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Adopting the Directive 2014/89/EU. The French and Greek

experience in establishing a framework for maritime spatial

planning.

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Abstract

In 2014, the European Parliament and the Council, adopted a certain framework in order to create

a common base for maritime spatial planning in Europe (2014/89/EU Directive). According to the

commitments, until 2016 the Member States had to complete the transposition and designation of

the Directive. The European Commission, also designates that by 2021 Member States must

establish maritime spatial plans.

During the last decade, huge progress is made in the field of research programs related to the

maritime spatial planning (MSP). Cross border projects, including Plan Bothnia, BaltSeaPlan,

ADRIPLAN, Baltic SCOPE and more recent Supreme - Eastern Mediterranean, are still trying to

explore the MSP content, prepare recommendations, identify best practices and launch maritime

spatial plans. In some cases great progress is made, like Plan Bothnia project that developed a

draft maritime spatial plan, shared by Sweden and Finland.

The interest now moves on identifying how EU member States can develop marine spatial plans,

within certain MSP legislation. In most cases, the Member States have to overcome specific

difficulties because of the existing regulations and aspects in their planning systems, which

somehow overlap or do not consider the MSP approaches. On the one hand, in Greece, the recent

reform of spatial planning legislation (L.4447/2016) was a great opportunity for introducing the

MSP into an integrated planning system. At the same time, there was a public consultation for the

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transposition of Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning into the Greek Law. On the other hand, in France, although there is a tradition, with a variety of spatial planning tools for the coastal zone, the MSP system has been less developed.

The purpose of the paper is to analyze the way that regulations regarding MSP, are adopted in Greek and French legislative framework. Also, the paper tries to identify the basic choices of these two countries, on implementing MSP, since there have been different options and trends, including sectorial or holistic approaches for MSP, combination of MSP with integrated coastal zone management, and some other planning approaches like ecosystem based management. Thus, the article's main goal is to investigate and highlight the risks, the different approaches and the opportunities that these two countries have to consider, in order to implement by 2021, a comprehensive maritime plan, in correlation with the EU framework.

#### **Keywords**

Maritime spatial planning, Directive 2014/89/EU, France, Greece.

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## Introduction

EU Directive (2014/89/EU) introduces a framework for maritime spatial planning which came into force on September 2014, as a horizontal policy tool in the EU integrated maritime policy (Zervaki, 2015) and defines maritime spatial planning as "a process by which the relevant Member State's authorities analyze and organize human activities in marine areas to achieve ecological, economic and social objectives."

This article discusses the EU's approach to Maritime Spatial Planning (MSP) and more specifically the transposition of the Directive 2014/89/EU into the national law of two member states: France and Greece. Thus, the article's main goal is to investigate and highlight the risks, the different approaches and the opportunities that these two countries have to consider, in order to implement comprehensive maritime spatial plans by 2021.

## 1 The European Context

The European Union encourages maritime spatial planning in the context of integrated maritime policy. Since the adoption of the Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 for establishing a framework for maritime spatial planning, each member state should establish a relative framework for implementation of maritime spatial planning procedures. As it set in the article 11 of the Directive "while it is appropriate for the Union to provide a framework for maritime spatial planning, Member States remain responsible and competent for designing and determining, within their marine waters, the format and content of such plans, including institutional arrangements and, where applicable, any apportionment of maritime space to different activities and uses respectively".

#### 1.1 The latest research programs

In support of this brand-new field of spatial planning, in recent years, the European Commission is funding a series of research programs, which aim to explore capabilities, introduce planning rules and procedures, and produce -among other tasks- a coherent framework for the implementation of maritime spatial planning. The most recent research programs include:

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- SIMNORAT for supporting the implementation of Maritime Spatial Planning in the Northern European Atlantic. This program started in 2017 and it is expected to be completed by the end of 2018, and among other goals, it is intended to contribute and support cross-border cooperation between Member States in relation to implementation of the Maritime Spatial Planning (MSP) Directive. Its completion is expected to contribute positively to the facilitation of the MSP, as the resulting data can be exploited by the Member States. Moreover, the use of any output of the project will be decided by individual Member States as determination of any approach to their maritime spatial planning (CESAM, 2017).
- SIMWESTMED for supporting the implementation of Maritime Spatial Planning (MSP) in the Western Mediterranean Region. This program started in 2017 and it is expected to be completed by the end of 2018. The collaborative work across different countries and the specialized transboundary issues that will be analyzed, are expected to make some significant contributions in understanding the planning procedure. Moreover, land sea interactions will be a part of this project, within certain linkages to the regions and national governments for a more practical approach (CPMR, 2016).
- SUPREME for supporting the implementation of Maritime Spatial Planning in EU Member States within their marine waters in the Eastern Mediterranean, including the Adriatic, Ionian, Aegean and Levantine Seas. Among other tasks, there will be recommendations and guidelines for a common understanding on a regional scale aspects of MSP. Also, there will be an analysis of data needs and existing data gaps in relation to a transboundary perspective of MSP. Finally, among other tasks, SUPREME will address a synergic implementation of the regionally relevant policy instruments for MSP (ARCH NTUA, 2017).

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# 2 Transposition and designation status

#### 2.1 The French framework

In France, issues of maritime spatial planning have been introduced many years ago mainly through environmental planning, and in particular through the institutionalization of Plans for the Development of the Sea (schémas de mise en valeur de la mer – SMVM) in 1983<sup>1</sup>. These plans where revised in 2005 in order to include the coastal areas, with measures such as the zoning of activities and the allocation of zones to specific marine end-uses, but after all they "did not prompt any growth in the use of marine planning instruments" (Boillet, N. and Gueguen-Hallouet, 2015).

Since 2003, under the law n° 2003- 346 of 16 April 2003 for the creation of an ecological protection zone off the coastal territory (Loi n° 2003-346 du 15 Avril 2003 relative à la creation d'une zone de protection écologique au large des côtes du territoire de la République) ecologic protection zone (EPZ) were predicted and institutionalized, in sequence to the provisions of part V of the UNCLOS convention<sup>2</sup>. Implementation logic and the background of this type of zones was not related to maritime spatial planning models, and thus it failed to develop corresponding tools, as the whole procedure remained limited to environmental protection terms and strategies.

Subsequently, aiming to enhance the protection of sensitive ecosystems within the framework of National Biodiversity Strategy and National Strategy for Marine Protected Areas, France has been working on maritime zones through the network of Marine protected Areas (MPAs). Moreover, in 2006 the Agency for Marine Protected Areas is established, in order to achieve an integrated management, as well as sustainable development and protection of species, habitats and ecosystems (Premier Ministre, 2009).

In 2010, the implementation of Grenelle II law (12 July 2010) gave new instruments for marine strategies according to the 2008 Marine Strategy Framework Directive (MSFD). Furthermore, the new category of planning instrument is known as the action plans for the marine environment (plans d'action pour le milieu marin – PAMM) and their main purpose is to set strategies for the

<sup>&</sup>lt;sup>1</sup> France has an SMVM for the Étang de Thau lagoon on the Mediterranean, the Arcachon Basin on the Atlantic, the Gulf of Morbihan and the coast off Trégor-Goëlo (see: http://www.cscope.eu/en/project-activities/marine-management-plan/neighbouring-countries/)

<sup>&</sup>lt;sup>2</sup> Law 2003-346, essentially modifies the existing law no 76-655 of 16 July 1976 for the exclusive economic zone (EEZ) off the French territory, according to the UNCLOS convention, by adding the EPZ.

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marine environment, and action plans in order to achieve good ecological status. In addition, it is stated that national strategy for the sea and coastal areas, must be adapted to mainland coastal zones using "documents stratégiques de façade" (DSF) and "documents stratégiques de bassin maritime" for overseas territories (L219-4 to L219-6 of the new Environmental Code<sup>3</sup>).

In 2017, Decree no 2017-222 of 23 February 2017 for National Strategy for the Sea and the Coast (Décret n° 2017-222 du 23 février 2017 Stratégie nationale pour la mer et le littoral) determines that the national strategy for the sea and the coastline should provide a framework for public policies concerning the sea and the coast. In the long term, it focuses on the structural objectives: the ecological transition of the sea and the coast, the development of the maritime economy, the good environmental status of the marine environment and the preservation of the attractiveness of the coastal zone, and influence of France at the international level. It is also determined that national strategy should set out some orientations, including: building on knowledge and innovation, developing sustainable and resilient maritime and coastal territories, supporting and enhancing initiatives and removing obstacles, promoting a French vision within the European Union and in international negotiations and bring national issues (Décret n° 2017-222).

## 2.2 Decree n°2017-724 of 3rd May 2017

In France, transposition of the Directive 2014/89/EU (for Maritime Spatial Planning) into law was completed in May 2017 (JORF n°0106 du 5 mai 2017<sup>4</sup>). As defined in the Decree of 3 May 2017 (Décret n° 2017-724 du 3 mai 2017), there will be different phases in maritime spatial planning, and specific tasks need to be completed for successful implementation. More specifically mapping of different activities, identification of strategic priorities and objectives of the action plans, as well as introduction of specific indicators, tailored to the specific design features, are some of these initial tasks (European MSP Platform, 2017).

For the transposition of the Directive 2014/89/EU, each member state remains responsible and competent for the designing and determining process. France appears to choose a strategic planning approach to integrate existing policies and anticipate new ones for the regulation marine space. Moreover, the overall objective is how establishing a framework for maritime spatial

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<sup>&</sup>lt;sup>3</sup> LOI n° 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement, Article 166

<sup>4</sup> https://www.legifrance.gouv.fr/affichJO.do?idJO=JORFCONT000034579357

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planning, can lead to the integration of the action plan for the marine environment, within a strategic planning document (document stratégique de façade, or the façade strategic document-DSF), which relates potentially to any activity and use at sea (with the exception of activities whose sole purpose is defense or national security) and intends to protect the environment, value the potential of the blue economy and anticipate / manage land use conflicts (Dirm mediterranee, 2017).

Furthermore, it can be seen that the Decree of 3 May specifies the scope, content and conditions for the elaboration of frontier strategy documents as well as the way they relate to existing policies: the national strategy for the sea and the coast (stratégie nationale pour la mer et le littoral -SNML) and the Action Plan for the Marine Environment (ainsi que du plan d'action pour le milieu marin).

In order to incorporate the regulations introduced, modifications to environmental legislation are required. In particular, as set out in Articles 2 to 5, strategic planning documents from now on, should include a chapter on the action plan for the marine environment. More specifically the façade strategic document is elaborated for each of the four metropolitan facades (or marine sub regions):

- The façade of "Manche Est-mer du Nord"
- The "North Atlantic-West Channel" façade
- The "South Atlantic" façade
- The "Mediterranean" façade.

The strategic document of these sub regions reflects the orientations of the national strategy for the sea and the coastal zone, with regard to the economic, social and ecological factors. Thus, the above spatial units coincide with the regions which have been institutionalized for the implementation of Directive 2008/56/EC (marine strategy framework directive) in French law code

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de l'environnement<sup>5</sup> (Préfet maritime, 2017). It is also the framework for the planning of maritime space provided for in Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 and contains in this respect the plans resulting from the planning process. As can be seen, in the French planning system, a clear synergy - a concurrent design - is being promoted between Marine Strategy Framework and Maritime Spatial Planning procedures.

This view, is also confirmed by the analysis of the proposed methodology as set out in the Decree of 3 May 2017 (Décret n° 2017-724 du 3 mai 2017), where the strategic document that implements the maritime spatial planning procedures, occurs as a process of the following tasks:

-The situation of the existing in the perimeter of the seafront. It includes a diagnosis of the state of the coastal and marine environment, and cartographic representations must be used. Moreover at this stage, a data search is being carried out in order to define: the uses of marine and coastal space as well as land-sea interactions, economic activities linked to the sea and coastal development, the main prospects for socio-economic and environmental and related activities. It also under investigation the main issues and emerging needs of the sub region (façade), taking into account existing or foreseeable conflicts of use. The origin of the data is an issue, as available sources of information may be limited, however, as noted in the text of the decree the best available data must be used.

-The definition of strategic objectives and associated indicators. These objectives can be environmental, social and economic. They are accompanied by the definition and justification of the conditions for the spatial and temporal coexistence of the activities and the uses considered and the identification, in the maritime spaces, of the coherent zones with regard to the general stakes and objectives assigned to them. Cartographic representations are also considered necessary at this stage of planning process.

 $http://www.legifrance.gouv.fr/affichCode.do; jsessionid=9E61F1C9308F36AA475CF9D36596701A.tpdjo04v\_3?idSectionTA=LEGISCTA000022494788\&cidTexte=LEGITEXT000006074220\&dateTexte=20131112 and R. 219-2 à R. 219-17$ 

https://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000023951570&idSectionTA=LEGISCTA00 0023951568&cidTexte=LEGITEXT000006074220&dateTexte=20131112

<sup>&</sup>lt;sup>5</sup> See L. 219-9 à L. 219-18

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-The methods for evaluating the implementation of the strategic document. This part includes the definition of a set of relevant criteria and indicators, which are related and can be differentiated from region to region.

#### - The action plans.

As noted in the text of the Decree, each of the parts of the frontier strategy document contains a specific chapter that groups together all the above elements of the action plan with reference to the marine environment. Moreover, the responsible Ministers for the environment and the sea shall ensure, during the consultations on the parts of the frontier strategy document, that it respects the principles and guidelines of the National strategy for the sea and the coast, that it is compatible with the other frontier strategy documents and that it is coherent and coordinated with the maritime strategies and maritime spatial planning adopted by the other Member States.

#### 2.3 The Greek framework

The Greek spatial planning system foresees planning procedures within special spatial planning frameworks for the sustainable development of cutting-edge activities. So far, there have been institutionalized Special Frameworks related to the tourism sector<sup>6</sup>, industrial sector, aquaculture, renewable energy sources and prisons. According to the recent law of the revised planning system (Law 4447/2016 Spatial planning - Sustainable development and other provisions) the Special Spatial Planning Frameworks are set of texts and diagrams which identify strategic guidelines at national level, in particular -among others- "the spatial development and organization of the national areas of particular importance from the spatial, environmental, developmental or social point of view, such as coastal, marine and island regions, mountainous and problem areas".

From the above formulation it is understood that the legislator expressly states that the maritime spatial procedures are included in the provisions of Special Spatial Planning Frameworks. However, such a plan has not yet been institutionalized. The Specific Spatial Planning is accompanied by a program of actions and priorities, specifying the actions and priorities required for their implementation, within clear timetable and identified implementing bodies.

<sup>6</sup> The Special Framework of spatial planning and sustainable development of tourism has been canceled by the Council of State, and thus, there is currently no planning framework

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As in France, also in Greece, but to a much lesser degree/ extent, there are environmental protection procedures, which can define and create marine protected areas<sup>7</sup> (Law 1650/1986 for environmental protection). Also from the Special Framework of Spatial Planning and Sustainable Development of Aquaculture, there have been identified areas of gradual development of aquaculture activities. These are the basic existing maritime spatial planning examples, which however do not fit into an integrated maritime spatial planning system as defined in Directive 2014/89/EU (for Maritime Spatial Planning).

For this reason, and under the pressure of the commitments stemming from the European Union, the Greek Ministry of Environment and Energy launched in November 2016, a public consultation to transpose the Maritime Spatial Planning Directive into Greek law. So far, there are no developments in the institutionalization of the published law plan, but useful information can be drawn through the stakeholders' observations during the consultation procedure.

More specifically the Hellenic Association of City and Regional Planners (SEMPXPA) estimates that the transposition and implementation of Directive 2014/89/EU should be based as far as possible on existing mechanisms, in accordance with the principles of proportionality and subsidiarity, and to minimize of the additional administrative costs. The draft law on the incorporation of the Directive, states that provisions for Maritime Spatial Planning corresponds to the "Regional Planning Level" and this wording conflicts with existing legislation (law 4447 /2016 as analyzed above), where it is stated that Maritime Spatial Planning has a Strategic Spatial Planning character and thus it is institutionalized through Special Spatial Planning (SFP) procedures (SEMPXPA, 2016).

Another issue that creates ambiguities for the draft law (for the transposition of Directive 2014/89 / EU) is that coastal zones are also included within the scope of MSP. On the one hand, this seems to contradict the provisions of Directive 2014/89/EU (where there are no mentions for the regulation of coastal areas). On the other hand, in the Greek planning system, coastal zones (land area) are already regulated by spatial planning and urban planning procedures, and the Greek proposal (draft law) does not mention how these areas are going to be regulated (SEMPXPA, 2016).

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<sup>&</sup>lt;sup>7</sup> Alonnisos marine park (http://alonissos-park.gr/) and Zakynthos marine park (http://www.nmp-zak.org/)

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Furthermore, Greek Tourism Confederation (SETE, 2016) estimates that the draft law for the for the transposition of Directive 2014/89/EU leads to the addition of a "separate-parallel- Maritime Spatial Planning Framework, that will burden the existing situation", because the coastal area is a terrestrial area with special features, and the marine space is in direct interaction with it. Fragmentation of the design is another risk, arising from the draft law. It is even pointed out that it "is inappropriate to incorporate horizontal regulations and rules" that may not be compatible with the conditions and characteristics of Greece, as the Greek government does not seem to have taken into consideration the special characteristics of the country.

## **Conclusion**

In France, the transposition of the MSP Directive (2014/89/EU) was completed in May 2017 with the approval of an ad hoc implementing decree (Décret n° 2017-724 du 3 mai 2017). The decree is the culmination of a long process of building an integrated framework for National Strategy for the Sea and the Coast, and follows the institutionalization of the 'Law on the recovery of biodiversity'9. Therefore, maritime spatial planning is examined in a parallel procedure with the marine strategy framework directive (already included in the national planning system). The outputs are integrated strategic documents (and maps) dedicated to four specific French coastal-sea areas. At a later stage, each area will define the objectives of integrated management of the sea and coastline areas, in accordance with the principles and guidelines set by the National Strategy for the sea and the coastline approved in February 2017 (Décret n° 2017-222 du 23 février 2017 Stratégie nationale pour la mer et le littoral).

In Greece the transposition of the MSP Directive (2014/89/EU) is still pending. Despite the expiry of the transposition deadline, which raise major concerns (eg precluded from acting, entering international agreements etc.), there are some serious concerns from the social partners and stakeholders which are summarized in the view that the draft law (for the transposition of Directive 2014/89/EU into Greek law) does not contradict the Greek planning system, the needs and characteristics of the Greek territory and therefore appropriate measures should be taken as soon as possible.

<sup>8</sup> See more comments of SETE in Article 01 : http://www.opengov.gr/minenv/?p=8368#comments.

<sup>&</sup>lt;sup>9</sup> Loi n° 2016-1087 du 8 août 2016 Pour la reconquête de la biodiversité, de la nature et des paysages: https://www.legifrance.gouv.fr/eli/loi/2016/8/8/2016-1087/jo/texte

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