

# Institutional ambiguity in implementing the European Union Marine Strategy Framework Directive

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*Abstract:* This article addresses the institutional ambiguity that exists between the European, Regional and Member State level in the implementation of the Marine Strategy Framework Directive (MSFD). The two main reasons for the emergence of institutional ambiguity are (1) the MSFD being a framework directive and (2) Member States are required to coordinate the implementation of the MSFD through the Regional Sea Conventions. Institutional ambiguity refers to the interference zone between different institutional settings that come together in new policy practices. New rules of the game are needed to bring these institutional settings together and the room to manoeuvre for the actors who negotiate these rules is a defining feature of institutional ambiguity. This article analyses the institutional ambiguity associated with MSFD implementation on the European and regional level for four European Seas: the North Sea, the Baltic Sea, the Mediterranean Sea and the Black Sea. The results indicate different levels of institutional ambiguity in each of the four regions, with the lowest level of ambiguity in the Baltic Sea and the highest in the Mediterranean Sea. Institutional ambiguity also exists on the European level, as coordination efforts have not resulted in clear directions for the implementation of the MSFD as yet. The level of institutional ambiguity is influenced by the relative number of EU member states bordering the particular sea and whether they consider implementation of the MSFD to be urgent. We therefore conclude that Member States bordering the Mediterranean and the Black Seas lack the support of Regional Sea Conventions in addition to receiving limited direction from the European level.

*Highlights:*

- Member States are faced with institutional ambiguity in the implementation of the Marine Strategy Framework Directive through the Regional Sea Conventions

- A low level of institutional ambiguity exists for the Baltic and North Sea Member States
- Moderate and high level of institutional ambiguity exists for the Black Sea and Mediterranean Sea respectively
- At the EU level, institutional ambiguity is considerable given the lack of coordination provided by the Common Implementation Strategy

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*Key words:* Marine Strategy Framework Directive, institutional ambiguity, multi-level governance, Regional Sea Conventions

## 1. Introduction<sup>1</sup>

The increasing pressure on the marine environment by human activities calls for new European legislation with the aim to protect the sustainability of the European Seas. With the introduction of the Integrated Maritime Policy and the Marine Strategy Framework Directive, the European Union (EU) has firmly entered this new policy domain. While the Integrated Maritime Policy focuses on the economic and social use of the European Seas, the Marine Strategy Framework Directive provides a comprehensive framework for the protection of the marine environment.

The main objective of the MSFD is to achieve environmentally healthy marine waters by 2020. Member states will first need to assess the current state of the marine environment and the existing pressures on the ecosystem in their respective marine waters. By 15 July 2012, they will have to determine what can be considered as good environmental status (GES) by including targets and setting indicators. This is followed by establishing monitoring programmes (by July 2014) and programmes of measures (by 2015) in order to attain GES by 2020.

In operationalising each step, Member States are required to coordinate and cooperate at the regional level. The European Seas differ substantially in terms of their conditions, problems and needs [1]. That is why Member States should “develop a marine strategy for its marine waters which, while being specific to its own waters, reflects the overall perspective of the marine region or sub-region concerned” [1]. Marine regions (and their sub-regions) are defined for the purpose of facilitating implementation of this Directive, taking into account hydrological, oceanographic and bio-geographic features [2]. In order to cooperate and coordinate the implementation of the MSFD, it is envisaged that Member States use the already existing Regional Sea Conventions, such as the OSPAR Convention in the North Eastern Atlantic, the Helsinki Convention in the Baltic, the Barcelona Convention in the Mediterranean, and the Bucharest Convention in the Black Sea [3]. These Regional Seas Conventions have existed since the 1970s. As part of the operationalisation of the MSFD, they are now directly brought into European policy practices. The requirement of regional coordination

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<sup>1</sup> The views presented in this article do not represent the European Commission’s position and in no way anticipate any future opinion of the European Commission in this sphere.

and cooperation through the Regional Sea Convention is a unique feature of the MSFD and an innovative concept in EU marine legislation.

The MSFD is a directive, differing from other directives as a *framework* directive. Implementation of EU directives occurs when the decision-making and legislative process at the EU level (the interplay between the Commission, the Council of Ministers and the European parliament) is completed. After adoption, directives are further shaped by the Member States when they are put into national rules (formal compliance). In the case of a framework directive, the Member States' role in operationalising the policy is even stronger as there are no specific (environmental) targets and measures defined within the directive itself. The directive provides a framework, which requires further formulation of environmental objectives, i.e. GES. In addition, it requires the adoption of a programme of measures at the national level instead of the European level. Hence, the MSFD provides ample room for Member States to manoeuvre and create a programme of measures that takes into account the national context. Like the Water Framework Directive, the adoption of the MSFD is only the beginning of a new round of policy formulation and implementation.

These two unique features of the MSFD, the aspect of regional cooperation through the Regional Sea Conventions, and the framework character of the directive, bring Member States into a situation of institutional ambiguity. Coordination between Member States at the regional level is vital for the success of the MSFD. Yet, the European Treaty does not recognise this regional level. Hence, new institutions should be developed at the regional level. The Regional Sea Conventions that have been allocated a specific role under the MSFD have to adapt in order to facilitate coordination and cooperation between Member States. Moreover, institutional linkages will have to be established between the EU and the Regional Sea Conventions, and Regional Sea Conventions to national implementation processes. The aim of this article is to understand and explain the institutionalisation processes in the implementation of the MSFD at both the European and regional levels. Using the concept of institutional ambiguity, this article will study the differences and similarities between four regional seas (the North Sea, the Baltic Sea, the Mediterranean Sea and the Black Sea) in how they deal with a situation in which institutional rules are developed and (re)negotiated for the implementation of the MSFD.

This study is based on two sources of data. The first source consists of 16 interviews conducted with governmental officials of Member States who are involved in the implementation of the MSFD. Membership of one of the EU meetings, in which implementation of the MSFD was discussed (i.e. the Marine Strategy Coordination Group or Working Group on Good Environmental Status), determined the selection of interviewees. Interviews were conducted via phone conversations, although two interviewees preferred to answer questions by email. In addition to Member States, two persons from the Directorate-General (DG) for the Environment of the European Commission were interviewed as well as three from DG for Maritime Affairs and Fisheries. In addition, one interview was conducted with the secretariat of the Mediterranean Action Plan. Policy documents from the four Regional Sea Conventions and the European Commission were collated and analysed to provide further data.

The concept of institutional ambiguity within the framework of multi-level governance will be explored and defined below. This will be followed by a discussion on the causes for institutional ambiguity in the implementation of the MSFD (section 3) and an analysis of the current level of

institutional ambiguity for each of the four regional seas (section 4). The institutional ambiguity at the EU level is analysed in section 5. The final section will present the conclusions and lays down some implications for the implementation of the MSFD.

## 2. Institutional ambiguity in multi-level governance

The governance approach in European studies does not consist of a single EU theory or of European integration, but rather a cluster of related theories emphasizing common themes [4-6]. The governance approach in EU studies emphasizes the core themes of non-hierarchical networks, public-private interactions, governance without government [5] and informal strategies and practices in relation to institutional change [7,8]. Specifically, Marks [9,10] contributed to the (European) governance approach by developing the concept of Multi-level Governance (MLG) to understand the making and implementation of the EU's Structural Funds. In opposition to intergovernmentalists, Marks [9] argued that Member States were losing control to subnational governments and to the Commission. Hooghe and Marks [10,11] emphasized that authority and policy making power have slipped away from the state to supranational authorities and other actors and is shared across multiple levels.

In general, the MLG concept contains both vertical and horizontal dimensions [12,13]. *Multi-level* refers to the increased interdependence of governments operating at different territorial levels, while *governance* refers to the growing interdependence between government and non-governmental actors at various territorial levels. We define MLG as 'the sharing of policy-making competencies in a system of negotiation between nested governments at several tiers (supranational, national, regional and local) on the one hand and private actors (e.g. NGO's, producers, consumers and citizens) on the other' [14].

In this paper we use the MLG perspective to analyse the implementation of the MSFD. Within the MSFD, policy-making competences are not only shared between EU institutions and EU Member States, but across European, *regional* and national levels. The Regional Sea Conventions are a potential new site of politics and policy for member states to establish a system of negotiation for the coordination of MSFD implementation.

According to Hajer [15], when politics moves beyond established institutional arrangements it moves into an institutional void where "there are no generally accepted rules and norms according to which politics is to be conducted and policy measures are to be agreed upon". This does not mean that there are no institutions, but that "there are no accepted rules and norms according to which policy making and politics is to be conducted" [15]. Many people interpreted 'institutional void' as institutional 'emptiness'. However, in a reaction Hajer [16] stated that his point is "that there are no rules that bind all participants. Hence it is a lack of rules that function *institutionally*". In other words, actors could make use of rules of different institutional settings in interactions and negotiations, with the possibility to define new rules.

Instead of using the concept of institutional void, we introduce a new concept in this article, i.e. *institutional ambiguity*. Rather than referring to the existence of an institutional *void* in new policy practices, we want to emphasize the *ambiguity* that results from different institutional settings that come together in new policy practices. The nature of institutional ambiguity is, for a large part,

defined by the mismatch between institutions of the different policy making settings which come together. Consequently, uncertainty and confusion will arise about rules of the game, e.g. the way in which policy making will take place and who is involved. Moreover, the larger this mismatch, the more room actors have to manoeuvre when negotiating and changing the institutional rules. As there are no generally accepted rules and norms in the interference zones of these institutional settings, actors have the possibility to negotiate and change the institutional (frontstage) rules of the game [6,17].

### **3. Institutional ambiguity in implementing the MSFD**

The implementation of MSFD takes place in the context of different institutional settings (Regional Sea Conventions, EU, Member States). The Regional Sea Conventions have a long history of decision-making and implementation for the conservation and protection of the marine environment. It is therefore logical that the MSFD envisages these Regional Conventions to be the forums for its coordination and cooperation in the implementation [18]. However, the inclusion of the Regional Sea Conventions in EU policy making and implementation is a new phenomenon. It is therefore expected that a situation of institutional ambiguity will emerge, as Regional Sea Conventions have to renegotiate their institutional settings to adapt their practices to facilitate the implementation of the MSFD.

The institutional ambiguity of the implementation of the MSFD is caused by two factors. The first is the establishment of marine regions and sub-regions. This regional aspect of the MSFD causes ambiguity about authority and competences of the EC, the Regional Sea Conventions and Member States. The MSFD does not define to what extent coordination or cooperation at the regional level should take place. This envisaged regional coordination and cooperation leads to uncertainty and differences in practices across regions. At the regional level, Member States will have to negotiate how the Regional Sea Conventions will contribute to national implementation of the MSFD. The outcome of this negotiation and possible redefining of the Regional Sea Conventions may differ across regions.

The second cause of institutional ambiguity in the implementation of the MSFD is the framework nature of the directive coupled with the close relationship between the MSFD and other (marine) policies. The EU performs different coordinating roles in maritime policies. On the one hand, the framework nature of the MSFD results in more scope for the Member States to define GES, environmental targets and national measures. Consequently, the steering capacity of the European Commission is limited. Therefore, coordination at the EU level is needed to ensure that Member States work towards the implementation of the MSFD in a similar vein. The EC can only steer the implementation process by ensuring information exchange and coordination at the EU level. On the other hand, the EU wants to coordinate maritime activities with the Integrated Maritime Policy. This also results in institutional ambiguity because this coordination role has no legal basis.

Ambiguity exists about how this coordination will take place and the exact role of the EC versus the Member States in implementing the MSFD. Coupled to that, the EU aims to establish healthy and productive seas and oceans through an integrated ecosystem-based approach. However, a plethora of EU legislation and policy exist that contribute to the protection of the marine environment, i.e. Natura 2000 (Habitat and Birds Directive), Integrated Maritime Policy, Water Framework Directive,

Common Fisheries Policy, and sectoral shipping legislation. Even though the MSFD, with its particular aim to achieve GES for European Seas, seems to be the most encompassing when focussing on the environmental dimension, its effectiveness is related to other EU legislation (see also [19]). Hence EU ecosystem-based management is based on the MSFD and the other marine policies of the EU. Ambiguity thus exists about the role and contribution of each individual piece of legislation in the light of achieving GES. Moreover, the interaction between these policies has to be further developed not only at the EU and regional level, but on the national level as well.

Assessing the institutional ambiguity with regard to the MSFD requires an analysis across European regions. Because of the interplay between levels and policies, the implementation of the MSFD will need further refinement at the EU, the regional and at the national level. The implementation of the MSFD is defined by the interplay between these levels and will differ per region and Member States. In this article, we will compare the four regional seas of the EU. Based on the two factors that cause institutional ambiguity, we will compare the regional seas on the following aspects:

1. The mismatch between good marine environmental quality as defined by the Regional Sea Conventions and the challenge of individual Member States to implement the MSFD and define GES for their own marine waters. Institutional ambiguity emerges when the approach and definitions of the Regional Sea Conventions differs from the aim of achieving GES of the MSFD.
2. The opportunities and challenges in providing a platform for coordination at the regional level. Member States are in the process of transposing the MSFD directive into national law. The first requirement is for Member States to implement an initial assessment of the status of their marine waters. In addition, they have to define the objectives, targets and indicators for GES. Institutional ambiguity exists with regard to regional coordination and cooperation in doing this initial assessment and in defining objectives, targets and indicators for GES. To what extent does the institutional setting of the Regional Seas Conventions facilitate coordination and cooperation between Member States on these issues? How have new rules of the game been negotiated to create a better match between the Regional Sea Conventions and the MSFD?
3. The coordinating role of the EU. Both Member States and the Regional Sea Conventions have different expectations about the coordinating role of the EU in steering the process of reaching GES. To what extent is EU coordination taking place and does this facilitate regional cooperation on the one hand and national implementation on the other? Which new rules have been negotiated to create a new institutional setting for coordination and cooperation between Member States at the EU level?

In section 4, the institutional ambiguity for each regional sea is assessed based on: (1) the similarities and differences between the definition and operationalisation of marine environmental quality by the Regional Sea Conventions and the aim of achieving GES as formulated in the MSFD and (2) the way in which the Regional Sea Conventions are able to form a forum for coordination in implementing the MSFD. In section 5, we analyse the coordinating role of the EU.

## 4. Institutional ambiguity at the regional level

### 4.1 Baltic Sea

The regional Convention for the Baltic Sea, the Helsinki Convention, constitutes eight EU member states, the European Commission and one non-EU Member State (Russia). During the Ministerial meeting of the Helsinki Convention in 2007, parties adopted the Baltic Sea Action Plan (BSAP). This plan aims to restore the good ecological status of the Baltic marine environment by 2021. Good ecological status is further defined using a joint vision, goals, ecological objectives, targets and indicators [20,21]. The plan focuses on four environmental priorities: eutrophication, biodiversity, maritime activities and hazardous substances and includes an action plan to achieve good ecological status of the Baltic Sea by 2021.

The link between the BSAP and the MSFD can be considered as strong, resulting in a low institutional ambiguity with regard to the aims of the Regional Sea Convention and the MSFD. The BSAP is widely recognised as a pilot project for the implementation of the MSFD. The BSAP provides for a common understanding of good environmental status. According to Wenzel the only difference is the difference in timeframe (2021 instead of 2020), but “other than this there are no noteworthy differences in content between the aims of the BSAP and MSFD” [21]. Aligning with BSAP, previous work of the Helsinki Convention on integrated thematic assessments assessed eutrophication, biodiversity, hazardous substances, maritime activities and ecosystem health can assist Member States in their national assessment on the status of their marine waters.

The 2010 Ministerial Meeting of the Helsinki Convention confirmed that the Helsinki Convention is the forum for regional coordination for implementation of the MSFD by the Member States around the Baltic Sea. Interview responses by civil servants of the Baltic Sea Member States show that the institutional setting provided by the Helsinki Convention has not been questioned. The tradition of cooperation within the confines of the Helsinki Convention has been an important factor in adjusting to, and taking a proactive attitude towards the MSFD [22]. The institutional setting and work under the Helsinki Convention has not changed fundamentally, although some substantive changes have been made to facilitate work for the MSFD [23]. For example, HELCOM’s work on noise and litter has gained priority because of the MSFD, whilst the CORESET<sup>2</sup> [24] project has been established to develop a set of core indicators for good ecological status by June 2013. Although HELCOM is perceived to be important for information exchange based on the willingness of countries to share the outcomes of their work [23], it still is unclear how countries will use this regional cooperation to set up their national initial assessments [25]. Based on this, we can conclude that the institutional ambiguity for the Baltic Sea with regard to the institutional change required to become a platform for coordination is low. However, some ambiguity might arise with the further implementation of the MSFD, i.e. with regard to the initial assessment and definition of GES created under the CORESET project.

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<sup>2</sup> The HELCOM CORESET project (2010-2013) aims at making the holistic assessment of the Baltic Sea ecosystem health status available on the HELCOM web site with links to the technical background reports and supporting information; developing a HELCOM Core Set of Indicators for Biodiversity (CSIB) with quantitative targets to allow an assessment of the status of the Baltic Sea in relation to the ecological objectives for biodiversity; and developing a HELCOM Core Set of Indicators for hazardous substances (CSIHS) with quantitative targets to allow an assessment of the status of the Baltic Sea in relation to the ecological objectives for hazardous substances.

As a result the overall institutional ambiguity with regard to the implementation of the MSFD in the Baltic Sea can be considered to be low, as the BSAP and MSFD are almost fully in line with each other and the institutional structure within the Helsinki Convention is not brought to question, nor substantially changed. This is related to the fact that the Helsinki Convention has been proactive in dealing with the MSFD, adopting the BSAP even before the MSFD was finalised.

#### **4.2 North Sea**

The North Sea and the wider North East Atlantic area have a large number of countries that are members of the EU or are closely associated (Iceland and Norway). The OSPAR Convention is the current legal instrument guiding international cooperation on the protection of the marine environment in the North-East Atlantic. Parties of the OSPAR Convention adopted a North-East Atlantic Environmental Strategy in 2010. This strategy emphasises that the ecosystem approach is the overarching concept and basis for OSPAR's work and that there is a need to protect the ocean from pollution and other adverse impacts of human activities [26] .

The MSFD is specifically mentioned in the OSPAR Environmental Strategy. It emphasises that the Directive's objective to achieve or maintain GES in the marine environment by 2020 concurs with and supports the aims of OSPAR, and that OSPAR will facilitate the coordinated and coherent implementation of this Directive [26]. OSPAR's Environmental strategy has an overall goal with strategic objectives facilitating and coordinating work of Member States to achieve GES under the MSFD. The strategic objectives of OSPAR's environmental strategy focus on: biodiversity loss, eutrophication, hazardous substances, offshore oil and gas activities, ionizing radiation and the integrated management of human activities. For the first five strategic objectives, operational aims, measurable targets and indicators have been formulated. The Environmental Strategy represents the synergy that has developed between the aims of the Regional Sea Convention and the MSFD [27]. Institutional ambiguity is therefore low taking into consideration the aims of the Regional Sea Convention and the MSFD.

With its commitment to accommodate the MSFD the institutional structure of OSPAR has changed considerably, reflected by its focus, scope, structure and strategies [28]. For example, the adoption of the new Environmental Strategy as well as the development of an Intersessional Correspondence Group (ICG) on implementation of the MSFD. While the ICG on MSFD will provide strategic direction, several working groups will cover technical work on the various GES descriptors. So far, OSPAR has played a major role as platform for information exchange. In addition to that, the Quality Status Report of 2010 provides a detailed evidence base for the initial assessment [27,28]. OSPAR will also provide input to the initial assessment by coordinating a socio-economic analysis for the OSPAR area [28].

Nonetheless, although implementing the MSFD will require coordination at the regional level, most interviewees do not expect that OSPAR will develop into the institution where such decisions are made. In this process, differences in implementation-horizon between Member States have become evident. Although cooperation and coordination is perceived as important, and will most likely be strengthened in coming years as deadlines fast approach, Member States set different targets related to the most urgent problems on the national level, the different financial budgets they have available for marine conservation and different monitoring programs they use [22,27,29]. In addition, coordination is challenged by the fact that some crosscutting issues, such as marine food



webs, might get lost within OSPAR, because different working groups deal with different descriptors. Interaction between descriptors is therefore not effectively taken into account [22]. This suggests uncertainty about whether OSPAR can truly live up to its coordinating role. In terms of institutional ambiguity, OSPAR was able to smoothly change the institutional structure to accommodate MSFD requirements. However, OSPAR has not yet become a forum for cooperation between Member States. Hence, some institutional ambiguity might surface at a later stage.

The overall level of institutional ambiguity within OSPAR is considered to be low to moderate. On the one hand, the aims of the OSPAR Convention are in line with the MSFD and the institutional structure of OSPAR allows coordination in implementing the MSFD. On the other hand, there is some institutional ambiguity about the desired level of regional coordination for national tasks in implementing MSFD (i.e. status assessment and defining GES).

#### *4.3 Mediterranean Sea*

The vast Mediterranean Sea counts the largest number of bordering states (21 in total), with the majority being non-EU states (14). Cooperation to protect the Mediterranean Sea dates back to 1975 and 1976 when Mediterranean countries and the European Community jointly adopted the Mediterranean Action Plan (MAP) and the Barcelona Convention. In 2008 the Barcelona Convention adopted the ecosystem approach consisting of 7 steps: defining an ecological vision for the Mediterranean, setting strategic goals, identifying important ecosystem properties and assessing the ecological status and pressures, developing a set of ecological objectives, developing operational objectives (including indicators and target levels), revising the monitoring programmes and developing action plans and programs.

The development of the ecosystem approach under the Barcelona Convention is closely related to the EU initiative to develop the MSFD [30]. Currently the description of the ecosystem properties, and the status and pressure assessment (Step 3 of the implementation plan of the MSFD), are in preparation for the four Mediterranean sub-regions (Western Mediterranean, Ionian and Central Mediterranean, Adriatic and Eastern Mediterranean) and are envisaged to be finalized in 2011 [31]. The development of ecological objectives (Step 4) has started in 2010 [31] and should be finished in 2013 [32].

Even though the Barcelona Convention closely follows what is happening under MSFD, and seeks ways to incorporate this into the Convention's Ecosystem Approach [33], the link between the MSFD and the Barcelona Convention has not been formalised. The secretariat of the Barcelona Convention tries to ensure synergy between the MAP and MSFD [31,32]. However, noting the large geographical area and large non-EU Member State membership of the Barcelona Convention, it is not feasible to directly operationalise the MSFD within the Convention's context. The extent to which synergy between the MSFD and the Convention is truly created, depends on the negotiations and decisions made by all Parties to the Barcelona Convention. There is room to manoeuvre for the Mediterranean states in connecting the aims of the MAP with the MSFD for as long as the Convention's Ecosystem Approach is still under development. This means that some institutional ambiguity will exist throughout the implementation process of the Convention's Ecosystem Approach.

Together with the adoption of the Ecosystem Approach, a process of institutional change was initiated within the Barcelona Convention. A governmental designated expert group was established to guide the implementation of the Ecosystem Approach [31]. In addition, technical meetings are

held to discuss the status assessment and operational objectives. Yet, this institutional change is only partially geared towards MSFD. MAP does not have the mandate of all Parties to work on MSFD [34] and the Barcelona Convention therefore does not serve as a coordinating body for the implementation of MSFD. Informally, some coordination is taken place, because the secretariat shares its work with EU Member States to help them with implementing MSFD, however, the secretariat cannot provide formal leadership at the moment [32]. As a result, Member States have little room to manoeuvre with regard to developing MAP to become a platform for regional coordination. It is therefore not surprising that an informal coordination group has been formed consisting of the EU Member States bordering the Mediterranean Sea to discuss the implementation of the MSFD and the role of the Barcelona Convention [35]. Consequently, the room to manoeuvre of EU Member States increased considerably, because the exact nature and role of this informal group is still under negotiation. Institutional ambiguity might not exist with regard to MAP, but does exist with regard to this informal initiative.

Institutional ambiguity for Member States under the Barcelona Convention is substantially higher than in the Baltic or the North Sea. There still is a mismatch between the Convention's Ecosystem Approach as developed under the Barcelona Convention and the requirements of the MSFD. To what extent this mismatch is being reduced will depend on the outcome of the decision making process for the implementation of the Ecosystem Approach. Moreover, EU Member States have little room to renegotiate the institutional setting at the regional level because of the majority of non-EU states that are party to the Barcelona Convention. Yet of course, the EU Member States can develop an informal way of coordination. It is expected that the high level of institutional ambiguity will remain until the Convention's Ecosystem Approach has been fully operationalized and implemented. If the informal group has negotiated and formulated its own role and institutional setting, future institutional ambiguity might be lowered to moderate.

#### **4.4 Black Sea**

The Black Sea is surrounded by a relatively small number of states, and only two of them are EU Member States. In 1992, the Bucharest Convention (the Convention on the Protection of the Black Sea Against Pollution) was signed. A new Strategic Action Plan for the Environmental Protection and Rehabilitation of the Black Sea (BS SAP) was adopted in April 2009 (superseding the 1996 SAP).

Similar to the other Regional Sea Conventions, the BS SAP contains an ecosystem approach and envisages itself as a framework for regional coordination, seeking coherence with the MSFD [36]. The BS SAP contains an overall vision, long-term ecosystem quality objectives, management targets and indicators. The BS SAP focuses on preserving commercial marine living resources, conserving biodiversity and habitats, reducing eutrophication, and ensuring good water quality for human health, recreational use and aquatic biota [37]. Although the MSFD will be taken into account during the further elaboration of the targets and indicators for the Black Sea [36], the BS SAP does not contain specific references to the MSFD yet. This means that in connecting the Convention's Ecosystem Approach to the MSFD, room to manoeuvre still exists for both the EU and non-EU Member States.

The activities relating to the BS SAP are developed within the Advisory Groups organised by the Black Sea Commission or by the Secretariat itself [38]. There is no particular group dealing directly with MSFD, reflecting the stable institutional setting of the Black Sea. Still, according to the Ministry

of Environment and Forests of Romania [39], cooperation needs to be enhanced within the Bucharest Convention to implement MSFD. The process of the MSFD implementation is only at the beginning and the role of this Convention within the process still needs to be defined [39]. Uncertainty therefore exists with regard to the appropriateness of the institutional setting of the Bucharest Convention with regard to its facilitating role in implementing the MSFD. As a consequence, currently the institutional ambiguity with regard to the institutional setting of the Bucharest Convention for implementing the MSFD is low, although it might increase in the future, when the Bucharest Convention decides to increase its focus on implementing the Ecosystem Approach and the MSFD.

The Member States in the Black Sea have to deal with a moderate level of institutional ambiguity. Although the Bucharest Convention is foreseen as the forum for coordination, it has not actively taken on this role yet. The process of institutional and policy change at the regional level has not taken off yet. In addition, the Member States can draw from work done in achieving good environmental quality of the Black Sea under the Bucharest Convention, but active alignment between the BS SAP and the MSFD is in an early stage, creating some room for manoeuvre for the states bordering the Black Sea.

#### *4.5 Comparing the four regional seas*

The levels of analysis that currently exist with regard to the implementation of the MSFD at the regional level is summarised below (Table 1) and is based on: (1) the mismatch between how environmental quality is aimed at by the Regional Sea Convention and by the MSFD and (2) the institutional change of the Regional Sea Convention to become the platform for regional coordination for the MSFD.

<b>Regional Sea Convention</b>	<b>Mismatch definition environmental quality – aim of GES</b>	<b>Institutional change to become platform for coordination</b>	<b>Overall level of institutional ambiguity</b>	<b>Future institutional ambiguity</b>
Baltic Sea	Low	Low	Low	Low to moderate
North Sea	Low	Moderate	Low to moderate	Low
Mediterranean Sea	Moderate	Low for MAP, high for informal EU Member States group	High	High to moderate
Black Sea	High	Low, not started yet	Moderate	Moderate to high

Table 1 The level of institutional ambiguity for each regional sea associated with implementation of the MSFD.

Institutional ambiguity is highest in the Mediterranean Sea and lowest in the Baltic Sea. Overall, more institutional ambiguity exists for the two regional seas in Southern Europe than for the two in the North of Europe. This can partly be attributed to the fact that for the Northern Seas the membership of the regional Conventions is largely based on EU Member States, while in the two Southern Seas the membership of the Regional Seas conventions is largely from non-EU Member States. The urgency to align the definition and approach to assessing and achieving GES based on the MSFD approach is felt less in these southern regions. Additionally, there is less need and desire to change the institutional setting of the Regional Convention to accommodate regional coordination in the implementation of the MSFD. The level of ambiguity also relates to the stage the regions are in with regard to adapting national policy to implement the MSFD. For example, the Baltic Sea Member States who have been proactive, experience much less ambiguity than the Mediterranean Sea who are still in the process of redefining their ecosystem approach and institutional setting to accommodate the MSFD. The Black Sea Member States experience a rather low level of ambiguity, but this might well change when the challenge of regional coordination in the implementation of the MSFD is taken up. The institutional ambiguity that EU Member States face, is not only dependent on the interplay between the national requirements, regional coordination and the processes taking place under the Regional Sea Convention, but also by institutional ambiguity at the EU level.

## **5. Institutional ambiguity at EU level**

As the MSFD is an EU directive, the EC is a central player in this process. Moreover, the MSFD directive specifies several issues for coordination at the EU level, such as the assessment of national implementation efforts by the EC, new research and the relation between MSFD and other marine legislation, such as the Integrated Maritime Policy, Common Fisheries Policy and Natura 2000 [1]. Since coordination is not foreseen in the EU treaty, institutional ambiguity not only exists at the regional level, but also at the EU level with regard to establishing institutions to coordinate this framework directive at the EU level.

The level of institutional ambiguity with regard to the EU institutional structure to coordinate the implementation of the MSFD at the EU level is low, because the EC has decided to implement a Common Implementation Strategy (CIS) similar to the one for the Water Framework Directive [40]. The CIS consists of meetings of the Marine directors (MD) twice a year. These meetings take place back-to-back with the meetings of the Water Directors, because of overlap between issues (such as coordination between GES of the MSFD and Good Ecological Status of the Water Framework Directive) but also between the Directors attending both meetings.

The Marine Directors met for the first time in May 2009. The Marine Strategy Coordination Group (MSCG) was established to prepare the Marine Directors meetings, and therefore, co-ordinates the different working groups and activities under the common strategy [41]. It consists of the Member States' coordinator of implementation. The MSCG is allowed to establish Working Groups (WG) to discuss issues in more detail. Currently, WGs have been established for Good Environmental States, Data, Information and Knowledge exchange and the Economic and Social Assessment. A working group can, in turn, establish a Technical Committee (TC). Two of such TCs exist under the WG Good Environmental Status, namely one on Marine Litter and one on Underwater Noise. A selected group

of stakeholders are involved during these meetings, such as port authorities, bird life, the oil industry and shipping. The Fisheries sector has been invited to meetings but attended once [40].

Coordination of the implementation of the MSFD by Member States at the EU level takes place in several ways. The first is through the decision on criteria and methodological standards on GES of marine waters, which was adopted in September 2010. Several interviewees consider this piece of legislation as one of the ways in which coordination at the EU level has taken place so far. Secondly, there is a lot of information exchange between the Member States within the MSCG WGs on issues such as the initial assessment and latest scientific information on marine litter and the GES descriptors. Most interviewees consider this very useful, but some also note the lack of decisions or steering taking place at the EU level [29,42]. Another topic on which coordination is sought is on the synergies and linkages with the Water Framework Directive, Natura 2000, Integrated Maritime Policy and the Common Fisheries Policy. Information exchange is used as a key strategy so far.

Given the exploratory nature of much of these coordination efforts, the room to manoeuvre of both the EC and the Member States is considerable in processes of coordination at the EU level. This is confirmed by the interviewees who state that they are fairly satisfied with the coordination and exchange of information at the EU level to date, but that the issue of how much coordination should take place is subject to debate. For example, during the meeting of the Marine Directors in May 2010, coordination in-between regions was an agenda topic [43]. At the next Marine Directors meeting it was decided to have the issue on the agenda of meetings within the CIS regularly [44] (see also [45]).

Institutional ambiguity at the EU level is at a moderate level, because the new institutional structure has been set up soon after the adoption of the MSFD. The Common Implementation Structure is developed to ensure EU coordination and facilitate the implementation of the MSFD by Member States. Yet, the way in which coordination will be achieved is unclear, leading to some institutional ambiguity for both the EC and the Member States.

## 6. Conclusions

The analysis exemplifies the struggle within the four marine regions and at the EU level to ensure an effective system of multi-level governance to implement the MSFD. In all four regional seas, we witness institutional change, although the extent to which differs per regional sea. The institutional ambiguity between the regions differs, with the Baltic Sea having the least institutional ambiguity and the Mediterranean Sea the highest.

The level of institutional ambiguity depends firstly on the mismatch between the definition of environmental quality by the Regional Sea Convention and the aim of achieving GES by the MSFD. Moreover, the extent to which the Regional Sea Convention is able to function as a coordinating body and the extent to which institutional change is needed, determines the level of institutional ambiguity. Besides these two factors, we conclude that the level of ambiguity also depends on the extent to which EU Member States enclose the regional sea and how much urgency is felt by the Regional Sea Convention. The interplay between these factors explains the differences in institutional ambiguity between the four regional seas.

In addition, at the EU level institutional ambiguity exists as well. Even though the institutional structure has been defined, the way in which coordination will take place is uncertain. Several initiatives have been taken within the Common Implementation Structure, but the nature of coordination is mostly based on information exchange and little direction is given to Member States how to implement the MSFD nationally.

The concept of institutional ambiguity enables an analysis of the multi-level governance dynamics of EU policy where different institutional settings come together. Institutional ambiguity affects the implementation process of the MSFD. Based on the assumption that Member States benefit from exchanging information within the setting of the Regional Sea Conventions for the national implementation of the MSFD, the Baltic and North Sea Member States seem to be in a better position. The Member States bordering the Mediterranean and Black Sea will have to initiate processes on their own as they receive less support from their respective Regional Sea Conventions in addition to the EU. This situation of institutional ambiguity highlights the question as to whether all EU Member States will be able to meet the deadlines as proposed by the MSFD.

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