European Commission, DG ENV

Study concerning the report on the application and effectiveness of the SEA Directive (2001/42/EC)

Final report

April 2009

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The study presents the views of the Consultant and does not necessarily coincide with those of the European Commission or the 27 Member States

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List of abbreviations

APA	Portuguese Environment Agency
ASCI	Emerald network" of Areas of Special Conservation Interest
COBAT	Brussels Code for Spatial and Urban planning
CWATUP	the Walloon Code for Spatial, Urban and Heritage Planning
CWE	The Walloon Code of Environment
DEREP	The Decree on the environmental Report
DETPRO	The Decree on the Types of Projects
DPPA	Development Policy Principles Act
DPSIR	driving forces, pressures, state, impacts, responses
DTA	directives territoriales d'aménagement
EA	environmental assessment
ECJ	European Courts of Justice
EIA	Environmental Impact Assessment
EIAL	Law on Environmental Impact Assessment
ENEA	European Network of Environmental Authorities
EPA	Environmental Protection Agency
EPLA	Environmental Protection Law Act
ETS	Emissions Trading System
EU	European Union
GIS	Geographical Information System
IAIA	The International Association for Impact Assessment
INAG	Water Institute
ICNB	Institute for Nature and Biodiversity Conservation
INTERREG	Innovation and Environment - Regions of Europe
IPPC	Integrated Pollution Prevention and Control
JMD	Joint Ministerial Decision
MESD	Minister of Environment and Sustainable Development
NDPA	National Development Plan Act
NECATER	A French tool developed to assess the global impact of OPs on CO2 emissions.

OPs	Operational programmes
PLU	Plans Locaux d'Urbanisme
PPs	Plans and programmes
RACM	The National Service for Archaeology, Cultural Landscape and Built Heritage
SAC	Special Areas of Conservation (SACs)
SCoT	Schémas de Cohérence Territoriale
SDRIF	The Development Plan of the Paris region (schéma directeur de la région d'Ile-de-France
SEA	Strategic Environmental Assessment
SG	State Gazette
SIMPLEX	The Programme for Administrative Simplification and e-Government
SPA	Special Protection Area

Executive summary

Purpose of the study

The study of the application and effectiveness of the SEA Directive (Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment) contains analyses of how the 27 EU Member States have chosen to transpose and implement the SEA Directive in their national planning systems.

Scope of the study

The study examines the organisational and legal arrangements in place and their effectiveness as well as the level of experience with carrying out SEAs in Member States, including the number of SEAs carried out, transboundary issues and the impact of the Directive particularly in terms of benefits and costs.

More specifically the study provides an analysis of the handling by the Member States of the key stages of SEA (Screening, scoping, baseline reporting, alternatives, impacts, monitoring, preparation of the Environmental Report, consultation and public participation). Finally, the study explores the relationship of the SEA Directive with other Community policies and legislation, in particular the 'EIA Directive', the 'Habitats' and the 'Birds Directives', the 'Seveso Directive', the EU Action Plan 'Halting the loss of biodiversity by 2010 - and beyond' and the European Union's Climate Initiative.

Methodology

The study has been conducted through five main tasks: 1) Review of responses to the EU Commission's Questionnaire on the application and effectiveness of the SEA Directive; 2) A desktop literature search study of existing relevant SEA studies, reports and analyses completed in the period 2001-2007; 3) Review of specific country data collected by local consultants - including the legal and institutional set up of the SEA procedure in Member States and the actual application and implementation of the SEA Directive in the Member States; 4) Cross-country analysis and 5) Final reporting.

The draft final report of this study has been subject to Member State consultation and was discussed at the meeting of the EIA / SEA working group set up under the EU Commission, DG Environment meeting in Paris, October 2008.

Information sources

The report is primarily based on Member State responses to the EU Commission questionnaire on the application and effectiveness of the SEA Directive. Country information collected by the Consultant's own network of local consultants in Member States by way of interviews with relevant stakeholders and document review constitute an important supplementary source of information.

And finally, the study has been informed by a comprehensive literature search study identifying issues addressed in SEA literature.

Organisation of the study

The study has been carried out by COWI A/S in association with Milieu Ltd. The study was carried out between December 2007 and November 2008.

Disclaimer

The study presents the views of the Consultant and does not necessarily coincide with those of the EU Commission or the 27 EU Member States subject to the Study.

Findings of the study

The most important findings of the study are:

- the SEA Directive contributes to the systematic and structured consideration of environmental concerns in planning processes
- the SEA Directive provides by way of its formality further structure to existing planning procedures, and

as a consequence of the two above findings

- contribute to a transparent and participatory decision making process

Overall finding

The overall picture of the application and effectiveness of the SEA Directive across the 27 EU Member States is also diverse - in terms of institutional and legal arrangement of the SEA procedure in Member States, the actual implementation of the SEA procedure as well as how Member States perceive of the SEA Directive. The diverse picture also counts for how Member States view benefits and drawbacks and in terms of what - if anything - could be done in order to improve implementation and effectiveness of the Directive requirements.

It is anticipated, that the diverse picture is mainly a consequence of the fact that some provisions of the SEA Directive may create powers rather than duties which are discretionary rather than mandatory.

Generally, Member States report of limited SEA experience. Hence, recommendations from this study may be based on a limited basis of evidence in Member States in applying the requirements of the SEA Directive.

The fact that European Court of Justice' jurisprudence is still to be developed, the EU SEA Guidance document is so far the most authoritative statement available to Member States.

The nature of problems reported by Member States are small compared to the profound nature of the SEA Directive, when thinking of the SEA Directive as being a framework for the change of mindsets among planners. This picture is somewhat more mixed when local consultants hired for this assignment to collect information on the application and effectiveness of the SEA Directive re-

quirements in Member States provide a more critical picture on problems and issues in Member States.[1]

- Institutional and legal arrangements

The institutional arrangements provided for by Member States show that the responsibility to carry out the SEA procedure is in the vast majority of Member States placed on the planning authority. The planning authority is however, often supported by relevant environmental authorities and other experts. Several Member States - depending on the nature and/or content of the plan or programme in question - establish temporary working groups for the purpose of facilitating procedure, providing advice and support decision making in the SEA process.

Member States have chosen different formal legal ways of transposing the SEA Directive into law, where the dominating way is to integrate the requirements into existing legislations (in e.g. the Environmental Protection Act, The Environmental Impact Assessment Act); others have chosen to implement by way of an independent SEA Act.

Some Member States have chosen to designate the responsible Environmental Authorities that must be consulted in SEA procedures in their legislation, whereas other Member States rely on an ad-hoc decision of which authorities that must to be consulted in individual procedures.

It is generally reported from Member States that consultation arrangements work in the intended manner.

It is not possible to conclude anything with regard to effectiveness of institutional and legal arrangements as experiences so far are too limited to provide reliable evidence.

- Key stages in the SEA procedure

Member States report that different key stages of the SEA procedure may have caused problems in their application of the SEA Directive.

Determination of the application of the Directive: In general there are only few reports of problems on the determination of the application of the SEA Directive. Few Member States have encountered problems on how to determine which plans and programmes that must be subjected to a decision on whether an assessment is needed or not.

One problem not directly pointed to by Member States relates to the discretionary power of Member States in transposing Article 3(2) (a) of the Directive.

Most Member States report that their screening model is based on a combined approach where a list of plans and programmes that *must* be subjected to an assessment is supplemented by a *case-by-case* approach to determining whether an assessment is needed.

[1] The criticism expressed by local consultants is highlighted throughout the report whenever relevant.

Whereas the majority of Member States have simply transposed the general categories of plans and programmes as listed in Article 3(2) (a) of the Directive, some Member States have taken it further and specify in detail which concrete plans and programmes should be subject to an SEA when they provide the framework for future development consent of projects.

Member States that comply with the Directive by simply adopting the Directive text in each case will have to consider if the characteristics set forth in the Directive are applicable to the plan or programme in question. National SEA systems that are founded on a simple translation of the Directive's text in this regard are thus more vulnerable to failure to comply with regulations at the application level, simply because a formal position must be reached in each case a plan or programme is under scrutiny. In these Member States the issuing of national guidance on the application of the SEA legislation must be considered a necessity.

A few Member States have encountered problems related to the determination of the term 'administrative provisions' in the light of the SEA requirement. An important qualification for a plan or programme to be subject to the Directive is that it is required by 'legislative, regulatory or administrative provisions'. However, neither the Directive nor the SEA Guidance provides clear and unambiguous criteria for how to interpret this qualification.

From an environmental perspective this has become an issue in e.g. Denmark, since the preparation of the annual/bi-annual investment plan for infrastructure adopted by the Minister for Transportation is not subjected to an SEA procedure. The submission of the Investment plan is not regulated by law or any other administrative provision, but in practice constitutes a practice that may equal a duty set forth in law and/or other administrative requirement.

'Setting the framework for future development consent' is crucial to the interpretation of the Directive; there is no definition of the term in the Directive. There are quite different approaches to whether it, at all, is relevant to provide further guidance on the understanding of what is meant by 'setting the framework for future development consent'. As revealed a majority of Member States have refrained from providing guidance, whereas a minority have chosen various ways of shedding light on what is meant by the wording.

The relevance of national guidance must obviously be viewed against whether public authorities are given discretion to adopt plans and/or programmes without being subjected to a formal requirement to do so.

Scoping: The SEA Directive and Guidance document set forth limited requirements to the scoping of the environmental assessment. The wide discretionary power left to Member States results in the application of different methods for scoping, different ways of organising the scoping phase, including the consultation of concerned authorities, as well as different requirements as to the development of e.g. a scoping document or report, the procedure for consultation of authorities and the public, consultation deadlines, etc. in the 27 Member States.

Member States report that scoping procedures are mostly developed on a case-by-case basis; and most Member States provide discretion for choosing the scoping method relevant to the individual planning context rather than prescribing specific methods.

In determining the scope for the environmental assessment, Member States report that a qualitative method is most often used in this stage of the SEA procedure. In guidance documents adopted at national level there may be references to many different scoping methods. There are differences between Member States with regard to which authority that decides the outcome of the scoping procedure - i.e. the scope of the environmental assessment. This is either the responsibility of the planning authority - but only after having consulted the responsible environmental authorities; in other instances this is left to the responsible environmental authority. In some Member States the scoping procedure results in a formal report - in some Member States called the scoping conclusion. When consulting other authorities these are given specific deadlines for reacting to the consultation. Deadlines stretch from 10 days to 2 months in Member States. In few Member States it is even required that the public is consulted in the scoping procedure although this is not required in the Directive.

Alternatives: Alternatives in the Environmental Report are one of the few issues that have given rise to problems in Member States; the problem being how to select the reasonable and relevant alternatives to a plan or programme. For that purpose some Member States report that extensive national guidelines have been developed providing support for the identification and selection of the reasonable and relevant alternatives in individual procedures. The vast majority of Member States, however, have refrained from defining how this should take place.

It is characteristic that national legislation does not provide for a distinct definition of 'reasonable alternatives' or a number of alternatives that must be assessed; the choice of 'reasonable alternatives' is determined by way of a case-by-case assessment and decision. All Member States report that the do-nothing alternative has to be included in the environmental report on a mandatory basis.

Environmental report: Drawing up the environmental report, including the description of a baseline has only given rise to problems in some Member States. The problems mainly relate to the issue of baseline reporting and the availability and access to data for the baseline description. Furthermore, problems have been encountered in deciding the level of detail of the environmental report for the purpose of strategic decision making, as well as in the development of reliable and relevant assessment methods. Finally, there are problems related to providing indicators for monitoring.

Experience from OPs under the Cohesion Policy and other EC co-financed OPs shows, among other things, that non-technical summaries are sometimes not of a non-technical nature but comprehensive documents in a rather technical language. In other cases, the non-technical summary is missing in the consultation of authorities and the public.

Baseline reporting: National legislation lays down a formal requirement to provide a description of the baseline situation with the exception of one Member State. National requirements are often the same as those listed in Annex I in the Directive. It is reported that, especially, the problem of identifying the right scale of data for the baseline description as well as - as a direct consequence - identifying the right level of detail in assessment, are predominant. One major problem is obviously to target a homogenous level of detail that allows for the assessment to take place at the strategic level. Other issues raised by Member States in relation to the baseline reporting are: the lack of good quality information on environmental aspects in the Member States, it is time consuming to describe the baseline situation, absence of homogenous criteria for the scope and content of the baseline analysis, absence of a standard set of environment and sustainability criteria against which plans and programmes should be assessed.

Impact assessment: In general guidelines on impact forecasting, including methodological guidance, do often not exist in Member States. Most Member States have adopted the Directive criteria for determining the 'likely significant environmental impact' of a plan or a programme without further elaboration. Most Member States use qualitative predictions or a combination of qualitative and quantitative predictions. No specific problems related to the assessment of plans and programmes have been identified as being more suited or less suited by Member States.

Monitoring and evaluation: For monitoring and evaluation there are very few responses from Member States that report about monitoring as a predominant issue in SEA. On the contrary, there is evidence that monitoring is a non-issue in a number of Member States and that the lack of substantial national guidance may pose a problem. Data seem to suggest that the problem of monitoring may be a general problem in a substantial number of Member States.

Consultation: Member States have reported that consultation of the public and other authorities is well developed employing a wide range of media. Most Member States allow for consultation periods of at least one months length, whereas other Member States report that their national legislation uses the criteria 'reasonable time frame' or 'appropriate time frame' as the outset for deciding the specific time frames to be employed in individual procedures. Experiences from the implementation of SEA procedures into the programming of the EU Cohesion Policy (2007 - 2013) show examples of SEAs carried out over very limited time periods not allowing for 'appropriate time frames' for consultation of relevant authorities or the public - or not sufficient time to take the outcome of the consultation into account in the environmental assessment.

Relationship with other EU Directives

The key provision relating to the relationship of the SEA Directive with other Community legislation is Article 11 (2) which stipulates that Member States may provide for coordination and joint procedures in situations where an obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other Community legislation.

Member States report considerable differences in implementing SEA, and consequently coordinating with the **EIA** assessments. Member States choose quite diverse approaches to solve potential ineffectiveness (i.e. overlapping procedures/requirements between SEA and EIA), ranging from joint procedures in specific cases to informal coordination between the competent authorities. Several Member States have identified the overlapping of the SEA Directive with the requirements of other directives as a key problem. Only few Member States report on the existence of guidance for coordination of the joint procedures (synergies) for fulfilling the requirements for the assessments under different directives (Water Directive, EIA Directive, and Habitats Directive).

Regarding the **Habitats and Birds Directives**, in light of the lack of reported issues it can be concluded that nature conservation authorities consider that the relationship between SEA and Habitats is operating relatively smoothly, principally by implementation of Article 11(2) of the SEA Directive and Article 6(3) of the Habitats Directive. It should be noted however, that some reports from other stakeholders show a somewhat different picture. In several cases, NGOs have raised concerns as to the proper coordination of SEA and Habitats Directive procedures.

Member States report that they have taken measures to avoid duplication, although the approaches they adopt differ, depending on which option they have chosen: a 'co-ordinated' or 'joint' approach. For the **Biodiversity Action Plan** many Member States simply consider that the provisions of the SEA already sufficiently take into account the substance of the Action Plan. In relation with the **Seveso Directive**, very few Member States make comment, however, in terms of legal requirements, as a rule the national legislation would not go beyond the requirements of the Directives. Therefore, this is mainly a question of practical implementation and would involve principally informal institutional coordination mechanisms. Lastly, **climate change** issues in SEA, with the notable exception of the UK and France, appear to be still limited to plans and programmes which have an obvious impact on climate through increased greenhouse gas emissions, although a trend to pay more attention to these questions is emerging.

- Member State perception of effectiveness of the SEA Directive

Member State perception of effectiveness of the SEA Directive has been commented and assessed in terms of:

- The degree to which SEA has impacted on the national planning procedures:
- The degree to which SEA has an impact on the content of plans and programmes
- Costs of SEA
- Whether SEA is typically applied as a planning and /or an assessment tool in Member States
- Stakeholder perception of the main benefits of SEA.

A majority of Member States reports that the application of the SEA Directive to planning procedures has impacted on existing national planning procedures.

Especially, the structuring effect of the SEA Directive is mentioned, as well as the formal requirements of consultation of other authorities and the public which has lead to an increased transparency in planning procedures.

A majority of Member States also report that the content of plans and programmes are gradually being altered as a consequence of the iterative process of conducting the SEA along side the preparation of the plan or programme. Specifically, it is mentioned that previously adopted and expensive mitigation measures may now be superfluous and abandoned as a direct consequence of the early inclusion of environmental considerations in the plan or programme.

There is great variety in the reported costs of SEA. Costs reported on SEAs are mostly based on estimates and vary according to type of plan and programme being assessed but lie in the range of EUR 3,000 to EUR 100,000.

Member States have identified a large number of benefits of SEA; the major ones being:

- SEA integrates environmental consideration into decision making - and makes plans and programmes "greener".
- SEA allows for participation and consultation of relevant public authorities which both qualify decision making and facilitates and strengthens cooperation between different (planning and environmental/health) authorities.
- SEA increases transparency in decision making due to involvement of all levels of society.
- SEA helps to comply with the requirements of specific environmental policy concerned, and to check the coherence with other environmental policies.
- SEA helps to distinguish what is relevant to environmental issues; the knowledge of the environmental stakes of a territory (and the sharing of this knowledge between the different actors of the territory)

Recommendations and proposals for amendments

The majority of Member States have expressed that they see no urgent need for any changes being introduced into the SEA Directive at this stage - first and foremost as experience in applying the Directive is still too premature. A considerable number of Member States report that they prefer stability in the legislative requirements, to allow SEA systems and processes to settle down and provide the opportunity to establish robust ways of using SEA to improve plan-making.

The recommendations presented in the following are those of the Consultant and do not necessarily coincide with those of the EU Commission and the Member States. However, recommendations have been made on the basis of a close reading of the Member States' answers to the Commission's questionnaire on the application and effectiveness of the SEA Directive.

In general, recommendations are presented with some reservation simply based upon the fact that experiences in applying SEA in many Member States are still quite small.

- Amendments to the Directive

In the short term perspective, it is recommended that reluctance towards amending the SEA Directive should be exercised for the purpose of allowing further experience being generated and for national SEA systems and processes to settle down.

In the longer term perspective, it is recommended - since the SEA Protocol is likely to incur changes to the SEA Directive, when entering into force[2]. The European Community will as a signatory be required to align the SEA Directive to the requirements introduced by the SEA Protocol. In the light of this requirement potential supplementary amendments to the SEA Directive should be considered and where relevant be introduced through this legislative process.

Other possible initiatives

It is recommended that a working group[3] be established to investigate the further needs for amending the SEA Directive.

Among others, it is recommended, that the working group should consider:

- Whether - if consistent application and implementation of the Directive across EU 27 Member States is an objective, as stated in the Commission's Guidance on the implementation of the Directive - there is a case for tightening requirements in the SEA Directive and in that way limit the discretion left to Member States in the existing SEA Directive. Findings from the desk search study, e.g. Marsden (2008) and Risse et al. (2003) cited in Marsden as well as findings from the Consultant's own analysis of the application and effectiveness of the SEA Directive, e.g. of key stages in the SEA, suggest that the general requirements prescribed by the Directive are not restrictive and leave too wide discretions to Member States[4]. This should ideally provide more direction in the application of the SEA Direc-

[2] There are minor, however, significant differences between the SEA Directive and the SEA Protocol. These differences are concentrated in art. 11(1) b) and 12(2) of the SEA Protocol. The differences relate primarily to the obligations of providing details of information to the public and the requirement to make available the results of monitoring efforts.

[3] During the meeting of national EIA and SEA experts in Paris, France, 16 - 17 October 2008 a working group under the expert group was established with the purpose of discussing - in light of the Commission initiatives on *Better Regulation and Simplification of the EC Legislation* - possible amendments to the EIA Directive. The working group suggested to be established in this report, should be the same as the one established at the Paris meeting.

[4] Some examples drawn from the analysis are: i) the discretion left to Member States in transposing Art. 3(2)(a), i.e. the definition of Sector Plans and Programmes; ii) the organisation of the scoping process is entirely left to the Member States with the exception of the obligation to hear concerned authorities; iii) the Directive and the SEA Guidance leave several issues related to monitoring and implementation unclear. Much is left to the discretion of Member States which in effect may leave uncertainties in the practical application of Art. 10 of the SEA Directive.

tive in Member States. The working group should take into consideration whether differences in experiences in planning cultures between Member States may be of such profound nature that a further harmonisation in the application and implementation of the SEA Directive may be difficult to achieve since the outset for developing national systems may draw in differing directions - and may rather be relying on the underlying planning systems than on the interpretation and application of the SEA Directive[5]. The north-south divide commented in chapter 3 of this report is only one of several differences in SEA and planning cultures across the Community.

- Consolidating the SEA and EIA Directives for the purpose of clarifying their interrelationship and to ensure more consistency in the application of the Directives in Member States. Furthermore, to consider harmonising the key stages and elements of EIA and SEA.

- Furthermore, within this line of thinking consider whether there at all is a need to have a two-directives based environmental assessment system within the EU.

- In the light of the close relationship with the EIA Directive, whether there is a need to tie the application of the SEA Directive so closely to the development consent of projects listed in the annexes in the EIA Directive.

- Development of further guidance

There is evidence that there is a need for further guidance in some Member States. However, Member States disagree as to the extent to which and in what areas this is needed. It is therefore recommended that Member States in cooperation with the Commission discuss possibilities that allow for different needs in Member States.

Further guidance could materialise in development of new guidance documents or update / extension of the existing SEA Guidance. Member States should discuss among themselves on which issues further guidance is needed and on what level these should be developed - whether at EU or national level.

The need for guidance suggested by Member States relate to different stages in the SEA procedure, to the assessment of specific types of plans and programmes and to further clarify the relationship between the SEA and EIA Directives and other related Directives.

Guidance in terms of collections of examples including e.g. cases of best practices and lessons learned when assessing plans and programmes that are common to all Member States, such as OPs under the Cohesion Funds and other EC co-financed OPs or on specific stages in the SEA procedures have been suggested by a number of Member States.

[5] This is among other things argued in one of the theoretical studies in chapter 3, which states is that a north-south divide in EU in SEA based upon the differences in planning cultures may be an obstacle for achieving a further harmonisation between Member States with regard to the application and implementation of the SEA Directive.

It is further recommended to establish forums for knowledge sharing between Member States on national application of the SEA Directive requirements. This could be by way of seminars, workshops, etc.

1 Introduction

1.1 Objectives of the study

This study is the first formal report on the application and effectiveness of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (hereinafter the SEA Directive). The study is carried out as one of the bases for the report drawn up by the European Commission as required in art. 12(3) of the SEA Directive. The report contains data presented to the Commission on the application and effectiveness of the Directive across the European Community. It gathers experiences on issues such as the scope of transposition, organisational arrangements and possible and/or intended effects on the planning processes of the SEA Directive. It is not a study of the degree to which Member States have transposed the provisions of the SEA Directive into national legislation.

The SEA Directive was adopted by Council in 2001 and Member States had to transpose in their national legislation the provisions of the SEA Directive before 21 July 2004. The prime purpose of SEA is to integrate environmental considerations into certain plans and programming adopted by public authorities in order to ensure a high level of protection of the environment. As a tool to aid decision making, SEA is widely seen as a proactive environmental safeguard that, combined with public participation and consultation may help to meet the EU's wider environmental objectives and policy principles.

Objective of the Study

The objective of this study is to provide the Commission with a comprehensive cross-country analysis of progress made and problems encountered in the implementation and application of the SEA Directive in the EU-27 and to provide recommendations, where relevant, for improvements of the functioning of the SEA Directive. This will also include possible amendments to the SEA Directive, in order for the Directive to be applied in an effective and coordinated manner across the EU-27.

The present study emphasise analysing the status of the practical application of the Directive in Member States. It brings together the information and data on national SEA-systems from each of the 27 Member States on the basis of which a subsequent assessment of the application and effectiveness of the Directive across the EU-27 has been carried out.

Context

The context of the study of the application and effectiveness of the SEA Directive is, furthermore, that it constitutes an input to the first formal review as stipulated in art. 12(3) of the SEA Directive. Against this background, the study is to a large extent directed towards reporting on the formal implementation of the SEA Directive as well as on the existence of basic elements in national SEA systems.

The study has been designed as to provide relevant details of national SEA systems focusing on the extent to which national systems cover relevant sectors, as required in the SEA Directive, as well as reporting, where possible, on SEA systems that have extended the application of SEA to other sectors than required in the Directive.

Furthermore, the study is developed towards providing information on the handling of individual stages of the SEA procedure as well as analysing the way in which these stages are designed and implemented in national SEA system.

Finally, the SEA study is designed to include a survey of the relationship between the SEA Directive and a number of key environment directives and initiatives, through which the assessments carried out in SEA procedures may be affected and given an increased reliability and quality.

More specifically the study provides an analysis of the handling by the Member States of the key stages of SEA:

- Screening
- Scoping
- Baseline reporting
- Alternatives
- Impacts
- Monitoring
- Preparation of the Environmental Report
- Consultation and Public Participation

In addition, the study examines:

- The organisational arrangements in place and their effectiveness
- the state of evidence available, including estimating the number of completed SEAs, the distribution of SEAs in different planning sectors to the extent information has been available
- transboundary issues
- the impact of the Directive particularly in terms of benefits and costs

Finally, the study explores the relationship of the SEA Directive with other Community policies and legislation, in particular:

- The 'EIA Directive" (Council Directive 85/337/EEC on the assessment of the effect of certain public and private projects on the environment as amended by Directives 97/11/EC and 2003/35/EC

- The "Habitats Directive", Article 3(b) - Article 6 of the Directive, (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.
- The "Seveso Directive", (Council Directive 96/82/EC) on the control of major accident hazards involving dangerous substances.
- The EU Action Plan "Halting the loss of biodiversity by 2010 - and beyond and its specific actions and targets concerning SEA.
- The European Union's Climate Initiative

The study is completed by recommendations proposed by Member States, where available, and adds the recommendations of the consultant.

1.2 Methodology

Methodology

Study implementation has been made up of 5 main tasks, and supplemented by specific reporting activities:

Task 1: Review of responses to the EU Commission's Questionnaire on the application and effectiveness of the SEA Directive

Task 2: A desktop literature search study of existing relevant SEA studies, reports and analyses completed in the period 2001-2007.

Task 3: Review of specific country data collected by local consultants - including relevant legislation and the institutional set up related to SEA in the Member States as well as the actual application and implementation of the SEA Directive in the Member States (content, processes and procedures, effectiveness, and the relationship with other EC legislation).

Task 4: Cross-country analysis

Task 5: Final reporting

The draft final report of this study has been subject to Member State consultation and was discussed at the meeting of the EIA / SEA working group set up under the EU Commission, DG Environment in Paris, October 2008.

Information sources consulted

The report is based on a variety of sources of information.

The primary source of information is Member States' responses to a questionnaire prepared and submitted by the EU Commission on the application and effectiveness of the SEA Directive during 2007. The questionnaire was addressed to national SEA focal points in all 27 Member States - in this report referred to as national SEA experts.

Most of the questions posed were factual questions related to the general implementation of the SEA Directive, the key stages of SEA, procedures and processes of SEA, content of SEA, transboundary issues related to the implementation of the SEA, the relationship between SEA and other Community leg-

islation in the Member States. The last section of the questionnaire sought the opinion of Member States to determine the future direction of the SEA Directive and to provide recommendations for good practices. Responding to this last section was voluntary.

Another important source of information is the additional country information collected by the Consultant's own network of local consultants in Member States - in the report referred to as local consultants. The purpose of the additional country information was to provide an as precise as possible picture of the functioning of the national SEA system and to evaluate and consolidate answers provided in responses from Member States to the Commission's questionnaire. The task was primarily a task of reviewing information in the questionnaire responses and of adding details, as necessary, in order to nuance and complete the description where relevant.

The additional country information collected for the purpose of this study is produced by local consultants. It is not intended for publication. Information and opinions expressed in the additional country information are those of the local consultants and do not necessarily reflect the views of the Member States or of the Commission.

Other key information sources are national and international SEA experts - including NGOs - consulted for in-depth exploration of specific issues identified in the questionnaire responses, county reports and through literature search.

In addition the study has been informed by a comprehensive literature search study identifying the issues addressed in SEA literature. This information has been gathered for the purpose of further qualifying findings and views of the consultant and substantiating findings and conclusion of the study.

Finally, national legal documents and guidelines have been explored for the purpose of further exploring how the SEA Directive has been applied in Member States and for the purpose of identifying good practices employed in some Member States that may provide inspiration in other Member States.

Where necessary, sources of information are clearly identified and distinguished in the report.

Organisation of the study

The study has been carried out by COWI A/S in association with Milieu Ltd. The study was carried out between December 2007 and November 2008.

Disclaimer

The study presents the views of the Consultant and does not necessarily coincide with those of the EU Commission or the 27 EU Member States subject to the Study.

Structure of the report

This report has been structured in 8 chapters including this introduction:

Chapter 2 provides a background description of the SEA Directive;

Chapter 3 provides the results of the desk search study and Chapter 4, a description and analysis of the legal and institutional set up in the Member States;

Chapter 5 provides a cross-country analysis of the main stages of the SEA procedure in the 27 Member States;

Chapter 6 analyses the relationship between the SEA Directive and other Community policies and legislation, including the Habitats and the Birds Directives, the Seveso Directive, the Initiative for Halting the loss of Biodiversity, and the Climate Agenda;

Chapter 7 analyses stakeholder perceptions of the effectiveness of the application of the SEA Directive in the 27 Member States, and

Chapter 8 presents the findings and recommendations of the study.

The report has three annexes. Annex I constitutes the list of literature researched for the desk study; Annex II contains a list of literature consulted for the purpose of the study in general; and Annex III contains a list of stakeholders consulted for the purpose of the study.

2 Background/History of the SEA Directive

2.1 Rationale of the SEA Directive

The Commission adopted in 1996 a Proposal for a Directive on Environmental Assessment of certain plans and programmes. This Proposal was amended by the Commission in 1999 after the European Parliament had its First Reading. This amended text formed the basis for negotiations at Council level with the 15 Member States in the course of 1999. In December 1999 the Environment Ministers reached a political agreement on a common text for the future Directive (the common position). The common position was formally adopted on 30/03/2000.

The European Parliament as co-legislator approved on 6 September 2000 the Common Position subject to the amendments voted at its plenary session (Second Reading). The Commission formulated on 16 October 2000 its opinion on the amendments to the Common Position voted by the European Parliament.

On 31 May 2001 the European Parliament and on 5 June 2001 the Council formally adopted the SEA Directive 2001/42/EC. The text of the SEA Directive was published in the Official Journal L197 of 21 July 2001, page 30[6].

2.2 Scope of transposition

According to the Directive, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the SEA Directive before 21 July 2004 and inform the Commission thereof.

Based upon the responses to the Commission's questionnaire for this study, follow up questions of clarification and further research, it is clear that all Member States have made arrangements for the transposition and implementation of the SEA Directive.

However, it should be noted for the purpose of this study that the transposition of the Directive into the legal system of a Member States does not necessarily mean that the transposition is deemed in conformity with the requirements of the SEA Directive.

[6] http://ec.europa.eu/environment/archives/eia/SEA legalcontext.htm#legal

Jurisprudence

Jurisprudence related to the SEA Directive is still limited due to the relatively short time period the Directive has been in effect.

According to the EU Commission, DG Environment, as of 14 October 2008, there were 23 open cases related to the SEA Directive[7].

- There are 14 infringement cases (letter of formal notice has been notified, the procedure is ongoing).
- In relation to communication of the national transposition measurements, 16 non-communication cases were opened. Now, all of them are closed.
- At the time of writing (November 2008) the majority of infringement procedures related to the SEA Directive are non-conformity cases.
- A new Pilot scheme allowing for a more consultation based conflict solution on non-conformity issues are employed for a number Member States.

The jurisprudence of the ECJ on the EIA Directive and related provisions is extensive and much of this may be directly relevant to the interpretation and application of the SEA Directive given the close relationship between the two Directives and, especially, the common vocabulary employed in the Directives. The meaning of 'authority', 'project', 'plan', 'development consent', 'significant environmental effects', environmental effects', 'cumulative effects' and 'likely to have' have all been subjected to interpretation by the European Court of justice in relation to the EIA Directive.

The implications of exceeding the margin of discretion afforded to Member States or failing to comply with requirements for transboundary impacts, and the flexibility available to decide on detailed public participation requirements and access to information have all been considered by the ECJ[8].

Status of transposition

The EU Commission is currently undertaking a conformity check study of the transposition of the SEA Directive in the 27 EU Member States. As of October 2008, the conformity checking was finalised for 14 Member States. As a consequence of the study, the Commission has decided to launch infringement proceedings related to the SEA Directive against 10 out of the 14 Member States for which procedures of non-conformity are pending. The conformity checking exercise related to the SEA Directive is expected to be finalised for the remaining part of the Member States by the end of 2008.

[7] Novakova, Milena: Legal issues on EIA/SEA: Infringement cases and ECJ judgements, European Commission, Env.D.3, 16. October 2008, Paris.

[8] Marsden, Simon , 2007.

2.2.1 Overview of national legislation on SEA

The legislative structure and arrangements adopted by Member States transposing the SEA Directive are diverse. An overview of national legislation transposing the SEA Directive is provided in Table 1 below.

Table 1 Overview of national legislation transposing Directive 2001/42/EC as of August 2008[9]

MSs	Transposition Status
AT	The SEA Directive has been transposed both by numerous amendments to the existing legislation and adoption of new acts. The following Acts have been amended in order to comply with the requirements of the SEA Directive: **Federal level:** **Amendment of the Federal Clean Air Act**, Federal Law Gazette I 34/2006, Vienna **Amendment of the Federal Waste Management Act 2002**, Federal Law Gazette I 155/2004, Vienna **Amendment of the Federal Water Management Act**, Federal Law Gazette I 112/2003, Vienna **Federal Act on Environmental Impact Assessment**, Federal Law Gazette 697/1993, amended by Federal Law Gazette I 89/2000, last revision by federal Law Gazette I 2/2008, Vienna **Federal Act on Strategic Assessment for the Transport Sector**, Federal Law Gazette I 96/2005, Vienna **Federal Environmental Noise Act**, Federal Law Gazette I 60/2005, Vienna **Provincial level:** Burgenland: **Amendment of the IPPC Installations, Seveso II Installations and Environmental Information Act of Burgenland**, Provincial Law Gazette 8/2007, Bregenz **Amendment of the Roads Act of Burgenland**, Provincial Law Gazette 11/2007, Bregenz **Amendment of the Spatial Planning Act of Burgenland**, Provincial Law Gazette 36/2006, Eisenstadt **Amendment of the Waste Management Act of Burgenland**, Provincial Law Gazette 7/2008, Eisenstadt Carinthia: **Carinthian Environmental Planning Act**, Provincial Law Gazette 52/2004, amended by Provincial Law Gazette 24/2007, Klagenfurt Lower Austria: **Amendment of the Spatial Planning Act of Lower Austria**, Provincial Law Gazette 26/2005, St. Pölten Salzburg **Amendment of the Spatial Planning Act of Salzburg Province**, Provincial Law Gazette 65/2004, amended by Provincial Law Gazette 19/2006, Salzburg

[9] Source: Country information collected by the Consultant's network of local consultants in the respective Member States.

	Amendment of the Waste Management Act of Salzburg Province, Provincial Law Gazette 19/2005, Salzburg **Environmental Protection and Information Act of Salzburg Province**, Provincial Law Gazette 72/2007, Salzburg **Ordinance on Environmental Assessment for Spatial Plans and Programmes**, Provincial Law Gazette 59/2007, Salzburg Styria **Amendment of the Styrian IPPC- and Seveso II Installations Act,** Provincial Law Gazette 113/2006, Graz **Amendment of the Styrian Spatial Planning Act**, Provincial Law Gazette 13/2005, Graz **Styrian Environmental Noise Act 2007 regarding provincial roads**, Provincial Law Gazette 56/2007, Graz Tyrol **Amendment of the Tyrolean Spatial Planning Act**, Provincial Law Gazette 35/2005, Innsbruck **Tyrolean Environmental Assessment Act**, Provincial Law Gazette 34/2005, Innsbruck Upper Austria **Amendment of the Environmental Protection Act of Upper Austria**, Provincial Law Gazette 44/2006, Linz **Amendment of the Spatial Planning Act of Upper Austria**, Provincial Law Gazette 115/2005, Linz **Amendment of the Upper Austrian Roads Act**, Provincial Law Gazette 61/2008, Linz **Ordinance on Environmental Assessment for Spatial Programmes**, Provincial Law Gazette, 111/2006, Linz Vienna **Amendment of the Viennese Building Code**, Provincial Law Gazette 10/2006, Vienna **Amendment of the Viennese National Park Act**, Provincial Law Gazette 18/2006, Vienna **Amendment of the Viennese Waste Management Act**, Provincial Law Gazette 17/2006, Vienna **Viennese Environmental Noise Act**, Provincial Law Gazette 19/2006, Vienna Vorarlberg **Amendment of the IPPC- and Seveso II Installations Act of Vorarlberg,** Provincial Law Gazette 26/2006, Bregenz **Amendment of the Roads Act of Vorarlberg**, Provincial Law Gazette 22/2006, Bregenz **Amendment of the Spatial Planning Act of Vorarlberg**, Provincial Law Gazette 33/2005, last amendment by Provincial Law Gazette 42/2007, Bregenz **Ordinance of the Provincial Government of Vorarlberg concerning plans, that are excluded from environmental screening and environmental assessment**, Provincial Law Gazette 23/2005, Bregenz **Waste Management Act of Vorarlberg**, Provincial Law Gazette 1/2006, Bregenz

BE	**Federal level**: SEA Directive has been transposed in the Federal legislation by the law of 13 February 2006, the Royal Decree of 22 October 2006 concerning the organisation and the functioning of the "Comité d'Avis", as well as by the Royal Decree of 5 June 2007 relating to the environmental assessment on plans and programmes which are likely to have significant environmental effects in a transboundary context. **Brussels Capital Region and Walloon Region:** In both regions, the SEA requirements for assessing land use plans and all remaining plans and programmes are regulated through another specific law. **Brussels Capital Region**: the transposition of the SEA Directive was carried out: for the first category of PPs through amendments to the Ordinance of 29 August 1991 on planning and town planning by the Ordinance of 19 February 2004 relating to certain provisions in the field of town planning and have been subsequently integrated into the Ordinance, which coordinates, codifies and repeals, from 5 June 2004, a number of Ordinances (including the organic Ordinance of 29 August 1991 on planning and town planning) and creates the COBAT (Bruxelles Code for Spatial and Urban planning). For the second category, through a specific Ordinance, the Ordinance of 18 March 2004 relating to the assessment of the effects of certain plans and programmes on the environment– 2004 Ordinance, which transposes Directive 2001/42. **Walloon region:** Transposition of Directive 2001/42/EC in relation with Walloon legislation has been mainly done through amendments introduced by the Decree of 18 July 2002 modifying the Walloon Code for Spatial, Urban and Heritage Planning (CWATUP) and the Decree-programme of 3 February 2005 on economic recovery and administrative the Ordinance. In Walloon Region, framework rules on SEA of plans and programmes have been integrated in the Walloon Code of Environment (CWE), first book, which includes horizontal environmental legislation in its articles D.49 to D.61 and R.46 to R.51. CWE entered into force on 4 May 2005.
BG	BG has transposed the SEA Directive through the Environmental Protection Act (EPA)[10] and Ordinance on the terms and conditions for carrying out of environmental assessment (EA) of plans and programmes[11]
CY	The SEA Directive is transposed by law N.102 (I)/2005 "Assessment of impacts on the environment from certain plans and/or programmes" which came into effect as from 29 July 2005.
CZ	The SEA Directive is mainly transposed by the Act No. 100/2001 Coll., on environmental impact assessment, a framework act for both EIA and SEA procedures. The body of the SEA procedure is regulated by the provisions of § 10a - § 10j of the mentioned act. There are a number of exemptions from the framework SEA legislation. The most important exemption is made for land use plans. Act No. 183/2006 Coll., Building Code, significantly simplified and integrated the SEA procedures into the land use planning procedures. Matters which are not regulated by the SEA framework legislation or by the special legislation such as the Building Code are governed by Act No. 500/2004 Coll., Administrative Code.
DE	The SEA regulations are part of the EIA act §§ 14a - 14f, implemented in national law in 2005. In 2004, SEA was implemented in land use planning and local development planning by novelling the 'Baugesetzbuch' (Federal Building Code). Compa-

[10]Promulgated in SG, issue No 91/25.09. 2002, amended by SG issue No 98/18.10.2002, amended by SG issue No 86/30.09.2003, amended by SG issue No 70 /10.08.2004, amended by SG issue No 74 /13.09.2005, amended by SG issue No 77 /27.09.2005, amended by SG issue No 88 /4.11.2005, amended by SG issue No 95 /29.11.2005, amended by SG issue No 105 /29.12.2005, amended by SG issue No 30 /11.04.2006, amended by SG issue No 65 /11.08.2006, amended by SG issue No 82 /10.10.2006, amended by SG issue No 99 /8.12.2006, amended by SG issue No 102 /19.12.2006, amended by SG issue No 105 /22.12.2006, amended by SG issue No 31 /13.04.2007, amended by SG issue No 41 /22.05.2007, amended by SG issue No 89 /6.11.2007SG 91/2002)

[11] Adopted by Decree No 139 / 24.06.2004 of the Council of Ministers promulgated in SG, issue No 57/02.07.2004, amended by SG issue No3/10.01.2006

	rable to the EIA regulations, beside the federal level, the 'Bundesländer' have special SEA regulations at their own area of application.
DK	Denmark has transposed the SEA Directive by a single act - Law no. 316 of 5 May 2004 on environmental assessment of plans and programmes - amended by Law no. 1398 of 22 October 2007.
EE	The SEA procedure is regulated in the Environmental Impact Assessment and Environmental Management Systems Act - a framework act for administrative procedures - and is applicable in general matters. The main piece of regulation came into force 3 April 2005.
ES	Directive 2001/42/EC on the assessment of environmental effects of plans and programmes has been transferred to the Spanish legal system through Law 9/2006.
FI	Act on the Assessment of the Impacts of the Authorities' Plans and Programmes on the Environment, known as the SEA Act (Act 200/2005) as well as the Decree on the Assessment of the Impacts of the Authorities' Plans and Programmes - the SEA Decree (347/2005) are the major pieces of transposing legislation for Directive 2001/42/EC. The impacts of land use plans are assessed under the provisions of the Land Use and Building Act (Act 132/1999) and Decree (895/1999) as amended for the purpose of transposing the SEA Directive. The impacts of water management plans is carried out under the provisions of the Act on the Arrangement of Water Management (Act 1299/2004) as amended for the purpose of transposing the SEA Directive.
FR	The SEA Directive has been transposed by a set of legislative measures (Ordinance n° 2004-489) supplemented by a number of regulatory measures (Decrees): Legislative measures: the Ordinance n° 2004-489 of 3 June 2004 introduced the core provisions of the SEA Directive into different Codes: the French Environmental Code (art. L.122-4 to L.122-11); the French Land Use Code (art. L.121-10 to L.121-15); and the French Code of Territorial and Local authorities (new indent in art. L.4424-13). Regulatory measures: Decree n° 2005-613 of 27 May 2005 (which introduced in the French Environmental Code art. R.122-17 to R.122-24, as well as R. 414-19 and R.414-21 for Natura 2000 sites); Decree n° 2005-608 of 27 May 2005 (which introduced implementing measures in both the French Land Use Code and the French Code of Territorial and Local authorities); Decree n° 2006-454 of 18 April 2006 (which introduced specific implementation measures in the French Forest Code).
GR	The SEA Directive has been transposed by the Joint Ministerial Decision (JMD) 107017/2006 "on the assessment of the effects of certain plans and programmes on the environment.
HU	The SEA Directive has been transposed by two pieces of legislation: Act No. 53 of 1995 on General Rules of Environmental Protection (hereinafter: Environmental Code), where Article 44 summarizes the most important rules of the SEA procedure, and Government Decree No. 2 of 2005 (11th of January) on the environmental assessment of certain plans and programmes.
IRL	Ireland has implemented the SEA Directive by means of two sets of regulations: SI 435/2004, which deals with plans outside the planning and development context and SI 436/2004 which deal with plans in the planning and development context.
IT	The SEA Directive has been transposed through Legislative Decree n. 4 of 16 January 2008.
LT	The SEA Directive has been transposed by incorporating general provisions in the framework law on environmental protection, namely - The Republic of Lithuania Law

	on Environmental Protection of No 5-75 of 21 January 1992, as last amended by No X-147 of 24 March 2005 (Valstybės žinios, 1992, Nr. 5-75; 2005, Nr. 47-1558)[12]. A number of general provisions of the SEA Directive have been transposed into The Republic of Lithuania Law on Territorial Planning No IX-1962 of 15 January 2004 (Valstybės žinios, 2004, No 21-617)[13]. Detailed requirements of the SEA Directive have been transposed into the following legal acts: Decision of the Government of the Republic of Lithuania of August 18, 2004, No. 967 on the Approval of the Regulations of Strategic Assessment of the Effects of Plans and Programs on the Environment[14]., which provides the process of strategic assessment of the effects of plans and programs on the environment and the relationships between the participants of this process; Order of the Minister of Environment of the Republic of Lithuania of August 27, 2004, No. D1-456 on the Approval of the Regulations of the Screening for the Strategic Assessment of the Effects of Plans and Programs on the Environment[15], which provides the procedure of Screening for SEA, and, inter alia, regulates preparation and obligatory contents and of the Screening Document; Order of the Minister of Environment of the Republic of Lithuania of August 27, 2004, No. D1-455 on the Approval of the Regulations of Public Participation in the Procedures of the Strategic Assessment of the Effects of Plans and Programs on the Environment and Informing the Assessment Stakeholders and Member States of the European Union[16], which regulates participation of general public, relevant governmental and municipal institutions (the so-called stakeholders) in the process of Strategic Environmental Assessment and the procedures of informing other Member States about the ongoing SEA; Decision of the Government of the Republic of Lithuania of September 18, 1996, No. 1079 (amended by Decision of July 16, 2004, No. 904) on the Approval of Regulations on Public Participation in the Process of Territorial Planning[17], which regulates participation of the public in SEA of territorial planning documents and in the process of territorial planning itself; Order of the Minister of Environment of the Republic of Lithuania of May 22, 2006, No. D1-255 on the Approval of the Regulations of Determination of Significance of the Effects of Implementation of Plans, Programs and Proposed Economic Activities on Established or Potential „Natura 2000" Territories[18], which includes the questionnaire for determination of significance and criteria, by employing which, institution responsible for organization of protection and management of established or potential „Natura 2000" territories can determine if implementation of a plan, program or proposed economic activity (separately or in combination with other plans and programs) might have significant effects on established or potential „Natura 2000" territories and if therefore strategic environmental assessment of such a plan or program or environmental impact assessment of proposed economic activity shall be carried out.
LU	The Law of 30 April 2008 transposes Directive 2001/42. This Law transposes the Directive almost literally.
LV	The implementation of SEA Directive is performed by means of adopting Law on Amendments to the Law on Environmental Impact Assessment ("EIAL") and the Cabinet of Ministers Regulation No 157 on "Procedures for Strategic Environmental Impact Assessment" ("Regulation No 157") governing procedures for strategic environmental impact assessment.
MT	Directive 2001/42/EC has been transposed through the Strategic Environmental Assessment Regulations, 2005 (Legal Notice 418 of 2005).

[12] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=253930

[13] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=243180

[14] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=310883

[15] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=240961&p_query=&p_tr2=

[16] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=240949&p_query=&p_tr2=

[17] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=293898

[18] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=277087

NL	The transposition of SEA into Dutch legislation, into the Environmental Management Act (Chapter 7) and Environmental Impact Assessment Decree respectively (*Staatsblad* 2006, 336 & 388), took place on 28 September 2006.
PL	The main legal act transposing Directive 2001/42 is the Environmental Protection Law Act of 2001 (EPLA). Certain provisions important from the point of view of implementing Directive 2001/42 are contained in several other legal acts, mainly: the Spatial Planning Act of 2003 (SPA), National Development Plan Act of 2004 (NDPA), Development Policy Principles Act of 2006 (DPPA).
PT	Directive 2001/42/EC was transposed by Law Decree 232/2007 of 15 of June 2007.[19] The legal regime applicable to the assessment of the effects of certain plans and programmes on the environment is complemented by Law Decree 380/99, establishing the legal regime for land use planning instruments, which was amended by Law Decree 316/2007 of 19 of September[20] in order to fully integrate the SEA in the preparation and adoption procedure of land use planning instruments.
SL	SEA is regulated in The Environmental Protection Act and its implementing regulations: the Decree on the environmental Report and on Detailed Procedure of the Strategic Assessment of the Effects of plans on the Environment. Adopted: Ur.l. RS, nr. 73/2005 (DEREP), the Decree on the Types of Projects for which Environmental Impact Assessment is mandatory. Adopted: Ur.l. RS, nr. 78/2006. Amended: Ur.l.Rs, nr. 72/2007. (DETPRO), the Decree on the prevention of major accidents and amelioration of their impacts. Adopted: Uradni list, nr. 88/04.
SK	The legislative frame for SEA implementation is formed by the national law - Act No. 24/2006 Coll. on "Environmental Impact Assessment and on changes and completion of some acts", where part II deals with SEA with national/regional/local reach and part IV, art. 42-43 deal with assessment of transboundary impact.
SV	The SEA Directive has mainly been transposed through Chapter 6 of the Environmental Code (1998:808) (as amended by SFS 2006:57). In addition, the Ordinance on Environmental Impact Statements (1998:905) (as latest amended by SFS 2006:57) concerns inter alia environment impact assessment of plans and programmes and environmental audit as prescribed by Chapter 6 of the Environmental Code. Likewise, the sector legislation such as Planning and Construction Law (1987:10) contains SEA provisions.
RO	Directive 2001/42/EC has been transposed by the Governmental Decision no. 1076/2004 establishing the procedure for the assessment of the effects of certain plans and programmes on the environment (GD 1076/2004).
UK	The legal framework for SEA in the UK includes: Statutory Instrument 2004 No. 1633 The Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633); Welsh Statutory Instrument 2004 No. 1656 (W.170); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (WSI 2004/1656); Environmental Assessment (Scotland) Scottish Statutory Instrument 2006, The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (Scottish Statutory Instrument 2004 no. 258) and Act 2005 (EASA 2005).

[19] Law Decree 232/2007 of 15 June, establishes the regime on the assessment of the effects of certain plans and programmes on the environment (transposing into internal law Directive 2001/42/CE, of the European Parliament and of the Council of 27 June 2001, and Directive 2003/35/CE, of the European Parliament and of the Council of 26 May 2003), *Decreto-Lei nº232/2007, de 15 de Junho, Estabelece o regime a que fica sujeita a avaliação dos efeitos de determinados planos e programas no ambiente (transpondo para a ordem jurídica interna as Directivas 2001/42/CE, do Parlamento Europeu e do Conselho, de 27 de Junho, e 2003/35/CE, do Parlamento Europeu e do Conselho, de 26 de Maio)* (DR 114/2007, Serie I) – Abbreviation: DL 232/2007

[20] Law Decree 316/2006, of 19 September, establishes the legal regime for land use planning instruments and amends Law Decree 380/90, of 22 September, *Decreto-Lei 316/2007 sobre a avaliação ambiental dos instruments de gestão territorial que emenda o Decreto-Lei 380/99 de 22 de Setembro* (DR 181/2007, Serie I)- Abbreviation: DL 316/2006.

http://dre.pt/pdf1s/2007/09/18100/0661706670.pdf

	These 2004 Regulations remain in force for plans and programmes whose preparation began after 21 July 2004 but before the Act came into effect, or those which were not adopted by 21 July 2006; Statutory Rules of Northern Ireland 2004 No. 280 Environmental Protection. The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 (SRNI 2004/280).

Information on the split between Member States that have introduced wholly new legislation to transpose the SEA Directive and those who have integrated the legislation into existing arrangements is presented in chapter 4 on Institutional arrangements.

Elements beyond the requirements in the directive

In their responses to the Commission's questionnaire, 15 Member States report that there are elements in their legislation that go beyond the requirements of the SEA Directive.12 Member States report that there are no elements in their legislation that go beyond the bare requirements of the SEA Directive.

The Member States have identified the elements that they consider the most important additional requirements in their legislation. Additional elements reported vary in nature and character and may be categorised as below:

- widening of sector scope
- extending the requirement to other types of plans and programmes
- extended public participation / consultation of authorities
- comprehensive administrative arrangements
- more refined selection mechanisms
- extended scope of the SEA report
- Extension of the number of formal SEA stages.

The majority of additional requirements fall under the categories 'public participation and consultation of authorities' and 'administrative arrangements'.

Related to 'Public Participation': In France and Romania legislation goes beyond the requirements of the Directive in that they - although employing different means - warrant for the consultation of the public by strengthening the requirements of the Directive.

In Romania, the SEA procedure outlines modalities of public consultation in writing; In France, public participation is organised, inter alia, through public inquiry, laid down by law.

In France and Belgium (Brussels region), the advice of the authority with specific environmental responsibilities is enclosed in the dossier submitted to public inquiry, in order to provide a more comprehensive information basis for the consultation of the public. The publicity of this environmental advice is a mean to strengthen its importance. In addition, France provides specific guarantees with the intervention of an 'inquiry commissioner' (commissaire-enquéteur). This independent third party is given the role of warranting the quality of the public consultation.

Malta and Bulgaria has strengthened the public's participation by introducing an open scoping procedure where the public is included in the consultation of the scoping procedure.

Related to consultation of authorities: In Bulgaria and Romania health authorities are obligatorily involved in the screening process.

Related to 'administrative procedures': Spain and Portugal have established structures and measures in order to ensure the quality of the SEA process:

The Spanish National Law on SEA provides for the participation of a specific body (the environmental body, 'órgano ambiental') that supervises the integration of the environmental concerns into plans and programmes subject to SEA.

In addition, Spain has required a publication of an environmental review ('memoria ambiental') before the decision to adopt the plan or programme in question is taken (Cf. Text box 1).

Text box 1: The Spanish SEA process[21]

The Spanish example: Once the SEA is required, the promoter prepares the Initial Document. It outlines the objectives of the plan, the applicable environmental regulations, the potential environmental impacts and the possible interaction with the objectives of other sectors and regional planning. This initial document is forwarded to the environmental body ("órgano ambiental"), who then conducts an initial consultation with the authorities and public concerned, who will have 30 days to submit their suggestions. Drawing from the results of this consultation, the environmental body ("órgano ambiental") produces the Scoping Document, determining the scope of the SEA, the environmental objectives, sustainable criteria and indicators to be integrated into the plan. The scoping document also includes the modalities and timing of the public information process. This document is sent to the promoter. Taking into account the specifications of the Scoping Document, the promoter prepares the environmental assessment of the plan. The result of this assessment is reflected in the Environmental Report. The content of this document is regulated by the SEA Act. The Environmental Report, together with a draft of the Plan, is exposed to public information for a period of 45 days. After the deadline for the public information process, and once evaluated its outcome, the promoter together with the environmental body ("órgano ambiental") produces the environmental review ("memoria ambiental"). It is published in the Official Gazette. Finally, the promoter must approve the plan or programme taking into account the specifications set out in the Environmental Assessment.

In Portugal, Article 6.4 of DL 232/2207 has established an annual procedure for evaluating the quality of the environmental reports. The final document on this evaluation, which includes the proposal of measures for improving the quality of the environmental report is issued by the Portuguese Environment Agency and submitted to the Ministry of the Environment.

Related to "sector scope': Four Member States (Belgium, Finland, Hungary and France) have - in some respect - included land use plans as plans that require environmental assessment in any case, regardless of whether they fulfil the additional requirements laid down in the SEA Directive. In Hungary, cer-

[21] Source: Spanish country information collected by the local consultant.

tain types of land use plans are mandatorily subjected to the SEA procedure. In France, a minimal environmental assessment is always required for land use plans, but not in all the aspects of a SEA in the sense of the SEA Directive; thus, for the land use plans that enter into the criteria of the SEA Directive, a more developed SEA is provided. In Belgium (Brussels region), the land use plans and development plans at regional level or for the whole territory of a Commune (municipality) are always submitted to an SEA; only the local land use plans about arbitrary parts of a Commune are not automatically submitted to an SEA - but on the basis of a case-by-case analysis and on the basis of advice from the Regional Authorities.

Member States' SEA experience

Member States' experience of applying the SEA procedure varies considerably from Member State to Member State.

In terms of numbers of SEA procedures carried out annually in each Member State, the formation of an experience basis varies considerably.

In some Member States, the number of SEA procedures carried out annually per year 2006 is relatively high indicating the development of a quite substantial level of experience in those Member States. However, such experience may be spread across many authorities; this is in particular the case if it is the planning authority that is responsible for conducting the SEA. In their response to the EU Commission questionnaire on the application and effectiveness of the SEA Directive, Finland reports that around 1500 SEA procedures are annually being carried out in Finland, the United Kingdom reports that 400-500 SEA procedures are currently in process of being carried out, France states that around 400 SEA procedures were carried out in 2007 concerning land use plans only (an average of 4 SEAs per "départements" - there are 100 "départements" in France). For other plans and programmes - for which statistics are only partly available - at least 40 SEAs were carried out in 2007.

In other Member States, the number of SEA procedures reported in 2006 is low: 1 SEA was carried out in Malta in 2006; some SEA procedures are in process, 2 in Portugal (some SEA procedures are in process), 3 in Luxembourg, and 4 SEA procedures have been carried out in Cyprus since 2005.

Even within one Member State, Austria, which is federally organised, the number of screening procedures carried out varies significantly between provinces; the province of Salzburg conducted 300 screening procedures while the Province of Vorarlberg conducted 20 screening procedures.

It is relevant to consider the implementation of SEA in the frame of the new cycle of the Cohesion Policy 2007 - 2013; All programmes were required to have a SEA for the first time and SEAs for Cohesion Policy were likely to represent the largest part of SEAs produced in Member States not only in the period corresponding to the early part of the new cycle, but also in general since the introduction of the SEA Directive. In fact, it is estimated that approximately

360 SEAs have been produced for the Operational Programmes under the frame of the Cohesion Policy and sent to the Commission in 2007.[22]

At least nine Member States (Denmark, Germany, France, Hungary, Ireland, Italy, the Netherlands, Sweden and the United Kingdom) do not keep statistics of the number of SEA procedures carried out by authorities in their Member States. The United Kingdom also notes that some plans and programmes, e.g. in spatial planning, are developed in several stages, and there may be consultation at successive stages with an Environmental Report accompanying the draft plan or programme at each stage. These cases are considered as a single SEA of a single plan or programme. In France, statistics are available for land use plans but not for other types of plans and programmes. These cases are considered as a single SEA of a single plan or programme.

Member States report that at the national/regional level, SEA is mostly carried out for Operational Programmes (2007 - 2013), national sector plans or strategies (energy, transport, forest)[23]. SEA at the local level is mainly carried out for spatial development and land use plans. Most Member States report that it is related to the spatial development and land use plans at local level that most SEA activity is seen.

The development of OPs under the Cohesion Policy Programmes (2007 - 2013) and other EC co-financed OPs has provided an important opportunity for all Member States to apply the SEA procedure. A preliminary evaluation of the experiences has been carried out by the EU Commission, DG Environment[24]. Findings from this evaluation presented in Milano, October 2008, will be taken into consideration in this report where relevant.

The table below provides an overview of the number of SEA procedures carried out in the 27 Member States as reported by national experts in their response to the EU Commission's questionnaire on the application and effectiveness of the SEA Directive.

Table 2 Number of SEA procedures carried out on average each year (2006 or latest data) at government level in the 27 EU Member States

MS	Number of SEA procedures carried out in 2006*	Most common type(s) of plans/programmes assessed
AT	There were responses from eight out of the nine Austrian provinces and from some federal ministries. By adding estimation for the missing Province of Upper Austria, approximately 200 SEAs have been carried	Spatial planning documents in particular those concerning the local level.

[22] ENEA (European Network of Environmental Authorities) (for Cohesion Policy), Working Group: Cohesion Policy and SEA. Working document, 2008.
[23] Member State responses to the Commission's questionnaire.
[24] EU Commission, DG Environment, Jonathan Parker: SEA Directive (2001/42/EC): preliminary evaluation of the experiences, with a focus on the Structural Funds programmes. Milan, 22.10.2008.

	out in the year 2007. The results of the SEA working group are different, as they list approximately 270 SEAs in the period 2006 until 2007 (completed and ongoing SEAs).	
BE	Brussels Region: A first SEA was carried out and finished in 2006. A second and third one were started in 2006 and one of them finished in 2007 Walloon Region (2006-2007): 3 SEAs for regional developments (structural funds); 1 SEA relating to the agriculture (structural funds); and 1 SEA for transportation by river navigation. Flanders Region (2006): 15 SEAs have been carried out Federal: At the time of the questionnaire, no plans were submitted for an SEA. There were 3 plans or programmes that were planned to be submitted to an SEA.	Brussels region: most SEAs were on the Local Plans for Ground Destination, initiated by the Commune. Walloon Region: Regional development plans. Flanders region: Spatial development plans.
BG	109 SEAs. (10 mandatory, 99 by screening)	Urban development plans at local level
CY	4 SEAs (since 2005)	Sector Operational programmes and land use plans
CZ	12 SEAs (On average each year: average for 2004-2006).	Territorial development, tourism, transport infrastructure.
DE	No statistics available	Expected: Land use plans, local development plans
DK	No statistics available	Probably: local plans, municipal plans
EE	165 SEAs (of which 16 at government level)	Strategic planning (government level), spatial planning
ES	10 SEAs (at national administration level).	Regional and local land use plans
FI	Approx. 1500 SEAs per year for land use plans (i.e.: 1400 local detailed plans; 100 local master plans, 4-5 regional plans) Other plans: 10 per year.	Land use plans
FR	Statistics are only beginning to become available However, France reports that approx. 400 SEAs were carried out in 2007 for land use plans only. In addition, approx. 40 SEAs of other plans and programmes are carried out per year.	Land use plans, waste management plans, urban mobility plans and water management plans
GR	At a central government level: 21 SEAs and 2 screening procedures have been finalized. 4 SEAs and one 1 screening procedure are currently underway. Regional SEA activity in the waste management sector: (Foreseen in the region of East Macedonia and Thrace for the modifi-	EU co-financed programmes under the current programming period (2007 – 2013), i.e. 20 programs. The foreseen trend in future SEA activity will probably be related to spatial and urban planning.

	cation of the regional waste management plan)	
HU	No statistics available Estimated: Regional level: inspectorates: 78 SEAs. (In some additional cases they proposed to the planner to apply the SEA rules to their respective planning procedures in vain (59 such cases at 4 inspectorates)). Government level: Chief inspectorate: 10 SEAs National development agency: 72 SEAs	Spatial plans of local governments
IRL	No statistics available	
IT	No statistics available Up to May 2008, 3/4 SEAs have been carried out	Since 2006 most activities focussed on structural funds programmes
LT	25 SEA reports (+ 20 screening documents; 30 scoping documents)	Territorial planning documents, (master plans of counties, master plans of municipalities, special layouts for arrangement of supermarkets, etc.) National sector plans and strategies Operational Programmes 2007-2013
LU	3 SEAs	Community funded operational programs (INTERREG, ORATE, FEDER obj2)
LV	88 SEAs	Plans defined in Article 3 point 2(a) of the Directive. (i.e. sector plans) - town and country spatial planning documents - elaborated for land use planning - which set the framework for future development of projects listed in Annex I and II of EIA Directive. - sector plans, e.g. plans of agriculture and fishery.
MT	1 SEA Some in progress - national sector plans / Strategies	Operational Programme (OP)
NL	No statistics available Estimated: 64 SEAs per year in average	Spatial plans (PKB's, Streekplannen + Structuurvisies).
PL	23 SEAs in total: i.e. (16 SEA for Regional Operational Programmes for 2007-2013 3 SEA for Operational Programmes for 2007-2013 SEA for National Development Strategy 2007-2015 SEA for National Cohesion Strategy for	Regional operational programmes for 2007-13 National programmes and strategies.

	2007-2013 SEA for European Territorial Cooperation Programmes 2007-2013 SEA for Railway Transport Plan and for Energy Policy).	
PT	2 SEAs	
SL	Government level: 98 SEAs Local level: 240 SEAs	At government level: - Operational programmes - Detailed plans of national importance for infrastructure - Forest sector plans At local level: - spatial development strategy - land use plans
SK	Governmental level: 19 SEAs (2007)	Operational programs (2007-2013) Energy sector.
SV	No statistics available. 220 SEAs for development plans + SEAs were made for Sweden's eight regional operational programmes for the Structural Funds and for the ten transboundary programs.	Development plans
RO	77 SEAs (2007: 105 - and this number is expected to rise)	Town and country planning, land use.
UK	No statistics available We cannot provide a precise figure, since our estimates are based on proposals to produce PPs, some of which may have been delayed or cancelled. An estimated 400-500 SEAs are currently in the process of being carried out.	At regional and local levels: - spatial and land use planning sector, - local transport planning sector plans.

Source: Member State responses to the EU Commission questionnaire on the application and effectiveness of the SEA Directive.

** Please note that the figures presented in the table have been provided by Member States. The number of SEAs carried out should take into account the number of SEAs carried out for the Cohesion Policy Operational Programmes.*

3 Desk research

A desktop literature search study of existing relevant SEA studies, reports and analyses completed in the period 2001-2007 has been carried out.

The purpose of conducting the literature search is to analyse the documentation and identify:

- characteristic trends in reports;
- any other issues raised concerning the implementation process.

3.1 Methodology

The findings from the literature search have been used to inform the analysis of the application and effectiveness of the SEA Directive.

The method used for the literature search of existing relevant SEA studies, reports and analyses completed in the period of 2001-2007 consists of desk research in Commission Reports, IAIA[25] international periodicals, such as the Journal of Environmental Assessment Policy and Management and the Journal of the IAIA Impact Assessment and Project Appraisal, internal Commission documents provided by the Commission as well as other relevant documents.

Legal sources have been screened for relevant material on the implementation, effectiveness and application of the SEA Directive in the European Member States in order to establish the shortcomings in the transposition of the Directive as well as characteristic trends of the effectiveness and application of the SEA Directive.

3.2 Contents of the desk research

In general the desk study shows that the development of key features of SEA is still under way, and need to be further refined in order to contribute to a more targeted development of the individual features of SEA. This is primarily revealed through the issues that are addressed across international literature from 2003-2008.

[25] International Association of Impact Assessment

A major bulk of the literature studied reveal that the match of SEA to national planning systems, and especially the contribution of SEA to decision making, is an issue of great importance. It is discussed how and when SEA may most effectively be included as a tool in developing plans and programmes. Literature has identified a wide range of potential conceptual and practical problems. In this context a particularly interesting study was recently released on the effectiveness of SEA in a North-South European perspective[26].

Study on the effectiveness of SEA in a North-South European perspective

This study suggests that the difference in planning cultures in the two representative Member States, Italy and United Kingdom, to a large extent predetermine both the way in which SEA is implemented in the national legal order, but also the way in which effectiveness of the application of SEA in individual cases are assessed in the two Member States. The findings of the study is based on an analysis of how available international literature on SEA emphasises specific topics as crucial to the development of SEA - and that these topics to a large extent are predetermined by the structures and functions of the planning cultures in Member States that the authors of literature come from.

This analysis becomes all the more relevant in the sense that the author reveals that the contribution in international literature to the development of SEA mainly stems from North-European contributors. This finding naturally affects the general picture in international literature about SEA in the sense that it seems to favour the development of specific features, such as:

- The development of accountability and quality control in SEA, through documentation, transparency and simplicity
- SEA should be stakeholder-driven and sustainability lead, focused, iterative, flexible, and adaptable to large input from the public
- Cost and time effective generation of sufficient and reliable information
- Availability of manuals and guidance on different aspects of SEA

Interestingly, the author by way of a questionnaire survey finds that Southern European experts favour very different aspects as the most crucial in developing SEA, such as:

- Clear and defined roles of actors - e.g. the proponent of a plan should be separated from the assessor;
- SEA is environmental baseline-driven based on homogenous procedural requirements
- SEA is applied in a rigorous and strict manner according to legal and formal approach

[26] Gazzola, P. "What appears to make SEA effective in different planning systems?" JEAPM, vol. 10. nr. 1, Imperial College Press, p. 1 ff

- SEA introduces mandatory requirements for the consideration of alternatives

The interesting element in this study is the fact that it is the existing planning cultures and traditions that to a large extent determine the selection of important factors that may contribute to a development of SEA.

SEA follow up

Another research article (2007)[27] finds that there is a general lack of knowledge on SEA follow-up. According to this article, the SEA Directive represents an important milestone for SEA in EU Member States, in terms of introducing a legal requirement and harmonising the procedure (p. 479). The Directive's requirements relevant to SEA follow-up are to:

1. make plans for monitoring during the ex-ante assessment and include these plans in the environmental report;

2. provide information on the monitoring measures decided after the plan or programme has been adopted; and

3. monitor the significant environmental effects identified in the environmental assessment.

The European Commission has issued guidance on monitoring within SEA to complement the "minimalist" approach of the Directive.

However, according to the research article the following flaws with regard to SEA follow up has been identified:

1. The Directive does not require an evaluation to be made.

2. The Directive leaves open the question of how best to organise follow-up activities and who should be responsible for them;

3. Requirements and guidance regarding the scope of the monitoring are ambiguous;

4. The guidance suggests that monitoring of environmental effects could be integrated into regular revisions of the plan or the programme;

5. The guidance recognises that since plans and programmes involve many indirect effects, causality chains are likely to be more complicated at the SEA level than at the EIA level;

6. Useful working processes are proposed in the Commission's guidance but no practical methods, indicators, checklists, analytical tools, or existing datasets are referred to or described.

[27] Persson, Åsa and Måns Nilsson, Towards a framework for SEA follow-up: Theoretical issues and lessons from policy evaluation, in Journal of Environmental Assessment Policy and Management Vol. 9, No. 4 (December 2007) pp. 473-496. Imperial College Press.

Taking remedial action in response to monitoring results is not mandatory.

Study on Biodiversity in SEA

In a thematic issue of Journal for Environmental Policy, Assessment, and Management on biodiversity in SEA[28] the potential in SEA for integrating the considerations of biodiversity in a systematic manner is highlighted. The confidence in SEA is among other reasons founded in the fact that SEAs are often focused on considering developments in a larger scale than e.g. EIA-procedures.

The confidence is founded in the fact that SEA may among other things:

- provide for building biodiversity objectives into plans and programmes
- identify biodiversity-friendly alternatives to existing planning;
- identify and manage cumulative threats to biodiversity;
- plan effective mitigation strategies to halt the loss of biodiversity;
- inaugurate monitoring systems that may generate biodiversity data.

It is maintained that the confidence in SEA must be followed up by more elaborated information/guidance on how to treat biodiversity as a subject in SEA procedures, in particular provide evidence from previous case-studies containing current good practice.

One of the tools highlighted in the articles is systematic conservation planning through which priority areas for conservation actions are identified. This tool does provide the possibility of informing future land use planning and SEA/EIA procedures triggered by land use planning and projects. A key problem in this context is to develop accessible "translation" of scientific data into easy to use information packages useable in assessment procedures.

In another article of the thematic issue the information on biodiversity in regional planning is integrated into GIS-based predictive ecological modelling. When coupling this information to an established set of biodiversity targets and their related indicators alternative scenarios could be developed and tested against each other for the purpose of allowing better integration of biodiversity consideration in planning through the use of SEA.

In a Dutch study reported of in the thematic issue, the systematic consideration of biodiversity in spatial planning at different levels (national, regional, and local) is integrated through the employment of SEA. The basic message is that if biodiversity impacts are considered at an ecosystem level, then SEA may effectively be used to address biodiversity needs in spatial planning. It is suggested that some form of legislative back up for that purpose would probably

[28] Journal for Environmental Policy, Assessment, and Management, vol. 7, no. 2. June 2005

lead to better consideration of biodiversity in future SEA processes as well as other decision making processes.

Study on workshop approach in developing objectives, targets, and indicators in SEA

The article discusses a workshop approach to identifying, discussing, and agreeing on the basic tools, objectives, targets, and indicators employed in individual SEA procedures. The tools must be agreed between planners and environmental scientists as those that are relevant in the individual context to which SEA is applied. The approach is discussed and found to be quite fruitful in bringing about a consensus based on careful consideration of each set of clusters - objective, target, indicator - discussed in workshops. The workshop approach was build upon dividing a group of invitees representing planners and environmental scientists into four groups - each with one theme (biodiversity, water, air, and climate).

The benefit from the workshop approach and the careful consideration that goes into identifying and agreeing on each set of clusters pays back in the sense that it provides a more focused SEA as well as a reduced workload in later stages of developing the environmental report.

Strategic Environmental Assessment in International & European Law

A recent publication: 'Strategic Environmental Assessment in International & European Law' (2008) provides an overview of the current status of SEA in international and European law to assist with implementation of legal requirements and consider future developments at all levels. The publication is written primarily for the non-legal audience, with practitioners responsible for environmental policy making, planning and management operating within the framework of the SEA Directive and the SEA Protocol to the Espoo Conventions, particularly in mind. In addition, to explaining and analysing procedural and substantive law, the publication is focused on explaining the context of these provisions, the underlying legal frameworks of international and European law and the relationship with each other and the national legal systems.

For the purpose of this study, chapters 10: The SEA Directive and 11: Relationship between SEA, EIA and other related Directives, are the most relevant. In the following the most interesting findings and conclusions from the publication as seen in the light of this study, are extracted. In addition, findings and conclusions from the publication will be throughout the study.

- Referring to difficulties of harmonising existing procedural requirements in Member States in accordance with the amended EIA Directive, Sommer agitates: "Taking 'into account its unclear terminology and other legal deficiencies' it will probably be 'more difficult to introduce the SEA Directive to national legal systems', especially into the Accession States that in many instance have no current related legal requirements", (2005, pp. 70 - 73 cited in Marsden, 2007, p. 225).

- In discussing the objective of the SEA Directive, Marsden holds that some provisions may create powers rather than duties, which are discretionary rather than mandatory and to which a legal challenge in administrative law will prove difficult provided a decision maker has exercised that discretion appropriately. Marsden provides an example: the word "promote" in Article

1, provides significant discretion especially when linked to a principle such as sustainable development, which is vague and subject to differences of opinion, even given policy guidance as to its meaning. The meaning of "high level of protection" has been considered by the ECJ to not have to be the highest technically possible. Especially as Article 174(2) permits taking costs and benefits into account. (p. 209 - 210). Further, in discussing the discretionary margin of Member States, Marsden (2007) refers to Risse et al. (2003) who analysed each of the procedural provisions of the Directive indicating the discretionary margin available to the MS. They conclude that 'the general requirements prescribed by the Directive are not restrictive and leave ample room for creativity, flexibility and adaptability to suit each Member State's context'.

- "The SEA Directive contains provisions that are mainly of a procedural nature"…"The provisions are in many instances similar and/or related to the EIA Directive, with requirements for screening, scoping, consultation, monitoring and decision making. The jurisprudence of the ECJ on the EIA Directive and related provisions is directly relevant to the SEA Directive given the close relationship between the laws.[29]

- The publication refers to different studies. Among others a 2004 special issue (vol. 14.) of the journal European environment reported on progress towards meeting the requirements of the SEA Directive, discussing practice in Austria, the UK, Germany, Italy, Sweden and Slovenia. Most of the papers dealt with land use or transport planning others with the energy and the water sectors. Conclusions reached overall include the need for policies to also be assessed, the importance of vertical and horizontal integration of SEA in plan making, the significance of guidelines and the definition o f sustainability objectives and targets, the role of tiering, and the need for checks and balances where planning processes are highly politicised.[30]

- According to Marsden, some commentators[31] question whether Article 7 of the Convention has been adequately transposed into Article 6 of the SEA Directive. Changes to the SEA Directive will undoubtedly be needed to fully implement the Aarhus Convention, and potentially also the SEA Protocol, if and when it is finally ratified as required.[32]

- When the European Commission, or the majority of the Member States, ratifies the SEA protocol there are likely to be moves to ensure the applica-

[29] Marsden mentions: "The meaning of 'authority', 'project', 'plan', 'development consent', 'significant environmental effects', 'environmental effects', 'cumulative effects' and 'likely to have' have all been subject to interpretation. The implications of exceeding or preventing the exercise of discretion of failing to comply with requirements for transboundary impacts, and the flexibility available to decide on detailed public participation requirements and access to information have also been considered by the ECJ" (Marsden, 2007, p. 213).

[30] Marsden, 2008, p. 226.

[31] See Mathiesen, 2003, p. 46; De Mulder, 2006, p. 274.

[32] Marsden, 2008, p. 228.

tion of the SEA Directive to policy and legislative proposals, as the Commission IA process does currently with EC proposals.

- Finally, to be highlighted in this chapter, Marsden suggests that the review (i.e. the present study on the application and effectiveness of the SEA Directive) permits the opportunity to consider consolidation with the EIA Directive as advocated by Sheate (2003a, o. 347) and others. It also permits the opportunity to extend application to policy and legislative proposals, driven by the SEA Protocol and legislated experience in a few of the MS or devolved administrations within. The relationship between the SEA Directive and the other related European Law suggests further consolidation of European EA requirements may also be needed.

Findings from EEB report

An independent NGO report produced by the European Environmental Bureau (EEB), 'Biodiversity in Strategic Environmental Assessment' (2005), provides a 'snapshot' of the quality of transposition and application of the SEA Directive across Europe at the end of 2005. By looking at a diverse spectrum of European countries, it intends to identify and highlight good practice with a special emphasis on biodiversity and climate change.[33] Furthermore, Member States where SEA implementation needs to be improved, as well as the key problems of implementation are also identified. The report also intends to assess the level of integration of biodiversity into other policy sectors, thereby measuring the policy responses of EU Member States to halt the loss of biodiversity by 2010.

The report holds that SEA can become a key component of a proactive strategy to protect biodiversity by avoiding damage in the first place, and if no alternatives can be found, to mitigate the impacts in certain plans and programmes.

The overall findings of the report are:

- Although some improvements in planning practices can be discerned, the SEA Directive is still far from delivering its full potential, especially in comparison to environmental impact assessment (EIA), with in some cases countries simply carrying out SEA based on EIA legislation which could hint at a reluctance to apply the improvements introduced by the SEA Directive.

- The lack of information on biodiversity and climate change suggests that increased awareness of the issue is badly needed, as well as increased efforts on the part of NGOs to become more active. The proposed decision by the 8th Conference of the Parties under the CBD for guidelines to integrate Biodiversity in SEA should, when adopted in spring 2006, be instrumental in further raising awareness.

The report concludes that much progress is still to be made to address biodiversity and climate change in SEAs. In the majority of countries these aspects

[33] The report is based on a questionnaire survey conducted end 2005 among environmental NGOs in Europe. 20 responses were received covering 18 countries in Europe.

have not been included in SEAs, or information has not been easily available. The application of the 'precautionary' principle, the 'no net loss' principle, the participation of ecologists and climate experts in SEA teams, and the consideration of ecological corridors, is still all in its infancy in most countries.[34] The report further concludes that awareness raising on the benefits of addressing bio-diversity and climate change issues in SEAs is needed both from the side of NGOs and from the authorities.[35]

3.3 Desk study findings

This section presents the characteristics and trends from the literature search of existing relevant SEA studies, reports and analyses completed in the period 2002 - 2007 and to analyse the documentation.

In general the literature studied is dominated by the fact that at least in Europe SEA is still an issue of how to carry it out in a proper manner, rather than an issue related to the finer details of specific issues of SEA.

Theoretical studies of the application of SEA to specific decision making is an issue - especially reported as pilot runs of SEA. This of course must be seen in the light that the SEA Directive entered into force in Member States after or coinciding with the time in which samples employed in literature is collected.

- The contribution of SEA to decision making is in general analysed and debated;
- There seem to be a North-South divide in the way European Member States approach planning and SEA of plans and programmes;
- The employment of SEA requires that the planning context is made clear in order to bring about clarity about the role of SEA;
- The role of SEA as a tool for integrating broader cross cutting environmental considerations is in general appraised;
- Development of proper guidance based on SEA practice and experience seems to be a wanting issue, especially methods for scoping;
- Specific issues (scoping and monitoring) involved in SEA plays a minor role in international literature;
- Some conditions (issues and problems) have been highlighted that makes it 'natural' at some point to revisit the SEA Directive for the purpose of revising it.

[34] EEB, 2002, p. 46.
[35] EEB, 2002, p. 5

4 Institutional arrangements

Institutional and organisational arrangements set up in Member States for the purpose of supporting the implementation and application of the requirements in the SEA Directive is to a wide degree left to Member States to settle. This is on one hand a consequence of the fact that the Community does not have competence to set the details of how Member States' have organised their public authorities; on the other hand, it mirrors the fact that there are quite wide differences between Member States on how their public authorities are organised. This seems however, to be in concordance with the subsidiarity principle which implies that some issues are best decided at national or sub-national level rather than on the European level.

The institutional arrangements for the purpose of this analysis cover the designation of responsibilities for:

- Undertaking the requirement of carrying out the environmental assessment - is it the planning authority or is it a specifically designated authority?
- Are SEA requirements implemented in a centralised or a decentralised model?
- Is the designation of authorities with specific environmental responsibilities set forth in legislation or is it based on an ad-hoc designation?
- The discretion to decide the content and extent of the individual environmental assessment - is the consultation of authorities with specific environmental responsibilities compulsory to follow or is it simply given as an advice?

Information retrieved from the data shows that the EU 27 Member States have opted for different institutional arrangements in order to apply and implement the SEA Directive.

4.1.1 The legislative fundament in national SEA systems

The vast majority of Member States have chosen to implement the SEA requirements into national legislation by way of primary legislation often supplemented by a subsequent Government Regulation and/or Decree on the pro-

cedural requirements. United Kingdom (a part from Scotland) and Romania being the exceptions have chosen to implement the requirements of the SEA Directive by of way secondary legislation - namely by regulations. All Member States have thus fulfilled the general requirement of transposing EU-Directives by way of compulsory legislation.

In some Member States the federal structure has lead to a legislative model supporting SEA requirements in a multi-legal acts model where legal acts are adopted at federal as well as regional levels (Belgium, Italy, Germany, Austria and Spain).

Some Member States have chosen to implement the SEA Directive by amending their basic Environmental Protection Act/Environmental Code (Slovakia, Lithuania, Sweden, and the Netherlands), whereas another group of Member States have chosen to implement the SEA Directive through amending and supplementing existing EIA-legislation (Latvia, Czech Republic, Hungary, Malta, Estonia, Germany, Slovenia). A third group of Member States have chosen to implement the SEA Directive through a designated SEA Act (France, Denmark, and Cyprus). In fact, the SEA Act in France lead to amending the national Environment Code and the national Urbanism Code.

In a few Member States a combined legislative model of implementing the SEA requirement has lead to the SEA requirements being scattered across a number of existing acts (Lithuania).

4.1.2 The designation of authority to carry out SEA

The vast majority of Member States has chosen to set the requirement to carry out an environmental assessment on the authority that holds the responsibility/duty to adopt the plan/programme in question. This means that the duty to undertake SEA for a plan/programme is distributed across a wide variety of authorities.

For the purpose of assisting the planning/programming authorities in their duty to carry out environmental assessments of plans/programmes drawn up the institutional arrangement chosen in some Member States builds upon a shared responsibility to carry out the assessment. The responsibility is shared between plan developing authorities and designated agencies often organised under the Ministry of Environment (Malta, Luxembourg, Latvia, Bulgaria, Slovakia, and Spain).

4.1.3 Definition of authorities with specific environmental responsibilities

According to the SEA Directive's art. 6(3) Member States shall designate authorities with specific environmental responsibilities which by reason of these responsibilities are likely to be affected by the plan/programme in question. These authorities must be consulted when their responsibilities are likely to be affected by a plan/programme.

According to the SEA Directive's art. 6(5) Member States are left discretion to decide how the details of such consultations must take place.

Member States have been asked, how they define authorities with "specific environmental responsibilities" (Art.6 (3)). Are they specified in legislation or defined on a case by case basis?

A majority of Member States (Austria, Cyprus, Czech Republic, Spain, France, Hungary, Lithuania, Luxembourg, Slovakia and the United Kingdom) define authorities with "specific environmental responsibilities" in their national legislation. Denmark, Germany and Sweden use a case-by-case approach. Belgium, Estonia, the Netherlands, Latvia, Portugal, Slovenia and Romania use a combined approach, when defining authorities with "specific environmental responsibilities". Malta has pointed out that no definition or interpretation has been formally attributed in national legislation. The legislation makes reference to "identified stakeholders".

It seems that there is a lack of a homogenous definition of authorities with "specific environmental responsibilities". Germany uses a fairly broad definition that is "all authorities whose environmental or health-related responsibilities are affected by the plan or programme". Likewise, the French definition is broad: "authorities of the State in charge of environment matters". Some Member States specify a list of authorities is included in the national legislation (e.g. Hungary and Slovakia).

The most common authorities with "specific environmental responsibilities" are various Ministries (including Ministry of Environment), Environmental Protection Agencies, Governmental and municipal institutions responsible for environmental protection.

5 Key stages in SEA procedure

5.1 Introduction

The purpose of this chapter is to present information on how the SEA Directive is applied across the 27 Member States and to identify and describe how individual steps of the SEA procedure have either provided for effective application and implementation of the Directive or have given rise to misunderstandings of and/or ineffective application of the SEA Directive.

The methodology applied for doing this has been to identify the mechanisms employed in the SEA Directive and to investigate how these mechanisms are applied in Member States. The information upon which this investigation has been carried out is first and foremost Member States' responses to the questionnaire on the application and effectiveness of the SEA Directive submitted to national SEA experts in the Member States by the EU Commission in autumn 2007. This information has been supplemented by data collected by local consultants from the Consultant's own network in the Member State for the purpose of carrying out this study.

The understanding of the SEA Directive's requirements is based on inter alia the Commission's Guidance on the implementation of the SEA Directive (hereinafter called the SEA Guidance). Until the European Court of Justice considers the SEA Directive explicitly, the SEA guidance is one of the authoritative statements of interpretation available to the Member States. The SEA Guidance addresses some of the challenges that potentially may arise in the interpretation and/or application of the SEA Directive. The SEA Guidance reflects the Commission's viewpoints and is of a non-binding character. It was issued in order to assist Member States in implementing the Directive in accordance with its wording and spirit - and for the purpose of facilitating a consistent implementation and application across the Community to achieve the maximum potential for environmental protection and sustainable development.

The SEA Guidance as well as national guidelines from Member States (where possible) are drawn into the analyses in order to provide as broad a basis for discussions as possible.

The analyses are furthermore based on studies of international literature on SEA, as reported in the desk study research chapter, as well as the consultant's own experience in delivering advice on SEA across the Community.

5.2 Determination of the application of the Directive

The first step in applying the SEA procedure is to determine which plans and programmes are subject to the SEA procedure. The Directive applies a methodology in determining the plans and programmes subject to the SEA requirements by cascading a number of selection-mechanisms in determining the individual application of the Directive.

Article 3 of the Directive sets out the scope of application of the Directive and is fundamental to its operation. It begins by expressing the requirement for an environmental assessment of certain plans and programmes which are likely to have significant environmental effects (paragraph 1). It then defines classes of plans and programmes which require assessment, either based on the formal characteristics of the plans and programmes (subsection 2) or on the basis of a determination by Member States (subsections 3 and 4). Subsection 5 specifies how that determination - the so-called 'screening' - should be carried out. Subsection 8 determines plans and programmes which are categorically exempted from the Directive.

At the Member State application level a number of criteria are set out in the Directive upon which Member States are required to decide whether a plan or programme must be subject to the assessment requirements of the Directive. This level in the selection mechanism is analysed in section 5.3

Further down the selection mechanisms are the screening requirements introduced by the Directive in deciding whether the plans and programmes that fall within the scope of the SEA Directive may have significant impacts on the environment. This selection mechanism is analysed in section 5.6

Categorical exemptions from the requirements of the SEA Directive are discussed in section 5.4.

5.3 Criteria for applying the Directive to plans and programmes

The Directive contains a number of criteria for applying the Directive to plans and programmes. These criteria also determine what kinds of plans and programmes may reasonably be excluded from the Directive besides national defence and budget planning.

Whereas the exemptions related to national defence and budget planning have been determined in the Directive (see section 5.4), the decision of whether a plan or a programme and the characteristics of a plan or a programme qualify for the application of the Directive is a matter for the Member States to decide.

5.3.1 Categories of plans and programmes covered by the Directive

Plans and programmes subject to SEA

According to the Directive, an environmental assessment must (as a minimum) be carried out for all plans and programmes that may have a significant impact on the environment:

1. which are
    a. prepared for certain specified sectors (including land use planning), and
    b. set the framework for future development consent of projects listed in Annex I or Annex II of the EIA Directive Art. 3, section 2,b); or
2. which, in view of the likely effect on protected sites, have been determined to require an assessment under the Habitats Directive (Art. 3, section 2, b).

The below mentioned plans and programmes are made subject to a screening requirement, before determining whether an environmental assessment should be undertaken or not.

3. Plans and programmes which determine the use of small areas, or minor modifications to the above mentioned plans and programmes, require an environmental assessment where the Member State determines that they are likely to have significant environmental effects Art. 3, section 3).
4. Plans and programmes other than those referred to under article 3, section 2, a, (see 1. above) that sets forth the frames for future EIA-projects are subjected to a screening procedure by which Member States decide whether or not to carry out an EA (Art. 3, section. 4).

Interpretation of the Directive

Whereas, SEA requirements related to plans and programmes falling under 1) and 2) requires assessment directly upon the basis of their formal characteristics, SEA requirements for plans and programmes falling under 3) and 4) are left to the decision of authorities in Member States. In taking this decision Member States must apply a screening procedure to determine whether plans or programmes are subject to an SEA. The criteria for determining whether or not an assessment must be carried out for plans under 3) and 4) is set forth in the SEA Directive's Annex II.

The determination of the applicability of the SEA procedure on plans and programmes that are screened in accordance with criteria set forth in Annex II must be based on case-by-case examination, or by specifying types of plans and programmes, or by combining both approaches.

In the following, a number of key terms and concepts crucial to the interpretation of the Directive as well as criteria for determining the application of the Directive to plans and programmes will be discussed. In addition, each section illustrates Member States' practice related to the determination of the application of the Directive to plans and programmes.

5.3.2 Definition - Law and administrative provisions

The Directive

An important qualification for a plan or programme to be subject to the Directive is that it is required by 'legislative, regulatory or administrative provisions'.

The SEA Guidance

The SEA Guidance contains a discussion of the wording 'Administrative provisions' in the following way: 'Administrative provisions are formal requirements for ensuring that action is taken which are not normally made using the same procedures as would be needed for new laws and which do not necessarily have the full force of law. Some provisions of 'soft law' might count under this heading. Extent of formalities in its preparation and capacity to be enforced may be used as indications to determine whether a particular provision is an 'administrative provision' in the sense of the Directive. Administrative provisions are by definition not necessarily binding, but for the Directive to apply plans and programmes prepared or adopted under them must be required by them, as is the case with legislative or regulatory provisions'.[36]

Marsden suggests that 'While administrative provisions may, in some instances, not be legally binding if a plan or programme is required by them, then they may also be subject to the SEA Directive (paragraph 3.16) if they also set the framework for development consent. Provisions can therefore be required by either the legislative or executive branch of government at national, regional or local levels (paragraph 3.14), which brings considerable flexibility and also comprehensive application, at least to the provision in question'.

There is, however, no doubt that the requirement is broad and may seem comprehensive, but when determining the content of the requirement to apply SEA procedures to the preparation and adoption of a plan it is probably not just the flexibility and comprehensiveness of the requirement which is at stake, but rather the interpretation in so-called "hard cases" which is the most interesting feature of the requirement.

It is obvious from the above, that neither the Directive itself nor the SEA Guidance provides clear and unambiguous criteria for how to interpret the qualification when deciding to apply the SEA requirement. The guidance suggests *extent of formality* as a criterion for determining whether a particular provision is an 'administrative provision', however, this criterion is only a suggestion and it is also subject to interpretation. Hence, determining the wording 'Administrative provision' is open to interpretation in Member States. This is all the more relevant in a situation where the Community as such does not hold competence

[36] SEA Guidance on the implementation of Directive 2004/42/EC on the assessment of effects of certain plans and programmes on the environment.

to either determine or pre-empt national administrative law, nor the contents of national planning legislation.

Member State experience

Member State experience show some problems related to the interpretation of what is meant by the wording 'administrative provisions'.

It is clear from responses from Member States to the EU Commission's questionnaire that a majority of Member States have not further defined or interpreted the concept of "administrative provisions". Only Cyprus, Finland[37], Greece, Hungary, Ireland, Latvia, the Netherlands, Romania, Slovenia, Spain, and United Kingdom have set forth further definition of the concept for the purpose of bringing clarity to how the criteria may be understood.

Criteria employed are:

- the degree to which the requirement is formalised,
- the degree to which the decision under the provision may be enforced,
- The plan / programme is provided for by an administrative act (governmental decision, ministerial order, decision of the local council
- The provision must also use language that plainly requires rather than just encourages a plan or programme to be prepared.

In United Kingdom it is furthermore mentioned that the likeliness that the plan/programme is made available to the public and probably also the fact that it is subjected to consultations are elements that may bring further clarity to the understanding. However, it is also clear that these elements are purely indicative and do not *per se* provide certainty as to the extent to which the Directive must be applied to a plan or programme.

In Hungary, the national SEA expert reports, that in Hungary, there is no direct equivalent to the term “administrative provisions”. According to the expert: "The term is transposed in Article 43(4) a of the Act in the following way: “(…) which are required by the decisions of the Parliament, the Government or a local municipality”. The term “Administrative provision” therefore means the general decisions of the three bodies mentioned and does not carry any normative meaning related to the content or nature of the decision. A decision can be general in term of the persons or the activities it refers to, or the time or the territory when or where these activities take place. Usually, only one or two of these elements (persons, activities, time, territory) are indefinite, while the rest of the elements are more concrete – this is the key difference from the normative acts which are usually fully general".

In Denmark a number of ministries[38] in central government prepare plans and programmes to which no SEA procedure is undertaken. This is first and foremost defended from a position where the ministries maintain that these plans

[37] In Finland the Government bill about the SEA legislation provides an explanation of "Administrative provisions" with examples - not the SEA legislation itself.

[38] The Ministries of Climate- and Energy, and Transport Infrastructures

and programmes are not adopted under any formal requirement of law or other administrative provision. One example is explained in the following example:

It has become practice that the Danish Ministry of Transport submits a draft annual investment plans to the Parliament's Transport Committee in a co-decision making process. The investment plan is regularly revised (annually or bi-annually) and is expected by members of Parliament's Transport Committee as a regular tool for planning future investments. Although the submission of the investment plan is not regulated by law or any other administrative provision, this practice constitutes or represents a practice that may equal a duty set forth in law and/or administrative requirement - albeit, not formulated in any source of law or other official document. In other words, the sole fact that the duty to deliver an Investment plan within the Transport sector has not been formulated in law and or administrative provision should in itself constitute an exemption of the plan from the obligation of the Directive.

When seen from an environmental perspective it clearly becomes unacceptable that the most far reaching infrastructure decisions in Denmark are not assessed with regard to their impact on the environment at the strategic planning level.

This practice eludes basic considerations such as whether the objectives of the investment plan has struck the right balance between transport modes or whether at all is has been taken into consideration, as well as the extent to which general mobility needs may be met in a more prudent manner by drawing into attention considerations of impacts on the environment. These problems are all the more relevant in this context because any other formal plan or programme in which such issues are systematically considered is not required according to Danish law or practices.

It may be questioned whether this practice in Denmark complies with the wording and the spirit of the SEA Directive. Furthermore, the question that may be posed in this context may be whether semi-constitutional practises in principle may exempt plans and programmes from the Directive's requirements. A parallel to this problem has so far found its solution in the EIA Directive by virtue of the art. 1(5) exemption for projects the details of which are determined by a specific piece of legislation.

The finding, that there may be legal problems related to the interpretation of 'administrative provisions' is supported in literature.

The EEB publication (2005) states that "One loophole that appears, for example in Denmark and Germany, is that projects that are based on plans or programmes that are not required by law, are not covered by the SEA Directive"[39].

[39] EEB, 2005, p. 3.

5.3.3 Definition of sector plans and programmes

The SEA Directive

Article 3 paragraph 1 states that an environmental assessment shall be carried out for plans and programmes (specified in paragraphs 2 - 4) which are likely to have significant environmental effects.

The SEA Directive, article 3, paragraph 2, requires that a number of predefined sector plans and programmes as a rule should be made subject to an environmental assessment.

Article 3, paragraph 2(a) defines two classes of plans and programmes which are deemed likely to have significant environmental effects. For a plan or programme to fall within the scope of paragraph 2(a), both conditions described must be fulfilled:

- The plan or programme must have been prepared for one or more of the sectors (agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use) and
- It must set the framework for future development consent of projects listed in the EIA Directive's annex I and II.

Member State experience

All Member States - except Luxembourg - report that they have adopted a list of Plans and Programmes for which SEA is mandatory. Although not all Member States in their response to the Commission's questionnaire or in the information collected by the Consultant's own network of local consultants specify the list of Plans and Programmes for which SEA is mandatory, it is the clear impression that most Member States have simply transposed the general categories of Plans and Programmes as listed in Article 3(2) (a) of the SEA Directive.

Text box 2: Example: France - specification of Plans and programmes subject to the SEA procedure

E.g. France: The French regulation has specified types of plans and programmes subject to a SEA because they are likely to have significant effect due to their nature or their dimensions :

⇒ **plans and programmes listed at the article R. 122-17 of the environment code** for water, waste, forestry, transports,… :

Plan defining rules both for the sea along the coast and the seaside areas (Schémas de mise en valeur de la mer)

Urban mobility Plans (Plans de déplacements urbains)

Department plans for motorized rides (Plans départementaux des itinéraires de randonnée motorisée)

Master development plans for water management (Schémas directeurs d'aménagement et de gestion des eaux)

Local development plan for water management (Schémas d'aménagement et de gestion des eaux)

Departmental or inter departmental plans for domestic waste management (Plan départementaux ou interdépartementauxd'élimination des déchets ménagers et assimilés)

Regional plans for industrial waste management (plans régionaux ou interrégionaux d'élimination des déchets industriels spéciaux)

Regional domestic waste management for the Ile-de-France region (Plan d'élimination des déchets ménagers d'Ile-de-France)

National plan for elimination of certain dangerous special waste (Plan national d'élimination de certains déchets spéciaux dangereux)

Departmental schemes of quarries (Schémas départementaux des carrières)

Programmes for the protection of water against pollution by nitrates (Programmes d'action pour la protection des eaux contre la pollution par les nitrates)

Regional directive for State forest management (Directives régionales d'aménagement des forêts domaniales)

Regional directive for local communities forest management (Schémas régionaux d'aménagement des forêts des collectivités)

Regional directive for private forest management (Schémas régionaux de gestion sylvicole des forêts privées)

Programmes located in Natura 2000 site (Programmes situés à l'intérieur du périmètre d'un site Natura)

⇒ **land use plans** :

The special areas plans (directives territoriales d'aménagement or DTA)

- These plans are prepared at the level of important areas with difficult planning problems (Loire and Seine estuaries, Iron basin in Lorraine, Marseille and Lyons urban areas, the department of Alpes maritimes (French Riviera). They define rules which give a framework for local land use plans. They are also an interpretation of the general regulations for mountain or seaside areas.

The development plan of the Paris region (schéma directeur de la région d'Ile-de-France or SDRIF)

- This regional development plan is prepared in a different way, but as roughly the same content as the other land use plan prepared at the level of other urban areas (see below SCoT)

The land use plan for important urban areas (and some rural areas) (schémas de co-

hérence territoriale or SCoT)

- They define the general planning rules on large areas with several local communities.

- The local land use plans (plans locaux d'urbanisme or PLU). For the local land use plans, more specific criteria are used to determine whether the plan needs a SEA or not: these criteria concerns the dimensions of the plan (the area covered, the number of inhabitants concerned…), and the sensibility of the environment: in particular, a SEA is undertaken for all urban local plan likely to have a significant effect on a Natura 2000 site (an important number of urban local plans can be subject to a SEA with this latest criteria).

Source: French response to the EU Commission questionnaire

Some Member States use the approach of an established indicative list of Plans and Programmes which are considered to be subject to the SEA requirements have been developed:

In Romania the SEA Government Decree provides for two types of plans/programmes:

- ones for which the SEA procedure is compulsory to be carried out (art.5(2));
- ones for which it is decided, on a case by case basis, if they are subject of the SEA procedure (art.5 (3)).

In order to facilitate the application of the SEA General Decree, a Ministerial Order (MO) no. 995/21.09.2006 (Order of the Minister of Environment and Sustainable Development - MESD) approved an indicative and non-exhaustive list of plans and programmes that can be subject to the SEA procedure (they are compulsory brought to the attention of the environmental competent authority for screening).

In United Kingdom an "Indicative List" of plans and programmes which the Government considered to be subject to the requirements of the Directive was published in the UK's main guidance document, "A Practical Guide to the SEA Directive" (referred to as the "SEA Practical Guide"), and was submitted to the Commission as required by Art 13.4. In most cases, all plans and programmes of the types in the Indicative List will invariably require SEA. However, a few types need to be screened, because individual Plans and Programmes of the type in question vary in the extent to which the criteria in Art 3 apply.

In Scotland, the SEA Tool Kit identifies those plans, programmes and strategies that have already entered the SEA process. This can be updated as and when required.

Only Luxembourg reports that the selection mechanism applied to determine whether a plan or programme should be subject to the SEA requirements is decided solely by means of a case-by-case approach using the criteria of Annex II of the Directive.

5.3.4 Setting the framework for future consent procedures to EIA-projects

The SEA Directive

The SEA Directive requires as a second criteria that plans and programmes prepared for a number of sectors and which set the framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 in the assessment of the effects of certain public and private projects on the environment should be made subject to systematic environmental assessment (Article 3(2) (a). When these plans and programmes only determine the use of small areas at local level (Article 3(3)) or minor modifications to the abovementioned sector plans or programmes (Article 3(4)), Member States must determine if they are likely to have significant effects on the environment and therefore be subject to an environmental assessment.

In order to determine for which plans and programmes an environmental assessment must be carried out, Member States must determine whether plans and programmes set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, i.e. the EIA Directive.

For plans and programmes under paragraph 3 and 4 it should further be determined if they are likely to have significant environmental effects and therefore, in accordance with paragraph 1, require environmental assessment.

The SEA Guidance

The Commission's Guidance emphasises that although the meaning of 'setting the framework for future development consent' is 'crucial to the interpretation of the Directive, there is no definition of the term in the Directive.

The Guidance addresses the meaning of 'framework' which normally would mean that the plan or programme contains criteria or conditions which guide the way the consenting authority decides an application for development consent. According to the Guidance, such criteria could "…place limits on the type of activity or development which is to be permitted in a given area; or they could contain conditions which must be met by the applicant if permission is to be granted; or they could be designed to preserve certain characteristics of the area concerned".

Member State experience

Member States have been asked if they define or interpret "setting the framework for future development consent of projects" (Art.3 (2) (a))? And if this is the case, how have they defined/interpreted the criteria?

According to Member State responses to the EU Commission's questionnaire on the application and effectiveness of the SEA Directive, 18 out of the 27 Member States which have responded to the questionnaires do not define or interpret "setting the framework for future development consent of projects in their national legislation. While some Member States simply answer "No", some Member States specify that they apply the same wording as the Directive and therefore do not further interpret or define the expression.

Nine Member States (Czech Republic, Germany, Finland, France, Hungary, the Netherlands, Slovenia, Slovakia and Romania) report that they do define or interpret "setting the framework for future development consent of projects".

Table 3: Member State definition of "setting the framework for future development consent of projects

Member States	Definition / interpretation of "setting the framework for future development consent of projects"
CZ	The legislation lays down areas for which plans and programmes subject to assessment are prepared, i.e. areas for future development consent of projects
DE	The term is defined as follows: “Plans and programmes set a framework for the decision on the admissibility of projects if they contain elements that are significant for future development consent, in particular with regard to the need, size, location, nature, operating conditions or allocation of resources.“ Land law either makes a reference to this definition or contains similar definitions
FI	- if the plan is a prerequisite for further development - if the plan or legislation concerning the plan includes a requirement to take the plan into account in the planning of future projects - if the plan would include criteria or conditions which should be taken into consideration in the permit procedure.
FR	When transposing the Directive in the French law, the expression has been interpreted as plans and programmes which have “prescriptive” effects – that is to say plans and programmes which lay down juridical norms. The article L. 122-4 1° of the Environment Code refers to the notion of “compatibility”: Plans and programmes subject to a SEA are those with which projects must be compatible.
HU	”(4) Plans and Programmes that set a framework for the future authorisation of activities or facilities described in Paragraph (2) ba) and (3) c) (hereinafter referred to as “Activities”) are defined as Plans and Programmes that: a) include provisions or conditions to be compulsorily applied, or criteria to be compulsorily considered during the authorisation procedure, in particular as regards the location, nature, size and operational conditions of such Activities, or the direct use of, load to or other uses of natural resources by such Activities; b) require the implementation of any such Activities; or c) affects the location, nature, size and operational conditions of such Activities, or the direct use of, load to or other uses of natural resources by such Activities in other ways (by facilitating, encouraging or restricting them).
NL	SEA is mandatory if the plan is the framework for a decision that later on will be subject to an EIA (screening) A plan shall, in any event, be considered the framework for such a decision if that plan: a. designates a site or route for those activities, or b. one or more sites or routes are considered for those activities.
SL	There is the provision of Art. 40 of the Environmental Protection Act, in which we laid down that the SEA process is required, as assessed according to Directive 85/337, for all plans and programmes accepted by the government or local government for land use, water management, forestry, agriculture, industry, traffic, waste management, water supply, telecommunications and tourism, and which represent a framework for further development consent for projects.
SK	If the competent authority, on the basis of screening results of strategic document assessment, decides that also strategic documents not listed in the annex No. 1 are sub-

	ject to assessment. These documents create the frame for approval of proposed activities, assessed, in particular for the sphere of agriculture, forestry, fishing, energy, traffic, waste management, water management, telecommunications, tourism, landscape planning, or for the area use, regional development and the environment, environmental protection, that might have impact on the environment, including those that may have impact on the areas protected according to specific regulations.
RO	The expression is interpreted by MO nr.117/2006 which contains the same explanations as the EC SEA guidelines.

Source: Member State responses to the EU Commission questionnaire

A few Member States report that they refer to the Community's SEA Guidance or are preparing guidance themselves in order to further define the expression.

There are quite different approaches to whether it, at all, is relevant to provide further guidance on the understanding of what is meant by 'setting the framework for future development consent'. As revealed a majority of Member States have refrained form providing guidance, whereas a minority have chosen various ways of shedding light on what is meant by the wording.

The relevance of national guidance must obviously be viewed against whether public authorities are given discretion to adopt plans and/or programmes without being subjected to a formal requirement to do so.

The United Kingdom has linked the criteria to the legal definition of development consent in the EIA-Directive. By this link the legal definition of whether a plan and/or programme may set frames for future EIA-projects is directly coupled to a well-known decision-concept as well as coupled to the precise matter of the case - namely, the framework for future consents to projects subject to the EIA-procedure.

The meaning of "development consent" is also discussed in Marsden (2008). Marsden refers to the *Wells* decision[40]. Of particular relevance to the SEA Directive is the emphasis by the ECJ on assessment being carried out at the earliest stage possible, suggesting that where plans or programmes are part of a tiered hierarchy, assessment of the highest level proposal should always take place first, consistent with SEA theory and good practice. While in some cases it may be quite clear what kind of specific development that may be allowed for (e.g. land-use plans), in other cases it may be necessary to consider carefully (on a case by case basis) whether the framework for development consent is set. Marsden concludes a broader survey of plan types in Member States by emphasising that it should be recognised that development consent is not limited to a grant of planning permissions, but can encompass many different types of licenses, permissions and permits.[41]

[40] ECJ, Case C-201/02 *R (Wells) v Secretary of State for Transport, Local Government and the Regions* [2004] ECR 000.

[41] Marsden, 2008, p. 218.

5.3.5 Definition - Small areas, local level and minor modifications

The Directive

Art. 3(3) of the SEA Directive requires the consideration of whether to apply the rules of the SEA Directive to plans covering small areas, local level and minor modifications to these plans. The terms small areas, local level, and minor modifications are not defined in the SEA Directive.

SEA Guidance

In relation to size, the SEA Guidance suggests that differences between the Member States mean that interpretation must be on a case by case basis.

The term 'Local level' gives rise to similar issues albeit that it suggests there is a contrast between national and regional levels. Although the Guidance expresses concern that since in some Member States local authority areas can be very large and an exemption for the whole of such an area would be a major loophole in the scope of application, the jurisprudence of the ECJ in relation to the exercise of discretion and giving effect broadly to EA provisions would indicate such an approach would be unlikely to succeed.

The SEA Directive Guidance suggests that a general definition of 'minor modifications would be unlikely to serve any purpose and that rather, it should be 'considered in the context of the plan or programme which environmental effects, not the size of the modification, as even small modifications may produce significant effects.

Member State experience

There are no indications from national experts or from local consultants that this has become a problem in the application of the SEA Directive.

5.4 Categorical exemptions

The Directive

In the Directive it is determined that the following plans and programmes are exempted from the requirements of the Directive.

- plans and programmes the sole purpose of which is to serve national defence or civil emergency,
- financial or budget plans and programmes

Commission Guidance

The exemptions are not further specified in the Directive. However, the SEA Guidance addresses issues relevant for the determination of when the exemptions apply.

With regard to the exemption related to 'national defence or civil emergency', the SEA Guidance interprets the Directive text, 'the sole purpose of which'. Plans and programs falling under this article should as their only purpose serve national defence or civil emergency purposes and not any additional purpose.

According to the SEA Guidance, 'civil emergency' includes events having a natural or a man-made cause (e.g. earthquakes and terrorist activities respectively). There is no indication of when such plans and programmes should be drawn up; but their sole purpose must be to serve national defence or civil

emergency. Thus a plan setting out the nature of action that must be taken in an emergency situation is exempt from the Directive, whereas one setting out measures to be taken to avoid a given emergency situation would not, because it would be intended to prevent an emergency rather than serve it.

Hence, it is the *purpose* of the plan or programme which must be considered in assessing whether the plan or programme is subject to the SEA procedure and not its *effect*.

With regard to financial or budget plans and programmes, the SEA Guidance states that 'Budgetary plans and programmes would include the annual budgets of authorities at national, regional or local level. Financial plans and programmes could include ones which describe how some projects or activities should be financed, or how grants or subsidies should be distributed'.

Member State experience

None of the Member States report that they have applied the Directive in a different way with regards to categorical assumptions. Neither, do any of the Member States report that there are any difficulties related with the effective application of this part of the Directive.

5.5 General obligations to the SEA procedure

The SEA Directive

The SEA Directive contains some general requirements to the SEA procedure:

- The environmental assessment shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative process (Article 4(1)).
- The requirements of the directive shall either be integrated into existing procedures in Member States for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive (Article 4(2)).
- Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy (Article 4(3)).

Member State experience

The national SEA experts have provided information as to how they comply with these obligations.

Initiation of the SEA process

In the EU Commission questionnaire on the application and effectiveness of the SEA Directive, Member States have been asked, at what stage in the preparation of the plan or programme the SEA process usually starts? (E.g. is it carried out in parallel with the planning process, or does it start when the draft plan or programme is available, etc.). Member States respond differently to the question and therefore it is difficult to extract comparable answers.

All Member States report that the SEA procedure is carried out at the latest before the adoption of plan and program and most Member States report that according to national SEA legislation, the SEA procedure should be initiated either at the same time as the planning procedure and be carried out in parallel with the development of the plan or in the early stage of the planning process. Only the Dutch and the Slovak national SEA experts report explicitly that there is no legal obligation to carry out the planning and the SEA procedures in parallel; In the Netherlands, the environmental assessment is usually carried out in parallel with the planning process. This is not obligatory. However, Dutch law only prescribes that an environmental impact statement pertaining to a plan or a programme shall be ready by the time the draft plan is disclosed for inspection.

Some national SEA experts, however, point to a discrepancy between obligation and what is suggested in national guidelines on the one hand and practice on the other hand.

A majority of national SEA experts state that the SEA procedure should be initiated coinciding with the initiation of the planning and/or programming and be carried out in parallel with the planning process and before its adoption by a legal act. However, several Member States report in the questionnaire response that in practice the SEA procedure in some cases may only begin when the planning document is available.

The Danish local consultant also report that in Denmark SEAs are at times contracted just before drafts of documents are finalised. This means that sometimes, SEAs are carried out very quickly.

The Hungarian national SEA expert reports that although the national law prescribes that screening shall start when the planning authority starts to develop the plan, practice shows different forms of implementation of this legal arrangement: 'Sometimes it is interpreted as a free discretion right of the planner. In some cases the SEA was started in early phase of the planning while in other cases the subject of SEA was almost ready when the process started. The timing greatly depends on the content of the plan as well. If there are alternatives developed by the planner, the SEA will start most probably after the alternatives are ready. In some cases a parallel, reiterative work during the whole planning procedure took part, however it was also experienced that SEA was a part only of the last phases of the planning process. Some opinions reinforce this last version as the most typical one'. Finally, the Hungarian expert mentions that the timing of the SEA procedure to the planning procedure also depends on schedule and duration of the planning procedure itself: 'When short terms are applied in the planning procedure then it is probable that the SEA starts in a later phase'.

Integration into existing procedures

With regard to the second obligation, to integrate SEA requirements into existing procedures in Member States for the adoption of plans and programmes or to incorporate requirements into procedures established to comply with this Directive (Article 4(2)) eight Member States (BE (Brussels region), Bulgaria, Germany, France, Italy, Luxembourg, Slovakia, and Spain) report that they have integrated requirements into existing procedures in the Member States for

the adoption of plans and programmes. Eleven Member States report that they have established separate procedures in order to comply with the SEA directive (Belgium (Federal level, Walloon region and Flanders region), Cyprus, Denmark, Greece, Estonia, Hungary, Latvia, Poland, Malta, Slovenia, and Romania).

In some Member States both ways may be possible (Finland, Czech Republic, Lithuania, Latvia, the Netherlands, Portugal, Slovakia and the United Kingdom). E.g.:

In Finland the SEA procedure is integrated in the planning procedures of plans and programmes for which there exists a detailed planning procedure defined in specific legislation. For other plans or programmes, the SEA procedure defines the planning procedure in practise.

In Lithuania, the SEA procedure is incorporated into the planning process in case of territorial planning documents. For other plans and programmes the SEA procedure is separate and must be implemented before adoption and (or) the approval of the plan or programme when it is not too late for selection of the most suitable alternative of the solutions of a plan or program.

In the Netherlands, the SEA procedure is a separate procedure which is established to comply with the Directive. It is however integrated in the Environmental Management Act and the EIA Decree with the EIA procedure.

In United Kingdom, the SEA procedure is generally integrated into procedures for preparing plans or programmes; but in some cases procedures have been adapted to comply with the Directive (e.g. Sustainability Appraisal of spatial plans) or stages added (e.g. to provide for scoping). The SEA Practical Guide (paragraph 2.21) recommends a balance between integration and separation: "Good practice in SEA emphasises the value of integrating the assessment with the plan- or programme-making process. Many benefits of SEA may be lost if it is carried out as a completely separate work-stream or by a separate body. But it is also helpful to involve people, either within the Responsible Authority or outside, who are not directly concerned in producing the plan or programme and can contribute expertise or a detached and independent view."

In Portugal, the DL no. 232/2007 establishes a separated procedure but specifically in the case of land use planning instruments, the existing procedure for the preparation and adoption of plans and programmes has been adapted and improved in order to integrate the SEA procedures (DL 316/2007 of 19. September).

Avoid duplication

The third obligation is to avoid duplication of assessment between different levels in hierarchies of plans and programmes, cf. art.4 (3).

15 Member States (Belgium (Federal level, Flanders region and Walloon region), Germany, Finland, France, Hungary, Luxembourg, Czech Republic, Spain, Lithuania, Malta, Portugal, Slovenia, the Netherlands, Romania and

United Kingdom) have reported that they have implemented provisions to avoid duplication in assessment.

Most of these Member States have adopted a general provision indicating that the authority responsible for carrying out the SEA must take decision on the scope of assessment. This inevitably involves consideration about the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication.

In Portugal although no specific provision is identified in legislation, the SEA procedure follows the frame established by SIMPLEX, the programme for administrative simplification and e-government in the Portuguese public sector. E.g. Law Decree no. 316/2008 of 19 September has been adopted in order to integrate the considerations made by SIMPLEX regarding the application of the SEA procedure to land use planning instruments.

Some Member States explicitly claim that no provisions have been implemented to avoid duplication (Bulgaria, Denmark, Estonia, Italy, and Cyprus). In Denmark and Estonia the discretion to decide when and how to avoid duplication is a matter decided on a case-by-case basis by the planning authority.

However, some Member States describe in more detail arrangements for specific types of plans and/or programmes to be taken to avoid duplication, e.g.:

In Germany, the general provisions of national law are supplemented by further special provisions on landscape planning (Article 19a UVPG), traffic route planning at national level (Article 19b UVPG), land use plans (Section 2 subsection 4, 5th sentence of the Federal Building Code, Article 17 paragraph 3 UVPG) and spatial plans (Section 7 subsection 5, 8th and 9th sentence of the Federal Regional Planning Act).

In France, the Urbanism Code specifies that local land use plans ("plans locaux d'urbanisme") are not subject to an SEA if an SEA is already carried out at the superior level of urban planning ("schemas de coherence territoriale"), except for the local land use plans likely to have incidences on a Natura 2000 site (for which a SEA is always required).

Above all, the hierarchies are integrated in the SEAs carried out by way of the obligation, for each SEA, to justify how superior plans have been taken into account. The French act specifies that the content of the environmental report is determined according to the existence of other plans and programmes covered the same geographical area (art. L. 122-6 of the Environment Code and art. L. 121-11 of the Urbanism Code). In France, there are several requirements of compatibility between plans and programmes for which SEA is relevant (for instance, urban plans must be compatible with water management plans): in these cases, it is required that the SEA, at the inferior level, explain how the plan is compatible with superior plans (and therefore the SEA carried out for the plan at the superior level).

In a number of Member States authorities are encouraged to, when plans and programmes are prepared on different planning levels, avoid duplication. They may in such cases directly refer to the results of previously performed assessment of the effects of plan and programmes carried out a higher level if a number of conditions are fulfilled, such as

- Solutions of the plan or programme under preparation do not alter solutions of plans and programmes of a higher level (Lithuania)
- previously performed environmental assessments of plans and programmes of a higher level is sufficiently comprehensive, (Lithuania)
- there were no essential changes to the environment since the previous assessment was carried out, (Lithuania)
- provided they comply with the provisions laid down by or pursuant to national regulation (the Netherlands).

According to the SEA practical Guide in United Kingdom, more detailed advice on how to adapt SEA to different levels in hierarchies, geographical areas and stages in the preparation of plans and programmes is discussed. It is a.o. mentioned that this aspect of SEA can be challenging in practice, for example in deciding the extent to which the assessment of a "higher level" plan provides sufficient detail on the envisaged environmental impacts so as to allow a more restricted focus in the assessment of a lower level plan.

5.6 Screening of plans and programmes

The Directive

All plans and programmes prepared for a number of sectors and which set the framework for future development consent of projects listed in Annexes I and II of the EIA Directive[42], and all plans and programmes which have been determined to require assessment pursuant to the Habitats Directive[43], are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment.

Two other categories of plans and programmes should be subject to Member States' determination of whether they should be subject to an environmental assessment through a so-called screening procedure:

- Plans and programmes adopted for the use of small areas at local level or where plans and programmes are only minor modifications to the above-mentioned plans and/or programmes should be assessed only where Member States determine that they are likely to have significant effects on the environment.

[42] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

[43] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna

- Other plans and programmes which set the framework for future development consent of projects may not have significant effects on the environment in all cases and should be assessed only where Member States determine that they are likely to have such effect.

Before considering the actual screening procedure, the definition of the term 'Likely significant environmental effect' will briefly be discussed.

5.6.1 Definition of "likely significant environmental effect"

The term 'likely significant environmental effect' is an important consideration throughout the SEA Directive.

SEA Directive

Article 3(5) of the Directive specifically requires Member States to take account of relevant criteria in Annex I when determining whether plans or programmes are likely to have significant effects on the environment.

SEA Guidance

The wording of the Directive implies that the whole set of Annex II criteria first needs to be considered so that the relevant ones can then be applied.

The Annex II significance criteria are divided into two categories:

- the characteristics of plans or programmes, and
- the environmental effects and the areas likely to be affected.

Expert judgement can help to apply relevant criteria to the plan or programme in order to reach a decision about the likely significance of its effects.

Careful consideration is needed of how the criteria in Annex II should be applied when specifying types of plans and programmes. In principle, the determination could be made by prescribing qualitative criteria or thresholds based on the relevant significance criteria. It is advisable to avoid screening systems which are based only on the size or financial thresholds of possible projects or on the physical area covered by the plan or programme, as these criteria alone may not comply with the criteria set forth in the directive.

The criteria listed in Annex II are not exhaustive and the Directive does not prevent Member States from requiring additional criteria to be taken into consideration for the purpose of fulfilling the wording and spirit of the SEA Directive. For this purpose the case law developed by the European Court of Justice on the screening requirement in the EIA Directive may provide guidance on how the screening requirement for plans and programmes are interpreted in the SEA Directive.

The case law on screening in the EIA Directive from the European Court of Justice takes an outset in two basic pillars. These are based on the understanding that the screening mechanism must be employed for the purpose giving effect to the EIA Directive to project categories to which it may not be deter-

mined without reasonable doubt that these project categories are not likely to have significant environmental impacts.

In Commission v Ireland, the ECJ stated that 'a project is likely to have significant effects where by reason of its nature there is a risk that it will cause a substantial of irreversible change in those environmental factors, irrespective of its size. In addition, the ECJ stated: 'Even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors set out in Article 3 of the [EIA] Directive….are sensitive to the slightest alteration'.[44]

When translated to the context of the SEA Directive the case law may be relevant in the following way:

- plans and programmes specified in accordance with art. 3(5) by Member States must be selected on the basis of criteria listed in Annex II of the SEA Directive
- screening criteria adopted/employed in Member States for a case-by-case examination may not be designed or have the effect that all these types of plans and programmes are excluded from the requirement in the SEA Directive

Besides the possible contribution of case law on the EIA Directive the SEA Guidance also recommends Member States to take into consideration environmental factors identified in Annex I in the assessment of determining the likelihood of significant environmental effects of a plan or programme.

Member State experience

The vast majority of the Member States report that the determination of the "likely significant effects" of a plan or programme has been laid down in national legislation as a reproduction of the criteria listed in Annex II of the SEA Directive.

Two Member States, Czech Republic and Latvia, report that in addition to the criteria laid down in Annex II of the SEA Directive they apply complementary criteria.

In Czech Republic these criteria are:

- effectiveness of the defined solution alternatives to achieve the pursued objectives of the plan/programme;
- relevance and vulnerability of the area which might be affected, with regard to population density, settlement pattern and level of urbanization;

[44] ECJ, Case C-392/96 Commission v Ireland [1999] ECR 1-2189

- expected benefit of the plan/programme assessment in relation to assessments of other Plans and Programmes being prepared at different levels in the same geographical area

In Latvia complementary requirements relate to natural values as well as the Baltic Sea and the Gulf of Riga coast area.

Generally, no Member States report on difficulties in applying the criteria of Annex II.

5.6.2 Screening models

The SEA Directive leaves it to the Member States to decide between different screening models. Screening of plans and programmes must be based upon criteria listed in Annex II of the Directive. The models employed in Member States may be

- ad hoc - paying attention to criteria in annex II
- generic in appointing types of plans and programmes - paying attention to criteria in annex II
- combination of the two above models - paying attention to criteria in annex II

Member State experience

A majority of Member States report that they use a combination of specifying/listing types of plans and programmes subject to the Directive and take a case-by-case approach. (Luxembourg and Flanders report that they solely apply a case-by-case approach). Poland reports that they apply a combined approach where plans and programmes subject to SEA is either specified or listed in legislation and supplemented by generic criteria in the same legislation.

The main distinctions which can be established between the Member States are the following:

- Member States which simply copy the SEA Directive's definition/list of plans and programmes relevant (Belgium - Walloon region, Cyprus, Czech Republic, Denmark, Estonia, Spain, Italy, Luxembourg, Latvia, Malta, Poland, Portugal, Slovenia)
- Member States which have translated the Directive's definition/list into a number of specific plans and programmes which are already known/formalised in the Member State (Austria, Belgium (Federal level and Brussels region), Finland, France, Germany, Greece, Hungary[45], Ire-

[45] Hungary applies two approaches to determine the scope of the application: The SEA regulation identifies the specific plans and programmes and transposes the SEA Directive's definition for all other plans and programmes.

land, Lithuania, the Netherlands, Slovakia, Sweden, Romania, United Kingdom).

The types of plans and programmes specified may be policies, strategies, national, regional and local area plans and can often be categorised under the sectors listed in the Directive.

Another issue is that Member States which comply with the Directive by simply adopting the Directive text in each case will have to consider if the characteristics laid down in the Directive are applicable to the plan or programme in question. National **SEA** systems that are founded on simple translation of the Directive's text in this regard are thus more vulnerable to failures to comply with regulations at the application level, simply because a formal position must be reached in each case a plan/programme is under scrutiny. For that purpose the production of national guidance on the understanding of the requirement seems to be required as a must.

Whereas, in cases where Member States have chosen to select a list of types of plans and programmes a more straightforward decision on whether a plan/programme must be subjected to SEA is expected to be reached.

The national SEA experts in Cyprus, Denmark and Italy - Member States which SEA system builds on a translation of the Directive's text - all report that they have general guidelines on the SEA procedure. Cyprus has ascertained that the Cypriot guideline provides guidance on the interpretation of Article 3(2) of the Directive. Whether this is also the case for the Danish and Italian guidelines is possible however, uncertain.

In Italy, guidance for structural funds programmes has been developed and it has been taken into consideration as reference document at national and regional level. The Ministry for Environment and Protection of Land and Sea also elaborated specific indications in order to clarify the relationship between SEA and 92/43 appropriate Assessment. An activity of confront and co-operation between the Ministry of Environment and the Regions has started at the beginning of 2008 after D. Lgs. 4/2008 has come into force and is in progress. This activity should lead also to appropriate guidelines.

The national SEA expert in the Czech Republic reports that no guideline on the SEA procedure exists for the Czech Republic. Belgium, Estonia and Spain have at the time of preparation of the Member State reports no guideline but report that guidelines are in development. Also for these guidelines it is possible but uncertain to what extent the guidelines support the translation of Article 3(2) of the SEA Directive.

5.7 Scoping

The SEA Directive

The SEA Directive's Articles 5(1) and 5(4) concern the scoping of the environmental report. Article 5(1) concerns requirements to the content of the environmental report whereas Article 5(4) concerns requirements to the hearing of

authorities which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes 6(3).

SEA Guidance

With regard to the content of the environmental report reference is made to Annex I of the SEA Directive which specifies the information that is to be provided in the environmental report. The annex lists ten paragraphs which set out a broad spectrum of issues to be dealt with in the environmental report; each paragraph in itself being of a substantial nature (See text-box below).

Text box 3: SEA Directive, Annex I

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;

(e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;

(f) the likely significant effects(1) on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings.

(1) These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.

The items listed in Annex I must be viewed in the light of the requirements in Article 5 of the SEA Directive laying down requirements on the content of the environmental report. Since the SEA Directive lay down a minimum environmental assessment framework, Member States may introduce provisions on the content of the environmental report that go beyond the requirements of the Directive.

Organisation of the scoping process is entirely left to the discretion of the Member States with the exception of the obligation to hear concerned authorities - as defined in article 6(3) - on the scope of the environmental assessment (Article 5(4)).

Member States experience

The limited requirements in the SEA Directive to the scoping of the environmental assessment has resulted in the application of different methods for scoping, different ways of organising the scoping phase including the hearing of concerned authorities, as well as different requirements as to the development of e.g. a scoping document or report, the conduction of consultations with authorities and the public, consultation deadlines, etc. in the Member States.

Member States' experiences related are reported in the sections below.

5.7.1 Methods and procedures for scoping applied

Scoping - a mandatory activity

Scoping is a mandatory activity in Member States. In most Member States the actual scoping procedure is, however, not formally defined in law; but it is up to the designated authorities to decide the procedure. This is often done on a case-by-case basis as relevant to the plan or programme in question.

According to the Czech local consultant, the SEA procedure in the Czech Republic is not a formal administrative procedure followed by a formal decision, but an informal environmental opinion of the competent authority.

Guidelines for scoping

Many Member States have prepared guidelines for scoping, though (Belgium - Brussels region, Cyprus, Denmark, Finland, France, the Netherlands, Portugal, Romania, the United Kingdom (Scotland)) or are in the process of preparing such guidelines (Belgium - Federal level Germany, Malta, Spain and Sweden).

In Bulgaria, Czech Republic, Estonia, Lithuania, Poland and Slovakia no national guideline for scoping has been developed. Scoping is being carried out on an ad hoc basis.

Neither in Hungary nor Latvia have official guidelines been enacted to support scoping of SEAs as of yet; however, some informal tools a. o. have been developed by private consultants and have proven useful in these Member States.

Denmark reports that several municipalities have developed checklists on the basis of Annex I of the SEA Directive in order to facilitate scoping.

Method for scoping

Some Member States report on methods most generally applied in the SEA procedure in order to determine the scope of the environmental assessment. Methods for scoping with regard to the determination of the environmental factors likely to be affected by the implementation of the proposed plan or programme are sometimes provided and described in national non-binding guidelines.

Several national SEA experts sustain that the assessment methods used depend on the type of plan/programme and also on the environmental characteristics of the region and the availability of data.

The French national SEA expert states that 'the French regulation does not require a particular method to be employed. Different methods can be employed in a useful way: in fact, it depends on the expertise of the consultant, the sensitivity and the stakes present in the area involved, the complexity of the effects, the scale of the plan and the degree of detail of its contents. French authorities apply the proportionality principle, as for EIA, to allow an adjustment of the environmental assessment to be adapted in relation to these considerations. From the point of view of French authorities that were interviewed, it is important to keep a capacity of adjustment of the assessment on a case-by-case analysis, so as to avoid "standardized" studies not reflecting the reality or the broader context in which the plan or the programme is to take place.

In parallel, specific methodologies are being developed, either for a type of plan or programme (land use plan, waste management, forest management, operational programmes) or for an environmental issue (ecological corridors, energy), on the basis of specific guidance that was issued (see above). According to the French national SEA expert these methodologies are not always formalised in guidelines as such, they can be elaborated in a particular SEA. The French national SEA expert also notes that EIA guides are available, where some information can also be useful for SEA. But, they note that SEA of plans and programmes face particularly the problems of defining measures to reduce and offset negative impacts (compensation measures), the monitoring, the study of alternatives, the scale and the degree of the analysis which, at the level of plans and programmes often - but not always - differ significantly from an EIA of a well defined project.

It is a general impression from information collected in Member States that the methods applied for scoping are mostly qualitative. I.e. in order to determine the scope of the environmental assessment the authority responsible for undertaking the scoping of the environmental assessment of the proposed plan or programme often involves authorities whose health and environment related responsibilities are affected by the plan or programme as well as consultants or experts or other third parties in order to inform the scoping process.

Some Member States report that descriptive methods and techniques (indicators; checklists; impact matrices); analytical methods and techniques (cost-benefit analysis; multi-criteria analysis; overlay mapping; geographical information system; SWOT analysis - strengths, weaknesses, opportunities and threats; forecasting and back-casting; life cycle analysis and risk assessment); interactive methods and techniques (e.g. participation, communication/reporting, consultation) are considered during the determination of the scope for assessment of the plan or programme in question.

Organisation of the scoping procedure

Member States have organised the scoping procedure in different ways.

In most Member States it is the planning authority which is responsible for defining the scope of the environmental assessment and for consulting relevant authorities (e.g.: Austria, Belgium (Federal level, Walloon region) Czech Republic, Finland, Germany, Greece, Denmark, Estonia, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Italy, United Kingdom (Scotland), Slovenia, Romania). In other Member States it is the competent environment authority who will define the scope (Bulgaria, Cyprus, the Netherlands, Portugal, Slovakia, and Spain).

In France, the definition of the scope of the environmental assessment is not the responsibility of the planning authority alone, but it is also the role of the environmental authority. French regulation requires that the planning authority consults the environmental authority and this environmental writes an advice; but to give this advice, the environmental authority needs also elements given by the planning authority.

In Poland the planning authority must get the approval of the proposed scope from both the Environment Authorities as well as the Authorities of Public Health.

In Belgium (Brussels region, Flanders), Portugal, Romania and in Slovenia, scoping is carried out by a committee or a working group composed of representatives from the planning authority, the environment, and in some Member States, also health authorities as well as other concerned authorities, natural / legal persons.

Text box 4: The Romanian procedure for establishing the scope of the SEA.

According to the Romanian local consultant, finalising the draft plan or programme, establishing the scope and level of detail of information to be included in the environmental report, as well as the analyses of significant effects of the plan or programme on the environment are carried out within a working group. The setting up of the working group is the responsibility of the plan or programme owner. The working group is not a permanent structure, being set up especially for the respective plan or programme, on the basis of the designations made by the authorities which are represented. The designations shall be made at the owner's request.

The opinions expressed within the working group are registered in minutes signed by the members of the working group. One copy of the minutes is kept by the competent environmental authority.

Only certified persons and appropriate employed experts analyse the significant environmental issues, including the current state of the environment and its evolution without the implementation of the plan or programme, and identify the relevant environmental objectives related to the specific objectives of the plan or programme.

According to the Romanian answers to the questionnaire on the application and effectiveness of the Directive, the level of detail of the information required to be developed in the environmental report is in practice established within this working group. The working group meets several times during the second stage of the Romanian SEA procedure and the authorities concerned express opinions which are summarized within the minutes of the working group.

Except for the general requirement of presenting to the working group the results of the activity carried out by the certified persons and the employed experts and the minutes of the working group meetings, no formal report on the scoping part of the SEA procedure

needs to be drafted. The content of the minutes of the working group meetings represents the scoping undertaken in the SEA procedure.

Source: The national SEA expert as reported in the EU Commission's questionnaire and the Romanian local consultant as reported in the additional country information.

Scoping report

Eleven Member States (Belgium (Federal level, Walloon region and Flanders), Czech Republic, Estonia, France, Greece, Hungary, Italy, Lithuania, Malta, Slovakia and Spain) have a system where a scoping report or similar document is prepared. Estonia, Hungary, Lithuania and Malta have made it an obligation to prepare a scoping report. Czech Republic reports that the requirements on the content and scope of the environmental report are laid down in a scoping conclusion. In Bulgaria a consultation scheme must be prepared on the scope of the report.

For some Member States the content of the scoping report is detailed either in national legislation or in guidelines based upon Annex I of the SEA Directive. E.g.:

Lithuania reports that the scoping document shall include short description of the plan or program - in case of spatial planning, description of the concept directions and their alternatives, main objectives and relations with other plans and programs. Furthermore, a description of the territory that might be significantly affected, identification of environmental components and effects that will be assessed and identification of methods that will be used for forecasting and assessment of the effects.

Malta reports that the following items are generally included in the scoping report: the relation with existing legislation, policies and other plans and programs and their objectives, baseline information, likely significant environmental effects and constraints, proposed SEA objectives, indicators and targets, alternative options, proposals for monitoring, proposals on assessment methodologies and proposals for the structure and level of detail of the environmental report.

In some Member States it is not a legal requirement that scoping reports are drawn up and/or published. However, in practise, it seems that in many cases some kind of scoping document is produced on a voluntary basis. This is amongst others the case in the Netherlands and Denmark. A scoping report is considered to provide a practical applicable means on the basis of which consultation of authorities is carried out. In the United Kingdom, they were not sure that a formal scoping report would always be the best way to consult at this stage of the SEA procedure. However, the United Kingdom Practical Guide suggests that "if possible, it is recommended that [plan/programme-making authorities should] aim to produce an outline of the [proposals for] the environmental report.

In practice, it is the impression that the content of the scoping document in the various Member States and even within a Member States vary considerably. The most comprehensive scoping reports identify environmental objectives,

establish indicators for monitoring objectives, list sustainability criteria and collect submissions from administrations and public concerned.

5.7.2 Consultation with relevant authorities on the scope of the Environmental Report

In accordance with Article 5, section 4, a number of Member States report that there is a hearing procedure with other competent authorities on the scope of the environmental assessment. All Member States report that some kind of consultation procedure with other relevant authorities takes place.

In some Member States, all authorities concerned with environmental matters related to the plan or programme must be consulted as a rule (e.g. Denmark and Luxembourg), whereas in other Member States, it is only the competent authority who - as a rule - shall provide comments to the scoping of the environmental assessment.

Consultation deadlines

Only few Member States report on legal requirements setting deadlines for the authorities concerned to provide comments to the scoping report.

Deadlines for consultation of the scoping report vary substantially between Member States, ranging from 10 working days in Lithuania to 30 days in Belgium to give comments. In Estonia the Ministry of Environment or its regional branches is given 14 days to approve or reject the study programme (i.e. the scoping report). In Malta authorities and the public must comment within eight weeks from receipt of the plan or programme description statement and the draft scoping report or otherwise comply to timeframes agreed with the competent authority. In United Kingdom consultation bodies have 5 weeks to respond to the scope and level of detail of the information that must be included in the report. In some Member States, national guidelines suggest appropriate deadlines. In Denmark, guidelines suggest 4 - 6 weeks for consultation of concerned authorities.

5.7.3 Consultation of the public on the scope of the Environmental Report

Although not being a legal requirement of the Directive, Bulgaria, Estonia, Latvia, Lithuania, Malta, Slovakia and Spain report that the public is consulted in the scoping phase pursuant to national legal requirements on the content and level of detail of the environmental assessment.

In national guidelines in United Kingdom (Scotland) it is recommended that the public concerned is consulted at an early stage of the SEA procedure, e.g. when considering the scope of the Environmental Report, as this may provide useful information on issues relevant to the plan or programme and the SEA. Early consultation of the public may also help avoid issues arising later which may delay the preparation of the plan or programme.

5.8 Alternatives

The SEA Directive

Article 5 (1) of the SEA Directive lay down a requirement to identify, describe and evaluate the reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme. For that purpose, Annex I (h) stipulates that an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technological difficulties or lack of know-how) encountered in compiling the required information shall be given.

Furthermore, Article 9 (1) (b) sets forth the obligation for Member States to ensure that the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed about, inter alia, how the environmental report prepared pursuant to Article 5 has been taken into account in accordance with Article 8, as well as the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with.

The definition of "alternatives" is however not laid down in the SEA Directive. Neither does the text of the Directive provide clarity of what is meant by reasonable alternatives. It does not follow from the wording of the SEA Directive whether alternative plans or programmes are meant, or different alternative designs employed within a plan or programme.

The SEA Guidance

The SEA Guidance emphasise that the obligation to identify, describe and evaluate reasonable alternatives must be read in the context of the objective of the Directive which is to ensure that the effects of implementing plans and programmes are taken into account during their preparation and before their adoption. It is thus essential that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. The information referred to in Annex I should be provided for the alternatives chosen.

The first consideration in deciding on possible reasonable alternatives should be to take into account the objectives and the geographical scope of the plan or programme. In practice, different alternatives within a plan will usually be assessed. An alternative can thus be a different way of fulfilling the objectives of the plan or programme.

It is, furthermore, underlined in the SEA Guidance that the alternatives chosen should be realistic. Part of the reason for studying alternatives, is to find ways of reducing or avoiding the significant adverse environmental effects of the proposed plan or programme. However, as stated by the Guidance: 'Ideally, though the Directive does not require that, the final draft plan or programme would be the one which best contributes to the objectives set out in Article 1'.[46]

[46] EU Commission: Commission's Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, para 5.14.

Member State experience

Member States have been asked if national legislation provides for a definition of "reasonable alternatives" (Art.5 (1)), as well as whether there are any requirements concerning the number of reasonable alternatives to be included in the environmental assessment. Furthermore, Member States have been asked what types of alternatives are usually assessed, and whether they include the 'do nothing'- alternative. The table below provides an overview of Member State responses to these questions.

Table 4: Member State responses to questions regarding 'alternatives'

Definition of "reasonable alternatives" in legislation	Member States
No definition of "reasonable alternatives"	Belgium (Federal level, Brussels region, Walloon region, Flanders), Bulgaria, Czech Republic, Cyprus, Germany, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, United Kingdom
Requirements on the number of alternatives	-
No requirements on the number of alternatives	Austria, Belgium (Federal level, Brussels region, Walloon region, Flanders), Bulgaria, Cyprus, Denmark, Germany, Greece, Estonia, Finland, Ireland, Hungary, Italy, Latvia, the Netherlands, Poland, Spain, Lithuania, Luxembourg, Romania, Slovenia, United Kingdom.
Number of alternatives usually assessed	Ireland: the do-nothing alternative and two other alternatives are considered a minimum. Latvia: The developed usually assesses 2 alternatives and the do-nothing alternative Romania: 3
The do nothing alternative assessed	Austria, Belgium, (Federal level, Brussels region, Walloon region, Flanders) Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, the Netherlands, Poland, Spain, France, Lithuania, Luxembourg, Slovenia, United Kingdom.
The do nothing alternative not assessed	Italy, Malta and Romania do not report on this issue.

It is characteristic that the reported national legislations do not provide for a distinct definition of "reasonable alternatives", but the definitions/choice of "reasonable alternatives" is left to a case-by-case assessment and decision. Some Member States have developed general national guidelines referring to the understanding of the function alternatives and the logic behind the requirements of alternatives (e.g., Austria - "Sommer 2005", Portugal- some general guidelines have been set in the Guide on Good Practices for SEA).

Some guidance on the definition of "reasonable alternatives" are found in the travaux preparatoires (Government Bill 2003/04:116 p. 64) to the Swedish Environmental Code (SFS 1998:808) stipulating that the reasonable alternatives

shall describe different ways how to reach the purpose with the plan, in other ways to use the land or alternative places for an activity or measure.

Slovenia uses the term "possible alternatives" in Art. 3 of the Decree laying down the content of the environmental report and detailed procedure for the assessment of the effects of certain plans and programmes on the environment (Official Gazette of the Republic of Slovenia, No. 73/05). They are defined as alternatives (contained in the environmental report) which take into consideration the environmental goals and characteristics of the affected area.

In SEA in Austria it is mandatory to assess reasonable alternatives and the choice of those alternatives has to be reasoned in the environmental report. The wording of these provisions is very similar to those of the SEA Directive. Some of the provinces in addition have guidelines for assessing alternatives. .

As for the specific requirements such as the number of alternatives, no similar requirement is provided for in national legislation of Member States, with the only exception of Bulgaria which has underlined that requirements for the alternatives, if any, are laid down in specific acts determining how to prepare the plan. No concrete examples have been provided for by Bulgarian authorities, however. Germany reports that the number and nature of reasonable alternatives varies considerably depending on the nature of the individual plan or programme and is therefore determined on a case-by-case basis. Romania has reported that three alternatives are at average assessed in practice, although, there is no formal legal requirement.

There is no homogeneous approach to the types of alternatives that are assessed, as the types of alternatives normally assessed depend on such factors as the filed application/scope of the plan, the geographical area subject to plan, and the socio-economic needs of an area. It is therefore often determined on a case-by-case basis (e.g., Germany and Romania).

All Member States have reported that the do-nothing alternative has to be included in the environmental report on a mandatory basis. Denmark and United Kingdom report that the do-nothing alternatives must be considered under the Directive Annex I (b). United Kingdom mentions that it distinguishes between "no plan/program" and "business as usual". France reports that plan-developers consider do-nothing alternative difficult. The Netherlands has commented that the "do nothing" is hardly ever a solution to a problem or in accordance with the goals of the initiator. It is not an alternative but a baseline for describing effects of the initiative (and its alternatives)

5.9 Baseline reporting

SEA Directive

It follows from Annex I (b) that the information to be provided under Article 5 (1), subject to Article 5(2) and (3) is the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.

SEA Guidance

The information for Annex I (b) on the likely evolution of the current state of the environment is necessary for the understanding of how the plan or programme could significantly affect the environment in the area in question.

The description of the likely evolution of the relevant aspects of the environment without the implementation of the plan or programme is important as a frame of reference for the assessment of the plan or programme. The evolution could be another one than that related to the plan or programme in cases when it concerns different areas or aspects. The description of the evolution should cover roughly the same time horizon as that envisaged for the implementation of the plan or programme. Effects of other adopted plans or programmes, or decisions made that would affect the area in question, should also be considered in this respect so far as practicable.

The SEA Guidance uses the term 'the relevant aspects' referring to environmental aspects that are relevant to the likely significant environmental effects of the plan or programme. These aspects could be of a positive as well as of a negative nature. The information must concern the current state of the environment which means that it should be as up to date as possible.

Member State experience

Based on the country information provided by the local consultants, it is characteristic that national legislations lay down formal requirements to provide a description of the baseline situation, with the exception of Malta, where there is no such obligation.

A number of Member States have reported that the national legislations lay down requirements to describe the baseline situation in general (e.g. the Czech Republic, the Netherlands, Portugal), whilst in Slovenia, there is a formal requirement to describe the baseline situation in general as well as to describe a baseline yardstick that is solely related to the possible development of a single environmental media that may be affected by the plan in question in legislation. In the case of Estonia, legislation is unclear, whether the baseline situation or a yardstick has to be described. Belgium, Cyprus, Denmark and Latvia have underlined that the requirement to describe the baseline situation is the same as in Annex I of the SEA Directive.

Several local consultants point to the problem of lacking good quality information on environmental aspects. This concern also relates to the establishment of the baseline description of the state of the environment. Some of the key issues raised by Member States are presented below:

It has been reported by several local consultants that the absence of homogenous criteria for the scope and content of the baseline analysis does have negative impact on the quality of the baseline report; resulting in poor quality description of the baseline analysis.

In Estonia the local consultant reports that national law is unclear as to what extent the baseline situation has to be described. The existing approach is that of “the report includes everything that the expert can think of”. The Spanish local consultant states that the quality of the baseline description varies signifi-

cantly. In some cases the baseline report is highly extensive (approx. 500 pages) with a poor strategic environmental analysis of the plan. Other local consultants mention that some reports are too extensive as documentation collected for other purposes is being applied without being elaborated for the purpose of the individual SEA procedure.

5.10 Forecast of impacts

Member States have been asked if there are any requirements concerning assessment methods, about the kind of methods used, as well as whether there are any special problems (e.g. methodological ones) in the assessment of plans and programmes.

The table below provides an overview of Member State responses to these questions.

Member State experience

Table 5: Member State responses to questions regarding impact forecasting

Requirements related to impact forecasting	Member States
No national requirements concerning assessment methods	Belgium (Federal level, Brussels region, Walloon region, Flanders), Bulgaria, Cyprus, Germany, Greece, Denmark, Estonia, Finland, Hungary, Italy, Poland, Slovakia, Sweden, Czech Republic, Spain, France, Lithuania, Luxembourg, the Netherlands, Portugal, Romania.
National requirements concerning assessment methods	Slovenia
No methods reported by Member States	Belgium (Federal level, Walloon region, Brussels region), Bulgaria, Germany, Denmark, Estonia, Slovakia, Sweden, Cyprus, Spain, France, Luxembourg, the Netherlands, Slovenia
Methods reported by Member States.	Austria, Hungary, Poland, Czech Republic, France, Latvia, Lithuania, Romania, United Kingdom.

In general, most Member States report that no national requirements concerning assessment methods have been set forth and only few Member States actually mentions what kinds of assessment methods they apply in carrying out SEAs.

German legislation states that assessment methods shall be generally accepted; however, it is also a general concern expressed that the assessment method(s) applied should be determined according to the plan or programme presented for consideration as this may differ depending on the nature, character and level of abstraction of the plan or programme in question. For example, United Kingdom holds that the development of effective assessment methodologies is a challenge, given the strategic level of the assessment; undertaking a viable assessment of very high level plans with strategic policies that do not result in specific physical effects on the ground (e.g. some Operational Programmes objectives). Hungary reports that the broad range of regulated plans may make

application of a requirement for method contra-productive. This concern is backed up by Flanders (Belgium) that points to the fact that the use of standard significance criteria is a problem - although it makes the expression of the impact comparable in different SEAs.

Most Member States use qualitative predictions or a combination of qualitative and quantitative methods. Assessment methods generally applied by Member States are DPSIR (driving forces, pressures, state, impacts, responses), overlay mapping, GIS in spatial planning, qualitative and quantitative indicators, significant calculations, multi-criteria and cost benefit analyses, risk analysis and significance evaluation, objectives-based method consisting in evaluation of meeting the targets (so-called reference targets of environmental protection), descriptive methods and techniques (checklists, impact matrices), SWOT, forecasting and back-casting, and life-cycle analysis. Furthermore: interactive methods and techniques (e.g. participation, communication/reporting, consultation) are mentioned as methods to predict impact.

For SEA of operational programmes a specific scheme "Strategic Evaluation Methodological Baseline" has been developed. Member States' experts mention that different kinds of international guidelines are consulted.

Only few Member States have developed national guidance on how impacts may be forecasted. Spain informs that the Ministry of Environment is preparing methodological guidelines for each type of plan and program. France reports that some general assessment methods are identified in national guidelines and some specific methods are emerging either for specific types of plan and/or programme or for an environmental issue; however, so far a case-by-case assessment is the preferred way of determining the relevant assessment method. Lithuania reports that description of possible methods for SEA is provided in the Manual for Strategic Environmental assessment; suggested assessment methods are: checklists, collective expert judgement method, impact table method, GIS, causal effects diagrams and computerised (Mathematical) modelling methods, as well as multi-criteria analysis methods.

Portugal reports that general guidelines have been set in the Guide for Good Practices for SEA, developed by the Portuguese Environment Agency. The United Kingdom is preparing guidance material and mentions that more complex techniques such as modelling, scenario building and causal chain analysis are used less frequently.

No specific problems in the assessment of plans and programmes have been identified by Member States. The Slovenian national expert reports though that the SEA is almost always prepared with the same level of detail as EIA project. This is in particular the case with regard to infrastructure projects.

5.11 Monitoring and evaluation

SEA Directive

Article 10 of SEA Directive states:

"Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action. 2. In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring."

The Directive neither specifies the methods of monitoring nor the bodies responsible for monitoring. In terms of the time and frequency of monitoring, the text of the SEA Directive is silent on this issue. It is furthermore unclear, whether Article 10 requires that the significant environmental effects of the implementation of all plans and programmes subject to the Directive to be monitored.

The SEA Guidance

The SEA Guidance describes monitoring as an activity of following the development of the parameters of concern in magnitude, time and space.

The Guidance does not specify the monitoring methods, but recommend that the methods shall be determined on case-by- case basis. Scientific research is not regarded as an appropriate activity in this context.

Significant environmental effects are defined as all kinds of effects, including positive, adverse, foreseen and unforeseen ones. They may usually be the effects described in the environmental report, and may be monitored directly or indirectly (through, for example, pressure factors or mitigation measures).

The Guidance neither recommends that information on the effects of plans and programmes shall be collected specifically for the purpose of monitoring, nor that a specific procedural stage must be established in this respect. It is stated in the Guidelines that other sources of information can be used. In this respect, the main challenge is to identify sources of information in different Member States that are suitable for implementing the monitoring requirements and, if necessary, to adapt existing monitoring arrangements to the requirements of the Directive. Data collected under other EU legislation (e.g. Water Framework Directive 2000/60/EC, IPPC Directive 96/61/EC) may be used for monitoring in accordance with Article 10.

The Guidance define implementation as not merely the realisation of the projects envisaged in the plan or programme but also other activities (such as behavioural measures or management schemes) which form part of the plan or programme (or its implementation).

It follows that both the text of the Directive and the SEA Guidance leave several issues related to monitoring and implementation unclear. Much is left to the discretion of Member States, which in effect creates uncertainties in practical application of Article 10 of the SEA Directive.

Experience of Member States

Member States have been asked whether national guidance has been provided on how to establish monitoring indicators. Furthermore, Member States have been asked whether monitoring indicators are a formal part of the Environ-

mental report, as well as if they are a formal part of the Environmental statement.

At least nine of the consulted Member States have clearly stated that there is no national guidance on how to establish monitoring indicators (Bulgaria, Czech Republic, France, Lithuania, Poland, Cyprus, Malta, Slovenia, and Slovakia). Czech Republic has reported that in practice, the SEA experts propose their own indicators.

In the case of France, although no national guidelines in terms of monitoring have been developed, competent authorities can use sustainable development indicators agreed at local level (local Agendas 21 for instance, but it is not always sufficient) or national level (Lois d'Orientation et de Programmation in the field of transportation, agriculture, land use, etc.) as indicators for monitoring. Several studies are carried out concerning the question of the indicators, especially about OPs (cohesion policy: cross-indicator on environmental integration in projects, CO2 indicators, etc.) and land use plans. National guidelines require monitoring details in the environmental report and many environmental reports have tried to identify some indicators.

Slovenia has reported that monitoring indicators are not prescribed in advance but are decided upon on a case-to-case basis. In the decision with which the plan or programme is approved, the Ministry of Planning also decides the methods of monitoring the impacts on the environment of the implementation of the plan or programme.

Very few respondents have stated that there is national guidance on how to establish monitoring indicators; only Austria[47] (general guidelines "Sommer 2005", Finland (Internet-based tool kit), Romania, the United Kingdom (the Practical Guide) report the existence of such guidelines.

United Kingdom has reported that the Practical Guide notes that the provisions on monitoring in the SEA Directive apply when the plan or programme is being put into effect rather than during its preparation and adoption. However, preparations for monitoring will need to be considered in the course of preparing the plan or programme. The Practical Guide goes on to note that monitoring in accordance with the Directive can be incorporated into existing monitoring arrangements, but if monitoring is not already established under arrangements for implementing a plan or programme, a new procedural step for carrying it out will be required. Appendix 10 of the Practical Guide provides more detailed guidance on monitoring.

Eight Member States have reported that national legislation stipulates a requirement that monitoring indicators shall be a formal part of the environmental report (Czech Republic, Lithuania, Romania, Spain, Slovenia, Slovakia, and Portugal).

[47] The Austrian local consultant.

As a general remark, the French national expert emphasise that several studies are carried out concerning the questions of indicators, especially about OPs (cohesion policy) and land use plans. Many environmental reports have tried to identify some indicators. The French national expert further states, that the problem is to choose the most relevant indicators.

5.12 Preparation of Environmental Report

SEA Directive

"Environmental report" is defined in Article 2(c) of the SEA Directive as "the part of the plan or programme documentation containing the information required in Article 5 and Annex I".

Article 5 of the SEA Directive requires that the environmental report shall be prepared, when an environmental assessment is required under Article 3(1). The environmental report shall identify, describe and evaluate the likely significant effects on the environment of implementing the plan or programme as well as reasonable alternatives.

In terms of the information that shall be included in the environmental report, it is " the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment". For this purpose, the information listed in Annex I may be used.

The SEA Directive does not specify, whether the environmental report should be integrated in the plan or programme itself or constitute a separate document. Neither does it state who is responsible for preparing the environmental report.

The environmental report must be subject to consultation in accordance with Articles 6 and 7. Consultation of the environmental report is dealt with in section 5.13. Further, it must be taken into account during the preparation of the plan or programme pursuant to Article 8. When the plan or programme is adopted, information must be made available on how this was done Article 9). Finally, the report must be of sufficient quality to meet the requirements of the Directive pursuant to Article 12.

SEA Guidance

The SEA Guidance emphasize that the environmental report is the central part of the environmental assessment required by the Directive. In addition, it forms the basis for monitoring the significant effects. It is likewise an important tool for integrating environmental considerations into the preparation and adoption of plans and programmes. Normally, it is the responsibility of authority or natural or legal person to prepare the plan or programme.

In terms of the content of the environmental report, it follows from the Guidance that the reference to ‘contents and level of detail in the plan or programme’ is a recognition that, 'in the environmental report for a broad-brush plan or programme, very detailed information and analysis may not be neces-

sary; whereas much more detail would be expected for a plan or programme that itself contained a higher level of detail'. The desirability of rationalising the collection and production of information follows from Article 5 (3). It provides that relevant information already available from other sources may be used in compiling the environmental report.

Annex I sets out a broad spectrum of issues that may be addressed in the environmental report (depending on the type of plan or programme). Non-technical summary is however a compulsory element of the environmental report.

The Guidance recommends that if the environmental report is integrated in the plan or programme it should be clearly distinguishable as a separate part of the plan or programme. The environmental report might be a part of a wider assessment of the plan or programme (e.g., a part of a document on sustainability assessment covering social and economic effects).

5.12.1 Content of environmental reports

Member State experience

Member States have been asked if the environmental reports are required to provide more information than listed in Annex I (e.g. social or economic aspects). If this is the case, what is the additional information that is required and/or provided? Member States have also been asked if there are any requirements to the content of a Non-Technical Summary. If this is the case, does it cover all elements listed in Annex I of the SEA Directive?

A majority of Member States have stated that the Environmental reports in general provide more information than required in Annex I. For some Member States additional information is required by legislation (Estonia, Hungary, Latvia, Czech Republic, Spain, France, Malta, and Portugal) whereas in other Member States additional information is included in environmental reports on the basis of national guidance or practice (Finland, Poland, Lithuania, the Netherlands, Romania and the United Kingdom). Some Member States (Germany, Denmark, Sweden, Cyprus, Luxembourg, and Slovakia) have stated that the environmental report does not provide for more information than that mentioned in Annex I.

Estonia reports that their SEA legislation requires the following additional information:

- Description of transboundary environmental impact,
- An overview of carrying out the SEA,
- The results of public involvement and transboundary consultations,
- The SEA process and the minutes of the public consultations,
- The minutes of the public consultation regarding the SEA report,
- The proposals, objections and questions of authorities and persons and
- An overview of the justifications for taking account of or refusal to take account of the proposals, objections and questions.

Latvia reports that the following information should be included:

- Description of SEA methods applied,
- Possible compensation measures according to the law "on particularly protected territories",
- Possible environmental problems regarding the Baltic Sea and Riga Gulf.

The Czech Republic reports that the legislation requires the following additional information:

- A description of planned measures to eliminate, minimize and compensate negative effects identified,
- A definition of project selection indicators,
- Effects of a plan/programme on public health,
- Aggregate settlement of the received statements on the concept,
- Conclusions and recommendations including draft statement on the concept.

Some Member States mention that socio-economic aspects are included in the environmental report, e.g. Belgium (Brussels region) and Romania. Romania further specifies the socio-economic aspects; i.e. those related to economic growth, socio-economic profile of the people, the economy of the region, income per family, unemployment, human health, use of unconventional energy and education.

In United Kingdom, the SEA Practical Guide suggests adding information on geology, energy consumption, noise and light pollution. However, the environmental report is often also part of the plan justification, which includes environmental as well as other aspects. Germany states that, although environmental reports are usually very extensive, as a rule they do not include social or economic aspects. Denmark reports that the possibility to include other elements than those of Annex I is open, however rarely used in practice.

No specific problems in the assessment of plans and programmes have been identified by Member States with the exception of a number of Member States who report that difficulties relate to problems of defining measures to reduce and offset negative incidences, the study of alternatives, and deciding on the scale and the degree of the analysis. At the level of plans and programmes, these aspects are quite different from an EIA of a project. The French national expert emphasises that it is not so much a question of problems as such related to the mentioned issues however, more that there is a need for future methodological studies on the issues mentioned.

5.12.2 Non-technical summary

In terms of the requirement on the content of a non-technical summary, Bulgaria, Estonia, Finland, Latvia, Poland, Sweden, France Lithuania and the United Kingdom have reported that this the requirement either is laid down in the national legislation or follows from general guidelines.

Experiences from Operational Programmes under the Cohesion Policy show, inter alia that non-technical summaries are sometimes not of a non-technical nature but comprehensive documents in a rather technical language. In other cases the non-technical summary is missing in the consultation of authorities and the public.

5.12.3 Difficulties related to the preparation of environmental reports

Member States have been asked what difficulties they have encountered related to the preparation of environmental reports.

Some Member States (Belgium, Denmark, Germany, Ireland, Italy, the Netherlands, Portugal and Sweden) claim that it is too early - due to lacking experience of conducting SEA - to draw conclusions on what are the difficulties.

The difficulties mentioned by some Member States cover many aspects of SEA and relate both to the content of the SEA and the process of carrying out the SEA. The most distinctive difficulties mentioned by Member States relate to:

Availability and access to data: This issue is mentioned by at least 6 Member States (Bulgaria, Germany, Luxembourg, Latvia, Poland and Slovakia). It concerns:

- Many Member States report that there is a lack of good quality data in their Member State. Environmental data is not being collected and stored systematically.

- Collecting and using data require extensive resources due to the fact that different Ministries and Departments collect different data

- Poland identifies the problem of generating and collecting data about the state of the environment in areas likely to be significantly affected by the implementation of the plan or programme in question in cases when location of planned projects is not settled or is only outlined. It indicates necessity of identifying the current state of the environment in large areas of even several dozen square kilometres what is very problematic.

Deciding on the level of detail of the environmental report: This issue is mentioned by a number of Member States.

- A number of Member States (e.g. Germany, Latvia, Lithuania and Luxembourg) point to the fact that environmental reports vary considerably in terms of level of detail of the information included.

- Lack of adaptation of the environmental report to the level of abstraction of the plan or programme assessed.

- It is difficult to meet the right scale and level of detail in the description of possible impacts in the environmental report.

- Difficulties related to collecting meaningful information at the appropriate spatial scale for long term wide ranging plans or programmes;

Development of assessment methods

- Challenging to develop effective assessment methodologies, given the strategic level of the assessment; undertaking a viable assessment of very high level plans with strategic policies that do not result in specific physical effects on the ground (e.g. some Operational Programmes' objectives).

- No solid methodological background, no guidelines and no exchange concerning the best practices.

Assessment of impacts

- Difficulties in addressing cumulative impacts in SEA

- Difficult to assess impacts when there are no effective assessment methodologies developed.

- Identification of and assessment of the significant environmental impacts of certain plan/programme,

Monitoring and enforcement:

- Difficulties in identifying monitoring indicators and the development of the monitoring programme. There is no standard set of environmental / sustainability criteria against which plans should be assessed

- There is no enforcement tool in the hands of the environmental authorities

Institutional and legal issues

- Understanding the SEA Directive requirements may sometimes be difficult.

- Insufficient political will to support the SEA process and that compartmentalised organisational structures and bureaucratic prerogatives hinder effective SEA procedures.

- Competent and knowledgeable authorities do not always have the human resources, they are not always able to manage effective control on all plans or programmes

Other issues:

- Authorities responsible for conducting the SEA complaint that the legal requirements are difficult to understand.
- Difficulties in the screening phase related to the decision on whether a plan is likely to have significant impacts on the environment or not.
- Difficulties in identification of appropriate alternatives
- Difficult to identify mitigating measures.
- There is a lack of experience and lack of qualified persons to undertake the SEA
- Proper identification of methodologies in assessment as a key problem.
- Public involvement tends to cause delays in the planning process as different counterparts fail to follow prescribed rules and interested stakeholders (authorities or public) tend to require more of the environmental assessment than is required in the national SEA legislation.
- Quality assurance of the environmental report is often missing.

In summing up, Member States have identified many different problems and challenges when conducting SEA. A distinction should be made between problems and challenges that Member States may influence by way of their national implementation and those problems that have their outset in the SEA directive.

According to the findings of a preliminary evaluation of the experiences with the implementation of the SEA Directive, with a focus on the Structural Funds Programmes[48] a number of deficiencies have been encountered with regard to Environmental Reports. Some examples are:

- Consideration and incorporation of the conclusions of the environmental report into the plan/programme is sometimes absent,
- Financial allocations to different priorities and activities in the Operational Programme are sometimes unclear or not allocated with sufficient detail which makes it difficult to assess the environmental effects of the programme. In addition, Operational Programmes may promote certain environmental aspects but the programmes do not have any budget allocations to address these aspects.
- Early start of the SEA procedure relative to the programme development and hence, the iterative development of the programme and the conduction of the SEA may not take place.

[48] Parker, Jonathan: 'SEA Directive (2001/42/EC): preliminary evaluation of the experiences, with a focus on the Structural Funds programmes, European Commission, DG Environment, Milan, 22 Oct. 2008.

5.13 Consultation and public participation

SEA Directive

It follows from Article 2(b) of Directive 2001/42/EC that consultation constitutes an integral part of the environmental assessment procedure and taking into account of the results of consultation in decision making. Article 6 of the Directive is concerned with consultation and participation and is intended to implement Article 7 of the Aarhus Conventions[49], which has had a significant influence on the SEA Directive. Its provisions are incorporated into the SEA Directive in so far as they apply to plans and programmes covered by the Directive.

Consultation shall be carried out at all the stages of SEA:

Table 6: Overview of the Directive's information and consultation requirements.

Stage of SEA	Consultation requirements in domestic situations	Additional requirements in Transboundary situations
Determination if a plan or programme requires an SEA	Consultation of authorities (Art. 3(6)) Information made available to the public (Art. 3(7))	
Decision on scope and level of detail of the assessment	Consultation of authorities (Art. 5(4))	
Environmental report and draft plan or programme	Information made available to the public (Art. 6(1)). Consultation of authorities (Art. 6(2)), Consultation of the public concerned (Art. 6(2))	Consultation of authorities in the Member States likely to be affected (Art.7 (2)). Consultation of the public concerned in the Member State likely to be affected (Art. 7(2))
During preparation of plan or programme	Take account of environmental report and opinions expressed under Art. 6 (Art.8).	Take account of the results of transboundary consultation (Art. 8)
Adopted plan or programme; statement according to Art. 9(1)(b), measures concerning monitoring	Information made available to authorities (Art. 9(1)). Information made available to the public (Art. 9(1))	Information made available to the consulted Member State (Art. 9 (1)).

Source: SEA Guidance: Implementation of Directive 2001/42 on the assessment of the effects of certain plans and programmes in the environment

Arrangements for the information to be provided

Article 6(5) leaves the matter of the detailed arrangements for the information to be provided and manner of consultation of the authorities and public to the MS, with no detail as to the means of information provision or consultation which, in contrast, is included in the EIA Directive and also the SEA protocol, which requires making information publicly accessible "by public notice or other appropriate means, such as electronic media" (Jendroszka and Stec, 2003, p. 109).

[49] According to Marsden (2007) some commentators rightly question whether Article 7 of the Convention has been adequately transpose into Article 6 of the SEA Directive.

Early and effective consultation procedure

However, Member States are not entirely free to determine these matters. Member States are obliged to ensure early and effective consultation procedure. However, the text of the SEA Directive does not specify the time-frames for the consultation procedure. The term "appropriate time-fames" is used (Article 6 (2)). Neither does the Directive specify the methods by which information shall be made available. They have to be adequate to enable authorities and the public to express their opinions in accordance with Article 6 (2).

In the scoping phase, the obligation to consult authorities is laid down in Article 3 (6). The public must likewise be informed (Article 3 (7)). When deciding on the scope and level of detail of the assessment, authorities must be likewise be consulted (Article 5 (4)). Information on the environmental report and draft plan and programme must be available to the public pursuant to Article 6 (1). The authorities and the public concerned must be consulted (Article 6 (2)). Of importance is that the opinions expressed pursuant to Article 6 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure (Article 8). When a plan or a programme is adopted, information (including statement pursuant to Article 9 (1(b)) shall be made available to authorities and the public in accordance with Article 9.

The obligation of transboundary consultations on plans or programmes that are likely to have significant effects in other Member States is set forth in Article 7. The Directive requires that 'appropriate time-frames' shall be provided for transboundary consultation.

Definition of authorities with specific environmental responsibilities

The obligation of the Member States to identify authorities with specific environmental responsibilities is laid down in Article 6 (3) stipulating that Member States shall designate the authorities to be consulted with which by reason of their specific environmental responsibilities are likely to be concerned by the environmental effects of implementing plans and programmes.

Definition of the public

It follows from Article 6 (4) that Member States shall identify the public for the purpose of participation in environmental decision-making. The text of the SEA Directive defines the public as "one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups" (Article 2 (d)).

Definition of "the public concerned

The definition of "the public concerned" follows from Article 6 (4): "the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned. The Public is also broadly defined in Article 2(d) as any natural or legal person, including their associations, organisations or groups.

SEA guidance

The SEA Guidance further elaborates on the information and consultation requirements including the definition of authorities with relevant environmental responsibilities, the public and the public concerned.

Member State experience

Overall, Member States report that consultation of the public and other authorities is well developed employing a wide range of media.

According to the preliminary evaluation of the experiences with the implementation of the SEA Directive, with a focus on the Structural Funds Programmes50 the Commission has received some criticism that environmental authorities were not properly consulted on the content and/or results of the SEA process, and that it was not always clear if views of environmental authorities were taken into account in the preparation of the plan/programme.

Member States have been asked, how they identify "the public" and “relevant non-governmental organisations” cf. Art.6 (4), whether they are specified in legislation or defined on a case by case basis?

Clearly the relevant public in each case will be different, depending on whether the decision making affects or interests the public concerned, which will have to be considered in each instance. Heiland (2005, p. 423), indicates that it is the role of the Member States to determine this, which will entail a complex assessment of who is affected or not, and who has an interest in the matter. Current national legislation in some instances does not make such distinctions, Heiland citing the example of Germany under the Federal Building Code and Spatial Planning Act (2005, p. 423).

A majority of Member States (Austria, Belgium (Federal level), Bulgaria, Czech Republic, Cyprus, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Slovakia, Spain, Slovenia, Sweden, Romania, the Netherlands and the United Kingdom) has defined what is meant by the term "the public" either specified in legislation or on an ad-hoc basis.

Of these, eleven Member States have defined "the public" in legislation. Several Member States tend to apply the widest possible approach when defining "the public". This is the case for Austria, Estonia, Finland, Hungary, Italy, Latvia, Lithuania, Poland, Ireland, France and the Netherlands. In practice, this approach implies that the most optimal interpretation of "the public" is "everyone" including NGOs. Ireland has specifically underlined that in effect, individuals from abroad are entitled to the same participation rights as the citizens in Ireland who may be directly affected by the elements of a plan or programme. Such rights were upheld by the Irish Courts.

In addition, Member States such as Belgium (Federal level), Italy, and Sweden states that they do have a definition of "relevant NGOs". However, the definition is included in the definition of the "public" which means that "relevant NGOs" are basically regarded as part of the public. This approach does not provide a clear picture in terms of how NGOs are defined, however.

[50] Parker, Jonathan: 'SEA Directive (2001/42/EC): preliminary evaluation of the experiences, with a focus on the Structural Funds programmes, European Commission, DG Environment, Milan, 22 Oct. 2008.

Only four Member States (Estonia, Ireland, Poland and Portugal) have stated that they lack a definition of "the public" specified in legislation or on an ad-hoc basis. Estonia has reported that "everyone" including NGOs has the rights the Directive gives to the public. As environmental NGOs have formed a roof-organisation, legislation foresees it to be consulted and communicated. Poland states that the Polish law does not provide for a definition of "the public", but merely states that "everyone" has a right to submit comments during the public participation procedure. Portugal reports that no specific definitions are set forth in national legislation, but the SEA regime follows the provisions of the Code of Administrative Proceedings and in accordance with the Aarhus Convention.

In terms of a definition of "relevant NGOs ", a majority of Member States state that they either have the definition specified in legislation or on an ad-hoc basis. A smaller group of Member States have reported that they have the definition of "relevant NGOs" specified in legislation.

5.13.1 Methods applied for public consultation

Member States have been asked which methods are used for public consultation within SEA, whether there are more opportunities for the public to participate than required by the Directive. Does this differ for each type of plan or programme?

With regard to methods of public participation, a number of common procedures such as public announcement e.g. in the premises of the competent authority or in the press (Official Gazette), public meetings, internet surveys, questionnaires etc. are used. Several Member States (such as Belgium (Federal level), Finland, Hungary, Ireland, Malta, Poland, and the United Kingdom) have specifically mentioned the use of modern technologies (Internet) as encouraged by the Commission's Guidelines. At large, a combination of methods is used in the majority of the consulted states.

Eleven Member States (Portugal, Slovenia, Belgium, Germany, Estonia, Finland, Slovakia, Slovenia, Cyprus, Luxembourg and Romania) have reported that the same procedure for all plan and programme apply. Belgium (Federal level) has stated that the public consultation is the same for all plans at federal, regional and local level providing for 60 days of consultation, except for local land-use plans where 30 days is considered a sufficient time frame. Finland has reported that in addition to formal opportunities (public announcement, documents publicly available, opportunity to express its opinion) public meetings, Internet surveys, questionnaires etc. are used depending on type of plan.

The same methods for each type of plan or programme are used in seven Member States (Lithuania, France, Denmark, Latvia, Poland, Spain, and the Netherlands). Denmark states that concerning municipal and local planning, the involvement of the public goes further than the SEA Directive when the planning subject is revision of the municipal plan or major amendments to the municipal plan. Poland has underlined that the principles of public consultations are dif-

ferent for local spatial plans. This procedure is regulated by Spatial Development Act.

Hungary reports that the methods applied for public consultation regulated by the governmental decree differs e.g. according to the coverage of concerned public.

Malta reports that the national legislation does not specify how public consultation must take place. Public consultation is carried out for the Draft Scoping Report and the Draft Environmental Report, through adverts in the press and on the internet.

In the United Kingdom different methods for public consultations are applied for each type of plans and programmes. The Practical Guide states: "The form of consultation and the participation of individuals and organisations will vary depending on the nature and scale of the plan and programme

Appropriate time-frames

In terms of the definition of "appropriate time-frames" for public participation procedure, only few Member States have stated that their national legislation lay down fixed time-frames: Belgium (Federal level as well as regional and local level[51]) and Italy reports 60 days, Germany - at least 1 month, Hungary - at least 30 days, Latvia - at least 40 days, Lithuania - 20 work days, Portugal – at least 30 days, Slovenia -30 days before adoption, Luxembourg -30 days, the Netherlands - 6 weeks, and Spain - 45 days.

The Swedish legislation does not provide for explicit definition of "appropriate time-frames". Eight Member States have not provided a clear answer in terms of whether any time-frames are laid down in the national legislation. Five Member States have merely stated that "the opportunities are as required by the Directive".

The overall picture is that all Member States (with the exception of Malta) meet the Directive's requirements of making the draft plan/programme as well as the environmental report available to the public by the means prescribed in the SEA Directive.

5.13.2 Availability of environmental report to the public

As for the availability of the environmental report to the public, the vast majority of the consulted Member States have reported that the environmental report is made available to the public at the same time as the draft plan or programmes (Art. 6): Austria, Belgium, Bulgaria, Czech republic, Germany, Denmark, Spain, Finland, France, Hungary, Latvia, Lithuania, the Netherlands, Malta, Poland, Portugal, Slovenia, Slovakia, and Sweden). Of these, Bulgaria, Denmark, Hungary, Italy, Lithuania, Slovenia and the United Kingdom have ex-

[51] Hence, in Belgium, the time frame for public consultation is the same for all plans at federal, regional and local level - except for local land use plans where the duration is shorter (30 days for public consultation, but 60 days for specific instances.

plicitly stated that this is a legal requirement laid down in the national SEA legislation.

Lithuania reports that the national SEA legislation requires that the organizer of preparation of a plan or program consults the public and presents the prepared SEA Report and the draft of a plan or program (in case of territorial planning – SEA Report and solutions, prepared during the planning concept definition phase) at the same time. In case of territorial planning documents it is presented at an early stage, when all alternatives prepared and presented are still open. And it contributes to decision making substantiation, helping to choose why one or another alternative is preferable.

Romania has provided for an extensive answer stating that the national SEA legislation uses the following expressions: "the first version of the plan/programme" and "the draft of the plan/programme". The difference between the first version of the plan/programme and the draft plan/programme must be made. The first document represents an outline of the aim and scope of the plan/programme which is submitted to the competent environmental authority. Based on this document the competent authority decides if the respective plan/programme is subject to the SEA procedure. This document is made available to the public. The draft plan/programme represents the version of the plan/programme as s result of the SEA procedure. This document is made available to the public, as well, together and at the same time with the environmental report.

The legislation of the United Kingdom copies the words of the SEA Directive on this, requiring certain consultation activities for "every draft plan or programme for which an environmental report has been prepared…and it's accompanying environmental report". In the SEA Practical Guide, it is emphasised the importance of consultation on both the draft plan/programme and Environmental Report at the same time, and as an integral part of the consultation process.

Cyprus states that the environmental report is made available to the public as soon as this is submitted to the environmental authority for evaluation. In the case of Estonia, the SEA procedures and plan preparation procedures are separate, however are carried out in parallel. The environmental report can be made available to the public at different preparation stages of the plan and there is no fixed timeframe.

5.13.3 Requirements for informing the public and authorities concerned

Member States have been asked if they have requirements for informing/notifying the public and authorities concerned on the final decision (Art.9)? If so, who is responsible for this and what items are made available upon such notification?

All the consulted Member States have reported that they do have a requirement to inform the public and authorities concerned on the final decision (Art.9).

In some cases, it is the responsibility of the planning authority to provide information on the final decision (e.g., Finland, Latvia, Poland, and Romania). Quite often, it is the responsibility of the authorities (e.g. Belgium, Cyprus, Germany, Denmark, Hungary, Sweden and the United Kingdom) for the most part competent authorities, but also other authorities such as approving authorities e.g. as in the case of Czech Republic); and in Belgium, it is a joint responsibility of the Planning Authority and Competent Authority.

5.13.4 Transboundary consultation

Transboundary consultation is an inherent part of the public consultation procedure in those cases, when a plan or a programme may have a significant environmental cross-border effect.

Member States have been asked whether transboundary SEA consultations have been carried out by the consulted Member States or other Member States. If so, are the Member States satisfied with the transboundary consultation? How could weaknesses be overcome? In addition, the question has been posed whether any bilateral agreements for SEA have been set up?

Quite many respondents have answered that there have been cases of transboundary consultation (Austria, Denmark, Estonia, Finland, Greece, Hungary, Poland, Sweden , Czech Republic, Ireland, Malta, the Netherlands, Slovenia, Romania, and the United Kingdom) Belgium (Federal level), Bulgaria, Latvia, Slovakia Sweden. Italy, Spain, Lithuania, Luxembourg and Portugal state that they are not aware of any cases of transboundary consultation. According to the French National SEA expert, in France, some transboundary consultations have been launched for river basin management plans, but they have no-feed-back now

None of the respondents have identified any severe weaknesses, when the transboundary consultations were carried out, and the level of satisfaction appears to be high. A few issues have been raised by the respondents, though.

One of the issues raised concerns translation of documents. Finland notes that translation costs may be a problem in small municipalities. Hungary reports that an issue arose when the sent documentation was not translated into Hungarian or in English at least but the requested deadline was too short. In the case of transboundary consultation between Malta and Italy, scoping report document was provided in Italian, thus it was difficult to follow by the Maltese.

It follows from the Member States' answers that national legislation may hamper the effectiveness of the transboundary consultation procedure. E.g. Sweden states that the fact that the designated competent authority for performing the transboundary consultations is the Swedish National Environmental Protection Agency has proved to be somewhat problematic since the whole process from

the date they receive the plans and programmes from the other Member States' authority, send it to the relevant municipalities and local or regional authorities, receive comments and send these back to the other Member States takes too much time to fit the restricted time limit in that Member States planning procedure. It has proven more effective if the relevant County Administrative Board perform these consultations. The legislation gives the Government the possibility to designate such a Board for each case. This might be made permanent by legislative change. Likewise, in the case of Ireland, the problem has been identified that relates to the fact that current Irish legislation does not provide for any time limit on transboundary consultations. Thus, in theory, consultations can be continued indefinitely. In practice, this has only caused problems a couple of times. Minor difficulties have also arisen in relation to differing statutory consultation periods between the two jurisdictions.

6 Relationship with other EU Directives

The relationship of the SEA Directive with other Directives raises key questions as to how Member States ensure that requirements of all legislation are complied with, in case of potential overlaps between different procedures applicable to a plan or programme (or complex project), while avoiding duplication.

This section provides a general description of the SEA Directive requirements to the relationship with other Community legislation. It focuses more in detail on specific legislation, namely the relationship with the EIA Directive, the Habitats Directive, the Birds Directive, the EU Action Plan – Halting the loss of biodiversity by 2010 – and beyond, and the Seveso Directive. Finally, the relationship with a range of other initiatives and directives is examined, in particular with the climate change agenda and other sectors mentioned by the Member States, such as noise, water and waste.

6.1 Directive requirements regarding the relationship with other Community legislation

The Directive

The key provision relating to the relationship of the SEA Directive with other Community legislation is Article 11(1) and (2).

Article 11(1) requires that an environmental assessment carried out under the SEA Directive '…shall be without prejudice to any requirement under Directive 85/337/EEC and to any other Community law requirements'.

Article 11(2) stipulates that Member States may provide for coordination and joint procedures in situations where an obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other Community legislation.

As underlined in the Community guidance,[52] Article 11(1) means that other Community law requirements relating to an environmental assessment of plans and programmes apply cumulatively with the SEA Directive. When such cases occur, under Article 11(2) Member States are invited to provide for a coordi-

[52] EU Commission: Implementation of Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment.

nated or joint environmental assessment procedure. In other words, they can choose:

- to coordinate SEA and other assessments, e.g. an EIA assessment, carried out in parallel, or,
- to introduce a form of joint procedure with one single assessment that would meet the requirements of both Directives.

Article 11 should also be read in combination with the corresponding recital (recital 19), which refers, for example, to the Birds Directive (79/409/EEC), the Habitats Directive (92/43/EEC), and the Water Framework Directive (2000/60/EC). In addition, other Directives can be considered, namely the Nitrates Directive (91/676/EEC), the Waste Framework Directive (2006/12/EC), the Air Quality Framework Directive (96/62/EC), or the Environmental Noise Directive (2002/49/EC).

According to the guidelines, Member States should consider if the SEA Directive requires further elements for assessment than are required by other Community law. Where further elements are required, the Guidance envisages several ways in which Member States may implement the Directive requirements, namely:

- Member States may decide to introduce a single legislative instrument applying all the requirements of the Directive to all the plans and programmes covered,
- Member States may decide to amend each legal regime requiring the preparation of such a plan or programme, or
- Member States may combine the two approaches, with the main principles being set out in a general requirement, and amendments to the details of existing regimes made where necessary.

In addition, Member States are recommended to explain the method by which they have implemented such complementary provisions when they notify the measures they have adopted under Article 13(1) of the SEA Directive.

Finally, Article 5, which sets up requirements as to the content of the environmental report to be prepared for the SEA, provides in paragraph 3 that the information obtained through other Community legislation may be used for the report.

Member States' experience

Member States have been asked what issues they have identified with regard to the relationships between the SEA Directive and other Directives and EU-level policies.

In the sections below, the relationship between the SEA Directive and selected Community law (i.e. the Climate agenda, the EIA Directive, the Habitats and

the Birds Directives, and the IPPC Directive) has been explored with regard to Member States' practise on coordinating and avoiding overlaps with assessment as required in these laws.

6.2 The EIA Directive

In addition to general provisions on the relationship between the Directive and other Community legislation, other provisions of the SEA Directive are specifically related to the relationship of the Directive with the EIA Directive.

With regard to the scope of the Directive itself, Article 3(2) (a) requires compulsory SEA for all plans and programmes:

(a) which are prepared for specific sectors, namely agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent of projects listed in Annexes I and II of Directive 85/337/EC

It should be underscored that these two conditions on the concerned sector and setting the framework for future development consent are cumulative. In addition, the projects concerned also include Annex II project categories whether or not the actual projects require an EIA. This would typically include not only land-use plans which can set conditions for granting future building permits, but also those defining the location of future development in the area concerned.

Under Article 3(4), environmental assessment is required for any plans and programmes which set the framework for development consent of projects (not limited to those listed in the EIA Directive) and which are determined through screening to be likely to have significant environmental effects. Article 3(5) allows decisions on whether assessments are needed in these cases to be made either on a case-by-case basis or by categories of plans or programmes.

Finally, Article 5 which sets up requirements to the content of the environmental report to be prepared for the SEA provides in paragraph 3 that the information obtained through other Community legislation, including the EIA Directive may be used for the report.

In theory, the SEA and EIA Directives will not normally overlap as the SEA Directive applies to plans and programmes, relating to broader proposals and alternatives, while the EIA Directive applies to projects and focuses on the effects of a particular proposal. In other words, SEA is "up-stream" whereas the EIA is "down-stream". In many ways, both SEA and EIA even complement each other, and in particular the results of an SEA may be useful for the environmental assessment of associated projects.

However, different areas of potential overlaps in the application of the two Directives have been identified. In particular, the boundaries between the defini-

tion of a plan, a programme or a project are not always clear, and therefore there may be some doubts whether the 'object' of the assessment meets the criteria for requiring the application of either or both the EIA and SEA Directives.

To be legally compliant Member States will need to ensure they meet the requirements of both Directives when these apply. This issue is particularly important with regard to the differences between the SEA and EIA requirements. In such cases, EIA and SEA procedures should be applied in parallel or joint procedures can be specially elaborated to meet the requirements of both Directives simultaneously.

EU Study on the relationship between the EIA and the SEA Directives

According to the EU Commission study on the Relationship between the EIA and the SEA Directives (2005) which aims at clarifying the legal relationship between the two Directives and identifying the potential areas of overlap between the EIA and SEA Directives among the then EU 15 Member States, key areas identified as likely to give rise to potential overlaps between the Directives were:

- where large projects are made up of sub-projects, or are of such a scale as to have more than local significance,
- project proposals that require the amendments of land-use plans (which will require SEA) before a developer can apply for development consent and undertake EIA,
- plans and programmes which when adopted or modified set binding criteria for the subsequent consent for projects, i.e. if a developer subsequently makes an application which complies with the criteria then the consent has to be given, and
- hierarchical linking between SEA and EIA ('tiering').

As mentioned above, the key question is how the Member States will ensure they meet the requirements of both Directives with regard to the differences between the SEA and EIA requirements. The EU Study has identified several key differences between both processes which would need to be considered and addressed if joint or coordinated procedures were adopted. These relate in particular to:

- consultation requirements: in contrast to the EIA Directive, the SEA Directive requires consultation of authorities at the screening stage,
- environmental information/report: notably, the SEA Directive requires explicitly an assessment of reasonable alternatives and has an explicit general provision about the use of information from other sources, and
- monitoring and quality control: only the SEA Directive includes such requirements.

Member States' experience

SEA legislation has usually developed independently from previous EIA legislation. In a majority of Member States, two distinct sets of legislation regulate each procedure, cf. section 4.3.

Even when these are regulated under the same legislation as it is the case in Italy where both procedures are governed by Legislative Decree No.4 of 16 January 2008, the SEA and EIA procedures are distinct. Similarly, in Flanders, EIA and SEA are regulated in two distinct titles containing similar but not identical requirements with regard to the assessment of environmental effects and public consultation. This is also the case in Sweden where both procedures are regulated in Chapter 6 in the Environmental Code with two different sets of provisions where the SEA provisions follow directly after the EIA provision. However, the Swedish expert noted that this fact could have a potential of creating some confusion in the application of the SEA rules.

In addition, provisions governing SEA are often established through amendments to various legislation and regulations relating to planning. This can be done through amendments to a number of specific legislation concerning various plans and programmes, e.g. in the waste management legislation, transport legislation, etc. As a further example, in France, SEA legislation has been transposed by amendments to different codes – the Environmental Code, the Land Use Code, the Code of Territorial and Local Authorities, and the Forest Code.

While some Member States do not establish any formal links between the two procedures, in other Member States, the relationship between EIA and SEA assessments is specifically regulated (cf. examples below).

Complementarities between the SEA and the EIA Directives

It should also be noted that in many Member States EIA and SEA are seen as complementary; many answers to the Commission's questionnaire underline that carrying out an SEA does not remove the need for an EIA.

Many Member States answering to the Commission's questionnaire (Belgium - Brussels region, Flanders), Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Lithuania, Luxembourg, Latvia, the Netherlands, Romania, Slovenia and Slovakia) [53] have noted that the SEA helps in undertaking EIA. In particular, the results of the SEA assessment could prove useful when assessing the possible impacts of a project under the corresponding plan or programme. Such complementarities are particularly clear when the plan or programme subject to SEA sets the framework for future development consent of projects listed in Annexes I and II of the EIA Directive:

[53] It should be noted that many responses are formulated as assumptions illustrating that Member States have still limited experience. No Member State has answered that SEA is not helpful in undertaking EIA. 10 Member States have not answered the question (Belgium (Federal level, Walloon region) , Germany, Ireland, Italy, Malta, Poland, Portugal, and Sweden) and 3 Member States provided dubious answers (Bulgaria, Denmark, and Greece). The United Kingdom holds that experience is too limited to form a clear view.

- The SEA can improve the content of EIAs by providing a broader analysis than the one carried out at the project level. In particular, the SEA helps to identify and select alternatives at the strategic level. The outcomes of this assessment should be considered by the EIA which would focus on technical issues. Besides, the SEA is useful in excluding or significantly reducing the number of possible alternatives at an earlier stage. The SEA is also instrumental in considering cumulative effects at a larger scale.

- The early identification of environmental issues helps to strengthen and streamline individual project EIAs, thus reducing the time and effort needed for assessments.

- SEA results can be used during different stages of the EIA procedure. In particular, EIA screening decisions for projects can be taken within the context of SEA procedures. In Romania, the SEA legislation requires that the projects proposed by a plan or programme are screened against EIA requirements. SEA results can also influence the definition of the scope of the EIA of a project that is planned in sufficient detail in the corresponding plan or programme.

- The information contained in the SEA environmental report can be used in the EIA.

Different Member States have recognised and specified this interrelationship in their legislation.

In general, the national legislation will require that information from the SEA process shall be used in the EIA, sometimes specifying that any divergence with the results of the SEA should be justified. For example, the 2008 Italian Legislative Decree notes that environmental impact studies for EIA procedures can use information and analysis contained in a prior SEA environmental report[54]. The decree also specifies that SEA documentation and conclusions should be considered in the preparation of projects and in their assessment. In Portugal, Law Decree 232/2007 requires the competent authority to take into account the results of the SEA in the EIA for projects that fall under the plans and programmes subject to the SEA[55]. In Bulgaria, the Environmental Protection Act (EPA) states that collected information and the analyses made during the preparation of the environmental assessment of plans and programmes and the statement of the competent authorities shall be used in the elaboration of the reports and the issuance of EIA decisions for investment proposals for projects listed in appendices No 1 and 2 of the EPA (these correspond to the Annexes I and II of the EIA Directive)[56].

In some instances, national legislation goes further than simply requiring to 'take into account' the information gathered during the SEA process, as it al-

[54] Italian country information collected by the local consultant

[55] Portuguese country information collected by the local consultant

[56] Bulgarian country information collected by the local consultant

lows the EIA to be limited to the components which have not been covered by the SEA. For example, in Belgium (Brussels region), when a permit application relates to a project located in the perimeter of a plan for which a SEA has been carried out, the EIA can be limited to the specific aspects of the project – in other words to aspects which have not been covered by the environmental assessment carried out for the relevant plan[57]. In Germany, when a spatial plan has been subject to SEA, the EIA at the licensing level should be limited to additional environmental effects[58].

Finally, in certain cases, national legislation will give an alternative between carrying out an SEA or an EIA. In Bulgaria, the Environmental Protection Act (Article 91(2)) provides that when a detailed urban development is required for a given project, the developer may request, or the competent authority can prescribe, that only one assessment is carried out in order to avoid overlapping in both assessments.

While the fact that SEA can be useful for EIA is generally recognised, it has been noted that, as a consequence of the information from SEA being used in the related EIA procedure, that there is a risk that the environmental reports developed under the SEA and the associated EIA may have the same scope and level of detail, especially in the case of infrastructure projects, thus duplicating each other (Slovenia).

Overlaps between the EIA and the SEA Directives

As a general remark, it should be noted that, in many Member States, experience in the application of SEA requirements is still limited. Therefore, although a need for coordination of both procedures is often perceived, mechanisms and tools are still not properly developed and experimented.

Fifteen Member States (Slovakia, Portugal, Romania, Belgium (Brussels region; Flanders), Bulgaria, Denmark, Germany, Greece, Sweden, Hungary, Latvia, France, Lithuania, the Netherlands, Slovenia) have addressed coordination issues between SEA and EIA Directives. Eleven Member States (Belgium - Federal level) Cyprus, Czech Republic, Estonia, Spain, Finland, Ireland, Italy, Malta, Poland and the United Kingdom) have not identified (or provided an answer in relation to) the need for coordination mechanisms or they claim that they have insufficient experience in order to assess the need for coordination[59].

The need for a clear coordination mechanism between EIA and SEA is more critical in situations where there are potential overlaps.

Eleven Member States (Belgium (Brussels region, Flanders) Bulgaria, Denmark, Germany, Greece, Estonia, Hungary, Lithuania, the Netherlands, Romania, and Sweden) consider that certain 'objects' can be subject to both SEA and EIA, while five Member States (Czech Republic, France, Luxembourg, Latvia, Slovenia) consider that there is no overlap at all. Ten Member States did not

[57] Brussels region answer to the EU Commission's questionnaire.
[58] German country information collected by the local consultant.
[59] Member States' answer to the EU Commission's questionnaire.

provide an answer (Belgium (Federal level, Walloon region), Cyprus, Spain, Finland, Ireland, Italy, Malta, Poland, Portugal and Slovakia)[60].

The main areas of potential overlaps identified by local consultants are:

- Land-use planning, in particular detailed urban plans, and
- Large infrastructure projects, in particular transport but also electricity.

It should be also noted that some projects listed in Annex II of the EIA Directive are considered as also potentially falling under the definition of plans and programmes, raising the question whether they should be subject to an SEA or EIA procedure. This is particularly in cases of:

- Point 1(a): *projects for the restructuring of rural land holdings,*
- Point 1(b): *projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes,*
- Point 1(g): *reclamation of land from the sea,*
- Point 10: *infrastructure projects,* and in particular, point 10(a) and (b): *industrial estate developments projects and urban development projects, including the construction of shopping centres and car parks.*[61]

This issue of potential overlaps may lead to contradictory decisions within one Member State as to whether or not similar plans/projects would be subject to EIA or SEA. In Federal States especially, the decision may vary greatly from one region to another. Spain quoted, by way of example, the Director Plans for Sea Ports and Airports which are sometimes subject to SEA when an EIA would be more appropriate.

Another issue is linked to potential overlaps and the 'hierarchical relation' between EIA and SEA (tiering). Although the coordination of the procedures should be resolved in theory by hierarchical considerations, i.e. the projects must be compatible with related plans or programmes, in practice EIAs can be undertaken simultaneously or even before the associated SEAs. For example, in the Netherlands, zoning plans can be subject to SEA and EIA at the same time.

In some Member States, programmes that could be considered as falling under the SEA Directive have been previously subject to EIA. In such cases, while some Member States have chosen to replace an EIA procedure with an SEA procedure, others have opted for adapting the EIA procedure to fulfil the requirements of the SEA one.

This is, for example, the case in France where programmes of works are subject to EIA. The Decree of 25 February 1993 has already introduced the notion of

[60] Member States' answer to the EU Commission's questionnaire.

[61] See 'Commission Guidance on the interpretation of definitions of certain project categories of Annex I and II of the EIA Directive', 2008, where the Commission notes that these two categories constitute areas where potential overlaps between the EIA and SEA Directives can occur more frequently than in other areas.

programme. It can occur that several projects form part of a programme where they are developed simultaneously. In that particular case, the EIA had to deal with the entire programme. The route was open to decide a comprehensive assessment of plans and programmes. This is needed when several projects have between them an obvious functional link. The EIA which must deal with the entire programme of works must take into account the cumulative impacts of the whole project or programme of works. When the realisation of the works is spread in time, the EIA of each phase of the operation must deal with the whole programme of works. For each phase of the project or programme of works, the EIA concerns the phase realised and the whole project or programme of works. The most current illustrations are transport infrastructures, urban developments, and realisation of leisure resorts. But the question remains as to the contents of the EIAs undertaken for the different projects of a programme. At each stage of the programme, an EIA must be prepared for the phase in which an authorisation is required, including information available at the same time for the whole programme. However, the expert notes that this can be difficult to implement when different developers are involved in the programme since the EIA for specific projects will be carried out under the responsibility of individual developers. Besides, the notion of 'programme of works' is not always very clear when a project is designed. Under these conditions, it is difficult to conduct an EIA on the whole project or programme of works. In practice, the definition of a programme is considered too narrow[62].

A similar example is illustrated by the Czech local consultant stating that 'The problem is that EIA is a relatively old tool which is used in the Czech Republic since 1992. On the other hand, SEA started to be used more frequently only since 2004. This was due to the big amendment to the Czech EIA/SEA Act which transposed the requirements of the SEA Directive. As a result, there are old EIA projects which are transposed into newly prepared SEA plans/programmes. This applies especially to road infrastructure projects which often wait many years to be implemented after they were submitted to EIA[63].

This problem of applying EIA on plans and programmes was also highlighted in the EEB report (2005) which states that: 'In seven countries (such as the Netherlands and Finland), there have been SEAs carried out that were not based on the SEA Directive, but still on the EIA Directive'[64].

As also emphasised in the EEB report, 'Where EIA is undertaken alone this will not be legally compliant if the object of the assessment meets the screening criteria of the SEA Directive. The EIA process then would have to be enhanced to cover the additional requirements of the SEA Directive to address satisfactorily issues of alternatives, cumulative effects, monitoring and adequate consultation, effectively creating a joint procedure'.

Finally, under Point 1 of Annex 3 of the Czech EIA Decree ("activities subject to EIA based on the decision of the environmental inspectorate") one item, the

[62] French answer to the Commission's questionnaire.

[63] Czech country information collected by the local consultant.

[64] EEB; Biodiversity in Strategic Environmental Assessment, 2005, p. 26-17.

"redistribution plan of land properties," which is practically a strategic decision, is subject to an individual EIA procedure because of the close interrelationship with certain individual activities also subject to EIA.

Joint procedures

Establishment of joint procedures between SEA and EIA is a solution that has rarely been favoured by the Member States. In addition to the differences in the nature and requirements of SEA and EIA procedures, in particular as to the content and the level of assessments, the authorities involved are generally not the same.

However, there are some instances when Member States have merged the two procedures. This is mainly the case for local plans and programmes which determine the use of small areas, mainly land-use plans. Such joint procedures are seen as a way of saving resources in terms of time and money.

For example, in Austria, two provinces have already used a joint procedure regarding skiing and golf courses. They reported various advantages in terms of the procedures and their management and coordination, mutual information and multiple uses of data, avoiding duplication of assessments[65].

Another example is Denmark where the EIA Directive is implemented in the Danish planning act at municipal level – except for offshore activities and projects decided by an act. By conducting an EIA according to the planning act, the municipal authority has to make an amendment to the municipal plan. This means that EIAs are also planning documents. For that reason, every EIA has to undergo a screening process according to the SEA act at the very minimum. If the EIA planning document also has to undergo an SEA, it is possible to combine the procedures into one common procedure, and the Impact Statements into one paper fulfilling both the EIA and SEA requirements. [66]

In Germany, overlaps may occur in the case of local development plans which are prepared or modified for projects according to Annex II of the EIA Directive. The Federal Building Code therefore contains provisions for an environmental assessment for local development plans, which meet both the requirements of the SEA Directive and the EIA Directive[67].

Coordinated procedures

In addition to facilitating the use of information from SEA to EIA (see above), some Member States have set up some forms of coordinated procedures between both processes. However, very few Member States have actually described formal mechanisms and it seems that, in most cases, these are informal.

An exception is the 2008 Italian Legislative Decree which states that EIA screening decisions for projects can be taken within the context of SEA procedures. In such cases, the public should be clearly informed.

[65] Austrian country information collected by the local consultant.

[66] Danish response to the Commission's questionnaire.

[67] German answer to the Commission's questionnaire.

In Germany, it is possible to combine the SEA with other assessments for the determination or evaluation of environmental effects to avoid duplication of assessment in specific cases (Article 14n UVPG), for example if the preparation or modification of a plan and the procedure for approval of a project described in the plan take place simultaneously.

Some Member States have also made use of coordinating mechanisms at the institutional level, aiming at coordinating the activities of competent authorities for SEA and also those for EIA. This is particularly important in Member States where several authorities at different territory levels are involved in both procedures.

For example, in France, the general SEA Guidance invites all administrative authorities to coordinate their efforts in case several SEAs and/or EIAs have to be conducted at the same time. This is in order to give priority to SEA, and furthermore in order to ensure that the SEA (for the plans and programmes that set the framework for projects) is undertaken before the EIA for these projects. This also means that the results of the SEA are properly reflected in the EIA for the associated projects. In particular, the Regional Directorates for the environment (DIREN) are called upon to coordinate any action to be taken by competent services to support the Préfet (the Region or the Departement) in providing advice upon request from the public authority for the scoping phase as well as for the environmental report.

Finally, it should be noted that in many Member States, the same department, at least within the Ministry of Environment, is in charge of EIA and SEA. This will obviously facilitate solving any coordination issues. This is especially true in smaller sized Member States, such as Luxembourg or Malta. For example, the Luxembourg expert noted that no major problem is foreseen mainly due to the small size of the country and easy coordination between the responsible authorities.

Member States' proposals for improving the relationship between EIA and SEA

There are considerable differences in terms of experience in implementing SEA, and consequently coordinating both processes. Many Member States consider that they do not have sufficient experience to properly identify and assess overlapping issues. Different approaches have been chosen in the Member States to solve potential ineffectiveness in terms of overlapping procedures/requirements between SEA and EIA, ranging from joint procedures in specific cases to informal coordination between the competent authorities.

Recommendations made by Member States relate mainly to the development of guidance documents.

Guidelines

The vast majority of Member States[68] expressing themselves on this issue underlined that the specificities of the SEA process and the EIA process should be well preserved and distinguished as these are related but complementary processes that should not be directly linked. Therefore, the harmonisation of both procedures should not lead to a full harmonisation of the requirements. In par-

[68] Member State responses to the Commission's questionnaire.

ticular, the scale and level of details should be adapted to the "object" of the assessment. One Member State (Slovenia) notes that there is already a tendency to apply the same methodology in the SEA and EIA procedures, and to falsely perceive them as the same type of instrument, just applied to different documents. A merging of both Directives into a single SEA EIA Directive would not be recommended as it could magnify this false perception.

Some local consultants (Spain and Lithuania)[69] and the Swedish national SEA expert[70] recommend considering consolidation of the SEA and EIA Directives with a view to clarify their interrelationship. This would, in their view, ensure more consistency between both pieces of legislation and would harmonise the key stages and elements of EIA and SEA. Key stages and elements would include the examination of reasonable alternatives as a mandatory duty; establishing of monitoring measures as part of the environmental information; and efficient integration of quality management elements and reviews of the environmental information. Lithuania proposes to amend the SEA Directive to provide clear interconnection between SEA and EIA, or to develop a single Directive on EIA/SEA to facilitate practical implementation of both Directives.

Capacity Building

One Member State (Slovakia) noted that more support would be needed for SEA implementation at the national level through capacity-building projects in order to overcome the lack of understanding as to the differences between EIA and SEA, which only results in a poor quality of SEA.

6.3 The Habitats and the Birds Directives

Introduction

Europe's primary nature conservation policy is found in both the Habitats and Birds Directives (92/43/EEC and 79/409/EEC). These Directives provide for the protection of plants, species and the habitats in which they live. The sites protected – called Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) – are grouped together in the Natura 2000 network, which in turn contributes to the "Emerald network" of Areas of Special Conservation Interest (ASCIs) established by the Bern Convention (1979) on the conservation of European wildlife and natural habitats.

It should also be noted upfront that the Habitats procedures also embrace those of the Birds Directive. The schemes of both the Habitats and Birds Directives are broadly comparable.[71] Moreover, the SPAs are now classified under the Natura 2000 network, and Articles 6(2), 6(3) and 6(4) apply to SPAs. As the Commission notes, comments that are made in relation to the Habitats Directive will apply mutatis mutandis to sites classified under the Birds Directive.

There are three main ways in which the SEA Directive relates to Habitats. This occurs through direct reference to the Habitats Directive in the definition of the scope of the SEA Directive, the information to be provided for the environ-

[69] Spanish and Lithuanian country information collected by the local consultants

[70] Swedish response to the Commission's questionnaire.

[71] Habitats Guidance document, 2000, pp. 9-10, paragraph 1.1.

mental assessment, and the appropriate assessment of plans required under the Habitats Directive in relation to plans likely to have a significant effect on Natura 2000 sites.

The key provision relating the SEA and the Habitats Directive is **Article 3(2) (b) of the SEA Directive** which establishes a direct link with the Habitats Directive in defining its scope, as the following are subject to compulsory SEA: *"plans and programmes which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of [the Habitats Directive]."* Point (b) establishes a link with the Habitats Directive, in particular Article 6(3) of the Habitats Directive, which requires the carrying out of an appropriate assessment of projects or plans not directly connected with or necessary to the management of a site but likely to have a significant effect thereon. In such case, the plan should be subject to SEA. This applies to SPAs under Article 4 of the Birds Directive and those sites proposed to be classified as sites of Community importance (SCIs) under Article 4 the Habitats Directive.

According to Marsden (2008), 'there will be many instances where the SEA and Habitats Directives apply cumulatively if there are effects from plans on -sites pursuant to Article 6 and 7 of the Habitats Directive'.[72] In these cases, the SEA Directive guidance recommends a combined procedure that fulfils the requirements of both Directives, which would therefore need to be in accordance with the procedural provisions of the SEA Directive (e.g. detailed requirements for consideration of reasonable alternatives, consultation, public participation and monitoring) and the Habitats Directive, fulfilling the requirements of Articles 6(3) and 6(4) (e.g. inclusion of an opinion from the Commissions, and little discretion to give priority to non-environmental interests).[73]

Marsden further holds, that, "While it is clear from guidance produced on Article 6 of the Habitats Directive[74] that an appropriate assessment is not exactly the same as an EA that may be required under the EIA Directive (the former being narrower in scope (paragraph 4.5.2)), the guidance indicates that information provided in the EIA process may be used to inform the appropriate assessment under Article 6(3) (paragraphs 4.5.1-4.5.2). The integration of assessment processes may therefore have significant benefits for reducing potential impacts upon habitats. This has already been seen with regard to the role of SEA (and EA in general) in biodiversity conservation",[75]

In addition, Annex I (d) of SEA, which prescribes the information to be included in an environmental assessment, also refers directly to both the Birds and Habitats Directives, stating that *"any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to the Birds and Habitats Directives."*

[72] Marsden, 2005, p. 244.

[73] Marsden, 2005, p. 244.

[74] Commission of the European Communities, 2000.

[75] Marsden, 2005, p. 244.

Finally, as mentioned in Section 1 of this chapter the SEA Directive Article 11(2) provides for coordinated or joint procedures to fulfil the requirements of SEA together with the requirements of other Community legislation, including the Habitats Directive.

Duplication and the transposition of Article 11(2) are the focus of country information provided by local consultants[76]. The information shows that most Member States have implemented Article 11(2), although the approaches they adopt differ, depending which option they have chosen: a 'co-ordinated' or 'joint' approach.

Member State experience

For Member States which have adopted a joint approach, this means that there is either an automatic trigger in the Habitats procedure that demands an SEA, or vice versa; or that the procedures are merged into one. Overall, this is not the preferred approach, with only four Member States (Germany, Spain, Lithuania and the Netherlands) clearly reporting this[77].

Rather, the Member States favour a co-ordinated approach, which can take various forms:

- the transposing laws allow for similar documents/assessments to be used in one or the other process,
- the transposing laws allow for co-ordination of the documents without prescribing how this might happen, usually relying on the competent authority to exercise common sense in their discretion, or
- by de facto co-ordination, where for example, there is only one competent authority that needs to be involved, and they apply an effective policy of co-ordinating procedures in an effort to minimise duplication.

Although National SEA experts do report on overlapping requirements and need for coordination between requirements of the SEA Directive on the one hand, and the Habitats and the Birds Directives on the other hand, most SEA experts also maintain that differences must be reconciled in the practical application of provisions and that overlaps do not constitute major problems.

Some issues have been reported in the implementation of a co-ordinated approach by local consultants in the Member States. For example, in the information provided by the Czech Republic local consultant, the local consultant states that it is difficult to carry out Article 6 assessments within the SEA for land-use plans because at that stage of the plan the details are often too vague. The Czech local consultant states as an example that *"regional land-use plans include broad corridors for building express roads. The corridors may have several hundred meters. In case the protected habitat is small and is found within the corridor, it is not clear whether it will be affected and to what extent. This*

[76] Findings by local consultants

[77] Findings by local consultants

depends on the final positioning of the road which will be clarified in EIA and the subsequent permitting procedures."[78]

The existence of Guidance documents related to this issue has only been encountered in a few Member States. In the Czech Republic there is the Guidance on significance of impacts evaluation during the assessment in accordance with the Art. 45i of the Act No. 114/1992 Coll., on the Protection of Nature and the Landscape. The Czech local consultant is however, doubtful about the guidance may assist in such a scenario where plans at this stage will always have a degree of vagueness. In France, the guidance document is quite useful in stating that all relevant authorities should be invited into the process and that they should co-ordinate, for example.

In Belgium (Federal level) it is the intention to develop guidance for the author of the plan[79].

Other stakeholder perceptions

It should be noted that some reports from other stakeholders show a somewhat different picture. In several cases, NGOs have raised concerns as to the proper coordination of SEA and Habitats Directive procedures[80]. The Bulgarian National Audit Office report that there is a comment that *"due to a delay in the introduction of European directives for the amendment of respective regulations in Bulgarian legislation, there is a delay and a lack of clarity in the conduction of procedures regarding the assessment of compatibility of investment intentions with potential protected sites (NATURA 2000)"*.[81]

Findings

In light of the lack or reported issues/difficulties it may be obvious to conclude that nature conservation authorities consider that the relationship between SEA and Habitats is operating relatively smoothly, principally by implementation of Article 11(2) of the SEA Directive. There are, however, issues raised by NGOs[82] and other national bodies that suggest that there is a general lack of compatibility between the two.

6.4 The EU Action Plan - Halting the loss of biodiversity by 2010 - and beyond

Introduction

The EU Biodiversity Action Plan ("the Action Plan") sets out very clearly Europe's goal of ending biodiversity loss by 2010. The Action Plan is set out in a communication from the Commission (COM (2006) 216) which includes Annex 1 with more specific goals. The essential premise is that the Action Plan

[78] Czech country information collected by the local consultant.

[79] Belgium (Federal level) response to the Commission's questionnaire.

[80] E.g. the EEB (2005).

[81] *Report on the results of the audit of the Environmental Impact Assessment and Strategic Environmental Assessment Programme in the Ministry of Environment and Waters for the period from 01.01.2005 to 31.12.2006*, Hussein Chaush (Member of the National Audit Office and Head of Division VIII, Republic of Bulgaria National Audit Office.

[82] Biodiversity in Strategic Environmental Assessment: Quality of national transposition and application of the SEA Directive, EEB, December 2005.

sets 10 priority objectives to achieve this, including safeguarding the EU's most important habitats and species, and integrating biodiversity into land-use planning and development.[83] These goals are supported by various measures such as finance, governance, partnerships and awareness-raising.[84]

The SEA is inherently linked to the objective 'integrating biodiversity into land-use planning and development', given that both cover plans. The Action Plan requires that all relevant territorial plans and projects within the EU are subjected to both EIA and SEA and that these assessments take full account of potential biodiversity problems or issues.[85]

It should be underlined that, in order to achieve Target 4.6 (*All Strategic Environmental Assessments and Environmental Impact Assessments have taken full account of biodiversity concerns*), the Commission refers to Actions A1.1.3, which calls for a full transposition and effective implementation of Article 6 of the Habitats Directive. Therefore, the Commission clearly identifies an efficient application of Article 6 of the Habitats Directive as being the best tool for the effectiveness of SEAs with respect to preventing the loss of biodiversity. It also encourages promotion of best practice through the development of guidelines, and recognition of good performance – ensuring that full account is taken of the findings of the assessment (in terms of biodiversity impacts) in the final programme or plans.[86]

It should also be noted that the SEA Directive refers directly to biodiversity in Annex I (f) as a factor for environmental assessment under Article 3(1). *"An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects."*

With this in mind, the Commission has asked the Member States to share their views as to how effective SEA is with respect to preventing biodiversity loss in their Member State.

Member State experience

Only few Member States report on issues identified with regard to the relationship between the SEA Directive and the EU Action Plan "Halting the loss of biodiversity by 2010 - and beyond". From the country information collected by local consultants, the overwhelming view is that there is only an informal link between the Action Plan and the SEA as discussed in the introduction. There are in fact only two Member States that formally link the Action Plan with the SEA Directive. In 2004, France has adopted a national strategy for the biodi-

[83] Commission's brochure 2008 pages 8-24.

[84] See Annexes to the Communication from the Commission SEC(2006)621, Annex 1, page 11, paragraph B4.1.

[85] See Annexes to the Communication from the Commission SEC(2006)621, Annex 1, pages 5-6. Note also that other Action Points such as 3.6.4 also apply to environmental assessment in areas not related to land-use planning. For example, Action point 3.6.4 in relation to fish and aquaculture.

[86] See Annexes to the Communication from the Commission SEC(2006)621, Annex 1, page 6, paragraphs A4.1.4, A4.2.1, A4.6.1 and A4.6.4.

versity, with the same objective to halt the loss of biodiversity in 2010. This strategy is declined in several action plans (for instance urbanism) and has to be taken into account in SEA.[87] Despite the lack of formal (legal) links, most local consultants consider that the SEA is effective with respect to preventing biodiversity loss in their Member State: it is achieved by simply applying the requirements of the Directive.

Competent authorities play a key role in some Member States, advising and taking consideration of the Action Plan (Belgium, Finland and Portugal).

The United Kingdom and Spain are the only two Member States with a formal link between the Action Plan and the SEA Directive. In Spain, the law on sustainable development of rural areas incorporates most of the Action Plan's objectives requiring consideration of biodiversity issues. The United Kingdom approach is similar, stating that environmental protection objectives that must be considered include those set by policies or legislation, including United Kingdom initiatives such as the Biodiversity Action Plans or the Scottish Biodiversity Strategy[88].

Findings

Many Member States consider that the provisions of the SEA Directive already sufficiently take into account the substance of the Action Plan. Therefore, despite the fact that neither biodiversity nor the Action Plan itself are specifically mentioned, biodiversity is still covered to a similar degree as envisaged by the Action Plan. This is mainly through an effective transposition and implementation of the SEA Directive requirements related to consideration of fauna and flora protection and of the Habitats Directive (Article 6 assessment). As per the conclusions on the relationships of SEA Directive and the Habitats Directive, it should be noted that there have been some concerns as to how biodiversity is being addressed in SEA in practice. In relation to biodiversity the 2005 EEB report noted that *'much progress is still to be made to address biodiversity [...] in SEAs. In the vast majority of countries these aspects have not been included in SEAs, or information has not been easily available'*[89].

6.5 Seveso Directive

Relationship between the SEA and the Seveso Directives

Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (Seveso Directive) aims to prevent major accidents involving dangerous substances and limit their consequences when they happen. It applies to industrial installations where dangerous substances are present on account of the quantities of such substances as per the thresholds set up in the annexes to the Directive. Along with obligations on the operators, the Directive also sets up obligations on the Member States.

[87] French national SEA expert.

[88] Country information collected by the local consultants from Spain and the United Kingdom.

[89] Biodiversity in Strategic Environmental Assessment: Quality of national transposition and application of the SEA Directive, EEB, December 2005.

Of particular relevance, Article 12 requires the Member States in their land-use planning around hazardous installations and/or other relevant policies, to take into account the objectives of preventing major accidents and limiting the consequences of such accidents through controls on the sitting of new establishments, modifications to existing establishments, new developments such as transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the sitting or developments are such as to increase the risk or consequences of a major accident.

Directive 2003/105/EC has specified this obligation, adding a new paragraph to Article 12, which requires Member States to ensure that their land-use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between Seveso establishments and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest and, in the case of existing establishments, of the need for additional technical measures so as not to increase the risks to people.

Article 12 also provided that the Commission should develop guidelines defining a technical database including risk data and risk scenarios to be used for assessing the compatibility between the Seveso establishments and residential and other sensitive areas. The Land-Use Planning Guidelines, published in September 2006,90 are a precious source of information for planners on industrial risk considerations.

Finally, the SEA Directive defines risk as one of the screening criteria. The criteria for determining likely significant effects as listed in Annex II of the SEA Directive cover risks to human health and the environment, including those due to accidents.

Member States' experience

Very few Member States have actually commented on this question. In terms of legal requirements, as a rule the national legislation would not go beyond the requirements of the Directives as described above, although some Member States' legislation refers directly to the Seveso Directive or Seveso installations in relation to risk aspects to be included in the environmental report (Belgium (Brussels region) and Ireland). Therefore, this is mainly a question of practical implementation and would involve principally informal institutional coordination mechanisms. For example, in France, as the competent authority for both the IPPC and Seveso Directives, the 'préfet' must anticipate any implication from a draft plan or programme on existing or planned Seveso sites through the scoping phase, as well as when giving advice on the SEA environmental report before any final decision is taken. In some cases the authorities responsible for the development of land-use plans, which are subject to SEA, are also in charge

[90] *Land Use Planning Guidelines in the Context of Article 12 of the Seveso Directive 96/82/EC as amended by Directive 105/2003/EC, also defining a technical database with risk data and risk scenarios, to be used for assessing the compatibility between Seveso establishments and residential and other sensitive areas listed in Article 12*, September 2006, European Commission, Joint Research Centre.

of adopting restrictions on Seveso sites in order to prevent major hazard accidents to occur.

One local consultant underlined that although SEA legislation is quite recent in that Member State, official indications are that it has been useful in terms of integrating land-use planning and environmental analysis with risk assessment, the latter being critical in preventing major accident hazards involving dangerous substances.

The lack of information in the answers to the questionnaire may also be due to the fact that these issues are generally handled by persons and organisations responsible for Seveso rather than SEA.

6.6 Climate agenda

Introduction

The Climate change is recognised as one of the key challenges now being faced by Europe and the world in general. In order to combat climate change, the EU has taken a number of initiatives since the early nineties:

- The European Climate Change Programme launched in 2000 has led to the adoption of the EU Emissions Trading System (ETS) Directive and legislation aiming to reduce emissions of fluorinated gases, the ratification of the Kyoto Protocol in 2002.

- In March 2007, the Member States committed the EU to cutting its greenhouse gas emissions by at least 20% of 1990 levels by 2020, and 30% provided other developed Member States commit to comparable reductions, while setting three key targets to be met by 2020: a 20% reduction in energy consumption compared with projected trends; an increase to 20% of renewable energies' share of total energy consumption; and an increase to 10% of the share of petrol and diesel consumption from sustainably-produced biofuels.

- Finally, in January 2008, the Commission has proposed the so-called ‘Climate action and renewable energy package’ which in order to achieve these ambitious commitments, provides for a set of measures, in particular an improved emissions trading system and emission reduction targets for industries not covered by the ETS.

Relationship between the SEA Directive and the Climate Change Agenda

The SEA Directive provides the opportunity to integrate climate policies in plans and programmes. Consideration of climate change issues should not only cover the impacts of the plan or programme on climate change, e.g. calculations of greenhouse gas emissions, but also the climate change induced impacts on the plan and programme itself, e.g. increased flood events. SEA is particularly well suited for taking into account climate change objectives as it allows a broader strategic scope and also better consideration of cumulative effects associated with plans and programmes in a given sector or region.

The SEA Directive (Article 5 and Annex IV) requires the author of a plan or programme to provide a description of the aspects of the environment likely to be significantly affected by the proposed plan or programme. This includes, in particular, climatic factors; and, in the case of significant adverse effects, the measures envisaged to prevent, reduce and as fully as possible offset these effects on the environment of implementing the plan or programme.

Note that the person responsible for developing the plan or programme should also provide information of the environmental protection objectives, established at the international, Community or Member State level. The level is determined as required by the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation. This would also include objectives set up in order to combat climate change.

Member State experience

It should be noted that no question has been included in the Commission's questionnaire to the Member States concerning the relationship between climate change initiatives and SEA. Therefore, this section is principally based on information gathered afterwards mainly through the Consultant's own network of local consultants.

Specific attention to climate change issues appears to still be limited in many Member States, although in some Member States, increased attention is paid to this question (Denmark, Sweden[91] and Austria[92]). As a rule, climate change issues are considered in SEA on a case-by-case basis and mainly in relation to plans and programmes with a potential significant impact on climate, such as energy or transport related plans. For example, the national Environmental Report for the 2008 Development Plan of Italy's electricity grid identifies impacts on climate change in terms of the expected reduction of greenhouse gas emissions, due mainly to improved efficiency. In Ireland, the screening report and determination for SEA of the Transport Strategy for the Greater Dublin Area 2010–2030 underlines the need to take into account the National Climate Change Strategy and the relevance of the Strategy for the implementation of the European Climate Change Programme.

In other words, climate change issues are mainly covered by considering the climatic factors as one of the elements of the environment which could be potentially affected by the plan or programme pursuant to the requirements of the SEA Directive. In addition, some Member States, for example France and Austria, specifically include the UNFCCC and the Kyoto Protocol (respectively), sometimes along with National Climate Change strategies or plans, among the environmental protection objectives established at various levels which need to be taken into account, when appropriate, in the development of the plan or programme.

[91] Danish and Swedish country information collected by the local consultants.

[92] The Austrian SEA expert reports that Austria has adopted a climate change assessment for federal legislation (laws, regulations) in July 2008. This means that a climate change assessment has to be carried out for all laws and regulations before their adoption at federal level. Guidanc e has been developed and supports the ministries in carrying out the climate agenda.

Consideration of climate change issues can also be ensured during the SEA consultation phase by involving stakeholders with a specific interest and expertise in climate change issues. This is the case in Belgium (Walloon Region) where the Walloon Environment Council for Sustainable Development (CWEDD) who advises public authorities on various environmental issues, including climate change, is one of the bodies whose consultation is compulsory pursuant to the SEA legislation.

According to the EEB report (2005) climate change issues are not sufficiently and adequately addressed in SEAs in a number of European countries subject to the study (cf. Chapter 3.2). In particular with regard to climate change issues, the report highlights the issues about lacking application of the 'precautionary principle' and the lack of involvement and participation of climate change experts in the conduction of SEAs.

No information is available on the development of specific guidance for this issue with two exceptions, the United Kingdom and France[93]. In the United Kingdom, the Strategic Environmental Assessment and climate change (Guidance for practitioners (England and Wales), originally launched in 2004 and revised in June 2007) suggests how both mitigation of and adaptation to climate change can be considered at various stages of the SEA process. The Guidance defines sources of baseline information and indicators on climate change causes and impacts, issues and constraints caused by climate change, along with possible SEA climate change objectives in relation to both mitigation and adaptation measures.

In France, in relation to the preparation of Operational Programmes (OPs) under the Cohesion Policy, a tool (NECATER) has been created in order to assess the global impact of OPs on CO2 emissions. Besides, the French national SEA expert reports that currently, a study is ongoing in order to improve the “carbon balance” tool (Agence de l’environnement et de la maîtrise de l’énergie) and to see in which conditions this tool can be applied to land use plans.

Attention should however, be drawn to the vast amount of documents and papers on the UNECE website concerning the application of the SEA Protocol with regard to climate change issues; [94] in particular, attention should be drawn to the 'Guidance for practitioners' (2007) document. [95]

Conclusions

The lack of methodology to predict impacts has been mentioned as a key problem. Given the lack of guidance, the definition of impacts is mainly based on an expert’s judgement and impacts are defined in a qualitative rather than quantitative manner. For example, it was not possible to calculate in quantitative terms the decrease in car emissions which the strategy on support to railway transportation could bring (Slovakia).

[93] French national SEA expert.

[94] http://www.unece.org/env/eia/sea_manual/links_climate_change.html

[95] Levett-Therivel: http Sustainability consultants: Strategic Environmental Assessment and Climate Change: Guidance for Practitioners, revised 2007. www.environment-agency.gov.uk/commondata/acrobat/seaccjune07_1797458.pdf

With the notable exception of the United Kingdom and France, consideration of climate change issues in SEA appear to be still limited to plans and programmes which have an obvious impact on climate through increased greenhouse gas emissions, although a trend to pay more attention to these questions is emerging.

Given the lack of specific guidance on consideration of climate change issues in SEA at the national level, the Commission should consider the development of EU level guidelines on this topic, including the definition of indicators and objectives, along with methodological guidance on impact prediction.

6.7 SEA as an umbrella for Environmental Assessment requirements

The above section of chapter 6 displays a majority of various Environmental Assessment needs and requirements in EU Environmental Law. These requirements are set forth in individual legal frameworks and must be complied with unless there is specific exemption mentioned. As mentioned in the introduction to chapter 6 art. 11(2) of the SEA Directive allows for a joint procedure incorporating SEA and EIA requirements.

The benefits from merging the Environmental Assessment requirements of a number of Directives into one are of course obvious when measured in terms of regulatory simplicity and better regulation initiatives. Furthermore, benefits could arise from problems being clustered in a manner so as to allow for an efficient, coherent and all-covering assessment of their impacts. Furthermore, problems that have proven hard to combat would be more robustly handled in an integrated procedure where the assessment would always be located at the right level of solution/addressing the problem.

When looking at the drawbacks a number of items become clear. First of all, the assessment required under the Habitats and Bird Protection Directives are profoundly different in their aim from the general assessments under the EIA and SEA Directives. Assessment under the Habitats and Bird Protection Directives are directed towards ensuring that no development that may impose a danger to the favourable conditions of protected sites and/or species may be given consent - the assessments under the EIA and SEA Directives are merely designed to provide systematic information about possible environmental impacts to the consenting authority for the purpose of improving the quality of the plan in question. The designated authority under the EIA and SEA Directives are not required to act in a specific manner, which does make the assessment of the impacts under the two directives a different matter than assessments under the Habitats and Bird Protection Directives.

It is clear that a further integration of environmental assessment under an umbrella-like function of the SEA Directive requires careful consideration of the scope and nature of the resulting assessment requirements.

7 Effectiveness of the application of the SEA Directive

Assessing the effectiveness of the application of the SEA directive is inherently difficult. Effectiveness criteria are a concern of many environmental Assessment systems, including the SEA systems. The International Association for Impact Assessment has developed a set of SEA Performance Criteria[96] which to a large degree highlights different aspects of the effectiveness of SEA.

The main performance criteria of the IAIA are:

- SEA is integrated
- SEA is sustainability led
- SEA is focused
- SEA is accountable
- SEA is participative
- SEA is iterative

While the SEA Performance Criteria have been applied in evaluations of SEA systems in e.g. Canada, the Netherlands and Australia[97], the data material available for this study on the application and effectiveness of the SEA Directive, is not collected for the purpose of making such a comprehensive and detailed assessment of effectiveness of the application of the SEA Directive in the Member States of the Community. The application of the IAIA SEA Performance Criteria would require a much more thorough analysis of individual SEA procedures and processes as well as of the documents prepared for the purpose of these procedures.

In this chapter, effectiveness will be assessed on the basis of:

- the degree to which planning and programming procedures and decisions have been influenced by the environmental considerations that the SEA procedure is intended to integrate in decision making - including,

[96] IAIA, 2002.
[97] Marsden, 2008.

- the extent to which the planning and/or programming procedures have been altered as a results of the application of the SEA procedure
- the extent to which plans and programmes have affected as a result of the application of the SEA Directive requirements.

- costs of preparation of the SEA and procedural steps
- stakeholder perception of the main benefits of SEA.

Whereas this Chapter 7 presents Member State *perception* of effectiveness with regard to the issues listed above, Chapter 8 (findings and recommendations) takes into consideration the analysis and findings generated throughout the report and synthesise findings and recommendation from the entire study report with regard to the application and effectiveness of the SEA Directive.

This Chapter 7 relies on information provided by national SEA experts by way of their responses to the Commission's questionnaire.

7.1 Impact of the application of the SEA to the planning process

Member State experience

Member States have been asked if the SEA requirements have changed the processes for preparing plans and programmes? And if so, in what way(s)?

Twenty Member States (Austria, Belgium (Federal level, Brussels region, Walloon region and Flanders), Bulgaria, Czech Republic, Cyprus, Denmark, Germany, Estonia, Finland, Hungary, Italy, Lithuania, Luxembourg, Latvia, Poland, Romania, Spain, Slovenia, Slovakia and the United Kingdom) state that the SEA requirements have changed the process for preparing plans and programmes. The remaining Member States find experience to be too premature in order to answer this question or have not responded to the question.

Specifying in what way the SEA requirements have changed the process for preparing plans and programmes twelve Member States answer that the SEA Directive requirements have changed the planning process in a way that - from a SEA Directive effectiveness perspective - may be considered a positive way:

- The SEA Directive requirements have lead to the integration of new procedural stages into existing planning process (Germany, Estonia, Lithuania, Poland and the United Kingdom)[98]; these steps include for example:
  - scoping,
  - the preparation of an environmental report,
  - public consultation,

[98] It should be noted however, that Member States do not necessarily consider the extension of the planning and/or programming procedure as positive (e.g. Germany).

  - publication of the plan or programme together with a summarising statement.

- The SEA Directive requirements make the planning process more structured and effective (Belgium, Bulgaria, Finland);
- The SEA Directive requirements related to public participation and consultation of authorities is a positive contribution to the planning process (Cyprus, Bulgaria, Finland, Latvia, and the United Kingdom);
- The SEA requirements ensure the integration of environmental considerations into decision making;
- Finally, the SEA requirements facilitate a strengthened relationship between environmental and planning authorities.

Two Member States report that the SEA Directive requirements may also have a negative influence on the planning process (Bulgaria and Hungary):

- The SEA Directive requirements may result in a more time consuming planning process if the planning process is not properly coordinated by the planning authority or the authority responsible for the SEA;
- The SEA Directive requirements to involve the public may be time consuming and costly.

7.2 The degree to which SEAs affect the contents of plans and programmes

Member States have been asked if the SEA changed the content of plans or programmes? And if yes, what are some typical changes?

The majority of the Member States reports that SEA in some or most cases modify the contents of the plans and programmes (Austria, Belgium (Flanders, Brussels region) Bulgaria, Czech Republic, Cyprus, Greece, Spain, Finland, France, Hungary, Ireland, Italy, Lithuania, Latvia, Romania, Slovenia, Slovakia and the United Kingdom). It is however, not always radical alterations (Austria, Finland, Slovakia, Hungary).

Some Member States report that experiences differ in this regard. In numerous cases, no effect or only rather superficial changes (more reasoning, one more chapter in the documents, changes achieved only in the details but not in the major issues, etc.) have been made. Some experience shows that SEA does not change the major goals, nor the financial allocation among the funding objectives; it rather changed some funding objectives, schemes or criteria. Other experiences show that at the level of the largest national plans quite a lot of the SEA findings exerted strong influence on the essence of the plans, among others in the selection of the alternatives or incorporating several important suggestions from the SEA into the plans. Likely significant effects on the environment as a consequence of the implementation of the plan or programme are more likely to appear as a consequence of environmental assessment if the planning territory is provided in the plan or programme.

Six Member States claim that experience with SEA is too premature to draw any conclusion on the influence of the SEA requirements on the content of plans and programmes. (Belgium, Denmark, Germany, Luxemburg, Malta, and Portugal) and a few Member States have not answered the question (the Netherlands, Poland and Sweden).

A few examples reported by Member States of radical changes to plans and programmes due to the SEA requirements are listed below:

In Hungary an important change was the adoption of the principle of the so called "sustainability minimum criteria" in the planning of some operational programmes.[99]

Bulgaria reports on cases where the SEA has resulted in the revision of audited plans and programmes. For example, in the National Programme for Ports Development, two of the proposed terminals in the program were rejected because of conflicts with the nature protected areas.[100]

Slovenia reports that by introducing the SEA procedure, environmental aspects have been introduced into the planning procedures, and activities with critically harmful and adverse impacts on the environment and protected areas were prevented or greatly reduced. Thus, the principles of sustained development, integrity and prevention are implemented in the planning procedures, their transparency is assured and environmentally more suitable solutions are applied. In some cases the SEA completely changed the plan and in other cases it assisted in achieving better consideration of alternatives, creating additional alternatives and ultimately finding better solutions. The SEA procedure has also resulted in the definition of better mitigation measures and monitoring.[101]

Romania also reports on experience where the SEA procedure has changed the content of plans and programmes in Romania. One example is the regional waste management plan where the best alternative from an environmental perspective was chosen as a result of the SEA. In selecting the final alternative the environmental report took into consideration the multi-criteria analyses.[102]

Ireland reports that the very fact that alternatives must be considered by law is a major development. It prevents a single proposal being considered. It further ensures that even where there are no realistic alternative proposals available, the plan cannot proceed without taking into account the potential significant environmental impacts and, at a minimum, help ensure those impacts are mitigated. In a number of instances, originally intended plans have, following the SEA process, been changed in favour of the alternative action by virtue of considering the environmental impacts of the proposal and the alternative. This is a

[99] Hungarian answer to the Commission's questionnaire.
[100] Bulgarian answer to the Commission's questionnaire.
[101] Slovenian answer to the Commission's questionnaire.
[102] Romanian answer to the Commission's questionnaire.

major development, as prior to SEA, the original proposal would have proceeded with appropriate mitigation in place.[103]

7.3 Costs of SEA

Most Member States do not have reliable estimates of what are the costs of preparation of the procedural steps of the SEA process (Cyprus, Germany, Spain, France, Lithuania, Luxembourg, Latvia, Latvia, Romania, and Slovakia) or claim that they have insufficient experience in order to provide an estimate (Belgium, Greece, Finland, Italy, Portugal and Sweden).

Most Member States claim that the costs depend on the type and scope of the plan or programme in question. In the table below, estimates of costs of SEA as provided by the national SEA experts in Denmark, Estonia, Hungary, the Netherlands, Slovenia and the United Kingdom are presented[104]:

Table 7: Estimated costs of preparation and procedural steps of the SEA process

Member State	Estimated costs
Denmark	20.000 - 70.000 DKK per SEA (~ 2,700 - 9,400 EUR)
Estonia	4.000-30.000 EUR per SEA
Hungary	20.000-40.000 EUR per SEA*
The Netherlands	Total costs: 570.000 EUR per year, of which 372.800 EUR for municipalities, 164.400 EUR for provinces and 32.800 for the state.
Slovenia	EUR 5,000–100,000 per SEA. The environment reports are EUR 2,000 or more, and suitable assessment reports are more than EUR 30,000
The United Kingdom	35.000-80.000 EUR for typical SEAs (See text below)

* figures only relate to the preparation of the environmental report and only to cases of nation-wide plans and programmes.

Estonia further claims the administrative burden of common SEA is high through the list of obligatory procedures. Public involvement - among others due to the requirement of notification - constitutes a financial burden. In Estonia, a large number of authorities have been listed for obligatory consultation which has caused a drastic rise in administrative costs and work load.

The United Kingdom claims that it is difficult to estimate the exact costs of SEAs. These are not always additional to costs of preparing plans or programmes – for example, some elements of SEA were required in the United Kingdom before the Directive, either under previous forms of assessment or as part of preparation of the plan or programme itself. However, research and information from practitioners suggest that: typical SEAs (e.g. of local spatial plans) take around 70-80 person-days, including scoping; daily equivalent rates

[103] Irish answer to the Commission's questionnaire.

[104] Member State answers to the Commission's questionnaire.

for both in-house staff and consultants are in the range of United Kingdom £ 300-600 per day; so notionally, costs are typically in the range EUR 35,000 to EUR 80,000.[105]

However, according to the national SEA expert, costs for complex SEAs can significantly exceed these typical costs. For example total costs including in-house staff for SEA of the United Kingdom Nuclear Decommissioning Strategy was several times these figures. Offshore SEA is similarly quite expensive, running into the millions of pounds.[106] [107]

Ireland has not collated any data on costs. However, it is understood from the national SEA expert that the SEA process in relation to County Development Plans and Local Area Plans is both expensive and resource consuming. Often, specialised consultants are employed to advice on aspects of the SEA process. In addition, given the cross-sectional aspects to SEA, a number of sections within the body or authority will have to be involved in the process and it is not unusual for cross-section teams to be established to progress the process. Also, it is not unusual for public meetings to be held in relation to significant land use plans.[108]

Germany reports that there is no central record of estimates of statements of the costs for the SEA. It depends on the individual plan or programme. It can be assumed that the SEA has regularly caused higher administrative and compliance costs, in particular in those cases for which public consultation or monitoring was not mandatory before.[109]

7.4 SEA as a planning and/ or assessment tool

Member States have been asked if SEA is used more as a planning tool (e.g. focusing on the elaboration of alternatives and integrating environmental issues via SEA, prior or parallel to the plan or programme-making process) or as an assessment tool (focusing on the effects of the draft plan or programme when it has been prepared)?

Integration of planning and SEA can be regarded as a starting point to tackle one of the main challenges of all assessment procedures, namely that the results of the assessment are really taken into account in the final planning decision.

Most Member States report that they use SEA as both a planning and an assessment tool (Belgium (Flanders), Bulgaria, Cyprus, Czech Republic, Denmark, Germany, Finland, France, Hungary, Italy, Latvia, the Netherlands, Romania, Slovenia, Slovakia and the United Kingdom). However, the degree to which the complete integration of the planning process and the SEA process to

[105] Answer to the Commission's questionnaire by the United Kingdom.
[106] Answer to the Commission's questionnaire by the United Kingdom.
[107] Note that the figures do not include costs of consultation.
[108] Irish answer to the Commission's questionnaire.
[109] German answer to the Commission's questionnaire.

one common procedure, which allows for continuous interaction between planning and assessment resulting in an iterative optimisation of the planning solution is unknown.

A quite substantial number of Member States report that they apply SEA mainly as an assessment tool (Belgium (Walloon region), Estonia, France, Greece, Spain, Latvia, Luxembourg, Malta, Poland, and Portugal).

Where SEA is used solely as an assessment tool may be a reflection of the fact that planning authorities still consider environmental assessment as an obligation. A real integrated planning or programming process seems not to have been reached jet. In any case, the experience is not so wide.

7.5 Benefits of SEA

Member States have been asked if they have information on the main benefits of SEA? And if these differ by type and level of a plan or programme?

Nine Member States report that experience is too limited to conclude anything on the benefits of applying SEA, however, most Member States are able to provide examples of the main benefits of SEA experienced in their own Member State[110].

The benefits mentioned can be categorised as follows:

- SEA integrates environmental consideration into decision making - and makes plans and programmes "greener". E.g.:

  The Romanian national SEA expert states that "SEA provides the relevant information to the decision-makers on the different alternatives of the plan/programme and proposes the best alternative of the plan/programme which fulfils the environmental objectives. Consequently the decision makers are better informed when adopting/approving a plan/programme. At the same time the SEA reduces the costs of further mitigation/remediation measures".[111]

  The Latvian focal point states that SEA is effective in both the planning and the monitoring stages: "In the planning process, environmental conditions and environmental consequences are foreseen setting necessary limitations. In the monitoring phase: it is an assessment tool for the further possible corrections in the planning document or the way of its implementation".[112]

- Several Member States point to the benefits of the involvement and consultation relevant public authorities which both qualify decision making and

[110] Member State answers to the Commission's questionnaire.

[111] Romanian answer to the Commission's questionnaire.

[112] Latvian answer to the Commission's questionnaire.

facilitates and strengthens cooperation between different (planning and environmental/health) authorities.[113]

- Some Member States point to the transparency in decision making due to involvement of all levels of society.

Hungary provides a long list of concrete examples where the planning process has benefited from SEA:

- in a water management programme the SEA helped to prevent a very expensive project
- in a flood protection programme the SEA led to the selection of the alternatives most favourable from social and physical planning viewpoints
- in an operative programme SEA helped in eliminating the most problematic programme elements
- in a nation-wide development concept SEA succeeded in incorporating sustainable solutions into the plans.[114]

France makes a distinction between types of plans and programmes when reflecting on the benefits of SEA in the planning process:

- For plans and programmes which apply directly to environmental policies (for instance, plans or programmes for water management or waste management…) SEA helps to comply with the requirements of the specific environmental policy concerned, and to check the coherence with other environmental policies (in these cases, the question is not necessarily to identify negative incidences of the plans, because the object of the plan is precisely to improve the global quality of environment; the role of SEA is here to strengthen the measures planned).

- For plans and programmes which cover a wider range of issues and for which environment has to be integrated among other considerations, SEA helps to distinguish what is relevant to environmental issues; the knowledge of the environmental stakes of a territory (and the sharing of this knowledge between the different actors of the territory) is certainly one of the mains benefits of SEA. Moreover, the obligation of transparency on environmental issues, with the consultation of the public and of the environmental authorities, is very important because it leads the planning authority to better justify its choices in an environmental point of view.[115]

[113] Member State responses to the Commission's questionnaire.
[114] Hungarian answer to the Commission's questionnaire.
[115] French answer to the Commission's questionnaire.

8 Findings and recommendations

Findings of the study are spread across the large bulk of information and do not in themselves generate a self-evident picture of the application and effectiveness of the SEA Directive. Instead, the picture that may be generated is a picture of specific problems, that may in some instances be related to national implementation and in others, to ambiguities in the SEA Directive.

Generally, Member States report of limited SEA experience. Therefore, the findings and recommendations are based on a somewhat limited basis of evidence in Member States in applying the requirements of the SEA Directive.

8.1 Findings

The nature of problems reported by Member States are small compared to the profound nature of the SEA Directive, when thinking of the SEA Directive as being a framework for the change of mindsets among planners.

The general picture of findings is a picture that reports that there are no major problems in the Member States' application of the SEA Directive - or at least not an unambiguous picture.

This picture is somewhat more mixed when local consultants hired for this assignment to collect information on the application and effectiveness of the SEA Directive requirements in Member States provide a more critical picture on problems and issues in Member States.

A number of characteristic trends emerge, nevertheless, from the aggregated information provided by Member States.

The interesting trends in the aggregated information are related to:

- the national legislative framework and the institutional structure
- key issues in the implementation procedure that have posed some problems
- strengths and drawbacks of applying the SEA procedure

8.1.1 Legislative framework and institutional structure

When asked to elaborate on the formal and institutional arrangement of national SEA arrangement Member States have reported variations in the way in which SEA is organised within their jurisdictions. It is reported that at least three different models exist for transposing the SEA Directive into national legislation. These are:

- integrated into a general Environmental Protection Act,
- integrated into an existing EIA-Act, or
- independent SEA Act.

The choice of legislative transposition mechanism seems to be chosen quite independently from the institutional structure chosen in arranging responsibilities under national SEA systems. One could have imagined that i.e. the introduction of an independent SEA Act was followed up by a whole new structure containing independent designated responsibilities. However, this is not the case.

Another interesting point is whether Member States that have chosen to integrate the SEA requirements into an existing EIA Act have done so, because they assume that by integrating the requirements into one single act - SEA and EIA could be further integrated where possible.

Having asked country experts whether this in fact was the case in the Member States reported to have adopted an integrated EIA/SEA Act none reported that such a line of thinking was a part of the reason behind the choice of transposition mechanism.

The vast majority of Member States have chosen to place the responsibility to carry out SEAs on the planning authority. Few other Member States have chosen to place the responsibility to carry out SEA as a shared responsibility between several authorities. Several Member States - depending on the nature/content of the plan or programme in question - establish temporary working groups for the purpose of facilitating the procedure, providing advice and support decision making in the SEA process.

Some Member States have chosen to designate the responsible Environmental Authorities that must be consulted in the SEA procedures in their legislation, whereas other Member States rely on an ad-hoc decision of which authorities that must be consulted in individual procedures.

It is generally reported from Member States that consultation arrangements work in the intended manner.

It has not been possible to conclude anything with regard to effectiveness of institutional and legal arrangements as experiences so far are too limited to provide reliable evidence.

8.1.2 Key issues of the SEA procedure

A few of the key issues addressed in the EU Commission's questionnaire seem to cause some concern in Member States. These issues are:

- determination of the application of the Directive
- definition of relevant alternatives
- baseline reporting/environmental report
- Monitoring of impacts

Determination of the application of the Directive

The problem of application of the requirements of the SEA Directive relates to i) the definition of sector plans and programmes; ii) the interpretation of what is meant by the wording 'administrative provisions'; and iii) setting the framework for future development consent.

- the definition of sector plans and programmes

One problem not directly pointed to by Member States relates to the discretion left to Member States in transposing Article 3(2) (a) of the Directive, i.e. the definition of sector plans and programmes.

Most Member States report that a combined approach for determination of the application of the Directive is based on a list of plans and programmes that *must* be subjected to an assessment is supplemented by a *case-by-case* approach to determining whether an assessment is needed.

A majority of Member States have simply transposed the general categories of plans and programmes as listed in Article 3(2) (a) of the Directive, some Member States have taken it further and specify in detail which concrete plans and programmes should be subject to an SEA when they provide the framework for future development consent of projects.

Member States which comply with the Directive by simply adopting the Directive text in each case will have to consider if the characteristics set forth in the Directive are applicable to the plan or programme in question. National SEA systems that are based on a simple translation of the Directive's text in this regard are thus more vulnerable to failure to comply with regulations at the application level, simply because a formal position must be reached in each case a plan or programme is under scrutiny. In these Member States the issuing of national guidance on the application of the SEA legislation must be considered a necessity.

- 'administrative provisions'

A few Member States have encountered problems related to the determination of the term 'administrative provisions' in the light of the SEA requirement. An important qualification for a plan or programme to be subject to the Directive is that it is required by 'legislative, regulatory or administrative provisions'. However, neither the Directive nor the SEA Guidance provides clear and unambiguous criteria for how to interpret this latter qualification.

From an environmental perspective this has become an issue in e.g. Denmark, since the preparation of the annual/bi-annual investment plan for infrastructure adopted by the Minister for Transportation is not subjected to an SEA procedure. The submission of the Investment plan is not regulated by law of any other administrative provision, but *de facto* constitutes a practice that may equal a duty set forth in law and/or other administrative requirement.

- 'Setting the framework for future development consent'

Despite the fact that the wording 'Setting the framework for future development consent' is crucial to the interpretation of how to what extent the Directive must be applied, there is no definition of the term in the Directive. There are quite different approaches to whether it, at all, is relevant to provide further guidance on the understanding of what is meant by 'setting the framework for future development consent'. As revealed a majority of Member States have refrained from providing guidance, whereas a minority have chosen various ways of shedding light on what is meant by this wording.

The relevance of national guidance must obviously be viewed against whether public authorities are given discretion to adopt plans and/or programmes without being subjected to a formal requirement to do so.

Definition of relevant alternatives

Alternatives in the Environmental Report are one of the few issues that have given rise to problems in Member States. The problem of defining relevant alternatives is an "old" problem in environmental assessment. The purpose of the alternative in environmental assessment is first of all to provide for a comparative yardstick, by which the proposed plan/programme may be compared with regard to its environmental impacts. Especially, in SEA alternatives are presumed to play a more dominant role than in EIA, simply because SEA is about assessing different options in achieving one or more objectives.

Relevant and reasonable alternatives to a plan or programme is very often representing partial elements of the plan/programme developed during the cause of drawing up the plan or programme, but which are abandoned during the drafting process because of their lack of ability to provide the right end to an objective or may lead to unwanted environmental consequences .

Member States do in general report that the decision on which alternatives and the number of alternatives studied is taken on an ad-hoc basis.

It is characteristic that national legislation does not provide for a distinct definition of 'reasonable alternatives' or a number of alternatives that must be assessed; the choice of 'reasonable alternatives' is left to a case-by-case assessment and decision. Some of the Member States have adopted national guidelines in which the problem of alternatives has been dealt with. All Member States report that the do-nothing alternative has to be included in the environmental report on a mandatory basis.

Baseline reporting/environmental report

Baseline reporting and production of the Environmental Report contain one of the few dominating problems in Member States' reports. The main problem in relation to baseline reporting and the Environmental Report is how to deal with the scale of matters when collecting data as well as how to set the right level of

detail. These problems are obviously most relevant to be commented in guidelines where experiences of carrying out SEAs may be elaborated. Nevertheless, quite a number of Member States mention the scale of matters as well as setting the right level of detail as a crucial problem in individual SEAs.

Monitoring of impacts

For monitoring and evaluation there are very few responses from Member States that reports on monitoring as a predominant issue in SEA. Still, we find it important to address the issue since: i) there is evidence that monitoring is a non-issue in a number of Member States and that the lack of substantial national guidance may pose a problem; ii) Data seem to suggest that the problem of monitoring may be a general problem in a substantial number of Member States; iii) The research article[116] presented in Chapter 3 finds that there is a general lack of knowledge on SEA follow-up and that there are a number of flaws in the Directive's requirements relevant to SEA follow-up.

8.1.3 Strengths and drawbacks of applying the SEA procedure

Many Member States report that applying the SEA procedure to individual planning processes has provided a clearer structure and regulatory framework for the planning drafting process, the consultation process with other authorities as well as the consultation process with the public at large, including the public concerned. Furthermore, some Member States have emphasized the fact that planning processes have become more transparent, and even some Member States report that the early consideration of environmental needs have lead to a decrease of expensive mitigation measures, because the environment was considered early in the process.

Some Member States report that the inter-authority consultation procedures inaugurated are difficult to handle and consumes a lot of resources. Other Member States refer to the enormous amount of time spent in public consultation procedures.

It seems obvious that the strengths outnumber the drawbacks in providing clearer structures and more transparent procedures. The time consuming efforts spent in consultation procedures seems to be a minor drawback vis-à-vis the benefits reported.

8.1.4 Overall findings on the effectiveness of the SEA Directive

The above outline of the findings related to the practical, the legal and the institutional framework of the SEA procedure, including strengths and drawbacks of applying the SEA procedure, leads us to the following overall findings on the effectiveness of the SEA Directive.

The overall picture of the application and effectiveness of the SEA Directive across the 27 Member States is diverse - in terms of institutional and legal ar-

[116] Persson, Åsa and Måns Nilsson, Towards a framework for SEA follow-up: Theoretical issues and lessons from policy evaluation, in Journal of Environmental Assessment Policy and Management Vol. 9, No. 4 (December 2007) pp. 473-496. Imperial College Press.

rangement of the SEA procedure in Member States, the actual implementation of the SEA procedure as well as how Member States perceive of the SEA Directive. The diverse picture also counts for how Member States view benefits and drawbacks and in terms of what - if anything - could be done in order to improve implementation and effectiveness of the Directive requirements.

This diverse picture is mainly a consequence of the fact that some provisions of the SEA Directive may create powers rather than duties which are discretionary rather than mandatory. Generally, Member States report of limited SEA experience. Hence, recommendations from this study may be based on a limited basis of evidence in Member States in applying the requirements of the SEA Directive.

The fact that European Court of Justice' jurisprudence is still to be developed the EU SEA Guidance document is so far the most authoritative statement available to Member States.

The nature of problems reported by Member States are small compared to the profound nature of the SEA Directive, when thinking of the SEA Directive as being a framework for the change of mindsets among planners. This picture is somewhat more blurred when local consultants hired for this study to collect information on the application and effectiveness of the SEA Directive requirements in Member States provide a more critical picture on problems and issues related to the application and effectiveness of SEA in Member States.

The general findings of the study seem to suggest that the application of the SEA requirements in Member States is in its infancy and that a need for further development may be wanted before deciding on whether the Directive should be amended. Member States seem to prefer stability in the legislative requirements, to allow SEA systems and processes to settle down and provide the opportunity to establish robust ways of using SEAs to improve plan-making.

The two overall findings at a general level are:

- the SEA Directive contributes to the systematic and structured consideration of environmental concerns in planning processes
- the SEA Directive provides by way of its formality further structure to existing planning procedures, and

as a consequence of the two above findings

- contribute to a transparent and participatory decision making process

8.2 Recommendations

Based on the findings above, this section presents the recommendations of the study. The recommendations presented are those of the Consultant and not necessarily those of the EU Commission or the 27 EU Member States subject to

the Study. However, recommendations have been made on the basis of a close reading of the Member States' answers to the Commission's questionnaire on the application and effectiveness of the SEA Directive.

In general recommendations are presented with some reservation simply based upon the fact that experiences in applying SEA in some Member States are still quite small.

8.2.1 The SEA Directive

Amendments to the Directive

In the short term perspective, it is recommended that no amendments to the SEA Directive should be introduced in order to allow for further experiences being generated and for SEA systems and processes to settle down.

In the longer term perspective, it is recommended - since the SEA Protocol is likely to incur changes to the SEA Directive, when entering into force. The European Community will as a signatory be required to align the SEA Directive to the requirements introduced by the SEA Protocol. In the light of this requirement potential supplementary amendments to the SEA Directive should be considered and where relevant be introduced through this legislative process.

It is recommended that a working group[117] be established to investigate the further need to amend the SEA Directive in a longer term perspective.

Among others, it is recommended, that the working group should discuss

- Whether - if consistent application and implementation of the Directive across EU 27 Member States is an objective, as stated in the Commission's Guidance on the implementation of the Directive - there is a case for tightening requirements in the SEA Directive and in that way limit the discretion left to Member States in the existing SEA Directive. Findings from the desk search study, e.g. Marsden (2008) and Risse et al. (2003) cited in Marsden as well as findings from the Consultant's own analysis of the application and effectiveness of the SEA Directive, e.g. of key stages in the SEA, suggest that the general requirements prescribed by the Directive are not restrictive and leave too wide discretions to Member States[118]. Tighten-

[117] During the meeting of national EIA and SEA experts in Paris, France, 16 - 17 October 2008 a working group under the expert group was established with the purpose of discussing - in light of the Commission initiatives on *Better Regulation and Simplification of the EC Legislation* - possible amendments to the EIA Directive. The working group suggested to be established in this report, should be the same as the one established at the Paris meeting..

[118] Some examples drawn from the analysis are: i) the discretion left to Member States in transposing Art. 3(2)(a), i.e. the definition of Sector Plans and Programmes; ii) the organisation of the scoping process is entirely left to the Member States with the exception of the obligation to hear concerned authorities; iii) the Directive and the SEA Guidance leave several issues related to monitoring and implementation unclear. Much is left to the discretion

ing the wording of the Directive should provide more direction in the application of the SEA Directive in Member States. The working group should take into consideration whether differences in experiences in planning cultures between Member States may be of such profound nature that a further harmonisation in the application and implementation of the SEA Directive may be difficult to achieve since the outset for developing national systems may draw in differing directions - and may rather be relying on the underlying planning systems than on the interpretation and application of the SEA Directive[119]. The north-south divide commented in chapter 3 of this report is only one of several differences in SEA and planning cultures across the Community.

- Consider consolidating the SEA and EIA Directives for the purpose of clarifying their interrelationship, to ensure more consistency between both pieces of legislation and to harmonise the key stages and elements of EIA and SEA - including the scoping, which is compulsory in the SEA Directive and discretionary in the EIA Directive. Key stages and elements would include the examination of reasonable alternatives as mandatory; establishing of monitoring measures as part of the environmental information; and efficient integration of quality management elements and reviews of the environmental information. The consolidation of the Directives should also take into consideration the specificities of each process, as these are related but complementary processes that should not be directly linked. Therefore, the harmonisation of both procedures should not lead to a full harmonisation of their requirements. In particular, the scale and level of details should be adapted to the "object" of the assessment.

- Furthermore, within this line of thinking consider whether there, at all, is a need to have a two-directives based environmental assessment system within the EU. By merging the two directives into one some of the co-ordination issues may be void, however, one should not be blind to the fact that other co-ordination issues may still prevail and new will probably arise. This should, however, not be an obstacle to proceed investigating whether the benefits of merging the two directives into one will outweigh the drawbacks. The latest practice from the European Court of Justice in relation to the EIA Directive[120] seem to suggest that emerging black spots between the legal boundaries of the EIA Directive and the SEA Directive calls for an investigation of the boundaries between the two directives.

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of Member States which in effect may leave uncertainties in the practical application of Art. 10 of the SEA Directive.

[119] This is among other things argued in one of the theoretical studies in chapter 3, which states is that a north-south divide in EU in SEA based upon the differences in planning cultures may be an obstacle for achieving a further harmonisation between Member States with regard to the application and implementation of the SEA Directive.

[120] C-2/07 Abraham a.o. in which the court took the view that a mutually binding agreement between an authority and a developer was not a project in the meaning of the EIA-Directive. It is definitely not a plan either, but is one of those configurations that emerge between the public and the private sectors that limit the discretion of the public authority.

- In the light of the close relationship with the EIA Directive, whether there is a need to bind the application of the SEA Directive so closely to the development consent of projects listed in the annexes in the EIA Directive. One of the drawbacks of linking SEA so closely to EIA is that the SEA procedures are only applied to programmes and plans that are not directly relevant to EIA projects, after screening regardless of whether these plans and programmes may have much wider implications for the environment. In other words, there need not be a direct linkage between the significance of environmental impacts from plans and programmes and the fact that these plans and programmes set the frameworks for projects under the EIA Directive. This is only one of many possible links between a plan and/or programme and significant environmental impacts.

8.2.2 Other possible initiatives

There is evidence that there is a need for further guidance in some Member States. However, Member States disagree as to the extent to which and in what areas this is needed. It is therefore recommended that Member States in cooperation with the Commission discuss possibilities that allows for different needs in Member States.

Further guidance could materialise in development of new guidance documents or update / extension of the existing SEA Guidance. Member States should discuss among themselves on which issues further guidance is needed and on what level these should be developed - whether at EU/national level.

Further need for SEA guidance has been suggested by *some* Member States on the following issues:

- Guidance on the interpretation of screening criteria: likely significant environmental effects, administrative provisions, small areas at local level, minor modifications to plans and programmes.

- Guidance on the identification of relevant alternatives and monitoring in practice (e.g. definition of indicators, selection of relevant data, use of existing monitoring schemes).

- A collection of examples - including integration of environmental concerns into the drafting process of plans and programmes (scoping report), methods for the assessment of the environmental impacts depending on different types of plans and programmes, drawing up the monitoring programme, assessment of the results of the monitoring programme and ways of addressing the emerging problems, etc.

- SEA guidance for particular types of planes and programmes, such as spatial planning

- A collection of examples with cases of best practices and lessons learned regarding plans and programmes that are common for all Member States, such as Operational Programmes under the Cohesion Policy.

- Guidance for coordination mechanisms and/or joint procedures (synergies) for fulfilling the requirements for the assessments under different Directives (EIA Directive, Habitats Directive, Seveso Directive but also the Water Framework Directive, the Environmental Noise Directive, the Waste Framework Directive, the Air Quality Directive) would be a useful tool for further understanding and proper implementation of the SEA Directive.

- Development of specific guidance to specify the link between SEA and EIA in relation to certain project categories included in Annex II of the EIA Directive[121]. The introduction of a more precise definition of the term "setting framework for future development consent of projects listed in Annex I and II to Directive 85/337/EEC" should also be considered.

- Development of EU level guidelines on consideration of climate change issues in SEA at the national level, including the definition of indicators and objectives, along with methodological guidance on impact prediction.

- Guidance on the relationship between the EIA and the SEA Directives, especially on when SEA is needed and when EIA is sufficient. This may among other things be difficult to assess with regard to large scale infrastructure projects.

It is further recommended to establish forums for knowledge sharing between Member States on national application of the SEA Directive requirements. This could be by way of seminars, workshops, etc.

[121] Points 1 (a), (b) and (g) and 10.

Appendix 1 Overview of literature identified for desk study

Table 8 Overview of literature in the desk search study.

Author/Title	Reference	Key issues of article	Year	Member State	Type
Towards a framework for SEA follow-up: Theoretical issues and lessons from policy evaluation, Åsa Persson and Måns Nilsson	Journal of Environmental Assessment Policy and Management, Vol. 9 No 4, Dec. 2007, pp. 473-496, Imperial College Press	Monitoring, evaluation and management are important tools in the SEA follow-up procedure, in order to make SEA effective and learning-oriented. SEA follow-up displays a number of critical differences, including • an enhanced risk of implementation gaps • focus on performance rather than compliance • less direct linkage between decisions and impacts The main challenge in comparison with EIA follow-up is the level of abstraction and long impact chains. The article concludes that effective SEA follow-up can be reached through more guidance and systematic learning-from-doing. A significant weakness in the SEA Directive is that it does not stipulate any remedial actions to be taken in response to monitoring.	2007	Sweden	Assessment of the follow-up procedure in the SEA process Barriers to effective SEA follow-up
Guest editorial: Strategic environmental assessment - great potential for biodiversity? Helen Byron and Jo Treweek	Journal of Environmental Assessment Policy and Management, Vol. 7 No 2, June 2005, pp. v-xiii, Imperial College Press	SEA is a potential powerful tool for mainstreaming biodiversity in planning and development, because it can consider larger scales, which are essential for adequate consideration of effects on ecosystems in Member States and long term consequences. Currently there is a lack of information about the treatment of biodiversity issues in SEA, particularly case studies documenting current and good practice.	2005	United Kingdom /international	Biodiversity and the current SEA system
Having an impact? Context elements for effective SEA application in transport policy, plan and programme making, Thomas B. Fischer	Journal of Environmental Assessment Policy and Management, Vol. 7 No 3, Sep. 2005, pp. 407-432, Imperial College Press	In order for SEA to be effectively applied in transport policy, plan and programme making, the existence of certain context elements are essential. Currently these are only partly in place. SEA needs to be more conceptualised as a framework, that does not only include core procedural and other methodological requirements, as is normally the case, but also has to take due consideration to the context the elements introduced in the article. Currently most SEA requirements and provisions aim at procedural and substantive elements and not much atten-	2004	Netherlands, Finland, Germany, United Kingdom	Making the process of SEA more effective

		tion is given to the overall context within with SEA is happening.			
Workshop approach to developing objectives, targets and indicators for use in the SEA, Alison Donnelly, Eleanor Jennings, Peter Mooney, John Finnan, Deirdre Lynn, Mike Jones, Tadhg O'Mahony, Riki Thérivel and Gerry Byrne	Journal of Environmental Assessment Policy and Management, Vol. 8 No 2, June 2006, pp. 135-156, Imperial College Press	The authors used a workshop based approach to in order to provide an interface between planners and environmental scientists and in order to give examples of objectives, targets and indicator for biodiversity, water, air, and climatic factors, which could be used for national, regional and local plans.	2005	Ireland	Assessment of current SEA procedure, methodological approach to scoping
Integrating cumulative effects assessment into UK strategic planning: implications of the European Union SEA Directive, Lourdes M. Cooper and William R. Sheate	Impact Assessment and Project Appraisal, Vol. 22, no 5, March 2004, pp. 5-16, Beech Tree Press	The adoption of SEA will have implications for the consideration of cumulative effects in strategic planning. Interview research made by the authors of the article helped develop a framework for integrating cumulative effects assessments into the SEA and plan-making-process. This framework identifies key steps and activities in the SEA process to address cumulative effects. Currently cumulative effects assessments have not been carried out properly - in the past due to a lack of effective processes through which cumulative environmental effects can be identified and assessed.	2004	United Kingdom	Current and future application of SEA Effectiveness of SEA on cumulative effects. Key steps in UK law regarding cumulative effects of SEA
Writing strategic environmental assessment guidance, Riki Thérivel, Pietro Caratti, Maria do Rosário Partidário, Ásíd Hlökk Theodórsdóttir and David Tyldesley	Impact Assessment and Project Appraisal, Vol. 22, no 4, Dec. 2004, pp. 259-270, Beech Tree Press	The authors summarise the evolution of the early guidance documents on the implementation of SEA.	2004	United Kingdom, Iceland, Italy, Portugal and Scotland	Summary of evolution of SEA guidance documents

Appendix 2 List of literature

Albrecht (2005) cited in Marsden (2008)

Annexes to the Communication from the Commission SEC (2006)621

Biodiversity in Strategic Environmental Assessment: Quality of national transposition and application of the SEA Directive, EEB, December 2005.

Commission's brochure 2008 pages 8-24.

Commission Guidance on the interpretation of definitions of certain project categories of Annex I and II of the EIA Directive', 2008

(COM (2006)

Directives:
Council Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment.

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna

Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (Seveso Directive)

Habitats Directive (92/43/EEC)

Birds Directives (79/409/EEC)

The Water Framework Directive (2000/60/EC)

Land Use Planning Guidelines in the Context of Article 12 of the Seveso Directive 96/82/EC as amended by Directive 105/2003/EC,

The Nitrates Directive (91/676/EEC)

The Waste Framework Directive (2006/12/EC)

The Air Quality Framework Directive (96/62/EC)

The Environmental Noise Directive (2002/49/EC).

Literature

European Environmental Bureau (EEB), 'Biodiversity in Strategic Environmental Assessment, Quality of national transposition and application of the Strategic Environmental Assessment (SEA) Directive, 2005.

ECJ, Case C-201/02 R (Wells) v Secretary of State for Transport, Local Government and the Regions [2004] ECR 000.

ENEA (European Network of Environmental Authorities) (for Cohesion Policy), Working Group: Cohesion Policy and SEA. Working document, 2008.

Federal Building Code and Spatial Planning Act (2005, p. 423).

IAIA (The International Association for Impact Assessment) (2002) Strategic Environmental Assessment Performance Criteria, Special Publication Series No 1, Fargo, ND, Available at http://www.iaia.org/modx/assets/files/sp1.pdf

Gazzola, P. "What appears to make SEA effective in different planning systems?" JEAPM, vol. 10. no. 1, Imperial College Press, p. 1 ff

Habitats Guidance document, 2000

Journal for Environmental Policy, Assessment, and Management, vol. 7, no. 2. June 2005

Levett-Therivel Sustainability consultants: 'Strategic Environmental Assessment and Climate Change: Guidance for Practitioners', revised 2007. www.environmentagency.gov.uk/commondata/acrobat/seaccjune07_1797458.pdf

Marsden, Simon, 'Strategic Environmental Assessment in International & European Law. A Practitioner's Guide, Earthscan, UK and USA, 2008.

Novakova, Milena: Legal issues on EIA/SEA: Infringement cases and ECJ judgements, European Commission, Env.D.3, 16. October 2008, Paris.

Parker, Jonathan: SEA Directive (2001/42/EC): preliminary evaluation of the experiences, with a focus on the Structural Funds programmes. EU Commission, DG Environment, Milan, 22.10.2008.

Persson, Åsa and Måns Nilsson, Towards a framework for SEA follow-up: Theoretical issues and lessons from policy evaluation, in Journal of Environmental Assessment Policy and Management Vol. 9, No. 4 (December 2007) pp. 473-496. Imperial College Press.

Hussein Chaush, Report on the results of the audit of the Environmental Impact Assessment and Strategic Environmental Assessment Programme in the Ministry of Environment and Waters for the period from 01.01.2005 to 31.12.2006

European Commission: SEA Guidance on the implementation of Directive 2004/42/EC on the assessment of effects of certain plans and programmes on the environment.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=253930

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=243180

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=310883

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=240961&p_query=&p_tr2=

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=240949&p_query=&p_tr2=

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=293898

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=277087

http://www.unece.org/env/eia/sea_manual/links_climate_change.html

Appendix 3 List of stakeholders consulted

For each Member State, the local consultant responsible for collecting additional country information as well as the stakeholders consulted by the local consultant in that process are listed.

Austria
Local consultant:
Dr Ralf Aschemann, Austrian Inst. for the Development of Env. Assessment (An !dea).

Stakeholders:
Ms Cornelia **Mittendorfer**, Federal Chamber of Labour, environment department
Ms Liliane **Pistotnig**, Office of the provincial government of Styria, spatial planning department
Ms Ursula **Platzer-Schneider**, Federal Ministry of Agriculture, Forestry, Environment and Water Management, EIA/SEA department
Ms Ute **Pöllinger**, Environmental Ombudsman of Styria

Belgium
Local consultant:
Ms Claire Dupont, Senior Policy and Legal Advisor, Milieu Ltd.

Stakeholders:
Madame Sabine Wallens, for the Federal State;
Monsieur Alain Bozet for the Walloon Region;
Monsieur Benoît Gervasoni for the Walloon Region (Urbanism and Land use administration)
Monsieur Michel Delcorps, for Brussels region (Ministry of the Brussels Region, Directorate of Urbanism - EIA Unit.

Bulgaria
Local consultant:
Dr Csaba Kiss, Environmental attorney

Stakeholders:
Ms Vanya Grigorova – Director of Preventive Activities Directorate, Ministry of Environment and Water
Ms Jacquelina Metodieva – Head of EIA – Sea Department, Preventive Activities Directorate, Ministry of Environment and Water

Czech Republic
Local consultant:
Radek Motzke, Lawyer, Ekologicky Pravni Servis
Pavel Černý, Lawyer, Ekologicky Pravni Servis,

Stakeholders:
Ing. arch. Jiří Löw, Löw spol. s r.o.

Ing. Jana Hrnčířová, Integra Consulting Services s.r.o.

Cyprus
Local consultant
Ms Melina Pyrgou, Head of the Litigation department. Developed the European Law Department with special interest in the field of Environmental Law

Stakeholders:
Ms Christina Pantazi – Representative of the Environment Service, Ministry of Agriculture, Natural Resources and Environment
Mr Christos Theodoulou – Representative of the Federation of Environmental and Ecological Associations.

Denmark
Local consultant:
Ms Caroline Hartoft-Nielsen, Assistant Project Manager, COWI A/S

Stakeholders:
Ministry of the Environment, Danish Agency for Spatial and Environmental Planning. Mr Gert Johansen

Estonia
Local consultant:
Kaarel Relve, Ministry of Justice, Workgroup member

Stakeholders:
Mr Taimar Ala, Ministry of Environment, Head of the Environmental Management Department
Ms Irma Pakkonen, Ministry of Environment, Specialist of the Environmental Management Department

Finland
Local consultant:
Ms Tatsiana Turgot, Laywer, COWI A/S

Stakeholders:
Ms Soveri Ulla-Riita, Ministry of Environment

France
Local consultant
Ms Claire Dupont, Senior Policy and Legal Advisor, Milieu Ltd.

Germany
Local consultant:
Dr Joachim Hartlik, Doctoral degree (Dr.-Ing.)

Stakeholders:
Dr. Stefan Balla, Bosch & Partner, Büro Herne
Dr. Heinz-Joachim Peters, Fachhochschule Kehl

Greece
Local consultant
Mr Vassiliki Romeliotou, Environmental Law Expert, Society for the Protection of Prespa, Associate Consultant to EXERGIA

Stakeholders:
Angeliki Psaila, EIA/SEA Expert, Special Environmental Service, Ministry of Environment, Physical Planning and Public Works
Thalia Statha, EIA/SEA Expert, Special Environmental Service, Ministry of Environment, Physical Planning and Public Works

Hungary
Local consultant:
Dr Csaba Kiss, Environmental Attorney

Stakeholders:
Prof. Gyula Bándi (head of Department of Environmental Law at Pázmány Péter Catholic University-PKKE and president of EMLA)
Dr. Péter Vágó (public interest environmental lawyer at Miskolc Sustainable Development Institute with extensive EIA experience)

Ireland
Local consultant
Mr Norman Sheridan, Barrister, Sheridan Chambers

Stakeholders:
Professor Yvonne Scannell, Trinity College, Dublin
Dr Michael Ewing, Social Partnership Coordinator for the Irish Environmental Network

Italy
Local consultant
Ms Michela Latini, Legal Expert and Business Development Manager

Latvia
Local consultant:
Mr Aigars Gozitis, Associate, Attorneys at Law "Lejiņš, Torgāns & Partneri

Stakeholders:
Deputy Director of the Environment State Bureau - Arnolds Lukšēvics;
Senior Official of the Ministry of the Environment, Department of Environmental Protection, Environmental Quality Unit - Sandija Sniķere

Lithuania
Local consultant
Mr Domas Balandis, Attorney-at-law, Law Office Domas Balandis

Stakeholders:
Vitalijus Auglys, Head of Environmental Impact Assessment Division of the Ministry of Environment

Mindaugas Raulinaitis, JSC 'Strateginiai Transporto Sprendimasi', Zalgirio 90-402, Vilnius (leading SEA specialist).

Luxembourg
Local consultant
Ms Nathy Rass-Masson, Legal advisor, Milieu Ltd.

Malta
Local consultant
Ms Emma Psaila, Legal expert, University of Cambridge, Research Services Division.

The Netherlands
Local consultant
Ms Sophie Vancauwenbergh, Legal Adviser, Milieu Ltd.

Stakeholders:
Ms. Pascale van Duijse (Dutch Ministry of Housing, Spatial Planning and the Environment, VROM)
Mr. Steven Pieters (Netherlands Commission for Environmental Assessment, NCEA)

Poland
Local consultant:
Ms Magdalena Bar, Partner, Legal Expert, Jendroska Jerzmanski Bar i Wspolnicy
Mr Jerzy Jendroska, Doctor of Laws (LLD - PhD), Jendroska Jerzmanski Bar i Wspolnicy

Stakeholders:
Katarzyna Kot, Environment Ministry, SEA specialist
Sergiusz Urban, EIA/SEA specialist in the Regional Environmental Fund in Poznan
Pawel Karpinski, official at the Marshall Office in Wroclaw

Portugal
Local consultant
Ms Teresa Amador, Director, Ecosphere – consultants in environment and development
Mr José Bettencourt, Project director, Ecosphere – Consultants in environment and development

Stakeholders:
The interview was undertaken with Eng. Margarida Marcelino senior officer of APA in charge of SEA.

Slovakia
Local consultant:

Assoc. Prof. Vladimir Ira, Ph.D., Institute of Geography, Slovak Academy of Sciences

Sweden
Local consultant:
Tatsiana Turgot, Laywer, COWI A/S

Stakeholders:
Mr Sten Jerdenius
Enheten för hållbar utveckling
(Division for sustainable development)
Miljödepartementet (Ministry of the Environment)
Ms Anna Wahlström, Naturvårdsverket
(Swedish Environmental Protection Agency)

Spain
Local consultant
Ms Lola Manteiga, TERRA Ecogest

Stakeholders:
Antonio Laguna. INYPSA. Expert.
Enrique Segovia. WWF-ADENA.
David Howell. SEO-Birdlife.
Juan Carlos Atienza. SEO-Birdlife.
José Ramón Molina. TECNOMA. Expert.
Raúl Bueno. INYPSA. Expert.
Ignacio Gamarra. Ministry of the environment. Administration.

Romania
Local consultant
Ms Luminita Elena Dima, Scientific Secretary of the Council of the Law Faculty of the Bucharest University

Stakeholders:
Eng. Margarida Marcelino senior officer of APA in charge of SEA.

Slovenia
Local consultant
Mr Borut Santej, Director, IPO

Stakeholders:
Vesna Kolar Planinšič (head of SEA Unit at the MEPP)
Urša Šolc, OIKOS d.o.o., Domžale
Mojca Hrabar, Oikos d.o.o. Domžale

The UK
Local consultant
Mr Norman Sheridan, Barrister, Sheridan Chambers

Stakeholders:
Environmental Assessment Team at the Department of Communities and Local Government, in particular
Robert Lowenstein
Roger Smithson and
Tanya Burdett,
for their comments and discussions.

Roger Smithson
Environmental Assessment Team
Department of Communities and Local Government
Zone 1/G10
Eland House
Bressenden Place
London SW1E 5DU

Appendix 4 Questionnaire on the application and effectiveness of the SEA Directive

Questionnaire

First Report to the European Parliament and the Council on the Application and Effectiveness of the SEA Directive

I. General Implementation

1. Give a website with your MS's/region's legal SEA provisions (will consulting this will give access to your legal framework)?

2. Are there elements in your legislation that go beyond the bare requirements of the Directive? What are the most important ones?

3. How many SEAs are carried out on average each year (2006 or latest data) at your government level?

II. Scope

4. Do you specify or list types of plans and programmes subject to the Directive, do you take a case-by-case approach, or do you use a combination of both approaches? If you specify or list types of plans and programmes, which types are covered?

5. How is the determination of the "likely significant effects" of a plan or programme laid down in the legislation? Are there any requirements in addition to the significance criteria in Annex II? If yes, which ones?

6. Do you define or interpret "administrative provisions" (Art.2(a)) in guidance? If so, please provide details?

7. Do you define or interpret "setting the framework for future development consent of projects" (Art.3(2)(a))? If so, how?

8. Do you define or interpret "small areas at local level" and "minor modifications to plans and programmes"? If so, how are they defined?

III. Procedure/Process

9. At what stage in the preparation of the plan or programme does the SEA process usually start? (e.g. is it carried out in parallel with the planning process, or does it start when the draft plan or programme is available, etc.).

10. Are SEA procedures integrated into existing procedures for the preparation and adoption of plans and programmes, or are they separate procedures which were established to comply with the Directive? (If there are differences between sectors or types of plan or programme, please outline in general terms these differences).

11. Are there any provisions to avoid duplication of assessment between different levels in hierarchies of plans and programmes (Art.4(3))? If so, please describe for each relevant type of plan or programme, if possible.

12. How do you identify "the public" and “relevant non-governmental organisations” (Art.6(4))? Are they specified in legislation or defined on a case by case basis?

13. Which methods are used for public consultation within SEA? Are there more opportunities for the public to participate than required by the Directive?

Does this differ for each type of plan or programme?

14. How do you define authorities with "specific environmental responsibilities" (Art.6(3))? Are they specified in legislation or defined on a case by case basis?

15. Is the environmental report made available to the public, for consultation, at the same time as the draft plan or programme (Art.6)?

If no, please explain at what points in the preparation of the plan or programme these documents are made public.

16. Do you have requirements for informing/notifying the public and authorities concerned on the final decision (Art.9)?

If so, who is responsible for this and what items are made available upon such notification?

IV. Content

17. How is scoping (deciding on the information to be included in the environmental report) carried out? It’s done according to elements of Annex I – in particular Annex I, f. Is there a scoping report?

If yes, what does it typically include?

18. Is there a definition of "reasonable alternatives" (Art.5(1))?

Are there any requirements concerning the number of reasonable alternatives?

What types of alternatives are usually assessed, and do they include the alternative “do nothing”?

19. Are there any requirements concerning assessment methods?

What kinds of methods are used?

Are there any special problems (e.g. methodological ones) with assessment of plans and programmes?

20. Do Environmental Reports provide more information than listed in Annex I (e.g. social or economic aspects)?

If yes, what additional information is provided?

21. Are there any requirements on the content of a Non-Technical Summary?

If so, does it cover all elements listed in Annex I of the SEA Directive?

V. Transboundary SEA

22. Have there been any cases of transboundary SEA consultations, either initiated by your MS or by another MS?

23. Were you satisfied with the way that transboundary consultations were carried out?

If there are some weaknesses in the consultation process, how could these difficulties be overcome?

24. Have bilateral agreements for SEA been set up?

VI. Relationship with other directives and policies

25. What issues have you identified with regard to the relationships between the SEA Directive and other Directives and EU level policies, such as the:
    i. Habitats Directive (92/43/EEC)
    ii. Birds Directive (79/409/EEC)
    iii. Environmental Impact Assessment Directive (85/337/EEC, as amended)
    iv. Seveso Directive[122] (96/82/EC)
    v. EU Action Plan "Halting the loss of biodiversity by 2010 - and beyond"
    vi. Other - please specify

26. Does SEA help in undertaking EIA? If so, in what ways?

27. Do certain 'objects' have joint SEA and EIA?

If so, please describe in more detail what type of developments they referred to. How are any such overlaps resolved?

[122] The Seveso II Directive (96/82/EC) - amongst other provisions - requires in its Article 12 the Member States in their land-use planning around hazardous installations and and/or other relevant policies to take into account the objectives of preventing major accidents and limiting the consequences of such accidents.

VII. Effectiveness

28. Have the SEA requirements changed the processes for preparing plans and programmes? If so, in what way(s)?

29. Have SEAs changed the content of plans or programmes? If yes, what are some typical changes?

30. What are the most common difficulties in preparing Environmental Reports in practice? How could they be overcome?

31. Is SEA used more like a planning tool (e.g. focusing on the elaboration of alternatives and integrating environmental issues via SEA, prior or parallel to the plan or programme-making process) or an assessment tool (focusing on the effects of the draft plan or programme when it has been prepared)?

32. Do you have any estimates/data of costs of preparation/writing and procedural steps (administrative burden) of the SEA process?

33. Do you have any information on the main benefits of SEA?

Do these differ by type or level of plan or programme? Can you provide examples?

VIII. Further technical issues

34. How long does the SEA process take (on average)? Does SEA prolong the plan/programme-making process?

35. Which tools (e.g. guidance, electronic tool kit) exist to support practical SEA implementation?

IX. Feel free questions

36. Have you found any difficulties in assessing secondary, cumulative, synergistic, short, medium and long term, permanent and temporary, positive and negative effects (Annex I(f))? If so, how could these difficulties be overcome?

37. How is the SEA process carried out? (e.g. is it done by separate working groups or are officials responsible for SEA included in the working group that prepares the plan?)

38. In what respects, if any, do you think there is scope for changes to the SEA Directive (e.g. procedures, the degree of detail in Annex I, areas/sectors or types of plans or programmes)?

39. Is there any need for further SEA guidance or any other support at the EU level? If so, please provide suggestions.

40. Do you have any further remarks you would like to make concerning the application and effectiveness of the SEA Directive?