

# EU Integrated Maritime Policy and multilevel governance

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## **Abstract**

*Marine and coastal environment are under pressure from several pollution sources. Most of the environmental law was developed on a sectoral basis and does not reflect the interdependence of the various issues and their solutions. Since the adoption of Blue Book, EU legislation to protect the marine environment has been progressively implemented in many relevant areas: Fisheries, Shipping, Tourism, energy, etc. The Integrated Maritime Policy covers several cross-cutting policies, more specifically blue growth, marine data and knowledge, maritime spatial planning, integrated maritime surveillance, and sea basin strategies. Oceans and sea are influenced by many activities, interests and policies and are interlinked. A holistic, integrated approach is the best way to handle maritime affairs, with States cooperation not only on an EU States basis but also with third States and International Organizations. International Organizations provide an essential forum for international co-operation in relation to environmental issues. In this context they have two important roles to play: environmental policy-making and the development of international environmental law.*

**Keywords:** *marine environment protection; ocean governance; integrated maritime Policy; maritime spatial planning.*

**JEL Classifications:** K23, K32, K33, K39

## **1. Chronologic review**

Integrated Maritime Policy (IMP) is a holistic approach to all EU sea-related policies. Based on the idea that, by coordinating its policies, the Union can reap more benefits from seas and oceans with less environmental impact, the IMP covers areas as diverse as fisheries and aquaculture, transport and seaports, marine environment, marine research, offshore energy, shipbuilding and marine related industries, maritime surveillance, coastal and maritime tourism, employment, development of coastal regions and external relations concerning maritime issues.<sup>3</sup>

The first step in building the IMP was the launch of the “Green Paper for a Future Union Maritime Policy. A European Vision for the Oceans and Seas” in 2006.

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<sup>3</sup> See Regulation (EU) 1380/2013 of the European Parliament and of the Council of the 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) 1954/2003 and (EC) 1224/2009 and repealing Council Regulations (EC) 639/2004 and Council Decision 2004/585/EC; Regulation (EU) 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund; Doc 14631/07 – COM (2007) 575 final, Doc 16616/07, (paragraph 58) and Doc 15175/1/09 REV 1.

The Green Paper emphasizes that the IMP should aim to build an innovative, competitive and environmentally friendly maritime sector, focusing on the need to end the sectoral governance model. EU institutions, Member States and regions would set up governance structures that should ensure that seas policies do not continue to develop in isolation and take into account connections and synergies with other policies.<sup>4</sup>

In 2007, the European Commission drew up an action plan: this led to the formulation of the Blue Book, which envisioned measures to provide a coherent policy framework in a sustainable manner.<sup>5</sup> However, the “Blue Book” fails to specify in detail - despite its pragmatic nature - how to achieve its several goals,<sup>6</sup> even with the solid commitment not to exceed the 2015 fish stocks limit, in line with the goals of the UN Sustainable Development Summit.<sup>7</sup>

In 2012, EU Maritime Ministers issued the “Limassol Declaration”, the main objective of which was to re-emphasize the IMP five years after its creation. This Declaration took place in a specific economic context, where the EU needed to find ways to quickly and efficiently overcome the financial crisis.<sup>8</sup> The Limassol agenda sets 2020 targets, with a special focus on green maritime transport, renewable marine energy, aquaculture farming, coastal and maritime tourism and technologies for the safe and sustainable exploitation of marine mining resources. It is following this Declaration that the concept of “blue growth” emerges, setting concrete objectives, with 2020 as the time horizon. The EU's maritime territory has been divided into sea basins: Adriatic and Ionian Seas, Arctic Ocean, Atlantic Ocean, Baltic Sea, Black Sea, Mediterranean Sea and North Sea,<sup>9</sup> and development strategies were defined for each.<sup>10</sup>

At the end of the meeting of the Ministers of the Sea, which took place in Malta in 2017, the La Valleta Declaration was issued, aiming to take advantage of the IMP: “Blue growth has allowed notable improvements around European sea and sub-sea basins through the mix of innovative industry sector strategies, providing a focus on enabling actions, notably research, data, skills, ecosystem-based maritime spatial planning, cross sectoral security initiatives and financing to underpin the conditions for innovation and development in the blue economy.” However, as Salvador observes, this statement is more of a recommendation than an analysis of the real impact of actions undertaken in Integrated Maritime Policy<sup>11</sup>.

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<sup>4</sup> Doc COM (2006) 275 final.

<sup>5</sup> Doc SEC (2007) 1278 final.

<sup>6</sup> Clive Schofield, Seokwo Lee and Moo-Sang Kwon (eds.), *Limits of Maritime Jurisdiction*, Martinus Nijhoff Publishers, 2013.

<sup>7</sup> Regina Salvador, *A Política Marítima Integrada da União Europeia: Visão Global e Desafios para Portugal*, „Lusiáda. Economia & Empresa”, n.º 25 (2018), 87-97.

<sup>8</sup> *Ibid.*

<sup>9</sup> French Guiana, Guadeloupe, Martinique, Mayotte, Reunion Island and Saint-Martin (France, Azores and Madeira (Portugal) and the Canary Islands (Spain).

<sup>10</sup> See [https://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/docs/body/limassol\\_en.pdf](https://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/docs/body/limassol_en.pdf) (last seen 02.11.2019).

<sup>11</sup> Regina Salvador, *op. cit.*, 2018, p. 87-97.

On 16 January 2018, Parliament adopted a resolution on international ocean governance: an agenda for the future of our oceans in the context of the 2030 Sustainable Development Goals. Governance concerns to all human marine and maritime activities, both traditional and new, including fisheries<sup>12</sup>.

## 2. Marine environment protection

Given that a healthy environment provides a foundation for all life, marine environmental protection is an issue of considerable relevance in the law of the sea. Marine pollution is an increasing threat to a healthy marine environment because it may severely damage the environment, including ecosystems, and human health. The welfare of coastal populations relies essentially on a sound marine environment. Thus, the protection of the marine environment can be considered as a common interest of the international community as a whole.<sup>13</sup> Despite its vital relevance, the regulation of marine pollution has attracted little attention until recently because of low awareness of environmental protection.<sup>14</sup>

Today, we are aware of the importance of a healthy environment and we know that the quality of the marine environment is an integral part of the quality of global terrestrial ecology and human well-being. Take as examples the acidification of the oceans caused by carbon dioxide absorption, the negative changes in food chains that project from microalgae to humans, the increased risk of disease and death of species caused by the introduction of invasive species in the oceans. Note the impact of environmental disasters caused by human activity on oil tanker accidents *Torrey Canyon* (1967), *Almoco Cadiz* (1978), *Exxon Valdez* (1989), or *Prestige* (2002), where damage to the marine environment and coastal states has fallen short of the responsibilities required of owners and the states where they were registered.<sup>15</sup>

Most of the European Union (EU) countries are coastal states for the purposes of United Nations Convention on the Law of the Sea (UNCLOS).<sup>16</sup> All the

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<sup>12</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018IP0004> (last seen 02.11.2019).

<sup>13</sup> See Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge University Press, 2019.

<sup>14</sup> It is only since the end of World War II that international regulation of marine pollution began to develop. The International Convention for the Prevention of Pollution of the Sea by Oil, was adopted in 1954 and the 1958 Conventions related to Sea covered only a few sources of marine pollution or no provision at all. The States had wide discretion to pollute the oceans. The 1967 *Torrey Canyon* disaster exemplified the scale of oil pollution from a modern tanker and raised public awareness of the risk of accidental vessel-source pollution. As a consequence, the International Convention Relating to Intervention on High Seas in Cases of Oil Pollutions on the High Seas was adopted in 1969 and in the same year, the International Convention on Civil Liability for Oil Pollution Damage was also adopted. The 1970's MARPOL provides the key instruments regulating pollution from ships. It was adopted in 1973 and modified by the Protocol of 1978. For further developments see Tanaka (2019).

<sup>15</sup> António Cortês e Armando Rocha, *O Princípio da Proteção do Ambiente Marinho*, in Maria da Glória Garcia *et al.*, *Direito do Mar*, Universidade Católica Editora, 2016.

<sup>16</sup> Only five countries - Austria, Slovakia, Hungary, Luxembourg and the Czech Republic have no connection to sea.

EU States and EU itself are part of UNCLOS. UNCLOS is considered the constitution of the oceans and it is the result of a long process of codification of customary rules, which aims reconciling individual interests of States and safeguarding common interests of the international community as a whole.

The interaction between global and regional frameworks is crucial to protect marine environment, as it can't be achieved by a single State. Thus, international collaboration between States becomes a prerequisite to regulate marine pollution.<sup>17</sup> A holistic, integrated approach is the best way to handle maritime affairs, with States cooperation not only on an EU States basis but also with third States and International Organizations. International Organizations provide an essential forum for international co-operation in relation to environmental issues. Regional marine-related organizations in Europe are mainly connected to the regional marine conventions: the Convention for the Protection of the Marine Environment for the North-East Atlantic (OSPAR), the Helsinki Convention on the Protection of the marine Environment of the Baltic Sea Area (HELCOM), the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) and the Convention on the Protection of the Black Sea Against Pollution (Bucharest Convention). These organizations are the regional focal points for environmental protection in their respective sea areas.<sup>18</sup> Initially related with marine pollution, began to address issues of biodiversity, marine protected areas and sustainable development. These organizations can provide a basis for responsible and effective management.

### 3. Ocean Governance

Ocean Governance can be seen as the integrated conduct of the policy, actions and affairs regarding the oceans to protect ocean environment, sustainable use of coastal and marine resources as well as to conserve its biodiversity. It comprises legal and institutional frameworks and mechanisms of implementation and should be integrated both horizontally and vertically. Sustainable Development Goal 14 demands a "careful management of this essential global resource" as "a key feature of a sustainable future".

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<sup>17</sup> ITLOS in the 2001 *Mox Plant* case highlighted the importance of international cooperation stating that the duty to cooperate is a fundamental principle in the prevention of the pollution of the marine environment under Part XII of the Convention and general international law. UNCLOS Article 197 stipulates that States shall cooperate on a global basis and as appropriate, on a regional basis, directly or through competent international organizations in formulating and elaborating international rules, standards and recommend practices and procedures consistent with UNCLOS, for the protection and preservation of the marine environment, taking into account characteristic regional features. For further developments see Yoshifumi Tanaka, *op. cit.*, 2019.

<sup>18</sup> Kjell Grip, *International marine governance: A review*, „Ambio”, May 2017, Volume 46, Issue 4, 413-427, <https://doi.org/10.1007/s13280-016-0847-9>.

### 3.1 Ecosystem-based approach

The concept of ocean governance entails complex multilevel relations (international, national, regional and local) and processes through which individuals and institutions, public and private, attempt to manage maritime affairs, accommodate diverse interests and cooperate through formal or informal arrangements. It encompasses different sectoral policies, from maritime transport, fisheries and the exploitation of marine resources to marine environmental protection, blue energy or underwater cultural heritage. Also implicates different levels of decision-making – international, regional, national and sub-national) and involves various actors that take part in decision-making processes or are affected by them. The ecosystem approach to ocean governance constitutes a holistic approach to ocean management that attempts to accommodate environmental with societal objectives.<sup>19</sup>

UNCLOS recognizes in its preamble that “maritime space problems are closely interrelated and should be considered as a whole.” This notion of interconnection of maritime space is also taken into account by the European Commission in identifying the main objectives for an integrated maritime policy of the European Union, with a view to maritime spatial planning and the adoption by Member States of maritime policies that recognize the connection of all maritime issues and safeguard the treatment of these as a whole.<sup>20</sup>

Initially introduced as a principle of environmental protection<sup>21</sup>, the Convention on Biological Diversity (CBD) has fostered the concept of an ecosystem approach, which, although present in international diplomas and documents since at least the 60’s of the last century, only reaches a real impact with the CBD.

This approach presupposes “a dynamic complex of plant, animal and microorganism communities and their non-living environment, interacting as a functional unit”<sup>22</sup> that are divided into ecosystems and multiple sub-ecosystems. The generalization of the ecosystem approach as a new strategic paradigm for the protection of marine biodiversity has been encouraged by other international instruments, such as the Jakarta Mandate<sup>23</sup> and the 1992 OSPAR Convention, where, in relation to the sustainable management of the marine space, recognizes that the importance of “management of human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to

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<sup>19</sup> Antonia Zervaki, *The Ecosystem Approach and Public Engagement in Ocean Governance: The Case of Maritime Spatial Planning*, in David Langlet and Rosemary Rayfuse (eds.), *The Ecosystem Approach in Ocean Planning and Governance*, Brill.com, 2019.

<sup>20</sup> Vasco Becker-Weinberg, *A Lei de Bases da Política de Ordenamento e de Gestão do Espaço Marítimo Nacional*, in Maria da Glória Garcia *et al*, *Direito do Mar*, Universidade Católica Editora, 2016.

<sup>21</sup> See 1992 Rio Declaration, UNGA Report “UN Conference on Environment and Development” (1992) and UNGA Resolution “Transforming our world: the 2030 Agenda for Sustainable Development”, 2015.

<sup>22</sup> See art. 2 CBD.

<sup>23</sup> Approved in 1995 under the CBD.

sustain the legitimate uses of sea and will continue to meet the needs of present and future generations.”<sup>24</sup> Article 11 of the 1980 Convention on the Conservation of Antarctic Marine Living Resources requires that any conservation or harvesting and associated activities must be carried out with regard not only to the maintenance of the ecological relationships between harvested and non-harvested species, but also to the broader marine ecosystem as a whole.

Within the framework of EU law there have been numerous initiatives and documents that have led to the consolidation of the ecosystem approach, including Marine Strategy Framework Directive (MSFD)<sup>25</sup> or Maritime Spatial Planning Framework Directive<sup>26</sup> (MSPD). MSFD requires adaptive management on the basis of the ecosystem approach to be applied with the aim of attaining good environmental status and, according to the MSPD an ecosystem-based approach. As Langlet observes the EU Water Framework Directive (WFD) is also functionally based on an ecosystem approach even though that exact terminology is not employed<sup>27</sup>

Despite the advances and setbacks in the effort to conceptualize the ecosystem approach and the resulting terminological dispersion, today the 2003 joint statement of the OSPAR Commission and the HELCOM Commission entitled *Towards an Ecosystem Approach to the Management of Human Activities* provides us the most accurate notion of the concept. This is defined in the fifth paragraph as “the comprehensive integrated management of human activities based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems and its dynamics, in order to identify and take action on influences sustainable use of ecosystem goods and services and to protect their integrity”.

The ecosystem approach places the tonic on the integrative and holistic perspective of ecosystems as components of a complex whole and in reconciling the protection and preservation of these components with the planning of potentially biodiversity-damaging human activities.<sup>28</sup>

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<sup>24</sup> See Paragraph 3 of Preamble of OSPAR Convention.

<sup>25</sup> Directive 2008/56/EC of 17 June 2008.

<sup>26</sup> Directive 2014/89/EU of 23 July 2014.

<sup>27</sup> David Langlet and Rosemary Rayfuse (eds.), *op. cit.*, 2019.

<sup>28</sup> Long defines as an “interdisciplinary approach that balances ecological, social and governance principles at appropriate temporal and spatial scales and governance principles at appropriate temporal and spatial scales in a distinct geographical area to achieve sustainable resource use” Long also identifies four principles related to this approach: 1) The ecosystem should be maintained in a desirable state such that: a. consumptive and non-consumptive values could be maximized on a continuing basis, b. present and future options are ensured, and c. risk of irreversible change or long-term adverse effects as a result of use is minimized. 2) Management decisions should include a safety factor to allow for the facts that knowledge is limited and institutions are imperfect. 3) Measures to conserve a wild living resource should be formulated and applied so as to avoid wasteful use of other resources. 4) Survey or monitoring analysis, and assessment should precede planned use and accompany actual use of wild living resources. Rachel D Long *et al.*, *Key principles of marine ecosystem-based management*, in „Marine Policy” 57, 2015, pp. 53-60.

### 3.2 Marine Spatial Planning

The main instrument for coordinating the maritime policy spatially with various activities at sea is the Framework Directive for Maritime Spatial Planning.<sup>29</sup>

Marine Spatial Planning (MSP) is a new practice introduced to meet the needs of marine environmental protection at the national level. The adoption of the first transboundary MSP revealed the growing significance of MSP for comprehensive management of marine space.<sup>30</sup> The MSP process usually results in a comprehensive plan or vision for a marine region. Since the Limassol Declaration the EU's maritime territory has been divided into eight sea basins: Adriatic and Ionian Seas, Arctic Ocean, Atlantic Ocean, Baltic Sea, Black Sea, Mediterranean Sea, North Sea, and Outermost Regions,<sup>31</sup> and development strategies are defined for each.

Principles and rules of international law do not function in a vacuum, but in the living reality of a changing world.<sup>32</sup> Considering "maritime space problems are closely interrelated and should be considered as a whole" MSP Directive is perceived as the "logical advancement and structuring of obligations and of the use of rights granted under UNCLOS and a practical tool in assisting member states to comply with their obligations". In this context, member states are obliged to prepare spatial plans according to their national priorities and institutional mechanisms. If the MSP is founded on the above mentioned UNCLOS approach the MSP processes seem to modernize the traditional governance logic of UNCLOS which is filtered through the lens of the ecosystem approach, by integrating environmental with concrete economic and societal objectives and promoting transboundary cooperation under common management plans.

The role of regional institutions is also mentioned in the MSP Directive's text as the most suitable mechanisms for the cooperation among neighboring member states and, wherever possible with third countries, taking into account the ecological unity of marine space.<sup>33</sup>

The concept of Maritime Spatial Planning presupposes the adoption of a set of strategies and solutions based on scientific data and economic and social policy options, following a holistic approach to maritime space. This holistic approach results in the adoption of a macro strategy, harmonizing the uses throughout the maritime space. This strategy requires an ecosystem-based approach, which starts with the protection and conservation of marine biodiversity and sustainable management of the sea, regardless of the strategic options for the use of maritime

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<sup>29</sup> Directive 2014/89/EU.

<sup>30</sup> Antonia Zervaki, *op. cit.*, 2019.

<sup>31</sup> French Guiana, Guadeloupe, Martinique, Mayotte, Reunion Island and Saint-Martin (France), Azores and Madeira (Portugal), and the Canary Islands (Spain).

<sup>32</sup> Nico Schriver, *Sovereignty Over Natural Resources – Balancing Rights and Duties*, Cambridge University Press, 1997, p. 368.

<sup>33</sup> Antonia Zervaki, *op. cit.*, 2019.

space.<sup>34</sup> The structuring principles of the MSP are the ecosystem approach, environmental assessment, stakeholder participation and adaptive management.

Marine Strategy Framework Directive (MSFD) is the environmental pillar of the EU Maritime Policy. It fills a gap in EU's environmental policy, which was earlier focused on land and freshwaters issues. MSFD is not only about pollution, but also covers the sustainable use of marine areas and their resources and the protection of species and habitats.<sup>35</sup>

### 3.3 The implementation of EU Marine Policy

The strategic approaches towards developing macro regional and sea basin strategies bring an added value to coordinated action and policy implementation. EU developed sea basin strategies (or maritime strategies) for each of the following maritime regions: Adriatic and Ionian Seas, Arctic Ocean, Atlantic Ocean, Baltic Sea, Black Sea, Mediterranean Sea and North Sea. A sea basin is defined as a structured framework of cooperation in relation to a given geographical area, developed by Union institutions, Member States, their regions and where appropriate third countries sharing a sea basin. A sea basin strategy is place-based and related to EU States and non-EU States located in the same geographical area and takes into account the geographic, climatic, economic and political specificities of the sea basin.<sup>36/37</sup>

EU is a contracting party to OSPAR, HELCOM and the UNEP/MAP Secretariat for the Barcelona convention and observer to Bucharest Convention. The former coordinate and facilitate – at the regional level – the implementation of EU directive requirements, especially MSFD. In view of the above, sea basin strategies also incorporate the necessary collaboration with these organizations.

The Commission adopted the Atlantic maritime strategy in 2011 and the Atlantic action plan on May 2013.<sup>38</sup> The action plan aims to implement an ecosystem management approach in Atlantic waters and give impetus to the cooperation with other Atlantic nations such as the US and Canada. OSPAR is the legal instrument

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<sup>34</sup> Vasco Becken-Weinberg, *op. cit.*, 2016. See also Francisco Noronha, *O Ordenamento do Espaço Marítimo – subsídios para um (futuro) regime legal*, Mestrado em Direito (Ciências Jurídico-Administrativas), Faculdade de Direito da Universidade do Porto, 2013.

<sup>35</sup> Grip (2017).

<sup>36</sup> Regulation (EU) 1303/2013.

<sup>37</sup> Focus on common issues, solutions and actions of strategic relevance providing genuine added value for the entire region and encourage strategic cooperation and coordination among policies, institutions and funding sources. It seeks to provide a more coherent approach to maritime issues, with increased coordination between different policy areas. The implementation of the strategy requires integrated approach establishing cross-sectoral cooperation and coordination mechanisms as well as multi-stakeholder dialogue. An Action Plan is elaborated together with stakeholders and adoption by the College of Commissioners is needed. A structured framework is adopted by the European Commission and endorsed by the European Council. The sea basin strategy is initiated by European Commission at the request of the regions and/or Member States and principles like no new EU legislations, no new EU institutions and no new EU funds are followed.

<sup>38</sup> COM (2013) 279 final.



guiding international cooperation for the protection of the marine environment of the Northeast Atlantic marine environment.<sup>39</sup> Most of the Contracting Parties come from EU,<sup>40</sup> but EU itself is an OSPAR Contracting Part so are their neighbors Norway, Switzerland and Iceland. They have the obligation to take the necessary and possible measures to prevent and combat pollution, protect the marine environment from the impact of human activities, preserve and restore marine ecosystems and safeguard human health. The OSPAR Convention, like other regional conventions aimed at protecting the marine environment and its biodiversity, also contributes to the goal of the Marine Strategy Framework Directive (MSFD), which is to achieve, by 2020, the good environmental status in the marine waters of the EU. MSFD is very much in the line with the objectives and approaches by OSPAR: the implementation of the Ecosystem Approach and the five thematic strategies on eutrophication, hazardous substances, radioactive substances, offshore oil and gas industry, biodiversity and ecosystems.

The EU sea basin strategy for the Baltic Sea follows the Strategy for the Baltic Sea Region, the first Macro-Region strategy in Europe. In May 2014 the European Commission adopted the Baltic Sea agenda "A sustainable Blue Growth Agenda for the Baltic Sea Region".<sup>41</sup> In 2010, the HELCOM Ministerial Meeting decided to establish, for those HELCOM Contracting Parties being also EU-Member States, the role of HELCOM as the coordinating platform for the regional implementation of the MSFD in the Baltic Sea. HELCOM is a Baltic Marine Environment Protection Commission created by the Convention on the Protection of the Marine Environment of the Baltic Sea Area,<sup>42</sup> also known as Helsinki Convention.<sup>43</sup> The Commission adopted in 2007 a Baltic Sea Action Plan (BSAP), which is a program aimed at restoring the good environmental status of the Baltic marine environment by 2021<sup>44</sup>, focused on the following priorities: eutrophication<sup>45</sup>, harmful substances, conservation of biodiversity and nature and maritime activities.

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<sup>39</sup> OSPAR is thus a legal mechanism through which the contracting parties constituting the OSPAR Commission cooperate to protect the marine environment of the North-East Atlantic. The Commission began in 1972 through the Oslo Convention which discussed the problem of dumping. Later, in 1974, the Paris Convention discussed issues related to sources of marine pollution from land and offshore industry. These two conventions were unified, updated and extended by the OSPAR Convention in 1992. The name OSPAR thus derives from the two original conventions ("OS" of Oslo and "PAR" of Paris).

<sup>40</sup> Belgium, Denmark, Finland, France, Germany, Ireland, the Netherlands, Portugal, Spain, Sweden, the United Kingdom and Luxembourg.

<sup>41</sup> SWD (2014) 167 final, of 16 May.

<sup>42</sup> Available at the HELCOM website <http://www.helcom.fi/about-us/convention/> (last seen 12.11.2019).

<sup>43</sup> HELCOM monitors the implementation of the convention, makes recommendations for the protection of the marine environment, has budget decisions, and assumes any other appropriate functions under the Convention.

<sup>44</sup> The BSAP was updated in 2013 during the meeting of HELCOM Ministerial Conference 2013 and is available in <http://www.helcom.fi/baltic-sea-action-plan> (last seen 02.11.2019).

<sup>45</sup> When there is an excess of nutrients in the water that stimulates algae growth.

Each priority is achieved by several actions<sup>46</sup>. In addition, HELCOM has been pursuing other actions in the context of BSAP: prevent pollution caused by agriculture; ensure the ecological sustainability of Baltic fisheries by 2021; address pollution of terrestrial origin<sup>47</sup>, ensure regionally coherent maritime spatial planning processes in the Baltic Sea, monitor and evaluate the marine environment, cooperate in pollution preparedness and intervention, protect Baltic biodiversity<sup>48</sup>; and contribute to the regional application of the International Maritime Organization (IMO) Regulations on maritime transport.<sup>49</sup> Finally, HELCOM is also used as a regional cooperation framework for the implementation of Directive 2008/56/EC which established an approach for EU action in the field of marine policy for the Baltic member countries. Both EU and EU members Denmark, Finland, Germany, Latvia, Lithuania, Poland, Sweden, Estonia, together with Russia are contracting parties within this Convention.<sup>50</sup>

In the Mediterranean region, IMP is designed to improve cooperation among 20 countries, a large part of it from non-EU countries. Regional cooperation includes in the Western Mediterranean the Initiative for the sustainable development of the blue economy; in the Euro-Mediterranean Partnership the European neighborhood policy, the Union for the Mediterranean and several EU-funded marine and maritime projects such as the MEDPAN South Project, MAREMED project, ADRIPLAN project and PERSEUS. The EU strategy for the Adriatic and Ionian region is a sub-regional strategy from the IMP for the Mediterranean region. The key forum for the protection of the marine and coastal environment in the Mediterranean is the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean. The Convention's main objectives are to assess and control marine pollution, to ensure sustainable management of natural marine and coastal resources, to integrate the environment in social and economic development, to protect the marine environment in social and economic development, to protect the marine environment and coastal zones through prevention and reduction of pollution, as far as possible, elimination of pollution, whether land or sea-based, to protect the natural and cultural heritage, to strengthen solidarity among Mediterranean coastal States, to contribute to improvement of the quality of life. Although EU is a contracting Part, most of the 22 Contracting Parties are not EU

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<sup>46</sup> One of the main tools developed by HELCOM is the nutrient reduction regime. This is a regional approach based on sharing the burden of nutrient reduction with a view to achieving the objective of a Baltic Sea not affected by eutrophication, agreed by the countries of that region. The scheme was first introduced and agreed in 2007 in the HELCOM Baltic Sea Action Plan. At that time, countries agreed on interim nutrient reduction targets. HELCOM adopted the revised nutrient reduction regime in 2013.

<sup>47</sup> Such as waste water, pharmaceuticals, industrial emissions, marine litter, etc.

<sup>48</sup> Red lists of species and habitats, marine protected areas and development of indicators.

<sup>49</sup> In 2016, HELCOM contributed to the designation of the Baltic Sea under the IMO as a nitrogen oxide emission control zone (NOx ECA).

<sup>50</sup> For further developments see also Decision 94/156/EC of 21 February and Decision 94/157/EC of 21 February.

State members.<sup>51</sup> EU is represented by the Commission, essential to the implementation of the Mediterranean Action Plan and its consistence and complementary with other EU Mediterranean-related policies.

The sea basin strategy for Black Sea includes synergies and coordination by six countries, including the EU Member States Bulgaria and Romania supported by the EU: the annual high-level stakeholder conference on blue economy, the Burgas Declaration “Towards a Common Maritime Agenda for the Black Sea”<sup>52</sup> or the Burgas Vision Paper.<sup>53</sup> EU enjoys observer status in the Bucharest Convention on the Protection of the Black Sea against Pollution also referred to as Bucharest Convention. EU supports financially projects related to marine and coastal environmental monitoring in the Black Sea.<sup>54</sup>

EU marine environmental governance needs well-functioning organizations and legal frameworks as a basis for action and in support of responsible and effective marine and maritime management by individual countries.<sup>55</sup> Portuguese Marine Spatial Planning (PMSP) is a good example of the last.

Portugal has one of the largest maritime areas in Europe. The maritime space extends from the baselines to the outer limit of the continental shelf beyond 200 nautical miles.<sup>56</sup>

The Portuguese Marine Spatial Planning (PMSP) was designed by the inter-ministerial committee for maritime affairs along with representatives from the outermost regions of Madeira and Azores. PMSP was properly segmented, identifying and characterizing the different zones, and the types of uses allowed, thus anticipating a potential resolution of conflicts among users or between them and the surrounding marine environment to promote legal certainty by providing individuals with the legal framework to guide future licensing or concessions.

Law 17/2014 of 10 April (LBOGEM) established the basis of the Portuguese maritime spatial planning and management policy (PMSPM),<sup>57</sup> Law Decree 38/2015 of 12 March developed LBOEGM establishing the regime of national maritime spatial planning instruments, the legal regime applicable to titles for private use of national maritime space, the economic and financial regime associated with the private use of national maritime space, the permanent monitoring and evaluation regime and the national maritime spatial planning technique and the regime for the private use of water resources in transitional waters for aquaculture purposes.

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<sup>51</sup> Contracting Parties States include Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Lybia, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia and Turkey.

<sup>52</sup> [https://ec.europa.eu/maritimeaffairs/maritimeday/sites/mare-emd/files/burgas-ministerial-declaration\\_en.pdf](https://ec.europa.eu/maritimeaffairs/maritimeday/sites/mare-emd/files/burgas-ministerial-declaration_en.pdf) (last seen 12.11. 2019).

<sup>53</sup> [https://ec.europa.eu/maritimeaffairs/maritimeday/sites/mare-emd/files/burgas-vision-paper\\_en.pdf](https://ec.europa.eu/maritimeaffairs/maritimeday/sites/mare-emd/files/burgas-vision-paper_en.pdf) (last seen 12.11.2019).

<sup>54</sup> [https://ec.europa.eu/environment/marine/international-cooperation/regional-sea-conventions/bucharest/pdf/BSIMAP\\_2017\\_to\\_2022\\_en.pdf](https://ec.europa.eu/environment/marine/international-cooperation/regional-sea-conventions/bucharest/pdf/BSIMAP_2017_to_2022_en.pdf) (last seen 12.11.2019).

<sup>55</sup> Grip (2017)

<sup>56</sup> See UNCLOS Article 76.

<sup>57</sup> Vasco Becken-Weinberg, *op. cit.*, 2016.

Portuguese system referred to in Article 6 of the LBOGEM mentions two distinct types of instruments, one of a political nature and the other of a legal nature.

Legal planning instruments include the situation plan and the “allocation plans”.<sup>58</sup> The situation plan represents and identifies the spatial and temporal distribution of existing and potential uses and activities in the Portuguese maritime space.

LBOGEM determines that the situation plan must identify marine protection and preservation sites, including classified or about to be classified marine protected areas, as well as the spatial and temporal distribution of uses and activities carried out in one or more areas and/or volumes of Portuguese maritime space, such as aquaculture, prospection, exploration and extraction of energy resources and raw materials, scientific research and sports, recreation and tourism activities.<sup>59</sup>

The allocation plan covers areas and/or volumes of maritime space, affecting them for uses and activities that are not identified as current or potential uses or activities in the situation plan.<sup>60</sup> These plans may be drawn up by the Portuguese State or by the Azores and Madeira regions, but also by any interested party wishing to develop a use or activity that is not foreseen as existing or potential in the situation plan.<sup>61</sup> Nevertheless, approval of allocation plans will always depend on the state, and is preceded by the environmental impact assessment.<sup>62</sup>

Potential conflicts between uses and activities already in use or proposed uses and activities are determined by criteria that assess the good environmental status of the marine environment and coastal zones.<sup>63</sup> If the use and activity in question does not ensure the good environmental condition will be removed. But provided that biodiversity values and good environmental status of the marine environment and of the coastal waters is guaranteed, the following preference criteria should be used: 1) greater social and economic advantage to the country; 2) maximum coexistence of uses or activities.

Article 6 (a) LBOGEM also comprises political instruments with a specific reference to “National Ocean Strategy” (NOS). NOS is an action plan aimed to the economic, social and environmental valorization of the Portuguese maritime space through the implementation of sectoral and cross-sectoral projects. MSP is a key operation to the implementation of this plan and for creating the conditions necessary for the growth of the maritime economy and environmental and social improvement.<sup>64</sup>

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<sup>58</sup> Portuguese terminology used to identify the instrument used for amending or altering the situation plan.

<sup>59</sup> Article 7 (1) Law 17/2014 of 10 April.

<sup>60</sup> Article 9 (1) b) Law 17/2014 of 10 April.

<sup>61</sup> Article 8 (5) Law 17/2014 of 10 April.

<sup>62</sup> Article 9 (1) Law 17/2014 of 10 April.

<sup>63</sup> Article 11 (1) Law 17/2014 of 10 April.

<sup>64</sup> <https://www.msp-platform.eu/practices/national-ocean-strategy-2013-2020>, (last seen 12.11. 2019).

#### 4. Conclusions

We conclude that the Integrated Maritime Policy (IMP) has established itself as a new approach to strengthening the optimal sustainable development of sea-related activities. It adopted the view that by combining sea and ocean policies, Europe could achieve better economic results with less environmental impact.<sup>65</sup> IMP as a transparent and inclusive strategy-making process has the benefit of allowing more interaction and debate within the maritime community and allows the EU to take a broader and more strategic approach to dealing with the seas and the oceans.<sup>66</sup> The main instrument for coordinating the maritime policy spatially with various activities at seas is the Framework Directive for Maritime Spatial Planning.<sup>67</sup>

The concept of Maritime Spatial Planning presupposes the adoption of a set of strategies and solutions based on scientific data and economic and social policy options, following a holistic approach to maritime space. This holistic approach results in the adoption of a macro strategy, harmonizing the uses throughout the maritime space. This strategy requires an ecosystem-based approach. The ecosystem approach places the tonic on the integrative and holistic perspective of ecosystems as components of a complex whole and in reconciling the protection and preservation of these components with the planning of potentially biodiversity-damaging human activities. OSPAR, HELCOM and the UNEP/MAP Secretariat for the Barcelona convention are the adequate Forum to coordinate and facilitate – at the regional level – the implementation of EU directive requirements, especially MSFD. These International Organizations support responsible and effective marine and maritime management by individual countries such as Portugal.

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<sup>65</sup> See Regina Salvador, *op. cit.*, 2018.

<sup>66</sup> See Jan-Stefan Fritz and John Hanus, *The European Integrated Maritime Policy: The next five years*, „Marine Policy” 53, 2015, p. 1-4.

<sup>67</sup> Directive 2014/89/EU.

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