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LEGAL CHALLENGES IN INTRODUCING MARITIME SPATIAL PLANNING IN LATVIA: ENVISIONING A MULTIUSE APPROACH FRAMEWORK

JŪRAS PLĀNOJUMA IEVIEŠANAS JURIDISKĀS PROBLĒMAS LATVIJĀ: DAUDZFUNKCIONĀLAS JŪRAS IZMANTOŠANAS KONCEPCIJA

Key words: Baltic Sea Region, Directive 2014/89/EU, maritime spatial planning in Latvia, maritime spatial plan of Latvia, interim evaluation of maritime spatial plan, multiuse

Atslēgvārdi: Baltijas jūras reģions, Direktīva 2014/89/ES, jūras telpiskā plānošana Latvijā, Jūras plānojums, Jūras plānojuma starpposma novērtējums, daudzfunkcionāla jūras izmantošana

Summary

Maritime spatial planning (MSP) is a tool for balancing the dimensions of sustainability, both by protecting the marine environment and by identifying opportunities for the use of marine space and resources to implement these uses, as well as conflict management. In line with the requirements of Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for MSP, the Republic of Latvia Cabinet of Ministers in 2019 adopted a national level long-term territorial development planning document – Maritime Spatial Plan 2030. In accordance with the national legal framework, by 30 December 2023, an Interim Evaluation of the implementation of the Maritime Spatial Plan 2030 was prepared and submitted to the Cabinet of Ministers, including proposals for its updating, establishing the need to make several amendments to national legislation, one of the most important of which was introduction and application of multiuse (MU) concept in order to be able to use the sea space more sustainably and efficiently. To this end, the article aims to explore introduction of the MU concept framework in Latvian legislation, considering the opportunities and limitations in light of the evolution of scientific knowledge.

The study's findings first highlight the need to strengthen the MU concept at the political and planning level before introducing MU in more detailed regulations. The importance of necessary adaptations in the legislation governing the granting of permits is indicated, depending on

the activity and the type of MU (for example, whether it is only about MU of space or MU of technical resources). It is also emphasized that in the case of a highly integrated MU, special attention should be paid to risk management and risksharing considerations. In the process of implementing MU on a national scale, it is critical to capitalise on the methods and experiences of other countries in the Baltic Sea Region, as well as the already existing legislative frameworks for environmental impact assessment and strategic environmental impact assessment.

Kopsavilkums

Jūras telpiskā plānošana (JTP) ir rīks ilgtspējības dimensiju līdzsvarošanai, gan aizsargājot jūras vidi, gan nosakot jūras telpas un resursu izmantošanas iespējas, lai īstenotu lietojumu un konfliktu pārvaldību. Atbilstoši Eiropas Parlamenta un Padomes Direktīvai 2014/89/ES (2014. gada 23. jūlijs), ar ko izveido jūras telpiskās plānošanas satvaru, prasībām arī Latvijā 2019. gadā Ministru kabinets pieņēma nacionāla līmeņa ilgtermiņa teritorijas attīstības plānošanas dokumentu – Jūras plānojumu līdz 2030. gadam. Saskaņā ar nacionālo tiesisko regulējumu līdz 2023. gada 30. decembrim tika sagatavots un iesniegts Ministru kabinetā starpposma novērtējums par Jūras plānojuma īstenošanu, tostarp par priekšlikumiem tā aktualizēšanai, konstatējot nepieciešamību veikt vairākus grozījumus valsts tiesību aktos, no kuriem kā viens no būtiskākajiem ir daudzfunkcionālas jūras izmantošanas (DJI) koncepcijas ieviešana, lai varētu ilgtspējīgāk un efektīvāk izmantot jūras telpu. Šajā nolūkā rakstā izpētīta DJI koncepcijas ietvara iekļaušana nacionālajā tiesiskajā regulējumā, apsverot iespējas un ierobežojumus no zinātnisko zināšanu evolūcijas viedokļa.

Pētījuma secinājumos vispirms ir uzsvērtā nepieciešamība stiprināt DJI koncepciju politiskā un plānošanas līmenī pirms tās ieviešanas sīkāk izstrādātos noteikumos. Ir norādīts uz vajadzīgajiem pielāgojumiem tiesību aktos, kas reglamentē atļauju izsniegšanu, atkarībā no darbības un DJI veida (piemēram, raugoties, vai ir runa par telpas vai tehnisko resursu daudzfunkcionālo izmantošanu). Tāpat ir uzsvērts, ka augsti integrētas DJI gadījumā sevišķa uzmanība ir jāpievērš riska pārvaldības un riska dalīšanas apsvērumiem. DJI ieviešanas procesā nacionālā mērogā ir arī ļoti svarīgi izmantot citu Baltijas jūras reģiona valstu aprobētās metodes un pieredzi, kā arī jau pastāvošos ietekmes uz vidi novērtējuma un stratēģiskā ietekmes uz vidi novērtējuma tiesiskos regulējumus.

Introduction

Among other things, Sustainable Development Goal 14, “Life Below Water”¹ calls for a balanced and ecosystembased approach. Maritime spatial planning or MSP is developing as an integrated system tool for effective and sustainable management of marine areas at the national and regional levels² and a component of fulfilling the commitment to global goals.

MSP is defined as a public process purporting to “analyse and organise human activities in marine areas to achieve ecological, economic and social

¹ United Nations. Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development. Available: https://sdgs.un.org/goals/goal14#targets_and_indicators [viewed 23.11.2023.].

² See, e.g., European Commission (EC). Best Practice Guidance in MultiUse Issues and Licensing Procedures. Short Background Study. Publications Office of the European Union, 2021.

objectives”³ spatially and temporally,⁴ using an ecosystembased approach⁵ and, as a result, aiming “at protection of the marine environment, rational use of the sea and integrated management, as well as balancing the social welfare and economic development with the environmental protection requirements.”⁶ In other words, MSP is supposed to act as a lever for balancing sustainability dimensions⁷ by effectively organising different uses in marine areas⁸ and considering “the interests of all maritime sectors and their impact on the marine environment, and their contribution to climate change and biodiversity loss.”⁹ As a result, MSP can be beneficial in advancing sustainable and ecologically responsible blue economy development¹⁰ and ocean governance, putting the European Green Deal¹¹ into practice and achieving European Union (EU) carbonneutral objectives.

In the EU, MSP was legally anchored and made more robust by adopting and implementing Directive 2014/89/EU, establishing a framework for maritime spatial planning (hereinafter –MSP Directive or Directive). Accordingly, in Latvia, the Maritime Spatial Plan 2030 (MSPlan 2030 or when referred to generally –MSPlan/s) was adopted in 2019, for which, currently, Interim Evaluation of the MSPlan 2030¹² (Report) has been prepared. Within the Report, several amendments have been proposed to the legal framework, of which the introduction

³ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning. OJ 2014, L 257. (MSP Directive), Art. 3(2), p. 135.

⁴ Ehler C. N.& Douvère F. Marine Spatial Planning: A StepbyStep Approach Toward Ecosystem-Based Management. Paris: United Nations Educational, Scientific and Cultural Organization, Intergovernmental Oceanographic Commission and the Man and the Biosphere Programme, 2009, p. 18.

⁵ MSP Directive, Recitals 14, 22, Art. 5.1.

⁶ Jūras vides aizsardzības un pārvaldības likums [Marine Environment Protection and Management Law]. 18.11.2010. Latvijas Vēstnesis No. 183, 17.11.2010, Art. 1.4., see also MSP Directive, Recital 19.

⁷ Neimane L., Ozolina L. & Saparniene D. Maritime multiuse approach in the Baltic Sea Region: Offshore wind energy and tourism cases. In: RTU 62nd International Scientific Conference on Economics and Entrepreneurship. Riga: RTU, 2021, p. 49; Neimane L. Jūras telpiskās plānošanas aktualitātes Eiropas Savienības piekrastes dalībvalstīs Baltijas jūras reģionā [Actualities of maritime spatial planning in the coastal Member States of the European Union in the Baltic Sea region]. Jurista Vārds, No. 4 (1270), 2023.

⁸ EC/High Representative of the Union for Foreign Affairs and Security Policy. Joint communication “International ocean governance: an agenda for the future of our oceans”. 10.11.2016, JOIN(2016) 49 final, p. 13.

⁹ EC/High Representative of the Union for Foreign Affairs and Security Policy. Setting the course for a sustainable blue planet – Joint Communication on the EU’s International Ocean Governance Agenda. 24.6.2022, JOIN(2022) 28 final, p. 11.

¹⁰ Friess B. & GrémaudColombier M. Policy outlook: Recent evolutions of maritime spatial planning in the European Union. Marine Policy, 132, 2021, 103428. See also: HELCOM. Baltic Sea Action Plan. 2021 update. October 2021.

¹¹ EC. The European Green Deal. 11.12.2019, COM(2019) 640 final. See more on the interaction between MSPlan 2030 and European Green Deal, for example, Neimane L. & Puzulis A. The role of Latvia’s maritime spatial planning in promoting the European Green Deal. Europa XXI, 42, 2022.

¹² MoEPRD. Jūras plānojuma starpposma novērtējums [Interim Evaluation of the Maritime Plan]. 23TA2929, 30.11.2023. Available: https://tapportal.mk.gov.lv/legal_acts?search%-SBquery%5D=23-TA-2929&quicksearch= [viewed 30.11.2023.].

of multiuse (MU) into the legal system will be considered the most fundamental and essential for the purposes of this article.

Against this background, the article aims to explore introduction of the MU concept framework in Latvian legislation, considering the opportunities and limitations in light of the evolution of scientific knowledge. To that end, the article firstly offers an insight into the background of MSP at EU and national levels. Secondly, the article provides an analysis and description of the MSPlan's evaluation, as well as the essence and application of the MU approach. Thirdly, the article presents potential ways to introduce MU, taking into account the relationship between policy and planning levels and more detailed provisions. These observations form the basis for extrapolating the research findings, which are summarised in the conclusion of the article.

The analysis has been carried out, using techniques such as monographic, dogmatically comparable and special analytical method, as well as synthesis, examining national and regional policy documents and MSP-related legislation in Latvia and Baltic Sea Region countries, scientific publications and project reports in a summary manner, using the main findings resulting thereof.¹³ More specifically, the analysed documents include the MSPlan 2030, the Report – Interim Evaluation of the MSPlan 2030, and the meeting summaries of the newly established Maritime and Coastal Spatial Planning Coordination Group.

The current article builds upon the information, documentation, and versions of regulatory acts available as of 30 November 2023.

1. Background of Maritime Spatial Planning at the EU and national levels

In the EU, following the development of an Integrated Maritime Policy¹⁴ in 2007, the Blue Growth Strategy¹⁵ in 2012 and establishment of sea basin strategies,¹⁶ in legal terms – the MSP as “the EU’s new approach for a sustainable blue economy”¹⁷ was introduced and strengthened with adoption of the MSP

¹³ This approach has been used considering that since 2010 the EU has financed many MU projects (such as COEXIST, TROPOS, MUSES, UNITED, MULTIFRAME, to name but a few). Considering the number of projects, it is not possible to comprehensively analyse them within the scope of this article due to the limitation of its scope. See EC 2021.

¹⁴ Commission of the European Communities (CEC). An Integrated Maritime Policy for the European Union. 10.10.2007, COM(2007) 575 final.

¹⁵ EC. Blue Growth – opportunities for marine and maritime sustainable growth. 13.9.2012, COM(2012) 494 final.

¹⁶ CEC. Concerning the EU Strategy for the Baltic Sea Region. 10.6.2009, COM(2009) 248 final. See more on the EU Strategy for the Baltic Sea Region, for example, Neimane et al., 2021, pp. 54–55.

¹⁷ European Union. EU Voluntary Review on progress in the implementation of the 2030 Agenda. Luxembourg: Publications Office of the European Union, 2023, p. 162. See also: EC. On a new approach for a sustainable blue economy in the EU: Transforming the EU’s Blue Economy for a Sustainable Future. 17.5.2021, COM(2021) 240 final.

Directive in 2014, thereby obligating Member States to transpose the Directive by 18 September 2016¹⁸ and ensure adoption of MSPlans by 31 March 2021^{19,20}. Adopting the MSP Directive triggered the establishment of MSPlans in the EU coastal states.

The MSP Directive governs requirements for both MSP as a process and the resulting planning document – the MSPlan. Additionally, the MSP Directive establishes only uniform minimum requirements for MSP,²¹ so that planning specifics and management goals are not mandated by the Directive, – formulation and regulation of these remain at the discretion of Member States.²² However, the common minimum requirements for MSP to respect in the MSP processes of the Member States include the tasks to promote coexistence of activities and to revise plans at least every ten years (Art. 6.3). Regarding coexistence, Recital 19 of the MSP Directive stipulates that MSP “also aims at identifying and encouraging multipurpose uses, in accordance with the relevant national policies and legislation.” Similarly, Article 5, paragraph 1 of the Directive refers only to the obligation of the Member States “to promote coexistence of relevant activities and uses”. To summarise, the overall stance of the MSP Directive is to leave discretion for each Member State “as to **how to plan** maritime activities”, which “means that national [MSPlans] differ significantly in terms of how the MU is addressed, if at all.”²³

All the coastal EU Member States have fully completed transposition measures and, in most countries, the development of MSPlans has also been concluded, following the deadline set out in the MSP Directive or within one year after the deadline.²⁴ In Latvia, in line with the requirements of the MSP Directive, on 21 May 2019 – after a decade-long gradual MSP evolvement in Latvia²⁵ – the Cabinet of Ministers approved MSPlan 2030 for the Inland Sea Waters of the Republic of Latvia, the Territorial Sea and the Waters of the Exclusive

¹⁸ See more: EurLex website. National transposition measures communicated by the Member States concerning: Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning. Available: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=uriserv%3AOJ.L_.2014.257.01.0135.01.ENG [viewed 05.11.2023.].

¹⁹ MSP Directive, Art. 15.1, 15.2, 15.3. The obligations of the Member States resulting from these provisions include the designation of the national MSP authority by 18 September 2023.

²⁰ The EC declared that “[t]he adoption of the Directive and its implementation has made the EU the grouping of the countries that is most advanced in developing MSP, and an international point of reference.” EC. Report [...] outlining the progress made in implementing Directive 2014/89/EU establishing a framework for maritime spatial planning. 3.5.2022, COM(2022) 185 final, pp. 16–17.

²¹ MSP Directive, see, e.g., Art. 6, also Arts 4–12.

²² Friess & GrémaudColombier 2021.

²³ Neimane et al. 2021, p. 52. See also MSP Directive, Art. 4.3.

²⁴ EC 2022, pp. 3–6, 16–18.

²⁵ For a detailed overview see Neimane & Puzulis 2022.

Economic Zone (EEZ) by adopting Order No. 232 on MSPlan 2030.²⁶ The total area of Baltic Sea waters (including the Gulf of Riga) under Latvian jurisdiction is 28 500 km², i.e., 17 656 km² of EEZ, 10 178 km² of territorial sea and 668 km² of inland sea waters.²⁷

MSPlan 2030 is a longterm (12year) national spatial planning document²⁸ that describes the conditions and ways of using the sea in written and graphic form.²⁹ It includes an explanatory note, a strategic section, a section “Use of the sea”, and a graphic part.³⁰ As a general administrative act, MSPlan 2030 binds planning regions, municipalities, industry groups, and state institutions that establish policies on maritime issues.³¹

The framework for Latvia’s national MSP is outlined in the Marine Environment Protection and Management Law, Spatial Development Planning Law and Regulations of the Cabinet of Ministers No. 740 “Procedures for the Development, Implementation, and Monitoring of the Maritime Spatial Plan”, which lay down the main components and essential variables to consider when establishing the uses of the sea.³²

2. Evaluation of the Maritime Spatial Plan 2030 and emergence of MultiUse Concept Framework

Echoing in national legislation³³ the transposed requirements of the MSP Directive,³⁴ paragraph 5 of Order No. 232 on MSPlan 2030, the Ministry of Environmental Protection and Regional Development (MoEPRD) had to submit to the Cabinet of Ministers a Report – Interim Evaluation of the MSPlan 2030 and proposals for updating the plan by 30 December 2023.

²⁶ Cabinet of Ministers of the Republic of Latvia. Par Jūras plānojumu Latvijas Republikas iekšējiem jūras ūdeņiem, teritoriālajai jūrai un ekskluzīvās ekonomiskās zonas ūdeņiem līdz 2030. gadam [On the Maritime Plan for the Inland Sea Waters of the Republic of Latvia, the Territorial Sea and the Waters of the Exclusive Economic Zone until 2030]. 21.05.2019. Order No. 232, Latvijas Vēstnesis No. 102, 23.05.2019.

²⁷ MSP. Maritime Spatial Planning Information: Latvia. European MSP Platform. Available: <https://maritime-spatial-planning.ec.europa.eu/countries/latvia> [viewed 29.11.2023].

²⁸ Teritorijas attīstības plānošanas likums [Spatial Development Planning Law]. 01.12.2011. Latvijas Vēstnesis No. 173, 02.11.2011, Art. 1.11.

²⁹ Order No. 232 on MSPlan 2030.

³⁰ Cabinet of Ministers of the Republic of Latvia. Jūras plānojuma izstrādes, ieviešanas un uzraudzības kārtība [Procedures for the Development, Implementation and Monitoring of the Maritime Spatial Plan]. 30.10.2012. Regulations No. 740. Latvijas Vēstnesis No. 180, 14.11.2012, para. 12; Order No. 232 on MSPlan 2030.

³¹ Neimane & Puzulis 2022, pp. 116, 122.

³² See also Veidemane K., Ruskule A., Sprukta S. et al. Development of a Maritime Spatial Plan: the Latvian Recipe. Baltic SCOPE project, 2017.

³³ The MSPlan 2030 is reviewed every six years to ensure constant updating or revision. Regulations No. 740, para. 30.

³⁴ MSP Directive, Art. 6.3, see also Recital 18.

Accordingly, between November 2022 and October 2023, the MoEPRD organised six meetings of the newly established Maritime and Coastal Spatial Planning Coordination Group³⁵ (Coordination Group). During those meetings, the participants of the Coordination Group discussed the actualities and implementation of the MSP and made proposals for updating MSPlan 2030. As a result of this process, the MoEPRD prepared a Report concerning evaluation of MSPlan 2030. Introducing the MU concept is among the recommendations in the Report for improving the legal framework. Since MU is of fundamental importance in organising activities at sea, an analysis of the essence of this concept and the conditions for its inclusion in regulatory acts will be provided.

To begin with, it is worth recalling that, currently, five biological diversity research areas (along marine protected areas, biosphere reserves and nature reserves) and five research areas for offshore wind farms (OWF)³⁶ are defined in MSPlan 2030. Here, it is essential to note that both biodiversity research areas and OWF research areas are indicated as priority uses. Moreover, these two priority uses overlap territorially in several places.³⁷ Additionally, practically all OWF research areas are located in the protective zones of military navigation technical means, which implies that the construction of OWF in these areas requires coordination with the Ministry of Defence.³⁸

It should be noted that the OWF research areas aim to narrow down the possibilities of OWF placement rather than indicating specific seawater areas for their construction.³⁹ According to the Report, applications for licence areas have been received in all OWF research areas except for the E2 area. In this regard, the “licence area” concept legally presupposes that a licence is first

³⁵ MoEPRD. Par Jūras un piekrastes telpiskās plānošanas koordinācijas grupas izveidi [On the establishment of the Maritime and Coastal Spatial Planning Coordination Group]. Order No. 12/171, 25.11.2022. Between November 2022 and October 2023, six Coordination Group meetings were organized on various topics affecting the MSP, such as environmental and nature protection interests, energy issues, shipping, ports, defence, aquaculture, raw material extraction, climate change and tourism. The summaries of the Coordination Group meetings used in the study are indicated in the footnotes according to the date on which the meetings took place, – MoEPRD. Coordination Group, 25.11.2022; 17.02.2023; 28.04.2023; 30.06.2023; 24.08.2023; 20.10.2023. See MoEPRD. Jūras un piekrastes telpiskās plānošanas koordinācijas grupa (no 2022. g.) [Maritime and Coastal Spatial Planning Coordination Group (from 2022)]. All available: <https://www.varam.gov.lv/lv/juras-un-piekrastes-telpiskas-planosanas-koordinācijas-grupa-no-2022g> [viewed 23.10.2023.].

³⁶ According to the information available in the Report, the total area of OWF research areas is 1 648.76 km², which is approximately 6% (5.82%) of Latvia's total maritime territory. Potential OWF energy capacity in Latvia has been estimated to be 14.50 GW, or 29 wind farm blocks that could generate 49.20 TWh of power annually. EC. Study on Baltic offshore wind energy cooperation under BEMIP. 2019.

³⁷ MoEPRD 2023. See also LIFE REEF. Available: <https://reef.daba.gov.lv/public/eng/> [viewed 21.11.2023.].

³⁸ MoEPRD. Coordination Group, 17.02.2023; RjascenkoSaraks J. Aizsardzības nozares intereses jūras plānojumā [Defence industry interests in maritime planning]. 17.02.2023. Available: <https://drive.google.com/file/d/1D7f5iHiEi827MBRaVfwb3fJmuxHyq24Y/view> [viewed 11.11.2023.].

³⁹ MoEPRD. Coordination Group, 25.11.2022.

issued for exploration and then for construction, including the requirement of an environmental impact assessment.⁴⁰ However, the necessary regulation must first be adopted for holding auctions, according to which developers can apply and then receive a permit for OWF site construction.⁴¹

Besides the aforementioned uses, the other application spheres of the MSPlan 2030 include fisheries, shipping, oil and gas, raw material and aggregates extraction, ports, cables and pipelines, tourism and recreation, as well as underwater cultural heritage. Although not all these functions have a reserved space, they are contemplated in the MSPlan 2030, and several are actually underway in real life. As a result, space is becoming a limited resource, given the “maritimisation” of activities, specifics of offshore developments, and competition between diverse sectors.⁴²

It has been acknowledged that OWF can and should coexist with a wide range of other industries, particularly in congested locations,⁴³ in order to tackle the everincreasing demand for marine space. Coexistence involves MU, defined by the EU’s commonly accepted definition as the sharing of resources in close geographic proximity – “a radical change from the concept of exclusive resource rights to the inclusive sharing of resources by one or more users”⁴⁴ based on conscious will.⁴⁵ For the benefit of all users, MU is predicated on a deliberate and explicit willingness to share resources and space between two or more activities.⁴⁶ The MU approach guarantees, for example, a decrease in conflict, effective use of maritime space, delivery of environmental benefits and socio-economic values and improvement of society’s perception, all of which increase social acceptability.⁴⁷ In short, the MU approach reduces conflicts and creates opportunities in the MSP process at the same time.⁴⁸ However, implementing the MU concept might also have weaknesses and threats that can be identified by

⁴⁰ MoEPRD 2022.

⁴¹ MoEPRD 2023; Ministry of Climate and Energy. Grozījums Jūras vides aizsardzības un pārvaldības likumā [Amendment to the Marine Environment Protection and Management Law]. 16.10.2023, 23TA2031. Available: https://tapportals.mk.gov.lv/legal_acts/f93a5cb8-64b2-48bc-a60a-e884ef47b9dd [viewed 25.11.2023.].

⁴² EC, 2021.

⁴³ EC. An EU Strategy to harness the potential of offshore renewable energy for a climate neutral future. 19.11.2020, COM(2020) 741 final.

⁴⁴ Przedzrymirska J., Zaucha J., Depellegrin D. et al. Multiuse concept in European Sea Basins. MUSES project, 2018.

⁴⁵ EC, 2021.

⁴⁶ Ibid.; Zaucha J., Bocci M., Depellegrin D. et al. Analytical Framework (AF) – Analysing Multi-Use (MU) in the European Sea Basins. MUSES project, 2017.

⁴⁷ Neimane et al. 2021, p. 53. See also VASAB Secretariat. 4th Baltic MSP Forum. Workshop 5: MultiUse and Blue Economy [Video]. YouTube, 15 July 2021, Available: <https://www.youtube.com/watch?v=C0KCPA32f4s>. [viewed 25.11.2023.]; EC. 2021.

⁴⁸ SchultzZehden A., Lukic I., Ansong J. O. et al. Ocean MultiUse Action Plan. MUSES project, 2018; Bocci M., Sangiuliano S. J., Sarretta A. et al. Multiuse of the sea: A wide array of opportunities from sitespecific cases across Europe. PLoS ONE, 14(4), 2019, e0215010; VASAB Secretariat, 2021; Neimane et al., 2021.

SWOT⁴⁹ or DABI (drivers added values barriers impacts) factors.⁵⁰ As to the drivers of MU, the majority of case studies examined in the MUSES project revealed that a crucial element for the actual creation and functioning of MU is the presence of a legal, regulatory, and planning framework that supports and facilitates MU.⁵¹

In general, MU can take place at different levels: between sectors of the same industry - e.g. OWF combined with other forms of renewable energy - or cultivation of mussels and macroalgae alongside fish aquaculture, or between different sectors, e.g. OWF, on the one hand, and aquaculture and tourism or shipping on the other. It is also possible to connect both levels, such as the North Sea coastal test site of the UNITED project, where wind energy harvesting is combined with seaweed cultivation and solar panels.⁵² More importantly, MU is applicable between the sectors previously considered mutually exclusive and conflicting, such as OWF and fisheries, or OWF and biological diversity⁵³ (marine protected areas⁵⁴ and even in terms of restoring and improving marine habitats,⁵⁵ except for certain aspects such as development of OWF in bird nesting areas⁵⁶) and, to some extent, related fields, such as OWF and aquaculture, aquaculture and fisheries,⁵⁷ and even OWF and defence,⁵⁸ as well as many other combinations. In addition, according to the MUSES project findings,⁵⁹ several MU types can be distinguished, such as multipurpose/functional dimension,⁶⁰ symbiotic use,⁶¹ coexistence/colocation⁶² and subsequent use/repurposing.⁶³ They differ in terms of the level of connectivity, and among them, the highest degree of connectivity between activities is ensured by a multipurpose functional dimension.⁶⁴ This dimension includes not only MU of space but also technical resources.⁶⁵ It implies a rather hard MU (in the event of permanent/longterm installations) instead of soft MU (mobile and “temporary”

⁴⁹ EC 2021.

⁵⁰ Bocci et al. 2019.

⁵¹ *Ibid.*, pp. 32–33.

⁵² UNITED. UNITED pilots. Available: <https://www.h2020united.eu/pilots> [viewed 20.11.2023.].

⁵³ MoEPRD. Coordination Group, 30.06.2023. See also MoEPRD. Coordination Group, 24.08.2023.

⁵⁴ EC 2020.

⁵⁵ VASAB Secretariat 2021; MoEPRD. Coordination Group 28.04.2023.

⁵⁶ MoEPRD. Coordination Group 30.06.2023.

⁵⁷ MoEPRD. Coordination Group 28.04.2023.

⁵⁸ MoEPRD. Coordination Group 17.02.2023.

⁵⁹ SchultzZehden et al. 2018; Schupp M. F., Bocci M., Depellegrin D. et al. Toward a Common Understanding of Ocean MultiUse. *Frontiers in Marine Science*, 6, 165, 2019. See also EC, 2021.

⁶⁰ Multipurpose/functional dimension – occurrence of activities at the same time and using the same main services/infrastructure.

⁶¹ Symbiotic use – occurrence of uses at the same maritime space at the same time and using peripheral infrastructure or services in common.

⁶² Coexistence/colocation – occurrence of activities in the same space and at the same time.

⁶³ Subsequent use/repurposing – subsequent occurrence of activities in the same maritime space.

⁶⁴ EC 2021.

⁶⁵ *Ibid.*

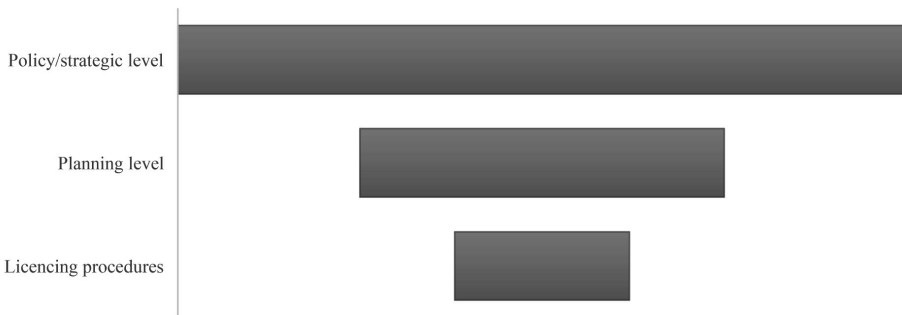
use of the sea, such as tourism).⁶⁶ Thus, legal regulation in the case of licensing will have to be adapted to both the type of activity and the type of MU.

At this state of scientific knowledge evolution about processes at sea, one thing is clear – that “in a contemporary understanding, a holistic [MU] approach to maritime space forms an integral part of MSP for resource and space sharing between two or more activities with the aim of benefiting all users.” This provides conceptual evidence for the MU principle’s genesis in the MSP process⁶⁷ and is a prerequisite for the compatibility of the MSPlans.⁶⁸

3. Way forward and required legislative improvements

Overall, the Report proposes introducing the MU concept into the legal framework. However, the existing relationship between political settings and goals, planning and more detailed legal norms must be respected (see Fig. 1). In this regard, it is only possible for MU to be introduced in the detailed regulations of the Latvian Cabinet of Ministers if it is part of the set of principles of national sustainable development strategies such as Latvia’s Sustainable Development Strategy and spatial planning. Summing up, it would mean starting with introduction of the MU principle along with the rest of the “Principles for Planning Development of a Territory Development Planning” in Article 3 of the Spatial Development Planning Law.

Figure 1. Relationship between different levels of MSP regulation for enhancement of MU



Source: author’s elaboration after EC 2021.

⁶⁶ Bocci et al. 2019.

⁶⁷ Neimane et al. 2021, pp. 49, 58.

⁶⁸ European Parliament. European Parliament resolution of 16 February 2022 on a European strategy for offshore renewable energy (2021/2012(INI)), 2021.

Additionally, in this case, and at the current stage of scientific knowledge, including information about technological solutions regarding MU,⁶⁹ it will be challenging to establish strict criteria according to which MU will be possible, because these might vary according to the characteristics of different sectors. This statement is confirmed by the experience of other countries, since at present it seems unlikely that there is a possibility to foresee an infallible and sufficiently detailed legal regulation, which would be able to sufficiently effectively depict all possible combinations of MU and the rights and obligations of the parties arising from them, including risk management and liability. Most likely, the development of such regulation can only take place gradually, in tandem and parallel with the evolution of scientific knowledge, technological solutions and practice on the interaction of sectors within the MU.

Thus, the suggestion here is that before developing detailed provisions, it would be necessary to formulate principles that later serve for interpretation of more detailed provisions (when the evolution of scientific knowledge, technology and practice on the interaction of sectors within the MU allow for that). Moreover, a policy must be developed that would support MU and to establish MU as a requirement for sectorspecific activities (including driving sectors such as renewable energy, and, more particularly – OWF and tourism), to determine its possible advantages (and risks) using strategic social and environmental assessments,⁷⁰ as well as project environmental impact assessments (EIA). To reiterate, these assessments are legally established already and can therefore be a partial solution for consideration of MU, especially in the case of the OWF.

Table 1. MU elements in the Baltic Sea Region

Country	MSPlan/s adopted*	MU included in national legislation	MU in strategic documents and individual administration level	MU in MSPlan	MU in practice in the real environment
Denmark	2021	✓	✓	✓	✓
Estonia	2022	–	–	✓	✓
Finland	2021	–	–	–	✓
Germany	2021**	✓	✓	–	✓
Latvia	2019	–	–	–	✓
Lithuania	2021	–	–	–	–
Poland	2021	–	–	✓	–
Sweden	2021	–	✓	✓	✓
Total number of countries		2	3	4	6
Source: Przedzrymirska et al. 2018, as remodified by the author; * – added by the author; ** – EEZ.					

⁶⁹ Cf. Bocci et al. 2019. See also Stancheva M., Stanchev H., Zaucha J. et al. Supporting multiuse of the sea with maritime spatial planning. The case of a multi-use opportunity development – Bulgaria, Black Sea. *Marine Policy*, 136, 2022, 104927.

⁷⁰ EC 2021; Neimane et al. 2021.

The next step is to incorporate MU and its panEuropean approach⁷¹ in the MSPlan, since it is recognised that it is one of the ways to ensure that the MU principle is implemented when determining permit requirements.⁷²

In this regard – although, in general, implementation of the MU principle at different levels in the Baltic Sea Region is uneven – there are several positive examples (see Table 1). For example, in Swedish MSPlans, the guiding nature of the MU (coexistence) principle is recognised.⁷³ In Estonia, MSPlan underlines that “the Estonian marine area is characterised by synergistic combined use.”⁷⁴ MU’s counterpart – combined use – permeates the Estonian MSPlan, including a chapter particularly dedicated to it, and is reflected in guidelines and conditions for the uses of marine areas. The Danish MSPlan⁷⁵ and Act on Maritime Spatial Planning⁷⁶ recognise coexistence as one of the basic MSP principles.

In this a context, amendments regarding establishing test sites for commercial purposes (not only for scientific purposes, as is the case now), that is, the possibilities for researching prototypes, would be essential to unlock the potential of both MU and Innovation Research Areas newly foreseen in the Report.⁷⁷ Along the OWF, test sites would be necessary, especially for sectors such as aquaculture and wave energy, for which MSPlan 2030 does not specify the place for development.

Conclusions

1. The multiuse principle should be recognised at the political and planning level before introducing multiuse in more detailed regulations.
2. Considering the varieties and complexities of multiuse application, legislation in the licensing case will have to be adapted to both the type of activity and the type of multiuse. There will be significant differences when drafting legislation for different kinds of multiuse, for example, whether it is only about multiuse of space or multiuse of technical resources. Highly integrated multiuse of the sea will require a highly sophisticated legal framework, including regulation of risk management and risksharing tools.

⁷¹ SchultzZehden et al. 2018.

⁷² Cf. EC 2021; VASAB Secretariat 2021; Neimane et al. 2021.

⁷³ Swedish Agency for Marine and Water Management. Marine spatial plans for the Gulf of Bothnia, the Baltic Sea and Skagerrak/Kattegat: National planning in Sweden’s territorial waters and exclusive economic zone (EEZ). Reg. No. 66619, 2019.

⁷⁴ Ministry of Finance. Estonian Maritime Spatial Plan. Government of the Republic order, No. 146, 12 May 2022.

⁷⁵ Danish Maritime Authority. Maritime Spatial Plan. Explanatory notes, 2021.

⁷⁶ Ministry of Business and Growth (Denmark). Act on Maritime Spatial Planning. 615, 8 June 2016.

⁷⁷ Cf. MoEPRD. Coordination Group 20.10.2023.

3. In addition, to advance multiuse regulation, it is critical to capitalise on the methods and experiences of other countries in the Baltic Sea Region and existing legislative frameworks of environmental impact assessment and strategic environmental assessment.

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