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| **Technical and administrative support for the joint implementation of the Marine Strategy Framework Directive (MSFD) by the EU Black Sea Member States**  **- Phase II –**  ***Joint document on regional coordination of Programme of Measures in the EU Black Sea***  **Project number BE0114000978 | Final report | 3/12/2015** | | |
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Joint document on regional coordination of Programme of Measures in the Black Sea

Final Document on Work in Progress:

**Version 0.3 – 02.12.2015**

*Note: This document has been prepared under the project ‘Technical and administrative support for the joint implementation of the Marine Strategy Framework Directive (MSFD) in Bulgaria and Romania – Phase II’ (further named ARCADIS MSFD Black Sea support project,* [*http://www.msfdblackseaproject.eu/*](http://www.msfdblackseaproject.eu/)*). The draft is a snapshot of the on-going regional coordination process related to the development of the Programmes of Measures between the EU Black Sea Member States (EU Black Sea MS) under the ARCADIS MSFD support project and may be completed with results of other coordination processes between the EU Black Sea MS (Romania, Bulgaria).*

*The information and views set out in this joint document are those of the BG and RO experts involved in this ARCADIS MSFD Black Sea support project and do not necessarily reflect the official opinion of the EU Black Sea authorities. They should be considered as proposed measures and operational actions, suggestions and ideas in order to work forward in the implementation of the MSFD, without being formal commitments between the EU Black Sea MS at this stage.*

# Aim of the document

This joint document on regional coordination of Programme of Measures in the Black Sea prepared under the ARCADIS MSFD support project has a three-folded objective:

* Summarizing the regional coordination efforts made by Bulgaria (BG) and Romania (RO) in their development of coordinated and/or joint measures: the outcomes reflect the proposed measures and operational actions, suggestions and ideas of the experts participating to the project in order to work forward in the implementation of the MSFD, without being formal commitments between the EU Black Sea MS at this stage (beyond the capacity of most of the NFCP/experts involved).
* Providing the basis for the regional parts under the PoMs reporting requirements by the EU Black Sea MS: the structure of the document is based on the PoMs reporting requirements set out by WG DIKE (see Annex 1), allowing direct transposition of the information provided here into the national reporting regarding:
  + Regional cooperation and transboundary impacts
  + Obligations in relation to public consultation (Art. 19(2))
* Information exchange of the work done under MSFD in the Black Sea Region: the efforts done by Bulgaria and Romania on coordinated PoM development under the ARCADIS MSFD support project may be presented to the Contracting Parties of the Bucharest Convention as a basis for further discussion on coordinated measures in the whole Black Sea.

# Protecting the Black Sea marine ecosystem

## Key environmental pressures and risks affecting the Black Sea Coast and Sea

The Black Sea is one of the most vulnerable regional seas in the world given its limited exchange of water with the open oceans and the large area of continental Europe from which it receives drainage. The four strongly interlinked priority transboundary problems of the Black Sea are (Black Sea TDA-2007):

* **Eutrophication/nutrient enrichment**: Nutrient loads entering the Black Sea via the Danube are identified among the main causes of nutrient enrichment. Discharges from large municipal/industrial plants directly into the Black Sea are equivalent to only a small proportion of nutrients discharged to the Sea via rivers, of which the Danube is by far the most important. The ICPDR made significant efforts to reduce N and P loads, as measures under the Water Framework Directive. As a result eutrophication has decreased in the last decade. Available information also suggests that atmospheric deposition of nitrogen may be of a similar order of magnitude to river loads, but there is considerable uncertainty over the data used, with a clear need for updating and harmonisation of monitoring protocols.
* **Changes in marine living resources:** The structure of catches has shifted significantly since the early 1970s-1980s due to overfishing. Declining stocks of predatory species resulted in an increase in non-predatory species such as anchovy and sprat. Consequently, fishing fleets have increasingly targeted these smaller species. Total fish landings are now about half of what they were in the latter half of the 1980s. Commercial fish stocks have been affected by introduction of alien species. Sturgeons remain endangered in the Black Sea basin. Unsustainable fishing practices are still in relatively common use. The commercial importance of *Rapana venosa, a non-indigenous species (*an introduced snail), has increased and has helped off-set the decline in mussel and clam landings. The contribution of illegal fishing activities to the decline of the marine environment is not yet fully understood but itis accepted that this is a causative factor.
* **Chemical pollution (including oil):** Relatively high contamination levels of some pesticides, heavy metals and PCBs are present at specific sites in the Black Sea, with illegal dumping/discharges (particularly of agrochemicals) being recognised as a particular problem. The historically poor enforcement of discharge standards and a failure to consider the Sea itself as a receiving water body for discharges to river are considered to be the principal reasons underlying the pollution status of the sea. There is an increased risk of oil pollution due to increased volumes of oil transported across the Black Sea and oil/gas extraction activities in the Black Sea. These risks can cause 2 problems: localized chronic oil pollution from frequent but minor releases and acute oil pollution from major oil spills.
* **Biodiversity degradation:** In some areas, strong declines are observed in seaweed beds, with replacement by opportunistic macro-algae. Areas with Eelgrass *Zostera*) decreased tenfold in shallow zones. Coastal margin habitats and pelagic habitats are considered to be in a critical status in some areas of the Black Sea. The invasive species *Mnemiopsis* *leidyi* caused a catastrophic decline in fish productivity in the late 1980s early 1990s. The current effect of this invader is unclear. Between 1996 and 2005 a total of 48 new alien species were recorded, which represents over 22 % of all registered aliens.This increase in invasive aliens suggests a serious impact on the Black Sea native biological diversity, with negative consequences for human activities and economic interests.

The Convention on the Protection of the Black Sea against Pollution (Bucharest Convention) addresses these problems through enhanced cooperation amongst its signatories (since 1994). Next to the Regional Convention’s activities and responsibility, the aim of the European Union's Marine Strategy Framework Directive (adopted in June 2008) is also to protect more effectively the marine environment across Europe for achieving or maintaining the good environmental status by 2020. Each European Member State - cooperating with other Member States and non-EU countries within a marine region - are required to develop strategies for their marine waters. For the Black Sea marine region, Romania and Bulgaria are the European Member States responsible for implementation of MSFD,

According to art.6 EU Member States are required to cooperate with each other and with non EU countries (Turkey, Ukraine, Russia, Georgia) to ensure successful implementation of the EU-MSFD in the Black Sea, and act together where transboundary environmental problems exist.

## Bucharest Convention

The Black Sea legal framework for protection of the marine environment at the regional level was established under the UNEP Regional Seas programme in 1992. The 1992 Convention on the Protection of the Black Sea against Pollution (Bucharest Convention, http://www.blackseacommission.org/\_convention.asp), framework convention, sets out the overall objectives and obligations of the Contracting Parties (Bulgaria, Georgia, Romania, Russian Federation, Ukraine and Turkey), which include, in particular, “the prevention, reduction and control of pollution”.

And where the Bucharest Convention sets out the overall objectives and obligations of the Parties, the actual implementation of each of these is to be realized through more detailed and specific protocols. To date, the Black Sea States have ratified or adopted four implementing protocols dealing with land-based sources of pollution, emergency situations, damping and conservation of biodiversity (<http://www.blacksea-commission.org/_table-legal-docs.asp>).

There is no specific coordination for the MSFD implementation, as this is the obligation of only two of the Black Sea states – Romania and Bulgaria. However, being contracting parties to the Bucharest Convention, the Black Sea countries, have an obligation to harmonise their environmental protection policies/legislation and to join efforts in preserving and rehabilitating the Black Sea. This is the reason for the revision of the Black Sea Strategic Action Plan (the main policy document at the regional level), which was endorsed in 2007. The new Black Sea Strategic Action Plan was born through increased convergence between the policy and legal framework of the Black Sea region with relevant EU acquis, and the Marine Strategy Framework Directive, in particular. It is based on sound understanding of the priority Black Sea transboundary environmental problems and consequent formulation of ecosystem quality objectives. The BSSAP2009 also includes short-, mid- and long-term targets to tackle the sources of possible degradation - municipal, industrial and riverine discharges, overfishing, habitat destruction, ballast waters, illegal discharges from ships and other ship-related threats, climate change, lack of integrated coastal zone management and spatial planning, and others. The intention is to reach ‘Good environmental status’ of the whole Black Sea and to sustain it as likewise stated in the European Community Marine Strategy Framework Directive. The BSSAP2009 was signed by all Black Sea coastal states in April 2009.

During the last years, the harmonization/EU approximation process has been progressing under the ‘umbrella’ of the BSC through the following project:

2009-2011. “Support to the Black Sea Commission for Implementation of the Marine Strategy” (EC MSFD project, EC DG Env. Direct Grants to regional Agreements). The project was prolonged till end of 2012. Main objectives of this project are:

* Progressing toward achievement of good environmental status
* Enhancing the cooperation between the Black Sea coastal states, signatories to the Convention on the Protection of the Black Sea Against Pollution), harmonization practices between EU and non-EU states
* Providing institutional support to the Permanent Secretariat of the Commission on the Protection of the Black Sea Against Pollution

The Commission on the Protection of the Black Sea Against Pollution (Black Sea Commission, BSC) is the body responsible for the implementation of the Bucharest Convention and its protocols, and the Black Sea Strategic Action Plan (BSSAP2009).

A BSC Work Program (http://www.blackseacommission.org/\_commission-wp2009-2010.asp) is designed and implemented annually.

The actual day-to-day responsibility to fulfil the functions of the BSC and implement the Work Program falls upon the Black Sea Permanent Secretariat, which is based in Istanbul. Six Advisory Groups advise the BSC and the Secretariat. An Advisory Group consists of two representatives from each of the six Black sea countries, acting also as an intermediary between the Commission and the national authorities and other stakeholders in their respective countries. The Advisory Groups are an integral part of the institutional structure of the BSC and function as specialized subsidiary bodies and technical bodies.

## Implementation of MSFD

The EU Commission’s assessment of EU Member States’ first implementation steps of the MSFD in 2012 highlighted certain weaknesses. This includes lack of quantification and shortcomings in the coherence of national approaches to defining good environmental status (Art. 9 MSFD) and setting environmental targets (Art. 10 MSFD).

Ideally, cost-efficient measures are devised by reference to environmental targets, which quantify the reduction of the pressures required for achieving or maintaining good environmental status. By doing so, environmental targets bridge the gap between the current status and the desired (good) status of the marine environment. It is therefore necessary and urgent to develop regionally coherent definitions of good environmental status as a basis for such marine strategies.

## Programme of measures

The coordination of programmes of measures between the EU Black Sea MS includes:

* the exchange of information on the status of the PoM development and alignment of measures that are primarily of national concern and responsibility in Bulgaria and Romania. This includes information exchange on national existing and new measures and proposals for a coordinated approach at national level, if relevant.
* the development of coordinated measures at (sub)regional level with a focus on transboundary issues.
* the identification of issues and, if possible, the development of joint proposals for measures that are required to achieve good environmental status but are in the competence of the EU, international authorities (e.g. IMO, river commissions) or third countries outside the EU and RSC cooperation (e.g. upstream-countries), and agreement of concerted actions of Contracting Parties to approach those bodies/authorities through the Black Sea Commission (Reference to Art. 13 (5) and Article 15)
* the exchange of information on instances within the national marine waters where the environmental targets or good environmental status will not be achieved in every aspect due to reasons beyond the capacity of the MS concerned (Reference to Art. 14). These issues mainly relate to transboundary impacts which may need a coordinated approach.

The coordination process allows the identification of coordinated actions to be proposed at European or Regional (Black Sea Commission) level and to coordinated approaches of national measures to ensure that they have a positive impact on waters under the jurisdiction of neighbouring countries and contribute to achieving or maintaining good environmental status at regional scale.

Coordination between the EU Black Sea MS is taken forward at different levels:

* At regional level as contracting parties to the Black Sea Commission.
* At project level, more specifically “Technical and administrative support for the joint implementation of the Marine Strategy Framework Directive (MSFD) in Bulgaria and Romania – Phase II” under Framework contract for services related to coordination between the different marine regions in implementing the ecosystem approach (ENV.D.2/FRA/2012/0017), set up by EC DG Environment for this purpose:
  + In 2014, Bulgaria and Romania started sharing information on their monitoring programmes, needed to measure progress towards GES and targets.
  + In 2015, the emphasis shifted towards an information exchange and the identification of proposed coordinated measures by Bulgaria and Romania with a view to identifying opportunities for improved coherence, joint approaches and regional measures.

Within this joint report regional cooperation in developing programme of measures between Bulgaria and Romania under the Technical MSFD support project has been worked out in more detail in Chapter 3.

The coordination process needs to take account of the different timetables of Bulgaria and Romania to develop the national draft programmes of measures and to submit them to public consultation, as further elaborated in Chapter 4.

# Coordination and joint elements of programme of measures

## (Sub)regional cooperation in development PoMs

In the Black Sea region, under the auspices of UNEP/MAP/Bucharest Convention and its Protocols, Regional Plans, related National Action Plans (NAPs), the Contracting Parties have been already over 20 years addressing key pressures and their drivers.

The Contracting Parties over the last two decades have designed a number of multitude of sectorial or integrated policy instruments within different frameworks, aiming to address different identified pressures. These were included in the Black Sea Strategic Action Plans of 1996[[1]](#footnote-2) and 2009[[2]](#footnote-3) .

This work forms the basis for the requirements of the European Maritime Strategy Framework Directive (MSFD) to be fulfilled by the 2 European Member States bordering the Black Sea: Bulgaria and Romania.

In addition, with the financial support of the European Commission, Bulgaria and Romania increased their collaboration by participating in the “Technical and administrative support for the joint implementation of the Marine Strategy Framework Directive (MSFD) in Bulgaria and Romania under Framework contract for services related to coordination between the different marine regions in implementing the ecosystem approach” to reach a good environmental status by 2020 in their marine waters.

Building on the experience gained under the first phase of the service contract, 8 Capacity Building Events (CBEs) have been organised, bringing together Bulgarian and Romanian experts to discuss specific issues related to the development of a coordinated programme of measures (PoM). The focus of the project lays on joint or coordinated measures which should be further completed by national measures for Bulgaria and Romania (outside scope project).

If relevant, also external and regional experts participated to the CBEs. The interactive setting of the CBEs has proven to be of uttermost importance to enhance cooperation between Bulgaria and Romania.

The following Capacity Building Events (CBE) have taken place:

* CBE 1 - Brainstorm long list/gap analysis, Revisions selected common targets, Template Roof report, Practicalities consultation process (selection main stakeholders)
* CBE 2 - Defining selection criteria, Brainstorm short list (common measures), Detailed description selected measures, Preparatory steps CBE/CEA for selected measures
* CBE 3: Financial assessment and potential funding opportunities to address needs
* CBE 4: Cost-effectiveness analysis POM
* CBE 5: Review and prioritization PoM implementation needs BG & RO, Work session on the measure definitions, activities in the scope of each measure, cost – effectiveness and cost – benefit analysis of the measures.
* CBE 6: work session selected measures - selected topics, sectorial consultation Romania, sectorial consultation Bulgaria
* CBE 7: work session on measure definitions, activities in the scope of each measureCBE 8: Work plan POM, roof report POM, Joint interpretation Art. 14 & 15,

An overview of the minutes/ presentations of the CBEs and the documents have been uploaded on the EEA webpage: <http://projects.eionet.europa.eu/black-sea-marine-region-documents>

### Scoping exercise for further coordination between Bulgaria and Romania

At the first Capacity Building Event (CBE1, Constanta, Romania) a discussion took place between Bulgaria and Romania to define the further scope for the development of the coordinated/joint PoM between Bulgaria and Romania, more specifically based on the transboundary character of the (priority) pressures (Section 3.1.2 and 3.1.3).

It was agreed at this meeting to consider all descriptors in the further development of potential joint and/or coordinated measures (and not a priori exclude any descriptors), as it was specified in the TOR.

In addition, there was a demand from Bulgaria and Romania in August 2015 to discuss in more detail the joint interpretation of Article 13(5), 14 and 15 of the Marine Directive (Section 3.1.4). The exercise on Article 14 and Article 15 also contributes to the identification of transboundary impacts in the Black Sea.

### Tools developed to facilitate the coordination of PoM development

**Prioritization criteria**

Starting from a long-list of measures, a short list has been processed based on a number of prioritization criteria. The prioritization criteria for have been discussed at CBE2 and include:

* The Transboundary character of pressure – transboundary implementation
* Common - Sound common basis (priority for BG and RO)
* Direct contribution to achieving GES/targets
* Priority to marine oriented measures
* Stakeholder acceptance
* Additional remarks (related on-going studies, role of specific organisations, etc.)

**Common criteria for effectiveness, costs and benefits**

According to Article 13(3) of the Marine Strategy Framework Directive (MSFD), Member States shall ensure that measures are cost-effective and technically feasible, and shall carry out impact assessments, including cost-benefit analysis, prior to the introduction of any new measure.

As no specific EC guidelines exist on how to assess technical feasibility, cost-effectiveness and cost-benefits, common criteria have been proposed for these assessments and detailed guidelines developed for Bulgaria and Romania:

* Technical feasibility in strict sense is correlated to technical measures determined by the maturity of the technology and the capacity available to implement this technology. For the purpose of the ARCADIS support study, the concept has been extended towards non-technical measures (e.g. feasibility studies, awareness actions, etc.) looking to the availability of capacity to implement these measures.
* Effectiveness has been estimated as the sum of five criteria including the relative importance of the driver (~size/intensity), the relative impact of the driver on the pressure (~ driver-pressure-impact table; per unit of activity), the scale of the impact (~ potentially disturbed area affected), the expected effectiveness of the measure (~ measure type) and the timing of the effect (~ actual implementation of the measure).
* Costs have been further broken down in legal costs (for regulator and regulated (incl. preparation, consultation), in institutional costs (organisation, equipment, human capacity), in policy (incl. economic) costs (to assess, prepare, implement), in technical costs (investment, O & M) and in capacity/awareness (communication, training, etc.).
* Benefits have mainly be assessed on a qualitative basis describing the range of benefits (direct/indirect) related to the measure and their time scale (immediate to long term). Monetary evaluation of the benefits over the analysed period could only be done to a limited extent due to lack of data.

The project has supported Bulgaria and Romania by delivering a methodological framework for the cost-effectiveness and cost-benefit analysis, according to a stepwise approach:

1. Defining operational actions for the measures
2. Assigning cost components and their temporal scale (one off; yearly cost; time period) to the measures and their operational actions. The cost components include legal implementation costs, enforcement costs, negotiation costs, management costs, research costs, and communication costs, training costs, consultation costs, costs for awareness raising, technical implementation costs and opportunity costs.
3. First rough assessment: costs will be divided into preliminary cost ranges: low (< 50,000 €), medium (50,000 – 1 M €), high categories (> 1 M €). These costs should be interpreted as the total cost per Member State for the first 6 years, corresponding to the MSFD planning cycle.
4. Detailed assessment: especially the detailed cost assessment (step 4) demands a more detailed formulation of the measures into operational actions. This formulation facilitates the breakdown of the cost assessment in specific cost components.

Considering the restricted time within the ARCADIS support project, the first detailed assessments for CEA and CBA are mainly based on expert judgement and preliminary cost estimates (if data available) and need to be further revised and fine-tuned by Bulgaria and Romania based on more quantitative data available.

**Template measure fact sheet**

According to Article 5(2)(b) of the 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)) (i.e. by 31 March 2016). Any exceptions which the Member State seeks under MSFD Article 14 are to be clearly identified and substantiated in the PoM.

This project supported Bulgaria and Romania by producing a template for measure fact sheets based on the PoM Recommendation document[[3]](#footnote-4), particularly on Annex 2 of the Recommendation; the PoM Recommendation describes the content of the PoM and the process to develop it. The measure fact sheet has been developed in coordination with the German/Bulgarian UBA project on the national PoM in Bulgaria.

Based on feedback given by Bulgaria and Romania during the CBE, the measure fact sheet has been divided in two parts:

* Part I (relevant for all measures): short description of the measure, categorization according to MSFD and WFD, environmental targets, main pressures, drivers, link to relevant legislation, spatial reference, transboundary aspect, impact on MPAs, Implementation issues, coordination and financing, effectiveness, costs, benefits
* Part II (only for national measures): supporting information for SEA

At the DIKE meeting of 12 October the draft document ‘Reporting on Programmes of Measures (Art. 13) and on exceptions (Art. 14) for the Marine Strategy Framework Directive’ was presented that further elaborates on the reporting requirements of PoMs. The template measure fact sheets developed under the ARCADIS MSFD support project are still in line with the guidelines given in this revised version.

### Coordinated and/or joint measures to tackle transboundary issues

During several capacity building events, a step-wise selection of a short list of potential coordinated/joint measures took place. Starting from a longlist of 133 measures 17 measures were shortlisted based on the prioritization criteria discussed under 3.1.2.

The shortlist of 17 coordinated/joint measures was further structured per theme: A. Eutrophication and contaminants (D5/D8/D9), B. Marine litter (D10), C. Fisheries (D1/D3), D. MPAs (D1, D3, D4, D6)), E. Non-indigenous species (D2) and F. General regulations (D1, D6, D7, D11), corresponding with the most prominent transboundary pressures acting on the Black Sea.

Table 1: Proposed shortlist of 17 coordinated/joint measures structured per theme

| Nr | Proposed shortlist of 17 joint/coordinated measures for BG & RO | Theme |
| --- | --- | --- |
| 1 | Management and reduction of diffuse sources of pollution including atmospheric deposition. | A |
| 2 | Introduction of Ecolabelling (based on of existing relevant ecolabels) related to aquaculture (e.g. Blue mussels) | A |
| 3 | Development of Regional Marine litter Action Plan (joint methodology for quantifying the marine litter, identification of sources, prosecution of offenders, etc.) | B |
| 4 | Improvement of ship generated waste management. | B |
| 5 | Coordinated set up and / or support of regular (yearly) awareness raising campaigns addressed to business (commercial, beach users, fishermen, etc.) and public (tourists, students, children, etc.) related to the sources and the environmental consequences of marine litter and the need for waste recycling. | B |
| 6 | Awareness building (educational campaign) of and advisory services for local professional Fishery Groups regarding effective use of environmental friendly fishing techniques and equipment. | C |
| 7 | Stimulation of environmental friendly practices for fishing vessels under 10 m and not using towed gear (small scale fishery) | C |
| 8 | Designation of zones permitted for beam trawling and long-term observation of the impacts. When necessary, change usage requirements for beam trawling. | C |
| 9 | Promotion and stimulation (including financial) of environmental friendly fishing and collection of shellfish | C |
| 10 | Development of common multi-annual management plan for targeted fish stocks | C |
| 11 | Enforced control of turbot gillnets. | C |
| 12 | Define and re-evaluate spatio-temporal bans and closures for fish species - fish stocks | C |
| 13 | Protection of non-breeding seabird species Yelkouan Shearwater (*Puffinus yelkouan*) and European shag (*Phalacrocorax aristotilis*) in coastal, territorial waters and EEZ of BS countries. | D |
| 14 | Elaboration/update of management plans for MPAs according to requirements of the MSFD and including both national and common targets | D |
| 15 | Creating a coherent and representative network of marine protected areas that includes MPA's in both RO and BG, including management plans. Enhanced control of regulated activities within MPAs | D |
| 16 | Setting up of a common action plan for early detection, mitigation and impact assessment of non-indigenous species. | E |
| 17 | Amendment of existing legislation, where necessary, through Introduction of a permit regime for activities in marine environment | F |

A detailed cost-and benefit assessment has been performed for these 17 shortlisted measures according to the methodology described under section 3.1.2. All information has been structured per measure in a measure fact sheet. An illustrative example may be found in Annex 2.

### Joint interpretation of Article 13(5), Article 14 & 15 of MSFD

In terms of coordinated actions to develop PoMs, three articles within the Marine Strategy Framework Directive needed some further clarification of the scope and procedures to be followed namely Article 13(5), Article 14 and Article 15. All are characterized by a transboundary aspect either in terms of impact and/or in terms of implementation.

Particularly following points were further clarified for a better interpretation by Bulgaria and Romania based on input provided by the European Commission (Clementine Leroy) and summarized in Annex 3:

* Scope of and differences between Article 13(5), Article 14 and Article 15?
* How to interpret [… likely to have a significant impact on the marine environment…] and [… in order to achieve the objectives of this Directive…] as stated in Art. 13 (5)? Is this directly linked to reaching GES and targets by 2020?
* Which procedure to be followed under Art. 13(5) […to address the competent authority or international organisation concerned…], taking also into account the more recently agreed Lisbon Treaty?
* May a MS request an exception based on the conditions to use an exception as laid down in Art. 14, even if GES has not been defined yet?
* Does condition 1(a) under Art. 14 referring to [….action or inaction for which the MS concerned is not responsible...] also apply to non-EU MS or Contracting Parties of the Bucharest Convention?
* May a request for action to an international organisation be done directly by a EU MS under Art. 13(5) or pass through the EC under Art. 15? Which procedure to be followed?
* How to interpret the scope as defined in [… linked to another Community policy or international agreement...] under Article 15? May for example Communication and Action Plans be considered as policies?

In the next sections the obligations of the Member States under these articles and the issues that might be considered by Bulgaria and Romania as common issues to report under these articles have been summarized. The issues raised reflect the ideas and suggestions of the participants to CBE 8 to consider under regional coordination between Bulgaria and Romania (in 1st or next cycles of MSFD), and need to be further formalized as part of the national process of MSFD implementation (political responsibility).

#### Article 13 (5)

**Obligations under Art. 13 (5)**

The EC Recommendation for implementation and reporting on PoMs, endorsed by the Marine Directors in Rome on the 25th of November 2014, briefly points to Article 13 (5) stating that for some of the descriptors, pressures and impacts according to Annex I and III of the MSFD action at a EU level are required, particularly where fishing (CFP) and shipping (IMO) are concerned (but also hazardous substances (REACH), market regulation related to plant protection products, etc.).

A summary of the most important elements of Article 13(5) is given in Table 2.

Table 2 : Overview of Member States’ obligations under Article 13(5)

|  |
| --- |
| Obligations of MS when applying Art. 13 (5) |
| Identify if the management of human activities at Community or international level is likely to have a significant impact on the marine environment  (note: significant impact is linked to reaching GES by 2020) |
| Identify the competent authority or international organisation concerned |
| Elaborate view to the consideration and possible adoption of measures to achieve objectives of Directive (note: to reach GES by 2020) |
| Address the competent authority or international organisation concerned individually or jointly with this view |

**Issues raised by BG & RO under Art. 13 (5)**

Based on the discussions during CBE8 following issues have been raised by BG & RO under Article 13 (5). An overview of the discussion can be found in Annex 4.

|  |  |  |
| --- | --- | --- |
| D | Issue at stake / Arguments by BG/RO | Competent Authority or International Org. |
| D1 | Migratory species - birds (Mediterranean Shearwater *Puffinus yelkouan*)  Lack of effective management plans for existing MPAs in BG and RO | NGO: Bird life international  EC - Bird Directive |
| D3 | Commercial fish (sprat, turbot, whiting, horse mackerel, anchovy, dogfish, red mullet)  1) Need for coherence of GES & targets at EU level (MSFD targets) and Black Sea level (BS SAP objectives); leading role to be taken by GFCM.  2) Development of GES & targets within Black Sea by GFCM that may be used as common targets by BG & RO.  3) Management plans of CFP should be compliant with common GES / targets for EU Black Sea MS (BG & RO). | EC - CFP  BSC – BS SAP  GFCM – MoU with BSC |
| D11 | Ambient noise (non-fixed sources, like shipping)  Ambient noise related to maritime transport to be addressed by IMO | IMO |
| D11 | Impulsive noise (fixed sources, mainly offshore plants)  1) Need for common GES & targets to be established by ACCOBAMS based on the best available knowledge on impact levels (cumulative, subregional aspects), with priority for impact on marine mammals (evidence available within ACCOBAMS)  2) Management of maritime activities causing noise should be enhanced by developing management plans based on noise mapping and considering their cumulative effects  3) Management of military activities is difficult; compliance with ACCOBAMS should be enforced. | ACCOBAMS |

**Obligations under Art. 14**

Guidance on Article 14 has been provided within the EC Recommendation for implementation and reporting on PoMs (final version, 25/11/2014). A summary of the most important elements is given in Table 3 and used as basis during CBE 8.

Table 3 : Overview of Member States’ obligations under Article 14

|  |  |
| --- | --- |
| Obligations of MS when applying Art. 14(1) to (3) | Obligations of MS when applying Art. 14(4) |
| Identify exceptions in the PoMs | Avoid that the achievement of GES be permanently compromised |
| Consider the consequences for MS in the marine region or subregion concerned | Identify exceptions in their PoMs |
| Take appropriate ad-hoc measures aiming to continue pursuing the targets | Provide the Commission with the necessary justification to substantiate their decision |
| Take appropriate ad-hoc measures aiming to prevent further deterioration (applicable only to points (b), (c) and (d) of Art. 14(1)) |  |
| Take appropriate ad-hoc measures aiming to mitigate the adverse impact in the marine waters of other MSs |  |
| Integrate as far as practicable ad-hoc measures in the PoMs |  |
| Ensure that the use of exceptions under Art. 14. 1(d) does not permanently preclude or compromise the achievement of GES at the level of the marine region or subregion concerned or in the marine waters of other MSs |  |

**Issues raised by BG & RO under Art. 14**

Based on the discussions during CBE8 following issues have been raised by BG & RO under Article 14. An overview of the discussion can be found in Annex 4.

| D | Issue at stake / Arguments by BG/RO | Exception | Ad hoc measures (Ref. to PoMs BG/RO) |
| --- | --- | --- | --- |
| D1 | Migratory species - birds (Mediterranean Shearwater *Puffinus yelkouan*)  Lack of good conditions in the nesting areas located in MED region (e.g. IT, El, MT). | BG & RO  1 (a) | BG/RO: Establish or improve of the management plan of existing MPAs . |
| D1 | Migratory species - marine mammals (*Phocoena phocoena* relicta) Requirements under ACCOBAMS are not implemented by all Contracting Parties to BSC (e.g. Turkey). Especially the pressure of by-catch of (illegal) fisheries on *Phocaena phocaena* is considered by RO as important for not achieving their targets, and thus negatively affecting the environmental status. | RO  1 (a) | RO: Effective implementation of ACCOBAMS including better/increased enforcement of illegal fisheries/by-catch in their national waters. |
| D2 | NIS (ballast water)  Ballast Water Convention is not (properly) implemented by some EU MS and Contracting Parties BSC. | BG & RO  1 (a) | BG/RO: National implementation of Ballast Water Convention. |
| D10 | ML (general)  Lack of good conditions in the other CP of BSC on marine litter issue resulting in litter entering the national waters of BG & RO (transboundary character).  Lack on agreed Regional Action Plan in Black Sea. | BG & RO  1 (a) | BG/RO: Development of Regional Marine litter Action Plan (joint methodology for quantifying the marine litter, identification of sources, prosecution of offenders, etc.) |

#### Article 15

**Obligations under Art. 15**

A Guidance document on Article 15 has been endorsed on the 4th of May 2015 by the MSCG and presented to the Marine Directors on the 26-27th of May 2015 (Table 4) and was further discussed with BG and RO during CBE 8.

Table 4 : Overview of Member States’ and EC obligations under Article 15

| Obligations of MS when applying Art. 15 | Obligations of EC when applying Art. 15 |
| --- | --- |
| **PHASE 1 - Identification and analysis (Article 15 (1))** | |
| Identify identifies an issue which has an impact on marine waters and  1. cannot be tackled at national level or  2. is linked to another EU policy, or  3. is linked to an international agreement  (note: on MS’s initiative) | Commission’s analysis including link with other legislations, preliminary assessment of what the EU can do/ actions by EU institutions needed |
| Work out a justification to substantiate its view  (Note: no mandatory list of information, but e.g. In-depth description of the issue; Impact assessments; Cost benefit analysis; Measures already undertaken;  Recommendation proposals) | Commission responds within 6 months of receipt of the official communication  (in case of a positive answer; start of phase 2) |
| Formally inform the Commission accordingly (incl. the justification)  (Note: Early notice of upcoming Art. 15 requests if possible (e.g. via MSCG); Ideally with PoMs communication) |  |
| **PHASE 2 – Follow-up action (Article 15(2))** | |
| Make appropriate recommendations for measures to the Commission and the Council (note: no timeline specified) | Commission responds within 6 months after receipt recommendations  (note: Council free to decide whether to follow-up or not) |
|  | **May** reflect the recommendations in proposals to the EU Parliament and to the Council (unless other EU legislation applies) (note: no timeline for proposal) |

**Issues raised by BG & RO under Art. 15**

Based on the discussions during CBE8 following issues have been raised by BG & RO under Article 15. An overview of the discussion can be found in Annex 4.

| D | Issue at stake  Recommendation by BG & RO (under consideration) |
| --- | --- |
| D1 | Migratory species – birds (Mediterranean Shearwater *Puffinus yelkouan*)  Request to EC for support tools to assess effectiveness of management plans of existing MPA (incl. transparent effectiveness criteria). |
| D1 | Migratory species - marine mammals (*Phocoena phocoena* relicta)  (Only RO) Request to ACCOBAMS/EC for enhanced follow-up of effective implementation of international agreements (e.g. possibility to envisage financial consequences). |
| D2 | NIS (ballast water)  Follow up and transparent communication of actions taken at EU / BSC related to implementation of IMO guidelines. |
| D3 | Commercial fish (sprat, turbot, whiting, horse mackerel, anchovy, dogfish, red mullet)   1. Request to EC to actively approach GFCM and BSC to improve coherence of GES and targets under MSFD and BS SAP 2. Request to UNEP/MAP to exchange best practices related to ECAP process (incl. coherence efforts with MSFD) to improve BS SAP process 3. Request to BSC to consider the best practices of ECAP process to improve BS SAP and to aim for max. alignment with MSFD process 4. Request to CFP to make their management plans compliant with common GES/targets set by BG and RO (based on input from GFCM) |
| D10 | ML (general)   1. Request to BSC to continue the development of the RAP ML in Black Sea (max. alignment desirable between the newly developed RAP ML by BSC and the requirements under MSFD (European - EC)). 2. Request to the EC on clarification/adjustment of legislation related to waste disposal issue related to FFL initiatives (e.g. which garbage can be disposed and at which cost? And at which PRF?) 3. Request to EC for funding for a feasibility study of the options for collecting and processing or to value the end of life of fishing equipment. |
| D11 | Ambient noise (non-fixed sources)   1. Request to IMO/EC to stimulate technical measures to reduce shipping noise 2. Request to TG Noise for support to set ambient noise levels for BG and RO (and if possible, for the Black Sea region) |
| D11 | Impulsive noise (fixed sources, mainly offshore plants) –   1. Request to EC (TG Noise)/ ACCOBAMS to develop common GES & targets to be established based on the best available knowledge on impact levels (cumulative, subregional aspects), with priority for impact on marine mammals (evidence available within ACCOBAMS) 2. Request to ACCOBAMS to develop subregional noise maps/ management plans 3. Request to EC/ACCOBAMS to set boundary levels for impulsive noise + guidelines to assess cumulative effects EIA 4. Request to ACCOBAMS for compliance check of ACCOBAMS requirements related to military activities |

## Assessment of transboundary impacts on waters

Information on how BG and RO assessed the transboundary impacts on waters beyond their marine waters will be further elaborated in their national reporting (not focus of project).

## Notification of transboundary impacts to affected states

Information on how and when the identified transboundary impacts (positive and negative) were notified by BG & RO to the affected states, and how their views were taken into account in the final set of PoMs, will be further elaborated by them in their national reporting (not focus of project).

# Coordination in relation to public consultation

The coordination process needs to take account of the different timetables of EU BS Member States to develop draft programmes of measures and to submit them to public consultation.

Bulgaria and Romania have planned their public consultation in the first quarter of 2016. Bulgaria and Romania have to cope with some delay in the development of their programme of measures due to limited capacity and overlapping deadlines in meeting European environmental policy requirements which fall under the same competence (WFD, MSFD, Natura 2000).

## Overview table public consultation PoMs

Current planning of public consultation of national programmes of measures of Bulgaria and Romania, including when, where, how and what the public consultation will include can be found in Annex 5.

## How was the public consultation taken into account?

As the public consultation of the PoM will only take place after the project end of the ARCADIS MSFD support project, the way how the outcomes of the public consultation was taken into account for the final programme of measures will need to be further elaborated by BG and RO as part of their national reporting.

# Summary conclusions and next steps

## Main achievements of the support project in BG & RO (phase II)

Important achievements under the MSFD support project as a result of coordinated effort between Bulgaria and Romania have been summarized under Section 2.2 and discussed in more detail within the different chapters of the report. They include:

* Development of coordinated and/or joint measures (incl. shortlist, CEA/CBA and measure fact sheets);
* Overview tables on transboundary issues potentially to be considered under Articles 13(5), 14 and 15 by BG and RO;
* Joint document on regional coordination of PoMs in the Black Sea by BG & RO;
* Work plan as a basis for further work on PoMs.

## Challenges

The project was challenged by a tight timeline and by project timelines not being aligned with national timelines for the development of Programme of Measures, regional timelines set by the Bucharest Convention and external timelines of other related projects[[4]](#footnote-5). In addition, the limited capacity available for MSFD implementation in Bulgaria and Romania makes it even harder to provide (timely) the requested input to all on-going processes, including this ARCADIS MSFD support contract.

Despite these difficulties, both the local experts and the national focal contact points of Bulgaria and Romania have worked closely together with the international consortium partners in identifying measures, defining their operational actions, assessing the measures and drafting measure fact sheets. This good collaboration has further led to the exchange of work done on the national PoMs by Bulgaria to Romania which may support the development of the national PoMs in Romania.

Both Bulgaria and Romania emphasized the added value of the outcomes produced under the second phase of the MSFD support contract, which will be directly used by both Member States for the reporting requirements under MSFD under Article 13, 14 and 15. The MSFD support project further enhanced cooperation between both countries (‘working in one team’) by providing an information exchange and discussion platform for common issues in the Black Sea, as presented in the outcomes above. They were pleased with the active collaboration of many experts during the capacity building events and also during the on-going consultation (in BG). The organization of 2 separate national stakeholder workshops proved useful in this sense. BG stated that it has opened the way for more intense discussions with relevant parties. The complexity of the MSFD process and specifically new steps such as developing a programme of measures, demands a clear and prominent communication throughout the process. An element that could have deserved some more attention during phase II of the support contract.

Both Bulgaria and Romania expressed their interest for continued support for MSFD implementation within a regional context, and proposed following elements to be considered for future support projects:

* Guarantee of European financial support for MSFD implementation in BG and RO on a long term basis in line with the up-coming MSFD cycles.
* The MSFD support projects should run over a considerable time (preferably > 1 year) to allow better spreading of meetings and more preparation time between the meetings;
* Need for optimal start of project to have sufficient time to work towards the formal deadlines set by MSFD;
* Need for enhanced coordination at national and regional level (currently support from the regional level seems to minimal due to lack of capacity, differences in priorities and timelines, recent rejection of BSIMAP review process);
* Need for realistic scoping of the work within the time frame given.

More concrete, the third phase of the MSFD support project in Bulgaria and Romania should consider:

* Coordination: Set-up and/or strengthen coordination at national and regional level (~Bucharest Convention) to be done early in phase 3 (preferably meeting with all relevant parties) to streamline timelines and objectives/expectations relevant projects, national processes, BSC process, EC meetings, to create ‘ownership’ and to facilitate information exchange.
* Assessment: Priority focus on second assessment of the environmental status of the marine waters for the main transboundary pressures and impacts (scoping of work);
* GES & targets: Further coordination of GES and targets between BG & RO, considering the work done in the BSC on objectives and common parameters.

Other MSFD support will further be needed on:

* Monitoring: Priority focus on monitoring programmes (common indicators + operational coordination)
* Priority focus on further elaboration of PoMs including:
  + Concrete work out of proposed measures during phase I & 2
  + Identification of coordinated measures for other descriptors

Abbreviations

ACCOBAMS Agreement on the Conservation of Cetaceans in the Black Sea Mediterranean Sea and Contiguous Atlantic Area

BG Bulgaria

BSC Black Sea Commission

BSBD Black Sea Basin Directorate

BSIMAP Black Sea Integrated Monitoring and Assessment Programme

BSSAP Black Sea Strategic Action Plan

CBA Cost Benefit Assessment

CBE Capacity Building Event

CEA Cost Effectiveness Assessment

CFP Common Fisheries Policy

EAMA Executive Agency of Maritime Administration

EC European Commission

EU European Union

FFL Fishing For Litter

GES Good Ecological Status

IMO International Maritime Organization

IO-BAS Institute of Oceanology to the Bulgarian Academy of Sciences

KTM Key Type of Measures

MAP Mediterranean Action Plan

MSCG Marine Strategy Coordination Group

ML Marine Litter

MoEW Ministry of Environment and Waters

MPA Marine Protected Area

MSFD Marine Strategy Framework Directive

NAP National Action Plan

NFCP National Focal Contact Points

PC Public Consultation

PoM Programme of Measures

RAP Regional Action Plan

RO Romania

SEA Strategic Environmental Assessment

TG Technical Group

UNEP United Nations Environment Programme

WFD Water Framework Directive

# Annexes

Annex 1: Summary report on PoM – General Overview Section

Annex 2: Measure fact sheet - illustrative example

Annex 3: Clarifications related to the joint interpretation of Article 13(5), Article 14 and Article 15 of MSFD

Annex 4: Issues raised by BG & RO under Article 13(5), 14 & 15 of the MSFD

Annex 5: Overview table public consultation PoM in BG & RO

Annex 1: Summary report on PoM – 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**
   1. 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.
   2. Did you set any operational targets that relate to concrete implementation measures to support their achievement (Annex IV (2))?
2. **Inventory and assessment of existing measures**
3. Provide an overview of the existing measures (WFD, other); specific details are provided in the chapter ‘Existing and new measures of the PoM’;
4. Based on your review of existing measures (Article 13(2)), provide an analysis of the contribution of existing measures towards achieving or maintaining GES (the baseline scenario, taking into ongoing account implementation of existing measures and forthcoming legislation or international agreements) and the gap that needs to be addressed (gap analysis) to deliver the environmental targets and to achieve or maintain GES? This analysis should provide a link between the existing measures and the KTMs.
5. 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).
6. **New measures**
   1. Describe the method or approach to selecting new measures;
   2. Provide a summary of the new measures; specific details are provided in the chapter ‘Existing and new measures of the PoM’;
   3. When selecting new measures, how have you ensured that they are based on / take into account (Article 13(3)):
      1. Technical feasibility;
      2. Sustainable development: a combination of Impact Assessment (environmental, social and economic), cost-effectiveness analysis and cost-benefit analysis[[5]](#footnote-6)?
   4. Describe how the new measures will be implemented (e.g. by legal, policy, socio-economic and financial instrument), including an overview of potentially co-financed measures (Article 22) where relevant;
   5. Indicate whether further spatial protection measures will be identified and the purpose for which they are put in place (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?
7. **Adequacy of the PoM and need for exceptions (if any)**
   1. 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))?
      1. Yes, the PoM as a whole is sufficient;
      2. 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 and provide a justification for exceptions (see section 4.4.3).
   2. 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 on whether the measures are sufficient to achieve the targets and to achieve or maintain GES.
8. **Link to other policies**
   1. Describe the overall coordination or input to other EU legislation and policies (including international agreements);
9. **Regional cooperation and transboundary impacts**
10. 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)).
11. How did you assess the transboundary impacts of your PoM on waters beyond your marine waters (Article 13(8))?
12. 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?
13. **Public consultation**
    1. When was the Public Consultation undertaken (Article 19(2))?
    2. Where/how? (consultation website)
    3. Did the Public Consultation include:
       1. All measures reported under Article 13?
       2. All exceptions reported under Article 14?
       3. Ad-hoc measures under Article 14(1), 3rd subparagraph?
       4. If not, provide a list of the measures and/or exceptions which were not included and a reason for this.
    4. How was the Public Consultation taken into account?
14. **Administrative process**
15. 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)).

Annex 2: Measure fact sheet - illustrative example

| **Measure characteristics** | **Management area:**   * ***Black Sea***   ***Any other codes*** | **Code:**  ***MSFD reporting code***  **No. of measure:**  **4** |
| --- | --- | --- |
| **Measure title** | Improvement of ship generated waste management. | |
| **Short, precise description of the measure** | The measure refers to the assessment and enforced control of collection and transport of ship-generated waste (this includes garbage as domestic, food and plastics in terms of MARPOL Annex V, as well as oil waste (sludge) and waste water (sewage and bilge waters).  The measure consists of the following actions (aiming to enforce the control):  4.1. Training of control staff;  4.2. Additional staff for control;  4.3. Operational control | |
| **EU measure category** | **2a** | |
| **Key Types of Measures** | KTM 29 Measures to reduce litter in the marine environment  KTM 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 | |
| **Environmental targets** | Marine Litter  Target: Decreasing trend in the amount of marine litter washed ashore and/or deposited on coastlines.  Decreasing trend in the amount of marine litter deposited on the seafloor.  Contaminants  - The 75th percentile of heavy metal concentrations in water is lower than the levels from which the adverse effects are expected to occur (WFD-EQS/ Directive 2013/39/EU; /Ord.161/2006)  - The 75th percentile of synthetic contaminants concentrations in water is lower than the levels from which the adverse effects are expected to occur (WFD-EQS/ Directive 2013/39/EU)  - The 75th percentile of polycyclic aromatic hydrocarbons in water is lower than the levels from which the adverse effects are expected to occur (ERL/US EPA; EAC/OSPAR; SQC)  - The 75th percentile of heavy metal concentrations in sediments is lower than the levels from which the adverse effects are expected to occur (ERL/US EPA; EAC/OSPAR; SQC/Order 161/2006)  - The 75th percentile of synthetic contaminants concentrations in sediments is lower than the levels from which the adverse effects are expected to occur (ERL/US EPA; EAC/OSPAR)  - The 75th percentile of polycyclic aromatic hydrocarbons concentrations in sediments is lower than the levels from which the adverse effects are expected to occur (ERL/US EPA)  - The 75th percentile of heavy metal concentrations in Mytilus galloprovincialis is lower than the levels from which the adverse effects are expected to occur (Commission Regulations (EC) no. 1881/2006 and 629/2008  - The 75th percentile of synthetic contaminants concentrations in Mytilus galloprovincialis is lower than the levels from which the adverse effects are expected to occur (EAC/OSPAR) | |
| **Descriptors** | D8 - Contaminants  D10 – Marine litter | |
| **Main pressures** | * Other physical disturbance/Marine litter * Systematic and/or international release of substances | |
| **Main drivers** | * Port activities * Shipping * Waste removal – other | |
| **Characteristics** | * Marine and coastal birds * Marine mammals * Fish * Benthic habitats * Pelagic habitats | |
| **Link to other directive/legislation/policy** | * Waste Framework Directive 2008/9/EC * Urban Waste Water Directive 91/27/EEC * Bathing Directive 2006 /7/ ЕС) * Port Reception Facilities Directive 2000/59/EC, as amended by Directives 2002/84/EC and 2007/71/EC and Regulation (EC) No. 137/2008 * Convention for the Protection of the Black Sea Against Pollution and the Protocol on the protection of the Black sea environment against pollution by dumping | |
| **Necessity for transnational regulation** | Link with Convention for the Protection of the Black Sea Against Pollution and its Protocols - possible need for change | |
| **Instrument for implementation/** **Mode of implementation** | * Legal * Technical * Economic | |
| **Spatial reference/implementation zone** | (whole Black sea) regional | |
| **Contribution of the measure to achieving the target** | *– using technical information*   * Improvement of waste management especially to waste originating from illegal discharges from ships (marine – base sources of pollution). * Raising public awareness about the negative impact of marine litter accumulated in the marine environment.   The measure will have positive effect on decreasing of total amount of waste entering into the Black sea marine environment, especially the percentage waste, originating from shipping. The measure will have a moderate contribution to achieving the targets. | |
| **Transboundary impact** | The implementation of the measure is not expected to have negative transboundary impact on the waters of other countries shared the Black sea marine region.  The measure will have positive effect on decreasing of total amount of waste entering into the Black sea marine environment especially the waste, originating from shipping. | |
| **Costs** | **First rough assessment:** medium € 50.000-1.000.000  Administrative and implementation costs:  1) Additional staff for control (new working places, salaries, insurances): 63.000 €  2) Training of control staff: 1000 €  3) Operational costs for control (fuel, material, boat, repair costs): not possible to assess at this stage  Total one off costs within MSFD cycle (6 years): not possible to assess at this stage (minimum 64.000 €, probably < 100.000 euro  Scoring:   |  |  | | --- | --- | | **Score** | **total cost** | | 1 | > € 1 million | | 2 | € 500.000 - 1 million | | 3 | € 200.000 - 500.000 | | **4** | **€ 50.000 - 200.000** | | 5 | < € 50.000 | | |
| **Effectiveness** | Strong | |
| **Indicator(s) to measure effectiveness** | Number of signals received / yearly  Number of inspections / yearly  Number of taxes / yearly  Weight of different categories of waste for further processing in ports / yearly | |
| **Socio-economic assessment** | **Positive / Negative side effects:**  The implementation of the measure is not expected to have negative effects on the marine environment. Instead of that, the measure will contribute to decreasing of waste amount in it.  **Cost Effectiveness Assessment**: Cost effective  **Cost Benefit Assessment:** Medium | |
| **Coordination** | **At national level**  Bilateral coordination between Bulgaria and Romania  Regional measure in the scope of the Black sea Commission | |
| **Technical feasibility** | * *Frequently applied; extensive experience / evidence of good practice* | |
| **Body responsible for the measure implementation** | **Bulgaria:** Ministry of Environment and Waters (MoEW), Regional Inspectorates of Environment and Water - Varna and Burgas (RIEW - Varna and RIEW Burgas), Ministry of Transport, Information Technology and Communications and Executive Agency "Maritime Administration" - "Varna" Directorate and "Burgas" Directorate, port operators  **Romania:** Ministry of Environment, Waters and Forests;  Port Authorities, Environmental Protection Agency and Environment Guard | |
| **Financing opportunities** | *Public funds; EU projects (i.e Horizon 2020 Program)* | |
| **Planning of implementation/temporal coverage** | **2017** | |
| **Difficulties in implementation** | No | |
| ***Supporting information for SEA*** | | |
| **Additional values for protection (outside MSFD)** |  | |
| **Reasonable alternatives** |  | |

Annex 3: Clarifications related to the joint interpretation of Article 13(5), Article 14 and Article 15 of MSFD

| **Art. 13 (5)** | **Article under Programmes of measures** | **Questions raised by EU MS** | ***Reply by EC (C. Leroy)*** |
| --- | --- | --- | --- |
|  | ***FACTS (situation)*** |  |  |
|  | … management of human activity | How does this relate to terminology of 'issue' under Art. 15 |  |
|  |  | Does "management of a human activity" refer to PoM? |  |
|  | … significant impact on marine environment… | How does this relate to the definition of GES & targets? How to interpret 'significant'? | *Art. 13-5 states "in order to achieve the objectives of this Directive" meaning "reaching GES by 2020" (~impact on marine environment). With Article 13(5), the link is therefore more clearly established between the PoM, GES and Targets.* |
|  |  | How can PoM have a negative impact? Contradiction? |  |
|  |  |  |  |
|  | ***PROCESS (what to do)*** |  |  |
|  | … to address competent authority or international organisation concerned | What is difference between Art 15? | *Articles 13 and 14 are linked to the PoM, art. 15 is something in addition. Art. 15 represents an open possibility that can be raised at any time, not only during PoM preparation or within PoM context. To apply under art. 15, the issue must have an impact on the marine waters of the MS: this is quite an open phrasing which leaves room for different types of impact. The evidence of an environmental impact in a more general way is sufficient to apply for art. 15. So, art. 15 might or might not be linked to GES and targets.* |
|  |  | May a request for action to international organisations be done by a EU MS directly under Art. 13(5) or pass through EC under Art. 15? How to address competent authority? | *Concerning the need of addressing issues to international organization (e.g. GFCM), in case of measures needed to achieve GES, this may be more directly done via Art 13(5) than via Art 15. However, Art 13(5) has to be read in light of the Lisbon treaty, meaning that it cannot be seen as a blank check for MS to directly address international organization, such as GFCM. In all cases the "principle of unit in the external representation" and "loyal cooperation" should be respected. This means that the need to approach an international institution concerning a given issue, should ideally be consulted with the relevant EU institutions, depending on the competence at stake.* |
|  |  | What if competent authorities is EC? Should we then go through Art. 15? (answer C. Leroy: not necessarily) |
|  |  | Lisbon treaty after MSFD. How do we know if EC is the competent authority? |
|  | … possible adoption of measures that may be necessary | Very broad scope |  |
|  | … to achieve the objectives of Directive | What should be considered as objective? Does this mean reaching GES & targets here? | *Art. 13-5 states "in order to achieve the objectives of this Directive" meaning "reaching GES by 2020" (~impact on marine environment). With Article 13(5), the link is therefore more clearly established between the PoM, GES and Targets.* |
|  |  |  |  |
| **Art. 14** | **Exceptions** |  |  |
|  | 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: | What if no GES have been defined for certain descriptors, may Art. 14 then be applied? | *The conditions to use an exception are laid down in Article 14, if the conditions are met, MS can request an exception, even if GES has not been defined yet.* |
|  | (a) action or inaction for which the Member State concerned is not responsible | Does this also apply to non-EU MS / third countries of the Barcelona convention? | *Yes* |
|  | (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 ….. |  |  |
|  | (e) natural conditions which do not allow timely improvement in the status of the marine waters concerned. |  |  |
|  | The Member State concerned shall identify such instances clearly in its programme of measures and shall substantiate its view to the Commission. …. |  | *No illustrative examples available on detail of information.* |
|  | 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…. |  | *In case GES is not reached due to causes the MS is not responsible for, MS have to evaluate the possibility to define ad hoc measures targeting the issue, even if they will not get the objective.* |
|  |  |  |  |
| **Art. 15** | **Recommendations for Community action** |  |  |
|  | Application of Art. 15. |  | *Articles 13 and 14 are linked to the PoM, art. 15 is something in addition.* |
|  |  |  | *Art. 15 represents an open possibility that can be raised at any time, not only during PoM preparation or within PoM context. To apply under art. 15, the issue must have an impact on the marine waters of the MS: this is quite an open phrasing which leaves room for different types of impact. The evidence of an environmental impact in a more general way is sufficient to apply for art. 15. So, art. 15 might or might not be linked to GES and targets.* |
|  |  |  | *Art 15 should be used if MS wants to raise an issue at a higher level, due to its great importance. Regarding Art 14, MS will have to assess if the conditions are met and substantiate it when reporting to the Commission.* |
|  |  |  | *It is for MS to decide whether they consider that the appropriate conditions are gathered to trigger an Article 15 request, not for the Commission. The conditions to use an exception are laid down in Article 14, if the conditions are met, MS can request an exception. Art. 14 and art. 15 can be applied in parallel, but this is up for MS to decide depending on the situation at stake and on whether the appropriate conditions are met.* |
|  |  |  |  |
|  | 1. 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. | How to interpret community policy? Is there a list available? Can a (unilateral) communication or action plan that has not been adopted by the parliament/council fall under this scope? | *Concerning the interpretation of the term "policies" under art. 15, not only directives or regulations should be considered, the suggestion is to interpret it much broader way.   (EC: there is no list, but to be seen widely (incl. communication, action plan, non-legally binding documents, etc.); will not be dismissed by reason of scope)* |
|  | 2. 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. | What is meant with term "appropriate"? When may we raise recommendations? | *Disregarding if you reach your GES or not, you may raise issues to the EC with recommendations for additional actions to be taken by the EC  Concerning the type of recommendations to be addressed through art 15, it could be either technical or legislative. The suggestion is to provide the Commission with ideas on which type of action/process is envisaged by the MS to tackle the issue raised.* |

Annex 4: Issues raised by BG & RO under Article 13(5), 14 & 15 of the MSFD

| Descriptor | Issue at stake | Competent authority (higher level) or international organisation  (ref. to Art. 13(5) and Art.15) | Consideration by BG & RO | | | | | |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Art. 13 (5) | Arguments Art. 13 (5) | Art. 14  (MS + ref. exception type) | Arguments Art. 14 | Art. 15 | Arguments/ Recommendations Art. 15 | Ad hoc measures ( REF to PoM) |
| **D1** | Migratory species - birds (Mediterranean Shearwater *Puffinus yelkouan*) | NGO: Bird life international EC - Bird Directive | BG and RO | Lack of effective management plans for existing MPAs in BG and RO | BG & RO (1a) | Lack of good conditions in the nesting areas located in MED region (e.g. IT, El, MT). | BG and RO | Request to EC for support tools to assess effectiveness of management plans of existing MPA (incl. transparent effectiveness criteria). | BG/RO: Establish or improve of the management plan of existing MPAs . |
| Migratory species - marine mammals (*Phocoena phocoena* relicta) | ACCOBAMS |  | *(Note: BG & RO implemented the requirements of ACCOBAMS)* | RO (1a) | Requirements under ACCOBAMS are not implemented by all Contracting Parties to BSC (e.g. Turkey). Especially the pressure of by-catch of (illegal) fisheries on *Phocaena phocaena* is considered by RO as important for not achieving their targets, and thus negatively affecting the environmental status. | RO | Request to ACCOBAMS/EC for enhanced follow-up of effective implementation of international agreements (e.g. possibility to envisage financial consequences). | RO: Effective implementation of ACCOBAMS including better/increased enforcement of illegal fisheries/by-catch in their national waters. |
| **D2** | NIS (ballast water) | IMO |  | *(Note: BG signed the Ballast Water Convention; RO currently not)* | BG & RO (1a) | Ballast Water Convention is not (properly) implemented by some EU MS and Contracting Parties BSC. | BG and RO | Follow up and transparent communication of actions taken at EU / BSC related to implementation of IMO guidelines. | BG/RO: National implementation of Ballast Water Convention. |
| **D3** | Commercial fish (sprat, turbot, whiting, horse mackerel, anchovy, dogfish, red mullet) | EC - CFP BSC - BS SAP GFCM - MoU with BSC | BG and RO | 1) Need for coherence of GES & targets at EU level (MSFD targets) and Black Sea level (BS SAP objectives); leading role to be taken by GFCM. 2) Development of GES & targets within Black Sea by GFCM that may be used as common targets by BG & RO. 3) Management plans of CFP should be compliant with common GES / targets for EU Black Sea MS (BG & RO). |  |  | BG and RO | Request to EC to actively approach GFCM and BSC to improve coherence of GES and targets under MSFD and BS SAP Request to UNEP/MAP to exchange best practices related to ECAP process (incl. coherence efforts with MSFD) to improve BS SAP process Request to BSC to consider the best practices of ECAP process to improve BS SAP and to aim for max. alignment with MSFD process Request to CFP to make their management plans compliant with common GES/targets set by BG and RO (based on input from GFCM) | BG/RO: Development of common multi-annual management plan for targeted fish stocks |
| **D10** | ML (in general) | BSC (RAP ML in progress) EC (EU TG ML) |  |  | BG & RO (1a) | Lack of good conditions in the other BSC on marine litter issue resulting in litter entering the national waters of BG & RO (transboundary character). Lack on agreed Regional Action Plan in Black Sea. | BG and RO | 1) Request to BSC to continue the development of the RAP ML in Black Sea (max. alignment desirable between the newly developed RAP ML by BSC and the requirements under MSFD (European - EC)). 2) Request to the EC on clarification/adjustment of legislation related to waste disposal issue related to FFL initiatives (e.g. which garbage can be disposed and at which cost? And at which PRF?) 3) Request to EC for funding for a feasibility study of the options for collecting and processing or to value the end of life of fishing equipment. | BG/RO: Development of Regional Marine litter Action Plan (joint methodology for quantifying the marine litter, identification of sources, prosecution of offenders, etc.) |
| **D11** | Ambient noise (non-fixed sources, like shipping) | IMO | BG and RO | Ambient noise related to maritime transport to be addressed by IMO |  |  | BG and RO | Request to IMO/EC to stimulate technical measures to reduce shipping noise Request to TG Noise for support to set ambient noise levels for BG and RO (and if possible, for the Black Sea region) | BG/RO: Initial studies to determine ambient noise levels at national level (with support of TG Noise) |
| Impulsive noise (fixed sources, mainly offshore plants) | ACCOBAMS | BG and RO | 1) Need for common GES & targets to be established by ACCOBAMS based on the best available knowledge on impact levels (cumulative, subregional aspects), with priority for impact on marine mammals (evidence available within ACCOBAMS) 2) Management of maritime activities causing noise should be enhanced by developing management plans based on noise mapping and considering their cumulative effects  3) Management of military activities is difficult; compliance with ACCOBAMS should be enforced. |  |  | BG and RO | 1) Request to EC (TG Noise)/ ACCOBAMS to develop common GES & targets to be established based on the best available knowledge on impact levels (cumulative, subregional aspects), with priority for impact on marine mammals (evidence available within ACCOBAMS) 2) Request to ACCOBAMS to develop subregional noise maps/ management plans  3) Request to EC/ACCOBAMS to set boundary levels for impulsive noise + guidelines to assess cumulative effects EIA  4) Request to ACCOBAMS for compliance check of ACCOBAMS requirements related to military activities | BG/RO: Development of noise register\ noise maps at national level |

Annex 5: Overview table public consultation PoM in BG & RO

| **Public consultation (PC)** | **Bulgaria** | **Romania** |
| --- | --- | --- |
|  | (BG) | (RO) |
| National MSFD web page | <http://www.bsbd.org>  <http://www.moew.government.bg> | http://www.mmediu.ro |
| Consultation web page | <http://www.bsbd.org/bg/merki_13_rdms.html>  <http://www3.moew.government.bg/?show=top&cid=28&lang=bg> | http://www.mmediu.ro |
| Responsible authority for MSFD implementation | * Council of Ministers of Republic of Bulgaria * Ministry of Environment and Waters (MoEW) and its regional structure as Black sea Basin Directorate to the Ministry of Environment and Waters (BSBD)   Supporting Ministries:   * Ministry of Transport, information technology and communications and its regional structures as Executive Agency of Maritime Administration (EAMA) and two Directorates in Varna and Burgas cities * Ministry of Health and its regional structures as Regional Health Inspectorates * Ministry of agriculture and food and its regional structure Executive Agency for Fisheries and Aquaculture * Ministry of Foreign Affairs * Ministry of Tourism * Ministry of Energy * Ministry of Economy * Ministry of Regional Development and Public Works * Institute of oceanology to the Bulgarian academy of Science (IO-BAS) | * Ministry of Environment, Water and Forest |
| Responsible authority/ Institute for reporting Programme of Measures | Black sea Basin Directorate to the Ministry of Environment and Waters (BSBD to MoEW) | National administration ‘Apele Romane’ and National Institute Marine Research and Development ‘Grigore Antipa’ |
| Consultation period (planned) | January – April 2016 | March 2016 (possible to be postponed) |
| Status of consultation | A preliminary consultation with all stakeholders was organized in June 2015 during a meeting in Varna. The formal consultation has not started yet and is forthcoming. | A preliminary consultation with all stakeholders was organized in June during a meeting in Constanta. The formal consultation has not started yet. |
| Method/format | Bulgaria plans to use the following methods for sharing the information on PoMs under the public consultation:   * + publication on the official internet sites of the Black sea Basin Directorate (BSBD) and the Ministry of Environment and Waters (MoEW):   <http://www.bsbd.org/bg/merki_13_rdms.html>  http://www3.moew.government.bg/?show=top&cid=28&lang=bg   * + Announcement and preliminary discussion on the annual meeting of Basin Council on December 2015.   An interim meeting with the competent authorities and stakeholders for discussion of PoMs during the PC. | Romania has the intention to organize a round table with all possible stakeholders and publication on a webpage. |
| Description document | Bulgaria is planning to prepare a description document including overview of the content of national program of measures (PoMs) under Art. 13 of MSFD that it will be published for public consultation together with the measure factsheets. |  |
| All measures reported under Art. 13 included in PC? | Bulgaria is planning to include all measures (national and transboundary) in Public Consultation defined at this stage. |  |
| All exceptions reported under Art. 14 included in PC? | Not yet decided |  |
| If not, provide a list of the measures and/or exceptions which were not included in PC and a reason for this. | Not yet decided |  |
| How was the public consultation taken into account? | To be completed after Public consultation | To be completed after Public consultation |
| To which extent the discussed coordinated or joint PoMs have been considered in the national reporting | All transboundary measures developed in the scope of the BS project - phase II will be included in the scope of the national PoMs of Bulgaria. |  |
| Main reasons for using or not using them | The transboundary measures are developed in close cooperation with Romania represent the bigger part of the measures that will be included to the national PoMs of Bulgaria. They are focused on the main pressures on the marine environment as fishery, marine litter, also on management of human activities in protected areas. |  |
| Status Official reporting PoM | Forthcoming reporting of PoMs |  |

1. <http://www.blacksea-commission.org/_bssap1996.asp> [↑](#footnote-ref-2)
2. <http://www.blacksea-commission.org/_bssap2009.asp> [↑](#footnote-ref-3)
3. EC (2014). Programmes of measures under MSFD – Recommendations for establishment/implementation and related reporting. [↑](#footnote-ref-4)
4. German/Bulgarian twinning project (UBA) Implementation of the Marine Strategy Framework Directive (MSFD) in Bulgaria – Development of Programmes of Measures under Article 13” aimed to assist and guide Bulgaria with the development of the national Programme of Measures under MSFD 2008/56/EO. Period: 2015-2017. [↑](#footnote-ref-5)
5. Following the *PoM Recommendation*, sustainability is not to be assessed separately, but as a combination of impact assessment, SEA and CEA/CBA. [↑](#footnote-ref-6)