



## Constitutional and Legislative Affairs Committee

Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management (COM(2013)133).

Briefing

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This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

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## 1. Introduction

The proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management (**'the proposed directive'**) **was issued by the European Commission on 12 March 2013.**<sup>1</sup> The Assembly subsequently received a copy of the Department for Environment, Food and Rural Affairs' Explanatory Memorandum, **which set out the UK Government's views** of the proposal, on 26 March 2013.

## 2. The proposed directive

The proposal aims to establish a framework for the implementation of maritime spatial **planning ('MSP') and integrated coastal management ('ICM') across the EU's Member States**, aimed at promoting sustainable growth of maritime and coastal activities and the sustainable use of coastal and marine resources.

The key requirements of this proposal are for Member States to establish and implement:

- Maritime spatial plans in marine waters (including their offshore waters); and
- Integrated coastal management strategies within their territorial waters.

The proposed directive requires these documents to be developed while cooperating with neighbouring Member States and third countries which share coastal and marine boundaries.

## 3. Subsidiarity

The eight week deadline for reasoned opinions from national parliaments in relation to the proposed directive is 13 May 2013.

As of 10 April 2013, no reasoned opinions have been expressed by national parliaments on the proposal.<sup>2</sup> The Department of **Environment, Food and Rural Affairs' Explanatory Memorandum** on the proposed directive states however that the UK Government anticipates 'that several Member States will raise concerns about different aspects of the proposal'.<sup>3</sup>

No concerns have been expressed either by any of the regional legislatures within the **Committee of the Regions' Subsidiarity Monitoring Network** to date.

### 3.1. Views within the UK

The Department of Environment, Food and Rural Affairs' **EM** states in relation to subsidiarity that:

The Government **generally agrees with the Commission's view on subsidiarity as expressed** in the proposal, as it imposes a requirement to establish maritime spatial planning and

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<sup>1</sup> Europa.eu, [Proposal for a directive establishing a framework for maritime spatial planning and integrated coastal management](#), 12 March 2013 [accessed 9 April 2013]

<sup>2</sup> IPEX, [Document: COM/2013/0133](#), 12 March 2013 [accessed 9 April 2013]

<sup>3</sup> Department for Environment, Food and Rural Affairs, *Explanatory Memorandum on European Union Document: Draft Instrument of 14 March 2013 concerning a Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management*, 26 March 2013

integrated coastal management processes in order to achieve a framework for implementation by **Member States across Europe's coastal and marine areas. The Commission's Explanatory Memorandum for the proposal emphasises that maritime spatial plans and integrated coastal management strategies should reflect national and local needs and be developed within existing governance structures.**<sup>4</sup>

The EM adds however that:

the effects of Article 5 [of the proposed directive] could affect what Member States need to include in their plans and strategies and also relate to other Directives ... these provisions appear to go beyond what is required to ensure effective implementation of maritime spatial plans and ICM strategies **[RS emphasis]**.<sup>5</sup>

**Further background information to the UK Government's position on the issue** is also contained in the EM:

The European Commission have long recognised that the UK is at the forefront of implementing policy on MSP and ICM but that few other Member States have made effective **progress in this area. To that extent the UK understands the European Commission's decision to introduce the proposal for a Directive but we have made clear that it is important that EU action does not undermine our own processes and/or cause confusion or added burdens** **[RS emphasis]**.<sup>6</sup>

A copy of the EM is included in full as an annex to this paper.

Assembly officials understand that the Northern Ireland Assembly and the Scottish Parliament will be looking at whether the proposed directive raises any subsidiarity concerns over the coming weeks.

### **3.2. Views of the Assembly**

The content of the proposed Directive is of relevance to the Assembly as it relates to Subject 6 (Environment) of Schedule 7 to the **Government of Wales Act 2006**.<sup>7</sup> The EM also states that the Welsh Government was consulted by the Department for Environment, Food and Rural Affairs in the preparation of the EM.

Under the Subsidiarity Protocol, the Committee may raise formal subsidiarity concerns in relation to the proposal on behalf of the Assembly by issuing a written representation to the **Commons' European Scrutiny Committee and the Lords' EU Select Committee**. Those committees may then take account of such views in reaching their own conclusions on the proposal and in considering whether or not to recommend issuing a written representation.

## **4. Next steps**

On the basis that no further objections on the grounds of subsidiarity will be made by other Member States before 13 May 2013, the proposal should be submitted to the Council

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<sup>4</sup> Department for Environment, Food and Rural Affairs, *Explanatory Memorandum on European Union Document: Draft Instrument of 14 March 2013 concerning a Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management*, 26 March 2013

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> [Government of Wales Act 2006](#) (Chapter 32) [accessed 10 April 2013]



of Ministers for agreement of a general approach soon after. In anticipation that several Member States will raise concerns about the proposed directive, the EM states however that

It seems highly unlikely that the proposal will be submitted to Council for agreement of a general approach before the end of June 2013 and, at this stage, it seems probable that Council negotiations will continue into early 2014 by when the European Parliament should have voted on the proposal.<sup>8</sup>

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<sup>8</sup> Department for Environment, Food and Rural Affairs, *Explanatory Memorandum on European Union Document: Draft Instrument of 14 March 2013 concerning a Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management*, 26 March 2013



Annex: UK Government Explanatory Memorandum

**7510/13**  
**COM 2013 133 final**  
**7510/13 ADD 1**  
**SWD(2013) 64 final**  
**7510/13 ADD 2**  
**SWD(2013) 65 final**

**EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT**

**Draft Instrument of 14 March 2013 concerning a Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management.**

**Draft Instrument of 14 March 2013 concerning a COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for maritime spatial planning and integrated coastal management**

**Draft Instrument of 14 March 2013 concerning a COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for maritime spatial planning and integrated coastal management**

***Submitted by the Department for Environment, Food and Rural Affairs***  
**26 March 2013.**

**SUBJECT MATTER**

1. The Commission has submitted a proposal for a Directive to establish a framework for the implementation of maritime spatial planning (MSP) and integrated coastal management (ICM) across the EU, aimed at promoting sustainable growth of maritime and coastal activities and the sustainable use of coastal and marine resources.
2. The proposal provides for the establishment and implementation by Member States of maritime spatial plans and integrated coastal management strategies. ICM and MSP (more commonly known as Integrated Coastal Zone Management and Marine Planning in the UK) are accepted approaches to managing resources within coastal zones and marine environments in an integrated and sustainable way. They contribute to the effective management of marine activities



and more sustainable use of marine resources, by creating a framework for more integrated, consistent, sustainable, and evidence-based decision-making.

3. The key requirements of this proposal are for Member States to establish and implement maritime spatial plans in marine waters (including their offshore waters), and ICM strategies within their territorial waters, while cooperating with neighbouring Member States and third countries which share coastal and marine boundaries.
4. The Parliamentary scrutiny history relevant to this proposal is contained in the attached Annex.

### **MINISTERIAL RESPONSIBILITY**

5. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Ministers, Welsh Ministers and the Northern Ireland Executive. The Devolved Administrations have been consulted in the preparation of this Explanatory Memorandum.

### **LEGISLATIVE PROCEDURES**

#### 6. (i) Legal Basis

The legal basis for this proposal is Articles 43(2), 100(2), 192(1) and 194(2) of the Treaty on the Functioning of the European Union.

#### (ii) Legislative Procedure

Ordinary legislative procedure (formerly known as co-decision) applies.

#### (iii) Voting Procedure

Qualified Majority voting will apply for the Council but simple majority voting applies in the European Parliament.

#### (iv) Impact on UK Law

The UK already has legislation in place for marine planning, in particular the Marine and Coastal Access Act 2009, the Marine (Scotland) Act 2010 (for the Scottish inshore area), and the Northern Ireland Marine Bill (for the NI inshore area) currently progressing through the Northern Ireland Assembly. However, if the proposed Directive is adopted in its current form, it is likely that this legislation would need to be amended to ensure any specific requirements of the Directive are adequately transposed.

#### (v) Application to Gibraltar

The Directive will apply to Gibraltar.

#### (vi) Fundamental Rights Analysis

No fundamental rights arise from this Document.

### **EUROPEAN ECONOMIC AREA**

7. The proposal will have no relevance under the EEA Agreement.

## **SUBSIDIARITY**

8. The Government generally agrees with the Commission's view on subsidiarity as expressed in the proposal, as it imposes a requirement to establish maritime spatial planning and integrated coastal management processes in order to achieve a framework for implementation by Member States across Europe's coastal and marine areas. The Commission's Explanatory Memorandum for the proposal emphasises that maritime spatial plans and integrated coastal management strategies should reflect national and local needs and be developed within existing governance structures. However the effects of Article 5 could affect what Member States need to include in their plans and strategies and also relate to other Directives. As discussed in paragraph 11 below, these provisions appear to go beyond what is required to ensure effective implementation of maritime spatial plans and ICM strategies.

## **POLICY IMPLICATIONS**

9. The European Commission have long recognised that the UK is at the forefront of implementing policy on MSP and ICM but that few other Member States have made effective progress in this area. To that extent the UK understands the European Commission's decision to introduce the proposal for a Directive but we have made clear that it is important that EU action does not undermine our own processes and/or cause confusion or added burdens. The UK approach to implementing ICM is more comprehensive and inclusive of coastal terrestrial processes than the proposal, which specifically provides that it is without prejudice to Member States' competences for town and country planning. Although there is no legal requirement in UK legislation to create an ICM strategy as a separate entity, we have incorporated the Integrated Coastal Zone Management principles into the UK Marine Policy Statement which provides the framework for marine planning in the UK.

10. The UK strongly supports implementation of MSP which will create a framework for more consistent, sustainable and evidence-based decision-making and so contribute to more effective management of marine activities and more sustainable use of marine resources. The Marine and Coastal Access Act 2009 and Marine (Scotland) Act 2010 provided for the introduction of marine planning across the UK. The UK wide Marine Policy Statement of March 2011 was the first stage in implementation of a process designed to help integrate marine planning and management at the coast. While UK Administrations are at varying stages of progress in developing their first marine plans, we believe that the ongoing work should help form the basis to achieve compliance with both the ICM and MSP elements of this proposal. We already make all efforts to engage at an early stage



with neighbouring Member States to ensure effective cross border cooperation. Despite this, if the proposal was adopted in its current form it is likely that we would need to amend our current legislation in order to meet the specific requirements of the Directive. We shall therefore seek amendments to minimise this and any changes to plans under development.

11. Although we consider that the UK could comply with the proposed Directive, there are elements we do not wholly support as they seem to go beyond what is strictly necessary to ensure implementation of MSP and ICM across the EU. Several Member States share our view on this. For instance the proposal requires that plans and strategies are in place within 36 months of the Directive coming into force. In addition approaches in the UK to marine planning vary slightly largely due to the size of the area to be planned for, the number and range of activities and interests within that area, the level of detail aimed for and number and range of stakeholders. Scotland and Northern Ireland are preparing National Marine Plans while the UK Government has adopted a phased approach to plan development in England's inshore and offshore marine area. We are working towards having 10 marine plans covering all the English marine area in place by 2022. This approach will enable us not only to prioritise but also learn from development of previous plans. Therefore, we will be seeking to negotiate changes to extend the time limit before plans and strategies have to be in place.

12. The proposal will apply to British Gibraltar Territorial Waters. HM Government of Gibraltar will be responsible for the transposition of the proposed Directive into Gibraltar law. As Spain does not recognise British Gibraltar Territorial Waters, the definition of the "coastal zone" (Article 3.1) would cause particular difficulties. We will consult closely with HM Government of Gibraltar and pursue this with the Commission and in negotiations.

13. We will also seek a number of amendments to the Directive to reduce the need to modify the UK's existing arrangements. This includes seeking to amend the text of the proposal to make clear that objectives (Article 5) and minimum requirements for plans and strategies (Articles 6-8) are illustrative rather than mandatory. We will reinforce the underlying principle that it is for Member States to decide priorities and how they deliver them. We will seek to amend article 12 so that Member States must only cooperate to help ensure MSP and ICM strategies are coherent and coordinated rather than having to ensure this. We will seek to delete or amend Article 16(1)(b) which appears to give the Commission unnecessarily wide implementing powers that go beyond those required to help implement existing obligations.





## **IMPACT ASSESSMENT**

14. The Commission have produced an Impact Assessment (IA) along with the draft proposals. The IA is very high level and estimated costs and benefits are qualitative rather than quantitative. This is understandable given that MSP is a relatively new process and hard data is scarce. The IA highlights the positive benefits of MSP which the UK recognises and supports. However it also includes some statements we do not accept (e.g. MSP will ensure growth in marine sectors) and it references reports in which we do not entirely agree with the content or conclusions.

15. In terms of the impact on the UK, we do not expect any regulatory or economic impact on business. As stated above, the UK has legislation in place and/or under consideration to implement the proposal and we will work with other Member States to seek to amend the Directive to minimise any requirement to change our current marine planning processes.

## **FINANCIAL IMPLICATIONS**

16. The Commission have estimated additional administrative costs of approximately €0.58m (£0.5m) but the financial implications for the UK are likely to be minimal. However, if we are required to establish all plans and strategies before our own scheduled timescale of 2022 it may be necessary to devote more resources to achieve an accelerated deadline. At this stage it is impossible to estimate the costs involved. There may also be future reporting costs attributed to government but as the UK already require reporting under domestic legislation on marine planning this should be negligible.

17. As the proposal is intended to ensure that Member States produce integrated and coordinated maritime spatial plans and integrated coastal strategies there will be no, or minimal, additional burdens on industry or individual sectoral activities.

## **CONSULTATION**

18. There was extensive consultation on UK proposals for Marine Spatial Planning and ICZM in the development of proposals and approaches within UK domestic legislation referred to above, the Marine Policy Statement and National ICZM Strategies. There was overwhelming support for all Administrations' approaches. We are carrying out an informal and targeted consultation of key stakeholders on the proposal for a Directive.

## **TIMETABLE**

19. We anticipate that several Member States will raise concerns about different aspects of the proposal. It seems highly unlikely that the proposal will be submitted to Council for agreement of a



general approach before the end of June 2013 and, at this stage, it seems probable that Council negotiations will continue into early 2014 by when the European Parliament should have voted on the proposal.

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