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Background and action required

The attached document contains the fourth draft of the Guidelines on transboundary consultations public participation and co-operation. It reflects the comments received at HELCOM-VASAB MSP WG 11-2015. Any additional proposals for changes to the guidelines should be submitted to lead country Poland (jacek.zaucha@im.gda.pl) in copy to the Secretariats (laura.meski@helcom.fi and info@vasab.org) **by 15 November 2015.**

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Guidelines on transboundary consultations, public participation and co-operation

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1 Introduction

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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.

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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.

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The guidelines presented in this document have been prepared in order to assist maritime spatial planners and the authorities they work for. [They are of a non-binding character.](#)

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

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

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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.

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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.

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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.

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

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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.

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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.

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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.

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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.

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87 **Cross-border issues:** Issues which are relevant 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 Steps a) – d) are sub-steps within the consultation process. Consultation forms can vary: sometimes
110 opinions should be extracted and sought actively, and sometimes screening available materials and
111 information is sufficient.

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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 towards encompassing not only potential conflicts but also synergies, in particular socio-
123 economic opportunities, whereas co-operation will cover general planning approaches, such as
124 overall aims and objectives of maritime spatial plans.

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

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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. This applies to all national, but also to sub-national maritime spatial
143 plans if these are expected to have cross-border impacts.
 - 144 b) The competent authorities will inform their neighbouring counterparts of their intention to
145 start an MSP process. This will be done in the form of a formal letter/e-mail in English (or
146 national language of the addressees). The information will be sent to the countries affected,
147 as well as to the relevant pan-Baltic organisations if such a plan is likely to have pan-Baltic
148 impact.
 - 149 c) The competent authorities clearly state the intention and the nature of the maritime spatial
150 plan, so other countries can understand the possible influence and the impacts of the plan.
 - 151 d) The competent authorities then ask for relevant documents and any other information, if
152 available (or public sources of such information) from the neighbouring countries, which
153 could have an impact on the development of the envisaged plan, such as environmental
154 data and information on human uses of the sea, in particular with cross-border
155 elements (e.g. issues suggested under Article 8 of DIRECTIVE 2014/89/EU OF THE
156 EUROPEAN PARLIAMENT AND OF THE COUNCIL).
 - 157 e) The competent authorities also inform the neighbouring countries, once the stakeholder
158 process begins in order to give the neighbouring country the option of installing a parallel

159 domestic stakeholder process (or public participation) on issues of cross-border significance.
160 It is suggested that the information is being given in the form of a letter/e-mail in English (or
161 national language of the addressees) describing the location of the plan, its main objectives
162 and possible cross-border impacts.
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164 3.3 Organising stakeholder involvement in the transboundary consultation process

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

172 Following steps are proposed:

- 173 a) **The authorities of the BSR neighbouring countries** ~~{(in co-operation with National MSP~~
174 **contact points)} - when requested by the competent authorities from a country which
175 started elaboration of the maritime spatial plan - ~~might~~ initiate and run a stakeholder
176 involvement process within the territory of their state immediately after obtaining the
177 request and in line with information received (on the intention and the nature of the plan).
178 The process might vary and will be shaped in line with the nature of the problems to be
179 discussed, ranging from asking selected stakeholders for opinion up to full-scale public
180 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 available national resources, 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 the relevant **authorities of the BSR neighbouring**
190 **countries**, ~~[National MSP contact points in other countries]~~, who run the consultation
191 process, in due time of how and to what extent their remarks have been taken into
192 consideration in the process of drafting the plan, and, in case the remarks have not been
193 taken into account, provide a justification.

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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).
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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 is also important both in
210 the country itself and in the neighbouring countries. The competent authorities will
211 therefore be prepared to travel to the neighbouring countries in the early stages of
212 elaboration of a maritime spatial plan and explain their plans and intentions, if asked by
213 the National MSP contact points of the countries influenced by the plan. Alternatively
214 contact points from neighbouring countries are invited to the country which prepares the
215 plan, Since such a meeting would provide a possibility of more holistic discussion about the
216 plan envisaged. The outcomes of Bi-lateral and multilateral discussions should be distributed
217 to All neighbouring countries by the competent authorities.
- 218 d) Language is a critical issue in this process:
- 219 a. The MSP technical language needs to be explained. To avoid misunderstanding the
220 different stages of MSP, the respective aims, outputs and tools need to be clearly
221 explained.
- 222 b. The competent authorities will be ready to make available relevant information in
223 English, ~~[and preferably also in the languages of the neighbouring countries]~~ – Poland
224 ~~proposes to delete what is in the bracket.~~

225 3.5 Strengthening informal transboundary cooperation processes

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

- 228 a) Informal routes of communication will be established between the relevant authorities
229 before a maritime spatial plan is drafted, as this can facilitate the informal supply of
230 information outside the narrow confines of (potentially restrictive) formal channels.
- 231 b) Informal discussions can be initiated as a useful vehicle for brokering common solutions.
- 232 c) Informally agreed solutions then need to be endorsed through formal channels, e.g. to the
233 extent that remarks and suggestions raised in the consultation process will be taken into
234 consideration.
- 235 d) Authorities responsible for MSP will be in regular contact with each other, in order to build
236 trust, and also to know who to communicate with during formal processes.

237 4 Recommendations for transboundary pan-Baltic 238 cooperation on MSP:

239 4.1 Continuing policy guiding at pan-Baltic level

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

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

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

247 **4.2 Creating and facilitating Expert Groups for pertinent MSP topics and issues and**
248 **implementing their results**

249 It is recommended that the main focus of pan-Baltic co-operation be actual MSP plans (or outcomes
250 from the practitioners forum/projects), in order to develop and present ways of solving different
251 planning issues The issues requiring policy support will be brought to policy level (VASAB CSPD and
252 HELCOM HoD).

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

259 The expert groups will meet following requirements:

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

274 Before establishment of an expert group a possibility of making use of the results of the relevant
275 completed or on-going projects and projects under preparation should be analysed in order to avoid
276 duplication of the work and ensure sparing use of the expert resources.

277 **4.3 Engaging and cooperating with other pan-Baltic organisations on a continuous basis**

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

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

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

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

296 **4.4 Promoting informal pan-Baltic co-operation of MSP practitioners**

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

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

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