

SIMWESTMED Case Study #4 Strait of Sicily – Malta Part II – Regulating Maritime Uses

November 2018

Grant Agreement: EASME/EMFF/2015/1.2.1.3/02/SI2.742101

Component: 1.3

Sub-component: 1.3.6

Deliverable partner: Planning Authority-Malta

Start Date of Project: 01/01/17

Duration: 24 Months

Version: 1.2

Dissemination Level		
PU	Public	
PP	Restricted to a group specified by the consortium (including the Commission services)	
RE	Restricted to other programme participants (including the Commission services)	
CO	Confidential, only for members of the consortium (Including the Commission services)	

Disclaimer: The contents and conclusions of this report, including the maps and figures, do not imply the expression of any opinion or endorsement of the participating partners concerning the legal status of any country, territory, area, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The depiction and use of boundaries, geographic names and related data shown on maps included in this report are not warranted to be error free nor do they imply official endorsement or acceptance by any of the participating partners. This report is a working document and may rely on data from sources external to the SIMWESTMED project Consortium and, in addition to this; it may contain some information gaps. Neither the European Commission or Executive Agency for Small and Medium-sized Enterprises nor UN Environment/MAP Barcelona Convention Secretariat may be held responsible for any use that may be made of the information contained in this report.

Contents

1	Introduction	4
2	Methodology adopted	4
3	Regulatory Framework.....	5
4	Key findings from the electricity-interconnector case study.....	8
5	Conclusions	9
6	Recommendations	10

1 Introduction

Directive 2014/89/EU establishing a framework for maritime spatial planning, requires the establishment and implementation of maritime spatial planning through the development of plans that aim to contribute to sustainable development of at least the following sectors at sea: energy, maritime transport, fisheries and aquaculture and the preservation, protection and improvement of the environment, including resilience to climate change impacts.

Implementation of maritime spatial planning as defined by the Directive is not defined further than the preparation of the MSP plan and its implementation. With the Strategic Plan for Environment and Development (SPED) of 2015 as Malta's first MSP plan, its implementation is primarily through the preparation of more detailed subsidiary plans and policies as well as the effective determination of project proposals submitted to the Planning Authority to obtain a planning permit for the proposed development.

The Planning Authority as Competent Authority for MSP in Malta is seeking to improve its administrative procedures in providing consent for development projects at sea, particularly projects beyond the limits of the Territorial Waters. Part II of the SIMWESTMED Case Study #4 (covering part of the Strait of Sicily) is aimed to inform regulatory practices that can support the effective implementation of MSP within the case study area when considering development consent of projects.

For this part of the case study, which is being undertaken solely by the Planning Authority, it was decided to use the consent process undertaken in Malta for the development of the Malta – Sicily (Ragusa) power cable¹, a project that was part-financed through the European Union's European Energy Programme for Recovery (EEPR), and which came into operation in April 2015.

This report provides:

- an outline of the governance framework for maritime projects before and after the transposition of the MSP Directive;
- the key findings of the tasks undertaken in accordance with the Case Study fiche; and
- recommendations that can be considered to further facilitate transboundary co-operation for MSP.

The conclusions reached for Part II of the SIMWESTMED Case Study #4 present a spotlight on the operational front for MSP that may contribute towards improved understanding of performance at both national and regional level.

2 Methodology adopted

Desk study

(i) Project Case file

The case file for the development application was retrieved from the Planning Authority's database. The procedural steps undertaken were noted together with related time frames; issues that were raised during the permitting process; the final permit decision and associated conditions.

¹ <http://www.enemalta.com.mt/index.aspx?cat=2&art=247>

(ii) Regulatory framework

The main regulatory procedures that were in place during the processing of the inter-connector project were identified. These were compared with the existing regulatory procedures in place at the time of writing, to identify whether significant changes were made particularly concerning transboundary projects.

Meetings

Discussions with the officers who were involved in the consent process were also undertaken to obtain a better understanding of the context within which the project proposal was processed. These discussions also helped to clarify any points that were raised from reviewing the documentation in the case file.

Workshop

A half day workshop was organised on the 7th of May 2018 to compare the adopted procedures with current ones concerning the Projects of Common Interest, with a view to define elements that could support transboundary co-operation for development projects at sea. The workshop also served as an awareness raising forum on MSP for the three entities involved (Planning Authority, Environment Resources Authority, Energy and Water Agency) in the new proposed transboundary project of a gas pipeline between Malta and Sicily. A separate report on the outcome of the workshop is included as Annex with this report.

3 Regulatory Framework

This section provides a brief overview of the existing regulatory framework influencing decision making for development projects within Malta's marine waters.

Pre MSP Directive

Changes to the Development Planning legislation in 1997 enabled the adoption of a system for plan formulation and development control that covers both land and maritime territory up to the 12 nautical mile limit of the territorial waters. The regulatory authority responsible for spatial planning consequently integrated its plan formulation and regulatory processes for land and sea and was able to fulfil its functions in a comprehensive manner.

By the time that the planning application for the interconnector project was submitted, considerable experience existed with regards to the processing of individual development project proposals at sea. This experience was mainly focused within the national territory with very limited opportunity to address transboundary issues since most development applications were mainly for inshore waters. Such projects included the deployment of fish farms, the scuttling of wrecks as diving attractions, port related infrastructure and temporary structures related to tourism and recreation. The regulatory processes pertaining to the EIA process, inter-departmental consultations and stakeholder involvement for such project proposals continued to be refined over time and supported the successful outcome for the transboundary projects undertaken mainly consisted of the laying of telecommunication cables between Malta and Sicily.

In the absence of a spatial plan that covered maritime space, strategic decisions that called for the deployment of such cables were beyond the functions of the regulatory authority responsible for spatial planning and emanated from government policy. Therefore the approach adopted for the

development consent for the transboundary projects focused on determining the most suitable location for the coastal landing sites and the underwater route within Malta's territorial waters. Issues beyond the 12nm limit would have been flagged through the EIA process however none were identified through the desk study undertaken for the preparation of this report.

Transposition of the MSP Directive

(i) Regulating development projects

The Development Planning Act of 2016 re-establishes the Planning Authority with its two main decision-making bodies, the Executive Council responsible for plan and policy formulation and day-to-day operations and the Planning Board, responsible for decision taking of project proposals. In essence the key steps in assessing development project have not changed, with the procedure remaining as transparent as possible allowing for the public to make representations, requiring consultations with government entities, and providing access to justice where planning decisions can be appealed through a separate body, the Environment and Planning Review Tribunal.

The Planning Directorate within the Planning Authority is responsible for processing planning applications in accordance with approved planning policies all of which are available on line and easily accessible. The process is also supported by an online portal which enables a more efficient method for submission of applications and related documents.

In 2015 the Strategic Plan for Environment and Development which provides the strategic policy framework for part of Malta's marine waters up to 25nm, was approved by Parliament. This plan provides additional policy guidance to regulate development at sea, seeking to ensure that all such projects are to facilitate both the implementation of the Maritime Strategy Framework Directive and the national integrated maritime strategy.

(ii) Governance for MSP

The MSP Directive was transposed into national legislation through the Maritime Spatial Planning Regulations (S.L. 552.27) under the Development Planning Act of 2016, placing the Planning Authority as the Competent Authority for MSP. Through the same regulations, the Strategic Plan for Environment and Development (2015), constituting the national spatial strategy in line with the Development Planning legislation, is recognised as being the national MSP Plan, where the policy framework covers up to 25nm. In view that the Planning Authority regulatory remit is limited to 12nm, the governance framework adopted in Malta for the implementation of the MSP Directive is built on a legislative framework that has led to administrative co-operation amongst relevant regulators over the years.

Through the Development Planning Act (2016) it is possible for the Executive Council to call in representatives from identified entities when taking decisions on plans, policies and other guidance necessary to fulfil its functions. With the Maritime Spatial Planning (MSP) Regulations the Executive Council decided that for the purpose of implementing Maritime Spatial Planning it will call in representatives from identified entities, particularly for matters pertaining to the following:

- a. provision of guidance on development plans and proposals for maritime uses as governed by the Strategic Plan for Environment and Development;
- b. provision of guidance and support on matters pertaining to the implementation of the MSP Directive in all marine waters; and

c. provision of support in any matters pertaining to international co-operation.

In support of the decision-making role of the Executive Council, an MSP Technical Committee representing all entities concerned has been established to facilitate the ongoing implementation processes linked with the MSP Directive on a more frequent basis. The MSP Technical Committee provides a forum for co-operation at a technical level and is expected to provide support and make recommendations to the Executive Council accordingly. The Technical Committee is tasked to work towards the resolution of issues that may arise amongst the respective entities on processes linked to:

- Policy development and plan making;
- Licensing and permitting procedures;
- Data management and collation;
- Stakeholder engagement; and
- International co-operation.

The main regulatory entities involved in MSP include the Department of Fisheries and Aquaculture, the Environment and Resources Authority, Transport Malta, the Superintendence of Cultural Heritage and the Continental Shelf Department. They are all empowered to designate specific spatial areas and regulate activities therein within the provisions of the UNCLOS. Another entity established in 2016 is also on board; responsible for the promotion of blue growth on behalf of Government, Malta Marittima Agency, although not a regulator provides an invaluable bridge with the operators as key stakeholders.

No significant changes were affected to the decision making process for assessing development proposals as a result of the MSP Regulations of 2016 coming into force.

Projects of Common Interest (PCIs)

Regulation (EU) No.347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure seeks to identify projects of Common Interest (PCIs) necessary to implement priority corridors and areas falling under the energy infrastructure categories in electricity, gas, oil and carbon dioxide for the period up to 2020 and beyond. The same Regulation seeks to facilitate the permit granting process by requiring Member States to appoint a Competent Authority responsible for making the comprehensive decision and is made within the time limits specified in the Regulation.

The Planning Authority was designated as the Competent Authority in Malta. In accordance with the requirements of the Regulation, the PA has published a manual of procedures for the permit granting process application to PCIs. The manual is available on line through the PA website and outlines in detail the permit granting process, the required documentation, the applicable laws and public participation necessary. It also provides the contact details of the Competent Authority and other authorities and major stakeholders relevant to PCIs.

The Manual of Procedures is based on the existing planning procedures that are applicable to other major project proposals.

4 Key findings from the electricity-interconnector case study

The permitting process

The procedure for obtaining a planning permit is established by legislation and it is beyond the scope of this exercise to go through each step. This section focuses on those steps that would influence effective implementation of MSP as required by the Directive.

(a) Project scope

Any preliminary discussions on the proposal of the interconnector pertaining to its scope and location were co-ordinated at high level. Previous experience with other development projects at sea and the diverse maritime activities present in Maltese coastal waters enabled high-level discussions on issues concerning potential user conflicts were already discussed prior to the submission of a planning permit application with the Malta Environment and Planning Authority (MEPA) in 2009.

(b) Timelines

Whilst MEPA was alerted by the project proponent in 2007 of a potential project, the formal application for the inter-connector was submitted with the MEPA, in 2009. MEPA processed the project proposal within the 12nm limits of the territorial waters. With very little discussions with MEPA at the initial phase of project planning, the permitting process was affected by delays in the early stages due to technical requirements. Initially two separate applications were submitted: one for the submarine cable and another for the inter-connector landing station. The proponents had to resubmit fresh plans to include the marine part up to 12nm. Consequently this affected the building levy calculation and validation process, delaying the permitting process by more than two years.

(c) Environmental studies

The EIA process was not significantly affected by this delay and commenced a year after the initial submission. By November 2010 the Terms of Reference for the EIA were issued following consultations with relevant NGOs, Local Councils, Government entities and the general public. The draft EIA was submitted a year later, circulated for review with relevant entities where the process was completed by March 2012. The project was also screened for an appropriate assessment in view that the coastal part of the cable is within a marine Special Area of Conservation of International Importance.

(d) Stakeholder involvement

The planning permit regulations since 1992 have required stakeholder and public consultation during the application process. For the electricity cable permitting process the following entities were involved:

- Energy Directorate within the Malta Resources Authority's on matters related to Energy Regulations;
- Environmental Health Department on matters related to Bathing Water Quality;
- Civil Protection Department on potential risks concerning proposed tunnel development on land;
- Local Councils in the vicinity of proposed landing site.

For the interconnector application stakeholder meetings were held towards the end of the decision making process and this led to delay in the permit being issued with a consequent delay in its implementation. Stakeholder meetings in Sicily were held as part of the EIA process.

Environmental Assessment

The regulatory framework applicable at the time reflected the EU regulatory framework in relation to Environmental Impact Assessments and the application of Appropriate Assessments (Habitats Directive). Through the EIA Regulations in force at the time (L.N. 114 of 2007), the possibility for participation in the EIA processes on development applications of a transboundary nature would have been undertaken through the Minister responsible for the Environment.

The project qualified for an EIA and the Terms of Reference issued required that the assessment addresses marine uses and the effects of the project on marine uses. The outcome of the EIA report was not available for the desk study, however from the recommendations made by the Environment Protection Directorate it is evident that the marine aspect was only considered from an ecological perspective. No information was provided on whether or not the laying of the marine cable would impact marine uses, and no reference to transboundary impacts was indicated.

It is important to note that the spatial extent addressed by the EIA processed by the Maltese authorities was limited to 12nm. Since Malta did not have an Exclusive Economic Zone, national jurisdiction on planning and environment protection was limited to the limits of the Territorial Waters.

In addition to the EIA, an Appropriate Assessment was also conducted since the coastal area for the proposed cable location is a marine protected area and Natura 2000 site: *MT0000105: Zona fil-bahar fil-grigal ta' Malta*. No significant environmental impacts were identified: the potential residual impact within the footprint of the cable itself and the immediate area of influence as identified by the EIA were expected to be negligible in proportion to the extensive Natura 2000 site along the Malta coast. Mitigation measures were recommended to ensure the least possible impact on *Posidonia* meadows present.

5 Conclusions

The regulatory process for maritime projects outside 12nm

By 2009 Malta had gained experience with processing of development projects that were transboundary in nature, consisting mainly of fibre optic cables deployment between Malta and Sicily. However with national jurisdiction on development planning and regulation extending only up to 12nm, the planning process could not undertake a co-ordinating role for transboundary discussions.

The process adopted between 2009 and 2012 for this particular project highlights the lack of adequate spatial policies to address development at sea. The emphasis placed on the land-based infrastructure and immediate coastal environment, with the EIA process focusing mainly on marine ecology indicates a lacuna in the administrative procedures and potentially skills capacity, when it comes to evaluating the potential impacts of projects on existing and potential maritime uses.

Whilst two landing sites were required (one on each side of the Sicily-Malta channel) and the electricity cable laid across, the approach taken to identify any transboundary issues was through the EIA process. Emphasis was on the potential impacts on marine ecology with no significant reference to existing or potential future maritime uses. No transboundary issues were flagged.

The additional role of the Planning Authority as Competent Authority for the decision making process pertaining to PCIs provides scope for the organisation to consolidate its procedures in a manner that enables it to fulfil its different roles. The publication of the Manual of Procedures for PCIs placed on the Planning Authority website and outlining the entire development control process including the contact details of relevant authorities, is essentially applicable to all projects within the maritime space and may prove useful to implement the objectives of the MSP Directive.

6 Recommendations

With the approval of the SPED in 2015, a spatial framework for the coastal zone and a portion of the marine area in Malta is in place, providing policy direction in favour of addressing potential user-conflicts. However, detailed policy guidance is necessary to facilitate decision making for development projects at sea.

The designation of the Planning Authority as the Competent Authority for MSP, following the transposition of the MSP Directive, provides further opportunity for improvement of procedures particularly for project proposals located outside the 12nm limits.

The Manual of Procedure as required by the PCI regulations outlining procedures and contacts that is easily available to the public may be a useful template to consider for improving transboundary co-operation on MSP for both plan formulation and decision making on transboundary projects.

Finally it is expected that the clearer the governance framework at the national level, the greater the opportunities for effective transboundary co-operation on MSP. The MSP Technical Committee is considered to be the appropriate forum where improvements on the governance framework on MSP in Malta may be discussed.

ANNEX

- Report of Workshop
- Workshop Agenda
- Participant List



Co-funded by the
European Union

SIMWESTMED

Case Study #4 Malta-Sicily Channel
Part II – Regulating maritime uses in a transboundary context

Outcome of workshop held on 7th May 2018

1. Introduction

1.1 The scope of the workshop was to assist the Planning Authority to identify the procedures adopted to assess the development permit application for the deployment of the electricity interconnector cable between Malta and Sicily. As part of the SIMWESTMED Malta-Sicily case study as agreed in the Project Group and Steering Committee Meetings in Marseilles, in February 2018, the workshop also focused on the parallel procedures adopted through the Regulations concerning Projects of Common Interest with a view in defining elements that could support transboundary co-operation for development projects at sea.

1.2 Officers representing the Planning Authority, the Environment and Resources Authority and the Energy and Water Agency attended the meeting. The meeting was held at the offices of the Planning Authority on the 7th of May 2018 from 9.00 – 12:00.

2. Agenda

2.1 The first part of the meeting covered two short presentations: one on the MSP Directive and SIMWESTMED Project Case Study, the other on the Regulation concerning Projects of Common Interest and the adopted procedure by Malta for its implementation. This was followed by an overview of the procedures adopted for Malta – Sicily Interconnector permitting process. After the coffee break, the meeting proceeded in a discussion format to address the governance, procedural and technical aspects experienced in the interconnector project.

3. Points arising from the workshop

3.1 The workshop discussions were mainly instigated by the SIMWESTMED project group members to elicit information and views on:

- (a) the development permit process that covered the interconnector project, to gain a better understanding of issues addressed at the time, and
- (b) the current initiative being undertaken by the Ministry for Energy and Water Management in Malta, for the development of a gas pipeline between Malta and Sicily to identify what actions are already in place and what actions could be undertaken in future.

The most relevant points emerging from the workshop are listed below.

3.1.1 The permitting procedure for the inter connector project

- Preliminary discussions on the proposal of the interconnector pertaining to its scope and location were co-ordinated at high level. Issues on potential user conflicts were already discussed at this level prior to the submission of a planning permit application with the Malta Environment and Planning Authority (MEPA). Awareness of the need to assess these aspects was built from previous experience with other development projects at sea, and also in view of the diverse maritime activities present in Maltese coastal waters. Alternative site assessment options within the EIA process addressed potential user conflicts in more detail.
- Although the project was a transboundary one, each country assessed the respective segments falling within its jurisdiction separately. MEPA assessed the project proposal within the 12nm limits of the territorial waters.

- Whilst MEPA was alerted by the project proponent in 2007 of a potential project, the formal application for the inter-connector was submitted with the MEPA, in 2009. With very little discussions with MEPA at the initial phase of project planning, the permitting process was affected by delays in the early stages due to technical requirements. Initially two separate applications were submitted: one for the submarine cable and another for the inter-connector landing station. The proponents had to resubmit fresh plans to include the marine part up to 12nm. Consequently this affected the building levy calculation and validation process, delaying the permitting process by more than two years.
- The EIA process was not significantly affected by this delay and commenced a year after the initial submission. The project was also screened for an appropriate assessment in view that the coastal part of the cable is within a marine Special Area of Conservation of International Importance. By November 2010 the Terms of Reference for the EIA were issued following consultations with relevant NGOs, Local Councils, Government entities and the general public. The draft EIA was submitted a year later, circulated for review with relevant entities where the process was completed by March 2012.
- Detailed underwater studies are carried out with enough details to guide development and decision making. The EIA process did not identify any significant environmental impacts nor did the Appropriate Assessment screening with regards to the marine SAC, in view of the proposed location, methodology and mitigation measures to be adopted for deployment and operation of the electricity cable.
- The planning permit regulations since 1992 have required stakeholder and public consultation during the application process. For the electricity cable permitting process the following entities were involved:
 - (a) the Malta Resources Authority's Energy Directorate on matters related to Energy Regulations;
 - (b) Environmental Health Department on matters related to Bathing Water Quality;
 - (c) Civil Protection Department on potential risks concerning proposed tunnel development on land;
 - (d) Local Councils in the vicinity of proposed landing site.

For the interconnector application stakeholder meetings were held towards the end of the decision making process and led to delay of permit being issued and consequently its implementation. Stakeholder meetings in Sicily were held with regards to the EIA process.

3.1.2 The PCI Regulations and the current process for the gas pipeline development

- The PCI Regulation calls for a one-stop-shop approach at a national level to issue relevant permits. They provide for a more structured approach towards reaching consent for projects in a timely and effective manner through the requirement of one comprehensive decision at a country level.
- Knowing in advance who the responsible authorities are facilitates transboundary co-operation. Already a conference for stakeholders has already been undertaken at the early stage of the project, before its validation. In addition a letter of intent for a Memorandum of Understanding for collaboration to achieve a twinning agreement between the town of Gela in Sicily and the Local Council of Marsaxlokk, Malta is already in place.

- The requirements of the PCI Regulation are very similar to the national procedures adopted through the Development Planning Act of 2016 in Malta to assess development applications.
- The procedures provide for a clearer definition of the regulatory roles and this has already encouraged the uptake of co-operation efforts between the project proponent and the permitting regulator from the initial stages.

4 Conclusion

4.1 The key conclusions reached from the workshop suggest that:

- Mechanisms for improved co-ordination to address maritime development projects both within and outside Malta's marine waters would contribute towards more efficient permitting procedures.
- The PCI regulations contain elements that support efficient and effective transboundary co-operation, including in particular stakeholder involvement and identified timelines for development consent.

SIMWESTMED Case Study #4: Malta – Sicily Channel Part II – Regulating Maritime Uses

AGENDA

Introduction	09:00hrs
The MSP Directive and SIMWESTMED Project – Case Study	09:10hrs
The PCI regulation and MT procedure	09:25hrs
The Malta-Sicily Interconnector permitting process	09:40hrs
<i>Coffee break</i>	
Workshop Discussion	10:15hrs
Conclusion	12:00hrs

Questions to be addressed at the Workshop

Governance	Procedural	Technical
Who initiated the project?	Was the process for development consent carried out unilaterally, in parallel or in sequence with Sicily?	What was the level of information available at the time?
Were there any bilateral agreements before the decision to submit development application was taken?	How were permit procedures tackled in Sicily?	What data gaps were identified?
Were there pre-application submission meetings with MEPA? When did these start?	How was the EIA carried out and approved?	Was there a need to address user conflicts? Were changes to the proposed route affected?
Was there need for diplomatic involvement in the process?	Were transboundary issues considered? If any were found, how were these resolved?	
Were there limitations that affected the decisions and permit conditions?	Which stakeholders participated in the process?	
Is there any monitoring linked with conditions? How was it managed?	What would have facilitated the process, on hindsight?	

Participant List

Planning Authority

Mr. Joseph Scalpello, Assistant Director
Ms. Michelle Borg, Unit Manager
Mr. Ivan Fava, Unit Manager
Ms. Suzanne Gauci , Unit Manager
Mr. Bernard Ferry, Executive II
Ms Alexia Vella, Assistant Planning Officer

Environment and Resources Authority

Mr Alex Camilleri, Unit Manager
Ms Josianne Abela Vassallo, Team Manager
Ms Leonora D'Amato, Environment Protection Officer

Energy and Water Agency, Ministry for Energy and Water Manager

Ing Alexandra Meli, Senior Project Manager
Ms Nadine Borg, Architect

SIMWESTMED

Case Study #4 Malta-Sicily Channel

Part II – Regulating maritime uses in a transboundary context

Workshop 07.05.2018

Name	Organisation	Signature
Suzanne Galea	Planning Authority	
Ivan Fava	Planning Authority	
Alexandra Mela	Energy & Water Agency	
Bernard Ferris	Planning Authority	
Leandra D'Amato	Environment & Resources Authority	
Feliciana Akola Vassallo	ERA	
Alexia Vella	Planning Authority	
Alexi Camilleri	ERA	
Nadine Bors	Energy & Water Agency	
Jill Skerrett	PA	
Michelle Botta	PL	