

EVALUATION ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (known as the "Strategic Environmental Assessment (SEA) Directive")		
LEAD DG RESPONSIBLE UNIT	DG ENVIRONMENT E.1	DATE OF THIS ROADMAP	11/07/2017
TYPE OF EVALUATION	Interim Evaluation	PLANNED START DATE	Q3/2017
		PLANNED COMPLETION DATE	Q4/2019
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose
(A.1) Purpose
<p>This is the first evaluation of the Strategic Environmental Assessment (SEA) Directive¹ and it will cover the application of the Directive in all Member States since the date of its entry into application (21 July 2004).</p> <p>This evaluation of the SEA Directive will build upon the findings and the conclusions of the two preceding Commission implementation reports² to the Council and the European Parliament, prepared under Article 12(3) of the SEA Directive. The evaluation is a retrospective exercise which will go beyond the descriptions provided in these reports and assess the performance of the directive.</p> <p>The results of this evaluation will be used to identify lessons learned, with the intention of improving implementation of the SEA Directive, taking into account the EU obligations stemming from relevant international environmental treaties, such as SEA Protocol³ and the Aarhus Convention⁴.</p> <p>The evaluation exercise will try to identify how or why the Directive is/is not working, including issues arising in the existing legal provisions. To this end, the evaluation will be performed against five criteria: (i) effectiveness (ii) efficiency; (iii) relevance; (iv) coherence; (v) EU-added value.</p>
(A.2) Justification
<p>The evaluation of the SEA Directive is included in the Commission Work Programme 2015 "A new Start", COM (2014) 910 final of 16 December 2014, Annex 3, REFIT. On 15 May 2017 the Commission adopted the second implementation report on the SEA Directive and thus examined the application of the directive across the EU Member States. Hence, this evaluation is a logical next step.</p>

B. Content and subject of the evaluation
(B.1) Subject area
<p>The SEA Directive establishes a specific set of rules applying to decision-making by the competent national authorities at an early stage when plans and programmes are being developed (e.g. preparation of an environmental report on the likely significant effects on the environment; informing and consulting the public and</p>

¹ OJ L 197/30, 21.7.2001, p. 30.

² COM (2009) 469, 14.9.2009 and COM (2017) 234, 15.05.2017.

³ OJ L 308, 19.11.2008, p. 33.

⁴ OJ L 124, 17.5.2005, p. 1.

the environmental authorities; transboundary consultations with potentially affected Member States; identification of measures to address and monitor significant environmental impacts).

The SEA Directive is intended to reinforce the quality of this "plan-making" process, and should ensure that the environmental concerns are properly taken into account in the decision making. The 7th Environmental Action Programme⁵ mentions that when correctly applied the SEA Directive *"is an effective tool for ensuring the integration of environmental protection requirements into plans and programmes"*. To this end the SEA is a universal tool which, when properly applied, is intended to facilitate the implementation of key EU policy actions and contribute to the attainment of the Sustainable Development Goals (SDGs) being a horizontal and cross-cutting legislation.

The SEA Directive implements into the EU law the provisions of the Protocol on Strategic Environmental Assessment to the 1991 UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context. The EU has been a party to the SEA Protocol since 21 November 2008. The Protocol entered into force on 11 July 2010 and is part of EU environmental acquis. As the two texts mirror each other, an assessment under the SEA Directive is considered to meet the SEA Protocol requirements.

(B.2) Original objectives of the intervention

The objective of the SEA Directive (as stated in Article 1) is to provide for a high level of protection of the environment and contribute to the integration of environmental considerations into the preparation, adoption and implementation of plans and programmes, with a view of promoting sustainable development. This objective should be achieved by ensuring that environmental assessment is carried out, in accordance with the provisions of the Directive, for those plans and programmes which are identified as likely to have significant effects on the environment. To decide whether a plan and programme falls under the scope of the SEA Directive, the following four criteria should all be met:

(i) the plan and programme should be subject to preparation and/or adoption by an authority at national, regional or local level;

(ii) it is required by a legislative, regulatory or administrative provisions;

(iii) it is prepared by any of the sectors listed in Article 3(2)(a) of the Directive;

(iv) it sets the framework for future development consent of projects listed in Annex I and II to the EIA Directive.

To this end the SEA Directive applies to a wide range of public plans and programmes (e.g. on land use, transport, energy, waste, agriculture, etc.), which give rise to individual projects, including those co-financed by the European Union. Its application should lead to more sustainable and resource efficient development through systematic appraisal of different options at a planning level.

The SEA Directive sets out a procedure which must be undertaken when assessing a plan or programme to which the procedure applies. These steps include scoping; the preparation of the environmental report, with due consideration of the baseline information and the reasonable alternatives; public consultation and participation; the decision-making, and monitoring. The SEA Directive also provides that plans and programmes which determine the use of small areas at local level and minor modifications to plans and programmes, as well as plans and programmes different from those listed in Article 3(2), but which set the framework for future development consent of projects, are subject to a screening procedure. The margin of Member States' discretion in screening certain plans and programmes is limited by the significance criteria set in Annex II of the SEA Directive and the overall objective of the Directive that is to provide for a high protection of the environment.

(B.3) How the objectives were to be achieved

The chart on page 3 provides a simplified description of how the SEA directive was expected to work.

⁵ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

INITIAL INTERVENTION LOGIC

Objectives of the SEA Directive (Article 1)

- General objective: Provide for a high level of protection of the environment and promote sustainable development.
- Specific objective: Contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes.
- Operational objective: Ensure that environmental assessment is carried out of certain plans and programmes which are likely to have significant effects before their adoption or submission to a legislative procedure.



Actions

- Member States should establish a set of procedural requirements in accordance with the provisions of the SEA Directive providing for carrying out SEA for plans and programmes falling under the scope of the SEA Directive (Article 2 (a) and Article 3(2)).
- Member States should determine the plans and programmes likely to have significant effects on the environment based on the criteria laid down in Annex II of the SEA Directive (Article 3(5)).
- Member States should integrate the SEA into existing procedures or incorporate it in specifically established procedures (Article 4(2)).
- Member States shall designate the authorities with specific environmental responsibilities to be consulted and those responsible for implementing the Directive. (Article 5(3)).
- Member States should ensure that when a plan and programme is adopted, the relevant authorities and the public are informed and relevant information is made available to them (Article 9).
- Where the obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other EU legislation, in order to avoid duplication of the assessment, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant EU legislation (Article 10(2)).
- The Commission shall prepare at seven-year period results to the Council and the European Parliament on the application of the SEA Directive (Article 12(3)).



Consequences

- Member States determine the plans and programmes which always require an SEA.
- Member States determine whether the plans and programmes set in Article 3(4) and (5) of the Directive have significant effect on the environment and whether an SEA is required, on the basis of the relevant criteria set out in Annex II of the SEA Directive.
- Scoping
- Environmental report is prepared containing relevant information as set in the SEA Directive, identifying, describing and evaluating the likely significant environmental effects of implementing the plan or programme, and reasonable alternatives.
- The authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes.
- Reasonable timeframes are set, allowing sufficient time for consultations, and public participation.
- The environmental report and the opinions expressed by the relevant authorities and the public, as well as the results of the transboundary consultation, are taken into account
- Where relevant, transboundary consultations are organized.



External Factors

- Legislative and administrative arrangements for transposing and implementing the Directive at national/regional/local levels.
- Administrative capacity.
- The SEA applies to a very broad scope of plans and programmes, not necessarily environment related (i.e. land use, transport, energy, agriculture, etc.).
- Other legislation calling for an environmental assessment, e.g. EIA Directive, Habitats and Birds Directives, Water Framework Directive, Industrial Emissions Directive, etc., as well as provisions not necessarily linked to environment but with high relevance to the SEA procedure (i.e. land use planning).
- Jurisprudence (CJEU, Member States' national courts' case-law).



Expected Results: *inter alia*

- SEA enables integration of environmental considerations into decision-making thus contributing to high level of protection of the environment.
- SEA structures the planning process and facilitates the decision-making.
 - SEA informs and improves strategic decisions and increases their transparency and social acceptance.
 - SEA is a proactive instrument addressing the causes of environmental problems early in the decision-making rather than simply identifying the negative outcomes.
 - It also has the advantage that it assesses the cumulative effects and thus the carrying capacity of the environment in the areas where the plan will be developed. Hence it can facilitate the EIA, and any other subsequent environmental assessment at plan or project level, including relevant permitting process.

C. Scope of the evaluation/FC

(C.1) Topics covered

The evaluation will cover the application of the entire SEA Directive in all EU Member States from the date of its application (21 July 2004), including its relation with relevant international environmental treaties such as the SEA Protocol, and the Aarhus Convention. The evaluation will aim to consider all relevant aspects, i.e. legal (e.g. legal base, internal coherence and consistency with other legislation, terminology and definitions, etc.), environmental, economic and social. The evaluation will examine what has worked well, what has not worked well, and why.

The evaluation will rely on an evidence-based approach. Relevant literature, reports will be reviewed (see below), and consultation will take place with relevant stakeholders, including national, local and regional authorities, institutions, NGOs and organizations, while ensuring adequate and wide geographical representation within the EU.

The evaluation will assess how well the SEA Directive has been applied and what its impact has been on the planning process; to what extent environmental concerns have been integrated in the adopted plans and programmes. The evaluation will identify any shortcomings with its implementation and enforcement, and point out the causes of such shortcomings, including gaps in the existing legislation. Finally the evaluation will include evidence based conclusions.

(C.2) Issues to be examined

The evaluation will respond to the following evaluation questions:

Effectiveness:

- To what extent has the SEA Directive contributed to ensuring a high level of protection of the environment?
- To what extent has the SEA Directive influenced the Member States' planning process, the final content of a plan/programme, and eventually projects' development?
- What factors (e.g. gaps, overlaps, inconsistencies) influenced the effectiveness?

Efficiency:

- To what extent are the costs involved proportionate, given the identified changes/effects achieved?
- What factors influenced the efficiency with which the achievements observed were attained?
- What is the cause of any unnecessary regulatory burden or complexity associated with the SEA Directive?

Relevance:

- To what extent is the Directive still relevant to promote a high level of protection of the environment and sustainable development?

Coherence:

- To what extent is the intervention coherent with other parts of the EU environmental law and policy, in particular those setting provisions for environmental assessment procedures, such as the EIA Directive (Directive 2011/92/EU, as amended), the Habitats Directive (Directive 92/43/EC) etc.?
- To what extent are sectoral EU policies, such as the Cohesion, transport, climate change and energy policies coherent with the SEA Directive?
- To what extent is the intervention coherent with EU international obligations?

EU added value

- What would be the most likely consequence of repealing the SEA Directive?

(C.3) Other tasks

n/a

D. Evidence base

(D.1) Evidence from monitoring

As noted in the intervention logic the SEA Directive does not prescribe the exact arrangements for monitoring

the significant environmental effects, the frequency of the monitoring, its methodology and the bodies in charge of performing it. The monitoring arrangements therefore give wide discretion to Member States. The Commission services do not receive any direct information from reporting by the Member States about the implementation of the SEA Directive.

External contractors, who will be commissioned to support the evaluation, will gather evidence on the monitoring practices in the Member States and analyse to what extent they contribute to the attainment of the Directive's objectives.

(D.2) Previous evaluations and other reports

The SEA Directive was not subject to Impact Assessment prior to its adoption in 2001 and this is the first evaluation of the SEA Directive. However, there are already some reports and information gathered that can facilitate the evaluation.

Evidence from the Commission implementation reports (2009, 2017)

- Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC) [<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009DC0469>];
- Report from the Commission to the Council and the European Parliament under Article 12(3) of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment [<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1494874134751&uri=COM:2017:234:FIN>].

Commission guidance documents on the application and effectiveness of the SEA Directive

- Commission's Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment [http://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf];
- Guidance on integrating Climate Change and Biodiversity into Strategic Environmental Assessment [<http://ec.europa.eu/environment/eia/pdf/SEA%20Guidance.pdf>];

Other deliverables

- Study concerning the application and effectiveness of the SEA Directive (2009) [<http://ec.europa.eu/environment/eia/pdf/study0309.pdf>];
- Study concerning the application and effectiveness of the SEA Directive (2016) [http://ec.europa.eu/environment/eia/pdf/study_SEA_directive.pdf];
- The Use of Spatial Data for the Preparation of Environmental Reports in Europe (JRC technical support, 2010) [http://ec.europa.eu/environment/eia/pdf/jrc_technical%20report_2009%20eia-sea%20survey.pdf];
- Workshop on the application and effectiveness of the SEA Directive (Directive 2001/42/EC), 18 May 2016, Brussels [http://ec.europa.eu/environment/eia/conference_may_2016.htm].

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

Despite the fact that all Member States have transposed the SEA Directive and communicated the respective national transposing measures, the challenge of ensuring that the SEA Directive is applied effectively and consistently across all Member States is a continuous one.

The number of complaints received and the infringement procedures initiated (as regards the non-conform transposition or bad application of the SEA Directive) is relatively low. On the other hand, due to the horizontal character of the SEA Directive, the bad application cases of the SEA Directive are often related to the bad application of other pieces of the EU legislation, e.g. Habitats and Birds Directives, Water Framework Directive, Environmental Impact Assessment Directive. The evaluation will take into account the evidence resulting from

the above mentioned implementation report. Very few infringement procedure cases have reached the CJEU. However, the CJEU has delivered several judgements on the basis of requests for preliminary rulings. The evaluation will take into account all relevant case law of the CJEU.

(D.4) Consultation

The respective public authorities in charge of the preparation and adoption of plans and programmes in all areas described in Article 3(2)(a) of the SEA Directive, such as agriculture, forestry, transport, energy, water, town and country planning, land use etc., will be the main source of information for the evaluation of the SEA Directive. Due to the fact that the SEA Directive applies to public plans and programmes, the respective authorities are the best placed to provide important information and evidence related to the costs and benefits of the application of the Directive; the implementation approach in the Member States, etc.

The authorities with environmental responsibilities in the Member States play a key role in the SEA procedure, mainly in assuring the quality of the environmental report. In some Member States, however, they have been granted a wider scope of competences, including the overall steering of the SEA procedure, and taking the final decision on its outcomes. External contractors will collect hands-on feedback from such environmental authorities, who illustrate the application of the Directive on the ground.

Meanwhile, other stakeholders, such as NGOs, citizens, etc. could also be directly or indirectly affected and concerned in the application of the SEA Directive, as the directive provides for public participation and consultation.

It is expected that an external contractor will conduct a range of consultation activities. These will be therefore only be finalised once the contract is awarded and work has progressed. The following (minimum) consultation activities are foreseen:

- 1) A public consultation in accordance with the Commission's Better Regulation guidelines⁶ using a structured public questionnaire (available in all EU official languages) published on the relevant Commission website⁷.
- 2) Targeted consultation with the national authorities and other key stakeholders (e.g. NGOs) on the basis of appropriate means (e.g. structured questionnaire, to be developed in agreement with the Commission services).
- 3) Targeted consultation with a range of competent Member State's authorities in charge of preparing and adopting a plan or programmes subject to SEA, and an authority with environmental responsibilities. This approach will provide background information on the application of the SEA Directive in the different Member States, as well as provide evidence on the application of the SEA Directive from the various public authorities involved.
- 4) There will be a dedicated workshop to share and discuss the draft findings of the evaluation to which Member States and key stakeholders will be invited.

Further detail will be provided on the Europa SEA webpage⁸ as the consultation strategy evolves, particularly in light of the approach agreed with contractors.

(D.5) Further evidence to be gathered

Additional evidence, as identified, will be gathered during the consultation process or during the study work which will include reviewing previously published material (see above).

⁶ http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm
Toolbox: http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm

⁷ <http://ec.europa.eu/info/consultations>

⁸ <http://ec.europa.eu/environment/eia/sea-legalcontext.htm>