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<b>Document title</b>	Third draft of the Guidelines on transboundary consultations public participation and co-operation
<b>Code</b>	3-2-Rev.1
<b>Category</b>	DEC
<b>Agenda Item</b>	3 - Implementation of the Regional Baltic Roadmap 2013-2020
<b>Submission date</b>	23.9.2015
<b>Submitted by</b>	Poland
<b>Reference</b>	Outcome of HELCOM-VASAB MSP WG 10-2015

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### Background

The attached document contains the third draft of the Guidelines on transboundary consultations public participation and co-operation.

The second draft of the document was made available on the HELCOM-VASAB MSP WG 11-2015 Meeting site on 21 August 2015 with a request to the HELCOM and VASAB members to conduct national consultations and provide possible comments and feedback to Jacek Zaucha ([jzaucha@im.gda.pl](mailto:jzaucha@im.gda.pl)) at the latest by 16 September 2015.

Minor comments were provided by Germany and Poland by the deadline and have been incorporated in the attached document in track changes.

The first draft of the guidelines were drafted by a Task Force under the lead of the Lead Country Poland and were circulated among the official contacts of the HELCOM-VASAB MSP WG on 25 May 2015 for comments by 1 July 2015.

### Action required

The Meeting is invited to consider the guidelines and the level of agreement needed and endorse the guidelines, if possible.

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# Guidelines on transboundary consultations, public participation and co-operation

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## 1 Introduction

The Regional Baltic Maritime Spatial Planning Roadmap 2013-2020 adopted by the HELCOM Ministerial Meeting in 2013 and welcomed by the VASAB Ministerial Conference in 2014 calls for the development of guidelines regarding: a) Transboundary consultations and cooperation in the field of MSP and b) Public participation for MSP with transboundary dimensions.

In view of the inter-relationship between these two different aspects, it has been decided by the Joint HELCOM-VASAB Maritime Spatial Planning Working Group (HELCOM-VASAB MSP WG), that both topics will be covered by one guideline document.

The guidelines presented in this document have been prepared in order to assist maritime spatial planners and the authorities they work for.

Transboundary cooperation and consultations for maritime spatial planning (MSP) takes place in different formats depending on the topics to be consulted or cooperated on.

In general terms consultation and co-operation could be defined as follows:

Consultation of more practical topics arising in the course of elaboration of maritime spatial plans, e.g. transboundary impacts of the plan, or transboundary coherence of the planning provisions. This usually takes place in bilateral or trilateral interactions (cross-border interactions). In this case consultation refers to the formal process, which takes place between affected Baltic Sea Region (BSR) countries and their authorities on specific provisions foreseen in a given Maritime Spatial Plan.

Cooperation on maritime spatial planning and similar documents is understood as a more open and preparatory process with focus on information and knowledge exchange as well as development of common understandings.

Co-operation and consultation at pan-Baltic level concern strategic and far sighted decisions on e.g. joint directions or joint guidelines and principles for development of marine areas, sensitive political questions e.g. breadth of exclusive economic zone and its limits, ways of settling disputes.

Both types of cooperation and consultation at transboundary scale relate mainly to the structured and organised interaction between various government bodies.

Stakeholder involvement and public participation (including municipalities, groups of professional like e.g. fishermen and other formal and informal groups) is, however, often part of both processes with public participation being broader in scope as it involves methods which engage the general public as opposed to working only via a selected range of targeted stakeholders.

39 The guidelines cover the following aspects:

- 40 i) **Consultations** between MSP authorities of neighbouring countries and/or those countries  
41 directly affected by MSP and the related **public participation** process that should take place  
42 concerning transboundary aspects during the process of drafting a maritime spatial plan.
- 43 ii) **Cooperation** between MSP authorities at pan-Baltic scale on issues affecting most or all of  
44 the Baltic Sea and/or the level involving most or all BSR countries as well as the process  
45 foreseen to ensure effective **stakeholder engagement** at a more strategic level.

46 Consultation processes should be in line with the common approaches decided in pan-Baltic co-  
47 operation. Both processes should ensure that maritime spatial plans are coherent across the Baltic  
48 Sea-basin scale to avoid costly misalignments and negative environmental impacts as well as  
49 promoting efficiency gains and synergies. The purpose of public participation or at least  
50 stakeholder engagement is to ensure that stakeholder voices are heard, not only from within  
51 the country developing the plan but also across the borders and on pan-Baltic scale.

## 52 **2 Glossary**

### 53 **2.1 Definitions used in this set of guidelines:**

54 **Competent authorities (authorities responsible for MSP):** the authorities preparing and/or  
55 approving maritime spatial plans.

56

57 **National MSP contact points:** The chosen authority in charge of MSP in each BSR country, which shall  
58 represent the country's interest and thus act as the "focal points" for transboundary as well as pan-  
59 Baltic MSP cooperation. Ideally this should be one institution (one contact person) only, which in turn  
60 will consult with the other authorities in its own country as to provide one national position.

61 **Consultation:** In this document the formal process which takes place between competent national  
62 authorities usually from 2-3 BSR countries to discuss practical topics arising in the course of  
63 elaboration of maritime spatial plans, e.g. transboundary coherence of the planning provisions.

64

65 **Cooperation:** In this document more open, informal and often preparatory process of information  
66 and knowledge exchange which involves a larger number of competent authorities and stakeholders.

67 **Public participation** is the process by which an organization consults with interested or affected  
68 individuals, organizations, and government entities before making a decision. Public participation is  
69 two-way communication and collaborative problem solving with the goal of achieving better and  
70 more acceptable decisions. Public participation prevents or minimizes disputes by creating a process  
71 for resolving issues before they become polarized. Thus, public participation is very broad by  
72 engaging general public in addition to the more institutionalised stakeholders. Widespread public  
73 participation will ensure a wider acceptance for the planning solution.

74 **The Aarhus Convention** (the Convention on Access to Information, Public Participation in Decision-  
75 making and Access to Justice in Environmental Matters). The Aarhus Convention grants the public  
76 rights regarding access to information, public participation and access to justice, in governmental  
77 decision-making processes on matters concerning the local, national and transboundary  
78 environment.

79 **The Espoo (EIA) Convention** – the United Nations convention that sets out the obligations of Parties  
80 to assess the environmental impact of certain activities at an early stage of planning and lays down  
81 the general obligation of States to notify and consult each other on all major projects under  
82 consideration that are likely to have a significant adverse environmental impact across boundaries.

83 **Pan-Baltic (scale/level):** affecting most or all of the Baltic Sea countries, and/or the level involving  
84 most or all BSR countries. The pan-Baltic level mainly deals with strategic issues, such as achieving  
85 coherence or providing general guidelines.

86

87 **Cross-border issues:** Issues which are relevant ~~to~~for two or more countries only, but not necessarily  
88 only immediate neighbours as impacts may extend further.

89 **Transboundary issues:** both pan-Baltic and cross-border issues

90 **Stakeholder involvement:** Processes which deals with concerns and issues raised at stakeholder  
91 and/or expert level. Unlike **public participation** these processes do not necessarily involve the  
92 general public.

93 **Spatial Subsidiarity:** The principle as developed in the BaltSeaPlan project – BaltSeaPlan Vision 2030  
94 Towards the sustainable planning of Baltic Sea Space, which stipulates that spatial challenges should  
95 be dealt with at the lowest most appropriate spatial level.

96 **Consultation steps** in these guidelines are understood in the following way:

97 a) **informing** in a targeted way about relevant aspects of the MSP process (e.g. commencement  
98 of MSP, entering new phase of MSP, availability of materials for consultations etc.),

99 b) **screening** the resources of stakeholders available at public domain (e.g. website, reports,  
100 available data and information etc.) in order to use them in the MSP,

101 c) **asking stakeholders for inputs** to the MSP process in order to identify existing practice and  
102 interests of various stakeholders, e.g. identification of development plans towards a certain  
103 sea space, identification of areas of the most intensive use of the sea space, identification of  
104 an exclusive possession of the stakeholder, etc.,

105 d) **asking stakeholders for opinions and reflections** on a draft proposal of the maritime spatial  
106 plan (goals, methodology and proposed solutions/preferences)

107 e) **preparing jointly with stakeholders new** body of knowledge, new know how, tentative  
108 solutions of the problems etc.

109 ~~The~~Steps a) – d) are sub-steps within the consultation process. Consultation forms can vary:  
110 sometimes opinions should be extracted and sought actively, and sometimes ~~it is sufficient to~~  
111 ~~screening~~ available materials and information ~~is sufficient~~.

112

### 113 3 Recommendations for transboundary consultation and 114 cooperation for a specific MSP process:

#### 115 3.1 Broadening the scope of transboundary dialogue: Building on the Espoo Convention 116 while strengthening the scope of consultations

117 The Espoo (EIA) Convention and the subsequent protocol on Strategic Environmental Assessment  
118 (SEA) to the Espoo convention provides a framework for facilitating formal transboundary  
119 consultation between affected states with focus on environmental impacts only. But full-scale  
120 consultation should deal with a broader range of MSP issues, in particular socio-economic issues. As  
121 a result of voluntary compliance of the responsible authorities in the BSR consultations will be  
122 extended to ~~wards~~ encompassing not only potential conflicts but also synergies, in particular socio-  
123 economic opportunities. ~~Whereas~~ ~~whereas~~ co-operation will cover general planning approaches ~~to~~  
124 planning, such as ~~the~~ overall aims and objectives of maritime spatial plans.

125 Therefore MSP needs a broader scope, ~~and of~~ consultations and co-operation starting in better time  
126 and their earlier start than than it is required by the Espoo (EIA) Convention. At least the wider scope  
127 (covering socio-economic concerns) consultations will start at least together with the Espoo  
128 consultations. This will be achieved through voluntary compliance of the responsible authorities in  
129 the BSR, as a result of adoption of these recommendations. This is in line with the spirit of of  
130 DIRECTIVE 2014/89/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL – Article1.

#### 131 3.2 Establishing a formal process of transboundary information exchange and 132 consultation early in the MSP process

133 Timing of formal transboundary consultations remains a critical issue. In order to give  
134 neighbouring countries a chance to understand the essence of the envisaged plan, and a real  
135 chance to contribute not only to the planning provisions/solutions but also to the planning process,  
136 it is necessary to start consultations before the maritime spatial plan is fully drafted.

- 137  
138 The following steps are proposed:
- 139 a) All Baltic Sea States will start consulting neighbouring countries at the early stage of  
140 preparation of a maritime spatial plan as a part of the routine MSP process. If the impact of  
141 the plan is of pan-Baltic nature, all BSR countries and the relevant pan-Baltic organisations  
142 will be informed ~~and the relevant pan-Baltic organizations~~. This applies to all national, but  
143 also to sub-national maritime spatial plans if these are expected to have cross-border  
144 impacts.
  - 145 b) The competent authorities ~~s~~will inform their neighbouring counterparts of their intention to  
146 begin start an MSP process. This will be done in ~~a the~~ form of a formal letter/e-mail in English  
147 (or national language of the addressees). The information will be ~~send~~ sent to the countries  
148 affected, and as well as to the relevant pan-Baltic organisations if such a plan ~~can~~ is likely to  
149 have pan-Baltic impact.
  - 150 c) The competent authorities clearly state the intention and the nature of the maritime spatial  
151 plan, so other countries can understand the possible influence ~~of the plan~~ and the  
152 consequences impacts of the plan.
  - 153 d) The competent authorities then ask for relevant documents and any other information ~~-~~  
154 if available (or public sources of such information) from the neighbouring countries, which  
155 could have an impact on the development of the envisaged plan, such as environmental  
156 data and information on human uses of the sea, in particular with cross-border  
157 elements (e.g. issues suggested under Article 8 of DIRECTIVE 2014/89/EU OF THE  
158 EUROPEAN PARLIAMENT AND OF THE COUNCIL).

- 159 e) The ~~competent authorities~~ also inform the neighbouring countries, once the ~~stakeholder~~  
160 process ~~begins~~ in order to ~~give~~ the ~~neighbouring~~ country ~~the~~ option ~~of~~ installing ~~a~~  
161 parallel ~~domestic stakeholder~~ process (or public participation) on issues ~~of~~ ~~cross-border~~  
162 significance. It is suggested that the information ~~have~~ ~~is~~ ~~being~~ ~~given~~ ~~in~~ the form of a letter/e-  
163 mail in English (or national language of the addressees) describing the location of the plan, its  
164 main objectives and possible cross-border impacts.  
165

### 166 3.3 Organising stakeholder involvement in the transboundary consultation process

167 The decision on how to organise the transboundary stakeholder process is ~~a~~ ~~the~~ responsibility of ~~the~~  
168 BSR neighbouring ~~countries~~ approached by the competent authorities from another country.  
169 Stakeholder involvement is ~~best~~ organised ~~best~~ at this level, as each country has a different culture  
170 and legislation (regulations) on **public participation** and different settings on how stakeholders are  
171 organised. It therefore needs to find its own way of involving stakeholders and engaging them in ~~the~~  
172 MSP process.

173 ~~The~~ ~~following~~ steps are proposed:

- 174 a) **The authorities of the BSR neighbouring countries [National MSP contact points]** ~~when~~  
175 requested by the competent authorities from a country which started elaboration of the  
176 maritime spatial plan ~~might~~ initiate and run a stakeholder involvement process within the  
177 territory of their state immediately after obtaining the request and in line with information  
178 received (on the intention and the nature of the plan). The process might vary and will be  
179 shaped in line with the nature of the problems to be discussed, ranging from asking selected  
180 stakeholders for opinion up to full-scale public participation.
- 181 b) **[National MSP contact points]** They ensure the necessary comprehensive participation of  
182 stakeholders in line with information received from the neighbouring country. They sort out  
183 which type of input can be obtained via screening ~~the~~ available national resources, ~~and~~ which  
184 information can be extracted via asking stakeholders for inputs or opinions and to what  
185 extent involvement of general public is necessary. They prioritise the results of the  
186 stakeholder process, if necessary.
- 187 c) **[National MSP contact points]** They then ~~communicate~~ the results of the stakeholder process  
188 to the neighbouring country, i.e. the ~~very~~ country drafting the maritime spatial plan.
- 189 d) The competent ~~authorities~~ ~~inform~~ ~~in~~ ~~due~~ ~~time~~ the relevant **authorities of the BSR**  
190 **neighbouring countries [National MSP contact points in other countries]**, who run the  
191 consultation process, ~~in~~ ~~due~~ ~~time~~ ~~of~~ how and to what extent ~~their~~ remarks have been taken  
192 into consideration in the process of drafting the plan, and, in case the remarks have not been  
193 taken into account, provide a justification.  
194

195 The competent authority, if appropriate, might also consider engaging well organised stakeholder  
196 groups existing at pan-Baltic level, and also consulting existing transboundary expert groups (e.g.  
197 established by the HELCOM-VASAB MSP WG ) on particular topics (see recommendations below).  
198

### 199 3.4 Developing a transboundary consultation strategy

200 Apart from the step-by-step approach, appropriate consultation and communication formats have to  
201 be found within a transboundary consultation process. Whereas each strategy will depend on the  
202 specificities of an individual maritime spatial plan, as a minimum the following features of the  
203 consultations format will be taken care of in the early planning phases:

- 204 a) Direct communication at the level of the competent authorities is essential for building up  
205 a capital of trust, so networking between the competent authorities and MSP  
206 practitioners will be encouraged (see below).

207 b) Written information alone is often not sufficient; face to face meetings with the  
208 neighbouring countries are encouraged, to present and discuss the planned MSP process.

209 c) Direct communication to stakeholders on the planned undertaking ~~to stakeholders~~ is also  
210 important both in the country itself and in the neighbouring countries. The competent  
211 authorities will therefore be prepared to travel to the neighbouring countries in the  
212 early stages of elaboration of a maritime spatial plan and explain their plans and  
213 intentions, if asked by the National MSP contact points of the countries influenced by the  
214 plan. Alternatively contact points from neighbouring countries are invited to the country  
215 which prepares the plan, Since such a meeting would provide a possibility of more holistic  
216 discussion about the plan envisaged. The outcomes of Bi-lateral and multilateral discussions  
217 should be distributed to All neighbouring countries by the competent authorities.  
218

219 e)d) Language is a critical issue in this process:

220 a. The MSP technical language needs to be explained. To avoid misunderstanding the  
221 different stages of MSP, the respective aims, outputs and tools need to be clearly  
222 explained.

223 b. The competent authorities will be ready to make available relevant information in  
224 English, and preferably also in the languages of the neighbouring countries ~~– Poland~~  
225 proposes do delete what is in the bracket.

### 226 3.5 Strengthening informal transboundary cooperation processes

227 In parallel- with- ~~a the described above~~ processes- of -informing- neighbouring -countries described  
228 above, -informal processes -of co-operation i.e. exchanging information and experience will be  
229 strengthened.

230 a) Informal routes of communication will be established between the relevant authorities  
231 before a maritime spatial plan is drafted, as this can facilitate the informal supply of  
232 information outside the narrow confines of (potentially restrictive) formal channels.

233 b) Informal discussions can be initiated as a useful vehicle for brokering common solutions.

234 c) Informally agreed solutions then need to be endorsed through ~~the~~ formal channels, e.g. to  
235 the extent ~~to which that~~ remarks and suggestions raised in the consultation process will be  
236 taken into consideration.

237 d) ~~The~~ A authorities responsible for MSP will be in regular contact with each other, in order to  
238 build trust, and also to know who to communicate with during formal processes.

## 239 4 Recommendations for transboundary pan-Baltic 240 cooperation on MSP:

### 241 4.1 Continuing policy guiding at pan-Baltic level

242 It is recommended that VASAB (CSPD/BSR) and HELCOM HoD will continue their role as a facilitator  
243 of pan-Baltic MSP development by providing a forum for:

- 244 • Exchange on MSP strategies and policies of their Member States
- 245 • Exchange on political decisions on transboundary consultation in principle.

246 Practical cooperation in this field will be steered by the HELCOM and VASAB Working Group on  
247 Maritime Spatial Planning (HELCOM-VASAB MSP WG). The HELCOM-VASAB MSP WG concentrates  
248 mainly on practical issues and preparation of decision-making of pan-Baltic scope and relevance.

## 249 4.2 Creating and facilitating Expert Groups for pertinent MSP topics and issues and 250 implementing their results

251 It is recommended that the ~~key point~~ main focus of pan-Baltic co-operation ~~beis in presentation of~~  
252 actual MSP plans (or outcomes from the practitioners forum/projects), in order to develop and  
253 present ways of solving different planning issues. The issues requiring ~~the p~~Policy support will be  
254 brought to pPolicy level (VASAB CSPD and HELCOM HoD).

255

256 If the need to support the work of the HELCOM-VASAB MSP WG arises, it is recommended that the  
257 expert groups are established by ~~the~~ decision of HELCOM and VASAB with concrete mandate to deal  
258 with pertinent specific topics and issues related to MSP development within the BSR. The expert  
259 groups are expected to work within a given timeframe towards clearly defined outputs to be  
260 presented for decision-making to the HELCOM-VASAB MSP WG. They will work on issues that need  
261 expert support to become solved (using existing HELCOM-VASAB framework).

262 The expert groups will meet following requirements:

- 263 a) They will represent a broad range of relevant perspectives for a given topic.
- 264 b) The BSR countries shall be consulted on the n ~~in~~ nomination of ~~ng~~ relevant experts. National  
265 MSP contact points in each country (if existing) will be involved in such consultations.
- 266 c) Nominees will not be seen as political representatives, but are expected to act in their  
267 personal capacity as experts in their field.
- 268 d) Expert group topics will be selected based on the following criteria:
  - 269 • The urgency of the issue for all BSR countries,
  - 270 • Manageability of the task and achievement of a clear output,
  - 271 • Inability ~~to~~ of being solved under existing frameworks,
  - 272 • Willingness of sectors and stakeholders to become involved.
- 273 e) A close liaison will be provided of the groups' work with other important pan-Baltic  
274 processes such as actions of the EU Strategy for the Baltic Sea Region, (in particular  
275 Horizontal Action Spatial Planning), and with the work of the EU Member States Expert  
276 Groups on ICM and MSP.

277

## 278 4.3 Engaging and cooperating with other pan-Baltic organisations on a continuous basis

279 Cooperation with industrial and other interests' sectors is a prerequisite of proper and successful  
280 MSP. ~~Sectors~~ Their stakeholders/representatives will ~~in future~~ become increasingly involved in  
281 transboundary as well as pan-Baltic MSP processes in future, through active co-operation at national  
282 and pan-Baltic level. Furthermore they may also be represented within expert groups.

283 Therefore it is recommended that HELCOM-VASAB MSP WG:

- 284 a) ~~will~~ prepares development and ~~ensures an~~ update of the ~~list of relevant sectors that might~~  
285 be involved in pan-Baltic co-operation on MSP, and ~~identifiesy~~ their formal roles,  
286 responsibilities and mandates in concrete MSP relevant fields/policies,



- 287 b) ~~will run~~s the process of recognition of each other's competences (sectors and MSP WG) and  
288 ~~a~~ concrete cases/issues to be jointly discussed (identification of common goals/interests),  
289 c) monitors on a regular basis major changes in the work of those sectors relevant for Baltic  
290 MSP,  
291 d) ~~will prepare~~s and ~~ensure~~s an update of the communication strategy ~~of regarding the~~  
292 engagement of different types of sectors in the MSP at pan-Baltic level,  
293 e) assigns ~~the responsibility to the VASAB and/or HELCOM Secretariat~~ of co-operating ~~and~~  
294 ~~discussing and developing solution for~~ ~~on~~ concrete issues with sectors at pan-Baltic level  
295 (establishing Baltic MSP permanent communication channels for sectors of pan-Baltic scope  
296 and magnitude) ~~to the VASAB and/or HELCOM Secretariat~~ and monitors the results.

#### 297 4.4 Promoting informal pan-Baltic co-operation of MSP practitioners

298 In parallel to the HELCOM-VASAB MSP WG as well as the EU Member States MSP Expert Group, it is  
299 suggested to promote an informal discussion platform on MSP issues for those responsible for  
300 developing and implementing maritime spatial plans in their countries (practitioners' level).

301 The VASAB Secretariat will ~~engage with~~use this platform, as well as given projects and other MSP  
302 initiatives on MSP at various levels: regional, national, transboundary, and even outside the BSR if  
303 appropriate.

304 ~~In order to~~ To promote pan-Baltic co-operation on MSP, VASAB Secretariat will facilitate an ongoing,  
305 structured process of conducting regular events, ~~to targeting at~~ fostering information and knowledge  
306 exchange and ~~creat~~ing trust among Baltic Sea MSP practitioners across different initiatives, thereby  
307 enhancing future transboundary MSP processes.