# **Bachelor Thesis:**

The Challenges for Maritime Spatial Planning in Sweden: Results from the compliance process with Directive 2014/89/EU on developing and implementing MSP

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#### Abstract

This thesis seeks to identify change processes triggered by Directive 2014/89/EU in Swedish law, administration and policies connected to maritime governance within the country. In this regard, it poses the research question of How successful is Sweden in implementing directive 2014/89/EU? The findings indicated that Sweden is facing challenges of institutional and administrative character as well as issues connected to the overall character of spatially planning its maritime areas. This is with regards to the fact that Sweden did not have any MSP established before the Directive came into force and hence, MSP proves to be a completely new planning approach for the country. Nevertheless, the findings of this thesis indicate that Sweden is successfully managing the compliance process until now, although certain aspects of detected compliance challenges are still unsolved.

# **Table of Content**

Glossary	1
1. Introduction	2
1.2 Research Question	4
1.3 Disposition	4
2. Theory	4
2.1 Literature review on compliance theory	4
I. Institutional and administrative issues for successful compliance	4
II. Issues connected to the obligations of the MSP Directive	6
3. Operationalization of the main concepts	7
3.1 European Policy implementation in the context of Europeanization	7
3.2 European policy implementation defined through principal-agent theory	8
3.2.1 Conceptualizing compliance and non-compliance	8
3.3 Introducing MSP as parts of European Maritime Governance	9
4. Methodology	10
4.1. Introduction to the research design	10
4.2 Case Selection: Why Sweden?	12
5. Analysis	13
5.1 Obligations of the MSP Directive	13
5.2 The changes in Swedish law under the MSP Directive	15
Summary of changes in law	17
5.3 Changes in administration and institutional authority	17
Summary of changes in administration and institutional authority	18
5.4 Sweden's MSP policies	18
I. The status report of 2014	18
II. The national Proposals for Maritime Spatial Plans	19
III. Further policy of interest	20
Summary of changes in policy	21
5.5 Interviews	21
6. Discussion of cumulative Findings	
6.1 Policy and Institutional Misfit	24
6.2 Change in national legislation	24
6.3 Changes in administration and institutional authority	25
6.4 Changes in Policy	26
6.5 Challenges that Sweden is facing within the compliance process	26
Categorizing Sweden's degree of domestic change	

7. Conclusion	
8. List of references	
8. Annex	
Tables	
Interviews	
Interview 1	
Interview 2	41

# <u>Glossary</u>

EU – European Union

- EPA Swedish Environmental Protection Agency
- IMP Integrated Maritime Policy
- MPA- Maritime Protected Area
- MSP Maritime Spatial Planning

MSP Directive – Directive 2014/89/EU on establishing a framework for Maritime Spatial Planning

- PBL Swedish Planning and Building Act
- SEC Swedish Environmental Code
- SwAM The Swedish Authority for Marine and Water Management

#### **1. Introduction**

Marine governance is a major concern of coastal states in Europe and elsewhere as marine ecosystems are exposed to ongoing pressures, including overfishing, pollution, new industries and other users competing for marine space (e.g. off-shore oil and gas exploration, marine aquaculture, wind farms, and shipping). Indeed, these multiple uses and their complex relationships and interaction create problems (Rittel and Webber 1973) with no easy technical solutions for marine governance (Chuenpagdee and Jentoft 2009). Recent efforts to amend the problems take various forms that are generally more comprehensive and integrative than previous attempts. Among them are place-adjusted instruments such as marine protected areas (MPAs), and most recently marine spatial planning (MSP) (Chuenpagdee and Jentoft 2015). MSP is the consequential approach to solve the lack of coordination, enforcement and integration of single sector management which usually misses profound approaches to the scope and geographic coverage of sea areas and the environmental conditions in which monitoring and enforcement have to operate, hence reducing the effect of enforcement of regulations dealing with sea bases (Douvere and Ehler 2009). Instead, MSP is a multi-sector approach. It can be defined as a public process of allocating and analyzing the temporal and spatial distribution of human activities in marine areas to achieve economic, social and ecological goals and objectives that are usually specified through a political process. MSP is characterized by multiple sector integration, participatory stakeholder involvement, and strategic and future-oriented alignment. Furthermore, it is area- and ecosystem-based (Douvere and Ehler 2009).

On a European level, MSP was first introduced as a policy guideline in the EU integrated maritime policy (IMP) in 2007 (European Commission 2007) with enhancing Member States to administer the various sectoral policies having an effect on maritime space (Zervaki 2015). Although MSP was initially limited to policy guidelines, it soon became the prioritized approach to cope with managing European sea areas and maritime spaces more coherently in order to give answers to increasing human activities at sea. The regulation of MSP took a shift from soft law to legally binding rules, when the European Council and Parliament adopted a directive to create a common framework for Maritime Spatial Planning in Europe (Directive 2014/89/EU). The *Directive on establishing a framework for maritime spatial planning* (in the following referred to as *the MSP Directive*) was published in July 2014 and came into force the same year, when it was released within the official Journal of the European Union (European Council and Parliament 2014. O.J. L. 257/135).

The directive obligates Member States to designate the competent authorities for MSP implementation and transpose the directive into their national legal order (bringing into force laws, regulations and administrative provisions) by 2016 and sets a legal requirement for Member States to develop and implement MSPs ultimately by 2021 (Zerfaki 2015, O.J. L. 257/135). The process of its implementation is monitored and supported by the European Commission with the European MSP platform (European Commission 2016), where knowledge and expertise in regard of MSPs in Europe is made available. The outcomes of European Union (EU) policy are essentially shaped by processes of transposition and enforcement at Member State level. Great attention has been given to transposition and implementation procedures and the importance of the research field of policy implementation is widely recognized. Scientific contributions dealing with the implementation of European policy are numerous (Börzel 2001, Falkner et al. 2005; Mastenbroek 2005; Steunenberg 2006; Treib 2006; Toshkov 2007). Despite the obligation to comply with EU legislation, many Member States have indeed difficulties with adopting national policies implementing EU directives (Steunenberg 2006). This level of difficulty varies from member state to member state and regarding policy areas (Toshkov 2007). Looking at the process of compliance with directive 2014/89/EU, it can be noted that the Directive proposal raised significant concerns due to the promotion of cross-border cooperation", and "the idea of pursuing coordination with other Member States, as well as bordering third states, was not appreciated by most national authorities" (Zerfaki 2015, p.105). Furthermore, concerns were raised in terms of actions to achieve the goals of the directive, with Member States

expressing concerns about financing as well as about administrative burdens to implement the directive (Zerfaki 2015). According to the timeframe set by the MSP Directive, Member States shall designate the competent authorities for MSP implementation and transpose the Directive into their national legal order by September 2016, and have fully developed maritime spatial plans in force by 2021 (O.J. L. 257/135, Art. 15).

The success of the implementation process is dependent on a number of parameters.

First of all, some Member States already had relevant legislation and MSP practices in place before the MSP Directive came into force in 2014. For others MSP is a totally new approach for planning human activities at maritime areas (Zerfaki 2015; European MSP Platform 2018). Taking into account the fact that the construction of the required institutional, legal and political requisites for MSP is a complex and pedestrian multilevel process (Zerfaki 2015), it could be a problem for certain Member States to timely comply with the MSP Directive.

Secondly, the MSP Directive provides an orientation regarding options in relation to the subjects that national MSP shall incorporate (O.J. L. 257/135). However, for Member States that do not have any experience with MSP, compliance with the Directive requires for specifications and adjustments to the framework provided with the MSP Directive and bringing it in accordance to the individual Member State's maritime operational objectives and strategies. This requires a comprehensive approach that involves various authorities with sharing competences and different levels of the governmental administration. In this sense, there is a risk for time consuming consensus finding in decision-making and for administrative burdens (Zerfaki 2015).

Another challenge for MSP implementation is the vast list of activities, uses and interests to be considered and integrated into national spatial plans according to the MSP directive.

In parts of that, cross-border cooperation raises many issues in terms of its applicability in different European maritime regions. The variety of established institutional, administrational and legal mechanisms can make cross-border cooperation more difficult (Zerfaki 2015; Baeza 2011). This problem is emphasized by the fact that most of the European sea areas are under increasing pressure of intensified human activities (European MSP Platform 2018).

Some Member States are more advanced in spatially planning their coastal and offshore waters, like Belgium, Germany, the UK or the Netherlands, while others have developed new legislation to advance MSP and did not have relevant legislation or structures for MSP in force before the MSP directive came into force. One of such countries is Sweden, which in this regard could face challenging issues for a sound implementation of the MSP Directive (European MSP Platform 2018). As Sweden is one of the Northern European Countries that has only little experience with spatial planning of maritime areas, this thesis will deal with how successful the country is in complying with the MSP Directive and to which extent the Directive has led to change in institutional processes and national law. Furthermore, it will be analysed how Sweden meets the requirements of effective maritime spatial planning. The fact that European Seas are exposed to a large variety of human activities makes conducting research on the introduction of the MSP approach to maritime policing in Sweden highly significant to society.

So far, there are studies existing that focus on issues of spatial land planning, as well as on issues related to maritime governance in Sweden including the establishing of maritime protected areas (MPAs) or designating areas for setting up offshore energy production, or strategic environmental assessment (Petersson-Forsberg 2014; Andersson et al. 2017; Kyriazi, Maes and Degraer 2016; Grip and Blomqvist 2018). No research is focusing on maritime spatial planning in Sweden so far. In terms of scientific significance, this thesis will contribute to the research field of maritime policy with conducting an in-depth analysis on how the MSP Directive is leading to change processes in maritime planning within the country. Thereby, a look is given at how successive Sweden is in realizing the Directive's objectives and on the extent to which the country is meeting the requirements of effective maritime spatial planning.

# **1.2 Research Question**

The overall research question of this thesis is:

How successful is Sweden in implementing directive 2014/89/EU?

Successfulness refers to the effectiveness of the implementation of the directive, which is compliance with the directive's provisions.

In order to be effective at least three requirements must be met:

1. An adequate implementation of the Directive's provisions into national legislation,

2. A change or adaptation in the national administration for maritime governance,

3. Developing and realizing planning tools for maritime areas in line with the obligations of the MSP Directive.

# 1.3 Disposition

The overall research approach of this thesis is a single-case study of Swedish compliance with the MSP Directive.

The country could face certain problems in this process, due to the fact that MSP constitutes a completely new planning approach for it.

In Chapter 2 of this thesis, possible obstacles to successful compliance are determined drawing on existing theory.

Chapter 3 deals with operationalizing the main concepts this thesis deals with, which are European policy implementation, and Maritime Spatial Planning as parts of European maritime governance. Chapter 4 is designated to the overall methodology. Here, the research design is introduced and elaborated. Furthermore, a discussion is given on why Sweden makes up an accurate case of observation.

Chapter 5 includes the analysis, whose outcomes are presented and discussed in the form of findings in Chapter 6. Finally, Chapter 7 consists the conclusion of this thesis.

# 2. Theory

#### 2.1 Literature review on compliance theory

The first step is to find and develop theoretical and conceptual frameworks for examining differences in conduct and implementation of European legislation at domestic levels. Literature dealing with compliance in Europe is vast and multiple authors indicate that compliance problems cannot be explained through a single approach, as different directives and other EU policies deal with different policy-fields (Zhelyazkova et al. 2016, Steunenberg 2006, Thomson 2010, Blom-Hansen 1997, Kassim and Menon 2003).

MSP is a relatively new planning tool that Sweden has little experience with. This gives incentives to think about a number of possible compliance problems and reasons for it, which can be found within the large body of literature dealing with compliance in Europe.

First of all, it can be assumed that Sweden had a maritime governance system in place, which did not or only to a little extent facilitate MSP before the MSP Directive came into force in 2014. Hence, successful compliance requires a change or adaption in the national legislation, policies and regarding the overall institutional structures and organizing of maritime governance.

#### I. Institutional and administrative issues for successful compliance

According to Börzel and Risse, adaptational pressures are generated when newly introduced European policy contains structures of authoritative decision-making which might clash with national structures

of policy-making and that the Member States must follow EU law according to the European treaties (Börzel and Risse 2000) A certain level of *misfit* or "the incompatibility between European-level processes, policies and institutions" and their domestic-level counterparts (Börzel and Risse 2003 p.1) is a necessity of domestic change or adaption to happen. This relation is summarized by the authors with stating that "the lower the compatibility between European and domestic processes, policies and institutions, the higher the adaptional pressure" (Börzel and Risse 2003 p.5). Thus, if the political views and interest at a European level are not correspondent with those at national levels, successful compliance is more unlikely.

The authors distinguish between two types of misfit.

First, European policies might cause a *policy misfit* between domestic circumstances on the one hand, and European rules and regulations on the other. In this case, misfit equals compliance problems. European policies can challenge domestic regulatory standards as well as policy goals and the techniques or instruments used to achieve them (Börzel and Risse 2003). According to the authors, such policy misfit can also wield adaptational pressure on planning-involved institutions (Börzel and Risse 2003). Thus, policy misfit can lead to adaptational necessities at national levels of Member States.

The second one is referred to as *institutional misfit*, which challenges domestic procedures and rules as well as the collective understandings attached to them.

According to Börzel and Risse, European rules and procedures give national governments privileged decision powers in comparison to other domestic actors. This poses a challenge for highly decentralized member states which endow their domestic institutions with autonomous decision power.

One of the mediating factors that has an influence on the capacities of a decentralized Member State to adapt to this challenge is the existence of multiple veto points within its institutional structure. The more actors have a say in political decision-making and the more power is distributed across the political system, the more difficult it is to come upon a consensus necessary to introduce changes in response pressures of new European policy. Hence, the number of institutional and administrative veto players influences the capacity of Member States to achieve policy changes.

According to Börzel and Risse, Europeanization can cause three different degrees of domestic change:

1. Absorption, where Member States are able to include European policies with readjusting their national institutions without substantially having to modify existing policies, institutions and processes attached to them. In this case, the degree of domestic change is low.

2. Accommodation, where existing processes, policies and processes have to be adjusted in order to meet the obligations of European policies. One way of doing this is "by patching up new policies and institutions onto existing ones without changing the latter" (Börzel and Risse 2003 p, 34). Here, the degree of domestic change is modest.

3. Transformation, where member states have to replace existing institutions, policies and processes by extensively different ones, or alter existing ones to such an extent that their "essential features and/or the underlying collective understandings are fundamentally changed" (Börzel and Risse 2003, p.34). Here, the degree of domestic change is high.

According to Zhelyazkova et al, compliance requires the involvement of different political and administrative actors. Hence, the willingness and ability of political actors to control implementation activities at all process-involved domestic levels certainly could play a role for successful compliance with the MSP Directive (Zhelyazkova et al. 2016).

Connected to that, institutional and administrative reasons could play a role for compliance problems. Administrative reasons involve administrative shortcomings, e.g. in personnel and financial resources or shortcomings of knowledge. Institutional reasons include certain prerequisites that drive the choice of compliance approaches (Falkner et al. 2005, Thomann and Sager 2017). As MSP is a relatively new approach in Sweden, administrative shortcomings could be persistent within institutions involved in planning and governing maritime areas, and moreover that interpretation problems could be perpetual. Legal uncertainty and the obligation of directives for timely legal compliance can lead to copy-pasting

of substantive parts of the transposing texts when adopting European law into national legislation, which in turn can lead to problems aligning the respective legal act and to an ignoring of the actual extent of changes required in national law for compliance (Dimitrakopoulos 2001). Thus, problems can emerge when aligning the respective European legal act with existing legislation.

#### II. Issues connected to the obligations of the MSP Directive

One of the challenges for compliance found in literature is the technical dimension of certain subjects of European directives and related complexities. According to Gilek and Karlsson, governing and regulating maritime environments is a highly complex and challenging activity (Gilek and Karlsson 2016). Certain complexities result of ecological and social conflicts of usage, knowledge gaps, as well as other issues that come with governing maritime areas. (Boström et al., 2016). As MSP constitutes a holistic approach of governing maritime areas, this requires a comprehensive look at all dimensions of environmental issues, possible conflicts and all other aspects and effects of human usage of sea-based resources and areas (Douvere and Ehler 2009). Hence, it can be assumed that the *Directive on establishing a framework for maritime spatial planning* brings certain complexities and compromises certain technically challenging aspects. This could lead to compliance problems, certainly in Member States that do not use spatial planning approaches for their sea areas yet. In relation to these issues, it could be possible that Swedish authorities involved in MSP-making are perplexed regarding the choice of policy and legal options to comply with the MSP Directive.

Assuming that the directive gives room for Member States to realize its obligations in a manner that is adoptable to domestic circumstances, *vagueness* could play a role for compliance problems. According to Dimitrakopoulos, the content of directives is frequently vague as a result of political compromises that occur in formulation. Vagueness is a problem, since it leads to uncertainty under which national authorities must make far reaching decisions about how to implement EU law into national legislation, moreover it may contribute to inability of national decision-makers to realize an efficient policy change (Dimitrakopoulos 2001).

The obligations for planning maritime areas under the spatial approach of the MSP Directive have the goal to minimize maritime challenges at European seas and to organize the human usage of these maritime areas sustainably with a holistic planning approach. Besides reducing conflicts of different sectoral activities, sustainability is a main goal of MSP, which aims at balancing economic growth and environmental impacts (European Commission 2017).

The ecosystem-based approach is viewed as a core principle of MSP. It is commonly known as assuring the ecological dimension to MSP (Santos et al. 2014, Douvere 2008) and as a facilitator to stimulate conservation and sustainable use of natural resources (Soma et al. 20015, Scott et al. 2013). Applying the ecosystem-based approach presupposes a holistic perspective, continual development of knowledge regarding the seas and their usage, application of the precautionary principle. In a MSP context one of the main challenges is the evaluation of cumulative effects that may result from the combination of different projects and activities and the potential lack of a continuous series of data and related assessment tools. This aspect is linked to the need for evaluation and monitoring of conflicts among uses in order to detect how these conflicts evolve in the course of implementing MSP plans (European MSP Platform 2018).

It has been noted however that the ecosystem-based approach of the MSP Directive is not always followed by Member States, depending on where they position their focus in planning. Olsen et al. (2011) refer to this as "path dependency" and point out that the previous use of the marine environment are possibly primary objectives of future use (Olsen, Olsen and Schaefer 2011: 318). This view is shared by Jones et al. (2016) with it is possible that the set of priorities that exist are brought into the initiating process of MSP resulting in a strategic sectoral planning (Jones, Lieberknecht & Qui 2016). The direction of the approach could therefore be determined by the main sectors operating within the maritime areas of a Member State. Either focus is put to achieving a good environmental status or on achieving blue growth.

Hence, pushing for economic development and realizing environmental protection and sustainability at

the same time could turn out to be contradicting in the process of implementing the MSP Directive and it will be analysed on which of these two aspects Sweden's current MSP-development is aligned to.

After having determined possible reasons for compliance problems with the MSP Directive, the next step is to compile them in a structured framework. The challenges for compliance were categorized into I. Institutional and administrative issues, and II. Issues connected to the obligations of the MSP Directive. They are presented in Table 1.

#### Table 1: possible reasons for compliance problems

#### I. Institutional and administrative issues

- The institutional and administrational aspects of the Directive pose a policy and institutional misfit to domestic circumstances
- Adaptational costs due to institutional and policy misfit
- The extent of changes required in national law for compliance
- Copy pasting of substantive parts of the Directive into national legislation
- There are shortcomings in knowledge and capacities (financial, human, knowledge) in the different levels of the administration
- There are uncertainties regarding the choice of policy and legal options to comply with the directive
- There is need for involvement of national, regional and local levels of governance

#### II. Issues connected to the obligations of the MSP Directive

- The provisions of the directive are vague or lack clarity
- The subject matter of the directive is complex and technically challenging
- (Parts of) the obligations disagree with one another
- The obligations are (in parts) challenging to realize

# 3. Operationalization of the main concepts

#### 3.1 European Policy implementation in the context of Europeanization

As this thesis is dealing with the change processes in the policy field of MSP triggered by the implementation of an EU Directive, first of all the concept of policy implementation in the context of Europeanization is going to be elaborated. The other concept that this Thesis is dealing with is Maritime Spatial Planning as a means within the overarching framework of maritime policy, which will be elaborated in a following step.

Defining the concept of *policy implementation* in the context of *Europeanization* is important as to find a basis of explaining the functioning of European directive-implementation and subsequently using the concepts and framework of chapter 3.1 for analysing implementation performance and applying these to the case of Sweden.

Policy implementation refers to a complex change process where decisions are transformed into procedures, practices and regulations between hierarchies in a vertical matter (DeGroff and Cargo 2009). In sum, Europeanization on one hand can be seen as the process whereby national systems adapt to EU policies and European integration, and on the other hand how Member Sates themselves are shaping the European Union (Laffan and Stubb 2012). Hence, Europeanization can be conceptualized as a top-down or a bottom-up approach. Whereas the bottom-up approach looks at

Europeanization as the Member States influence and shape on EU policies and influencing the institutional setting of the EU in their favour, the top-down approach focuses on the impact of Europeanization on domestic political processes (Börzel and Risse 2009).

The concept of 'Europeanization' is rather broadly elaborated in existing political science literature. Two of these definitions were selected, as they have regard to the overall research objective of this thesis.

First, the term can refer to the development of policies at the EU-level. (Risse et al. 2001). Secondly, it is used to describe the reactions of domestic systems to top-down influences caused by European policies (Ladrech 1994; Radaelli 2000).

Ladrech implies a top-down approach for *Europeanization* with defining it as an "incremental process reorienting the direction and shape of politics to the degree that [European] political and economic dynamics become part of the organizational logic of national [...] policy-making" (Ladrech 1994 p. 69) and hence treating it as the European Union's impact onto member state policy.

For the purpose of this thesis, the top-down perspective shall be applied with conceptualizing European policy implementation through the principal-agent model.

#### 3.2 European policy implementation defined through principal-agent theory

Looking at European policy implementation through the principle-agent model, a top-down approach is applied with defining policy implementation as a process where sets of tasks are delegated in a vertical matter from the European Union level to national levels where Member States are obligated to realize these sets of tasks through policy implementation.

The principal-agent model has been applied to analyse European policy implementation by various researchers (Egan 1998; Franchino 2001; Garrett 1992; Garrett and Weingast 1993; Menon 2003; Pierson 1996; Stetter 2000). The model is explicitly concerned with complex inter-institutional interactions while allowing to put the overall process of European policy implementation into a simplified order with offering a way of grasping the institutional complexity of the European Union. The model cuts through the inherent complexity of organizational relationships by identifying distinct aspects of individuals and their environments that are most worthy of investigation, and it integrates these elements into a logically coherent order (Kassim and Menon 2003).

The European Union as the legislator and producer of European directives and other law-constructs can be defined as the principal delegating the Member States who act as agents for carrying out the accurate implementation of functions and sets of tasks, namely European policy (Kassim and Menon, 2003). It is assumed that the EU as legislator strives for an implementation as close as possible to its own agenda, in contrast the Member States as implementers strive for an outcome as close as possible to their individual political views and interest. This situation might lead to problems, since the priorities of enforcing agents and decision-making principals differ often (Pressman and Wildavsky, 1973) and the resulting conflict of interest (between principal and agent) is a necessary condition for non-compliance (Zhelyazkova and Torenvlied 2009). Translating this to the case of implementing the MSP Directive in Sweden, it could be considered that both *policy* and *institutional misfit* are persistent to a certain degree between Sweden and the EU in accordance with the assumptions of Börzel and Risse (Börzel and Risse 2003).

#### 3.2.1 Conceptualizing compliance and non-compliance

Correct compliance with European policy consists of both legal and practical implantation phases that require the involvement of a multitude of actors engaged at the various levels and stages of a European directive's life cycle. While legal compliance refers to Member States' incorporating European policy into national law, practical compliance relates to the actual domestic fulfilment of European policy and its application at national levels. According to Zhelyazkova et al, legal compliance is not automatically followed by practical implementation. This fact is describes as "decoupling", and "reflects the extent to which practical implementation lags behind the legal implementation of EU rules" (Zhelyazkova et al. 2016 p. 828).

However, legal compliance levels can only explain the practical application of EU law to a certain degree. In contrast, the customization of EU policy may lead to different national practical application, enforcement and compliance practices (Versluis 2007).

The multitude of actors involved at the various levels and stages of an EU Directive's life cycle offer numerous possibilities for shortcomings in implementation and application. Two main forms of non-compliance can be distinguished. The first one can be defined as non-transposition or delayed transposition, contrary to correct legal implementation of the MSP Directive's provisions. The second form consists of non-application, referring to the failure of realizing the MSP Directive and establishing Maritime Spatial Plans in Swedish Sea territories.

#### 3.3 Introducing MSP as parts of European Maritime Governance

After having defined the concept of policy implementation and compliance in the context of principalagent theory and Europeanization, the next step is to localize Marine Spatial Planning in the European framework of maritime governance. Maritime governance in the context of Europeanization has increasingly become a field of interest for researchers to study policy and institutional transformation processes (Gilek and Kern, 2015; Söderström, Kern and Hassler, 2015). For most coastal states in Europe, it is of major concern as related marine ecosystems are exposed to ongoing pressures which include overfishing, maritime pollution, the production of green energy as well as offshore oil and gas exploration, shipping, and marine aquacultures amongst other challenges (Jetoft and Chuenpadgee 2009).

Despite the EU holding the exclusive competence only in the field of fisheries and having shared competences over many other maritime areas (Koivurova 2009) and although regional governance systems differ considerably among the carious regional sea areas (depending on individual environmental problems and the regional institutions), the European Union is arguably the most relevant political actor in Europe's regional sea areas (Kern and Gilek 2015). As of today, European maritime governance is dealt with and regulated within the EU's integrated maritime policy (IMP) which came into force in 2007 when it was proposed in the blue book of the European Commission (Kern and Gilek 2015). The IMP serves as a governance framework and provides tools of integrated, inter-sectoral, and multidisciplinary character in respect to the reality of maritime challenges while aiming at the sustainable management of actions on coasts, seas and oceans.

The introduction of Maritime Spatial Planning (MSP) as a tool for dealing with the various challenges of regulating maritime space in Europe is based on the European IMP, which recognizes a need for development of the former in order to give response to increasing human activity in the coastal waters around the EU and within Exclusive Economic Zones (EZZs). This need is furthermore recognized given the fact that no systematic spatial planning systems existed at most member states at the time of IMP coming into force (Kern and Gilek 2015). Moreover, MSP was admitted as a key instrument for IMP with the EC's roadmap for MSP of 2008 (Kern and Gilek 2015).Finally, The European Parliament and the Council put out the directive on establishing a framework for maritime spatial planning in 2014 (OJ L257), which is the subject of this thesis.

Maritime spatial planning is a tool for area-based management of human activities at seas and oceans. The eco-system approach of it implies sustainable development and use of all activities at previously defined areas. The place-based character of ecosystems, the temporal and spatial development of ocean resource uses and conflicts among them together with the need to develop human uses in places that minimize their impacts on ecologically or economically important places in the marine ecosystem all draw attention to the need to look at the system from a spatial perspective.

Maritime spatial planning provides a tool to deal with these issues, with administering an analytical basis for identifying and evaluating these measures in coastal and maritime environments for subsequent regulation of human activities in designated areas. In addition to applying an ecosystem based approach, MSP provides an integrated, strategic and future-orientated framework for all possible uses of sea areas in order to achieve sustainable economic development with incorporating environmental, social and economic objectives. Furthermore, the approach makes it possible to identify and appropriately dealing with important components of coastal and maritime ecosystems, while at the same time allocating available space in a rational, science based manner that also avoids or at least minimizes possible conflicts of interest, both between human usage of natural resources and environmental conservation and regarding inter-sectoral conflicts. A main aim of the MSP-approach is to reduce conflict and maximize synergy effects across sectors in areas or regions that are typically designated for multi-use (Douvere and Ehler 2009)

In sum, maritime spatial planning can be defined as a means of analyzing and allocating parts of threedimensional spaces to specific uses or non-use based on rational decision-making, in order to achieve ecological, social and economic objectives that are usually specified through a political process (Douvere and Ehler 2009). According to Douvere and Ehler, the goals of MSP can be accomplished with accurately delineating the boundaries of the ecosystem to be managed, defining certain spaces of ecological or biological value and spaces of economic value and potential, to allocate sea areas where the effects of human activities interact negatively or positively with ecological functions and processes, and where conflicts possibly occur or do not occur (Douvere and Ehler 2009). Hence, a correct spatial planning of maritime areas should be knowledge based.

# 4. Methodology

#### 4.1. Introduction to the research design

"Research on Europeanisation [...] targets a broad and complex phenomenon since all parts of the domestic political system may be affected" (Falkner et al. 2005 p.11).

My thesis is analysing the status of compliance with the MSP Directive in Sweden and aims to examine how Sweden's maritime planning regime is changing under the process of compliance. In order to answer the research questions, a single-case study will be conducted whereby a focus is put on the process of legal implementation and domestic application of the MSP Directive's provisions. A case study is chosen as the research approach, as it helps to explain both the process and outcome of a phenomenon through complete observation, reconstruction and analysis of the case under investigation (Tellis 1997).

The case study serves as an ideal methodology when an in-depth, holistic investigation of a certain phenomenon or process is needed (Feagin, Orum and Sjoberg 1991). Choosing the case study method enables insights into the nature of a contemporary phenomenon through detailed contextual analysis of a limited number of events and their relationships (Hossieni et al. 2012). The method can be used to identify whether particular policy programs are working and whether the goals of particular policies are reached in observed cases (Zainal 2007).

As this thesis is focusing on only one country, a single-case design is used in order to give an overview on the status of compliance with the MSP Directive in Sweden and to show and explain change processes triggered by the directive.

This is done both *descriptively*, with an aim to show the status of compliance with the directive Sweden is located at the moment and reveal characteristics of the Swedish Maritime planning regime and possibly compliance problems, and *explanatory* in terms of targeting reasons for such compliance problems.

According to Tellis, *descriptive* cases require a *descriptive* theory to be developed before starting the analysis (Tellis 1997). Generally said, the analysis should rely on theoretical propositions that led to the case study. If theoretical propositions are not present or fit the case under investigation only to a limited scope, a descriptive framework around which the case study is organized could be developed by the researcher (Tellis 1997, Yin 1994). This thesis relies on existing compliance theory and renders it in order to make it fit for the analysis of the case of the Swedish compliance process with the MSP directive. If certain compliance problems with the MSP Directive turn out to be persistent, the elaborated parts of existing compliance theory are consulted for theory testing in order to determine if existing theory can serve as a mean to explain compliance problems.

*Explanatory* case studies are fit to be used for causal investigations and rely on the in-depth analysis of gathered information in order to detect and explain cause-effect relationships (Tellis 1997, Zainal 2007). Hence, explanatory case studies aim to explain a phenomenon in deep level and should be based on a first formed theory which is tried to be tested in a following step.

In this sense, the thesis selects a qualitative research method approach with describing, understanding and explaining (Tellis 1997) the complex issue of the Swedish compliance process with the MSP Directive.

As in all research, consideration must be given to *construct validity*, *internal validity*, *external validity*, and *reliability* (Tellis 1997).

Construct validity, which is especially challenging in case study research, deals with *concept operationalisation*. *Operationalisation* is the process of defining a concept through a set of attributes

or in order to make it measurable through empirical observations (Tellis 1997).

According to Yin (1994), there are strategies for improving construct validity including maintaining a chain of evidence and including the use of multiple sources (Yin 1994). Employing multiple sources of evidence can contribute to construct validity by providing multiple measures of the same phenomenon. Designing the case study so that the chain of evidence is maintained should allow reviewers to trace from conclusions back to the initial research questions (Yin 1994).

In this thesis, the main concepts are Maritime Spatial Planning and Policy implementation. Both are elaborated and discussed in Chapter 3. Furthermore, construct validity is supported by using multiple sources of evidence, with reviewing the Swedish maritime policy and change processes triggered by the directive through the analyzation of hard data including legislative and policy documents as well as soft data with using information gathered through a conducted interview with a MSP responsible person from SwAM.

While *construct validity* mostly deals with the correct collection and use of data and information, *external validity* is about the data and information analysis. *External validity* deals with the problem of knowing whether the findings are generalizable to other cases. Yin (1994) provided the assertion that external validity could be achieved from theoretical relationships and from these generalizations could be made.

Here it is important to have a reasonable research design that is comprehensible to the reader. A clear operationalization in chapter 3, the theory framework of chapter 2 and the analysis conducted in chapter 5 could be used in similar manner for other cases of Member States' compliance with the MSP directive. Nevertheless, it is hard to create theoretical assumptions on compliance and implementation that are generally applicable for other cases reaching over policy fields other than maritime policy, as MSP is a relatively new planning approach of unique character. Furthermore, many Member States had MSP related policies and laws in practice before the MSP directive came into force in 2014, while others did not. Therefore, it could be assumed that the research approach this thesis is choosing cannot so easily be applied in other cases as the preconditions for effective MSP are differing amongst Member States.

*Internal validity* is concerned with the justification of causal relationships and hence is of great importance for the *explanatory* part of a case study. It can be achieved by following a clear and reasonable case study design, with a specification of the unit of analysis, developing of theory, followed by data collection and theory testing in parts of the analysis.

In order to create *internal validity*, this thesis aims to fulfil all of these mentioned conditions on which the operationalization in chapter 3, the theory framework of chapter 2 and the analysis of chapter 5 are based on. Moreover, the units of analysis are elaborated in this chapter in parts of the case selection. *Reliability* deals with demonstrating that same results can be obtained by repeating the data collection procedure. In other words, other investigators should in principle be able to follow the same procedures and arrive at the same results (Yin 1994, Tellis 1997).

The data base including the fully transcripted interviews and other sources of information are given in the annex of this thesis. In doing this, the thesis aims to make the conducted research understandable and to give a clear overview on how own data was collected and used.

In order to answer the complex research questions outlined in Chapter 1, a thorough analysis covering the Swedish transposition process of the MSP Directive both in terms of implementing the Directive's obligations into national legislation and regarding practical application will be conducted. This is especially necessary to analyse if the MSP Directive led to change in institutional structures and national law as well as to detect possible problems with implementation and application, and to detect how the Swedish authorities are treating possible problems within the process of complying with the MSP Directive.

In order to explain such possible problems, existing compliance theories have been collected in a theory framework, adapted to the special character of maritime governance.

In a second step, the actual outcomes of the Swedish MSPs are being judged in terms of meeting the requirements of the MSP Directive.

The main instrument in order to answer the research questions will be an analysis of the MSP Directive and national legislative documents and further information provided by the Swedish authorities on the process of compliance, supported by two interviews with a MSP responsible person at the Swedish Maritime Agency (SwAM).

As MSP is a relatively new planning approach and existing literature on its application in a European context is limited, the case-study approach is promising to give more insights to the functioning of MSP in Sweden as well as to possible problems and challenges its application faces at domestic levels. In this matter, the findings of the case study conducted in this thesis could also give incentives for further research in the field.

# 4.2 Case Selection: Why Sweden?

The *directive on establishing a framework for maritime spatial planning* ultimately applies to maritime waters of Member States (Directive 2014/89/EU). Hence, it counts for all Member States that have access to sea- and ocean-territories. In the following, it is elaborated why Sweden makes up an interesting and significant case for observation on compliance with the MSP Directive.

In order to be suitable for a scientific analysis, a case has to afford enough available data to address the question of interest. If sources are scarce, unreliable, or inaccessible, the case is of little value (Seawright and Gerring 2008) Furthermore, a choice of cases shall be based on criteria of indicators for *significance* and *appropriateness* (Seawright and Gerring 2008) For *appropriateness* a fit to both the phenomenon under investigation and the purpose of research needs to be demonstrated (Seawright and Gerring 2008). This is discussed in terms of the availability of data and information as well as the significance of the respective case.

#### I. Availability of data and information

Sweden's well-developed public data records and the accessibility of legal texts as well as the responsiveness of national planning authorities are the basis of information this thesis is built upon. In a first step, information was gathered drawn on information from the websites of the European MSP Platform, where summaries on existing or planned MSPs in every Member State affected by the MSP Directive as well as country profiles and overviews on respective States are presented in the form of country profiles, including legislation and administrative distributions of competences. Furthermore, the European MSP Platform provides hyperlinks leading to significant websites from national authorities. These respective institutions involved in the planning processes of maritime areas in Sweden where searched for further information using multiple key words (MSP, marine/maritime spatial planning).

In this respect, significant information helping to answer the research question was highly accessible. Not only provide the websites information on the overall working together of the Swedish maritime governance system, but also give access to legislative documents handling with the legal foundation of MSP in English language. This made the analysis of policy and law documents possible. In order to support the findings from the analysis of legal and policy documents and to solve remaining questions, two interviews with a representative person from *SwAM* were conducted in order to get first-hand information that could not be gathered with other research methods.

#### II. Significance

The significance of Sweden for the research approach of this thesis follows from the issues addressed by the MSP Directive and the ones the country itself is facing as well as from the country's specific role in the Scandinavian and Baltic area.

First of all, Sweden did not have any national MSPs in force before the MSP Directive came into force in 2014. Hence, unlike for other Member States, this particular approach is a rather new thing and experience with comprehensive planning of maritime areas incorporating a variety of issues happening at the same time is very limited.

With a total size of approximately 70.000km<sup>2</sup> Swedish sea territories are the largest amongst all Baltic Sea bordering states. The country has both access to the Baltic and the North Sea. On the country's Baltic Sea side, coastlines extends all the way from the northernmost part of the Bothnian Bay to the Skagerrak, a distance of more than 1,500 kilometres.

Areas like the coast and particularly the archipelagos and the islands of Gotland and Öland are

enormously important for summer recreation and outdoor life.

In Sweden, MPAs have a status of high precedence and an intact maritime environment is seen as vital for the functioning of all sectoral activities connected to sea spaces and areas.

Coastal sites of cultural heritage have been adversely affected by human activities and there is a growing need to find means of resolving conflicts of interest. The sector of fishing is of great importance in both the Swedish North Sea and the Baltic, not only for the municipalities and coastal communities but also as a sector sustaining to the overall Swedish economy.

Sweden's largest port of Gothenburg is localized at the North Sea side of the country, other small ports are furthermore of great importance for the sectors of shipping and fisheries. In addition to this, the Skagerrak and Kattegat regions are relatively small and used in various ways by multiple nations and international companies (European MSP Platform 2018).

All of these issues are making Sweden a significant case of observation for analysing how the country is dealing with implementing the obligations of the MSP Directive.

Considering the availability of vast and detailed information and the importance its North Sea situated regions have for the country, as well as the fact that Sweden had, in contrast to other Member States, no MSPs in force before the MSP Directive and the multi-use and possible conflict aspects of the country's multiple sea regions connected to Sweden's level of consultation with its neighbours, makes Sweden an interesting case of observation. Therefore, the country fits to the purpose of the research conducted in this thesis and proves as an object of investigation of compliance with the MSP Directive.

The unit of analysis is a critical factor in the case study. It is typically a system of action rather than an individual or group of individuals. Case studies tend to be selective, focusing on one or two issues that are fundamental to understanding the system being examined (Tellis 1997).

Selecting the appropriate units of analysis should be based on accurately specifying the primary research questions (Yin 1994).

Correct compliance with the MSP Directive consist of adequately implanting the Directive's provisions into national legislation, a change or adaption in the national administration for maritime governance, and developing and realizing planning tools for maritime areas in line with the obligations of the MSP Directive.

In this thesis, the units of analysis therefore include the national legal basis that MSP builds upon, the country's administrational system for maritime governance and MSPs under development. These three units combine to the overall MSP-making process that Sweden is currently going through.

# 5. Analysis

# 5.1 Obligations of the MSP Directive

In order to determine whether or not Sweden's MSP system and designated policies match with the requirements and obligations of the MSP Directive, an overview on the latter will be given in the following section.

In the next step, a look will be given at change in law, regulations and legal mechanisms necessary to comply with the MSP Directive, followed by analysing which administrative provisions have been established and which national authorities have been designated. After that, a focus is put on the new planning policies that have been established under the MSP Directive.

The MSP Directive obligates Member States to bring into force the regulations, administrative provisions and laws necessary for compliance by September 2016 (O.J. L. 257/135, Art. 15 [1]). Furthermore, the competent authorities shall be designated by the same time (O.J. L. 257/135, Art. 15 [2]). In addition to the obligation of legal compliance, Member States have to establish maritime spatial plans ultimately by 2021 (O.J. L. 257/135.Art. 15 [3]).

Chapter II of the MSP Directive stipulates how Member States shall establish and implement national maritime spatial plans. These obligations are laid out more detailed in the Directive's foregoing provisions (O.J. L. 257/135, Provisions 9, 11-16, 18, 20-21, 23, 24).

First of all, plans shall consider social, environmental and economic aspects to support sustainable development and growth in the maritime, with applying an ecosystem-based approach and to promote the coexistence of relevant activities and uses. All relevant activities shall be organized on the basis of sustainability. With introducing MSP, a framework shall be established for consistent, sustainable and evidence-based decision making (O.J. L. 257/135, Provision 9). Although the Directive is without prejudice to the competence of Member States to determine how these different objectives are weighted and reflected in their maritime spatial plans and there are no obligations regarding the concrete choices of Member States about how to pursue sectoral policies aiming at realizing the Directive's goals, there are some minimum requirements for MSP (O.J. L. 257/135, Art.4; Provision 9). The Member States are responsible and competent for determining and designing the format and content of maritime spatial plans, setting up the necessary institutional arrangements and appointing maritime space to different activities and uses, if necessary (O.J. L. 257/135, Provision 10). The minimum requirements for MSP are taking into account land-sea interactions, environmental, social, and economic as well as safety aspects, promoting coherence of the plans with other relevant processes, ensuring the involvement of stakeholders, base the plans on the use of best available data and knowledge, ensuring trans-boundary cooperation with Member States affected by the national planning and promoting cooperation with third countries. Furthermore, the plans shall be reviewed at least every ten years in order to adjust them to maritime developments (O.J. L. 257/135, Art. 4-6). When establishing MSP, Member States shall have due regard to the particularities of the maritime space, relevant existing and future activities and uses and their impacts on the environment, as well as to natural resources. Thereby, they shall include or build on existing national policies, mechanisms and regulations, that have been established before the MSP Directive came into force, to the greatest extend possible as long as these are in conformity with the requirements of it (O.J. L. 257/135, Art. 4 6: Provision 12).

The overall process of MSP-making shall cover the full policy circle of "problem identification, information collection, decision-making, implementation, revision or updating, and the monitoring of implementation" (O.J. L. 257/135, Provision 18).

The Directive gives special regards to the organizing and addressing of land-sea interactions, public participation, data use and sharing as well as cooperation among Member States and with third countries.

Regarding land sea-interactions, the Directive obligates Member States to either handle it as parts of their MSP or through other formal or informal processes, such as integrated coastal management, and to reflect the outcomes of these processes in their maritime spatial plans (O.J. L. 257/135, Art. 7). According to provision 16, MSP can be a useful tool in determining orientations related to the preservation of the living environment, sustainable and integrated management of human activities at sea, as well as the fragility of coastal ecosystems. Therefore, MSP should aim to integrate the maritime dimension of coastal activities and uses and related impacts (O.J. L. 257/135, Provision 16). In terms of public participation, Member States shall establish means of realizing this by informing all interested parties and by consulting relevant stakeholders and authorities and the public concerned at an early and appropriate stage in the MSP-development. In addition to that, open access to the plans shall be given to relevant authorities and stakeholders as well as the public concerned once the plans are finalised (O.J. L. 257/135, Art. 9, Provision 21).

For using the best available data, Member States shall include environmental, economic and social information collected in accordance with relevant activities within the areas designated for MSP, as well as physical data about maritime waters. For that, Member States shall use relevant and effective instruments and tools (O.J. L. 257/135, Art. 10). In order to gather the up-to-date and best available data and information, Member States shall encourage the relevant stakeholders to share information (O.J. L. 257/135, Provision 24).

In regard to cooperation with Member States and third countries, cooperation shall happen with the aim of ensuring that plans are coherent and coordinated across the maritime regions concerned with taking into account issues of transnational nature. Cooperation shall be pursued through networks or structures of Member State's competent authorities and/or through existing regional institutional cooperation structures (O.J. L. 257/135, Art. 12, Provision 20).

Furthermore, the ecosystem-based approach is one of the fundamental principles, MSP should be based upon. The various pressures of human activities to the natural maritime environment should be handled and regulated within the plans, in order to ensure that the collective pressure of all activities is

kept within levels compatible with a good environmental status and the capacity of the maritime environment to respond to human-induced changes is not compromised. An ecosystem-based approach shall be applied in a way that is adapted to the specific environmental circumstances of such maritime areas, which are object of MSP (O.J. L. 257/135, Provisions 13-14).

In sum, successful compliance with the MSP Directive is established, if Sweden meets the requirements of legal implementation, designating competent authorities and realizes national MSP policy, which meets the Directive's provisions and minimum requirements. A summary of the obligations found with analysing the MSP Directive is provided in Table 2.

#### Table 2: Obligations of the MSP Directive

#### I. Significant deadlines

- bring into force the regulations, administrative provisions and laws necessary for compliance by 2016
- establish national maritime spatial plans by 2021

#### **II. Overall considerations**

- social, environmental and economic aspects
- support sustainable development in the maritime sector
- establish a framework for consistent, sustainable and evidence based decision-making
- setting up necessary institutional arrangements
- determining and designing the content and format of maritime spatial plans
- if necessary, appoint maritime space to different activities and uses
- include or build on existing national policies, mechanisms and regulations, that have been existing already before the Directive
- the process of MSP-making shall cover the full policy cycle

#### II. Minimum requirements for national maritime spatial plans

- take into account:
  - o land-sea interaction
  - o social, environmental, economic aspects
  - relevant existing and future activities and their impact on the environment and to natural resources
- base the plans on an ecosystem-based approach with using the best available data and knowledge, having regard to the particularities of the maritime space and the natural environment.
  - The various pressures of human activities shall be regulated within the plans
     With the aim to ensure a good environmental status
  - Planning shall be adapted to the specific environmental circumstances of maritime areas
  - Involve stakeholders at an early stage of developing MSPs

#### 5.2 The changes in Swedish law under the MSP Directive

The Swedish planning system is mainly found on the basis of the *Planning and Building act (PBL)* and the associated *Planning and Building Ordinance (PBF)*, which include provisions related to comprehensive municipal and regional planning, area regulations as well as provisions regarding plan development and implementation (SFS 2010:900) Another foundational law is the *Swedish Environmental Code (SEC)*, which constitutes environmental legislation aimed at promoting

sustainable development and serves as the key tool in Sweden for developing environmental policy (Swedish EPA 2018).

The PBL explicitly designates the planning of the use of all Swedish land and water areas to the responsibility of municipalities (SFS 2010:900). Chapter three of the PBL obligates the municipalities to establish comprehensive plans covering the entire respective areas under their authority, including sea areas. Although comprehensive plans are not legally binding, they must indicate orientation for the long-term development of the physical environment and include guidance for decisions on the use of land and water areas. While comprehensive plans are not legally binding, detailed plans or area regulations are indeed. These type of plans concern the use of particular land and sea areas within the municipalities. While comprehensive planning shall be used for developing long-term strategies for broader areas, detailed plans or area regulations shall serve the purpose of outlining and realizing certain projects, which can be related to building infrastructure, environmental protection measures and others (SFS 2010:900, Chapter 4 Section 1, 2, 6-17).

The PBL stipulates that both comprehensive plans and detailed plans or area regulations shall be based upon and include national interest, with regards to streamlining planning with national and regional goals, plans and programmes of significance for sustainable development (SFS 2010:900, chapter 3 sections 2-5, Chapter 4 section 42, Chapter 5 Section 14). National interest is defined in chapter 4 of the SEC and includes a wide variety of areas such as military interests, protected areas including MPAs, environmental protection, fishery, harbours and cultural important areas (SFS 2018:1427, Chapter 4 Section 1-7).

It falls on the municipalities to interpret and demonstrate how the various national interests are to be accommodated into their comprehensive and detailed plans or area regulations (PBL 2016, chapter 3 section 5, chapter 4). In case of prioritizing conflicts, national interest must always take precedence over all other interest including the municipal ones and priority shall be given to the purpose that is most likely to promote sustainable development of the physical environment (SEC Chapter 3 Section 10). Regarding sustainability and environmental standards for planning, all acting shall be based on the provisions of Chapter 5 of the SEC (SFS 2018:1427, Chapter 2 section 10).

Chapter 5 of the SEC designates that the government may issue rules with respect to the country as a whole or to certain geographical areas concerning the quality of the general environment in order to provide for lasting environmental protection and the well-being of human health. Furthermore, "the government may instruct a public authority to issue environmental quality standards arising out of Sweden's membership to the EU" (SFS 2018:1427, chapter 5 section 1). The same counts for adopting action programmes and plans arising from the EU membership (SFS 2018:1427, Chapter 5 section 5, 8). In addition to that, such action programmes shall be established if there is a necessity for compliance with an environmental quality standard. Action programmes may be include human activities that affect the levels of pollution or disturbance, and have regard to the measures to be taken to reach compliance with environmental quality standards.(SFS 2018:1427, Chapter 5 section 6). Section 2 of chapter 5 defines environmental quality standards with specifying "the levels of pollution or disturbance to which the population [or the environment] may be exposed". The levels specified in environmental quality standards shall indicate the maximum and minimum occurrence of chemical products and organisms that can serve as indicators of the state of the environment in water, air and ground as well as maximum levels for noise, light, radiation or other such impacts. (SFS 2018:1427, chapter 5 section 2). Any planning shall be based on environmental impact assessments, if the government decides that a planned activity is likely to have an impact (SFS 2018:1427, Chapter 6 section 1).

While the PBL gives no special regard to MSP and was not updated in parts to meet the requirements of the MSP Directive yet, it still serves as the foundation of organizing and designating the authority for planning Sweden's maritime areas (European MSP Platform 2018).

The SEC instead was adopted in 2015 after the MSP Directive came into force. Chapter 4 of it got additional section provisions, which designate the establishment of maritime spatial plans for the Gulf of Bothnia, the Baltic Sea as well as for Skagerrak/Kattegat, adopted by the Government. These plans will cover Sweden's EEZ and all areas in Swedish territorial waters from one nautical mile of the

baseline seawards that do not constitute private property. The marine spatial plan shall provide guidance to public authorities and municipalities in the planning and review of claims for the use of the areas covered by the plans. The SEC furtherly states that each of the three plans shall contribute to sustainable development. (SFS 2018:1427, chapter 4 section 10; European MSP Platform 2018). As MSP was not on the agenda before the MSP Directive came into force in 2014, Sweden not only had to adapt existing legislation, but also to create new one in order to meet the requirements for compliance. This was realized in 2015 with the *Maritime Spatial Planning Ordinance* (in the following referred to as "the Ordinance"). The Ordinance regulates the process of developing national MSPs for the three areas that are defined in chapter 4 of the SEC and contains provisions on geographical boundaries for these planning regions (SFS 2015:400, section 2). Moreover, the regulation contains provisions for the content of maritime spatial plans. In this sense, a spatial plan for maritime areas shall present the basics for the human use of a specific sea area, possible collisions of national interest and how incompatible or conflicting purposes of human use should be solved as well as clearly state the meaning and consequences of the sea-usage as planned (SFS 2015:400, Section 3-4).

Additionally, spatial plans shall be designed in ways that integrate economic, social and environmental goals and serve to achieving a good environmental status of the maritime environment with sustainably using the maritime resources, while at the same time promoting coexistence between different sectoral activities and the environment. Thereby, plans have to comply with chapter 3-4 of the SEC.

The Ordinance furtherly designates the responsibility for preparation, consultation and cooperation in the proposal processes as well as monitoring and review of the plans to the *Swedish Agency for Marine and Water Management (SwAM)*. While developing proposals for maritime spatial plans, SwAM shall draw from the support and input from national authorities, which have to provide supporting data for MSP.

The municipalities that may be affected by national MSPs must be given the possibility to participate in the proposal processes in order to include local and regional conditions and needs. In addition to that, SwAM shall promote cooperation with neighbouring countries and shall coordinate the Swedish MSPs with those of other states which may be affected by these plans (SFS 2015:400, Section 5-12) In fulfilling all these tasks, SwAM shall rely on the help and expertise of significant national authorities, if necessary (SFS 2015:400, Section 14-16). The Ordinance regulates the coordination of the MSPmaking process in detail and designates the tasks to all relevant state actors of the Swedish maritime governance system, which will be presented in the next section of this chapter.

#### Summary of changes in law

Summarizing the changes in Swedish law and jurisdiction under the MSP Directive, it turned out that the changes required to adapt the legal system in order to comply with the directive where different from law to law.

The PBL was not object to change regarding MSP. Although the law was adopted over the years, no regards to spatial planning can be found in the text and no change was made to the overall organization of planning maritime areas. Hence, the municipalities are still in a powerful position and their authority for planning land and maritime areas within their individual spheres of influence was not touched by change processes following the MSP Directive.

One amendment was added to the SEC in 2015. Chapter 4 of it got additional section provisions, which designate the establishment of maritime spatial plans for three areas in the Gulf of Bothnia, the Baltic and the North Sea.

Last but not least, the MSP Ordinance was adopted in 2015. This regulation designates how the contents of maritime spatial plans shall be organized, which Swedish authorities have to be involved in the process of MSP related policy making and how this should happen.

#### 5.3 Changes in administration and institutional authority

Before the MSP Directive came into force in 2014, MSP was not used as a planning approach within the maritime governance system. Based on a variety of legal mandates that add up to the laws which

are directly connected to MSP, there is a number of Swedish authorities involved in MSP besides SwAM. These authorities have a national sectoral planning responsibility, including in maritime areas. The legal mandates of these institutions are mostly related to identifying areas of national interest in different fields and to capacities for knowledge-based decision making (SwAM 2018).

SwAM gives an overview on its website regarding the overall level of involvement in MSP of each of these authorities.

*The Swedish national Board of Housing, Building and Planning (Boverket)* is responsible for the oversight of national interests and is designated as the managing authority for matters concerning the built environment and its management according to the PBL. Within the MSP process, Boverket is responsible for guiding municipalities in their efforts with spatial planning that may coincide with the national plans for Sweden's EEZs.

The *Swedish Environmental Protection Agency (EPA)* has overarching responsibilities regarding Sweden's environmental quality objectives and identifies areas of national interest with respect to outdoor recreation and conservation. In addition to this, EPA also funds maritime environmental research. Within the MSP process, EPA provides assistance for environmental impact assessment and takes part in communication of MSP related issues with the competent authorities abroad in affected Member States.

Other institutions supporting SwAM with knowledge on maritime issues regarding the environment and sectoral activities. These institutions are the *Geological Survey of Sweden (SGU)*, the *Swedish Institute for the Maritime Environment*, the *Swedish Meteorological and Hydrological Institute* (SMHI), Statistics Sweden (SCB) and the Swedish Marine Administration (SMA).

In addition to these supporting institutions, there is a number of authorities that either are aligned with competences or have to be consulted in parts of the MSP-making process. The *Swedish National Heritage Board* identifies areas of national interest related to the historic environment. The Board is consulted in matters of such environments that may be affected by renewable energy production, cabling and wiring as well as fishing. The *Swedish Energy Agency* on the other hand works for the use of renewable energy, improving technologies and the mitigation of climate change. This is connected to developing a sustainable energy system and identifying areas of national interest for energy production and distribution, including off-shore wind energy production and wave energy. In terms of sea traffic, the *Swedish Transport Administration* is tasked with developing long-term plans for transport systems and with identifying claims to areas of national interest for shipping. Last but not least, the *Swedish Armed Forces* hold a number of interests in maritime areas based on the purpose of upholding Sweden's territorial integrity and defending the country against future threats. (SwAM 2018).

#### Summary of changes in administration and institutional authority

The policy-analysis of changes in administration and institutional authority could not fully determine such changes, as no information was found on the significant circumstances before the MSP Directive came into force. Nevertheless it was found that as of today, the process of national MSP-making involves a large number of national governmental institutions besides SwAM, that have different roles and distinctive levels of competences within this process.

#### 5.4 Sweden's MSP policies

#### I. The status report of 2014

The Swedish process of developing MSPs started in 2014 when SwAM published a status report, in which a discussion is given on all maritime related issues that might have an impact on spatially planning Sweden's sea areas. These include maritime cultural heritage, recreation and tourism, commercial fishing, aquaculture, shipping, defence, energy, infrastructure, the extraction and storage of minerals, potential risks and influential factors for the environment, environmental monitoring as well as international matters (SwAM 2018 p. 46-154). The report also discusses whether or not certain

aspects and issues of maritime planning are suitable to be dealt with under the approach of MSP and which problems could emerge with introducing this new planning policy. Furthermore, the report gives an overview on the use of the sea and the current status of MSP of all states within closer range to Sweden. These include Denmark, Estonia, Finland, Latvia, Lithuania, Norway, Poland, Russia and Germany.

The report takes an ecosystem-based approach with identifying existing environmental issues that are persistent in all of the three planning areas, as well as analysing possible threats to the environment that could result from increasing human activities in Sweden's maritime areas. This is done on the basis of the best available data, which is presented throughout the whole report. The conclusions of the report can be analysed as seeing MSP mainly as a tool to contribute to the prevention of negative effects on the maritime environment, safeguarding the ecosystem and carefully choosing the instruments under which human activity could be increased, as some maritime activities can have negative effects on environmental goals. The report furtherly identifies that securing economic and social as well as ecological sustainability is a fundamental issue of MSP.

Furthermore, potential spatial conflicts are recognized for the activities of fishing, aquaculture and energy production as these interest cannot share the same space within the Swedish waters and could come into conflict with the natural values existing within all sea areas. Furthermore, the report recognizes that land-sea interaction is difficult to be handled within MSP regarding the reduction of environmental problems found in maritime areas caused by activities on land, which proves to be an issue that cannot be resolved through MSP.

In addition to environmental issues and usage conflicts, there is a special regard to potential conflicts rising from the intersecting areas of national and municipal planning. Figures 1 and 2 show maps taken from the report, in which the overlap of municipal and national planning areas is presented. The figures can be found in the Annex of this thesis. The overall average intersecting area of areas under the planning monopoly of the municipalities and the areas under national planning is 12 nautical miles. According to the report, this demands for increased coordination and a sharing of knowledge. While the report does not present actual solutions to the various problems and challenges that are identified within it, it can be categorized as a policy of "problem identification" and "information collection" in the overall MSP-policy making process in line with provision 18 of the MSP Directive. It includes the discussion of all aspects and minimum requirements of the Directive for future national maritime spatial plans.

#### II. The national Proposals for Maritime Spatial Plans

All of the three MSPs under development are identical in their structure. First of all, the national legal basis for their establishment is presented with regards to the MSP Ordinance and the Environmental Code. The Proposals have regard to the goals for sustainable development which shall be achieved through MSP, in accordance with the obligations of both national laws. Furtherly, there is a regard to the overall structure that maritime spatial plans shall take. These include maps and plan descriptions. The Maps and plan description presented in the proposals present the main outlines for the use of the maritime areas, the areas of national interest in accordance with chapter three of the Environmental Code as well as other public interests of material significance.

Furthermore, the aim and direction for the use of the planned areas, indications on how issues regarding incompatible purposes should be resolved as well as implications and consequences of the utilisation of maritime areas are presented. Each of the three proposal plans considers and discusses social, environmental and economic aspects under the aspects of increasing sustainable development and growth in the maritime sector. In doing so, certain maritime spaces are appointed to designated maritime activities and uses that are in line with national interests. Hence, Sweden chooses the MSP approach of designating priority areas. Nevertheless, the proposal plans recognize that certain activities can happen at the same time in certain areas, while others exclude each other. In order to achieve coexistence for certain types of activities and use, extensive adaption is required for some cases in all of the three planning areas. These fields include fishing, environmental protection.

Besides these aspects, all three plans take into account land-sea interaction, structure the involvement of the public and relevant stakeholders, regulate how the best available data and knowledge shall form the basis of decision making for planning, how cooperation with neighbouring states is organized. Furtherly, the plan proposals give regards to the overlapping responsibility between the municipalities and the national one. It is recognized that this is a problem in 65 municipalities. According to the plan proposals, ca. 20 municipalities have adopted comprehensive plans, in which standpoints are presented for planning the maritime areas under the municipal authorities.

In terms of applying the ecosystem-based approach, all information the plans are based upon is drawing from the environmental impact assessment tool *symphony*.

The plans differ in the details regarding the analysis of challenges that each of the three planning regions is facing. In this sense, they have regard to the particularities of the maritime space, for relevant existing and future activities and uses and their possible impact on each of the maritime environments.

In sum, it can be found that the proposal plans do not consist decisions on spatially planning the EEZ areas of the Gulf of Bothnia as well as the Baltic and the Northern Sea yet. There are well outlined approaches for planning based on scientific knowledge and analysis within the proposals, but these cannot be categorized as final decisions. Hence, they can be categorized as a pre-step to decision making within the overall policy-developing process for Sweden's national MSP (SwAM 2018).

#### III. Further policy of interest

#### 1. Information on consultation

SwAM is presenting further information through the institution's website on the consultation process that the country is currently at within the policy-making process of MSP. These concern both consulting with neighbouring countries and with national stakeholders and the general public. According to SwAM, all three proposed MSPs have been subject to consultation internationally from June to October 2018. Furthermore, contact details are presented for submitting input through a digital forum provided at the website of the institution. The three MSP proposal plans and plans for strategic environmental assessment in each of the planning areas are provided in English, Estonian, Finish, Latvian and Polish language (SwAM 2018).

Sweden takes part in further international consultation through a variety of international projects and forums, which were either existing before the MSP Directive came into force in 2014, or were established in order to deepen international cooperation for MSP after 2014 (SwAM 2018; European MSP Platform 2018).

These include NorthSEE, Baltic SCOPE, seaGIS and others. All of these projects had or have the aim of promoting consistence and coherence of maritime spatial plans across the European Sea basins, deepening cooperation amongst Member States and with third countries, the exchange of information, knowledge and data and to develop future strategies for aligning national MSPs to each other in cases where this is useful (European MSP Platform 2018).

For national consultation matters, SwAM conducted a total of 14 meetings in 2018, where a large number of planning-involved institutions and planning-affected stakeholders were consulted. Planning-involved institutions included municipalities and regional planning bodies in each of the three areas of national planning. Affected stakeholders included associations from the fields of national trade, the energy industry, the fishing and shipping sectors as well as nature and environment. Additionally, the general public was given the choice to give comments during consultation phase through an online forum provided by SwAM. At the moment, consultation is finished and SwAM is about to start with reviewing (SwAM 2018).

#### 2. Information on environmental impact assessment

Sweden is using its own tool for applying the eco-system based approach for MSP with *Symphony*, which serves as a mean to understand and illustrate the cumulative environmental impact of human use and activities on ecological values. According to SwAM, *Symphony* calculates the cumulative

impact to the environment from the sum or the average of all pressures' effect on all considered ecosystem values. The particular sensitivity of each ecosystem component to each pressure is accounted for. This calculation is done for every cell within the Swedish territorial waters and exclusive economic zone (EEZ) with a resolution of 250 by 250 meters. In doing so, *Symphony* develops distribution maps of ecosystem components, based on compilations of already existing data. These include about 25 different ecosystem components. The results can interpreted and recalculated for different plan options in order to compare alternatives and find plausible solutions, and are used iteratively in the planning process with the goal of developing sustainable national MSP (SwAM 2018).

#### Summary of changes in policy

The change to Swedish maritime policy was vast under the influence of complying with the MSP Directive. As no MSP-related policy was in place before the Directive came into force, Sweden had to develop new approaches for spatially planning each of the three designated areas. A further discussion of the changes in policy is given in Chapter 5 of this thesis.

#### 5.5 Interviews

Although the policy analysis contributed to answering the research question and a few challenges for compliance where detected, it could not fully contribute to the overall research approach of this thesis. In order to get more information on the policy-making process of national MSP and possible challenges for compliance with the MSP Directive, two interviews were conducted with a person involved in the organising of MSP-making at SwAM.

Interview 1 focused on possible problems that Sweden is facing with the planning objectives of the country's national maritime spatial plans under development, with the participation of stakeholders, with the contradicting planning authority of the municipalities and with how support through the European Union is seen from a Swedish perspective. Furthermore, questions considered how Sweden is building on the ecosystem-based approach in developing national MSP.

Interview 2 dealt with the progress of MSP development and with possible challenges or problems in any of the three planned areas, which might hinder Sweden from timely compliance with the MSP Directive. Further questions focused on the institutional organisation of MSP, with regards to the issue of overlapping municipal and national planning zones, and with regards to change in institutional organisation of planning maritime areas caused by the MSP Directive.

In parts of Interview 1, the dialogue partner was asked to discuss aspects that could hinder transposition, which were based on the literature review of Chapter 2 of this thesis. A few concerns were raised directly by the interview partner, while others resulted from the themes that where discussed within both interviews. All outcomes of the answers are considered within the cumulative findings of this thesis.

In the following, the cumulative outcomes of both interviews are presented in a structured way, starting with challenges to national MSP and followed by change processes within the institutional organizing of national MSP.

# 1. Challenges to national MSP

Challenges for national MSP were identified within issues regarding contradicting activities, incorporating the ecosystem-based approach, consultation with stakeholders, issues with municipalities, involving a high number of decision makers in the MSP-process and additional issues.

#### I. Issues regarding contradicting activities

The Swedish MSP will be organized in a way that designates areas of most relevant and fitting use for one or a low number of activities. These priority areas will be mainly based on the choice of national interest by the designated Swedish institutions. One conflict that was pointed out in the interview concerns striking a good balance of environmental protection and economically using the natural

resources at the same time. For example, Sweden has designated certain areas as MPAs, where rules for fishing are stricter than in other areas. The discussion of defining areas where fishing is allowed and not is usually a hit debate, but the overall conflict is only persistent in certain areas and is mostly solved locally. According to the interview partner, this is not seen as a general problem at the Swedish seas.

Nevertheless, the contradiction of increasing the Blue Economy, while simultaneously deepening protection of the seas and reducing the effects of climate change was pointed out as challenging. An example was given about increasing off-shore wind power to the ocean, which is beneficial for CO2 emissions, but on the other hand could produce additional emissions from shipping and fishing, which have to take longer ways in order to not cross sea areas designated for wind energy.

#### II. Planning on the ecosystem-based approach

The interview partner gave regard to the Swedish environmental impact assessment tool *Symphony*. The given statements were in line with the information provided through the webpages of SwAM, which can be found in chapter 5.3 II of this Thesis. In summary, with *Symphony* maps are produced, which take into account 41 pressures of human activities and 32 ecosystem components. These are combined to assess the environmental impact of every 250x250 meter square within the Swedish waters. Every each of these grid-cells gets a value for the different introduced pressures and components that can be combined and compared in order to assess the resulting environmental impact in a certain area. *Symphony* can be used for planning MSP related products like off-shore wind production. According to the interview partner, this assessment tool is outstanding within the North and Baltic Seas and no other Member State is using a comparable instrument, that is based on the same extend of data and knowledge as *Symphony*.

In addition to elaborating on environmental impact assessment, it was stated that Sweden's current MSP proposals are focusing a lot on environmental protection.

#### III. Consultation with stakeholders

The interview partner stated that Sweden has a strong inclusive culture with a lot of consultation for policy making. In regards to the MSP-making process, SwAM provides chances of public participation and consultation through the institutions websites. In addition to that, there are consultation meetings with relevant stakeholders. These take form in regional meetings and in sectoral meetings.

The regional meetings include important stakeholders of localities and regions that are affected by national MSPs. These include for example municipalities, small scale businesses and representatives from the tourism sector. Sectoral meetings include relevant stakeholders of the sectors of shipping, fishing and others.

According to the interview partner, consultations are mostly working in a good and informative way, but input from participants is lacking due to missing knowledge or interest about new planning approaches.

#### IV. Issues with municipalities

According to the interview partner, the Swedish municipalities have high levels of authority and planning competences within their territorial seas. There is a potential risk of municipal plans and national MSPs coming into conflict as the planning-subjected areas are overlapping in many cases. There is an average 11 nautical mile overlap between municipally planned sea areas and the national MSP. As the national MSP is not implemented, there is no issue yet but once it will enter into force, Sweden might face a situation where a municipality realizes a project within the overlapping sea zone that is not included in the national maritime spatial plans. Right now, there is only one example of a municipality that plans to establish an offshore wind farm within the overlapping zone. Within the national proposed MSP, the specific area where this project is planned is not designated as one for offshore energy production. As such a scenario has never been there before, SwAM is not sure on how to resolve it. According to the institution's legal assessment, the national MSP outraces the ones from the municipalities within the overlapping zones, unless the municipalities can prove to have very good

reason not to follow it. Nevertheless, the interview partner stated that neither the municipal guiding plans nor the national MSPs are legally binding in their character, but are seen as guiding policy. The only legally binding plans that exist within the legal framework for maritime planning are detailed plans that the municipalities can establish only for very small areas. And so far, there are no detailed planning being done in the seas at all, but only on land. Apart from the one mentioned case, there is no potential for conflicts of authority for planning yet. If any such conflict might emerge in the future, decision-making will probably be made on a case-to case basis with each affected and involved municipality.

Generally said, the issue of authority should not turn out to hinder Sweden from timely compliance with the Directive until its deadline in 2021 according to the interview partner.

With the newly established law of the Maritime Spatial Planning ordinance, national MSP surpasses the municipal ones.

Another problem concerning the municipalities was stated with acknowledging shortcomings in knowledge and capacities at the regional planning levels. Most Swedish municipalities see MSP as a rather unimportant topic on an already full agenda and do not have much knowledge on MSP or even the seas and related issues. The need for involving national, regional and local levels of governance was furtherly pointed out as a challenge for compliance.

#### V. Involving a high level of decision-makers in the MSP-Process

A challenge was pointed out regarding organizing decision-making while a high number of different institutions is involved in the MSP process. These include different departments at governmental levels from which all have different levels of political power, which reflect within the national priorities.

#### VI. Other issues

While the interview partner pointed out that there are no outstanding challenges regarding the planning objectives, that could hinder Sweden from timely compliance with the MSP Directive, it was stated that there is a possible challenge with regard to the political situation Sweden is facing right now. Elections happened recently and the elected parties could not agree on forming a new government until now. This could possible turn out to delay the compliance process. SwAM will deliver the final proposal for all three national maritime spatial plans to the government by the end of 2019. Until then, the government must be in order and be able to receive what SwAM will send them as well as to start their own process of decision making regarding the plans. If the process of government-forming will be delayed to such an extent that would go over SwAM's deadline to deliver the plan, it could turn out that the overall compliance process will be delayed as well. Furthermore, the political priorities of the new government could change drastically from the previous one, as the latter had a rather green-left attitude and the former might be aligned more right wing. This could also have an influence on the national MSP, as the current proposal plans are focusing a lot on environmental protection.

2. Changes in institutional responsibility for governing maritime areas triggered by the MSP Directive. The interview partner pointed out that before the MSP Directive came into force, responsibilities for governing different aspects of maritime issues were distributed across different institutions. The *Transport Agency* was in charge of shipping legislation and inspections. The following examples of authority for certain subjects of maritime governance were given:

The *Swedish Maritime Administration* was in charge of shipping routes and fairway maintenance as well as ice breaking. Regarding issues of the maritime environment, the *Swedish Environmental Protection Agency (EPA)* was in charge, while the *Swedish Coast Guard* was responsible for dealing with violations of compliance with environmental protection measures. *The Swedish Fisheries Agency* was in charge of fisheries.

In parts of planning authority, the municipalities had the full responsibility and the monopoly to plan the overall territorial seas of Sweden. But even though they had this mandate, the municipalities did carry it out only to a very little extend. When SwAM started to develop national MSP, only two municipalities actually had plans covering their territorial sea. Apart from that, spatial planning was only conducted for land areas but not for the sea.

National spatial land planning was coordinated by the *National Board of housing, building and planning (Boverket)*. As of today, the Board has a role for MSP in terms of organizing and dealing with land-sea interaction and harmonizing planning criteria.

After the MSP Directive was introduced, SwAM was designated as the coordinating and guiding authority for national MSP-making. The institution was founded by the parts of *EPA* and the *Swedish Fishery Agency*. In the position of coordinating, SwAM develops the overall basic approach for developing MSP and collects input from all institutions and authorities involved in this process and from such stakeholders that are affected by the outcomes of the national maritime spatial plans. SwAM is consulting *EPA* for providing information and data on MPAs that are localized within subjected areas of planning. The same happens with all other relevant institutions.

# 6. Discussion of cumulative Findings

#### 6.1 Policy and Institutional Misfit

After analysing the MSP Directive for its obligations and the Swedish level of compliance with them, a misfit can be localized at the designation of authority for developing MSPs proposed by the Directive and the actual situation in Sweden before the Directive came into force. The Directive states that it does not interfere with the Member States' competence for town and

The Directive states that it does not interfere with the Member States' competence for town and country planning, including any planning on coastal zones, nor that it shall not apply to those waters. On the other hand, the Directive obligates each Member State to designate the competent authority or authorities for establishing national MSPs. In Sweden, the municipalities had the monopoly to plan the overall territorial seas of Sweden before the Directive came into force. This monopoly is legally determined by the PBL, which explicitly designates the planning of all Swedish land and water areas to the responsibility of the municipalities. Although the PBL defines obligations for the municipalities to establish plans covering the entire respective areas under their authority, most of the municipalities only planned and still spatially plan their land areas, but not any sea areas except for a low number of exemptions. The MSP Directive has no regard to a situation like this, which poses an *institutional misfit* between the obligations of the Directive and the domestic situation it is applied at in Sweden. Hence, the national distribution of planning competences had to change in order to successfully comply with the MSP Directive.

On a national level, the responsibility to deal with maritime issues was split to a significantly high number of different institutions and spatial planning of maritime areas was not used as policy at all. According to the information that was discussed in the analysis, Sweden can be categorized as a highly decentralized Member State with many actors that have a say in MSP related decision-making, and power is distributed across the overall maritime governance system.

In order to adapt the system of maritime governance in Sweden, legal adaptions were made and new laws were formed, and changes were made to the institutional organisation of authority and responsibilities.

In addition to the *institutional misfit*, a misfit in policy could be recognized. This showed in the fact that Sweden did not spatially plan its sea areas at all before the MSP Directive came into force, and that entirely new policy had to be established, although it partly could base on existing mechanisms and tools (e.g. environmental assessment tools).

In the following, the cumulative findings are presented for change in national legislation, institutional organization, and change in policy.

#### 6.2 Change in national legislation

In Sweden, there are three national laws that were designated to consolidate the legal basis for MSP. These are the *Planning and Building Act (PBL)*, the *Swedish Environmental Code (SEC)* and the *Maritime Spatial Planning Ordinance*.

The PBL ordains the municipal planning monopoly and was not adapted in parts to meet the requirements of the MSP Directive. Nevertheless, there are references to the SEC for sustainability and environmental standards for planning. According to the PBL, all municipal planning acting shall be based on the provisions of Chapter 5 of the SEC. Within this chapter, the SEC gives room to the national government to instruct a public authority to issue environmental quality standards arising out of the membership of Sweden to the EU as well as for adopting action programmes and plans arising from this membership. Furthermore, chapter 5 of the SEC stipulates that any planning within Sweden shall be based on environmental impact assessment. In addition to that, the SEC regulates that national interest has precedence over the interest of municipalities.

While there was no change with significance for legal compliance with the MSP Directive was made to the PBL, the SEC got additional section provisions in 2015 after the Directive came into force. These adaptions designate the establishment of maritime spatial plans for the Gulf of Bothnia, the Baltic Sea and the North Sea. According to the additional provisions, these plans shall cover Sweden's EEZs.

Although the SEC forms a third of the legal foundation for MSP, the added provisions are rather vague in terms of describing how such spatial plans shall be structured and what these shall incorporate. According to the SEC, the national MSP shall provide guidance to public authorities and municipalities in the planning and review of claims for the use of the area covered by the plans, and that the plans shall contribute to sustainable development.

More detailed provisions were realized with establishing the MSP Ordinance in the same year of the adaptions to the SEC. The Ordinance regulates the process of developing national MSPs for each of the three areas, which are designated for spatial planning by the SEC.

The obligations of the Ordinance are in line with the minimum requirements for national MSP given in the MSP Directive.

It has regard to include social, economic, and environmental aspects, land-sea interaction, relevant existing and future activities at Sweden's sea areas, and solving conflicts of use and interest, and involving stakeholders at an early stage of developing the national plans. Further provisions for national MSP are to incorporate the ecosystem-based approach, evidence based decision making on the basis of using the best available data and supporting sustainable development.

Furthermore, the Ordinance appoints SwAM to take the responsibility for developing national MSP, including preparation, consultation, and cooperation in the proposal processes as well as monitoring and reviewing the plans once these are established. While developing MSP-proposals, SwAM shall draw from the support and input from national authorities, which have to provide supporting data for MSP. The ordinance explicitly designates which authorities shall be involved in the process and designates specific tasks to each of them.

In sum, the findings indicate that Sweden did adequately implement the Directive's provisions into national legislation. The legal bases distinguish the necessary institutional arrangements and point out requirements for MSP-making, which are in accordance with the minimum requirements of the MSP Directive for national maritime spatial plans.

Nevertheless, no regulation regarding the issue of the municipalities' planning monopoly could be recognized within the laws that were analysed.

#### 6.3 Changes in administration and institutional authority

Before the MSP Directive came into force in 2014, MSP was not used as a planning approach within the maritime governance system. Competences where rather dissimilated across different authorities for different sea-related uses and activities, and planning did not happen under a holistic approach. With the *Maritime Spatial Planning Ordinance*, SwAM was designated as the leading institution for national MSP. The overall process of developing MSP posed a challenge to integrate the work and responsibility of the various institutions that had responsibilities for such policy-fields that are now being governed under the holistic planning framework of MSP. A large number of governmental institutions was designated with determining and regulating areas of national interest within the Swedish sea areas in accordance with the SEC. The same institutions are now part of the overall

national MSP process.

Throughout both interviews that were conducted as parts of this thesis, it was stated that Sweden has a strong inclusive culture with a lot of consultation regarding political and administrational decision-making. As of today, SwAM has to integrate the input and work of ten other governmental institutions, from which some only are providing data and information that is being used to develop the national maritime spatial plans, while others have coordinating and decision-making functions for issues of maritime governance.

In addition to the changes in national maritime governance, the planning monopoly of the municipalities given by the PBL is being challenged by the introduction of national MSPs. Although there is only a low number of municipalities that actually do plan the sea territories under their authority, the municipal waters intersect with the areas of national MSP on an average of 12 nautical miles. This poses a future risk of conflict and poses a challenge for Swedish planning that has not been there before the MSP Directive came into force.

#### 6.4 Changes in Policy

In total, Sweden is developing three maritime spatial plans for the EEZ including areas in the Gulf of Bothnia, the Baltic Sea, and the North Sea.

As MSP was not used as a planning tool for maritime areas in Sweden before the MSP Directive came into force, the country had to establish entirely new maritime policies in order to meet the Directive's obligations.

This process started with a status report in 2014, in which challenges and possible problems for spatially planning Sweden's maritime areas were identified, and information was collected on the overall maritime environment and existing as well as future planned human activities and uses. A special regard was given to potential conflicts rising from the intersecting areas of national and municipal planning. According to the Report, this demands for increased coordination and a sharing of knowledge between the national authorities and the municipalities.

After identifying problems and collecting information with the Status Report, SwAM developed three proposal maritime spatial plans for each of the regions that were designated for national MSPs within the preceding legislation. Each of these proposal plans is structured in an equal manner. The proposals take into account the aim and direction for the uses of each planned area, indications on how multiple-use and activities can be organized and how incompatible purposes shall be resolved. In this sense, each plan considers social, environmental and economic aspects. Furtherly, the proposals take into account land-sea interaction, the involvement of stakeholders and the general public in the development of national MSP, cross-border cooperation and consultation with neighbouring states, the ecosystem-based approach and how the best available data and knowledge shall form the basis of decision-making for planning, and last but not least, the issue of overlapping areas of authority with the municipalities. Within the proposal plans, certain areas within the EEZs are designated for priority activities. Furthermore, each proposal plan outlines how planning in each of the three areas shall be adapted to the local circumstances of human activities, existing and future infrastructure as well as environmental circumstances.

In sum, this means that Sweden's proposal plans are meeting the requirements for national MSPs in line with the MSP Directive's obligations. More detailed information regarding the involvement of stakeholders and international consolidation, as well as on Sweden's environmental impact assessment tool *Symphony* indicates that these aspects of the Directive's obligations are also fulfilled.

#### 6.5 Challenges that Sweden is facing within the compliance process

Although the findings from analysing the legal and institutional change processes, as well as changes in national maritime policy indicated that Sweden is on a good way to fully comply with the MSP Directive until the set deadline of 2021, some challenges could be identified. These are presented in the next section.

#### I. Institutional and administrative issues

First of all, a misfit was detected between the ways in which the MSP Directive expects the distribution of authority for MSP within the Member States and the actual situation in Sweden. Consequently, the Swedish system of maritime governance had to adapt in order to enable compliance with the Directive. There were some adaptional costs and the overall responsibility for planning parts of the country's maritime areas was shifted from the municipalities to the national government. This resulted in an overlap of sea areas under the authority of the municipalities and such under the national MSP. As almost all municipalities did not plan their sea territories at all until today, conflicts did not emerge yet. This overall issue is recognized within the status report of 2014 and within the national proposal maritime spatial plans under development. Nevertheless, no means to solve possible conflicts of authority can be found within the analysed legal documents or policies, except for calling for increased coordination and knowledge-sharing. According to the findings from the interview, this issue is not seen as posing a risk for timely compliance with the Directive and possible conflicts will be probably decided on a case-by-case basis. Another challenge for compliance was identified in the form of shortcomings of knowledge and capacities. These can be localized within the consultation processes of the national MSPs, where some stakeholders and the municipalities have a limited awareness about what MSP actually is and see it as a rather unimportant theme on an already full agenda. This is also represented by the little input that some stakeholders provide to the planning process. In addition to that, the findings indicated that there is a high number of involved national institutions and authorities, as well as regional and local levels of governance, which makes decisionmaking and consent-finding a challenging issue for the national MSP-designated authority SwAM. The extent of changes required in national law did not turn out to being an obstacle for compliance. In addition to this, it turned out that uncertainties regarding the choice of legal options and policy were not an issue for complying with the directive.

#### II. Challenges connected to the obligations of the MSP Directive

Challenges could be detected within the Status Report of 2014 and through the conducted interviews. The Report identifies that integrating the securing of economic, social and the wellbeing of the environment poses a challenge. This was furtherly elaborated in Interview 1, where an example was given on the contradiction of establishing offshore-wind parks to reduce emission-production, which on the other hand could lead to increased carbon emissions with additional maritime traffic and fisheries having to circumnavigate areas where wind-parks are going to be established. Land-sea interaction was mentioned as another challenge for national MSP, as many environmental problems found at sea levels are caused by activities on land. The overall expectation that this issue could be handled through MSP was criticised within the Status Report.

In parts of Interview 1, it was mentioned that the subject matter of the Directive is complex and technically challenging, and that the provisions of the Directive are vaguely formulated. According to the interview partner, this might lead to differing interpretations across Member States and among the different Swedish institutions involved in the MSP process. The problem was identified as having regard to international companies that could face differing interpretations of the Directive's rules in different countries. An example was given on the windfarm area Krieger's Flak between Sweden, Denmark and Germany, where very different rules apply for basically the same area.

Within Interview 1, it was furtherly criticized that there is a lack of guidance from the EU in crossborder issues and conflicts. Cross-border issues are being handled within projects, but not through any direct forum or institution of the EU, neither has the EU published any policy or guidance for solving cross-border issues. Table 1.2 shows the framework for reasons for compliance problems drawn from the Theory Chapter of this thesis. Such issues that proved to have a challenging character in the overall Swedish compliance process are marked in red.

#### Table 1.2: Findings from the analysis



# Categorizing Sweden's degree of domestic change

Sweden had to substantially modify existing policies and the processes of institutional organization for maritime governance in the compliance process posed by the MSP Directive. Although aspects of the new policies and institutional organizing could build upon existing ones and laws were only altered to small extends, the newly introduced shift of authority for planning to a governmental authority did touch on the essential feature of the Swedish municipal planning autonomy and monopoly. As of today, this clash of responsibilities is not solved. The findings of this thesis indicate a high degree of domestic change, hence Sweden could be categorized as going to a process of transformation in accordance with the theory of Börzel and Risse (2003).

# 7. Conclusion

The overall research approach of this thesis was to analyse how successful Sweden is in implementing the MSP Directive. Successfulness was dependent on an adequate implementation of the Directive's provisions into national legislation, a change or adaption in the administrative system of the country's maritime governance as well as developing and realizing planning tools and policy for maritime areas in line with the obligations of the MSP Directive for national MSP.

As Sweden did not have any MSP considered as a planning approach for the country's maritime areas, it was assumed that the overall compliance progress with the MSP Directive could face certain problems, which were identified on the basis of MSP related challenges within existing literature of compliance theory. Parts of the analysis indicated, that Sweden is going through a process of intensive

domestic change with regards to the overall institutional organizing of maritime governance, policies as well as essential features and collective understandings attached to them. The findings indicate that Sweden could be categorized as going through a process of transformation in accordance with the existing theory, but nevertheless it must be stated that no comparison to other Member States could be made as parts of this thesis.

The main findings from the analysis indicate that certain aspects of assumed compliance problems are indeed present within the process of MSP-making in Sweden. For institutional and administrative issues, these combine the challenges of including a large number of decision-makers from national and local levels of governance, knowledge gaps at the different levels of administration and with stakeholders as well as adaptional necessities regarding the institutional settings of authority and inclusion of input from all such institutions, which had or have a mandate and designated tasks in the MSP process.

In terms of issues connected to the obligations of the MSP Directive, it was identified that the subject matter of the Directive is complex and technically challenging and that the provisions of the Directive are vague and lack clarity. This posed a risk of different turn-outs of actual national MSPs across the different Member States and to confusion at different planning levels within Sweden. In this sense, a lack of uniformity and guidance by the EU in cross-border planning issues was detected.

Furthermore, the analysis showed that parts of the Directive's obligations are seen as challenging to realize from a Swedish perspective, as these are perceived as being incompatible.

Nevertheless, none of the identified problems turned out to hinder Sweden from successful compliance with the MSP Directive until now. As of today, the Swedish MSP process can be localized at the point of decision-making. Consultation with stakeholders is finished and SwAM is currently reviewing the received input and feedback from consultation rounds.

As the country has not put into force any maritime spatial plans yet but only proposals, no conclusion can be made on whether or not compliance with the MSP Directive will be successful. This gets clear taking into account the issue of authority for planning maritime areas in regards to the overlap of sea areas under the planning mandate of the municipalities and such that are handled within the national MSP. In this regard, there is still a risk of conflict and the outcome of any such clash could not be determined within this thesis, nor could this thesis detect a national institutionalized framework for resolving this issue.

A further risk for compliance was found with a possible change of direction of the planning, as Sweden is in the process of forming a new government. In this regard, the future could bring a paradigm change in national politics, by which MSP could also be affected. The maritime spatial plan proposals of Sweden are focusing a lot on environmental protection and with a new government, this planning-priority could be shifted elsewhere.

The findings of this thesis indicate that Sweden is on a good way of complying with the Directive until its deadline of 2021. The country produced new legislation on MSP and adapted existing ones in order to meet the Directive's requirements. Furthermore, the proposal plans are in line with the minimum requirements for maritime spatial plans of the Directive.

Nevertheless, no final conclusion can be made on the success of Sweden in fully complying with the Directive. This will largely be dependent on the steps the country will take in implementing the plans and putting the national MSP into force within the next years until 2021. This bachelor thesis provided an overview and analysis on national change processes triggered by the MSP Directive happened until now.

Further research has to be done in order to determine whether or not Sweden is going to be able to do the steps necessary for full compliance and it is still an open question, if more adjustments have to be made to the Swedish legal and administrational framework of maritime governance. The outcome of national MSP policy is also still an unknown. Under the aspect that Sweden is still in the middle of its national MSP-making process, it is necessary for future research to observe the coming process in order to determine possible problems the country could face in regards to complying with the MSP Directive.

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# 8. Annex

#### **Tables**

Table 1: possible reasons for compliance problems

#### I. Institutional and administrative issues

- The institutional and administrational aspects of the Directive pose a policy and institutional misfit to domestic circumstances
- There are adaptational costs due to institutional and policy misfit
- The extent of changes required in national law for compliance
- Copy pasting of substantive parts of the Directive into national legislation
- There are shortcomings in knowledge and capacities (financial, human, knowledge) in the different levels of the administration
- There are uncertainties regarding the choice of policy and legal options to comply with the directive
- There is need for involvement of national, regional and local levels of governance

#### **II.** Issues connected to the obligations of the MSP Directive

- The provisions of the directive are vague or lack clarity
- The subject matter of the directive is complex and technically challenging
- (Parts of) the obligations disagree with one another
- The obligations are (in parts) challenging to realize

#### Table 1.2: Findings from the analysis

#### I. Institutional and administrative issues

-	The institutional and administrational aspects of the Directive
	pose a policy and institutional misfit to domestic circumstances
-	There are adaptational costs due to institutional and policy misfit
-	The extent of changes required in national law for compliance
-	There are shortcomings in knowledge and capacities (financial,
	human, knowledge) in the different levels of the administration
-	There are uncertainties regarding the choice of policy and legal options to comply with the directive
-	There is need for involvement of national, regional and local level
	of governance
Issu	es connected to the obligations of the MSP Directive

# II.

- The provisions of the directive are vague or lack clarity The subject matter of the directive is complex and technically challenging
- (Parts of) the obligations disagree with one another
- The obligations are (in parts) challenging to realize

#### I. Significant deadlines

- bring into force the regulations, administrative provisions and laws necessary for compliance by 2016
- establish national maritime spatial plans by 2021

#### **II. Overall considerations**

- social, environmental and economic aspects
- support sustainable development in the maritime sector
- establish a framework for consistent, sustainable and evidence based decision-making
- setting up necessary institutional arrangements
- determining and designing the content and format of maritime spatial plans
- if necessary, appoint maritime space to different activities and uses
- include or build on existing national policies, mechanisms and regulations, that have been existing already before the Directive
- the process of MSP-making shall cover the full policy cycle

#### II. Minimum requirements for national maritime spatial plans

- take into account:
  - o land-sea interaction
  - o social, environmental, economic aspects
  - relevant existing and future activities and their impact on the environment and to natural resources
- base the plans on an ecosystem-based approach with using the best available data and knowledge, having regard to the particularities of the maritime space and the natural environment.
  - The various pressures of human activities shall be regulated within the plans
     With the aim to ensure a good environmental status
  - Planning shall be adapted to the specific environmental circumstances of maritime areas
  - o Involve stakeholders at an early stage of developing MSPs

*Figure 1: The overlapping of national MSP and municipal areas, EEZ and coastal municipalities not bordering on MSP* 



*The figure was taken from the Swedish Current Status Report for Marine Spatial Planning (SwAM 2018, p.9)* 



Figure 2: Overlapping of planning areas and of international and national law and policy

*The Figure was taken from the Swedish Current Status Report for Marine Spatial Planning (SwAM 2018, p. 14)* 

#### Interviews

Interview 1 Date:18.06.2018 Time: 07:30-8:15am

#### **I. Interview Questions**

1. Which aspects of maritime spatial planning weight out the most for Sweden's current development of a spatial plan for its North Sea areas?

Fishing, marine protected areas and shipping (largest port in Sweden, Gothenburg, is here). Largest fishing is also on the West coast, as well as the only marine national park.

2. Which role does land-sea interaction play within the MSP plan of Sweden for its North Sea area?

I would say that would be the connection between fisheries and shipping to and from the ports. Sweden's largest ports are localized at the North Sea side of the country (Gothenburg).

The small ports at our North Sea facing side are important for the sectors of shipping and fisheries as well. Tourism plays another big role, especially because several natural reserves and archipelagos exist at our western coasts.

Apart from that, many jobs are dependent on all of these sectors.

# a. If there are conflicts, how are they treated within Sweden's current maritime spatial planning (for the North Sea)?

Of course there are always problems with the fishermen at MPAs and with striking a good balance of environmental protection and using nature's resources as well as pointing out the areas where fishing is allowed and areas that are protected. Sweden has different levels of protection for MPAs and in most of them it is actually allowed to do fishing commercially. The discussion of defining areas where fishing is allowed and not is usually a hot debate. But this problem is only persistent in certain areas and mostly solved locally, I do not see this as a general problem at our seas.

# Is there a change coming with the new MSP plan in this regard? For example, will there be different approaches to fishing quotes in MPAs with the new plan?

No not with this plan. But there's going to be a review on how to manage the MPAs and that will produce some additional rules for these areas. This inquiry is ongoing and I do not yet know how it exactly will turn out in the end. With stronger regulations of fishing in MPAs on the horizon, this conflict might be escalating.

# 3. How is Sweden including the required eco-system approach of the Directive 2014/89/EU in its MSP?

Via a continuous Symphony evaluation during planning phase. Symphony is the Swedish method for cumulative environmental impact assessment in certain areas. So we produce maps with taking into account 41 pressures and 32 ecosystem components that are combined to assess the environmental impact of every square of a 250x250 meters grid in the Swedish waters.

In this regard, every grid-cell of our waters gets a value for the different pressures and components, then we can combine and compare those values to see how big the environmental impact is in a certain area. We can use *Symphony* while planning MSP related projects (like off-shore wind production) to estimate possible environmental impacts e.g. for MPAs.

#### Do you know if other countries are using similar programs like that?

I know that at least in the North and Baltic Seas and as far as we know, nobody in the world is using a tool like that operationally. There are several tools like that available but Sweden is the only authority using it to such an extent.

#### Do you see chances to use this tool in cross-border projects like NorthSEE?

It's on the Agenda of several projects, to build and use such tools for bigger areas which also potentially are crossing sea-borders of neighbouring countries. Unfortunately, important data is usually missing for building impact assessment tools like that. Within projects, we are working to improve on this, but it will take a while.

# 4. The MSP plan of Sweden for its North Sea area is currently in its consultation phase. How are stakeholders engaged to participate in giving input? And where do you see problems/controversies in this matter (e.g. with municipalities)?

We have a pretty strong inclusive culture in Sweden with a lot of consultation. So partly we provide the usual chances of public participation and consulting (like websites), but we also have a lot of meetings. We have two consultation rounds of 30 meetings each year ( $\sim$ 30x2=60). These are:

1. Regional meetings where important stakeholders of localities are involved (e.g. municipalities, small scale businesses, tourist businesses) and

2. Sectoral meetings where important stakeholders of the sectors of shipping, fishing, etc. are involved.

My impression is that based on given feedback, these consultations are mostly working in good and informative ways. The meetings are good, people take time to come and sit down with us and ask questions. The only problem is a lack of input from participants. In think this is a result of many participants not preparing themselves with sufficient information.

There is one problem with the municipalities: The municipalities are very strong in Sweden. They have high levels of authority and planning competences within their territorial seas. Municipal plans and national MSPs may come into conflict as the planning-subjected areas are overlapping in many cases. There is on average an 11 nm (nautical mile) overlap between municipally planned sea areas and the national MSP. Right now the national plan is not implemented but should be seen as guiding. We do not have an issue yet but we might get one, once the national MSP is in force. For example, we might get a situation where a municipality realizes a project within the overlapping sea zone that is not included in the national plan. I think that conflicts will be decided on a case-by-case basis in the end.

# 5. In which ways is Sweden being supported by the EU in terms of compliance with the Directive 2014/89/EU? How would you rate this support?

The support we get is mainly through European MSP projects like NorthSEE and the European MSP platform, which is a good form of guidance where Member States can get a lot of information. The MSP platform gives good guidance and up-to-date information of all MSP related plans, actions and projects currently happening in Europe. The European MSP platform not only provides adequate information but also works as a forum. In this regard, stakeholder events and meetings are organized regularly all over Europe where not only sectoral stakeholders meet up, but also representatives of European Member States find chances of exchange of information and thoughts on MSP. The only problem is, that the European MSP platform is organized as a project. That means at one point, it will run out of money and apart from that, there is a given uncertainty on if or how the project will be updated within the coming years.

I would say that the support we get is adequate for realizing MSP-plans that the Directive requires. Apart from that, I would say that there is a need for guidance in cross-border issues and conflicts. There is not much guidance in that regard. Cross-border issues are being handled within projects, but not trough any direct forum of the European Union. The EU hasn't published any policy or guidance for solving cross-border issues or conflicts.

Guidance and information on the MSP Platform on the web. Support is adequate. MSP is very domestic in nature and the EU is of limited use, except guidance. What could be improved is how to handle cross-border issues and conflicts, as no policies and little guidance exists.

#### 6. How can cross-border projects like NorthSEE contribute to effective Maritime Spatial Planning?

In addition to solving and identifying cross-border issues I think it is very good that the people who are actually implementing a spatial plan get together and exchange thoughts on existing and planned projects informally. A lot of the more formally MSP meetings are happening at a political level, which means these are more strategically. The main advantage of informal meetings is that actual planners implementing MSPs get talking and compare notes and processes. This is a useful informal fora to identify and possibly solve cross-border issues and conflicts.

# II. Catalogue of transpositioning hurdles

These are potential hurdles to timely transposition. Please <u>mark red the components that you find most</u> <u>accurate to have an effect on transpositioning the Directive 2014/89/EU in Sweden</u>. If you can, please elaborate your answers furtherly.

# 1. Institutional and administrative issues

- The understanding or interpretation of a provision of EU law by the national authorities differs With the EU institutions understanding.
  - As the Directive is written quite vaguely, interpretation will differ among countries and by different institutions. As SwAM creates the national Swedish MSP, other national institutions have to adapt to our agencies rules and guidance, which makes interpretations much easier. It is more problematic for international interests, for example large energy companies and shipping, who face different interpretations of the rules in different countries, even neighboring. Best example is the windfarm area Krieger's flak between Denmark, Germany and Sweden, with very different rules for basically the same area. Similar to wind farm on the Dutch border with Belgium, I believe.
- Adaptational costs are high for institutions
- The extent of changes required in national law for compliance
- There are shortcomings in knowledge and capacities (financial, human) in the different levels (*please specify which ones*) of the administration
- There are uncertainties regarding the choice of policy and legal options to comply with the directive
- There is need for involvement of national, regional, local levels of governance.
  - Especially at the municipal level, there are great shortcomings in knowledge and human capacity. Most Swedish municipalities see this as another topic on an already full agenda, and do not have much knowledge on MSP or even the ocean.

#### 2. Issues connected to the obligations of the MSP Directive

- The provisions of the directive are vague or lack clarity
- The subject matter is complex and technically challenging.
  - A very wide topic with little national guidance. All countries are different and leads to different MSP processes. There is a lack of knowledge among most authorities about what MSP is, at least in the beginning.
- (Parts of) the obligations are seen as unimportant or irrelevant

#### The obligations are (in parts) challenging to realize

• The contradiction of increasing the Blue Economy, while simultaneously protecting more of the ocean is challenging. For example, adding more wind power to the ocean is beneficial for CO2 emissions, but may create additional emissions from shipping and fishing that have to go around the wind farms.

Interview 2 Date: 24.11.2018 Time: 02:00-02:24 pm

#### I. Questions regarding the progress of MSP and effectiveness

SwAM has divided the Swedish waters into the already mentioned three parts.

- a. Do the planning approaches for these three areas differ from each other?i. If yes, please elaborate differences in planning.
- They do not. We did strive to have the same planning process for all of the three areas simultaneously. The only difference regarding the approach is that we did cluster the physical meanings in one area/region at one time. There is rather a difference in the challenges that each region faces for spatially planning it, than a difference in the planning approach and organization. *How is the planning approach organized?*
- In the end, there will be designated areas of most relevant use for e.g. wind-farms or for environmental protection in the form of MPAs. These priority areas are mainly based on the choice of national interest from the designated Swedish institutions.
- b. Do you see outstanding challenges or problems in any of the three planning areas, which might hinder Sweden from timely compliance with *Directive 2014/89/EU*?
  i. If yes, please elaborate them furtherly.
- > I do not think that there are outstanding challenges regarding the planning objectives.
- > But there is a challenge for timely compliance in terms of the political situation that Sweden is facing right now. We just had elections and at the moment, we do not have a new government, as the elected parties could not agree on forming a government until now. This could possibly delay the process of complying with the directive. SwAM's task is to deliver the final proposal for the three MSPs to the government by the end of 2019. The government must of course be in order by that time, to be able to a) receive what we will send them, b) start their own process of decision making regarding the plans. If the process of the government-forming will be delayed to such an extent that would go over our deadline to deliver the plan, it could turn out that the overall compliance process will be delayed as well. Furthermore, if the political priorities change drastically from the previous government to the next government. The previous government had a rather green-left political attitude, whereas the new one will probably be more right wing. This could also have an influence on the overall alignment of our national MSP, as our current MSP proposals are focusing a lot on environmental protection. This could change with the new government. But currently, these are just assumptions and it all depends on the overall formation of a new government.

# **II.** Questions regarding the institutional organisation of MSP

- 1. Sweden has strong municipalities with the planning authority within their administrative borders including sea areas, while the Swedish government is responsible for planning the country's EEZs. On average, there is an 11 nm overlap between municipally planned sea areas and the national MSP.
  - a. How is this issue tackled by the responsible authorities?
  - In terms of hierarchy, all the authorities in Sweden are on the same level. So, if there is a conflict between two or more authorities, there is no clear hierarchy on who has the lead. Therefore, such problems have to be resolved either through negotiation or, if no agreement can be found, at the courts. And that would be for each individual case I guess. Nevertheless, I doubt that this would go to the courts and I think there rather will be some forms of compromise for such cases of conflict.
  - Right now, the national MSPs are not in force and once they will be, they will not be legally binding (just like the one of the municipalities). The national MSP and the overview plans of the municipalities are guiding, the detailed plans of the municipalities are binding. The binding plans, unlike the guiding plans, deal with very small areas within the planning authorities of the municipalities. So far, there is no detailed planning being done in the seas at all, but only on land.
  - There is one example of a municipality that plans to establish an offshore wind farm. This planning authority is currently in the phase of approval processes for the area. In the national plan, we are not discussing this area as a designated one for off shore energy production and this area lies within the overlapping zone. Such a scenario has never been there before and we are not really sure how to resolve it. According to our legal assessment, the national maritime spatial plans outraces the ones from the municipalities within the overlapping zones, unless the municipalities can prove to have very good reason not to follow it.
  - Apart from in this case, and generally said, there is no potential for conflicts of authority for planning, I do not think that this will hinder Sweden from timely complying with the Directive until 2021.
  - b. Does national planning takes precedence over municipally planning? E.g. if national interest is affected?
  - Yes. But this is also a new law, it was established in the Maritime spatial planning ordinance. It states that the national MSP surpasses the municipal ones.
- How did the Planning System for maritime areas adjust in terms of complying with *Directive* 2014/89/EU?

In terms of institutional authority and responsibility for carrying out MSP:

- i. Which institutions were responsible for governing Sweden's maritime areas **before** *Directive* 2014/89/EU came into force?
- I don't think anybody actually planned the seas at all. For governing the sea, the Transport Agency was in charge of shipping legislation and inspections. Swedish Maritime Administration was in charge of shipping routes and fairway maintenance, as well as ice breaking. The Swedish Environmental Protection Agency was in charge of the marine environment (before SwAM was founded in 2011). Swedish Coast

Guard was responsible for environmental compliance (oil spills and fisheries). Swedish Fisheries Agency was in charge of fisheries. Before the Directive came into force, the municipalities had the full responsibility and the monopoly to plan the overall territorial seas of Sweden. But even though they had this mandate, they never really done it. When we started to develop national MSP, I think only two municipalities actually had plans that covered their territorial sea. Apart from that, spatial planning was only made for land areas but not for the seas.

The national authority for coordinating land-planning was and still is the National Board of housing, building and planning (Boverket). The Board has a role for MSP in terms of organizing and dealing with land-sea interaction and harmonizing planning criteria.

# ii. Which institutions are responsible for governing maritime areas **now**? And which role does MSP have in this context?

SwAM is collecting input from all institutions and authorities involved in the MSP making process and from such stakeholders, that are affected by the outcomes of the plans. For example, SwAM is consulting the Swedish Environmental Protection Agency for providing information and data on MPAs that are localized within subjected areas of planning. The same happens with all other relevant actors. SwAM was founded by the marine parts of the EPA and the Fisheries Agency.

#### iii. Where do you see possible problems and issues in this change process?

- One challenge of organizing decision-making is related to the fact that a number of different institutions are involved in the MSP process. These include different departments at governmental levels and they all have different levels of political power. This reflects within the national priorities.
- For policy, it can be said that before the Directive came into force there was little coordination for overlapping areas of national interest and designated areas in the seas. Different uses and priorities overlapped. With developing national MSP, we have to make decisions which national interest outweighs the other one(s). Through MSP.