



Document title	Comments to Strategic follow-up to Commission Decision 2017/848/EU based on the Document 5-4 to GEAR 19-2018
Code	3-2
Category	CMNT
Agenda Item	3 – Regionally coordinated implementation of MSFD
Submission date	17.10.2019
Submitted by	DG MSFD
Reference	document 5-4 to GEAR 19-2018

Background

GEAR 18-2018 agreed on the content of document “Strategic follow-up to Commission Decision 2017/848/EU” ([document 5-4](#) to GEAR 19-2018), to be part of a GEAR planning document to inform further discussions on future work related to coordinated implementation of the MSFD by the HELCOM countries also being EU member states.

CG MSFD 1-2018 agreed that discussion on topics relating to the implementation of Commission Decision 2017/848 to be taken up at GEAR 20-2019, with the exception of indicators which was tabled already at GEAR 19-2018. CG MSFD 3-2019 agreed that there is a need to highlight a few, precise topics, with precise questions, for each meeting to ensure constructive discussions at GEAR. The meeting agreed to have a written procedure prior to GEAR 20-2019 to scope which topics the CPs are ready to discuss, or which would be timely to consider.

The document 3-4 to GEAR 20-2019 proposed how such questions could be specified for a few of the topics in the Background for strategic discussions on rev Com Dec_ CG MSFD 3-2019 document.

GEAR 20-2019 agreed ([Outcome of GEAR 20-2019](#), para 3.22) to come back to the questions raised in document 3-4 at GEAR 21-2019, and welcomed comments to the document. Comments were received from Estonia (see Attachment 1 of this document). The present document is updated with these comments, conclusions from GEAR 20-2019, and some recent developments. At GEAR 20-2019 it was proposed to keep the document as a living document and that countries could provide input to the questions raised.

Action requested

The Meeting is invited to

- take note of the information and use it as appropriate;
- discuss the questions outlined in the document, and identify how the outcomes of the discussion can support regional cooperation; and
- agree on any topics to be specifically prepared for GEAR 22-2020.

Strategic follow-up to Commission Decision 2017/848/EU

Commission Decision 2017/848/EU is part of the wider review package of MSFD-implementation. The Decision follows conceptual considerations, explored in the EU Commission's "cross-cutting issues document" (last update in November 2017, [MSCG 21-2017-06](#)). As a result, the Decision includes requirements (e.g. in its Art. 3 and 4) which are in need of specification. Guidance and interpretation aid is expected to be taken up in the further development of the EU CIS Art. 8 MSFD assessment guidance, which has been released by WG GES in February 2017 as a test version. As a common understanding of these issues is important for guiding regional cooperation on the technical follow-up work, early strategic discussions may be warranted in HELCOM and may later, if appropriate, result in input into the EU MSFD CIS process. The questions are:

- Do we have a common understanding on the requirement or topic?
- What guidance is needed by, and should be given to, HELCOM groups to follow-up on the requirements or topic?
- Where appropriate, how can Baltic regional knowledge and needs be communicated and represented in the discussion and guidance in the EU MSFD CIS process?
- Can the questions below help in prioritizing regional cooperation work and how?

WG GES plan to discuss overarching /cross-cutting issues in a workshop in April 2020. Initial discussions in HELCOM could provide a regional input to the EU-level discussions. Proposals for WG GES workshop topics include:

- Use and linking of criteria/indicators across descriptors
- generic assessment concept for D1.6, D4, D7 (water column)
- How to address climate change and natural variability in MSFD assessments
- Use and role of secondary criteria, including risk aspects
- How to assess and express the confidence in assessments
- How to express change in status
- Linking national and regional assessments

At GEAR 20 it was suggested that, in line with what has been agreed in the HELCOM Workplan for indicators (HOD 54-2018 document 4-5), the priorities listed in the document must be explicitly addressed as the basis for future indicator work.

Examples of issues for discussion may include:

- a. A **risk-based approach** should apply to the criteria retained in order to allow Member States to focus their efforts on the main anthropogenic pressures affecting their waters (recital 6 to Commission Decision 2017/848/EU). Gear 20 found that a better insight into the use of risk-based approach would be useful.

Risk considerations relate for example to:

- the use of secondary criteria (Art. 3(2) Commission Decision)

As regards the use of secondary criteria (Art. 3(2) Commission Decision 2017/848/EU); it would be useful to have an understanding of the approach which has been taken by different CPs in the

MSFD work. Based on this information, it would be possible for GEAR to discuss the topic and help HELCOM WGs in prioritizing regional indicator work.

A proposal for questions to prepare could include:

- what is your national view on, or approach to, the use of secondary criteria (Art. 3(2) Commission Decision 2017/848/EU in your indicator work; (for example do you use risk considerations)? We could possibly also discuss: if relevant, would you consider a different approach for future work than was used for the 2018 assessment?
Also, in line with EE comments: What are Helcom additional development needs on “administrative indicators” for follow up on measures efficiency, (new) drivers, and cumulative impacts?
- What should the status and relation between primary and secondary criteria be? Or: what is your national interpretation of this relationship?
At GEAR 20 it was suggested that focus should be on primary criteria. It was clarified that if a secondary criterion is considered relevant by a Member State then, in its assessment process, it has been considered and given the same weight as a primary criteria (GEAR 20 para 3.21).
- In cases where primary criteria are not used; how is this motivated? Are there primary criteria that no Helcom country uses?

- the selection of criteria elements (recital 19 to Commission Decision and Annex I thereto: D1C1, D2C3, D8C1, D8C2, D9C1, D10C4)

Proposal: this discussion should rather start from the WGs Pressure and State. GEAR could indicate the necessary descriptors and criteria for further regional discussions.

- the setting of threshold values *on the basis of the precautionary principle, reflecting the potential risks to the marine environment* (Art. 4 (1) (e) Commission Decision).

This topic and point b), c), d) below all concern threshold values. The topic could be timely to discuss as the indicator work has progressed a little further (GEAR 22 or 23) and guidance to WGs may be useful in development of new indicators and thresholds.

Questions for discussion could include:

- What principle have you used nationally for setting thresholds in relation to the below aspects?
- Could an indicator become “Core” even though a threshold cannot be agreed?
- To what extent /in what aspects can thresholds differ within Helcom CPs and still be considered coordinated (from the point of view of MSFD)?
- monitoring effort (all descriptors and criteria, but mentioned specifically under D5, D8 – Annex I to the Commission Decision). Proposal to discuss this topic at a later stage.

- b. Establishment of **thresholds where knowledge is limited**. Art. 2 of Commission Decision 2017/848/EU allows Member States in the absence of threshold values to use a) national thresholds, provided the obligation of regional cooperation is complied with, b) directional trends of the values or c) pressure-based threshold values as proxies for status-based threshold values.
- c. Threshold values should be set **consistent across different criteria** when they relate to the same ecosystem element (Art. 4 (1) (f) Commission Decision). This requires mechanisms that allow working across criteria where these are developed through different expert groups.

- d. Threshold values should be **consistent with other Union legislation**, e.g. the Habitats-, Birds- and Water Framework Directives. This could result in the need for reviewing some of the existing threshold values, e.g. for contaminants.
- e. A view expressed at GEAR20 is that the development of threshold values consistent with European Union legislation is not possible on certain occasions.
- f. Undertaking an **ecosystem-based assessment** remains still a challenge. How could this be usefully achieved in order to support the management of human activities and pressures including spatial planning, and to be comparable across EU marine regions. For HOLAS II a refined Baltic Sea Pressure and Impact Index has been used as a spatial approach.

New topics:

- g. There were views at GEAR 20 that **Baltic Sea Pressure Index** would be interesting to discuss. Questions could include:
 - how should this tool be linked to HELCOM indicators, and how could it better support MSFD assessment work?
 - In HOLAS II, the BSPI/BSII analysis was not mainly based on Helcom indicator-based data flows. What development would we like to see for HOLAS III?
- h. EE proposal: to discuss the linkage with WFD exceptions for coastal water bodies statuses (and chemical status for territorial sea), and the expected regional environmental status. Questions include:
 - have CPs used WFD art 4.4 (extended deadline to achieve the objective GES) and/or 4.5 (less stringent objective) for coastal waters ecological status in their water management plans?

Strategic follow-up to Commission Decision 2017/848/EU

Commission Decision 2017/848/EU is part of the wider review package of MSFD-implementation. The Decision follows conceptual considerations, explored in the EU Commission's "cross-cutting issues document" (last update in November 2017, [MSCG 21-2017-06](#)). As a result, the Decision includes requirements (e.g. in its Art. 3 and 4) which are in need of specification. Guidance and interpretation aid is expected to be taken up in the further development of the EU CIS Art. 8 MSFD assessment guidance, which has been released by WG GES in February 2017 as a test version. As a common understanding of these issues is important for guiding regional cooperation on the technical follow-up work, early strategic discussions in 2018 may be warranted in HELCOM and may later, if appropriate, result in input into the EU MSFD CIS process. The questions are:

- Do we have a common understanding on the requirement or topic?

EE: Depends on topic, not all topics aren't agreed. The gaps are still there concerning threshold values for some assessment criterias and standards (eg underwater noise D11, marine litter – D10, hazardous substances D8) and aggregation or integration rules from indicators to sub-criterias, criteria and between criterias.

- What guidance is needed by, and should be given to, HELCOM groups to follow-up on the requirements or topic?

EE: Especially integration rules should be agreed for those assessment categories and MSFD descriptors, where those are not agreed or in place yet. Eg D8 assessments: how to consider and integrate results from different sampling matrices and species used in monitoring, especially when GES or threshold values are not agreed yet on regional level. In this sample EN Haz Subs could elaborate Baltic Sea-specific hazardous substances GES or threshold values for different matrices and integration rules to generate a substance-specific status assessments. WG State & Conservation could formulate and agree relevant indicators and their integration rules, where needed.

Better cooperation between Helcom WG-s would be also necessary to handle specific environmental problem and maybe organize specific thematic workshops between different working and expert groups (or establish relevant web-based joint forums like MSFD EN Marine Litter or other relevant forums). WGs Pressure and State & Conservation could jointly analyze, when the good status of the Baltic Sea would be achievable for D5 (eutrophication) and also for some other descriptor, taking into account scenario business-as-usual and if all planned measures are fulfilled. Probably it will be carried out by ACTION project, but the roles of inner loads of nutrients in the Baltic Sea and current input loads from land-based sources and atmosphere must be clearly quantitatively assessed. If the good status is achieved in rivers according to the WFD, but status of the sea is still sub-GES, the regional approach to solve this gap and revision of the norms might be needed.

Assessment methodologies of different EU directives (habitats directive, birds directive, WFD and others) and their usage in Helcom indicators and assessments is still needed. It also includes the role of Baltic Sea status to some certain assessment criterias status – eg if birds status is sub-GES, is it related to the bad status of the Baltic Sea or activities or pressures outside the BS region. Also an ecological carrying capacity should be regionally methodically agreed for some indicator species (different protection regimes for some species, hunting of protected species etc).

- Where appropriate, how can Baltic regional knowledge and needs be communicated and represented in the discussion and guidance in the EU MSFD CIS process?

EE: Helcom relevant WGs professional secretaries could actively participate in EU processes (actually they do it already, but their mandate is quite weak currently). If CPs HoDs decide to give a mandate also for HELCOM Secretariat to participate in EU processes and share their knowledge (and data & information). At least Helcom expert network leads should participate in EU MSFD and WFD expert networks.

- Can the questions below help in prioritizing regional cooperation work and how?

Additional note: There is a plan in WG GES to discuss overarching /cross-cutting issues and in workshop format (e.g. tentatively in second half of 2019), and we could consider whether the below topics would be informed by, or inform, such a workshop. Examples of issues for discussion may include:

- a. A **risk-based approach** should apply to the criteria retained in order to allow Member States to focus their efforts on the main anthropogenic pressures affecting their waters (recital 6 to Commission Decision 2017/848/EU). Risk considerations relate for example to:

- the use of secondary criteria (Art. 3(2) Commission Decision)

As regards the use of secondary criteria (Art. 3(2) Commission Decision 2017/848/EU); it would be useful to have an understanding of the approach which has been taken by different CPs in the MSFD work. Based on this information, it would be possible for GEAR to discuss the topic and inform the planned indicator workshop, to help it and HELCOM WGs in prioritizing regional indicator work. It would be timely to bring up at GEAR 20.

EE: From our national point of view, the priority is given to priority criterias assessments and secondary criteria are use in cases, where a) there's no primary criteria in place, b) there's not sufficient data or knowledge (eg GES or threshold value) on priority criteria, c) indicators historical time-series are used and continued.

A proposal for questions to prepare could include:

- what is your national view on, or approach to, the use of secondary criteria (Art. 3(2) Commission Decision 2017/848/EU in your indicator work; (for example do you use risk considerations)? We could possibly also discuss: if relevant, would you consider a different approach for future work than was used for the 2018 assessment?

EE: The use of secondary criteria – look our comment above. For future assessments and works more attention should be paid to „administrative indicators“ (how we fulfill planned measures, incl Helcom recommendations) – new drivers affecting the sea environment (EU blue economy – establishment of new fish farms; climate policy – establishment of marine windmill parks etc). Thus, the drivers and pressures to marine areas will increase in future due to other EU policies and their cumulative impact on the regional scale might be different than on local scale, which is assessed within project-based EIAs. Also the status assessments given in the frames of implementation of other EU directives could be more actively used (if time-frames of different assessments enable this).

- What should the status and relation between primary and secondary criteria be? Or: what is your national interpretation of this relationship?

EE: See above – secondary criteria would be used, if there's a certain lack for primary criterias. All descriptors must be covered and their status or pressure should be assessed. However, if descriptors primary assessment criterias and indicators are in place, secondary indicators are not necessarily needed (except when historical or regionally agreed indicators/dataflows are in place and continued).

- In cases where primary criteria are not used; how is this motivated? Are there primary criteria that no Helcom country uses?

EE: in last MSFD status assessment (2018) underwater noise primary criterias D11C1 and D11C2 were not used in Estonia due to lack of scientific rationale on the issue and scientifically justified threshold values are not set yet. If to look certain species-subgroups (eg fishes or birds), some primary criterias (eg D1C1, D1C5) might not be covered for all indicator species and/or species groups due to lack of information or poor quality data.

- the selection of criteria elements (recital 19 to Commission Decision and Annex I thereto: D1C1, D2C3, D8C1, D8C2, D9C1, D10C4)

A question is whether this discussion should rather start from the WGs Pressure and State. GEAR could give general advice such as: harmonization with MSFD, WFD, Habitats Directive is needed. Detailed discussions can also take place in relation to the indicator development work

EE: We agree - if certain criterias are not used or assessed in several countries, this could be discussed in relevant working groups or expert networks. GEAR could indicate the necessary descriptors and criterias for further regional discussions.

- the setting of threshold values on the basis of the precautionary principle, reflecting the potential risks to the marine environment (Art. 4 (1) (e) Commission Decision).

This topic and point b), c), d) below all concern threshold values. The topic could be timely to discuss as the indicator work has progressed a little further (GEAR 22 or 23) and guidance to WGs may be useful in development of new indicators and thresholds.

Questions for discussion could include:

- What principle have you used nationally for setting thresholds in relation to the below aspects?

EE: if regionally agreed or EU level threshold values are not in place, we have made national research projects to establish national 'baseline' values (not thresholds). Further monitoring and assessment activities enable to follow the changes compared to baseline level, eg trendline is assessed. It will be used until regional or EU TV-s are set.

- Could an indicator become "Core" even though a threshold cannot be agreed?

EE: rather not. If TV is not agreed, the indicator should be pre-core.

- To what extent /in what aspects can thresholds differ within Helcom CPs and still be considered coordinated (from the point of view of MSFD)?

EE: perhaps it depends on criteria, but if the monitoring and assessment methodology is agreed, different TV-s in CPs might be justified (eg due to different ecological and hydrological conditions in different marine areas). Especially when it's a priority criteria and assessed in the frames of other EU directives or regulations. Also it could be regionally agreed, when trendline assessment could be used instead of threshold value.

- monitoring effort (all descriptors and criteria, but mentioned specifically under D5, D8 – Annex I to the Commission Decision). Proposal to discuss this topic at a later stage.
- *EE: agree, but the aggregation rules of results from different sampling matrices and Baltic Sea specific thresholds of haz substances (where EQSes are not set) should be elaborated asap.*

- b. Establishment of **thresholds where knowledge is limited**. Art. 2 of Commission Decision 2017/848/EU allows Member States in the absence of threshold values to use a) national thresholds, provided the

obligation of regional cooperation is complied with, b) directional trends of the values or c) pressurebased threshold values as proxies for status-based threshold values.

- c. Threshold values should be set **consistent across different criteria** when they relate to the same ecosystem element (Art. 4 (1) (f) Commission Decision). This requires mechanisms that allow working across criteria where these are developed through different expert groups.
- d. Threshold values should be **consistent with other Union legislation**, e.g. the Habitats-, Birds- and Water Framework Directives. This could result in the need for reviewing some of the existing threshold values, e.g. for contaminants.

EE: also some Helcom indicators might be revised, where species-specific of sub-groups specific assessments are required by EU legislation instead of combined indicators (eg "wintering birds").

- e. Undertaking an **ecosystem-based assessment** remains still a challenge. How could this be usefully achieved in order to support the management of human activities and pressures including spatial planning, and to be comparable across EU marine regions. For HOLAS II a refined Baltic Sea Pressure and Impact Index has been used as a spatial approach.