

# **D17– Recommendations Report Malta: Governance for MSP**

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## Introduction

The overall objective of MSP-MED is to favour the Maritime Spatial Planning process in the Mediterranean Sea, by supporting the establishment of coherent and coordinated plans across the Mediterranean marine regions and between Member States, in line with the MSP Directive objectives. One specific objective is to support the work of the MSP Competent Authority in the establishment and adoption of maritime spatial plans.

The Planning Authority (PA) is the Competent Authority for the MSP Directive in Malta and as partner to the MSP-MED project is focused on specific aspects concerning governance in support of the implementation of the Strategic Plan for Environment and Development (SPED), as Malta's first MSP plan. As part of Work Package 2 - Setting-up of maritime spatial plans, the PA is seeking to identify basic procedures that can support the plan making/review process of MSP plans, in particular to ensure that the revised SPED is informed with the most relevant information, to deliver an MSP plan that is based on ecosystem management and can deliver blue growth for all of Malta's marine waters.

Through Task 2.5 the PA is expected to deliver:

- an Evaluation Report (D16) that identifies linkages between different national plans (and their respective SEA processes where relevant) addressing Malta's marine waters; issues and gaps within the current SPED policy framework and existing mechanisms for stakeholder engagement.
- a document with recommendations (D17) to formalise procedures at a national level in support of MSP plan making and review.

A separate task was added during the MSPMED project which focused on the user survey to gauge public awareness on MSP. A separate report (D49) has been submitted by the Planning Authority.

## Scope of the Report

This current document evaluates the main findings from the first deliverable for Task 2.5. and identifies recommendations aimed to formalise procedures at a national level in support of MSP plan making and review. Prepared by the Planning Authority this report also takes on board recommendations made during an MSP Technical Committee carried out specifically to address the MSPMED deliverables, on 27<sup>th</sup> May 2022.

## *The legislative provisions for MSP plan making in Malta*

The Maritime Spatial Planning (MSP) Directive was transposed into Maltese legislation in October 2016, through the MSP regulations (S.L.552.27) which assigns the Strategic Plan for Environment and Development (SPED), or any subsequent plan, as Malta's Maritime Spatial Plan and delegates the Competent Authority for MSP within the Planning Authority. The first MSP plan was adopted by Parliament in 2015. Towards the end of 2020 Government instructed the Planning Authority to initiate the process for its revision, triggering a procedure guided by the provisions of the Development Planning Act.

The specific requirements for the preparation of the new National Spatial Strategy (NSS) which is to replace the SPED, are explicitly set in the provisions of the Development Planning Act of 2016 (Articles 44, 45 and 46).

The first requirement is that the spatial strategy 'must ensure that sectoral policies, activities and inputs are integrated and coordinated with each other, combining the inputs of all disciplines and groups; and it follows other national policies and plans'. In addition, the legislation requires the Executive Council of the Planning Authority to have regard to current economic, social and environmental policies that affect development, and all possible land and sea-use options. To promote policy co-ordination, the planning legislation places an emphasis on the Cabinet of Ministers to take measures 'intended to coordinate and improve the spatial impacts of other sectoral policies and their relation to the Spatial Strategy'.

These provisions not only acknowledge the inter-relationship between sectoral policies and their respective demand for land and marine space but also the effort required to support policy coherence on which spatial planning policy is dependent. The key roles to support this are assigned to:

- (a) the Planning Authority to ensure that the spatial strategy is responding to national policy; and
- (b) Government Ministers to ensure that sectoral policies are drafted in full cognition of the spatial context of the country.

The Development Planning Act also has provisions for public representation prior to the preparation of the draft Spatial Strategy, thus acknowledging a third actor in the process. Stakeholder engagement at this stage will be carried out once the first set of reports concerning the plan review are finalised. Having one plan integrating land and sea should ensure that the public consultation process clearly explains both the land and marine components.

Article 45 of the Development Planning Act outlines the steps for the approval of the plan, once a draft Spatial Strategy has been prepared in consultation with the Minister responsible for spatial planning. This commences with the publication of the document together with a statement of the representations received in the first public consultation exercise and the responses by the

Authority to address them. This round of public consultation of not less than six weeks is required. Once this is undertaken, the Executive Council is required to prepare a position statement with recommended changes to the draft Spatial Strategy together with all representations received and their respective responses are to be referred to the Minister responsible for Planning. The next step is for the Cabinet of Ministers to consider the draft Spatial Strategy. The Minister responsible for planning is then expected to submit the draft plan or as revised by the Cabinet of Ministers, to the House of Representatives, with a motion for a resolution that the Spatial Strategy be approved by the House of Representatives.

Within the Parliamentary process, an additional step for scrutiny that is open to the public is the referral of the draft Spatial Strategy to a Parliamentary Standing Committee on the Environment and Development Planning for its effective scrutiny. This Committee is expected to report on its deliberations to the House of Representatives. The Parliamentary debate and approval of the draft Spatial Strategy can only be undertaken once these steps are completed.

It is to be noted that the preparation of the Spatial Strategy is also subject to the relevant national legislation concerning Strategic Environmental Assessment and the undertaking of Appropriate Assessment in line with the provisions of the EU SEA Directive and EU Habitats Directive. The relevant public consultation processes are planned to be iterative with the public engagement steps on the Draft Spatial Strategy.

For the purpose of MSP, to support the Planning Authority in its role as Competent Authority for the implementation of the MSP Directive, there is another important actor. In line with the Development Planning Act of 2016 Executive Council can call in representatives from the Environment and Resources Authority, the Continental Shelf Department, the Superintendence for Cultural Heritage, Transport Malta, the Department for Fisheries and Aquaculture. Through the transposition of the MSP Directive, a MSP Technical Committee (MSPTC) was appointed in 2016 to provide a forum for co-operation on matters related to policy development, plan making, licensing, and permitting procedures, data management, stakeholder engagement and international cooperation and is expected to meet at least four times a year. This informal body, chaired by the PA has met regularly and although it continues to operate, changes in participating members over the years has restricted the degree of continuity and the progress of work expected from this forum. Nonetheless the commitment provided by the entities involved throughout the MSPMED project suggests a high degree of interest. It is therefore expected that the MSP TC will be an important actor within the SPED review process and particularly for the preparation of the new NSS.

Within the current SPED review process, the Government Policy Review referred to in the MSPMED Deliverable D16 constitutes the Planning Authority's role to ensure that the spatial strategy is responding to national policy. From that report, the degree of efforts that should have been undertaken to ensure that sectoral policies are drafted in full cognition of the spatial context of the country are expected to emerge. The review of the MSP relevant government policy documents reported in Deliverable D16 provides an indication of the degree these were drafted in full cognisance of the spatial context within the marine waters and adjacent coastal space.

### The current governance framework for the MSP plan review

Within the existing legislative and administrative context, a schematic representation of the different roles within the plan preparation and approval process is indicated in Figure 1 below. The MSP TC theoretically should support the MSP component for the review of the SPED and the preparation of the replacement plan, the National Spatial Strategy.

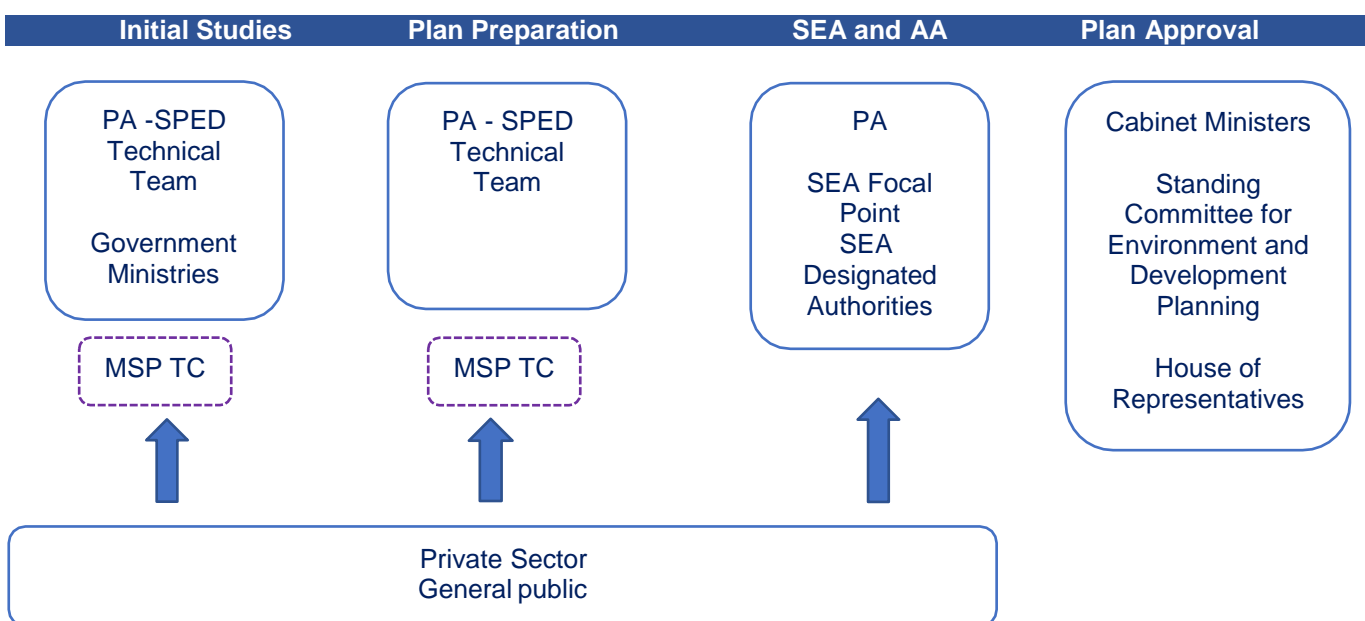


Figure 1: schematic representation of key steps and respective players in the national MSP plan review process

## *Outcome from the review of government policies relevant for MSP in Malta*

As outlined in the MSPMED Deliverable D16 a sub-set of government policies considered to be directly related or expected to influence the national planning process for the allocation of maritime space for specific uses and activities, were evaluated. A list of twenty-one (21) documents were reviewed which include both approved and draft policy documents issued for public consultation. To support an analysis related to governance the selected documents were categorised in a hierarchy, where:

- Tier 1 policy documents are considered overarching and reflect government direction for socio-economic and/or sustainable development of the Maltese Islands;
- Tier 2 policy documents are mainly thematic however are likely to influence a broad variety of uses; and
- Tier 3 policy documents are also of a thematic nature but are more focused on specific sectors.

The Tier 1 documents can be considered as framework policy documents, setting the trajectory for the future of the Maltese Islands. Given the physical extent of the Maltese marine territory compared to the small land area, marine uses were expected to feature significantly in these four (4) policies documents.

The eight (8) policy documents considered as Tier 2 cover various themes which either address specific geographic areas such as the Integrated Maritime Policy and the Regional Development Strategy for Gozo 2021-2030, and address a wide variety of uses, or otherwise the policy documents consider a theme that affects multiple sectors and is applicable to all the territory, both land and sea such as Malta's Low Carbon Development Strategy – Consultation Draft and the National Employment Policy 2021-2030. These policy documents are expected to influence future demand for and use of maritime space. The third category, Tier 3, includes nine (9) policy documents addressing specific themes, the majority of which relate to either the environmental status or marine waters or the future plans for specific sectors that depend on the sea, such as tourism, aquaculture and fisheries and transport.

The main findings can be summarised as follows:

- (i) The existing list of plans and policy documents that can influence the use of marine space reflects a degree of iteration where common themes are reflected in different documents even across the policy hierarchy. This reflects a degree of consistency. However, in view of different timing in publication and lack of legal provision for the review particularly for the key documents that set the direction for maritime economy, has resulted in a policy gap for the preparation of the new MSP plan.



- (ii) Although the role of marine waters is deemed significant for certain sectors it is not considered at par with land territory in strategic socio-economic policy making: a sectoral approach risks derailing national objectives dependant on sea space to accommodate infrastructure or missed opportunities for diversification, growth and synergy for existing and emerging sectors and the eventual identification of suitable space to accommodate them in an MSP plan.
- (iii) An implementation framework is only identified for those plans linked with the implementation of EU Directives. The absence of an implementation and policy review cycle reduces the opportunity for actions to be delivered and inform eventual reviews of the MSP plan. The more coherent the national policy framework for the long-term sustainable use of the sea, the more detailed the policy framework of an MSP plan. The lack of periodic monitoring and review of the National Integrated Maritime Policy may be considered as the main issue that leads to a lack of policy convergence at the strategic level.
- (iv) Whilst the level of synergy and monitoring mechanisms for the implementation of the MSFD Strategy are considered as a positive contribution to support the ecosystem-based approach for the MSP plan, the time lag that exists in the update of the MSFD Program of Measures following the results of the national marine monitoring program presents a policy gap that will reflect the degree of environmental data to inform the MSP process.
- (v) The co-ordination framework to support the MSP plan making has been tested under the reformed legal provisions governing the spatial planning process in the country. The MSP TC has served as a forum to increase awareness on the subject amongst the represented entities. However, as observed in the government policy review exercise, the MSPTC was not effectively utilised by all the relevant entities to inform the MSP Competent Authority of ongoing policy work. This implies that the potential for synergies of the respective sectoral policy with MSP was not tapped into. At the same time, key entities that will direct policy for important sectors (e.g. energy, tourism) are not included in the MSP TC.

The current state of play as regards policy direction for the revision of the MSP plan suggests that whilst there are multiple statements indicating the significance of the sea for their future, the degree of clarity in terms of projected demands is not sufficient to enable the identification of potential allocation of space to accommodate all demands with no user conflicts and minimal environmental impacts.

This suggests that within the existing context, and assuming no detailed policy is published during the plan preparation process, a prioritisation exercise may need to be undertaken to safeguard space for critical infrastructure whilst taking into account the latest data available from the MSFD process. This prioritisation exercise needs to be supported by a co-ordinated approach with the relevant policy makers which can in theory be enabled through the MSP TC.

## *Recommendations for improved governance for MSP*

The emphasis for improved governance for MSP in Malta is to strengthen policy co-ordination so that the same marine waters required by different users and subjected to different regulatory regimes can be used sustainably with minimal user conflicts and without environmental degradation.

### **National policy co-ordination**

The first recommendation in support of improved governance is a call to update the National Integrated Maritime Policy and establish an administrative structure to oversee its implementation and review and act as the national policy co-ordinator for marine policy in the Maltese Islands. This framework should take into consider existing structures and processes already in place that address specific geographic areas or sectors at sea. MSP is to be considered an inherent component for a functioning Maritime Policy and the actions taken by the PA as MSP Competent Authority will inform and in turn be informed by that overarching co-ordinating process.

GOV\_MSP: Adoption of a long-term framework supplemented by a clear strategic policy for Malta's marine waters that provides a direction for their sustainable use, through a review of the national Integrated Maritime Policy that complements the Sustainable Development Strategy and is backed by stronger co-ordination for policy coherence at government level.

### **Policy co-ordination for MSP**

The enhancement of policy co-ordination for the review and preparation of the national MSP plan can be brought about if the existing MSP TC is strengthened in a manner that ensures greater commitment for consistent participation and possibly with broader participation from other entities that regulate or promote sectors that utilise marine space.

The Development Planning Act of 2016 allows for the statutory establishment of policy advisory bodies to support the functions of the Planning Authority. It is being recommended that legal provisions are made to formally establish the MSP TC with the current terms of reference as a policy advisory body under the planning legislation where participation is also widened to include the entity responsible for energy policy, and the entity responsible for tourism development. Other entities may be considered as the need arises. As a statutory body, this will require greater accountability and commitment towards MSP from the represented entities and the chairing body.

The strengthening of this co-ordination function can lead the way for concerted effort in MSP implementation at a national level, where actions supporting inter agency co-operation for data management, stakeholder engagement, permitting, compliance and enforcement can then be proposed for implementation.

PA\_ MSP: Establish the MSP Advisory body through planning legislation and broaden participation to include entity responsible for energy policy, entity responsible for tourism management.

These two strategic recommendations build on the experience developed so far at national level and aim to foster a strong collaborative environment which has already been exhibited within the workings of the MSP TC in the past 5 years since its inception, despite its resource limitation.

## Conclusion

This report has highlighted the significance of policy co-ordination as a precursor for the MSP plan preparation. The stronger and clearer the national strategic direction for the use of the sea, the more detail that can be elaborated within the MSP plan. In addition, policy coherence also provides for more opportunity to streamline processes between different entities concerning data collation, policy implementation and stakeholder engagement.

The outcome of this study indicates that at a government level, whilst informal forums may operate, these are very much dependent on individual involvement and work may not be prioritised when faced with other priorities and resource constraints linked to the individual entity represented in the informal setting. To strengthen national policy implementation, elevating a policy co-ordination forum from an informal one to a statutory advisory body may be necessary to lead to improved results.

The adaptive approach to MSP as called for by the EU Directive is always relevant. In this case following a 5-year experience it is apparent to both the Competent Authority and the respective entities within the existing MSPTC that to further strengthen the co-ordination process additional entities need to be brought in. As different maritime sectors may evolve different pathways in terms of diversification and technical advancements, some sectors are expected to more involved within the MSP process.

It was not the scope for the MSPMED Task 2.5 to look at overall ocean governance in Malta. The focus was dedicated to facilitating and improving governance for the MSP plan review. The timely streamlining of the MSPMED deliverables with the SPED review process that kickstarted after the start of the MSPMED project provided added value as the tasks were directly informed by the plan review process. The evolution of the proposed recommendation into tangible deliverables will be a task for the MSP Competent Authority to pursue.