

INFORMATION NOTE TO MANAGING AUTHORITIES

Cohesion Policy and Environment

One of the key principles of Cohesion Policy is that all projects must comply with EC legislation. An important part of that legislation relates to the environment. With this note the European Commission would like to remind Member States of:

- (1) The continued need to operate the Cohesion Policy programmes in compliance with the obligations under Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment¹ (also known as the Strategic Environmental Assessment or SEA Directive);
- (2) Reiterate the relevance of this Directive for various plans that are obligatory under environmental law, *inter alia*, Waste Management Plans required under the Waste Framework Directive² and Plans submitted under the Water Framework Directive³; Plans under the Ambient Air Quality and Cleaner Air for Europe Directive⁴ or management plans under the Habitats Directive.⁵

The SEA Directive has been applied to the relevant Operational Programmes (OPs) adopted by the Commission. It is encouraging to note that, for the most part, this operation has been carried out without any major problems. The few difficulties that arose have been resolved through bilateral contacts between the Commission and the Member State concerned.

However, the obligations under the SEA Directive do not cease with the adoption of the OPs. Indeed, there are four issues that we would like to bring to your attention:

- SEA monitoring measures – Article 10 of the SEA Directive specifies that Member States shall monitor the significant environmental effects of plans and programmes in order to identify at an early stage unforeseen adverse effects and be able to undertake appropriate remedial action. If this action leads to an amendment of the Operational Programme, an SEA maybe necessary (see next point). The same Article also states that existing monitoring arrangements may be used if appropriate with a view to avoiding duplication of monitoring.
- Any possible amendment to approved Operational Programmes – Article 33 of the General Regulation⁶ foresees the possibility to revise Operational Programmes either at the initiative of the Member State or the Commission. In this case, the amendments to a given OP will, in principle, necessitate a screening to decide if a new SEA procedure is required (Article 3.3 of the SEA Directive).

¹ OJ L 197, 21.07.2001, p.30

² Directive 2006/12/EC, OJ 114, 27.04.2006, p.9

³ Directive 2000/60/EC, OJ 327, 22.12.2000, p.1

⁴ Directive 2008/50/EC, OJ 152, 11.06.2008, p.1

⁵ Directive 92/43/EEC, OJ L 206, 22.7.1992, p. 7

⁶ OJ L 210, 31.07.06, p.25

- Annual and Final Implementation Reports – Managing Authorities are obliged to provide an Annual Report under the Cohesion Policy rules while as explained above monitoring measures are foreseen under the SEA procedure. In order to achieve administrative efficiency, the Commission encourages the inclusion of SEA monitoring measures or indicators in the Annual Implementation Reports for Cohesion Policy. More specifically, this information could be included under chapter 2.7⁷ of the Reports.
- Plans and programmes stemming from the Operational Programmes – it may be possible that an Operational Programme gives rise to further plans and programmes which fall under the scope of the SEA Directive, and hence require a new SEA procedure or an appropriate screening to determine if an SEA procedure is necessary.

Various EC Directives demand the drafting of integrated plans as indicated above under point 2. Where such plans are newly drafted or where old plans are substantially amended, these should be made subject to an SEA procedure, provided that they fulfil the criteria in Article 3.2 of the SEA Directive. This is especially the case if those newly drafted or amended old plans set the framework for the future development consent of projects listed in Annexes I and II of the Environmental Impact Assessment Directive⁸. Furthermore, in view of their likely effect on nature sites, those plans also require an assessment according to Article 6 or 7 of the Habitats Directive⁹. In case these plans and programmes determine the use of small areas at local level or minor modifications to those already approved, an SEA shall be required only where the Member States determine that they are likely to have significant environmental effects according to Article 3.3 of the SEA Directive. Where a Directive requires a plan to be adopted and such a plan is not yet established or, if requested, has not undergone an SEA, the Commission will initiate infringement procedures.

Additionally, Member States need to be reminded that an Environmental Impact Assessment will also be required, as well as an appropriate assessment under the Habitats Directive (Article 6)¹⁰, or an Assessment under the Water Framework Directive (Article 4.7)¹¹ for most of the projects foreseen in the relevant plan. The Commission will monitor, by all appropriate means, the compliance with these obligations.

Managing Authorities for Operational Programmes are encouraged to collaborate closely with national and regional colleagues in the relevant Environmental Authorities in order to be pro-active and to head off potential problems at an early stage.

⁷ See Annex XVIII of the Commission Regulation 1828/2006/EC, referring to the contents of the Annual and Final Reporting.

⁸ Directive 85/337/EEC, as amended, OJ L 175, 5.7.1985, p.40; OJ L 73, 14.3.1997, p.5; OJ L 156, 25.6.2003, p.17

⁹ OJ L 206, 22.7.1992, p.7

¹⁰ OJ L 206, 22.7.1992, p.7

¹¹ OJ L 327, 22.12.2000, p.11