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

Final Study
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List of abbreviations

AA    Appropriate Assessment
AC    Spanish Autonomous Communities
AoS   Appraisals of Sustainability (UK)
BAU   Business as Usual
CAP   Common Agricultural Policy
CEF   Connecting Europe Facility
CF    Cohesion Fund
CJEU  Court of Justice of the European Union
CO2   Carbon dioxide
CPR   Common Provisions Regulation
Defra Department for Environment, Food & Rural Affairs (UK)
DGOTDU Directorate General of Spatial Planning and Urban Development (Portugal)
EA    Environmental Assessment
EAFRD European Agricultural Fund for Rural Development
EAP   Environmental Action Plan
EBRD  European Bank for Reconstruction and Development
EC    European Commission
EIA   Environmental Impact Assessment
EIB   European Investment Bank
ELY   Centres for Economic Development, Transport and the Environment (Finland)
EMFF  European Maritime and Fisheries Fund
ERDF  European Regional Development Fund
ESF   European Social Fund
ESIF  European Structural and Investment Funds
ESPON European Observation Network for Territorial Development and Cohesion
EU    European Union
EU2020 Europe 2020 Growth Strategy
GDP   Gross Domestic Product
GHG   Greenhouse gas
GIS   Geographic information system
IROPI Imperative reasons of overriding public interest (Habitats Directive)
ISPRA Istituto Superiore per la Protezione e Ricerca Ambientale (Superior Institute for Environmental Protection and Research) (Italy)
MEPA  Malta Environmental & Planning Authority
NCEA  Netherlands Commission for Environmental Assessment
NGO   Non-governmental organisation
NOVANA Danish national monitoring programme
NPS   National Policy Statements (UK)
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<td>NSIP</td>
<td>Nationally significant infrastructure projects (UK)</td>
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<td>NTG Plan</td>
<td>National Electric Transmission Grid Investment and Development Plan 2009-2019 (Portugal)</td>
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<td>OP</td>
<td>Operational Programmes</td>
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<td>PCI</td>
<td>Projects of Common Interest</td>
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<td>PoM</td>
<td>Programme of Measures (MSFD and RBMP)</td>
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<td>R&amp;D</td>
<td>Research and development</td>
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<td>RBMP</td>
<td>River Basin Management Plans</td>
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<td>RDP</td>
<td>Rural Development Programmes</td>
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<td>REFIT</td>
<td>Regulatory Fitness and Performance Programme</td>
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<td>REN</td>
<td>Rede Electrica Nacional (Portuguese TSO)</td>
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<td>RSDS</td>
<td>Renewed Sustainable Development Strategy</td>
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<td>SDS</td>
<td>Sustainable Development Strategy</td>
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<td>SEA</td>
<td>Strategic Environmental Assessment</td>
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<td>TEN</td>
<td>Trans-European Networks</td>
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<td>TEN-E</td>
<td>Trans-European Networks for Energy</td>
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<td>TEN-T</td>
<td>Trans-European Networks - Transport</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>TSO</td>
<td>Transmission System Operator</td>
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<td>TYNDP</td>
<td>Ten-year-network development plans</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNECE</td>
<td>United Nations Economic Commission for Europe</td>
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<td>WCED</td>
<td>World Commission on Environment and Development</td>
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<td>Water Framework Directive</td>
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Executive Summary

Introduction

Purpose and scope of the study

The objective of this study is to provide the Commission with information on Member States’ progress and challenges experienced in the application of the Council Directive 2001/42/EC (‘SEA Directive’) on the assessment of the effects of certain plans and programmes on the environment for the period 2007-2014. The study first analyses the practical implementation of the SEA Directive across all 28 Member States. It then evaluates the performance of the legislation from a broader perspective to understand how environmental considerations have been integrated into planning processes and the extent to which the SEA Directive contributes to achieving better and more coherent planning. The Commission proposed 10 evaluation questions, which have been organised according to the five evaluation criteria presented in the Commission’s Better Regulation Guidelines: effectiveness, efficiency, relevance, coherence and EU added value.

Methodology and information sources

The evidence for the study was collected from a range of sources and perspectives. To assess SEA implementation, the project team first reviewed Member States’ replies to the Commission’s questionnaire on the application and effectiveness of the SEA Directive. This information was complemented by additional desk research at Member State level and consultation with the Member States’ experts to gain a more comprehensive understanding of the situation on the ground. Literature review was then carried out to establish state-of-the-art knowledge and thinking on SEA, followed by consultation with SEA experts and practitioners: four focus groups were organised in order to validate preliminary findings and cover any potential gaps in the available information.

Overall findings

The comprehensive review of opinions, experience, factual reporting and other evidence collected for this study has resulted in an array of findings and conclusions about the performance of the SEA Directive across the EU since its adoption. Overall, a positive trend was observed in the progress made in the implementation of the SEA Directive. Patterns of good (and poor) practice have emerged, centred around a number of areas where improvements in implementation could be considered by the Commission, Member States, plan/programme developing authorities, environmental authorities, practitioners and other stakeholders.

Legal and administrative arrangements in Member States

The SEA legislative framework varies across Member States, depending on their administrative structure. The majority of the Member States have introduced new legislation, specific to the SEA Directive, while others have integrated the Directive’s requirements into existing arrangements, including the legal act in place transposing the EIA Directive. Many Member States also implemented numerous amendments to existing sectoral legislation, in particular the spatial planning legislation and other sectoral legislation (nature protection, water etc.). Since 2007, the legislation transposing the SEA Directive has been subject to changes in more than half of the
Member States. These were usually either triggered by infringement procedures initiated by the Commission, or applied in order to address specific shortcomings experienced in the practical implementation of the Directive.

Depending on their specific administrative structure and culture, the 28 Member States have chosen different organisational arrangements to implement the Directive. In the majority of Member States the plan/programme developing authority is the authority in charge of the preparation and adoption of the plan or programme subject to the SEA procedure. While in some Member States the ministry of environment or an environmental agency is considered to be the ‘concerned authority with specific environmental responsibilities’ who must be consulted, in other Member States they can assume a more important role throughout the procedure, closely cooperating with the plan/programme developing authority, or even directly leading the SEA process itself. In addition, other Member States have a specifically designated body to supervise and check the quality of the SEA procedure and outcome.

Handling the main stages of SEA - Implementation status

Determination of the application of the Directive: The majority of Member States have encountered no problems in determining the scope of application of the SEA Directive. Most reported that their model is based on a combined approach, whereby the list of plans and programmes to be assessed is supplemented by a case-by-case determination of whether an SEA is needed. Around half of the Member States have either literally transposed Article 3(2), or made only minor adjustments and additions to the type or name of sectoral planning documents that must undergo SEA. Several Member States, to ensure greater clarity in the application of the Directive, have defined a more exhaustive list of plans and programmes covering a wider range of sectors. Likewise, most Member States have literally transposed the phrases ‘setting the framework for future development consent of projects’, ‘small areas at local level’ and ‘minor modifications to plans and programmes’, as provided in Articles 3(3) and 3(4) of the Directive, preferring to maintain a margin of discretion in the application of the requirement on a case-by-case basis.

The majority of Member States reported that there were no major problems with the screening process of the SEA Directive. However, two issues were raised by a minority of Member States. Some Member States still struggle to determine which plans or programmes should undergo a screening procedure (Article 3(3) and 3(4)) and wish to have more guidance for the interpretation of these articles at the European level. In practice, the exact outcome of the case-by-case approach depends largely on the available data and the experience of the responsible authorities.

Scoping: Article 5(1) refers to Annex I of the SEA Directive which specifies the information that is to be provided in the Environmental Report. The organisation of the scoping process, however, is entirely at Member States’ discretion with the only obligation that the authorities with specific environmental responsibilities and who are likely to be concerned by the environmental effects of implementing plans and programmes (as established in Article 6(3)) are consulted on the scope of the Environmental Report (Article 5(4)). As a result, it is the responsibility of the designated authority to decide on the detail of the procedures on an ad hoc basis. Depending on the type of plan and programme concerned:

- Around one-third of Member States require a scoping report by law. Another one-third, while not legally requiring a scoping report, have become accustomed to preparing one.
The role of the public authorities also varies, with some Member States requiring the environmental authority to give the final approval, while others only receive comments from them.

**Baseline reporting:** Very few Member States have legislative requirements on the description of the current environmental status beyond those contained in Annex I of the SEA Directive. Detailed baseline reporting is most often seen on small-scale plans, as information is more readily available and the plans tend to be very location-specific. Some Member States reported that the baseline scenario normally equates to the ‘zero alternative’ when considered as the continuation of the existing plan. The most common challenges faced by Member States with respect to baseline reporting were data-related: lack of relevant data, costs of collecting data, and uncertainties about the level of detail required.

**Environmental Report:** About half of the Member States reported that the content of their Environmental Reports goes beyond the requirements of the Directive: additional social and economic factors may be assessed and, in a few cases, assessment of the impacts on human health is specifically requested. Other Member States specifically require the results of public consultations to be included in the Environmental Report.

**Reasonable alternatives:** A clear definition of ‘alternatives’ is not proposed in the Directive. As a consequence, most Member States do not explicitly define them. Other Member States offer explanation in their guidance documents. There is no standardised approach to the types of alternatives assessed, as they normally depend on factors such as the scope of the plan, the geographical area impacted by the plan, and the socio-economic needs of an area. Several views exist with respect to the ‘zero alternative’ – whether it means no development at all, or whether development is to continue as it has been. Alternatives most often assessed are location alternatives, qualitative and quantitative alternatives, or technical alternatives. Alternatives can be difficult to determine if the plan or programme is too general, or if it is too early in the plan-making process. Conversely, often alternatives are developed too late in the plan-making process, when it is difficult to bring about substantial change to the plan.

**Assessment of impacts:** Information about the current environmental situation is normally used as a starting point when assessing the impacts. The method used for the assessment of impacts is usually decided on a case-by-case basis. Qualitative methods were mentioned most often, given that quantitative analysis is more difficult.

Member States reported a variety of challenges in preparing good quality Environmental Reports, both in terms of content and process:

- Availability and quality of data.
- Expertise of practitioners and authorities.
- Time (both spent and allowed).
- Clarity on applicability of legislation.

**Consultation and public participation:** Member States have reported that consultation of the concerned authorities and the public is well developed and employs a wide range of methods. Consultation with the concerned authorities takes place either through participation at meetings or committees, through ad hoc communication, informal meetings or formal letters. Although the Directive does not require the public to be involved in the scoping process, in some Member States, the public is involved, through receiving information or having the opportunity to make written comments. In all Member States, the Environmental Report is made available to the public at the same
time as the draft plan or programme, giving the public sufficient time to express opinions and contribute to the development of the Environmental Report before the formal adoption of the plan or programme. There are, however, some exceptions in some Member States depending on the type of plan and programme in question. In these cases, the Environmental Report may be made public earlier, or later, when the draft plan/programme has been finalised. Finally, in some Member States, consultation requirements or practices include the organisation of a consultation meeting or public hearing.

Monitoring: Many Member States were unable to comment on monitoring practices. Several noted that they depend on the type of plan and are carried out using standard monitoring indicators or defined on a case-by-case basis. Several Member States have environmental monitoring systems in place, which are laid out in national legislation and used during the implementation of the plan and programme or based on the requirements set out in other EU Directives.

Following the completion of the SEA procedure: After the SEA procedure is completed, the results must be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure (Article 8). At least 11 Member States indicated that the decision taken by the environmental authority is binding. These decisions may either refer to the approval of the Environmental Report, or may dictate how the results of the public consultation and the Environmental Report are to be taken into consideration during the final decision on the plan or programme. The extent to which the results of the SEA are taken into account in the final decision on the plan or programme appears to vary. While the issue was not covered by the Commission’s questionnaire, some of the Member States’ experts consulted noted that this may often depend not only on the existence of a binding decision by the environmental authority, but often on the individuals involved in the decision-making process, and how committed they are to the objectives of the SEA Directive.

Evaluation of effectiveness, efficiency, relevance, coherence and EU added value of the SEA Directive

Effectiveness
All Member States and stakeholders consulted recognised some sort of influence of the SEA in the planning process, agreeing that there have been improvements in the way SEA is conducted that have led to better quality plans and greater environmental emphasis in earlier stages of planning processes. However, views differ with regard to the actual changes in procedures or the content of plans and programmes that have been brought about by SEA, depending on the type of plan and programme in question. The consideration of alternatives and the inclusion of mitigation and monitoring measures were most frequently mentioned. SEA was more likely to have an influence on land use planning documents rather than in sectoral or national-level planning documents where political pressure is higher and strategic decisions are often taken in advance with little margin for alteration. Key factors that influence the success of the SEA Directive are:

• Starting the SEA procedure earlier, at or close to the time of the start of the planning process which is becoming more common in many Member States.
• Appropriate consideration of alternatives. There are still many problems in the way alternatives are identified and assessed. The assessment goal is often more focused on mitigating negative impacts rather than improving the plan or programme by enhancing positive impacts to fully support sustainable development.
Public consultation. Member States and stakeholders agreed that SEA provides opportunities for early engagement of the public. However, there are mixed opinions on the added value of public consultation at different stages of the SEA procedure (e.g. at the very end of the process when there is little margin to influence the procedure). The organisation of a meeting or public hearing is considered an opportunity to share information in a more effective and concentrated way.

A tailored scoping process: Environmental Reports are often overly comprehensive and not sufficiently tailored to the assessment needs, resulting in inefficiency.

Lack of ownership and understanding of the administrative requirements of the SEA procedure on the part of plan/programme developing authorities and practitioners, particularly at the local level.

Good communication and collaboration approaches across authorities (the plan/programme developing authorities, the environmental authorities and the practitioners).

The promotion of a community of practice among practitioners has helped to enhance collaboration practices and consequently facilitated the share of information and knowledge among practitioners in some Member States.

The existence of adequate review and quality assurance mechanisms which is, however, the case only in few Member States.

Efficiency

SEA tends to be perceived as a cost-effective mechanism for assessing and addressing the environmental impacts of plans and programmes in many Member States, although quantitative evidence is lacking to support this perception. Cost-effectiveness depends on the type of plan/programme and the way in which it is carried out; doing so in a timely, adaptive and tailored manner is a pre-condition for cost-effectiveness. The most significant categories of direct costs are those related to:

- Implementation: the costs incurred by the authorities in familiarising themselves with new or amended regulatory obligations.
- Staff time devoted to completing the activities required to achieve regulatory compliance.
- External consultancy services.

The main potential indirect costs relate to procedural delays with regard to the plans and programmes subject to SEA.

The main categories of benefits associated with SEA have to do with its capacity to:

- Identify significant adverse effects at an early stage and assess alternatives.
- Bring about solid decision-making that leads to legal security and fewer judicial procedures; greater transparency accelerates decision-making (with time and cost savings); facilitate follow-up decision-making, thanks to the anticipation of issues that would otherwise be addressed only at the EIA stage.
- Increase public awareness, ownership and acceptance.
- Acknowledge and assess cumulative impacts and help to avoid the costs for EIA procedures for projects that are environmentally ‘unacceptable’.
- For EU funded programmes, SEA can contribute to prioritising projects that are sustainable from an environmental perspective.

In some cases it was found that authorities tend towards a precautionary approach to carrying out SEA, which can result in overly comprehensive (lengthy yet superficial) Environmental Reports that are not tailored to either the analytical needs nor the
priority environmental impacts, and which inflate SEA-related costs without necessarily generating any of the expected benefits.

The lack of counterfactual evidence and comparable quantitative estimates for SEA-related costs, as well as the virtual absence of estimates for benefits, make it impossible to fully assess the efficiency of the SEA Directive’s implementation in terms of costs vs benefits. Furthermore, a reliable understanding of benefits would require more time to account for certain environmental impacts, as well as allow for delays in transposition in certain Member States.

Relevance
The focus of the SEA Directive is protection of the environment. The SEA Directive directly contributes to the environmental pillar of sustainable development, but it also has ‘a view to promoting sustainable development’ overall. The evidence gathered suggests that SEA has been successful in helping to incorporate previously neglected environmental concerns with plans and programmes. The SEA Directive, therefore, appears very relevant to the environmental pillar of sustainable development as it addresses the sustainable development policy guiding principle of integrating environmental concerns within policy, through the assessment of plans and programmes at a strategic level. Although some Member States already require additional economic and social aspects to be covered and reported on in their SEAs, this is not widespread across the EU. Nevertheless, with its stated aim to promote sustainable development overall, and specific role in promoting the integration of environment into plans and programmes that are typically driven by socio-economic priorities, the SEA Directive has the potential to continue to support EU sustainable development as the concept evolves in both common understanding and relevant legislation and policy.

Coherence
In general, there is consistency and coherence between the SEA Directive and other EU environmental legislation (specifically the EIA, the Habitats Directive and the WFD), due mainly to requirements found in the legislation, differences in scope and guidance to coordinate the instruments. However, in practice, Member States point to a risk of duplication or inconsistency, as, inevitably, there is a need for interpretation in implementation. There are also considerable opportunities for synergy across the instruments, especially in terms of sharing information, identifying potential issues early on in the decision-making process, and public participation. Such practices result in higher quality assessments, and more efficient and effective use of resources. In practice, however, the scopes of the assessments may not be as distinct as the Directives claim. Overlaps do occur in some cases, however. This could be due to a detailed local plan (and the SEA) issuing results closer to an EIA, or the SEA becoming bogged down with detailed information better suited for another type of assessment. While the Directives do provide for coordinated or joint procedures, and in theory these should be possible, in practice the timeframe for each assessment may not be so linear. Despite these problems, while there are arguments that further coherence between the two Directives should be driven by change at the EU level, others sources indicated that this can take place through better implementation.

Other relevant EU policies, including Cohesion Policy, Rural Development Policy, the Common Fisheries Policy and the energy and transport sectors, are not dedicated to environmental objectives, but all have high-level sustainability objectives and some have environmental components. However, in practice the situation is more complex. The Directive was first applicable to funding programmes under the Cohesion, Rural
Development and Fisheries policies for the 2007-2013 period. During that period, it was recommended that SEA be carried out in coordination with the broad ex ante evaluation required for the funding programmes. This was tightened for the 2014–2020 period, when the Regulation governing all funds under the three policy areas required SEA to be carried out as part of the ex ante evaluation. This period also saw the introduction of ex ante conditionalities related to SEA which required Member States to have the necessary capacities in place to comply with the SEA Directive in order to receive funding. Almost one-third of Member States reported that they did not experience any problems in carrying out SEAs for ESI Funds programmes. For others, some of the most common issues identified were:

- The general nature of ESI Funds programmes makes an effective SEA difficult or even redundant.
- Timeframes imposed by the Commission.
- Ambiguity as to what is required from the practitioner.

With regard to energy policy, the TEN-E Regulation requires Member States to take measures to ‘streamline’ all environmental assessment procedures stemming from EU legislation, with the aim of improving efficiency and reducing the time required. Guidance issued by the Commission strongly recommends the application of SEA to strategic-level energy plans, but this is not always done in practice. There is some evidence of sectoral plans and programmes in the energy and transport sectors being classified as ‘policies’, and therefore falling outside the scope of the SEA Directive and in general there is some ambiguity regarding the extent to which certain sectoral programmes should undergo an SEA. Despite this, a number of practical examples show the benefits of carrying out SEA in the energy and transport sectors.

**EU added value**

Despite the limited evidence base and the methodological caveats, it can be concluded that the SEA Directive, overall, has been a source of European added value insofar as it has introduced a strategic-level, environmental assessment procedure for public plans and programmes where no such consideration was previously guaranteed. Even in those Member States with a well-established practice of undertaking SEAs prior to the Directive’s adoption, the latter had a significant impact on improving their quality, relevance and operational effectiveness, most notably by fostering the transition from a segmented assessment of environmental impacts to a more holistic approach. This has enabled a more level playing field across the Member States, better assessment of cross-border impacts and increased opportunities for exchange of experience, capacity-building and the creation of knowledge bases and communities of practice.

**Suggestions for improvement**

Based on the overall findings, areas for improving implementation identified are:

- Provide more dedicated, targeted support for smaller-scale SEAs and local authorities.
- Make better efforts to track costs and benefits of the implementation of the Directive and learn from their analysis.
- Scoping is key to effective and efficient SEAs and its practice may need to be improved.
- Improve the availability of basic data and information required for SEAs.
- Continue to develop and employ more innovative approaches to consultation.
- Explore further options to maximise the contribution of SEA to sustainable development and the SDGs Further guidance at EU and Member State levels.
In addition to the issues already mentioned, more comprehensive guidance materials could be usefully developed for the following topics:

- Examples of case law, which would provide legal guidance.
- Developing and assessing alternatives.
- Relationship between the SEA Directive and other Directives, and how to mitigate overlaps.
- Developing, evaluating, and maintaining assessment methods (including indicators and monitoring).
- Clarification of the terms not defined in the legislation.
- Clarification of the screening procedure (type of plans and projects subject to mandatory or potential SEAs).
- Clarification of tiering and the relationship between different levels of assessment.
- Examples of best practice.
- Transboundary cooperation.
1 Introduction

The Council Directive 2001/42/EC (‘SEA Directive’) on the assessment of the effects of certain plans and programmes on the environment was adopted on 27 June 2001 and entered into force on 21 July 2004. The purpose of the Directive is to provide a systematic framework for considering the environmental effects of public sector plans and programmes, and to provide a high level of protection for the environment, as well as to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes, with a view to promoting sustainable development.

Pursuant to Article 12(3) of the SEA Directive, the Commission must submit a report on the application and effectiveness of the SEA Directive to the European Parliament and the Council every seven years. The first such report was presented in 2009 (the ‘EC 2009 SEA report’).

1.1 Objectives of the study

The objective of this study is to provide the Commission with information on Member States’ progress and challenges experienced in the application of the SEA Directive for the period 2007-2014. The findings of the study will be used to prepare the Commission’s second report on the application and effectiveness of the SEA Directive, due in 2016.

Moreover, the 7th Environmental Action Programme requires that the EU and its Member States fully implement the SEA Directive by 2020. This study will also contribute to understanding the extent to which this goal is being achieved.

The study first analyses the practical implementation of the SEA Directive across all 28 Member States. It then evaluates the effectiveness, efficiency, relevance, coherence and EU added value of the SEA Directive, and focuses on assessing how environmental considerations have been integrated into the planning process, and the extent to which the SEA Directive contributes to achieving better and more coherent planning.

As proposed by the Commission in its Communication on EU Regulatory Fitness, the findings of the study assess the potential for simplification and will feed into any
subsequent Regulatory Fitness and Performance Programme (REFIT) evaluation to determine whether the SEA Directive is ‘fit for purpose’

1.2 Background, context and rationale for the study

The SEA Directive requires authorities to undertake an environmental assessment of public sector plans and programmes likely to have significant effects on the environment. It sets out standard procedures for undertaking strategic-level environmental assessment. By requiring an assessment at the planning stage, SEA complements the Environmental Impact Assessment (EIA) Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

The need for a comprehensive system of environmental assessment that goes beyond the assessment of projects, arose from Commission studies as early as the 1970s, which raised concerns that that the environmental assessment of projects 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. At the time of the adoption of EIA Directive 85/337/EEC, the Commission considered the possibility of extending its field of application, and both the Fourth and the Fifth Environmental Action Programmes confirmed their commitments in this respect (Farmer, A.M., 2012).

In 1991 the Commission proposed the first internal draft of the SEA Directive and it took 10 years of negotiations before the Directive was finally agreed. This was due to political opposition from several Member States, along with technical difficulties associated with the concept of environmental assessment applied to strategic documents including ‘policies’, ‘plans’ and ‘programmes’. The draft acknowledged that there may be differences of interpretation among Member States on policies, plans or programmes, with explicit definitions, therefore, omitted from the provisions contained in the Directive. By the time the Commission’s official proposal was formally published in 1996, its scope was restricted to certain plans and programmes, and exclusively related to town and country planning. In this and all subsequent drafts (including the Directive as agreed), no definition of ‘plans’ or ‘programmes’ was included that might enable them to be distinguished from the ‘policies’ that were now excluded from the scope of the Directive (Farmer, A.M., 2012).

At the same time as the Commission’s first internal draft in 1991, the Convention on Environmental Impact Assessment in a Transboundary Context - the so-called Espoo

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Convention⁸. In 2003, the Espoo Convention was supplemented by a Protocol on Strategic Environmental Assessment (the SEA Protocol) which entered into force on 11 July 2010, and which provides a framework for SEA beyond the EU⁹. The EU is a Party to the Espoo Convention¹⁰ and the SEA Protocol. These are so called ‘mixed agreements’ – the Union and all its Member States (for the Espoo Convention) are Contracting Parties.

An important addition to the SEA Directive in Europe is the United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (1998) which entered into force shortly after the SEA Directive, on 1 October 2001, and which has since both been influenced by, and had an influence on, the EU legislation on EIA and SEA¹¹. The EU is a Party to the Aarhus Convention as of May 2005¹². The SEA Directive implements some key aspects of the Aarhus Convention in the EU, particularly the requirement for the public to be given an early and effective opportunity to express opinions (Article 6(2) of the Directive). However, unlike access to information and public participation, the third pillar of the Aarhus Convention - access to justice - is not covered by the SEA Directive. The Convention enshrines the international law Principle 10 of the 1992 Rio Convention and represents a legal safeguard to minimise poor implementation of public participation provisions during SEA (Sheate, W.R. & Eales, 2016).

The final adopted version of the SEA Directive provides details on which plans and programmes may require an environmental assessment before they can be approved. It stipulates the screening requirements for determining whether a strategic environmental assessment (SEA) is required; the scoping arrangements to identify the most significant effects of proposed plans and programmes that require SEA; and the preparation and submission of an Environmental Report that must be made available for public consultation before the adoption of any plan or programme requiring SEA. However, the Directive’s 15 Articles and two Annexes have no fixed delivery mechanism, with individual Member States free to formulate their own SEA methodologies and procedures to achieve the Directive’s objectives.

Since its adoption, the implementation of the SEA Directive has required Member States to re-think traditional approaches to planning, strengthening the consideration of longer term sustainable development in planning procedures. At the same time, effective implementation of the SEA Directive has proved challenging for Member States and practitioners.

The EC 2009 SEA Report on the application and effectiveness of the SEA Directive concluded that, at that time, the SEA process in Member States was in its infancy, with further experience needed to determine whether or how the Directive should be

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¹² The Decision on conclusion of the Aarhus Convention by the EC was adopted on 17 February 2005.
amended. It also found that Member States experienced difficulties in assessing impacts at the strategic level, where there is typically greater uncertainty and higher incidence of complicated cumulative effects. It was also found that, in some cases, public administrations lacked the qualified staff to carry out or even supervise SEAs, or failed to appreciate the potential benefits of carrying out robust SEAs.

The findings of the 2009 EC SEA report have been confirmed in more recent studies carried out by national authorities and academics. However, to confidently determine how to move forward with the SEA Directive in terms of any legislative and non-legislative measures or actions, a more thorough and rigorous examination of its performance and impacts is required. This study comprises two distinct components: firstly, an implementation review, essentially an update of the 2009 study, secondly, an evaluation of the Directive, taking a more critical and in-depth look at its performance since its adoption. This evaluation is explained in more detail in Section 2.

1.3 Structure of the study

This study is structured in six parts.

Part 1 – Introduction: presents the SEA Directive and introduces the objectives of the study.

Part 2 – Methodology: presents the methods used to gather and analyses the relevant information.

Part 3 - Legal and administrative arrangements in Member States: part of the implementation component, this section describes the legal, administrative and organisational arrangements in place in the Member States for the implementation of the SEA Directive, as well as the policy framework in which the SEA procedure operates in each Member State.

Part 4 - Handling the main stages of SEA – Implementation status: Also part of the implementation component, this section provides an analysis of Member States’ implementation approaches to the key stages of SEA:

- Screening.
- Scoping.
- Baseline reporting.
- Preparation of the Environmental Report.
- Consultation and public participation, including transboundary consultation.
- Monitoring.

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Part 5 - Evaluation of effectiveness, efficiency, relevance, coherence and EU added value of the SEA Directive: This section covers the evaluation component of the study and is structured around five evaluation criteria:

- **Effectiveness** - the degree to which the Directive is achieving its objectives.
- **Efficiency** - the impact of the Directive in terms of costs and benefits.
- **Relevance** - the appropriateness of the Directive in contributing to sustainable development.
- **Coherence** - the relationship of the SEA Directive to other EU policies and legislation.
- **EU added value** - the degree to which the introduction of the Directive has made a difference for the promotion and integration of environmental considerations at EU level.

Part 6 - Conclusions: This final section draws conclusions about the progress made by the Member States in the application of the SEA Directive, and the effectiveness of these efforts.

The report has five annexes. Annex I is the evaluation framework prepared to guide the development of the overall methodology for the evaluation; Annex II is the Commission’s questionnaire on the application and effectiveness of the SEA Directive; Annex III contains the list of Member States’ experts consulted; Annex IV contains the list of references for the study; and Annex V contains a list of SEA experts consulted during the focus group discussions, as well as a summary of those discussions.
2 Methodology

The study methodology was based on the Commission’s terms of reference for this work, taking into account the need to review implementation progress on the Directive, as well as evaluate the performance of the legislation since its adoption in 2001. Based on these requirements, the methodology took into account the need for a transparent and robust examination of the best available evidence within the scope of the resources available for the work.

2.1 Study components and analysis framework

The study is made up of two main components: an implementation component (Parts 3 and 4 of the study) and an evaluation component (Part 5 of the study). The implementation component presents factual information about the application of the SEA Directive in Member States, while the evaluation component evaluates the performance of the legislation from a broader perspective. For the latter, the Commission proposed 10 evaluation questions, organised according to the five evaluation criteria presented in the Commission’s Better Regulation Guidelines: effectiveness, efficiency, relevance, coherence and EU added value. The evaluation questions are presented in Box 1 below.

**Box 1 Evaluation questions grouped by evaluation criteria**

<table>
<thead>
<tr>
<th>Evaluation questions grouped by evaluation criteria</th>
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<tbody>
<tr>
<td><strong>Effectiveness</strong></td>
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<tr>
<td>1. Have the SEA requirements influenced the process of preparing plans and programmes? If so, in what way(s), e.g. new alternatives, additional mitigation/compensation measures, specific monitoring measure(s)? If no, or only limited influence can be demonstrated, what could be the reason for this?</td>
</tr>
<tr>
<td>2. Which main factors (e.g. implementation by Member States, action by stakeholders) have contributed to or stood in the way of achieving the objectives of the SEA Directive?</td>
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<tr>
<td><strong>Efficiency</strong></td>
</tr>
<tr>
<td>3. Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? If yes, how is this demonstrated in practice?</td>
</tr>
<tr>
<td>4. What are the costs and benefits (monetary and non-monetary) associated with compliance with the SEA Directive? What is the administrative burden?</td>
</tr>
<tr>
<td><strong>Relevance</strong></td>
</tr>
<tr>
<td>5. How relevant is the SEA Directive to achieving sustainable development?</td>
</tr>
<tr>
<td><strong>Coherence</strong></td>
</tr>
<tr>
<td>6. To what extent is the SEA Directive coherent with other parts of EU environmental law/policy, including Environmental Impact Assessment and Appropriate Assessment?</td>
</tr>
<tr>
<td>7. To what extent does the SEA Directive complement or interact with other EU sectoral policies such as agriculture, forestry, fisheries, energy, industry, transport, waste management, water</td>
</tr>
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management, telecommunications, tourism, town and country planning and land use, regional and cohesion, etc.? How does the SEA Directive positively or negatively affect these policies?

8. Are there overlaps, gaps and/or inconsistencies that significantly hamper the achievements of the SEA objectives?

EU added value

9. To what extent does the SEA Directive support the EU internal market and creation of a level playing field for economic operators?

10. What has been the EU added value and what would be the likely situation had there been no EU SEA legislation?

An evaluation framework was prepared to guide the development of the overall methodology for the evaluation. The evaluation framework (see Annex I) reviewed each of the evaluation questions proposed, examining specific sub-questions to reformulate the questions in a more operational way, judgement criteria to define the assessment issues in an objective way, and indicators, i.e. the data required to assess the judgement criteria. The framework also specified, for each evaluation question, the information to be gathered and the data collection tools and analysis methods to be used to synthesise, triangulate and interpret data and information from the various sources, in order to develop sound, evidence-based conclusions.

2.2 Sources of information

The evidence for the study was collected from a range of sources and perspectives. These are described in this section.

Member States’ replies to the Commission’s questionnaire

To collect information on SEA implementation, the Commission sent a questionnaire with 44 questions on the implementation and application of the SEA Directive to Member States ('the Commission’s questionnaire’, see Annex II). The questionnaire was addressed to the members of the EIA/SEA National Experts Group, which comprises representatives of the relevant Ministries or statutory environmental authorities in all 28 Member States\textsuperscript{16}\textsuperscript{17}. They are referred to as ‘Member State experts’ throughout the study.

As a first step to assess SEA implementation, the project team reviewed Member States’ replies to the Commission’s questionnaire. Most of the questions were factual and related to the legal and administrative arrangements in place in the Member States for the implementation of the SEA Directive, the key stages of SEA, procedures and processes of SEA, content of the Environmental Report, and transboundary issues related to the implementation of the SEA. These questions were mainly used as evidence for the first component of the study on implementation. The last part of the study concerns the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC)
questionnaire addressed other key issues relevant to the SEA Directive, namely: the impact of the Directive in terms of costs and benefits, Member States’ perceptions of the effectiveness of the application of the Directive, the relationship of the SEA Directive to other EU policies and legislation, and any recommendations for improvement. Member States’ responses to these questions were a key source of information for the evaluation component of the study.

Throughout the study, Member States’ replies to selected questions of the questionnaire are presented by means of illustrative graphs that show various trends in the application of the SEA Directive in practice across the EU. These provide a graphic overview of the Member States’ experiences in the implementation of the Directive, together with their perceptions of the effectiveness of the Directive.

**Desk research and consultation with the Member States’ experts**

The information gathered via the Commission’s questionnaire was complemented by additional desk research at Member State level (e.g. information available on government websites, guidance documents, recent national publications, etc.). The purpose of this additional country-specific information was to provide an accurate picture of the functioning of the national SEA system and to evaluate and consolidate the answers provided in the questionnaire.

Finally, where gaps were identified in Member States’ replies to the Commission’s questionnaire, or where clarifications were needed that could not be addressed with further desk research, the research team contacted the Member States’ experts directly, to gain a more comprehensive understanding of the situation. At this point the Member States’ experts also had the opportunity to provide additional information and clarification18.

Member States’ replies to the Commission’s questionnaire, desk research, and consultation with the Member States’ experts provided a comprehensive account of the organisational and legal arrangements in place for carrying out SEA, as well as the level of experience in handling the key stages of SEA in each Member State. These are presented in Parts 3 and 4 of the study.

**Literature review**

The first step in the evaluation component of the study was a literature review to establish state-of-the-art knowledge and thinking on SEA. This was used to complement the other sources of information.

Initial database searches were undertaken using Scopus and Web of Science, using key search terms19. These were further narrowed to Europe and then selected for their relevance to the SEA Directive and the five evaluation criteria.

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18 The list of Member States’ experts consulted is available in Annex III.
19 e.g. TITLE-ABS-KEY (strategic environmental assessment) AND TITLE-ABS-KEY (influence) AND TITLE-ABS-KEY (plan) OR TITLE-ABS-KEY (programme) AND PUBYEAR > (2009).
Those references selected as most relevant were imported into Mendeley (a desktop and web programme for managing and sharing research papers, discovering research data and collaborating online), along with their abstracts, where possible. The search focused on the most recent articles (since 2010). Around 60 references were selected and included in the Mendeley management system for further analysis. Following scrutiny of the abstracts, the full documents were sought via links provided in the database/Mendeley or directly via the relevant online journals where these were accessible.

All references in Mendeley were then tagged from their abstracts, with key words. This approach allowed the different articles to be allocated to the relevant evaluation criteria/questions.

In addition to academic articles, the literature review also looked at national legal and guidance documents to understand how the Directive is implemented in individual Member States, and to identify good practices.

The full list of references is presented in Annex IV.

**Consultation with SEA experts and practitioners**

Once the literature review was finalised, four focus groups were set up with SEA experts and practitioners. These were scheduled at a mid-point in the project, in order to validate preliminary findings and cover any potential gaps in the analysis.

The SEA experts and practitioners who participated were divided into four groups, according to their expertise and origin:

- Focus group with academic experts.
- Focus group with practitioners from EU-15 Member States.
- Focus group with practitioners from EU-13 Member States.
- Focus group with national regulators/independent bodies.

Some weeks in advance of the focus groups, participants received a background document explaining the objectives and methodology of the study, and outlining the 10 evaluation questions, broken down into sub-questions that were used to guide the focus groups. The discussion was structured around the five evaluation criteria and allowed for an in-depth exploration of specific issues to do with SEA implementation. It must be noted that the opinions expressed by the participants in the focus groups do not

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22 EU-15 Member States are: Austria (AT), Belgium (BE), Denmark (DK), Finland (FI), France (FR), Germany (DE), Greece (EL), Ireland (IE), Italy (IT), Luxembourg (LU), Netherlands (NL), Portugal (PT), Spain (ES), Sweden (SE) and United Kingdom (UK).
23 EU-13 Member States are: Bulgaria (BG), Croatia (HR), Cyprus (CY), Czech Republic (CZ), Estonia (EE), Hungary (HU), Latvia (LV), Lithuania (LT), Malta (MT), Poland (PL), Romania (RO), Slovakia (SK) and Slovenia (SI).
necessarily represent the official position of the participants’ Member States of origin or the Member State(s) concerned by their statements.

The list of focus group participants is available in Annex V, together with a summary of the discussions.

2.3 Analysis methods and reporting

As the volume of information collected and reviewed for this study was considerable, systems and methods were required to synthesise and analyse the information, and to allow for robust, evidenced conclusions to be drawn.

The implementation component of the study (Parts 3 and 4) is based on the information gathered from the questionnaires, desk research and consultation with the Member States’ experts. The team used comparative tables to collate this information and provide a horizontal overview across all Member States. This allowed the identification of key trends across the Member States, and the development of Excel-based graphs to present the results at a glance.

Information gathered through the literature review and the focus groups was used to address the evaluation component of the study. Additional analytical methods were required to enable triangulation of the information coming from different sources and perspectives. The approach differed for each evaluation criterion, and is discussed at the beginning of each sub-section in Part 5 of the study.

Generally, the analysis under each criterion followed basic rules of content analysis, focusing on the categorisation and summary of the data from the dispersed sources of information, allowing for the identification of important issues and linkages between different aspects of a subject. The analysis had both quantitative (how often was something mentioned and by whom?) and qualitative elements (in what context was it mentioned? How is it explained?).

Ultimately, the analysis of each criterion depended on the nature of the question and/or sub-question to be answered. Some required straight mapping and counting, while, for others, the responses were organised into different layers (e.g. type of objective or part of the Directive to which it corresponds) for clearer understanding. For the relevance and coherence questions, legal and policy analysis were carried out based on the relevant Directives, Regulations, strategic documents and EU guidance documents. For the cost-effectiveness and EU added value questions, an approximate qualitative counterfactual scenario was developed to understand the situation with and without implementation of the SEA Directive.

2.4 Challenges and limitations of the research

As described throughout this section on methodology, considerable efforts have been made to ensure that this study was based on a transparent and robust examination of the best available evidence. However, some challenges and limitations must be recognised with respect to the research, evidence and analysis methods and results. The process of carrying out this study also produced some learning which can be taken
into account by the Commission for improvement in future monitoring and evaluation of the SEA Directive. The following paragraphs describe the main challenges and limitations encountered in carrying out the study.

The 2015 version of the Commission’s questionnaire on implementation and effectiveness of the SEA Directive (see Annex II) was a very important source of information and evidence for both the implementation and evaluation components of the study. The Commission addressed the questionnaire to statutory national environmental authorities, who are the main experts at the Member State level working on environmental assessment issues. While these authorities have a thorough understanding of the value of the Directive and the transposing national legislation governing it, in many cases they have only limited implementation experience. This meant that the Member States’ replies tended to focus on the situation as described in the national legislation, and the extent to which their responses reflected the experience of other sectors or levels of administration is not clear. At the same time, the focus of the study - and the evaluation component in particular - was on understanding the performance of the legislation since its adoption. This requires going beyond the content of the legislation and getting an understanding of how the legislation is implemented in practice. In many cases, the questionnaires, despite being the richest and most comprehensive sources of information available, tended to describe how the legislation was supposed to work, rather than its actual performance on the ground.

- A related challenge was the fact that the study methodology focused on consultation of those considered to have the greatest expertise in SEA, who understand the legislation and how to carry out SEAs. As a result, in addition to the national environmental authorities in the Member States, those consulted for the study were mainly academic experts and practitioners of SEA. The latter provided very valuable information through focus groups, complementing the perspective of the Member States’ environmental authorities. However, the focus on SEA expertise excluded the perspective of those impacted by the Directive who are not necessarily experts in its application, i.e. plan and programme developing authorities, such as sectoral authorities, local authorities, ESI Funds managing authorities. Consultation of these stakeholders was not envisioned in the original Terms of Reference or methodology for the study, but could have brought an additional useful perspective, particularly on issues of relevance and cost-effectiveness.

- Methodologically, it was difficult to establish a reliable understanding of what the situation would have been had the SEA Directive not been adopted. Such a counterfactual would have been particularly useful for evaluating the efficiency and EU added value of legislation. While efforts were made to establish an approximate qualitative understanding of the situation in the absence of the Directive (e.g. Member States with previous legislation in place, international obligations related to environmental assessment), this was complicated by multiple causality (i.e. changes may have been due to factors other than the implementation of the SEA Directive).

- Finally, a lack of reliable and comparable cost data and the absence of a clear evidence base for estimating benefits made quantitative cost-benefit assessment and an understanding of the administrative burden impossible. This is related to several factors, such as large variations in the scope and cost of SEAs by Member State and plan type, and the lack of a consistent method for tracking SEA-related costs. The assessment focused, therefore, on establishing a sound qualitative
understanding of cost and benefit types, key drivers and factors affecting cost-effectiveness in SEA.
3 SEA Directive – Legal and administrative arrangements in Member States

This section provides basic information on the legal, administrative and policy contexts for the SEA system in the Member States. It describes the legal and administrative framework supporting implementation of the Directive - including the organisational arrangements – and highlighting any changes observed since 2007.

3.1 Legislative framework

The Council Directive 2001/42/EC (‘SEA Directive’) on the assessment of the effects of certain plans and programmes on the environment entered into force on 21 July 2001. According to the Directive, Member States were required to transpose it before 21 July 2004. As highlighted in the 2009 SEA Report, despite some delays in the transposition and some problems with the conformity with the Directive’s requirements, all Member States had by then made arrangements for the transposition and implementation of the SEA Directive, as described in the following sections.

3.1.1 Brief overview of national transposition of the SEA Directive

The SEA legislative framework varies between Member States depending on their administrative structure, as well as their record in carrying out environmental assessments before the SEA Directive came into force.

The majority of the Member States have introduced new legislation, specific to the SEA Directive, while others have integrated the legislation into existing arrangements, e.g. their Environmental Code, or the legal act in place transposing the EIA Directive. To comply with certain provisions of the SEA Directive, many Member States also implemented numerous amendments to existing sectoral legislation, in particular the spatial planning legislation and other sectoral legislation (nature protection, water etc.). An overview of national legislation transposing the SEA Directive is provided in Table 1 below.

Table 1 Type of national legislation transposing the SEA Directive

<table>
<thead>
<tr>
<th></th>
<th>Specific SEA legislation</th>
<th>Environmental Code/Environmental Protection Act</th>
<th>Integrated legislation</th>
<th>EIA legislation</th>
<th>Sectoral legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>X (in some provinces)</td>
<td>X</td>
<td>X (federal level and in some provinces)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium Federal</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Belgium - Flanders Region</td>
<td>X</td>
<td>X</td>
<td>X</td>
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</table>

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<tr>
<th></th>
<th>Specific SEA legislation</th>
<th>Environmental Code/Environmental Protection Act</th>
<th>EIA legislation</th>
<th>Sectoral legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium - Brussels Capital Region</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
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<tr>
<td>Belgium - Wallonia Region</td>
<td>X</td>
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<td>Bulgaria</td>
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<td>Croatia</td>
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<td>Cyprus</td>
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<td>Czech Republic</td>
<td>X</td>
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<tr>
<td>Denmark</td>
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<tr>
<td>Estonia</td>
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<td>Finland</td>
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<td>France</td>
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<td>Germany</td>
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<td>Greece</td>
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<tr>
<td>Hungary</td>
<td>X</td>
<td>X (general principles for environmental assessment)</td>
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<td>X</td>
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<tr>
<td>Ireland</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Italy</td>
<td>X</td>
<td>X (SEA/EIA at national/regional level)</td>
<td>X (some regions)</td>
<td></td>
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<tr>
<td>Latvia</td>
<td>X</td>
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<td>Lithuania</td>
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<td>Luxembourg</td>
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<td>Malta</td>
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<tr>
<td>Netherlands</td>
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<td>Poland</td>
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<td>Portugal</td>
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<td>Spain</td>
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<tr>
<td>Sweden</td>
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<tr>
<td>UK</td>
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</tbody>
</table>

Only in a few Member States, due to their administrative system, is the SEA Directive also transposed at regional level. In Austria, where there are about 37 implementation Acts plus several ordinances, the requirements of the SEA Directive have been implemented by integrating them into existing or newly established Acts, both at federal and provincial level. In Belgium, each region has its own sets of decrees in addition to the law at the federal level. Similarly, in the UK, there is separate primary legislation (the ‘SEA Act’) in Scotland, as well as variations in other devolved administrations according to sector. Regions and autonomous provinces or communities in Italy and Spain also have their own SEA legislative framework. The practice in these countries is thus much diversified at the local level.

In Spain, the SEA Act (now amended – see Section 3.1.2 below) was the state legislation applicable to the whole territory. In addition to the basic requirements, the
law also allowed the Autonomous Communities (ACs), within the framework of their competences, to develop their own SEA legislation that could include additional requirements. Each AC holds the administrative responsibility of designing, implementing and monitoring SEA. In most ACs, SEA had been implemented immediately after the national Law came into force. However, in most ACs, SEA provisions have been incorporated into a more traditional EIA structure and SEA and EIA processes are regulated by the same legal document.

In Italy, prior to the entry into force of the Legislative Decree transposing the Directive at the national level, many Italian Regions had introduced forms of SEA in their spatial planning and/or EIA laws, in many cases with specific reference to the SEA Directive. Despite the common framework provided by the national law, the actual implementation of the SEA Directive is regulated at the regional level for the majority of plans and programmes that are subject to SEA (in particular, spatial plans).

### 3.1.2 Main changes in national legislation since 2007

Since 2007, the original SEA Directive transposing legislation has been subject to some change in more than half of the Member States. Some of these changes were triggered by infringement procedures initiated by the European Commission, while others were applied in order to address specific shortcomings experienced in the practical implementation of the Directive.

**Infringement cases**

Only a few Member States were recently involved in infringement procedures regarding the transposition of the SEA Directive, with all problems addressed either at the letter of formal notice or at reasoned opinion stage. The main reasons for launching these procedures related to shortcomings on the provisions for public consultation (inappropriate timing (Finland), inadequate or absent information available to the public at different stages of SEA (Finland, Lithuania, Portugal, Slovakia and Sweden) and obligation to carry out transboundary consultation (Belgium), and shortcomings with regard to the definition of the scope of the Directive (Denmark, Lithuania and Slovakia). To illustrate some gaps in transposing legislation or implementation deficiencies, Table 2 below provides more details about some infringement cases and how they were addressed.

**Table 2 Selection of recent infringement cases for inappropriate transposition of the SEA Directive**

<table>
<thead>
<tr>
<th>Infringement cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Denmark</strong></td>
</tr>
<tr>
<td>Denmark received a letter of formal notice from the Commission in February 2008, following which changes were made to the Danish SEA Act in order to comply with the issues highlighted. Such changes included the scope of the Act, the definition of plans and programmes, and a broadening of access to justice. The wording of other definitions in the Act was streamlined in accordance with the Directive.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>In October 2011 the Commission sent a reasoned opinion to Finland identifying shortcomings related to the unclear timing set for public consultations (mainland Finland) and to the lack of sufficient detail on the quality and content of the assessment, as well as citizens’ access to information (Åland islands).</td>
</tr>
<tr>
<td>Italy</td>
<td>In Italy, the original transposing Legislative Decree 152/2006 - made under the urgency of mandatory transposition - contained several procedural weaknesses. This has since been amended and supplemented by Legislative Decree n. 4/2008 and, more recently, by Legislative Decree n. 128/2010 in reply to the Commission’s remarks contained in the infringement procedure 2009/2235. These changes brought improvements to the definitions of principles, clarification of competences and better specification of instruments. The actual implementation of the Directive at the national level in Italy, therefore, only began in 2008.</td>
</tr>
<tr>
<td>Lithuania</td>
<td>In March 2011 the Commission sent a reasoned opinion to Lithuania. The main problems identified were that certain detailed territorial plans were excluded from the scope of the legislation, and that the opportunity for the public to be appropriately informed of the plans and programmes, and to be able to effectively express their opinion, was not fully provided under the original Lithuanian law.</td>
</tr>
<tr>
<td>Portugal</td>
<td>In response to a letter of formal notice sent in 2010 by the Commission, amendments were made to the original Portuguese transposing legislation. These changes clarified some requirements relating to public information, namely the obligation to disclose the grounds for the determination of a plan or programme as being likely or unlikely to have significant effects on the environment. This amendment also establishes that the entity responsible for preparing the plan or programme is also responsible for:</td>
</tr>
<tr>
<td></td>
<td>• making available to the public the final version of the plan or programme as well as the environmental statement; and</td>
</tr>
<tr>
<td></td>
<td>• sending these documents to the authorities with specific environmental responsibilities and to the competent services of the Ministry of Foreign Affairs whenever another Member State is likely to be significantly affected by the plan or programme.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>In Slovakia changes were made to the Act to address issues raised in the 2011 letter of formal notice, including the scope of the act, ensuring that all plans and programmes likely to have a significant effect on the environment were subject to SEA, and the obligation to inform the public of the reasons why an impact assessment is not required for a specific plan or programme. Yet in 2012, the Commission was concerned that the potential environmental effects of the 2007-2010 road-building programme in Slovakia were not sufficiently assessed, and sent a reasoned opinion to Slovakia. The infringement case was closed when the Slovakian transposing legislation was amended to include a list specifying those plans and programmes for which an SEA is mandatory.</td>
</tr>
<tr>
<td>Sweden</td>
<td>In 2012 the European Commission urged Sweden to bring its national legislation on SEAs in line with EU rules. In response, Sweden has made changes in the legislation that have addressed the Commission’s concerns. Firstly, the authority or municipality must inform concerned municipalities and authorities, the public and the countries concerned, that the plan or programme has been adopted. It is also required to make the plan or programme available to them. Secondly, the content of an environmental report shall be adjusted according to where in a decision-making the plan or programme is.</td>
</tr>
<tr>
<td>Belgium</td>
<td>In Belgium the original transposing legislation in the regions did not ensure that neighbouring Member States would be consulted where plans and programmes could affect them. While some regions have adopted new legislation in this area, the Commission sent a reasoned opinion in June</td>
</tr>
</tbody>
</table>
2010, urging all regions to address the issue. A Decree was issued in 2012 by the Walloon region to comply with this obligation.

Other amendments

Almost half of the Member States have made changes to the SEA legislation since 2007. Some of these changes were minor – such as adjustments and update according to the changes in the institutional or planning system - and did not affect the legal provisions for the SEA in their terms and principles. In Latvia, for example, titles of institutions have changed, while in other Member States the changes related to clearer definitions of the responsibilities of the competent authorities and the concerned authorities to be consulted. These included changes in Denmark in 2007 to allow the Minister to delegate tasks to authorities within the Ministry; in Sweden, in 2010, the addition of the Swedish Agency for Marine and Water Management to the list of authorities to be included in the consultation; in Poland, also in 2010, the addition of the maritime offices to the list of the concerned authorities for plans and programmes that may have significant effect on the maritime areas; also in Poland, the specification, in 2015, of territorial competences of environmental and sanitary bodies for draft plans and programmes relating to maritime areas; and, in Malta, a 2010 amendment which brought a major shift in the ‘ownership’ of the SEA procedure from the centralised ‘SEA audit team’ to all plans and programmes responsible authorities.

In Denmark and the Czech Republic, the legislation was modified in order to provide clearer rules with regard to public participation: the Czech Republic added a specific definition of the public, while Denmark specified the rules for consultation with concerned authorities and the public and allowed the digitalisation of public hearings.

Changes made in other Member States, on the contrary, were made to the substance of the SEA procedure. In Hungary, the amendments related to the specific requirements for the Non-Technical Summary, while in France, the law Grenelle II and subsequent Decrees, introduced some changes to the types of plans and programmes subject to an SEA. France also made changes to the content of the Environmental Report, with the list of plans and programmes subject to SEA extended from 19 to 43, and case-by-case examination introduced, which had not been part of the original transposing legislation.

In Portugal, Luxembourg and Latvia, the existing laws regulating the procedures for preparation and adoption of spatial and land use plans have been adapted and improved in order to integrate the SEA procedures and comply with the SEA Directive. Poland introduced the option of not carrying out SEA for those spatial development plans and programmes whose draft plans and programmes represent minor modifications to the documents that have already been accepted, and which have no significant impacts on the environment (previously, this was only possible for sectoral plans and programmes). Ireland provided for a reduction in the mandatory SEA population threshold for Local Area Plans, from 10,000 to 5,000 persons. Local Area Plans covering an area greater than 50sq km also now require mandatory SEA. In the UK the Planning Act 2008 introduced an Appraisal of Sustainability (AoS) to comply with the SEA Directive for National Policy Statements (NPSs), intended to set the framework for decisions on nationally significant infrastructure projects (NSIPs) in key sectors, e.g. energy, ports, waste, transport networks.
In Spain, the Netherlands and Estonia, the legislation underwent major changes with the result that the SEA and EIA systems were completely reformed, although in Estonia the amendments only came into force in July 2015, making it too early to establish any concrete advantages of the new legislation, or any significant improvements in practice. Table 3 summarises these examples.

Table 3 Amendments to the Dutch, Spanish and Estonian SEA legislation

<table>
<thead>
<tr>
<th>Amendments to the Dutch, Spanish and Estonian SEA legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Netherlands</strong></td>
</tr>
<tr>
<td>The Environmental Management Act (1987) introduced the EIA tool, specifically via the EIA Decree (which is part of the Act). This Decree described not only projects but also certain plans and programmes subject to the procedure laid down in the Act. It is generally understood that SEA was implemented in 1987, although this was not explicitly mentioned. The SEA Directive was formally transposed by amending the Environmental Management Act (1987) in 2006, and amending the relevant regulatory provisions of the EIA Decree, separating the EIA and SEA procedures. On the 1st of July 2010 the Dutch Environmental Assessment legislation changed (Environmental Assessment Modernisation Act), modifying the procedures of EIA/SEAs (although the categories of plans/programmes/projects requiring an SEA/EIA remained unchanged), effectively re-integrating the SEA and EIA processes. These changes primarily concerned EIA, and aimed to enable customisation for complex projects/plans.</td>
</tr>
</tbody>
</table>

| **Spain**                                                     |
| In Spain the original transposing Act was recently repealed by Law 21/2013, the Environmental Assessment Act (BOE no. 296, 11 December 2013 - the EA Act). The new legislation simplifies and streamlines the SEA and EIA procedures by creating a new legislative framework on environmental assessment, which is applicable to the whole country. The EA Act unifies the SEA and EIA provisions into a single piece of legislation, formerly regulated by two different Acts, and establishes a set of common rules for the application of both regulations while establishing a procedure that is common throughout the country, without prejudice to the powers of the ACs. |

Taking advantage of the experience gained on the implementation of the environmental assessment legislation, this new law addresses errors and shortcomings, such as delays in issuing some environmental procedures, or diversity of regulations across regions. The new Act introduces several changes:

- With the Environmental Assessment Act, efforts to strengthen environmental protection are concentrated on plans and programme that have a greater environmental impact. Based on the principles of precaution, preventative and precautionary action, correction and compensation of impacts on the environment and the polluter pay principle, the law also recognises the principle of proportionality between the expected effects on the environment and the type of environmental assessment procedure applied, differentiating between an ordinary and a simplified assessment procedure (screening procedure). The law also requires higher quality environmental documents to be prepared, ensuring that the final decision is based on the best technical criteria.

- The Environmental Assessment Act also aims to increase legal certainty through the introduction of uniform legislation that promotes unity and integration of the different environmental assessment approaches across the country, thereby avoiding fragmented approaches across ACs. This is done by increasing the importance of the so called ‘basic legislation’ applied at national level, and by harmonising the environmental assessment procedures that vary considerably between ACs. The regions had one year in which to adapt their legislation to the new law.
Since the EIA Act was adopted in 2005, there have been several changes to the framework legislation, the latest of which came into force on 1 July 2015. Numerous problems were encountered during the EIA and SEA procedures, namely, the coordinator of preparation of the strategic planning document had insufficient ownership of the whole process; the quality of the SEA reports was considered poor, the procedures lacked transparency and the SEA and spatial planning operated in silos. The main change is that the central party for the SEA assessment, both in terms of organisation and content, will now be the coordinator of preparation of the strategic planning document, i.e. the authority who most needs the results of the SEA for preparing a strategic planning document. The spatial planning procedure is also fully integrated with the SEA, and the qualifications of lead experts responsible for carrying out the SEA have become more stringent.

3.2 Organisational arrangements in place

The definition of institutional and organisational arrangements for the implementation of the requirements of the SEA Directive are, to a large extent, left to the discretion of the Member States. Several authorities participate in the SEA process, the authorities responsible for carrying out the environmental assessment, and those authorities with ‘specific environmental responsibilities’ who are consulted throughout the procedure.

Depending on their specific administrative structure and culture, the 28 Member States have chosen different organisational arrangements to implement the SEA Directive. These are presented in the following sections.

3.2.1 SEA responsible authorities

In the majority of Member States the SEA responsible authority - meaning the authority responsible for initiating and coordinating the SEA procedure - is the authority in charge of the preparation and adoption of the plan and programme in question (the plan/programme developing authority). In these Member States the distribution of the SEA competences depends on the administrative level at which the plans and programmes are prepared, i.e. national, regional or local. The duty to undertake SEA is therefore distributed across a wide variety of authorities.

The role of the environmental authority

In some Member States, however, other authorities share responsibility with the plan/programme developing authority to carry out the assessment. While in some Member States the Ministry of Environment/the Environmental Agency are considered to be concerned authorities with specific environmental responsibilities who must be consulted (see Section 3.2.2), in other Member States they can assume a more important role throughout the procedure, closely cooperating with the SEA responsible authority, or even directly leading the SEA process itself.

Depending on the Member State’s internal administrative structure, the Ministry of Environment is often directly responsible for leading the SEA process, especially for plans and programmes at national level. For example in Malta, the responsible authority for carrying out the SEA procedure is, in most cases, the Malta Environment & Planning...
Authority (MEPA). In Romania, the Environmental Ministry and National Environmental Agency (when delegated by the Ministry) deal with national plans or programmes, Regional Environmental Agencies conduct the SEA procedure for most of the plans and programmes developed in their regions, and, sometimes, the Local Environmental Agencies are delegated local plans (usually local urban plans). In the Czech Republic, the SEA responsible authority is the Ministry of the Environment at the national level, together with the Regional Authority in whose territorial jurisdiction the project is proposed, or for whose jurisdiction a plan or programme is being drawn up. In Bulgaria the Ministry of Environment and Water is considered the SEA responsible authority, issuing screening decisions and setting requirements for the scope of the Environmental Report. Likewise, in Luxembourg, the Minister responsible for the environment plays a key role in deciding whether or not an environmental assessment is required and decides on the scope and level of detail of the information to be included in the Environmental Report. In Croatia SEAs are carried out in cooperation with the Ministry of Environmental and Nature Protection at national and regional levels, and with the administrative body within the county competent for environmental protection at local level.

In Spain, two main authorities are responsible for each SEA procedure: the plan/programme developing authority (who is also responsible for the approval of the plan or programme) and the authority responsible for the SEA analysis. The Ministry of the Environment has been appointed as the environmental authority at the national level in charge of supervising and guiding the whole SEA process, including the submission of the Scoping document.

Specifically designated body

Other Member States have a specifically designated body to supervise and check the quality of the SEA procedure. For example, in Latvia, the Environmental State Bureau is the specifically designated institution, under the Ministry of Environmental Protection and Regional Development, competent on environmental impact assessment. It takes a motivated decision if a particular plan or programme requires SEA, consults the SEA responsible authority on the scope and level of the detail of the information which must be included in the Environmental Report, provides an opinion regarding the Environmental Report, as well as determining the time periods in which the responsible authority must submit a report on monitoring of the environmental effects of the implementation of the particular plan or programme. Similarly, in Estonia, according to the 2005 EIA Act, the Ministry of the Environment and the Environmental Board act as separate supervisory authorities in the SEA process and are responsible for approving the SEA documentation.

The Netherlands Commission for Environmental Assessment (NCEA) is an independent committee of experts in the various fields of knowledge covered by the SEA, advising the SEA responsible authority on completeness and correctness of the information in the SEA. The NCEA can provide voluntary advisory reports at the request of the SEA responsible authorities on the scoping report, the interim review, and a review of supplementary material for the Environmental Assessment report. The NCEA provides a mandatory advisory report on the review of the Environmental Report.

In Portugal, while the Ministry of Environment holds a regulatory role, the Portuguese Environment Agency assumes the task of monitoring the implementation of the legislation and disseminating information, including ensuring dialogue with the
European Commission. The Portuguese Environment Agency prepares an annual report comprising a general overview of conformity between the Environmental Reports and the content of the SEA Decree and proposing measures deemed necessary if full conformity is not observed. This report is submitted to the Government representative responsible for the environment.

In Italy, at national level, the EIA-SEA Technical Commission provides technical and scientific supports to the Ministry for the Environment, Land and Sea for the implementation of the SEA Directive. ISPRA – Istituto Superiore per la Protezione e Ricerca Ambientale (Superior Institute for Environmental Protection and Research) is an autonomous state agency which supports the Ministry of Environment and the national EIA-SEA Technical Commission in several stages of SEA procedures.

### 3.2.2 Definition of authorities with specific environmental responsibilities

According to Article 6(3) of the SEA Directive, Member States must designate the authorities to be consulted, which, by reason of their specific environmental responsibilities, are likely to be affected by the plan or programme in question. According to Article 6(5), the specific arrangements for the information and consultation of these authorities are left to the discretion of the Member States.

The CJEU with its Judgement on Case C-474/2010 indicates that the environmental authorities that also act as the plan/programme developing authorities should be designated and consulted for the purposes of Article 6.

**Box 2 CJEU, Judgement on Case C-474/10**

*CJEU, Judgement on Case C-474/10 (Department of the Environment for Northern Ireland v Seaport (NI) Ltd. and Others)*

> ‘... Article 6(3) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment does not require that another authority to be consulted as provided for in that provision be created or designated, provided that, within the authority usually responsible for undertaking consultation on environmental matters and designated as such, a functional separation is organised so that an administrative entity internal to it has real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to fulfil the tasks entrusted to authorities to be consulted as provided for in Article 6(3) and, in particular, to give an objective opinion on the plan or programme envisaged by the authority to which it is attached."

To this end the CJEU highlighted that the requirement under Article 6(3) of the SEA Directive was intended to contribute to more transparent decision-making. In essence, a public ministerial authority responsible for environmental matters, which had been designated pursuant to Article 6(3) in Northern Ireland, was able to perceive the environmental effects of a plan or programme. However, it was the only authority designated under that provision, and there was no provision for an authority designated in another part of the Member State to be consulted on plans or programmes concerning Northern Ireland.

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In that situation the CJEU concluded that, there had to be a functional separation so that an administrative entity internal to it had real autonomy and was provided with administrative and human resources of its own, so that it was in a position to fulfil the tasks entrusted to authorities to be consulted. In particular, it had to give an objective opinion on the plan or programme envisaged by the authority to which it was attached (see paras 34-35, 38, 41-42 of judgment).

Judgment on Case C-474/10 was also recently referred to by the advocate general Kokott while formulating the opinion on Case C-379/15 Association France Nature Environnement v the Premier minister and the Ministre de l’Écologie, du Développement durable et de l’Énergie27 where the Association questioned the conformity of the French legislation with Article 6(3) of the SEA Directive with respect to the autonomy of the environmental authority to be consulted. The French national court (the Conseil d’État) confirmed the non conformity of the French legislation in that there are no provisions that guarantee that consultation with the environmental authorities involves an authority with the necessary degree of autonomy and appealed to the CJEU to understand whether, in such cases, the national court could still keep the non-conform national law temporarily in force because of an overriding consideration linked to the protection of the environment. This was done to avoid that the plans and programmes adopted pursuant to the legislation are called into question because of the incompatibility of the latter with European Union law.

Not many Member States have defined or interpreted the concept of ‘specific environmental responsibilities’ in the SEA legislation. For example, a broad definition is given in the Dutch legislation where ‘specific environmental responsibilities’ are translated as ‘the administrative authorities who, pursuant to the statutory provisions on which the plan is based, are to be involved in the preparation of the plan’ or ‘all relevant authorities’. In the German legislation, the concerned authorities are defined ‘as all authorities whose environmental or health-related responsibilities are affected by the plan or programme’.

Generally, the most common authorities consulted are various Ministries (including Ministry of Environment), Environmental Protection Agencies, Governmental and municipal institutions responsible for environmental protection.

More than half of the Member States designate the authorities to be consulted on a case-by-case basis, depending on the type of plan and programme in question, and its geographical coverage. The rest of the Member States (Denmark, Estonia, Finland, France, Hungary, Ireland, Lithuania, Latvia, Malta, Poland and Slovenia) use a combined approach, where the legislation provides guidance on which public bodies must be consulted depending on their competence, but the SEA responsible authority can choose to involve other authorities on a case-by-case basis.

Some Member States (e.g. Hungary and Ireland) also differentiate between the authorities that are permanently involved (i.e. for all type of plans and programmes at all government levels) and those authorities that may be involved on an ad hoc basis.

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Some other Member States established a specific Committee composed of different members, and this Committee must be consulted for its’ recommendations. See the examples for Cyprus and Romania in Table 4 below.

Table 4 Consultative Committees established in Cyprus and Romania

<table>
<thead>
<tr>
<th>Committees established for consultation in Cyprus and Romania</th>
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</thead>
<tbody>
<tr>
<td><strong>Cyprus</strong></td>
</tr>
<tr>
<td>In Cyprus the permanent members of the Committee are designated by the Law to be consulted the environmental authority and are composed of the Ministry of Agriculture, Rural Development and Environment (President), the Directorate General for European Programmes, Coordination and Development; the Ministry of Energy, Commerce, Industry and Tourism; the Ministry of Transport, Communication and Works; the Ministry of Interior; the Technical Chamber of Cyprus; the Federation of Environmental Organisations of Cyprus; the University of Cyprus and the Cyprus University of Technology.</td>
</tr>
<tr>
<td>In addition to these members, the Committee has the authority to consult with any public enterprise, state service, organisation of public law or authority, local government, and any person whose views or specialised knowledge is judged useful or necessary.</td>
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</table>

<table>
<thead>
<tr>
<th>Romania</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Romania there are a number of authorities (Prefecture, County Council, Department of Public Health, Water Basin Administration, National Environmental Guard, Inspectorate for Emergency Situations, the Sanitary Veterinary and Food Safety Direction) which form part of the Special Committee by decision/order of the Head of the competent authority for environmental protection. Other authorities (e.g. the custodians / administrators of protected areas) may also be invited to consult. The Special Committee is a permanent consultative body, without legal personality, which performs the screening stage of plans and programmes. The Special Committee meets whenever necessary at the request of the President.</td>
</tr>
<tr>
<td>Depending on the specific plan or programme, the structure of the Special Committee may be broadened to include representatives of other central public authorities (Ministry of Culture, Ministry of Education and Research, Romanian Academy, the National Agency for Mineral Resources, etc.).</td>
</tr>
</tbody>
</table>

3.3 Policy framework

3.3.1 Guidance documents and tools available

This section identifies national, regional, local or sectoral policy and guidance documents and tools prepared by the Member States to help the authorities and practitioners in the application of SEA. It also looks at whether SEA-related information is presented on a web portal in the Member State, as well as through other guidance tools.

Guidance documents

The majority of the Member States have various guidance and methodological documents available online. Brussels Capital Region circulated a guidance note to Local Authorities which is not publicly available. Only Bulgaria, Cyprus, Hungary, and Malta stated that they have no national SEA guidance beyond that available from the European Commission.
The following Member States also had guidance documents available in English: Austria, Ireland, Latvia, Lithuania, the Netherlands, Portugal, Sweden, and the UK. Estonian experts noted that, on top of their own national guidance, SEA practitioners also used the UK guide for the plan/programme developing authorities, as well as EC and UNECE guides. A Portuguese study was also found on the Austrian SEA portal as an aid for Austrian practitioners.

Some Member States update the guidance documents as the SEA practice evolves and improves. The Spanish experts acknowledge that Spanish guidance is quite old and has not been subject to review. Similarly, Italian guidance also predates the Directive, although it has since been updated.

Member State guidance is often specialised, either focusing on a specific section of the SEA process, or on a specific sector. Several Member States, such as Germany, the UK and Spain, have several guidance documents each applying to a specific sector. Some other examples of guidance focusing on a specific part of the SEA include:

- Scoping (Belgium – Federal, France).
- Screening (Austria, Belgium - Federal).
- Participation (Belgium - Flanders Region, Finland).
- Mitigation measures (Belgium - Flanders Region).
- Methodology (Belgium - Flanders Region).
- Impact assessment (Finland, Luxembourg).
- Content of environmental assessment (France, Luxembourg).
- Competence of Environmental Authorities (France).
- Urban planning (France).
- Land use plans (Luxembourg).
- National level (Spain, UK).
- Regional level (Spain, Italy).
- General SEA procedures (Brussels Capital Region, France, Latvia, Italy).
- Monitoring (Italy)
- Integrated/coordinated procedures for SEA/EIA/AA (Italy)

The following tables provide an overview of the guidance documents available in each Member State.

**Table 5 Type of guidance document available in each Member State**

<table>
<thead>
<tr>
<th>Member State</th>
<th>National guidance</th>
<th>Regional/local level guidance</th>
<th>SEA Manual/general guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Belgium - Federal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium - Flanders Region</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium - Brussels Capital Region</td>
<td>X</td>
<td></td>
<td>guidance note describing the SEA procedure</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>No guidance below EU level - Only instruction letters responding to individual queries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cyprus</td>
<td>No guidance below EU level</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Study concerning the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC)

<table>
<thead>
<tr>
<th>Member State</th>
<th>National guidance</th>
<th>Regional/local level guidance</th>
<th>SEA Manual/general guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Estonia</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Finland</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Germany</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
<td>No guidance below EU level</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td>No guidance below EU level</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Latvia</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Lithuania</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td>No guidance below EU level</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Poland</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>X</td>
<td></td>
<td>X (focus on good practice)</td>
</tr>
<tr>
<td>Romania</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Slovakia</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td>No guidance below EU level</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Sweden</td>
<td>X</td>
<td></td>
<td>X²⁸</td>
</tr>
<tr>
<td>UK</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

For those Member States with guidance documents other than those developed by the EU, the following table gives an overview of the procedural SEA step covered in the guide (for example, screening, scoping, etc.) and whether the guidance document only covers a specific sector. Note that Table 6 does not include those Member States identified as having only a general SEA Manual.

**Table 6 Focus of guidance documents available in each Member State**

<table>
<thead>
<tr>
<th>Member State</th>
<th>Documents addressing specific SEA procedural steps</th>
<th>Sector-specific documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Screening Steps from scoping to monitoring SEA tool box (various checklists)</td>
<td>Transport sector Regional/local land use planning</td>
</tr>
<tr>
<td>Belgium - Federal</td>
<td>Scoping Screening</td>
<td></td>
</tr>
<tr>
<td>Belgium Flanders Region</td>
<td>Specific environmental factors Participation Methodology Mitigation</td>
<td>Farming Urban development Chemicals Thermal power plans Energy and infrastructure</td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td>(Advisory notes)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Member State</th>
<th>Documents addressing specific SEA procedural steps</th>
<th>Sector-specific documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>Monitoring Information on the SEA decision</td>
<td>Land use development policy</td>
</tr>
<tr>
<td>Denmark</td>
<td>(Regional) Screening Environmental Reports</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>Methodologies Screening</td>
<td>Planning law</td>
</tr>
<tr>
<td>Finland</td>
<td>Public participation Assessment of impacts</td>
<td>Land use planning</td>
</tr>
<tr>
<td>France</td>
<td></td>
<td>Urban planning</td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td>Spatial planning</td>
</tr>
<tr>
<td>Ireland</td>
<td>Scoping (Town &amp; Country)</td>
<td>Town and country planning(^\text{29})</td>
</tr>
<tr>
<td>Italy</td>
<td>Monitoring (regional and national)</td>
<td>Energy</td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td>Agriculture, food and marine</td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td>Species protection</td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td>Cohesion policy</td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td>(Regional) Urban planning</td>
</tr>
<tr>
<td>Sweden</td>
<td>Screening</td>
<td>Transport and mobility</td>
</tr>
</tbody>
</table>

\(^{29}\) Majority of guidance documents are developed for Town and Country planning concerning many SEA aspects (GIS tools, scoping, climate change etc.).
Apart from formal guidance documents, most Member States also have other tools in place to assist practitioners. Information on SEAs can be found on national websites of all Member States, although some, like Greece, have only a brief description of what an SEA is, naming the steps of an SEA, and identifying the relevant legislation. Other Member States, for example Austria and Italy, have full SEA portals aimed to both inform the public of new and current SEAs, but also to provide guidance for practitioners. Regions and Municipalities also have made an effort to either aid practitioners or inform the public, with Croatia being an example where a general national website provides links to the websites of other national and regional competent authorities for SEAs.

Another popular online tool is the use of an online database, with one established in each of Austria, Belgium - Flanders Region, Italy, Poland, Romania, Spain, Bulgaria. These are maintained by either the environmental authorities/Ministry for Environment, or by local or regional authorities.

Other tools include:
- Standardised forms/checklists.
- Training courses/practitioner forums.
- Assessment studies.
- Analysis tools/data collections.
- Guidance from other actors.

Several Member States use standardised forms developed for practitioners, especially at regional level (for example in France, Denmark and Italy). In Italy, standard templates for the main administrative acts were agreed in order to ensure efficiency and the timely verification of the completeness of documentation by the competent authority at national level (the Ministry of the Environment). They also help to ensure consistency and completeness of the submitted information in the process of approving the applications submitted. Other Member States, such as Austria, Ireland, France and Slovakia, have checklists and guidelines. These checklists are used to ensure all relevant information is included and, if not mandatory, can provide a guide on what practitioners could use as a basis for their assessment. These forms often concern the screening step or the content of the Environmental Report, but may also include the steps needed for public consultation. It is worth noting that Malta uses guidance and toolkits adopted by other Member States to guide practitioners.
Several Member States provide practitioner training and the dissemination of information. In Austria, each year, SEA authorities at federal and provincial levels are invited by the federal Ministry of Environment to discuss the latest developments and practical problems. The SEA practice group also meets once a year to discuss specific technical issues. In other Member States, practitioners are part of an electronic network (Bulgaria) or national forum (Ireland). Training courses for practitioners are carried out by at least two Member States, Cyprus and Poland.

**SEA research studies**

Information is also disseminated via research studies. Several Member States have undertaken studies on the implementation of SEAs, including Scotland, the Netherlands, Italy, and Estonia. The latter has also looked at implementation practices in other Member States, including Finland, Germany, the UK and the Netherlands to establish how they compare to Estonian implementation. Finland and Sweden have also carried out research and assessment studies on the application of SEAs, which are available to practitioners. Similarly, an SEA magazine is published regularly in Slovakia.

There are also several agencies providing guidance to practitioners. In the Netherlands these are the Commission for Environmental Assessment (NCEA) and the governmental agency Infomil. In Scotland, the SEA Gateway is used as a document exchange platform between consultation authorities and responsible authorities, as well as a database and a source of informal advice.

### 3.3.2 SEA State of Play

This section provides information on the State of Play in carrying out SEA, including the number of completed SEA procedures for the period 2007-2014 (average yearly figures where available), as well as the distribution of SEAs across the different planning sectors.

**Average number of completed SEA procedures per Member State**

The number of SEAs carried out per year in Member States varies considerably, depending on the size and the legislative requirements of the Member State. German experts reported that there are more than 3000 development plans produced every year involving an SEA, plus 75-90 SEAs per year (not including development plans), while Finnish experts reported that around 1500 SEAs are carried out for land use plans (including 1400 local detailed plans, 130 local master plans, and 4-5 regional land use plans), plus another 10-15 for other types of plans. Irish and Latvian experts, in turn, claimed that, on average, less than 50 SEAs are carried out each year.

The large differences between Member States carrying out hundreds or thousands of SEAs a year and Member States carrying out only a handful can be best explained using the Polish example. In Poland, there are ‘several hundred’ SEAs carried out per year in the regions, thus also including local spatial plans, and ‘several dozen’ at central (national) level. In addition, several Member States pointed out that regional authorities carry out the vast majority of SEAs, and that a yearly national average of SEAs was therefore not available. Italy cautioned, for example, that the estimates given by Member State experts may underestimate the number of SEAs done by regional authorities. It is worth noting that several Member States included transboundary SEAs.
in their total count, while others did not. Another source of confusion may be due to the interpretation of the Commission questionnaire, which asked how many SEAs were carried out annually, without specifying if this included those plans or programmes screened but not requiring a full SEA.

Several Member States provided clarifying information:

- Difference between those that were screening out (Italy and Belgium - Flanders Region).
- Difference between land use/spatial plans and other types of sectoral plans and programmes (Luxembourg, Cyprus, Finland).
- Difference between national, regional, and municipal plans (Denmark, France, Poland,).
- Difference between mandatory and screened SEAs (Bulgaria).
- Total number of screenings versus total SEA (Cyprus).

Notwithstanding these differences, an overview of the average number of SEA procedures carried out each year in each Member States is provided in Table 7 below.

Regardless of interpretation differences, several conclusions can be drawn. Smaller Member States also carry out fewer SEAs per year, with Luxembourg carrying slightly over 30 SEAs per year (including SEAs for modifications) and Malta carrying out, on average, two per year. It is also worth noting that there have been only nine full SEAs carried out at the federal level in Belgium between 2007 and 2014, which reflects the lack of competences of the national government for environmental issues.

The newest Member State, Croatia, carried out fewer SEAs per year (on average six per year between 2009-2014), but had a steady increase over time, with the yearly average rising from one in 2009 to 22 in 2014. The ambiguity of the data also highlights the lack of any centralised repository or reporting body for SEAs in many Member States (Scotland being one that has such as system, its ‘SEA Gateway’).
Table 7 Average number of SEA procedures carried out each year 2007-2014

<table>
<thead>
<tr>
<th>MS</th>
<th>Number of SEA procedures carried out (2007-2014)</th>
<th>Most common type(s) of plans/programmes assessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>160 on average</td>
<td>In 2014 there were 170 local spatial planning projects, eight regional spatial plans, three regional development plans, one each for water, provincial roads, air, and miscellaneous 12 OPs under Cohesion Policy, one for RDP and one OP for Fisheries</td>
</tr>
<tr>
<td>Belgium Federal</td>
<td>Nine total between 2007-2014</td>
<td></td>
</tr>
</tbody>
</table>
| Belgium Flanders Region | 289 screenings and 25 SEAs per year             | Water plans: 2%  
City development and delineations of small urban areas: 25%  
Roads, tramline and railroad: 20%  
Tourism and recreation: almost 9%  
Industrial areas: 12% (some are a mix of the above mentioned sectors) |
| Brussels Capital Region | Four-five SEAs per year                          | Three for land use, one to two for other types   |
| Bulgaria              | 512 screenings and 32.4 mandatory SEAs on average per year | 90% for town and country planning and land use  
10% energy, transport, waste and water plans |
| Croatia               | Six per year on average from 2009 (with an increase from one in 2012, eight in 2013, 22 in 2014) | 12 spatial planning between 2009-2014, eight regional development SEAs (including 5 OPs under Cohesion Policy), three waste plans, three water plans and three transport plans. |
| Cyprus                | Five SEA reports on average per year, plus four screening opinions | 2007-2014: 22 Town and country planning or land use  
3 waste plans, two energy plans, two water plans  
Eight OPs under Cohesion Policy, 1 agriculture programme, 1 fisheries plan |
| Czech Republic        | 129 SEAs per year                                | 2007-2014: On average 115 SEAs per year for land use planning.  
55% SEAs for regional development, 10% water management, 7% each for tourism and transport |
<p>| Denmark               | One to two SEAs per year at national level, one to two SEAs per year at regional level; one to two SEAs per year for large municipalities (approx. 15 screenings); Zero to one SEAs per year for small municipalities (approx. five to ten screenings) | According to experts – one SEA per sector per year |
| Estonia               | Estimate an average of 43 SEAS per year (not including | No information |</p>
<table>
<thead>
<tr>
<th>MS</th>
<th>Number of SEA procedures carried out (2007-2014)</th>
<th>Most common type(s) of plans/programmes assessed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>transboundary SEAs)</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Finland</strong></td>
<td>Land use plans (1400 local detailed plans per year, 130 local master plans, four to five regional land use plans)</td>
</tr>
<tr>
<td></td>
<td>1500 land use plans per year plus 10-15 SEAs for other types of plans and programmes</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>France</strong></td>
<td>In 2013, 900 opinions given for spatial planning documents, 100 opinions for other plans and programmes (22 water plans, 20 quarry departmental plans, 12 waste plans, 12 urban travel plans, 11 forestry schemes, seven ecological coherence schemes)</td>
</tr>
<tr>
<td></td>
<td>565 SEAs on average per year, with numbers increasing each year</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Germany</strong></td>
<td>Predominantly spatial development plans</td>
</tr>
<tr>
<td></td>
<td>Estimates of federal states give 3000 spatial development plans with SEAs per year, plus 75-90 SEAs per year for other sectors</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Greece</strong></td>
<td>No information</td>
</tr>
<tr>
<td></td>
<td>Estimate 50 SEAs per year</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Hungary</strong></td>
<td>Spatial development plans</td>
</tr>
<tr>
<td></td>
<td>Estimate 155 SEAs on average per year, plus one transboundary SEA per year on average</td>
<td>Transport strategies and programmes, EU funded programmes, including trans-boundary programmes</td>
</tr>
<tr>
<td></td>
<td><strong>Ireland</strong></td>
<td>Of 394 total SEAs, 305 SEAs were on land use plans. Other sectors were Energy (20/394) and Fisheries (12/394)</td>
</tr>
<tr>
<td></td>
<td>42 SEAs on average per year, with 66 screenings per year. In total to end of 2014</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Italy</strong></td>
<td>At national level between 2009-2014: 50% water plans, 20% energy, 10% nature, cultural heritage and tourism, 10% research and competitiveness At regional level in 2014, 84% spatial/development plans at municipal level, 9% sector plans, 4% programmes co-funded by ESIF.</td>
</tr>
<tr>
<td></td>
<td>600 SEAs on average per year (2009-2013) with1000 screenings per year. Data only refer to completed SEAs</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Latvia</strong></td>
<td>In 2014 a total of 19 SEAs, including six each for spatial plans, amendments to spatial plans, and national level guidelines, plans and programmes of sectoral policy. Five SEAs for strategies of sustainable development</td>
</tr>
<tr>
<td></td>
<td>41 SEAs per year on average.</td>
<td>Estimate 85% of SEAs are territorial planning documents at national and local level</td>
</tr>
<tr>
<td></td>
<td><strong>Lithuania</strong></td>
<td>Estimate 85% of SEAs are territorial planning documents at national and local level</td>
</tr>
<tr>
<td></td>
<td>52 SEA reports and 127 screening documents per year on average</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Luxembourg</strong></td>
<td>Land use plans, plus one on average per year for agriculture, four for economic development and territorial cooperation (including three cross-border OPs under Cohesion Policy), and three for water plans</td>
</tr>
<tr>
<td></td>
<td>15 SEAs per year on average for new land use plans, plus 18 for modifications of a land use plan</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Malta</strong></td>
<td>Sectoral analysis not available due to small number of SEAs. SEAs have been carried out for Operational Programmes (OPs) under Cohesion Policy, waste management, energy, storm water, Rural development and Fisheries</td>
</tr>
<tr>
<td></td>
<td>Two SEAs on average carried out per year, with 47 total submitted for screening between 2007-2014</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Netherlands</strong></td>
<td>SEAs for municipal zoning plans (e.g. regulating intensive livestock farming) make up considerable proportion of total</td>
</tr>
<tr>
<td></td>
<td>Estimate 35 SEAs per year (2007-2010) and 85 SEAs per year (2011-2014)</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Poland</strong></td>
<td>70-80% of regional SEAs apply to spatial development plans or amendments at municipal level. At national level, 30% concern water management, and 10% each for transport and forestry</td>
</tr>
<tr>
<td></td>
<td>Several hundred proceedings per year at regional level plus several dozen at central level.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Portugal</strong></td>
<td>Out of 607 total SEAs 2007-2014, 539 were land planning instruments (mostly detail plans and municipality plans), 15 OPs under Cohesion Policy and 37 sectoral (mostly transport and water)</td>
</tr>
<tr>
<td></td>
<td>87 SEAs on average per year, including those still to be completed.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Romania</strong></td>
<td>According to 2011 data, 91% of SEAs are spatial and urban planning documents</td>
</tr>
<tr>
<td></td>
<td>2,657 SEAs on average per year, plus 42 carried out by local county agencies for environmental protection</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Slovakia</strong></td>
<td>Municipal land use plans and OPs under Cohesion Policy</td>
</tr>
<tr>
<td></td>
<td>185 SEAs on average per year</td>
<td></td>
</tr>
</tbody>
</table>
### Number of SEA procedures carried out (2007-2014)

<table>
<thead>
<tr>
<th>MS</th>
<th>Number of SEA procedures carried out (2007-2014)</th>
<th>Most common type(s) of plans/programmes assessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovenia</td>
<td>78 SEAs on average per year</td>
<td>No information</td>
</tr>
<tr>
<td>Spain</td>
<td>Estimate 1000 SEAs per year, with 10 carried out at national level</td>
<td>At national level 2006-2014 in total 31 SEAs regarding airports, 39 for water management, and 37 for economic and regional development. At regional level, the majority relate to land use management plans</td>
</tr>
<tr>
<td>Sweden</td>
<td>Estimates 100-140 SEAs per year</td>
<td>50-80 detailed spatial development plans plus 50-60 SEAs for comprehensive plans, waste plans, energy plans, transport plans, regional plans, and OPs under Cohesion Policy</td>
</tr>
<tr>
<td>UK</td>
<td>Estimate 140 SEAs completed on average per year</td>
<td>Scotland in 2007-2011 had a total of 396 full SEAs, with 42% relating to town and country planning and land use sector</td>
</tr>
</tbody>
</table>
Distribution of SEAs per sector

As seen above in Table 7, just over half of the Member States had information available about the distribution of SEAs per sector. While in some Member States, this information was held in databases (e.g. Spain), for others the information came from accessed SEA reviews (e.g. Scotland).

Spatial plans, town and country planning, and land use planning made up the significant majority of SEAs. Of the remaining, water plans were the most common, followed by transport, rural development and energy. Tourism and agriculture were also mentioned by several Member States. It is worth noting that the vast majority of plans are carried out at local level.
4 Handling the main stages of SEA - Implementation status

Part 4 describes how Member States handle the key stages of SEA. The information summarised is useful to understand how the ways in which Member States approached each stage of SEA have helped or hindered effective application and implementation of the Directive.

4.1 Definitions of plans and programmes and determination of the application of the Directive

Plans and programmes are defined in Article 2(a) of the Directive as follows: ‘plans and programmes’ shall mean plans and programmes, including those co-financed by the European Union, as well as any modification to them:

- Which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by the Member States national/regional/local parliaments or governments, and
- Which are required by legislative, regulatory or administrative provisions.

The SEA Directive does not provide for individual definitions for a plan or programme. In identifying whether a document is a plan or programme for the purposes of the Directive, it is necessary to decide whether it has the main characteristics of such a plan or programme as described in Article 2(a). Some definitions can be found in several guidance documents, manuals, handbooks etc. For example, the Commission SEA guidance document suggests an interpretation of ‘plan’ as a document which sets out how it is proposed to carry out or implement a scheme or a policy and ‘programme’ as a plan covering a set of projects in a given area.

The definition of plans and programmes, in particular regarding the requirements for adoption by legislative, regulatory or administrative provisions, was interpreted by the CJEU in Judgement on Case C-567/10 (see Box 3). The judgement confirmed that plans and programmes that do not require adoption may still be subject to SEA if they meet the relevant criteria.

Box 3 CJEU, Judgement on Case C-567/10

<table>
<thead>
<tr>
<th>CJEU, Judgement on Case C-567/10 (Inter-Environnement Bruxelles ASBL, Pétitions-Patrimoine ASBL, Atelier de Recherche et d’Action Urbaines ASBL v Région de Bruxelles-Capitale)</th>
</tr>
</thead>
<tbody>
<tr>
<td>It must be stated that an interpretation which would result in excluding from the scope of Directive 2001/42 all plans and programmes, inter alia those concerning the development of land, whose adoption is, in the various national legal systems, regulated by rules of law, solely because</td>
</tr>
</tbody>
</table>

---

their adoption is not compulsory in all circumstances, cannot be upheld.

The interpretation of Article 2(a) of Directive 2001/42 that is relied upon by the abovementioned governments would have the consequence of restricting considerably the scope of the scrutiny, established by the directive, of the environmental effects of plans and programmes concerning town and country planning of the Member States.

Consequently, such an interpretation of Article 2(a) of Directive 2001/42, by appreciably restricting the directive’s scope, would compromise, in part, the practical effect of the directive, having regard to its objective, which consists in providing for a high level of protection of the environment (see, to this effect, Case C-295/10 Valčiukienė and Others [2011] ECR I-8819, paragraph 42). That interpretation would thus run counter to the directive’s aim of establishing a procedure for scrutinising measures likely to have significant effects on the environment, which define the criteria and the detailed rules for the development of land and normally concern a multiplicity of projects whose implementation is subject to compliance with the rules and procedures provided for by those measures.

It follows that plans and programmes whose adoption is regulated by national legislative or regulatory provisions, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as ‘required’ within the meaning, and for the application, of Directive 2001/42 and, accordingly, be subject to an assessment of their environmental effects in the circumstances which it lays down.

It follows from the foregoing that the answer to the second question is that the concept of plans and programmes ‘which are required by legislative, regulatory or administrative provisions’, appearing in Article 2(a) of Directive 2001/42, must be interpreted as also concerning specific land development plans, such as the one covered by the national legislation at issue in the main proceedings. (paragraphs 28-32)

Article 3 of the SEA Directive defines the scope of application. It establishes that an environmental assessment must be carried out for plans and programmes which are likely to have significant environmental effects.

Article 3 defines two different categories of plans and programmes to which the Directive applies: 1) plans and programmes for which SEA is mandatory, and 2) plans and programmes that are subject to a screening decision before determining whether or not an environmental assessment should be undertaken.

While the Directive is prescriptive for a number of predefined sector plans and programmes (based on their formal characteristics), as defined in paragraph 2, SEA requirements for plans and programmes falling under paragraphs 3 and 4 are left to the discretion of authorities in Member States. The CJEU provided interpretation on the plans and programmes covered by the Directive and on the margin of discretion of the Member States in Judgement on Case C-295/10³³ (see Box 4).

Box 4 CJEU, Judgement on Case C-295/10

Whenever the Member States decide on the scope of their national legislation implementing the Directive they should bear in mind that their margin of discretion ‘pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans which are likely to have significant environmental effects is limited by the requirement under Article 3(3) of that directive, in conjunction with Article 3(2), to subject the plans likely to have significant effects on the environment to environmental assessment, in particular on account of their characteristics, their effects and the areas likely to be affected’ (paragraph 46).

In another judgement the Court stated clearly that national legislation should not create exemptions which are contrary to the objectives of the SEA Directive (Judgement on Case C-463/11, L v M 34 – see Box 5).

**Box 5 CJEU, Judgement on Case C-463/11 (L v M)**

31. At the outset, it should be recalled that, as it is apparent from Article 1 of the directive, the fundamental objective of that directive is to ensure that plans and programmes which are likely to have significant effects on the environment are subject to an environmental assessment when they are prepared and prior to their adoption (Case C-295/10 Valčiukienė and Others [2011] ECR I-0000, paragraph 37, and Case C-41/11 Inter-Environnement Wallonie and Terre wallonne [2012] ECR I-0000, paragraph 40).

[...]

43. Moreover, it is clear from the case-law of the Court that, where a plan, within the meaning of the directive, should, prior to its adoption, have been subject to an assessment of its environmental effects in accordance with the requirements of the directive, the national courts hearing an action for annulment of such a plan are obliged to take all general or particular measures for remedying the failure to carry out such an assessment (see, to that effect, Inter-Environnement Wallonie and Terre wallonne, paragraphs 44 to 46).

44. Consequently, in the main proceedings, it is for the referring court, within the exercise of its jurisdiction, to apply the provisions of European Union law and to give full effect to those provisions, refusing to apply any provision of the BauGB, in particular Paragraph 214(2a)(1) thereof, which would lead that court to deliver a decision contrary to the directive (see, to that effect, Case 106/77 Simmenthal [1978] ECR 629, paragraph 24, and Case C-617/10 Åkerberg Fransson [2013] ECR I-0000, paragraph 45).”

The majority of Member States have not encountered problems in determining the scope of application of the SEA Directive. Most have reported that their model is based on a combined approach, whereby the list of plans and programmes to be assessed is supplemented by a case-by-case approach to determine whether an SEA is needed. The following sections will present how these two different cases are defined in the SEA Directive, and how Member States have transposed and apply in practice the Directive’s requirements regarding its scope of applicability.

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4.1.1 Transposition of Article 3(2) – definition of sectoral plans and programmes

Article 3(2)(a) of the SEA Directive defines two classes of plans and programmes which are deemed likely to have significant environmental effects and are, thus, covered by the Directive. These pre-defined sets of plans and programmes are those that have been prepared specifically for the following sectors: agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, and town and country planning or land use. At the same time, they must fulfil a specific condition in order to be directly subject to the Directive: they must set the framework for future development consent of projects listed in Annex I and II to the EIA Directive.

Another set of plans and programmes for which an environmental assessment must be carried out as a general rule are those that, in view of their likely effects on protected sites, have been determined to require an assessment under the Habitats Directive (Article 3(2)(b)). The CJEU provided further interpretation on how to apply Article 3(2)(b) in its Judgement on Case C-177/11 (see Box 6). For more information on the Habitats Directive and its relationship with the SEA Directive, see Section 5.4 on coherence with other EU environmental legislation.

Box 6 CJEU, Judgement on Case C-177/11

<table>
<thead>
<tr>
<th>CJEU, Judgement on Case C-177/11 (Eighth - Sillogos Ellinon Poleodomon kai Khorotakton v Ipourgos Perivallontos, Khorotaxias kai Dimision Ergon and Others)</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘... Article 3(2)(b) of the SEA Directive must be interpreted as meaning that the obligation to make a particular plan subject to an environmental assessment depends on the preconditions requiring an assessment under the Habitats Directive, including the condition that the plan may have a significant effect on the site concerned, being met in respect of that plan. The examination carried out to determine whether that latter condition is fulfilled is necessarily limited to the question as to whether it can be excluded, on the basis of objective information, that that plan or project will have a significant effect on the site concerned.’ (paragraph 24)</td>
</tr>
</tbody>
</table>

All Member States have identified a list of plans and programmes for which SEA is mandatory. Around half of the Member States have literally transposed Article 3(2), and most have made only minor adjustments and additions to the type or name of sectoral planning documents according to their own national arrangements. Several Member States, however, have defined a more exhaustive list and have added provisions covering a wider range of sectors, often with respect to a particular type of plan.

Member States that only introduced minor additions or specifications to the list in Article 3(2) of the SEA Directive focused primarily on the following aspects:

- Mining activities (Bulgaria, Croatia, Spain, Romania, Slovenia, Latvia).
- Regional development (Czech Republic, Poland, Slovakia, Croatia, Finland, Romania, Greece, Bulgaria).
- ‘Environment’ (Finland, Slovakia).
- Marine industry/aquaculture and/or maritime public domain use (Spain, Romania).
- EU funded projects (Croatia, Greece, Bulgaria).
- Drinking water (Slovenia).
In addition to extending the list outlined in Article 3(2)(a), several Member States have also added provisions in national legislation to include certain types of plans. Estonia, Lithuania, Ireland, Bulgaria and Poland, for example, established specific lists for territorial planning documents so as to avoid any ambiguity about whether or not they should undergo a mandatory SEA. Spain does the same, but at regional level. Other Member States (Germany, Greece, Hungary, Finland, and Sweden) deliberately specify which national plans and programmes that fall under the sectors mentioned in Article 3(2)(b) of the Directive must be subject to an SEA.

French legislation details 46 types of plans and programmes split into two specific lists for sectoral plans and spatial plans, in two different legislative acts. While this was done with the idea to leave little scope for plans to fall outside the Directive, in practice it may lead to the opposite effect. In the Netherlands a list of decisions requiring an SEA is laid out in the Annex of the national EIA/SEA legislation. In both the UK and Sweden, comprehensive lists have been set out in guidance documents, which are not binding, but still give practitioners an indication of what sort of plan requires an SEA. It is also worth noting that in Luxembourg it is expected that such a list, in the form of legislation or guidance, will be developed (although this has not been done yet).

Of those Member States that have extended the scope of application of the SEA Directive, Scotland is the most extreme example, as the legislation has been extended far beyond the Directive, with almost every public plan, policy, or programme falling under equivalent provisions to the SEA Directive.

With regard to transposition of Article 3(2), there are two notable exceptions, the first being Austria, which has no single national SEA legislation. Instead, SEA transposing legislation is divided either provincially or by sector, making generalisations difficult. However, Member State experts noted that most of the legislation specifies the types of plans and programmes for which an SEA has to be carried out according to the requirements of the SEA Directive. The other exception is Belgium, where the federal government only has certain competences, for example activities at sea and nuclear installations, electricity production and supply, and natural gas supply. Mandatory SEAs are therefore carried out on:

- Plans concerning electricity production and supply.
- Plans concerning natural gas supply.
- Programmes on long-term management of radioactive waste.
- Plans on marine areas within the limit of concessions granted or exploitations carried out.
- Any other plan or programme, decided on a case-by-case basis.

**4.1.2 Setting the framework for future development consent of projects**

Article 3(2)(a) of the SEA Directive requires that plans and programmes prepared for the listed sectors should also comply with the following requirement: 'set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC'.

In order to determine the plans and programmes for which an environmental assessment must be carried out, Member States must determine whether plans and
Study concerning the preparation of the report on the application and effectiveness of the SEA Directive
(Directive 2001/42/EC)

programmes set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive.

There is no further definition of the term in the text of the Directive, although this is described in more detail in the European Commission’s guidance on the implementation of the Directive\(^\text{35}\). Nevertheless, Member States are free to define and interpret it as they deem appropriate.

A comprehensive consideration of the phrase ‘plans and programmes ... which set the framework for future development consent of projects’ in Article 3(2)(a) was given in the Advocate General’s opinion in Terre Wallone ASBL v Région Wallone and the subsequent judgement on Joined Cases C-105/09 and C-110/09\(^\text{36}\) (see Box 7 below).

**Box 7 CJEU, Judgement on joined Cases C-105/09 and C-110/09**

**CJEU, Judgement on joined Cases C-105/09 and C-110/09, Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne.**

To understand whether a plan or programme 'sets the framework for future development consent', it is necessary to examine the content and purpose of those programmes, taking into account the scope of the environmental assessment of projects as provided for by that directive.

[...]

'An action programme adopted pursuant to Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources is in principle a plan or programme covered by Article 3(2)(a) of Directive 2001/42/EC ... since it constitutes a 'plan' or 'programme' within the meaning of Article 2(a) of the latter directive and contains measures compliance with which is a requirement for issue of the consent that may be granted for carrying out projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997'.

The following section presents whether and how Member States have defined the criterion 'setting the framework for future development consent'. It also discusses those cases in which Member States have provided further interpretation through a guidance document, as well as the identification of such cases in practice.

25 of the 28 Member States have transposed the phrase directly into national SEA legislation, with little in the way of interpretation. Several Member States, for example Greece, Slovakia, Slovenia, Malta and Romania, have simply defined the phrase as a project falling under the EIA Directive. In Greece, for example, the phrase is interpreted in the Greek Ministerial Decision on SEA as setting the framework for future permits for projects or activities requiring obligatory Environmental Licensing. The latter term


\(^{36}\) CJEU, Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne, available at: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-105/09.
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(obligatory Environmental Licensing) corresponds to the projects listed in Annexes I and II of the EIA Directive.

Germany, and Hungary provide more extensive definitions in their legislation. For the remaining Member States, interpretations can be found in a range of formats such as additional guidance documents.

Legislation

German legislation defines the concept as follows: Plans and programmes shall be considered to provide the framework for decisions regarding the approval of projects if they contain assertions of relevance to subsequent approval decisions, particularly regarding the necessity, size, location, nature or operating conditions of projects of the utilisation of resources. The Hungarian legislation reads in a similar fashion.

Guidance documents

Other than legislation, Member States have provided definitions in guidance documents. In Belgium - Flanders Region, the concept was defined in a Circular. This Circular interprets states that a plan or programme determines a framework in which the execution of projects may be permitted. Sweden’s legislative preparatory works state that the phrase implies that the plan or programme somehow restricts the scope of future permits for activities. Permits are in turn interpreted by the Swedish Environmental Protection Agency in its guidelines.

Other means

In Ireland, the phrase is not defined, although the Planning & Development Acts and Regulations, as amended, provide the legislative background for forward planning and development management, requiring consent permission in the country. In Cyprus, the environmental authority compares the projects proposed for the plan or programme under review with those listed in the Annexes, and then decides on the need for an SEA procedure. It is also worth noting that in Belgium - Flanders Region, European Court of Justice (CJEU) case law has played a role in widening the interpretation beyond that set out in official guidance documents.

Common definition

There are a few Member States who, despite not having a definition formalised in legislation or guidance documents, have established a common understanding. In Austria, for example, Member State experts were able to interpret the phrase to mean ‘plans and programmes containing criteria or conditions which guide the way the consenting authority decides on an application for development consent’. Member State experts in Romania also give an interpretation referring to plans or programmes which include in the plan actions/measures/priorities, future projects to be implemented, and which are found in Appendix I or II of the EIA Directive. Such plans are subject to SEA.

Some Member States provide no interpretation. Polish and Spanish experts both note that this is something the EU Commission could consider developing. On a federal level, in Belgium, an interpretation of the phrase may be included in a reform currently under preparation. Other Member States have no interest in defining it. Spanish Member State
experts note that ambiguity may cause this to be an issue for some stakeholders, while Swedish Member State experts state that this ambiguity works favourably to ensure no plan or programme is overlooked on a technicality. Although Polish experts have identified this issue to be one which could be clarified at EU level, they also note that strict regulation on the issue may have limited benefits, due to the range of documents undergoing SEAs. They concluded that, so far, a better solution has been to rely on the individual interpretation of cases, although it requires extensive knowledge and involvement on the part of the bodies that develop documents and assessments, as well as the approval authorities. Other Member States, such as Bulgaria, France and, to a lesser extent, the UK (where an indicative list is provided in guidance documents), list the types of plans falling into this category so comprehensively that there seems to be no need to provide additional guidance.

4.1.3 Screening

Under Article 3(3) and 3(4) of the SEA Directive, an environmental assessment is required for certain categories of plans and programmes where they are determined to be likely to have significant environmental effects. These categories include:

- Plans and programmes of the types listed in Article 3(2), which determine the use of small areas at local level, or which are minor modifications to plans and programmes.
- Plans and programmes of types which are not listed in Article 3(2), which set the framework for future development consent of projects (not limited to projects listed in the Annexes to the EIA Directive).

Screening definitions

The terms small areas, local level, and minor modifications are not further defined in the SEA Directive. This section will look at how Member States interpret the concepts ‘small areas’, ‘local level’, and ‘minor modifications’. It will also examine whether specific definitions are set forth in their legislative and policy frameworks, and how these are applied in practice.

The Member States were asked whether ‘small areas at local level’ and ‘minor modifications to plans and programmes’ are defined in their national legislation. The vast majority of Member States do not define such terms. An overview of their replies is provided in Figure 1 below.
Figure 1 Are ‘small areas at local level’ and ‘minor modifications to plans and programmes’ defined?

* ‘small areas at local level’ defined but not ‘minor modifications’
** terms only defined at state (sub-national) level

Small areas at local level
According to their replies to the Commission questionnaire, four Member States plus Belgium – Flanders Region have defined ‘small areas at local level’ in their legislation. However, this phrase is also covered (briefly) in Swedish guidance, as well as in a Flemish circular. While the phrase is not defined in SEA legislation in Germany, the Federal Building Code contains a definition. Other Member States, such as Luxembourg and Slovakia, have a common interpretation used by practitioners which is not set out formally in legislation or guidance documents.

Through consultation for this study, Member States also provided evidence of what they mean by size of a ‘small area at local level’, with interpretation seeming to differ between Member States. Some define the phrase to mean only one municipality (Czech Republic, Poland), while a more widespread definition states that the area must be smaller than a municipality (Belgium – Flanders Region, Saxony in Germany, Slovakia, and Spain). Croatian legislation and SEA Guidance from the Swedish National Board of Housing, Building, and Planning define small areas at local level, respectively, as urban development plans and detailed land use plans.

In Ireland, a mandatory SEA is required for Local Area Plans for 5000 persons or areas greater than 50 square kilometres, however, this threshold is not used to define small areas. In Luxembourg, a small area is generally considered a gap between existing buildings where one or more buildings could be built.

Minor modifications
Even fewer Member States define ‘minor modifications’, with only Spanish legislation giving the definition: ‘... those modifications of already approved plans and programmes that have differences in the characteristics of their effects or the influenced area, but that are not fundamental variations of the strategies, guides, and proposals of their chronology’. In the Belgium – Flanders Region, a Circular defined ‘minor modifications’ as a modification which causes no substantial or essential environmental impact. Of the remaining Member States, German experts pointed to the definition of the phrase in the
Federal Building Code, and Austrian experts note that in each planning act it is determined whether minor modifications and small area apply to the specific plan type. In addition, for some of these additional specifications may be laid down, for example size in combination with specific determinations.

**General remarks from Member States**

When asked if national legislation defines the abovementioned terms, most Member States replied that definitions are decided on a case-by-case basis, depending on whether modifications to plans for a small area were likely to have significant environmental effects. As Swedish experts pointed out, rigid definitions would increase the likelihood that plans or programmes with potentially significant environmental effects ‘escape’ screening. Italian experts agreed that although a case-by-case approach is expensive and potentially unpredictable, it is still the best way to establish definitions.

Many Member States have provided practitioners with guidance. Member States such as Denmark, Portugal, Estonia and Romania have specific guidance documents while Italian experts stated that court sentences can provide guidance for future practitioners.

**Screening models**

The decision on whether plans and programmes other than those referred to in Article 3(2) should be subject to an SEA is left to the discretion of Member States. In taking this decision Member States must apply a screening procedure to determine whether plans and programmes are likely to have significant environmental effects. This should be done, according to Article 3(5) of the SEA Directive, ‘through a case-by-case examination or by specifying types of plans and programmes or by combining both approaches’.

This section describes the screening models employed by the Member States to determine which plans and programmes are subject to SEA.

Almost all Member States use a case-by-case approach, with a screening decision made by the responsible authority (upon consulting the authorities, which by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes) and then publicised. Of these Member States, four (Estonia, Hungary, France and Greece) also have a specific list of plans and programmes other than that set out in Article 3(2) that must be subject to screening in order to understand the likelihood of their having a significant impact on the environment. These lists specify certain sectors/types of plan. In Estonia, for example, there are detailed lists of spatial planning documents. In Hungary the legislation allows for a case-by-case assessment in certain cases on an individual basis for specific plans and programmes (e.g. regulatory plans, or local construction codes prepared for a part of a settlement). It is also worth noting that in Greece there is a set of questions which - for plans/programmes who meet them - are followed by a screening procedure as set out in Annex II of Article 11 of a Ministerial Decision.

The exception is the Netherlands, which does not carry out any case-by-case analysis. In the Netherlands, there are several lists in the Annex of the EIA Decree which cover plans requiring an EIA or SEA. Along with lists identifying activities requiring a
mandatory SEA and EIA, there is also a list for activities to be screened for an EIA. The decision to carry out an SEA is made based on whether the subsequent project will require an EIA, and thus there is no SEA screening although there is a combined SEA/EIA approach.

The Member States who undertake case-by-case screening use a variety of approaches to such screening. For many Member States, the plan/programme developing authority undertakes research and then issues a decision to the public detailing the decision to either begin a full SEA procedure, or outlining reasons why SEA is unnecessary. Other Member States, for example, have more actors involved in the process (see Section 4.1.3.2 for more detail).

Screening criteria

Article 3(5) of the Directive requires Member States to take into account the criteria listed in Annex II when determining whether plans and programmes are likely to have significant effects on the environment. This section presents how Member States have transposed Annex II into their legislation and how they apply the significance criteria in practice.

20 Member States plus Belgium - Brussels Capital Region and Belgium - Flanders Region 22 have transposed the significance criteria of Annex II directly. The Netherlands does not undertake screening, so has not transposed it. Austrian Member State experts noted that, due to the high number of transposing legislative acts, it was possible provinces had expanded beyond the Directive. However, the country’s national website shows only a direct translation.

Latvia has extended the provision by adding complementary requirements related to natural values, as well as the Baltic Sea and the Gulf of Riga coast area, while in the Czech Republic consideration is given to the relevance and vulnerability of areas which might be affected, with regard to population density, settlement and level of urbanisation. Lithuanian legislation states that an SEA must be undertaken where it cannot be proven that there will be no environmental impacts. Lithuania has also developed far more prescriptive criteria for significance (see Box 8 below), and the phrase is defined in relevant EIA legal acts. Significant environmental impact means the anticipated change in the environment which necessitates planning of relevant measures in order to avoid or to reduce, to compensate for, or to liquidate consequences of such change. In Hungary, legislation expects socio-economic and cultural behaviour to be taken into account, along with investor and consumer behaviour. Additionally, impacts that cause catchment areas to fail to meet or maintain environmental objectives must be considered.

Box 8 Defining screening criteria in Lithuania

<table>
<thead>
<tr>
<th>Defining screening criteria in Lithuania</th>
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<tbody>
<tr>
<td>Significant effects take into account:</td>
</tr>
<tr>
<td>• Plan/programme relevance vis-à-vis environmental considerations (especially sustainable development). Positive effects may be evident if the plan/programme is intended for environmental protection or restoration, or could promote and implement sustainable development.</td>
</tr>
<tr>
<td>• Plan/programme relevance vis-à-vis national and EU environmental legislation, keeping in mind that plans/programmes falling under such legislation (e.g. waste management,</td>
</tr>
</tbody>
</table>
Defining screening criteria in Lithuania

wastewater treatment) may result in both positive and negative environmental effects.

- Environmental problems relevant to the plan/programme.
- The degree to which the plan/programme sets a framework for projects and other activities (location, nature, size, operating conditions or allocating resources). This is especially important for economic activities, which may have significant negative effects.
- Plan/programme influence on other plans, taking into account the planning hierarchy and the level of decision-making. The more a plan/programme provides a framework for future developments, the more likely the plan/programme will have significant environmental effects.
- The probability, duration, frequency, and reversibility of the effects, as well as the cumulative and transboundary nature of those effects. The risks to human and environmental health are considered, including unpredicted events such as accidents. Significant effects are measured against their magnitude and spatial extent (including geographical area and size of the population likely to be affected).

Characteristics of the territory likely to be affected include:

- National, European Community or international protection status of the areas.
- Protected species of plants or animals, natural habitats or other conservative nature or cultural heritage values found in the territory.
- Exceeded (or likely to be exceeded) environmental quality standards or limit values, for example ambient pollution levels.
- Intensive land use, for example agricultural activities.
- A certain level of naturalness in the territory.
- Those territories with protective (buffer) functions.

In Denmark, significance criteria are measured against commonly accepted criteria by field experts with specialist knowledge of the subject. This could be an authority with special responsibility/knowledge, or an external expert consultant. In Ireland, there are several guidance documents which provide criteria for best practice with respect to Annex II of the SEA Directive.

SEA applied to plan/programme modification

Article 2(a) of the SEA Directive notes that ‘plans and programmes’ also include any modifications. According to Article 3(3), minor modifications are exempt from the SEA procedure if they are not likely to have a significant effect on the environment. As discussed above, not only does the screening process vary between Member States, so too does the definition of minor modification. Member States have the option to either screen modifications or carry out a full SEA on modifications for plans.

The Commission questionnaire also asked Member States for details of the application of SEA in cases of modification of a plan or programme that has already been subject to SEA procedure. An overview of their replies is presented in Figure 2 below. Many Member States have examples where full SEAs have been carried out for a modification of a plan/programme. These data do not refer to Member States that require an SEA for modifications according to their legislation, but rather those who have carried out the process in practice.
Close to two-thirds of Member States reported having undertaken a full SEA procedure for a modification of a plan or programme. Some, like Belgium - Brussels Capital Region and Estonia, noted this had occurred only a few times, while Italy and France had many more examples, especially for spatial and land use plans.

Aside from the process of incorporating a modification, several variables were identified by the Member States when deciding to undertake a full SEA on a modification:

- Whether screening had been undertaken.
- Why the modification was introduced (e.g. because the previous plan had expired).
- What sector the plan covered/why type of plan.
- The size of the modification (covering only a small section of the plan, or a larger proportion).
- The expected impact of the modification.

In the Netherlands, if a plan or programme is subject to an SEA, amendments may also require a full SEA, but this depends on whether the amendments either define the framework for future development consent for a project which requires an EIA, or is subject to an appropriate assessment pursuant to the Birds and Habitats Directive. However, in Slovenia, screening applies in all cases. In Italy, the competent authority decides whether a full SEA is undertaken or, alternatively, screening is applied. In
Slovakia, modifications are evaluated on a case-by-case basis, and, if a modification is deemed likely to cause obvious environmental effects, screening can be bypassed. In many cases, especially in Greece and Denmark, screening of modifications, although frequently undertaken, rarely results in a full SEA (and never yet, in the case of Greece). Danish Member State experts explained that this is because changes to a plan are made early in the planning process as a result of the original SEA, before the plan is finalised, reducing the need for a new SEA.

Whether or not a modification requires a full SEA also depends on the type of plan or programme. In Belgium - Brussels Capital Region, modifications to regional development plans are a rare example where full SEAs are necessary, whereas, in Cyprus, full SEAs are usually reserved only for amendments to land use plans. Other Member States use the type of plan to decide whether to undertake a full SEA. In Finland, a full SEA is used for all modifications for land use plans, while, in Luxembourg, a full SEA is carried out if environmental effects cannot be excluded during the screening procedure.

Another variable affecting the need for a full SEA is the type of modification. Many plans and programmes have a specific lifespan, at the end of which a new plan must be adopted. In Hungary, settlement development plans modified by legally required deadlines do not require a full SEA unless they change substantially, while in the Czech Republic and the Netherlands updates for the new programming period are considered new plans or programmes and must undergo a full SEA.

The size of the modification was also a factor for many Member States. In Belgium - Flanders Region, modifications are usually small, and therefore screening is usually sufficient to determine that a new SEA is not needed. In Hungary, a new SEA is needed if the modification applies to the whole settlement covered by the Settlement development plan. In the Czech Republic, a full SEA is required if new activities or measures are set, while, in Lithuania, a full SEA is required in the case of core changes, which may include changing the goals of the plan or programme, or its implementation measures.

The process of executing a full SEA also varies from Member State to Member State. In Sweden, for example, an SEA can be carried out on the parts of the plan or programme directly or indirectly affected by the amendment. If a large part of the plan or programme is amended, then an SEA is carried out on the whole document. In Italy, the assessment is carried out with regards to the significant environmental effects of the modifications, not previously assessed within the SEA screening or within the full SEA carried out for the plan or programme. In Hungary, if a full SEA is required for settlement development plans, part of the original SEA is to be used. However, in Poland and several other Member States, if a full SEA is required, the process is identical to an SEA carried out on a new plan or programme, and the whole draft document undergoes assessment. Swedish legislation also notes that amendments accumulated over time should be taken into consideration.

**Screening guidance**

While some Member States, such as the Netherlands, have little room for ambiguity in their legislation, and therefore do not have screening guidance, several Member States have put specific tools for screening in place to assist practitioners. Some of this
guidance can be found in legislation, for example in Lithuania, or via procedural obligations requiring consultations with environmental authorities who must give an opinion. In Italy, there are a certain number of court cases which provide guidance for more complex cases.

Estonia, Ireland and Lithuania all have specific screening guidance documents, and Hungarian guidance specifically covers the SEA procedures for modifications. Romanian guidance includes criteria for determining significant effects, as does Scottish and Polish guidance. Swedish guidance includes tables covering each industry sector. Portuguese guidance relates to specific plans, such as the Guidance on SEA of Municipal Land Management Plans published by the Directorate General of Spatial Planning and Urban Development (DGOTDU) in 2008.

Standardised checklists for screening are used by both Austria and France, and in Denmark there are commonly accepted criteria which are evaluated by experts and based on legislation and guidance. Similarly, in Luxembourg, guidance for municipalities has been published by the Department of the Environment, and includes a methodology to determine likely significant effects, which consists of a rating scale with five levels of evaluation.

4.1.3.1 Consultation with the concerned environmental authorities on the screening decision

Article 3(6) of the SEA Directive requires consultation with the environmental authorities if significant environmental effects are to be determined on a case-by-case basis. In the Netherlands the NCEA was required to give an opinion on screening, until 2010 when this became an optional step in screening. However, the NCEA is still often asked for advice, especially for more complicated plans and programmes. In Hungary, the decision on the likely significant environmental impacts of plans and programmes rests with the plan/programme developing authorities. However, the opinions from the concerned environmental authorities are required for the screening decision.

Other Member States place more emphasis on the process, which, as Latvian experts pointed out, adds consistency to the screening process. In France, Malta, Romania, Poland and Cyprus, the environmental authority decides whether plans or programmes are likely to have significant environmental effects, based on the information provided by the planning authority. In Romania, a permanent Special Committee, a consultative body, performs the screening stage, as per the legislation.

In Italy, the plan/programme developing authorities must provide the competent environmental authority with a ‘preliminary report’, including a description of the plan or programme and the information and data necessary to verify the significant environmental effects of implementing the plan or programme. The competent authority must take into consideration the opinion of the environmental authority before issuing the screening decision. In Spain, screening follows a similar process. In Luxembourg, a preliminary test is also undertaken, although it is the Environment Minister who gives an opinion on whether or not an environmental assessment is required and, in cases where an SEA is required, it must also give its opinion on the scope of the SEA. In Greece, a preliminary report is submitted by the planning authority to the competent environmental authority. The application is then transmitted to the relevant public
authority for consultation, while, in Latvia, the preliminary report is submitted to the Environmental State Bureau, following consultations with the concerned authorities.

The environmental authority may also be involved in decisions regarding minor modifications and small areas at local level. In Belgium - Flanders Region, if a plan or programme falls under this category, the planning authority submits an SEA screening document to the EIA/SEA unit, which then decides if an SEA is necessary. In Poland, Malta, Belgium - Flanders Region, and Spain, the environmental authorities also decide if an SEA is needed. In Malta, this is done based on recommendations provided by the competent authority. In Portugal, consultations with environmental authorities are optional for SEA exemptions for small areas or minor modifications.

4.1.3.2 Screening Issues

The majority of Member States reported that there were no significant issues with the screening process of the SEA, with Slovakian Member State experts noting that the screening process works especially well for land use plans. However, there were two main issues identified by some Member States, the first legislative, and the second concerning how screening is carried out in practice.

Legislation issues
Experts from Belgium, and especially the Flanders Region, noted a lack of clarity as to which plan or programme should be subject to an SEA. Member State experts noted that this is not only a threat to the environment, but could also undermine legal certainty if the plan is disputed. Croatian experts echoed this issue of ambiguity, noting that they favour a case-by-case approach when it comes to screening. This is to combat the fact that some plans may be assumed to require an SEA on the basis of the name of the plan, when in reality the issues and activities they address do not require an SEA.

The Flemish Member State experts added that legislation requires screening to be carried out even if it is clear from the outset there are no significant environmental impacts, making it superfluous and inefficient.

Bulgarian Member State experts point out that while there have been no problems, they did identify a difficulty in that plans/programmes set a framework for future development consent of projects. They give the example of the Regional Development Plans (RDPs) subject to mandatory SEAs (under the Regional Development Act). However, these plans set the framework, as they include projects set out in other programmes and strategies. These projects do not come from this specific plan, and therefore implementation (or not) of the plan is not required for approval and execution of these projects.

The issues regarding definitions were also raised. In Romania there were very few cases where potential significant effects were identified, and even then, most identified effects were positive. Similarly, in Slovenia, there have been discussions on how to improve the assessment of cumulative effects.

Practical issues
Both Cyprus and Luxembourg raise practical issues regarding screening. Experts from Luxembourg note that while a case-by-case approach generally works well, the evaluation of significant impacts depends largely on the available data, in the absence
of which, the precautionary principle is applied. In Cyprus, a lack of guidance and limited training for personnel represent the main problems encountered during the screening process.

For Member States which have included such inclusive lists that there is very little room for ambiguity (e.g. France and the Netherlands), Dutch Member State experts noted that these lists must be constantly updated to take account of new plans. They added, however, that this is only a minor inconvenience.

Italian Member State experts stated that adopting a case-by-case approach is the most expensive in terms of time, staff, and unpredictability (especially for stakeholders), however, they remain sure that it is the best approach, in light of several jurisprudential sentences – expressed both by national and by EU Courts.

### 4.2 Scoping

The information to be provided in the Environmental Report is set out in Annex I of the SEA Directive. However, its required level of detail is established at the scoping stage of the SEA procedure. Scoping is a very important part of the SEA procedure as it enables agreement upfront on what is to be assessed, and provides all actors, authorities and evaluators with an appropriate idea of what is to be achieved and what needs to be done.

Article 5 of the Directive lists the factors to be considered in deciding what information to include in the Environmental Report:

- Information that may reasonably be required, taking into account current knowledge and methods of assessment.
- The content and level of detail of the plan or programme.
- The objectives and geographical scope of the plan or programme.
- The stage reached in the decision-making process.
- The extent to which it would be more appropriate to assess certain matters elsewhere in the decision-making process.

Article 5(1) refers to Annex I of the SEA Directive which specifies the information that is to be provided in the Environmental Report. The Annex is composed of 10 paragraphs which set forth a broad range of issues to be dealt with in the Environmental Report. However, since the SEA Directive lay down minimum requirements for the assessment, Member States are free to add provisions to the content of the Environmental Report that go beyond the Directive.

The organisation of the scoping process is entirely at Member States’ discretion, with the only obligation that the authorities with specific environmental responsibilities and who are likely to be concerned by the environmental effects of implementing plans and programmes (as established in Article 6(3)) are consulted on the scope of the Environmental Report (Article 5(4)). Here again, Member States’ legal provisions may go beyond the minimum requirements of the Directive and lay down obligations for public consultations at the SEA scoping stage. The public can also be consulted regarding the important issues to be addressed in the Environmental Report, taking into consideration the results of consultations with the authorities.
The requirements in the SEA Directive regarding the scoping of the environmental assessment has resulted in different methods of organising the scoping and determining the content of the Environmental Report, as well as different requirements with respect to consultations with authorities and the public. Member States’ experience related to all these aspects are presented in the following sections.

### 4.2.1 Methods and procedures for scoping

According to the SEA Directive, scoping is a compulsory activity. In most Member States, however, the different elements of the scoping procedures are not formally defined in legislation, or are only partially defined. It is the responsibility of the designated authorities to decide on the details of the procedure on an ad hoc basis, depending on the type of plan and programme concerned.

**Scoping details defined in legislation**

In Greece, for example, the legislation includes a checklist for the contents of the Environmental Report. The authorities reported that this approach facilitates the scoping, as the predefined contents of the Environmental Report are perceived as fixed and clear requirements that have to be taken into account during the preparation of the plan or programme, from the earliest stage possible.

In other Member States, the scoping approach is more flexible. In Hungary, scoping is defined in SEA legislation, which stipulates that the plan/programme developing authorities must define the content and level of detail of the environmental assessment into a ‘scoping document’ that is shared with the environmental authorities in order to obtain their opinion. In some other Member States, even though scoping is not formally defined, the legislation provides for specific requirements in carrying out consultation. This is the case in Estonia and Germany, where the EIA Act describes specific requirements.

**Scoping approach**

While in all Member States the case-by-case approach to scoping prevails, it varies depending on the type of plan and programme, or the level of administration at which the plan or programme is prepared. In Belgium scoping is done on a case-by-case basis, although it is more structured (i.e. fixed requirements) for land use plans. In the Netherlands, scoping is done on a case-by-case basis, however, for plans and programmes that occur frequently (e.g. municipal zoning plans for the countryside), certain common practices have grown over time. In Ireland, the planning authorities for Town and Country Planning are required by law to notify the environmental authorities during the scoping phase, and comments may be made to the planning authorities on the scoping report/level of detail of the plan. In Spain, while scoping is done on a case-by-case basis at national level, some regions define minimum requirements of the scoping report, with a preliminary analysis of the alternatives, environmental objectives to consider and indicators for the assessment.

Other Member States have explored innovative approaches for the definition of the content of the Environmental Report. In Romania there is no formal report on the scoping phase of the SEA procedure. Instead, the contents of the minutes of the Working Group meetings represent the scoping undertaken in the SEA procedure: a Working Group finalises the first draft of the plan/programme and establishes the scope
and detailed level of information that must be included in the Environmental Report. The Working Group is composed of representatives of the plan or programme owner, the competent environmental and health authorities, other authorities concerned - identified according to their specific attributions and environmental protection responsibilities, one or more natural or legal persons certified according to the legal provisions, as well as employed experts, as appropriate. In France, a similar approach has been recently tested, with meetings organised between the authorities to determine the scope of the Environmental Report, in place of the formal scoping reports. However, this is only at an experimental level and is not yet enshrined in legislation.

Scoping guidance

Some Member States, e.g. Denmark and Belgium - Federal level, reported that Annex I of the Directive, as transposed in the national legislation, provides basic guidance for the definition of the scope of the Environmental Report. Some other Member States instead prepared supplementary guidance material to aid the case-by-case scoping process, either as part of a general guidance document on the environmental assessment procedure, or a specific guidance for the scoping stage. A full overview of Member States with guidance specifically on scoping can be found in Table 6 above, however it is worth noting that in Italy, no guidance is provided at national level, although it exists at regional level, and gives details on the information to be included in the 'preliminary Environmental Report'. In Luxembourg, although a general guidance document is available, the environmental objectives defined at the screening phase are used as a guiding framework for the scoping decision, with Annex II criteria used in practice to describe the scope of the Environmental Report. A similar approach is followed by the Czech Republic.

Scoping time frames

Not all Member States provided information on the duration of the scoping phase. However, for those that did, there was an average duration of one to three months. Consultations and time needed by authorities to respond are cited as the main reasons for extending the scoping period in , Bulgaria, and Romania, although Luxembourg noted that land use plans generally take longer.

A slightly longer timeframe has been reported in Estonia (on average 4 months), starting from the preparation of the programme by experts until its approval by the supervisor. In Italy, scoping takes around 90 days, but this is only indicative and can be modified upon agreement with the SEA competent authority (Ministry of Environment or region) and the planning authority. The average is 60 days, but never less than 30.

4.2.2 Scoping document/report

Two separate trends exist for the preparation of a scoping report during this phase of the procedure. One group of Member States stated that a scoping report is specifically required by law (Hungary, Slovakia, Czech Republic, Germany, Lithuania, Netherlands, Belgium – Flanders Region and Spain). In at least 11 Member States (plus Brussels Capital Region), while no scoping report is required by legislation, it is still common practice to prepare one. In Scotland for example, this is done to engage with consultation bodies and other interested parties. In some Member States (e.g. Poland, Latvia), no scoping report is prepared at all.
In those Member States where the preparation of the scoping report is not formally required, the outcome of the scoping procedure is recorded in a written document. This outcome is the opinion of the competent body and other relevant environmental and nature protection institutions. Similarly, in Italy, although there is no scoping report, the outcome of the scoping phase consists of a set of comments and contributions made by the consulted bodies with environmental competence that is then used in preparation of the Environmental Report. In Croatia a 'scoping decision' (opinion) is issued by the designated authorities.

In some Member States, a scoping report is only required for certain types of plans and programmes. For example, in Ireland, the preparation of scoping reports for Town and Country planning is recommended by official guidelines. In Finland, the scoping report (called 'Participation and assessment scheme') is obligatory for land use plans only, while for sectoral plans the public and other relevant authorities are consulted based on the information available on the objectives and preparation of the programme. In Estonia, different requirements exist, depending on whether the scoping report is prepared for sectoral plans (called 'SEA programme') or for spatial plans (called 'The plan to conduct an SEA').

Content of the scoping report

Half of the Member States were able to provide insight into what is included in the scoping report, regardless of whether such a report is required by law. While some Member States, such as Bulgaria, require the information set out in Annex I of the SEA Directive as the minimum, others use Annex I as a guideline rather than a prescriptive list of what should be included. For example, the Lithuanian and the Slovak scoping reports slightly elaborate the Annex I criteria and state, inter alia, what alternatives have to be assessed and what aspects to focus on. In Germany, the scoping report is a record of the discussion on the subject.

Other Member States have more general requirements. In Croatia, the scoping decision must include:

- The starting points, scope and objectives of the strategy, plan or programme.
- The final established content of the SEA study.
- The list of the bodies and/or persons that participated in the procedure.
- Information on the author.

This last point can also be found in Estonian scoping reports, which not only identify the expert who prepared the programme and the person who prepares the strategic planning document (which is also required in Flemish reports), but also the persons/authorities which may be affected or which may have a reasoned interest in the strategic planning document. Reference to these persons/authorities is also found in Latvian and Italian reports. Another common addition found in several scoping documents is a timeline or schedule of the SEA (Estonia) or consultations (Hungary and the UK).

In other Member States, the report focuses on the aims (Slovenia), indicators (Slovenia and Lithuania) and methods (Lithuania and Belgium - Flanders Region) to be used in the assessment, as well as the level of detail (UK, Germany, Belgium - Flanders Region and Latvia). In Hungary, Denmark, and Slovakia, possible alternatives are identified, while,
in Spain, some regions require, as a minimum, a preliminary analysis of the alternatives, environmental objectives to be considered, and assessment indicators.

For some Member States the content of the scoping report varies. In Belgium - Brussels Capital Region, for example, the content specifications are more detailed and tailored in the case of land use plans, while other types of plans are subject to standard specifications reviewed by the unit in charge of the SEA, after consultation with the relevant authorities. The type of plan will also influence the level of detail in Luxembourg, for example when comparing a concrete land use plan to a more strategic planning instrument, or a plan or programme relating to a concrete territory to a national territory. In these cases, the more concrete the issue, the higher the level of detail. This trend was also identified by Flemish experts, who noted that the complexity of the SEA and the SEA research also plays a part in the level of detail decided on in scoping.

In Denmark, the scoping document depends on the traditions of the authorities, although the report (or equivalent) usually includes the subjects listed in Annexes I and II of the SEA Directive. This report may include the zero alternative, as well as a table with the relevant explanations of the different plans, placing more emphasis on how the plan relates to other plans and programmes.

In Greece, there is a fixed list of requirements for the contents of the SEA report, but how these requirements are fulfilled depends on the authorities involved. Similarly, in Luxembourg, Member State experts stated that a scoping report done by an experienced consulting engineer is normally more appropriate than a scoping report done by the authority responsible for the plan or programme. Estonian Member State experts also noted that the lack of necessary information is sometimes an issue in Estonia, however, they attributed this to the fact that the plan is still in its beginning phase and therefore does not have the required detail to make scoping fully effective.

### 4.2.3 Consultation on the scope of the Environmental Report

**Consultation with environmental authorities**

Article 5(4) requires the SEA responsible authority to consult with authorities with specific environmental responsibilities when deciding on the scope and level of detail of the information to be included in the Environmental Report. The legislation and practices of Member States vary considerably here, with some environmental authorities offering advice, approving the scoping decision, or having a direct influence on the content. Other Member States require ‘consultations’, without elaborating further on what this may entail.

In Belgium - Flanders Region, Spain, and France, the scoping document is prepared by the environmental authority. In Germany and Bulgaria, experts may be appointed to prepare scoping documents. Additionally, although many Member States, including France, do not require a scoping document by law, if the French plan/programme developing authority asks for a scoping report from the environmental authority, the environmental authority must oblige.
In Estonia and Slovenia, the Ministry of Environment (or equivalent, depending on the plan) gives the final approval on the scoping report. In Belgium - the Brussels Capital Region, land use plans are submitted to the Environmental Authority and the Regional Administration for Urbanism for advice. Once their advice has been taken into account, the local council adopts the draft and sends it for approval to the Steering Committee.

In other Member States the environmental authority has no such binding role. In Ireland, Lithuania, Croatia, Estonia, Portugal, Hungary, Bulgaria, and Germany, the environmental authorities may make comments to the plan/programme developing authorities on the scoping report, and these must be considered. Hungarian Member State experts point out, however, that it is difficult to comply with deadlines for opinions. The 30-day timeframe given by the legislation is not enough for the official response to be returned, given the administrative requirements in Hungary.

Other Member States have more specific consultation requirements. In the Czech Republic, screening and scoping are merged, which means the affected authorities have the option to submit opinions on both procedures. In Croatia, the responsible authority is obliged to organise one or more debates with the concerned environmental authorities during the scoping procedure.

In Greece, scoping is predefined in the form of a fixed list of contents for the SEA report. This means there is little room for adjustments during the scoping procedure. The plan/programme developing authority, however, may ask at any time for formal clarifications from the competent environmental authority. The relevant authority may consult with the appropriate or relevant public environmental authority but it must provide a written answer.

4.3 Baseline reporting / Environmental information

The information on the likely evolution of the current state of the environment (Annex I (b, c, d)) is necessary in order to understand how the plan or programme could significantly affect the environment in the area concerned. This section looks at whether Member States have set out in their national legislation the formal requirements to describe the baseline situation, as well as whether these are more specific than that required by Annex I. In practice, it is also useful to know the level of detail of the information regarding the current environmental situation (baseline study), and if standard criteria/guidelines are established for the scope and content of the baseline description, as well as the inclusion of data from other assessments.

Level of detail

Very few Member States have requirements on the description of the current environmental status. Of those that do, Belgium, the Czech Republic and Spain have requirements almost identical to those of Annex I of the SEA Directive.

The following paragraphs briefly describe the situation in the remaining Member States with respect to requirements for a baseline study, as well as those Member States who base the level of detail on available data, and the type (level) of the plan.
In Estonia, the baseline study requires a description of the potentially affected environment and, in the case of alternatives, development scenarios including the comparison of alternatives, and the probable development if the strategic plan is not implemented. In Spain, the level of detail depends on the type of plan or programme, as well as the content of the Environmental Report, according to the requirements of the scoping document. Under the Polish EIA Act, information contained in the Environmental Report should match the content and level of detail of the draft document and the stage of adoption of the document in the process of preparing draft documents. The description is therefore usually very detailed. In Greece, specific requirements on the scope and content of the description of the current environmental situation are set out in legislation. In Ireland, guidelines state that it is ‘clearly desirable’ to use relevant quantitative data and, where appropriate, time-series data. The guidelines also provide examples of the level of detail to be included.

In Italy, the description of the current environmental situation is generally done in detail and represents the most extensive part of the report. The level of detail is strictly related to the scale of the plan or programme, as a small scale plan (e.g. a municipal spatial plan) requires a high level of detail. This is also the case in Lithuania, Slovakia, Latvia, France, the Netherlands and Denmark, where detailed information is only required for detailed plans or programmes, often because these are the situations where more detailed data are available. For more general programmes, for example ESIF programmes, only general descriptions are used, e.g. protected areas, climate change, etc.

In Belgium - Flanders Region, the detail depends on the specific intentions of the plan, and its expected impacts. In Belgium - Brussels Capital Region and Greece, the level of detail of the base line report depends on the sector analysed and is based on the data available, while, in Romania, the level of detail used for the baseline study corresponds to the level of detail in the latest annual report of the state of the environment. The availability of data also influences the level of detail in Austria, as do existing environmental problems. If sufficient data is not available in Luxembourg, the Ministry of Environmental may give specifications to rectify the deficit. The level of detail is determined in a similar way in Cyprus, where the members of the Committee and the relevant authorities assess the level of data.

**Standard criteria and guidelines**

Approximately one-third of the Member States replied that there are no standard guidelines or criteria for describing the current environmental situation. The rest of the Member States have guidance in place, except for Poland, where guidance is taken from the EIA Act, and Spain, where there is no specific guidance but an Environmental Indicators Public Database is available, which contains relevant data on air quality, agriculture, water quality, coastal and marine information, natural disasters, energy, waste, fisheries and more.

Guidance on the description of the current environmental situation is found in general SEA guidance documents (Sweden, the Czech Republic, Luxembourg, Latvia, Ireland, France and Germany, Austria, and Italy) providing for the scope and content of descriptions of current environmental situations. Others, such as Belgium - Brussels Capital Region, have separate guidance documents. In the Czech Republic, however, criteria are set out in detail in the 2015 Guide on the Methodology of assessment of the effects of territorial development principles on the Environment.
Other Member States, such as the Netherlands, provide factsheets and examples to guide practitioners. In the Netherlands, this is provided by the NCEA and InfoMil (a database of best practices and data kept by the Ministry of Infrastructure and the Environment). In Croatia, guidance provides practical recommendations for authorised persons on the preparation of the report, while in Belgium - Flanders Region, guidelines are published dealing with each environmental factor. In Denmark guidance documents have information on where to find criteria to describe the current environmental situation.

Member States may also have guidance or criteria in place at a regional level. In Italy some of the competent regional authorities provide SEA guidelines for characterising the baseline scenario. In some regions there are criteria and/or guidelines that also contain indications for the description of the current environmental situation. This has been done in Calabria, Toscana, and Sardinia for municipal urban plans. A catalogue of environmental indicators has been set up by ISPRA and provides factsheets for each environmental topic, including the source and availability of the relevant data.

**Existing data**

The SEA Directive allows for the use of relevant information available on the environmental effects of the plans and programmes, including that obtained at other levels of decision-making, or through other Community legislation.

Some Member States simply stated that existing data may be used, although it is not clear whether this concept is further described in national legislation or policy, or whether it is applied in practice. In Belgium - Brussels Capital Region, Italy, Lithuania, Estonia and the Czech Republic, information can be used if it is relevant, up-to-date, and supports the objectives of the study. Other Member States noted the types of data often used. In Poland, for example, publically accessible statistical, spatial, and other scientific data are used, while Latvian experts noted that publicly available data on air and water quality are used, as well as data on protected species and habitats.

Cyprus, the Czech Republic, Slovakia, Portugal, Luxembourg, and Croatia noted that data from other EU legislation can be used, with the latter two specifying the Habitats, Birds, and Water Framework Directives. Italian experts also specified the Water Framework Directive, while Flemish experts specifically mentioned the requirements for Natura 2000 areas.

**Data availability**

Some Member States identified where the data are available. In Malta, for example, data are available through a number of published sources, as well as through specific requests made to entities holding such data. In Estonia data are available from databases, as is also the case in France. In Belgium - Brussels Capital Region, databases are available from several sources, including Brussels Institute for Environment, the Administration of Mobility, etc. Estonian data may also come from studies, surveys, and previous impact assessments. In Italy there is a national EIA-SEA Portal with data by topic. A few Italian regions have similar portals. ISPRA also collects and disseminates data, and every year an ‘Environmental Data Yearbook’ is published. At a regional level, French ‘regional environmental profiles’ present an overview of the environment in the region, while in Spain several regions have been experimenting with using software.
Main difficulties
Over a third of the Member States provided no information on difficulties, while Belgium - Brussels Capital Region, Bulgaria, the Czech Republic, Germany, and Portugal all reported no significant difficulties. Of the remaining Member States, the lack of data was the most common issue, along with costs, relevance of data and the level of data.

Lack of up-to-date data was the main concern for those Member States with data collection issues. In Greece, the main issue was collecting the data (which is readily available for certain sectors), while, in Poland, outdated data are more common at local level. In Italy, the availability of data depends on the environmental sector. In Latvia, differences in the collection, timeframe or processing of data at local level has led to issues in comparing data from one locality to another. In Italy, steps have been taken to mitigate both the issue of non-comparable data and the lack of data overall. At national and regional levels, different bodies collect and manage environmental databases with public access. A list of the main environmental datasets can be found on the EIA-SEA web portal, although Member State experts noted that data collection remains a very time-consuming activity.

In Luxembourg and Poland, the lack of relevant data requires its collection from scratch each time, a costly and time-consuming practice. In Ireland, the time and effort needed to compile baseline information has prompted guidelines to emphasise that much of the information collection can and should be compiled before the statutory plan preparation and review processes. Cost is also an issue in Spain, where some regional initiatives have been set up to estimate impacts, using software such as the AMBIMOB-U to retrieve data from international databases. Experience has shown this approach is complex and very expensive to develop.

In Croatia, Member State experts note that issues do not stem from a lack of data, but, rather, a focus on irrelevant issues, leading to overly detailed and complex studies. Preference is therefore given to detailed description of facts while ignoring data analysis, leading to the neglect of environmental issues, even those flagged during the scoping process. In Estonia critics have also voiced concerns about the baseline study containing too much information. In Denmark, however, the general nature of the plan or programme makes a baseline difficult to assess as relevant environmental issues are less specified, while in Italy baseline reports are very generic and not tailored for the specific plan. In Estonia and Lithuania, the main difficulty is defining the appropriate level of adequacy, importance, and volume of information which, in the case of Lithuania, is compounded by difficulties determining how information should be linked to assessment results. Romanian experts noted the ambiguity surrounding baseline reporting, claiming it is due to the lack of guidelines.

4.4 Environmental Report

The 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 an Environmental Report to be prepared when an SEA is required under Article 3(1). The Environmental Report is a cornerstone of SEA,
as it is an essential tool to integrate environmental considerations into the preparation and adoption of the plans and programmes. It also forms the basis for monitoring the significant effects.

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 indicate the responsible authority for preparing the Report, leaving it to Member States’ discretion.

The sections below will explore the various elements of Environmental Reports, as well as the issues experienced in its preparation.

4.4.1 Content of the Environmental Report and the Non-Technical Summary

The Environmental Report must identify, describe and evaluate the likely significant effects on the environment of implementing the plan and programmes, as well as reasonable alternatives. Article 5(2) specifies that the Environmental Report must include 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.
- The extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

With regard to the content of the Environmental Report, reference is made to Annex I of the Directive, which specifies the information that is to be provided in the Environmental Report. However, Annex I is just a de minima framework for environmental assessment, and Member States may introduce provisions on the content of the Environmental Report that go beyond the requirements of the Directive.

Article 5(3) also provides for the use of relevant information already available from other sources (i.e. obtained at other levels of decision-making or through other Commission legislation) in meeting Annex I requirements.

12 Member States reported that the content of their Environmental Report goes beyond the requirements of the Directive. These countries were Austria, Belgium - Flanders Region, Czech Republic, Estonia, France, Hungary, Italy, Poland, Romania, Slovakia, Spain, and Scotland. In the remaining 16 Member States, the content is the same as required by the Annex I. However, in Cyprus, although the content is the same, the Environmental Authority may ask for more information at a later stage. In Finland, the requirements are the same in the transposing legislation, but in practice several additional socio-economic factors are also dealt with.

Type of additional information requested

Additional social and economic factors are assessed in several Environmental Reports (e.g. Austria (for network changes including high capacity railways, waterway, and federal roads), Hungary and Belgium - Brussels Capital Region), while impact on social needs is also evaluated in the Estonian Environmental Report. In Slovakia, the
additional requirement of economic necessity must be considered, if the character and scope of the strategic document enables it. It usually represents brief information on the financial claims relating to the national budget and the business environment. In Spain, in practice, some authorities also require information on the economic viability of the plan and its alternatives; in other cases, a risk analysis is also required (e.g. land use plans).

It is common practice in several Member States to include the information gathered during the public consultations in the Environmental Report. In the Czech Republic, the Environmental Report also includes a comprehensive description of the received opinion on the draft plan from the perspective of environmental impacts and impacts on public health. Similarly, in Estonia, results from the public consultation, including the proposals/objections and questions raised during the process and justifications for approval or rejection of these proposals, form part of the Environmental Report. In Latvia, the list of institutions (including enforcement authorities) consulted, information on the level of public participation, and results of the consultations are included. In Spain additional details on specific impacts, such as those related to climate change or carbon footprints, are also included in the Environmental Report.

Non-Technical Summary

Annex I (j) requires the Environmental Report to include a Non-Technical Summary, in order to make the key issues and findings of the Environmental Report accessible to the general public, as well as to decision makers. The structure and content of the non-technical summary is, however, left to the discretion of the Member States.

Virtually all Member States reported that the Non-Technical Summary covers all elements required by Annex I of the Directive. In Bulgaria, some extra requirements are included, i.e. publicly accessible language, not less than 10% of volume of report prepared as a separate Annex to the SEA report.

In Croatia, although all elements are formally covered, practice has shown that this type of document is unnecessary, as both the bodies involved and the general public focus on the strategic study and not on the Non-Technical Summary when providing their opinions, comments and proposals. In the UK all elements are covered, plus economic and social issues if a Sustainability Appraisal is required under national legislation.

An interesting example comes from Italy, where, acknowledging the importance of the Non-Technical Summary, the authorities have launched a ‘Quality Award’ for the Non-Technical Summary in 2013 (both for EIA and SEA). The Non-technical Summaries are assessed by an award committee, on the basis of the following criteria:

- Reporting clarity, using non-technical language or technical terms adequately described in a simplified form for ‘non-expert’ public.
- Completeness of information, in relation to the content of the related reference documents (Environmental Report and Environmental Impact Study) and according to the priorities of the information to be communicated.
- Presence of representative drawings/graphs/maps, allowing an easier understanding of the text and an effective contextualisation of the topics.
- Conciseness of the information provided.
4.4.2 Preparation of the Environmental Report

This section explores the preparation of the Environmental Reports in practice, including the duration of the preparation process. It also discusses the main challenges faced by the Member States in preparing the Environmental Report, and the measures taken to overcome them.

All Member States reported that preparation of the Environmental Report takes at least several months. Numbers vary for each Member State, but average between two and nine months. Some Member States (Denmark, Germany, France, Ireland, Hungary, Poland, Spain and the UK) stated that although the average duration is several months, complex SEAs can take a number of years. In particular, spatial and land use plans take longer (Luxembourg, Ireland and France), while OPs are the most complex in Cyprus, and water management plans the slowest to prepare in France.

All Member States stressed that the duration depends on the plan/programme specific, as well as on the duration of the planning process if run in parallel, and also on the outcomes of the scoping phase.

4.4.3 Alternatives

Article 5(1) of the SEA Directive requires that reasonable alternatives are identified, described and evaluated in the Environmental Report. These should take into account the objectives and geographical scope of the plans and programmes. More specifically, Annex I (h) requires that an outline of the reasons for selecting the alternatives examined, as well as a description of how the assessment was undertaken, including any difficulties faced in compiling the required information, must be given in the Environmental Report.

A clear definition of ‘alternatives’ is not proposed in the Directive, nor is an indication given as to what is meant by ‘reasonable’. This section examines the approach followed by Member States in defining ‘reasonable alternatives’, e.g. whether there are specific requirements concerning reasonable alternatives in the national legislation, or the interpretation of the concept. This section will also look at requirements for the types and minimum number of alternatives to be included in the assessment, as well as practical problems faced by the Member States in the identification of practical alternatives.

Definition of alternatives

No Member State explicitly defines what is meant by ‘reasonable alternative’ in its legislation, although some allude to a definition. For example, in Spain the SEA Act requires the analysis of reasonable and technically and environmentally viable alternatives that take into account the objectives and the geographical scope of the plan or programme. In France the legislation specifies that alternatives should enable meeting the purpose of the plan, scheme, programme or other planning document in its territorial scope. Each assumption (alternative) has to mention its advantages and disadvantages. In Slovakia reasonable alternatives are defined as considered variant
solutions taking account goals and geographical dimension of the strategic document. In other Member States, such as Greece, an outline of the reasons for selecting the alternatives considered, as well as the environmental evaluation that led to the selection of the proposed plan/programme over the other alternatives, is required.

Other Member States offered further explanation of ‘reasonable alternatives’ in their guidance documents. Belgium - Flanders Region, Finland, Ireland, and Sweden offer clear definitions in guidance documents, while Romanian and Estonian guidance provide criteria defining either ‘possible alternatives’ (Romania) or a ‘realistic alternative’ (Estonia), as shown in Table 1 below. It is worth noting that the Estonian criteria refer specifically to EIA, but Member State experts considered them equally applicable to guide SEA.

Table 8 Examples of criteria defining alternatives

<table>
<thead>
<tr>
<th>Examples of criteria defining alternatives</th>
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<tbody>
<tr>
<td><strong>Estonia</strong></td>
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<tr>
<td>Based on the guidance materials available on the Ministry of the Environment website, in order for the alternatives to be ‘realistic’ they have to comply with the following criteria:</td>
</tr>
<tr>
<td>• Correspond to the objectives set for the programme/plan.</td>
</tr>
<tr>
<td>• Be in compliance with the applicable legislation.</td>
</tr>
<tr>
<td>• Cannot lead to unacceptable environmental impact.</td>
</tr>
<tr>
<td>• Be economically and technically feasible.</td>
</tr>
<tr>
<td>• Conform to best available techniques.</td>
</tr>
<tr>
<td>• The programme/plan developer must be willing to actually implement the alternative.</td>
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</table>

| **Romania**                               |
| ‘Reasonable alternatives’ are mentioned in the legislation and further defined in the 2006 Manual on implementation of the procedure of environmental assessment for plans and programs. The concept of ‘possible alternatives’ takes into account two criteria: |
| • The objectives of the plan/programme and its geographical area. |
| • ‘Reality’ of the alternatives. |

The SEA Manual states that the objectives of the plan/programme and geographic area can be discussed with respect to alternative possibilities for the plan/programme (overall plan objectives etc.), or in reference to different alternatives within a plan/programme. In practice, alternatives within a plan/programme are discussed, and therefore an alternative usually constitutes a different way of achieving the objectives of the plan/programme.

‘Reality’ refers to the fact the proposed alternatives are not limited in number but instead must correspond to reality – taking into account the actual conditions on site, and considering the facts. Alternatives must also be materially and territorially consistent, given the plan/programme owner.

In the Dutch SEA Manual, there are suggestions for choosing reasonable alternatives, noting that, while no definition is provided in legislation, in practice there has been a fairly clear-cut interpretation.

Member States have several similar attributes when defining ‘reasonable alternatives’, either in guidance documents or in practice. Taking into account the definitions provided by several Member States, a ‘reasonable alternative’ should:

- Provide an alternative way to achieve the same goal of the plan (Estonia, Germany, Romania, Slovakia, and Belgium - Flanders Region).
- Be legally feasible (Estonia, Germany, Belgium - Flanders Region).
- Take into account geographical, physical, social, and economic conditions (Germany, Romania, Slovakia, and Belgium - Flanders Region).
- Be realistic, and with a chance of success (Germany, Romania, Belgium - Flanders Region).
- The impact on the environment must be proportionate to the plan’s goals (Estonia, Germany, and Belgium - Flanders Region).
- Be supported by stakeholders and the plan/programme developing authorities (Estonia, Belgium - Flanders Region).

In addition, the German definition notes that it is not necessary to consider every alternative, nor does the assessment of alternatives explicitly require that particularly environmentally sound alternatives are developed and examined. The guidance stresses that ‘reasonable’ alternatives should be compared in terms of their impact on the environment. In this manner, the way in which environmental concerns are taken into account in deciding which alternatives should be further pursued, is open to scrutiny.

**Assessment of alternatives, types of alternatives**

There is no standardised approach to the types of alternatives assessed, as they normally depend on factors such as the scope of the plan, the geographical area impacted by the plan, and the socio-economic needs of an area. The selection of reasonable alternatives is therefore left to a case-by-case assessment and decision. This section looks at what types of alternatives are usually assessed and why, including whether the ‘do nothing’ alternative is considered.

The number of alternatives required for an SEA is not prescribed in any legislation, although in Spain some authorities require the analysis of at least two alternatives. In practice, however, many Member States usually include around three alternatives for each SEA. In the Netherlands, sometimes two extreme choices are assessed. For instance, the competent authority can use a SEA on a zoning plan for the countryside to investigate the possible outcomes of two different policy courses; one primarily aimed at expansion room for the agricultural industry and the other primarily aimed at conserving landscape and nature values. The results can be used to decide upon a policy somewhere in between. In Malta, three alternatives are expected – the ‘do nothing’ alternative, the ‘do something’ alternative, and the ‘do maximum’ alternative. In practice, usually four to six alternatives are considered in Malta. In Cyprus, the three alternatives are usually the ‘do nothing’ alternative, the draft plan, and an alternative to the draft plan, while in the Czech Republic, one of the alternatives usually does not contain any overtly controversial aspects.
Delving more into the types of alternatives considered by Member States, there are some similarities which arise. Although approximately one-third of Member States noted that the types of alternatives depend on the type of plan, the following categories of alternatives were mentioned more than once:

- **Locational alternatives**: changes in location (Austria, Belgium - Flanders Region, Bulgaria, Croatia, Latvia, Luxembourg, Spain, Estonia, Belgium - Brussels Capital Region, France), the Netherlands.
- **Qualitative and quantitative alternatives**: changing the scale or size of the intervention (Belgium - Brussels Capital Region, Estonia, and UK).
- **Technical alternatives**: alternatives concerning the design of possible projects on a selected site (Austria, Belgium - Brussels Capital Region, Netherlands, Estonia).

The Netherlands, the UK and Belgium - Brussels Capital Region mentioned more **strategic alternatives** (e.g. different ways of achieving the objective of the plan or programme without disproportionate costs or exceptional technical problems), and the UK also considered more detailed alternatives. In the Netherlands strategic alternatives are very common, especially for transport and infrastructure plans.

The Romanian experts specified that alternatives are focused on changes within a plan or programme rather than changing the objective of the plan, which is an approach implicitly followed by many Member States. Alternatives are often slight variations on a theme, especially with small level local plans established for a very specific purpose (as mentioned by Austrian experts), although Irish experts stated that higher level plans often have a wider variety of alternatives.

The ‘do nothing’ alternative, also called the ‘zero’ alternative, is often included. In practice, the zero alternative or ‘do minimum’ may be a continuation of the existing plan, and therefore may also equate to the likely evaluation of the environment without the (new) plan (as described already in Section 4.3). As such, it cannot be the only reasonable alternative considered, so an SEA that only considers a draft plan and a zero/do minimum alternative is not considering reasonable alternatives, as assessing the likely evolution of the environment without the plan and reasonable alternatives are two separate requirements laid out in the Directive. The number of alternatives included is thus important.

The majority of Member States always include the zero alternative in the list of alternatives considered in the SEA, with many of these setting it out as a requirement in legislation. The remaining Member States noted that the zero alternative is sometimes used. In Croatia regulations do not set an obligation to take into account the zero alternative and Environmental Reports in general do not consider the zero alternative. The main reason for this practice is the lack of cooperation among the competent environmental body, the planning body and the practitioner. Belgium - Flanders Region, Belgium - Brussels Capital Region, the Netherlands, and Romania all consider the zero alternative as the baseline from which to assess other alternatives.

Despite a majority of Member States using the zero alternative, approaches still vary in practice. Danish guidance notes that the zero alternative is not necessarily the status quo, but a projection of development without the proposed plan or programme (the ‘do minimum’ alternative). In Hungary, depending on the nature of the plan or programme, the type of alternative with the least intervention is considered the zero alternative. In
Greece, this variation in definition is acknowledged, and two types of zero alternatives are evaluated in the case of spatial planning. The first alternative considers what would happen if the building were not built at all, while the second considers what would happen if the development were allowed to continue as the standing regulation allows.

Issues in the identification of alternatives

Some Member States also reported on the main issues experienced in identifying alternatives in practice. In France, the main difficulty lies in the progressive nature of the plan or programme development process, i.e. as the plans and programmes planning advances, more strategic details are defined, and different and newer alternatives could be considered, making the process more complicated. The same issue is raised by Austria, where formulating alternatives is sometimes difficult, as they may be developed only late in the process or only as a formality. In Finland, the main difficulty in providing meaningful alternatives is related to timing: the SEA process has to be calibrated in a manner that the alternatives are realistic, i.e. based on sufficiently mature and detailed plans or programmes, but also such that the alternatives considered could still feed into the design of the plan or programme.

4.4.4 Assessment of impacts

Different methods can be employed to assess the likely environmental effects of plans and programmes. This section explores the various assessment methods used by the Member States, highlighting any problems encountered with each method for the assessment of different types of likely environmental effects, coupled with Member State solutions to these problems.

Assessment methods

Various assessment methods are identified by the Member States, although many noted that the method is decided on a case-by-case basis, with particular attention paid to the actual environmental impact being assessed. In Slovenia, the legislation states that the best methods should be used for assessment of specific programmes and plans, which is understood to mean the best scientific evaluation method available. A handful of Member States have no statutory requirements for assessment methods, although of these, Cyprus has general guidance in Annex I of its SEA law which identifies the information that must be included, while in Ireland statutory requirements may soon be provided by the Environmental Protection Agency.

Many Member States, however, were able to identify their frequently used assessment methods. Qualitative methods are used most often, given that quantitative analysis is more difficult to perform. In Italy, for example, quantitative analysis has only recently become more common, and only for land take by urbanisation, urban sprawl and service availability. While there are many methods employed by Member States to assess the likely environmental effects of plans and programmes, ranging from broad to specific methods, some of the most common are:

- Matrices (Bulgaria, Hungary, Italy, Malta, Slovenia, Spain, Slovakia).
- Coherence analysis (Italy, Spain).
- Impact tables (Lithuania).
- SEA/AoS objectives (UK).
• Multi-criteria analyses (Lithuania, Poland, Croatia).
• Checklists (Lithuania, Slovakija).
• Expert opinion (Estonia, Latvia, Lithuania, Luxembourg, Denmark (where assessment methods are decided by experts/consultants), Slovakija, Belgium - Brussels Capital Region).
• GIS (Croatija, Slovenija).
• Modelling (Estonia, Luxembourg, Poland, Lithuania, Slovakija, Belgium - Brussels Capital Region, Croatia).
• Specially designed assessment tools (Netherlands, Spain, Sweden).

The decision about which assessment method to use usually rests with the plan/programme developing authorities, although there are exceptions. In Belgium - Brussels Capital Region, for example, assessment methods are determined through dialogue between the plan/programme developing authorities and the SEA Steering Committee. In general the decision relates to environmental concerns (for example, as required by German legislation), however the decision may also depend on the background of practitioners or the consideration of (public) consultations (Italy and Spain and the UK respectively)

Guidelines to assist practitioners in making this decision are available in many Member States. Although five Member States (Cyprus, Greece, Latvia, Slovakija and Slovenija) do not offer any guidance, the remaining Member States provide specific guidance documents or general SEA manuals. This guidance may be focused on a specific sector or administration level, such as in Italy, for example, where there is no guidance at national level but there are documents to guide regional plans, especially municipal urban plans. More specific guidance tends to focus on the assessment method for land use plans, but this can also be broken down by environmental sector, often including guidance on applying the analytical tools. Guidance may also exist for plans with a specific task, for example bat conservation in Luxembourg.

4.4.5 Challenges identified during the preparation of the Environmental Report

Member States reported a variety of challenges in preparing the Environmental Report of a good quality, both in terms of content and process, and this section sets out these challenges. Some Member States/authorities reported no issues regarding the Environmental Report. Issues may also be localised, for example in Denmark, where several municipalities identified no impediments, although others reported various issues.

The issues raised by Member States in their replies to the Commission questionnaire are summarised below, grouped into the following subsections:

• Data (or lack thereof).
• Expertise of practitioners and authorities.
• Time (both spent and allowed).
• Assessing alternatives.
• Consultations (public and with other authorities).
• Monitoring.
• Clarity on applicability of legislation.
Data
Several Member States have issues collecting and accessing accurate and up-to-date data for baseline studies and other assessments. Polish and Portuguese experts noted that this is one of the factors contributing to a poor quality SEA. In Cyprus, this has led to various assumptions being used, which has an impact on the quality of the Report while the approach in Greece is to collect raw data when no other are available. In Germany, Luxembourg, Latvia, and Ireland, a digital environmental database has been proposed as a way to resolve this issue.

Data may also be less available at local levels. In Italy, attempts have been made to mitigate this issue by preparing catalogues of environmental indicators at sub-regional level. Also at this level there are examples of web portals gathering all available environmental indicators, as well as other useful information.

The lack of data is also an issue when assessing the environmental impact of the proposed plan/programme. Eight Member States (Austria, Lithuania, Luxembourg, Romania, Slovakia, Denmark, Cyprus and Poland) and Belgium - Brussels Capital reported difficulties resulting from a lack of data, or quality of the data. In Belgium - Brussels Capital Region, for example, there is no quantitative data available, nor any data from neighbouring regions, making assessment difficult, while in Luxembourg, there is a lack of specialised data needed for specific assessments (e.g. bats). Older data can be used, however, in Denmark, for instance, it is not clear what has changed since the data has been collected. Slovakian experts noted that this lack of quality data is often (but not exclusively) encountered at national level.

General nature of plans
Some Member States, such as Germany, Lithuania, Latvia and Hungary, blame the lack of data on the abstract nature of the plans or programmes, especially those without specific geographical scope. Such plans make data impossible to collect accurately. In Ireland the issue is due to the fact that not all relevant plans/programmes are readily accessible to review, while in the UK the data are not available at a proportionate cost.

When assessing the impacts, the general nature of plans was identified as an issue by Austria, Belgium - Flanders Region, Finland, France, Hungary, Lithuania, Poland and Spain. Experts from Belgium - Flanders Region noted that it is more difficult to carry out an assessment of the impact for very high level plans/programmes than for specific projects (where specific physical effects on the ground can be easily forecasted), given their general nature. Lithuanian experts also noted that plans often have a very wide geographical scope, adding to the difficulty of assessing concrete impact.

Expertise
Lack of experience in carrying out SEAs can significantly impact the process. In Poland, this may contribute to a decrease in quality of the SEA. In Cyprus and Poland, practitioners are more comfortable carrying out EIAs than SEAs, which leads to an uncertainty as to the methodology used (an issue also found in Slovenia) or the risk of producing a ‘mega-EIA’ in the case of Poland. In Belgium - Brussels Capital region, the issue is with the quality of the assessment, due to the lack of independence of the assessor (who is also the author of the plan) and their lack of scientific expertise on environmental issues. In Ireland varying levels of expertise can influence decisions on impact assessment, given the degree of subjectivity in an evaluation. It is worth noting
that this lack of uniformity was also considered an issue by Swedish Member State experts.

Improving the expertise of practitioners in small Member States like Malta is especially difficult given the lack of awareness of the SEA Protocol, and the fact that only a small number of programmes assessments are carried out each year. Even in Germany it is noticeable that first-time SEAs for specific kind of plans or programmes are more difficult than plans which are renewed or assessed often. German experts, therefore, expect assessment to become easier as experience grows. Romanian experts also noted the inadequate dissemination of relevant information; however, in this case, it is because financial resources are unavailable to undertake studies.

Practitioners may also lack specific environmental knowledge. In Spain, those drafting the Environmental Report sometimes lack adequate methodologies for the analysis of impacts, for example climate change assessment. In Denmark, this issue is related to cost, as professional experts are not always found in-house, while, in Estonia, practitioners must learn from the example of other SEA cases. In Luxembourg, Slovenia, and Latvia, there is a shortage of professionals with the right knowledge to handle the workload, especially - as Latvian experts point out - given that the SEA process is relatively new.

Assessing cumulative effects as per Annex I (f) of the SEA Directive proves a stumbling block for roughly one-third of Member States. In Hungary, interdependent impacts only start to become clear at a later stage, particularly for cumulative effects, while, in Luxembourg, multiple municipalities establish new land use plans in parallel with each other, but not in a coordinated manner. In Slovenia, these issues are sometimes so conflicting that a third opinion is needed to resolve opposite opinions. Member State experts from the Czech Republic, Cyprus, and Lithuania all noted that more guidance would be useful. Additionally, Lithuanian experts stated that specific definitions and examples would be helpful, given the ambiguity of some of the wording in Annex I(f), including temporary, permanent, medium, and long-term, which are currently being used interchangeably. In the Czech Republic, it is hoped methodological issues will be resolved with the publication of guidance documents currently being prepared by the Ministry of the Environment.

Maltese and Polish experts noted that additional guidance from the Commission will lead to a harmonised approach to SEAs, and provide guidance on the methods used to conduct analysis and assessment. Polish experts pointed out, however, that it is hard to develop guidelines that would be useful in practice, as SEAs concern documents that vary in scope, scale and conditions of implementation (spatial, environmental, social, economic and other), limiting the usefulness of precise guidelines. General guidelines, on the other hand, are also of limited practical use. Promotion of good practices and the publication of case studies and lists of recommended resources and methods might be helpful, both at national and European level.

**Time**

In Belgium - Brussels Capital Region, Cyprus, Denmark, France, Poland, and Slovakia, time is a factor, with practitioners required to produce the Environmental Report in a short space of time. In Belgium - Brussels Capital Region and Denmark, this may be a result of political pressure (or lack thereof, in the case of Brussels Capital Region), while in Cyprus, it is due to contractual constraints. In France, the time constraints occur due
to pressure to finalise the plan. In Cyprus, the short timeframe has been reported to lead to unsatisfactory consultations.

In Belgium, the length of the Environmental Report procedure and the associated costs are perceived to be a problem, while experts from Luxembourg noted that, as a relatively new instrument, the SEA is often considered an administrative burden further complicating planning procedures. In this case, efficient coordination and management of planning procedures are sometimes difficult to initiate. Danish and Maltese Member State experts stated that the amount of paperwork required for smaller plans, especially in small municipalities, can be disproportionately costly and time-consuming.

**Assessment of alternatives**

Alternatives remain an issue for many Member States. The formulation of alternatives is an issue in Austria and Ireland, as in Austria, they are sometimes developed as a formal requirements, late in the process. In Belgium - Flanders Region, the issue is determining the number and grouping of alternatives, although this can be mitigated through consultations. In Cyprus and Spain, the assessment criteria and methodologies prove difficult to identify, and similarly in Denmark and Romania, ‘significant effects’ are often not clear. In Austria, Ireland and Denmark, these issues are amplified by a lack of data, especially when considering cumulative, and transboundary effects. Member State experts from Finland and Lithuania attributed difficulties in identifying and assessing alternatives to the general nature and broad scope of the plans and programmes. In the same vein, in France, difficulties lie in the progressive nature of the plan or programme development process, so as the planning advances, more strategic details are defined, making different and newer alternatives possible, complicating the process.

**Consultations**

The lack of public participation during the scoping phase is potentially problematic, since it may lead to overlooking innovative alternatives with large public support. In Bulgaria, limited consultations have led to conflicting views, which must then be mitigated by further consultation meetings and an eventual compromise, while in Cyprus, consultations are impeded by confidentiality concerns. In addition, in Cyprus, consultations and bureaucracy may also lead to delays in the SEA process.

In Hungary, a lack of coordination between authorities has been reported, and transboundary consultations have delayed the SEA process, due to differences between Member States. This has prompted experts to call for Commission guidance on transboundary SEAs, which could include a unified template for the Environmental Report.

**Monitoring**

In Belgium- the Brussels Capital Region and Cyprus, the weakness of follow-up monitoring of environmental impacts is another issue. In Romania, monitoring problems stem from the inadequate treatment of monitoring indicators.

**Clarity on applicability of legislation**

In Belgium, difficulties are reported with identifying those plans and programmes which should be subject to an SEA, while in the Netherlands, the confusion sometimes lies in whether or not certain effects should be assessed as part of the SEA, or included in more detail as part of a subsequent EIA. In a similar vein, French Member State experts...
noted that there may be overlap between the content of the plan or programme itself and the content of the Environmental Report, especially for plans and programmes with an environmental purpose. Difficulties in understanding the legal requirements have prompted Swedish experts to call for further guidance.

In Cyprus, legislation states that the Environmental Report and the determination by the Environment Authority may take place only once prior to the first publication of the Development Plan. This means that any changes made by the Council of Ministers at a later stage (between the first and final publication of a Development Plan), however small or significant, are not subjected to any SEA process, thus, potentially overlooking issues likely to have significant environmental effects.

4.5 Consultation and public participation

Consultation and the consideration of its results in the finalisation of the plan or programme is an integral part of the environmental assessment procedure, as stipulated in Article 2(b) of the SEA Directive. Article 6 further defines the consultation and public participation requirements.

Consultation with concerned authorities and the public must be carried out during certain stages of the SEA. Member States are obliged to ensure early and effective consultation procedures in respect of the following requirements:

**Box 9 SEA Directive information and consultation requirements**

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<thead>
<tr>
<th>SEA Directive information and consultation requirements</th>
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<tr>
<td><strong>Consultation requirements</strong></td>
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<tr>
<td>• Consultation at the screening phase: In the screening phase, the obligation to consult authorities is laid down in Article 3(6).</td>
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<tr>
<td>• Consultation at the scoping phase: When deciding on the scope and level of detail of the assessment, authorities must be consulted (Article 5(4)).</td>
</tr>
<tr>
<td>• Consultation on the Environmental Report and draft plan or programme: The opportunity to express an opinion on the draft plan and the Environmental Report is given to the public according to Article 6(1) -(2). Their opinions must be taken into account during the finalisation of the plan and programme and before its adoption or submission to the legislative procedure (Article 8).</td>
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<tr>
<td>• Consultation with other Member States’ authorities and the public: Where a Member State considers that the implementation of a plan or programme is</td>
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<tr>
<th>Information requirements</th>
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<tr>
<td>• Information at the screening phase: The public must be informed about the screening decision (Article 3(7)).</td>
</tr>
<tr>
<td>• Information on the Environmental Report and draft plan or programme: Information on the Environmental Report and draft plan or programme must be made available to the authorities concerned and the public pursuant to Article 6(1).</td>
</tr>
<tr>
<td>• Information about the decision: Finally, when a plan or programme is adopted, information must be made available to authorities and the public in accordance with Article 9, including the environmental statement.</td>
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According to Article 6(5), Member States are free to define the preferred specific arrangements for the information to be provided and the methods for consultation with the authorities and the public. The Member States are, however, required to ensure early and effective consultation procedures. The text of the Directive does not specify the timeframes for the consultation procedure, simply requiring that the consultations are carried out in the ‘appropriate timeframes’ (Article 6(2)). The CJEU in the Judgement on Case C-474/10 has confirmed that such periods may be prescribed by law or on a case-by-case basis and made a link between the time needed and obligation of the Member States to provide for effective opportunities to the public and the authorities to express their opinions in good time. In other words, Article 6(2) did not preclude national legislation from requiring an authority envisaging the adoption of a plan or programme likely to have significant environmental effects from laying down on a case-by-case basis the period allowed for the consultation authority and the relevant public to express their opinions, provided that the period actually laid down was sufficient to afford them an early and effective opportunity to do so. However, setting such a time frame on a case-by-case basis might allow for greater recognition of the complexity of a proposed plan or programme and lead to the allowance of periods longer than those that might be laid down by law or regulation (paras 48-49, C-474/10).

Box 10 CJEU, Judgement on Case C-474/10

CJEU, Judgement on Case C-474/10 (Department of the Environment for Northern Ireland v Seaport (NI) Ltd. and Others)

‘... Article 6(2) of Directive 2001/42 must be interpreted as not requiring that the national legislation transposing the directive lay down precisely the periods within which the authorities designated and the public affected or likely to be affected for the purposes of Article 6(3) and (4) should be able to express their opinions on a particular draft plan or programme and on the environmental report upon it. Consequently, Article 6(2) does not preclude such periods from being laid down on a case-by-case basis by the authority which prepares the plan or programme. However, in that situation, Article 6(2) requires that, for the purposes of consultation of those authorities and the public on a given draft plan or programme, the period actually laid down be sufficient to allow them an effective opportunity to express their opinions in good time on that draft plan or programme and on the environmental report upon it.’ (paragraph 50)

The Member States can therefore prescribe timeframes coherent with their own situation but bearing in mind the objectives and spirit of the Directive and the CJEU case-law and the fact that if properly and transparently applied, these consultations lead to greater public acceptance of plans and programmes, and based on early identification and resolution of conflicts.

This section focuses on consultation with the public at the screening and scoping phases as well as consultation with the concerned authorities and the public on the Environmental report.

4.5.1 Definition of the public

In its Article 2(d), the Directive broadly 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 6(4) requires that Member States identify the public for the purpose of participation and consultation. The notion of the public includes ‘who is affected or likely to be affected by, or having an interest in, the decision-making subject to the Directive, including the relevant ‘non-governmental organisations’ such as those promoting environmental protection and other organisations concerned.

Virtually all Member States define the public in their national transposing legislation, although there are some differences in how detailed/broad these definitions are. The majority of the Member States have a broad definition, similar or identical to the text of the Directive, while others propose a more specific definition. For example, in Slovakia, the public is called ‘the public concerned’ and includes a natural person older than 18 years, a legal entity or a civic initiative. In Austria, some provinces include explicit definitions, while others determine the public as ‘everybody’ - natural as well as legal persons, including NGOs.

Only a few Member States do not define the public in legislation but in guidance documents, or on a case-by-case basis. In Ireland, for Town and Country Planning, the ‘public’ is given as both organisation and individual under the SEA Guidelines, thus reflecting Article 2(d) of the SEA Directive. For other sectors, it is defined on a case-by-case basis. In the UK, there is no formal definition of the two terms ‘the public’ and ‘relevant non-governmental organisations’, but only general guidance is provided. SEA guidance states, that ‘responsible authorities should consider the term ‘the public’ in its widest sense’, thus it is interpreted as encompassing a wide group of people, not only the general public but also wider organisations, specialist groups, NGOs and other government bodies. In Portugal, the public concerned (i.e. citizens, companies, NGOs) is defined on a case-by-case approach depending on the type of plan or programme and their location. Moreover, the Good Practice Guide on Strategic Environmental Assessment, published by the Portuguese Environment Agency in 2007, recommends that clear communication strategies are adopted to ensure active involvement by different target groups that may be fundamental to the success of implementation of the plan or programme. Similarly in Sweden, a case-by-case definition of the public is established, including NGOs.

Almost all Member States explicitly or implicitly include NGOs within their definition of the ‘public’. Only a minority of Member States identify the NGOs on a case-by-case basis (Belgium - Federal, Malta, Portugal and Sweden). In Malta, the SEA Regulations do not identify the ‘relevant non-governmental organisations’, however a list of NGOs can be found on the MEPA website. Likewise in Portugal, NGOs are commonly consulted and the Portuguese Environment Agency maintains the national register of NGOs whose contacts are available for public participation purposes.
4.5.2 Public involvement at the screening and scoping phase

4.5.2.1 Screening information available to the public

According to Article 3(7), Member States must ensure that the screening decision, including the reasons for not requiring an environmental assessment, is made available to the public.

All Member States reported they make the decision about undertaking or not an SEA available to the public. This is normally done on an internet website, which could be the website of the plan/programme developing authority, or the website of the principal environmental authority, particularly if this is the authority that takes the final screening decision. Many Member States also require the screening decision to be published in one or more newspapers, especially if the decision concerns a local plan. The screening decision can also be made public via other more formal channels, like the official journal/Gazette, or directly on a hard copy on the notice board at the premises of the responsible authority.

In Germany, the form in which the decision is made public is, to some degree, regulated by the provisions of the sectoral legislation in question. In cases where the form of publication is not regulated in greater detail, the authority responsible uses its discretion to choose a suitable form of publication. In Hungary, Sweden and the UK, the way in which the decision is made public is defined on a case-by-case basis, as judged appropriate by the responsible authority.

Few Member States also specify a time limit within which the decision should be made public (within three days after the decision is taken in Bulgaria, within 10 days in Lithuania, seven days in Latvia, 28 days in England and 28 in Scotland). Others, such as the Netherlands, specify that this should be done as soon as possible after the decision.

4.5.2.2 Consultation with the public on the screening decision

Some Member States have expanded public involvement at the screening phase beyond the requirements of the Directive. In Lithuania, Luxembourg, the Czech Republic and Romania, the public has the opportunity to submit comments and opinions on the screening document within a set time period, while in Austria, Denmark, and Bulgaria, public discussions are carried out in some cases.

Box 11 Public opinion on the screening decision in Romania

<table>
<thead>
<tr>
<th>Public opinion on the screening decision in Romania</th>
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<tr>
<td>In Romania, the public has the opportunity to comment on the screening decision within 10 calendar days of publication of the announcement. The competent authority for environmental protection may reconsider the decision at the screening stage, on the basis of justified proposals of the public within the consultations carried out with the committee established for this purpose, within 15 calendar days. The final decision is announced publicly within three calendar days, by displaying it on its own web site.</td>
</tr>
<tr>
<td>Despite this opportunity, Romanian Member State experts note that, in practice, public participation mainly takes place in the final stages of the SEA, as the early stages of the SEA do not generate any interest and in many cases there are no public opinions submitted during the</td>
</tr>
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</table>
In some other Member States, such as the UK and Portugal, there are neither formal obligations nor restrictions regarding consultation with the public. In other Member States, for example Ireland, public consultations depend on the type of plans.

4.5.2.3 Consultation with the public on the scope of the Environmental Report

The SEA Directive does not require the public to be involved in the scoping process; however, in some Member States the public is involved. Forms of involvement range from informing the public, taking written comments, or holding consultations.

Several Member States, such as the Czech Republic and Slovakia, allow the public to submit comments on the scoping document. It is worth noting that, in the Czech Republic, screening and scoping are merged, meaning the public can submit opinions on both processes simultaneously.

The public also has the right to participate in the scoping phase in Finland, Belgium - Flanders Region, Belgium - Brussels Capital Region, the Netherlands, and Bulgaria. In Spain, public consultations on the scope are carried out during the screening phase. In Croatia, the public can submit written opinions and proposals, and the competent authority must coordinate and carry out at least one discussion with representatives of bodies and persons. If necessary, the competent body may also organise a discussion with the public, or invite it to discussions held with the environmental authorities.

In Estonia, the requirements for notification and public consultation of the scoping report are specified in legislation. These are presented in 2 below.

**Box 12 Public consultation on the scoping report in Estonia**

Public consultations on scoping must be announced – at a minimum - in the Government’s official publication. The EIA Act requires the person preparing the strategic planning document to do this, while also publicly displaying the scoping report in the same publication, a newspaper and on its webpage, or by sending letters to the authorities and persons who may be affected, or who may have reasonable interest, as well as those specified by legislation.

As a general principle, everyone has the right to access SEA documentation at the time of publication, and to submit proposals, objections and questions regarding the documentation and to obtain responses.

In some Member States consultation with the public on the scope of the Environmental Report may be done on an ad hoc basis, depending on the type of plan and programme or on the inclination of the responsible authority, for example in Denmark (see Box 13 below), Scotland and Sweden. In Ireland, not all types of plans require public consultations at this stage, for example Development Plans (<10,000) and local plans require consultations not less than four weeks from the date of the notice, while Variation to a Development Plan only has three weeks. For other plans, consultations are not carried out.
Box 13 Example of Public Consultations timeline - Denmark

<table>
<thead>
<tr>
<th>Timeline of consultations held during the establishment of a permanent repository for Danish low and intermediate level radioactive waste</th>
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<tbody>
<tr>
<td>Scoping: Six public meetings over five weeks involving citizens and NGOs</td>
</tr>
<tr>
<td>Scoping: consultations with authorities and NGOs over four weeks</td>
</tr>
<tr>
<td>Environmental Report: delivered after three months</td>
</tr>
<tr>
<td>Public hearing: two months</td>
</tr>
</tbody>
</table>

In other Member States, where there are no specific requirements, the public may be involved occasionally, e.g. in Portugal, where it is not obligatory but is considered good practice, and in Germany, where environmental associations may also be consulted together with the concerned authorities.

The value of public consultations at this stage is sometimes unclear. According to several Member State experts from Finland and Estonia, public consultations in the scoping phase may add little quality to the report, as the content is still in development and not detailed enough to allow the public and the authorities to provide meaningful input.

4.5.3 Consultation with the concerned authorities on the Environmental Report

All Member States consult the authorities on the Environmental Report, as required by the Directive. The methods and timeframes for consultation are generally the same as those used for consultation with the public (see Section 4.5).

Generally, the starting point is the time when the responsible authority makes the Environmental Report and the draft plan or programme publicly available. However, there may be some cases where the consultation between the responsible authority and the environmental authority starts before the official submission of the Environmental Report (e.g. Cyprus and Austria). This consultation takes place either through participation at meetings or committees (voluntary), through ad hoc communication (emails), informal meetings or formal letters. In some Member States the competent environmental authority plays the role of intermediary between the plan/programme developing authority and all other concerned authorities to be consulted. In addition, it checks the Environmental Report for completeness and quality before forwarding it to the other authorities for consultation. For example, in some ACs in Spain, the environmental authority supports the participation process by allowing the plan/programme developing authorities and the SEA assessors to hold meetings and
workshops at the regional and municipal levels in coordination with local authorities. This is particularly useful when plans and programmes are geographically or strategically important (e.g. Regional Plans, Energy Plans, Transport Director Plans, etc.) and the environmental impacts may be very significant. When the plan or programme has a smaller scale (e.g. Urban Development Plans), typically the SEA assessors and local authorities handle the participation processes themselves.

In all Member States the consultation of the authorities takes the form of comments, whether submitted in writing or, in some cases, given orally at meetings. For example, working group/committee meetings with authorities are practiced in Croatia, the Czech Republic, France, Germany, Hungary, Latvia, Slovakia and Romania.

4.5.4 Public consultation on the Environmental Report

4.5.4.1 Environmental Report made available to the public

In all Member States the Environmental Report is made available to the public at the same time as the draft plan or programme so that the public has sufficient time to express opinions and contribute to the development of the Environmental Report before the formal adoption of the plan or programme. There are, however, some exceptions in some Member States depending on the type of plan and programme in question.

For example, in Lithuania, in cases of territorial planning documents, the Environmental Report is made public at an early stage, when different kinds of alternatives are still open. This contributes to the decision by helping to identify why one or another alternative is preferable. In Slovenia, the Member State experts state that usually the plans and programmes are presented to the public at the same time as the Environmental Report. According to the specific spatial planning legislation, however, the plan and the Environmental Report can sometimes be presented separately, first the plan and then the report, e.g. national water management plan. In Italy, the involvement of the public at the moment of publication of the plan/programme and the Environmental Report for the collection of written representation occurs only when an advanced draft of the plan has already been developed. Although the final plan may be amended considerably, public involvement is compressed towards the end of the plan-making process.

In Portugal, generally, when the entity responsible for preparing the plan or programme is the central government, this announcement is included in documentation published in the Official Gazette. When the entity responsible for the preparing the plan or programme is a local authority, this announcement is more usually made at the town hall meeting, with the decision published on the internet. However, work is being developed in order to establish a common template that allows this information to be consistently made available to the public by the various entities involved.

4.5.4.2 Methods for public consultation

With regard to the methods used for public consultation, a variety of practices are adopted in all Member States. The most common practice is to publish an announcement on an internet website, in the SEA dedicated section of the environmental authority or in a newsletter/bulletin. To maximise the number of people reached, the majority of Member States also publish the information via the press, in
national or local newspapers, depending on the type of plan or programme. Some Member States also reported publishing the announcement in the Official Journal/Gazette, especially if it is national plan.

In Belgium, the federal authorities are currently discussing a reform which would substitute the publication in the Official Journal (which is considered somewhat cumbersome) with the publication of a press release on the website of the plan’s author. This reform could also introduce a participatory meeting, to take place during the screening or scoping phase.

Generally, the announcement contains the title of the plan or programme proposal, the responsible authorities, the location where all the documentation related to the draft plan or programme, the Environmental Report and the Non-Technical Summary are available for public consultation, as well as the timeframe and methods for consultation (e.g. how comments can be submitted, or if a meeting or public hearing is planned). The UK specified that the level of detail of the public notice should be appropriate to the type of plan under assessment and the range of interested parties. Germany also specified that the venue where the announcement is made is determined by the authority responsible, giving due consideration to the type of plan or programme and its content and having the aim of ensuring effective public participation. In Sweden, the Environmental Protection Agency general guidelines on SEAs state that the method used to publicise the Environmental Report and the draft plan/programme is decided on a case-by-case basis. In practice, the SEA Member State experts state that it is often best to announce the consultation in the media, although minimum requirements state that the information should be provided at least through the municipal/authority agency website or notice board.

All Member States provide for comments to be sent to the responsible authorities, with some Member States specifying that this can take the form of emails, internet surveys, questionnaires, interviews (e.g. Bulgaria, Germany, Estonia, Ireland, the Netherlands, Poland and Slovakia), as appropriate in the individual cases. In Portugal, a web-based platform has recently been launched, which collates all public participation procedures within environmental and land planning areas. The public can also submit comments through this platform.

In several Member States the consultation requirements or practices extend beyond the Directive to include the organisation of a meeting or public hearing to consult the public. This is the case in Bulgaria, Cyprus, Czech Republic, Denmark, Spain, Latvia, Romania and Belgium - Brussels Capital Region. In Cyprus, the Committee composed of different representatives of the concerned authorities may invite the public to its meetings. Similarly, in the Belgium - Brussels Capital Region, the Steering Committee organises a public debate after all public opinions have been gathered.

In many Member States the practice of organising a meeting or public hearing varies according to the type of plan or programme in question (e.g. Germany, Hungary, Italy, Lithuania, Poland, Sweden, Slovenia and France). In the Netherlands, organising such a meeting is optional, although it is a fairly common practice. Some interesting practices are presented in Table 9 below.
Table 9 Public consultation practices in Member States

<table>
<thead>
<tr>
<th>Members State</th>
<th>Practices</th>
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<tr>
<td>Hungary</td>
<td>During the adoption of more complex plans and programmes, the planning authority may opt to organise verbal consultations with the public. For example, during partnership meetings on the preparation of an OP, an electronic link to the full Environmental Report was made available, instead of only the Non-Technical Summary. Questions concerning the SEA of the OP were also discussed in more detail at the related regional forums. For the Interreg V-A Hungary-Croatia Co-operation Programme 2014-2020 and Interreg V-A - Romania-Hungary Co-operation Programme 2014-2020, separate SEA workshops were held, to which all concerned organisations were invited. For example, the Po River Basin Authority organised public forums, thematic workshops and focus groups during the SEAs required for updating the River Basin Management Plan and the draft Flood Risk Management Plan.</td>
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<tr>
<td>Italy</td>
<td>While the Member State experts stated that consultation methods remain the same, irrespective of the type of plan or programme, there are some interesting cases where the SEA provided a platform for an enlarged arena of debate, open to groups of citizens usually excluded. These experiences, however, are the result of the political commitment of single administrations, rather than an established trend of national and regional laws. For example, the Po River Basin Authority organised public forums, thematic workshops and focus groups during the SEAs required for updating the River Basin Management Plan and the draft Flood Risk Management Plan.</td>
</tr>
<tr>
<td>Lithuania</td>
<td>The organiser preparing a plan or programme publicly presents the Environmental Report and the draft plan or programme (including its objectives) at least 20 working days in advance of the meeting. The organiser must answer questions from the public and explain how submissions from the public were taken into account. Afterwards, the organiser must prepare public consultation documents according to a defined format: reference of received public proposals, minutes of the public presentation, list of participants, and information about the public announcements in the media. These documents, together with the Environmental Report, are submitted to the stakeholders of SEA.</td>
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<tr>
<td>Poland</td>
<td>In practice, in the case of some draft documents (e.g. those important to a region, voivodship or association of gminas or local interest groups) the responsible authority organises additional forms of communication with the public not required by law – meetings, consultations, and public debates at which the public may participate, along with economic entities, environmental organisations and NGOs.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Consultation practices differ between plans and programmes. The more open and transparent the plan preparation process (), the more active participation methods are used, such as round tables or separate meetings for NGOs.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Public hearings are normally conducted for national and local spatial plans. For other types of plans and programmes, there may be more than one public consultation period, sometimes twice in one month.</td>
</tr>
<tr>
<td>France</td>
<td>The public hearing is conducted by an ‘investigating commissioner’, responsible for the smooth running of the procedure, the collection of public contributions and the overall synthesis of opinions. He can visit the locations involved, request more information from the planning authority, hear from persons concerned and summon people he deems necessary to provide further information.</td>
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Benefits of public consultation

Generally, a meeting is a good instrument to supplement the process of public consultation, as it provides an opportunity to share information in an effective and concentrated way, facilitating more in-depth discussion, while, at the same time, giving all participants an equal opportunity to listen and to gain more information. However, when asked about the added value of public consultations, the Finnish Member State expert noted that the added value is most obvious in cases where planning/SEA situations are more concrete (e.g. land use planning). When the plan is more abstract,
it is often difficult to get any response from individual citizens. In these cases, it is mainly organised bodies (e.g. NGOs and other interest groups) who participate.

4.5.4.3 Duration of the public consultation on the Environmental Report

The appropriate timeframes for public consultation are normally set out in legislation. Many Member States establish minimum timeframes, the most common being 30 days (in Finland, France, Croatia, Hungary, Latvia, Ireland, Portugal and Slovenia), followed by 35 days in Cyprus, 6 weeks in Austria, 45 days in the Netherlands, Spain and Luxembourg, and 60 days in Denmark, Belgium - Flanders Region and Italy. 16 weeks is the minimum timeframe in Malta, while only 21 days is given in Estonia, Poland and Slovakia, although the Member State experts reported that this is often prolonged in practice, especially for high level national strategic plans or programmes.

Differences may exist, depending on the type of plans and programmes. This is reported by many Member States, such as Austria, Denmark, Germany, Latvia, the Netherlands, Portugal and Belgium - Brussels Capital Region. In Ireland, for example, the public consultation timeframes for River Basin Management Plans (RBMPs) is set to six months, while different timeframes are set for land use plans depending on their size. In Lithuania, the timeframes differ between territorial plans and sectoral national plans.

Besides the minimum duration for consultation, some Member States also provide average values experienced in practice and these are, in all cases, longer than the minimum limit. The consultation can last up to six months in Germany and Denmark, or up to 10 months in Luxembourg for land use plans, although the Member State expert pointed out that it is difficult to estimate an average duration for the consultation process, as, if it is assumed that the process ends when it becomes evident how the opinions expressed during the consultations have been taken into account during the preparation of the plan or programme, the length of the consultation process thus depends on the procedure to adopt the relative plan or programme.

4.5.5 Information about the final decision

Article 9 requires the Member States to inform the public and the consulted authorities about the plan or programme as adopted; the consideration of the results from the consultations under Article 6 and 7; and of the reasons for choosing the alternative among all other alternatives analysis; and the monitoring measures. The authorities must provide sufficient information about the conditions under which the environmental information is available and how it can be obtained.

A general trend has been to inform the public when the plan/programme is adopted, via the Official Journal/Gazette and at the premises of the responsible authority, although the use of a website is becoming more and more common among all Member States. Adopted regional/local plans are also usually announced on local newspaper/websites for municipalities (depending on the geographical coverage), as well as on the notice board of the concerned municipalities.

The differences occur in relation to the responsible authority for the final decision publication – in the majority of Member States it is the authority responsible for the
plan/programme preparation, while in some Member States is the competent environmental authority (e.g., Romania, Slovakia, and Slovenia).

In addition, some Member States are sending the final decision directly to the authorities involved during consultation.

In Portugal, to facilitate research papers from interested parties, it was decided to release the registration of all completed SEA processes, including all the Environmental Statements. These are available on the website of the environmental agency.

4.5.6 Transboundary consultation

Regulated by Article 7 of the SEA Directive, 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. This section will explore transboundary consultation issues from the perspective of the Directive. It will look in particular at Member States’ experiences in transboundary consultation, as well as exploring the challenges experienced by Member States in transboundary consultation, and how these may be overcome.

All but two Member States (Cyprus and Greece) reported that transboundary SEA consultation has taken place, as the affected party, or party of origin, or both (Bulgaria, for example, has only been in the position of an affected party).

There were Member States which did not specify if specific requirements for transboundary consultation are set in their national legislations, but several reported that there are no special rules but, rather, the SEA Directive and SEA Protocol apply (Bulgaria, Cyprus, the Czech Republic, Denmark, and Hungary).

With regard to the responsible authority for transboundary consultation, the majority of Member States indicated that it is the Ministry of Environment, or a special department within the Ministry (for at least nine Member States). In Slovenia, for example, it is the Espoo focal point within the Ministry of Environment and Spatial Planning which acts as the responsible authority and in Sweden, it is the Swedish Environmental Protection Agency that is the responsible authority when it comes to consultations on transboundary significant environmental effects of activities and measures and of plans and programmes.

In Romania, the Ministry of Foreign Affairs supports the central public authority promoting the plan or programme, In Italy, competence for SEA transboundary consultations is up to the Ministry of the Environment in agreement with Ministry of Foreign Affairs and the Ministry of Cultural Heritage.

Challenges identified

Member States raised several issues as potentially hindering smooth transboundary consultation. Most raised the issue of translations, which relates to poor or only general translation of documents (e.g. Austria, Bulgaria, Denmark, Estonia, Italy, Latvia, Lithuania, Luxembourg, Poland and Slovenia). Italy, for example, in order to simplify
the process, often asks for a translation of the Environmental Report in English and translation of the Non-Technical Summary in Italian.

Austria mentioned the timing of notification from the neighboring state - either too late or too early, tight deadlines, lack of information regarding planning process/public participation timeframes. Issue of short timeframes was also specifically brought up by Estonia, the UK, Germany and Sweden. Bulgaria pointed to the lack of statutory requirements regarding documentation on SEA.

Croatia shared its experience with the joint cross-border consultations. While the procedures were in accordance with the procedural requirements under the SEA Directive and SEA Protocol, the process was made more difficult by differences in actions in the neighbouring countries, e.g. the public debate in the affected country lasted twice as long as in the country of origin, responses were sometimes delivered to the country of origin up to six months after the expiry of the set deadline, the affected country failed to deliver the name of the contact authority and/or person that could be consulted for procedural information.

France stated that it was impossible to determine the likely significant impacts in France within the deadline set by the other party. It recommended stronger links between the Member States and a charter of good practices to be developed.

In addition, Germany suggested that problems could be overcome through a more transparent approach, bilateral talks and close collaboration between countries involved. More time to set up transboundary procedures, they added, would also be useful.

4.6 Monitoring

Article 10 of the Directive extends Member States’ duties beyond the planning phase to the implementation phase, and lays down the obligation to monitor the significant environmental effects of the implementation of plans and programmes. Monitoring is an important element of the Directive since it allows for the results of the environmental assessment to be compared with the environmental effects which in fact occur. The Directive also establishes that other sources of information / existing monitoring arrangements can be used to measure the environmental effects in order to avoid duplication. The Directive, however, does not prescribe how the significant environmental effects are to be monitored, for example, the bodies responsible for monitoring, the time and frequency of monitoring, or the methods to be used.

This section will present the Member States’ experiences with monitoring.

Monitoring arrangements

It is not clear yet whether Member States undertake effects monitoring systematically, selectively or occasionally, what types of information is gathered and how it is used (for example to take appropriate remedial actions if unforeseen adverse effects are identified). Many Member States were in fact unable to comment on the frequency of monitoring. Several noted that this depended on the type of plan, or that monitoring
reports are submitted ‘regularly’ for certain plans. Examples include German Flood Risk Management Plans, Cypriot OPs (every two years) and Land Use plans (every five years), and certain plans in the UK which are required annually. In Finland, such reports are required during or after the implementation, and, for land use plans, when a plan needs to be changed. Other Member States stated that frequency was determined on a case-by-case basis. In Ireland, this is decided by the planning authority, while in Latvia the Environmental State Bureau determines the time periods in which the plan/programme developing authority must submit a report on monitoring of environmental effects. In the UK, agreement is sought from consultation bodies, while in Croatia, frequency of monitoring is derived from sectoral regulations such as the Air Pollution Act and the Water Act.

**Monitoring methods**

Monitoring can be done using standard monitoring indicators (which may or may not be set in legislation) or defined on a case-by-case basis. Monitoring may also be done at a sub-national level, as is the case in Spain and Italy, which makes generalisations difficult to pinpoint. Several Member States also use existing monitoring mechanisms. Arrangements/measures may be included in, or made part of, procedures required by the authority in later permissions following the plan, or can be implemented by additional local planning (e.g. Denmark). Similarly, there are no specific methods used to monitor environmental effects in the Netherlands, as any effects to be monitored stem from that actual project, rather than the plan that provides the framework for it.

**Existing mechanisms**

Several Member States have environmental monitoring systems already in place, some of which may be already laid out in national legislation. In Germany, monitoring measures stem from Annex I to the Federal Building Code, while in Estonia, the Planning Act requires a review of significant economic, social, cultural, and environmental impacts brought about by the implementation of the plan. In Sweden, the Nordic Calculation model for noise is often used, as are SIS Standards for the assessment of biodiversity. Many practitioners base assessments on the National Environmental Quality Objectives. In Croatia and Poland, it is specified that where a monitoring system is already in place measuring the same indicators (for example under the Air Protection Act or the Water Act in the case of Croatia), these data are to be used to avoid a duplication of activities. In Denmark, the NOVANA national monitoring programme provides information on the state of the environment, covering eight sub-sectors of the environment.

The EU also requires environmental monitoring for several other Directives, including the WFD, the Habitats Directive and the Ambient Air Quality Directive among others. Several Member States have, therefore, based their monitoring mechanisms on the requirements set out in these Directives. In Member States such as Lithuania and Luxembourg, monitoring is carried out using data collected at national level, while in Poland and the UK existing mechanisms are used at sub-national level, with additional measures proposed if necessary.

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Monitoring indicators and standards

In some cases, plans set out indicators which could be used for monitoring. Examples can be found in Belgium - Brussels Capital Region, Italy, or Denmark (for housing and city plans). In other cases, standards may be set out in guidance, as per the French methodological guidance, or the catalogue of environmental indicators set up by ISPRA in Italy, that provides factsheets for each environmental topic. In Croatia, standard indicators are defined by regulations, however, at the same time it is possible to define indicators on a case-by-case basis, depending on the specific nature of the plan (although this is not often done). Similarly, standard indicators in Slovenia are often upgraded or detailed in SEA reports.

Just under half of the Member States establish monitoring indicators on a case-by-case basis, unless they fall under another EU Directive. Some Member States use a combination of established standards and those decided case-by-case. In Denmark, for example, monitoring relating to mining is decided by regions, rather than at national level or covered by the national environmental monitoring programme. In Italy, standards may also be established at regional level, with some regional environmental authorities recently developing sets of indicators to be used for spatial/land use plans. In Slovakia, however, the case-by-case approach is applied individually to each and every strategic document.

In Greece, monitoring indicators evolve while the programme is in place. For example, an indicator may refer to ‘Population of the urban areas for which sewage treatment is applied’ and when the programme leads to some new sewage treatment plants or networks that connect new areas to existing plants, the indicator is increased by the population of the new areas. The Luxembourg Member State expert also supports flexible indicators decided on a case-by-case basis, as the monitoring is sometimes likely to be a method for verifying that the identified measures of the Environmental Report are implemented, rather than assessing their effectiveness.

Guidance

Most Member States have mechanisms in place to guide practitioners on monitoring. Several Member States have guidance documents available, including Austria, the Czech Republic, Sweden, Lithuania, and Ireland, who all have general guidance documents detailing how monitoring should be undertaken, especially how monitoring indicators should be established. Irish experts noted, however, that a more specific guide would be useful.

More specific guidance can be found in Denmark (NOVANA), the Netherlands (NCEA), and Italy, where national operational guidelines for SEA monitoring have been prepared by the Italian Ministry of Environment in cooperation with the National Institute for Environmental Protection and Research. In Cyprus, training sessions for the environmental authority personnel are planned.

Good practices are also considered guidance, for example in Bulgaria, where a General Environmental Monitoring Plan prepared by the Ministry of Transport, Information technology and Communications can be used for this purpose. In Hungary, the Danube Transnational Programme used the indicators of the European Environmental Agency, due to the large geographical scope of the programme.

Issues in monitoring
Member States were not specifically asked if they had any issues regarding monitoring, but a handful highlighted some specific issues. In the Czech Republic, monitoring remains an issue, as in most cases the competent authority does not receive feedback on how monitoring is carried out, which provides little guidance for the competent authority when designing monitoring for future plans and programmes. This is echoed by Belgium - Federal level. In response to this, an amendment is planned to Czech legislation, to include an obligation to inform the competent authority of the monitoring measures, taking into account the effects of implementation on the environment. In Hungary, the environmental statement drafted after the approval of the plan and programme must also contain an evaluation of the monitoring proposals.

In Estonia, there are issues with identifying relevant monitoring measures, their level of detail and application, etc., at both regional and national levels. Croatian Member State experts also pointed out that monitoring may not be focused on the most important issues. Estonian planning authorities also reported difficulties collecting monitoring results from other sectors, while Romanian authorities often do not take into account the monitoring done at different levels of governments or plans.

4.7 Following the completion of the SEA procedure

After the SEA procedure is completed, the results must be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure (as required by Article 8). Article 9(1b) also requires a statement summarizing how environmental considerations have been integrated into the plan or programme and how the results of the SEA have been taken into account. Together these articles reflect the ultimate goal of the Directive to ensure integration of environmental considerations in the planning process and outcomes.

The role of the environmental authorities within the SEA procedure varies between Member States. Notwithstanding the different arrangements made to transpose Article 9 of the SEA Directive, after the completion of the SEA, the environmental authorities may have the right to issue an administrative act that can be of a binding or non-binding nature on the outcomes of the SEA procedure. This section will explore the nature of the decision in various Member States, and its impact on the development of the plan or programme.

In Austria and the Netherlands there is no decision taken by environmental authorities after finalisation of the SEA procedure: in Austria the whole SEA procedure is handled by the planning authority, and the environmental authority by law provides comments, while in the Netherlands such advice is asked of the NCEA. In the rest of the Member States, as a general rule, an authority with environmental competencies takes some form of binding or non-binding decision which must be considered in the finalisation of the plan or programme and; if deviation occurs, some justification must be provided.

At least 10 Member States indicated that the decision taken by the environmental authority on the Environmental Report is binding upon the content of the report. In Estonia, if the Environmental Report is not approved by the supervisory body (the Environmental Board), it goes back to plan/programme developing authority for further work. Similarly, in Greece, where the Environmental Report is rejected by the environmental authority, the process of adopting the plan/programme cannot proceed.
In Belgium - Flanders Region, if the Environmental Report is not approved by the environmental authority, the initiator must adjust the SEA report and re-submit it to the EIA/SEA Unit for quality control of the report. In Cyprus, the opinion of the environmental authority is binding on the Environmental Report and, in cases where the plan/programme developing authority decides not to include an essential term or condition, then it must inform the environmental authority and bring the matter before the Council of Ministers for a final decision.

In the Czech Republic, the opinion of the environmental authority is not fully binding on the Environmental Report, although the plan/programme developing authority is obliged to state its reasons for ignoring any parts of the opinion. Similarly, in Italy legislative amendments in 2010 now provide for a binding opinion of the environmental authority on all SEAs.

An interesting example comes from Spain, where the environmental authority issues a final binding document that summarises the main milestones of the SEA process, including the results of the public participation. The environmental authority issues an opinion at the screening and scoping phase, which is integrated in the plan or programme, something which has not been reported in any other Member State.

The remaining Member States indicated that the final opinion of the environmental authority is non-binding. In Belgium – Federal Level, for example, this takes the form of a recommendation issued by environmental authorities upon reception of a declaration on the final version of the plan. In Croatia, only opinions related to the protection of the Natura 2000 network are binding. All other opinions by the environmental authorities have to be considered but do not have to be accepted and as a result suggestions generated by the SEA are not always incorporated into the proposed plan or programme. Similarly, in France the comments of the environmental authorities are not always taken into consideration simply because it is not obligatory.

In Latvia, Luxembourg, Hungary, the Netherlands and Slovakia, the opinion of the environmental authorities is issued in the form of non-binding statement/opinion and it is followed in practice. It is worth noting that in the Netherlands, the NCEA, which is not an authority, also gives non-binding advice on the quality of the SEA report. Experts from Belgium - Brussels Capital Region stated that for plans with environmental objectives, it is easier and more common to integrate recommendations directly into the plan, although there is no obligation for the plan/programme developing authority to follow up on the recommendations of the Environmental Report. Experts consulted during the focus groups explained that the extent to which recommendations are taken into consideration often depends on the individuals involved in the decision-making process. Some see the process as merely a step required to tick boxes, while others take such recommendations under serious consideration.
5 Evaluation of effectiveness, efficiency, relevance, coherence and EU added value of the SEA Directive

5.1 Effectiveness

This section focuses on assessing the extent to which the objectives of the SEA Directive have been met, and the significant factors that may have contributed to, or inhibited progress towards, meeting those objectives. ‘Objectives’ refers to those presented in Article 1 of the Directive. ‘Factors contributing to or inhibiting progress’ can relate to the Directive (e.g. the clarity of definitions) and the SEA process itself, or to external factors such as the lack of political will, resource limitations, lack of cooperation of other actors, or other factors.

5.1.1 Interpretation and approach

Effectiveness is intended as the assessment of the extent to which an intervention – in this case the SEA Directive – has made progress towards its stated objectives. The assessment of effectiveness establishes certain changes or effects that have taken place since the legislation was adopted, and attempts to determine the extent to which these observed effects correspond to the objectives of the legislation.

Article 1 of the SEA Directive sets out its overall objective to:

provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with the Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

The SEA Directive was conceived with the intention of incorporating more consideration of the sustainability of development into public plans and programmes across a wide range of sectors. By requiring an environmental assessment, as well as consultations with environmental authorities and the public at an appropriate stage in the planning process, the Directive aims to foster the development of better plans that are more likely to consider long-term, wider impacts on the environment and also benefit from greater public understanding and acceptance.

‘Integration of environmental considerations into the preparation of plans and programmes’ requires that the results of an environmental assessment are fully represented and taken into account during the plan or programme decision-making process. A specific objective of SEA, therefore, besides the overarching objective of protection of the environment, is to support an informed decision-making process.

This support may occur at various stages throughout the planning process, such as early on, at which point it may influence the options considered, or later, when it might inform mitigation and monitoring.
Based on this specific definition of the objectives of SEA, its effectiveness can be assessed in different ways. Studies evaluating the effectiveness of SEA (van Doren et al., 2013; Sheate & Eales, 2016; Zhang et al., 2013) distinguish two main aspects of the concept: substantive effectiveness and procedural effectiveness.

Procedural effectiveness looks at whether SEA is undertaken in line with legal requirements. It provides insights into the compliance of the SEA process carried out in Member States with the requirements of the Directive, but it presents no view on the extent to which the SEA actually influenced decision-making with respect to plans and programmes. Substantive effectiveness is more useful in understanding whether or not SEA achieves its purpose, as it covers aspects such as the assessment of changes in the plan or programme as a result of the SEA, as well as modification in the knowledge base of decision-makers on the environmental implications of the decision and, ultimately, the extent to which environmental issues were considered during decision-making processes (van Doren et al., 2013).

Some authors also identify a third component of effectiveness, ‘transformative effectiveness’ or ‘incremental effectiveness’, that looks at neglected or unintended changes in society triggered by the SEA process (Zhang et al., 2013; Stoeglehner, 2010; van Doren et al., 2013). These are identified by Sheate (2016) as those ‘less tangible benefits of SEA that might make SEA more effective – improved learning outcomes, social learning and knowledge exchange, governance outcomes, and attitudinal and value changes’. The literature increasingly sees these aspects as important in influencing the success of the SEA Directive, and will be the focus of the section of EU added value of the SEA Directive (Section 5.5).

This section on the assessment of the effectiveness of the SEA Directive focuses on procedural and substantive effectiveness by examining two specific evaluation questions.

**Evaluation question 1:** Have the SEA requirements influenced the process of preparing plans and programmes? If so, in what way(s), e.g. new alternatives, additional mitigation/compensation measures, specific monitoring measure(s)? If no, or only limited, influence can be demonstrated, what could be the reason for this?

**Evaluation question 2:** Which main factors (e.g. implementation by Member States, action by stakeholders) have contributed to, or stood on the way of, achieving the objectives of the SEA Directive?

Evaluation question 1 considers a composite indicator of the effectiveness of SEA – the extent to which the requirements have influenced the process of preparing plans and programmes, as well as the extent to which improvements to Member States’ plans can be attributed to SEA, and the reasons why this may or may not be happening. Evaluation question 2 looks at the objectives of SEA more broadly, but with a focus on understanding the main factors at play in determining the success of the Directive. The two questions are closely related and have been considered together.
Examination of question 1 consisted of two main aspects:

- 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 the extent to which the planning and/or programming procedures have been altered as a result of the application of the SEA procedure; and
- The extent to which (the content) of plans and programmes has been affected as a result of the application of the SEA Directive requirements.

The second question looks at the factors behind the observed role and impact of SEA on planning. This is closely linked to the ways in which the Directive is transposed and implemented in the Member States, as well as the practical approach to carrying out SEA by authorities and practitioners.

### 5.1.2 Main sources of evidence

The assessment of effectiveness is primarily based on the following evidence:

- Replies from the Member States to the Commission’s questionnaire.
- Literature review.
- Consultation with SEA experts during focus group discussions.

A large amount of the evidence gathered for this study was relevant for the effectiveness questions, as these relate to many different aspects of the implementation of the Directive. A key source of information for assessing effectiveness was the Member States’ replies to the Commission’s questionnaire. The assessment of progress, particularly for the first evaluation question, has primarily relied on the views and perceptions expressed by the Member State experts.

In particular, Question n. 27 of the questionnaire directly asked Member States to state whether and how SEA requirements have influenced the planning process. Responses to questions on changing content of plans and programmes (Question n. 34) and the use of SEA as a planning versus assessment tool (Question n. 35) also shed light on the progress towards achieving the SEA objectives. This was complemented by the views of Member State authorities in answering questions that required an evaluation of implementation factors (Question n. 29 on impediments and Question n. 41 on difficulties, as well as others depending on the scope of the provided response). Finally, responses to many of the questions on the implementation of the Directive also enabled judgements on effectiveness. These include approaches to the different stages of SEA, i.e. screening, scoping, assessment of alternatives and impacts, public participation, etc.

The Member States’ replies to these questions have been examined together with evidence from academic literature and studies on implementation of the Directive.

The focus group discussions provided a third perspective, often yielding explicit lists of the main factors influencing the effectiveness of the SEA Directive.
5.1.3 Analysis of the questions according to available evidence

This section will first explore the role played by SEA in influencing Member States’ planning processes and the final content of plans and programmes. It then moves on to investigate the key factors behind the success of the SEA Directive.

5.1.3.1 SEA influence on the planning process

The way in which the SEA has influenced the process of preparing plans and programmes could be viewed either positively or negatively by the Member States, depending on the role played by SEA in the process. This section presents the evidence for the improvements/streamlining that SEA requirements may (or may not) have brought to the planning process.

The questionnaire asked Member States whether the SEA requirements have influenced the process of preparing plans and programmes. In their responses, all Member States recognised some sort of influence on planning process, going on to explain the changes associated with this influence. The main reasons identified are presented in Figure 3 below.

**Figure 3 How have SEA procedures influenced plan/programme preparation processes?**

Some Member States reported that changes occurred to every single plan or programme, while others recognised that influence differs depending on the type of plan and specific case (e.g. Austria, Germany). Hungary stated that changes were observed in many cases; however, the procedure typically did not influence spatial development plans, which contradicts reports from other Member States (e.g. Ireland, Lithuania, the Netherlands, and Slovakia). There the greatest impact was seen on spatial planning process (because it is easier to identify locational or technical alternatives for these types of plans).
Half of the Member States recognised that the SEA had resulted in greater environmental emphasis at earlier stages of planning processes. However, few Member States mentioned changes directly related to the decision-making process, with the majority of Member States instead focusing their attention on changes related to specific aspects of the Environmental Report as the output of the SEA procedure, such as the consideration of alternatives and the inclusion of mitigation measures.

When asked for reasons why and how SEA has influenced their planning processes, Austria, Cyprus, Finland, Denmark and the UK pointed out that planning processes had become more systematic as a result. This included improvements to the organisation, and structure of the whole planning procedure so that problems were identified and resolved earlier in the process, when it is easier to alter the plan. Austria, Belgium, Finland and Cyprus also recognised that SEA had driven transparency in the planning process. Cyprus, Denmark, Germany, Latvia, Lithuania and Portugal stated that the SEA Directive requirements for public participation and consultation of authorities were a positive contribution to the planning process. Only Denmark, Estonia and Finland stated that greater cooperation and communication has been observed between key persons/authorities (the plan/programme developing authority and the assessors).

The vast majority of the Member States replied that improvements were perceived in the identification and assessment of alternatives (20 Member States plus Belgium – Flanders Region) and mitigation measures (23 Member States plus Belgium – Flanders Region), as well as monitoring measures (12 Member States plus Belgium – Flanders Region). Interestingly, the same answers were provided when looking at the changes made to the final content of the plan (see section 5.1.3.2 below). However, replies to this question may have been biased by the fact that the question (Question n. 27) explicitly mentioned ‘new alternatives, additional mitigation/compensation measures and specific monitoring measures’ as examples of the ways in which SEA may have influenced the process of preparing plans and programmes.

Some Member States also mentioned the negative influence of SEA on planning processes. In Germany, for example, some authorities criticised the additional administrative work involved in carrying out SEAs, which some consider to be disproportionately high. The UK explained that, as SEA is a statutory procedure, it also provides an avenue for those who disagree with certain plans or programmes to attempt to block or delay them by legally challenging the SEA procedure. This risk of legal challenge has encouraged inefficient SEA practices, such as consideration of unrealistic alternatives or assessment of environmental factors that are not likely to be significantly affected, simply to avoid later accusations of failure to include them.

In general, the evidence gathered during the focus group discussions is in line with the findings presented above. While it can be difficult to clearly distinguish the specific impacts of SEA, all participants in the focus groups agreed that improvements to the way in which SEA is conducted have led to better quality plans. Focus group experts agreed that, overall, SEA has made the planning process more structured and transparent, with the environmental variables often disregarded before the SEA came into force now taken into account.

During the focus group discussions some experts also pointed out that, while some evidence is available in some Member States, thanks to country specific reviews of SEA effectiveness carried out (e.g. the Netherlands, Scotland and Ireland), it is difficult to
judge SEA effectiveness in Member States where no such reviews have yet been conducted. The evidence in these Member States is therefore mainly based on practitioners’ experiences and perceptions, and does not necessarily reflect the official opinion of the Member State concerned.

There was general agreement among the focus group experts that effectiveness depends on the existence of political will to really impact on the plan and programme and actually integrate environmental considerations, rather than simply focusing on compliance with the procedure, which was often the case in the first years of application of the Directive. Lack of awareness and understanding of the process was also raised by practitioners from both EU-15 and EU-13 Member States, as hindering the influence of SEA on plans and programmes.

The majority of the focus group experts concluded that these problems are not due to the SEA Directive itself, but, rather, relate to practical implementation issues in the Member States.

5.1.3.2 SEA influence on the content of plans and programmes

By requiring an environmental assessment as well as consultations with environmental authorities and the public at an appropriate stage in the planning process, the Directive aims to foster the development of better plans that are more likely to consider the long-term, wider impacts on the environment and also benefit from greater public understanding and acceptance. This section will explore if and how SEA drives changes in the content of plans and programmes, and the extent to which the results of the SEA are incorporated into the final planning decision.

Member States were asked whether or not SEAs have changed the content of plans or programmes, and to describe some typical types of changes that have taken place. While all Member States reported that SEA generally changes the content of the plans and programmes, 17 Member States pointed out that these changes were only observed in specific cases (e.g. for some types of plans and programmes but not for others). The overview of their replies is presented in Figure 4 below.
As for the typical changes observed, a variety of examples were provided by the Member States, the following being the most frequently observed changes:

- New scientific data were identified and collected, with greater accuracy, and these were used to influence alternatives and final decisions.
- Public opinion was integrated into the final plan/programme.
- Monitoring measures were further developed and included in final plans/programmes.
- Location or the size of the area was altered in line with new alternatives and environmental impacts.
- Plans/programmes displayed more environmental emphasis in terms of possible environmental impacts.
- Alternatives were added, usually with a more environmental focus.
- Mitigation and/or compensation measures were added to offset environmental impacts identified during the SEA.
- Certain terms were removed where they did not comply with the requirements of the SEA.

Many Member States explained that typical changes focused on the introduction of mitigation measures and specific alternatives, such as changes in location, size or activity (e.g. Cyprus, Finland, France, Hungary, Ireland, Luxembourg, Slovakia, Spain, Sweden, and UK). Most Member States stated that such changes are more likely to happen in land use planning and are less common in sectoral or national-level planning, where political pressure is higher and strategic decisions are often taken in advance.
Some Member States (Portugal, Germany, and Sweden) also explained that it was difficult to reply to the question, given the lack of consolidated research or data on the influence of SEA on the content of the plans and programmes.

With regard to the extent to which the results of the SEA are accounted for in the final planning decision, evidence is not available for all Member States, as there was no specific question on this in the Commission’s questionnaire and only few Member States provided further insight. For example, Belgium - Brussels Capital Region stated that, for plans with environmental objectives, it is easier and more common to integrate recommendations directly into the plan, although there is no obligation for the plan/programme developing authority to follow up on the recommendations of the Environmental Report. Similarly, Croatia stated that the results and suggestions generated by the SEA are not always incorporated into the proposed plan or programme. In France the comments of the environmental authorities are not always taken into consideration simply because it is not an obligation to do so.

Experts consulted during the focus groups explained that the extent to which the results of the SEA are accounted for in the final planning decision often depends on the individuals involved in the decision-making process: while some are very engaged in the SEA process and are willing to take recommendations on board, for others it is simply a box-ticking exercise.

5.1.3.3 Description of key factors

In recent years a growing number of publications and SEA evaluation studies have identified factors contributing to SEA effectiveness. This section reviews and analyses those factors in order to provide a deeper understanding of the effectiveness of the implementation of the SEA Directive across the Member States. It is important to recall that Member States varied considerably in their starting points of implementation of the SEA Directive; while some had SEA experience pre-dating the Directive (e.g. the Netherlands), others started entirely from scratch. As underlined by Sheate & Eales (2016), evaluating the effectiveness of procedures such as SEA is complicated by the challenge of distinguishing the effects of SEA from those of many of the other variables affecting decision-making (i.e. the different administrative, legal and cultural contexts). The implementation process of an SEA influences its effectiveness, and involves processes that are highly complex.

Differences in terms of SEA effectiveness are also evident within a Member State itself. During the focus group discussions, Member State experts noted that the SEA process can vary considerably across the different level of administration within individual Member States.

As Van Doren et al. (2013) also highlights, given that every plan or programme for which an SEA is conducted is different (in that it deals with a distinctive problem and operates within a different decision-making culture), any assessment of the implementation and success of the tool must consider the context in which SEA operates. For instance, the context in which spatial plans are prepared is very different from the context in which sectoral, national plans and programmes are prepared, as the authorities and the interests involved are different. Evidence collected through the
Commission’s questionnaire on Member States’ implementation practices often distinguishes between experiences of spatial planning and national sectoral planning.

The literature review focused on the most recent publications. Two key sources proved extremely useful in the identification of factors, as they themselves reviewed the available literature: van Doren et al. (2013) reviewed a number of studies that examined the factors influencing the effectiveness of the SEA Directive in the past decade and identified 13 factors believed to contribute to the effectiveness of SEA; similarly, Zhang et al. (2013) carried out an extensive literature review and found 30 articles published between 2000 and 2010 that identified one or more critical factors influencing the performance of SEA implementation. Taking these two articles as a starting point, the key factors affecting the SEA implementation process were selected and are presented in the following section. A distinction is drawn between internal factors relating to the SEA process/content (e.g. integration, scoping, alternatives and public participation) and external factors relating to the institutional, administrative and cultural context (e.g. communication/coordination between different stakeholders, institutional framework, political will etc.). The key factors relate to the ongoing implementation of the Directive and are presented according to the frequency of mention in the different sources.

**SEA integration with the planning process**

From a procedural point of view, the SEA steps largely follow the phases of the planning process and can be easily integrated. The Directive, however, leaves it to the discretion of the Member States whether SEA should be introduced as a stand-alone process or as an integrated planning instrument. SEA theory and the Commission itself recommend that the SEA procedure is carried out in parallel with the planning procedure, with close cooperation between the SEA team and the planning team. Such integration allows for a continuous interaction between planning and assessment, resulting in continuous improvement to the planning solution. This tends to lead to more robust planning overall, including wider consideration of the range of options, measures and innovative features required to meet the needs identified.

The level of integration of SEA with the planning process can be measured in two different ways: the degree of cooperation and communication between SEA assessors and plan/programme developing authorities during the decision-making process, and the starting time of the SEA process in relation to the plan or programme preparation process. Timing is important. The SEA should start when the planning process is sufficiently concrete, but while alternatives can still be developed and included. At the same time, the Environmental Report must be available when needed in the planning process in order to reach full environmental integration. If the feedback from the SEA comes after the first draft of the plan or programme has already been made, it is impossible to influence the plan or programme.

While it is difficult to gather evidence on the frequency of communication between SEA assessors and decision makers about their work during the decision-making process, Member States’ experts completing the Commission’s questionnaire reported on their

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experiences with regard to the starting time of the SEA process and its alignment with the planning process.

Half of the Member States replied that SEA is carried out in parallel with the planning process (at its early stages), while some Member States confirmed that SEA normally starts only when a first draft of the plan or programme is available (Belgium – Federal level, Croatia, Cyprus, Latvia and Germany). Some other Member States see both practices occurring, depending on the type of plan and programme concerned and the degree of ownership of the planning authority (Belgium – Brussels Capital Region, Bulgaria, Lithuania, Luxembourg, Poland, France, Czech Republic, Greece and Denmark). They explained that SEA is normally more integrated with the planning process in the case of land use planning. This may be because more complex sectoral, national plans and programmes (for example water plans) involve more actors and interests, and take longer to agree on an outline of the plan, resulting in SEA starting only after a first draft is available. Another reason mentioned by Member States is that often the authorities responsible for a plan or programme are simply not aware of the SEA requirements at the start of the process. In some Member States practice has changed over time, making the early start the preferred option. In Italy, for example, prior to legal reforms in 2008 and 2010, SEA started later in the process, when the plan or programme was available. On the other side, the Greek experts reported that this is not perceived as a problem: the team that prepares the draft plan or programme is aware of the forthcoming SEA and usually adjusts the level of detail of the first draft in order to allow the flexibility to adopt possible changes that may result from SEA.

Overall, evidence showed that some Member States have a very open approach to integration of SEA into the planning process, while others keep the procedures more separate. However, correct timing is one of the most challenging issues related to SEA, as the right balance has to be found between sufficient information already available in the programme to make the assessment meaningful, and the window where sufficient scope exists to influence the drafting of the programme and provide meaningful alternative suggestions.

Member States were also explicitly asked whether SEA is used as a ‘planning tool’ or as an ‘assessment tool’. The former use means that SEA is carried out in parallel with the plan and programme development process, and focuses on the elaboration of alternatives and integration of environmental issues; the latter use means that SEA focuses more on the effects of the draft plan or programme available.

Based on the variety of the answers to this question, it seems the Member States struggle to differentiate between these possible uses of SEA. Not all Member States who instigate SEA early in the procedure view SEA as a planning tool. The majority, in fact, reported that it is used both as a planning tool and an assessment tool, depending on the type of plan or programme in question. Only Cyprus, Belgium – Federal level, Malta and Slovakia firmly confirmed that SEA is used as an assessment tool, and only Slovenia stated that it is used as a planning tool. In the remaining Member States there is a more nuanced picture, with SEA used primarily as an assessment tool in Spain, Sweden, Greece, Lithuania, Luxembourg Poland and Portugal, although some Member States recognised that the level of effectiveness would be higher if it were used as a planning tool and efforts are being made to drive this shift in focus (Portugal, Spain, Luxembourg, Hungary, Finland).
The under-utilisation of SEA as a planning tool to improve the decision-making process is highlighted as problematic by some authors. When reviewing SEA effectiveness in the context of SEA and spatial planning in Austria, Stoeglehner (2010) noticed that, frequently, decision makers have already prioritised the plan or programme draft, and the reasonable alternatives described in the Environmental Report have already been decided, despite being subject to consultation once the Environmental Report is written, leaving little margin for it to influence the final content of the plan or programme. To fully integrate SEA into the planning process, Stoeglehner recommends carrying out two rounds of appraisal of alternatives. In the first round, preliminary drafts of alternatives are assessed and prioritised and decision makers select the most favourable alternative. In the second round, this alternative is developed in more detail as a draft plan for the consultations, as described in the Environmental Report together with the other alternatives. This model gives the advantage of tailoring the information needs to the stage of the planning process in order to integrate environmental objectives and reach an environmentally friendly design of plans and programmes.

Kontić & Kontić (2012) go even further, recognising the trend towards a gradual decrease in motivation for improving a plan or programme, and an increase in the use of environmental assessments simply as a tool for obtaining approval for a specific plan/programme (or project) proposal. This may be a consequence of the fact that the plan/programme developing authorities still consider environmental assessment as an obligation, or even a burden. Their lack of interest in an integrated SEA model stems from their efforts to gain approval for their proposal, while improvement of the content of the plans and programmes using the SEA process is considered less important. As a consequence, the assessment of environmental impacts is, in many cases, adapted to fulfil these authorities’ interests. Such misuse of SEA leads to a loss of credibility of the assessors and to the erosion of trustworthiness of the SEA process, undermining its effectiveness.

Focus group discussions also confirmed that SEA is often conducted in a way that fails to adequately exploit its advantages as a planning tool, as it is carried out in a too bureaucratic a way, with an emphasis solely on compliance of the assessment procedure, rather than on its impact in the decision-making.

**Consideration of reasonable alternatives**

The requirements of the SEA Directive for the identification and assessment of ‘reasonable alternatives’ and ‘reasons for selecting the alternatives dealt with’ were a major breakthrough in the process for approving a plan or programme, as they require the consideration of reasonable alternatives that would avoid environmental impacts, something that might not otherwise have happened in many Member States. These requirements (Article 5(1) and Annex I (para h) – ‘prevent, reduce or offset’) give effect to an important principle of the Directive, i.e. avoid impacts from occurring in the first place, rather than merely limiting them through mitigation. Yet, evidence showed that in practice there are still many problems with respect to the identification and assessment of alternatives in practice.

Section 4.4.3 distinguished different types of alternatives:

- **Strategic alternatives**: different ways of achieving the objective of the plan or programme without disproportionate costs or exceptional technical problems.
- **Locational alternatives**: changes in location.
- **Qualitative and quantitative alternatives**: e.g. changing the scale or size of the intervention.
- **Technical alternatives**: alternatives concerning the design of possible projects on a selected site.

Each type of alternative has a different level of influence on the environmental impact of a plan or programme, decreasing from strategic to locational to technical alternatives. Although the Directive calls for an assessment of alternatives, it does not specify which type of alternatives must be assessed as long as they are ‘reasonable’. While the assessment of strategic alternatives is considered indispensable (Stoeglehner, 2010), as they allow for an overall qualitative rating of the environmental performance of a plan or programme on a general level, this is not yet widespread in Member States’ SEA practices, as already highlighted in section 4.4.3. The majority of Member States, in fact, opt mainly for assessment of locational or technical alternatives, and focus on changes within a plan or programme rather than changing the objective of the plan.

The focus group discussions also concluded that most SEAs do not, in their experience, explicitly compare alternatives, or even develop alternatives, but, rather, react to proposed alternatives. Even when discussed, alternatives are often not strategic, but relate to implementation details. One expert explained that plan-making always includes the development of a set of options and that the SEA then decides on the best option. However, the alternatives proposed are often inappropriate, being invented as a result of the requirement to consider them. In this case, SEA does not provide an obvious winner, leaving considerable room for improvements on the development and handing of alternatives.

Another expert pointed out that not a lot of improvement has been seen with regard to alternatives. Despite the fact that academia and the SEA community are aware of the importance of formulating alternatives and the improvements brought by case law, in practice implementation remains very poor.

Experts participating in the focus group with practitioners with EU-13 also noted that political pressure on a plan may be so strong that alternatives are not considered even when proposed by practitioners. When a decision has already been taken and it is difficult to change, then the plan/programme developing authorities opt to simply reduce the impact by proposing compensation measures that are often poorly formulated.

Too often the assessment goal is more focused on mitigating negative impacts rather than improving the plan or programme to fully support sustainable development. This aspect is also important for the assessment of alternatives: avoiding negative effects can be anticipated with site or technical alternatives within a given opinion, whereas striving for positive impacts probably means addressing the level of strategic alternatives. The fact that location or technical alternatives are frequently preferred over more strategic alternatives can often be explained by the fact that, as described earlier, the assessment may be aimed at justifying a decision already made.

The issue of ‘enhancement of positive environmental impacts’ is analysed by McCluskey & Joao (2011). Their paper evaluates how the enhancement of positive environmental impacts has been considered and developed in SEA reports since the SEA Act was
introduced in Scotland in 2005. Again, SEAs have been found to focus mainly on mitigation, frequently ignoring the opportunity offered by enhancement measures. The paper concludes that, in order for SEA to achieve its full potential, SEA practitioners and decision makers must begin to explicitly recognise potential enhancement opportunities, in addition to considering mitigation measures for negative environmental impacts. This suggests that SEA needs to evolve beyond its current sectoral application to examine ways in which development decisions can not only pre-empt and prevent environmental damage, but also positively enhance and restore existing natural resources. The paper also points to many examples where the alternatives identified were not reasonable, i.e. they were often used to defend the ‘pre-SEA’ preferred alternative.

Like the SEA Directive, the Scottish SEA Act does not stipulate any obligation to consider or include environmental enhancement or improvement. Following the introduction of the SEA Act, in 2006 the Scottish Government published a toolkit which included guidance to assist local authorities in the application of the SEA process and to comply with the Act. In accordance with the legislation, the guidelines state that only ‘measures envisaged for the prevention, reduction and offsetting of significant adverse effects’ be listed in the Environmental Report. However, the guidelines do suggest that it may be useful to indicate in the Environmental Report how positive environmental effects may be enhanced.

Public participation

Public involvement in environmental decision-making was institutionalised through the EIA and SEA Directives and, importantly, by the UNECE Aarhus Convention on access to Information, Public Participation and Access to Justice in Environmental Matters. The SEA Directive requires public consultation on plans and programmes subject to SEA, with the public given an ‘early and effective opportunity’ to express their opinion. Yet, recent legal action by the European Commission against Member States - with 28 infringements cases by 2011 - has often focused on poor transposition of public participation provisions or their poor application (Meuleman L., 2011). At the Aarhus Convention Compliance Committee, nine out of the 129 cases reported between 2004-2011 related to concerns around public participation in relation to plans and programmes (Sheate & Eales, 2016).

Part of the problem is that public participation is sometimes seen more as a mere obligation to be fulfilled in order to conclude the procedure, rather than an informative instrument to enhance and share knowledge in decision-making (Partidario M.R. & Sheate W.R., 2012).

Section 4.5.3 of this report has outlined how Member States’ replies to the Commission’s questionnaire showed that some progress has been made in the past seven years, with respect to the methods applied for public consultation, with greater attention now placed on this aspect by Member States\textsuperscript{41}. For example, it is now common practice in all Member States to publish the announcement on an internet website, or, in some cases, to accept comments by email or internet surveys, questionnaires or interviews.

\textsuperscript{41} COWI (2009), Study concerning the report of the application and effectiveness of the SEA Directive (2001/42/EC), Final Report for the European Commission, April 2009.
In addition, while the majority of the Member States strictly adhere to the Directive’s public consultation minimum requirements (i.e. giving the public the opportunity to comment on the draft plan or programme and the Environmental Report), in some Member States the consultation requirements or practices extend beyond the Directive, to include a public consultation meeting or public hearing.

Naddeo et al. (2013) suggests that is good practice for the plan/programme developing authority to give SEA practitioners a list of people that should be invited to consultation. Equally, it is beneficial for regional administrations to produce official guidelines to facilitate the consultation process. It is not common practice yet, however, to directly invite the interested NGOs to participate in the procedure, according to Member State questionnaire replies. In order to provide for more effective public involvement in the SEA process, Naddeo et al. (2013) also propose the introduction of a web-based portal to manage information. This tool can effectively collect and share opinions, feedback, environmental data and SEA results. A survey can be issued to users during each phase of SEA through the website, each of which is focused on involved subjects and with a different level of detail. The evidence gathered from Member States’ replies to the questionnaire suggested that some Member States, e.g. Portugal and Scotland, make such a web-based platform available, which assembles all public participation procedures within environmental and land planning areas, and through which the public can submit comments. However, this practice is not widespread across all Member States.

As explained by the German expert during the focus group discussions, consultation practices in Germany depend on the type of plans and scale of application. New approaches for SEA are being developed for very significant plans, for example the national power grid, which requires a lot of effort and information. Electronic media are involved, which may promote better acceptance from the public and stakeholders. This may work well for big national/sectoral plans, but presents a problem for local/smaller SEAs where there is a lack of capacity and resources.

A public meeting is generally considered to be a good instrument for public consultation, because it provides an opportunity to share information in an effective and concentrated way. These meetings allow for more in-depth discussion, while at the same time giving an opportunity for those participants who do not usually take an active role in asking questions, to gain further information (see Section 4.5.3 for some examples of public consultation practices beyond the Directive’s requirements). Yet, little evidence is available on the extent to which such practices influence the decision-making process and the final version of the plan or programme. The Finnish expert noted that the added value of public consultation is most obvious in cases where planning/SEA situations are more concrete (e.g. land use planning). If the plan is more abstract, it is often difficult to get any response from individual citizens. In these cases, it is mainly organised bodies (e.g. NGOs and other interest groups) who participate.

Similar conclusions were drawn from the Scottish review of the SEA Act carried out in 2011, as well as the review of the English context (Illsley et al., 2013). While interaction between the plan or programme developing authorities and the concerned authorities was found to be very useful (with concerned authorities meeting very high

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performance standards), the overall public participation in the application of the SEA legislation was considered disappointing. There was clear evidence of public engagement at a number of points in the SEA process, including the scoping stage, in the consideration of alternatives and at the draft plan or programme stage, but the extent of this involvement varied considerable (see Box 14 below).

**Box 14 Review of the Scottish SEA Act: strengths and weakness of public participation practices**

<table>
<thead>
<tr>
<th>Review of the Scottish SEA Act: strengths and weakness of public participation practices</th>
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<tr>
<td><strong>Scoping</strong></td>
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<tr>
<td><strong>Alternatives</strong></td>
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<tr>
<td><strong>Environmental Report</strong></td>
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*Source: Scottish Environment Protection Agency (SEPA) 2011*

Member State’ replies to the Commission’s questionnaire and discussions during the focus groups also confirmed that the Environmental Report is often a poor vehicle to engage with the public because of its overly technical nature. In its reply to the questionnaire, the UK expert highlighted that excessively long and unfocused Environmental Reports can make it more difficult for the plan/programme developing authorities and the public to properly identify the likely environmental effects of a plan.

The Scottish experience of engaging stakeholders in SEA is very similar to the findings of a review of the English context (Illsley et al., 2013). According to this review, English practice has focused unduly on process at the expense of outcomes, as a result of which SEA has not been used to best effect to shape the plans and programmes to which it was applied. Although there was some agreement that SEA provides opportunities for early engagement, in practice it was believed difficult to engage the public, with
evidence of frequent lack of any response to consultation other than from the concerned environmental authorities. Explanations for this low public response rate include a lack of general understanding among the public of the purposes of consultations, particularly how the SEA process is intended to influence plan preparations. Some respondents suggested that extending consultation beyond concerned authorities during the initial scoping of an SEA would promote greater engagement at the outset.

The focus group experts confirmed that public participation remains a weak point of SEA, often because consultations are left to the end of the process, when the Environmental Report is ready, rather than carried out during scoping. At this later stage, consultation can make only a limited difference, since decisions have usually already been taken. To overcome this problem, one expert suggested formalising the link with the Aarhus Convention in the text of the SEA Directive, explicitly requiring a public debate at a moment where there is still room for discussing alternative options.

As described in Section 4.5.2, in many Member States the public is involved at the screening and scoping phases, varying from informing the public, taking written comments, or holding consultations. The value of public consultations at this stage, however, is unclear. According to Member State experts from Finland and Estonia, public consultations in the scoping phase may add little quality to the report, as the content is still in development and not detailed enough to allow the public and the authorities to provide meaningful input. Romanian experts also noted that, in practice, despite the opportunity to involve the public at early stages, public participation mainly takes place in the final stages of the SEA, as the early stages of the SEA do not generate any interest and, in many cases, there are no public opinions submitted during the public debates.

Similar conclusions have been reported for other Member States. Bonifazi et al. (2011), for example, reported that the implementation of the SEA Directive in Italy is strengthening cross-sectoral governance networks (i.e. communication and coordination between different sectoral authorities), but is yet to promote greater engagement among ordinary members of the public or civil society organisations.

Scoping

Scoping is the stage during which the likely extent (geographical, temporal and thematic) and level of detail of the assessment to be included in the SEA are determined. Scoping is a very important part of the SEA procedure as it enables agreement up front on what is to be assessed and provides all involved actors, authorities and evaluators with an appropriate idea of what is to be achieved and what is to be done.

The SEA Directive lays down minimum requirements regarding the content of the Environmental Report. Article 5(1) of the SEA Directive refers to Annex I which specifies the information that is to be provided in the Environmental Report. The Annex is composed of 10 paragraphs which set forth a broad range of issues to be dealt with in the Environmental Report.

Van Doren et al. (2013) suggest that an SEA is effective depending on the level of ‘pragmatism of the decisions’. With respect to the content of the Environmental Report,
the paper argues that it is important that it provides information that is adapted to the decision makers needs and is understandable for all actors involved in the decision-making process (including those without technical expertise). The evidence gathered during the focus group discussions showed that poorly implemented scoping procedures result in overly comprehensive Environmental Reports instead of being tailored to the assessment needs, thereby improving effectiveness and efficiency. This is due to a tendency on the part of authorities to adhere strictly to the requirements of Annex I and include all environmental aspects in the assessment (even those less relevant) in order to avoid the risk of being accused of omissions at a later stage. How the scoping approach affects the efficiency of the process is discussed in more detail in the following Section 5.2.

Experts from the focus groups also raised concerns about the level of detail of the terms of references (ToRs) when SEA is outsourced to external consultants. These are normally very general, with information often copied and pasted from previous SEAs and therefore not always relevant.

Focus group experts explained that considerable resources are dedicated to the descriptive part of the SEA, estimating that 70% of most SEA consultants’ time is spent on collecting baseline data, which could be done more efficiently if the ToRs were more tailored to the needs of the specific plan. When baseline information is requested for all environmental sectors instead of just the priority ones, the Environmental Report can be unnecessarily lengthy and descriptive. Readers of the reports tend to skip ahead to the impacts, with one expert estimating that only 20% of the baseline information is actually used in the Environmental Report.

Experts from the focus groups with practitioners from EU-13 also stated that consultation during the scoping phase often involves (along with the environmental authorities) bodies from several different sectors who understand neither the SEA procedure nor its purpose. The practitioners are therefore forced to cover all environmental issues/impacts and not just those related to the future activity. All practitioners consulted agreed that, from a practical point of view, it is not useful to have such a broad scope of assessment.

**External factors**

**Capability and availability of human resources**

Adequate resources are a prerequisite to implementing SEA, including human resources, financial resources, external funding and data. These will be treated in more detail under Section 5.2 on efficiency. With regard to effectiveness, the important factor is the knowledge and practical experience gained in carrying out SEA. Ultimately, it is the competences of the SEA team that influence the quality of an SEA. These competences include ‘independence, objectivity and credibility; breadth and depth of expertise and experience and the authority to implement the appraisal recommendations’ (Therivel & Minas, 2002). Other important capacities include expertise in dealing with planning staff, authorities and politicians, as well as capacity to engage with stakeholders, in addition to professional knowledge.

Most of the SEAs carried out in the EU relate to spatial plans at regional and local level. Lack of resources is a problem that affects local authorities (especially in small
municipalities) when carrying out SEA for spatial plans, while SEAs for national/sectoral plans and programmes are more readily handled by the better-resourced national authorities. All of the experts consulted during the focus group discussions agreed that improving effectiveness will require exploring ways to support local authorities in conducting SEA.

During the focus group with practitioners from EU-13 Member States, the experts stressed the issue of lack of awareness and experience on the part of the plan/programme developing authorities and the SEA practitioners of the SEA procedure and the types of measures that should be prescribed. In several Member States, especially where there were problems with late transposition of the Directive, it took more time for these authorities to get used to undertaking an SEA. The experience from Croatia illustrates the gradual learning process that has characterised implementation of the SEA Directive: after the Directive was transposed into national legislation, SEAs exhibited several weaknesses, due to lack of knowledge and experience, with all SEAs starting too late in the planning process thereby limiting the possibility to influence the final plan or programme. SEAs were treated as 'mega EIAs' and recommendations were mostly at EIA level. After some years of experience, the plan/programme developing authorities gained a better understanding of SEA objectives and administrative requirements, and their input became more focused on the strategic level of assessment and recommendations.

EU financing has played an important role in building the capacities of the actors involved in SEA in Central and Eastern Europe. In Croatia, for example, in the context of the EU capacity building co-financed project ('Strengthening capacities for strategic environmental assessment at regional and local level' (2012-2014)) several workshops and consultations have been held with authorities at different levels (local, regional, national) and practitioners. This learning cycle resulted in the significant increase of skills and capacities within the SEA process.

Guidance documents and other supporting tools

Guidance documents are an important way to ensure better implementation of the Directive. As seen in Section 3.3 of this report, in some Member States considerable guidance is provided to authorities and practitioners through documents and websites. Not all Member States have translated or adapted the EU guidance document to their national SEA legislative framework, and only few Member States have produced specific guidance documents tailored to the sectoral or geographical context (national vs. regional and local level).

As noted by Sheate & Eales (2016), the preparation of guidance documents should be the typical response to reviews of effectiveness which identify the need for changes to practice. This has been seen with the EU Commission guidance on biodiversity and climate change, for example, which came directly from perceived inadequacies in the way in which these two factors were being addressed in practice. Member States should be encouraged to update national guidance documents as SEA practice evolves, which has been the case in very few Member States to-date.

With regard to support for local authorities, the use of web portals managed by the national government to which the SEA responsible authority can refer, are viewed as good practice. The availability of standardised checklists and forms, for example to assist the screening and scoping procedures, provides valuable help to the local
authorities which lack the capabilities and resources to carry out SEA. It should be borne in mind, however, that standard templates run the risk of implying that there is only one acceptable way of conducting SEA, thereby stifling innovation (Phillips and Sheate, 2010). Such practices, however, have only been adopted by a few Member States (e.g. Austria, Italy, and France).

Training practitioners could be beneficial for strengthening the knowledge and capacity of the plan/programme developing authorities. In addition, some Member States are experiencing a growing community of interest in SEA among practitioners and academics, and this is helping to enhance collaborative practices and facilitate the sharing of information and knowledge. The existence of a community of practitioners in Scotland, operating through the SEA Gateway or the annual SEA Forum, has brought those involved in the SEA together and has improved the sharing of knowledge and exchange of good practices among experts. Similar practices are in place in Austria, Ireland and Bulgaria.

Ownership of SEA

For an SEA to be carried out in a smooth and effective manner, it must be clear who the responsible authorities are throughout the process. Clear institutional frameworks simplify the procedures and facilitate better implementation.

As already described in Section 3.2, the organisational arrangements in place vary between Member States depending on their specific administrative structure and culture. What is important is the level of clarity regarding the different authorities’ responsibilities and the ways in which they coordinate and communicate with each other.

In the majority of Member States the SEA responsible authority (i.e. the authority responsible for initiating and coordinating the SEA procedure) is the plan/programme developing authority. In some Member States, however, other authorities share the responsibility for carrying out the assessment, for example environmental authorities. When the SEA responsible authority is the plan/programme developing authority, the duty to undertake SEA is distributed across a wide variety of authorities (national, regional and local authorities) that are often not completely aware of the process or, worse, treat SEA as a compliance formality. It is in these cases that awareness of potential benefits triggered by SEA and the overall buy-in of authorities to the SEA process is most challenging, and a problem of ‘ownership of SEA’ arises. SEA is considered ineffective when plan/programme developing authorities view it as an administrative burden and do not ‘own’ the process, as well as when SEA practitioners have a very weak understanding of strategic decision-making and limited appreciation of the political context. Therefore, adequate cooperation between stakeholders has an important impact on the effectiveness of SEA.

Communication/collaboration between different stakeholders

The importance of communication and interaction between different stakeholders is widely demonstrated as important for SEA implementation, given the role that communication and interaction plays in acceptance and perceived value of the SEA. Although the Directive provides for a basic level of participation with respect to
information and consultation rights, communication and collaborative planning processes, although promoted, are not specifically required.

Generally, evidence showed that better communication and collaboration across authorities helped to improve the success of SEA. However, these practices are not promoted and recognised in all Member States in the same way as a factor contributing to the improvement of the procedure. This often depends on the extent to which environmental authorities are involved in the procedures, which varies between Member States, each producing different outcomes, making it difficult to identify an optimal approach.

Role of the environmental authority

As seen in Section 3.2, the environmental authority may play an important role within the procedure. While in some Member States the environmental authority is called into action only as part of the statutory consultations with the ‘concerned authorities’, in others it plays the role of intermediary between the plan/programme developing authority and the practitioners supervising and guiding the whole process, or may even have the power to approve/reject the Environmental Report, adding a third layer of coordination to the process and ensuring a high quality outcome.

The involvement of the environmental authorities in the SEA process and the ways in which they communicate with the SEA responsible authority can vary within a single Member State, depending on the type of plan and programme in question. For example, as explained during the focus group discussion with regulators, in France there are two different models. For land use plans, which are handled by the local authorities, the environmental authority is closely involved from the beginning up until the decision on the land use plan, while for sectoral/national plans, the environmental authorities are present only at the end of the process, giving their opinion just before approval. The environmental authority does not communicate with the plan authority until the end, in a bid to increase independence. According to one expert from the focus group discussions with practitioners from EU-13, the same happens in the Czech Republic, Slovakia and Romania, where the environmental authorities refuse to talk to the practitioners (normally external consultants) and the plan/programme developing authorities in order to preserve their independence. The situation is different in Italy, where, as stated by an expert during the focus group discussion with practitioners from EU-15, the influence of the SEA on the planning process has created more transparency and inter-institutional cooperation, rarely observed before.

SEA Quality review

Another factor that contributes to the effectiveness of the SEA is the existence of adequate mechanisms to ensure a high quality of SEA outputs.

To enhance the accountability and the effectiveness of strategic decision-making, some Member States require the review of the SEA results by either the statutory environmental authority or a separate independent body. This is the case, for example, in the Czech Republic, Estonia, the Netherlands, Malta, Portugal, Slovenia and Spain. The SEA review is a means for checking the quality of the presented information, which will constitute the basis for decision-making.
In some Member States the environmental agency/authority has a direct role in overseeing or determining the quality of SEA. In Spain, for example, where the environmental agency prepares the draft scoping report, or in the Czech Republic and Estonia, where the environmental authorities review the Environmental Report before it is made available to the public and, if shortcomings are identified, they can return it to the plan/programme developing authority for rectification.

Only limited provision is made for independent review of SEA: in the Netherlands, for example, where the Netherlands Commission for Environmental Assessment (NCEA) advises on the quality of environmental information in the Environmental Reports (see Box 15 below).

**Box 15 The Netherlands Commission for Environmental Assessment (NCEA) and SEA**

<table>
<thead>
<tr>
<th>The Netherlands Commission for Environmental Assessment (NCEA)</th>
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<tr>
<td>At the request of a public authority, the Netherlands Commission for Environmental Assessment (NCEA) advises on the quality of environmental information in the Environmental Reports. The NCEA does not prepare these Environmental Reports, nor does it advise on the decision to approve a programme or a plan. Their role is mainly to check that public debate and political decision-making in the Netherlands is based on correct environmental information.</td>
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5.1.4 Key findings

Positive trends in the progress made in the implementation of the SEA Directive can be observed by the evidence gathered. However, evaluating the effectiveness of the SEA Directive is complicated, as the success of SEA depends on the context (administrative, legal and cultural) it is applied to. Evidence gathered also showed that SEA effectiveness can vary considerably across the different levels of administration within individual Member States, as well as depending on the type of plans and programmes under scrutiny.

Influence on the planning process and the final content of the plan/programme

- All Member States and stakeholders consulted recognised some sort of influence of the SEA in the planning process, agreeing that there have been improvements in the way SEA is conducted that have led to better quality plans. In particular, everybody recognised that greater environmental emphasis was considered in earlier stages of planning processes.

- However, views differ with regard to the actual changes in procedures or the content of plans and programmes that have been brought about by SEA. These often depend very much on the type of plan and programme in question. The consideration of alternatives and the inclusion of mitigation and monitoring measures were most frequently mentioned. Only a few Member States explicitly recognised changes directly related to the decision making process (i.e. a more transparent, systematic and structured planning procedure, greater cooperation and communication between key authorities and greater attention to public participation and consultation practices).
• SEA was more likely to have an influence on land use planning documents rather than in sectoral or national-level planning documents where political pressure is higher and strategic decisions are often taken in advance with little margin for alteration.

• The extent to which the results of the SEA are accounted for in the final planning decision often depends on the attitude of the individuals involved in the decision-making process, with some very engaged and willing to take recommendations on board, and others simply following the procedural requirements of SEA, viewing it as a box-ticking compliance exercise.

**Key factors for the success of the SEA Directive**

• Starting the SEA procedure earlier, at or close to the time of the start of the planning process, is becoming more common in many Member States. Correct timing for the procedure is recognised as one of the most challenging issues related to SEA, finding the right balance between the time where sufficient information is already available on the programme to make the assessment meaningful, but while sufficient scope remains to influence the drafting of the programme and provide meaningful alternative suggestions.

• The starting time of the SEA procedure and whether it runs in parallel with the planning process also depends on the type of plan and programme, as well as the degree of ownership and awareness by the plan/programme developing authority (SEA seems to be more easily integrated into the planning process for land use planning, while it is more difficult for complex sectoral, national plans and programmes, where more actors and interests are involved, taking more time to agree on an outline of the plan and thereby delaying the start of SEA until this draft is ready).

• Evidence also indicated that some authorities in some Member States fail to adequately exploit the advantages of SEA integration into the planning process and carry out the procedure in a more ‘bureaucratic’ way aimed more at achieving compliance with SEA legislation than genuine improvement of the content of the plans and programmes.

• Although the majority of the Member States recognised that consideration of alternatives and their influence on the final content of plans and programmes has improved, evidence showed that there are still many problems in the way they are identified and assessed. The assessment goal is often more focused on mitigating negative impacts rather than improving the plan or programme by enhancing positive impacts to fully support sustainable development.

• The assessment of strategic alternatives (focused on striving for more positive environmental impact) is still not common practice in many Member States, where SEA is limited to the assessment of locational and technical alternatives (focused on avoiding negative effects). This is due to the fact that sometimes the assessment is aimed at justifying a decision already taken.

• Some progress has been made on the methods used for public consultation, with greater attention being paid to this aspect by Member States. Member States and stakeholders agreed that SEA provides opportunities for early engagement of the
public. However, there are mixed opinions on the added value of public consultation at different stages of the SEA procedure.

- Some Member States and experts reported that it was very difficult to engage the public when consultations are left until the end of the process and there is only a limited margin to really influence the decisions. This is compounded by a general lack of understanding of the public on the purposes of public participation and how the outcomes will influence the plan, as well as the technical nature of the outcomes of SEA, in particular the Environmental Report. It was therefore suggested to extend consultation during the initial scoping of an SEA, a practice already carried out in some Member States. Other Member States, however, raised the point that at the scoping phase the content is still in development and not detailed enough to allow the public and authorities to provide meaningful input.

- While the majority of the Member States strictly follow the Directive’s public consultation minimum requirements, some extend their consultation practices beyond the Directive, with the organisation of a meeting or public hearing, which is considered an opportunity to share information in an effective and concentrated way.

- SEA practitioners consulted for the study agreed that Environmental Reports are often overly comprehensive and not sufficiently tailored to the assessment needs, resulting in inefficiency. They mainly attribute this weakness to poorly implemented scoping procedures and a tendency on the part of the authorities to follow the requirements of Annex I very conservatively, including all environmental aspects in the assessment rather than risk of being accused of omission at a later stage (and face legal challenges).

- The plan/programme developing authorities and practitioners have become more experienced in carrying out SEA. However, in many Member States, authorities, particularly at the local level, still lack ownership and understanding of the SEA administrative requirements, or simply view SEA as an administrative burden, thereby affecting the quality of SEA.

- These smaller, less aware authorities need to be supported by the central government (e.g. by means of capacity-building programmes and training, the availability of specific and tailored guidance documents, checklists and standard templates).

- Evidence showed that better communication and collaboration approaches across authorities (the plan/programme developing authorities, the environmental authorities and the practitioners) helped to improve the success of SEA. The promotion of a community of practice among practitioners in some Member States has helped to enhance collaboration practices and consequently facilitated the share of information and knowledge among practitioners. This is as yet unexplored by the majority of the Member States.

- The existence of adequate review and quality assurance mechanisms contributes to the effectiveness of SEAs. There are, however, only a few Member States where the quality of the Environmental Report is formally reviewed before it is made available for public consultation.
5.2 Efficiency

This section assesses the main types of costs and benefits that can be attributed to the implementation of the SEA Directive, the relationship between these costs and benefits, and their underlying drivers.

5.2.1 Interpretation and approach

As defined in the Commission’s Better Regulation Guidelines, efficiency considers the relationship between the resources used by an intervention and the changes generated by that intervention (which may be positive or negative). Assessing efficiency is therefore crucial to understand if the costs associated with the implementation of the SEA Directive justify the benefits generated.

This assessment, however, is not without challenges, chief among which are the lack of a counterfactual scenario, low comparability of cost data, and a poor evidence base for benefits.

Lack of counterfactual scenario

One of the challenges linked to the assessment of efficiency and cost-effectiveness is the lack of a counterfactual to describe what would have happened in the Member States had the SEA Directive not been adopted in 2001. This is further complicated by limited data availability, as well as multiple causality (i.e. changes observed may be due to factors other than the implementation of the SEA Directive). Here, however, the main obstacle has to do with insufficient evidence to enable a comparison between environmental assessments carried out as per the Directive and a potential alternative means of addressing and assessing environmental impacts. In other words, based on the existing evidence base, no quantitative estimates can be carried out of a no-SEA scenario. Section 5.4 on EU added value later in this report presents a tentative qualitative assessment of the likely evolution in such a scenario.

Low comparability of cost data

Estimates of SEA-related compliance costs present large variations depending on scope, type of plan or programme, and also in terms of perception by different administrations. In addition, there is no single consistent method for tracking SEA-related costs, severely undermining the comparability of data.

A related challenge has to do with difficulties for some plan/programme developing authorities to distinguish SEA compliance costs (which may not always be accounted for separately) from their business-as-usual (BAU) activities. As one Member State explained in its answers to the Commission’s questionnaire, ‚There is no general information of SEA costs, and there could be a big difference depending on the plan or programme‘; ‚One administration has estimated that the average costs of the elaboration of the SEA report is around EUR 50,000, plus 300-450 hours of administrative work. Another administration has considered that administrative costs are not important comparing with the normal functions of that Administration‘.

Poor evidence base for benefits
As stated in the Better Regulation Guidelines, the assessment of costs, while important, needs to be supplemented by the analysis of the corresponding benefits arising from the EU legislation\textsuperscript{43}. While it is acknowledged that the implementation of the Directive has brought, or is likely to bring, a number of benefits, virtually no attempt has been made to quantify (let alone monetise) such benefits. In addition, different time periods may need to be considered when assessing costs and benefits associated with the implementation of the Directive (with benefits typically accruing over a much longer period of time). Some Member States pointed out that costs tend to be more visible than benefits. All of these factors further undermine a quantitative approach to assessing efficiency.

The assessment of efficiency for this study is structured around two evaluation questions:

\textit{Evaluation question 3: Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? If yes, how is this demonstrated in practice?}

\textit{Evaluation question 4: What are the costs and benefits (monetary and non-monetary) associated with compliance with the SEA Directive? What is the administrative burden?}

Given the practical difficulties associated with a quantitative assessment of efficiency (whether entirely or in part), the focus of our analysis is on understanding those cost and benefit variables which can be meaningfully assessed and the main types of costs and benefits, including their underlying drivers. Although this will be done in an essentially qualitative fashion, a short overview of quantitative estimates will be provided where these are available.

This analysis of key variables and drivers will enable the identification of the conditions that need to be met in order for SEAs to be an efficient means of assessing and addressing the environmental impacts of plans and programmes. In addition, although no direct comparison between costs and benefits can be provided, this analysis will highlight the lessons learned with respect to the efficiency of the SEA Directive’s implementation, pinpointing key sources of inefficiencies, excessive burdens or overlaps, with a view to correcting them. By the same token, these lessons are relevant to the assessment of effectiveness, as increasing efficiency (e.g. by ensuring that SEAs are focused, accessible and well-targeted) will, in many cases, also lead to improvements in the extent to which the Directive’s objectives are likely to be met.

\textbf{5.2.2 Main sources of evidence}

The assessment of efficiency of the SEA Directive is primarily based on the following evidence:

- Replies from the Member States to the Commission’s questionnaire.
- Literature review.

• Consultation with SEA experts during focus group discussions.

Member State replies to Questions n. 30 to 33 of the Commission questionnaire were the starting point for assessing efficiency. Responses to Questions n. 30 and n. 31 proved a useful source of qualitative opinions on the main benefits associated with implementation of the SEA Directive and the cost-effectiveness of the SEA process. However, these assessments were not underpinned by quantitative evidence. Responses to Question n. 32 served to illustrate the large variance in estimates of costs associated with the preparation of the procedural steps (including administrative burdens) in the SEA process. Responses to Question n. 33 provided information on the perception of potential delays impacting plans and programmes related to SEAs.

Relatively few publications were identified that were directly relevant to an assessment of the efficiency of SEA in the EU. Findings from the literature review served, however, to put some of the questionnaire results into perspective; for example, one of the studies attempting to assess SEA-related costs (Farmer et al, 2015) showed much less variance in cost estimates, which is likely to stem from the methodology used, such as a smaller survey sample. The literature review was also useful to illustrate the importance of data needs (particularly for baseline scenario development) as a key cost driver.

Focus group discussions were, in turn, particularly useful in gaining a deeper understanding of the main cost drivers, as well as the key factors influencing the benefits likely to result from SEAs. These discussions also served to highlight the constraints applying to different types of plans or programmes and geographical and institutional settings.

5.2.3 Analysis of the questions according to available evidence

Evaluation question 3: Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? If yes, how is this demonstrated in practice?

Evaluation question 3 seeks to ascertain the extent to which the costs associated with the implementation of the SEA Directive are justified in light of the changes it has brought. As explained, however, a definite answer is hampered by the lack of robust evidence. This section is divided into two main parts. The first sub-section discusses the overall perception of the cost-effectiveness of SEAs, as reported by Member States in their responses to the Commission’s questionnaire, as well as by experts during focus group discussions. The second sub-section discusses the key factors affecting the cost-effectiveness of SEAs.

Overall perception

Member States’ replies to the Commission’s questionnaire suggest that, overall, the SEA Directive is perceived as a cost-effective mechanism for addressing and assessing environmental impacts. As shown in Figure 5 below, nearly half of the EU Member States answered positively when asked about the overall cost-effectiveness of SEA. However, the same number of Member States stated that cost-effectiveness depends on the type of plan and the manner in which it is carried out. Member States
responding that SEA is cost-effective typically justified their perception on the grounds that the Directive encourages impact prevention instead of damage remediation, the former approach being more cost-effective as a general rule (e.g. in terms of cost avoidance further down the line).

**Figure 5 Is the SEA process a cost-effective mechanism for assessing and addressing environmental impacts?**

One of the Member States questioned the efficiency of the SEA process, arguing that it was often associated with additional costs and delays to both the SEA and the plan-making process (e.g. due to judicial reviews).

Cost-effectiveness can only be assessed by weighing costs against the benefits brought about by the implementation of the Directive. While this cannot be carried out in a quantitative fashion, evidence gathered in the course of this study clearly indicates that there are certain situations in which there is a greater expectation of cost-effectiveness. More precisely, as discussed in the focus groups, SEA is not cost-effective in cases where the plan or programme is modified shortly after plan decisions have been made (requiring the SEA to be redone). SEA will also be less cost-effective when used in a perfunctory fashion, as a means of justifying choices made beforehand (see the section on effectiveness for further discussion).

Another key finding from both Member States’ replies to the Commission’s questionnaire and focus group discussions, is that carrying out SEA in an adaptive and tailored manner is a pre-condition for cost-effectiveness. This chiefly involves considering ‘the special characteristics of each planning level and planning task’ and directing the assessment at the essential and significant impacts.

**Factors affecting cost-effectiveness**
A number of factors have been identified as affecting cost-effectiveness insofar as they tend to result in a less efficient allocation of resources.

In their responses to Question n.31 of the Commission’s questionnaire (see Figure 6 below), Member States cited a number of elements contributing to and hindering SEA cost-effectiveness. In particular, they highlighted the early identification of environmental issues during the SEA process as enhancing cost-effectiveness by enabling the adoption of prevention or mitigation measures. Member States also underlined the contribution of SEAs to ensuring a focus on key environmental impacts, allowing them to be identified, assessed and mitigated in a cost-effective way. Additional factors influencing cost-effectiveness, according to Member States, include the expertise of practitioners, the level of synchronisation between the SEA and the planning process and, more generally, the approach and attitude of those in charge of carrying out the SEA. As previously stated, if viewed as no more than a procedural requirement, SEAs are likely to be both ineffective and inefficient.

**Figure 6 Elements contributing to/hindering SEA cost-effectiveness**

<table>
<thead>
<tr>
<th>Early Issue identification</th>
<th>AT</th>
<th>BG</th>
<th>DK</th>
<th>FR</th>
<th>IE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental impacts</td>
<td>BG</td>
<td>CY</td>
<td>DK</td>
<td>HU</td>
<td>IE</td>
</tr>
<tr>
<td>Future benefits</td>
<td>BE:</td>
<td>DL:</td>
<td>BE:</td>
<td>FL</td>
<td>DK</td>
</tr>
<tr>
<td>High costs</td>
<td>BE:</td>
<td>BXL:</td>
<td>BE:</td>
<td>FED</td>
<td>DK</td>
</tr>
<tr>
<td>Quality of SEA</td>
<td>AT</td>
<td>FI</td>
<td>FR</td>
<td>DE</td>
<td>IT</td>
</tr>
</tbody>
</table>

Member States’ replies to the Commission’s questionnaire are consistent with findings from both the literature review and SEA experts’ consultations carried out in the context of this study. Special emphasis is due to what some of the experts termed the ‘precautionary approach’ to SEA. According to these experts, this approach stems from fear of legal challenges or attracting blame for the withdrawal of a plan or programme, and is compounded by overly vague terms of reference (ToR) and/or deficiencies during the scoping phase. It typically results, according to these experts, in overly comprehensive (lengthy yet superficial) SEA reports that are not tailored to either

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44 Many Member States identified potential hindrances, even if they responded positively with regard to SEA cost-effectiveness. Member States were only counted as identifying a reason if they used the specific phrase/term, thus leaving no room for interpretation on the part of the researcher.
analytical needs or priority environmental impacts, inflating SEA-related costs without necessarily generating any of the expected benefits.

In addition, the following factors are among the most significant determinants of cost-effectiveness in SEAs:

- Timing of SEA (particularly synchronisation with the planning process).
- Scale and level of complexity of the plan or programme (and related uncertainty);
- Level of coordination in the planning and SEA decision-making process.
- Technical capacity and resources available to the plan/programme developing authorities/entities in charge of the SEA.
- Data-related issues, e.g. data availability, duplication of data gathering efforts, etc.

Timing of SEA

The timing of the SEA can affect cost-effectiveness in two significant ways. Firstly, as discussed earlier in this section, a lack of synchronisation with the planning process may result in procedural delays, thereby generating costs. Secondly, as pointed out by some experts during focus group discussions, the later the SEA starts, the higher the chances it will be perfunctory, making it more likely to be open to legal challenge. In this case, cost-effectiveness will be undermined, in that the SEA will most likely not meet its objective of timely assessment of environmental impacts, nor will it address real impact but will, instead, be limited to a procedural requirement (i.e. benefits will be low). One of the experts also suggested, however, that an early start of the SEA process may also entail higher costs, as a result of more coordination and consultation efforts. It can thus be assumed that the net efficiency effects will depend on how targeted and useful those efforts turn out to be.

Choosing the appropriate timing to carry out the SEA is also important to minimise associated delays in the preparation and adoption of a plan or programme. In their responses to the Commission’s questionnaire (see Figure 7 below), 11 Member States (plus Belgium – Brussels and Flanders Regions) indicated that, in their experience, the SEA tends to prolong the plan/programme making process. A smaller group of Member States stated that much depends on the type of plan/programme or specific circumstances, while others - despite giving lengths of time taken for an SEA - made no statement about whether the SEA prolongs the plan/programme making process. More than one-third of the Member States replied that the SEA process is integrated into the planning process, making it difficult to attribute any delays to the SEA specifically, as the cause of delay may be unclear or may still have happened in the absence of the SEA.
Study concerning the preparation of the report on the application and effectiveness of the SEA Directive
(Directive 2001/42/EC)

Figure 7 Does the SEA prolong the plan/programme making process?

Scale and level of complexity of the plan or programme

Most of the evidence gathered for this study suggests that there is a positive correlation between the complexity of the plan or programme (be it in terms of geographical scale, uncertainty or the range of stakeholders potentially affected) and SEA-related costs. This has to do with the fact that complexity and associated uncertainty entail significant data needs from various sources. In the same vein, Farmer et al (2015) conclude that input by public authorities (the plan/programme developing authorities) tends to be positively correlated with the scale of the plan or programme (e.g. it will be much smaller in the case of local plans than for international cooperation programmes), whereas input from external consultants seems to depend more on the complexity of the plan or programme. Consultant inputs are thus typically higher for municipal development plans, which, according to the same study, ‘may reflect the wide focus of such plans and the range of stakeholders affected’. Member States’ replies to the Commission’s questionnaire seem to confirm the hypothesis that municipal development plans are data-intensive. In the same vein, SEAs involving a transboundary component can be associated with significant costs as a result of their complexity (e.g. range of stakeholder groups involved, additional translation needs, etc.).

While the findings above are useful indications of some of the key cost drivers in the context of implementing the SEA Directive, it cannot be concluded that SEA of larger or more complex plans or programmes requiring significant amounts of data and information will necessarily be less cost-effective. Indeed, size and complexity may bring greater benefits in cases where economies of scale are at work. Costs and benefits thus need to be assessed and compared (even if only qualitatively) on a case-by-case basis.
Level of coordination in the planning and SEA decision-making process

Insufficient coordination and overlap tend to undermine the cost-effectiveness of SEAs. Some of the Member States’ replies to the Commission’s questionnaire revealed instances of overlap between assessments at the strategy, programme and plan levels (e.g. road development), resulting in duplication of effort. Coordination issues have also emerged from the findings of the literature review. In Austria, for example, the SEA Directive has been transposed into 37 Acts at the provincial and national levels, as a result of which more than 2000 communities carry out SEA on local land use plans, which may hamper coordination and lead to duplication of effort, particularly with regard to data collection (Farmer et al, 2015).

Technical capacity and resources available to the plan/programme developing authorities/entities in charge of the SEA

Lack of technical capacity and resources can undermine the cost-effectiveness of SEA. These problems are, to some extent, related to the coordination issues discussed above. Farmer et al. (2015) summarise the problem as follows: ‘Member States have transposed the Directive in a range of ways according to their local planning frameworks, and this has implications for the overall costs of implementation. Devolution to sub-national legislation, for example, often results in an expanded role for private sector consultants (in the absence of in-house capacities) and may contribute to additional costs where coordination and exchange of best practice is weak’. Indeed, desk research findings, together with a number of responses to the Commission’s questionnaire and some focus group discussions, suggest that in cases where the responsibility for carrying out the SEA is with small-sized entities (e.g. some local and provincial bodies), insufficient in-house capacity tends to reduce efficiency. If such difficulties create the need for external consultants, this will come at a cost. However, the impact of the involvement of external consultants on cost-effectiveness will depend on the specific situation. In principle, the net effect on cost-effectiveness will be a function of several factors, including the wage and productivity differentials between public officials and the consultants engaged, as well as the coordination costs and the usefulness of the results.

While the majority of participants in the focus group discussions agreed that lack of technical capacity among responsible authorities at the local, municipal and provincial levels generally leads to inefficiencies, one of the focus group experts argued that these difficulties can be overcome through close cooperation across different levels of the administration. The same expert added that large municipalities tend to have the necessary data and skills at their disposal.

Data-related issues

An overall finding emerging from desk research, replies to the Commission’s questionnaire and focus group discussions is that flawed approaches to gathering and processing data can significantly undermine the efficiency of SEA processes, as they lead to an inefficient allocation of resources and undermine the overall effectiveness of the SEA.
A recurring comment in focus group discussions was that too much emphasis is often given to data gathering (particularly for the purposes of developing a baseline scenario), which can decrease effectiveness and efficiency by shifting attention and resources from analytical tasks to the description of the current situation. According to estimates provided in the course of these discussions, as much as 70% of external consultants’ time can be spent collecting baseline data, even though only 20% of the baseline information is typically used in the Environmental Report. These estimates are in stark contrast with those of Craglia et al. (2012), according to whom only 5% to 10% of the total cost of producing SEAs relates to data acquisition. This is likely to be due to varying definitions, as well as to the formulation of estimates with upper-bound and average values.

Other potential data-related inefficiencies highlighted in focus group discussions include overlapping consultations, e.g. where the same people are consulted separately with regard to the plan or programme and the SEA. In the same vein, Farmer et al. (2015) highlight that ‘in some cases, the limited data provided, coupled with stakeholder concerns that the full range of possible effects were not reflected, resulted in additional research needs for the SEA. In some cases, the large number of options to test resulted in extensive cumulative impact assessment requirements. This required consideration of effects in combination with other planned and existing activities’.

Evaluation question 4: What are the costs and benefits (monetary and non-monetary) associated with compliance with the SEA Directive? What is the administrative burden?

Evaluation question 4 is structured around two main aspects. It firstly discusses the quantitative data gathered so far, which can illustrate the range of existing estimates of costs and - to a lesser extent - benefits related to SEA Directive implementation. Secondly, it outlines the main types of costs and benefits associated with SEA compliance.

Available quantitative estimates

While few quantitative estimates of benefits exist, a limited number of estimates on SEA-related costs are available. These are presented in Table 10 below to illustrate the general lack of comparable data (see Introduction for further discussion) and to provide an indication of the orders of magnitude in question. In all cases, estimates refer to varying years and conversion rates to EUR values are a distorting factor, given wage differentials.

Table 10 Selected quantitative estimates of SEA-related costs

<table>
<thead>
<tr>
<th>Estimates from Member States’ replies to the Commission’s questionnaire</th>
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<tbody>
<tr>
<td>Between EUR 20,000 and EUR 40,000 (land use plans)</td>
</tr>
<tr>
<td>Between EUR 50,000 and EUR 80,000</td>
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<tr>
<td>Between EUR 10,000 and EUR 30,000 (with some more complex SEAs reaching up to EUR 90,000)</td>
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<tr>
<td>Between EUR 5,000 and EUR 120,000</td>
</tr>
<tr>
<td>EUR 15,000, on average</td>
</tr>
<tr>
<td>Between EUR 5,400 and EUR 270,000</td>
</tr>
</tbody>
</table>
Study concerning the preparation of the report on the application and effectiveness of the SEA Directive
(Directive 2001/42/EC)

Selected quantitative estimates of SEA-related costs

<table>
<thead>
<tr>
<th>Up to EUR 50,000</th>
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<tbody>
<tr>
<td>An average 30% of the total cost of the plan or programme</td>
</tr>
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</table>

**Estimates from Farmer et al (2015)**

| Average costs across a selection of EU Member States ranged from EUR 60,000 to approximately EUR 69,000 |
| An average of 217 full time-equivalent days was required for the SEA procedure, mostly in preparation of the Environmental Report |
| Ratios of administrator to consultant costs varied significantly: between zero (i.e. no consultant input) and 1:16 |
| Resources allocated to screening ranged from five days for local plans to 45 days for more complex municipal plans and trans-boundary cooperation programmes; authorities spent an average 22 days on screening |
| When consultants were hired to (help) prepare the Environmental Report, an average 111 external consultant days were required |
| On average, 25 days of authority time for consultations; 11 days of engaging external consultants |

**Estimates from Craglia et al (2012)**

| According to 2009 data, SEAs cost an average EUR 34,000. This compares to about EUR 73,000 in 2002/2003, as the amount of time required has diminished thanks to ‘operational maturity’ |

**Estimates from focus group discussions**

| Between EUR 5,000 and EUR 1m |

A stark contrast is evident between the very broad range in cost estimates provided in response to the Commission’s questionnaire and the estimates gathered through desk research. These differences are likely to be attributable to methodological choices, including the composition of the respondents’ population. It is not possible, however, to accurately determine the origin of those discrepancies based on available evidence. Further monitoring and coordination efforts are required to gather the necessary elements that would allow a quantitative assessment of efficiency. For this reason, and as previously discussed, the analysis here is essentially qualitative in nature.

**Types of costs**

As suggested by the Better Regulation Guidelines, a qualitative, top-down approach to estimating compliance costs is the most appropriate in cases where the range of starting positions across regulated entities is wide and/or there are numerous ways of achieving compliance. This is the case in implementation of the SEA Directive. Based on this approach, two main categories of costs – direct and indirect – are considered here.

**Direct costs**

Among the categories of direct compliance costs outlined in the Better Regulation Guidelines, two are particularly prominent: *administrative costs* (i.e. costs of complying with information obligations stemming from the policy option under consideration) and *substantive compliance costs* (i.e. non-business as usual) of complying with regulation.

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45 Estimates based on responses to a survey administered to 11 Member States, of which six Member States submitted responses.


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(other than fees and charges or administrative costs). Since compliance with the SEA Directive involves meeting a range of information obligations associated with the preparation of the SEA report, it is not possible to clearly dissociate administrative costs from substantive compliance costs.

Based on Member States’ replies to the Commission’s questionnaire and focus group discussions, the most frequent types of direct costs are those related to:

- **Implementation**: the costs incurred by regulated entities in familiarising themselves with new or amended regulatory compliance obligations, developing compliance strategies and allocating responsibilities for completing compliance-related tasks (typically short term, one-off costs; as stated by one expert during focus group discussions, ‘since the SEA procedure was a relatively new tool, it required greater involvement of the authorities which were not sufficiently familiar with it, especially before 2013’).
- **Direct labour costs**: staff time devoted to completing the activities required to achieve regulatory compliance.
- **External consultancy services**: typically involving external assistance in achieving regulatory compliance (e.g. data gathering, preparation of the SEA report, etc.).

The share of each of these categories of the total SEA-related costs will depend on a range of factors, such as previous knowledge and expertise, available in-house capacity, implementation modalities and the type of plan or programme.

In terms of cost distribution, it is assumed here that the bulk of these costs are borne by the plan/programme developing authorities. It is worth noting that asymmetric impacts can be at work, e.g. focus group discussions raised the point that while SEA-related costs can typically be expected to be ‘manageable’ for national authorities and larger regional/county level authorities, for cities and municipalities, ‘[costs related to] SEA procedures could be a burden’ and even have a deterring effect on the preparation of SEAs.

**Indirect costs**

The main indirect costs are those related to possible procedural delays. One of the Member States, in its response to the Commission’s questionnaire, stated that ‘The SEA process can be subject to legal challenge which incurs significant additional cost and delay to both the SEA and plan making process.’ It went on to say that ‘the SEA of the revocation of plans can also be a costly time consuming activity’. Several other Member States also mentioned that the SEA procedure can lengthen the process of preparing plans/programmes where it does not run parallel to the planning process. Conversely, it can be argued that the SEA Directive implementation may result in time savings further down the line (see discussion of benefits below). In both cases, there seems to be a lack of quantitative evidence on costs (or cost savings) linked to delays, judicial proceedings or their avoidance.

**Types of benefits**

All streams of evidence gathered for this assessment indicate that the benefits associated with compliance with the SEA Directive will depend on the nature and extent of changes to plans and programmes brought about by such compliance.
Participants in focus group discussions emphasised that understanding and quantifying the benefits of SEA is extremely difficult. While SEA may have influenced the process of developing credible alternatives, which is beneficial, attaching a monetary value to those benefits does not appear feasible. In addition, in those instances where benefits have been identified, quantitative (or, for that matter, monetised) estimates are not available due to both methodological difficulties and the fact that it may often be too early to attempt the assessment of benefits altogether.

Despite the abovementioned methodological issues, a general finding emerging from this study (literature review, Member States’ replies to the Commission’s questionnaire and focus group discussions) is that the SEA Directive’s implementation is a source of benefits in those cases where SEA serves to ensure that the environmental impacts of plans and programmes are considered at an early stage and result in the identification of viable alternatives, thereby lowering financial and time costs further down the line.

Member States’ replies to the Commission’s questionnaire highlighted the role of SEA as a source of legal certainty, in addition to bringing long-term savings through the identification of significant adverse effects at an early stage and the consideration of reasonable alternatives. Other benefits described were the increase in public awareness and acceptance and, ultimately, more informed decision-making. Member States pointed to improvements in coordination brought about by assessing and addressing environmental impacts of plans and programmes developed at different levels of administration, and also to the value of using SEA as a source of information when planning and assessing downstream projects.

Views expressed by the experts invited to comment during focus group discussions were consistent with these Member State responses. The main categories of benefits highlighted in this discussion related to the capacity of SEA to:

- **Bring about solid decision-making** that leads to fewer judicial procedures; transparency leading to more support and therefore acceleration of decision-making (and subsequent time and cost savings); integrated approach; facilitation of follow-up decision-making thanks to the anticipation of issues that would otherwise be addressed only at the EIA stage.
- **Help to speed up EIA procedures and streamline their scope** (and thus reduce their costs) by ensuring that project proposals are set within a policy framework that has already been subject to environmental scrutiny.
- **Alert decision makers about unsustainable development options at an early stage in the process.**
- **Acknowledge and assess cumulative impacts** and help to avoid the costs for EIA procedures for projects that are environmentally ‘unacceptable’.
- **Generate spill-over effects related to third party compliance** (e.g. the SEA Directive model is currently being adopted in Qatar).
- **For EU-funded programmes**, e.g. those under the Cohesion, Rural Development, Fisheries, Energy and Transport policies, but also under certain International Financial Institutions (IFIs) (e.g. for energy projects, the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) require the prior existence of SEA of plans), SEA can contribute to **prioritising projects that are sustainable from an environmental perspective**.
A further category of benefits which may potentially be attributed to the implementation of the SEA Directive are those related to the protection of the environment, which is a public good and, as such, can result in welfare increases\textsuperscript{47}. The extent of these benefits (which in general do not lend themselves to straightforward quantification) will depend on the level of effectiveness in implementing the Directive. As pointed out by some experts during focus group discussions, SEA-related benefits will be minimal in comparison to costs unless the SEA brings about fundamental changes to the plan or programme at hand.

5.2.4 Key findings

SEA tends to be perceived as a cost-effective mechanism for assessing and addressing the environmental impacts of plans and programmes in many Member States, although quantitative evidence is lacking for this perception. There is clear acceptance that such cost-effectiveness depends on the type of plan/programme and the manner in which it is carried out, doing so in a timely, adaptive and tailored manner is a pre-condition for cost-effectiveness. This involves considering ‘the special characteristics of each planning level and planning task’ and directing the assessment towards the essential and significant impacts.

The most significant categories of direct costs are those related to:

- Implementation: the costs incurred by regulated entities in familiarising themselves with new or amended regulatory compliance obligations, developing compliance strategies and allocating responsibilities for completing compliance-related tasks (typically short term, one-off costs).
- Staff time devoted to completing the activities required to achieve regulatory compliance (according to one expert, ‘since the SEA procedure was a relatively new tool, it required greater involvement of the authorities which have not been sufficiently familiar with it, especially before 2013’).
- External consultancy services.

The actual weight of each of the abovementioned categories in total SEA-related costs depends on the type of plan or programme, as well as implementation approach and available in-house capacity and expertise. The main potential indirect costs relate to procedural delays.

The benefits associated with compliance with the SEA Directive will, in turn, depend on the nature and extent of the changes brought about to plans and programmes by such compliance. The main categories of benefits associated with SEA have to do with its capacity to:

- Identify significant adverse effects at an early stage and study sustainable alternatives.
- Bring about solid decision-making that leads to legal security and fewer judicial procedures; greater transparency accelerates decision-making (with subsequent time and cost savings); integrated approach and facilitates follow-up decision-

\textsuperscript{47} European Commission, 2015, Better Regulation Guidelines > Tool # 52: Methods to Assess Costs and Benefits. \url{http://ec.europa.eu/smart-regulation/guidelines/tool_52_en.htm}.
making, thanks to the anticipation of issues that would otherwise be addressed only at the EIA stage.

- Increase public awareness, ownership and acceptance.
- Help to speed up EIA procedures and streamline their scope (and thus reduce their costs) by ensuring that project proposals are set within a policy framework that has already been subject to environmental scrutiny.
- Acknowledge and assess cumulative impacts and help to avoid the costs for EIA procedures for projects that are environmentally ‘unacceptable’.
- For EU funded programmes, SEA can contribute to prioritising projects that are sustainable from an environmental perspective.

As to the key determinants of cost-effectiveness, special emphasis should be put on what some of the experts termed the ‘precautionary approach’ to SEA. According to them, this approach is induced by fear of legal challenges or of attracting blame for the withdrawal of a plan or programme, and is compounded by overly vague ToR and/or deficiencies during the scoping phase. Experts pointed out that a precautionary approach typically results in overly comprehensive (lengthy yet superficial) SEA reports that are not tailored to neither the analytical needs nor the priority environmental impacts, and which inflate SEA-related costs without necessarily generating any of the expected benefits. Other major factors affecting cost-effectiveness include:

- Approach and attitude of those in charge of carrying out the SEA; if considered nothing more than a procedural requirement, SEA is likely to be both ineffective and inefficient.
- Timing of SEA and coordination between planning and SEA decision-making processes.
- Scale and level of complexity of the plan or programme (and related uncertainty).
- Technical capacity and resources available to the plan/programme developing authorities/entities in charge of the SEA.
- Data-related issues, e.g. data availability, duplication of data gathering efforts, etc.

The lack of counterfactual evidence and comparable quantitative estimates for SEA-related costs, as well as the virtual absence of estimates for benefits, make it impossible to fully assess the efficiency of the SEA Directive’s implementation. It may also be too early to meaningfully assess efficiency, not least because of delays in transposition and the time lags required to account for certain impacts. Further monitoring and coordination efforts are required in order to gather the necessary elements that would allow a quantitative assessment of efficiency.

### 5.3 Relevance

This section focuses on assessing relevance, i.e. how well the objectives of the SEA Directive are consistent with the needs of the EU. It considers whether the objectives and requirements of the legislation are still valid, necessary and appropriate.

#### 5.3.1 Interpretation and approach

For this part of the study the relevance of the SEA Directive to achieving sustainable development was examined using the following evaluation question:
**Evaluation question 5: How relevant is the SEA Directive to achieving sustainable development?**

While sustainable development features in the objective of the SEA Directive, the focus is on protection of the environment in the first instance. The text implies that the protection of the environment and incorporation of environmental considerations will assist in promoting sustainable development. As such, while it is of value to consider the role of the Directive in achieving sustainable development, it should be done in the knowledge that sustainable development was not the primary focus of the legislation.

Although the concept of sustainable development was formulated and developed throughout the 1960s, 1970s and 1980s, the term did not become popularised until the 1987 report 'Our Common Future', also known as the Brundtland Report, by the World Commission on Environment and Development (WCED). Despite many subsequent attempts to define the concept, the Brundtland Report still provides the most widely accepted definition:

> ...development which meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:
> - the concept of 'needs', in particular the essential needs of the world’s poor, to which overriding priority should be given; and
> - the idea of limitations imposed by the state of technology and social organisation on the environment’s ability to meet present and future needs.”

(WCED, 1987, p. 43)

The full Brundtland definition, as quoted, includes in the two bullet points clear social and environmental imperatives or conditionalities on the basic needs definition, i.e. it is an essentially strong conception of sustainable development and not simply about a balancing of the three pillars. Over recent decades there has been a gradual shift from environmental integration as an EU policy principle to sustainable development (Sheate, 2003). Sustainable development is now one of the fundamental objectives of the EU, highlighted under Article 11 of the Treaty on the Functioning of the European Union (TFEU) and recognised in the EU sustainable development strategy. Environmental assessment is, however, widely recognised as having a key role to play in environmental policy integration in EU environmental governance (Jordan and Lenshow, 2010). SEA, therefore, provides a means by which the environmental aspects of sustainable development can be integrated into plan and programme making and therefore to contribute to more sustainable development.

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48 Article 1 of the SEA Directive: The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

49 TFEU Article 11 states: 'Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.'
There are two aspects to consider: firstly, whether the Directive promotes sustainable development through the integration of such considerations within plans or programmes; and, secondly, as result, does the SEA help to deliver sustainable development outcomes within plans and programmes in practice.

The relevance of the SEA Directive to the aims and principles of sustainable development was examined in light of the following sub-questions:

a. What are the key objectives and targets for sustainable development of the EU and how have these evolved over time since the adoption of the SEA Directive?

b. How well does the implementation of the SEA Directive reflect EU sustainable development policy, taking into account any evolution of EU sustainable development priorities over time?

5.3.2 Main sources of evidence

There were three key sources of information used in addressing this question:

- A literature review of relevant EU strategy documents, as well as academic and other grey literature on sustainable development and SEA practice.
- Expert opinion from four focus groups discussions involving SEA practitioners, regulators and academics and subsequent further detailed responses provided by several attendees.
- Relevant Member States’ replies to the Commission’s questionnaire.

The literature review of strategy documents, together with the focus group discussions provided the majority of information described here. Although much of the evidence was coherent, some of the focus group participants occasionally provided contrasting views, which are presented here clearly and with equal merit.

5.3.3 Analysis of the questions according to available evidence

Evolution of sustainable development objectives and targets in the EU

At the EU level, sustainable development was first addressed as a concept within the first objective of the Treaty of the European Union 1992 (otherwise known as the Maastricht Treaty), with the Union seeking ‘…to promote economic and social progress which is balanced and sustainable…’[50]. Since then it has become one of the overarching objectives of the EU, included in the Treaty of Amsterdam in 1997.

As a result of the 1992 Rio Declaration and subsequent summits, the EU committed itself to developing a sustainable development strategy ahead of the 2002 World Summit on Sustainable Development in Johannesburg (also known as the Earth Summit). The EU Sustainable Development Strategy (EUSDS) was produced in 2001, outlining an approach to tackling a number of identified issues that would ‘…pose severe or irreversible threats to the future well-being of European society’.[51,52]

[50] TEU Article B.
[52] Ibid., p.3.
The evolution of sustainable development thinking can be traced from the initial development of the SDS, review and renewal of this strategy in 2006, review of the 2006 SDS and more recent linkages with the Europe 2020 strategy, the 7th Environmental Action plan (7th EAP) and more international work, including the development of the UN sustainable development goals and Agenda 2030 (UN, 2015).

The SEA Directive was developed at the same time as the first sustainable development strategy, with transposition required two years before the renewed sustainable development strategy (rSDS) in 2006.

**EU Sustainable Development Strategy (2001)**

The acute threats identified in the SDS included: climate change, public health and the environment, poverty, an ageing population, natural resource management issues and issues concerning transportation. In order to meet these threats, the SDS set out a set of cross-cutting proposals and recommendations, a set of long-term objectives and measures, and set out steps to implement and review the strategy. These are summarised below:

**Box 16 Three elements of the SDS**

<table>
<thead>
<tr>
<th>Part 1: Cross-cutting proposals and recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Improve policy coherence</strong> through careful assessment of effects and better information</td>
</tr>
<tr>
<td><strong>Getting prices right to give signals to individuals and businesses</strong>, including the removal of harmful subsidies</td>
</tr>
<tr>
<td><strong>Invest in science and technology for the future</strong> and ensure that legislation does not hamper innovation</td>
</tr>
<tr>
<td><strong>Improve communication and mobilise citizens and businesses</strong>, with earlier and more inclusive dialogue and fostering a sense of individual and collective responsibility and an acknowledgement that sustainable development offers new opportunities</td>
</tr>
<tr>
<td><strong>Take enlargement and the global dimension into account</strong>, such that EU policies, both internal and external, actively support efforts by other countries</td>
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<table>
<thead>
<tr>
<th>Part 2: Objectives and measures</th>
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<tbody>
<tr>
<td><strong>Long-term objectives</strong></td>
</tr>
<tr>
<td>Limit climate change and increase the use of clean energy</td>
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### Address threats to public health

- Make food safety and quality the objective of all involved in the food chain.
- By 2020, ensure that chemicals are only produced and used in ways that do not pose significant threats to human health and the environment.
- Tackle issues related to outbreaks of infectious diseases and resistance to antibiotics.
- Improve consumer information and awareness though education and food labelling.
- Creation of an EU Food Authority by 2002.
- Improve monitoring capacity of health aspects in relation to substances in food and the environment.
- Re-orient support for the Common Agricultural Policy (CAP) towards quality rather than quantity, and remove tobacco subsidies.
- Develop a strategy on health at work by 2003.
- Put all legislation on new chemicals policy in place by 2004.
- Present an action plan by 2001 on slowing resistance to antibiotics.
- Create capacity to monitor and control infectious disease outbreaks by 2005.

### Manage natural resources more responsibly

- Break the links between economic growth, the use of resources and the generation of waste.
- Protect and restore habitats and natural systems and halt the loss of biodiversity by 2010.
- Improve fisheries management to reverse the decline in stocks and ensure sustainable fisheries and healthy marine ecosystems, both in the EU and globally.
- Develop an Integrated Product Policy to reduce resource use and the impacts of waste.
- Put EU legislation on strict environmental liability in place by 2003.
- Establish a system of biodiversity indicators by 2003.
- Propose a system of resource productivity measurement to be operational by 2003.
- Improve the agri-environmental measures in CAP so that they provide a transparent system of direct payments for environmental services.
- Remove counter-productive subsidies which encourage over-fishing, and reduce the size and activity of EU fishing fleets to a level compatible with worldwide sustainability.

### Improve the transport system and land use management

- Decouple transport growth significantly from growth in GDP.
- Bring about a shift in transport use from road to rail, water and public passenger transport.
- Promote more balanced regional development.
- In 2002, propose a framework for transport charges to ensure that prices reflect social costs.
- Promote technological progress on road pricing.
- Prioritise public transport for infrastructure development.
- Improve transport systems by addressing gaps, developing open markets and EU cooperation.
- Promote teleworking.
- In 2001, start ESPON.
- Assess the coherence of the zoning of different Community policies, taking account of their objectives.
- Diversify income sources in rural areas, including by increasing the proportion of CAP funds directed to rural development.
For the cross-cutting proposals and steps for implementing and reviewing the strategy (parts one and three), specific actions were proposed to provide a coherent pathway to a more sustainable EU. For the long-term objectives, EU level measures associated with each headline objective were set out, ranging from detailed prescriptions, such as the creation of a system of biodiversity indicators by 2003, to less prescriptive measures, such as promoting teleworking by accelerating investment in next generation infrastructure and services. As well as EU level measures, the strategy highlights the need for Member States to take action in their domestic policies and through their role in EU level decision-making.

**Renewed Sustainable Development Strategy (rSDS)**

Following review of the SDS in 2004, a renewed and more comprehensive rSDS was adopted in 2006. Building on the initial SDS, the rSDS acknowledged that unsustainable trends ‘...in relation to climate change and energy use, threats to public health, poverty and social exclusion, demographic pressure and ageing, management of natural resources, biodiversity loss, land use and transport still persist and [that] new challenges are arising’\(^{57}\).

Whereas the initial SDS was set out in three parts, the focus of the rSDS was the identification of seven key challenges, each with associated targets, objectives and actions. Included with the rSDS was the 2005 Declaration on Guiding Principles for Sustainable Development, which set out four key objectives and 10 policy guiding principles underpinning the sustainable development agenda (see Box 17)\(^ {58}\).

**Box 17 Key objectives and policy guiding principles**

<table>
<thead>
<tr>
<th>Key objectives</th>
<th>ENVIRONMENTAL PROTECTION</th>
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<tbody>
<tr>
<td>Safeguard the earth’s capacity to support life in all its diversity, respect the limits of the planet’s natural resources and ensure a high level of protection and improvement of the quality of the environment. Prevent and reduce environmental pollution and promote sustainable production and consumption to break the link between economic growth and environmental degradation.</td>
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| SOCIAL EQUITY AND COHESION | Promote a democratic, socially inclusive, cohesive, healthy, safe and just society with respect for fundamental rights and cultural diversity, that creates equal opportunities and combats discrimination in all its forms. |

| ECONOMIC PROSPERITY | Promote a prosperous, innovative, knowledge-rich, competitive and eco-efficient economy which provides high living standards, and full and high-quality employment throughout the EU. |


MEETING OUR INTERNATIONAL RESPONSIBILITIES

Encourage the establishment and defend the stability of democratic institutions across the world, based on peace, security and freedom. Actively promote sustainable development worldwide and ensure that the EU’s internal and external policies are consistent with global sustainable development and its international commitments.

<table>
<thead>
<tr>
<th>Key policy guiding principles</th>
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<tbody>
<tr>
<td>PROMOTION AND PROTECTION OF FUNDAMENTAL RIGHTS</td>
</tr>
<tr>
<td>Place human beings at the centre of the EU’s policies, by promoting fundamental rights, by combating all forms of discrimination and contributing to the reduction of poverty worldwide.</td>
</tr>
<tr>
<td>INTRA- AND INTERGENERATIONAL EQUITY</td>
</tr>
<tr>
<td>Address the needs of current generations without compromising the ability of future generations to meet their needs in the EU and elsewhere.</td>
</tr>
<tr>
<td>OPEN AND DEMOCRATIC SOCIETY</td>
</tr>
<tr>
<td>Guarantee citizens’ rights of access to information and ensure access to justice. Develop adequate consultation and participatory channels for all interested parties and associations.</td>
</tr>
<tr>
<td>INVOLVEMENT OF CITIZENS</td>
</tr>
<tr>
<td>Enhance the participation of citizens in decision-making. Promote education and public awareness of sustainable development. Inform citizens about their impact on the environment and their options for making more sustainable choices.</td>
</tr>
<tr>
<td>INVOLVEMENT OF BUSINESSES AND SOCIAL PARTNERS</td>
</tr>
<tr>
<td>Enhance social dialogue, corporate social responsibility and private-public partnerships to foster cooperation and common responsibilities to achieve sustainable production and consumption.</td>
</tr>
<tr>
<td>POLICY COHERENCE AND GOVERNANCE</td>
</tr>
<tr>
<td>Promote coherence between all EU policies and coherence between local, regional, national and global actions, in order to increase their contribution to sustainable development.</td>
</tr>
<tr>
<td>POLICY INTEGRATION</td>
</tr>
<tr>
<td>Promote integration of economic, social and environmental considerations so that they are coherent and mutually reinforce each other by making full use of instruments for better regulation, such as balanced impact assessment and stakeholder consultations.</td>
</tr>
<tr>
<td>USE BEST AVAILABLE KNOWLEDGE</td>
</tr>
<tr>
<td>Ensure that policies are developed, assessed and implemented on the basis of the best available knowledge and that they are economically sound and cost-effective.</td>
</tr>
<tr>
<td>PRECAUTIONARY PRINCIPLE</td>
</tr>
<tr>
<td>Take a precautionary approach where there is objective scientific uncertainty, in order to avoid potential damage to people’s health or to the environment and take preventative action.</td>
</tr>
<tr>
<td>MAKE POLLUTERS PAY</td>
</tr>
<tr>
<td>Ensure that prices reflect the real costs to society of production and consumption activities and that polluters pay for the damage they cause to human health and the environment.</td>
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</tbody>
</table>

Although several of the policy guiding principles were included within the original SDS’ general discussion on improving policy coherence and elsewhere, the rSDS made these principles explicit and they continue to form the basis for the approach to sustainable development in the EU.

Likewise, although the key challenges identified were, in some cases, shared with those identified in the original SDS - climate change and clean energy, public health, conservation and management of natural resources, sustainable transport - other areas, such as social inclusion, demography and migration, sustainable consumption and production, and global poverty and sustainable development challenges, were clearly stated rather than discussed more generally. Operational objectives (see below) and concrete actions were set out, again building upon those set out in the original SDS, but updated to reflect progress and changing international circumstances (e.g. on climate change).
Table 11 Key challenges and operational objectives from the rSDS (2006)

<table>
<thead>
<tr>
<th>Key challenges</th>
<th>Operational objectives / Targets Summary</th>
</tr>
</thead>
</table>
| Climate change and clean energy                    | • Kyoto targets.  
• Energy supply should be secure, provision should be competitive and done sustainably.  
• Adaptation should be integrated into policy.  
• Setting of renewable targets. |
| Public Health                                       | • Improve protection against health threats.  
• Improve food and feed legislation.  
• Continue to promote animal health and welfare standards.  
• Curb the increase in lifestyle related disease.  
• Reduce health inequalities between Member States.  
• Ensure that chemicals are produced, handled and used in ways that do not pose significant effects to human health or the environment.  
• Improve information on environmental pollution and adverse health impacts.  
• Improve mental health and tackle suicide risks. |
| Social inclusion, demography and migration          | • Pursue EU objectives on poverty and social exclusion.  
• Ensure social and territorial cohesion.  
• Support Member States in efforts to modernise social protection in the face of changing demographics.  
• Significant increase in labour market participation of women and older workers.  
• Continue developing migration policy, accompanied by policies on integration of migrants and families.  
• Reduce the negative effects of globalisation.  
• Promote increased employment of young people.  
• Increase labour market participation of the disabled. |
| Conservation and management of natural resources    | • Improve resource efficiency to reduce the overall use of non-renewable natural resources.  
• Gain competitive advantage by improving resource efficiency.  
• Improvement in management and avoiding over-exploitation of renewable resources.  
• Halt the loss of biodiversity.  
• Avoid the generation of waste and enhance efficient use of natural resources by applying the concept of life-cycle thinking and promoting re-use and recycling. |
| Sustainable transport                              | • Decouple economic growth and the demand for transport with the aim of reducing environmental impacts.  
• Achieve sustainable levels of transport.  
• Reduce pollutant emissions from transport to sustainable levels.  
• Balanced shift towards environmentally friendly transport modes.  
• Reduce transport noise.  
• Modernise framework for EU public transport.  
• Reduce average car fleet emissions in line with EU strategy.  
• Halve road transport deaths by 2010 compared to 2000. |
| Sustainable consumption and production              | • Address social and economic development within carrying capacity of ecosystems and decoupling of economic growth from environmental degradation.  
• Improve environmental and social performance for products and processes.  
• Aim to achieve green public procurement.  
• Increase market share in environment tech and eco-innovations. |
| Global poverty and sustainable development         | • Progress towards EU commitments, particularly in relation to the Millennium Declaration.  
• Contribute to improving international environment governance.  
• Raise aid volumes to targets. |
As well as the challenges, objectives and targets, the rSDS also discussed cross-cutting issues contributing to a knowledge society, including discussions on education and training, research and development, aspects relating to financing and economic instruments, communication issues and ways to mobilise actors, and implementation and monitoring actions.

A need to recognise the role of ecosystem services was introduced within the rSDS, as an overall objective in relation to the conservation and management of natural resources. This brought together sustainable development and the ecosystem services concept, which had been developing in parallel and which was brought to mainstream political and scientific thinking as a result of the Millennium Ecosystem Services Assessment in 2005. An ecosystem services approach acknowledges the social, economic and ecological benefits provided from ecosystem services, and is ‘a generic framework for incorporating the holistic consideration of ecosystem services and their value into policy, plan and decision-making’ (Department for Environment, Food & Rural Affairs, UK (Defra), 2010, p.12).

Generally speaking, the 2006 rSDS provides the basis for subsequent and current thinking on sustainable development within the EU.

Europe 2020 and other recent and relevant initiatives

In 2009 the rSDS was reviewed, and while it was noted that progress had been made in terms of integrating sustainable development within policy areas, there was still evidence of unsustainable policy actions.\(^{59}\)

Sustainable growth, along with smart growth and inclusive growth, is one of the priorities of the Europe 2020 growth strategy (EU2020). Flagship initiatives to implement the Europe 2020 strategy include ‘a resource-efficient Europe’, supporting a shift towards a resource-efficient, low-carbon economy, and ‘an industrial policy for the globalisation era’, which supports entrepreneurship and seeks to address every part of the value chain. Sustainable growth strives to counter issues associated with an over-reliance on fossil fuels, pressures on natural resources and climate change, whilst simultaneously improving competitiveness. In this respect, sustainable growth within the Europe 2020 strategy focuses more on the environment and the economy than on the social aspect of sustainable development, although the social aspect is taken up more within the smart and inclusive growth aspects of the strategy. As a result, the measures in the Europe 2020 strategy are seen as compatible with the long-term objectives of the EU SDS (Kurkowiak et al, 2015).

Sustainable development has also been incorporated within the EU’s 7th EAP, which aims to guide the EU’s environmental policy to 2020. Priority objectives include:

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

- Thematic objectives in relation to the development of environmental and climate policy:
  (a) To protect, conserve and enhance the Union’s natural capital.
  (b) To turn the Union into a resource-efficient, green and competitive low-carbon economy.
  (c) To safeguard the Union’s citizens from environment-related pressures and risks to health and well-being.

- Four pillars of an enabling framework:
  (d) To maximise the benefits of Union environment legislation by improving implementation.
  (e) To improve the knowledge and evidence base for Union environment policy.
  (f) To secure investment for environment and climate policy and address environmental externalities.
  (g) To improve environmental integration and policy coherence.

- Meeting local, regional and global challenges:
  (h) To enhance the sustainability of the Union’s cities.
  (i) To increase the Union’s effectiveness in addressing international environmental and climate-related challenges.

Key principles underlying the 7th EAP include the polluter pays principle, the precautionary principle (both mentioned as part of the 2005 Declaration of Guiding Principles for Sustainable Development) and the principle of rectification of pollution at source.

The incorporation of ecosystem services within the sustainable development paradigm is made clearer within the 7th EAP:

The 7th EAP reflects the Union’s commitment to transforming itself into an inclusive green economy that secures growth and development, safeguards human health and well-being, provides decent jobs, reduces inequalities and invests in, and preserves biodiversity, including the ecosystem services it provides (natural capital), for its intrinsic value and for its essential contribution to human well-being and economic prosperity.\(^\text{60}\)

Ecosystem service based approaches are encouraged in relation to climate change mitigation and adaptation, and in terms of incorporating ecosystem values for accounting and reporting systems.

The headline issues from the 7th EAP form the basis for the more recent Commission communication – A Decent Life for All: From Vision to Collective Action (2014) – which builds on the objectives set out in the 2006 Sustainable Development Strategy, the conditions set out to achieve smart, sustainable and inclusive growth in the EU2020 Strategy, and the objectives from the 7th EAP, to set out priority areas and target topics for a new post-2015 agenda on poverty and sustainable development. These areas include:

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Despite this expanded focus, and as set out in the recent monitoring report on Sustainable Development Strategy by Eurostat (Kurkowiak et al, 2015), the sustainable development indicators used to assess progress towards sustainable development have remained relatively stable since 2005. The key indicator themes include:

- Socioeconomic development
- Sustainable consumption and production
- Social inclusion
- Demographic changes
- Public health
- Climate change and energy
- Sustainable transport
- Natural resources
- Global partnership
- Good governance

Although the key themes are closely associated with the seven threats identified in the rSDS, additional themes are included in terms of socioeconomic development (which focuses on the key objective of economic prosperity) and good governance (which is related to the guiding principles of the rSDS).

Most recently, the EU provided technical contributions to development of the United Nations 2030 Agenda for Sustainable Development (2015). The 17 sustainable development goals and 169 targets (see Table 12 below), which seek to balance the economic, social and environmental dimensions of sustainable development at a global level, are reflected in the 17 areas highlighted in the aforementioned Commission communication, a Decent life for All.

Table 12 2015 Sustainable Development Goals

<table>
<thead>
<tr>
<th>2015 Sustainable Development Goals</th>
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</thead>
<tbody>
<tr>
<td>Goal 1. End poverty in all its forms everywhere</td>
</tr>
<tr>
<td>Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture</td>
</tr>
<tr>
<td>Goal 3. Ensure healthy lives and promote well-being for all at all ages</td>
</tr>
<tr>
<td>Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all</td>
</tr>
<tr>
<td>Goal 5. Achieve gender equality and empower all women and girls</td>
</tr>
<tr>
<td>Goal 6. Ensure availability and sustainable management of water and sanitation for all</td>
</tr>
<tr>
<td>Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all</td>
</tr>
<tr>
<td>Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all</td>
</tr>
<tr>
<td>Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation</td>
</tr>
</tbody>
</table>
Overall, the key focus areas associated with sustainable development policy at the EU level have remained relatively consistent since the first SDS, with climate change and clean energy, public health issues, natural resource management and sustainable transport appearing in the subsequent rSDS. With the exception of public health, environmental, rather than social or economic, considerations have formed the backbone of sustainable development policy at an EU level from the initial SDS. Over time however, recognised challenges in relation to sustainable development have been expanded into the areas of social inclusion, demography and migration, sustainable consumption and production and global challenges, topics more closely associated with social and, to a certain extent, economic concerns. Likewise, targets and policy measures became more far reaching over this period, with further detail and increases in the number of targets associated with the consistent key themes, and new targets developed for those additional themes. The rSDS still contains the fundamental objectives in relation to sustainable development, reinforced through more recent initiatives such as EU2020 and the 7th EAP. The new UN sustainable development goals and the Decent Life for All publication suggest that sustainable development now encompasses more of the social and economic aspects, in addition to the environmental concerns previously considered.

The main policy approaches to sustainable development also appear to have centred around those policy guiding principles from the rSDS, some of which were articulated in the initial SDS but not as clearly defined.

**SEA and sustainable development**

While the focus of the Directive is on the environment, the promotion of sustainable development is expected to result from the protection of the environment and integration of environmental considerations into plans and programmes. The procedural non-prescriptive nature of the Directive means that specific EU objectives relating to the environmental aspects of sustainable development are not defined in detail as key areas for review. There is, however, some indication as to the types of information required within Environmental Reports and the criteria for determining the likely significance of impacts, where it is stated that there is a need for information relating to:

- (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\(^{61}\).

Rather than the clear association with specific sustainable development objectives from the SDS, rSDS or later strategies, the SEA concerns the principle of integrating sustainable development considerations within policy, which has been part of the EU approach to sustainable development since the rSDS. SEA can also be seen to contribute to enhancing the involvement of citizens, through the obligations relating to public consultation. One academic expert participating in the focus group discussions highlighted the value of the SEA in promoting the concept of environmental justice more broadly, through public involvement.

As previously mentioned, there are two aspects to investigate: firstly, whether the Directive provides a view to promoting sustainable development through the integration of such considerations within plans or programmes; and, secondly, as result, does the SEA help to deliver sustainable development outcomes within plans and programmes in practice.

One issue raised by several experts in the focus group discussions was the limited nature of SEA in terms of addressing economic and social issues. One SEA practitioner suggested that SEA should be carried out in conjunction with economic assessment, to improve decision-making. This was echoed by several other experts in their focus group, who felt that a social dimension was missing from SEA. One expert pointed out that although socioeconomic impacts were sometimes assessed for projects, this was not the case for plans and programmes. However, replies to the Commission’s questionnaire, indicated that six Member States (plus Belgium – the Brussels region) include some economic and or social factors within their environmental reporting requirements, in addition to the Annex I de minima requirements (see section 4.4.1).

This focus on the environmental aspects - as opposed to the economic and social aspects - has been highlighted as one of the issues associated with sustainable development implementation more generally (Drexhage and Murphy, 2010). During the focus group discussions with national regulators/independent bodies, one expert stated that prior to the SEA Directive, social and economic issues were much more in focus, with environmental assessment lagging. Since the introduction of SEA, this expert felt that economic and environmental issues have been prioritised, with social issues now lagging behind in terms of integration within plan/programme decision-making. Arguably, this is a testament to how relevant the SEA Directive has been for the environmental aspects of sustainable development. Indeed, several of the participants in the focus group with academic experts pointed out how valuable the SEA Directive has been in furthering the environmental agenda. One academic expert highlighted how useful SEA has been in developing sustainable development indicators to assess progress, and that the SEA had been an efficient way of including environmental considerations within policy. During the focus group discussion with national regulators/independent bodies, an expert pointed out that the SEA is the only tool available to consider environmental issues, particularly in relation to global environmental impacts. Prior to the SEA in 2004, this regulator said, assessments of environmental impacts was not done.

\(^{61}\) Annex I to the SEA Directive.
The limitation of SEA in terms of addressing economic and social issues under Annex I as a potentially fundamental problem with the Directive can be considered at both a theoretical and practical level.

At a theoretical level, whether a focus on the environment (one of the three pillars of sustainable development) can be said to be coherent with sustainable development more generally relates to the different definitions of sustainability (e.g. ‘weak’ vs ‘strong’ sustainability and the substitutability of one of the three pillars for another)\(^6^2\). Gibson (2006), for example, views sustainable development as being an inherently integrated concept, promoting sustainability assessment that integrates the three pillars into one overarching set of objectives, actions and effects. This would help to prevent sustainable development from being seen as a balancing act between the three pillars, and, rather, as a coherent framework for assessment (Gibson, 2006). By primarily focusing on the environment, SEA arguably does not capture the holistic nature of sustainable development, as defined by three pillars. However, Gendron (2006) argues that sustainable development concerns three dimensions, rather than pillars: social progress as the overall objective of human development, economy as the instrument and the environment as the fundamental condition. From this perspective, the SEA Directive’s focus on the integration of the environment into plan and programme making is entirely coherent with sustainable development, since it is about integrating understanding about the fundamental condition of sustainable development – the environment.

Likewise, if it is acceptable to view sustainable development as a composition of the three separate pillars rather than as an integrated whole, the Directive can be seen to be coherent with promoting sustainable development, allowing for social and economic aspects to be dealt with in another way in plan/programme development. An example of a more complementary approach, where SEA is carried out with economic and social aspects in tandem, is the sustainability appraisal in the UK, required for the majority of plans/programmes. As another alternative, Sheate (2010) highlights the potential use of ecosystem services assessment as a more integrated way of tackling sustainability assessment, if ecosystem services are defined very broadly to include the built environment. The consideration of ecosystem services within SEA was assessed in a 2013 paper by Honrado et al., using Portugal as an example. They found very limited evidence of complete ecosystem assessment within SEA, with only broad discussion in the cases where ecosystem services were mentioned at all. As such, they point to the potential benefits from incorporating an ecosystem service approach with SEA, which could:

- Increase the transparency and commitment on decision-making.
- Provide knowledge related to equity and poverty issues.
- Identify winners and losers as a consequence of development options.
- Favour sustainability in its three dimensions.
- Improve the planning process through the integration of biodiversity.
- Evaluate ecosystem services, recognising their value and putting biodiversity on the decision agenda.
- Safeguard the provision of ecosystem services for future generations.

(Honrado et al, 2013, p.16).

\(^6^2\) For a further discussion see, for example, Beckerman (1994).
Similarly, Russel et al (2014) found limited evidence of a fully embedded ecosystem framework within sampled SEAs in the UK, however, there was evidence that some aspects, such as an integrated approach and implicit consideration of ecosystem services, could be found within many of the SEAs sampled. This implies that the practical application of this approach and its usage to incorporate additional sustainable development aspects may not be as challenging as first appears.

At a more practical level, the integration of environmental, economic and social aspects can be seen in relation to implementation approaches in Member States. During the focus group discussions, one practitioner, citing the example in Germany, suggested that SEA is only understood as an environmental tool, and that the implementation approach with this focus was a reflection of the cultural history of environmental management, rather than an issue with the Directive itself. An academic focus group member echoed this point, suggesting that there were two different approaches in terms of the application of SEA, with some Member States following the approach of advocacy for the environment, while others are more focused on the broader concept of sustainable development.

During the focus group discussions with practitioners from EU-13 Member States, some experts felt that, while the SEA Directive was a useful framework for decision-making, it was being used less in terms of the sustainable development underpinnings and more as a way of adding a layer of accountability to policy.

Several Member States’ replies to the Commission’s questionnaire noted implementation issues facing the SEA Directive, and these were echoed in part during the focus group meetings. Although implementation issues are more fully discussed in the section on effectiveness (see section 5.1) these implementation issues reduce the effectiveness of the Directive, creating implications for its relevance to sustainable development. Issues in relation to cumulative effects, particularly in reference to global problems such as global warming and problems relating to the development of alternatives, were raised both in the Member States’ replies to the Commission’s questionnaire and during focus group discussions. One focus group practitioner felt that where there was not a clear link between the SEA and sustainable development, this was an issue of application rather than with the legal framework.

In terms of the practicalities of amending the SEA to incorporate additional sustainable development elements or tackle implementation weaknesses, several focus group participants questioned the value in comparison to the costs. One regulator pointed out that the SEA could be made to be more adaptable, with potentially reformulated objectives to match the sustainable development agenda, but that in reality this would increase the costs of carrying out SEA. Another practitioner also noted that it may not be beneficial to expand the remit of SEA anyway, as broadening the scope might diminish its power.

Although it is clear that the EU sustainable development objectives are not explicitly stated within SEA, and that the broader concept of the environment is the focus, it is not clear that this lack of prescription within the legislation has led to implementation weaknesses. Several focus group members highlighted that the flexible, non-prescriptive nature of the legislation meant that Member States have been able to set the scope of assessments. Adjusting the legislation itself may not, therefore, be
required, as the flexibility already exists to include other aspects within SEA. One academic expert suggested that there are no issues that could not be brought into the assessment when required and that only practitioners’ skills would limit that scope in the short term. The example of assessing health impacts was given, as one where the scope of SEA was extended successfully. Indeed, the integration of economic and social issues within the Environmental Report in some Member States suggests that this could readily be done at Member State level. Another academic expert agreed, highlighting the adaptability of the Directive. The flexible, non-prescriptive nature of the Directive can be seen as a strength in terms of its relevance for sustainable development: given the gradual development of the concept at the EU level, the SEA Directive enables the adaptation of requirements as needed, rather than requiring legislative changes. However, another academic expert noted that although the flexibility was a strength of the legislation, a balance needed to be found in terms of prescription, in order to prevent inconsistent application.

Overall, the evidence gathered appears to point to a generally positive picture of the SEA in terms of its value in incorporating environmental considerations into plans and programmes. Without being prescriptive in relation to aspects associated with sustainable development objectives, the SEA Directive is highly relevant for the more environmental objectives of sustainable development within the EU. However, whether the implementation of the SEA Directive goes far enough into social and economic issues is also a valid theoretical concern, given the holistic nature of sustainable development. Ultimately, it is a question of whether the SEA can be seen to promote the sustainable development agenda without requiring these other aspects to be considered. At the same time, the question of whether the SEA Directive should drive the social and economic aspects of sustainable development was also raised, especially given that the key focus is not on sustainable development directly. The limited evidence gathered does not provide a sufficiently clear answer to draw definitive conclusions on these theoretical aspects.

5.3.4 Key findings

- The focus of the SEA Directive is protection of the environment, and does so through legal means, such that the provisions are binding with regard to the results that Member States should achieve through implementation of the Directive. Although this focus appears to contribute mainly to the environmental pillar of sustainable development, it should be noted that it is with a view to promoting sustainable development overall.

- From the literature reviewed, although targets and actions have been developed over time, many of the main themes associated with sustainable development at an EU level appear to have remained relatively constant. More recently, in work for the UN sustainable development indicators, social and economic factors appear to have been expanded at an EU level, building on the mostly environmental focus of the sustainable development strategy. Although the prescribed enabling framework developed between the first SDS in 2001 and the renewed SDS in 2006, the policy guiding principles appear to have remained relatively constant since then.

- Generally speaking, the evidence suggests that SEA has been successful in helping to incorporate previously neglected environmental concerns with plans and programmes in practice, although some implementation issues exist. The SEA
Directive, therefore, appears very relevant to the environmental pillar of sustainable development. The SEA Directive directly addresses the sustainable development policy guiding principle of integrating environmental concerns within policy, through the assessment of plans and programmes at a strategic level.

- The evidence suggests that SEA could do more to incorporate social and economic issues into plan and programme assessment. However, the non-prescriptive nature of the legislation means that there is already scope to apply the legislation in alternative ways. The flexibility provided by the non-prescriptive nature of the legislation means that if the concept of sustainable development evolves over time, changes in application can help the Directive to be more relevant in terms of EU sustainable development policy. Although some Member States highlighted that they already require additional economic and social aspects to be covered and reported on in their SEAs, this is not widespread across the EU and was raised as an issue in several focus groups. Given that the Directive is focused on the environment, this would imply expanding the remit of the Directive to specifically include these economic and social aspects. However, it should be noted that generally the plans and programmes to which SEA is applied are socio-economically driven and justified, where environmental information is being provided through SEA to ensure the environment is properly considered alongside other priorities. Given the wide ranging interpretations of sustainable development, expanding the remit of the Directive to include wider economic and social aspects would risk comprising the primary objectives of a high level of environmental protection.

- Some of the evidence gathered from the literature questions whether sustainable development can really be promoted if only one pillar is supported, instead of a more integrated approach incorporating economic, social and environmental aspects more holistically. On the other hand, there are many interpretations of sustainable development, so it is arguable whether a more ‘balanced’ approach addressing all three ‘pillars’ would still be capable of delivering a high level of environmental protection, which is seen in the Directive as fundamental to promoting sustainable development. From the latter perspective the SEA Directive is entirely coherent with a strong conception of sustainable development (as Brundtland defined it), with environmental and social imperatives. From the former perspective, the SEA Directive could be considered rather less positive in terms of promoting sustainable development, potentially exacerbating a disjointed and less coherent approach. Whether the Directive can be seen to be helping to achieve sustainable development ultimately rests on the conception of sustainable development adopted by the observer or the decision-maker.

### 5.4 Coherence

The section focuses on assessing the extent to which the SEA Directive is coherent with other relevant EU environmental legislation and sectoral policies. The aims or objectives of these instruments were examined, together with their implementation in practice as it interacts with the SEA Directive. The section provides a high-level view, capturing key inconsistencies and synergies, highlighting good implementation practices, and noting where there may be room for improvement.
5.4.1 Interpretation and approach

Evaluating the coherence of legislation, policies and strategies means assessing if they are logical and consistent with each other and with other legislation, as well as with relevant policies. This includes determining whether there are significant contradictions or conflicts that stand in the way of their effective implementation or which prevent the achievement of their objectives.

The SEA Directive relates closely to other parts of EU environmental law and policy, in particular the legislation containing provisions for additional environmental assessment procedures. There is considerable scope for coordination, allowing for appropriate synergies to be maximized while avoiding duplication and inconsistencies. EU environmental legislation of particular relevance to the SEA Directive includes the Environmental Impact Assessment (EIA) of projects Directive 2011/92/EU (EIA), the Habitats Directive 92/43/EEC and the Water Framework Directive 2000/60/EC (WFD).

The SEA Directive also has a very important role to play in the implementation of key EU sectoral policies, in particular those that require the preparation of plans and/or programmes that may impact the environment and which require an SEA under the provisions of the SEA Directive.

To assess coherence of the SEA Directive with other EU environmental legislation and key EU sectoral policies the analysis is structured around the following evaluation questions:

Evaluation question 6: To what extent is the SEA Directive coherent with other parts of EU environmental law/policy, including environmental impact assessment and appropriate assessment?

Evaluation question 7: To what extent does the SEA Directive complement or interact with other EU sectoral policies such as agriculture, fisheries, energy, transport, regional and cohesion, etc.? How does the SEA Directive positively or negatively affect these policies?

Evaluation question 8: Are there overlaps, gaps and/or inconsistencies that significantly hamper the achievements of the SEA objectives?

Evaluation question 6 considers how the main provisions and measures set out by the EIA, the Habitats Directive and the Water Framework Directive interact with the SEA Directive, whether there are overlaps in their scope and objectives, and whether there are potential risks of duplication or inconsistencies in implementation.

Evaluation question 7 focuses on the analysis of coherence between the SEA Directive and other selected EU policies. This assessment has been carried out in two parts. The first focuses on the three policies that are supported by the European Structural and Investment (ESI) Funds: Cohesion Policy, the Common Agricultural Policy and Common Fisheries Policy, in light of the significant experience across the Member States in applying the SEA Directive to the programming documents required by the EU funds regulations. The second part of the assessment focuses on the energy and transport sectors. These sectors interact significantly with the environment and there is considerable experience with SEA. Each part of the assessment examines coherence
between legislation, policy and guidance on the one hand, and practical experience on the other.

Evaluation question 8 essentially sums up the responses to the above questions, and explains the extent to which instances of incoherence with other environmental legislation and policies creates overlaps, gaps and/or inconsistencies that would significantly hamper the achievement of SEA objectives. The answers to this question are therefore incorporated into the answers to the previous two questions.

5.4.2 Main sources of evidence

The assessment of coherence of the SEA Directive is primarily based on the following evidence:

- Analysis of EU level legislation and policy documents.
- Replies of the Member States to the Commission’s questionnaire.
- Desk research at Member State level.
- Literature review.
- Consultation with SEA experts during focus group discussions.

Particularly with regard to evaluation question 6, Question n. 37 of the Commission’s questionnaire asked Member States to describe how the SEA and EIA Directive interact with each other, e.g. whether and how SEA facilitates the EIA process, and whether there is any procedure in place to avoid duplication or inconsistencies between assessments in practice. Question n. 38 focused on the relationship between the SEA Directive and other Directives and EU level policies, where the majority of the Member States’ replies referred to the Habitats Directive and the Water Framework Directive.

To complement the evidence collected via the Commission’s questionnaire, desk research and a literature review were also carried out. A useful source of information was the Commission’s guidance document on streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs) (PCI Guidance, 2012)\\(^{63}\). Milieu prepared a study in 2012-2013 that served as the basis for this guidance document; the research mapped transposition of the EU legislation requiring environmental assessment in every Member State, and identified ways in which the various procedures stemming from EU legislation are coordinated. It referred mainly to coordination between SEA, EIA and Article 6 assessment under the Habitats Directive. The results of that study were cross-checked against the Member States’ replies to the Commission’s questionnaire.

With regard to evaluation question 7, only Question n. 3 of the Commission’s questionnaire addressed other EU policies, asking Member States to describe their experience with the implementation of the of the SEA Directive to the ESIF 2014-2020 programmes. The analysis, therefore, draws heavily on desk research, literature review and the results of the focus group discussions with SEA experts.

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5.4.3 Analysis of question 6 according to available evidence

5.4.3.1 SEA and the Environmental Impact Assessment Directive

SEA and EIA – objectives and scope

Directive 2011/92/EC on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) aims to harmonise the way Member States assess the environmental impacts of certain projects. The Directive was amended in 2014 to align the procedure with the principles of smart regulation and to enhance coherence and synergies with other EU legislation and policies, and the strategies and policies developed by Member States in areas of national competence.

This section compares EIA and SEA based on the legislative requirements for each procedure, briefly examining the relationship between the procedures as set out in the Directives.

Scope of application

The EIA Directive applies to projects that might have significant negative effects on the environment. At the time of its adoption in 1985, this was the first attempt in the EU to promote environmental considerations at an early stage of the process of issuing development consent for projects. It soon became clear that decisions made at higher policy levels had a large influence on the project level (Jiricka & Pröbstl, 2009), leading to the 2001 adoption of the SEA Directive, in order to ensure environmental consideration in the preparation and adoption of plans and programmes, and specifically those which set the framework for future development consent of projects covered by the EIA Directive (Article 3(2)(a)).

This has resulted in two Directives with complementary scopes. The SEA applies to plans and programmes, focusing on the more strategic level of assessment, while the EIA applies to projects, allowing a more detailed and specific assessment. The two Directives apply cumulatively as established by Article 11(1) of the SEA which specifies that an environmental assessment carried out under this Directive must be without prejudice to any requirements under the EIA Directive (and to any other EU law requirements).

The SEA and EIA Directives will normally not overlap because of their differences in scope of application. Overlaps, however, may occur when plans or programmes provide for several projects to which the EIA Directive applies (e.g. land-use plans, transport plans). In such cases application would be cumulative.

The SEA Directive lays down provisions to avoid duplication in the case both Directives apply cumulatively. Article 11(2) allows Member States to provide coordinated or joint procedures which fulfil the requirements of the relevant Community legislation (in this case both the SEA and the EIA Directives). The rationale behind this provision is to avoid that two essentially similar assessments (SEA and EIA) are carried out on the same proposal.

64 Recital 3 of Directive 2014/52/EU.
The assessment under the EIA Directive is usually performed at a later stage of the decision making process than that under the SEA Directive, since it deals with projects instead of plans and programmes setting the framework to such projects. In some Member States, however, there may be overlaps between the two Directives in situations where a plan or programme comprises the development consent for a project. In these cases, to avoid duplication of assessments, the introduction of a coordinated procedure covering both the EIA and the SEA aspects may be desirable.

The CJEU interpreted Article 11(1) and (2) of the SEA Directive in its Judgement on Case C-295/10\(^\text{65}\) (see Box 18), clarifying that an environmental assessment carried out under the EIA does not dispense with the obligation to carry out such an assessment under the SEA Directive.

**Box 18 CJEU, Judgement on Case C-295/10**

<table>
<thead>
<tr>
<th>CJEU, Judgement on Case C-295/10 (Genovaitė Valčiukienė and Others v Pakruojo rajonos vivaldybė and Others)</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, does not dispense with the obligation to carry out such an assessment under Directive 2001/42. However, it is for the referring court to assess whether an assessment which has been carried out pursuant to Directive 85/337, as amended, may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.’</td>
</tr>
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</table>

In the cases where both assessments are required cumulatively, especially when the plan or programme comprises the development consent for a project, there are also opportunities for synergy to be exploited. Throughout the early development phase of plans, programmes, and projects authorities and project promoters should identify the type of environmental assessment to take place at what point should be indicated, which not only improves the quality of the assessments but also ensures they are completed in a timely and efficient manner\(^\text{66}\).

Additionally, there are instances when information from one assessment can be used for another. More recently, Articles 4(5) and 5(1) of the amended EIA Directive have further enhanced the principle of ‘streamlined environmental assessments’ already promoted by Article 11(2) of the SEA Directive. These articles explicitly require the EIA to take into account the results of preliminary verifications or assessments on the effects on the environment carried out pursuant to Union legislation other than the

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Directive, which would include any previous SEA. In cases where both an SEA and an EIA are required, Article 5(3) of the SEA Directive allows the SEA to use relevant information from other EU legislation or from other levels of decision-making for the preparation of the environmental report. Sharing information not only reduces the potential for duplication and improves efficiency, but also enables both the EIA and SEA to benefit from each other’s perspective, improving the quality of the assessment results. Although in theory a plan or programme is developed first at a strategic level, with projects developed later, as Sheate et al. (2005) point out, in many cases the procedures may not be so sequential. This creates opportunities for the EIA to provide information for the SEA process.

**Significant environmental effects**

‘Significant effects’ are not explicitly defined in either the EIA or SEA Directives, but the different provisions found in the two Directives provide opportunities for synergy. The EIA Directive notes that ‘experience has shown that projects using or affecting valuable resources, projects proposed for environmentally sensitive locations, or projects with potentially hazardous or irreversible effects, are often likely to have significant effects on the environment’ (Recital 28 of the EIA Directive). Sheate et al. (2005) point out that Article 3 of the same Directive gives more guidance on how to assess the significance of the effects by noting that direct and indirect significant effects must be assessed with regard to: population and human health; biodiversity (in particular, the Birds and Habitats Directives); land, soil, water, air and climate; material assets, cultural heritage and the landscape. As already highlighted in earlier in this report, the guidance provided by the EIA Directive may also be used by Member States to interpret the meaning of ‘significant effects’ when applying the SEA Directive.

**Scoping**

Scoping is a mandatory step in the SEA procedure. As laid out in Article 5(4), authorities with specific environmental responsibilities and those likely to be concerned by the environmental effects must be consulted on the scope of the environmental report. Conversely, scoping during the EIA procedure is only required if the developer specifically requests it. In such cases the competent authority issues an opinion on the scope and level of detail of the information to be included by the developer (Article 5(2)). However, definition of the scope before the environmental assessment is carried out is seen as an essential step to ensure an efficient and concise assessment (as evidenced by the PCI guidance and various focus group discussions). It can therefore be concluded that mandatory scoping at the SEA level may form a framework for scoping at the EIA level, keeping in mind the general differences in scope and objectives (as outlined above).

**Identification of reasonable alternatives**

Both Directives require a final assessment decision addressing the alternatives selected within a plan/programme or a project. Article 5 of the EIA Directive requires description of the reasonable alternatives identified and justification for the selection of the option chosen, given the effects of the project. Conversely, Article 5 of the SEA Directive requires the SEA to identify, describe, and evaluate all reasonable alternatives, taking into account the objectives and the geographical scope of the plan or programme. The same article ensures that extra information on the alternatives assessed during the SEA is also available to those carrying out the EIA. This not only helps to avoid the
duplication of assessment during the EIA, but such ‘tiering’ works to ensure that decisions at the plan/programme level do not preclude options at the project level (or, indeed, that decisions at project level do not effectively foreclose options at the plan/programme level).

With regard to the types of alternatives addressed by each assessment, the SEA Directive requires reasonable alternatives to consider the objectives and geographical scope of the plan or programme. For EIA, the alternatives should be ‘relevant to the project and its specific characteristics’, taking into account the effects of the project on the environment. Again, these differences in the Directives offer opportunity for synergies, as alternatives are considered by each procedure at different stages of the process of planning, programming and decision-making.

**SEA and EIA - interaction in practice**

From a legal perspective, the SEA and EIA Directives can be considered coherent as they provide for different scopes and levels of assessment, which, taken together, offer many opportunities for synergy. In practice, however, evidence suggests some instances where the two procedures may lead to duplication or inconsistency. This section examines the Member States’ replies to the Commission’s questionnaire, as well as supplementary evidence stemming from focus groups discussions, to determine how the SEA and EIA Directives perform together in practice.

Member States were divided on the extent to which the SEA works coherently with the EIA procedure. Question n. 37 of the Commission’s questionnaire asked Member States if the SEA facilitates the EIA process, and the results are presented in Figure 8 below. The questionnaire offered no guidance as to what is meant by ‘facilitate’. However, nearly every Member State answered ‘yes’ to this question, with just over half adding that the SEA does not facilitate the EIA in every case. The graph therefore differentiates between those that answered ‘yes’ and those that gave a qualified ‘yes’.

**Figure 8 Does the SEA facilitate the EIA process?**
Finland, Slovakia, and the UK all reported that the SEA may offer greater benefits to the EIA for land use plans. Slovakian experts noted that this is because municipal land use plans are sufficiently detailed to make a comprehensive SEA, which, in turn, provides detailed information to be reused in the EIA. However, most Member States highlighted the re-use of information, and the fact that the SEA sets a framework for the subsequent EIA, as being the areas of greatest benefit. The latter is considered important because the SEA provides an overview of the issue, as well as providing an initial outline of the possible alternatives. Experts from the Brussels Capital Region of Belgium summed the issue up by noting that the SEA facilitates the EIA by providing a ‘fixed array of alternatives at strategic level, allowing the EIA to focus on more specific and practical aspects of the project’.

In Denmark and Germany the SEA is considered beneficial, as it flags any potential high-level contentious issues which may be encountered during the EIA, giving practitioners time to prepare mitigation measures. Similarly, in Italy, Member State experts report that the SEA is used to address alternatives early in the planning stage, rather than waiting for the EIA assessment when the project is further along the decision-making path.

**Coordinating SEA/ EIA interactions**

In many cases, the success of the SEA - and its benefit to the EIA - stems from the individual practitioners involved and their experience with the topic. During the focus group discussions with practitioners from both EU-15 and EU-13 Member States this point was raised several times, especially with regard to scoping. It was noted that inexperienced practitioners, afraid of omitting something important, fail to narrow down the scope of the assessment, resulting in ‘mega EIAs’, whereby the SEA starts to encroach on the scope of the EIA. Sheate et al (2005) support this assertion, noting that the potential for duplication between the SEA and EIA is much greater in areas such as land use planning, as local plans may be very detailed and closely linked in time and space to EIA and the development consent of projects. Land use planning seems, therefore, to be the area where Member States can easily apply coordinated procedures and ensure better synergies between the two assessments.

During the focus group discussions, practitioners from EU-15 Member States noted that incoherence becomes an issue if practitioners do not see the link between the two Directives. According to practitioners from EU 13 Member States, the risk of duplication arises when practitioners are reluctant to replicate information used in other reports, for example using information from the SEA in the EIA, thereby failing to exploit the potential synergies between the two procedures. Part of the reason this occurs, they stated, is because consultants developing the EIA/SEA report are contractually obliged to produce something, which can implicitly be understood to mean ‘something new’.

The focus group discussions with regulators/independent bodies mentioned that the risk of duplication may also be blamed on the way national legislation is formulated. They explained that since there is no explicit link between the two Directives at the EU level (i.e. in the text of the Directives themselves), it is very difficult for this link to be established in the national legislation. The Scottish experts in this focus group agreed that linking the EIA and SEA is difficult because there are no formal, direct links in the EU legislation; for example, there is no specific requirement in legislation for EIA to look
specifically at the results of SEA. Scotland proposed a requirement, in land use planning, that mitigation measures identified at the SEA stage must be the starting point for EIA. However, they noted that this would be more effective if the EU made a formal link directly in legislation.

Ambiguity has also played a role in this issue as raised in the focus group discussions with practitioners from EU-15 Member States. According to the practitioners, there are examples of SEAs that ‘look like EIAs’ and that go through the EIA process. In these cases, when the plan/programme is composed of a series of projects, the assessment is focused around one specific project, examining the detail rather than the plan/programme at an overall strategic level. This ‘EIA approach’ to SEA can mean that the assessment fails to take into account the potential environmental impacts of all possible projects under the plan/programme, instead focusing one specific project. This would result in gaps in the SEA, with the potential for a plan or programme to be adopted that paves the way for projects that have detrimental environmental effects.

Measures to enhance coherence between the SEA and EIA procedures

To avoid duplication and inconsistencies between the SEA and EIA procedures outlined above, Member States have adopted varied approaches to coordinating the SEA and EIA procedures. Figure 9 below, based on Member States’ replies to the Commission’s questionnaire, shows the 10 Member States with joint procedures in place.

Figure 9 Member States with SEA/EIA joint/coordinated procedures

Coordinated/joint EIA and SEA procedures

Streamlining SEA and EIA via a joint SEA/EIA procedure is one way to ensure synergies and avoid duplication of assessment. While streamlining in this way does not necessarily imply any weakening of environmental protection requirements foreseen
under EU law (PCI Guidance), applying a joint SEA/EIA procedure may be difficult in practice, as the joint or coordinated assessment must cover the requirements of both the SEA and the EIA Directives to be compliant as established by Article 11(2) of the SEA Directive discussed above. Despite this, several Member States followed the SEA/EIA coordinated approach and prepared one final report that takes into account the results of the assessments satisfying the requirements of both Directives.

The Netherlands, for example, have an integrated SEA/EIA procedure, with SEAs taking place since 1987. The Flanders region of Belgium has recently added the legislation in order to integrate the SEA/EIA procedures, and Croatia is considering whether to follow suit. In total, 10 Member States stated that they have provisions for joint SEA/EIA procedures. Some Member States apply coordinated/joint SEA/EIA procedures only in specific situations: in France, for example, a joint SEA/EIA can be undertaken for housing or real estate business; in Germany for development planning; in Romania for transport; and in Italy for port plans. Latvia also pointed out that the SEA and EIA can be coordinated in practice, with public consultations for both procedures carried out simultaneously where appropriate.

During the focus group discussions with national regulators/independent bodies, it was pointed out that the reason an integrated SEA/EIA works so well in the Netherlands is because of its long history of ‘tiered’ decision-making from plan/programme to project level. For Member States without this history and experience, combining the EIA and SEA procedures has caused difficulties. When asked if there is scope for changes to the SEA Directive, many Member States (Cyprus, Denmark, Estonia, Italy, Lithuania, Spain, Portugal and France) suggested that either or both of the SEA and EIA Directives could be amended to streamline SEA/EIA coherence by including a more explicit link between the two Directives, while others (Romania, Ireland, and Luxembourg) simply called for further guidance on this issue.

**Building synergies between EIA/SEA procedures**

In some situations, Member States are able to carry out either an SEA or an EIA, provided the requirements from one are covered by the other. Despite this, the replacement of an EIA by an SEA is not common (Sheate et al., 2005) and tends to take place either in very specific circumstances, or subject to strict restrictions. For example, in France, if a project subject to an EIA implies a modification to a preceding plan or programme subject to an SEA, according to the *Code de l’Urbanisme*, the modified plan or programme does not require a new SEA if the developer has already integrated the environmental assessment of this modification of the plan or programme, thereby reducing the risk of duplication. In Estonia, an EIA is not required if the environmental impacts are already assessed during the SEA, provided there is sufficient information available for granting development consent. According to legislation in the Flanders region of Belgium, if an EIA is needed after an SEA, the content of the EIA can be limited to specific aspects that were not analysed by the SEA. Bulgaria also has provisions for land use plans, whereby either an SEA or EIA is carried out in situations where duplication is expected. Therefore, and based on experience, some Member States have proposed possible amendments to the SEA Directive which would allow an

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68 The figure is the result of both the Member States’ replies to the Commission’s questionnaire and further communication with the Member States’ experts.
SEA to be withheld in favour of a more detailed EIA. As a result, this could improve coordination and risk of duplication between the two instruments.

Other provisions to mitigate overlap

In practice, various actions may be undertaken to facilitate the procedures required under the two Directives. In Luxembourg, the Department of Environment is specifically tasked with avoiding duplication on a case-by-case basis by coordinating different assessments on different levels, particularly for SEAs and EIAs. Scotland takes a similar approach, however it is done more generally, with dedicated guidance prescribing how duplication is to be avoided at each step of the planning process. The Netherlands have a long history of combined SEA/EIAs. The Netherlands Commission for Environmental Assessment therefore not only keeps a close eye on SEAs and EIAs in its own country, but also provides information and support to other countries (mostly outside the EU).

5.4.3.2 SEA and the Habitats Directive

SEA and the Habitats Directive – objectives and scope

The Habitats Directive (92/43/EEC) aims to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies. The Habitats Directive aims at setting up a coherent European ecological network of special areas of conservation (the 'Natura 2000 network'). It requires Member States to propose sites as special areas of conservation (Natura 2000 sites) and transmit a list of these sites to the Commission. The purpose is to recognise that the site hosts nature values worth protecting. According to Article 11 of the Habitats Directive, Member States must monitor the development of the protected natural habitats and species, with special surveillance on priority types of areas and species (outlined in the Annexes).

This section concerning the coherence between the Habitats and SEA Directives firstly identifies opportunities for synergy between the two procedures based on the relevant Directives, and then provides some practical insights from the Member States.

Scope of application

Article 3(2)(b) of the SEA Directive specifically states that plans and programmes which have been determined to require an assessment under the Habitats Directive in view of their likely effects on protected sites will always require an SEA. This provision applies on its own merits as also clarified by CJEU Judgment on Case C-177/11 (see Box 6 in section 4.1.1).

Any plan or project likely to impact a Natura 2000 site is subject to an Appropriate Assessment of the implications for the site in view of the site’s conservation objectives (Habitats Directive, 6(3)). The decision to carry out an SEA is made based on the criteria fulfilled by the plan or programme, while the Appropriate Assessment is triggered by the location (i.e. a Natura 2000 area). The Appropriate Assessment focuses on protecting Natura 2000 sites while maintaining the Member States’ obligations under the Habitats Directive.

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on the conservation objectives of the Natura 2000 site in question, while the SEA must take into account all environmental issues, including other plans and programmes within a hierarchy, transboundary effects, and cumulative effects. The SEA must assess the full range of environmental impacts as presented in Annex I of the Directive, while the Appropriate Assessment focuses only on the conservation objectives of the Natura 2000 site.

These three key differences in scope provide ample opportunity for synergy if a plan or programme falls under the application of both the SEA and the Appropriate Assessment procedures. The Appropriate Assessment’s focus on biodiversity results in a much more detailed assessment, which can subsequently be used to enrich the SEA assessment. Conversely, while not strictly necessary for the Appropriate Assessment, additional environmental impacts derived from the SEA can also be considered.

**Implication of the outcome of the assessment**

The Habitats Directive provides an environmental standard, laying down obligations for Natura 2000 sites. The Appropriate Assessment decision is binding and determines whether a plan or project may proceed. If the Appropriate Assessment determines that the plan or project has a significant effect on the Natura 2000 site, it can only progress without amendments if it fulfils the conditions of Article 6(4) of the Habitats Directive, i.e. carried out for ‘imperative reasons of overriding public interest’ (IROPI).

In contrast, Article 8 of the SEA Directive states that the Environmental Report must be ‘taken into account’ during the plan or programme preparation and before its formal adoption. This reflects the different objectives of the two assessments, with the SEA ‘… contribute(ing) to the integration of environmental considerations into the preparation and adoption of plans and programmes...’ (Article 1), and Appropriate Assessment more focused on the conservation and protection of listed sites and species.

**Public participation**

Public consultation is a requirement for the SEA, with the public to be given an ‘early and effective opportunity’ to express opinions on the draft plan or programme and the Environmental Report (Article 6(2)). The public must also have access to the outcome of the screening decision, including reasons for not requiring an SEA (Article 3(7)). For an Appropriate Assessment, public consultations are not required, although they may take place if appropriate (Article 6(2)). Day (2015) suggested that this is because the Habitats Directive was adopted when the integration of public participation rights into domestic and EU law was in its infancy. Regardless, the Commission SEA Guidelines note that if the Appropriate Assessment is incorporated into the EIA or SEA (as required by the former Directive, recommended by the latter) the public may be, by association, consulted on aspects of the Appropriate Assessment.

Public participation is one of the clearest opportunities for synergy. As Appropriate Assessment has no official consultation requirements, the public consultations held as

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part of the SEA can be tailored to include issues relating to the specific conservation objectives of the Natura 2000 site in question. Not only does this strengthen the quality of the decision-making, it brings it in line with the Aarhus Convention provisions relating to access to information, public participation in decision-making and access to justice in environmental matters. Additionally, there has long been a recognised need for more public participation during the designation of Natura 2000 sites (see Bouwma et al., 2010). As the PCI Guidance points out, all that is required is early planning to ensure that these issues are included in consultations.

**SEA and the Habitats Directive - interaction in practice**

The distinct differences in scope between the SEA Directive and the Habitats Directive mean that the SEA and Appropriate Assessment procedures are largely complementary. These differences in scope, however, may in some cases lead to a risk of inconsistency. During an Appropriate Assessment, for example, an alternative is preferred (even if it costs significantly more) if it will substantially minimise impacts on biodiversity (Bernotat, 2006). This is not the case with SEA, which is only required to assess ‘reasonable’ alternatives to prevent or minimise environmental impacts.

The Commission’s questionnaire also asked about other EU environmental legislation that might pose a risk of duplication with the SEA other than the EIA, and some Member States identified the Habitats Directive as one such risk. While this does not mean the risk is present for each and every plan requiring both an SEA and an Appropriate Assessment, some Member States have had to adopt provisions to reduce duplication in the assessment procedures. The Netherlands, Bulgaria, Poland, Slovenia, Estonia and Denmark, all noted there is no risk of duplication between the two because they had taken steps to mitigate the problem through joint procedures. In Poland and Estonia, duplication is avoided as information is re-used effectively for subsequent assessments.

In total, around one-third of the Member States noted there was no risk of duplication. The most common reason given was the difference in scope, as outlined above, making the two processes complementary. Additionally, as pointed out by one Member State expert during the focus group discussions with national regulators/independent bodies, the issue is less about duplication than about the gaps and coherence between different pieces of legislation.

According to Member States’ replies to the Commission’s questionnaire, the risk of duplication between the SEA and Appropriate Assessment depends on the individual case. Practitioners participating in the focus group discussions of Member States experts stated that, in general, there is no duplication between the EU Directives. Ideally, the SEA and Appropriate Assessment are carried out at the same stage of the planning process, enabling cooperation and synergy and avoiding the risk of duplication."}

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Any duplication between the SEA and the Habitats Directive may be more the result of the planning system rather than legislative overlap. During the focus group discussions with practitioners from EU-13 Member States, it was noted that an exception to this may be if a Member State has a lot of its territory designated as Natura 2000 sites, as is the case in Croatia. The revised EIA Directive established joint and/or coordinated procedures for EIA and Appropriate Assessment and, although this was already done in some Member States, the remainder will need some time for implementation of the new EIA provisions to have an effect on SEA procedures.

Coordinated/joint Appropriate Assessment and SEA

As seen above, Article 11(2) of the SEA Directive notes that ‘Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment’. With regard to combined SEA and Appropriate Assessment procedure, the Commission SEA Guidance specifies that the procedure has to include the procedural steps required by the SEA Directive and the substantive test regarding the effect on protected sites required by the Habitats Directive. It also suggests that the relevant impacts for the Appropriate Assessment should be set out in a separate chapter, as these findings are binding for the decision of the plan maker. Additionally, the PCI guidance stresses the importance of early planning or ‘roadmapping’ as an effective way to coordinate the Appropriate Assessment and SEA procedures.

Around two-thirds of Member States have joint procedures in place to combine the SEA and Habitats Directives. These may be set out formally in legislation (e.g. Italy, Belgium - Flanders Region and Germany), or carried out as common practice. In some cases, such as Hungary, the Appropriate Assessment, where applicable, must be included when the SEA is submitted, although coordination is not specifically mandated and the two assessments are carried out separately.

For those Member States that undertake joint or coordinated procedures, the results have been generally positive. Lithuanian experts noted that the combined SEA/Appropriate Assessment has helped to effectively streamline the assessment process, while UK experts noted that failing to consider the Appropriate Assessment during the SEA could result in aborted works, delays, increased costs and additional consultation requirements, thereby providing a clear incentive to coordinate.

In practice, however, trying to combine the two procedures to avoid duplication can have unintended consequences. In the 2013 study on Article 6(3) of the Habitats Directive, problems were found in some instances where the EIA/SEA was combined with Appropriate Assessment, with, in many cases the specificity of the Appropriate Assessment overlooked. This meant that the Appropriate Assessment focused too much on impacts on ‘nature and biodiversity’ in general, rather than on those of the habitat types and species for which the Natura 2000 site had been designated. In response to these issues, several Member States, including Portugal, the UK (Scotland), and Italy have all produced national guidelines.

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5.4.3.3  SEA and the Water Framework Directive

SEA and the Water Framework Directive – objectives and scope

The Water Framework Directive (WFD) was adopted in October 2000 and establishes a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. The WFD introduced a new integrated, participatory and spatial approach to water management in Europe, and includes a River Basin Management Plan (RBMP) to co-ordinate water quality-related measures within each river basin. RBMPs must address the objectives set out by the WFD, and must include an analysis of the river basin’s key characteristics, a review of the impact of human activity on the status of water, and estimates of the effects of existing legislation on meeting the Directive’s objectives. In addition, a Programme of Measures (PoM) must be prepared for each river basin district to ensure that good water status will be reached within the timescale set by the Directive. According to Article 11 of the WFD, the PoM must take into account the results of the analyses undertaken, while, according to Annex VII of the WFD, the RBMP must include a summary of the PoM.

The WFD is classed as a piece of environmental legislation but, unlike the EIA, SEA, and the Habitats Directives, it does not have an environmental assessment as its core function. Therefore, the following section examines how the SEA is applied to the RBMPs, given the different scopes and procedures of the WFD and the SEA Directive.

Applying an SEA to an RBMP

RBMPs, as plans prepared for water management and likely to have significant environmental effects, will be subject to at least an SEA screening. A full SEA, however, may not be carried out on an RBMP if Member States decide they have no significant environmental impacts (PCI Guidance). Nevertheless, various academics and practitioners strongly advocate for SEAs to be carried out on both RBMPs and PoMs. Although the SEA Directive does not specifically refer to the WFD, Article 11(2) of the SEA Directive states that coordinated procedures may be developed to avoid unnecessary duplication of effort.

Where the RBMP is considered to have significant environment effects and undergoes an SEA, opportunities for synergies between the levels of analysis of the water plan and the environmental assessment should be exploited (Sheate & Bennett, 2007). Broad strategic water management options should be addressed at the RBMP level before being selected for subsequent PoMs. The SEA, on the other hand, is more focused on alternative means of implementing the chosen options. This ‘tiering’ would ensure that individual elements and the overall nature of the assessments are not duplicated, and could lead to a sharing of baseline data and public consultation procedures.

Scope of the two Directives

Although the SEA Directive and the WFD are both environmental legislation, they have different objectives. The WFD has a distinct and measurable goal to be achieved within a set timeframe, whereas the SEA focuses on the more abstract goal of environmental consideration. The two objectives are complementary, however, with both Directives sharing the common wider goal of promoting sustainable development.

The SEA Directive and the WFD also have different scopes. As established earlier, the scope of the SEA is broad, applying to any plan or programme which may cause significant environmental effects. The WFD, on the other hand, is primarily focused on water. This can lead to potential synergy when applying the SEA to an RBMP, as the information collected under one Directive can be used for the other. The WFD ensures detailed scientific data are collected for water as part of the planning process of the RBMP, yet the evaluation of the impacts on water is only one element of the SEA. The SEA may identify other environmental impacts of the RBMP, thus offering a different perspective.

Public participation

Both the SEA Directive and the WFD require public participation. Article 14 of the WFD is dedicated to public information and consultation, including timeframes within which the public must be informed. For example, for each river basin district, Member States must make the following available to the public for comment:

- A timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers.
- An interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers.
- Draft copies of the RBMP, at least one year before the beginning of the period to which the plan refers.
- Article 11(2) states that at least six months must be given for written comments.

The SEA Directive has no such requirements, however, if the SEA is undertaken at the same time as the planning of the RBMP, the timing of the public consultations align (when the draft plan is available). Various advocates, including Sheate and Bennett (2007), suggest that public consultations should be jointly together, as the SEA can help to facilitate the demanding WFD requirements, provided the public consultation methods are coherent. This would require the adoption of a consistent method of consultation.

SEA and WFD - interaction in practice

Both the SEA Directive and the WFD have specific environmental objectives and, if the SEA is carried out at the same time as the preparation of the RBMP, there are considerable opportunities for synergies between the two. From a legal perspective, the SEA and WFD may be considered to be coherent and complimentary due to differences in scope and the potential to share information. In practice, however, there may be some instances where the two procedures could lead to duplication or inconsistency. Although evidence from the Commission’s questionnaire and the focus group discussions has been more limited in comparison with the previous Coherence sections,
this section examines the interactions between the SEA and WFD Directives, looking at how SEAs are applied to RBMPs in practice.

Many Member States have already integrated the necessary water considerations into SEAs, in order to identify issues as early as possible, as highlighted in the PCI Guidance. Indeed, according to a questionnaire circulated in 2010\textsuperscript{75}, almost three quarters of the 21 Member States who responded stated that there are national legal obligations subjecting RBMPs to SEAs. According to the more recent implementation reports for the WFD, around one third of the Member States specifically refer to SEAs in their assessments under the third RBMP implementation report\textsuperscript{76}. Italy, Latvia, Poland, Cyprus, and Malta all state that an SEA is carried out on all RBMPs, while several other countries, including Slovenia, Romania, Bulgaria and France, note that there are provisions for such cases, even though this does not mean an SEA is carried out on all RBMPs (e.g. France).

When asked in the Commission’s questionnaire if they had identified any risk of duplication between the SEA Directive and other EU environmental legislation (and provided with a list of examples including the WFD), several Member States (Finland, Estonia and Greece) noted that duplication of the two assessments is possible. In Greece, the risk of duplication occurs during the preparation, assessment and approval of the RBMP, as the objectives of ecological and chemical status targeted by the WFD are very similar to the environmental objectives used to assess impacts in environmental sectors and resources related directly or indirectly to SEA.

Other Member States, for example the Czech Republic and Poland, noted that, generally, there is no risk of duplication between the SEA and other EU environmental legislation as information from one assessment is used in the other. In Finland, for example, Member State experts pointed out there is potential duplication between the SEA Directive and WFD, especially with regard to baseline studies, impact assessments, consultations, etc. To avoid such duplication, legislation requires that earlier assessments need to be taken into account when carrying out the SEA in line with Article 5(3) of the SEA Directive. It is worth noting that according to the 2010 questionnaire mentioned earlier, the ratio of efforts versus the results was mostly considered to be disproportionate. Seven Member States (out of the 11 that responded to the question) who stated the SEA resulted in 'no change' on the RBMP.

When Member States were asked in the Commission’s questionnaire if the SEA is undertaken in parallel with the planning process, it was clear that not every SEA is started before the first draft plan is available. There is no information available on whether RBMPs may be an exception to this; however, if the SEA is started only after the first draft of the RBMP is available (and not in parallel), this suggests that the synergy discussed above is not being maximised. Sheate and Bennet (2007) note that fragmented environmental policy regimes in which different organisations operate independently will also hinder coherence, especially for integrated baseline data


\textsuperscript{76} European Commission website: \url{http://ec.europa.eu/environment/water/water-framework/impl_reports.htm#third}.
collection. Further data from Member States would be needed before more substantial conclusions can be made.

**Other water legislation**

Similarly to the WFD, the Marine Strategy Framework Directive (MSFD) aims to reach Good Environmental Status of the EU marine waters by 2020. The MSFD requires so-called Programmes of Measures (PoMs) to be established and that should be subject to SEA. France reported that this Directive includes its own assessment process for each new measure of the marine environment action plans. It was difficult for the SEA to have a coherent approach with this ‘measure by measure process’ and the complete environmental assessment of the plan. The expert noted that the timelines of the two Directives has caused some incoherence, as the MSFD has fixed specific targets for 2020, although actual implementation of the activities in the plan only start after five years, and thus the timelines do not match up.

### 5.4.4 Analysis of question 7 according to available evidence

This section will take a close look at the selected key EU policies by analysing their interaction with the SEA Directive on a theoretical and practical level.

#### 5.4.4.1 SEA and Cohesion Policy, Rural Development Policy and Common Fisheries Policy programmes

The SEA Directive has a very important role to play in the implementation of key EU policies - such as Cohesion Policy, the Rural Development Policy and the Common Fisheries Policy - that require the preparation of plans and programmes that may impact the environment and which require an SEA under the provisions of the SEA Directive. These policies covers a broad range of sectors and are financed by specific funds that are used to invest, for instance, in infrastructure, environment, employment and training, research and development, agriculture, forestry and fisheries development, with the overall objective to improve the quality of life of EU citizens. A brief overview of the main objectives of these three policies is presented in Table 13.

**Table 13 Overview of EU Cohesion Policy, Rural Development Policy and Common Fisheries Policy**

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<th>Overview of Cohesion Policy, Rural Development Policy and Common Fisheries Policy</th>
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<td><strong>Cohesion Policy</strong></td>
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Each of these three policies under consideration has a strategic planning and programming process in place as well as a governing framework defined for each seven-year EU budget cycle.

After presenting a brief overview of the current arrangements for the 2014-2020 period, this section will look at how SEA is applicable to programmes under the Cohesion Policy, Rural Development Policy and Fisheries Policy, both currently and in the previous 2007-2013 period. The first part is based on analysis of the relevant EU legislation and guidance while the second part is based on practical experience.

Five funds have been brought together under the label ‘European Structural and Investment Funds’ (ESI Funds) for the 2014-2020 programming period, with an allocated budget of EUR 454bn. These are: the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). They are key EU investment tools aimed at realising the objectives of the Cohesion Policy, Rural Development Policy and Fisheries Policy, as well as contributing towards the wider objectives of the Europe 2020 Strategy.

The five funds are governed by a single Common Provisions Regulation (CPR), as well as relevant fund-specific regulations. This marks a different from the previous programming period – 2007-2013 –, where Cohesion Policy Funds (ERDF, ESF and CF) were governed separately from the European Agricultural Guidance and Guarantee Fund (EAGGF) and the Financial Instrument on Fisheries Guidance (FIFG) for the Rural Development and the Fisheries Policy respectively.


As part of the strategic programming process for the 2014-2020 period, Member States were required to draw up negotiated ‘Partnership Agreements’ with the Commission, setting out the general directions of how the ESI Funds should support smart, sustainable and inclusive growth. The investment priorities and objectives of the Partnership Agreements were then broken down into national and/or regional plans and programmes prepared by the Member States and submitted to the Commission, i.e. Operational Programmes (OPs) for Cohesion Policy and the Common Fisheries Policy, and Rural Development Programmes (RDPs) for the Rural Development Policy.

Since 2000 the integration of environmental considerations into all aspects of programme development and implementation within these policies has gradually become more systematic and comprehensive (Hjerp et al, 2011). For the 2014-2020 period, sustainable development and climate change concerns have been mainstreamed in all ESI Funds programmes, via financial allocations, environmental assessments and the integration of environmental requirements in project selection. This is based on Art. 8 of the CPR, which prescribes the integration of environmental considerations with a view of promoting sustainable development (emulating the TFEU’s approach to environmental integration and sustainable development).

In many Member States, programmes for the ESI Funds are often important strategic planning documents for both economic development and key sectoral policies (agriculture and fisheries, but also environment, transport, employment and many others under the Cohesion Policy). As such, the application of SEA to these large-scale, highly strategic programmes that govern significant amounts of public investment in many Member States and regions, has been an important element of the implementation of the SEA Directive over the past decade.

**Applying the SEA Directive to ESI Funds programmes**

Article 2(a) of the SEA Directive states that the Directive applies to plans and programmes ‘including those co-financed by the European Community as well as modifications to them’. Therefore, Cohesion Policy OPs, RDPs under Rural Development Policy, and the OPs prepared under the Common Fisheries Policy are by definition subject to an SEA. The applicability of the SEA Directive to RDPs and the fisheries OPs is relatively straightforward, based on the provisions of Article 3(2.a) of the SEA Directive, which states that an environmental assessment must be carried out for all plans and programmes which are prepared for the agriculture, forestry, fisheries sectors (among others). For Cohesion Policy, which has a broader scope, the applicability of the SEA Directive is less straightforward: the OPs that cover areas listed under Article 3(2)(a), i.e. industry, transport, energy, water, waste, land use, require an SEA, while those OPs whose sectors of intervention are not listed under Article 3(2)(a), e.g. social and employment, may not necessarily have significant impacts on the environment and must be subject to a screening procedure first to determine the need to perform a SEA.

An equally important issue with regard to the applicability of the SEA Directive to EU funds programmes has been the ex ante assessment required by the Regulations

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83 Europe 2020, [http://ec.europa.eu/europe2020/index_en.htm](http://ec.europa.eu/europe2020/index_en.htm), accessed on 17.2.16.
governing the EU funds under the Cohesion, Rural Development and Fisheries policies. As this ex ante assessment could, in theory, overlap with SEA, the legislation governing the funds has evolved to take this into account.

2000-2006

For the programming period 2000-2006, Cohesion Policy OPs and RDPs were exempt from the application of the SEA Directive (Article 3(9)). At that time the requirement for ex ante evaluation of Cohesion Policy OPs specifically included environmental aspects (see Box 19 below). The SEA Directive included the exemption for 2000-2006 OPs and RDPs to avoid any risk of duplication or conflicting requirements for assessment arising from the application of the different legal instruments (the SEA Directive and the ex ante assessment requirements in the Regulations governing the funds) and any uncertainty which might follow.85

Box 19 Ex ante evaluation of 2000-2006 Cohesion Policy OPs

Ex ante evaluation of the 2000-2006 Cohesion Policy OPs

The requirements for ex ante evaluation under Article 41(2) of Regulation (EC) 1260/1999 include social and economic situation, environmental situation and the situation in terms of equality between men and woman. Paragraph b specifies the requirements for the environmental evaluation which are relatively brief:

It must include:
- An evaluation of the environmental situation of the regions concerned, especially those environmental sectors that may be considerably affected by the environmental impacts of the Structural Funds assistance.
- The arrangements to integrate the environmental dimension into the Structural Funds assistance and the coherence with existing short- and long-term national, regional and local environmental objectives.
- The arrangements for ensuring compliance with the Community rules on the environment.
- An estimation of the expected environmental impacts of the strategy and the Structural Funds assistance.


2007-2013

For the 2007-2013 period, the SEA Directive had come into force, and references to the ex ante evaluation for programmes were modified to refer to relevant Community legislation on SEA.86 This ensured the avoidance of any risk of legal incoherence in Community law or inconsistency with the SEA Directive.87

The guidance document on ex ante evaluation for OPs under Cohesion Policy for the 2007-2013 period88 clarified that, in general, it is the responsibility of Member States to

86 Article 47 of Regulation 1083/2006 and Article 84 of Regulation 1698/2005. Article 44 of the EFF Regulation refers in a more general way to taking the environmental impact into account.
decide how best to meet the requirements of the SEA Directive in relation to the OPs. Established procedures for SEA can be used or the Member State can decide to incorporate the SEA into the ex ante evaluation process. The authorities responsible for the development of the programme may decide to undertake all or parts of the SEA through the ex ante evaluation, in which case the terms of reference for the evaluation will need to specify the additional tasks for the environmental evaluation. In any case the ex ante evaluation report should explain how the outcomes of the SEA procedure have been taken into account in the OP89.

A similar guidance document was also prepared for OPs under the Common Fisheries Policy and for RDPs for the 2007-2013 period90,91. While the first one mainly reiterates the recommendations applicable to OP under Cohesion Policy outlined above, the guidance document issued on ex ante assessment for the 2007-2103 Rural Development Policy went further, specifying that the environmental assessment required by the SEA Directive was to be integrated directly into ex ante evaluations of RDPs. It referred to Article 11(2) of the SEA Directive which specifies that: ‘for plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment’. The guidance document for RDPs also specified that the Environmental Report prepared as an output of the SEA procedure should be ‘integrated into a specific chapter of the ex ante evaluation report’. Other instructions refer to the role of independent evaluators, as well as consultations with authorities with environmental responsibilities.

For Cohesion Policy, the obligation to apply the SEA Directive to the 2007-2013 programmes was considered an important opportunity to improve and accelerate capacity building and learning processes in local, regional and national administrations92. The result was that approximately 400 SEAs were produced for the OPs within Cohesion Policy and sent to the Commission in 200793.

Theophilou et al (2009) in their article on the ‘Application of the SEA Directive to EU structural funds: perspectives on effectiveness’ analysed whether the introduction of SEA requirements to Cohesion Policy programmes was perceived as a more effective and powerful mechanism for environmental assessment than the previous approach of ex ante evaluation alone. Diverging views arose among the Commission officials interviewed by the authors: some felt that the introduction of an official requirement to apply SEA to OPs was an important step forward because it put more emphasis on environmental considerations and thus promoted the mainstreaming of the environment throughout planning processes; while others thought that the application of the SEA Directive to OPs could trigger a marginalisation of environmental issues and weaken...

89 ibid
environmental integration by separating the three pillars of sustainable development (economic, social and environmental issues). Other Commission officials believed that the application of SEA to OPs was a positive development in theory, but it was too early to judge whether or not it would constitute an improvement in practice. In the conclusions, Theophilou et al suggest that, at the time of writing the article, the disagreement about whether a stand-alone SEA system was more effective in ensuring environmental integration into the planning processes than the previous ex ante evaluation system was due to different ideological perspectives of the problems: those who believed more environmental integration was needed felt that the application of the SEA Directive was an improvement; whereas, those who believed in the primacy of sustainable development felt it was a backward step. The relevance of the SEA Directive to achieving sustainable development is further analysed in section 5.3 above.

Despite these diverging views on the value of environmental integration to ex-ante assessment, the introduction of the SEA Directive has also brought the requirement to consult the public concerned to the process of evaluation of OPs. Stakeholder participation is enshrined as a principle in regulations governing Cohesion Policy and the current ESI Funds, but there is no explicit requirement to consult during the ex ante evaluation. When SEA is applicable, this requirement takes effect, and when SEA is integrated to ex ante assessment, the consultation may be carried out more broadly.

An example of the benefits brought by SEA of an OP in the Czech Republic from the 2007-2013 programming period\(^ \text{(1)} \) is presented in Box 20 below.

**Box 20 Benefits of SEA assessment for the Czech Republic Operational Programme ‘Enterprise and Innovation’ 2007-2013**

The global objective of the OP ‘Enterprise and Innovations’ was to increase the competitiveness of the Czech economy. The responsible authority was the Ministry of Industry and Trade (MIT). The main priority axes of the OP were establishment and development of firms, effective energy, innovation, environment for enterprise and innovation, business development services and technical assistance. Under each priority, key areas of intervention were proposed outlining the main activities and projects to be implemented.

The OP underwent the formal SEA process pursuant to the Directive. Although this was the first time that the MIT had to initiate and coordinate an SEA procedure, the SEA assessment started early in the process and was carried out in parallel to the preparation of the OP. The SEA team used the SEA Handbook for Cohesion Policy as a guidance document\(^ \text{(2)} \). The key environmental issues required by Annex I of the SEA Directive were analysed: i.e. climate change, air, water, biodiversity etc. In addition, the analysis also looked at other areas likely to impact the environment, such as waste management, energy management, transport, partnership, environmental-friendly products.

For each area of intervention, relevant environmental objectives were identified and were compared to the likely significant negative impacts likely to occur with the implementation of the

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The SEA team proposed alternatives to avoid or counteract possible negative impacts. These included the modification of some priority axes and key areas of intervention (for example they proposed to replace waste incineration with recycling practices) as well as the introduction of specific measures to minimise risks.

The SEA team also assessed the systems for environmental monitoring and for project evaluation and selection. It developed a list of environmental indicators for relevant environmental objectives linked to the priority axes and, based on these, proposed modifications to the project selection criteria under specific interventions.

The SEA overall influenced the final content of the OP. Most of the suggestions proposed in the SEA report were incorporated into the text of the programme and the proposed system for environmental monitoring and project selection was accepted by the MIT. Ultimately, the experience raised the MIT’s awareness of environmental issues as well as its understanding of the purpose of the SEA procedure.

2014-2020

As mentioned above, for the 2014-2020 programming period, the five ESI Funds under Cohesion, Rural Development and Fisheries policies are jointly governed by one Common Provisions Regulation (CPR). The regulation has strengthened the application of SEA to programming documents for the ESI Funds through integration with ex ante assessment and ex ante conditionality.

With regard to ex ante assessment, the CPR specifies that ex ante evaluations ‘shall incorporate’ the requirements of the SEA Directive where appropriate. Guidance on how to do this is given in three policy-specific guidance documents issued by the Commission to support ex ante evaluation in the 2014-2020 period.

The guidance document prepared for Cohesion Policy OPs 2014-2020 specifies that the SEA has to be carried out during the preparation of the programmes and must be completed before their adoption and submission to the Commission. It also points out that aligning the SEA with the process of developing the OP and the ex ante evaluation will reduce the need to make last-minute amendments to the OP based on the SEA outcomes. The guidance also lists the documents that the programming authority must submit to the Commission (i.e. the Non-technical summary, the monitoring measures, information on consultation and a summary of the how environmental considerations and the opinion expressed have been taken into account) ‘either in a separate document annexed to the ex ante evaluation or incorporated in a specific part of the ex ante evaluation’.

Following lessons learned from the 2007-2013 period, the guidance document for the ex ante evaluation of 2014-2020 RDPs provides several recommendations in relation to more effective use of SEA during the ex ante evaluation of RDPs. Among these are recommendations to ‘combine SEA with the ex ante meetings in order to infuse social and economic considerations; integrate the SEA process, in terms of temporally and administratively, in the programming process, e.g. through a single

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96 Article 55(4) of the CPR.
contracting with the ex ante evaluation; and to introduce public consultation early in the process reaching out beyond the customary authorities and stakeholders.

The CPR for the 2014-2020 period further reinforces the link with the SEA Directive through the so-called ‘ex ante conditionalities’. These are specific conditions to be satisfied by Member States in order to benefit from the funds, and were introduced as part of reforms to ensure that all institutional and strategic policy arrangements were in place for effective investment. The conditions also support the implementation of existing EU legislation. The general ex ante conditionality number 6, as provided for in the CPR requires Member States to demonstrate the existence of ‘arrangements for the effective application of Union environmental legislation related to EIA and SEA’. More precisely, criteria for fulfilment of the conditionality require that the following arrangements are in place:

- Arrangements for the effective application of the EIA Directive and SEA Directive.
- Arrangements for training and dissemination of information for staff involved in the implementation of the EIA and SEA Directive.
- Arrangements to ensure sufficient administrative capacity.

Where an applicable ex ante conditionality is not fulfilled at the time of preparation of the OP or RDP, Member States need to set out the actions to be taken to ensure it is fulfilled no later than the end of 2016, as well as the bodies responsible and an implementation timetable.

Another ex ante conditionality related to SEA was introduced for investment priorities under the transport sector. Thematic ex ante conditionality 7.1, 7.2 and 7.3 require the existence of a comprehensive plan(s) or framework(s) for transport investment, in accordance with Member States' institutional set up (including public transport at regional and local level), which supports infrastructure development and improves connectivity to the Trans-European Network – Transport (TEN-T) comprehensive and core networks. A specific criterion for fulfilment of this conditionality is that such plan(s) or framework(s) for transport investment comply with the legal requirements for SEA. This is discussed further in Section 5.4.4.2 below.

For the 2014-2020 period, the link between SEA and the programming process for the ESI Funds is quite explicit, with SEA firmly established as part of the ex ante evaluation. The ex ante conditionality takes this further, addressing the pre-conditions that Member States need in order to ensure the capacity to carry out the SEAs effectively. This applies not only to SEA of the OPs and RDPs that govern actual spending, but also the

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100 Annex XI Part II of the CPR.
other relevant strategic and sectoral plans and programmes that will underpin and
guide actual spending in different areas.

The SEA Directive and ESI Funds programmes in practice

As described above, the legislative frameworks and relevant guidance documents have
progressively strengthened the role of SEA in the programming process for ESI Funds,
particularly the link to the required ex ante evaluation. As a result, the majority of the
programmes for EU funds in the Cohesion, Rural Development and Fisheries policy
areas were subjected to an SEA procedure prior to their adoption both in 2007-2013

In the Commission’s questionnaire Member States were asked what types of ESI Funds
programmes for 2014-2020 required an SEA. Their replies showed that SEA was applied
to all RDPs and OPs for Fisheries. With regard to Cohesion Policy OPs, the Member
States differentiated the different types. SEA was applied to all regional, national,
sectoral and almost all cross-border cooperation and transboundary Operational
Programmes. Some Member States (Bulgaria, Czech Republic, Ireland, Italy, Malta,
Portugal and the UK) specified that the ESF OPs underwent a screening procedure,
which determined that an SEA was not needed. Estonia was the only Member State to
have applied SEA to the strategic-level Partnership Agreement.

There were very few cases where a cross-border cooperation or transnational
programme was screened out (e.g. Bulgaria, Cooperation programme under the
European Neighbourhood Instrument Black Sea Pool and Portugal, Cooperation
Programmes South West Europe, Interreg V-A - Spain-Portugal (POCTEP), Atlantic
Area). The reason is that these programmes did not define the framework for the
authorisation of future projects and/or, in accordance with the criteria set out in Annex
II of the SEA Directive, were not considered likely to have significant environmental
effects.

The Member States’ experts were also asked whether there have been any specific
issues to report regarding the implementation of the SEA Directive to the ESI Funds
programmes. While the question focused specifically on the programmes adopted for
the 2014-2020 programming period, it can be assumed that most of the problems
identified had been also encountered in the previous programming period 2007-2013
and have not yet been resolved.

Almost one-third of Member States stated that they have experienced no problems
when carrying out SEA for ESI Funds programmes. For the others, some of the most
common issues identified were:

- The general nature of ESI Funds programmes makes an effective SEA difficult or
even redundant.
- Timeframes imposed by the Commission.
- Ambiguity as to what is required from the practitioner.

Several Member States (Germany, Finland, Hungary, Cyprus, Malta, Poland, Portugal,
and Spain) reported that the general nature of the ESI Funds programmes made it
difficult to carry out SEAs effectively. As a result, the available information about the
possible environmental effects of the programmes was only qualitative and quite
general. The direct and indirect effects of the measures on the environment were investigated in the SEA, although examination of alternative measures was rarely undertaken.

The Spanish Member State experts reported that some stakeholders share the opinion that the SEA applied to sectoral planning at the national level makes the SEA applied to ESI Funds redundant. They explained that, in many cases, the activities planned in the OPs (e.g. infrastructure) are already covered by the corresponding national infrastructure plan, which is also subject to SEA.

To overcome this problem, the Maltese experts suggested that the recent Commission obligations making funding dependent on the completion of a sector-based SEA (i.e. fulfilling the thematic ex ante conditionality for investment in the transport sector mentioned above), are considered more appropriate than subjecting the actual OP to an SEA.

The general nature of the programme as a potential obstacle was particularly highlighted in cases of cross-border and transnational programmes, as stated by the Member States’ experts from Germany and Luxembourg. These programmes mainly consist of soft measures in an abstract form (policy recommendations, studies, strategies, action plans, instruments and procedures) and include investments only to a very limited extent, meaning that the SEA contained only a few general recommendations and did not have any great influence on planning. The requirement to prepare a separate Environmental Report for this kind of programme requires a level of effort which was considered by some authorities to be unreasonably high.

There were also issues reported in relation to timing. Both Finnish and Slovakian Member States’ experts highlighted the limited time allowed by the Commission for SEA preparation, which was a particular issue the Slovenian experts.

Both Czech and Cypriot Member States’ experts identified delays and reduced effectiveness due to a failure on the part of the programme managing authorities’ to fulfil the legal obligations stemming from the SEA Directive. In the Czech Republic, the managing authorities failed to elaborate a statement summarising how the requirements and conditions from the SEA were taken into account, or to submit information about the measures decided for monitoring of potential effects on the environment. Czech Member State experts attributed the problem to the fact that the managing authorities were insufficiently familiar with the requirements of the SEA legislation.

A number of German federal states pointed out difficulties related to SEAs for RDPs. Several federal states, for example, complained that there was a delay with the Commission issuing its planning guidelines, while, at the same time, the Commission was calling for the SEAs to begin promptly. This meant that the SEA would have had to begin at a point in time when the planning guidelines for the programme were not available in sufficient detail.

Hungarian Member State experts also noted that as the SEA runs in parallel with programme preparation, the continuous changing of the Environmental Report creates ambiguity. This can result in obsolete reports and unnecessary work. In Cyprus, for example, this may be because of the relatively poor quality of the Environmental Report; however, Estonian Member State experts identified potential ambiguity-related
risks in the scope of the assessment, level of detail of the Environmental Report and monitoring measures.

Very few Member States have developed tailored guidance for carrying out SEA for ESI Funds programmes. The majority of Member States used the guidance documents available at the EU level (e.g. The Commission Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment (2013)\(^{103}\), Commission Guidance documents on ex ante evaluation, which also include guidance on SEA and the Handbook on SEA for Cohesion Policy 2007-2013)\(^{104}\). The Italian experts noted that Italian guidance on SEA for Structural Funds programmes was outdated, as it only covered the period 2000-2006. Portugal for example, has specific guidance documents, while Spain, the Netherlands, and France rely on general SEA guidance documents. In Estonia, a working group on SEA has developed indicators for assessing the results of the activities specified in several ESIF programmes.

Problems and challenges in the application of SEA to ESI Funds programmes were also debated during the focus group discussions with Member States’ experts. The Italian SEA expert, during the focus group discussion with practitioners from EU-15 Member States, stated that the political pressure is sometimes high and limits leeway for environmental experts to change parts of the programmes that have already been decided. There is only a small margin to introduce changes, alternatives and mitigation measures, and, subsequently, no further proposals to enhance the programme are made.

The focus group with practitioners from EU-13 Member States revealed some additional issues in relation to SEA and ESI Funds programmes in different Member States. Some of the SEA practitioners stated that the requirement that SEA be carried out as part of ex ante evaluation has certainly helped to make programmes more coherent. However, during this discussion, it was pointed out that too often only consistency with existing environmental law and policy is checked, without further proposals to enhance the environmental impacts of the programmes.

At the same time, practitioners from this focus group also expressed concern about the fact that sometimes the OPs are just a list of projects, meaning that their purpose is not solving identified problems, but rather implementing a list of already agreed projects. This makes the substantive application of the SEA more difficult; as mentioned above, this point was also recognised by some Member States’ experts in the replies to the Commission’s questionnaire and demonstrates that there is a variety of experiences and perspectives regarding the practical application of SEA to ESI Funds programmes.

5.4.4.2 SEA and the Energy and Transport sectors

EU transport and energy policies have the potential for significant impact on the environment, and both sectors are among the list of sectors for which all plans and programmes require SEA, according to Article 3(2) of the SEA Directive. This section reviews the linkages between the SEA Directive and key EU policies in the energy and

\(^{103}\) European Commission, 2013, Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment.

transport sectors, as well as the application in practice of SEA to plans and programmes in these sectors.

EU energy policy focuses on the availability of affordable energy across the EU, as well as sustainable energy production and use in line with the EU's climate change targets. Currently, the EU's Energy Union strategy consists of five closely related and mutually reinforcing dimensions: supply security; a fully integrated internal energy market; energy efficiency; decarbonisation of the economy; and research and innovation\textsuperscript{105}.

In the transport sector, the 2011 White Paper is the principal EU-level strategic document\textsuperscript{106}. It establishes a vision that integrates efficient mobility and accessibility objectives with resource efficiency and sustainability goals. The main goals of transport policy, according to this document, include creating a Single European Transport Area with increased mobility, creating favourable conditions for growth and jobs while at the same time improving sustainability and minimising negative environmental impacts. An impact assessment accompanying the White Paper refers to the Sustainable Development Strategy, according to which sustainable transport is 'to ensure that our transport systems meet society’s economic, social and environmental needs whilst minimising their undesirable impacts on the economy, society and the environment'\textsuperscript{107}.

Both energy and transport objectives are supported by the Trans-European Networks (TENs) policies, which foresee infrastructure construction across the EU, some of which will be supported by EU funds. The Trans-European Networks for Energy (TEN-E) strategy supports the planning, design and construction of the energy infrastructure needed for the EU to integrate its energy market, ensure security of energy supply and meet its climate and energy goals\textsuperscript{108}. The TEN-E Guidelines Regulation, in its Article 7, requires that Member States take measures to streamline the environmental assessment procedures required under Union law for certain strategic, cross-border energy infrastructure projects\textsuperscript{109}. This includes SEA and, in line with the requirements of the Regulation, the Commission has issued guidance to Member States on how to do this. The Trans-European Networks for Transport (TEN-T) Regulation states that TEN-T networks shall be planned, developed and operated in a resource efficient way through, inter alia, the assessment of strategic environmental impacts, with the establishment of appropriate plans and programmes and of impacts on mitigation of the effects of climate change\textsuperscript{110,111}.

EU energy and transport sectoral policies are both based on principles of sustainable development, and contain specific objectives aimed at sustainability of the sectors.


\textsuperscript{111} Article 5(e) of the TEN-T Regulation.
Corresponding infrastructure policies also refer to environmental assessment. Nevertheless, implementation of EU energy and transport policies has seen some obstacles in terms of the SEA application.

**Applying the SEA Directive to plans and programmes in the Energy and Transport sectors**

Under European legislation, all Member States are required to plan electricity and gas infrastructure developments for the next 10 years\(^{112,113}\). These national 10-year network development plans (TYNDPs) then feed into EU-wide TYNDPs. These EU plans are updated every two years and form the basis for the planning and preparation of key energy infrastructure projects, including those supported through the TEN-E policy. Whether or not the SEA Directive applies to these plans depends upon how they are screened at Member State level.

As mentioned above, the TEN-E Regulation requires Member States to take measures towards streamlining the various environmental assessment procedures stemming from EU legislation, including SEA. The idea is to improve efficiency in coordinating the procedures as they apply to key infrastructure projects and the plans and programmes that underpin them. The guidance document issued by the Commission to support Member States in this streamlining process recommends that SEAs are made mandatory at the planning stage for national energy policies and plans (e.g. network development plans submitted by Transmission System Operators (TSOs) and approved by the competent authorities, in accordance with the Directives on common rules for the internal market in electricity and natural gas)\(^ {114}\).

According to the Commission’s guidance, the application of SEA to these grid development plans enables the early assessment of the environmental suitability of different types of energy sources, as well as different locations for energy projects. It encourages a more integrated and efficient approach to territorial planning, with environmental considerations taken into account much earlier in the planning process and at a much more strategic level. However, the TEN-E Regulation itself does not include a specific requirement for the PCI to be included in a plan or programme which has already undergone an SEA.

In the transport sector, the TEN-T Regulation, which governs the implementation of this policy across the EU, states that environmental assessments should be carried out by Member States and project promoters, as provided by the Habitats, Water Framework, EIA and SEA Directives, in order to mitigate or compensate for negative impacts on the environment\(^ {115}\). At the same time, it should be recalled that the current TEN-T network\(^ {116}\) was largely developed before the entry into force of the SEA Directive.


\(^{115}\) Preamble 35 of the TEN-T Regulation.

limiting the choice of alternatives (available at a strategic level) and shifting environmental considerations to the level of individual projects.

The Connecting Europe Facility (CEF), which provides financial support for the preparation and financing of key infrastructure projects in both the energy and transport sectors, requests funding applicants to state whether energy infrastructure projects seeking support are part of a plan/programme which has been subject to SEA\textsuperscript{117} \textsuperscript{118}. The applicant has to provide a non-technical summary of the Environmental Report and the information required by Article 9(1) (b) of the SEA Directive or, in cases where SEA was not carried out, an explanation of the reasons why it was not necessary.

During the focus group discussions it became evident that, in some cases, Member States avoid carrying out SEAs for certain sectoral strategies because they are considered ‘policies’ and therefore do not fall within the scope of the SEA Directive, which applies only to ‘plans and programmes’. An English expert who participated to the focus group discussions with practitioners from EU-15 Member States explained that there has been a debate on whether SEA should be applied to these national planning policy frameworks. A practitioner from Slovenia, in the EU-13 Member States focus group, confirmed the notion that sectoral authorities often try to avoid having to carry out SEA, and stated that they do not have internal capacities or sufficient experience to carry out an SEA. In Scotland, on the other hand, the scope of the SEA Directive was extended in the national legislation to cover policies as well as plans and programmes.

In the transport sector, this issue has been somewhat resolved for Member States that rely heavily on ESI Funds for financial support, mainly the new Member States. As discussed in the previous section on ESI Funds, an ex ante conditionality requires Member States to have a strategic transport plan that complies with legal requirements for SEA, if it is to access financing for transport sector projects\textsuperscript{119}.

**SEA and the energy and transport sectors in practice**

Despite the ambiguity, the evidence pointed to a number of practical examples showing the benefits of carrying out SEA in the energy and transport sectors, as well as the drawbacks of failing to do so.

The benefit of applying the SEA to energy policies was highlighted by the French Member State expert during focus group discussion with regulators/independent bodies. The expert stated that sectoral policies have become more coherent with the environment; particularly relevant for the energy sector where, for example, the potential negative environmental effects of using wood and other biomass for energy production are now considered more carefully.

A positive example of how the SEA can be used effectively in national grid planning is demonstrated by a case study from Portugal (Partidario et al., 2010):

\textsuperscript{117} European Commission, INEA, Connecting Europe Facility, available at: https://ec.europa.eu/inea/en/connecting-europe-facility


\textsuperscript{119} CPR Annex XI, Part I, Thematic Objective 7.
Box 21 SEA of national transmission grid (NTG) investment plan in Portugal

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<th>SEA of national transmission grid (NTG) investment plan in Portugal</th>
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<td>The Portuguese TSO, Rede Electrica Nacional (REN), carried out an SEA for the 2009-2019 National Electric Transmission Grid Investment and Development Plan (NTG Plan) during 2007-2008. This SEA followed an integrated procedure with the technical planning process, and demonstrated the time-saving and overall quality benefits that effective SEAs of grid plans can have on the projects that are eventually developed to implement the grid. The SEA of the NTG Plan enabled the consideration of different strategic investment options and eventual adoption of a solution that represented the best option from both environmental and development perspectives. This option avoided environmentally sensitive and highly populated areas as much as possible, resulting in significant potential reduction of the time required to plan and approve subsequent investment projects.</td>
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According to a focus group discussion with practitioners from EU-13 Member States, there have recently been greater synergies between the Cohesion Policy OPs for the transport sector and the SEA, as the assessment is now done in a more systematic way.

On the other hand, a recent example from Spain shows that a lack of SEA at the strategic planning stage was a contributing factor to the difficulties experienced further along at the project level. A group of Spanish NGOs stated in its reply to the evidence gathering questionnaire for the Fitness Check of the Nature Directives that authorities argued that impacts on environment and Natura 2000 in the transport sectors should be considered for each specific project rather than at the strategic level120. As an outcome of this, the planned highway project between the cities of Toledo and Ciudad Real was eventually cancelled due to the fact that it was planned to cross a Natura 2000 site (Montes de Toledo), despite the proposal of an alternative route not affecting the protected area121.

5.4.5 Key findings

In general, there is consistency and coherence between the SEA Directive and other EU environmental legislation (specifically the EIA, the Habitats Directive and the WFD), due mainly to requirements found in the legislation, guidance to coordinate the instruments, and differences in scope. However, in practice, Member States point to a risk of duplication or inconsistency, as, inevitably, there is a need for interpretation in implementation. The key findings are thus outlined below.

- The scope of the SEA Directive can be considered distinct when compared to other environmental legislation. Unlike the Habitats Directive and the WFD, it focuses on general environmental concerns, and unlike the EIA on projects, the SEA only applies to plans and programmes. Therefore, according to the legislation, there are no overlaps in their scope, other than the potential for ambiguity in what constitutes a plan/programme or a project.

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121 WWF Spain, Anulada la Autovía Toledo-Ciudad Real por su grave afección a la naturaleza de Montes de Toledo , March 2015, available at: http://www.wwf.es/noticias/sala_de_prensa/?33620/Anulada-la-Autovia-Toledo-Ciudad-Real-por-su-grave-afeccion-a-la-naturaleza-de-Montes-de-Toledo.
• There are considerable opportunities for synergy across the instruments, especially in terms of sharing information, identifying potential issues early on in the decision-making process, and public participation. Such practices result in higher quality assessments, and more efficient and effective use of resources.

• In practice, however, the scopes of the assessments may not be as distinct as the Directives claim. This could be due to a detailed local plan (and the SEA) issuing results closer to an EIA, or the SEA becoming bogged down with information better suited for another type of assessment.

• Practitioner experience also plays a role in the coherence of SEA with other environmental legal instruments, especially when it comes to scoping. A well scoped approach will clearly distinguish what falls under each procedure; however, many practitioners do not have the experience or resources to do this effectively.

• While the Directives do provide for joint procedures, and in theory these should be possible, in practice the timeframe for each assessment may not be so linear. As a result, assessments often do not take place at the same time, reducing the potential for joint procedures.

• While there are arguments that further coherence between the two Directives should be driven by change at the EU level, others sources indicated that this can take place through better implementation.

• Even some of those in favour of EU level change agree with those advocating the second approach, arguing that more time is needed before changes are made to the legislation.

When it comes to key EU policies, including Cohesion Policy, Rural Development Policy, the Common Fisheries Policy and the energy and transport sectors, the situation is more complex. These policies and related funding instruments are not dedicated to environmental objectives, although all have high-level sustainability objectives and some have environmental components. For example, objectives of ESI Funds should be pursued in line with the principles of sustainable development aiming at preserving, protecting and improving the quality of the environment (Article 11 and Article 191(1) Treaty on the Functioning of the European Union). This is coherent with the aim of the SEA Directive to enable the incorporation of environmental considerations into plans or programmes with a view to promote sustainable development. However, in practice the situation is more complex, as illustrated by the following key findings.

• Over time, EU regulations governing the funds have progressively strengthened the links with the SEA Directive. The Directive was first applicable to funding programmes under the Cohesion, Rural Development and Fisheries policies for the 2007-2013 period. During that period, it was recommended that SEA be carried out in coordination with the broad ex ante evaluation required for the funding programmes, according to the procedures commonly used for SEA by the Member States. This was tightened for the 2014 – 2020 period, when the CPR governing all funds under the three policy areas required SEA to be carried out as part of the ex ante evaluation.

• The 2014-2020 period also saw the introduction of ex ante conditionalities related to SEA. These broadly required Member States to have the necessary capacities in place to comply with the SEA Directive in order to receive funding. For the transport sector, a specific thematic ex ante conditionality requires that Member State transport plans be in place and be compliant with the SEA Directive.

122 Article 8 of the CPR.
According to responses to the Commission’s questionnaire, almost one-third of Member States reported that they did not experience any problems in carrying out SEAs for ESI Funds programmes. For others, some of the most common issues identified were:

- The general nature of ESI Funds programmes makes an effective SEA difficult or even redundant.
- Timeframes imposed by the Commission.
- Ambiguity as to what is required from the practitioner.

At the highest levels, EU energy and transport policies aim at achieving sustainability within these sectors, and key regulations governing the development of infrastructure (TEN-E and TEN-T) reflect the need to comply with environmental assessment legislation.

- The TEN-E Regulation requires Member States to take measures to 'streamline' all environmental assessment procedures stemming from EU legislation, with the aim of improving efficiency and reducing the time required. Guidance issued by the European Commission strongly recommends the application of SEA to strategic-level energy plans, but this is not always done in practice.
- There is some evidence of sectoral plans and programmes in the energy and transport sectors being classified as 'policies', and therefore falling outside the scope of the SEA Directive.
- Evidence also showed that there is some ambiguity regarding the extent to which certain sectoral programmes should undergo an SEA, particularly in the energy sector for overall strategic energy programmes and individual grid plans.
- Despite this, the evidence pointed to a number of practical examples showing the benefits of carrying out SEA in the energy and transport sectors. A key benefit identified was the review of alternatives at the strategic level, particularly with regard to siting issues and Natura 2000 sites.

5.5 EU added value

This section assesses the European added value of the SEA Directive, i.e. the additional value resulting from EU-level legislation compared to what would have been achieved by Member States acting in isolation. EU added value is assessed from two complementary perspectives: firstly, in terms of the Directive’s role in support of the EU internal market; and secondly, in terms of positive effects beyond those that would have resulted from action taken at regional and/or national level, e.g. coordination gains, legal certainty, greater effectiveness, complementarities, etc.123.

5.5.1 Interpretation and approach

European added value is directly linked to two other evaluation criteria assessed in the present study: the effectiveness of the legislation in achieving the required objectives and the efficiency of SEAs in assessing and addressing environmental impacts of plans and programmes. As stated in the Commission’s Better Regulation Guidelines, assessing

European added value can help to determine the performance of the EU intervention (in this case, the SEA Directive) and draw conclusions on whether the intervention continues to be justified, e.g. by better understanding the likely consequences of repealing the Directive.

The concept of EU added value is widely understood to have both an economic and a political dimension. The economic dimension refers to the delivery of European public goods through a collective EU-wide approach. In the context of this study, relevant public goods include environmental protection and the preservation of natural capital, but also include other spill-over or catalytic effects, such as the expansion of the knowledge base and the promotion of third-party compliance. The political dimension of European added value can, in turn, be defined as the promotion of actions that support the delivery of high level political priorities (Medarova-Bergstrom et al, 2012), e.g. objectives and priorities enshrined in the Treaty and in EU policies and strategies, such as Europe 2020 and the 7th Environmental Action Programme. In both cases, European added value is also linked to the subsidiarity assessment, i.e. the EU should only act when the objectives can be more successfully achieved by its action rather than by potentially variable actions by Member States124.

To capture the different dimensions of European added value in the context of this study, as well as the incidence of its driving factors, the analysis is structured around two evaluation questions:

**Evaluation question 9: To what extent does the SEA Directive support the EU internal market and creation of a level playing field for economic operators?**

**Evaluation question 10: What has been the EU added value and what would be the likely situation in the case of there having been no EU SEA legislation?**

In terms of measurement, the European added value amounts to the difference between what has occurred as a result of EU interventions and what would have occurred without them, i.e. the counterfactual. In principle, the concept considers both positive and negative difference insofar as these can be identified. Given the methodological difficulties relating to the development of a counterfactual scenario on a quantitative level (see section 5.2 on efficiency for a detailed explanation), the analysis of EU added value here will be qualitative only.

### 5.5.2 Main sources of evidence

The assessment of the EU added value of the SEA Directive is based on the following evidence:

- Literature review.
- Consultation with SEA experts during focus group discussions.

EU added value was not explicitly addressed in the Commission’s questionnaire issued to Member States. However, views from some Member States have been captured via focus group discussions.

Findings from the literature review informed an understanding of the situation prior to the adoption of the SEA Directive, and the issues and challenges that warranted action at EU level. In addition, some of the studies consulted provided relevant insights into the actual European added value of the Directive (Therivel, 2004; Knopp & Albrecht, 2005; Meuleman, 2011).

Focus group discussions proved useful, in that they yielded a range of different perspectives and examples on the need for EU level action. Little evidence was obtained during the discussions, however, as to the contribution of the SEA Directive to the EU internal market or the creation of a level playing field.

5.5.3 Analysis of the questions according to available evidence

SEA support to the EU internal market and creation of a level playing field for economic operators

Evaluation question 9 addresses two separate yet interrelated issues: implications for both the internal market and for a level playing field for economic operators. Although the evidence base for answering either sub-question is limited, an attempt is made here to draw tentative conclusions.

Contribution to the internal market

The SEA Directive may have affected the completion of the internal market by rendering certain necessary investments and actions more difficult. This could be the case in key network sectors such as energy and transport, if SEA procedures cause delays in the approval of the plans and programmes required to underpin infrastructure development. Most research and analysis on this topic, in fact, suggests the opposite, finding that it is precisely the integration of long-term thinking and public acceptance brought about through SEA procedures that provides for more robust development of these key internal market sectors. The Directive also requires transboundary consultation, which directly supports the development of EU network infrastructure. Indeed, several existing studies confirm the contribution of SEA to robust trans-EU network planning125.

Creation of a level playing field for economic operators

Another aspect that needs to be addressed in the context of European added value has to do with the impact of the SEA Directive on a level playing field for economic operators.

It could be argued that the Directive has contributed to the creation of a level playing field by ensuring reasonably similar economic conditions across the EU for those affected by SEA provisions, e.g. by standardising environmental assessment procedures across Member States and providing more certainty to economic operators (such as infrastructure developers) on the type and nature of the projects that will be approved. It seems likely that a common framework for SEAs, ensuring consistency in screening criteria, scoping requirements, the sectors for which it is mandatory, etc., would result in public plans and programmes that have broadly equivalent environmental components. Considering that environment-related legal requirements are broadly consistent across Member States (EU environmental acquis), such a common framework could contribute to setting environmental requirements for economic operators at a comparable level across the whole EU.

The opposite view would hold that if SEA provisions and practice (e.g. level of compliance with the Directive) are more strict or cumbersome in one Member State versus another, this may distort the level playing field for economic operators.

The caveat exists, however, that the connection between SEA and economic operators is indirect, as SEA is carried out for public plans and programmes, presenting a direct burden mainly on administrations. This is likely to be one of the reasons why the evidence base for assessing the implications of the Directive for a level playing field seems to be rather limited.

Although few relevant studies were identified as part of the desk research for this study, the research by Therivel (2004) is particularly interesting. The author claims that national regulations mandating SEAs for plans in programmes in Member States prior to the Directive, while allowing for the framework for SEA to be context-specific in each Member State, were generally too weak to provide the level of environmental protection desired by the European Commission. She adds that this advantage of flexibility and context-specificity ‘did not encourage the “level playing field” – establishment of reasonably similar economic conditions throughout Europe – that is a hallmark of European economic policy’.

Despite transposition of the SEA Directive by all Member States, concerns remain about the full attainment of the ‘level playing field’ objective, at least in the shale gas industry, particularly with regard to the rules for hydraulic fracturing. Environmental legislation across the EU is always open to a certain degree of interpretation and Member States have responded in different ways to the development of high volume hydraulic fracturing techniques (known as fracking) in different ways. While some cautiously undertake preliminary studies on the environmental, health and safety impacts, others have imposed bans or moratoria on fracking. The SEA Directive is one such piece of legislation with a degree of flexibility, and it appears that some Member States have issued licences for shale gas exploration – a first step towards extraction – without any SEA being carried out\(^\text{126}\).

\(^\text{126}\) European Commission, 2014, Communication from the Commission to the EP, the Council, the EESC and the CoR on the exploration and production of hydrocarbons (such as shale gas) using high volume hydraulic fracturing in the EU), COM(2014) 023 final.
European added value was not specifically addressed in the Commission’s questionnaire sent to Member States. Few responses to questions of added value were gathered during focus group discussions, as a number of experts argued that the link between SEA Directive and the level playing field was tenuous and difficult to assess. Those experts who did express an opinion were generally positive, highlighting the contribution of the Directive towards the creation of minimum standards and legal certainty in terms of the types of projects likely to be given consent later. It was, however, noted that this contribution is contingent on good coordination between the national authorities responsible for the implementation of the Directive.

**EU added value and the likely situation without the SEA Directive**

As discussed in the introduction, assessing EU added value consists of evaluating the net benefits resulting from the implementation of the SEA Directive that are additional to those that would have resulted from action taken at regional and/or national level. This determination requires an assessment of the changes that have taken place since the Directive was implemented, in order to establish the part of these changes for which the Directive is responsible (changes are affected by a wide range of other economic, social, environmental trends and pressures, as well as a variety of policy drivers). This assessment is challenging in light of the difficulties in quantifying and comparing costs and benefits, in addition to the lack of counterfactual evidence (see ‘Efficiency’ criterion). Several experts, during focus group discussions, emphasised the degree of uncertainty about what would have happened in the absence of the Directive.

This section first considers the situation prior to the adoption of the SEA Directive, before drawing conclusions on the added value of having implemented legislation at EU level to assess and address the environmental impacts of plans and programmes.

**Situation before the SEA Directive**

Several policy documents were produced ahead of the introduction of the SEA Directive that highlighted the issues in the way in which environmental impacts were assessed and addressed in the EU. A common Position adopted by the Council in 1996 with a view to the adoption of the Directive, underscored the need for ‘a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision-making’ and concluded that action was required at Community level ‘to lay down a minimum environmental assessment framework, which would set out the broad principles of the environmental assessment system’ in order to bring about ‘more sustainable and effective solutions’127.

This Council Position echoed the assessment that had previously been presented by the Commission in its 1996 Proposal for a Council Directive on the assessment of the effects of certain plans and programmes on the environment128. This Proposal identified two main deficiencies in the systems at that time for assessing and addressing

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environmental impacts. Firstly, it claimed that, although Member States had put in place certain provisions for assessing the likely environmental consequences of implementing plans and programmes adopted for development consent purposes, the coverage of such plans and programmes was not complete. Secondly, it highlighted that even where some form of environmental assessment system was in place, this did not always comply with the basic requirements for such a system, e.g. the information supplied for the assessment did not always cover all of the significant environmental impacts, nor was there any formal requirement to consult the public. The Proposal thus concluded that the lack of an effective and comprehensive environmental assessment system at the plan and programme level of assessment affected all Member States and led to ‘a general failure within the Community to integrate fully and completely environmental considerations into the development consent decision-making process’. It also highlighted ‘a particular Community problem when the implementation of a plan or programme in one Member State will have a significant effect on the environment of another Member State’, as well as describing the need for ‘proper transboundary consultations’ to address this issue.

In addition to the overall deficiencies discussed above, there were considerable differences between Member States with respect to the stage of development of their environmental assessment systems for plans and programmes. A briefing document by the European Environment Agency (2001) found that a number of Member States had a legislative framework requiring systematic SEAs of plans and programmes, at least in the area of transport. Denmark, Finland, Sweden and the Netherlands are generally recognised as having had the most extensive experience in applying SEA to public plans and programmes prior to the Directive entering into force (European Environment Agency, 2001). Fischer (2007) adds the UK and Germany to that list, estimating that 17 of the 25 Member States had seen at least one SEA conducted on their territory before the Directive came into force, either under a pre-existing national framework for SEA or in preparation for the Directive. Those eight countries that had not had an SEA were fairly well balanced between new Member States following the 2004 enlargement (Cyprus, Latvia and Malta) and the EU-15 (Greece, Ireland, Italy Luxembourg and Portugal) (Fischer, 2007).

**European added value**

Overall, based on desk research findings, it appears that a number of Member States were considering the environment when assessing plans and programmes before the SEA Directive came into force, or even, in some, before negotiations on the Directive had started. However, even in those Member States that had a well-established practice of undertaking SEAs for plans and programmes, the Directive can be considered to have had a significant impact on improving their quality, relevance and operational effectiveness, by – among others – introducing or strengthening the requirements for public participation in the SEA process, for the analysis of reasonable alternatives (Knopp & Albrecht, 2005) and for the participation of environmental authorities and their cooperation with sectors such as planning, transport and the health authorities (Meuleman, 2011).

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Despite the absence of a robust counterfactual, the outcome of focus group discussions suggests that these improvements would have been unlikely to take place to the same extent had the Directive not come into existence. Although international legal instruments exist with regard to SEA and EIA in a transboundary context (UNECE’s Espoo Convention and Protocol on Strategic Environmental Assessment, respectively[^130]), their weaker obligations, in addition to the lack of enforcement mechanisms, suggest that compliance would be uncertain. For the same reasons, repealing the Directive is likely to have negative consequences.

One of the Member States’ experts stated that, ‘had there been no EU-level legislation in this area, everything would probably still be organised sector by sector, with things being done just like they were decades ago’. This situation would probably lead to a failure to assess and address certain types of impacts, such as cumulative impacts. In addition, it would likely undermine the consistency of assessments. The same expert highlighted the decisive role of the SEA Directive in promoting coordination across different levels of government, as well as in creating communities of practice across Member States. Other experts also highlighted other dimensions of what they see as the Directive’s EU added value:

- **Adoption of a more holistic approach** (‘without the SEA Directive, the process would be more piecemeal’).  
- **Increased awareness of the impact of plans and programmes on other Member States** (‘without the SEA we would not think beyond our own borders’).  
- **Broader and more consistent coverage** (‘SEA could have been applied only to national plans and not local plans’), including the provision of a consistent platform for accountability of plan/programme proponents and decision-making authorities on environmental matters, and the achievement of greater transparency thanks to minimum requirements for publication and consultation.

It can be concluded that the SEA Directive, overall, has been a source of European added value insofar as it has introduced a consistent framework for strategic-level environmental assessment of public plans and programmes where no such consideration was previously guaranteed. The Directive has fostered the transition from a segmented perspective to a more holistic approach to the assessment of environmental impacts. In the same vein, it can be argued that EU action in this area has played an important role by contributing to the adoption of policies and measures in Member States where it would otherwise have been politically difficult to do so.

In addition, it has promoted the use of a common approach to carrying out SEA procedures in the EU, enabling both a level playing field across Member States and increased opportunities for exchange of experience and capacity-building and the creation of knowledge bases.

### 5.5.4 Key findings

Despite the limited evidence base and the methodological caveats, it can be concluded that the SEA Directive, overall, has been a source of European added value insofar as it has introduced a strategic-level, environmental assessment procedure for public plans.

and programmes where no such consideration was previously guaranteed. Even in those Member States with a well-established practice of undertaking SEAs prior to the Directive’s adoption, the latter had a significant impact on improving their quality, relevance and operational effectiveness, most notably by fostering the transition from a segmented assessment of environmental impacts to a more holistic approach. Similarly, it can be argued that EU action in this area has played an important role by contributing to the adoption of policies and measures in Member States where it would otherwise have been politically difficult to do so.

The Directive has promoted the use of a common approach to carrying out SEA procedures in the EU, as well as ensuring broader and more consistent coverage, including the provision of a consistent platform for accountability of plan/programme proponents and decision-making authorities on environmental matters and the achievement of greater transparency, due to the minimum requirements introduced for publication and consultation. This has enabled a more level playing field across the Member States, better assessment of cross-border impacts and increased opportunities for exchange of experience, capacity-building and the creation of knowledge bases and communities of practice. There is also anecdotal evidence to suggest a positive impact of the SEA Directive on the EU internal market (e.g. its contribution to more robust trans-EU network planning) and the creation of a level playing field for economic operators resulting from the adoption of minimum standards and the provision of greater legal certainty about the types of project likely to be approved at a later stage. The SEA Directive seems, therefore, to have addressed, at least in part, what the European Commission had termed ‘a particular Community problem’ in the 1990s.

Should the Directive come to be repealed, since the EU (and most of its Member States) are party to the UNECE’s Espoo Convention on Environmental Impact Assessment in a Transboundary Context and to the Protocol on Strategic Environmental Assessment, SEAs would continue to be required in the EU, as provided by these international instruments. However, the obligations imposed on Member States by these international instruments lack enforcement mechanisms, suggesting the likelihood of greater uncertainty with regard to compliance. Such uncertainty would be harmful for both the assessment and addressing of environmental impacts and the creation of a level playing field for economic actors.
6 Conclusions

This section summarises the key findings from the study and presents some overall conclusions. The first section outlines the findings from the implementation report, while the second part covers the key findings and conclusions for each of the five evaluation criteria presented in the Commission’s Better Regulation Guidelines: effectiveness, efficiency, relevance, coherence and EU added value. Finally, a set of priority areas are presented, where improvements in implementation could be considered by the Commission.

6.1 PART I: Summary of findings from the implementation report

6.1.1 Determination of the application of the Directive

The majority of Member States have encountered no problems in determining the scope of application of the SEA Directive. Most reported that their model is based on a combined approach, whereby the list of plans and programmes to be assessed is supplemented by a case-by-case determination of whether an SEA is needed.

Definition of sectoral plans and programmes (Article 3(2))

All Member States have identified plans and programmes for which SEA is mandatory. Around half of the Member States have literally transposed Article 3(2), and most have made only minor adjustments and additions to the type or name of sectoral planning documents, in line with their own national arrangements. Several Member States, to avoid any ambiguity about whether or not they should undergo a mandatory SEA, have defined an exhaustive list of plans and programmes (e.g. including specific types of regional and territorial planning documents or deliberately specifying which national plans and programmes fall under the sectors mentioned in Article 3(2)(b)).

Setting the framework for future development consent of projects (Article 3(2) and 3(4))

In order to establish the plans and programmes for which 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 2011/92/EU. 24 of the 28 Member States have transposed this phrase directly into national legislation, and provide little in the way of interpretation. For these Member States, further information can be found in a range of formats such as additional guidance documents. In addition, the clarification provided by the CJEU in cases C-105/09 and C-110/09 establishes a reliable criterion for interpreting and implementing this phrase.

‘Small areas at local level’ and ‘minor modifications to plans and programmes’ (Article 3(3))
The Member States were asked whether ‘small areas at local level’ and ‘minor modifications to plans and programmes’ are defined in their national legislation. The vast majority of Member States do not define such terms, although definitions may be found in guidance documents, or common definitions may be used. Many Member States have provided guidance at national level, the terms of which tend to be kept broad and are decided on a case-by-case basis, in accordance with the criteria of Annex II.

**Screening models and criteria (Article 3(4) and 3(5))**

Aside from those plans and programmes requiring a mandatory SEA, most Member States use a case-by-case approach, with a screening decision made by the SEA responsible authority (upon consulting the authorities, which by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes) and then publicised. Only a few Member States have a specific list of plans and programmes other than those set out in Article 3(2), which must be subject to screening to determine the likelihood of their having a significant impact on the environment.

21 Member States transposed the significance criteria of Annex II of the Directive literally.

When significant environmental effects are determined on a case-by-case basis, Article 3(6) of the SEA Directive requires consultation with the environmental authorities on the screening decision. Some environmental authorities offer only an opinion on the screening decision, while others take a more active role at the screening stage and may even take the final screening decision based on the information provided by the plan/programme developing authority.

**Main screening issues**

The majority of Member States reported that there were no major problems with the screening process of the SEA Directive. However, two issues were raised by a minority of Member States, the first of a legislative nature, and the second concerning how screening is carried out in practice.

The legislative issue relates to a lack of clarity as to which plans or programmes should undergo a screening procedure (Article 3(3) and 3(4)). When the terms of the Directive are literally transposed without any accompanying guidance or explanatory documents, this could undermine legal certainty if the plan is disputed. The legislation could also lead to screening being carried out on plans or programmes which obviously (or obviously do not) have environmental effects.

In practice, the case-by-case approach depends largely on the available data and the experience of the responsible authorities. Despite being more expensive and unpredictable, no alternatives to case-by-case assessment were proposed.
6.1.2 Scoping – determination of the scope of the Environmental Report (Article 5(1) and 5(4))

Article 5(1) refers to Annex I of the SEA Directive which specifies the information that is to be provided in the Environmental Report. The organisation of the scoping process, however, is entirely at Member States’ discretion with the only obligation that the authorities with specific environmental responsibilities and who are likely to be concerned by the environmental effects of implementing plans and programmes (as established in Article 6(3)) are consulted on the scope of the Environmental Report (Article 5(4)).

As a result, most Member States do not formally define the different elements of the scoping procedures, or define them only partly in legislation. It is the responsibility of the designated authority to decide on the detail of the procedures on an ad hoc basis, depending on the type of plan and programme concerned. Member States apply different methods for scoping, as well as for consultation of the authorities concerned during this stage of the SEA procedure:

- Around one-third require a scoping report by law, while another one-third, while not legally requiring a scoping report, have become accustomed to preparing one. In some cases, scoping requirements depend on the traditions of the authority, or the type of plan in question.
- Content of the report can range from minutes of meetings to stand-alone documents the content of which is prescribed by law.
- The role of the public authorities also varies, with some Member States requiring the Ministry of Environment to give the final approval, while others merely receive comments from them.

The SEA Directive does not require the public to be involved in the scoping process, however, in some Member States the public is involved. Forms of involvement range from informing the public, taking written comments, or holding public consultations.

6.1.3 Baseline reporting (Annex I(b))

Information on the likely evolution of the current state of the environment is necessary in order to understand how the plan or programme could significantly affect the environment in the area concerned.

The Commission’s questionnaire did not cover this issue, however, so information from the Member States was scant.

- Very few Member States have requirements on the description of the current environmental status, and of those that do, several have requirements almost identical to those in Annex I of the SEA Directive. Most Member States do, however, have guidance documents in place to aid baseline reporting.
- Detailed baseline reporting is most often seen on small-scale plans, as information is more readily available and the plans tend to be very location-specific.
- Around one-third of Member States provided no information on difficulties, while five more reported no significant difficulties. Of the remainder, the lack of data was the
The most common issue, along with costs, relevance of data and the level of data to be collected.

How the environmental baseline is used during the SEA process was not directly investigated, nor was it included in the Commission questionnaire. However, some Member States reported that the baseline scenario normally equates to the ‘zero alternative’ when considered as the continuation of the existing plan. Indeed, Belgium, Romania and the Netherlands all considered the zero alternative as the baseline from which to assess other alternatives.

6.1.4 Environmental Report (Article 5 and Annex I)

The Environmental Report is the cornerstone of the SEA, as it is an essential tool to integrate environmental considerations into the preparation and adoption of the plans and programmes. The SEA Directive does not specify whether the Environmental Report should be integrated in the plan or programme itself or presented as a separate document, neither does it indicate the responsible authority for preparing the Report.

- Annex I of the SEA Directive provides the minimum content of the Environmental Report, with about half of the Member States reporting that the content of their Environmental Reports goes beyond the requirements of the Directive.
- Additional social and economic factors may be assessed and, in a few cases, assessment of the impacts on human health is specifically requested.
- Other Member States specifically require the results of public consultations to be included in the Environmental Report.
- Almost all Member States follow Annex I with regard to what is included in the non-technical summary.

*Reasonable alternatives (Article 5(1))*

A clear definition of ‘alternatives’ is not proposed in the Directive and no indication is given as to what is meant by ‘reasonable’. Nor do Member States explicitly define the phrase, although some allude to a definition. Other Member States offer further explanation in their guidance documents. There are several recurring themes when examining ‘reasonable alternatives’, including ‘provide an alternative way to achieve the same goal of the plan’ or ‘take into account geographical, physical, social, and economic conditions’.

There is no standardised approach to the types of alternatives assessed, as they normally depend on factors such as the scope of the plan, the geographical area impacted by the plan, and the socio-economic needs of an area. The selection of reasonable alternatives is therefore left to a case-by-case assessment and decision.

Many Member States usually include three alternatives for each SEA, with the ‘zero alternative’ always considered in the majority of the Member States. Several views exist with respect to the zero alternative – whether it means no development at all, or whether development is to continue as it has been.
Other alternatives most often assessed are location alternatives, qualitative and quantitative alternatives, or technical alternatives.

Alternatives can be difficult to determine if the plan or programme is too general, or if it is too early in the plan-making process. Conversely, sometimes alternatives are developed too late in the plan-making process, when it is difficult to bring about substantial change to the plan.

Assessment of impacts

The method used for the assessment of impacts is usually decided on a case-by-case basis. Information about the current environmental situation is normally used as a starting point when assessing the impacts.

Many Member States were able to identify their frequently used assessment methods. Qualitative methods were mentioned most often, given that quantitative analysis is more difficult. Guidelines to assist practitioners to decide on the assessment method are available in many Member States, whether it be specific to a sector or an administration level, or more general guidance.

Challenges identified during the preparation of the Environmental Report

Member States reported a variety of challenges in preparing the Environmental Report of a good quality, both in terms of content and process. Some Member States/authorities reported no issues regarding the Environmental Report, while others most frequently raised the issues of:

- Availability and quality of data.
- Expertise of practitioners and authorities.
- Time (both spent and allowed). Assessment of alternatives.
- Consultations (public and with other authorities).
- Establishment of adequate monitoring indicators.
- Clarity on applicability of legislation.

6.1.5 Consultation with the concerned authorities and public participation

Although not specifically asked in the Commission’s questionnaire, the vast majority of the Member States did not raise any significant problems regarding the way public participation is carried out and how it influences the planning process.

Screening information available to the public

All Member States reported making the decision about whether or not to undertake an SEA available to the public. This is normally done on an internet website, which could be the website of the plan/programme developing authority, or the website of the principal environmental authority, particularly if this is the authority that takes the final
screening decision. Many Member States also require the screening decision to be published in one or more newspapers, especially if the decision concerns a local plan. The screening decision can also be made public via other more formal channels, like the official journal/Gazette, or directly on a hard copy on the notice board at the premises of the responsible authority.

**Consultation with the public on the scope of the Environmental Report**

The SEA Directive does not require the public to be involved in the scoping process for the Environmental Report. In some Member States, however, the public is involved, through receiving information, having the opportunity make written comments, or participating in consultations.

**Consultation with the concerned authorities on the Environmental Report**

According to Article 6(3) of the SEA Directive, Member States must designate the authorities to be consulted, which, by reason of their specific environmental responsibilities, are likely to be affected by the plan or programme in question. The Directive requires consultations with authorities on the Environmental Report (Article 6(2)). The CJEU in its Judgment on Case C-474/10 provides clarifications on whether the environmental authorities that also act as the plan/programme developing authorities should be designated and consulted for the purposes of Article 6.

Generally, the starting point is the time when the SEA responsible authority makes the Environmental Report and the draft plan or programme publicly available. However, there may be some cases where the consultation between the responsible authority and the environmental authority starts before the official submission of the Environmental Report. This consultation takes place either through participation at meetings or committees (voluntary), through ad hoc communication (emails), informal meetings or formal letters. In some Member States the competent environmental authority plays the role of intermediary between the plan/programme developing authority and all other concerned authorities to be consulted. In addition, it checks the Environmental Report for completeness and quality before forwarding it to the other authorities for consultation.

**Public consultation on the Environmental Report**

In all Member States, the Environmental Report is made available to the public at the same time as the draft plan or programme, giving the public sufficient time to express opinions and contribute to the development of the Environmental Report before the formal adoption of the plan or programme. There are, however, some exceptions in some Member States depending on the type of plan and programme in question. In these cases, the Environmental Report may be made public earlier, or later, when the draft plan/programme has been finalised.

In several Member States, the consultation requirements or practices extend beyond the Directive to include the organisation of a consultation meeting or public hearing.

**Information about the final decision**
A general trend has been to inform the public when the plan/programme is adopted, via the Official Journal/Gazette and at the premises of the responsible authority, although the use of a website is becoming more and more common among all Member States. Adopted regional/local plans are also usually announced on local newspaper/websites for municipalities (depending on the geographical coverage), as well as on the notice board of the concerned municipalities.

**Transboundary consultation**

All but two Member States reported that transboundary SEA consultations have taken place, as the affected party, or party of origin, or both. Only a minority of Member States indicated the existence of bilateral agreements to organise and facilitate communication between parties.

In the majority of Member States, the responsible authority for transboundary consultation is the Ministry of Environment, or a special department within the Ministry.

Member States raised several potential hindrances to transboundary consultation, including translations of documents (which are often poor or overly general) and the short timeframe allowed for consultation.

### 6.1.6 Monitoring

Monitoring is an important element of the Directive since it allows for the results of the environmental assessment to be compared with the environmental effects which in fact occur. Many Member States were unable to comment on the frequency of monitoring. Several noted that it depended on the type of plan, or that monitoring reports are submitted ‘regularly’ for certain plans. Monitoring can be done using standard monitoring indicators (which may or may not be set in legislation) or defined on a case-by-case basis. Monitoring may also be done at a sub-national level. The following practices are observed in the Member States:

- Several Member States have environmental monitoring systems in place, which are laid out in national legislation and used during the implementation of the plan and programme in compliance with Article 10 of the SEA Directive.
- The EU also requires environmental monitoring for several other Directives, including the Water Framework Directive, the Habitats Directive and the Ambient Air Quality Directive, among others. Several Member States have, therefore, based their monitoring mechanisms on the requirements set out in these Directives.
- In some cases, plans set out indicators which could be used for monitoring. In other cases, standards may be set out in guidance. Just under half of the Member States establish monitoring indicators on a case-by-case basis, unless they fall under another EU Directive. Some Member States use a combination of established standards and those decided case-by-case.
- Most Member States have mechanisms in place to guide practitioners on monitoring.
6.1.7 Following the completion of the SEA procedure

After the SEA procedure is completed, the results must be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure (as required by Article 8). Article 9(1)(b) also requires a statement summarizing how environmental considerations have been integrated into the plan or programme and how the results of the SEA have been taken into account. Together these Articles reflect the ultimate goal of the Directive to ensure integration of environmental considerations in the planning process.

To implement these articles, in most Member States, the environmental authority takes some form of binding or non-binding decision which must be respected in the finalisation of the plan or programme and, if deviation occurs, some justification must be provided. At least 11 Member States indicated that the decision taken by the environmental authority is binding. These decisions may either refer to the approval of the Environmental Report, or may dictate how the results of the public consultation and the Environmental Report are to be taken into consideration during the final decision on the plan or programme.

The extent to which the results of the SEA are taken into account in the final decision on the plan or programme appears to vary. While no specific investigation was carried out on this process, nor the issue was covered by the Commission’s questionnaire, some of the Member States’ experts consulted noted that this may often depend not only on the existence of a binding decision by the environmental authority, but often on the individuals involved in the decision-making process, and how committed they are to the objectives of the SEA Directive.

6.2 Part II: Summary of findings from the evaluation

6.2.1 Effectiveness

Assessing effectiveness amounts to determining the extent to which implementation of the SEA Directive has resulted in progress towards its stated objectives. The assessment of effectiveness establishes certain changes or effects that have taken place since the legislation was adopted, and attempts to determine the extent to which these observed effects correspond to the objectives of the legislation.

As set out in Article 1 of the SEA Directive, its overall objective is to:

provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with the Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

Overall, available evidence suggests a positive trend in the progress made in the implementation of the SEA Directive. However, evaluating the effectiveness of the Directive is complicated, as its success depends on the context (administrative, legal
and cultural) in which it is applied. Evidence gathered also showed that SEA effectiveness can vary considerably across different levels of administration within individual Member States, as well as between the type of plans and programmes under scrutiny.

The effectiveness in the implementation of the Directive can be considered to be a function of the ability of SEAs to influence both the planning process and the final content of the plan/programme. All Member States and stakeholders consulted acknowledged that SEA has influenced the planning process, at least to some degree, and that there have been improvements in the way SEA is conducted that have led to a higher quality of plans and programmes. In particular, it was recognised that the environment has received greater consideration at earlier stages of the planning processes. However, views differ with regard to the actual changes in procedures or the content of plans and programmes that have been brought about by SEA. These often depend very much on the type of plan and programme in question. The consideration of alternatives and the inclusion of mitigation and monitoring measures were the changes most frequently mentioned. A few Member States also highlighted changes directly related to the decision-making process (i.e. a more transparent, systematic and structured planning procedure, greater cooperation and communication between key authorities and greater attention to public participation and consultation practices).

SEA was found to be more likely to have an influence on land use planning documents than in sectoral or national-level planning documents, where political pressure is higher and strategic decisions are often taken in advance with little margin for alteration. The extent to which the results of the SEA are accounted for in the final decision on the plan or programme often depends on the attitude of the individuals involved in the decision-making process, with some very engaged and willing to take recommendations on board, and others viewing SEA as simply a procedural box-ticking requirement.

A number of key factors have been identified here as determinants for the effectiveness in the implementation of the SEA Directive. These chiefly have to do with timing and coordination with the planning process, as well as with the use of a focused and targeted approach. Stakeholder involvement also appears to be of paramount importance.

Choosing the appropriate timing for the SEA procedure is recognised as one of the most challenging issues related to SEA, as the right balance has to be found between the time where sufficient information is already available to make the assessment meaningful, but while sufficient scope remains to influence the drafting of the plan or programme and suggest meaningful alternatives. This usually involves starting the SEA procedure earlier, at or close to the start of the planning process, which is becoming an increasingly common practice in many Member States. The starting time of the SEA procedure, and whether it is run in parallel with the planning process, depends on the type of plan and programme concerned as well as the degree of ownership and awareness of the procedure by the plan/programme developing authority. SEA seems to be more easily integrated in the planning process for land use planning, proving more difficult for complex sectoral, national plans and programmes, which involve more actors and interests and which require more time to agree on a draft outline of the plan, thereby allowing SEA to start. In addition, some Member States fail to adequately exploit the advantages of integration into the planning process, carrying out the procedure in a more ‘bureaucratic’ or perfunctory fashion, aimed more at achieving
compliance with SEA legislation than genuine improvement of the content of the plan or programme.

Although the majority of the Member States recognised that consideration of alternatives and their influence on the final content of plans and programmes has improved, evidence showed that there are still many problems in the way alternatives are identified and assessed. Evidence indicated that the goal of the SEA is often more focused on mitigating negative impacts than on improving the plan or programme by enhancing positive impacts to fully support sustainable development. The assessment of strategic alternatives (focused on striving for more positive environmental impact) is not yet common practice in many Member States, who limit SEA to the assessment of locational and technical alternatives (focusing on avoiding negative effects). This may be due to the use of SEA to justifying a pre-existing decision in favour of a certain alternative.

Some progress has been made on the methods used for public consultation, with Member States placing greater attention on this aspect of the process. Member States and stakeholders agreed that SEA provides opportunities for early engagement of the public. There are mixed opinions, however, on the added value of public consultation at different stages of the SEA procedure. For example, it has been reported that it is very difficult to engage the public when consultations are carried out at the end of the process and there is only limited room for influencing strategic choices. Consultation practices also depend on the type of plan or programme and the scale of its application. The added value of public consultation is most obvious in more specific plans at the local level (e.g. for land use planning). If the plan is more abstract, it is often difficult to get any response from individual citizens and it is mainly organised bodies (e.g. NGOs and other interest groups) who participate. This is compounded by a general lack of understanding on the part of the public about the purpose of participation and how the outcomes will influence the plan, as well as their capacity to participate actively. The fact that the outcomes of an SEA - including the Environmental Report - are usually of a very technical nature, can also create difficulties. To address these obstacles, some Member States have extended the use of consultations to cover the initial scoping of an SEA. Others, however, argue that at the scoping phase the content is still in development and is not detailed enough for either the public or authorities to provide meaningful input. In terms of how consultations are carried out, the majority of the Member States strictly adhere to the Directive’s public consultation minimum requirements. Some Member States, however, go beyond these minimum requirements by organising meetings or public hearings to consult the public and share and disseminate information in an effective and targeted manner.

Most SEA practitioners consulted for this study agreed that Environmental Reports are often overly comprehensive and insufficiently tailored to the assessment needs, thereby undermining the effectiveness of the SEA itself. They attribute this weakness to poorly implemented scoping procedures and a tendency on the part of the authorities to follow the requirements of Annex I very conservatively, including all environmental aspects in the assessment rather than risk being accused of omitting something at a later stage (and face legal challenges).

Effectiveness is also dependent on the resources and skills available to the authorities and the practitioners to carry out SEA. Evidence has shown that better communication and collaborative approaches across authorities (the plan/programme developing authorities, the environmental authorities and the practitioners) has improved the
effectiveness of SEA. The promotion of a ‘community of practice’ among practitioners in a few Member States has helped to enhance collaboration practices and consequently facilitated the sharing of information and knowledge amongst practitioners. This, however, remains unexplored by the majority of the Member States. The availability of resources and skills for review and quality assurance has also been shown to enhance the effectiveness of SEAs, although many Member States do not systematically review the Environmental Report before it is made available for public consultation. On a related note, while plan/programme developing authorities and practitioners have become increasingly aware of, and experienced in, SEA-related practices, a number of Member States’ authorities – particularly at the local level - still lack sufficient ownership and understanding of the SEA administrative requirements, or continue to view SEA as an administrative burden, thereby reducing its quality and usefulness.

6.2.2 Efficiency

Efficiency considers the relationship between the resources used by an intervention and the changes – both positive and negative - generated by that intervention. Assessing efficiency is crucial to understand whether the costs associated with the implementation of the SEA Directive justify the benefits generated. Given the practical difficulties associated with a purely, or even mainly, quantitative assessment of efficiency (including a full straightforward comparison between costs and benefits), the study analysis instead focused on understanding the main types of costs which can be meaningfully assessed, as well as their underlying drivers.

In many Member States, SEA tends to be perceived as a cost-effective mechanism for assessing and addressing environmental impacts of plans and programmes, although there was no quantitative evidence provided to back this perception. In addition, there is clear awareness that such cost-effectiveness depends on the type of plan/programme and the manner in which it is carried out: doing so in a timely, adaptive and tailored manner is a pre-condition for cost-effectiveness. This involves considering the specificities of each planning level and planning task, and focusing the assessment on the most significant impacts.

Among the several categories of direct compliance costs outlined in the Commission’s Better Regulation Guidelines, two appear particularly prominent: administrative costs (i.e. costs of meeting the information obligations stemming from the policy option under consideration) and substantive compliance costs (i.e. non-business as usual) of complying with regulation, other than fees and charges or administrative costs. Since compliance with the SEA Directive chiefly involves meeting a range of information obligations associated with the preparation of the SEA report, dissociating administrative costs from substantive compliance costs is a challenging endeavour. Overall, the most significant direct costs are those related to:

- Implementation: the costs incurred by regulated entities familiarising themselves with new or amended regulatory compliance obligations, developing compliance strategies and allocating responsibilities for completing compliance-related tasks (typically short-term, one-off costs).
- Direct labour costs: staff time devoted to completing the activities required to achieve regulatory compliance.
• External consultancy services, which typically involve external assistance in achieving regulatory compliance (e.g. data gathering, preparation of the SEA report, etc.).

The actual weight of each of the abovementioned categories in total SEA-related costs will depend on a range of factors, such as previous knowledge and expertise, available in-house capacity, implementation modalities and the type of plan or programme. The main potential indirect costs relate to procedural delays in the adoption or implementation of plans and programmes subject to SEA.

The bulk of direct SEA-related costs are borne by the plan/programme developing authorities. It is worth noting that asymmetric impacts can be at work, e.g. these costs may be disproportionate for certain small cities and municipalities, thus potentially having a deterring effect on the preparation of SEAs.

The benefits of compliance with the SEA Directive will, in turn, depend on the nature and extent of changes brought about to plans and programmes by such compliance. The main categories of benefits potentially associated with SEA have to do with its capacity to:

• Identify significant adverse effects at an early stage.
• Study sustainable and strategic alternatives.
• Bring about solid decision-making that leads to legal security and fewer judicial procedures; transparency leading to more support and accelerated decision-making (with subsequent time and cost savings); integrated approach; facilitation of follow-up decision-making by anticipating issues that would otherwise be addressed only at the EIA stage.
• Increase public awareness, ownership and acceptance of plans/programmes.
• Help to speed up EIA procedures and streamline their scope (thus reducing their costs both for the public authorities and the developers) by ensuring that project proposals are set within a policy framework that has already been subject to environmental scrutiny.
• Acknowledge and assess cumulative impacts and help to avoid the costs of carrying out EIA procedures for projects that are environmentally harmful.
• For EU-funded programmes, e.g. those under the Cohesion, Rural Development, Fisheries, Energy and Transport policies, but also those financed by certain International Financial Institutions (IFIs), SEA can contribute to prioritising projects that are sustainable from an environmental perspective.

When examining the key determinants of cost-effectiveness, special emphasis should be put on what some of the experts, during focus group discussions, termed the ‘precautionary approach’ to SEA. According to the experts, this approach is fostered by fear of legal challenges or of attracting blame for the withdrawal of the plan or programme, and is compounded by Terms of Reference (ToRs) that are insufficiently specific and/or deficiencies in the scoping phase. It typically results in overly comprehensive (lengthy yet superficial) SEA reports that are not tailored to the analytical needs, that do not prioritise environmental impacts, and that push up SEA-related costs without necessarily generating any of the expected benefits. Other major factors affecting cost-effectiveness include:
• Approach and attitude of those in charge of carrying out the SEA: if it is considered as nothing but a procedural requirement, SEA is likely to be both ineffective and inefficient.
• Ability to timely identify key environmental issues, as this can enhance cost-effectiveness by enabling the adoption of prevention or mitigation measures.
• Timing of SEA and coordination between planning and SEA decision-making processes.
• Scale and level of complexity of the plan or programme (and related uncertainty).
• Technical capacity and resources available to the plan/programme developing authorities/entities in charge of the SEA.
• Data-related issues, e.g. data availability, duplication of data gathering efforts, etc.

Lack of counterfactual evidence or comparable quantitative estimates for SEA-related costs, together with the practical absence of estimates for benefits, mean that the efficiency of the SEA Directive’s implementation cannot be fully assessed at this stage, and that only a partial qualitative assessment can be performed. It may yet be too early to meaningfully assess efficiency, not least because of delays in transposition and the time lags required to account for certain impacts. Further monitoring and coordination efforts are therefore required to gather the necessary elements that would allow a quantitative assessment of efficiency.

6.2.3 Relevance

Assessing the relevance of the SEA Directive is important in understanding the extent to which its objectives are consistent with the needs and problems of the EU. This assessment also considers whether the objectives and requirements of the legislation are still valid, necessary and appropriate.

Although targets and actions have been developed over time, many of the main themes associated with sustainable development at EU level appear to have remained relatively constant since the adoption of the Directive. More recently, in work for the UN sustainable development indicators, social and economic factors appear to have been expanded at an EU level, building on the mostly environmental focus of the sustainable development strategy. Although the prescribed enabling framework developed between the first SDS in 2001 and the renewed SDS in 2006, the policy guiding principles appear to have remained relatively constant over time.

Generally speaking, the evidence suggests that SEA has been successful in helping to incorporate previously neglected environmental concerns within plans and programmes, although some implementation issues exist. As such, on the environmental pillar of sustainable development, the SEA Directive appears to be very relevant. The SEA Directive directly addresses the sustainable development policy guiding principle of integrating environmental concerns within policy, through the assessment of plans and programmes at a strategic level. On social and economic issues, however, the evidence suggests that SEA could do more in terms of incorporating these aspects into its plan and programme assessments. The non-prescriptive nature of the legislation means that there is already scope to apply the legislation in alternative ways, a flexibility which also means that if the concept of sustainable development evolves over time, changes in application can help to align the Directive more closely to EU sustainable development policy. Although some Member States highlighted, during the focus groups, that they already require additional economic and social aspects to be covered and reported on in
their SEAs, this is not widespread across the EU. Given that the Directive has its legal basis in the EU’s competence for environmental policy it is focused on the environment; the need to include the less-developed economic and social aspects would imply expanding the remit of the Directive to encompass all sustainable development priorities.

The focus of the SEA Directive is protection of the environment. While this focus certainly contributes to the environmental ‘pillar’ of sustainable development, there are also many interpretations of sustainable development, so it is arguable whether a more ‘balanced’ approach addressing all three ‘pillars’, as some suggest, would still be capable of delivering a high level of environmental protection, which is seen in the Directive as fundamental to promoting sustainable development. While there are debates as to whether sustainable development can be effectively promoted if only one pillar is supported, others would argue that the environment is the foundation of sustainable development and so the Directive’s focus is entirely appropriate as a balance for otherwise economically driven plans and programmes. The evidence assessed in this study provides no definitive answer to this question, largely because it cannot – the answer depends on the conception of sustainable development adopted by the observer or decision-maker. Nevertheless, with its stated aim to promote sustainable development overall, and specific role in promoting the integration of environment into plans and programmes that are typically driven by socio-economic priorities, the SEA Directive has the potential to continue to support EU sustainable development as the concept evolves in both common understanding and relevant legislation and policy.

6.2.4 Coherence

Assessing the extent to which the SEA Directive is coherent with other relevant EU environmental legislation and sectoral policies is important in determining whether there are significant contradictions or conflicts that stand in the way of effective implementation, or which prevent the achievement of their objectives. It also serves to capture key inconsistencies and identify good implementation practices.

The SEA Directive relates closely to other parts of EU environmental law and policy, notably legislation that contains provisions for additional environmental assessment procedures. There is considerable scope for coordination, to maximise synergies and avoid duplication and inconsistencies. EU environmental legislation of particular relevance to the SEA Directive includes the Environmental Impact Assessment (EIA) of projects Directive 2011/92/EU (EIA), the Habitats Directive 92/43/EEC and the Water Framework Directive 2000/60/EC (WFD).

In general, there is consistency and coherence between the SEA Directive and other EU environmental legislation (specifically the EIA, the Habitats Directive and the WFD), due mainly to requirements found in the legislation, guidance to coordinate the instruments, and the differences in scope. However, in practice, Member States can experience a risk of duplication or inconsistency, as there is inevitably a need for interpretation in implementation. For example, it was found that practitioner experience plays an important role in the coherence of SEA with other environmental legal instruments, especially when it comes to scoping. A well-scoped approach will clearly distinguish what falls under each procedure; however, many practitioners do not have the
experience or resources to do this effectively. The risks of duplication or inconsistency are mitigated by the recent amendments of the EIA Directive introduced by Directive 2014/52/EU. The revised EIA Directive includes specific provisions on how the SEA should be used when preparing the EIA report and when determining the need for an EIA.

When it comes to sectoral policies, including Cohesion Policy, Rural Development Policy, the Common Fisheries Policy and the energy and transport sectors, the situation is more complex and some problems arise in practical implementation. These sectoral policies and related funding instruments are not dedicated to environmental objectives, although all have high-level sustainability objectives and some have specific environmental components. For example, according to Article 8 of the Common Provisions Regulation (CPR), objectives of ESI Funds should be pursued in line with the principles of sustainable development aimed at preserving, protecting and improving the quality of the environment, as set out in Article 11 and Article 191(1) of the Treaty on the Functioning of the European Union (TEFU). This is coherent with the aim of the SEA Directive to enable the incorporation of environmental considerations into plans or programmes with a view to promote sustainable development.

Over time, EU regulations governing funds have progressively strengthened the links with the SEA Directive. The Directive was first applicable to funding programmes under the Cohesion, Rural Development and Fisheries policies for the 2007-2013 period. During that period, it was recommended that SEA be carried out in coordination with the broad ex ante evaluation required for the funding programmes, according to procedures commonly used for SEA by the Member States. This was tightened for the 2014 – 2020 period, when the CPR governing all funds under the three policy areas required SEA to be carried out as part of the ex ante evaluation (Articles 55(3) and 55(4)).

The 2014-2020 period also saw the introduction of ex ante conditionalities related to SEA. These broadly required Member States to have the necessary capacities in place to comply with the SEA Directive in order to receive funding. For the transport sector, a specific thematic ex ante conditionality requires that Member State transport plans be in place and be compliant with the SEA Directive.

In Member States’ replies to the Commission’s questionnaire, almost one-third reported that they did not experience any problems in carrying out SEAs for ESI Funds programmes. For others, some of the most common issues identified were:

- The general nature of ESI Funds programmes makes an effective SEA difficult or even redundant.
- The potential for overlap between the Environmental Report and the ex ante evaluation.
- Timeframes imposed by the Commission.
- Ambiguity as to what is required from the practitioner.

At the highest levels, EU energy and transport policies aim at achieving sustainability within these sectors, and key regulations governing the development of infrastructure (TEN-E and TEN-T) reflect the need to comply with environmental assessment legislation. The TEN-E Regulation requires Member States to take measures to ‘streamline’ all environmental assessment procedures stemming from EU legislation,
with the aim of improving efficiency and reducing the time required to make decisions. Guidance issued by the Commission strongly recommends the application of SEA to strategic-level energy plans, but this is not always done in practice.

There is some evidence of sectoral plans and programmes in the energy and transport sectors being classified as ‘policies’ and therefore falling outside the scope of the SEA Directive. Evidence also showed that there is some ambiguity regarding the extent to which certain sectoral programmes should undergo an SEA, (particularly in the energy sector) with regard to overall strategic energy programmes and individual grid plans. Despite this, the evidence pointed to a number of practical examples of the benefits of carrying out SEA in the energy and transport sectors. A key benefit identified was the review of alternatives at the strategic level, particularly with regard to siting issues and Natura 2000 sites.

6.2.5 EU added value

EU added value refers to the additional net gains resulting from EU-level legislation compared to what would have been achieved by Member States acting in isolation. This assessment of EU added here also considers the Directive’s role in support of the EU internal market via the creation of a level playing field. Assessing the EU added value can help to determine the performance of the SEA Directive and provide conclusions as to whether that intervention continues to be justified.

Although the evidence base is rather limited and methodological caveats apply, it can be concluded that the SEA Directive, overall, has been a source of EU added value, insofar as it has introduced a strategic-level, environmental assessment procedure for public plans and programmes where no such consideration previously existed. Even in those Member States with a well-established practice of undertaking SEAs prior to the Directive’s adoption, the latter can be considered to have had a significant impact on improving their quality, relevance and operational effectiveness, by fostering the transition from a segmented perspective to a more holistic approach to the assessment of environmental impacts. In the same vein, it can be argued that EU action in this area has played an important role by contributing to the adoption of policies and measures in Member States where it would have otherwise been politically difficult to do so.

The Directive has promoted the use of a common approach to carrying out SEA procedures in the EU, as well as broader and more consistent coverage. This includes the provision of a consistent platform for accountability of plan/programme proponents and decision-making authorities on environmental matters, as well as the achievement of greater transparency resulting from minimum requirements for publication and consultation. This has enabled a more level playing field across the Member States, better assessment of cross-border impacts and increased opportunities for exchange of experience, capacity-building and the creation of knowledge bases and communities of practice. Similarly, there is anecdotal evidence to suggest a positive contribution by the SEA Directive to the EU internal market (e.g. to robust trans-EU network planning) and the creation of a level playing field for economic operators, through the adoption of minimum standards and provision of legal certainty on the types of project likely to be approved at a later stage. The SEA Directive, therefore, seems to have addressed, at least in part, what the Commission had considered ‘a particular Community problem’ in the 1990s.
Should the Directive come to be repealed, SEAs would continue in the EU, as provided by UNECE’s Espoo Convention on Environmental Impact Assessment in a Transboundary Context and the Protocol on Strategic Environmental Assessment. However, these instruments lack the strong enforcement mechanisms that come with EU legislation, making greater uncertainty more likely with regard to compliance. Such uncertainty would be harmful in terms of assessing and addressing environmental impacts, but also as far as the creation of a level playing field for economic actors is concerned.

6.3 Part III: Suggestions for improvement

The comprehensive review of opinions, experience, factual reporting and other evidence collected for this study has resulted in an array of findings and conclusions about the performance of the SEA Directive across the EU since its adoption. Based on these, patterns of good (and poor) practice have emerged, centred around a number of areas where improvements in implementation could be considered by the Commission, Member States, plan/programme developing authorities, environmental authorities, practitioners and other stakeholders. While it is beyond the scope of this implementation and evaluation report to provide concrete recommendations for the future, the following section suggests some of the areas where actions towards improving the implementation of the Directive could have significant impacts on results, including - but not limited to - gains in efficiency and reduction of costs and burdens across Member States.

Areas for improving implementation that have been identified are (in no particular order):

**Dedicated, targeted support for smaller-scale SEAs and local authorities:** Lack of coordination, coupled with insufficient resources, capacity and skills to carry out SEA, particularly in the case of small local or municipal public bodies, have been found to hamper the success of SEA, especially when applied to land use plans. This suggests that there is a need to further explore ways to support local authorities in this context, particularly during the screening and scoping phases. Good practices in some Member States, such as the use of centralised bodies and economies of scale for supporting the screening and scoping phases of SEAs (e.g. the option of asking screening/scoping advice from NCEA in the Netherlands) or the promotion of knowledge exchanges and sharing of data and information via national or regional networks (e.g. Scotland SEA Gateway) could have potential for replication in other Member States.

**Tracking compliance costs and benefits and learning from their analysis:** It has become apparent that more time will be required to meaningfully assess the efficiency of SEA in the EU, not least because SEAs are a relatively recent practice and some benefits may only be observed in years to come. At the same time, evidence suggests that experiential learning and operational maturity may contribute to bringing SEA-related costs down. To continue to improve efficiency, it would be useful to monitor the evolution of compliance costs in the future, perhaps through the introduction of a consistent method to be applied across Member States for different types of plans and for distinguishing SEA compliance costs from business-as-usual activities. Another finding of the study is that some authorities still see SEA as a burden or a waste of time, and even actively try to avoid carrying it out (e.g. classifying strategies as policies...
rather than plans or programmes to avoid the SEA requirement). More concrete demonstrations of the value of SEA, particularly in more quantified terms, could have the benefit of convincing reluctant authorities of the value of SEA beyond merely satisfying a legal or procedural requirement.

**Scoping is key to effective and efficient SEAs and its practice may need to be improved:** The truly important elements required for the assessment should be singled out at the scoping stage so as to prevent a disproportionate amount of resources being dedicated to the descriptive part of SEA (baseline development). Effective scoping is also critical for ensuring the appropriate level of information collection and analysis at different stages of assessment, i.e., for building synergies across SEA, EIA and Appropriate Assessment. Further guidance and dissemination of good practice examples would also be important, not only to improve the capacity and skills of practitioners, but to alleviate concerns amongst authorities about the risks of potential legal challenges related to more targeted SEAs. Guidance from the Commission in this regard could also have an important impact, as this has been found to be an important factor in reducing unnecessary costs of implementing the legislation.

**Improve the availability of basic data and information required for SEAs:** Much of the evidence reviewed for this study pointed to the fact that a disproportionate amount of SEA effort (and cost) is devoted to the collection and presentation of baseline data in environmental reports. Making basic environmental information readily available (e.g., at regional level) could help to resolve this issue and improve efficiency. Full implementation of the INSPIRE Directive could also prove beneficial in this respect.

**Continue to develop and employ more innovative approaches to consultation.** Despite significant improvements in SEA-related consultation practices, there is scope for developing innovative approaches, including their use at the earlier stages of the SEA procedure (particularly during scoping), as is already being done in a number of Member States.

**Exploring further options to maximise the contribution of SEA to sustainable development and the SDGs** could be valuable to maintain the relevance of SEA to EU needs. Although the current environmental focus of the SEA Directive contributes to the sustainable development, there seems to be room to consider how SEAs could be better integrated with assessments covering the social and economic aspects of plans and programmes (e.g., ex ante assessment for ESI Funds or sustainability assessments carried out in some Member States).

**Further guidance at EU and Member State levels:** Although guidance documents and platforms for the exchange of experience and good practice already exist in the EU, these activities could be further promoted, with a view to updating guidance documents based on the wealth of implementation experience gained in recent years. In this sense, it would be valuable to encourage Member States to carry out country specific reviews of SEA effectiveness through surveys and consultations with their practitioners and public officials, in order to identify the needs on the ground. In addition to the issues already mentioned, more comprehensive guidance materials could be usefully developed for the following topics:

- Examples of case law, which would provide legal guidance.
- Developing and assessing alternatives.
- Relationship between the SEA Directive and other Directives, and how to mitigate overlaps.
- Developing, evaluating, and maintaining assessment methods (including indicators and monitoring).
- Clarification of the terms not defined in the legislation.
- Clarification of the screening procedure (type of plans and projects subject to mandatory or potential SEAs).
- Clarification of tiering and the relationship between different levels of assessment.
- Examples of best practice.
- Transboundary cooperation.
### Annex I – Evaluation framework

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<tr>
<th>EVALUATION QUESTION</th>
<th>SUBQUESTIONS</th>
<th>JUDGEMENT CRITERIA</th>
<th>INDICATOR</th>
<th>REQUIRED INFORMATION &amp; ANALYSIS</th>
<th>DATA COLLECTION/ ANALYSIS METHOD</th>
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<tbody>
<tr>
<td><strong>Effectiveness</strong></td>
<td>Has SEA influenced the process?</td>
<td>The extent to which SEA has influenced the process of preparation and adoption of plans and programmes across the EU.</td>
<td>Numbers of Member State experts who believe SEA has or has not influenced the process.</td>
<td>Positive and negative responses from Member State experts.</td>
<td>Member State questionnaire – specifically questions 27, 28, 34 and 35.</td>
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<td></td>
<td>How, specifically, have plans and programmes changed (process and content)?</td>
<td>The extent to which SEA has influenced the content of plans and programmes across the EU.</td>
<td>Number and type of concrete cases of SEA influencing planning and ways in which it has happened.</td>
<td>Overall impressions and specific examples from Member State experts.</td>
<td>Interviews to follow up on impressions and gather details on specific examples.</td>
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<td></td>
<td>What factors may have prevented SEA from having an impact on plans and programmes (process and content)?</td>
<td>Whether any obstacles or other negative factors may have prevented SEA from impacting plans and programmes.</td>
<td></td>
<td>Overall impressions and specific examples from practitioners and national experts.</td>
<td>Literature/studies.</td>
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<td>Analysis in academic journals and other studies.</td>
<td>Guidance documents.</td>
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<td>Content analysis, framework matrices, diagramming and SWOT analysis.</td>
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<td>Which main factors (e.g., implementation by Member States, action by stakeholders) have contributed to or stood in the way of achieving the objectives of the SEA Directive?</td>
<td>What are the main EU level factors that have contributed to or stood in the way?</td>
<td>The main EU level factors that have contributed to or stood in the way.</td>
<td>Identified policy and legislation weaknesses and gaps.</td>
<td>Analysis of policy reports and studies.</td>
<td>Member State questionnaire – specifically questions 29, 41.</td>
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<td>What are the main Member State level factors that have contributed to or stood in the way?</td>
<td>The main Member State level factors that have contributed to or stood in the way.</td>
<td>Stakeholder views on factors that have</td>
<td>Overall impressions and specific examples from Member State experts.</td>
<td>Interviews to follow up on</td>
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131 National experts is a general term not referring to those involved in the filling out the Commission questionnaire
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<tr>
<td><strong>Efficiency</strong></td>
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<td>4. Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? In the affirmative, how is this demonstrated in practice?</td>
<td>factors that have contributed to or stood in the way?</td>
<td>contributed to or stood in the way.</td>
<td>contributed to or stood in the way. Number and type of common implementation problems / legal infringements.</td>
<td>Overall impressions and specific examples from practitioners and national experts.</td>
<td>impressions and gather details on specific examples. Literature/studies. Content analysis, framework matrices, diagramming and SWOT analysis.</td>
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<td>5. What are the costs and benefits (monetary and non-monetary) associated with compliance with the SEA Directive? What is the administrative burden?</td>
<td>What factors characterise a situation with SEA and without SEA, for a typical plan/programme? What are the main costs associated with assessing and addressing environmental impacts in each situation? How do the costs compare and how can this reflect overall upon the cost effectiveness of SEA as a mechanism?</td>
<td>The main costs of assessing and addressing environmental impacts with SEA and without SEA. The comparison of the costs with and without an SEA.</td>
<td>Extent of costs with and without SEA.</td>
<td>Costs of SEA. Costs of a situation without SEA. Comparison of the two. Perspectives of Member States and national experts.</td>
<td>Member State questionnaire – specifically question 31. Expert judgement. Literature review Cost mapping and scenario analysis.</td>
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### Study concerning the preparation of the report on the application and effectiveness of the SEA Directive

(Directive 2001/42/EC)

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<th>EVALUATION QUESTION</th>
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<td>factors?</td>
<td>What is the administrative burden vs. a business-as-usual situation?</td>
<td>vs. scenario without compliance with SEA. Data available to characterise costs and benefits. Comparison of costs and benefits.</td>
<td>Member States. Extent to which data are comparable, annualised and based on reliable estimates. Value of admin burden.</td>
<td>Directive compliance. Data on administrative costs that are additional to planning – i.e. would not exist without the Directive. Assessment of the quality of data and potential for providing meaningful conclusions on cost/benefit comparison. Cost-benefit comparison (if possible).</td>
<td>Literature review. Specific clarification questions to Member State experts. Cost and benefit mapping. Standard cost model for administrative burden. Cost-benefit analysis.</td>
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**Relevance**

6. How relevant is the SEA Directive to achieving sustainable development?

How have EU objectives and targets related to sustainable development evolved since the adoption of the SEA Directive?

How has implementation of the Directive kept pace with the relevant objectives and targets?

How have EU objectives and targets related to sustainable development evolved since the adoption of the SEA Directive?

Number of ways in which SEA is coherence with sustainable development policies.

Number of new developments in sustainable development policies that SEA does not effectively address.

Review of key EU policies (EU 2020, EU SDS, 7EAP etc.). Review of SEA implementation practice Opinion of experts and practitioners.

Member State questionnaire – questions 29 and 41. Literature review. Interviews. Policy analysis, case examples.

**Coherence**

To what extent does the SEA Directive support the EU internal market and creation of a level playing field?

How does SEA support or hinder the EU internal market?

The support of EU legislation to the EU internal market. Stakeholders’ perception of level of support.

Analysis of impact on specific sectors and customers of these measures.

Member State questionnaire – specifically
### Evaluation Question: Playing field for economic operators?

**Subquestions:**
- How does the legislation support or hinder the creation of a level playing field?
- Which are the main economic stakeholders affected? Who benefits and loses?
- Does it prevent trade between and within Member States?
- Can it cause long delays for programmes and plans?

**Judgement Criteria:**
- The support of EU legislation to the creation of a level playing field for economic operators.

**Indicator:**
- Number of cases brought by economic operators.

**Data Collection/Analysis Method:**
- Literature review.
- Interviews.
- Content analysis, case examples.

### 7. To what extent is the SEA Directive coherent with other parts of EU environmental law/policy, including environmental impact assessment and appropriate assessment?

**Subquestions:**
- What interactions are foreseen for each piece of legislation?
- How do the procedures work together legally and in practice?
- Is there risk of duplication or overlap?
- Are there synergies and is there smooth coordination?

**Judgement Criteria:**
- The interactions between the legislation, legally and in practice.
- The risk of duplication or overlap.
- The existence of smooth coordination and efficiencies/synergies.

**Indicator:**
- Number of cases of incoherence with other parts of EU environmental law/policy.
- Number of cases of synergies with other parts of EU environmental law/policy.

**Data Collection/Analysis Method:**
- Review of key EU environmental laws and policies vs. SEA Directive.
- Feedback from Member States and experts to verify conclusions.
- Member State questionnaire – specifically questions 37, 38.
- Review of country reports from Milieu 2013 study on streamlining environmental assessments.
- Comparison of results, clarification of contradictions.
### Study concerning the preparation of the report on the application and effectiveness of the SEA Directive
(Directive 2001/42/EC)

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<tr>
<td><strong>8. To what extent does the SEA Directive complement or interact with other EU sectoral policies such as agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning and land use, regional and cohesion, etc.? How does the SEA Directive positively or negatively affect these policies?</strong></td>
<td>For each sector what are the main interactions at objectives level and practical level? Are there cases of conflicts and/or synergies?</td>
<td>The main interactions between SEA and key sectoral policies. Cases of conflicts and/or synergies.</td>
<td>Number of cases of conflicts and/or synergies.</td>
<td>Extent to which policies are coherent based on their objectives and measures. Examples from literature and/or experts on specific conflicts and/or synergies.</td>
<td>Member State questionnaire – specifically questions 29, 41, 42, 43. Literature review. Interviews. Policy analysis.</td>
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<tr>
<td><strong>9. Are there overlaps, gaps and/or inconsistencies that significantly hamper the achievements of the SEA objectives?</strong></td>
<td>What parts of the legislation and/or framework for its implementation may hamper achievement of the objectives (distinct from Question 2)?</td>
<td>Extent to which any issues significantly hamper SEA objectives.</td>
<td>Number of issues that significantly hamper SEA objectives stemming from legislative/coherence issues.</td>
<td>Results of analysis on Questions 7 and 8. Perspectives of Member State authorities and experts.</td>
<td>Member State questionnaire – specifically questions 29, 41, 42, 43. Clarifications and interviews. Content analysis.</td>
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<tr>
<td><strong>EU Added Value</strong></td>
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<td><strong>10. What has been the EU added value and what would be the likely situation in the case of there having been no EU SEA legislation?</strong></td>
<td>What would have been the likely situation regarding integration of environment in plans and programmes in case there was no SEA Directive? What is the current situation?</td>
<td>The contribution of the SEA Directive to the situation as it exists now compared to the situation that would have existed without the SEA Directive.</td>
<td>The expected situation of environmental assessment of plans and programmes in Member States without EU legislation (baseline). The difference between the baseline and the current situation.</td>
<td>Reference point: state of play in the Member States at the time of adoption of SEA Directive. External factors (conventions, pre-existing legislation, cross-border impacts) that would impact the scenario without the SEA Directive.</td>
<td>Legal research on Member States’ situation in 2001. Legal research to determine other applicable laws and how they might impact Member States in case of no Directive or removal of</td>
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What is due to the SEA Directive?
What has been the EU added value?

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Annex II – Commission’s questionnaire


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 (Article 12(3))

This questionnaire is addressed to the SEA experts in all 28 Member States (MSs) with a view to producing a report on the application and effectiveness of the SEA Directive (2001/42/EC), Article 12 (3).

The responses to this questionnaire do not require formal approval on behalf of the MSs, provided the information submitted is reliable.

Most of the sections of the questionnaire include factual questions. The last section of the questionnaire (section VII: ‘Feel Free Questions’) seeks your opinions to determine the future direction of the Directive and provide recommendations for good practices.

I. General information and scope of the SEA

1. How many SEAs are carried out on average each year (2007 – 2014)? Which are the main authorities involved in the process and what are their responsibilities?

2. Does the transposing legislation list the types of plans and programmes subject to the Directive? Do you follow 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?

3. Can you list the plans and programmes co-financed by the European Union (2014-2020) to which the SEA Directive was deemed applicable and an SEA procedure was performed? Were specific guidelines/scoping documents prepared? Are there any specific issues to report regarding the implementation of the SEA directive to the European Structural and Investment Funds' (ESIF) 2014-2020 programmes?

4. 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?

5. Do you define or interpret ‘setting the framework for future development consent of projects’ (Art.3 (2)(a))? If so, how?

6. Do you define or interpret ‘small areas at local level’ and ‘minor modifications to plans and programmes’? If so, how are they defined?
7. How was the SEA applied in case of modification of a plan or programme that has been subject to SEA procedure? Are there cases where not only a screening but a full SEA was carried out for modified plans and programmes? What kind of modification can trigger the need for a full SEA (e.g. revocation of a plan)?

8. How is the public informed and the decision about the reasons for not requiring an environmental assessment made public, pursuant to Article 3 (7) of the SEA Directive?

II. SEA Procedure

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. 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?

12. Which methods are used for public consultation within the 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? What is the time-frame for the public to be consulted and express its views? How long (on average) does the consultation process take?

13. 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? Who are they?

14. 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.

15. Pursuant to Article 9, how is the decision made available to the public (official journal, website, etc.)? Who (which authority) is in charge of its publicity?

III. Content

16. How is scoping (deciding on the information to be included in the Environmental Report) carried out? Is there a scoping report? If 'yes', what does it typically include?

17. How long (on average) does the SEA scoping process take?

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' ('zero alternative')?

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. Does your legislation provide for more information than that listed in Annex I of the SEA Directive to be covered by the Environmental Report (e.g. social or economic aspects)? If 'yes', could you point out the additional issues that are covered?

21. Are there any requirements on the content of the Non-Technical Summary? If so, does it cover all elements listed in Annex I of the SEA Directive?

22. How long (on average) does the preparation of the SEA report take?

23. Is there a decision which the environmental authorities take after the finalisation of the SEA procedure? If 'yes', what kind of form does it take (e.g. decision, statement, etc.)?

IV. Transboundary SEA

24. Have there been any cases of transboundary SEA consultations, either initiated by your MS or by another MS? What kind of plans/programmes have been subject to transboundary SEA procedure?

25. If there are some weaknesses in the consultation process, how could these difficulties be overcome?

26. Have bilateral agreements for SEA been set up?

V. Effectiveness, efficiency and coherence

27. Have the SEA requirements influenced the process of preparing plans and programmes? If so, in what way(s) (e.g. new alternatives, additional mitigation/compensation measures, specific monitoring measures)?

28. What kind of arrangements/measures do you envisage to ensure monitoring of the significant environmental effects of the implementation of plans and programmes?

29. What kinds of impediments are most frequently encountered in preparing the Environmental Reports in practice? How could they be overcome?

30. 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?

132 Section V of the questionnaire addresses the effectiveness (have the objectives been met?); efficiency (were the costs involved reasonable?), and coherence (does the policy complement other actions or are there contradictions?) of the SEA Directive. This section aims at identifying inconsistencies and/or obsolete measures which may have excessive administrative burdens, overlaps, gaps.
31. Do you think that the SEA process is a cost-effective mechanism for assessing and addressing environmental impacts?

32. Do you have any estimates/data of costs for the preparation and the procedural steps (administrative burden) of the SEA process?

33. How long (on average) does the SEA procedure take? Does SEA prolong the plan/programme-making process?

34. Have SEAs changed the content of plans or programmes? If 'yes', what are some typical changes?

35. 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)?

36. Are there any provisions to avoid duplication of assessment between different levels in the hierarchy of plans and programmes (Art.4 (3))? For example when in the same area there are national, regional and local plans. If so, please clarify and possibly describe for each relevant type of plan or programme.

37. Does the SEA facilitate the EIA process? If so, in what ways? Do certain types of complex activities have joint SEA and EIA procedures? If so, please, describe the type of developments and how the two processes were combined. Please describe any provisions/arrangements to avoid duplication/overlaps? Are there any specific provisions that foresee such combined assessments?

38. Have you identified any risk of duplication between the SEA Directive and other Directives and EU level policies? For instance:
   i. Environmental Impact Assessment Directive (Directive 2011/92/EU);
   ii. Habitats Directive (Directive 92/43/EEC);
   iii. Birds Directive (Directive 2009/147/EC);
   iv. Industrial Emissions Directive (IED) (Directive 2010/75/EU);
   vi. Flood Risk Directive (Directive 2007/60/EC);
   vii. Water Framework Directive (Directive 2000/60/EC);
   viii. Seveso II Directive\(^\text{133}\) (Directive 96/82/EC);
   ix. Nitrates Directive (Directive 91/676/EEC);
   x. Other - please specify.

   If the reply is "yes", please describe the provisions/arrangements to avoid duplication and what is the type of issues where duplication exists?

\(^{133}\) 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. The Seveso III Directive 2012/18/EU was adopted on 4th July 2012 and entered into force on 13th August 2012. Member States have to transpose and implement the Directive by 1st June 2015.
Do you have any co-ordinated or joint procedures for such cases?

VI. Further technical issues

39. Which tools (e.g. guidance, electronic tool kit) exist to support practical SEA implementation?

40. Provide a reference to a relevant website within your MS’s/region’s legal SEA provisions (provided that consulting this ensures access to the respective legal framework)?

VII. Feel free questions

41. 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 were/could these difficulties be overcome?

42. 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, links with EIA)?

43. Is there any need for further SEA guidance or any other support at the EU level? If so, please provide suggestions.

44. Do you have any further comments to make concerning the application and effectiveness of the SEA Directive?
Annex III – List of Member States’ experts consulted

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Affiliation</th>
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<td></td>
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<td>Estonia</td>
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<td>Finland</td>
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</table>
Annex IV - References


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Annex V – Focus group discussions

The opinions expressed by the participants in the focus groups do not necessarily represent the official position of the participants’ Member States of origin or the Member State(s) concerned by their statements.

List of participants

<table>
<thead>
<tr>
<th>Focus group with academic experts</th>
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<tbody>
<tr>
<td>Alan Bond</td>
<td>Academic expert - University of East Anglia, UK</td>
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<td>Anthony Jackson</td>
<td>Academic Expert University of Dundee, UK (Scotland)</td>
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<tr>
<td>Davide Geneletti</td>
<td>Academic expert - University of Trento, Italy</td>
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<tr>
<td>Lone Kornov</td>
<td>Academic expert, Aalborg University, Denmark</td>
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<thead>
<tr>
<th>Focus group with practitioners from EU-15 Member States</th>
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<tbody>
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<th>Focus group with practitioners from EU-12 Member States + Croatia</th>
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<td>Jiri Dusik</td>
<td>Practitioner, Czech Republic</td>
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<th>Focus group with national regulators/independent bodies</th>
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<td>William Carlin</td>
<td>SEA Specialist Scottish Government, UK</td>
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<tr>
<td>Veronica ten Holder*</td>
<td>Netherlands Commission for Environmental Assessment</td>
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</tbody>
</table>

*Veronica ten Holder was not able to participate to the focus groups discussion, but a separate interview was carried with her.
Summary of discussions

Focus group with academic experts

Thursday 14 January 2015, 10:00-12:00

Effectiveness

1. Have the SEA requirements influenced the process of preparing plans and programmes? If so, in what way(s)? If no, or only limited influence can demonstrated, what could be the reason for this?

Selection of alternatives as a weakness of the SEA process

- In England SEA is practiced via sustainability appraisal in the land use planning sector which uses indicators to help select the best option. However, it is difficult for the plan makers to identify what could be the best alternative.
- Plan making always includes the development of a set of options. The SEA then decides on the best option. However, the obligation for alternatives to be considered can end up with unreasonable alternatives just being invented; therefore SEA doesn’t provide an obvious winner. Nor does the SEA look at the interactions between all policy options that exist, which could result in 10,000 combinations.
- In Italy, it is extremely hard to find explicit comparisons of alternatives and difficult to find an SEA that develops alternatives, as opposed to reacts to proposed alternatives;
- When discussed, alternatives are often not strategic. They tend to relate to implementation details instead.

The role of statutory agencies

- In England there is no Environmental Authority but the Environment Agency is consulted, together with Natural England and English Heritage, depending on the case, and asked to comment, in a timely manner. The comments may vary depending on who is consulted, this may lead to inconsistencies.
- An inspector verifies whether sustainability appraisal has met the objectives of the SEA Directive. There have been cases where it has found not to be compliant and so the plan cannot be adopted.

Public and practitioners engagement and good practice examples

- In Scotland, public engagement is still the weak point of SEA: The public and NGOs find it difficult to be heard, when consultations are left at the end of the process, when the environmental report is ready, rather than carried out during scoping. At
this later stage consultation can make only a little difference, since decisions have already been taken.

- The existence of a community of practitioners in Scotland, operating through the SEA Gateway or annual SEA Forum, has brought those involved together and has improved the sharing of knowledge and exchange of good practices among experts. Community of practice means everyone gets to know each other better (including from other sectors)

**Examples of good practice**

- The National Planning Framework (NPF) sets the context for development planning in Scotland and provides a framework for the spatial development of Scotland as a whole. The public is asked to provide comment on the scope of the environmental report (public consultation previously used to be only on the Environmental Report itself). This practice has shown the public’s much greater willingness to be engaged, but it is still an education process.
- Annual SEA Forum: is hosted by the Scottish Government and is an event that brings Scottish assessment practitioners together to share experiences, knowledge, good practices and ideas.
- The Scottish Government has established the SEA Gateway to manage the administration of SEA consultations. Responsible Authorities must submit all formal SEA consultation documents to the Scottish Government SEA Gateway who will issue the documents to the Consultation Authorities and coordinate the return of responses from the Consultation Authorities within the appropriate timeframe. The Gateway provides a way of connecting people, letting them see comments, also other types of plans. The reason why such a Gateway has not been set up elsewhere in the UK is because at the time (and even today) the UK government was skeptical of SEAs. In Scotland, the devolved government was very keen to use the SEAs to shape government policy.

**Fragmentation**

- It is difficult to compare the effectiveness of SEA in different countries because the SEA process is devolved, with 4 different administrations in UK, 3 in Belgium, 20 in Italy, meaning there is variation in practice and approach between different jurisdictions. For example in UK there is no coordination between England and Scotland.
- In the UK the legislation for different sectors also varies.
- In Italy, there are some regions where public consultation is mandatory during scoping, which often makes a difference in terms of level/scope of public consultations.
- Achieving procedural effectiveness is a challenge in Italy, given the 20 different systems each with their own procedure.

**Role of environmental authorities**
For some Member States the environmental authority can only comment, while in others it needs to approve the SEA report. In Italy this differs from region to region.

In the UK no environmental authority has oversight over SEA: the SEA is undertaken and the plan is adopted by the plan makers.

However, having a supervisory body (e.g. the environmental authority) does not necessarily improve the quality of the SEA.

This has caused problems in EU, and the Commission has taken UK to court (which the UK won) given that EIA is applied to development control decisions (i.e. a building permit) and not an environmental license (which is not part of the process for many development types in England).

The SEA is undertaken, then adopted by the same authority which says whether the SEA is valid or not. The Environment Agency is consulted but there is no independent authority for a quality check. The Environment Agency instead can only try to influence the direction the plan takes.

Most SEAs are conducted in the land use sector through Sustainability Appraisal, which must comply with the SEA Directive, and there have been court cases when they have not. The local authorities responsible for land use plans can sometimes have problems understanding the sustainability appraisal methodology.

What would happen without the SEA Directive

Difficult to assess, as there are no control cases.

Those involved would say there are some differences, but their judgment is mainly based on perception.

Without the SEA Directive, the process would be more piecemeal, although it is probably that something similar would have happened eventually to bring everyone involved together.

There would have been incremental change: nowadays the practitioner engages with a wider community of practice sharing knowledge and experience; people learn from each other through consultation. The result is that technocrats (the administrations) do not dominate the decision making process.

The role of the public is important: when it is not engaged, there are poorer results (SEA is less effective). However, often the public is intimidated by the technical nature of the Environmental Report. The SEA process should be ‘less technocratic’. With regard to the communities of practice, some argue that they reinforce the dominance of technocrats, as only the technocrats in the inner circle understand the process, leaving the public feeling they are unqualified to comment.

Difficult to find evidence of impacts of SEA, but there have been improvements leading to a higher quality of plans:

SEA made the planning process more structured and transparent.

A set of environmental variables often disregarded before the SEA came into force and now taken into account, or at least described.

There are now formal internal and external consistency checks: e.g. the fact that the Environmental Report is published is a positive factor.

However, there is still lack of coordination. There are two different process of consultation 1) On the plan & 2) On the SEA. The planning and SEA processes are
often handled separately and should be more coordinated. Such lack of coordination can also increase the costs (link to efficiency).

**Efficiency**

2. *Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? In the affirmative, how is this demonstrated in practice?*

**Financial constraints/lack of resources issue**

- SEAs can be done in-house, but also are done by consultants. For example in Scotland and England there is no ‘SEA unit’ that does the assessment, but there are the consultants. With the economic recession the budgets have been reduced, and there is less money for consultants.
- Having internal SEA units within the tiers of government rather than consultants is more effective/efficient, as consultants need to learn the basics each time (unless the same ones are used each time, which would then make them an SEA unit).
- In Scotland, there is a resources problem: if there is no money for an SEA unit, and the Environmental Report is prepared in-house, then it becomes more difficult to integrate its results into the plan.
- In Italy, the lack of resources is a problem that affects local authorities (even small municipalities) doing SEA of spatial plans (most SEA done in the EU correspond to spatial plans), while national/sectoral plans and programmes are better handled by the national authorities (that have more resources).

**Cost effectiveness of the SEA**

- It is impossible to have exact figures on operational costs. Cost-effectiveness depends on how the Member States make the SEA part of the policy coordination.
- Costs are largely unrelated to effectiveness.
- Cross-over with coherence issue – participation requirements around similar issues (e.g. SEA and the plan) means the same stakeholders are sometimes consulted several times, which costs money.

**Relationship between the SEA duration and its effectiveness**

- In Scotland, regarding the duration, the SEA may be done faster, but this may lead to poorer quality.
- SEA does not have a specific duration, it depends on the duration of the planning process and in England a land use plan can take 2-3 years to develop (although it depends on what you consider the beginning and the end).
- In Italy, the average duration of an SEA is unrelated to effectiveness: if an SEA is being done in 1-3 months (short with respect to the plan duration), it is probably an indicator of poor quality. The average duration should be the length of the plan.
- SEA can be of a very short duration if it is simply added at the end of the planning process, to window dress, affecting cost, duration etc. However if this is the case, there is no added value to the planning and the SEA results are largely useless.
Difficulties in quantifying SEA benefits

- To understand efficiency we have to understand the benefits of SEA, but it is very difficult to quantify them: For example, the SEA may have influenced the process of developing credible alternatives, which is beneficial, but one cannot attach monetary benefits.

Additional issues affecting the SEA efficiency

- Level of details of the SEA Terms of Reference: they are normally very general, with information copied and pasted from previous SEA, and not always relevant.
- At a guess 70% of consultant’s time is spent collecting baseline data, which could be done more efficiently if the Terms of Reference were more tailored to the assessment needs.

Availability of data

- Downloading already available data could be done in-house/more cheaply. Very often consultants spend time to gather data that are already available.
- Analysis are done multiple times when data are already available on the European level
- Having data sets available electronically improves quality/efficiency of SEA

Relevance

3. How relevant is the SEA Directive to achieving sustainable development?

SEA and sustainable development

- The SEA Directive relies on sustainable development, and is more efficient (although has not gone quite as far as hoped).
- There has been no influence of the SEA Directive on the achievement of the EU Sustainable Development Strategy, Member States have their own Sustainable Development Strategies which are more likely to steer practice at Member State level.
- SEA helped develop sustainable development indicators.
- SEA Directive has flexibility given the sustainable development has a fluid definition. However, the perfect balance must be found between flexibility and prescription for implementation at Member State level. If the balance is not found, this can lead to inconsistencies in application.

SEA’s influence on environmental justice

- The SEA Directive was extended in Scotland to promote environmental justice and getting the public involved.
There are two different perspectives in the application of the SEA Directives: some Member States follow the approach of advocacy for environment while others are more focused on the broader concept of sustainable development.

**SEA as a far-reaching assessment**

- There are no issues which cannot be investigated. Practitioners may not have experience but if needed, can get skills very fast (e.g. assessment of health impacts were often neglected in the past but are now part of SEA).
- The SEA Directive embraces all aspects of the environment, it is quite flexible and it shouldn’t be difficult to adapt. For example: climate change, flora and fauna are part of Annex I but the Directive does not go beyond this and they are not always fully captured in practical application.
- In Scotland, if there is an opportunity for interpretation, courts will allow for interpretation.

**Additional issues**

- There has been influence in the sense that SEA brought common EU indicators that was not used before into practice (e.g. in Italy). However, it is difficult to tell whether there has been improvement.
- There are some global threads difficult to capture with SEA. For example the assessment of cumulative effects is often the most difficult part of SEA, as well as global warming.

**Coherence**

4. To what extent is the SEA Directive coherent with other parts of EU environmental law/policy, including environmental impact assessment and appropriate assessment?

5. To what extent does the SEA Directive complement or interact with other EU sectoral policies such as agriculture, fisheries, energy, transport, water management, regional and cohesion, etc.? How does the SEA Directive positively or negatively affect these policies?

**Coherence between SEA and EIA Directives**

- There are already various documents/studies on the relationship between SEA and EIA available – e.g. the Sheate et al., a study done for the Irish Environmental Protection Agency based on water management/water sheds.

**Sectoral coherence**

- The Scottish SEA system covers virtually all sectors, so there is not a problem with sectoral coherence.
The sectoral government authorities have been taken into the fold, and are learning how to do it.

The problem arises only when becomes jurisdictional/transboundary issue (e.g. water sheds)

In Scotland, Issues do arise when WFD requires good water quality, but the Habitats Directive requires poor quality (for some specific species). – which one do you go with?

The SEA requirements do not impede the achievement of other sectoral policies objectives. In general, there has not been reluctance to accept the SEA; however, many officials were not aware an SEA is required.

There may be issues in applying SEA to the Scottish Economic Development Programme because the economic impacts are different and diffuse in different areas; it is hard to pinpoint impacts to specific locations. However, this is more a problem of how to do a sustainability appraisal rather than SEA.

Policy vs plan

In England you can get around SEA if you call it a ‘policy’ not a ‘plan’. Policies are still subject to ‘regulatory impact assessment’, but not to SEA.

Making sure that Directive is applied to all plans and programmes will ensure effectiveness: in Scotland the SEA application (scope) is extended beyond the Directive to all policy and strategy documents.

Extending the scope of the SEA Directive in Scotland meant a lot more authorities require SEAs, so they have to start from scratch and bring more people on board.

EU added value

6. To what extent does the SEA Directive support the EU internal market and creation of a level playing field for economic operators across the EU Member States?

7. What would be the likely situation in case of there having been no EU SEA legislation?

SEA’s benefits to the public

Who benefits/loses depends on sector. However, public pays for the SEA, but public also benefits if it is done well.

The public is included by being consulted during the planning process, and so now it is involved with environmental issues.

Issue of SEA delaying the plan or programme preparation

SEA does not really delay plans, given that plans generally take a while anyway.

There is no reason why the SEA should lengthen the process.

SEA needs to keep up with the plan, for example if the report is rejected, it takes time to mitigate.
• If SEA cannot keep up with plan, i.e. lengthens the process, it is due to poor management and coordination at the Member State level rather than a failing on the part of the SEA Directive or a procedural issue.

General remarks
• The SEA Directive is not different from any other Directive in that different Member States implement differently, so the SEA Directive itself is not responsible for any benefits or issues with cross-border nature.

Focus group with practitioners from EU-15 Member States
Friday 15 January 2015, 10:00-12:00

Effectiveness
8. Have the SEA requirements influenced the process of preparing plans and programmes? If so, in what way(s)? If no, or only limited influence can demonstrated, what could be the reason for this?

SEA influence of the content of plans
• In the UK the effect the SEA has on the content of the plans varies across sector and spatial areas (whether community or national level), which lead to different understanding of what needs to be done.
• It also depends on individuals: some are very engaged in the SEA process, willing to take recommendations on board, while others just do it to tick the box.
• The influence SEA has on the content of plan/programmes depends on sectors and individuals.
• Similarly in Sweden many authorities don’t know SEA requirements, especially in smaller municipalities; so the issue is therefore of compliance – getting authorities to do an SEA when they should rather than of quality.
• In Italy, SEA has had influence on the planning process, ensuring more transparency and inter-institutional cooperation, given that in Italy inter-institutional cooperation is not usually the norm unless it is forced.
• With regard to the content of plan/programme (including technical aspects), improvements are needed, and there still seems to be a lack of analytical methods.

Addressing alternatives
• In the UK, case law over the last few years (since 2009) has also been a driver for plan makers taking SEA more seriously, making sure all reasonable alternatives are considered
• Consultants are more involved not only in the assessment but also in the generation of alternatives: plan makers are challenged to change embedded positions - challenged to say “is this actually the preferred choice of alternative”.

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Case law does drive effectiveness in the UK, more so than in other Member States, although they may have some other mechanism in place.

Alternatives are poorly dealt with (in Germany), and not a lot of improvement has been seen. Academia and the SEA community are aware of the importance of formulating alternatives; Case law has brought some improvements, but in practice still very poor implementation.

In Italy, alternatives are also poorly addressed, which may be the weakest point of the SEA.

**Government support and political will**

- In Denmark, the key factors affecting effectiveness of SEA are the size of the municipality and the support (or lack thereof) from government.
- In the UK, general budget cuts mean much less government support, less money, and driving down the money available to conduct an SEA, while still producing the same quality.
- Another key factor is political will: In Germany, in some Länder, SEA is supported by the preparation of extra guidance and training activities.
- In Denmark, partly because lack of real government support, SEA legislation does not go beyond minimum requirements, which has long been a strong policy position in Denmark. Interpretation of the legislation is very narrow, which leads to surprisingly poor implementation practice (especially at the local level because local authority have a weak understanding of SEA methods and practices, do not have the capacity, etc.).

**Financial constraints**

- Money is also another key driver (fees for consultants) as raised by the German expert: SEAs never paid very much, and now they get even less money (budget cuts). It is difficult to find a solution, to have a good quality SEA if there is no budget.
- In the UK, there has been a lot of blame placed on the SEA, especially in the light of budget cuts, and it is likely the SEA will face more scrutiny as the Government decides whether it’s really necessary in the planning process. Blame is disproportionate, given that the SEA is a relatively small part.
- In Italy, effectiveness depends on money and time constraints (practitioners are asked to carry out the assessment with little timeframe and low fees): evaluations and assessments are impacted by time availability, which affects quality - although this has improved over the years.
- If less money is used for screening, more is used later on when a full SEA is carried out.

**Role of the environmental authorities**

- The role of the environmental authority – in Germany they do not really participate in the process. The environmental authorities will give issue statements when
required, but do not have any other involvement. More support/input comes from NGOs and other stakeholders rather than the environmental authorities.

- In Italy the SEA procedures resemble the EIA – the SEA authority is different from the plan makers, and issues a final statement. In theory, the statement is legally binding, which increases effectiveness, and may lead to amendments being required. The authority has increased effectiveness procedurally.

**Issues with SEA at local level**

- In the UK the changes in the planning law have left consultation authorities inundated. Smaller level SEAs (at neighborhood level) mean there is a huge increase in screening requests. There can be 90 neighborhoods in one region, and consultation bodies which were already struggling are now overawed. The responses/comments are very patchy. This is also an efficiency issue.
- Because of this number, screenings are done following the precautionary principle, which is an idea shared by government. This means many SEAs are being done which are not needed, but no one has the time or money to do an in-depth screening to find out that one is not needed.
- The same problem is in Italy: there are also a lot of municipalities, all with many amendments to land use plans. There is a need to make sure requirements are fulfilled, requesting a lot of resources (especially for screening of the modification).

**Consultation practices**

- Consultation practices in Germany depend on plans, sectors and scale of application. New approaches for SEA are being developed for very big plans, for example regarding the national power grid, which takes a lot of efforts, a lot of information etc. Electronic media are involved, which might be a success in terms of better acceptance [from public/stakeholders]. This may work well for big national/sectoral plans, but is a problem for local/smaller SEAs where there is lack the capacity and resources (they may not have experts knowing how an SEA is done, and knowledge of the plan itself).
- In Italy consultations is often done to fulfil a minimum requirement. There is a lack of public consultation culture in Italy, although there are some good cases of public involvement.
- In Denmark consultations are generally strong element, but are not a result of the SEA Directive. There is instead a strong tradition/culture of consultation thanks to the planning law.
- Consultations in Denmark are held for p/p, and there is an expectation that the public will want to be involved, and be politically active. Public participation is part of the quality control of SEA, keeping p/p in line.
- Public consultation is also not a new concept in UK. Public are consulted often, especially for reasonable alternatives.
- Some consultees know the topic and go directly to the section that concerns them, while others comment are sometimes all over the place.
**Additional issues**

**Resources problem:**

- Participation beyond mere consultations cost extra money to the planning authority
- Consultations also need a lot of experts whose background is not necessarily environmental (extra staff needed in the SEA team: Experts in public involvement are also)
- If an environmental expert is not an expert in public involvement, it is better off not doing it than doing it badly or to minimum requirements.

**Efficiency**

9. *Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? In the affirmative, how is this demonstrated in practice?*

**SEA and cost efficiency**

- In the UK, measuring the cost of an SEA very difficult: SEA may cost 150,000 pounds, or 3,000. The costs really differ from the type of plan. If at the end of SEA there is no change (no influence) in the final plan, 150,000 is a lot to spend just to tick a box – SEA is thus not cost-effective in cases like this.

**Political pressure and fear of legal challenges**

- In the UK, the problem is that often the plan makers operate in fear – mostly of politicians, as the decision on p/p rests on them. So practitioners don not want to say anything unpopular.
- Also in UK, the fear of legal challenge can also play a role in the process: the content of the environmental report is very comprehensive, instead of being more tailored to the needs, which would improve efficiency. This is frustrating, trying to argue that less should be included to someone who has spent years working on the plan and does not want it to fail.

**Suggested improvements to improve SEA efficiency**

1. **Efficient use of resources and targeted scoping**

   - A lot of resources are dedicated to the descriptive part of SEA (the baseline study). This could be avoided to make the process more efficiency and effective. There a need to enhance to scoping phase, to single out what is relevant at scoping
   - Scoping needs to be improved, as currently it is not well tailored to the needs and contains with elements that should not be.
   - To become more cost effective, scoping should be done similar to EIA – unnecessary elements are taken out. Consultation bodies need to prove why something should
be included, and if not, taken out, thus focusing on what is important. There have been efforts to change this.

- Only 20% of the baseline information is actually used in the environmental report - The result is a hugely long report which comes to nothing. Finding ways to establish what is significant (at the scoping phase) makes it more cost-effective - and more likely people read it.

2. Assessment methods

- There also should be a break out of using certain assessment methods (+, ++, +++), which are not transparent or useful with the aim to make the SEA fitter and leaner.
- Cost-effectiveness can also be increased by developing sounder analytical assessment methods such as spatial models and other tools for specific analysis. There is still little uptake of these methods among practitioners.

3. Supporting local authorities

- To improve effectiveness, it is important to look at ways to support the local authorities in doing SEA (in particular screening and scoping phases)
- The Dutch model could be one option, with an advisory body (the NCEA) more centralised system for which advises local authorities on the quality of the SEA report and also on requires on screening and scoping decisions (the regulator supervises them). However, this option can also be costly.

Availability/accessibility of data:

- There is no application/single hub to download/collect environmental data for SEA. Basic environmental information which is constant, should be available/easily accessible. It would be useful if centralized environmental information (e.g. at regional level) was easily available. That would raise cost-effectiveness of the process.

Some efficiency issues with the Directive

- The Directive is both good and bad: it integrates environmental aspects in the decision-making process, but it does force practitioners to stick to the legislation (only follow the minimum requirements), instead of trying to make things more innovative or efficient.
- The SEA is not too prescriptive, but practitioners need to know what can be left out (for example what impacts need to be assessed: flora, fauna, etc.).
- Baseline information requested for all sectors: it is always very lengthy and nobody reads it, because people would rather know what the impacts are. But the Directive asks for it. There are no lawyers who are willing to support this change to scope things out, but consultants and academics would.
- Length of SEA: Practitioners were asked why the SEA report is sometimes longer than the actual report for the plan (in terms of pages). There is an imbalance
between the documentation prepared for one and what is needed for the other and this should be avoided.

- Practitioners also need to make sure SEA is not the weak point in the planning process, which is a huge pressure, especially when coupled with reduced budget; e.g. 5 people have been working to develop the plan/programme for 5 years, with a cost of GBP 500,000, then the SEA costs 10,000 pounds, and the SEA is expected to be of the same quality.

## Relevance

### 10. How relevant is the SEA Directive to achieving sustainable development?

### SEA and sustainable development

- According to the German expert consulted during the focus group, SEA is only understood as environmental; sustainable development is not on the table due to cultural history and how environmental management developed in Germany: the SEA is not to blame, but rather German implementation/understanding.
- There are several discussion rounds to find solutions, but there is no proper database and no real way to deal with it. It’s a complex situation with no time or money to fix it, even with guidance and discussions.
- With the reform of spatial planning in the UK in 2004, SEA has been integrated into the Sustainability Appraisal to also include socio-economic issues; however, widening the perspective of the SEA may diminish its power. There have been attempts to widen it out, but it is difficult to see the difference.
- SEA is not the tool for achieving sustainable development. In order to make it more relevant, there needs to be a better consideration of alternatives and cumulative effects etc., with legislation more proactive from a sustainable development perspective.

## Coherence

### 11. To what extent is the SEA Directive coherent with other parts of EU environmental law/policy, including environmental impact assessment and appropriate assessment?

### 12. To what extent does the SEA Directive complement or interact with other EU sectoral policies such as agriculture, fisheries, energy, transport, water management, regional and cohesion, etc.? How does the SEA Directive positively or negatively affect these policies?

### Coherence between the EIA, Habitats Directive and SEA Directive

- In the UK, the link between SEA/Habitats/EIA – duplications are rare as done separately but discretely.
- Contrary, for transport plans there is often confusion whether and SEA or EIA is needed.
• In the UK, High Speed 2 railway example – in this case there was SEA/EIA overlap, and SEA was not done in the end.
• In the UK the plan makers often ask for an EIA but actually mean an SEA, which highlights problems with terminology.
• There may be overlaps between SEA and other Directives if the Member State has a lot of areas covered by habitats under the Habitats Directive (for example Croatia) otherwise overlap is primarily an implementation issue depending on the planning system and not related to the Directive.
• The link between EIA and SEA has improved. The question is not if there is overlap, but rather if they work together. It is a problem when practitioners do not see the link between the SEA and EIA. Given that a central argument for the introduction of the SEA in the first place was to strengthen EIA practice.
• In Germany, there is no duplication between Sea and EIA as each assessment is very sector specific.
• It is different for Appropriate Assessment, which works only together with SEA if the exact same activity is under scrutiny.
• In Italy, there does not seem to be much evidence of EIA that benefit from SEA - but the opposite has happened.
• The relationship between EIA and SEA varied depending on the time, the size, and the sector.

**SEA coherence with other sectors**

• Regarding coherence with other sectors, the SEA has introduced environmental considerations into other sectors, which is positive, but changing something like CAP for instance is difficult.
• EU plans (e.g. cohesion policy Operational Programme and RDP) are all 7 year plans. SEA is part of the ex-ante evaluation, but it would be useful to introduce SEA in mid-term and final evaluations.
• SEA has improved the content of OIP and RDP. This is particularly true because they investment programmes unlike spatial plans at national level, however, the political pressure is high and limits leeway for environmental experts to change the plan or programme already decided. There is small margin to introduce changes, alternatives mitigation measures.

**Plan vs policy**

• Plans and programmes are covered by the scope of SEA, but policies are not. In the UK, there has been a debate whether SEA should be applied to the national planning policy framework. For example there have been policies which have had SEAs carried out, despite not legally needing them (Scotland).
• If the point of an SEA is to frame and facilitate the EIA, why are policies not included? There are policies which are not held accountable, and have not been tested via the SEA. It is a political decision.

**Issues with assessing cumulative effects**
Cumulative effects are very poorly addressed by SEA in Germany.

There are uncertainties of dealing with cumulative effects over large spatial areas, which leads to a vague analysis, yet it is hard to narrow the effects. SEA practice has tried to identify key areas of growth. This would lead not so much to more detail, but to more certainty.

**Additional issues**

- The SEA Directive is different from the SEA practice: while there are gaps in practice, we cannot change the legislation as it would cost more than it would benefit.
- In the UK, SEA objectives and plan objectives are not the same, as the outcomes of the processes are different. Guidance documents advocate the smarter use of objectives. This is an issue because many objectives used are very generic, and can be copy and pasted from one authority to another.
- With regard to how to undertake assessments, more discussions and examples of best practice would be useful.

**EU added value**

13. **To what extent does the SEA Directive support the EU internal market and creation of a level playing field for economic operators across the EU Member States?**

14. **What would be the likely situation in case of there having been no EU SEA legislation?**

**Benefits of the SEA Directive in Europe and beyond**

- The Directive itself is a very good piece of legislation so there should be no change to legislation, as all players involved would prefer to keep legislative stability.
- The Directive should not be changed, but rather what it is applied to. The Directive itself is straightforward, and was used in Qatar as a starting point, where there is no planning system place, to make it simpler.
- The SEA requirements are fine, it is the situation which they are applied to that matters (i.e. links with the planning system).
- Development planning is politically difficult - SEA legislation is effective in the sense that it has moved Member States towards a common minimum standard, and creating a more level playing field.
Focus group with practitioners from EU-13 Member States

Monday 18 January 2015, 10:00-13:00

Effectiveness

15. Have the SEA requirements influenced the process of preparing plans and programmes? If so, in what way(s)? If no, or only limited influence can demonstrated, what could be the reason for this?

SEA’s effectiveness in impacting the plan or programme preparation

- It is difficult to judge SEA effectiveness because no Member State has researched/reviewed the effectiveness of SEA in the region.
- SEA has influence on the decision making process if it is carried out together (in parallel) with the planning, rather than after it. This issue goes beyond the Directive to deal with the practical approach and practical communication between the client (the plan maker) and the consultants.
- In Croatia, many SEAs started too late when the plan is in final stages. For this reason, there was not always an influence on the final plan.
- It is difficult to estimate: SEA effectiveness should be measured by looking at the impact the procedure has on the way the plan or programme are prepared and not only at the impact on the final content of the plan or programme. It is a matter of integration into the planning system. To assess the effectiveness of SEA it is important to look at it together with the plan. The focus should be on the process not just the procedure.
- In Slovenia originally (2005-2008) they were worried to comply with the Directive from a procedural point of view (tick the box) so there was no concrete impact on plans and programmes. Draft plans or programmes were already decided, so the SEA had no influence.
- More recently they are starting to open. Public opinion is a very strong tool, and the public have really opened the case for practitioners.
- In Croatia, in the beginning there was significant resistance to the SEA procedure, especially in spatial planning where the environment was already being considered to some extent, so the feeling of the planning authorities was that SEAs were not needed. This has changed now, mostly because of EU financing.
- The SEA has not only affected the actual content of plans and programmes, but rather keeps environmental considerations in the planning processes (integration).
- Effectiveness depends on whether there is a desire to make better plans or just tick boxes.

Process vs formal procedure

- The SEA will not be as effective if the authorities see it merely as a procedural check, and will result in only marginal impact: it depends on the cultures of the Member States whether it is seen as only a bureaucratic check only.
In some cases the focus is more on the procedure than the process – and compliance is stressed, with practitioners striving to complete formal requirements.

**Issues impacting the SEA effectiveness**

- In Croatia, there was a lack of awareness and experience on the part of the plan makers and the SEA practitioners, regarding how the SEA works, what kind of measures should be proscribed in the SEAs, what to do with such measures regarding the plans/OPs etc.
- Sometimes the political pressure on the plan is so strong that practitioners may propose changes/alternatives, but they are not brought on board. The decision may also not be environmental.
- Sometime definitions in the Directive are too much focused on environmental impacts and do not stress enough integrating environmental consideration into the plan.
- However, the picture is not wholly pessimistic. There are some good examples, mainly from people who have had problems in the past and know what problems could occur downstream. Also, small authorities may be really committed, willing to start the SEA process early etc.
- Timing is also a major driving factor: if SEA is just done at the end of the planning process, it is not as effective.
- At the screening phase SEA has more impact at local level than national. Greater effectiveness is linked to public participation: the public is more willing to participate if the issue is closer to their everyday life and concerns.

**Role of environmental authorities and some deficiencies**

- In Croatia the role of the environmental authority is mostly to check compliance with the requirements of the SEA procedure. They do not participate much as a consultative body.
- The role of the environmental authorities depends from Member State to Member State: if they demonstrate their engagement at the scoping phase, the process will work better. If they don’t explain their views to the practitioners and the plan makers, it will be difficult to have an effective SEA.
- The practice in Slovakia is less developed than in the Czech Republic. The environmental authority did not participate much, but it ‘did not get in the way’ either. The result was a more flexible scoping stage.
- Lack of coordination among authorities involved can be an issue: in CZ, SK, RO for example the environmental authorities refuse to talk to the practitioners (consultants) and the plan makers, especially at the scoping phase, in order to preserve independence. In these cases there are no scoping meetings but only exchanges of documents. People therefore end up treating SEA as a bureaucratic procedure.
- This depends on the environmental authorities’ approach; whether they are just go through the basic motions required. This will affect effectiveness regardless of when SEA started (early or late in planning process).
Issues related to scoping

- Scoping is a problem – because apart from the environmental bodies it involves bodies from different sectors, who do not necessarily understand the SEA procedure or its purpose. In most cases, the scoping process- which usually lasts about 2 months- results with one decision which says that SEA Report should follow the content prescribed by the SEA by-law and that all of the environmental components have to be included in the SEA Report. Everything ends up lying with the practitioners and the consultations when they start the SEA.
- Scoping needs to be tailored to the needs and not cover all environmental aspects (water, waste energy...), it needs to be more flexible. But for the sake of the legal requirement, the environmental authorities are scared to exclude something from the scope: for example in the Czech Republic the practitioners were forced to cover all environmental issues which are written in legislation, making it less flexible. The potential for scoping is not fully used.
- Generally there is no consultation on scoping and the quality of the scoping process depends on attitude of environmental authority and also the dedication and capacity of the individual official.

Alternatives

- The way alternatives are assessed depends on the planning systems: the plan makers are not used to dealing with alternatives as other western Member States are.
- There are different approaches depending on whether the plan or programme is a sectoral/national plan or a more local spatial plan: for spatial planning – alternatives are discussed, but usually done internally. When SEA is open to consultations, alternatives are not always discussed.
- Alternatives are part of the planning procedure: normally they are discussed before SEA starts.
- Practitioners and planners don’t always work together, sometimes they are told not to because SEA is seen as an independent procedure.
- It is important to give more importance to the scoping phase
- Sometimes the aim of the exercise is forgotten – which is not to check boxes but to focus on incorporating environmental assessment. She thinks it is a problem of formulation of the Directive and not only of practical implementation.
- In Croatia, alternatives were not talked about; usually 1-2 are assessed only if the plan makers propose some.
- How alternatives are dealt with depends on who is responsible. If they are dealt with by someone with experience, they will involve practitioners early on.
- Alternatives depend on the way the environmental authority discussing with the plan makers - deciding what are the alternatives. Too often it is done just because the Directive requires it.
- There are never direct consultations on alternatives.
- The plan makers don’t care about the identification of alternatives, it’s up to the environmental authority to ensure they are looked at as guidance to practitioners.
• Croatia did not really have practical experience with alternatives. Not only was the whole SEA process new, but the SEA have been started late when most of the programming/planning decisions were already made. When talking about spatial plans, alternatives were only discussed if they had come from the plan makers, and the decision often was not changed after. Nowadays, the planers more and more see the SEA procedure as a helping tool to make some environmentally sound decisions.
• There has been experience with spatial plans considering alternative (in particular location alternatives), but less so with other types of plans.

**Efficiency**

16. **Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? In the affirmative, how is this demonstrated in practice?**

**Cost effectiveness of the SEA**

• The earlier the SEA starts, the greater the cost, e.g. more coordination efforts, more consultations entail higher costs. However this should not be an argument to start SEA late in the process.
• Costs of an SEA are being driven down because of the economic crisis. The quality is not the priority: whichever consultant can offer the lowest price even if it means they don’t have the capacity.
• Budget should therefore be realistic.
• In Slovenia, cost of SEA is not problematic per se, but it became high when added up to the costs of the planning process itself.
• Even if the cost associated with more structures/coordinated procedure would be higher, this would ensure higher quality and an effective SEA.
• The costs are often associated with longer procedures.
• There have been examples where the SEA runs in parallel with economic analysis, which has been interesting. Having two assessments has been important, the public paid more attention and stopped the SEA from being marginalised.

**Issues impeding SEA efficiency**

• There is also often too much emphasis on data gathering (baseline etc.): this decreases effectiveness and efficiency as practitioners look less at impacts and even less on mitigation, but instead focus on describing the current environment.
• If the SEA starts later in the planning process, it will not fulfill its purpose as a tool to enhance the environmental performance of the plan/ programme, i.e. it will not be effective. In such situations it is only considered as a procedural requirement that prolongs the planning process. From that point of view, it would be more cost effective if the SEA process started at an early stage and followed the planning steps, thus actually fulfilling its purpose.
• Making SEA more relevant (more tailored) is important to improve efficiency and effectiveness.
Relevance

17. How relevant is the SEA Directive to achieving sustainable development?

SEA and sustainable development

- The Directive is not adapted to the sustainable development agenda.
- It would be better to do SEA together with economic assessment, it would result in a better decision-making.
- The fact that there is no specific link with the SDA is not a problem with the Directive as such. The legal framework is fine, but the problem lies with practical application.
- There is not however much room in Directive to improve implementation.
- The SEA Directive provides a framework and a set of useful tools, but in Slovenia it is not used to contribute to sustainable development, but rather only as a regulatory assessment.
- So the contribution to relevance not as high as it should be.
- In Croatia there is not enough experience with implementation of plans/programmes that had the SEAs done to judge whether the SEA is relevant to sustainable development. It’s still too early to tell.

Specific SEA issues in the MS

- The SEA will lead to more complicated procedures. The Czech Republic had SEAs before the Directive, and there were some good and bad examples. Since 2004 it has become much more complicated.
- There is no need for a more structured procedure and to amend the Directive although it could be simplified to reduce inefficiencies/dysfunctions in procedures.

Coherence

18. To what extent is the SEA Directive coherent with other parts of EU environmental law/policy, including environmental impact assessment and appropriate assessment?

19. To what extent does the SEA Directive complement or interact with other EU sectoral policies such as agriculture, fisheries, energy, transport, water management, regional and cohesion, etc.? How does the SEA Directive positively or negatively affect these policies?

Coherence with environmental legislation

Risk of duplication and overlaps between EIA and SEA
• EIA/SEA may overlap depending on the experience of the planning authority/practitioners.
• In Slovenia there have been examples of detailed urban plans and industrial zone plans being done, where both SEA and EIA were done; but there is no duplication experienced for sectoral/national plans.
• In Croatia, the SEA and EIA are two separate procedures and there are no examples of joining them up.
• In Croatia, There is a possibility of duplication the process, in case of e.g. urbanistic plans or touristic zones. But we still haven’t got that experiences.
• Appropriate Assessments (AA) are carried out as part of SEAs when needed, and are coordinated pretty well.
• There are some Member States with overlapping procedures: for example, there are examples of SEAs that look like EIAs, then go through the EIA process – so there is room for improvement.
• There are significant overlaps between the EIA/SEA. There needs to be more integration.
• EIA should take into account any SEA. There should be a legal requirement for any EIA to consider the findings of SEA: often practitioners are afraid to ‘copy/paste’ and re-use the information produced in previous assessment like SEA because they have the contractual obligation to produce something new. To improve coherence and also effectiveness and efficiency it would be better to build upon and verify the information that is already available.

**Application of SEA into the EIA in practice**

• SEA for Operational Programmes under Cohesion Policy are often treated as ‘mega EIA’, because of the programme is an investment programme, with a range of foreseen activities (projects) for which mitigation measures are needed.
• There is clear separation between EIA and SEA in terms of legislation, but in practice they don’t feed into each other fully (e.g. cumulative impacts etc.). In some cases the assessments have just been copied and pasted; the SEA may also contradict the EIA – which also causes problems.
• In some cases the procedures are too separated and could have more synergy, be synchronised.
• In Croatia, Sometimes, especially the SEAs for the period 2007-2012, turned out to be mega EIAs, due to the lack of experience – from practitioners, but also from the relevant authorities (although situation is getting better for this programming period).
• In Slovenia the good practice to use SEA findings in EIA is not well developed; the two procedures don’t follow up on each other.
• AA is done as part of SEA, but there is the issue of the strategic assessment vs the more detailed requirements of the later EIA.
• It is difficult to integrated SEA if plans and programme do not have spatial characteristics.
• For SEA done for Operational Programmes a list of projects is included in the EU fund application and the assessment follows the EIA approach.
• There should be a control point (an obligation) to ensure a link between SEA and the subsequent EIA.

**SEA Recommendations implementation**

• Currently there is no system available to follow and verify how recommendations put forward in the SEA are followed: if the SEA findings give recommendations these are not always followed up by EIA. Planning authority is not asked to follow up on SEA. Instead of focusing on monitoring, there should be a focus on SEA recommendations.
• In this sense it is more useful to deal with SEA recommendations, especially for nationwide plans rather than on the monitoring of environmental effects.

**Sectoral coherence and related issues**

• In the Czech Republic, recently there has been great synergy between the Operational programmes for transport and SEA, because SEA was done in a more systematic way.
• SEA has had a positive effect and there are huge interactions with other EU sectoral policies.
• In Croatia, SEA has affected the other sectoral policies in a positive way. For example, in the water management sector, some of the SEA recommendations regarding better environmental performance of planning the flood prevention were taken into account. It is to be seen how, and if at all, these recommendations will be implemented in the future.
• SEA is done in consistency with other EU sectoral / environmental policy. By some Member States this is done well, others just do it to tick the boxes.
  • However too often only consistency is checked, with no further steps taken. E.g. SEA is done to make sure the OP complies / is consistent with water saving policy, but not further proposal is made to enhance the plan.
• Sectoral coherence depends on best practices; it varies a lot depending on the sector. For example the water sector (floods plans and RBMP) are those more consistent. Climate change is also taken more into SEA.
• The problem is that sometimes the OPs are just a list project, meaning that the purpose of the Op is not solving identified problems, but rather implementing a list of projects. This makes it more difficult for the SEA, including integration with EU sectoral policies.
• In countries like Poland, Latvia and Lithuania consistency with other EU sectoral policy is considered in the SEA and it’s a specific chapter of the Environmental Report.
  • The ex-ante conditionalities have also helped make the plan more coherent.
• In Slovenia, There are many opportunities for SEA to bring consistency with other EU sectoral policies. (e.g. transport, water)
  • However, in Slovenia, SEA is really done only for EU OPs; for other national sectoral plans SEA is usually done late, just to tick the boxes.
- Sectoral authorities try to get around SEA, and do not have internal capacities to carry out an SEA – no one who even knows what the SEA procedures entail. This results in a waste of time.
- The environmental authority should check consistency with other EU objectives and targets and select the most important what they want already at the scoping phase. There is a need to focus on these key objectives so the assessment team actually analyses them.
- There is also a difference between consulting on the targets or consulting on the impacts. The difference may decide if the assessment is done. (Impacts on the ground vs EU environmental objectives)

### EU added value

20. To what extent does the SEA Directive support the EU internal market and creation of a level playing field for economic operators across the EU Member States?
21. What would be the likely situation in case of there having been no EU SEA legislation?

### SEA and delays in plan/programme preparation

- The SEA can significantly prolong the process. Lots of time is spent on shuffling paper from office to office.
- In Central and Eastern Europe, there is more focus on procedure than study (which is the opposite of western Member States).
- In Slovenia, the SEA is lengthy and unnecessarily complicated.
- Much time is spent shuffling papers and discussing procedural aspects, and a layer of rigidity is added to the permitting process.

### Situation without the SEA Directive

- If there was no SEA Directive – anything could happen, several scenarios (for example SEA could have been applied only to national plans and not local plans). Czech Republic already had SEA system which could have been extended.
- The situation in Slovenia if there was no SEA Directive would be that environmental considerations would be much stronger in spatial planning than now and it would take into account all the requirements of the other EU environmental legislation more seriously: in the past spatial planning took environmental consideration into account, but now it has been watered down and relegated to SEA.
- To assess how would have been the situation without SEA Directive, one should look at other countries outside the EU (not covered by the SEA Directive). Given that SEAs are carried out across the world, there must be come value. Probably there would have been less formal requirements to do SEA.
Benefits introduced by the SEA

- SEA could really help with reducing conflicts at the EIA stages (e.g. cumulative effects of a project become an issue because environmental consideration wasn’t taken into account during the spatial plan preparation).
- SEA does help level the playing field – operators cannot go to a part of the EU where the SEA does not apply.
- It has been helpful to harmonize environmental assessment across the EU, but too much focus was made on transposition rather than implementation in practice.

Focus group with regulators/independent bodies

Thursday 21 January 2015, 14:00-16:00

Effectiveness

1. Have the SEA requirements influenced the process of preparing plans and programmes? If so, in what way(s)? If no, or only limited influence can demonstrated, what could be the reason for this?

Impact of SEA on the content of plans and programmes

- In France, there are many plans and programmes to which SEA is applied. But the recent implementation of the directive makes it difficult to draw conclusions on whether SEA has had an impact on the final content for all of them. For sure, there has been a positive effect, at least in the analytical phase, but it might not be the case for all plans and programmes.
- In Scotland, SEA has had a positive influence in amending the final content of many plans, but of course it depends heavily on the type of plan. Planners sometimes have to do the work themselves, but this has led to varying degrees of success. This means the effectiveness of the SEA can be dependent on internal assessment experience and local knowledge of the environment.
- There is the example of offshore renewable energy where the SEA has helped with the drafting of the plan, as environmental issues have been embedded in the plan from the beginning.
- In Scotland the quality of SEAs can vary widely as does their degree of effectiveness. Quality and effectiveness can depend on the type of plan, and how well it has been embedded into the planning system.
- The positive effect is seen on the plan makers: there has been a progressive improvement as they are more and more aware of the necessity to carry out SEA and how to do it. For example, for the Fisheries Operational Programme, the plan makers were told by the European Commission that it would take into consideration Environmental authority’s opinion before approving the French fund.
- If a SEA is undertaken within reasonable timeframe, it is more likely to be of good quality, thus improving its effectiveness, but it is really down to plan makers to be aware of the specific requirements and apply them at the right time.
Mitigation measures

- In France, it is not common practice to identify mitigation measures efficiently; in particular, mitigation measures are not precisely identified before the environmental authority gives an opinion.

Coordination between environmental authority and authorities responsible for the plan or the program

- In France there are two different models, which need to be considered when looking at coordination between environmental authority and authorities responsible for the plan or the program. 1) On the one hand there are the land use plans, which are handled by the local authorities, closely with environmental authority from the beginning up until the decision on the land use plan. 2) On the other hand, there are the sectoral/national plans, for which the environmental authorities are not present until the end of the process, when they have to give an opinion, just before approval. The environmental authority does not even speak to the plan authority until the end in order to increase independence.
- In Scotland the situation is similar, with local spatial plans being prepared by local authorities and not central government.
- In Scotland, the comments of the environmental authorities are not always taken into consideration because it is not an obligation to do so.

Best practice

- An important driver to improve effectiveness within Scotland has been the organization of an annual event, the SEA Forum where practitioners meet to discuss best practice and use each other as a sounding board.
- In Scotland, there are guidance documents concerning land use plans which set out timing and suggest that early involvement can improve quality.
- In Scotland the legislation goes beyond what the SEA Directive required. So when looking at effectiveness in Scotland, it needs to be clear what has been achieved because of the SEA Directive, and what is the result of how Scotland opted to extend their legislation.

Scoping

- In France, scoping can be done either formally or informally: land use plans are informally scoped, producing a document that looks like an SEA scoping report but covers impacts that go beyond environmental impacts.
- Formal scoping is not a very common practice in France. Only 1-2 formal scoping procedures were done over the last 5 years, although in 2015 there were been many more questions addressed to the environmental authority.
- In Scotland, there is awareness that scoping is the most important phase within SEA. If undertaken early, scoping allows practitioners to formally gain support from
the consultation (environmental) authorities at a time when it can meaningfully influence the plan.

- The timing of scoping is critical, if undertaken too late in the plan’s preparation it can lack influence, too early and the lack of practical information about the plan can lead to a vague assessment, which will then impact on the plan, the environmental report and the consultation.

Data availability

- In France, data availability provides a paradox as there are a lot of data available, but not all environmental aspects are covered. There are some aspects missing, for example regarding marine environment, but there are directives in progress to mitigate this.
- Data availability is not a problem as such; the problem is rather how the practitioners use available data. People do not always use all available data, which depends on time and probably also on the competence and skills of the people.
- Sometimes data may be outdated. One cannot use data from 2003 for an SEA done in 2016.
- Available data used to pose an issue, however there have been efforts in Scotland by the Consultation Authorities to mitigate this.
- In Scotland, access to data is not as big an issue as the interpretation of data, which for certain topics can need specialist input. Consultants undertaking SEA are more likely to be SEA experts, and not environmental experts. This is why the role of the consultation authorities is so important.
- The quality of data used for SEAs can sometimes depend on the quality of consultants.

Alternatives

- In France, if SEA is started at the beginning, there would be no difficulties in assessing alternatives. However, the planning process is very political, which means much is decided before the SEA starts and the political options are already decided (and cannot be changed). Consultants therefore are often asked to justify why some decision (the political option) has been taken over others.
- When a decision is taken and it is difficult to change, then the plan makers rather opt to reduce the impact by proposing compensation measures, that too often are not well formulated.

Additional issues

- In France there was a problem with late transposition of the Directive, and as a consequence it took more time for the plan makers to get used to undertaking an SEA.
- It is often seen that the law requires a plan to be completed by a specific time (e.g. end of 2014, end of 2015) and people try to finalise plan within this schedule. However, the SEA is not integrated into this timeframe and ends up being started
too late, when the environmental issues cannot be taken into account. This decreases the quality of satisfactory results.

- In Scotland, there are sometimes transparency issues regarding decision making, as it is not always clear whether social and economic factors were taken into account when the environment was not the reason for a decision.

### Efficiency

2. Is the SEA a cost-effective mechanism for assessing and addressing environmental impacts? In the affirmative, how is this demonstrated in practice?

### Cost-effectiveness of SEA

- In France, there are no data on cost-effectiveness of SEA.
- Some plans have only been assessed since 2009, more plans have been assessed in 2014-2015, but to see some real economic effects one would still have to wait 5-10 years.
- It is too early to judge; in the longer term there will probably be evidence to prove cost-effectiveness.
- Cost effectiveness is difficult to assess even in Scotland (differently than in England). The consultation authorities together with the Government attached a great important to SEA and have worked hard to get local authorities to do SEA work where required.
- Regarding the costs, consultants’ fee can be high, but it is difficult to attach monetary value to SEA overall, as one should also consider the benefits it can bring.
- There are issues regarding the benefits gained compared to the time put in to preparing the SEA. If the SEA brings about a big change to the plan, it may be cost-effective, however generally SEAs don’t lead to large alterations to a plan.
- Normally an SEA may just fine tune the final product, resulting in a more joined up picture that includes mitigation of effects. This is valuable, but it does not always bring to big changes to the plans, although in some cases this can result.

### Efforts to streamline the SEA process

- In Scotland the government is working very closely with the consultation authorities to improve and streamline the process (e.g. by reducing the amount of data used etc.), but reducing the time spent on SEAs does not necessarily means having more benefits.
- There is nothing in the Directive that prohibits streamlining. However too often there is too literal/strict interpretation of the Directive with the result that the implementation process is too lengthy, burdensome, not tailored and specific. There should be more flexibility in the interpretation. There is an issue of practitioners putting everything in the SEA just to make sure they can demonstrate compliance and thus less likely to be challenged.
- Legal challenges are possible, so people take a precautionary approach to SEA.

### The involvement of environmental authorities
In France, the environmental authorities are fully competent and work closely together. In large municipalities, people have the skills and data. Smaller municipalities work closely with the government and state local authorities (e.g. branch of the environmental ministry working locally). Smaller municipalities may have fewer in-house skills but generally the central government helps them. In Scotland, when budgets were larger authorities could afford to outsource. Now budgets are tighter they do not allow for this. Those within central government have been looking for practical solutions, which includes doing assessment in house or with a central resource of technical experts (mainly within larger responsible authorities). It is unclear whether outsourcing will resume if budgets allows. There is also opportunities regarding analysis of data and putting it into layman’s terms which the authorities and the public can grasp. There is already a struggle to engage the public, so a large document does not help. In Scotland there are efforts to improve the consultation process. Doing it in house can improve the environment, as can working more closely with the public.

### Relevance

3. How relevant is the SEA Directive to achieving sustainable development?

#### Relevance of the SEA Directive and sustainable development

- In France, there are no relevance issues, as there are no other tools to help policy makers to think about environmental issues. This was also not done before the SEA
- The link with sustainable development and in particular social and economic issue however is less clear.
- Before SEA, social and economic issues were at a higher level, and environmental assessment lagged behind. Now, environment and economic have increased, leaving social impacts to catch up. Social impacts are now where environmental impacts were 10 years ago.

### Coherence

4. To what extent is the SEA Directive coherent with other parts of EU environmental law/policy, including environmental impact assessment and appropriate assessment?

5. To what extent does the SEA Directive complement or interact with other EU sectoral policies such as agriculture, fisheries, energy, transport, water management, regional and cohesion, etc.? How does the SEA Directive positively or negatively affect these policies?

#### Coherence between the SEA and EIA and Habitats Directive
In France, whenever a Directive is approved at different times, it is transposed separately.

In France, for the transposition of the 2014 EIA Directive the Government tried to transpose it in coordination/integration with other Directive, including the SEA Directive, but it was unsuccessful. As long as the link between different EU environmental legislation is not made at European level, there will be no formal link at national level.

It is likely that the newest EIA will be more effective than previous EIA Directives, but there is still no formal link.

In Scotland, linking the EIA and SEA is difficult because there are no formal links in the legislation: there is not a specific requirement in legislation that EIA should look at the results of SEA.

Especially regarding land use planning, mitigation measures identified at SEA stage should be a starting point for the EIA. They have proposed this in Scotland, but it is difficult to become practice. It would be more effective if the EU make the formal link in legislation.

Regarding Appropriate Assessment there has been work in this area and two guidance documents for practitioners prepared in Scotland to help make clear the link between SEA and AA, which should lead to improvements.

**Duplication of assessment**

In general there is no duplication between the EU Environmental Directives; on the contrary, they are complementary and useful.

In France, the issue is not with duplication as such, but rather a question of gaps and coherence between different legislations and whether the formal link between SEA and EIA is made in legislation. For example, in the case of the Sea Ports, project after project has destroyed habitats, as the cumulative effects have not been fully taken into account. This highlights a gap in coherence between the EIA and SEA.

**Sectoral coherence**

In France, SEA is not always easy to be applied to other EU Directives. Another contradiction is found between the process laid out by the MSFD and the SEA process: the MSFD is aimed at improving the marine environment, so the objectives are coherent, but the two processes are not, because the MSFD fixed specific targets by 2020 (good status of conservation) and the actual implementation of the activities in the plan only start after 5 years, thus the timing for implementation is incoherent.

In France, regarding coherence with other sectors, SEA has helped making different sectoral policies more coherent for the environment (example in the energy sector where the use of wood, biomass for energy production was considered as having an impact on the environment).

However in France, sometimes some contradictions are found, for example climate mitigation which proposes the use of renewable energy vs water objectives.
(hydropower projects impact the status of water, offshore wind power projects may affect marine environment).

- In Scotland, there is no visible difference or contradictions between land use, transport plans, etc.
- One thing that the SEA does well is getting people in one sector to understand how the plan impacts other sectors. If done properly, the SEA gets the environmental authorities talking to the local authorities, which would not always be the case without SEA.

### EU added value

6. **To what extent does the SEA Directive support the EU internal market and creation of a level playing field for economic operators across the EU Member States?**
7. **What would be the likely situation in case of there having been no EU SEA legislation?**

### Situation without the SEA Directive

- In France, if there were no EU legislation, probably everything would still be organized sector by sector, with things the same as they were 10, 20, 30 or 40 years ago. The SEA Directive made a difference in France.
- Now there is also better coordination between the different levels of government. This would have been impossible in France without the Directive.
- Each Member State puts the SEA into its own existing plan structure.
- Not sure how the SEA contributes to a level playing field.
- There has been an increased awareness on the impact on other Member States. As part of an island, Scotland has never really thought about this cross-border impact. However there have been several instances of transboundary consultations. So without the SEA Scotland wouldn’t automatically consider potential impacts beyond its borders.

Interview summary with Veronica ten Holder (Netherlands Commission for Environmental Assessment NCEA)

### Effectiveness

- A review performed in 2012 in the Netherlands concluded that EIA/SEA in 63% of investigated cases (from 2010 onwards) had a clear impact on decision making and in another 25% a substantial impact. The majority of the cases were SEAs.
- Key factors for the overall success are mandatory requirements in Dutch legislation and high quality of information.
- If the plan makers are obliged by legislative requirements to carry out SEA the influence on the process of preparing plans and programmes will be higher.
- Independent quality review by the Netherlands Commission for Environmental Assessment helps ensuring the quality of SEA.
- Key factors for effectiveness are an early start of the SEA and a clear ambition in using SEA to investigate open minded possible solutions. Postponing SEA and in the
end using the SEA as a mere justification of choices often causes delay because of disregarding realistic alternative options or overlooking environmental impacts.

- The scoping phase of SEA is important: SEA has to cover all the possible impacts and not just those related to the future activity (the project that will be subject to EIA); however, from a practical point of view, it is not always useful to have such a broad scope of assessment. When giving its opinion on the scope of the Environmental Report, the NCEA tries to make it as relevant as possible to the future activities involved.

- Proposed amendments to the Directive:
  - A stricter requirement on the starting point of SEA in the EU Directive would improve practice.
  - A link with the Arhus convention asking for public debate in the phase of plan/project preparation at a moment where there is still room for alternative options, might be able to improve SEA practice (e.g. in a transport plan, prioritise public transport instead of building new roads and new infrastructures).

**Efficiency**

- Costs: time and money in the perception of decision makers are felt prohibitive in performing SEA properly. However in the before mentioned review EIA/SEA practitioners indicated that in practice EIA/SEA accelerate decision making and in that way reduce costs. Civil servants/policy makers, however, have contrasting opinion: they prefer to have instant decision and think that SEA prolongs the planning process and therefore it costs more. It’s always a matter of quality of SEA: if it done well, it is a good tool.
  - Our estimation of costs of SEA: ranging from € 5.000 to € 1.000.000 depending on the complexity
  - Producing quantified/monetised estimates of benefits is difficult. Costs of delay due to juridical procedures could give quantitative insight and could be useful.

- Another factor that determines the costs-effectiveness of SEA is the lack of resources (human and financial) of local government. Although it should be said that they have observed ‘operational maturity’ of SEA in the Netherlands because it has been carried out since 1987, way before the Directive came into force.

- The main benefits of SEA in the Netherlands are: solid decision making that leads to less juridical procedures, transparency leading to more support and therefore acceleration of decision making, integrated approach and last but not least facilitation of follow-up decision thanks to the anticipation questions such as Why? What? and Where? That would otherwise be addressed only at the EIA stage.

- SEA is not cost effective in cases where the plan is modified shortly after the moment the plan was decided upon (so SEA has to be done twice). It is less cost effective when SEA is merely used as justification for choices already made.

**Relevance**

- SEA is not relevant enough as SEA issues do not cover all issues within sustainability, namely more long term issue and social/economic issues.

- SEA should be more adaptable, it should be completely integrated into the sustainable development agenda.
The easier way to change the Directive would be in the reformulation of the specific objectives.
Impacts considered in SEA should also include social and economic impact, especially at strategic level. This would improve the decision.
However, we must be realistic and realise that such change would imply much more costs of carrying out SEA.

Coherence

- Overall there is good coherence between SEA and EIA; in practice, the Netherlands have a lot of experience with tiered decision making and SEA/EIA can be used accordingly. SEA and EIA at the local level are often carried out simultaneously.
- There is one gap identified: in the Dutch system, when a screening decision on EIA concludes that no EIA is necessary, as a result the need for SEA can disappear. As a result strategic alternatives that are more environment friendly move out of sight as well as cumulative impacts.
- Coherence with other EU Directive in the Netherlands at the moment is good in particular with AA, EU cultural heritage issues and water quality directive. The AA at the moment is a mandatory part of SEA when relevant. However the government is planning some amendments to the legislation and in the future the mandatory link between SEA and AA most likely will disappear. The rationale behind this change is mainly to grant more flexibility in the assessment and give the opportunity to plan makers to take one step at a time because otherwise, with a combined procedure, it is difficult to oversee the scope. NCEA feels that this will mean a step back in coherence and loss of efficiency.
- For several programs based on EU policies SEA was conducted in the Netherlands (e.g. Reduction of nitrates, programme for the long term management of nuclear waste)
- SEA already fits perfectly with the requirements of the WFD in the Netherlands. In addition, there is a proposal on the table to give the assessment of water quality even more emphasis during SEA and EIA to make sure that specific EU standards are respected (since NL is at the moment lagging behind in reaching the targets).

EU added value

- Yes, SEAs help create the level playing field as strategic choices (why, what, where) are already well addressed during on SEA and private parties (operators) will not have to go into these questions during EIA anymore. For example, when SEA is done on a wind mill park plan at national level the strategic questions of: how much energy should be addressed by wind energy or by solar energy are asked and location alternatives are looked at, then they should not be done at EIA level any more.
- In the absence of SEA the search for solutions that are friendly for the environment (such as the use of more sustainable techniques or more suitable locations with less environmental impact) will be less intensive.
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