

**Decision**  
of the Bundesrat

---

**Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management****COM (2013) 133 final; Council document. 7510/13**

In its 909th session on 3rd May 2012 the Bundesrat adopted the following Resolution pursuant to Article 12, Letter b, TEU:

1. The Bundesrat takes the view that the proposal tabled by the Commission is not compatible with the subsidiarity principle. Exclusive competences in the field of spatial planning have not been conferred to the EU. Pursuant to the general provisions on division of competences in Article 4, Sub-section 1 and Article 5, Sub-section 2, Sentence 2, TEU the Member States are competent to adopt provisions in this policy area. The Bundesrat emphasises that the actual planning process must remain within the remit of the Member States, in keeping with the aforementioned division of competences. This applies in particular to the establishment of priorities and identification of solutions at the national and regional level.
2. The EU provides substantiation for its proposal with references to areas governed by shared competences pursuant to Article 4, Sub-section 2, TEU. Pursuant to Article 5, Sub-section 3, TEU, the EU may only take action in areas where the EU does not hold exclusive competences in as much as and to the extent that the goals pursued by the envisaged measures could not be sufficiently attained by the Member States acting at either central, regional or local level, but could instead better be attained at EU level due to the scope or impact of such measures. As "Maritime Spatial Planning" requires inter-state agreements on a regular basis, the Bundesrat concedes that the EU is competent to act in this field; this competence must however be restricted to formulating a procedural framework and/or a procedural standard.

3. Although the Commission advocates – for public policy reasons – a regulatory framework in the fields of "Maritime Spatial Planning" and "Integrated Coastal Zone Management Strategies", it is not clear why the extent and scope of regulation proposed in respect of relevant points in the draft Directive extends far beyond the procedural framework. The Bundesrat takes the view that the specific minimum requirements for "Maritime Spatial Plans" and "Integrated Coastal Zone Management Strategies" envisaged in the draft Directive are much too detailed, and views this as an encroachment upon substantive spatial planning law (which falls within the sphere of competence of the Member States and sub-divisions of the Member States) and thus as a violation of the subsidiarity principle.
4. Furthermore the Bundesrat also considers that there is a need for clarification of the decision to base "Maritime Spatial Plans" and "Integrated Coastal Zone Management Strategies" on the ecosystem-oriented approach. Prior environmental assessment and/or establishment of priorities associated with this extend far beyond the level of a procedural framework. The Bundesrat draws attention to the fact that, pursuant to the proportionality principle as provided for in Article 5, Sub-section 4, TEU, the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties. The inadmissibility of detailed substantive provisions on "Maritime Spatial Planning" in the Member States can be derived from this principle. Such detailed provisions are not necessary in order to achieve the objective pursued, namely cross-border harmonisation of spatial planning, based on the same procedural principles across the EU.