



Together for the Mediterranean:

Expert group meeting on harmonizing the
national legal and institutional framework
with ICZM Protocol

Minutes of the Meeting (Split, 18-19 May 2011)

MedPartnership /2011/EMR.2
MAP/Priority Actions Programme
Split, June 2011

“Together for the Mediterranean”

Expert group meeting on harmonizing the national legal and institutional framework with ICZM Protocol ¹

Split, 18-19 May 2011

Background information

The present expert group meeting was a preparatory meeting for the forthcoming MedPartnership Regional Workshop on harmonizing the national legal and institutional framework with the Protocol on Integrated Coastal Zone Management in the Mediterranean (ICZM Protocol). The ICZM Protocol was adopted in January 2008 by the Contracting Parties to the Barcelona Convention, being the first supra-national legal instrument aimed at coastal zone management. The detailed analysis and discussions on the Protocol's provisions are of crucial importance for creating the conditions for a successful implementation of the Protocol in various fields: the legal framework; capacity building (administrative and legal staff, etc.); the use of regional planning documents (cadastres, land-use plans, etc.); the integration of climate change issues, etc.

Attendance

The meeting was attended by 17 participants, including the representatives of IDDRI, GEF MedPartnership and PAP/RAC, as well as three invited experts. A complete list of participants is attached as Annex I to this report.

Dates and venue

The meeting started at 9.00 a.m. on 18 May and ended at 1.00 p.m. on 19 May. The meeting was held at the PAP/RAC premises in Split, Croatia. The Agenda of the meeting is attached as Annex II.

Objectives of the meeting

The objectives of the meeting were:

- to present and discuss the draft “Explanatory Guide on ICZM Protocol”;
- to present and discuss the draft “Analysis of the Croatian legal framework in face of the Mediterranean ICZM Protocol’s provisions”;
- to discuss the implications of the ICZM Protocol ratification on spatial planning systems; and
- to discuss the nature, scope and contents of the National ICZM Strategies and ICZM Plans.

¹ Strategic Partnership for the Mediterranean Large Marine Ecosystem (Med Partnership)

Regional Component: Implementation of agreed actions for the protection of the environmental resources of the Mediterranean Sea and its coastal areas

Component 1. Integrated approaches for the implementation of the SAPs and NAPs: ICZM, IWRM and management of coastal aquifers - Sub-component 1.2. ICZM

Agenda item 1: Opening of the meeting. Background and meeting objectives.

1. Mr. Marko Prem, PAP/RAC Director, a.i., opened the meeting in his role of the Chairman of the meeting and welcomed the participants on behalf of PAP/RAC. Having introduced the participants, he presented the background of the meeting, highlighting its objectives and the agenda. He also stressed the importance of the current PAP/RAC activities related to the ICZM Protocol, such as the development of National ICZM Strategies (NICZMs) and Action Plans, the ICZM Governance Platform, the preparation of the Explanatory guide, etc.

Agenda item 2: General presentation of the findings of the Protogizc project.

2. Mr. Raphaël Billé, IDDRI, Programme Director, Biodiversity and Adaptation, presented the overall findings of the Protogizc project and opened it for discussion. He said that the Protogizc was a 3-year project on “Challenges and opportunities for implementing the Protocol on ICZM in the Mediterranean” led by IDDRI and MADP Team in Sciences Po, concerning four case studies: Croatia, France, Italy and Syria. The main conclusion of the presentation is that the analysis of the ICZM Protocol is now sufficient for stakeholders to get familiar with it. Also, it was concluded that a formal compliance of national laws in light of the Protocol’s provisions is not likely to be a major issue in many Mediterranean States. The Protocol will help in harmonizing conflicting situations, and filling gaps where needed, but much will depend on what the States and stakeholders want to do with the Protocol. This presentation is attached as Annex III.
3. Regarding the analysis of the Protocol in light of the Community acquis, it seems that much of the Protocol is already provided for in the EU Law, but with significant room for interpretation. The next steps are to draw conclusions on: ICZM implementation; respective roles of the States and other stakeholders; the added-value of international law for ICZM; and on the replicability of the Mediterranean experience in other Regional Seas.
4. Mr. Ivica Trumbić, GEF MedPartnership Project Manager, noted that, at the beginning of discussion, everyone should be aware of the notes from the Nice Focal Points meeting (11 – 13 May 2011), where the question of legitimacy of the Explanatory Guide had been raised. He added that the participants of the Nice meeting had stressed the need to clarify if the Explanatory Guide was laid on a solid legal ground, if it needed consultations, approval, etc.
5. Mr. Michel Prieur, CRIDEAU Scientific Director, followed up with the question on how the documents on the legal scope of the Protocol’s provisions were connected to the Explanatory Guide. Mr. Prem and Ms. Željka Škaričić, PAP/RAC Senior Programme Officer, seconded that expressing uncertainty about the actual view on the unclear form in which the Explanatory Guide should be written. Mr. Prieur stated that the Explanatory Guide should be written clearly for non-lawyers, namely, for NGOs, engineers, various stakeholders, etc. A good example of that would be the

Explanatory Report written for the European Landscape Convention (<http://conventions.coe.int/treaty/en/Reports/Html/176.htm>)

6. Mr. Trumbić emphasized that there was no legal basis for the Explanatory Guide, i.e. that not every convention had it. The Explanatory Guide should be clear and affirmative with little room for different interpretations. He concluded by saying that the Protogizc was an analysis, not a guide, and that the Explanatory Guide should be more practical.
7. Mr. Brian Shipman, PAP/RAC Senior Consultant, and Mr. Prem agreed that the term “guidelines” was very sensitive, stating that: it could open many revisions; it was very technical; and that it called for something with many tools and details. Ms. Škaričić questioned whether the term “guide” should then be used after all. Mr. Trumbić called for future discussions on that subject.
8. Mr. Julien Rochette, IDDRI, Research Fellow, Oceans and Coastal Zones, stressed the vagueness of the term “common regional framework”, which was mentioned in the ICZM Protocol. Mr. Prem and Mr. Shipman confirmed that there were different interpretations of that term and that, currently, it represented a very sensitive issue.
9. Mr. Billé observed the common criticism by many people that there were often no connections between ICZM projects and eventual changes in managing the coasts. Mr. Trumbić highlighted that many international agreements were driven by various demonstration projects. The problem often lays in insufficient national funding because many people see the ICZM as a cost, and not as a benefit.
10. Mr. Trumbić pointed out that the major question was also about who implemented the Protocol or how to show the change after the implementation of the Protocol. He noted that a common problem, in Croatia for example, was that many spatial planners perceived the ICZM as a sort of equivalent to spatial planning.
11. Mr. Nenad Starc, Scientific Advisor, Institute of Economics, Zagreb, stressed that the problem in Croatia was not even in the perception of ICZM as a cost, but in the “proposed change”. According to Mr. Starc, the physical planning system in Croatia has been getting more and more rigid in last 50 years and was not really open for the introduction of a more contemporary approach.

Agenda item 3: Analysis of the Mediterranean ICZM Protocol: contents and legal scope of the key provisions. Discussion.

12. Mr. Rochette made a presentation on the “Analysis of the Mediterranean ICZM Protocol: contents and legal scope of the key provisions”. He explained that the analysis had been done in four different sections (consolidation of and support to sectoral policies relating to coastal zones; changes in coastal zones governance; use of strategic planning in coastal zones; and strengthening the regional co-operation), with the first three sections being the core of the ICZM Protocol. A distinction between binding and non-binding (“soft law”) provisions was elaborated. Among binding

provisions, a distinction between obligations of result and obligations of conduct was discussed as well. This presentation is attached as Annex IV.

13. Mr. Prieur questioned the structure of Protogizc reports because, according to him, they did not follow the structure of the Protocol, to which people are used to. Mr. Rochette tried to rationalize the new structure by showing its added value – a new light on the Protocol’s dimensions (legal dimensions, governance) which is not possible by solely reading the Protocol. Mr. Prieur emphasized that the evolution of the Protocol’s contents should be included in the Protogizc documents, and that special emphasis in those documents should also be on concrete individual decisions, not only on planning and managing. He pointed out that it should be a question whether the “soft law” term should be used at all. According to him, all articles of the Protocol should be referred to as binding; the difference is only in the degree of obligation. Mr. Shipman seconded that by stating that the EU Recommendation was “maybe not taken so seriously” because being referred to as the “soft law”.
14. Mr. Prieur also mentioned that the obligations of the States to communicate to the Secretariat should be covered in the Protogizc documents. He observed some differences in French and English versions of the documents (some substantial ones, not only linguistic).
15. Mr. Shipman highlighted the importance of discussing the geographical coverage of the landward part of coasts in the Protogizc documents.
16. The “common regional framework” issue gets to be discussed again. Ms. Škaričić stressed the frequent confusion regarding the terminology: “Mediterranean ICZM Strategy” or a “common regional framework”, “ICZM Plan” or a “coastal plan”, etc. Mr. Shipman said that the source of the confusion was usually the Article 17 because it leaves terms such as “common regional framework” and “NICZMS” open for different interpretations. Mr. Billé and Mr. Rochette agreed that there was no reason to have a common regional framework as a document since everything was covered in the ICZM Protocol. Ms. Škaričić and Mr. Shipman proposed that maybe a common regional framework could be a part of the Mediterranean Strategy for Sustainable Development (MSSD), with a highlighted ICZM component.
17. Regarding the NICZMS, Mr. Trumbić and Mr. Billé agreed that those should not follow a strict form. It should be a sort of consensus, with more emphasis on implementation and support. Mr. Starc noted that there is over a hundred national strategies existing in Croatia with almost none being implemented. Mr. Shipman said that, in the case of the Protocol, reporting on implementation of NICZMS was required.

Agenda item 4: The Mediterranean ICZM Protocol in face of the EU law. Discussion.

18. Mr. Matthiew Wemaëre, IDDRI, had the presentation on “The Mediterranean ICZM Protocol in face of the EU law” *via* Skype. Many issues were presented, such as: the

articulation of the ICZM Protocol with the EU Law; the level of commitments and related legal obligations for the EU and its Member States under the ICZM Protocol; checking whether the EU Law is sufficient to ensure the application of the ICZM Protocol; identifying EU actions to implement the ICZM Protocol; etc. The ICZM Protocol, once it enters into force, is inferior to the primary EU Laws (Treaties) but superior to the secondary EU Laws (Directives, Regulations, Decisions). Although many pieces of the EU legislation are relevant for the implementation of the ICZM Protocol, the ICZM Protocol covers a broad range of provisions which must be implemented by different levels of intervention (subsidiarity). The EU *acquis* does not provide sufficient measures to implement the whole ICZM Protocol, such as for the establishment of zones where construction is not allowed (Article 8). This presentation is attached as Annex V.

19. During the discussion that followed Mr. Wemaëre's presentation, Mr. Shipman brought up the issue of coherence of EU policies with the ICZM Protocol, especially from the sectoral point of view, since in some sectors, such as fisheries and agriculture, there may even be conflicting situations. Mr. Wemaëre said that this stressed out the need to consolidate the ICZM Protocol with the EU Policies and that the NICZMS could do it on a national level. Mr. Prieur and Mr. Wemaëre pointed at the sensitive issues regarding the EU viewpoint on the Protocol, for example: Is the Protocol seen as an environmental or planning issue by the EU? The Article 191 of the Treaty on the Functioning of the European Union (TFEU) could be crucial for implementing the ICZM Protocol on the EU level.

Agenda item 5: Analysis of the Croatian legal framework in face of the Mediterranean ICZM Protocol's provisions. Discussion.

1. Mr. Rochette presented the "Analysis of the Croatian legal framework in face of the Mediterranean ICZM Protocol's provisions". Since the 2000s, the development of environmental law in Croatia was in the framework of the accession to the EU. He said that the Croatian legal system was mostly compliant with the ICZM Protocol's provisions, except for some provisions (there is nothing about natural risks and adaptation to climate change, no ICZM Strategy, etc.). He concluded that the compliance "looked good on the paper" but that there was a strong need to assess the effective implementation of legal provisions and to assess the actual integration of the coastal system. This presentation is attached as Annex VI.
2. During the discussion, Ms. Marina Marković, PAP/RAC Programme Officer, raised the issue of a questionable translation of some Croatian Acts and Policies. She also advised to include some other acts in the analysis, such as the Islands Act.
3. Mr Shipman stressed that EU funding programmes for regional development under the Cohesion Funds, rural development and agriculture under the Common Agricultural Policy, and other areas, will be main drivers of change in coastal regions both during and after EU Accession - but they are too often overlooked. According to the EU Regulations, all programmes and their implementation must be consistent with the maintenance or improvement of environmental quality. All funding programmes require agreed national and regional programming documents, such as the National

Strategic Reference Framework for Structural Funds or the so called "second pillar of the Rural Development Policy of the CAP. All such programming documents should be investigated to assess their potential impacts and seek positive benefits in coastal areas in accordance with Articles 9 (Economic activities) & 21 (Economic, financial and fiscal instruments) of the Protocol. In contrast to previous regional development plans, the EU programmes have pre-allocated funding streams a real and real means to deliver change and, as 'contracts between the Member States, The EU and other actors, will be subject to close scrutiny of delivery. They therefore they deserve major attention.

4. Mr. Starc noted that the regional development strategies could lean on more local projects (proposed by municipalities, for example) – a sort of a “bottom-up” approach, but with a strong “top-down” control. He also emphasized the importance of education among users. He mentioned examples of Croatian islands where users had not fully understood the concept of sustainability and were ready to vote for some questionable actions such as higher buildings, for example.
5. Ms. Marković mentioned the issue of compliance of Article 8 of the Protocol with a similar Croatian law (on construction in coastal zones). Mr. Rochette and Mr. Billé agreed that there was vagueness of the Croatian law in relation to what kind of construction was allowed in the coastal zone. The participants agreed that the vagueness of some terms such as “construction” (Mr. Berlengi) and “public interest” (Mr. Prem and Ms. Škaričić) could be a problem, or even be prone to be abused. Mr. Prieur said that it was the matter of the States’ interpretation. Ms. Marković agreed, but also added that PAP/RAC should provide assistance in clarifying such issues. Ms. Škaričić noted that the “hints” on what those terms actually cover should be highlighted in the documents such as the Protogizc ones. Mr. Prieur agreed, but emphasized that PAP/RAC should push the vision of what those terms should cover, but not go into too much detail.
6. The Aarhus Convention was mentioned as a guide to be used for elaborating in more detail the issue of participation. Mr. Prieur highlighted that the role of NGOs and public participation in general was really clearly covered in the Conference of the Contracting Parties to the Barcelona Convention (UNEP/MAP), held in Marrakech, Morocco, on 3-5 November 2009.
7. Mr. Prem stressed the need to deal with possible transboundary issues. Mr. Prieur said that PAP/RAC was obliged to provide some guidelines on such issues, as stated in Article 29 of the ICZM Protocol.
8. Ms. Daria Povh Škugor, PAP/RAC Programme Officer, raised the issue of sectoral laws and potential conflicts between them. She said that mainstreaming into sectors was essential, and provided the Convention on Biological Diversity (CBD) as a good example. Mr. Shipman agreed and added that the ICZM Protocol tried to go beyond sectoral conflicts by using the ecosystem approach.

Agenda item 6: Reflections on the Croatian and Montenegrin experiences related to public participation and spatial planning. Discussion.

9. Mr. Gojko Berleghi, COAST Project Manager, and Mr. Starc made presentations on “Reflections on the Croatian and Montenegrin experiences related to public participation and spatial planning”. They both agreed that, although the compliance of the Protocol and Croatian legal systems seemed pretty harmonious, in reality, there was a very weak enforcement, (almost) inexistent horizontal co-ordination, inefficient vertical co-ordination, participation in traces and no integration. As regards the Montenegrin experience, the coastal management context is similar to the one in Croatia with a pronounced lack of practical implementation of legal provisions which practically led to a “collapse” of the planning system. The need was stressed for the adoption of the State Location Studies. These presentations are attached as Annex VII and VIII.

Agenda item 7: The effective integration of coastal ecosystems. Discussion.

10. At 9 a.m. on 19 May, Mr. Prem opened the second day of the meeting by presenting the topics that were to be discussed.
11. Mr. Billé had the presentation on “The effective integration of coastal systems”. He pointed out that despite many valuable efforts, the ICZM evaluation still remained a challenge. He stressed the need for shifting the focus from ICZM projects and coastal-related laws to coastal management systems. He added that, firstly, environmental issues and use conflicts needed to be recognized (with the help of qualitative and quantitative indicators). Subsequently, he continued, comes the detection of available instruments that may contribute to better integration and application of such instruments. Lastly comes the analysis of how integrated the coastal zone management is. This presentation is attached as Annex IX.
12. Mr. Prem noted that the Guidelines for NICZMS, as well as the PEGASO Project, were going through a similar process as the one given in the presentation. Mr. Shipman agreed, but also highlighted the crucial difference, stating that Mr. Billé had referred to the existing state while the NICZMS were trying to “create a state”. He advised Mr. Billé to include the Orders of Outcome into his analysis. Mr. Billé replied that he was aware of the importance of the Orders of Outcome, but that it was more a linear process which the ICZM should not be. Mr. Shipman agreed, but said that the Orders of Outcome were good in showing “where you are” in the ICZM process. Mr. Berleghi noted that the issue-driven approach had usually shown to be the most practical approach. He concluded by saying that it was critical to see what the real root causes of the problem were and that a good thorough social assessment on that was essential.
13. Ms. Povh pointed out that, apart from illegal actions in coastal zones, there were problems with some legal sectoral provisions which could be harmful for ICZM (some fisheries, agriculture, tourism acts, etc.). Mr. Billé and Mr. Rochette agreed on that, but also said that the sectoral legal analysis was very challenging and difficult and that it would take “the whole thing too far”. In conclusion, Ms. Marković added that the sectoral assessment could be emphasized in the NICZMS, maybe in the form of a recommendation.

Agenda item 8: Discussion on the nature, scope and contents of National ICZM Strategies and Plans.

14. Mr. Shipman presented the Guidelines for the National ICZM Strategies (NICZMS) and elaborated on their proposed contents, including 9 steps: endorsement; a brief introduction; governance structure and participation; vision; analysis and objectives; priorities for the coastal zone; means of implementation; proposal for subsidiary coastal plans and programmes; and monitoring and evaluation. Thereafter, the discussion on NICZMS was opened.
15. Mr. Prieur commented on the Guidelines, pointing out that the National ICZM Strategy should be more than a Protocol and seen as “a way to move forward”. Further, he suggested that somewhere in the Introduction of the National ICZM Strategy, the compliance with the Protocol should be discussed (a sort of internal evaluation).
16. Mr. Starc wanted to know whether the finances for the implementation of NICZMS would be discussed. Mr. Shipman replied that those should be covered in the “Means and Implementation” section. Mr. Starc added that capacity building for institutions on implementing the National Strategy should be elaborated somewhere in the text.
17. Mr. Rochette questioned the actual “placement” of the NICZMS document, asking where it should be and whether it should be included in the Marine Strategy. Mr. Shipman disagreed with the idea of including it in the Marine Strategy, stating that the NICZMS should stand alone as a separate document. If the NICZMS is to be included somewhere, he concluded, it should be in the National Sustainable Development Strategy. Mr. Prieur and Mr. Prem agreed that the NICZMS should be a self-standing document.
18. Mr. Prieur highlighted the importance of including legal indicators in the Monitoring and Evaluation process.
19. Ms. Povh and Mr. Prieur agreed that in the Article 18 terms National Coastal Strategies and National Strategy for ICZM were used as synonyms.

Agenda item 9: Discussion on the nature, scope and contents of National ICZM Strategies and Plans (cont.).

20. Mr. Shipman presented the ICZM Process as an introduction to the discussion on the contents of National ICZM Action Plans.
21. At the beginning of the discussion, Mr. Prieur noted that the Strategic Environmental Assessment (SEA) should not be forgotten in Action Plans.
22. Mr. Berlengi added that the Plans should improve the quality of integration (which is lacking between sectors and institutions), the quality of participation, etc. He concluded by stressing the importance of avoiding duplication with Spatial Planning. Mr. Starc stressed that Spatial Planning was quite static and passive, although it includes land use and environmental protection. However, he said, Spatial Planning, unlike ICZM, does not include a proactive component – attracting proper investors,

managing activities, collaboration, mainstreaming, etc. Ms. Škaričić pointed out that the Plans would be different from one another anyway, so that the establishment of an ICZM Process should be more emphasized rather than creating some sort of strict rules for the contents. Ms. Marković said that the Strategy should contain: a root causes analysis; links with other sectors and ways of mainstreaming ICZM to other sectors (Article 9); contribution of ICZM to rationalization of resources; governance; etc.

Agenda item 10: Conclusions related to the “Analysis of the Mediterranean ICZM Protocol: At the crossroads between the rationality of provisions and the logic of negotiations” and “Analysis of the legal scope of the provisions of the Mediterranean ICZM Protocol”

23. Mr. Prem presented the Conclusions related to the analysis of the contents and legal scope of the key provisions as follows:

- Both documents are well prepared and innovative in the methodology and approach used for the analysis. Although the structure of the documents is different from the one used in the Protocol, they make a very solid basis to be used for the PAP/RAC purposes, i.e. for the preparation of “An Introduction to legal and technical aspects of the ICZM Protocol“. This document is needed. The appropriate term is to be proposed.
- Proposals for the improvement of the documents: (i.e. to strengthen some issues or make additions on the following):
 - Underline the notion of the integration as the main objective of the Protocol;
 - Territorial scope (Article 3, territorial integration, land-sea);
 - Importance of the local level for the coastal zone management, vertical integration, implementation, delivery of ICZM;
 - Check if all other provisions are analysed/taken into account;
 - With regard to the legal scope and the use of the soft law term, it should be pointed out that all Protocol provisions are binding. It is just the degree of obligation that is different;
 - Point out requirements to provide information to the Secretariat;
 - With regard to the Mediterranean ICZM Strategy: propose possible options (a self-standing document, integration with MSSD or alike);
 - To elaborate in more detail on the following:
 - Construction - give at least a basic definition (take Articles 5 and 6 into account);
 - Public interest;
 - Participation (Aarhus Convention);
 - Some good practices / examples would be useful if added.
- Merge both documents into one and add annexes (Report on Article 8 - setback, and Report on EU law).

Agenda item 11: Conclusions related to the Analysis of the Croatian legal framework.

24. Ms. Marković presented the Conclusions related to the “Analysis of the Croatian legal framework in face of the Mediterranean ICZM Protocol’s provisions”, as follows:

- In some parts of the document, translation of the laws should be improved;
- The Draft Strategy on Climate Change (2008) should be taken into consideration;
- When mentioning indicators, more reference should be put on the National List of Indicators (Agency for Environmental Protection);
- Also, a slight change could be made when mentioning the “carrying capacity” as this concept is not inexistent in Croatia, in particular in relation to some strategic documents;
- An appropriate change in the text should be made in accordance to the fact that the Marine Protection Strategy is requested by the Marine Strategy Framework Directive;
- In relation to the implications of the Article 8, it has been recommended to further consult spatial planners (e.g. Mr. Gojko Berlenji) to give a precise explanation of the articles related to PCA.

25. Based on the experiences gained from the national case studies, the national experts (Mr. Berlenji / Mr. Starc) recommended that several points be taken into consideration in the National ICZM Strategy, as follows:

- Identify root causes of problems;
- Establish links with other sectors and find ways of mainstreaming the ICZM in other sectors;
- Make recommendations of appropriate (legitimate) governance mechanisms;
- Focus on showing the benefits of ICZM, in particular in terms of rationalisation of costs and administrative mechanisms.

Agenda item 12: Closure of the meeting

26. At 1.00 p.m. on 19 May, Mr. Prem declared the meeting closed.



Annex I

List of participants

IDDRI

Mr. Raphaël BILLÉ, Programme Director, Biodiversity and Adaptation
Ms. Océane MARCONE, Coastal Management Intern
Mr. Julien ROCHETTE, Research Fellow, Oceans and Coastal Zones
Mr. Matthieu WEMAËRE, Permanent Representative of IDDRI to European Institutions in Brussels (via Skype from Brussels)

GEF MedPartnership

Mr. Ivica TRUMBIC, Project Manager

PAP/RAC

Ms. Branka BARIĆ, Programme Officer
Ms. Veronique EVERS, ICZM Junior Consultant
Ms. Marina MARKOVIĆ, Programme Officer
Ms. Daria POVH ŠKUGOR, Programme Officer
Mr. Marko PREM, Director a.i.
Mr. Ivan SEKOVSKI, ICZM Junior Consultant
Mr. Brian SHIPMAN, PAP/RAC Senior Consultant
Mr. Neven STIPIKA, Programme Officer
Ms. Željka ŠKARIČIĆ, Senior Programme Officer

Invited experts:

Mr. Gojko BERLENGI, COAST Project Manager
Mr. Michel PRIEUR, CRIDEAU Scientific Director, Professor Emeritus
Mr. Nenad STARC, Scientific Advisor, Institute of Economics, Zagreb

Annex II Agenda

18 May 2011

Opening of the Meeting (Mr. Marko Prem, PAP/RAC)	9:00 - 9:10
Background and Meeting objectives (Mr. Marko Prem, PAP/RAC)	9:10 - 9:20
General presentation of the findings of the Protogizc project (Mr. Raphaël Billé, IDDRI)	9:20 – 9:40
“Analysis of the Mediterranean ICZM Protocol: contents and legal scope of the key provisions”. Discussion (Mr. Julien Rochette, IDDRI)	09:40 -11:00
Continuation - “Analysis of the Mediterranean ICZM Protocol: contents and legal scope of the key provisions”	11:15 -12:15
The Mediterranean ICZM Protocol in face of the EU law. Discussion (Mr. Matthieu Wemaëre, IDDRI)	12:15 - 13:00
Analysis of the Croatian legal framework in face of the Mediterranean ICZM Protocol’s provisions (Mr. Julien Rochette, IDDRI)	14:30 – 14:50
Reflections on the Croatian and Montenegrin experiences related to public participation and spatial planning (Mr. Nenad Starc and Mr. Gojko Berlengi)	14:50 – 15:20
Discussion	15:20 - 17:00
Closure of the 1 st day	17:00

19 May 2011

The effective integration of coastal systems (Mr. Raphaël Billé, IDDRI)	09:00 – 09:20
Discussion	09:20 – 09:40
Discussion on the nature, scope and contents of National ICZM Strategies	09:40 – 11:00
Discussion on the nature, scope and contents of ICZM Plans	11:15 – 12:30
Conclusions related to the Analysis of the contents and legal scope of the key provisions (Mr. Marko Prem, PAP/RAC)	12:30 – 12:45
Conclusions related to the Analysis of the Croatian legal framework (Mr. Marina Marković, PAP/RAC)	12:45 -13:00
Closure of the meeting	13:00

Annex III

The Protogizc project: Introduction and early findings

by Mr Raphaël Billé

IDDRI SciencesPo. **Programme Liteau** Science & gouvernance en appui au développement durable du littoral. **SECURITY STRATEGIC PROGRAMME**

The Protogizc project: Introduction and early findings

Split, 18 May 2011

Raphaël Billé, IDDRI

Institut du développement durable et des relations internationales
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Presentation outline

1. Origins and introduction to the project
2. Main achievements so far
3. Early findings
4. The way forward

IDDRI Réunion MAEE 2

1. ORIGINS AND INTRODUCTION TO THE PROJECT

IDDRI Réunion MAEE 3

Origins of the project

Early interest / scepticism (negotiation process):

- A major innovation in international environmental law?
- A major innovation for ICZM, especially in the project proliferation context?
- Or the latest avatar of the Mediterranean bureaucracy?

Enthusiasm / scepticism on promises

To what extent may the Protocol actually *change* the way Mediterranean coasts are managed? How? Where? Under which conditions on what?

More broadly:

- What lessons can be learnt for ICZM implementation in general?
- Should ICZM Protocols be developed in other regional seas?

IDDRI Réunion MAEE 4

Introduction

A 3-year project on "Challenges and opportunities for implementing the Protocol on ICZM in the Mediterranean"

Team: IDDRI + MADP Team in Sciences Po

Disciplines: Law, Political Sciences, Management Sciences

Case studies:

- Croatia, France, Italy and Syria
- All have signed the Protocol
- A fair combination of crucial patterns for ICZM: level of development, structure of the State, EU, democracy, access to justice, role of NGOs...

IDDRI Réunion MAEE 5

Key objectives and case studies

Objectives:

- Analysis of the protocol
- Analysis of implementation perspectives, in light of particular national circumstances
- Applied research aiming at favouring an ambitious implementation of the Protocol

Key issues /starting points

- An international legal text is the result of a negotiation process
- Difficult to decipher: numerous articles, referring to other instruments, with editorial nuances
- Binding by definition, but may contain soft-law provisions
- Implementation to happen in very contrasted contexts (cf. supra)
- Lack of enforcement of international/national laws
- What can international law do about urban and regional planning, institutional coordination or stakeholder participation?
- Beyond States, what role for other stakeholders – regional authorities, sectoral administrations, civil society, etc. – whose involvement is at the core of the ICZM doctrine?

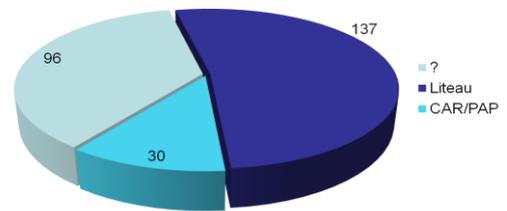
IDDRI Réunion MAEE 6

Methodology

- Based on bibliography (scientific + legal texts) and interviews
- Analysis of the Protocol:
 - Meaning + legal scope of provisions
 - The Protocol in face of EU Law
- Analysis of national coastal-related laws in light of the Protocol
- Analysis of actual coastal management systems (degree of integration, beyond coastal-related laws and ICZM projects)
- Implementation perspectives and recommendations

Funding

Project budget: 260 k€



Key project partners

Country / Macro-region	Institution	Expert
Croatia	Environment Ministry	M. Mance Kowalsky
	Coastal Conservancy	P. Bougeant / F. Bernard
France	National Assembly – National Agency for marine protected areas - Coastal Conservancy	J. Bigon
	Languedoc-Roussillon Region / Narbonne Regional Park	T. Lanieste
	Corsica Region / Office of the environment of Corsica	G.F. Prizoni
Italy	Environment Ministry	O. Montanaro
	Sardinia Coastal Conservancy	A. Satta
	Liguria Region	C. Artom
Mediterranean	UNEP-MAP / RAC-PAP	M. Prem
	UNEP-MAP / Coordinating Unit	T. Hema
	UNEP-GEF / LME project	I. Trumbic
	IUCN / Mediterranean Centre	A. Jesdy de Grissac

2. MAIN ACHIEVEMENTS SO FAR

Project deliverables

- “Analysis of the Mediterranean ICZM Protocol: At the crossroads between the rationality of provisions and the logic of negotiations”, in French and English
- “Analysis of the legal scope of the provisions of the Mediterranean ICZM Protocol”, in French and English
- “Coastal setback zones in the Mediterranean: A study on Article 8-2 of the Mediterranean ICZM Protocol”, in English only
- “Analysis of the Mediterranean ICZM Protocol in face of EU law”, in English only, with 3 separate tables in French reviewing where the Community acquis is sufficient, insufficient, or non-existent
- “Analysis of the Croatian legal framework in relation to the provisions of the Mediterranean ICZM Protocol”, in English only

Other outputs

Rochette, J., Billé, R. 2011. "Are ICZM Protocols the new silver bullet for regional seas to promote sustainable coastal development?" *Second international symposium on integrated coastal zone management*, Institute of Marine Research, Arendal, Norway, 3-7 July.

Rochette, J., Magnan, A., Billé, R. 2010. "Gestion intégrée des zones côtières et adaptation au changement climatique en Méditerranée". In Y. Lazzari et E. Moustier (Ed.), *Le développement durable dans l'espace méditerranéen : une gouvernance à inventer. Enjeux et propositions*, L'Harmattan, Paris.

Billé, R., Rochette, J. 2010. "Combining project-based and normative approaches to upscale ICZM implementation". IDDR, Series "Idées pour le débat", n°4/2010, 22 p.

Du Puy-Mombrun, G. 2010. Article 8-2 of the Mediterranean ICZM Protocol. La Rochelle.

Billé, R., Rochette, J. 2010. "Combining project-based and normative approaches for ICZM implementation. Lessons from the Mediterranean". International conference *Littoral 2010 – Adapting to global change at the coast: leadership, innovation and investment*, London, UK, 21-23 September.

Billé, R., Rochette, J. 2010. "Combining project-based and normative approaches to upscale ICZM implementation". Session 36: *ICZM, time to upscale!*, 5th Global Forum on Oceans, Coasts and Islands, UNESCO / GEF, Paris, 3 May.

Rochette, J., Billé, R. 2009. "Eléments de réflexion sur la mise en œuvre du protocole relatif à la GIZC en Méditerranée". *Round table on integrated coastal zone management*, Rabat, Morocco, 29 January.

International cooperation with the Western Indian Ocean (WIO) Region

2009-2010:

- Feasibility assessment of an ICZM protocol to the Nairobi Convention: Report to the Conference of the Parties of the Nairobi Convention. UNEP - Indian Ocean Commission.

2010:

- Pre- "zero-draft" of the Protocol
- Seminar « Developing an ICZM Protocol: Sharing experience between the Mediterranean and the Western Indian Ocean Region » as a side event to the Global Forum on Oceans, Coasts and Islands

2010-2011:

- Co-authors of the initial draft of the Protocol and contributing authors to the drafting group.
- Technical experts to the ICZM Protocol ad-hoc Legal and Technical Working Group of the Parties to the Nairobi Convention
- Needs assessment and project proposal on the revitalization of and support to the Nairobi Convention, especially with regard to ICZM

3. EARLY FINDINGS

Findings

The analysis of the Protocol is now sufficient for stakeholders to get familiar with it

Analysis of national laws in light of Protocol provisions seems to show that:

- Formal compliance is not likely to be a major issue in many Mediterranean States
- National environmental / coastal norms are already abundant and robust
- The Protocol will help harmonizing contrasted situations, and filling gaps where needed
- Much will depend on what States and stakeholders want to do with the Protocol: can be a strategic lever or a relatively minor legal improvement

Analysis of the Protocol in light of Community acquis tends to show that:

- Unsurprisingly, much of the Protocol is already provided for in EU Law
- But significant room for interpretation
- Stimulates /fuels a very interesting debate on a potential EC ICZM Directive

Great need to look beyond purely legal (and sometimes theoretical) matters, and wonder how international norms actually change the way the coast is managed by a variety of stakeholders, in contrasted contexts

4. WAY FORWARD

Next steps

Finalize all deliverables

Conduct legal analysis in France, Italy and Syria?

Refine the integration evaluation framework

Apply it to all four countries

Draw conclusions:

- On ICZM implementation
- On the respective roles of States and other stakeholders
- On the added-value of international law for ICZM
- On the replicability of the Mediterranean experience in other regional seas

Thank you

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Annex IV

Analysis of the Mediterranean ICZM Protocol: content and legal scope of the key provisions

by Mr Julien Rochette

Analysis of the Mediterranean ICZM Protocol: content and legal scope of the key provisions

Expert group meeting on harmonizing the national legal and institutional framework with ICZM Protocol
Split, May 18-19, 2011

Julien Rochette, IDDR I

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Introduction

2 documents

- “Analysis of the Mediterranean ICZM Protocol”
 - Julien Rochette and Raphaël Billé
- “Analysis of the legal scope of the provisions of the Mediterranean ICZM Protocol”
 - Julien Rochette and Matthieu Wemaëre

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1. Analysis of the Mediterranean ICZM Protocol
Why this study?

Starting points

- The Protocol, a very dense document : 7 Parts, 40 articles, almost 100 legal provisions
- Structure: no ex ante rationality but ex post result of negotiations

Objectives

- Shedding light on the content of the Protocol
- Presenting the main provisions according to a coherent analytical framework, beyond the sole “article by article” reading

Interests

- Making the understanding of the Protocol by a large range of stakeholders easier
- Facilitating its implementation by Mediterranean States

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1. Analysis of the Mediterranean ICZM Protocol
“Decoding” the text (1/2)

4 Parts

- Consolidation of and support to sectoral policies relating to coastal zones
- Changes in coastal zones governance
- Use of strategic planning in coastal zones
- Strengthening regional cooperation

Part IV somehow classical

3 first parts as the core of the ICZM Protocol

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1. Analysis of the Mediterranean ICZM Protocol
“Decoding” the text (2/2)

<p>Part 1. Consolidation of and support to sectoral policies relating to coastal zones</p> <p>Protection of biodiversity Management of coastal activities Risk issues</p>	<p>Part 3. Use of strategic planning in coastal zones</p> <p>National ICZM Strategies Coastal plans and programmes</p>
<p>Part 2. Changes in coastal zones governance</p> <p>Integration mechanisms Information, participation and right of a legal recourse</p>	<p>Part IV. Strengthening regional cooperation</p> <p>Principle of cooperation Fields of regional cooperation</p>

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1. Analysis of the Mediterranean ICZM Protocol
Implementation issues: the 3 dimensions (1/3)

Purely legal dimension

Adapting the domestic legal framework to the requirements set out in the Protocol

Major objectives of international law: to strengthen the national legal framework

Examples :

- Protection of coastal landscapes
- Activities subject to authorisation
- Risk management

Legal reforms needed

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1. Analysis of the Mediterranean ICZM Protocol
Implementation issues: the 3 dimensions (2/3)

A strategic dimension

Important to avoid the sole legal reforms without a real strategy for the coastal zones

Need of coherence in the implementation of legal instruments

2 main tools :

- A national ICZM strategy
- Plans and programmes

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1. Analysis of the Mediterranean ICZM Protocol
Implementation issues: the 3 dimensions (3/3)

Adapting governance patterns as a cross-cutting dimension

Through legal tools...

- Information and participation
- Spatial integration

... But not only

- Changes of behavior that the law can only suggest but not guarantee
- Intersectoral integration, science-management integration and institutional coordination

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1. Analysis of the Mediterranean ICZM Protocol
Conclusion

Two-fold interest of this analysis

- Facilitate the understanding of the Protocol by non-lawyers stakeholders
- Help the States to identify methodologies for the Protocol implementation



Study completed by an analysis of the legal scope of the Protocol's provisions (2)

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2. Analysis of the legal scope of the provisions
Why this study ?

Starting points

- Diversity of the Protocol's provisions
- Consequences on the legal scope

Objectives

- Making a distinction between binding and non-binding provisions
- Among binding provisions, making a distinction between obligations of result and obligations of conduct

Not to encourage States to apply only part of the Protocol

But

- For States: precise understanding of their commitments
- For MAP Secretariat: help elaborating the reporting format of the Protocol

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2. Analysis of the legal scope of the provisions
"Decoding" the Protocol's provisions (1/3)

Obligations of result

Clear commitments to achieve a specific result

Indicators : "shall", "agree to ", verb in the present indicative tense...

Examples

- "The Parties agree (...) to subject to prior authorization the excavation and extraction of minerals, including the use of seawater in desalination plants and stone exploitation"
- "The Parties shall (...) prepare and regularly update national inventories of coastal zones"
- "Each Party shall further strengthen or formulate a national strategy for integrated coastal zone management (...)"

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2. Analysis of the legal scope of the provisions
"Decoding" the Protocol's provisions (2/3)

Obligations of conduct

Commitments towards an objective – not a clear result

Indicators : "take into account", "undertake to the extent possible", "as appropriate"...

Examples :

- "The Parties shall endeavour to ensure the sustainable use and management of coastal zones in order to preserve (...) landscapes (...)"
- "The Parties shall formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zone"

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2. Analysis of the legal scope of the provisions
"Decoding" the Protocol's provisions (3/3)

Soft Law

Non-binding provisions

- In non-binding texts : Agenda 21, Rio Declaration, EC Recommendations on ICZM ...
- In binding texts like the ICZM Protocol

Indicators: "may"

Examples

- "Parties may *inter alia* adopt mechanisms for the acquisition, cession, donation or transfer of land to the public domain and institute easements on properties" (20-2)

2. Analysis of the legal scope of the provisions
Difficulties of the classification

Misleading indicators

Examples

- "The objectives of integrated coastal zone management are to (...) preserve coastal zones for the benefit of current and future generations" (5b) and to "ensure preservation of the integrity of coastal ecosystems" (5d).
- "The Parties shall endeavour to ensure the sustainable use and management of coastal zones in order to preserve the coastal natural habitats, landscapes, natural resources and ecosystems" (8-1).

Indicators : (i) verbs in the present indicative tense, (ii) "Shall"

Obligations of conduct: the Parties do not undertake to achieve a given result – which could be, for example, curbing biodiversity loss – but must "only" commit to the goal of preservation

2. Analysis of the legal scope of the provisions
Conclusion

Interest for States

- Understanding their commitments
- Example of France

Interest for MAP Secretariat

- Elaboration of the reporting format
- Compliance monitoring
 - Obligations of result: monitoring compliance based on the comparison between the result achieved and expected
 - Obligations of conduct: the major problem lies in determining the level of effort beyond which a State is considered to have fulfilled its obligations

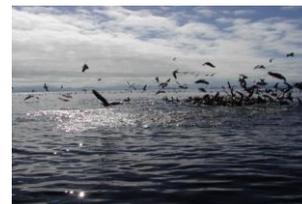
Conclusion

2 complementary analyses to help understanding the ICZM Protocol

Interests for

- Various stakeholders
- States
- Secretariat

To be finalised



Thank you



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Annex V

Harmonizing national legal and institutional framework for ICZM Protocol by Mr Matthieu Wemaëre

**“Together for the Mediterranean”
Harmonizing national legal and institutional
framework with ICZM Protocol**

The ICZM Protocol and EU Law

**Expert group meeting
Split, May 18-19, 2011**

PRIORITY
ACTIONS
PROGRAMME

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Research Focus

- Understand the articulation of the ICZM Protocol with EU Law
- Determine the level of commitments and related legal obligations respectively for the EU and its Member States under the ICZM Protocol
- Check if existing EU Law is sufficient to ensure an effective application of the ICZM Protocol
- Identify possible EU actions to implement the ICZM Protocol

EU approval of the ICZM Protocol

- The Lisbon Treaty has granted legal personality to the EU, which can conclude international agreements
- Art. 24 Barcelona Convention authorizes the EU to conclude the Convention and any of its protocols
- Article 218 TFEU provides for the procedure to conclude international agreements, which applies to mixed treaties like the ICZM Protocol
- EU approval of the ICZM Protocol through the Council Decision n° 2010/631/EU

Legal nature of ICZM Protocol from the viewpoint of EU Law

- The ICZM Protocol forms now an integral part of EU Law once it enters into force (CJCE Demirel, case 12/86)
 - Monist approach + competence of the CJEU
- Hierarchy of norms: the ICZM Protocol is inferior to primary EU Law (Treaties) but superior to secondary EU Law (Directives, Regulations, Decisions)
 -and some of its provisions may be of direct effect (Etang de Berre)
- The ICZM Protocol is a “mixed agreement”:
 - It covers a great variety of matters of shared competence (art. 4 TFEU)
 - The EU must ensure that matters of exclusive or shared competence are effectively implemented: need to identify those matters in order to determine precisely the EU obligations

About the distribution of competences: who should take action?

- Decision n° 2010/631/EU is based on Art. 191 TFEU :
 - Shared competence to take measure for the protection of the environment : is this the “centre of gravity” of EU policy on ICZM?
- Most of the matters covered by the ICZM Protocol are of shared competence (as listed now in Art. 4 TFEU)
 - Art. 2.2 TFEU: EU and MS may adopt legislation
 - Application of subsidiarity and proportionality principles
 - The Member States shall only exercise their competence to the extent that the EU has not exercised its own competence
- The EU and/or the MS that have ratified the ICZM Protocol must take action
 - The other MS may be required to take action pursuant to EU Law

Legal effects of the approval of the ICZM Protocol by the EU

- Compliance with the Good Faith principle and consequence of integration into the EU legal order:
 - EU (and MS) shall ensure take any measure does not conflict with the ICZM Protocol
 - EU (and MS) are required to take any necessary measure to ensure the effective application of the ICZM Protocol
 - The EC can launch an infringement procedure against a MS who is in breach of its obligations under the ICZM Protocol
- Key questions:
 - Does the existing EU Acquis enough to ensure the effective application of the ICZM Protocol?
 - If not, how (legal form) and on what (substance) the EU should take action?

Legislative gap analysis ICZM/EU Acquis

- **Many pieces of EU legislation are relevant for the implementation of the ICZM Protocol:**
 - MSFD, Water and Waste Framework Directives, Habitats/Wild Birds Directives, the EIA and SEA Directives, Civil Protection Decision and Risk Disaster Prevention measures (Flood Directive)
- **However, the ICZM Protocol covers a broad range of provisions which must be implemented by different levels of intervention:**
 - Subsidiarity!
- **The EU Acquis does not provide for sufficient measures to implement the whole ICZM Protocol**, such as for the establishment of zones where construction is not allowed (article 8).
 - To be left to the discretion of Member States in accordance with the principle of subsidiarity (see Preamble of Decision 2010/631/UE)?



What about candidate countries?

- Art. 49 TUE + Copenhagen criteria:
 - Approximation to the EU Acquis as a prerequisite condition for EU membership
- Chapter 27 Accession Partnership:
 - Environment Acquis + identification of priority domains (for Croatia, see Council Decision of 12 February 2008, closure of Chapter 27 in December 2010)
- Possibility to get derogations or delays for the adoption and implementation of some pieces of EU legislation



What to do to fill in the gaps?

- Consultation of stakeholders on-going until the end of this week, comments to be discussed at the public hearing taking place on May 30, 2011.
- Next step => Take a decision on how best to implement the ICZM Protocol
 - Legal form: update of 2002 ICZM Recommendation (not legally binding), Directive, Regulation (too precise)?
 - To do what? To consolidate the ICZM approach and ensure consistency with the existing Acquis and/or to cover ancillary (marine) issues (marine spatial planning, of spatial and temporal control measures foreseen by the MSFD)
 - Timing for action: end of 2011



Topics for discussion within the EG

- How to address MSP in relation to ICZM within the EU context?
- Is a Directive (covering all MS) the right instrument to introduce and consolidate ICZM throughout the EU ?
- To be acceptable for MS, should such Directive focus on the development of long term national ICZM strategies (balance between development and environment allowing some flexibility) while leaving the choice of implementing measures to MS discretion?
- How to address adaptation to the negative impacts of climate (adaptation Directive foreseen in 2011)?



Thank you for your attention!

Matthieu Wemaëre
 Senior Lawyer
 Research associate at IDDRI
 Permanent representative of IDDRI at EU institutions in Brussels



Annex VI

Analysis of the Croatian legal framework in face of the of the Mediterranean ICZM Protocol's provisions

by Julien Rochette



Analysis of the Croatian legal framework in face of the Mediterranean ICZM Protocol's provisions

Expert group meeting on harmonizing the national legal and institutional framework with ICZM Protocol
Split, May 18-19, 2011

Julien Rochette, IDDRI
Guillaume du Puy-Montbrun, Chaire MADP, Sciences Po

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Introduction

Step 3 of the ProtoGIZC project

- Analysing to what extent national legal systems comply with the provisions of the Protocol: Croatia as the first case study
- Identifying the legal reforms needed for Croatia to be fully compliant with the Protocol

Methodology

- Mission in Croatia, May 2010 (Zagreb, Zadar, Split)
- Desk work: analysis of the Croatian legal framework
- Help from experts: Marijana Mance, Nataša Kacić-Bartulović and Martina Sorsa, from the Ministry of Environmental Protection, Physical Planning and Construction, Croatia

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Introduction

Challenges

- EU screening report on the Croatian legal system not in public access
- Legal texts not all translated in English
- Case law not available

A purely legal analysis

- Examination of the legal compatibility between the Croatian law and the Protocol
- In certain fields, particularly difficult to assess the implementation of the provisions solely in light of the legal framework (integration mechanisms, regional cooperation...)
- Effective implementation of the legal provisions and effective integration of the coastal system not checked

Main conclusions

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1. A well-developed national legal framework

Since the 2000s, development of the environmental law in the framework of the accession to the EU

Legal texts adopted in order to transpose the Community acquis

Major texts

- Nature Protection Act, 2005: principles of nature protection, protected areas...
- Environmental Protection Act, 2007: environmental protection principles, protection against pollutions, institutional arrangements, information and participation...
- Physical Planning and Building Act, 2007: system of physical planning and building, creation of the "coastal protected area"...

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1. A well-developed national legal framework

Conclusion: compliance with most of the Protocol's provisions

Question: natural risks and adaptation to climate change?

- Not found any specific legal texts dealing with natural risks management in Croatia
- Special plans to take these risks into account? Coastal vulnerability assessments? Policy and / or a legal framework dealing with adaptation to climate change?
- Regulations about the methodology and content of plans relating to protection and rescue not available in English

To be refined

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2. An ICZM Strategy to be elaborated

No ICZM Strategy

Not compliant with Article 18 of the Protocol

Strategy for Sustainable Development in Croatia, 2009

- Special attention to the "Protection of the Adriatic Sea, Coastal Area and Islands"
- Calls for the elaboration of an "Integrated Coastal Management Strategy"

EPA, article 49

- Calls for the elaboration of a Marine Protection Strategy
- Shall address in particular ICZM issues

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2. An ICZM Strategy to be elaborated

Marine Protection Strategy in progress

Question :

- Connection between the ICZM section of the Marine Protection Strategy (EPA, article 49) and the Integrated Coastal Management Strategy (SSD / ICZM Protocol)

Options :

- A light ICZM section in the Marine Protection Strategy and a real ICZM Strategy elaborated in another document
- The ICZM section of the Marine Protection Strategy as the ICZM Strategy itself

2nd option avoiding the duplication of instruments

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3. Governance issues

Information, participation and right to legal recourse : compliant



Integration mechanisms

- Not easy to assess the compliance in light of the sole legal texts
- The legal framework does not prevent the implementation of the provisions



To be completed by a non-legal analysis

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Conclusion

Croatian legal system mostly compliant with the ICZM Protocol's provisions

Same situation in EU member States?

Need to convince the « advanced States » that the Protocol's implementation is not only a legal issue

Compliance « on paper »

- (1) Need to assess the effective implementation of the legal provisions
- (2) Need to assess the actual integration of the coastal system



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Thank you



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Annex VII

Public participation and awareness within ICZM Protocol implementation in Croatia by Mr Nenad Starc

Expert Meeting on Harmonizing national institutional arrangements and legislation with ICZM Protocol for the Mediterranean

Public Participation and Awareness within ICZM Protocol Implementation in Croatia

Prof. dr. sc. Nenad Starc
The Institute of Economics, Zagreb, Croatia

PAP/RAC, Split, Croatia
May 18-19.2011.

Formal harmony...

...a purely legal study...:

"It seems that the Croatian legal system provides for the obligation to..."

"Croatian law therefore appears to comply with..."

"Croatian law therefore provides the legal framework needed for..."

"It therefore seems that the Croatian system is in line with the obligations..."

"Croatian law therefore seems to meet the objectives..."

"Croatian law goes further than..."

Formal harmony...

...a purely legal study...:

"...the mechanism nevertheless remains compliant with the provision..."

"...as the Protocol uses the term "as appropriate" the legal mechanism appears to be in line..."

"...the Croatian systems complies with the provision... since it can be considered to be soft law."

"...we can consider that the Croatian law includes the elements needed to work towards taking account of..."

"obligations under national legislation enable or at least do not prevent..."

Formal harmony (not quite)...

...a purely legal study...:

"...no indicators of the development of coastal economic activities..."

"...no mention is made of the concept of carrying capacity..."

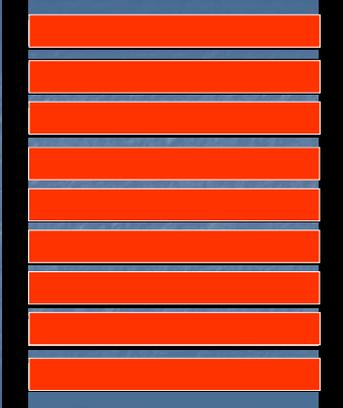
"...there is currently no specific information for the population regarding the Protocol..."

Anyhow:

"It does clearly appears that the public is granted a general right of information on matters directly regarding ICZM..."

"...It seems obvious that the Croatian legal framework is in conformity with the principle 6-d of the Protocol: **appropriate governance allowing adequate and timely participation... by local population.**"

Participation ladder in public projects



Duraiappah, A.K. et al. 2005.
Tribute to: Arnstein, S. 1969.

Where are we?

- Physical Planning and Building Act (Ministry of environment, physical planning and construction)
ex post participation (at best: 4. participation by consultation)
- Environmental Protection Act (Ministry of environment, physical planning and construction)
ex post participation
- Nature Protection Act (Ministry of Culture)
ex post participation (if any)

There is more...

- National Island Development Program (1997)
- Island Act (1999) (Ministry of the Sea, Transport and Infrastructure)
- Decree on Methodology of Sustainable Island Development Programs (2002)

integration of physical planning and development programming (Article 3-4 of the Island Act)
 ex ante participation (NPID, IA, Decree) (close to 7. interactive participation)

And more...

- National Regional Development Strategy 2011 – 2013 (2010)
- Regional Development Act (2010) (Ministry of Regional Development, Forestry and Water Management)
- 21 County Development Strategies 2011 – 2013 (prepared and adopted in 5 out of 7 coastal counties)

No mention made of

- participation
- integration of coastal zone management
- sustainable island development programs
- physical planning (sic)
- the Protocol on ICZM

Formal harmony...

But:

- weak enforcement
- (almost) inexistent horizontal coordination
- inefficient vertical coordination
- participation in traces
- and, needless to say,
- no integration

Annex VIII

ICZM Protocol and coastal planning in Croatia and Montenegro

by Mr Gojko Berlengi

ICZM Protocol and coastal planning in Croatia and Montenegro

Gojko Berlengi

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Character of Protocol provisions

- many provisions are of general nature
- clear obligation but how to measure result
- level of effort – what is enough to consider the state has fulfilled its obligations
- basic compliance vs. satisfactory implementation

Detailed assessment requires Guidelines for the implementation of the ICZM Protocol

- to make obligations as clear as possible and
- to establish benchmark criteria and good practices

ICZM Protocol impact assessment on Croatia - approach

- analysis of legal framework – compliance of the national legal system with the Protocol provisions
- analysis of coastal planning and management – legal system in practice

Country assessment approach (1)

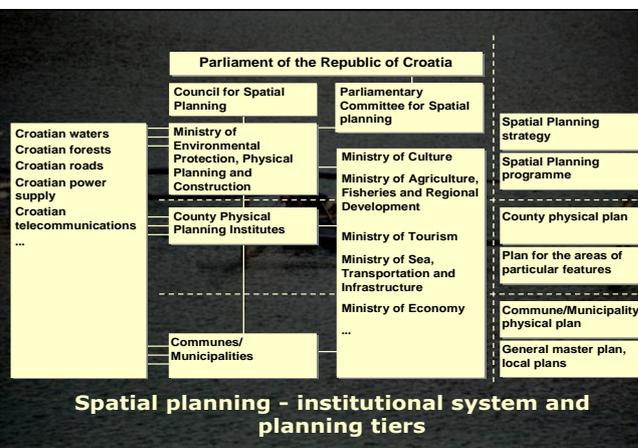
Coastal profile and coastal management context

- understanding of the main coastal systems,
- key issues and drivers, socio economic situation, administrative system, human resources

Country assessment approach (2)

Planning tradition and planning culture

- post socialist society in difficult transition process,
- developed spatial planning system not fully in tune with market economy principles,
- system congested with numerous obligations following from different laws and strategies,
- many strategies are almost wish lists, ceremonial documents full of empty claims,
- provisions in legal acts and other documents often lack quantitative indicators which are measurable and implementable



Country assessment approach (3)

EU accession process

- adoption of Acquis Communautaire required quick evolution of legal system which brought large number of new obligations,
- implementation lags behind, evident lack of implementation capacity and resources

Legal reforms to ensure compliance

- introduction of ICZM, definition of its geographical coverage, relation to PCA
- establishment of the permanent multisectoral co-ordinating body with the **real operational powers** capable to balance power of the existing line agencies,
- sectors and sectoral laws accept the role of spatial planning system which provides coordination and harmonization of the spatial aspects (physical development) of the sectoral strategies, plans and programmes in coastal area,
- modification of the existing setback relating provisions (article 8),
- introduction of the new instruments such as SEA, carrying capacity, ecosystem approach, landscape planning, climate change risk assessment,
- monitoring and evaluation instruments – indicators, reporting
- **ICZM strategy and coastal plans and programmes**

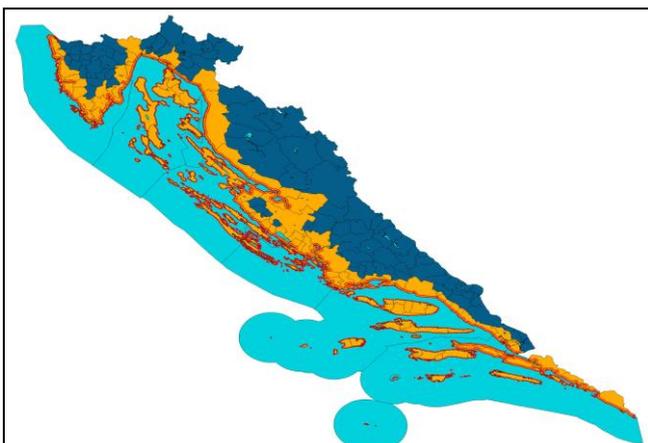
National ICZM strategy

- analysis of the existing situation, all relevant actors and processes,
- objectives,
- priorities with an indication of the reasons,
- coastal ecosystems needing management,
- measures and their cost,
- institutional instruments,
- legal and financial means available,
- implementation schedule

ICZM strategy (2)

- in-depth analysis of coastal issues
- clarified jurisdictions and responsibilities
- ICZM structure based on extended spatial planning system
- multisectoral (horizontal) integration instruments
- co-ordinated spatial and development planning

... consistent with the common regional framework for integrated coastal zone management in the Mediterranean?

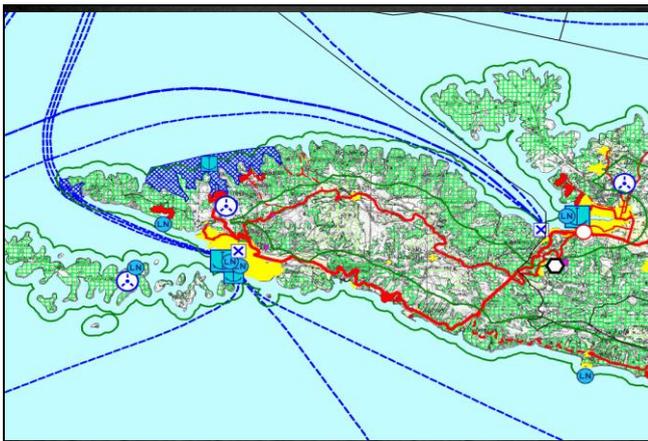


Coastal spatial planning - requirements

- Balanced allocation of uses avoiding unnecessary concentration and urban sprawl
- Identifying and delimiting, outside protected areas, open areas in which urban development is restricted or prohibited
- Limiting the linear extension of urban development and the creation of new transport infrastructure along the coast
- Restricting or prohibiting movement and parking of vehicles, as well as anchoring of marine vessels, in fragile natural areas
- Parties shall adopt appropriate land policy instruments and measures

Amendments needed:

- PCA planning criteria in PPBA
- existing county spatial plans (regional plans)



Priorities and pace of reforms

- important to understand capacity of the society/system for change
 - premature introduction of certain solutions or instruments may be counterproductive, costly, confusing, with no practical impact
 - need for robust and simple instruments implementable in given circumstances
 - danger of planning system collapse if overloaded, need for streamlining procedures
- ... it is critical to present ICZM as a means of rationalization which brings improved efficiency without additional costs

Prerequisites for compliance

- capacity building for public sector officials on all levels
- guidelines and manuals for new instruments
- elimination of illegal building

ICZM Protocol, Article 8 - implications on coastal spatial plans in Montenegro

Montenegro and Croatia - same planning tradition and similar planning culture

- legal system and key strategic documents are full of sustainable development principles and objectives,
- comprehensive planning system, number of planning levels,
- environmental management and nature conservation legislation mostly in place

Coastal planning in practice

- evident lack of practical implementation of planning principles and objectives,
- local plans are short of clear and quantified development criteria that should enable straightforward implementation,
- environmental policies with limited implementation ambition and capacity,
- SEA and AA at very beginning

Coastal management context

- post socialist society in transition,
 - attractive coastal landscapes and valuable natural ecosystems,
 - strong pressure for real estate development
-
- 300km of coastline, 6 municipalities

Key legislation and documents analysed

- Spatial Planning and Building Act
- Maritime Domain Act (58km², 300km coastline)
- National Sustainable Development Strategy
- National Spatial Plan
- Spatial Plan of Maritime Domain
 - limited in extent, narrow coastal belt
- By-law on the contents and form of spatial plans (2010)
 - coastal planning criteria including coastal setback provisions
- Municipal spatial plans (6 coastal municipalities)
- State Location Studies (20, 1300ha of tourist areas)

Main findings

Spatial planning system - basis for future ICZM structure

Identified obligations

- incorporation of key coastal planning criteria including coastal setback provisions into Spatial Planning and Building Act
- formulation of criteria for setback adaptations
- definition of coastal zone (6 coastal municipalities)
- national ICZM strategy
- new spatial plan of coastal zone as a new regional planning level
- application of coastal planning instruments

State Location Studies

Spatial planning document commonly used to plan tourist development zones

- unclear how many location studies are adopted and how many development briefs issued,
- question whether to prescribe mandatory harmonization of coastal location studies with Protocol setback requirements – sensitive issue of inherited rights and retroactive application of law
- if majority of location studies are adopted and no harmonization is required the ratification of Protocol regarding setback will have no or very limited impact

Coastal setback - comments

Logic of coastal setback is based on 3 reasons:

- to protect coastal natural systems/dynamics and landscape values,
 - to avoid or mitigate impacts of possible coastal risks including coastal erosion and climate change,
 - to secure public access to the coast and its recreational use where appropriate
-
- difficult to defend uniform coastal setback
 - third reason is the only unconditional requirement, other two make sense only in case of presence of mentioned values or risks.

The reality



some of the most attractive coastal landscapes in the Mediterranean



... often spoilt by recent "development"

Key coastal issues (1)

Excessive urbanization including real estate development (secondary homes), in particular when located too close to the shoreline and when deficient in infrastructure

Municipal spatial plans allocate larger than needed areas as buildable:

- strong demand for coastal properties
- pressure from real estate investors due to high profitability of this type of investment
- pressure from land owners for land conversion

Coastal urbanization statistics

- coast length: 5.835 km, area (5 km): 11.452 km²
- population: 1,100.000 (26%), density: 100 inh/km²
- 150 km¹ built by year 1960. (2,5% of coast length)
- 837 km¹ built by year 2000. (15%)
- 1.553 km¹ (27%) planned for development
- assuming that 50% of coastline is accessible, in 15 years more than 50% of available coastline will be developed



DPSIR – coastal urbanization

Driving Force	Pressure	State	Impact	Response
demand for coastal real estate, enforcement problems (system open for abuse), limited economic opportunities	development pressure, pressure for selling properties, pressure for land use conversion to buildable	intensive urbanisation, illegal building, low quality development (limited public spaces, roads, greenery, parking and infrastructure), occupied seashore (ribbon development), encroachment to high quality coastal landscapes (natural and cultural, improper infill development, building against intensity regulation, illegal dumping of material excavated during construction	loss of resources (natural, land, scenic landscape...), loss of property value, loss of tourism potential,	law amendments, governmental decree on coastal protected area, fiscal measures (property tax), improved enforcement, local development policies, public participation
coastal urbanisation, growing consumption and waste generation	large amounts of waste	illegal dumping sites, non treated waste water outfalls, visual pollution	polluted sea, land pollution, landscape degradation	"internalized" costs of urbanization, polluter pays,...

Excessive coastal urbanization

Underlying causes:

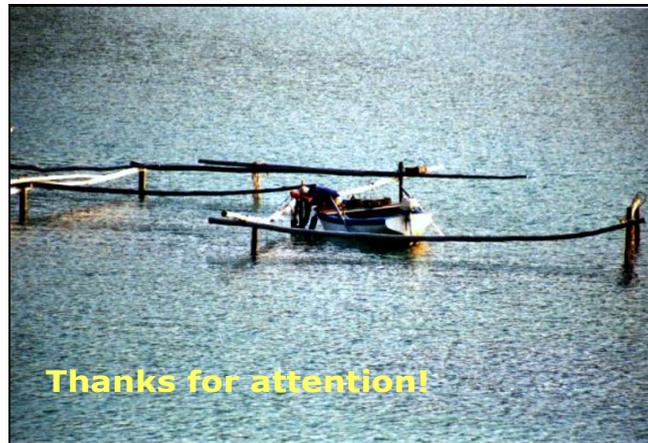
- lack of technical knowledge of land use allocations based on demographic trends and carrying capacity analysis, or
- politically understandable reaction on the pressure for land conversion to increase its value and attract real estate development, all due to the lack of other economic opportunities

Key coastal issues (2) – illegal building

- Illegal builders justify their act by the fact that their business cannot afford all the fees legal building requires.
- Some build outside land zoned as buildable because they business is not profitable enough to pay higher price of buildable land.
- The reason for poor performance of their businesses they see in unrestricted import and fierce competition from the markets with much lower wages.

Key lessons

- unless we show interest for real problems and their root causes we are not considered as competent partners
- if Protocol is based on an integrated, comprehensive approach to coastal problem solving, one would expect it should not neglect root causes of problems
- since many of the problems of coastal areas are related to the broader social and economic context within which they must operate, to what extent can we look at coastal actors on local or national level to provide solutions to these problems?



Thanks for attention!

Annex IX

Assessment of the actual integration of coastal management systems by Mr Raphaël Billé and Ms Océane Marcone

Assessment of the actual integration of coastal management systems

Split, 19 May 2011

Raphaël Billé and Océane Marcone, IDDRI

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Presentation outline

1. (Long) introduction
2. What we do

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1. (LONG) INTRODUCTION

IDDRI Réunion MAEE 3

Background

Started with previous research on evaluation of environmental policies, plans and programmes in complex settings:

Mermet, L., Billé, R., Leroy, M. 2010. "Concern-focused evaluation for ambiguous and conflicting policies: an approach from the environmental field". *American Journal of Evaluation*, 31(2): 180-198.

→ How to evaluate environmental policies when they are a minor player in the whole set of actions that influence the dynamics of socio-ecosystems, and when public policies are ambiguous and conflicting?

Billé, R. 2007. "A dual level framework for evaluating integrated coastal management beyond labels", *Ocean and Coastal Management*, 50(10): 796-807.

→ How to evaluate ICZM implementation beyond ICZM projects/laws?

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Baseline

Despite many valuable efforts, ICZM evaluation remains a challenge

Need to differentiate between management actions on systems (intentional management), and the way systems are actually managed (actual management)

Evaluating outcomes achievement rather than outputs delivery (projects) or legal compliance is a great challenge

Much progress has been made on indicators. But having good indicators may not be what is most critical to evaluation: one must have a clear understanding first of what to evaluate so as to make a wise use of a complex set of indicators. This is not the case yet.

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An example

"Evaluation of Integrated Coastal Zone Management (ICZM) in Europe" (2006):

The European ICZM Expert Group set up a comprehensive set of indicators, both process and results-based

But: evaluation strictly limited to process and effort (e.g.: is there a national ICZM strategy?)

Concretely, it did not say a word on whether coastal management was or was not improving in Europe following the 2002 European Recommendation!

Although of course this would have raised a thorny attribution issue...

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Key ideas

An attribution issue:

- An ICM initiative / legal framework is complex and heterogeneous, having to deal with numerous issues and stakeholders
- It is not the main / sole driver of the way the coast is managed

Evaluations of ICZM projects are not enough to report on ICZM implementation

Evaluating ICZM projects, or assessing legal frameworks, does not match our needs when it comes to reporting on ICZM implementation

It does not say whether a coastal area is or is not "integratedly" managed

Although these is the most important question!

So what?

Need to shift the focus from ICZM projects and coastal-related laws to coastal management systems

Means looking into:

- **Issues:** too often left out!
- **Instruments:** in all their variety, whatever their initial purpose
- **Implementation:** How are these instruments implemented?
- **Actual integration:** What is the level of integration in the way the coast is managed? Which integration dimensions are satisfactorily dealt with (e.g. integration between science and management)? Where are the weaknesses and inconsistencies (e.g. impact of agriculture on shellfish farming)? What is the current trend?
- **ICZM projects and norms implementation evaluation :** assessing their results against their objectives in a contextualized way

2. WHAT WE DO: IT'S (FRAME)WORK IN PROGRESS!

Conceiving an evaluation framework

Integrated management taken as an *objective* (never achieved), a *utopian horizon*, **not a process nor a procedure**

Develop a framework to:

- Draw a precise picture of the CZ studied
- Assess the level of integration of the CZ and the progress made toward sustainable development

Strategic objectives:

- Help design more strategic actions that:
 - Fit into a given CZM system
 - Exploit room for manoeuvre: target low-hanging fruits but never forget "higher-hanging fruits"!
 - Take (active or passive) resistances into account
- Allow cross-country comparisons

A key complement to current work on the Protocol
There is much more to ICZM than Protocol compliance!

1. Issue identification

Diagnosis of environmental issues and use conflicts (because that's what we're here for)

Issue	Sub - theme	Indicator
Land use	Urbanization	Rate of urbanization (% of the total population living in urban areas) % of artificialised coast line Number of inhabitant per km ²
	Land use planning	% of the total population living: -within 10 km of the coast -within 100m of the coast (the coastal setback zone) % of population living in hazard prone areas %of the coastline that is natural habitat (compared to developed land) % of the coastline used for agriculture Number of marina, commercial, fishing and military ports % of land used for agricultural purpose % of marine areas used for aquaculture

1. Issue identification

Both quantitative (indicators) : agriculture, tourism, transport, water quality, coastal fisheries...

And very qualitative (interviews) in complement:

How bad is the situation?

What are, eventually, the 3-4 key issues (the ones that if solved, would mean significant progress for ICZM implementation)?

Who are the main / most powerful stakeholders? The forgotten ones?

How recent are conflicts? What is their history?

2. Overview of available instruments

All instruments that may contribute to more integration:

- Includes those identified in Protocol compliance study
- And others if any:
 - Sectoral (e.g. CAP)
 - Informal (e.g. Voluntary agreements between private stakeholders)

3. Implementation of available instruments

Not (yet) in terms of their outcomes

But: **Are there traces of concrete implementation?**

- Number of PAs created
- Funding spent on...
- Number of court cases
- ...

2 + 3

Issue	Obligation	Croatian legal framework Other management tools	Indicators
Preserving biodiversity	Preserving biodiversity (5b, 5d, 5-1, 5-3c)	Constitution, articles 3, 50 <i>Conservation of nature and the environment ranked among the highest value of the constitutional values</i> <i>Restriction on entrepreneurial freedom</i> <i>Restriction on property right</i> EPA, articles 6, 9-2, 13-2 <i>Environmental matters are taken into account within all public policies elaboration</i> PFSA, article 49 <i>Creation of a Protected Coastal Area (PCA) with specific status</i>	Nb of appeals to the Constitutional Court because of environmental problems <i>Take a special interest in examples and symbolic cases</i> Government investments to protect biodiversity (€ spent per year) Number of SEA carried out (specify the subject, area of investigation) The specificity of the PCA can be evaluated thanks to proxy indicators (see below: sustainable use of natural resources, preserving cultural heritage, preserving landscape...)
	Sustainable use of natural resources (5c)	Water Act EPA, articles 24-3 PFBA, articles 49-2, 52-1, 71-1, 74 <i>PCA requires compliance, through planning documents, with numerous rules on the management of water resources.</i> <i>Promotion of economically and environmentally sustainable transportation, public and other infrastructure services through spatial plans (regional level)</i> <i>Creation of a "presentation of agricultural and forest land, water sources and water management systems" (local level)</i>	<i>Nb and extent of drinking water catchment with perimeters of protection</i> <i>Nb and extent of spatial planning mentioning those perimeters</i> % of planning documents concerning the PCA which comply with the specific rules for water management Nb of spatial plans set up at regional level km ² and % of the CZ covered by spatial plans (km ² and %) of the CZ covered by a regional spatial plan Nb and extend of spatial plans within the PCA Nb and % of cities with management system proposal

2+3 applies to...

SECTION I: CONSOLIDATION OF AND SUPPORT TO SECTORAL POLICIES IN EFFECT IN COASTAL ZONES

1. Preserving biodiversity
2. Managing coastal activities
3. Addressing risk

SECTION II: CHANGES IN GOVERNANCE METHODS FOR COASTAL ZONES

1. Consolidating integration mechanisms
2. Information, participation and the right to legal recourse

SECTION III: USE OF STRATEGIC PLANNING IN COASTAL ZONES

1. National ICZM strategy
2. Coastal plans and programmes as tools for implementing national strategies

SECTION IV: STRENGTHENING REGIONAL COOPERATION

1. Principle of cooperation
2. Fields of regional cooperation

4. Integration diagnosis

Consider integration problems diagnosed in Part I with regard to findings of Parts II and III

Aim: assess how integrated CZM is

- Qualitative analysis needed to point out where the persistence of the problems comes from:
 - Is it because nothing is done to improve CZM or because instruments are not effectively implemented?
 - Are instruments really mobilized to resolve the problems faced?
 - Are there some missing instruments?
 - Are some instruments not efficient?
- Which dimensions of integration are taken care of? On which dimensions further progress shall be made?

Thank you

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