



Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
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Strategic environmental assessment

Formal references	
2001/42/EC (OJ L197 21.7.2001)	Directive on the assessment of the effects of certain plans and programmes on the environment
Proposed 16.1.96 – COM(96)511	
Legal base	Article 192 TFEU (originally Article 130s EEC Treaty)
Binding dates	
Formal compliance	21 July 2004
Commission to report on effectiveness of the Directive	21 July 2006

Purpose of the Directive

The Directive requires authorities to undertake an environmental assessment of certain plans and programmes which are likely to give rise to significant effects on the environment. The process of assessing plans and programmes is generally referred to as ‘strategic environmental assessment’ (SEA). It sets out standard procedures for undertaking an environmental assessment, and complements the Environmental Impact Assessment (EIA) Directive [85/337/EC](#) on the assessment of projects, by requiring an assessment, normally at an earlier stage than for projects, in the planning process.

Summary of the Directive

Screening

Screening is the process of determining whether an SEA is required or not. An environmental assessment is required for certain plans and programmes prepared or adopted by national, regional or local authorities, where these are ‘required by legislative, regulatory or administrative provisions’. Consequently, an SEA covers in general only public plans and programmes (it might in some cases apply to privatized utilities).

An SEA is always required for:

- Plans and programmes which are prepared for 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 the EIA Directive [85/337/EC](#) (Article 3(2a)).
- 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 [92/43/EEC](#) (Article 3(2b)).

An SEA might be required for:

- Plans and programmes of Article 3(2) covering small areas at local level or minor modifications but are still likely to have significant environmental effects (Article 3(3)).
- Any plans and programmes, other than those referred to in Article 3(2), which set the framework for future development consent of any projects that are likely to have significant environmental effects (Article 3(4)).

For those plans and programmes which might require an SEA, Member States have to follow specific criteria to assess whether these plans and programmes are likely to have significant environmental effects. This determination can be done on a case-by-case basis or by specifying types of plans and programmes or by combining both approaches. In all these cases, Member States have to take into account the relevant criteria listed in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by the Directive.

National defence or civil emergency plans and programmes as well as financial or budget plans and programmes are exempt from the Directive.

Scoping and environmental report

Scoping is the term that sets the coverage and detail of the SEA process. Where an environmental assessment is required an environmental report has to be prepared, which identifies significant environmental impacts and reasonable alternatives to the plan or programme, taking into account the objective and the geographical scope of it. The information required for the environmental report is listed in Annex 1 and consists of:

- A description of the plan or programme.
- Relevant aspects of the current state of the environment, and its likely evolution in the absence of the plan or programme.
- The environmental characteristics of areas likely to be significantly affected.
- Specific environmental problems, in particular in relation to areas of particular environmental importance.
- Relevant environmental protection objectives established at international, Community or Member State level, and how they have been taken into account in the preparation of the plans or programme.
- The likely significant effects, including ‘secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary, positive and negative effects’, on:
 - Biodiversity;
 - Population;
 - Human health;
 - Fauna;
 - Flora;
 - Soil;
 - Water;
 - Air;
 - Climate;
 - Material assets;
 - Cultural heritage, including architectural and archaeological heritage;

- Landscape; and
- The inter-relationship between the above factors.
- Measures proposed to offset any significant adverse effects on the environment.
- Reasons for selecting the options chosen, rather than reasonable alternatives (which must be described and evaluated).
- A description of proposed monitoring measures.
- A non-technical summary of the above.

The environmental report has to include the above information, which may be reasonably required, taking into account current knowledge and methods of assessment, the contents and level of detail of the plan or programme as well as its stage in the decision-making process.

Consultations and public participation

Member States have to designate appropriate environmental authorities to be consulted during the different stages of the SEA process. In identifying the types of plans and programmes that might require an SEA (Articles 3(3) and 3(4)) these environmental authorities have to be consulted. They are also to be given an ‘early and effective opportunity to express their opinion’ both on the draft plan or programme, and the environmental report. Member States are also to identify the public to be consulted, including individuals or groups affected by, or having an interest in, the plan or programme, including environmental NGOs. Where a plan or programme is likely to affect significantly the environment in another Member State, consultations are to take place over a reasonable time-frame.

Following the adoption of the plan or programme, environmental authorities, the public and any other Member States are to be informed and the following items are to be made available to these:

- The plan or programme as adopted.
- A statement of how the environmental report and the results of consultation have been taken into account and an explanation of why that plan or programme was adopted rather than other reasonable alternatives.

Monitoring

Member States are required to monitor the significant environmental effects of the implementation of plans and programmes as part of the SEA in order to identify any unforeseen adverse effects, and to enable remedial action to be taken.

Development of the Directive

The view that a comprehensive system of environmental assessment should be established, going beyond the assessment of projects only, emerged from Commission studies as early as the 1970s. It was argued that project environmental assessment may take place too late in the planning process to avoid significant environmental damage, and cannot anyway take account of the cumulative impact of many individual projects. Therefore, the policies, plans and programmes that subsequently give rise to such projects should themselves be the subject of assessment.

Accordingly, at the time of the adoption by the Council of the EIA Directive 85/337/EEC, the Commission indicated that it would consider the possibility of extending its field of application, and both the Fourth and the Fifth Environmental Action Programmes contained commitments to this effect.

The first internal draft of a Commission proposal was dated January 1991, and it was to take ten years of negotiations before a Directive was finally agreed. This long gestation period reflected major technical difficulties associated with the concept of SEA, and the political opposition of several Member States, including at first the United Kingdom, on the grounds of practicability and subsidiarity.

Major problems concerned the scope of any future Directive, and in particular the definition of a number of key terms. The Commission's 1991 internal draft was a proposal for the environmental assessment of policies, as well as plans and programmes. However, the draft acknowledged that the meanings of the terms 'policy', 'plan' and 'programme' were variable and overlapping, and were therefore 'not distinguished in the provisions contained in this Directive'. A subsequent internal draft sought to sidestep this problem by referring only to 'planning strategies'.

By the time the Commission's proposal was formally published in 1996 (COM(96)511), its scope was restricted to certain plans and programmes only, exclusively related to town and country planning. In this and all subsequent drafts (including the Directive as agreed), there was no definition of 'plans' or 'programmes' that might enable them to be distinguished from the 'policies' that were now excluded from the scope of the Directive. This opened the possibility that Member States could avoid the obligations of the Directive by arguing that their plans and programmes were in fact policies, and therefore exempt.

Implementation of the Directive

The national transposition measures for Directive 2001/42/EC can be found in the Member States' national [execution measures](#).

In 2008 the Commission published a guidance document¹ clarifying the scope and definition of project categories in Annexes I and II of the EIA Directive 85/337/EEC. It aims to ensure that those projects likely to have significant effects on the environment do not fall outside the scope of the EIA Directive due to issues of interpretation. In a similar manner, the clarification of project categories is also useful for the SEA Directive, as it covers plans and programmes that set the framework for future development consent for Annex I and II projects of the EIA Directive.

In September 2009 the Commission published a Communication ([COM\(2009\)469](#)) on the application and effectiveness of the SEA Directive. According to this Communication, only a very few Member States reported that they had established monitoring methods or drawn up national guidance on how to establish monitoring indicators. The lack of appropriate national guidance raises the question of the effective implementation of the monitoring provision in these Member States. The Communication found that there is a need to develop capacity in the Member States so as to ensure effective implementation of the SEA Directive. In order to do this, the Communication points out, capacity building must be strongly encouraged, in

particular through targeted campaigns for the recruitment and training of SEA experts and guidance documents.

According to the accompanying document of the 26th annual report on monitoring the application of Community law ([SEC\(2009\)1684/2](#)), the SEA Directive is relatively recent and there is not sufficient experience of its implementation. Given the similar nature of the obligations between the EIA and SEA Directives, it is to be expected that problems in the correct application of the SEA Directive will be similar to those encountered in applying the EIA Directive.

Enforcement and court cases

The deadline for transposing the SEA Directive expired on 21 July 2004, but significant delays in transposition occurred in many Member States. For this reason, the Commission launched non-communication infringement proceedings against many Member States. In three cases (Estonia, Ireland and Denmark), the Commission continued the infringement procedure in 2009 by issuing reasoned opinions. In addition, one infringement procedure, based on a complaint, was launched in 2009 against Bulgaria for poor application of the SEA Directive.

In October 2009 the European Commission notified Slovakia, Portugal and Belgium that their national legislation did not meet the requirements of the Directive. In Slovakia the transposing legislation did not include the requirement on informing the public of why an impact assessment is not required. In Belgium the national legislation did not cover consultation of neighbouring countries in case of transboundary impacts. In the case of Portugal authorities were not required to divulge reasons for not carrying out an SEA or to provide a statement summarising how environmental considerations had been integrated into the plan or programme. As a consequence a reasoned opinion was sent to Portugal and Belgium² on 24 November 2010 and to Slovakia³ on 16 February 2011.

Cases [C-105/09](#) and [C-110/09](#) are judgements by the ECJ to the Belgian Conseil d'État to clarify the requirements for screening. The Belgian Conseil d'État queried whether a programme for the management of nitrogen in agriculture, which is required under Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources, is liable to constitute a plan or programme covered under the SEA Directive. The Court ruled that the action programme of Directive 91/676/EEC is such a plan or programme. It also ruled that the action programme sets the framework for future development consent of projects listed in Annexes I and II of the EIA Directive 85/337/EEC, and hence is covered by the SEA Directive. The Court argued that the action programme adopted under Directive 91/676/EEC provide for some measures that can be required for future development consent for projects under the EIA Directive, The ruling is relevant as it helps to define what plans and programmes are covered by the SEA Directive.

Further developments

In the longer term, a Communication ([COM\(2010\)538](#)) and an accompanying study⁴ on the application and effectiveness of the SEA Directive mentions the possibility of expanding the SEA Directive to cover policies and legislative proposals to better match the scope of the SEA Protocol to the Espoo Convention, which subsequently entered into force on 11 July

2010. However, the requirement of the SEA Protocol to cover policies and legislation is not a strict requirement and gives Parties the opportunity to apply the environmental assessment for policies and legislation more flexibly than for plans and programmes.

The Communication also considers extending the scope of the SEA Directive better to address certain issues such as climate change, biodiversity and risks as well as reinforce synergies with other pieces of environmental legislation.

The International Association for Impact Assessment (IAIA) in cooperation with the European Commission, Polish EU Council Presidency and the United Nations Economic Commission for Europe organized a special conference⁵ on Strategic Environmental Assessment in September 2011 to celebrate the 10 year anniversary of the SEA Directive. At the conference there was a broad consensus for the need to adapt the SEA Directive to new challenges and opportunities as well as move towards an SEA that would also recognise positive impacts, such as those provided by ecosystem services. Even so, it is unlikely that any review of the SEA Directive will take place before 2016.

Related legislation

The following Directives are related to the Directives concerned with SEA:

- Directive [85/337/EEC](#) on the effect of certain public and private projects on the environment.
- Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora.
- Directive [2008/1/EC](#) concerning integrated pollution prevention and control.
- Directive [96/82/EC](#) on the control of major accident hazards involving dangerous substances.

References

1 European Commission (2008) *Directive 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment (EIA Directive), Interpretation of Definitions of Certain Project Categories of Annex I and II of the EIA Directive*, European Communities.

2 EC Press Release (2010), *Environment: Commission asks Belgium and Portugal to comply with EU legislation on strategic environmental assessments* 24.11.2010, European Commission webpage.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1564&format=HTML>
Accessed 6.4.2011.

3 EC Press Release (2011), *Environment: Commission asks Slovakia to comply with EU legislation on strategic environmental impact assessments* 16 February 2011, European Commission webpage.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/176&format=HTML>
Accessed 6.4.2011.

4 European Commission (2009) *Study Concerning the Report on the Application and Effectiveness of the SEA Directive*, January 2009.

5 IAIA (2011), *SEA Implementation and Practice; Making an Impact?* Final Programme, Prague 21-23 September 2011.

http://www.iaia.org/SpecialMeetings/Prague11/documents/Final%20program%20Prague%2011_web.pdf