

IMPLEMENTATION OF DIRECTIVE 2001/42 ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT

Table of Contents

FOREWORD

1.	INTRODUCTION	p. 2
2.	OBJECTIVES OF THE DIRECTIVE	p. 4
3.	SCOPE OF THE DIRECTIVE	p. 5
4.	GENERAL OBLIGATIONS	p. 21
5.	THE ENVIRONMENTAL REPORT	p. 23
6.	QUALITY OF THE ENVIRONMENTAL REPORT	p. 32
7.	CONSULTATION	p. 34
8.	MONITORING	p. 43
9.	RELATION WITH OTHER EC LEGISLATION	p. 47

Appendix I	Practical Guidance on Monitoring
Appendix II	Members of the working group
Appendix III	Bibliography

FOREWORD

The Strategic Environmental Assessment (SEA) Directive is an important step forward in European environmental law. At the moment, major projects likely to have an impact on the environment must be assessed under Directive 85/337/EEC. However, this assessment takes place at a stage when options for significant change are often limited. Decisions on the site of a project, or on the choice of alternatives, may already have been taken in the context of plans for a whole sector or geographical area. The SEA Directive - 2001/42/EC – plugs this gap by requiring the environmental effects of a broad range of plans and programmes to be assessed, so that they can be taken into account while plans are actually being developed, and in due course adopted. The public must also be consulted on the draft plans and on the environmental assessment and their views must be taken into account.

Whilst the concept of strategic environmental assessment is relatively straightforward, implementation of the Directive sets Member States a considerable challenge. It goes to the heart of much public-sector decision-making. In many cases it will require more structured planning and consultation procedures. Proposals will have to be more systematically assessed against environmental criteria to determine their likely effects, and those of viable alternatives. There will be difficult questions of interpretation, but when properly applied, these assessments will help produce decisions that are better informed. This in turn will result in a better quality of life and a more sustainable environment, now and for generations to come.

It is important therefore that Member States have a clear understanding of the Directive's requirements, so that it is implemented consistently throughout the EU.

This document has been produced with that aim in mind. It should help Member States to implement the Directive such as to meet its requirements and gain the benefits expected from it. Finally, it should also enable them to understand better the purpose and operation of the Directive, and to consider the implications it will have for their own planning procedures.

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1. INTRODUCTION

- 1.1. Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment¹ ('the SEA Directive')² entered into force on 21st July 2001 and has to be implemented by Member States before 21st July 2004. It will greatly affect the work of many public authorities by obliging them to consider systematically whether the plans and programmes they prepare come within its scope of application and hence whether they need to carry out an environmental assessment of their proposals, in accordance with the procedures laid down in the Directive.
- 1.2. Experience of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ('the Environmental Impact Assessment or EIA Directive')³ has shown that it is important to ensure a consistent implementation and application across the whole Community to achieve the maximum potential for environmental protection and sustainable development. This document has been drawn up to provide guidance for Member States to ensure from an early stage as consistent implementation and application of the SEA Directive as possible.
- 1.3. The document was prepared by representatives of Member States and the Environment Directorate-General of the European Commission who, between them, possessed experience both of negotiating the Directive and of carrying out environmental assessments at various levels (see appendix II). It also benefited from discussions by national SEA experts from the Member States and the Accession Countries. The authors had very much in mind the questions which Member States will need to address as they apply the Directive in their own legal systems.
- 1.4. The document is designed to help Member States, Acceding States and Candidate Countries understand fully the obligations contained in the Directive and assist them in transposing the Directive into their national law and, equally important, in creating or improving the procedures which will give effect to the legal obligations. It does not set out to explain how to carry out an environmental assessment although it does offer some practical advice on how certain requirements could be met. In conjunction with national guidance prepared by Member States, it should also be of use to authorities which have to apply the Directive when preparing their plans and programmes. It may also be helpful when authorities come to consider the UN ECE Protocol on strategic environmental assessment which was opened for

¹ OJ L 197, 21.7.2001, p.30.

² Although the word 'strategic' does not appear in either the title or the text of the Directive, it is often referred to as the 'strategic environmental assessment' Directive (or SEA Directive) because it deals with environmental assessment at a higher, more strategic, level than that of projects (which are dealt with in the Environmental Impact Assessment (or EIA) Directive (Directive 85/337/EEC as amended by Directive 97/11/EC)).

³ OJ L 175, 5.7.1985, p.40.

signature on 21st May 2003 at the Fifth Ministerial Conference ‘Environment for Europe’ in Kiev, Ukraine.⁴

- 1.5. The document represents only the views of the Commission services and is not of a binding nature. The present version is not meant to be definitive. The document may be revised in the future according to the experience that will arise from the implementation of the Directive and from any future case law. It is not intended to give absolute answers to specific questions but it should help to throw light on the way they should be addressed. It must be emphasised that, in the last resort, it rests with the European Court of Justice (ECJ) to interpret a Directive.
- 1.6. The structure of the document draws upon the order of the Articles in the Directive itself. The first step in understanding the Directive is deciding which plans and programmes it applies to. The document therefore begins by discussing its scope of application focusing on the concept of plans and programmes as well as the issue of whether they are likely to have significant environmental effects. It then considers in turn the content of the environmental report, the requirements on quality assurance, the provisions on consultation, the nature of the monitoring requirement, and finally the relations between the Directive and other Community legislation.
- 1.7. So far as possible, the presentation of each section follows the same pattern, comprising reference (in italics) to the appropriate provision(s) of the Directive, a brief introduction to the topic, and a discussion of the issues which arise. This draws, where appropriate, on the jurisprudence of the ECJ, in particular on decisions which relate to the EIA Directive. Words quoted from the Directive itself are in bold type. Where examples are used in this document, it is not intended to imply that they necessarily fall within the scope of application of the Directive; that is a question which would have to be decided case by case.

⁴ Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention). Those of its provisions dealing with plans and programmes are similar, but not identical, to those in the Directive. The Protocol also contains an Article on policies and legislation.

2. OBJECTIVES OF THE DIRECTIVE

Article 1

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.

- 2.1. Article 1 lays down two objectives for the carrying out of an environmental assessment in accordance with the Directive:
- To provide for a high level of protection of the environment.
 - To contribute to the integration of environmental considerations into the preparation and adoption of certain plans and programmes with a view to promoting sustainable development.
- 2.2. These objectives link the Directive to the general objectives of Community environmental policy as laid down in the EC Treaty.⁵ Article 6 of the Treaty lays down that environmental protection requirements must be integrated into the definition and implementation of Community policies and activities, in particular with a view to promoting sustainable development.
- 2.3. Article 1 should be read in conjunction with the recitals of the Directive, particularly recitals (4), (5) and (6) which also describe the aims of the Directive:
- To ensure that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption (recital 4).
 - To benefit undertakings by providing a more consistent framework in which to operate by the inclusion of relevant environmental information into decision making. The inclusion of wider set of factors in decision making should contribute to more sustainable and effective solutions (recital 5).
 - To provide for a set of common procedural requirements necessary to contribute to a high level of protection of environment (recital 6).

⁵ Article 174 of the Treaty establishing the European Community.

3. SCOPE OF THE DIRECTIVE⁶

- 3.1. The provisions determining the scope of application of the Directive are mainly expressed in two related articles. Article 2 sets out certain characteristics which plans and programmes must possess for the Directive to apply to them. Article 3 then sets out rules for determining which of those plans and programmes are likely to have significant effects on the environment and must therefore be subject to environmental assessment. Article 13(3) defines the temporal scope of application (see paragraphs 3.64-66 below).

Article 2

(a) 'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications 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 Parliament or Government, and

- which are required by legislative, regulatory or administrative provisions.

- 3.2. The first requirement in order for **plans and programmes** to be subject to the Directive, is that they must meet the conditions of both indents in Article 2(a). In other words, they must be both 'subject to preparation and/or adoption by the prescribed authorities' and 'required by legislative, regulatory or administrative provisions'.
- 3.3. **Plans and programmes** are not further defined. The words are not synonymous but they are both capable of a broad range of meanings which at some points overlap. So far as the Directive's requirements are concerned, they are treated in an identical way. It is therefore neither necessary nor possible to provide a rigorous distinction between the two. 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. The name alone ('plan', 'programme', 'strategy', 'guidelines', etc) will not be a sufficiently reliable guide: documents having all the characteristics of a plan or programme as defined in the Directive may be found under a variety of names.
- 3.4. In considering the concept of 'project' under the EIA Directive in case C-72/95 *Kraaijeveld*, the ECJ noted that that Directive had a wide scope and a broad purpose. In view of the language used in Directive 2001/42/EC, the related purposes of that Directive and the EIA Directive, and the conceptual similarities between them, Member States are advised to adopt a similar

⁶ In the jargon of environmental assessment, 'scope' usually refers to the coverage of the environmental report described in Article 5. This is not to be confused with the term 'scope' as used in the title of Article 3 to refer to the scope of application of the Directive.

approach in considering whether an act is to be considered a plan or a programme falling within the scope of Directive 2001/42/EC. The extent to which an act is likely to have significant environmental effects may be used as one yardstick. It may be that the terms should be taken to cover any formal statement which goes beyond aspiration and sets out an intended course of future action.

- 3.5. The kind of document which in some Member States is thought of as a **plan** is one which sets out how it is proposed to carry out or implement a scheme or a policy. This could include, for example, land use plans setting out how land is to be developed, or laying down rules or guidance as to the kind of development which might be appropriate or permissible in particular areas, or giving criteria which should be taken into account in designing new development. Waste management plans, water resources plans, etc, would also count as plans for the purposes of the Directive if they fall within the definition in Article 2(a) and meet the criteria in Article 3.⁷
- 3.6. In some Member States, **programme** is usually thought of as the plan covering a set of projects in a given area, for example a scheme for regeneration of an urban area, comprising a number of separate construction projects, might be classed as a programme. In this sense, 'programme' would be quite detailed and concrete. One good example of such a programme could be the Icelandic Integrated Transportation Programme which is planned to take the place of independent programmes for road, airport, harbour and coastal defence projects. The transport infrastructure is defined and policy on transport infrastructure is laid out for a period of 12 years (identifying projects by name, location and cost). But these distinctions are not clear cut and need to be considered case by case. Other Member States use the word 'programme' to mean 'the way it is proposed to carry out a policy' – the sense in which 'plan' was used in the previous paragraph. In town and country planning in Sweden, for instance, the programme is thought of as preceding a plan and as being an inquiry into the need for, and appropriateness and feasibility of, a plan.
- 3.7. Plans and programmes include those **co-financed by the European Community**. The Directive is of course addressed only to the Member States and not to the institutions of the Community.⁸ Regardless of the decision-making process within the Community institutions regarding funding (and whether or not there is SEA – or an analogous form of assessment - by those institutions) there will need to be an assessment by the Member State if the plan or programme is subject to the Directive.

⁷ In Case C-387/97 (*Commission v Greece*), the ECJ considered what would not qualify as the plans which the Member States are required to adopt under Article 6 of Directive 75/442 and Article 12 of Directive 78/319. It said that 'legislation or specific measures amounting only to a series of ad hoc normative interventions that are incapable of constituting an organised and coordinated system for the disposal of waste and toxic and dangerous waste cannot be regarded as [such] plans' (paragraph 76).

⁸ The Commission has introduced a procedure for assessing the impact of its own proposals (Communication on impact assessment, of 5 June 2002 (COM(2002)276 final)).

- 3.8. If the criteria in Articles 2 and 3 are met, the Directive would apply in principle to co-financed plans in several sectors, including transport and regional, economic and social development (Structural Funds).⁹ Article 11(3) prescribes expressly that for plans and programmes co-financed by the European Community, the environmental assessment under Directive 2001/42/EC must be carried out in conformity with the specific provisions of the relevant Community legislation. Hence the assessment must comply with each requirement of the applicable legislation; an assessment adequate for one Directive may not be adequate for any other which applies. Plans and programmes co-financed under the current respective programming periods of Regulations 1260/1999/EC and 1257/1999/EC are exempted from the scope of the SEA Directive. This is because plans and programmes under those Regulations will almost certainly have been agreed before the Directive is due to be transposed in the Member States (i.e. 21st July 2004) and will have undergone prior environmental assessment. The exemption does not apply to future programming periods under those Regulations and Article 12(4) requires the Commission to report on the relationship between the Directive and the Regulations before the expiry of the current programming periods.
- 3.9. **The definition of plans and programmes includes modifications** to them. Many plans, especially land use plans, are modified when they eventually become outdated rather than being prepared afresh. Such modifications are treated in the same way as plans and programmes themselves and require environmental assessment provided the criteria laid down in the Directive are met. If such modifications were not given the same importance as the plans and programmes themselves, the field of application of the Directive would be more restricted.¹⁰ The adoption of such modifications will be subject to an appropriate procedure. It is important to distinguish between modifications to plans and programmes, and modifications to individual projects, envisaged under the plan or programme. In the second case, (where individual projects are modified after the adoption of the plan or programme), it is not Directive 2001/42/EC but other appropriate legislation which would apply. An example could be a plan for road and rail development, including a long list of projects, adopted after SEA. If, in implementing the plan or programme, a modification were proposed to one of its constituent projects and the modification was likely to have significant environmental effects, an environmental assessment should be made in accordance with the appropriate legal provisions (for example, the Habitats Directive, and/or EIA Directive).
- 3.10. Under Article 5 of Directive 2001/42/EC, the likely significant effects on the environment of implementing the plan or programme must be identified, described and evaluated. Thus it is logical to consider that a modification of a plan or a programme during its preparation must be subject to assessment under Article 5 if the modification in itself involves significant environmental effects not yet assessed. This might arise if a modification was made as a

⁹ 'Structural funds' are taken to include the European Regional Development Fund, the European Social Fund, the European Agricultural Guidance and Guarantee Fund, and the Financial Instrument for Fisheries Guidance (see Regulation 1260/1999/EC).

¹⁰ See also Case C-72/95 (Kraaijeveld) which dealt with a similar point in relation to the EIA Directive before its amendment by Directive 97/11/EC.

result of consultation, or of reconsideration of elements of the plan or programme, or if the state of the environment had changed so as to make assessment necessary. Even minor modifications can generate significant environmental effects, as foreseen in Article 3(3) of the Directive. Delays might ensue in the adoption of the plan or programme but these should be kept to a minimum, subject to the over-riding requirement to assess the likely significant environmental effects.

- 3.11. The element **subject to preparation and/or adoption by an authority** stresses that plans and programmes need to fulfil certain formal conditions in order to be covered by the Directive. The main idea of this element is that in the end a plan or programme would always be formally adopted by an authority. However, the phrase would also include the situation where a plan is prepared by one authority (or natural or legal person who works on behalf of the authority) and is adopted by another authority.
- 3.12. The concept of an 'authority' has been given a large scope in the case law of the ECJ. It can be defined as a body, whatever its legal form and regardless of the extent (national, regional or local) of its powers, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State, and it has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals (case C-188/89 *Foster and others v British Gas*). For example, privatised utility companies may be required to carry out some tasks or duties (such as preparing long-term plans for ensuring water resources) which in non-privatised regimes would be carried out by public authorities. In respect of those functions they would be treated as authorities for the purposes of the Directive. In other respects (such as providing consultancy services overseas) they would not be considered to be authorities in the sense of the Directive.
- 3.13. Plans and programmes which private bodies draw up for their own purposes (i.e. when not acting as authorities as described above, nor as agents of authorities, and when not preparing them for adoption by authorities) are not subject to the Directive.
- 3.14. Preparation of a plan or programme covers a process which lasts right through to its adoption. Adoption **through a legislative procedure by Parliament or Government** is one procedure for adopting plans and programmes in some Member States. For example, in Italy regional and local Territorial and Urban plans are adopted and approved in a two-stage procedure by the relevant regional or local authorities. The final approval is often by means of a regional law. 'Government' is not restricted to the level of the State. In some countries, plans and programmes may be adopted by primary or secondary legislation of any State, regional or local legislature. These cases, too, are subject to environmental assessment when the other requirements of the Directive are met. One example at national level is the French *Schémas de services collectifs* which are prepared at national level, with consultation at regional level, and approval by the Government after consultation with Parliament.

- 3.15. Another important qualification for a plan or programme to be subject to the Directive is that it must be **required by legislative, regulatory or administrative provisions**. If these conditions are not met, the Directive does not apply. Such voluntary plans and programmes usually arise because legislation is expressed in permissive terms,¹¹ or because an authority decides to prepare a plan on an activity which is unregulated. On the other hand, if an authority is not required to draw up a plan unless certain preconditions are met, it would probably be subject to the Directive once those preconditions had been met (and the other requirements of Articles 2 and 3 had been fulfilled). It is of course open to Member States, in respect of their own national systems, to go further than the minimum requirements of the Directive should they so desire.
- 3.16. **Administrative provisions** are formal requirements for ensuring that action is taken which are not normally made using the same procedures as would be needed for new laws and which do not necessarily have the full force of law. Some provisions of ‘soft law’ might count under this heading. Extent of formalities in its preparation and capacity to be enforced may be used as indications to determine whether a particular provision is an ‘administrative provision’ in the sense of the Directive. Administrative provisions are by definition not necessarily binding, but for the Directive to apply, plans and programmes prepared or adopted under them must be required by them, as is the case with legislative or regulatory provisions.

Article 3

- 3.17. Article 3 sets out the scope of application of the Directive and is fundamental to its operation. It begins by expressing the requirement for an environmental assessment of certain plans and programmes which are likely to have significant environmental effects (paragraph 1). It then defines classes of plans and programmes which require assessment, either automatically (paragraph 2) or on the basis of a determination by Member States (paragraphs 3 and 4). Paragraph 5 specifies how that determination (so-called ‘screening’) should be made.
- 3.18. Paragraphs 6 and 7 deal with transparency aspects of the determination under paragraph 5, and paragraphs 8 and 9 list certain plans and programmes exempted from the scope of the Directive.
- 3.19. The point in time from which these provisions apply is defined in Article 13(3) of the Directive.

Article 3(1)

An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

¹¹ ‘The authority may prepare a plan’, rather than ‘The authority shall prepare a plan’.

- 3.20. Article 3(1) is the starting point for the more detailed provisions which follow in the remainder of the Article. The assessment to be carried out must be in accordance with Articles 4 to 9, and the plans and programmes to be assessed are specified in paragraphs 2 to 4.
- 3.21. The relationship between paragraph 1 and paragraphs 2 to 4 is clarified by Recital 10. It is important to note that the plans and programmes defined in paragraph 2 should as a rule be made subject to systematic environmental assessment. Except in the cases provided for in paragraph 3, there is no discretion for Member States to determine whether the plans and programmes covered by paragraph 2 are in fact likely to have significant environmental effects: the Directive deems them to have such effects. By contrast, Member States must determine whether plans and programmes not referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects and therefore, in accordance with paragraph 1, require environmental assessment.

Article 3(2)

Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

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

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

- 3.22. Paragraph 2 defines two classes of plans and programmes which are deemed likely to have significant environmental effects. For a plan or programme to fall within the scope of paragraph 2(a), both conditions described there must have been fulfilled; the plan or programme must have been prepared for one or more of the sectors (agriculture, forestry, fisheries, etc) and it must set the framework for future development consent of projects listed in the EIA Directive. It is not necessary to decide whether projects in Annex II to that Directive would require EIA. All that is necessary is that they fall under the categories listed in either Annex I or II to the EIA Directive.
- 3.23. The meaning of '**set the framework for** future development consent' is crucial to the interpretation of the Directive, although there is no definition in the text. The words would normally mean that the plan or programme contains criteria or conditions which guide the way the consenting authority decides an application for development consent. Such criteria could place limits on the type of activity or development which is to be permitted in a given area; or they could contain conditions which must be met by the applicant if permission is to be granted; or they could be designed to preserve certain

characteristics of the area concerned (such as the mixture of land uses which promotes the economic vitality of the area).

- 3.24. The words 'sets a framework for projects and other activities' are used in Annex II with illustrations of how such a framework may be set (location, nature, size or operating conditions of projects and the allocation of resources). These illustrations are indicative and not exhaustive.
- 3.25. As Annex II states, one way of 'setting the framework' may be through the way resources are allocated but the exemptions in Article 3(8) should be borne in mind. The Directive does not define the meaning of 'resources' and in principle they may be financial or natural (or possibly even human). A generalised allocation of financial resources would not appear to be sufficient to 'set the framework', for example a broad allocation across an entire activity (such as the whole resource allocation for a country's housing programme). It would be necessary for the resource allocation to condition in a specific, identifiable way how consent was to be granted (e.g. by setting out a future course of action (as above) or by limiting the types of solution which might be available).
- 3.26. Land use plans generally contain criteria determining what kind of development can take place in particular areas and are a typical example of plans which set the framework for future development consent. An example of the latter is the Netherlands' Municipal Land Use Plans which in some cases set conditions for the granting of building permits by municipalities. Whether particular criteria or conditions set the framework in individual cases will be a matter of fact and degree in each case: a single constraining factor may be so significant that it has a dominant influence on future consents. On the other hand, several rather trivial or imprecise factors may have no influence on the granting of consents.
- 3.27. The phrase could include plans and programmes which, when adopted, themselves give consent for projects, provided these comply with the conditions set out in the plan or programme. Such provisions exist in several Member States. It could include the plans and programmes which, in some countries, set legally binding conditions with which future development consents must conform.
- 3.28. The phrase could also include sectoral plans and programmes which in broad terms identify the location of subsequent development within that sector. It would be necessary in each case to consider the extent to which future decisions on projects were conditioned by the plan or programme.
- 3.29. Article 3(2) expressly refers to '**projects**' listed in the EIA Directive. There 'project' is defined as:
- the execution of construction works or of other installations or schemes,
 - other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.

- 3.30. The word ‘project’ should be interpreted in a way which is consistent with its use in the EIA Directive. The same should hold good for the use of the word in Article 3(4), given the conceptual and linguistic similarities between the two provisions.
- 3.31. **Town and country planning plans** and **land use plans** deal with the way land is to be developed or redeveloped. The terms may be used in different ways by different Member States, but generally both deal with the way territory is to be used, even if one may comprise a broader concept than the other.
- 3.32. Article 3(2)(b) refers to Articles 6 and 7 of Directive 92/43/EEC (the Habitats Directive). Those Articles require an 'appropriate assessment' of 'any plan or project not directly connected with or necessary to the management of a site but likely to have a significant effect thereon'. Hence, if a plan¹² has been found to have significant environmental effects under Article 6(3) of Directive 92/43 on a certain site or sites, this finding triggers the application of the SEA Directive under this paragraph. The sites at issue are those designated as special protection areas (SPA) under Article 4 of Directive 79/409 on the conservation of wild birds and those proposed to be classified as sites of Community importance (pSCI) under Article 4 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora.¹³ In accordance with Article 11(2), integrated assessments are possible meeting the requirements of several items of Community legislation at the same time, in order to avoid duplication of assessment procedures. On the question of avoiding duplication of assessment see paragraphs 9.13 and 9.19-9.27 below.

Article 3(3)

Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

- 3.33. The meaning of '**small**' in the phrase 'small areas at local level' must be defined so as to take account of the differences between Member States and it will probably be necessary to decide it case by case. Interpretation will call for the careful exercise of judgement. The kind of plan or programme envisaged might be a building plan which, for a particular, limited area, outlines details of how buildings must be constructed, determining, for example, their height, width or design.

¹² It is to be noted that Article 6(3) covers plans and projects, not programmes.

¹³ See the document 'Managing Natura 2000 sites: The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC'.

- 3.34. There is a similar difficulty in deciding the meaning of 'local'. The language of the Directive does not establish a clear link with local authorities but the word 'level' does imply a contrast with, for example, national or regional levels. The complete phrase ('small areas at local level') makes it clear that the whole of a local authority area could not be excluded (unless it were itself small). In some Member States local authority areas can be very large indeed and an exemption for the whole of such an area would be a major loophole in the scope of application.
- 3.35. The key criterion for the application of the Directive, however, is not the size of area covered but whether the plan or programme would be likely to have significant environmental effects. A plan or programme which Member States determine likely to have significant environmental effects should undergo environmental assessment even if it determines only the use of a small area at local level. A similar point was made in Case C-392/96, *Commission v Ireland*, where the ECJ ruled that by setting thresholds on the basis of the size of projects alone, 'to the exclusion of their nature and location', the Member State exceeded the limits of its discretion. Projects could have significant effects on the environment by reason of their nature or location.
- 3.36. Similarly, **minor modifications** should be considered in the context of the plan or programme which is being modified and of the likelihood of their having significant environmental effects. A general definition of 'minor modifications' would be unlikely to serve any useful purpose. Under the definition of 'plans and programmes' in Article 2 'any modifications' to those plans or programmes are potentially within the scope of the Directive. Article 3(3) clarifies the position by recognising that a modification may be of such small order that it is unlikely to have significant environmental effects, but requiring that where the modification of a plan or programme is likely to have significant environmental effects then an assessment should be carried out regardless of the scale of the modification. It is important to note that not all modifications would require new impact assessment under the Directive since it does not require such new procedures to be triggered if the modifications are not likely to have significant environmental effects

Article 3(4)

Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

- 3.37. Article 3(4) broadens the scope of the Directive. Unlike Article 3(2), it does not automatically deem certain plans and programmes to have significant environmental effects. Instead it requires Member States to make a specific determination. The plans and programmes to which it applies are all those which set the framework for future development consent of projects but are not covered by Article 3(2). This includes projects in sectors not included in Article 3(2) as well as projects which are in those sectors but are not listed in the annexes to the EIA Directive. The definition of 'project' in the EIA

Directive would apply in this paragraph as it does in paragraph 2. The meaning of **set the framework for future development consent of projects** was discussed under Article 3(2) above.

Article 3(5)

Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

- 3.38. As described above, Article 3(3) and (4) sets out the circumstances in which Member States have to determine whether a plan or programme is likely to have significant environmental effects. Article 3(5) prescribes how they are to discharge this general requirement, while Annex II identifies criteria to guide the determination (the so-called ‘significance criteria’).
- 3.39. Plans and programmes referred to in paragraphs 3 and 4 are of two kinds: (i) special cases of plans and programmes falling under paragraph 2; and (ii) plans and programmes other than those in paragraph 2 which set the framework for the future development consent of projects.
- 3.40. Following the model provided by the EIA Directive, Directive 2001/42/EC provides for three approaches (or ‘screening mechanisms’) to making this determination: case-by-case examination, specifying types of plans and programmes, or combining both approaches.
- 3.41. A **case-by-case examination** would require each plan or programme to be examined on an individual basis to see whether it is likely to have significant effects on the environment. This approach has the advantage of being best able to take individual situations and the characteristics of each plan or programme into account but at the cost of some added administrative burden.
- 3.42. By ‘**specifying types of plans and programmes**’ the Directive envisages that plans and programmes of the same kind will be the subject of a general determination that they are likely to have significant environmental effects. This approach has the advantage of legal and administrative certainty since it is made clear from the start that an environmental assessment is necessary.
- 3.43. It is clear that the power in Article 3(5) to specify types of plans and programmes is not intended as a broad power to exempt whole classes of plans and programmes unless all those plans and programmes could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment (see Case C-72/95 *Kraaijeveld*). Insofar as it could represent a derogation from the Directive, it should be interpreted narrowly (see the comment at paragraph 65 of Case C-435/97 *Autonome Provinz Bozen*). In practice, exclusion from environmental assessment may not be justified in

many cases. It might well be that at the outset not enough information is available at the plan or programme level to be sure that none of the plans or programmes in the proposed class will have significant environmental effects. Furthermore, care would be needed to avoid pre-empting decisions on the application of the Directive to future plans and programmes which might not share all the characteristics of the class in question. For example, changes in the law might create new plans and programmes which would need consideration in order to determine whether the Directive applied to them.

- 3.44. A combination of both approaches (case by case examination and specifying types of plans or programmes) might be possible in some cases. The general approach would be to define a class of plans or programmes which would not, in specified circumstances, be likely to have significant environmental effects and to provide that in other circumstances the determination would have to be made case by case.
- 3.45. Article 3(5) of the Directive specifically requires Member States to take account of relevant criteria in Annex II when determining whether plans or programmes are likely to have significant effects on the environment. The wording of the Directive implies that the whole set of Annex II criteria first needs to be considered so that the relevant ones can then be applied. Expert judgement can help to apply relevant criteria to the plan or programme in order to reach a decision about the likely significance of its effects.
- 3.46. Different issues have to be taken into account when screening mechanisms are developed. The criteria in Annex II are divided into two categories: the characteristics of plans or programmes, and the environmental effects and the area likely to be affected. Cases of doubt about whether environmental assessment is needed are often likely to reflect uncertainty about the effects of the plan or programme. Further consideration by appropriate experts may resolve the doubt, if not it is recommended that environmental assessment should be carried out. Although Article 3(5) does not explicitly refer to Annex I, it may also be useful to consider the environmental factors identified there.
- 3.47. Careful consideration is needed of how the criteria in Annex II ('significance criteria') should be applied when specifying types of plans and programmes. In principle, the determination could be made by prescribing qualitative criteria or thresholds based on the relevant significance criteria. It is advisable to avoid screening systems which are based only on the size or financial thresholds of projects, or on the physical area covered by the plan or programme, as these may not comply with the Directive.

Annex II: Criteria for determining the likely significant effects

- 3.48. The list in Annex II contains criteria relating to the characteristics of the plan or programme (paragraph 1), and the effects and area likely to be affected (paragraph 2). They are not listed in order of importance. Their individual importance will be different as between cases. In general, it can be assumed that the greater the degree to which the criteria are met the more likely it is that the effects on the environment will be significant. It may be, however,

that in some cases the effects related to a single criterion are so important as to trigger the need for SEA. In such cases, the screening procedure can be abbreviated accordingly but usually a more comprehensive consideration will be needed.

- 3.49. The criteria listed in Annex II are not exhaustive and the Directive does not prevent Member States from requiring additional criteria to be taken into consideration.
- 3.50. Throughout the text of the Directive environmental assessment is connected with the likelihood of significant environmental effects. The prediction of likely environmental effects is complex, especially in the context of relatively broad-brush, or high level plans or programmes, where it may be difficult to anticipate the outcomes of implementation at the time a plan or programme is adopted. The use of the word ‘likely’ suggests that the environmental effects to be considered are those which can be expected with a reasonable degree of probability.

The degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources

- 3.51. The more precisely the framework is set by a plan or programme, the more likely it is that an assessment under the Directive will be required. Hence plans or programmes which define, for example, not only the area for building houses or commercial activities but also their nature, size and (as appropriate) operating conditions, might establish a more detailed framework for projects than plans or programmes which define objectives without specifying details of the framework within which they must be achieved. Plans or programmes which are legally binding might set the framework more strictly than non-binding plans or programmes. Plans or programmes whose only or main purpose is to set a framework for projects might also set a stronger framework than plans or programmes which have several different purposes and issues.

The degree to which the plan or programme influences other plans and programmes including those in a hierarchy

- 3.52. If a plan or programme strongly influences another, any environmental effects it might have may be spread more widely (or deeply) than if this were not the case. Schematically, plans and programmes can be divided into two categories, ‘horizontal’ (plans and programmes belonging to the same level, or having an equal or similar status) and ‘vertical’ (plans and programmes belonging to a hierarchy). In a hierarchy, plans and programmes at the higher, general level might influence those at a lower, detailed level. For example, those at the lower level might have to take account explicitly of the contents or objectives of the plan or programme at the higher level or might have to demonstrate how they contribute to the objectives expressed in the higher level plan. It is of course clear that in practice things may be less straightforward; in particular, in some systems the lower level plan or programme might sometimes (e.g. if it were more recent) influence the one at a higher level.

Binding plans or programmes, which will be explicitly implemented by means of other plans or programmes will probably have a strong influence. The legal aspect of a plan or programme - is it binding or not – may play a determining role in some systems. Plans or programmes which are the only ones in a sector and do not belong to a hierarchy might have less possibility of influencing other plans or programmes. This is not a foregone conclusion and the relationships between different plans and programmes will have to be carefully considered in each case.

The relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development

- 3.53. The question to be addressed in this context is how far the plan or programme envisaged can contribute to reducing harm to the environment. A plan or programme which has great scope to affect the environment will be a strong candidate for assessment whilst one with few environmental implications may not be. For example, integrating the environment in, say, an education plan is a desired outcome. There is unlikely to be much scope for this in a plan about the contents of school curricula (even assuming that it sets the framework for projects); but plans about school accommodation may well be candidates for environmental assessment as they have a considerable potential to influence travel and possibly housing patterns.
- 3.54. In addition, an assessment may help to find ways of improving the environmental outcome of a plan or programme, or its contribution to sustainable development, at no greater cost; in reducing the cost of environmental safeguards whilst enabling other objectives to be met; or in choosing between alternatives.

environmental problems relevant to the plan or programme

- 3.55. The relevance of the problems to the plans or programmes is not defined and could be interpreted in several ways. It would include cases where plans or programmes either cause or exacerbate environmental problems, are constrained or otherwise affected by them, or contribute to solving, reducing or avoiding them. In any case it will be necessary to identify the nature and seriousness of environmental problems relevant to the plan or programme.

the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection)

- 3.56. The Directive uses a rather neutral word ('relevance') in this criterion. Both positive and negative contributions to the implementation of Community legislation need to be considered here. It is important to ensure that the full range of Community legislation on the environment is taken into account.

*the probability, duration, frequency and reversibility of the effects,
the cumulative nature of the effects,
the transboundary nature of the effects,*

*the risks to human health or the environment (e.g. due to accidents),
the magnitude and spatial extent of the effects (geographical area and size of
the population likely to be affected),
the value and vulnerability of the area likely to be affected due to:*

- special natural characteristics or cultural heritage,*
- exceeded environmental quality standards or limit values,*
- intensive land-use,*

*the effects on areas or landscapes which have a recognised national,
Community or international protection status.*

- 3.57. Many uncertainties exist, and insufficient or missing data and inadequate knowledge may make it difficult to decide whether significant effects are likely. Nevertheless, it is assumed that a rough estimation of the effects should always be possible.
- 3.58. The nature and characteristics of the likely effects will influence their significance in the context within which they are being considered. For example, it is relevant to consider whether the probability or frequency of effects will be very low (accidental cause) or whether the effects will occur continuously. Moreover, the more complex (e.g. due to synergies and accumulation), the more widespread, or the more serious the effects, the more likely it is that they should be considered 'significant'.
- 3.59. An equally important factor to be considered is the area likely to be affected by the plan or programme and consequently by its effects. It should be noted that it is not only areas that have a designated protection status which are required by the Directive to be given attention. The particular value or vulnerability of the area likely to be affected may make it more likely that effects must be considered significant there.
- 3.60. This was a point considered by the ECJ in case C-392/96 *Commission v Ireland* (referred to above). There the Court said: 'Even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors set out in Article 3 of the [EIA] Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration. Similarly, a project is likely to have significant effects where by reason of its nature, there is a risk that it will cause a substantial or irreversible change in those environmental factors, irrespective of its size.'
- 3.61. Applying the criteria for determining potential environmental effects requires a comprehensive and systematic approach. To enable this to be achieved, some of the elements identified in Annex I may also be relevant. For example, for identifying likely significant effects the 'receptors' of these effects should be considered (see the list of issues in Annex I (f), i.e. *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 these factors*). The characteristics noted in the footnote to Annex I(f) should also be taken into account (i.e. whether the effects are *secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative*). The

use of Annex I together with Annex II in this way enables cross-media effects to be considered in a multidisciplinary way.

Article 3(8)

The following plans and programmes are not subject to this Directive:

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

- financial or budget plans and programmes.

3.62. The exemption of plans and programmes '**the sole purpose of which**' is to serve national defence or civil emergency is a stricter test than in the EIA Directive (which does not apply to 'projects serving national defence purposes'). This means that, for example, a regional land use plan which made provision for a national defence project in some part of the area it covered would require environmental assessment (provided the other criteria in the Directive were met) because to serve national defence was not its sole purpose. In applying this exemption, it is the purpose of the plan or programme which must be considered, not its effects. For example, an army base which is planned solely to serve national defence may have the additional effect of increasing local employment opportunities. It would still fall within this exemption. **Civil emergency** could include events having a natural or a man-made cause (e.g. earthquakes and terrorist activities respectively). There is no indication of when such plans and programmes should be drawn up; but their sole purpose must be to serve national defence or civil emergency. In line with the jurisprudence of the ECJ, the derogation should be construed narrowly. Thus a plan setting out what action should be taken if an avalanche were to occur would be exempt from the Directive, whereas one setting out measures to be taken to avoid avalanches occurring (perhaps through the provision of infrastructure) would not, because it would be intended to prevent an emergency rather than serve it.

3.63. Budgetary plans and programmes would include the annual budgets of authorities at national, regional or local level. Financial plans and programmes could include ones which describe how some project or activity should be financed, or how grants or subsidies should be distributed.

Article 13(3)

The obligation referred to in Article 4 (1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in paragraph 1 . Plans and programmes of which the first formal preparatory act is before that date and which are adopted or submitted to the legislative procedure more than 24 months thereafter, shall be made subject to the obligation referred to in Article 4(1) unless Member States decide on a case by case basis that this is not feasible and inform the public of their decision.

- 3.64. The obligation referred to in article 4(1) includes all the stages of an ‘environmental assessment’ as defined in Article 2 (i.e. environmental report, consultation, etc). It therefore implies the process of preparing a plan or a programme in the light of the emerging understanding of its environmental effects.
- 3.65. The word ‘formal’ does not necessarily mean that the act should be required by national law, nor whether it produces legal effects in national law. A judgement should be made in each case, taking into account factors such as the nature of the act in question, the nature of the steps preceding it, and the apparent aim of the transitional provision, namely to pursue legal certainty and good administration.
- 3.66. The second sentence of Article 13(3) is intended to ensure that an environmental assessment complying with the Directive will normally be carried out for plans and programmes of which the first formal preparatory act was before 21st July 2004 but which will not be adopted until after 21st July 2006. This implies that only minor or non- significant work would have been done on the plan by July 2004 in order to carry out a meaningful assessment. It would not be feasible to carry out an environmental assessment of a plan whose first preparatory act was before July 2004 and which was at a very advanced stage at that date. The focus of this provision is not so much on how long before July 2004 was the starting date of the plan or programme, but on whether the planning process of relevant plans or programmes is at a stage at which a meaningful environmental assessment can be carried out.

4. GENERAL OBLIGATIONS

- 4.1. Article 4 deals with three issues, the timing of the environmental assessment, the procedural arrangements for compliance, and the avoidance of duplication when plans and programmes form part of a hierarchy.

Article 4(1)

The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

- 4.2. As a matter of good practice, the environmental assessment of plans and programmes should influence the way the plans and programmes themselves are drawn up. While a plan or programme is relatively fluid, it may be easier to discard elements which are likely to have undesirable environmental effects than it would be when the plan or programme has been completed. At that stage, an environmental assessment may be informative but is likely to be less influential. Article 4(1) places a clear obligation on authorities to carry out the assessment during the preparation of the plan or programme.

Article 4(2) and (3)

(2) The requirements of this Directive shall either be integrated into existing procedures in Member States for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.

(3) Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with the Directive, at different levels of the hierarchy. For the purpose of, inter alia, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).

- 4.3. In Article 4(2), the Directive provides for the environmental assessment procedure either to be integrated into existing procedures for the adoption of plans or programmes or, to be incorporated in a separate procedure.
- 4.4. Where the assessment procedure is integrated into the existing preparation process for the plan or programme itself, the SEA procedure can affect the procedure for preparing the draft plan or programme. In this case, the preparation process for the draft plan or programme needs to be adjusted to agree with the demands of the Directive. The type of change which could be needed will depend on existing procedures but could involve, for example, adjustments to, or inclusion of, the public that has to be identified under Article 6(4) and the authorities that have to be designated under Article 6(3) in order to integrate properly the different steps of the assessment process into the preparation of the plan or programme.

- 4.5. In some circumstances, there may be more than one plan or programme dealing with the same broad subject matter but over a different geographical area or in different degrees of detail. For example, a land use plan may set out a vision for the development of an entire region; there may be a series of more detailed land use plans for the constituent parts of the region which set out in greater detail how the development of these areas is foreseen; whilst at municipal level there may be still more detailed plans which provide a very comprehensive framework for the development of the area. Article 4(3) combined with Article 5(2) and (3) is intended to ensure that duplication of assessment is avoided in this kind of situation.
- 4.6. If certain aspects of a plan or programme have been assessed at one stage of the planning process and the assessment of a plan or programme at a later stage of the process uses the findings of the earlier assessment, those findings must be up to date and accurate for them to be used in the new assessment. They will also have to be placed in the context of that assessment. If these conditions cannot be met, the later plan or programme may require a fresh or updated assessment, even though it is dealing with matter which was also the subject of the earlier plan or programme.
- 4.7. It is clear that the decision to reuse material from one assessment in carrying out another will depend on the structure of the planning process, the contents of the plan or programme, and the appropriateness of the information in the environmental report, and that decisions will have to be taken case by case. They will have to ensure that comprehensive assessments of each element of the planning process are not impaired, and that a previous assessment used at a subsequent stage is placed in the context of the current assessment and taken into account in the same way. In order to form an identifiable report, the relevant information must be brought together: it should not be necessary to embark on a paper-chase in order to understand the environmental effects of a proposal. Depending on the case, it might be appropriate to summarise earlier material, refer to it, or repeat it. But there is no need to repeat large amounts of data in a new context in which it is not appropriate.

5. THE ENVIRONMENTAL REPORT

- 5.1. The environmental report is the central part of the environmental assessment required by the Directive. It also forms the main basis for monitoring the significant effects of the implementation of the plan or programme.
- 5.2. The environmental report is an important tool for integrating environmental considerations into the preparation and adoption of plans and programmes since it ensures that their likely significant effects on the environment are identified, described and assessed and taken into account in that process. The preparation of the environmental report and the integration of the environmental considerations into the preparation of plans and programmes form an iterative process that should contribute to more sustainable solutions in decision-making.
- 5.3. The provisions on the environmental report are mainly expressed in Article 2 (Definitions), Article 5 (Environmental Report) and Annex I. In addition, the environmental report must be subject to consultation as provided for in Articles 6 and 7; it must be taken into account during the preparation of the plan or programme (Article 8) and, when the plan or programme is adopted, information must be made available on how this was done (Article 9); and it must be of sufficient quality to meet the requirements of the Directive (Article 12).

Article 2(c)

For the purposes of this Directive:

..

(c) 'environmental report' shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I.

- 5.4. Article 2(c) defines the environmental report as a part of the plan or programme documentation with a specified content. This implies that the environmental report should be a coherent text or texts. Although this is not required by the Directive, it maybe helpful to structure the report, so far as possible, on the headings used in Annex I. The Directive does not specify whether the report should be integrated in the plan or programme itself or a separate document. If it is integrated it should be clearly distinguishable as a separate part of the plan or programme, and be easy to find and assimilate for the public and authorities. In any case, there must always be a non-technical summary of the information provided under the headings listed in Annex I.
- 5.5. The environmental report might in many cases be a part of a wider assessment of the plan or programme. It could, for example, be part of a document on sustainability assessment covering also social and economic effects, or a sustainability assessment could be integrated in the plan or programme. Either model would be an acceptable way of complying with the Directive provided it fully met the requirements of the Directive.

Article 5(1)

Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

- 5.6. Article 5(1) gives the basic requirements for the environmental report. The tasks of the report are to identify, describe and evaluate the likely significant effects on the environment of the plan or programme and its reasonable alternatives. Annex I gives further provisions on which information must be provided concerning these effects. The studying of alternatives is an important element of the assessment and the Directive calls for a more comprehensive assessment of them than does the EIA Directive. Alternatives are discussed in paragraphs 5.11 - 5.14 below.
- 5.7. According to Article 4(1) the environmental assessment shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. The process of preparing the report should start as early as possible and, ideally, at the same time as the preparation of the plan or programme. The preparation of the report should normally have ended when the report is made available to authorities and the public in accordance with Article 6(1).
- 5.8. Article 5(1) does not explicitly state who is responsible for preparing the environmental report but it would in many cases be the authority or natural or legal person responsible for preparing the plan or programme.
- 5.9. What is meant by the implementation of a plan or programme cannot be defined unambiguously. It depends to a large extent on the character of the plan or programme. For plans or programmes that fall within the scope of the Directive because of the condition in Article 3(2)(a) (setting the framework for projects in various sectors) and Article 3(4) (other plans and programmes setting the framework for projects), implementation could mean among other things the implementation of projects that correspond to such a framework. However, since there might be several ways of fulfilling the requirements of such a framework, implementation of the plan or programme cannot generally be reduced to the implementation of specific single projects. In any case, a plan or programme may include elements that are not project-related but are important to its success. The effects of those aspects of the implementation should also form part of the assessment. For the plans and programmes that fall within the scope because of the condition in Article 3(2)(b) (require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC), the implementation may be conceived in the light of Article 6(3) of the Habitats Directive which calls for an assessment of the implications for a site in view of the site's conservation objectives see also paragraph 3.32 above).

- 5.10. Implementation of a plan or programme could cover a wide array of issues and provisions and it should be noted that an assessment has to focus on the part of implementation that is likely to have significant environmental effects. All parts of the implementation should be studied, however, as taken together they might have significant effects. Whether implementation of different parts of the plan or programme actually will take place is not a matter for the assessment to consider.

Alternatives

- 5.11. The obligation to identify, describe and evaluate reasonable alternatives must be read in the context of the objective of the Directive which is to ensure that the effects of implementing plans and programmes are taken into account during their preparation and before their adoption.
- 5.12. In requiring the likely significant environmental effects of reasonable alternatives to be identified, described and evaluated, the Directive makes no distinction between the assessment requirements for the drafted plan or programme and for the alternatives.¹⁴ The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. The requirements in Article 5(2) concerning scope and level of detail for the information in the report apply to the assessment of alternatives as well. It is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they not are considered to be the best option. The information referred to in Annex I should thus be provided for the alternatives chosen. This includes for example the information for Annex I (b) on the likely evolution of the current state of the environment without the implementation of the alternative. That evolution could be another one than that related to the plan or programme in cases when it concerns different areas or aspects.
- 5.13. The text of the Directive does not say what is meant by a reasonable alternative to a plan or programme. The first consideration in deciding on possible reasonable alternatives should be to take into account the objectives and the geographical scope of the plan or programme. The text does not specify whether alternative plans or programmes are meant, or different alternatives within a plan or programme. In practice, different alternatives within a plan will usually be assessed (e.g. different means of waste disposal within a waste management plan, or different ways of developing an area within a land use plan). An alternative can thus be a different way of fulfilling the objectives of the plan or programme. For land use plans, or town and country planning plans, obvious alternatives are different uses of areas designated for specific activities or purposes, and alternative areas for such activities. For plans or programmes covering long time frames, especially those covering the very distant future, alternative scenario development is a

¹⁴ Compare Article 5(3) and Annex IV of the EIA Directive which require the developer to provide an outline of the main alternatives studied and an indication of the main reasons for his choice taking into account the environmental effects.

way of exploring alternatives and their effects. As an example, the Regional Development Plans for the county of Stockholm have for a long time been elaborated on such a scenario model.

- 5.14. The alternatives chosen should be realistic. Part of the reason for studying alternatives, is to find ways of reducing or avoiding the significant adverse environmental effects of the proposed plan or programme. Ideally, though the Directive does not require that, the final draft plan or programme would be the one which best contributes to the objectives set out in Article 1. A deliberate selection of alternatives for assessment, which had much more adverse effects, in order to promote the draft plan or programme would not be appropriate for the fulfilment of the purpose of this paragraph. To be genuine, alternatives must also fall within the legal and geographical competence of the authority concerned. An outline of the reasons for selecting the alternatives dealt with is required by Annex I (h).

Articles 5(2) and 5(3)

2. The environmental report prepared pursuant to paragraph 1 shall 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 and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex I.

- 5.15. The starting point for the interpretation of these paragraphs is the requirement to provide information on the likely significant effects on the environment of the plan or programme. This information must be provided insofar as it may reasonably be required taking into account the factors mentioned in paragraph 2.
- 5.16. The reference to ‘contents and level of detail in the plan or programme’ is a recognition that, in the environmental report for a broad-brush plan or programme, very detailed information and analysis may not be necessary, (for example, a plan or programme at the top of a hierarchy which descends from the general to the particular); whereas much more detail would be expected for a plan or programme that itself contained a higher level of detail. So the environmental report for a national plan might not need to assess the effects of the plan on, say, every river in the country; but the environmental report underpinning a town plan would certainly be expected to address its implications for rivers or other waterbodies in or near the town.
- 5.17. Article 5(3) emphasizes the desirability of rationalising the collection and production of information; it provides that relevant information (which might include analysis as well as data) already available from other sources may be

used in compiling the environmental report. The value of this is obvious when plans and programmes form part of a hierarchy and for those cases Article 4(3) refers to the application of Article 5(2) and 5(3), especially for the purpose of avoiding duplication of the assessment. This issue is covered in paragraphs 4.5 – 4.7 above. Information obtained in other decision-making system, such as plans or programmes in other sectors, or from implementing other Community legislation such as the Water Framework Directive (2000/60/EC) can likewise be used.

Article 5(4)

The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report

- 5.18. The relevant environmental authorities, designated under Article 6(3), must be consulted when a decision is taken on the scope and level of detail of the information to be included in the environmental report. Those authorities might also be engaged in the preparation of the report throughout the process of preparing and adopting the plan or programme. Further information is to be found in section 7 below on consultation.

Annex I

- 5.19 Annex I specifies the information that is to be provided in the environmental report. The ten paragraphs of the Annex set out a broad spectrum of issues to be dealt with, each paragraph in itself being of a substantial nature. All paragraphs are to be examined in the light of the requirements in Article 5. Member States may introduce provisions on the content of the environmental report that go further than the requirements of the Directive. A plan or programme can be very extensive and treat a great number of different issues so it should be emphasized that the Directive calls for information that concentrates on issues related to the significant effects on the environment of the plan or programme (see Article 5). An excessive account of information on insignificant effects or irrelevant issues makes the report difficult to digest and might lead to important information being overlooked.

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

- 5.20. Information on the relationship with other relevant plans or programmes sets the plan or programme in a broader context: it might, for instance, concern its place in the stage of decision-making or its contribution amongst other plans or programmes to changes in the environmental conditions of a certain area. Relevant plans or programmes can thus be those at other levels in a hierarchy which the actual plan or programme forms part of or they can be those drawn up for other sectors affecting the same or adjacent areas.

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

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

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

- 5.21. The requirements in (b), (c), and (d) may overlap but are coherent and they aim at different aspects of the environmental conditions in areas covered by the plan or programme and on which it is likely to have significant environmental effects. In (b) the concern is the state of the environment in all the area that is covered by or significantly affected by the plan or programme, currently as well as without its implementation. In (c) information is to be provided on the areas that are likely to be significantly affected by the plan or programme, information that can be seen as a specification of the information given under (b). The concern in (d) is focused on environmental problems while the aspects or characteristics in (b) and (c) could be problems as well as environmental values and assets or a favourable state of the environment. Since the requirements in (c) and (d) overlap, it might in many cases be appropriate to address them together, provided that all the necessary information is provided.
- 5.22. The information required in (b) on the relevant aspects of the current state of the environment is necessary for the understanding of how the plan or programme could significantly affect the environment in the area in question. The term 'the relevant aspects' refers to environmental aspects that are relevant to the likely significant environmental effects of the plan or programme. These aspects could be of a positive as well as of a negative nature. The information must concern the current state of the environment which means that it should be as up to date as possible. The description of the likely evolution of the relevant aspects without the implementation of the plan or programme is important as a frame of reference for the assessment of the plan or programme. This requirement can be seen as corresponding to the so-called zero-alternative often applied in environmental impact assessment procedures. The description of the evolution should cover roughly the same time horizon as that envisaged for the implementation of the plan or programme. Effects of other adopted plans or programmes, or decisions made that would affect the area in question, should also be considered in this respect so far as practicable.
- 5.23. In (c) the focus is on the areas that are of special interest for the assessment, namely the areas likely to be significantly affected by the plan or programme. A description of the environmental characteristics of these areas is to be given in the report. It would be appropriate to describe environmental characteristics by reference to the environmental issues listed in paragraph (f). Examples of characteristics could be that an area is specially sensitive or vulnerable to acidification, that it has high botanical value or that it is densely populated and many people will be affected by traffic noise. It should be noted that such areas could be found outside the area covered by the plan or programme. If

this area is near to another Member State or if the effects are of a long-range nature, areas in other Member States and beyond could of course be significantly affected. In such cases transboundary consultation will be needed (see paragraphs 7.24 - 7.29).

- 5.24. Paragraph (d) asks for information on any existing environmental problems relevant to the plan or programme. The purpose of this information is to provide for an assessment of how these problems will affect the plan or programme or whether it is likely to aggravate, reduce or in any other way affect existing environmental problems. The relevance may also lie in the likely significant effects of the plan or programme, and also in non-significant effects that in combination with existing environmental problems could create significant effects. Even issues treated in the plan or programme which do not have any environmental effects may be relevant. The problems do not need to be of a significant nature and they do not need to be specially related to specific areas such as those exemplified in the text. Areas of particular environmental importance could be those with especially high environmental values, such as the areas designated under the Birds and Habitats Directives, but areas designated under national legislation could also be included.

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

- 5.25. The environmental protection objectives to be dealt with should cover at least the issued listed in paragraph (f). International and Community objectives are often incorporated in objectives on national, regional and local levels and these could often be sufficient for this purpose. It should be noted that the paragraph concerns objectives that are relevant to the plan or programme, which would imply relevant to its likely significant effects or to issues it raises. Consultation with authorities according to Article 5(4) can help to provide this information. The German EIA Association has developed a prototype of a database on environmental quality objectives on international or community level. This can be found at:

<http://www.umweltdatenkatalog.de:8888/envdb/maintopic.jsp>

(f) the likely significant effects 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.

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

- 5.26. The list of issues in (f) is not exhaustive and other issues may be relevant. Compared to the list of the amended EIA Directive, human health, biodiversity and cultural heritage are here mentioned explicitly. The notion of human health should be considered in the context of the other issues mentioned in

paragraph (f) and thus environmentally related health issues such as exposure to traffic noise or air pollutants are obvious aspects to study. Guidelines for incorporating biodiversity related issues in strategic environmental assessments have been adopted under the Convention on Biological Diversity. A description of the relationship between the factors mentioned in paragraph (f) is essential since it could show other and more severe significant effects than those resulting from a more isolated study of each single factor. Thus significant effects on air and climatic factors may cause significant adverse effects on flora, fauna and biodiversity. The purpose of the footnote is to emphasize the need for broad and comprehensive information on the factors and their interrelationship (although it should be read in the light of Article 5(2)). A description of positive effects is essential in order to show the contribution of the plan and programme to environmental protection and sustainable development.

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

- 5.27. The purpose of paragraph (g) is to ensure that the environmental report discusses how the significant adverse effects it describes are to be mitigated. The measures envisaged in paragraph (g) are not specified further and they could be measures envisaged or prescribed in the plan or programme or measures discussed in the environmental report. It should be remembered that mitigation measures may themselves have adverse environmental effects which should be recognised. There exist methods of mitigation in connection with environmental impact assessments that could also be helpful for assessments of plans and programmes.

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

- 5.28. Information on the selection of alternatives is essential to understand why certain alternatives were assessed and their relation to the draft plan or programme. A description of the methods used in the assessment is helpful when judging the quality of information, the findings and the degree to which they can be relied upon. An account of the difficulties met will also clarify this aspect. When appropriate, it would be helpful to include how those difficulties were overcome.

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

- 5.29. According to Article 10 the significant environmental effects of the implementation of the plan or programme shall be monitored and, since these effects are specified in paragraph (f), the report should contain a description of how that monitoring is to be undertaken. The description should refer to existing monitoring arrangements if these are to be used. There is some

overlap between paragraph (i) and the requirement in Article 9(1)(c) to make available at the time of adoption information on the 'measures decided concerning monitoring'. It is obvious that no definitive statement about the final monitoring measures can be made when the environmental report is still being prepared, since the content of the plan or programme is not decided, and in any event the content of the environmental report is subject to the criteria laid down in Article 5(2). Likewise, in some circumstances the monitoring arrangements may need to be adapted as implementation of the plan or programme proceeds. There appears to be nothing in the Directive to preclude this in appropriate cases.

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

- 5.30. The purpose of a non-technical summary, as required under paragraph (j), is to make the key issues and findings of the environmental report accessible and easily understood by the general public as well as by the decision-makers. The summary may be part of the report but it might also be helpful to make it available as a separate document to ensure a wider dissemination. An overall summary table may be helpful in simplifying the findings.

6. QUALITY OF THE ENVIRONMENTAL REPORT

- 6.1. Practical experience with the EIA Directive (which contains no specific requirements as to quality) has shown that the provision of information in the environmental assessment is sometimes defective. During the preparation of the SEA Directive, there were concerns that, here too, environmental reports might be incomplete or be drawn up without proper application of the procedure.
- 6.2. The aim is to ensure that the environmental report will contain information that is complete and reliable (subject to the provisos in Article 5) and will be adequate for the purposes of the Directive. The specific provision on this issue provides extra emphasis on the importance of the environmental report and the proper application of Article 5 of the Directive.

Article 12(2)

Member States shall ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive and shall communicate to the Commission any measures they take concerning the quality of these reports.

- 6.3. The Directive does not elaborate what is **sufficient quality**. But since the SEA process and environmental report are both defined by the Directive, a correct transposition and proper application of its provisions, both in content and procedure would appear to meet the requirement for sufficient quality. The Directive does not specify additional measures to ensure that this quality is sufficient.
- 6.4. In most cases, it will be the individual authority that has to decide before it adopts a plan or programme whether a specific environmental report is of sufficient quality or, if not, what action needs to be taken to rectify the deficiencies. This might include amending or augmenting the environmental report or even repeating part or all of the SEA procedure. In identifying what makes for satisfactory quality, the authorities responsible for the plan or programme will need to pay close attention to the requirements of the Directive as set out in Article 5 and Annex I. They will also need to pay close attention to the results of consultation with the environmental authorities and the public under Article 6. They will need to bear in mind that a defective report may call into question the validity of any acts or decisions taken in pursuance of it.
- 6.5. The procedural and substantive requirements of the Directive, if properly implemented and applied, may be envisaged as a 'minimum standard' for ensuring the quality of environmental reports. Member States may decide for themselves whether to establish additional measures and, if so, what these

should be. There is a wide variety of possible models.¹⁵ Many measures that are used in EIA practice may be adequate and appropriate for the purposes of the SEA Directive. Examples are independent assessments (such as a review panel, or a government commission which advises about the quality of the information in the environmental report); guidelines which prescribe procedural or substantive requirements for the planning authority to follow; an independent institution (to be used when determining the level of detail and scope of the environmental report); or simply reliance on appeals by complainants to a court of law.

- 6.6. As well as ensuring that every procedural step of the SEA process leading up to the environmental report is of sufficient quality, other methods may be envisaged to try to maintain the quality of the entire process. This may be done by, for example, checklists that demonstrate transparently whether every step in the procedure has been dealt with and dealt with properly; or by more advanced, computerised models enabling comparison to be made between the quality of individual elements in the environmental report and the quality of the report as a whole.
- 6.7. **Any measures** Member States take **concerning the quality** of the environmental reports will have to be **communicated** to the Commission. Among other things, this provision is intended to collect experiences within the Member States so that, for instance, innovative approaches can be disseminated amongst them. Even if these measures go beyond the obligations of the Directive, it will help to improve practice across the whole Community if they are disseminated as widely as possible.

¹⁵ For an overview, see also Royal Haskoning.

7. CONSULTATION

- 7.1. The consultation provisions of the Directive oblige Member States to grant an opportunity to certain authorities and members of the public to express their opinion on the environmental report and the draft plan or programme. One of the reasons for consultation is to contribute to the quality of the information available to those responsible for the decisions that are made concerning the plan or programme. Consultation might sometimes reveal important new information which leads to substantial changes to the plan or programme and consequently its likely significant environmental effects. If so, it might be necessary to consider a revision of the report and, if the changes justified it, fresh consultation. The principal requirements on consultation in the Directive are in Article 6, but many other articles also deal with this issue. This section deals with these in the following order. It discusses first the relevant definitions; then the question of who takes part in consultations; what must be subject to consultation; some related procedural provisions; transboundary issues; and finally the decision on the plan or programme.
- 7.2. An overview of the Directive's information and consultation requirements is given in Box 1.

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

- 7.3. Public participation in decision-making is also dealt with by the UN ECE Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention). Article 7 of the Convention contains provisions on public participation during the preparation of plans and programmes relating to the environment. Its provisions are incorporated in the SEA Directive insofar as they apply to plans and programmes falling under the scope of the Directive.¹⁶

Article 2(b)

'Environmental assessment' shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9.

- 7.4. This definition clearly states that **consultation** is an inseparable part of the assessment. Further, the results of the consultation have to be **taken into account** when the decision is being made. If either element is missing, there is, by definition, no environmental assessment in conformity with the Directive. This underlines the importance that is attached to consultation in the assessment.

Article 2(d)

'The public' shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

- 7.5. The definition of **the public** follows that of the Aarhus Convention. It refers to any natural or legal person. The question of whether a particular member of the public is affected or has an interest is dealt with under Article 6.
- 7.6. In many cases, an **association, organisation or group** of natural or legal persons will itself have legal personality, and will be directly covered by the definition. The language should be interpreted, therefore, to provide that associations, organisations or groups *without* legal personality (including non-governmental organisations) may, if national legal frameworks so provide, also constitute 'the public' under the Directive. In Article 6(2) in conjunction with Article 6(4) the Directive provides for a clear role for associations, organisations or groups.

¹⁶

Directive 2003/35/EC applies the Aarhus Convention to certain plans and programmes not subject to the SEA Directive.

Article 6(1)

The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

- 7.7. This Article is the starting point for consultation and any subsequent public debate about the proposed plan or programme. The draft plan or programme and the environmental report have to be made available to the public (which is defined in Article 2(d)). It is, however, only the public identified under paragraph 4 that is given the right to express its opinion on these documents. Whether or not the public is the same in any given case will depend on the plan or programme in question and on national law and practice.
- 7.8. The Directive does not specify the methods by which information shall be **made available** but these must be adequate to enable the authorities and public to express their opinion in accordance with Article 6(2). Appropriate publicity arrangements will be needed, and the information will need to be readily accessible. Also, interpretation in the light of Article 7 in conjunction with Article 6(3) of the Aarhus Convention would suggest effective dissemination either by public notice or individually as appropriate. This is true too for the information to be made available under Articles 3(7) and 9(1). In addition it might be appropriate for members of the public who have objected to a proposal to be informed individually about the decision (as is already normal practice in some Member States).

Article 6(2)

The authorities referred to in paragraph 3 [of Article 6] and the public referred to in paragraph 4 [of Article 6] shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

- 7.9. The **time frame** needs to be laid down in legislation. Member States are free to determine its duration so long as it meets the requirement to give an 'early and effective' opportunity for responses. Experiences with the EIA Directive and other consultation procedures will give Member States information about the time frames needed.
- 7.10. Different time frames may be appropriate for different types of plan or programme but care should be taken to allow sufficient time for opinions to be properly developed and formulated on lengthy, complex, contentious or far-reaching plans or programmes. Adequate time will also be needed for the planning authority to take these views into account before deciding on the plan or programme. Sometimes requests for additional information may be made and the time frame for consultation may also need to take into account the time for the responsible authority to respond.

Article 6(3)

Member States shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.

- 7.11. In this article, **authorities** covers formal governmental or public authorities, defined by administrative or legal requirements (see also the commentary at paragraphs 3-12 - 3.13 above). They might include environmental inspectorates (at the national, regional or local level), environmental research institutions performing a public task or units in government (at the national, regional or local level) that are likely to be concerned by, or have expertise in, the environmental effects of implementing the plan or programme in question.
- 7.12. The phrase **specific environmental responsibilities** refers to their responsibilities as authorities (for example, to monitor the quality of the environment, inspect sites or activities, carry out research, etc).¹⁷
- 7.13. The **designation** of the authorities in accordance with Article 6(3) can be done in a general way by including them in the legislation implementing the Directive. For example, a national environmental inspectorate could be designated as an authority to be consulted in all cases, or in specified classes of case. It would, of course, be possible to provide for exemptions from such a general designation.
- 7.14. Authorities can also be designated case by case, provided the implementing legislation is drafted so as to permit this type of designation. The precise way in which this is done will depend on the national legal system. One method might be to designate in the implementing legislation several authorities for the purposes of this Article. They might include environmental inspectorates or regional governmental units that have a strong interest in the contents of particular plans or programmes. In a case by case approach, the planning authority subsequently may designate which of these authorities are to be consulted on individual cases, depending on the contents of each plan or programme.
- 7.15. Member States may also decide to designate authorities which have environmental responsibilities in a more general way, for instance, 'neighbouring local authorities'. This type of designation would mean that the particular local authorities to be consulted were those which have an interest in any given plan or programme, without its being necessary to consult every local authority in a country on plans or programmes in which most of them had no interest. This example seems a more intermediate approach between general and case-specific designation.

¹⁷ The word 'authorities' is not used here to mean recognized (individual) experts, such as eminent scientists – though such individuals may be employed by public authorities.

Article 6(4)

Member States shall identify the public ..., including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.

- 7.16. **The public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive** can be described as a subset of the public in general. (For the definition of ‘the public’ see paragraphs 7.5-7.6 above.) This provision requires Member States to identify that subset, which is given the opportunity to express its opinion on the draft plan or programme and the environmental report (in accordance with Article 6(2)). But the duty to identify is not unfettered. The identification must include the public **that is affected or likely to be affected by**, or that has **an interest in** the plan or programme. It must also include relevant non-governmental organisations and other organisations concerned (see below). The public identified may differ from one plan or programme to another. In some situations, for instance in the case of a country-wide plan or programme, the public with an interest or likely to be affected may be very similar to the public in general and the identification would have to take account of that.
- 7.17. **Relevant non-governmental organisations** are by definition considered part of the public that is likely to be affected by, or has an interest in the decision-making for a specific plan or programme subject to assessment. NGOs may differ in their field of interest. Some are, for example, more active on the national level, and some are more active on the regional or local level or on specific issues, such as nature or waste. In identifying relevant NGOs in accordance with Article 6(4), Member States may tailor the identification to the nature and contents of the plan or programme concerned and the interests of the NGOs. NGOs with purely local concerns would need to be identified even in the case of plans or programmes relating to distant localities, provided it was clear that their interests were affected by those plans or programmes.

Article 6(5)

The detailed arrangements for the information and consultation of the authorities and the public shall be determined by the Member States.

- 7.18. The organisation of **the detailed arrangements** for informing the public and receiving reactions is left to the discretion of the Member States. The legislation implementing the Directive should provide for the framework for these arrangements.
- 7.19. In contrast to the EIA Directive, Directive 2001/42/EC does not specify any details about the method for consultation (e.g. the places for consultation or the method of dissemination). By analogy with the EIA Directive, the arrangements may, for example, specify the places where information can be consulted, the way in which the public may be informed, or the way in which

comments can be given. Member States also have the opportunity of exploring more modern arrangements for consultation such as internet-based discussions, provided that these do not by their nature exclude sections of the public.

- 7.20. There are many different methods and techniques for public consultation. These range through seeking written comments on draft proposals, public hearings, steering groups, focus groups, advisory committees or interviews.¹⁸ It will be important to select the most appropriate form of consultation for any given plan or programme.

Article 3(6)

In the case-by-case examination and in specifying types of plans and programmes [regarding the determination of plans and programmes that are covered by the Directive], the authorities referred to in Article 6(3) shall be consulted.

- 7.21. Before determining under Article 3 whether an SEA is required, the relevant authorities have to be consulted. When a **case-by-case** approach is used, this consultation has to take place on each separate occasion.

Article 3(7)

Member States shall ensure that their conclusions pursuant to paragraph 5 [regarding the determination of plans and programmes that are covered by the Directive], including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public.

- 7.22. The determination under Article 3(5) of whether an environmental assessment is required has to be made public and, if an assessment is not to be required, there is a specific obligation for the reasons to be made publicly available. In publicising these conclusions, Authorities may find it helpful to state how the criteria in Annex II have been taken into account.

Article 5(4)

The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.

- 7.23. This provision sets out requirements for what is known as the 'scoping phase' in an environmental assessment procedure. The EIA Directive does not include a requirement to have authorities involved on a mandatory basis at this stage in the EIA procedure. It is introduced into Directive 2001/42/EC as a means of improving the quality of the environmental report. One of the objectives of scoping is to leave less room for doubt later in the assessment

¹⁸ For an overview of types of consultation, techniques and case studies, see also Environmental Resource Management.

process about whether the correct topics are addressed in the report and are covered in the right level of detail.

Article 7(1)

Where a Member State considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State.

- 7.24. Article 7 provides for consultation on plans or programmes that are likely to have significant effects in other Member States. On this issue the Directive follows the general approach taken by the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).
- 7.25. Member States will need to ensure they have provisions in place which allow them to identify whether plans or programmes are indeed likely to have transboundary effects.

Article 7(2)

Where a Member State is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other Member State whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the Member States concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

Where such consultations take place, the Member States concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

- 7.26. Once the transboundary mechanism is triggered, the Member States involved have to agree on more detailed arrangements to ensure the necessary consultation of the public and environmental authorities in the Member State affected. Bilateral agreements that have been established in the framework of the Espoo Convention may, suitably modified to cover plans and programmes, provide a pattern for these arrangements. Multilateral arrangements may be established where appropriate.

Article 7(3)

Where Member States are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.

- 7.27. The Directive requires that **reasonable** time frames are to be provided for consultation in transboundary situations. Compared with non-transboundary situations, these will need to be sufficient for contact to be established between the States concerned, the identification and consultation of the public and environmental authorities in the affected State, and consideration of the resulting comments by the appropriate authorities in the State of origin. Practical matters such as the need to prepare translations may also lengthen the process.
- 7.28. The Directive allows for *ad hoc* arrangements to be established for transboundary issues. These could differ in each case. This can be helpful when the affected Member State wishes to designate different authorities or different parts of the public for different plans or programmes to enter into the consultation.
- 7.29. Alternatively it would be possible to agree upon a general framework for bilateral consultation, leaving the detailed arrangements to case-specific situations. When different regions in an affected Member State are involved, this may be a practical solution.

Article 8

The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

- 7.30 The obligations in Article 8 of the Directive reflect the iterative nature of the process of environmental assessment as applied to plans and programmes. They also reflect the obligation in Article 7 of the Aarhus Convention which, in conjunction with Article 6(8) of that Convention, requires that in decisions on plans and programmes due account is taken of the outcome of the public participation. The requirement to make information on this available is set out in Article 9 of the Directive (see below).

Article 9(1)

Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed and the following items are made available to those so informed:

- (a) the plan or programme as adopted;*
- (b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report*

prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of [transboundary] consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and

(c) the measures decided concerning monitoring in accordance with Article 10.

Article 9(2)

The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the Member States.

- 7.31. Article 9 deals with the provision of information about the final results of the assessment procedure. The Member States have discretion in the way they make information **available** to the public. Authorities must provide sufficient information about the conditions under which the environmental information is available and how it can be obtained. The facilities for doing this include, for example, information publications, announcements in government publications or on government web-sites, television or radio public service announcements, or as part of environmental information catalogues that describe how relevant information can be obtained. The notification to the public is similar to that in the EIA Directive. Member States can make use of this experience or set up different arrangements with the same objective.
- 7.32. Contrary to the EIA Directive, Directive 2001/42/EC does not include provisions for confidentiality with regard to the plan or programme or environmental report.

8. MONITORING

- 8.1. Article 10 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 enables the results of the environmental assessment to be compared with the environmental effects which in fact occur.
- 8.2. The Directive 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. Although monitoring activities are widespread across the EU, the information gathered is not always readily available or in comparable formats, even within the same administration. Member States may wish to consider whether any legal or administrative measures are needed not merely to ensure in accordance with the Directive that monitoring takes place but also to go further and enable data to be accessed and shared when appropriate, so that the obligations of Article 10 can be discharged efficiently.

Article 10(1)

Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.

- 8.3. Article 10 establishes that monitoring of the significant environmental effects of plans and programmes covered by the Directive is an obligation. When a plan or programme is adopted, the authorities referred to under Article 6(3), the public and any Member State consulted under Article 7 must be informed about 'the measures decided concerning monitoring in accordance with Article 10' (Article 9(1)(c)).
- 8.4. The Directive does not define the meaning of '**monitor**'. Monitoring can, however, be generally described as an activity of following the development of the parameters of concern in magnitude, time and space. In the context of Article 10 and its references to unforeseen adverse effects and remedial action, monitoring may also be a means of verifying the information in the environmental report. Article 10 does not contain any technical requirements about the methods to be used for monitoring. The methods chosen should be those which are available and best fitted in each case to seeing whether the assumptions made in the environmental assessment correspond with the environmental effects which occur when the plan or programme is implemented, and to identifying at an early stage unforeseen adverse effects resulting from the implementation of the plan or programme. It is clear that monitoring is embedded in the context of the environmental assessment and does not require scientific research activities. Also the character (e.g. quantitative or qualitative) and detail of the environmental information

necessary for monitoring depend on the character and detail of the plan or programme and its predicted environmental effects.

- 8.5. If monitoring can be satisfactorily integrated in the regular planning cycle, it may not be necessary to establish a separate procedural step for carrying it out. Monitoring may coincide for example with the regular revision of a plan or programme, depending on which effects are being monitored and upon the length of intervals between revisions.
- 8.6. Monitoring has to cover the **significant environmental effects**. These cover in principle all kinds of effects, including positive, adverse, foreseen and unforeseen¹⁹ ones. They may usually be the effects described in the environmental report (in accordance with Article 5 and Annex I(f)) and so will often be focused on the information that 'may reasonably be required taking into account the contents and level of detail in the plan or programme and its stage in the decision-making process' (Article 5(2)). It is possible that monitoring of other effects may sometimes be justified (for example, effects which were not foreseen when the plan or programme was drawn up).
- 8.7. The other elements of Annex I will not usually be relevant in implementing the monitoring requirement but it may in some circumstances be convenient to link the results of monitoring with, for example, environmental problems, environmental protection objectives, or mitigation measures identified under paragraphs (d), (e), or (g) of Annex I. The Directive does not, however, contain a requirement to that effect.
- 8.8. Article 10 appears not necessarily to require that significant environmental effects are monitored directly. The Directive also allows them to be monitored indirectly through, for example, pressure factors or mitigation measures.
- 8.9. **Implementation** means not only the realisation of the projects envisaged in the plan or programme (including both their construction and operation)but also covers other activities (such as behavioural measures or management schemes) which form part of the plan or programme (or its implementation).
- 8.10. Article 10 requires the significant environmental effects of the implementation of all plans and programmes subject to the Directive to be monitored. It does not specify whether this has to be done for each plan or programme individually. In view of the flexibility of Article 10, one monitoring arrangement may cover several plans or programmes as long as sufficient information about the environmental effects of the individual plans or programmes is provided and the purposes and obligations of the Directive are fulfilled.
- 8.11. In some cases, the cumulative effects of different plans and programmes may be easier to identify when they are monitored together.
- 8.12. One of the purposes of monitoring identified in Article 10 is to identify

¹⁹ See explanation of 'unforeseen' effects in paragraph 8.12.

unforeseen adverse effects. It is unlikely that a reasonably practicable monitoring scheme could be devised which, except by chance, would reveal completely unexpected effects (if any materialised) and that can hardly be the intention here. Even though unforeseen changes in the environment might be detected it may be difficult to attribute them to the implementation of the plan or programme. Unforeseen adverse effects is better interpreted as referring to shortcomings of the prognostic statements in the environmental report (e.g. regarding the predicted intensity of an environmental effect) or unforeseen effects resulting from changes of circumstances, which have led to certain assumptions in the environmental assessment being partly or wholly invalidated.

- 8.13. One purpose of monitoring is to enable the planning authority to undertake appropriate remedial action if monitoring reveals adverse effects on the environment that have not been considered in the environmental assessment. The Directive does not, however, necessarily require Member States to modify a plan or programme as a result of monitoring. This is consistent with the general approach of environmental assessment, which facilitates an informed decision, but does not create substantive environmental standards for plans or programmes. If, in the framework of their national legislation, Member States were considering remedial action, any relevant information received through such monitoring could naturally be of assistance.
- 8.14. If an adopted plan or programme is modified as a result of monitoring, this modification may again require an environmental assessment (if it meets the requirements of Article 2(a)) unless it is a minor modification and Member States do not determine that significant environmental effects are likely to occur (Article 3(3)). It is likely that plan modifications resulting from monitoring will serve to offset or mitigate adverse environmental effects. When deciding whether the modification of the plan has to undergo an environmental assessment relevant factors in deciding the significance of effects may include how far the environmental performance of the plan or programme will be improved and which environmental effects have already been subject to a comprehensive environmental assessment.

Article 10(2)

In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.

- 8.15. Article 10(2) helps clarify the obligations deriving from Article 10(1). Information on the effects of plans and programmes does not have to be collected specifically for this purpose, but other sources of information can be used. It also implies that there is no requirement to establish a new procedural step for the purpose of monitoring which is separate from the regular planning process, provided that process contains adequate monitoring arrangements. Monitoring can, for example, be integrated into the regular revision of the plan or programme. If no appropriate monitoring schemes exist Member States have to develop them.
- 8.16. The main challenge is to identify sources of information in different Member

States that are a suitable basis for implementing the monitoring requirements and, if necessary, to adapt existing monitoring arrangements to the requirements of the Directive. Data collected under other EU legislation (e.g. Water Framework Directive 2000/60/EC, IPPC Directive 96/61/EC) may be used for monitoring in accordance with Article 10 provided that they are relevant for the respective plan or programme and its environmental effects.

Related Aspects and Provisions

- 8.17. Article 5 and Annex I(i) together require that the public is informed on the monitoring arrangements 'envisaged', and Article 9(1) requires the public to be informed of 'the measures decided concerning monitoring'. These provisions are discussed in paragraph 5.29 above. Information on the monitoring measures decided is subject not only to Article 9(1) but also to the provisions of Directive 2003/04/EC of the European Parliament and of the Council of 28th January 2003 on public access to environmental information.
- 8.18. When appropriate, the environmental assessment will also cover transboundary environmental effects (see Article 7 and also Annex II(2), 3rd indent). Consequently, transboundary environmental effects may also be subject to monitoring. Therefore, in case of plans and programmes which require transboundary consultation, any arrangements concluded under Article 7 may also address monitoring measures. An inspiration for such arrangements could be the provisions of Article 7 of the Espoo Convention.
- 8.19. Monitoring may assist in the area of quality control (Article 12(2)). If monitoring reveals that a certain effect is systematically overlooked or underestimated in the environmental assessments of a certain type of plan or programme, then monitoring can help to improve the quality of future environmental reports. Generally speaking, monitoring may provide information on the quality of the existing environmental report which may be used for the preparation of future environmental reports. In that regard, efficient monitoring can be regarded as a tool for quality control helping to fulfil the requirements of Article 12(2).

9. RELATION WITH OTHER COMMUNITY LEGISLATION

- 9.1. There are overlaps between the Directive and certain other EC legislation. The Directive specifies that certain plans and programmes require an assessment in accordance with its provisions. Some of these plans and programmes are required by other Community laws which themselves may require further or different kinds of environmental assessments from that laid down in Directive 2001/42/EC.
- 9.2. Article 11 sets out the main general requirements with regard to the relations between the Directive and other EC legislation but there are further important requirements in Article 3(2)(b), 3(9), 5(3), and 12(4).

Article 11(1)

An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive 85/337/EEC and to any other Community law requirements.

- 9.3. Article 11(1) means that other Community law requirements relating to an environmental assessment of plans and programmes apply cumulatively with Directive 2001/42/EC.
- 9.4. One of the criteria for triggering the application of Directive 2001/42/EC is whether a plan or a programme sets the framework for future development consent of projects listed in the annexes to the EIA Directive. These two Directives will not normally overlap as Directive 2001/42/EC applies to plans and programmes whereas the EIA Directive applies to projects. Overlaps may occur when plans or programmes provide for several projects to which the EIA Directive applies (transport plans might be an example). In such cases, application would be cumulative.
- 9.5. When Community environmental law requires plans or programmes to undergo environmental assessment, it will be necessary (if these plans or programmes fulfil the criteria set out in Articles 2 and 3 of the SEA Directive) to consider whether further elements of assessment are introduced by that Directive. Where such further elements are required, several ways of implementing the Directive may be envisaged. Member States may, for example, decide to introduce a single legislative instrument applying all the requirements of the Directive to all the plans and programmes to which it may apply. Alternatively, they may decide to amend each legal regime requiring the preparation of such a plan or programme. Or these two approaches may be combined, with the main principles being set out in a general requirement, and amendments to the details of existing regimes made where necessary. When, under Article 13(1) of the SEA Directive, the Member States notify the measures they have adopted, they are recommended to explain, for reasons of clarity, the method by which they have implemented such complementary provisions.
- 9.6. This part of the guidance explores the consequences of the SEA Directive for

some examples of plans and programmes based on Community legislation which may relate closely to the SEA Directive. It makes no claim to be comprehensive. For a summary overview see the table on pages 53-54. In considering the relationship between the Directive and other Community law, the national legislation implementing the other Community law must also be taken into account in determining the legal status of the plan or programme.

- 9.7. The **Water Framework Directive 2000/60/EC** (WFD) introduces a Programme of Measures (Article 11 WFD) and a River Basin Management Plan (Article 13 WFD) to co-ordinate water quality-related measures within each river basin. It is not possible to state categorically whether or not the River Basin Management Plan (RBMP) and the Programme of Measures (PoM) are within the scope of the SEA Directive. Such an assessment should be done on a case by case basis. The tests which need to be applied in each case are the familiar ones in Articles 2 and 3 of the SEA Directive. Since the RBMP and the PoM are both required (by the WFD) and have to be prepared by authorities, the main question is whether they set the framework for the future development consent of projects. The answer will depend on the contents in each case. It will also be necessary to consider how far the element of planning is present in an RBMP if this does no more than summarise what has already been set out in PoMs.
- 9.8. The **Nitrates Directive** (91/676/EEC) requires action programmes for areas threatened by nitrate pollution. These action programmes are mainly directed towards certain agricultural practices rather than projects. In certain situations, however, these action programmes may set the framework for future development consent of projects such as intensive livestock units. In such cases they could be considered as 'programmes' within the meaning of the SEA Directive and would therefore require environmental assessment. Where they refer exclusively to agricultural practices, not to projects, the Directive would not apply to them.
- 9.9. The **Waste Framework Directive** (75/442/EEC) requires waste management plans to be established by Member States (Article 7). In particular Article 7 sets out the basic elements of the contents of waste management plans. Additional requirements regarding the content of waste management plans are applied by Directives 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste. One purpose of waste management plans is to identify suitable disposal sites or installations. In this sense they appear to set the framework for development consents of waste disposal installations, (which are covered by the EIA Directive in Annex I (9) and (10) and in Annex II (11)(b)). Such waste management plans would normally be covered by the SEA Directive and assessment would automatically be required, following Article 3(2)(a), provided all the other conditions of application are fulfilled. Furthermore, there may be plans which do not directly identify suitable disposal sites or installations but set the criteria for them and/or delegate this task to lower tier plans (e.g. regional or provincial plans). These plans also seem to set the overall framework for subsequent development consents and should therefore also be covered by the SEA Directive. Yet there may be waste management plans which do not identify areas for future disposal

installations, for example, in a situation where the disposal capacities are sufficient for the waste being produced. Such a waste management plan may allocate waste flows to certain regions or to certain recycling paths without setting 'the framework' for projects and so, in these cases, the Directive is unlikely to apply.

- 9.10. The **Air Quality Framework Directive** 96/62/EC stipulates that in zones and agglomerations in which levels of one or more pollutants exceed certain limit values Member States shall prepare and implement a plan or programme for attaining the limit value within the specific time limit (Article 8(3)). In zones and agglomerations, where the level of more than one pollutant is higher than the limit values, Member States must provide an integrated plan covering all the pollutants concerned (Article 8(4)). The main purpose of these plans or programmes is to improve air quality and, although they may affect many sectors, they are not necessarily attributable to any of the sectors listed under Article 3(2)(a) of the SEA Directive; but, under Article 3(4), they will require environmental assessment if they set the framework for development consent of projects and the Member State determines them likely to have significant environmental effects. Article 11 of the Air Quality Framework Directive stipulates that Member States' plans or programmes for attaining the limit values should be sent to the Commission. Although there is no requirement to do so, it would be helpful if information about the related SEA (e.g. that referred to in Article 9 of the SEA Directive) could be sent to the Commission at the same time.
- 9.11. The **Habitats Directive** (92/43/EEC) aims at setting up a coherent European ecological network of special areas of conservation. It requires Member States to propose sites as special areas of conservation and transmit a list of such sites to the Commission. The purpose is to recognise that the site hosts nature values worth protecting. Thus, the essence of such a proposal is to recognise the environmental value of the site. The proposal itself would not normally result in a planning or programming decision. It defines only the geographical scope in which protection measures must apply. The environmental effects following this procedure arise from the later protection measures not from the proposal to designate a site as a special area of conservation. The proposal to designate protected sites under the Habitats Directive is therefore not likely to require assessment under Directive 2001/42/EC.
- 9.12. For plans and programmes under the Structural Funds and under the European Agricultural Guidance and Guarantee Fund the SEA Directive does not apply under the current respective programming periods (see Article (3)(9) and paragraph 3.8. above).

Article 11(2)

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 co-ordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment

- 9.13. As discussed above, where environmental assessment is required by the Directive and by other Community law, both sets of requirements apply cumulatively. It would be absurd if this meant that two essentially similar assessments had to be carried out on the same proposal and, in order to avoid such duplication, Article 11(2) of the Directive allows Member States to provide co-ordinated or joint procedures which fulfil the requirements of the relevant Community legislation. The first step is to find out whether Directive 2001/42/EC and other Community provisions for environmental assessment apply at the same time (see above). Member States may then wish to provide for an environmental assessment procedure that incorporates the requirements of both the Directive and of the other Community legislation. In so doing they will wish to take account of any guidance which has been issued to amplify the requirements of Community law, always bearing in mind that if any conflict were to arise between guidance on one Directive and the legal requirements contained in another Directive, it is the latter which must be transposed into national law.
- 9.14. The assessment under the *EIA Directive* is usually performed at a later stage of the decision making process than that under Directive 2001/42/EC, since it deals with projects instead of plans and programmes setting the framework for such projects. In some Member States, however, there may be overlaps between the two directives in situations where the plan or programme comprises the development consent for a project.
- 9.15. In these cases, to avoid a duplication of assessment, the introduction of a co-ordinated procedure covering both the EIA and the SEA aspects may be desirable. The basic requirements of the EIA and the SEA Directive are similar, taking into account the characteristic features of a project on the one hand and a plan or programme on the other hand. Compared to the SEA Directive, the EIA Directive does not require consultation of other authorities when there is a case by case examination (Article 4(2)), has different requirements about notification of decisions on screenings, and has no requirements on quality or monitoring.
- 9.16. The *Water Framework Directive* and the SEA Directive are complementary and provide for a broadly similar environmental assessment. Analysis of the legal texts reveals some differences between the elements of environmental assessment they cover. For example, the provisions on public participation in the WFD focus on the steps needed to produce, review and update RBMPs, whilst those in the SEA Directive are more general in nature since they have to apply to quite diverse types of plans and programmes. If Member States decide to provide for a joint procedure in their transposition of these directives, they will need to ensure that it correctly reflects the provisions of both. One way of avoiding duplication would be for the competent authority identified under Article 3 of the Water Framework Directive also to be made responsible for ensuring that the requirements of the SEA Directive are adequately covered in the RBMP. There is one area where the SEA Directive can add particular value to the implementation of the Water Framework Directive. This is in the application of derogations as set out in Article 4 of the WFD. Whenever the terms ‘the wider environment’, ‘significantly better

environmental option' or 'sustainable human development' are used as criteria for applying a derogation, an environmental assessment in accordance with the SEA Directive may be useful in justifying the derogation on the basis of those criteria.

- 9.17. For the WFD, a Common Implementation Strategy has been developed and numerous informal guidance documents have been produced which give more detailed advice on approaches to implementing the Directive.²⁰ In some respects these go beyond the requirements in the text of the Directive. For example, the guidance document on public participation makes it clear that public participation is required not only for the RBMP (as Article 14 might imply) but also for the programme of measures. This guidance provides useful examples of how the public should be informed and consulted in accordance with the Directive and provides advice on good practice which could be applied to many other types of plan and programme covered by the SEA Directive. A similarly complementary approach is likely to be beneficial in applying other aspects of the Directives (such as the preparation of the environmental report, or the provisions on transboundary cases).
- 9.18. The procedure of preparing waste management plans pursuant to the *Waste Framework Directive* (75/442/EEC) does not include an environmental assessment. In general, the environmental assessment therefore has to be newly introduced here – though Member States may already have some elements of an SEA for waste management planning in their national legislation.
- 9.19. Plans and programmes that have been determined to require assessment pursuant to the *Habitats Directive*,²¹ are also subject to the assessment procedure under the SEA Directive (Article 3(2)(b)). Therefore the SEA Directive and the Habitats Directive apply cumulatively for all plans and programmes which have effects on protected sites pursuant to Article 6 or 7 of the Habitats Directive and a combined procedure may be carried out provided it fulfils both the requirements of the SEA Directive and the Habitats Directive. In this case, 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.
- 9.20. The assessment under the Habitats Directive is a test to certify that a plan does not adversely affect the integrity of the site concerned; the competent national authorities must not adopt a plan which has adverse effects impairing the site unless the conditions and criteria in Article 6(4) of the Habitats Directive are fulfilled.²²

²⁰ These documents cover subjects such as economic analysis, analysis of pressures and impacts, planning process and ecological status assessment and will be published during 2003. They are already available on the internet under: <http://forum.europa.eu.int/Public/irc/env/wfd/library>.

²¹ The Habitats Directive explicitly requires assessment for 'plans' and not for 'programmes'. However, a 'plan' according to the Habitats Directive may have the characteristics of a 'programme' pursuant to the SEA Directive, since it is impossible to provide a rigorous distinction between plans and programmes. (See also paragraphs 3.3 - 3.6 and 3.32 above).

²² Article 6(4) reads: 'If, in spite of a negative assessment of the implications for the site and in the

- 9.21. The assessment under the SEA Directive has a broader coverage; it not only covers effects on protected sites and on selected species, but also on biodiversity in general and on other aspects like air or water quality or the cultural or architectural heritage. The steps of an optional combined SEA procedure for the plans which have been determined to require an assessment pursuant the Habitats Directive might be the following.
- 9.22. Since the plan has been determined likely to have an effect on a site under the Habitats Directive, provided it complies with the other requirements of Articles 2 and 3 of the SEA Directive, it automatically comes within the field of application of that Directive.
- 9.23. The effects on the environment of the plan or programme and reasonable alternatives to the plan or programme are to be identified, described and evaluated in an environmental report. Effects on protected sites and on selected species in accordance with the Habitats Directive are part of this report. It may, however, be preferable to describe them in a separate chapter as the findings on such effects are binding for the decision of the competent authorities on the plan or programme.
- 9.24. The public and the authorities, which are likely to be concerned by the environmental effects of implementing plans, are to be consulted in accordance with Article 6 of the SEA Directive by making available the draft of the plan or programme and the environmental report. The consultation also includes the effects of the plan or programme on the sites and species, which are specially protected under the Habitats Directive.
- 9.25. The report and the results of the consultations have to be taken into account before the plan or programme is adopted or submitted to the legislative procedure. If the plan or programme is found to affect adversely the integrity of the site concerned, the plan or programme may be adopted only under the limited conditions described in Article 6 of the Habitats Directive. For other effects on the environment, the relevant national legislation under the Habitats Directive describes the conditions under which the plan or programme may be adopted.
- 9.26. Under Article 6 of the SEA Directive, the public and the designated authorities have to be informed about the decision on the plan or programme. The statement summarising how environmental considerations have been integrated into the plan or programme also includes the decision about whether the plan or programme conforms to the Habitats Directive.

absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.’

- 9.27. The effects on the environment of implementing the plan or programme have to be monitored (Article 10 of the SEA Directive). This monitoring includes effects on the sites and species protected under the Habitats Directive.

SEA for plans and programmes required by certain Community environmental legislation – Summary Table.

NB: This table is not exhaustive and readers should also refer to the relevant text as well as the Directives themselves.

Community legislation	Plan or programme within the meaning of the SEA Directive (Art. 2 (a))		Obligatory environmental assessment pursuant to Art. 3 (2)			Conditional environmental assessment pursuant to Art. 3(4)
	Plan or programme?	Required by legislative, regulatory or administrative provisions?	Prepared for the sectors listed in Art. 3 (2)(a)	Setting the framework for future development consent of EIA projects	Requiring an assessment pursuant to the Habitats Directive	
Water Framework Directive 2000/60/EC	yes/no	yes	yes (water management)	yes/no (depends on the contents)	yes/no (depends on the contents)	Requiring an assessment if likely to have significant environmental effects
Nitrates Directive 91/676/EEC	Yes	yes	yes (water management)	yes/no (depending on the contents of the programme, possibly for installations for intensive livestock breeding)	yes/no (depending on the contents of the action programme)	
Waste Framework Directive 75/442/EEC Including the requirements of Directives 91/676/EEC and 94/62/EC	Yes	yes	Yes (waste management)	yes/no (depending on the contents of the waste management plan)	yes/no (depending on the contents of the waste management plan)	

	Plan or programme within the meaning of the SEA Directive (Art. 2(a))		Obligatory environmental assessment pursuant to Art. 3(2)			Conditional environmental assessment pursuant to Art. 3(4)
Community legislation	Plan or programme?	Required by legislative, regulatory or administrative provisions?	Prepared for the sectors listed in Art. 3(2)(a)	Setting the framework for future development consent of EIA projects	Requiring an assessment pursuant to the Habitats Directive	Requiring an assessment if likely to have significant environmental effects
Air Quality Framework Directive	Yes	yes	- (sector: air quality)		yes/no (depending on the contents of the action programme)	yes
Habitats Directive 92/43/EEC	- (designation of an area does not constitute a 'plan or programme')	yes	-		-	-
Habitats Directive 92/43/EEC	Yes (plans and programmes, which have effects on protected sites pursuant to Art.6 or 7 Habitats Directive)	yes	yes		yes	
Structural Funds Regulation and European Agricultural Guidance and Guarantee Fund (EAGGF) Regulation	- (For the current planning period, excluded from the SEA)					

Appendix I - Practical guidance on monitoring

As guidance for the authorities in Member States which are responsible for integrating the monitoring requirements of Directive 2001/EC/42 into the different planning procedures, the following section describes several steps which could provide assistance.. These steps put the different issues into a logical order, but they do not represent a necessary chronological sequence. Moreover, knowledge and practical experience as regards monitoring of plans and programmes is at this stage relatively limited. Monitoring schemes should therefore be flexible and allow for adaptations as necessary.

More detailed information on the practical implementation of Article 10 can be obtained from the report 'Implementing Article 10 of the SEA Directive' prepared in the framework of the IMPEL Network.

Determination of the scope of monitoring

The first step to design a monitoring system for a given planning process is to define what environmental effects the monitoring system needs to cover. The environmental report sets a framework for the scope of monitoring by identifying the likely significant environmental effects. The environmental effects to be monitored are therefore in principle the same as those of the environmental assessment. However, depending on the type of plan or programme and in particular on the stage of its implementation it may be appropriate to focus on those environmental effects which are relevant with respect to the implementation. Further, the possibility of undertaking remedial actions may be considered when determining the scope of monitoring. Also scientific difficulties in establishing a clear link between the implementation of a plan or programme and changes in the environment may be an obstacle to monitor all environmental effects. Additionally a safety check should be performed in order to make sure that no adverse effect of the plan or programme has been overlooked in the assessment.

- **Monitoring covers in principle the environmental effects included in the environmental report.**
- **It may, however, focus on some environmental effects or include additional aspects which were not apparent.**

Identification of necessary information

The second step is the identification of the necessary information for finding out the environmental impacts of a plan or programme. Information about the environmental effects of a plan or programme can also be gained from the causes of the relevant effects,²³ since the effect of the plan or programme on the environment can be monitored directly (measuring changes in the environment) or indirectly through collecting information for example on the implementation of (mitigation) measures foreseen in the plan or programme or pressure factors such as emissions or the amount of waste.

²³ A current model for the causal chain is the DPSIR scheme (driving forces-pressure-state-impact-response).

Monitoring schemes which have been examined in the course of the IMPEL project on monitoring showed a tendency to focus rather on the implementation of measures and pressure factors than on the impact. The reason for this can be seen in the difficult establishing of the cause-effect link, i.e. to attribute a change in the environment which may be influenced by various factors unambiguously to the implementation of a plan or programme. A biological monitoring system, for example, may reveal comprehensive information about the status of the environment in a given area and about its change in a given period of time, but it may not contain any findings about whether a given change in the environment (e.g. loss of a certain species, damage to certain plants) can be attributed to the implementation of a certain traffic plan. Here the data from a biological monitoring system could be combined with an analysis of the progress of implementing the traffic plan ('driving forces') and the mitigation measures foreseen in the plan.

It should be noted that not all environmental information that might be available for the planning territory is automatically necessary and useful for the purpose of monitoring. The crucial point is to identify those data which are relevant and representative for the plan or programme. A feasible approach to select relevant environmental information was presented at the IMPEL project on monitoring. The monitoring arrangements for the waste management plan of Vienna were based on a set of questions which were relevant for the follow-up of the plan (e.g. prognosis about the amount of waste in the coming years; prognosis about emissions reductions; achievement of targets, etc.)²⁴. Also a set of indicators will in many cases be used as a framework for the selection of relevant environmental information. A key function of indicators or a set of questions used in Vienna is to condense environmental data to information which is understandable also for non-experts (who usually will decide on further action).

Of course, reliability and the availability of the respective data within the planning period should also be taken into account when determining what environmental data are needed.

- **It is useful to identify and select the environmental information which is necessary for monitoring the relevant environmental effects.**
- **Environmental effects may also be indirectly monitored through monitoring the causes of the effects (such as pressure factors or mitigation measures).**
- **Indicators or a set of questions may provide a framework which helps to identify the relevant environmental information. They also help to condense environmental data to understandable information.**

Identification of existing sources of information

The third step is to identify existing sources of information for the required information about the environmental situation. Whether this search is successful depends on the particular plan or programme concerned and on the monitoring systems existing for the environmental factors concerned. Two main sources of

²⁴ For more details see final report of the IMPEL project.

environmental information which may be useful for monitoring the significant environmental effects of plans and programmes are presented in the following section.

a) Data at project level

The first data source contains environmental data about the projects for which the plan sets the framework. Environmental data at project level are generated and collected at different stages of the project realisation. During the licensing phase of a project, information about its likely effects on the environment is collected for the purpose of the project EIA (although the data gathered in an EIA procedure are also prognostic they are usually more detailed than those used at the planning level) or other development consent procedures. During the construction and the operation phase the project is subject to inspections in order to make sure that the conditions set out in the development consent are observed in practice. Further, the IPPC Directive requires the establishment of a pollution emissions register covering emissions from a large number of industrial installations.²⁵

Data at project level in most cases cover pressure factors such as emissions and also to some extent environmental effects. These data can help to compare the prediction of environmental effects and the achievement of environmental targets on the planning level with the real effects resulting from the implementation of the plan or programme.

Usually information at project level is collected by other authorities than those in charge of monitoring of plans and programmes. It must therefore be ensured that the data are made available to the monitoring authority if the monitoring system is to depend on project-related data. Also it has to be taken into account, that information at project level is mainly focused on small-scaled environmental effects while the SEA is often performed for large-scale plans or programmes. Therefore the information from the project level has to be processed, aggregated and summarised in order to use it for the monitoring of a plan or programme.

b) General environmental monitoring

The second and wide-spread source of environmental information consists in general environmental monitoring systems including statistics providing environmental data without being specifically related to plans, programmes or projects. Although these data show changes in the environment and thus environmental effects they only allow conclusions limited as to the impact resulting from the implementation of the plan or programme (as the cause-effect link is difficult to establish). However, these data can be used to find out whether environmental objectives and targets included in a plan or programme have been achieved. They also may give an indication about the efficiency of measures undertaken or foreseen to achieve these targets. Such sources of general environmental monitoring schemes, statistics and investigations can be found in all Member States and are to a large extent also required by EC legislation (e.g. monitoring according to Articles 5 and 8 of the Water Framework Directive 2000/60/EC or Directive on Ozone in ambient air 2002/3/EC).²⁶

²⁵ A comprehensive overview of EC legislation requiring the collection of project-related environmental data is to be found in the final report of the IMPEL project.

²⁶ A more detailed overview of relevant EC legislation is given in the final report of the IMPEL project

- **Sources of environmental information can be found at project level (e.g. information gathered in EIA procedures or emissions registers established on the basis of the IPPC Directive).**
- **Environmental information at project level addresses pressure factors and environmental effects. Information at project level needs to be aggregated and summarized when it is used for the planning level.**
- **General environmental monitoring systems provide environmental data detecting changes in the environment. These data help to verify the achievement of environmental objectives and targets but they allow only to a limited extent the changes in the environment to be attributed to the implementation of the plan or programme.**
- **EC legislation contains various provisions requiring the collection of environmental data which may be useful for the purpose of Article 10.**

Filling the gaps

The fourth step is to fill the gaps that are found when comparing the existing sources of information to the needs following from Article 10 for the specific plan or programme. In some cases the information may be sufficient to fulfil the requirements of Article 10, but it may be necessary to provide for a continuous exchange of information between the authorities collecting the information and the authority responsible for monitoring. In other cases existing monitoring systems may have to be enlarged by including additional aspects or measuring points. Yet it should be stressed that monitoring according to Article 10 has a limited purpose, i.e. to identify shortcomings of the environmental assessment, and that it is not a free-standing scientific exercise. This always has to be borne in mind when thinking about enlarging existing monitoring systems or installing new ones.

Procedural integration of monitoring into the planning system

The fifth step is to integrate monitoring into the planning system. As said above, monitoring does not have to be a separate step in the planning procedure, but it can be part of the regular planning system. A good point in the administrative process to integrate the monitoring required by the SEA Directive appears to be the regular revision of an existing plan or programme. If there is no such regular revision, time and frequency for monitoring the effects of the plan or programme should be laid down, either in a general rule or in the context of each individual environmental report.

In any case some procedural arrangements have to be made to ensure that the monitoring system runs effectively. It has to be determined which authority (or other body) is responsible for the different tasks of monitoring, comprising the collection of environmental information, processing the environmental information and their evaluation. Further, it is important that the relevant information is submitted to the respective authority in an appropriate form (e.g. environmental data should be explained and put in an understandable document when presented to a decision-making body).

When setting up monitoring arrangements it should be noted that monitoring does not end with the collection of environmental information but includes also their evaluation.

- **Monitoring can be integrated in the planning system.**
- **Efficient monitoring demands a determination of the responsible authority/ies and the time and frequency of monitoring measures.**
- **Monitoring arrangements should also include the evaluation of the environmental information.**

Remedial action

Environmental information received through monitoring can be of assistance when considering appropriate remedial action in the framework of national legislation. Article 10, however, does not lay down an obligation to undertake remedial action. The following section therefore contains only general reflections about remedial action.

It may be useful to determine criteria which trigger an examination of remedial action. Existing legislation in some Member States contains already general provisions requiring a revision of the plan if this is necessary to ensure the intended development (e.g. to ensure a well balanced urban development).

Remedial action can be taken on different levels. On the planning level, the decision on the adoption of the plan or programme can be reversed and a new plan or programme can be adopted or the existing plan or programme can be modified. If the legal system of the Member States so allows, remedial action could also be taken on the implementation level. This could in particular mean that those statements in the plan or programme which have been proved incorrect or which were based on incorrect assumptions are no longer considered as a framework for the development consent of single projects.

Remedial action on the planning level could also be combined with such action on the implementation level. This would mean that the plan or programme is modified on the basis of the new information on its effects on the environment. In order to avoid developments which might occur while the (old) plan or programme is still in force and which might contravene the envisaged modification of the plan or programme, development consent procedures for projects could be postponed or the decision on projects could be taken without referring to the plan or programme if the respective national legal systems so allows.

- **It may be useful to determine criteria which trigger the consideration of remedial action.**
- **Remedial action can be undertaken on planning level and implementation level.**

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