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EVALUATION
of the

**Directive 2001/42/EC on the assessment of the effects of certain plans and programmes
on the environment**

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Glossary

AA	Appropriate assessment
CJEU	Court of Justice of the European Union
CFP	Common Fisheries Policy
CP	Cohesion policy
CPR	Common Provisions Regulation
EIA	Environmental Impact Assessment
ESIF	European Structural and Investment Funds
EU	European Union
IVL	Intervention Logic
MSFD	Marine Strategy Framework Directive
MSP	Maritime Spatial Planning
NGO	Non-Governmental Organisation
OP	Operational Programme
RBMP	River Basin Management Plan
RDP	Rural Development Plan
REFIT	European Commission's regulatory fitness and performance programme
SDGs	Sustainable Development Goals
SEA	Strategic Environmental Assessment
TFEU	Treaty on the Functioning of the European Union
UNECE	United Nations Economic Commission for Europe

1. INTRODUCTION

1.1. Purpose of the evaluation

This evaluation examines the extent to which Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment¹, referred to as the SEA Directive, is fit for purpose. It looks into what works and what can be improved, the extent to which the objectives of the Directive have been achieved and why some elements or features are successful or not. The evaluation examines the functioning of the Directive against the five standard evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value as well as lessons learned.

Since its adoption, the Commission has adopted two implementation reports in accordance with Article 12(3) of the SEA Directive². Although these reports assessed the application and the effectiveness of the Directive in the Member States, the performance of the Directive based on the five standard evaluation criteria has not been formally evaluated since its adoption. Therefore, the Directive was included in the Commission's 2015 work programme³ as part of its Better Regulation agenda⁴.

The findings of the evaluation are intended to inform any future decisions on the Directive.

1.2. Scope of the evaluation

The scope of the evaluation, as set out in its roadmap⁵, is the SEA Directive. The evaluation covers all aspects of the Directive and assesses its impact across the European Union from its adoption in 2001 and entry into application in 2004, until 2018⁶. The evaluation builds upon the findings and conclusions of the two preceding Commission implementation reports prepared under Article 12(3) of the SEA Directive.

The evaluation also takes into account the case law of the Court of Justice of the European Union (CJEU), whose interpretation of the SEA Directive is binding. It also refers to other relevant EU environmental directives, as appropriate.

2. BACKGROUND TO THE INTERVENTION

2.1. Intervention logic

The intervention logic setting out the rationale and approach for the operation of the SEA Directive is given in Figure 1.⁷

¹ OJ L 197, 21.7.2001, p. 30–37.

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

³ https://ec.europa.eu/info/publications/work-programme-commission-key-documents-2015_en

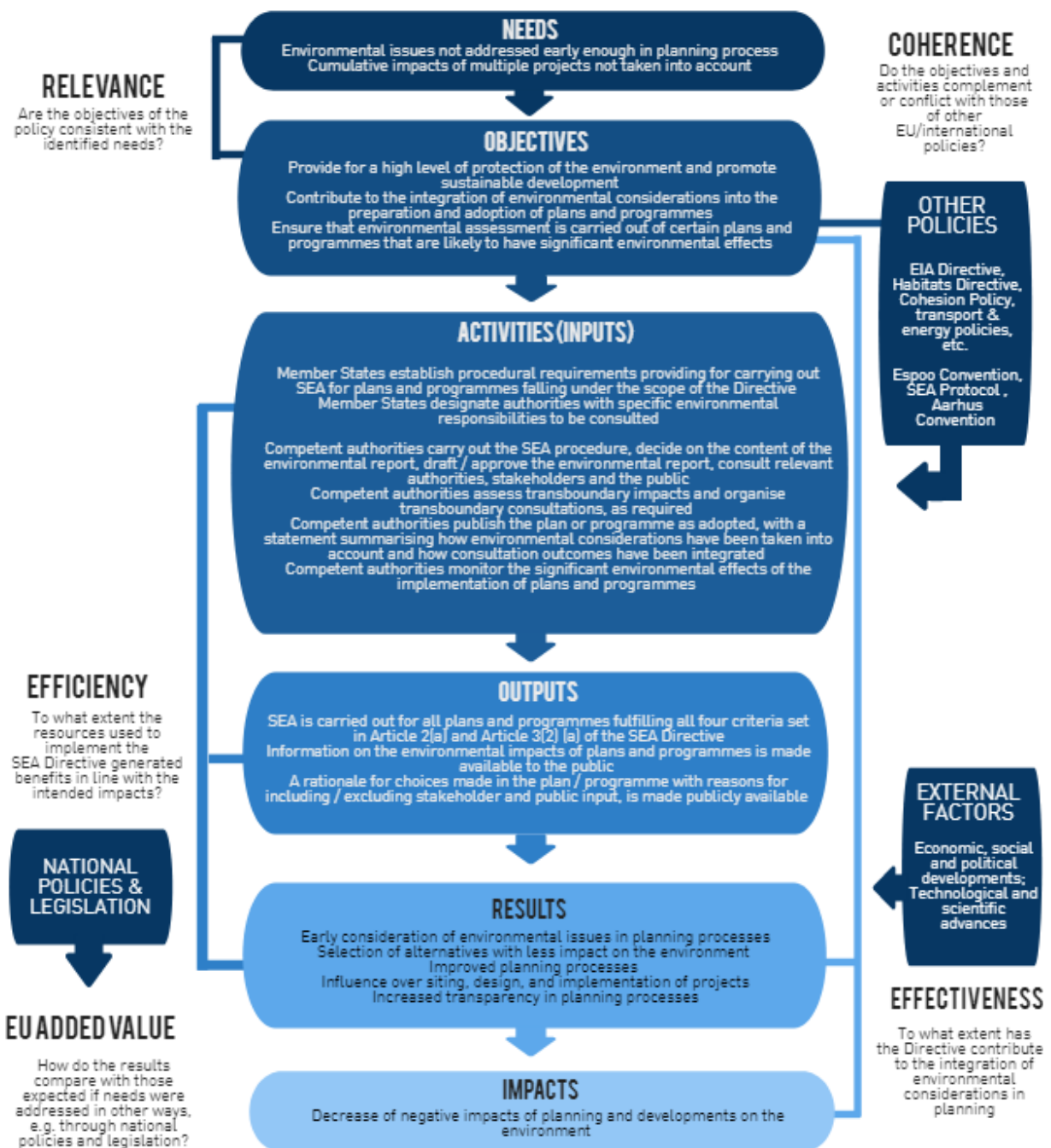
⁴ https://ec.europa.eu/commission/priorities/democratic-change/better-regulation_en

⁵ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3481432_en

⁶ The open public consultation and the workshop, as well as the literature research covered all Member States. The targeted consultation (online questionnaire) addressed selected stakeholders in all Member States. In addition to these and to complement the evidence gathered, there were interviews with a range of stakeholders in eleven selected Member States (Austria, Czechia, Denmark, France, Italy, Ireland, Latvia, Poland, Romania, Spain, Sweden).

⁷ For more information please refer to section 2.3. of the evaluation study supporting this REFIT: <https://ec.europa.eu/environment/eia/pdf/Consultation%20Strategy.pdf>

Figure 1: Intervention logic



The intervention logic presented in Figure 1 defines how the SEA Directive was designed to work. It describes the different steps and actors involved. This includes the Directive's general and specific objectives, the activities and inputs required to achieve these objectives, and the expected outputs, results and impacts.

The **general objective** of the SEA Directive is to provide for a high level of protection of the environment and to promote sustainable development. This leads to a **more specific objective**: to encourage the integration of environmental considerations into the preparation of plans and programmes, in line with Article 11 of the Treaty on the Functioning of the European Union (TFEU). Both of these are, in turn, reflected in the **operational objective**

of ensuring that an environmental assessment is carried out for certain plans and programmes which are likely to have significant effects on the environment.

To achieve these objectives, a range of actions have been developed to achieve the **outputs** that are linked to the various steps and requirements laid down in the Directive. All these outputs help achieve the operational objective of the SEA Directive. The outputs should achieve certain **results** (e.g. the selection of alternatives to limit the negative impact) and improve transparency and social acceptance through consultation and public participation. In this way they will help create long-term **impacts** at EU level, with the ultimate objective of providing a high level of environmental protection and promoting sustainable development.

2.2. Description of the SEA Directive

The SEA Directive implements the principle of environmental integration and protection laid down in Articles 11 and 191 of the TFEU. Its objective is to provide for a high level of environmental protection and to promote sustainable development by ensuring that environmental considerations are integrated into the preparation and adoption of specified plans and programmes, prior to their adoption. The SEA process is intended to provide the framework for influencing at an early stage the decisions on plans and programmes for which give rise to individual projects. The SEA process applies in various sectors. The systematic appraisal of policy options at the planning stage should help promote more sustainable and efficient use of resources.

The SEA Directive does not lay down any measurable environmental standards as such. It essentially establishes a strategic process by setting certain steps and obligations when identifying and assessing the environmental effects of plans and programmes. These steps include scoping; the provision of baseline information, and consideration of reasonable alternatives; consultations with the public and the relevant environmental authorities; adoption of a final decision based on the environmental report and the results of the consultations; providing information on the decision; and monitoring the implementation of plans and programmes. There are challenges in assessing these aspects at the strategic level, and thus there is a need to ensure that the scoping work is carried out in a robust and thorough manner.

Given the scale of the plans and programmes subject to SEA, it is important to identify the key environmental issues and focus on those. The scoping decision or report sets the framework for detailed assessment. The requirement to consider reasonable alternatives gives the SEA robustness and brings critical quality. Linked to the consideration of reasonable alternatives is the collection of baseline data. The SEA Directive requires that data⁸ is collected to ensure that the assessment of effects is robust and complete. SEA is often seen as providing a mechanism to better address the potential cumulative effects of development, and indeed offers an important opportunity to take these issues into account early on in decision-making. The SEA Directive requires cumulative effects to be considered when assessing plans and programmes.

Integrating this assessment into the planning process is a key challenge in implementing the SEA Directive. An effective SEA process should promote a systematic approach to assessment, so the latter begins at the same time as the planning process and progresses as it evolves.

⁸ Annex I to the SEA Directive prescribes the content of the environmental report.

A key part of that integration is coordinating the participation and involvement both of the statutory authorities and the public in the planning and appraisal process. The SEA Directive explicitly requires the consultation both of the environmental authorities and the public. The adopted plan and programme and a statement summarising how the SEA requirements have been taken into account in decision-making have to be made available to the public and the consulted authorities, together with information on the measures concerning monitoring.

2.3. Baseline⁹

As environmental impact assessments for policies, plans and programmes were not carried out across the EU in a systematic way when the SEA Directive was being proposed, there is neither a EU-wide baseline, nor an estimate of the expected benefits of the Directive.

Information about the evolution of the SEA concept in the EU has been drawn from literature reviews and documents produced during the Directive's drafting process. The baseline period therefore stretches from 1991, the year when the Commission proposed the first internal draft of the SEA Directive. That proposal met political opposition from several Member States, not least because of technical difficulties in applying the concept of environmental assessment to strategic documents such as 'policies'. The official proposal for the SEA Directive, published in 1996, referred only to town and country planning plans and programmes¹⁰.

Shortly after the Commission's proposal of the SEA Directive, the heads of government committed at the Cardiff Summit in June 1998 to integrating the environment into policy-making. This sparked several workshops, summits and meetings to develop strategies for integrating environmental considerations¹¹. In June 2001, the Commission released the Sustainable Development Strategy, which acknowledged that the integration of environmental concerns in sectoral policies, launched by the European Council in Cardiff, must continue and provide an environmental input into the Strategy¹².

The SEA Directive was adopted in 2001, 3 years after the adoption of the United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (1998) entered into force. In 2003 the Espoo Convention was supplemented by a Protocol on Strategic Environmental Assessment (the SEA Protocol), which provides a framework for SEAs at international level. The EU is a party to all three multilateral environmental agreements.

Since the adoption of the SEA Directive, the Commission delivered two reports on its application and effectiveness, in accordance with Article 12(3). The 2009 report¹³ concluded that the SEA Directive has contributed to the systematic and structured consideration of environmental concerns in planning processes and better integration of environmental considerations upstream. It also acknowledged that 5 years after its entry into application it is too early to decide whether the Directive needs to be amended to address emerging environmental priorities, such as biodiversity and climate change.

⁹ For more information please refer to section 2.2. of the the evaluation study: <https://ec.europa.eu/environment/eia/pdf/Consultation%20Strategy.pdf>

¹⁰ European Commission, Proposal for a Council Directive on the assessment of the effects of certain plans and programmes on the environment, COM (96) 511, final, Brussels, 4 December 1996.

¹¹ See http://www.europarl.europa.eu/summits/car1_en.htm; Presidency Conclusions.

¹² Communication from the Commission A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development, COM (2001) 264.

¹³ COM (2009) 469, 14.9.2009.

The 2017 report¹⁴ showed the lack of major implementation concerns in the Member States between 2007-2014. In the meantime, the CJEU has delivered a body of case law elaborating on the requirements of the SEA Directive. The Member States have stepped up their implementation and if necessary amended national legislation to ensure it complies with the Directive. The second Commission implementation report confirmed that the Member States have a large margin of discretion in implementing the Directive. The level and degree of implementation varies depending on the administrative and legal arrangements in place in each Member State. The 2017 report identified challenges in applying different elements of the SEA procedure (for example due to the quality and availability of the information used in the environmental report). Despite uncertainties regarding some concepts laid down in the Directive, such as ‘reasonable alternatives’, the report concluded that the Member States should pursue their efforts to ensure compliance with the Directive and, where necessary, take proactive initiatives, such as guidance documents, training, information sharing, and establishing environmental information databases.

3. IMPLEMENTATION / STATE OF PLAY

3.1. Transposition

The Member States had to transpose the SEA Directive by 21 July 2004, but on that date, only 9 of the 25 actually had. In December 2004, 15 non-communication infringement procedures were opened for failure to adopt legislation transposing the SEA Directive. Subsequently, five Member States were condemned by the CJEU for failing to transpose it.¹⁵

Now the Directive has been transposed in the national law of all 28 Member States and to date there are three pending infringement cases for bad application¹⁶.

3.2. State of play regarding the SEAs carried out across the EU

There are no consistent figures on the overall number of SEAs carried out in the Member States.

Data gathered in the 2016 SEA study¹⁷ for the implementation period 2007-2014 showed that some Member States may have undertaken five SEAs per year, while other may carry out up to 2 700 SEAs per year. This wide range might be due to how SEAs are counted by the national authorities, e.g. whether the number includes plans and programmes subject to SEA at national level or also includes those that have been done at regional and local level.

¹⁴ COM (2017) 234, 15.5.2017.

¹⁵ Judgment of the Court of 8 November 2007, *Commission of the European Communities v Italian Republic*, C-40/07, ECLI:EU:C:2007:665; Judgment of the Court of 24 May 2007, *Commission of the European Communities v Portuguese Republic*, C-376/06, ECLI:EU:C:2007:308; Judgment of the Court of 26 October 2006, *Commission of the European Communities v Republic of Finland*, C-159/06, ECLI:EU:C:2006:694; Judgment of the Court of 7 December 2006, *Commission of the European Communities v Kingdom of Belgium*, C-54/06, ECLI:EU:C:2006:767.

¹⁶ The cases are against Austria, Greece and Slovakia.

¹⁷ Milieu & Collingwood Environmental Planning Ltd, 2016, *Study concerning the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC)*, study prepared for the European Commission, DG Environment, Luxembourg: Publications Office of the European Union, <https://publications.europa.eu/en/publication-detail/-/publication/ab9839c5-65be-42e2-a4a6-d8a27bb5dd97>

Some Member States do not keep track of the SEAs performed at regional or local level, for example, and only have approximate figures.

While the 2016 SEA study did not specifically ask the Member States to identify which plans and programmes are subject to an SEA, it emerged that it is spatial plans, town and country planning, as well as land use planning that are most commonly subject to SEAs. Of the remainder, water plans were the most common (such as river basin management plans or flood risk management plans), but also local and regional plans and programmes, followed by transport, rural development and energy plans. Tourism and agriculture were also mentioned. The 2016 SEA study also revealed that the vast majority of plans and programmes to which the SEA applies are carried out at local level. No concrete figures are available on the share of such plans and programmes per sector.

3.3. Legal and administrative arrangements in the Member States

The 2017 Commission implementation report acknowledged that all Member States have transposed the SEA Directive. However, the legislation transposing the SEA Directive varies across the Member States and depends on their administrative structure and arrangements. Some Member States transposed the SEA Directive through specific national legislation, while others have integrated its requirements into existing laws, such as those transposing the Environmental Impact Assessment Directive ('EIA Directive')¹⁸.

The specific administrative features of each Member State have influenced the organisational arrangements they have established to transpose and implement the Directive. Usually the authority that develops and adopts the plans and programmes is also in charge of carrying out the SEA procedure. In most Member States, the Ministry of the Environment or an environmental agency is considered to be the 'concerned authority with specific environmental responsibilities' (Article 6(3) of the SEA Directive). In some Member States, the environmental authorities have more responsibilities and are in charge of driving the SEA procedure. Some Member States have designated a body to supervise and check the quality of the documentation and the outcomes of the SEA procedure.

The Member States enjoy wide discretion in decision-making (Article 8) and the arrangements for providing information on the decision once the SEA procedure is complete (Article 9).

3.4. Implementation of the main stages of SEA

The two Commission implementation reports¹⁹ confirmed that the Member States have transposed and implemented the SEA Directive in line with its objectives and requirements. The CJEU has delivered comprehensive judgments relating to the SEA Directive, and thus facilitated its application. The CJEU has confirmed the broad interpretation of the terms and provisions of the Directive²⁰. The following sections provide information about the implementation of the individual procedural steps of the SEA Directive.

¹⁸ OJ L 26, 28.1.2012, p. 1.

¹⁹ COM (2009) 469, 14.9.2009 and COM (2017) 234, 15.05.2017.

²⁰ Judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, ECLI:EU:C:2012:159, paragraph 37, and Judgment of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, ECLI:EU:C:2015:582, paragraph 50.

3.4.1. Definition of ‘plans and programmes’ and determination of the application of the Directive – Article 2(a) and Article 3(2)

The SEA Directive provides how “plans and programmes” have to be understood in the sense of the Directive.. To decide whether a plan or programme falls under the scope of the SEA Directive, all four of the following criteria, established in Article 2(a) and 3(2), should 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 legislative, regulatory or administrative provisions;
- (iii) It is prepared for 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 of the EIA Directive.

In addition, plans and programmes requiring an assessment under Article 6 or 7 of the Habitats Directive²¹ must by law undergo SEA (Article 3(2)(b) of the SEA Directive).

The SEA Directive therefore applies to a wide range of public plans and programmes (for example on land use, transport, energy, waste, agriculture), which give rise to individual projects, including those co-financed by the European Union.

The CJEU has delivered many rulings which clarify the various terms used by the above provisions and has provided useful guidance for the interpretation and application of the SEA Directive.

Article 2(a) - plans and programmes adopted and required

In the first judgment examining the scope of the SEA Directive, the CJEU clarified that the mere fact that plans and programmes are adopted in the form of a law or by legislative means does not exclude them from the scope of the Directive²².

Moreover, the fact that the plan or programme should have beneficial effects on the environment is not relevant in determining whether it they should be subject to an assessment of their environmental impact²³.

The Court has also stressed that the partial or total repeal of a plan or programme is likely to have significant effects on the environment, since it may involve a modifying the planning envisaged in the territories concerned. Hence, a procedure for the total or partial repeal of a land use plan falls in principle within the scope of the Directive²⁴.

Further to this, plans and programmes that are required under national or regulatory provisions determining the competent authorities and the procedure, but adoption of which

²¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.07.1992, as amended by Council Directive 97/62/EC of 27 October 1997 OJ L 305, 8.11.1997, p. 42, Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, OJ L 284, 31.10.2003, p.1, Council Directive 2006/105/EC of 20 November 2006, OJ L 363, 20.12.2006, p. 368, Council Directive 2013/17/EU of 13 May 2013, OJ L 158, 10.6.2013, p.193.

²² Judgments of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie*, C-105/09 and C-110/09, EU:C:2010:355, paragraph 41.

²³ Judgment of 12 June 2019, *CFE*, C-43/18, ECLI:EU:C:2019:483, paragraph 41.

²⁴ Judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, ECLI:EU:C:2012:159, paragraphs 36-38.

is not compulsory in all circumstances, may still be subject to the SEA Directive if they meet the relevant criteria set out in the Directive²⁵. Where there is any doubt, the distinction between plans and programmes and other measures should be drawn by **referring to the specific objective laid down in Article 1 of the SEA Directive**, namely that plans and programmes which are likely to have significant effects on the environment are subject to an environmental assessment²⁶.

The CJEU has interpreted Article 2(a) of the SEA Directive as meaning that plans and programmes whose adoption is regulated by national legislative or regulatory provisions which determine the authorities competent to adopt them and the procedure for preparing them, must be regarded as ‘**required**’.

Accordingly, they be subject to an assessment of their environmental effects in the circumstances which it lays down²⁷.

Article 3(2)(a) – plans and programmes setting the framework

As regards the definition of plans and programmes, nearly half of the Member States have transposed Article 3(2) of the SEA Directive word for word. Most of them have adjusted the type or name of the sectoral planning to take specific national arrangements into account. Under Article 3(2)(a) of the SEA Directive, an environmental assessment is to be carried out for all plans and programmes which are prepared for any of the sectors it mentions and which set the frameworkframework for future development consent of projects listed in Annexes I and II to the EIA Directive.

One of the most contentious terms in the SEA Directive is ‘setting the framework’ (Article 3(2)(a)). Almost all Member States have transposed the term ‘setting the framework’ word for word, often developing it in a legislative act or in guidance documents. CJEU case law has confirmed that this term must reflect the objective of the SEA Directive, namely taking account of the environmental effects of any decision that lays down requirements for consent for future projects and the content and purpose of the plans and programmes²⁸. It can therefore be said that plans and programmes set a framework for decisions which influence any subsequent consent to develop projects, in particular with regard to location, nature, size and operating conditions or allocating resources²⁹.

The interpretation of the CJEU in the cited judgments does not come as a surprise. It is consistent with the well-established CJEU case law on environmental matters, including on the SEA Directive. The Court favours a broad interpretation of the key concepts governing the application of the SEA Directive and focuses on its overarching objective, i.e. ensuring that measures likely to have significant environmental effects are subject to an environmental assessment. The CJEU has therefore ruled that the notion of ‘plans and

²⁵ Judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, Judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, ECLI:EU:C:2012:159, paragraphs 36-38.

²⁶ Judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 40 and Judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, ECLI:EU:C:2012:159, paragraph 30.

²⁷ Judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, ECLI:EU:C:2012:159, paragraphs 36-38, paragraph 31; Judgment of the Court of 7 June 2018, *Thybaut and Others*, C-160/17, ECLI:EU:C:2018:401, paragraph 43.

²⁸ Judgments of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie*, C-105/09 and C-110/09, EU:C:2010:355, paragraphs 43-49 and 60.

²⁹ COM (2017) 234, 15.05.2017.

programmes' relates to any measure which, by defining rules and procedures, establishes a significant body of criteria and detailed rules for granting and implementing implementation one or more projects likely to have significant effects on the environment³⁰. This applies regardless of whether or not the measure is called a 'plan' or a 'programme'.

In order to avoid the same plan being subject to several environmental assessments and provided that an environmental assessment was previously carried out, no new assessment is required for a plan or programme which falls within a hierarchy of acts whose environmental effects have been assessed, and as long as it may reasonably be considered that the interests which the SEA Directive is designed to protect have been taken into account sufficiently within that framework³¹.

Article 3(2)(b) – plans and programmes affecting Natura 2000 sites

This provision requires an SEA every time an assessment is required under Articles 6 or 7 of the Habitats Directive. The CJEU has found that Article 3(2)(b) must be interpreted as meaning that the obligation to make a particular plan subject to an environmental assessment depends on whether the plan meets the preconditions requiring an assessment under the Habitats Directive, including the condition that the plan may have a significant effect on the site concerned. The examination carried out to determine whether that latter condition is fulfilled is necessarily limited to the question of whether it can be excluded, on the basis of objective information, that the plan or project will have a significant effect on the site concerned³².

3.4.2. Screening

Article 3(3), (4) and (5) of the SEA Directive establishes the process of determining whether plans and programmes are likely to have significant environmental effects and thus require an SEA ('screening'). Member States have to take into account the significance criteria set out in Annex II to the SEA Directive. Most Member States have transposed Annex II literally and apply a case-by-case screening approach.

The margin of discretion enjoyed by Member States under Article 3(5) of the SEA Directive is limited by the requirement under Article 3(3), in conjunction with Article 3(2), to require an environment assessment for programmes likely to have significant effects on the environment, in particular on account of their characteristics, their effects and the areas likely to be affected³³.

The term 'small areas at local level' used in Article 3(3) must be defined with reference to the size of the area concerned where the following conditions are fulfilled: (i) the plan or programme is prepared and/or adopted by a local authority, as opposed to a regional or

³⁰ Judgment of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 49, and the case law cited therein; Judgment C-305/18, ECLI:EU:C:2019:384, paragraph 50, Judgment of the Court of 12 June 2019, *Terre wallonne ASBL v Région wallonne*, C-321/18, ECLI:EU:C:2019:484, paragraph 41.

³¹ Judgment of 12 June 2019, *Compagnie d'entreprises CFE SA v Région de Bruxelles-Capitale*, C-43/18, ECLI:EU:C:2019:483, paragraphs 72 and 73.

³² Judgment of 21 June 2012, *Syllogos Ellinon Poleodomon*, C-177/11, ECLI:EU:C:2012:378, paragraphs 19 and 24.

³³ Judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, ECLI:EU:C:2011:608, paragraph 47 and Judgment of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraph 53.

national authority; and (ii) the area inside the territorial jurisdiction of the local authority is small relative to that territorial jurisdiction³⁴.

Article 3(6) requires the relevant environmental authorities to be consulted if significant environmental effects are to be determined on a case-by-case basis and in specifying types of plans and programmes, but this is implemented differently between Member States. In some cases, the authorities consulted provide a (formal) opinion, while in others the environmental authorities decide whether plans or programmes are likely to have significant environmental effects, based on the information provided by the planning authority.

3.4.3. *Scoping*

The scope and level of detail of the information to be covered in the environmental report is referred to as ‘scoping’. Member States have wide discretion in organising the scoping phase of an SEA, limited by the sole obligation to consult the authorities with specific environmental responsibilities. While not required by the Directive, there is usually a formal or informal scoping document. This may take the shape of a guideline of what will be included in the final environmental report, a prescriptive list, or a record of discussions on the subject. The 2016 SEA study found that the scoping report is specifically required by law in a number of Member States, while in others it is common practice to prepare one, especially as a way to engage with consultation bodies and other interested parties. However, a small number of Member States do not produce a scoping report. In those Member States where the scoping report is not formally required, the opinion of the competent body and other relevant environmental and nature protection institutions is recorded as the outcome of the scoping procedure.

In some Member States the scoping report is mandatory. The content and the level of detail of the information presented can vary between Member States, and some stipulate its content in national legislation.

3.4.4. *Environmental report*

The environmental report is defined in Article 2(c) of the SEA Directive as ‘the part of the plan or programme documentation containing the information required in Article 5 and Annex I’. As such, it is the cornerstone of the SEA process, bringing together the identification, description and evaluation of the likely significant environmental effects and the reasonable alternatives. It also forms the basis for monitoring the significant effects. Despite this, the SEA Directive specifies neither the form this environmental report should take nor who is responsible for its preparation. Annex I to the SEA Directive sets out the minimum content of the environmental report. Member States should ensure that this report is of sufficient quality. Information on the likely evolution of the current state of the environment (Annex I (b, c, d)) is necessary in order to understand how the plan or programme could significantly affect the environment in the area concerned.

The environmental report takes on average between 2 and 9 months to prepare, although this depends on the type of plan or programme (for example, spatial and land use plans often take longer). It also depends on the duration of the planning process, for example if the SEA is run in parallel. It was noted that the time taken to prepare the environmental report also depends on the outcome of the scoping phase since that should determine the key issues to

³⁴ Judgment of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraphs 53-56, 66-69, 71, 74.

be covered, the methodological approach to be adopted and the nature of reasonable alternatives to be considered.

Article 5(1) of the SEA Directive requires reasonable alternatives to be identified, described and evaluated in the environmental report. However, the SEA Directive does not define the term ‘reasonable alternatives’, nor does Member States’ transposing national legislation. Many Member States have prepared national guidance documents to make it easier to identify and select the reasonable alternatives in the SEA procedure. There is no common approach to defining the types and the number of alternatives to be assessed. This depends on the objectives, the geographical scope and the content of each set of plans and programmes. However, the three most common categories of alternatives for Member States are: (i) locational alternatives; (ii) qualitative and quantitative alternatives (changing the scale or size of the intervention in the environment); and (iii) technical alternatives (related to the design of the future projects to be developed on a selected site)³⁵.

Member States always consider the ‘zero alternative’³⁶ in the environmental report, but the implementation approach varies. Some Member States take this as one of the ‘reasonable alternatives’, while others consider it a self-standing part of the environmental report, and not necessarily linked to the reasonable alternatives, but rather to the baseline information.

To ensure compliance in implementing and applying the SEA Directive, the alternatives that are assessed have to be reasonable, taking into account the objectives and the geographical scope of the plans and programmes before setting up their final content. Due to the specifics when preparing plans and programmes, the Member States noted in the 2016 study that identifying the reasonable alternatives could be a challenge. For example, it is challenging to identify and assess reasonable alternatives at the planning stage, either because the plans and programmes strategically address a particular matter, or because of the general content of the plans and programmes.

3.4.5. Consultation phase

Consultation and taking the results of this consultation into account when finalising the plan or programme are a key step in the environmental assessment procedure. At certain stages of the SEA, both the authorities concerned and the public must be consulted, with Member States obliged to ensure early and effective consultation procedures. Under Article 6(5) Member States are to define the specific arrangements for the information to be provided and for consultation with the authorities and the public. The Directive does not specify the timeframes for the consultation procedure, simply requiring that the consultations be carried out in the ‘appropriate time frames’ (Article 6(2)). The CJEU confirmed³⁷ that the Directive must be interpreted as not requiring that the national legislation transposing the Directive lay down precisely the periods within which the designated authorities and the public affected or likely to be affected for the purposes of Article 6(3) and (4) should be able to express their opinions on a particular draft plan or programme, and on the relevant environmental report.

³⁵ COM (2017) 234, 15.5.2017.

³⁶ Annex I (b) to the SEA Directive states that the environmental report must include information about the likely evolution of the state of the environment without implementing the plan or programme. This is often called the ‘zero alternative’.

³⁷ Judgment of 20 October 2011, *Seaport*, C-474/10, ECLI:EU:C:2011:681, paragraph 50. However, the Court recalled that in the situation at hand in the judgment, Article 6(2) of the SEA Directive requires that, for the purposes of consultation of the authorities and the public on a given draft plan or programme, the period actually laid down be sufficient to allow them an effective opportunity to express their opinions in good time on that draft plan or programme and on the environmental report upon it.

According to the 2016 SEA study, the most authorities most commonly consulted under Article 6 are ministries (including the Ministry of the Environment), environmental protection agencies, and governmental and municipal institutions responsible for environmental protection. The study found that more than half of the Member States designate the authorities to be consulted on a case-by-case basis, depending on the type of plan and programme in question, and its geographical coverage. The remaining Member States use a combined approach, where the legislation provides guidance or mandates the public bodies to be consulted (depending on their competence) but the authority responsible for SEAs can choose to involve other authorities on a case-by-case basis. Some Member States may also have a specific committee, which must also be consulted.

The 2016 SEA study found that most Member States define ‘the public’, either in legislation or guidance documents. In almost all cases, NGOs are either explicitly or implicitly included. The minimum timeframes for public consultation are usually set out in legislation and typically last between 4 and 6 weeks, although in practice they often last longer than the stipulated minimum timeframe. The duration may depend on the type of plan or programme, or the length or complexity of the adopting procedure.

Article 9 requires Member States to inform the public and the consulted authorities about the plan or programme as adopted; the results from the consultations under Article 6 and 7; the reasons for choosing the alternative compared to other alternatives; and the monitoring measures. The 2016 SEA study showed that the public is generally informed via the Official Journal/Gazette and through information made available at the premises of the responsible authorities. Regional/local plans are also usually announced in local newspapers/websites. It is worth noting that the authority responsible for publishing the final decision differs across Member States; while it is typically done by the authority responsible for preparing the plan or programme, in some Member States it is done by the competent environmental authority.

Article 7 of the SEA Directive sets out the requirements for transboundary consultations. According to the 2016 SEA study, all but two Member States have experience with transboundary consultation, either as the initiating partner or in response to an SEA of a neighbouring country. In some Member States the procedure is not set out in any legislation, although others report using the requirements of the SEA Directive and the SEA Protocol. Transboundary consultations are usually the responsibility of the Ministry of the Environment (or a special department within the Ministry), although in several Member States the Ministry of Foreign Affairs may also play some role.

Member States identified several issues with respect to transboundary consultations in the 2016 SEA Study, mostly relating to translation. Several examples were given of poor translations, or translations of key documents only. In addition, the timeframes of the two neighbouring Member States did not align, leading to short deadlines or to consultations being carried out either too early or too late in the process.

3.4.6. Decision-making

Article 8 of the SEA Directive requires the results of the SEA to be taken into account during the preparation of the plan or programme. Article 9(1)(b) also requires a statement summarising how environmental considerations have been integrated into the plan or programme. According to the 2016 SEA study, almost all Member States stipulate that the decision taken by the environmental authority following the SEA procedure must be considered when finalising the plan or programme. In at least 10 Member States, this decision is binding. In others, it is not binding, although the environmental authorities may demand justification if the authority developing the plan or programme disregards any part

of its opinion. In some Member States there was evidence that the SEA was ultimately disregarded in the preparation of the plan or programme, but others reported that the recommendation/opinion of the environmental authorities was followed.

3.4.7. *Monitoring significant environmental effects (Article 10)*

Article 10 of the Directive lays down the obligation for Member States to monitor the significant environmental effects of the implementation of plans or programmes. The 2016 SEA study found it was unclear whether Member States undertake such monitoring systematically or take remedial action in the case of unforeseen adverse effects. Many Member States were unable to comment on the frequency of monitoring, although some noted that this depends on the type of plan or programme. In other cases, it was stated that monitoring reports are submitted ‘regularly’ for certain plans or programmes.

Monitoring can be done by using standard monitoring indicators (which may or may not be set out in legislation), or defined case-by-case or at sub-national level. Existing monitoring mechanisms can also be used, for example those set out in other legislation, either at EU level (e.g. the Water Framework Directive, the Habitats Directive, the Ambient Air Quality Directive) or at national level. According to the 2016 SEA study, several Member States have based monitoring mechanisms on the requirements set out in these Directives.

3. METHOD

4.1. Evaluation method

The **roadmap** for the evaluation process was published on 11 July 2017 with a four-week period for the public to provide feedback³⁸.

To support the evaluation, the Commission awarded a **study contract**³⁹ in December 2017 to Milieu Ltd. and Collingwood Environmental Planning. A short overview of the method is provided below. More information on the evaluation methodology, the evaluation framework and evaluation timeline can be consulted in Chapter 4 of the study supporting the evaluation and Annex 2 to this document. The information used in this document relies on the results of the supporting evaluation study, and where appropriate it refers to the 2016 study⁴⁰, supporting the second Commission implementation report. The full details of the sources referred to in the supporting study are not necessarily reproduced here.

The evaluation work was overseen by an **interservice steering group** (see Annex 1). The Commission established a **dedicated web page**⁴¹ to share information and provide feedback to stakeholders about the evaluation.

The work on the supporting evaluation study ran from December 2017 to February 2019 and was based on a **three-month stakeholder open public consultation, a targeted online survey, targeted interviews, and literature/desk research**. The evaluation addressed the

³⁸ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3481432_en

³⁹ Study to support the REFIT evaluation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive), Milieu Ltd. and Collingwood Environmental Planning Ltd., ENV.E.1/ETU/2017/0016. See: <https://ec.europa.eu/environment/eia/pdf/Consultation%20Strategy.pdf>

⁴⁰ Study concerning the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC), Milieu Ltd. and Collingwood Environmental Planning Ltd., ENV.D.1/2015/ETU/SI2.708436.

⁴¹ <http://ec.europa.eu/environment/eia/sea-refit.htm>

11 questions listed in the roadmap (see Annex 3, Box 6). These questions were developed into an evaluation framework, including judgment criteria and indicators, and outlining the information to be gathered for each question, together with the data collection and analysis methods.

The **public consultation** was open from 23 April to 23 July 2018 and was available in 23 official EU languages. The questionnaire was divided into two parts: the first included general questions on the relevance of the SEA Directive to EU citizens and was aimed at all respondents; the second included more detailed questions on the implementation of the Directive and its performance, according to the five evaluation criteria. The second part was particularly aimed at respondents involved with or affected by the Directive and its requirements. A total of **249 responses** were received. 187 respondents replied to both parts of the questionnaire, while 62 replied to the first part only.

The **targeted consultation** addressed a narrower group of stakeholders than the public consultation and focused on those stakeholders responsible for implementing the SEA policy and legislation in the Member States. The targeted consultation had two stages: (i) an online questionnaire targeting a wide range of stakeholders, including authorities, practitioners, NGOs and economic actors; and (ii) interviews in selected Member States with authorities and practitioners. The online consultation questionnaire ran from 7 May to 7 September 2018; **76 responses** were received. This includes 35 national environmental authorities and/or EIA/SEA bodies from all Member States; 22 authorities responsible for the preparation of plans and programmes from 15 Member States⁴²; 16 practitioners and academics from 9 countries⁴³, and 3 EU environmental NGOs.

To complement the responses to the targeted consultation questionnaire, **interviews** were carried out in **11 Member States** (Austria, Czechia, Denmark, Ireland, France, Italy, Latvia, Poland, Romania, Spain and Sweden). The aim was to have a representative sample of Member States from different geographical regions, a mix of EU-15 and EU-13 Member States and of federal and non-federal countries. The interviews were designed to allow for more detailed and focused responses from selected stakeholders on some of the issues that were key to determining the evaluation findings.

The **documentary review** for the evaluation study built on and complemented the literature review conducted for the 2016 SEA study. The documentary review for the evaluation study included in particular academic literature, policy and guidance documents, CJEU case law, as well as ‘grey’ literature sources such as guidance documents, national studies, studies and other documents of the EU institutions and EU organisations. Regular progress reports have been presented to the meetings of the Commission group of EIA/SEA national experts (Sofia 27-28 March 2018, and Vienna 20-21 September 2018)⁴⁴.

The evaluation framework set the basis for the detailed review of evidence and analysis of each evaluation question. The analysis followed basic rules of content analysis, meaning it focused on the categorisation and summary of the data from dispersed sources (documentary review, targeted consultation questionnaire, public consultation, interviews). The analysis has both quantitative and qualitative elements, aiming to identify the core issues and establish linkages between the different aspects of the evaluated matters. The **evaluation**

⁴² Belgium, Croatia, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia and Sweden.

⁴³ Austria, Croatia, Czech Republic, Denmark, Finland, Germany, Ireland, Portugal, and the UK.

⁴⁴ Meetings of the Commission Group of EIA/SEA national experts: https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/c04306be-13d8-4c03-8e3e-d5bb5a13c291?p=1&n=10&sort=modified_DESC

workshop⁴⁵ was used to validate the preliminary conclusions of the evaluation and to determine the relative importance of different issues relating to the implementation of the Directive or the text of the Directive. It took place on 6 December 2018 in Brussels. It was attended by 85 participants, including Member State authorities (40), practitioners carrying out SEA and academics (14), representatives of NGOs and industry (10), members of the EU institutions (13) and the consultants (8).⁴⁶

Drawing upon the evaluation study, the Commission in this staff working document assesses and concludes on the evaluation questions set out in the roadmap, taking into account the quality of evidence and the extent to which views were corroborated from different sources.

4.2. Challenges and limitations

The key evaluation questions were outlined in the roadmap⁴⁷ and structured around the five evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value, in line with the Commission's better regulation policy⁴⁸.

The evaluation questions and data analysis methods are presented in Annex 3. Although the evaluation study encompassed a wide range of data, information and views of stakeholders, some methodological limitations remained. The limitations were encountered during the data collection phase of the evaluation study and concern the availability of certain information and data; the quality of the inputs and the limited possibility (in some cases) of triangulating sources and opinions. A summary of the main challenges is presented in the sections below.

4.2.1. Considerable reliance on consultation results

The findings in this study rely heavily (and, for some evaluation questions, almost exclusively) on the results of the consultation activities described in Annex 2. This is because there is limited literature and analysis on certain aspects related to evaluation questions, e.g. costs, and regulatory burden in comparison to the effectiveness of the Directive. New issues also emerged during the SEA REFIT evaluation. The practical impact of recent CJEU case law (i.e. case C-290/15⁴⁹; case C-671/16⁵⁰; cases C-160/17⁵¹, C-305/18⁵²; C-321/18⁵³; C-43/18⁵⁴) have not yet been analysed in depth in the literature, nor there is evidence of the cost implications that could be associated with this case law.

The significant reliance on consultation input exacerbated some challenges related to the availability and quality of these inputs, in particular the representativeness of the sample of

⁴⁵ <http://ec.europa.eu/environment/eia/sea-refit.htm>

⁴⁶ Figures based on the attendance list signed by participants at the evaluation workshop. It should be noted that the list might be incomplete, if attendees did not sign in.

⁴⁷ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3481432_en

⁴⁸ <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>
https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-47_en_0.pdf

⁴⁹ Judgment of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 49.

⁵⁰ Judgment of the Court of 7 June 2018, *Inter-Environnement Bruxelles ASBL and Others v Région de Bruxelles-Capitale*, C-671/16, ECLI:EU:C:2018:403.

⁵¹ Judgment of the Court of 7 June 2018, *Raoul Thybaut and Others v Région wallonne*, C-160/17, ECLI:EU:C:2018:401.

⁵² Judgment of the Court of 8 May 2019, *Associazione "Verdi Ambiente e Società - Aps Onlus"*, C-305/18, ECLI:EU:C:2019:384.

⁵³ Judgment of the Court of 12 June 2019, *Terre wallonne ASBL v Région wallonne*, C-321/18, ECLI:EU:C:2019:484.

⁵⁴ Judgment of 12 June 2019, *Compagnie d'entreprises CFE SA v Région de Bruxelles-Capitale*, C-43/18, ECLI:EU:C:2019:483.

stakeholders surveyed and interviewed. The SEA Directive applies to a wide range of public plans and programmes (on land use, transport, energy, waste, agriculture, etc.). The consultation strategy and data gathering were cross-cutting and so emphasised the need to collect the views of stakeholders other than the environmental stakeholders (national environmental authorities, practitioners, academics who often have an environmental perspective and environmental NGOs). These sources of information were not sufficiently captured in the 2016 SEA study.

Although the authorities responsible for sectoral and spatial plans were contacted in every Member State, it proved difficult to reach a balance between environmental and sectoral perspectives and stakeholders involved in making plans and programmes and the respective SEA procedures. This is illustrated by the profiles of the respondents to the targeted consultation questionnaire and the supporting analysis presented in the evaluation study⁵⁵. To widen the scope of consulted stakeholders, the consultation deadlines were extended considerably. The planning of interviews was also modified to provide another opportunity for those stakeholders who had not replied to the questionnaire to provide contributions. As a result, some of the follow-up interviews and interviews planned with new stakeholders became interviews with stakeholders who had been targeted but did not reply to the questionnaire. Nevertheless, there remains a moderate numerical bias – in the analysis of the closed questions in particular – in favour of stakeholders with an environmental perspective. However, this did not lead to a uniformly positive picture of SEA, as environmental stakeholders also criticised/critical the implementation of the Directive.

4.2.2. Limited availability of data to assess the efficiency of the SEA Directive

The available data did not allow for a quantitative assessment of the costs and benefits of the SEA Directive. Although cost data were collected through the consultation activities, they did not provide a clear indication of the costs of implementing the SEA Directive across the EU. This was because the data provided by stakeholders presented large variations, were often not completely accurate (notably because of authorities' difficulties in gauging administrative cost estimates). The data are also not comparable, as there is no consistent method of tracking the costs of implementing SEA.

As a result, the data did not allow an understanding of the cost of SEA at EU level, nor did they permit average estimates by type of plan/programme or by Member State. It was similarly impossible to clearly quantify the benefits of SEA, largely because the directly attributable benefits are procedural and thus not easily quantifiable (for example the flexibility of the procedural arrangements). The approach to assessing efficiency was therefore essentially qualitative, focusing on the acceptability of costs to the authorities bearing them, and the perceived proportionality of costs compared to the benefits of SEA.

4. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS

This chapter relies on the evaluation questions and sets out the supporting arguments to underpin the findings. Further details are available in Chapter 5 of the evaluation study.

5.1. Effectiveness⁵⁶

This section assesses progress in achieving the general and specific objectives of the SEA Directive. It also identifies any significant factors that may have contributed to or inhibited

⁵⁵ Evaluation study, Section 4.2.2.

⁵⁶ Further details can be found in Chapter 5.1. of the evaluation study.

progress in meeting those objectives and investigates any negative or positive changes produced, beyond the intended effects of the SEA Directive.

In order to assess the achievement of the objectives pursued with the SEA Directive, the analysis is based on the intervention logic presented in Figure 1, and the related indicators of outputs, results and impacts. More specifically, the analysis looked at:

- the contribution of the SEA Directive to ensuring a high level of protection of the environment⁵⁷;
- the impact of the SEA Directive to decision-making⁵⁸;
- the factors that have influenced the SEA Directive⁵⁹.

Effectiveness assesses the extent to which a certain intervention, legal provision or act, in this case the SEA Directive, has achieved its objectives.

5.1.1. To what extent has the SEA Directive helped ensure a high level of protection of the environment?

The evidence shows that **the SEA Directive has helped achieve the high level of protection of the environment in the EU**, and that this continues to be a valid objective. Many respondents to the consultation think that the Directive has contributed significantly to the high level of environmental protection (e.g. the majority of interviewees and nearly half of national authorities who responded to targeted consultation questionnaire). Some respondents (i.e. authorities responsible for preparing plans and programmes, academics and SEA practitioners who responded to the targeted consultation questionnaire, as well as the majority of the respondents to the public consultation) consider the Directive has made a partial contribution as other environmental protection mechanisms and tools (e.g. EU/national environmental legislation, environmental impact assessment (EIA) and appropriate assessment (AA)) also help improve environmental protection, as do good planning and development practices.

The respondents and the interviewees in the targeted consultation have shown that the effectiveness of the SEA Directive in considering various environmental issues depends (least partly) on a number of factors⁶⁰:

- The sector (e.g. housing development, transport, energy), the type (e.g. spatial plan, strategy, policy) and (governance) level (e.g. national, regional, local) of the plan or programme assessed;
- The synergies with and requirements of other environmental legislation requiring assessments (e.g. the EIA Directive, the Water Framework Directive, the Habitats Directive);
- Knowledge and practice, and availability of methods, tools and data for evaluating impact (e.g. higher effectiveness in evaluation practices with longer traditions and better availability of tools and data for measurable environmental impacts, such as air or water quality, in particular for lower level plans with a spatial dimension);
- Societal awareness of various environmental challenges at any given time.

Figure 2 shows the responses gathered in the targeted consultation answering to what extent

⁵⁷ Intervention logic: Objectives.

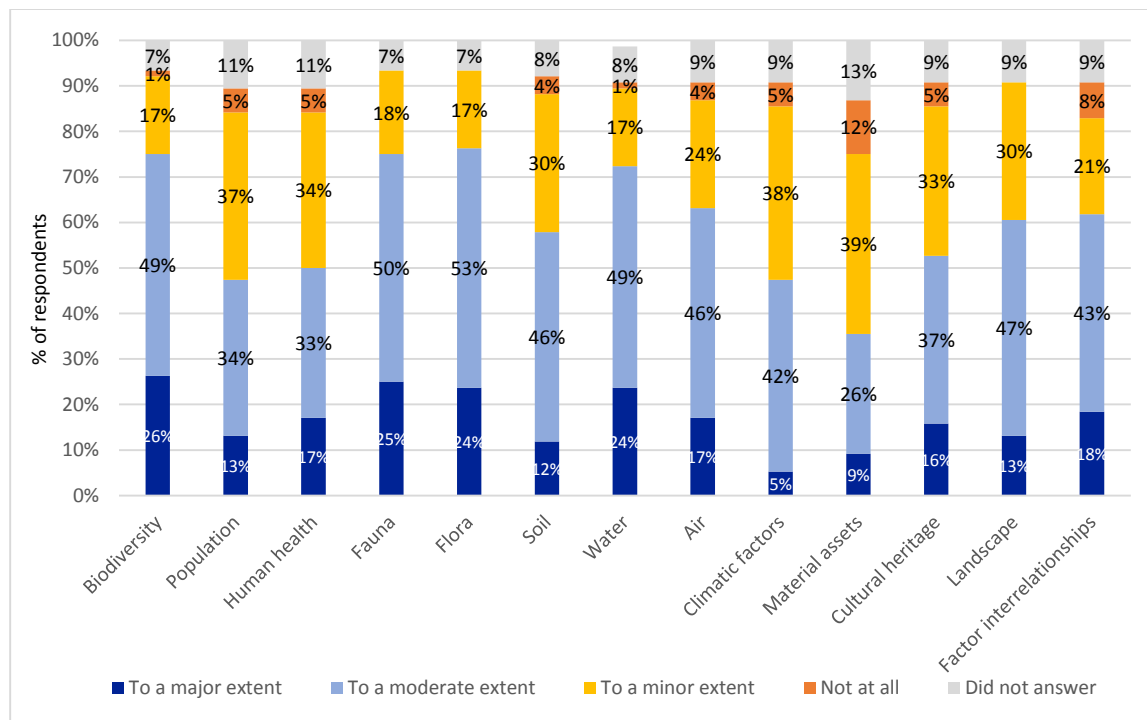
⁵⁸ Intervention logic: Results.

⁵⁹ Intervention logic: External factors.

⁶⁰ Evaluation study, section 5.1.1.3.

the SEA Directive has contributed to a high level protection of different environmental issues. It shows that **the Directive is considered most effective in addressing environmental issues such as biodiversity -including fauna and flora-, and water**, and rather less effective for material assets, population, human health, and climatic factors. **There are challenges** (limited methods, tools, and data) **in addressing global and emerging environmental concerns in SEA**, such as climate change, planetary boundaries, ecosystem services and natural capital.

Figure 2: To what extent has the SEA Directive contributed to a high-level protection of different environmental issues? [Targeted consultation questionnaire] (share of total respondents, n=76)



The strength of the Directive is the clear steps and obligations that it sets which allow the competent national authorities a large margin of discretion. Its strength also lies in its potential for promoting a well-informed, transparent, structured and ultimately auditable decision-making process. It can be argued that other pieces of EU environmental legislation focus more on substantive environmental outcomes (e.g. the Habitats Directive, the Water Framework Directive, the Seveso Directive) than the SEA Directive does, and that they should be seen as simply one part of wider EU environmental legislation. However, its strategic procedural framework means the SEA Directive facilitates the integration of the substantive environmental standards laid down by other directives (e.g. the Habitats Directive).

Moreover, as explained in the evaluation approach⁶¹, showing a (statistical) correlation between the SEA Directive and environmental outcomes is extremely challenging (and may not even be possible) and is beyond the scope of this evaluation. It is equally difficult to project what the state of the environment in Europe would be in the absence of the Directive (i.e. no counterfactual is possible), although environmental trends might well be even more challenging. In any case, the combined application of the SEA with directives setting specific substantive standards guarantees that environmental concerns are better integrated into the decision-making process and, subsequently, a high level of environmental

⁶¹ See Section 4 of this SWD.

protection.

Consequently, it can be assumed⁶² that the Directive, through its intervention logic, also has substantive aspects, if and when the environment is better integrated into plans and programmes and those plans and programmes implement a high level of protection for the environment.

The respondents in the public consultation (173) considered that the implementation of the SEA Directive has led to environmental benefits. In the targeted consultation, 73 out of 76 respondents noted that the SEA Directive contributes to a high level of environmental protection.

A well-implemented SEA process under the Directive retains the potential to help deliver a high level of environmental protection and this continues to be a valid objective for the SEA Directive. However, there are still implementation problems still occur.

One of the key **factors supporting the effectiveness of the SEA Directive** in contributing to a high level of environmental protection is effective **consultation with relevant environmental authorities as well as the public**. This was strongly recognised by respondents to the targeted consultation questionnaire as well as by interviewees⁶³.

The Directive fosters a meaningful decision-making process where environmental challenges and opportunities can be recognised and discussed openly, and gives a sense of ownership of the SEA process and plan or programme evaluated, which are important both for successful implementation of the SEA and the plan in question. **Quality, relevant and up-to-date environmental data, as well as the availability of technical knowledge and experience among environmental authorities and those preparing SEAs** are also considered to be crucial to the Directive's contribution to the high level of environmental protection.

Some evidence from the evaluation study suggests that **the SEA Directive is hindered in achieving its purpose of contributing to a high level protection of the environment**⁶⁴. One reason given is **that the SEA process often starts** when the plan or programme assessed is too far advanced (e.g. plans or programmes have already been 'politically' agreed) so environmental issues do not get properly considered.

The other reasons concern the **challenges in understanding the SEA requirements**. For example, some respondents pointed out the lack of a **clear definition of the term 'plans and programmes'** that should undergo SEA, as well as the ambiguity applied to the term 'set the framework for' projects subsequently subject to the EIA Directive. The case law of the CJEU has confirmed that the interpretation of the term 'plan and programme' in the sense of the SEA Directive should not be based on the sole title of the respective act but be established after a careful examination of whether it fulfils the four criteria set in Article 2(a) and Article 3(1) of the SEA Directive (see Section 3.4.1 of this document).

Summary of the findings for Section 5.1.1. on how the SEA helps to ensure a high level of protection of the environment

Results from the consultation activities show that the SEA Directive **has contributed to the**

⁶² Through the intervention logic of the Directive.

⁶³ Evaluation study, Section 5.1.1.3.3.

⁶⁴ Evaluation study, Section 5.1.1.3.4.

high level of protection of the environment. In particular, the SEA is considered most effective in addressing certain environmental threats to biodiversity, water, fauna and flora.

This is mainly because the Directive ensures:

- (i) effective consultation with the environmental authorities;
- (ii) the availability and quality of environmental data;
- (iii) technical knowledge and experience of environmental authorities.

Key challenges are:

- (i) the scope of the SEA and definition of the terms ‘plans and programmes’;
- (ii) the quality of the environmental monitoring; (iii) the ability to address new rising environmental challenges, such as climate change.

5.1.2. To what extent has the SEA Directive influenced the Member States’ planning process, the final content of a plan/programme, and eventually how the projects are developed?

The objective of this question is to trace the influence of the SEA process on a lower level consent or decision-making process for projects. To this end, the question primarily examines the substantive effectiveness, i.e. the degree to which the SEA has impacted the content of adopted plans and programmes and the subsequent decisions concerning projects. The question also relates to procedural effectiveness and whether the SEA process has been in line with the legal requirements.

The evaluation study found that **the SEA Directive has influenced planning and decision-making processes** to some extent. Over 80% of the respondents to the public questionnaire believe that the SEA Directive has improved the process of preparing plans and programmes, compared to 9% who think that it has not, and similar percentage who do not know. The **SEA Directive** is widely believed **to have improved the process of preparing plans and programmes** by:

- setting **mandatory requirements for considering environmental issues** in plans and programmes at early planning stages;
- introducing **public participation**;
- fostering (intersectoral/interinstitutional/public) dialogue;
- increasing the **transparency** of planning processes; and
- **raising environmental awareness** among decision makers.

The evaluation study suggests that the SEA Directive has influenced planning and decision-making practices in all sectors (particularly in spatial and land use planning) and at all levels of decision-making. Some respondents in the targeted consultation considered the influence of the Directive to be less significant, in part due to existing legislation and good (transparent, participatory, inclusive) planning and decision-making practices, which would consider the environment and environmental aspects of/in plans and programmes irrespective of the Directive⁶⁵.

The evaluation study found that the SEA Directive is considered to **influence the content** of plans and programmes. The evidence from the consultation activities corresponds to the findings of the 2016 SEA study, showing that stakeholders generally believe that the SEA Directive has influenced the final content of plans and programmes (about 96% of the targeted consultation and about 70% of the public consultation respondents)⁶⁶. Some respondents also pointed out that the content of plans or programmes changed due to new

⁶⁵ Evaluation Study, Section 5.1.2.3.1.

⁶⁶ Evaluation Study, Section 5.1.2.3.2.

environmental information that emerged as a result of the SEA process. The evaluation study also shows that plans and programmes were strongly influenced after considering new alternatives or environmental modifications that were identified in the SEA process.

In addition, the evidence clearly shows that the **SEA Directive has influenced the siting, design and implementation of projects developed from plans and programmes**, with SEA practitioners and academics expressing more positive views in this respect⁶⁷.

The influence of the SEA Directive on:

- the siting, design and implementation of projects depends on the type (e.g. spatial plan, strategy, policy);
- the decision-making/governance level (e.g. international, national, regional, local);
- the sector (e.g. spatial planning and land use, transport, energy) and sectoral hierarchies of the plan or programme assessed;
- planning cultures, laws and practices across Member States; and
- the quality and robustness of the SEA process.

As expected, the consultations showed that more explicit plans that have undergone SEA (e.g. spatial development plans) at local or other lower governance levels appear to affect the subsequent projects more significantly than more abstract ‘high-level’ (e.g. international, national) plans and programmes such as strategies or policies.

Similarly to the 2016 SEA study, the consultation activities show that the effectiveness of the SEA Directive is dependent on the political will, experience and meaningful engagement of the authorities and plan developers in the SEA process, and their willingness to make changes. ‘Closed’ decision-making favouring a specific pre-conceptualised version of a plan or programme is seen as one of the most limiting aspects of the SEA process. Many SEA practitioners and academics, but also local and regional authorities responsible for the preparation of plans and programmes, raised concerns that **SEA does not affect the content of final planning outputs as much as it should**. The respondents mentioned that the planning and decision-making process remains a political one, which hinders the effectiveness of the SEA Directive and in particular its ability to influence the content of plans and programmes. That might be due to **other prevailing (political, economic, social) interests, ‘closed’ and pre-determined decision-making, or poor integration of SEA into planning and decision-making processes**⁶⁸.

Although **assessing alternatives** is generally considered very important, the consultations reveal challenges with this part of the SEA process, such as the alternatives being considered (too) late and the general unfeasibility of other proposed options⁶⁹.

Summary of the findings for Section 5.1.2. on how the SEA Directive influences the planning process, the final content of the plans/programmes, and eventual project development

The SEA Directive has, at least to some extent, influenced **planning and decision making processes** and the **final content** of plans and programmes, establishing the siting, design and implementation of projects developed on the basis of plans and programmes.

The degree of influence of the SEA Directive **depends on the type** (e.g. spatial plan, strategy, policy) **and the level at which decisions are taken on the plan or programme** (e.g. national, regional, local).

⁶⁷ Evaluation Study, Section 5.1.2.3.

⁶⁸ Evaluation study, Section 5.1.2.3.2.

⁶⁹ Evaluation study, Section 5.1.2.3.2.

Key factors limiting the influence of the SEA Directive on the final content of plans and programmes include: (i) other prevailing interests (e.g. political, social, economic) that can lead to ‘closed’ decision-making favouring a specific conceptualised version of a plan/programme (e.g. precluded spatial planning in terms of location, technical design, etc. due to political/economic reasons; (ii) **challenges in identifying and assessing reasonable alternatives.**

5.1.3. What factors (e.g. gaps, overlaps, inconsistencies) influenced the effectiveness of the Directive?

The evaluation study and workshop discussions show the effectiveness of the SEA Directive depends to a significant extent on transposition and implementation, as well as planning and decision-making practices, laws and cultures within individual Member States⁷⁰. Although the Directive is generally considered to be effective, the study reveals that there are challenges when looking at the SEA practices in more detail, at lower (administration) levels, particularly from the perspective of SEA practitioners and the authorities responsible for the preparation of plans and programmes.

The impartiality, ethics and expertise of consultants conducting the SEA process also plays an important role in the effectiveness of the SEA Directive, as they frequently lead (public) consultations and give assurances that the environment is adequately taken into account when adopting new plans and programmes. The Directive does not provide any clear guidance on who should or should not conduct SEAs. This study shows that it is not uncommon for an SEA to be conducted by the same people who prepared the plan or programme, raising concerns regarding the impartiality, quality and effectiveness of the SEA evaluation process. The interview results also show that those preparing the plan or programme allocating **sufficient financial resources** to the SEA procedure is a key factor in the Directive’s effectiveness.

Another factor which influences effectiveness is the **perception of the SEA process** by governance authorities and plan developers, as it seems to be less effective if perceived as a separate rather than an integrated part of the planning and decision-making activities. This relates to the sense of ownership of the SEA process by those preparing the plan or programme, as well as ownership of the plan by the SEA practitioners.

Different aspects of the SEA process affect the effectiveness of the Directive to some extent. **Consultation practices** are important, as they foster communication among actors at different governance levels, enable public participation, increase transparency of the SEA process, and support positive perception of ‘plan ownership’ by different stakeholders. However, concerns were raised that the public does not engage in SEA processes to the desired extent. That might be due to overly technical reports (e.g. non-technical summary remains too technical) and difficulty in understanding evaluations, especially at higher governance levels. Respondents’ observations indicate that there seems to be a correlation between the concreteness of a plan/programme and the level of citizen participation: the less concrete a plan/programme, the fewer citizens are interested in participating in the SEA.

The legal requirements of the SEA Directive seem to **pose certain challenges**. Stakeholders noted that the wording of the Directive does not clearly identify the plans/programmes for which SEA is compulsory. The result is that some ‘high’ level plans/programmes with significant environmental impacts are not subject to SEA (e.g. because they are not seen to ‘set the framework’ *directly* for projects or it is not clear if they

⁷⁰ Evaluation study, Section 5.1.3.

fit the definition of ‘plans and programmes’), even though they might have adverse effects on the environment.

Although **mitigation and compensation measures** were generally considered to have a positive influence on the content of planned activities, they were also mentioned as providing leeway for approval of developments with potentially adverse environmental implications. **Environmental monitoring** appears to be poorly implemented, as the SEA process seems to stop with the adoption of the plan. Issues of duplication of monitoring activities required under other environmental regulations were also raised.

The effectiveness of the Directive **differs between sectors**. It is **most effective for town, country and spatial planning**, due to well-embedded processes, practice, knowledge and better availability of guidance. This is also the sector where there is most experience, given the high number of plans and programmes. Although SEA process is generally considered to be effective in transport and energy, some examples of **low effectiveness** of the SEA Directive were also reported in these sectors. The same is true of forestry, agriculture and **other sectors where economic and/or social interests might be emphasised** (e.g. tourism, mining) and/or where there is **a lack of guidance**.

Views vary in respect of the **effectiveness of SEA at higher** (e.g. international, national, strategic) **decision-making and governance levels, in comparison to the lower levels**. Respondents to the consultations undertaken for the study perceive the **Directive as less effective for ‘high’ level programmes and plans (e.g. strategies, legislation and policies)**, where the (environmental) effects may be less tangible. However, others support the opposite assertion, i.e. that **SEA is more effective at strategic levels in early planning stages, as there is still ‘enough’ room to consider environmental (and sustainability) objectives and possible alternatives**. These respondents also consider that the environmental repercussions of the strategic choices made in plans and programmes are now ‘formalised’ and specifically addressed during the planning and decision-making processes, which was not the case before the adoption of the SEA Directive.

The findings of the evaluation study show that respondents in the different consultation activities believed the Directive to be **most effective at local level**, where the planned measures/interventions are best defined and thus the effects are easier to project and assess, although this may simply reflect the greater experience with SEA at this level. This finding corresponds to the finding of the 2017 Commission implementation report⁷¹. However, the sustainability dimension of the SEA Directive seems to be more commonly considered in the SEAs of strategic national or regional plans and programmes than in (detailed) local level plans.

The challenges of the SEA Directive seem to be more obvious for more high-level SEAs. Overall, the SEA process, including the identification and assessment of significant environmental impacts, as well as monitoring for higher level strategic plans and programmes, might be more challenging because data indicators at these levels are more difficult to measure. However, that might reflect a rather ‘traditional’ interpretation of the SEA process as simply an EIA-style tool for local level plans and programmes, and the corresponding emphasis on, and experience of, certain types of indicators more familiar at the plan and programme (and indeed project) level. Considering SEA as a proactive design tool for supporting more sustainable decision-making and policies, some participants at the evaluation workshop argued that **it is precisely at these most strategic levels that SEA is**

⁷¹ COM (2017) 234, 15.05.2017.

most required. They therefore considered that the Directive needs to be adapted (in terms of nature and focus of information required) to enable it to be more readily applied at such higher levels.

Summary of the findings for Section 5.1.3. on the type of factors (e.g. gaps, overlaps, inconsistencies) that have influenced the effectiveness of the Directive

The **effectiveness of the Directive differs between sectors** (most effective in spatial planning) **and governance levels** (more effective at local level; less effective for high-level plans and programmes of more strategic and abstract nature).

Even if the requirements of the SEA (assessment of the reasonable alternatives, identification of mitigation and compensation measures and environmental monitoring) are considered to **significantly contribute** to the effectiveness of the SEA process, it is still sometimes challenging to implement these **aspects of the SEA process**.

Moreover, while it is still challenging to apply the SEA Directive to higher-level strategic plans and programmes, it is precisely at these most strategic levels that the SEA is most required.

Consultation practices and the impartiality, ethics and expertise of the SEA practitioners are important factors for an effective SEA process.

The **effectiveness of the SEA Directive depends to a significant extent on transposition and implementation**, as well as planning and decision-making practices, laws and cultures in each Member State.

The Commission services conclude that **the factors that positively influence the effectiveness** of the SEA Directive are:

- **the strategic and procedural character of the Directive** promoting a well-informed, transparent, structured and ultimately auditable decision-making process;
- **The fact that the SEA Directive can affect the planning and decision-making process.** Consulting that, in this regard, the envisaged consultation the public and the environmental authorities ensures transparency and guarantees a well-informed SEA procedure capable of delivering a high level of environmental protection;
- **The fact that the SEA Directive can influence the content of plans and programmes.** The application of the Directive can influence the siting, design and implementation of the projects developed.

The **factors limiting the effectiveness** of the Directive are:

- the lack of a clear definition of the terms ‘plans and programmes’ which results into a number of plans and programmes (e.g. legislative/normative acts) escaping from SEA.
- **the inadequate monitoring** of the significant environmental impacts.

5.2. Efficiency⁷²

The key question addressed in this section is whether the regulatory costs arising from the implementation of the SEA Directive are reasonable and proportionate compared to the benefits delivered.

5.2.1. *To what extent are the costs involved proportionate, given the identified changes/effects achieved?*

There is limited literature and few studies that directly address costs or cost-effectiveness of SEA. Several general and case-specific studies provide some input to a general typology of costs and benefits, while others have collected information on the time spent/costs of carrying out SEAs through surveys of Member States authorities or practitioners, or case studies on specific SEAs⁷³. The 2016 SEA study compiled cost data provided by Member State authorities in the Commission's reporting questionnaire⁷⁴.

In the absence of definitive literature or studies on the issue of cost proportionality and the scope of benefits, the evidence for responding to this question in the evaluation study stems primarily from the consultation activities, and in particular the targeted consultation and interviews.

This evaluation considers both direct costs (e.g. resulting from the requirement to carry out SEA of plans and programmes) and indirect costs (e.g. as a consequence of the measures needed to carry out SEAs of plans and programmes). Direct costs include compliance costs, for example costs incurred by various stakeholders to comply with obligations and requirements contained in the SEA Directive. Compliance costs can be further broken down into⁷⁵:

- **Implementation costs:** incurred by regulated entities in adapting their legal frameworks, building strategies and capacity to comply with the Directive. These are one-off or short-term costs.
- **Direct labour costs:** staff time required to organise and carry out SEAs to ensure regulatory compliance.
- **Costs of external services:** costs of payments to external suppliers providing assistance in achieving regulatory compliance.
- **Equipment or material costs:** costs incurred by stakeholders to purchase, maintain or change the material input needed to ensure regulatory compliance. These are likely to be minor and may only concern public consultation, data collection and monitoring.

A types of costs are presented Table 1 below. The information is based on the 2016 SEA study, together with other literature and the consultation results.

⁷² Evaluation study, Section 5.2.

⁷³ Evaluation study, Section 5.2.1.

⁷⁴ See 2016 Study, Section 5.2.3.

⁷⁵ Based on the better regulation toolbox, Tool #59: Administrative costs are defined as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. https://myintracomm.ec.europa.eu/sg/better_regulation/Documents/tool_59.pdf

Table 1: Types of direct costs resulting from implementation of the SEA Directive

Type of cost	Examples
Implementation costs	Legal transposition Capacity development Allocating responsibilities for completing compliance-related tasks Developing compliance strategies Familiarising staff with new or amended regulatory compliance obligations Training courses and development of guidance material and tools
Compliance costs	Administration of the system Screening/decision-making on whether specific plans and programmes are required to undergo SEA Scoping SEA reports Review and approval of SEA reports Assessing the plan/programme and preparation of the environmental report Screening/SEA of modifications to plans/programmes Public consultations Identifying relevant stakeholders Informing relevant stakeholders Considering stakeholder feedback Preparation and publication of the decision through which the plan/programme is adopted (usually referred to as the 'SEA Statement') Monitoring (of significant environmental effects) Implementing remedial action, if relevant

Indirect costs primarily relate to possible procedural delays in the adoption of plans and programmes, leading to increased labour costs. Procedural delays can also be the consequence of the SEA process being subject to legislative change.

The data collected⁷⁶ show considerable variation in costs, reflecting the diversity of plans and programmes subject to SEA (nature of the plan, size, sector, level of details, new plan vs. a modification). The cost data that the stakeholders provided vary considerably from several thousand euro (€2,000-3,000) to several hundred thousand euro⁷⁷.

Cost variations can be partly explained by the nature and size of the plan/programme. The cost estimates provided by respondents for sectoral plans show that regional level sectoral

⁷⁶ Evaluation study, Section 5.2.1.

⁷⁷ Evaluation study, Chapter 5.2.1.3.1.

plans tend to be less costly than those at national level. The lowest cost estimates were provided for local land use plans, although these also show the broadest cost range. This might reflect the diversity of spatial planning documents, in particular the area covered (municipality, intercommunal area, wider living area), and the fact that SEAs are often carried out for revisions of land use plans rather than for new plans.

However, the available data did not allow an understanding of the costs of SEA at EU level or average estimates by type of plan/programme, or even by Member State. As mentioned, many contextual factors which determine the cost of an SEA procedure, such as the complexity of the plan, the extent to which it sets the framework for projects, the number of alternatives, the scale of the plan/programme, labour costs, and budget availability. This makes it difficult to get a solid understanding of how much an SEA typically costs. In addition, the cost data provided are limited by authorities' ability to track such costs. As a result, the cost data collected were often simply the costs of hiring external consultants.

The stakeholders consulted agreed that the **main costs of the SEA procedure relate to preparing the environmental report**. Scoping and the review and approval of SEA reports incur significant costs. As drafting the environmental report is often subcontracted to external consultants, hiring external expertise was also mentioned as a key cost.

The stakeholders were divided on whether SEA causes significant procedural delays, but a large number of authorities reported that it does. According to consulted stakeholders, **delays in the adoption of the plan/programme are often due to poor synchronisation of the SEA with the plan preparation process or factors external to the SEA, particularly political factors**.

It was not possible to **quantify the benefits** of SEA, primarily because benefits directly attributable to SEA are procedural benefits. The stakeholders did state that the Directive is providing benefits by integrating environmental issues into plans and programmes, and that it leads to substantial environmental benefits. However, stakeholders tended to reply based on their experience with specific plans, which made it difficult to gain an understanding of the overall benefits of SEA as a safeguard mechanism.

The **costs of SEA were generally considered reasonable by the authorities consulted**, although some of the regional and local authorities interviewed stated that SEA can be unaffordable for small local authorities. Stakeholders also generally believed that the **benefits of SEA outweigh the costs**, although authorities responsible for plans and programmes perceived this less strongly than environmental authorities and practitioners⁷⁸.

In this respect just over half of the respondents in the open public consultation (125) stated that the benefits of the SEA Directive are higher than the costs, with 112 (45%) considering the benefits to far outweigh the costs, 15 of these respondents considered that the long-term remediation costs spared for compensating negative environmental impacts are much greater than costs for carrying out the SEA. These 15 respondents are individuals (7), NGOs (4), practitioners (3) and 1 regional authority. 9 respondents considered that environmental protection automatically outweighs any costs, and that cost consideration should not be weighed against those types of benefit. 5 respondents indicated that the SEA procedure can prevent conflicts at project level and accelerate the EIA and the development consent procedures. 4 mentioned that the SEA procedure is beneficial, if ecosystem services are included in the assessment, 3 respondents mentioned that the SEA leads to the better use of public funding, avoiding unnecessary costs and based on the assessment of alternatives.

Overall, **the consensus is that the costs of implementing the SEA Directive are not**

⁷⁸ Evaluation study, Chapter 5.2.1.3.4.

excessive and are proportionate to the benefits of SEA. This applies both to the administrative and implementation costs for authorities and costs and at plan/programme level, given the benefits of integrating environmental

Nonetheless, some of the regional and local authorities interviewed suggested that the costs can be perceived as too high for small municipalities, which face resource constraints. The cost-effectiveness of the SEA is to a large extent dependent on effective and proportionate implementation of the SEA procedure.

Summary of the findings for Section 5.2.1. on the proportionality of the costs involved in the SEA procedure

The available data **does not allow an understanding of the costs of SEA at EU level or average estimates by type of plan/programme or even by a Member State.** This is because various factors determine the cost of the SEA procedure, such as the scale and complexity of the plan/programme.

It was not possible to quantify the benefits of the SEA, mainly because the **benefits directly attributable to the SEA are procedural benefits.**

There is consensus among the stakeholders that in principle the **SEA costs are reasonable** and that the **benefits of carrying out an SEA outweigh the costs.**

5.2.2. What factors influenced the efficiency with which SEAs achieved their objectives?

The list of factors potentially influencing efficiency is based on the 2016 SEA study and other literature and studies. Two type of factors have been identified and considered for this evaluation:

- (v) **contextual factors** (i.e. relating to the nature of the plan or programme); and
- (vi) **practical factors** (i.e. relating to the way SEA is carried out).

Table 2 illustrates the types of factors towards which the analysis of this question was made.

Table 2: Contextual and practical factors influencing efficiency

CONTEXTUAL FACTORS	PRACTICAL FACTORS
<ul style="list-style-type: none"> - Scale of plan or programme (e.g. national, regional, local) - Level of detail of the plan or programme - Sector covered by the plan or programme (e.g. cohesion, energy, transport, agriculture) - Main areas of the environment impacted (e.g. air, climate water, soil) - Technical capacity of the authorities responsible for preparing the plan/programme - Quality of the experts carrying out the SEA 	<ul style="list-style-type: none"> - Timing of the SEA and its synchronisation with the plan or programme in question - Effective use of scoping - Use of external experts vs. competent authorities to carry out preparation of the environmental report - Approaches to carrying out data collection (including availability and quality of data) - Factors related to the selection and investigation of alternatives - Factors related to stakeholder and public consultation

Contextual factors

In general, the evaluation study has shown that **high quality SEAs are more efficient** as they deliver larger benefits and reduce the risk of duplication of work (in case of a negative

opinion from the environmental authority) and legal challenges⁷⁹. As a result, the **quality of experts** drafting the environmental report and the **technical capacity of the authority carrying the SEA procedure are important factors** influencing the efficiency of the SEA procedure. In addition, factors such as the **level of detail or complexity of the plan/programme and, to a lesser extent, the scale of the plan strongly influence the costs of SEA**. This is because complex plans and programmes require more in-depth assessment, data collection and field studies, warranting greater reliance on external contractors, the involvement of more experts and stakeholders and requiring the development and assessment of more alternatives.

Practical factors

According to the consulted stakeholders, the practical factors strongly influencing efficiency are the timing of the SEA and its synchronisation with the plan or programme being assessed, as well as the use of scoping. The technical capacity of the authority responsible for preparing the plan or programme, as well as its financial and human resources, was also mentioned as an important factor.

More effective use of scoping would greatly improve the efficiency of SEAs. The stakeholders consulted identified a tendency to produce lengthy and overly detailed environmental reports based on time-consuming data collection, with a view to avoiding non-compliance. They also identified a tendency to assess concrete and specific impacts rather than gaining an understanding of the strategic-level environmental aspects of a plan/programme. A **more proportionate and focused environmental report** on the environmental aspects that matter most at plan/programme level, informed by an **effective public scoping process**, would help streamline the overall assessment process and reduce the cost of the entire SEA procedure. This would involve extending the **scoping process and consultation beyond the environmental authorities to a dialogue with wider stakeholders, including NGOs and the public**.

Drawing from good practice, public consultation on a formal scoping report would be able to input to the approach/methodology to be adopted, the type of reasonable alternatives to be considered and the key environmental issues to be addressed. This would allow the SEA to focus on the most important or critical factors while engaging all stakeholders in the nature, purpose and process of assessing the potentially significant environmental effects of the proposed plan and alternatives. In addition, **more effective management of the SEA procedure**, better synchronisation with the plan/programme (i.e. integrating the assessment into the development of the plan, and early involvement of stakeholders and the public (at the scoping stage)) **would also help reduce the costs of the SEA process and the likelihood of procedural delays**.

Summary of the findings for Section 5.2.2. on the factors influencing the efficiency of SEAs

The **expertise and technical capacity of the competent authorities and the authors of the SEA report** are of key importance in delivering quality SEA procedures.

The **level of complexity** and the **scale of the plan** influence the SEA costs.

The practical factors that can influence the efficiency of SEA procedures are **timing** and **synchronising SEA** with the plan and programme, as well as the **use of scoping**. Scoping can determine the costs as it influences the content of the environmental report.

⁷⁹ Evaluation study, Section 5.2.2.

5.2.3. *What is the cause of any unnecessary regulatory burden or complexity associated with the SEA Directive?*

The purpose of this question is to identify and assess any unnecessary regulatory burden or complexity associated with the SEA Directive, and if such exists, to understand how the Directive causes this excessive burden. The regulatory burden includes costs resulting from the mandatory obligations that a piece of legislation places on public authorities, business, citizens and civil society organisations.

The evaluation study⁸⁰ found that in principle the SEA Directive does not cause a major unnecessary burden on the authorities. Some stakeholders mentioned that the requirement to carry out a full SEA, including the development of alternatives, might not be proportionate to some plans/programmes, in particular if renewing a plan/programme that was already subject to SEA at the time of adoption. Others found screening a challenging task, stating that it is not always easy to justify whether or not a full SEA is needed or not. To some extent this feedback could be related to the acknowledged difficulties resulting from the lack of a definition of the terms ‘plans and programmes that set the framework for future development consent’. This phrase can be interpreted in a limited sense, i.e. including plans and programmes that list future projects and/or determine their location, or in a broader sense, i.e. including any plans and programmes that contain provisions that determine the authorisation and implementation of future projects. Further clarification of this phrase was requested during the workshop to avoid complexities at the screening stage.

The evaluation revealed that Member States were concerned about the follow-up of recent CJEU case law⁸¹ providing for a broad interpretation of the definition of plans and programmes, meaning that the Directive would apply *ex lege* to any act that fulfils the four criteria set in in Article 2(a) and Article 3(1). This would imply that legislative or regulatory acts, as well as, policies are falling under its scope.

To reflect on the potential impact and consequences of case C-290/15⁸², Member States’ national experts have formed an ad hoc working group with the Commission Group of EIA/SEA national experts. The members of the ad hoc working group included representatives from six Member States (Austria, Belgium (Flanders region), Czechia, Denmark, France, and Ireland). The ad hoc working group published a discussion paper in September 2018⁸³. The paper concluded that policies and legislation should not be regarded as falling within the scope of the SEA Directive. It argued that policies and legislation are not plans and programmes in the sense of the SEA Directive, either from a legal point of view (i.e. Article 2(a) of the SEA Directive is likely to exclude policies and legislation since they are not ‘required by legislative, regulatory or administrative provisions’), or from a practical point of view (considering the additional costs and complexity that this would entail).

In addition, the discussion paper argued that applying the SEA procedure to high-level initiatives that have yet to crystallise into plans and programmes would require significant time outlays from public authorities without leading to the effective assessment of impacts on the environment. The paper also found that policies, for example, are not sufficiently

⁸⁰ Evaluation study, Section 5.2.3.

⁸¹ Judgment of 27 October 2016, *D’Oultremont and Others*, C-290/15, EU:C:2016:816; Judgment of the Court of 7 June 2018, *Inter-Environnement Bruxelles ASBL and Others v Région de Bruxelles-Capitale*, C-671/16, ECLI:EU:C:2018:403, Judgment of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, and Judgment of 7 June 2018, *Thybaut and Others*, C-160/17, ECLI:EU:C:2018:401.

⁸² Judgment of 27 October 2016, *D’Oultremont and Others*, C-290/15, EU:C:2016:816.

⁸³ Ad Hoc Working Group Discussion Paper: <https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/d7e4ef55-21a8-4491-b132-045466320cae/details>

concrete, making it difficult to apply the detailed assessment required under the SEA Directive. At the same time, the Directive does not provide for a lighter procedure to address this type of situation that would enable the SEA procedure to apply to acts of abstract nature. The paper reiterated that the SEA Protocol makes a distinction between plans and programmes and policies and legislation, which are excluded from formal SEA requirements, but whose preparation should consider environmental concerns ‘to the extent appropriate’. Finally, the paper claimed that this is a more appropriate approach as it provides discretion to authorities to adopt the most appropriate tool to assess environmental impacts.

A similar rationale to that of the discussion paper was presented by the national authorities in their replies to the targeted consultation questionnaire, during interviews and at the evaluation workshop⁸⁴. In addition to the points mentioned in the discussion paper, these authorities emphasised the legal uncertainty created by the case law and the risk of an overly strict application of the Directive. Ensuring that plans/programmes being prepared are not annulled after adoption because of procedural fault would lead to increased administrative burden and delays in the implementation of the measures contained in the plans/programmes. Similar concerns were expressed at having past policies deemed invalid because they were adopted without SEA or permits being annulled because they were based on policies or legislation adopted without SEA.

and (C-160/17, EU:C:2018:401) To date, there is little evidence of the extent to which this broad interpretation would impact Member States’ efficiency in complying with the SEA Directive, as there is limited experience and only two Member States’ national legislation has been subject to CJEU interpretation on the application of the SEA Directive in such circumstances. Few Member States transposed the SEA Directive beyond the scope and requirements of the Directive. Scotland has applied SEA to ‘strategies’, including policies and legislation, in addition to plans and programmes. The Scottish authority argued during the evaluation workshop that SEA could remain an efficient process when applied to policies and legislation, provided it remains flexible and adaptable to the iterations of the policy-making process and is well integrated into the policy-making process.

However, the recent experience of Belgium, following case C-290/15⁸⁵, showed that the application of the Directive to some normative acts might be technically complex. First and foremost, normative or regulatory acts are broad in scope. Secondly, they set the legal ground for action. As explained in previous sections, the more abstract the act that is subject to SEA, the more complicated and costly the SEA procedure. Box 1 below summarises the practical issues (in terms of cost and effectiveness) encountered as a follow-up action of implementing the judgment in case C-290/15. However, the scale and proportion of such costs is not known and it is not clear whether part of such costs would be required under other provisions (e.g. the need to carry out public consultations based on the Aarhus Convention). Moreover, the benefits of the SEA for the act are not known or analysed.

Box 1: Information provided by the Walloon Region (as part of the targeted consultation) on the follow-up to case C-290/15

Following case C-290-15 (*D’Oultremont and others v Walloon Region*), on November 2016 the Belgian Council of State issued its judgment No 239.886 annulling the Walloon Government’s order of 13 February 2014 on sectoral conditions related to wind farms (i.e. order subject of proceedings in C-290/15).

⁸⁴ Evaluation study, Section 5.2.3.3.2.

⁸⁵ Judgment of 27 October 2016, *D’Oultremont and Others*, C-290/15, EU:C:2016:816.

In the decision annulling the challenged order, the Belgian Council of State temporarily maintained the legal effects of the order for a period of 3 years, aiming to ensure legal certainty during the time it took to rectify the failure to perform SEA on that governmental order. The SEA procedure is still ongoing, but so far the preparation of the draft environmental report has taken approximately 1 year. The cost of drawing up the environmental report currently amounts to €154,880; the public consultation and environmental report amount to €300,000.

The above-mentioned example is only illustrative and it is not possible to draw from it any firm conclusions either on the potential burden on Member States, or on the benefits of carrying out SEA on any act that formally fulfils the four criteria in the SEA Directive. It is necessary to further analyse the regulatory burden that the application of the Directive to such acts would imply, and see if that is likely to be disproportionate compared to the effects and benefits to be achieved.

Summary of the findings for Section 5.2.3. on whether the SEA Directive causes any unnecessary regulatory burden or complexity

Member States have noted their **concerns about the broad interpretation of the terms ‘plans and programmes’ in follow up of the case law of the CJEU**. This interpretation is likely to affect the efficiency of the application of the Directive and lead to more administrative costs. There is no evidence of whether such costs are proportionate or not.

The Commission services therefore conclude that **the factors that improve the efficiency of the SEA process** are:

- the expertise and the technical capacity of the competent authorities and the authors of the SEA report, since they are of key to delivering a quality SEA procedure;
- properly planning the timing of the SEA procedure and synchronising it with the plan and programme;
- scoping to determine the costs and influence the content of the environmental report.

Factors limiting the efficiency:

- The level of complexity and the scale of the plan can influence the SEA costs.

5.3. Relevance

The relevance analysis compares the current needs and objectives with those defined when the Directive was adopted. It also examines if the objectives of the legislation remain necessary and appropriate, and if the objectives and requirements in the Directive are still valid in contributing to sustainable development.

5.3.1. To what extent is the Directive still relevant in promoting a high level of environmental protection and sustainable development?

Relevance to environmental protection and sustainable development

The evaluation study shows that **the SEA Directive remains very relevant to delivering a high level of protection and helping to promote sustainable development**. This is due in part to the Directive’s flexibility, but impacted by factors such as the quality of plans/programmes, the availability of technology and the expertise of those managing/undertaking the SEA. The SEA Directive was agreed in 2001, prior to many of the most recent developments on sustainable development, e.g. concepts of planetary

boundaries (as an expression of environmental limits intrinsic to sustainable development), the Rio+20 Earth Summit (in 2012), and the development of the Sustainable Development Goals (SDGs) in 2015. Therefore, it is appropriate to explore the relevance of the SEA Directive to the continually evolving conceptions of sustainable development.

Consultees showed a strong consensus on the relevance of the SEA Directive for environmental protection and sustainable development. **A vast majority of respondents to the targeted consultation (97%) believe that the SEA Directive (and its implementation) remains relevant or partially relevant to promoting a high level of protection of the environment and sustainable development. None of the respondents believes the Directive to be irrelevant.**

The practitioners and the authorities interviewed agreed that the SEA Directive is strongly relevant to ensuring environmental protection and sustainable development, in particular. According to these interviewees, the relevance of the SEA Directive appears to lessen as plans and programmes address lower scale matters, where environmental impact assessment (EIA) of projects becomes more important and relevant, or where the overlap between EIA (e.g. of large projects) and SEA (of local plans) becomes more pronounced.⁸⁶

The discussions on relevance at the evaluation workshop raised the issue of training, recognising the need for **training to effectively implement the SEA Directive** in relation to plan-making and monitoring, and to address evolving needs in view of sustainable development. It was noted that the actual effects of the SEA Directive depend on how well SEAs are carried out for individual plans and programmes. However, this depends in turn on the institutional capacity of the authorities reviewing and approving the SEA.

Many respondents to the targeted consultation questionnaire considered the SEA Directive to be relevant because of the many advantages it provides. They placed particular emphasis on the holistic approach it enables, which allows it to achieve the main objective set out in Article 1. Representatives of authorities pointed out that this approach makes it easier to consider broad cross-sectoral issues, going beyond sectoral environmental issues and policies (e.g. water, air, climate, or waste). This is achieved by considering other key relevant plans and programmes and including all relevant (national and international) policies or objectives in determining the full range of likely significant effects. Other advantages that can be attributed to the holistic nature of the Directive are adaptability to individual requirements, the applicability of necessary and useful methods, and highlighting for decision-makers the potential trade-offs between environmental goals (e.g. biodiversity vs. climate).

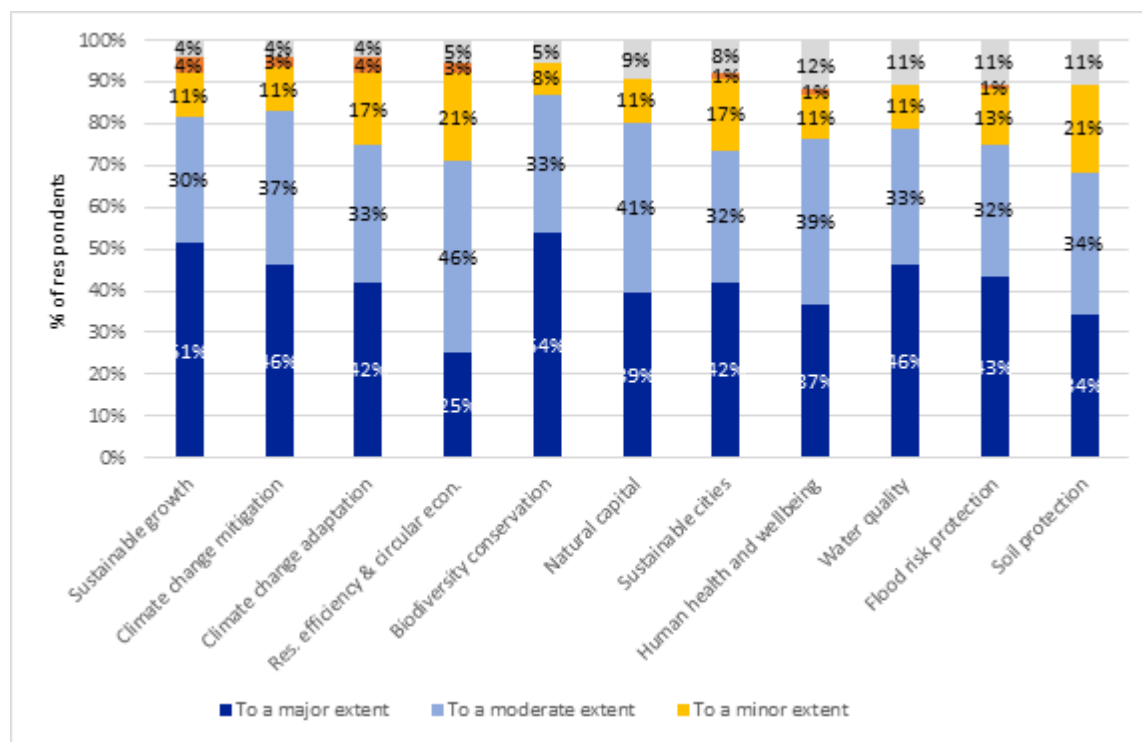
Correct implementation of the SEA Directive was also highlighted, since SEA could be a key tool to ensure the transition of the EU's economy and society to a truly sustainable path, e.g. it could help direct development away from areas of biodiversity value and flood risk. As such, it could play a key role in natural capital protection and climate change adaptation, in particular. **A key feature in this regard was the important contribution of the SEA Directive to the analysis and identification of alternatives at the early stages of a plan or programme**, bringing environmental impact and sustainability to the forefront, both in terms of public debate and ensuring dialogue on impacts within municipalities.

67 respondents to the targeted consultation consider (to a major or moderate extent) that the SEA Directive and its implementation is consistent with the current and likely future needs of EU citizens and environmental policies. In fact, approximately 60% of respondents from

⁸⁶ European Commission, 2005, *The Relationship between the EIA and SEA Directives: Final report to the European Commission*, Imperial College London Consultants.
http://ec.europa.eu/environment/archives/eia/pdf/final_report_0508.pdf

authorities and 62% of academic experts and practitioners believe that the SEA Directive is consistent with current and future needs to a major extent⁸⁷. This belief is particularly strong in the areas of sustainable growth and biodiversity conservation, where **participants note the significant contribution of the SEA in considering biodiversity and natural capital in all sectoral plans and programmes**. By contrast, resource efficiency and the circular economy, climate change adaptation and mitigation, and sustainable cities and soil protection were considered least consistent with the SEA Directive. Figure 3 illustrates stakeholders' positive view of the Directive's consistency with the needs of the other EU environmental policies.

Figure 3: In relation to the particular needs of the EU's citizens, environment and economy, to what extent is the SEA Directive and its implementation consistent with current and likely future needs of the following areas? [Targeted consultation questionnaire] (share of total respondents, n=76)



However, **views varied on the SEA Directive's consistency with current and the likely future needs of EU environmental policies**. While certain respondents to the targeted consultation questionnaire noted that the Directive has a key role in climate adaptation, others felt that SEA should take a more robust look at the continuously evolving information on climate change and reflect the magnitude of those challenges. Respondents' views also varied on soil protection, with one respondent highlighting that the Directive is often not applied to policies and legislation on soil protection, while another said the Directive helped to avoid and mitigate land take. The focus on the environmental aspects (as opposed to the economic and social aspects) has been highlighted as one of the issues associated more generally with promoting sustainable development.⁸⁸

⁸⁷ Evaluation study, Section 5.3.1.3.

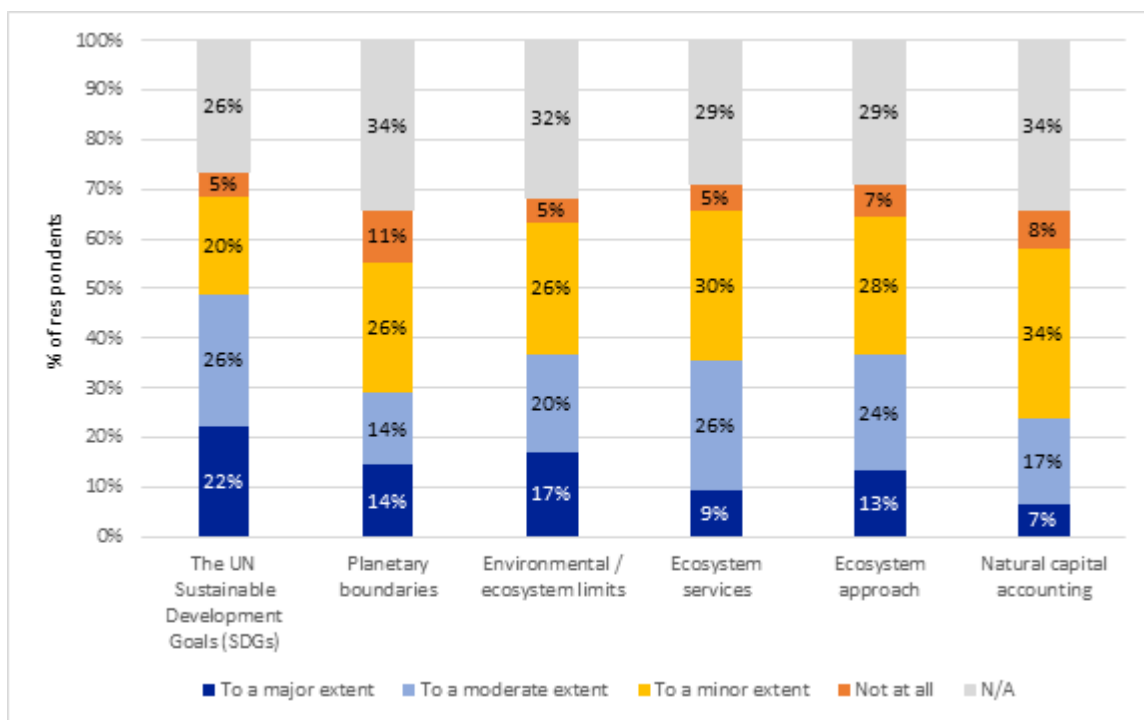
⁸⁸ Drexhage, J., & Murphy, D., 2010, *Sustainable Development: From Brundtland to Rio 2012*. International Institute for Sustainable Development, background paper prepared for consideration by the High Level Panel on Global Sustainability at its first meeting, 19 September 2010, United Nations Headquarters, New York.

Respondents highlighted that Directive needed some improvements. **Some pointed to the potential for ambiguity in what constitutes a plan/programme and legislation/policy under the SEA Directive, which affects its relevance to current and future needs of EU environmental policies.** The requirements of the SEA Directive are generally believed to strengthen other legislation, for example the requirements of the Habitats Directive are strengthened by the need to assess biodiversity and ensure monitoring as part of SEA. Practitioners and authorities suggested clarifying when the SEA Directive must be applied to plans and programmes at different levels (local/national) as this would improve recognition of the relevance of the Directive in protecting the environment and promoting sustainable development. **Given the procedural nature of the Directive, more detail in some provisions of the Directive (e.g. public involvement in the scoping process) was suggested.**

Relevance to the EU and global policies and objectives

Between 48% and 24% of respondents to the targeted consultation believe that the implementation of the SEA Directive has kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development to a major or moderate extent (see Figure 4 below).

Figure 4: Has the implementation of the SEA Directive kept pace with particular areas of emerging international policy, objectives, targets and concepts for sustainable development? [Targeted consultation questionnaire] (share of total respondents, n=76)



According to some respondents, the procedural, non-prescriptive nature of the SEA process makes it easier to keep pace with developments in EU and international policy. The majority of interviewees also recognise that its adaptability has allowed the SEA Directive to keep pace with emerging international policy, objectives, targets and concepts for sustainable development. **The Directive does not refer to recent developments in sustainable development, rather it sets out broad general objectives to be met by Member States,** rather than specific assessment approaches and methods. The Directive is sufficiently

flexible to allow these new developments to be incorporated into planning and SEA through best practice and guidance.

There are certain aspects that may require consideration if the Directive is to maintain its relevance to particular areas of emerging international policy and the objectives, targets and concepts for sustainable development. A key issue raised by several practitioners and authorities (both in the targeted consultation questionnaire and interviews) was the fact that the Directive has not been amended since it was first adopted. They emphasised the need for a review and update of those areas where further guidance is needed (e.g. the link between the ecosystem approach and SEA), and the need to integrate the concepts and objectives of these specific areas. The idea that some reform of SEA is likely to be needed to adapt it to the purpose of wider global environmental sustainability is also found in the literature⁸⁹.

Recognising the general principles that have been established by the Directive, some respondents from authorities and NGOs called for **the introduction of guidelines to interpret the provisions of the Directive in the context of emerging international policy and sustainability concepts**, targets, objectives, etc. and how these could be integrated into the assessment process at Member State level.

A number of academic experts and practitioners highlighted the importance of the person doing the SEA being able to recognise the concepts, targets and objectives of sustainable development, and to link those to the SEA process.

Respondents highlighted the areas where they believe the SEA Directive has had limited success in keeping pace: **planetary boundaries, environmental/ecosystem limits, ecosystem services, ecosystem approaches and, particularly, natural capital accounting.**

Some respondents to the targeted consultation questionnaire noted that by treating ecosystem services and natural capital as tools rather than objectives/concepts they can play an important role in SEA. Treating ecosystem services and natural capital as tools can improve the management of environmental assets. Both concepts can be applied during the SEA process, generating data for further analysis.

In their responses, some authorities and NGOs stated that the Directive has not kept pace with emerging international policy, or with the objectives, targets and concepts of sustainable development. However, this is an issue of implementation rather than legislation. A Directive **sets out broad objectives to be met, leaving Member States to decide on the appropriate means of implementation** (according to the subsidiarity principle). In the case of SEA, implementation is subject to current knowledge and methods of assessment, and appropriate levels of decision-making (Article 5(2) SEA Directive). **It is recognised that SEA is needed at higher decision levels (above plans/programmes), as these set the broad direction for subsequent plans and programmes. This is particularly true for sustainable development.**

Respondents suggested several reasons for the Directive having limited ability to keep pace with developments. One pointed to the underdeveloped concepts and links to international policies (e.g. planetary boundaries, natural capital accounting) in the implementation of the SEA Directive at regional/local level.. The current scope of environmental issues and the relatively recent appearance of these new areas of international policy were also considered to have impacted on keeping pace. Again, it would be inappropriate for a Directive to make

⁸⁹ Sadler, B., and Dusik, J. (Eds.), 2016, *European and International Experiences of Strategic Environmental Assessment: Recent Progress and Future Prospects*. Routledge, London, UK.

specific reference (other than perhaps in the preamble) to the SDGs as a particular means of contributing to or delivering sustainable development, since over time they may be replaced (as the Millennium Development Goals were). **The reference in the Directive to sustainable development (Article 1) appears to be, and can be interpreted into account, current conceptualisations of what sustainable development involves**, such as planetary boundaries (as a recent way of interpreting priority environmental limits) or SDGs as a current expression of internationally-agreed sustainable development objectives.

Scientific advances

Approximately half of the respondents to the targeted consultation questionnaire believe that the implementation of the SEA Directive is well adapted to technological and scientific advances to a major or moderate extent. Examples of the types of plans and programmes that considered particular technological and scientific advances included energy programmes, flood hazard management plans, and territorial plans at regional level. Meanwhile, the use of geographical information systems and other new methods of EIA (e.g. flood risk modelling) in SEA procedures for regional/local plans and programmes were some of the examples provided of adaptation to such advances.

By contrast, environmental modelling frameworks such as those for ecosystem services, habitat networks or flood risk, as well as natural capital accounting, were identified as areas of technological and scientific advances where SEA implementation has adapted to only a minor extent.

Respondents highlighted the flexibility of the SEA Directive in that it provides a framework for the evaluation procedure that enables the adoption of new methods or models for any new types of plans and programmes. The practitioners and authorities consulted were in broad agreement that online data sharing platforms can be useful to create an environmental baseline (if maintained) and can enable practitioners to examine new tools, methodologies and approaches to support SEA. By contrast, respondents also recognised a number of factors limiting the adaptability of the SEA to these advances. **Respondents value access to data sharing platforms, yet the incomplete spatial coverage of these platforms can be an issue.** Technical advances (e.g. data, technological tools, mapping) can all be accommodated within the SEA process and the Directive. **Guidance could usefully be given as to how these and other types of information can be best adapted to different decision levels and planning processes.**

Citizens' involvement

The SEA Directive is a key means of enabling citizens' participation at strategic level. However, more could be done to increase engagement, for example by improving participation of the scoping process and providing non-technical summaries that are adapted to a non-expert reader.

Most respondents to the targeted and public consultations believe it is very important for citizens to be informed of the potential environmental impacts of public plans and programmes, and that they be given the chance to provide input. These respondents strongly value citizen involvement as it provides important input to SEAs. This sentiment was also supported by interviewees, who stressed the importance of citizens having the opportunity to be involved in the policy-making and planning process. SEA is a useful tool for achieving this. The views of national environmental authorities on the extent to which EU citizens value the opportunity to be informed and use SEA were more positive than those of other respondents, in particular the plan/programme developing authorities. Several

representatives from authorities, mainly those responsible for the preparation of a plan or programme, expressed a more reserved opinion on the importance of citizens' participation.

Respondents provided a number of arguments to illustrate the importance of citizens being informed and providing input in the SEA process. Citizens' rights under the Aarhus Convention and citizens' rights to express their views on environmental aspects of strategic plans and policies mean there is a need to engage them in the SEA process. A recurring argument regarding citizens' participation made by many of authorities, academic experts/practitioners and NGOs was that **those SEA processes that consider the views and expertise of citizens and civil society are likely to be better managed, with well-informed decisions leading to better environmental outcomes.**

The outcomes of both the consultation and interviews indicate that participation in the SEA process helps increase environmental awareness among citizens. This is crucial, as citizens need to understand the nature of plans/programmes and their expected impacts on the environment. Citizen awareness is achieved by the SEA Directive enabling easy (including remote) access to information on the environmental implications of the planned activities; educating citizens; and collectively building public consciousness of the value of the environment and the ways it can be protected. Respondents considered that citizen engagement benefits SEA practitioners by providing local knowledge that may be useful in the assessment process. It also enables decision-makers to recognise the issues and potential blind spots in the plan or programme.

Public participation was recognised as important in the context of sustainability goals at European level. Although EU citizens' interest in the environment is increasing, the risk of citizen disengagement with environmental protection issues could lead to indicate future difficulties in maintaining public support for more sustainable approaches that will meet EU's goals. While the focus on citizens' participation in the SEA process, many of the authorities interviewed also recognised **the essential role of NGOs. The study suggests that representatives of NGOs are often the most active participants in the consultation process and provide the majority of comments.**

Summary of the findings for Section 5.3.1. on the extent to which the SEA Directive is still relevant to promote a high level of protection of the environment and sustainable development

All stakeholders agree that the **SEA Directive** remains **very relevant** to delivering a **high level of protection and helping to promote sustainable development.**

The Directive's relevant stems from its **flexibility**, which allows Member States to accommodate recent developments in sustainable development.

Technological and scientific advances (e.g. data, technological tools mapping) can all be accommodated within the SEA procedure.

The **SEA Directive** is highly relevant to delivering **citizens' participation and is a key means by which such participation is enabled at strategic level.**

- The Commission services therefore conclude that the SEA Directive is a key relevant tool for ensuring a high level of protection of the environment. The broad general objectives that the SEA Directive sets, as well as its flexibility allows a comprehensive approach towards an effective implementation of the SDGs at local, regional and national level.
- The relevance of SEA could be further strengthened through making optimal use of digital tools to address complex sustainability challenges, make the best decisions in a transparent and inclusive process and promote progress on the Sustainable

Development Goals (SDGs) through collaboration between private companies, research institutions, government agencies and civil society. Digitalisation can provide more complete sets of environmental data and a better understanding of the correlation between development and environmental effects, but also help create robust public-private open access data and catalyse change processes supporting the SDGs.

- **Factors limiting the relevance** of the Directive include data sharing and margins to improve and ensure well-informed decisions. These could be addressed by enhancing administrative capacity in the competent national administrations.

5.4. Coherence

This section evaluates the extent to which the SEA Directive complements or interacts with other EU legal and policy frameworks, and with relevant policies. This includes determining whether there are significant contradictions or conflicts preventing an effective SEA process or the achievement of the SEA objectives.

5.4.1. *To what extent is the intervention coherent with other parts of EU environmental law and policy, in particular on environmental assessment procedures, such as the EIA Directive (Directive 2011/92/EU, as amended) and the Habitats Directive (Directive 92/43/EC)?*

Examining this question firstly requires a review of this legislation, and checking coherence in *theory*. Secondly, the evaluation considers whether or not legislation is coherent in *practice*, i.e. how the implementation of each instrument supports or undermines the overall coherence of the EU legislation and policy on environmental assessments.

SEA Directive and EIA Directive

Coherence of legislation

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

The EIA Directive (Directive 2011/92/EU, as amended)⁹⁰ aims to ensure that ‘effects on the environment are taken into account at the earliest possible stage in all the technical planning and decision-making processes’ by harmonising the ways in which Member States assess the environmental impacts of certain projects⁹¹. While the SEA Directive applies to public plans and programmes, the EIA Directive applies to public and private projects.

When the predecessor of what is today EIA Directive was adopted in 1985 it was the first EU first attempt to promote environmental considerations at an early stage of the process of issuing development consent for projects. However, it soon became clear that decisions made at higher policy levels influence projects’ development⁹². This had led to the adoption

⁹⁰ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, pp.1-21, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ L 124, 25.4.2014, pp. 1-18.

⁹¹ Recitals 2 and 3 of the EIA Directive.

⁹² Jiricka, A., & Pröbstl, U., 2013, ‘The role of SEA in integrating and balancing high policy objectives in European cohesion funding programmes’, *Environmental Impact Assessment Review*, 38(2013), pp. 44-53.

of the SEA Directive in 2001, the primary objective of which is to ensure that environmental considerations are taken into account in the preparation and adoption of plans and programmes, specifically those which set the framework for future development consent of projects covered by the EIA Directive (Article 3(2)(a) of the SEA Directive).

This has resulted in two Directives with complementary scopes. The SEA applies to plans and programmes, focusing on the more strategic level of assessment, while the EIA applies to projects, allowing for more detailed and specific assessment. Carrying out an assessment under the SEA Directive does not negate the requirement for an assessment under the EIA Directive. This is established by Article 11(1) of the SEA Directive, which specifies that an environmental assessment carried out under this Directive is without prejudice to any requirements under the EIA Directive (or under any other EU law). The CJEU has confirmed that the application of the EIA ‘does not dispense with the obligation to carry out such an assessment under Directive 2001/42’⁹³. Where both assessments must be carried out, there are opportunities for synergies. Throughout the early development phase of plans, programmes and projects, authorities and project promoters should ideally identify the type of environmental assessment and the point at which it should take place. This has the potential to improve both the speed, efficiency and quality of the assessment.⁹⁴

Information from one assessment can be used for another. Article 4(5) of the EIA Directive, as amended, requires competent authorities to take into account the assessment of environmental impacts carried out under other EU legislation, including the SEA Directive, during the EIA screening phase. Similarly, under Article 5(1) of the EIA Directive, as amended, developers must take into account the available results from other relevant assessments required by EU law, including the SEA Directive, when preparing the environmental impact report, in a bid to avoiding duplicate assessments.

To support synergies, Article 5(3) of the SEA Directive allows for the use of relevant information from other EU legislation – including the EIA Directive – in the preparation of the environmental report. Sharing information not only reduces the potential for duplication and improves efficiency, but also supports better quality assessments under each Directive. Where a project falls within the framework of an earlier plan or programme that was subject to an SEA, the EIA for the project can take into account the strategic analysis from that earlier assessment.

Coherence in practice

When considering the SEA and EIA Directives in the light of their legislative texts alone, the two Directives are coherent. They seek to address different but complementary objectives at plan/programme or project level, respectively; they identify opportunities for synergies; and they encourage Member States to avoid duplication in assessments. However, the evidence gathered in the supporting evaluation study suggests that implementation issues at national, regional and/or local level can result in overlaps in assessments or failure to achieve synergies. This section reviews the evidence provided by stakeholders through the

⁹³ Judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, ECLI:EU:C:2011:608, paragraphs 60-63.

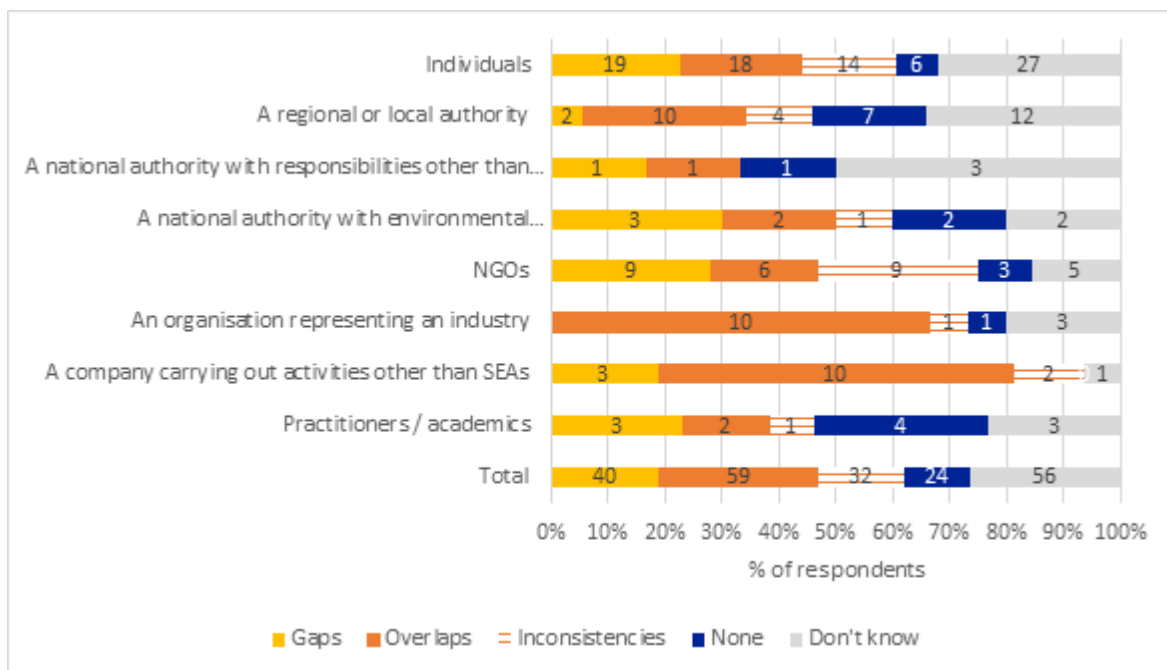
⁹⁴ European Commission, 2013b, *Streamlining environmental assessment procedures for energy infrastructure 'Projects of Common Interest' (PCIs)*, viewed 4 February 2019, http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf

public consultation, targeted consultation questionnaire and interviews in order to evaluate the coherence of SEA and EIA assessments in practice.

In general, stakeholders consider the SEA Directive to be coherent with the EIA Directive.

Figure 5 illustrates the stakeholders' opinion gathered in the public and targeted consultations on the complementarity between the EIA and SEA Directives.

Figure 5: In your opinion, are there any significant gaps, overlaps or inconsistencies between the SEA Directive and Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU (EIA Directive) [Public consultation] (share of total respondents by stakeholder group, n=187; multiple choices possible)



In the targeted consultation questionnaire, 56.6% of respondents reported that the SEA Directive is consistent with and supportive of the EIA Directive. National environmental authorities were in particular agreement with this sentiment (71.4%), while national, regional or local authorities responsible for the preparation of a plan or programme under the Directive were the least likely to agree (31.8%). Around one third of respondents to the public consultation reported that there were overlaps between the SEA and EIA Directives, with 19% finding gaps in the parallel implementation of both pieces of legislation, and 15% finding inconsistencies.

Respondents to the targeted and public consultations suggested that, in practice, there are risks of overlap between assessments under the two Directives. This can arise, for example, where an SEA is required for a plan or programme that contains projects that will subsequently require EIA. As assessments carried out pursuant to the SEA Directive and the EIA Directive differ for several reasons, it is necessary to comply with the requirements of both. Stakeholders were divided on the significance of the risk of duplication, with several mentioning it as a coherence concern, while others reported that duplications can be avoided through coordination between the relevant authorities and developers.

Implementation issues that can potentially cause overlaps between SEA and EIA assessments include national, regional or local approaches to screening plans and programmes for SEA, or project planning, that result in the need for both a SEA and an EIA.

Stakeholders in interviews and in response to the targeted consultation questionnaire reported that Member State legislation on the screening or definition of plans/programmes can sometimes result in duplicate EIA and SEA procedures. Overlaps appear to be a particular issue in spatial planning, as some countries' spatial plans also include projects, thus fall within the scope of both assessments. Again, a number of stakeholders specifically noted that duplication and overlap can be avoided through joint or coordinated procedures at Member State level.

Some interviewees also referred to specific cases where SEAs may be carried out for a document that is titled a 'plan' but which may not necessarily merit an SEA. They also pointed to national legislation that requires EIA for changes to spatial plans over a particular (area) threshold, resulting in both an SEA and an EIA being conducted for the same plan. Similarly, some stakeholders reported that the distinction between the two assessments was unclear or not well understood, potentially leading to overlaps in the scope of assessments. Practitioners in a number of Member States similarly observed that the distinction between EIA and SEA is not always well understood, potentially resulting in overlaps or poor-quality SEAs that miss opportunities to achieve synergies with EIA. Some stakeholders commented that where the distinction between SEA and EIA is not well understood, the SEA and EIA are often essentially the same document.

There are a number of opportunities to achieve synergies between the application of the EIA and SEA Directives in practice. This was an important factor contributing to the effectiveness of the Directive. Experience implementing the Directives has shown that the SEA Directive provides a good mechanism for identifying possible gaps that may appear in assessing 'down-stream' environmental impacts, for example, the cumulative impacts of projects and potential alternatives. The synergies between the two Directives include the use of data in assessments under both SEA and EIA (Article 5(3) SEA Directive and Article 5(1) EIA Directive), and the potential to use a tiered process, under which the SEA provides a strategic framework for projects later subject to EIA. A significant number of stakeholder responses pointed to these synergies, noting that tiering can benefit the EIA process, as the earlier SEA can help to ensure a sound strategic basis for a project. This minimises the distraction of political or strategic issues that are outside the scope of the project and helps the EIA to focus specifically on the environmental impacts at the project level. The SEA can also help to highlight the key environmental issues to be considered in the EIA and generate data for use in project level assessments.

The assessment of effectiveness carried out for this evaluation looks more specifically at the extent to which SEAs have influenced the siting, design and implementation of projects developed on the basis of plans and programmes subjected to SEA. Consultation on this point indicated strong agreement that the SEA Directive is effective in influencing the siting, design and implementation of projects subsequently carried out under assessed plans and programmes⁹⁵.

Some stakeholders have called for the SEA and EIA procedures to be formally merged in order to avoid duplication of the assessments. However, it should be recalled that the two assessments differ for a number of reasons. They apply to different levels of decision making, i.e. plan, programme and project, respectively and the one assessment cannot

⁹⁵ Evaluation study, Section 5.1.2.3.3.

dispense the obligation to carry out the other, according to the CJEU case law⁹⁶. This is why such an option was discarded when revising the EIA Directive⁹⁷.

Others argued that improved guidance for authorities would support better coherence between SEA and EIA assessments.

Stakeholders reported that, in some cases, assessments were well coordinated, even in the absence of a formal coordination mechanism. However, the lack of integration between the assessments – both in the Directives themselves and in practice – was a common theme in stakeholder comments. While stakeholders agreed that the Directives are generally coherent, they believe that improved integration could build synergies between assessments.

In practice, it appears that synergies are often not achieved because data is not used across assessments. In some cases, stakeholders reported that the information needs for SEAs and EIAs are too different to allow information to be reused in subsequent assessments, e.g. because the level of detail required for an EIA is not available in the information provided in an SEA. While some stakeholders reported positive experiences of data-sharing between assessments, others did not, with one practitioner reporting that ‘there is a lot of information, but it is not available to the right people to be reused’. Another reported that SEAs could potentially use the monitoring data from previous EIAs to determine whether the objectives of previous plans were achieved at the project level.

SEA Directive and Habitats Directive

Coherence of legislation

The Habitats Directive requires the assessment of plans and projects which are likely to have an impact on Natura 2000 areas (sites of Community importance and special conservation areas designated under the Habitats Directive as well as special protection areas designated under the Birds Directive). Under Article 6(3), any plan or project likely to have a significant impact on a Natura 2000 area must undergo an appropriate assessment (AA) of its implications for the site. The Member State can only agree to the plan or project if the AA confirms that the plan or project will not adversely affect the integrity of the site⁹⁸.

Plans and programmes subject to AA are also subject to SEA. Article 3(2)(b) of the SEA Directive specifically states that plans and programmes that require an assessment under the Habitats Directive will always require an SEA. This provision applies on its own merits. In Case C-177/11⁹⁹ the CJEU interpreted Article 3(2)(b) of the SEA Directive providing that this article ‘[...] must be interpreted as meaning that the obligation to make a particular plan subject to an environmental assessment depends on the preconditions requiring an assessment under the Habitats Directive, including the condition that the plan may have a significant effect on the site concerned, being met in respect of that plan. The examination

⁹⁶ Judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, ECLI:EU:C:2011:608, Case C-295/10, ECLI:EU:C:2011:608, paragraphs 59-60.

⁹⁷ Commission staff working paper impact assessment accompanying the document proposal for a Directive of the European Parliament and the Council amending Directive 2001/92/EU on the assessment of the effects of certain public and private projects on the environment, Section 10.6.2. Merging the SEA and EIA Directives – Option 3, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012SC0355>

⁹⁸ Under Article 6(4), plans or projects may be permitted despite a negative AA in the case of ‘imperative reasons of overriding public interest’ as defined in the Directive.

⁹⁹ Judgment of 21 June 2012, *Sylogos Ellinon Poleodomon*, C-177/11, ECLI:EU:C:2012:378, paragraph 24.

carried out to determine whether that latter condition is fulfilled is necessary limited to the question as to whether it can be excluded, on the basis of objective information, that that plan or project will have a significant effect on the site concerned’.

The scope of SEA differs from that of AA in three main respects: the trigger for the assessment, the scope of the assessment, and decision-making. The decision to carry out an SEA is made based on the criteria fulfilled due to the nature of the plan or programme itself and the characteristics of the effects and the area to be affected, while the AA is triggered by the likelihood of impacts on a protected site (i.e. a Natura 2000 area). The AA focuses on the conservation objectives of the Natura 2000 site in question, while the SEA must consider all environmental issues, including other relevant plans and programmes, transboundary effects, and cumulative effects. The environmental report of SEA and opinions expressed are to be taken into account in decision making, whereas the conclusion of the AA is binding.

Apart from these differences, there are opportunities for synergies where a plan or programme falls under the application of both the SEA and the AA procedures. For example, the public consultation is a requirement in the SEA Directive, and the public should be given an ‘early and effective opportunity’ to express its opinions on the draft plan or programme and the environmental report (Article 6(2) of the SEA Directive). The public must also have access to the outcome of the screening decision, including reasons for not requiring an SEA (Article 3(7)).

The CJEU has interpreted the application of the SEA Directive to acts that are setting the conservation objectives for Natura 2000 sites. It ruled that, provided such plans/programmes do not concern a particular site for the purposes of Article 6(3) of the Habitats Directive or require an assessment pursuant to Article 3(2)(b) of the SEA Directive, they do not fall under the scope of plans and programmes that are liable to SEA¹⁰⁰.

Coherence in practice

In general, the relatively clear differences in scope between assessments under the SEA Directive and the Habitats Directive mean that these assessments are largely complementary.

Stakeholders appeared to support this conclusion. In the targeted consultation questionnaire, 48 respondents (63.2%) agreed that the SEA Directive is consistent with and supportive of the Habitats Directive. 59 respondents from the national environmental authorities (74.3%) were in particular agreement, while 25 national, regional or local authorities responsible for the preparation of a plan or programme under the Directive were least likely to agree (31.8%). In the public consultation 64 respondents (26%) indicated that the SEA Directive overlapped with the Habitats Directive, 11 (14%) reported gaps in the implementation of the two Directives, and 17% found inconsistencies.

When asked how the SEA supports and is consistent with the Habitats Directive, the responses focused on the limited risk of overlap due to the specific scope of each assessment. The existence of joint SEA-AA procedures at Member State level (or the option in the Directive allowing Member States to adopt such combined procedures) was also frequently cited by stakeholders as evidence of coherence.

¹⁰⁰ Judgment of the Court of 12 June 2019, *Terre wallonne ASBL v Région wallonne*, C-321/18, ECLI:EU:C:2019:484, paragraphs 30-31 and 41-43.

Stakeholders identified four main areas where synergies can be found: common environmental reporting; data-sharing; more efficient and effective public participation; and higher quality assessments. A relatively limited number of stakeholders mentioned the option of conducting joint public consultations for both assessments as a synergy.

A number of stakeholders noted that the existence of two complementary assessment procedures improves the overall quality of assessments. It was noted that the SEA Directive helps integrate broader environmental considerations into AAs required under the Habitats Directive, while the Habitats Directive supports the targeted assessment of impacts on biodiversity in SEA procedures through better availability of data. Coordinated SEA and AA procedures that include joint public participation are likely to trigger stronger interest in the consultation procedure.

Potential synergies between the SEA and AA could be undermined by implementation challenges. For example, in some cases, data from one assessment is not made available for another. This appears to be a problem of coordination among authorities, whereby data is not transferred among authorities.

For example, one practitioner reported that the SEA and AA are carried out by separate authorities, with limited coordination between the two, while another reported overlaps between SEA and AA, with authorities failing to integrate SEA and AA due to concerns about being seen to comply with the Directives.

Summary of the findings for Section 5.4.1. on the coherence of the SEA Directive with the EIA Directive and the Habitats Directive

The **SEA and EIA Directives** have complementary objectives and are coherent.

The evidence shows that there is **room for reinforcing synergies** between the two Directives and that the SEA process can help ensure a better and more strategic basis for projects, for instance through better **coordination among authorities and consistent use of data across assessments where relevant**.

The **SEA and Habitats Directives** are coherent and pursue complementary objectives. There is **potential for enhancing the synergies** between the SEA and AA procedures, particularly in relation to integrated reporting, data-sharing, and public participation.

Joint or coordinated procedures can support these synergies.

To this end the Commission services conclude **that the SEA procedure is coherent with EIA and AA** and all these procedures are complementary and aim to ensure a high level of environmental protection. The existing legal basis allows the results of the procedures to be applied to each other and thus avoid duplication in the overall assessment processes.

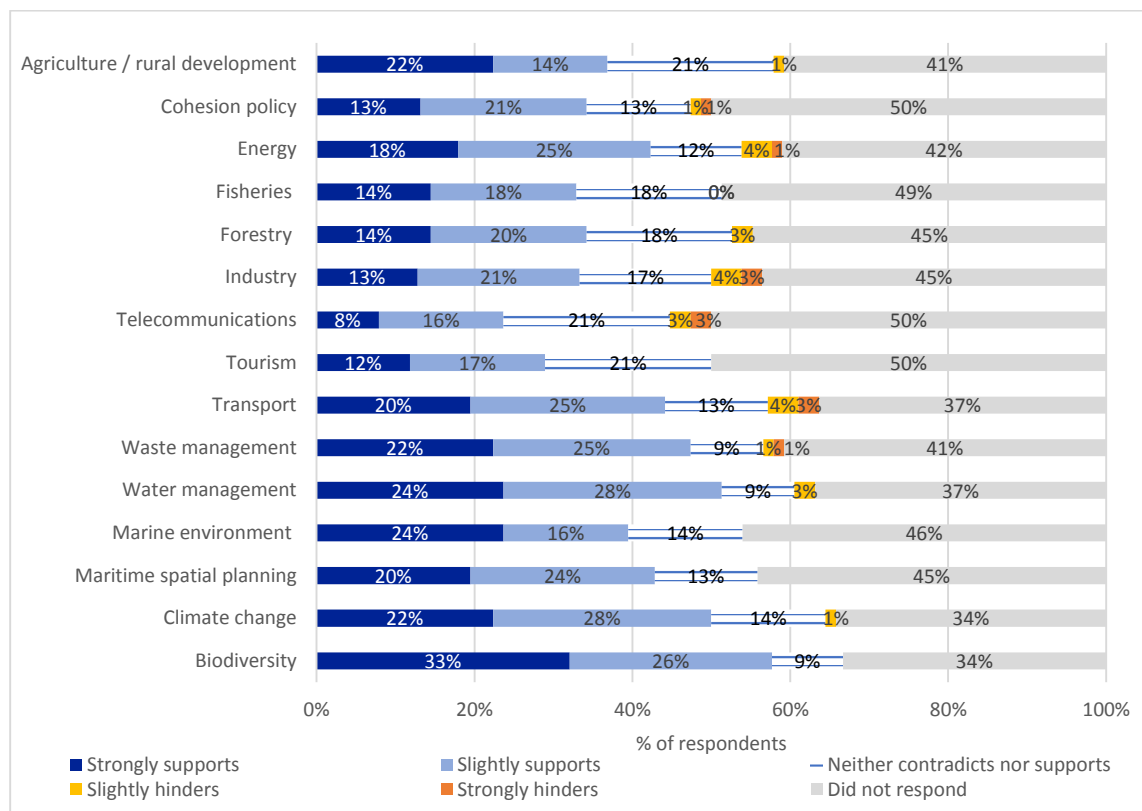
5.4.2. To what extent are sectoral EU policies, such as the cohesion, transport, climate change and energy policies coherent with the SEA Directive?

The assessment of coherence of the SEA Directive objectives with those of other sectoral policies is based on the findings of the evaluation study¹⁰¹ and analysis of EU legislative and policy documents, including any available guidance documents that support the SEA in practice in a specific sector.

¹⁰¹ Evaluation study, Section 5.4.2.

Results from the consultation activities are complemented by desk research, literature reviews and the results of the stakeholder interviews. In the targeted consultation the respondents were asked to score the sectors' relationship with the SEA Directive. Figure 7 presents their responses.

Figure 6: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (share of total respondents, n=76)



The results show that most of the respondents considered that the SEA Directive strongly supports or slightly supports effective implementation of EU legislation in each of the sectors. However, a considerable number did not reply, while others did not have a clear idea, stating that the SEA Directive neither hinders nor supports the effective implementation of EU legislation and policies.

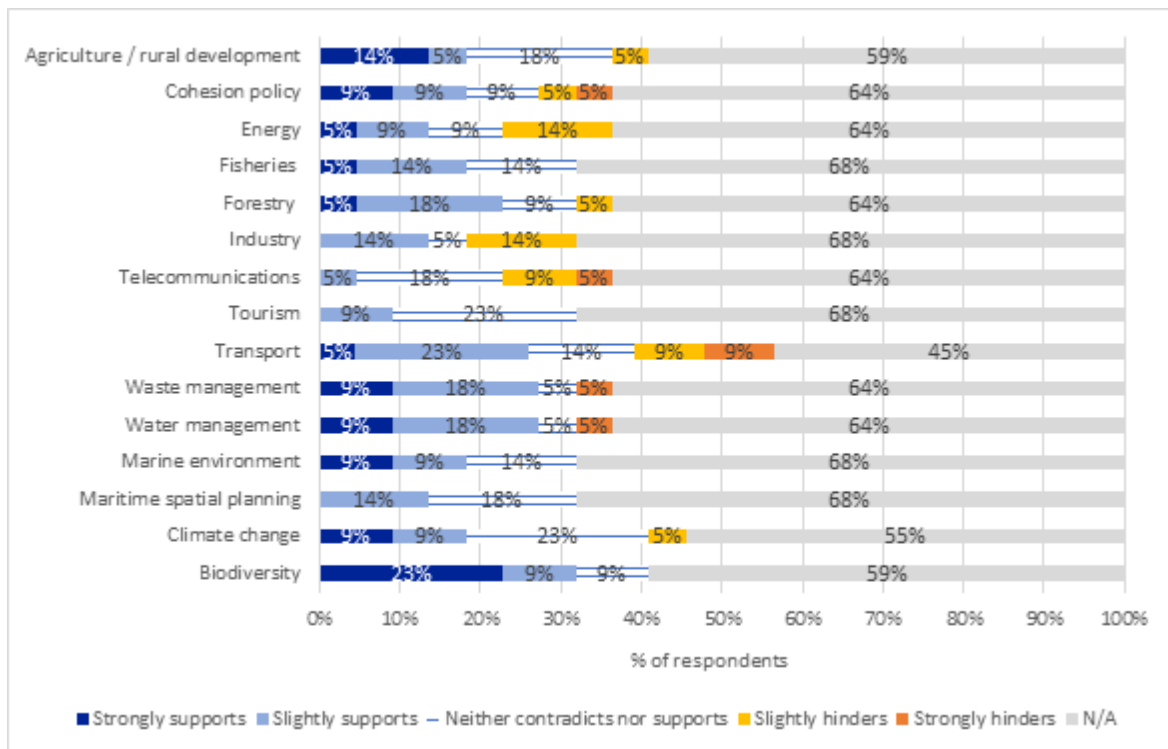
Overall, respondents were more positive for biodiversity, water management and climate change, with the proportion of respondents replying 'strongly supports' and 'slightly supports' above 50%. Respondents were less positive for tourism and telecommunications, for which the proportion of respondents who replied 'strongly supports' and 'slightly supports' is below 40%.

Question 50 of the targeted consultation questionnaire then asked stakeholders to justify their answer for each of the sectors mentioned in the reply to the previous question. Most of the respondents commented generally, stating that SEA supports the achievement of sectoral objectives by contributing to their environmental robustness and sustainability.

Around half of the respondents also specified that the SEA process only helps achieve sectoral objectives if it is carried out in an effective manner. They reiterated the most important factors influencing effectiveness: decision-making culture and awareness of the benefits of SEA, strong coordination between all authorities involved, broad public

participation, evidence-based decision-making and the identification of alternatives. In particular, alternatives are considered a critical component of the SEA process and ensuring that sectoral objectives can be achieved without causing environmental damage. Figure 8 shows the replies from national, regional or local authorities responsible for the preparation of a plan or programme to the same question for each sector.

Figure 7: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (share of replies from national, regional or local authorities responsible for the preparation of a plan or programme n=22)



The proportion of national, regional or local authorities responsible for the preparation of a plan or programme who answered positively (strongly or slightly supports) is much higher – double, in most cases – than those who gave a negative answer. This is valid for all sectors except energy, where positive and negative replies were equal in number. The respondents' explanations, as well as findings from the interviews, confirm a general trend whereby sectoral authorities are becoming more aware and engaged in the SEA process. However, some respondents pointed out that many sectoral authorities still see SEA as a pure formality and administrative burden.

Only five respondents mentioned that SEA has the potential to hinder the achievement of sectoral objectives that may have more impact on the environment, such as cohesion policy, energy and transport. However, three also indicated that those are the sectors for which SEA is most necessary and – ultimately – effective. The main constraint is that SEA lengthens the decision-making process and may delay the adoption of plans and programmes, thus influencing the timely delivery of sectors' objectives. By contrast, the respondents also identified clear synergies between SEA and sectors that incorporate environmental objectives from the onset, such as water, waste, marine, climate, explaining that SEA can improve the functioning of these other sectors by verifying their credibility and the applicability of measures.

These findings were largely confirmed by the 49 interviews carried out. 15 interviewees provided clear and relevant answers to the coherence questions, with most stating that they have not experienced any conflict in applying the SEA Directive to plans and programmes in various sectors. On the contrary, they felt that SEA can improve plans and programmes by identifying possible environmental problems and ways to avoid them. Several interviewees mentioned that SEA can help to avoid conflicts between sectors.

However, four interviewees pointed to the general lack of knowledge of the tool and its usefulness for the authorities responsible for plans and programmes. They reported that it is not only economic sector authorities that view it as a box-ticking exercise, but even those authorities responsible for plans and programmes in the environmental sectors sometimes see SEA as redundant. This points to a significant learning curve involved in understanding its benefits. Two interviewees mentioned that SEA would be more meaningful and more willingly embraced if it focused on contributing to positive effects and identifying synergies between sectoral objectives and the environment, rather than solely on reducing adverse effects.

Finally, question 51 of the targeted consultation questionnaire asked about the availability and usefulness of guidance documents that help in carrying out SEA in a specific sector or policy area. 37 of 76 respondents replied to this question, with the majority agreeing that guidance is really useful, including the European Commission guidance¹⁰². Some respondents suggested that it should be updated based on best practice examples and CJEU case law. Others pointed to the generic nature of other types of guidance documents, which are often only available in English and are not regularly updated.

Specific findings for each sector

Cohesion policy, rural development policy and common fisheries policy

This section examines the application of the SEA to programmes that are developed under the cohesion policy (CP)¹⁰³, rural development policy (RDP) and the common fisheries policy (CFP) ('ESIF programmes') for the current period and the previous one running 2007-2013.

Article 2(a) of the SEA Directive states that it applies to plans and programmes 'including those co-financed by the European Community as well as modifications to them'. Therefore, CP operational programmes, rural development programmes under RDP, and the operational programmes prepared under the CFP are, by definition, subject to an SEA. In many Member States, ESIF programmes are often important strategic planning documents for both economic development and key sectoral policies. Funding is available to directly support the environmental protection measures, but also for activities that may directly affect the environment, such as transport, energy and other infrastructure under CP, and irrigation measures under the RDP. As such, the application of SEA to these large-scale, highly

¹⁰² European Commission, 2004, *Implementation of directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment*, <https://publications.europa.eu/en/publication-detail/-/publication/7c2796c8-2786-4faf-bafd-e7bb93082b16/language-en>.

¹⁰³ The Cohesion Policy is delivered through three main funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF). The RDP is financed by the European Agricultural Fund for Rural Development (EAFRD) and the CFP is financed by the European Maritime and Fisheries Fund (EMFF). For the 2014-2020 programming period, the five funds have been brought together under the label 'European Structural and Investment Funds' (ESIF) and are governed by a single Common Provisions Regulation (CPR), as well as fund-specific regulations.

strategic programmes that govern significant amounts of public investment in many Member States and regions has been an important in implementing the SEA Directive over the past decade.

Over the years, the regulations governing these policies have established specific mechanisms to strengthen the link between CP, RDP and CFP and the SEA Directive. According to Article 8 of the Common Provisions Regulation (CPR) for the 2014-2020 programming period, the objectives of ESIF should be pursued in line with the principles of sustainable development aimed at preserving, protecting and improving the quality of the environment, as set out in Article 11 and Article 191(1) TFEU. This is consistent with the SEA Directive's aim of incorporating environmental considerations into plans or programmes, with a view to promoting sustainable development. For the 2014-2020 period, the link between SEA and the programming process for the ESIF is quite explicit, with SEA firmly established as part of the *ex ante* evaluation. The requirement to fulfil specific *ex ante* conditionality takes this further, addressing the pre-conditions that Member States must meet in order to ensure they have the capacity to carry out the SEAs effectively.

An ***ex ante* assessment** is required by the regulations governing the EU funds under the CP, RDP and CFP. As this *ex ante* assessment could, in theory, overlap with SEA, the legislation governing the funds has evolved to take this into account. The CPR for the 2014-2020 period specifies that *ex ante* evaluations 'shall incorporate' the requirements of the SEA Directive where appropriate¹⁰⁴. Guidance on how to do this is given in three policy-specific guidance documents issued by the Commission to support *ex ante* evaluation in the 2014-2020 period¹⁰⁵. A summary of the main points of this guidance is presented in Box 2 below.

Box 2: Guidance on *ex ante* evaluation and SEA

The guidance document prepared for CP operational programmes 2014-2020 specifies that the SEA must be carried out during the preparation of the programmes and must be completed before their adoption and submission to the Commission. It also points out that aligning the SEA with the process of developing the operational programme and the *ex ante* evaluation will reduce the need to make last-minute amendments to the programme based on the SEA outcomes. The guidance also lists the documents that the programming authority must submit to the Commission (i.e. the non-technical summary, the monitoring measures, information on consultation and a summary of the how environmental considerations and opinions expressed have been taken into account) 'either in a separate document annexed to the *ex ante* evaluation or incorporated in a specific part of the *ex ante* evaluation'.

In view of the lessons learned from the 2007-2013 period, the guidance document for the *ex ante* evaluation of 2014-2020 RDPs provides several recommendations in relation to more effective use of SEA during the *ex ante* evaluation of RDPs. Among these are recommendations to: 'combine SEA with the *ex ante* meetings in order to infuse social and economic considerations; integrate the SEA process (both in timing and administratively) in the programming process, e.g. through a single contract with the *ex ante* evaluation; and

¹⁰⁴ Article 55(4) CPR.

¹⁰⁵ European Commission, 2013, *Monitoring and Evaluation of European Cohesion Policy, Guidance document on ex-ante evaluation*, https://ec.europa.eu/regional_policy/en/information/publications/evaluations-guidance-documents/2013/guidance-document-on-ex-ante-evaluation

introduce public consultation early in the process, reaching out beyond the customary authorities and stakeholders'¹⁰⁶.

The CPR for the 2014-2020 period has reinforced the link with the SEA Directive through ***ex ante* conditionalities**. These are specific conditions to be satisfied by Member States in order to benefit from the funds and were introduced as part of reforms to ensure that all institutional and strategic policy arrangements were in place for effective investment. The conditions also support the implementation of existing EU legislation. The general *ex ante* conditionality number 6 (CPR) requires Member States to demonstrate the existence of 'arrangements for the effective application of Union environmental legislation related to EIA and SEA'¹⁰⁷. More precisely, criteria for fulfilment of this conditionality require the following to be in place:

- arrangements for the effective application of the EIA Directive and SEA Directive;
- arrangements for training and dissemination of information for staff involved in the implementation of the EIA and SEA Directives;
- arrangements to ensure sufficient administrative capacity.

Where an applicable *ex ante* conditionality is not fulfilled when preparing the operational programme or the rural development programme, Member States needed to set out the actions to be taken to ensure the conditionality was fulfilled no later than the end of 2016. They also needed to specify the bodies responsible and a timetable for implementation¹⁰⁸. The Commission's preliminary assessment of the *ex ante* conditionality mechanism (European Commission, 2017b) showed that such mechanisms triggered structural changes and policy reforms in the Member States and addressed a number of deficiencies in the transposition of EU legislation¹⁰⁹.

Another *ex ante* conditionality related to SEA was introduced for investment priorities under the transport sector¹¹⁰. This is discussed in the section on 'Energy and transport policies' below.

Coherence in practice

The results of the targeted consultation show that almost 40% of respondents considered that SEA supports (strongly or slightly) the effective implementation of the three policies (26 CP, 28 RDP and 25 CFP, out of 76 respondents). Only three respondents replied that SEA slightly hindered implementation of these policies (two for CP, one for RDP). The majority of respondents did not reply (50% CP, 49% CFP and 41% agriculture and rural development) or considered SEA to neither contradict nor support the effective implementation of EU legislation and policies in these sectors.

¹⁰⁶ European Evaluation Network for Rural Development, 2014, *Getting the most from your RDP, Guidelines for the ex ante evaluation of 2014-2020 RDPs*,

https://ec.europa.eu/agriculture/sites/agriculture/files/evaluation/guidelines/2014-2020-ex-ante_en.pdf

¹⁰⁷ Annex XI Part II CPR.

¹⁰⁸ European Commission, 2014, *Internal Guidance on Ex Ante Conditionalities for the European Structural and Investment Funds (Parts I and II)*, viewed 4 February 2019, https://ec.europa.eu/regional_policy/en/information/legislation/guidance/

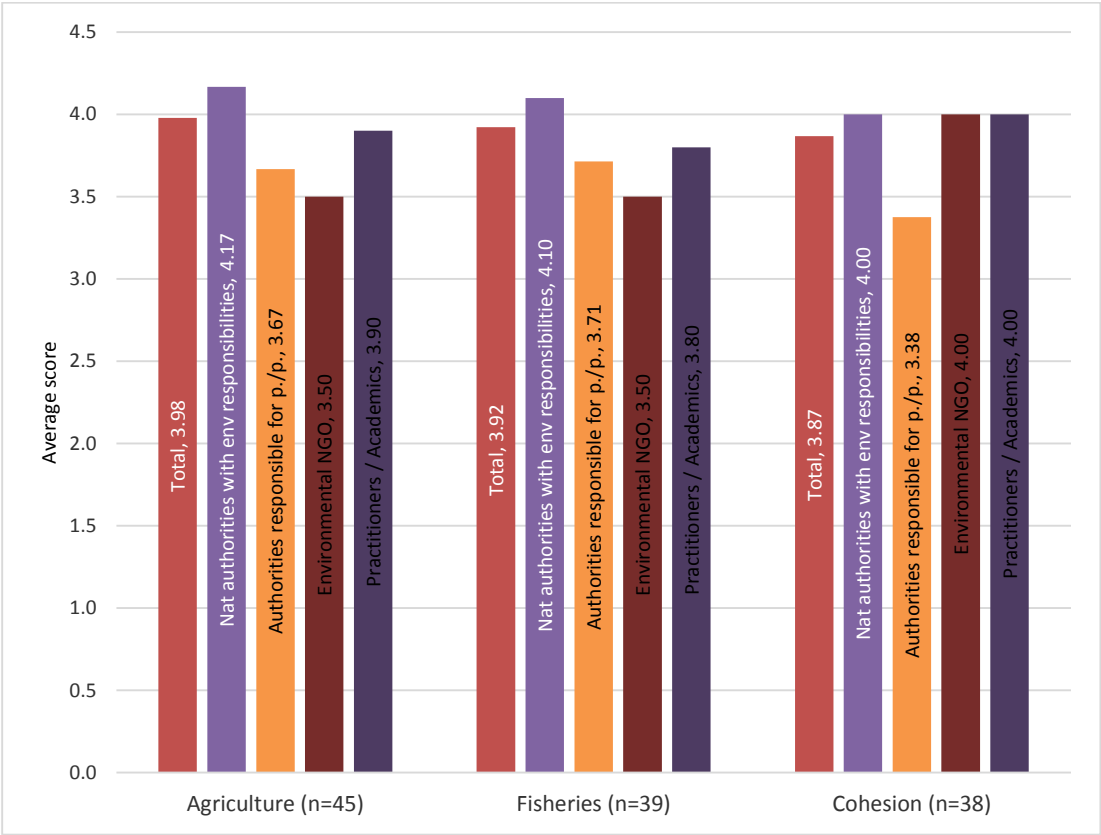
¹⁰⁹ European Commission, 2017b, *Commission Staff Working Document, The value added of ex ante conditionalities in the European Structural and Investment Funds*, SWD(2017) 127 final, 31 March 2017, https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/value_added_exac_esif_en.pdf

¹¹⁰ Part I of Regulation (EU) No 1303/2013 of the European Parliament and the Council of 17 December 2013 laying down common provisions on the ERDF, the ESF, the CF, the EARFD and the EMFF and laying down general provisions on the ERDF, the ESF, the CF and the EMFF and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320.

The results of the public consultation confirm these findings, with similar proportions of positive and negative replies. the exception was the fisheries sector, for which the proportion of respondents who replied ‘strongly supports’ and ‘slightly supports’ was below 40%.

The average scores of the targeted consultation by type of response (see Figure 9) for all three sectors show that national authorities with environmental responsibilities and SEA experts were most likely to state that SEA supports sectoral objectives, while authorities responsible for the preparation of plans and programmes held more negative views.

Figure 8: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (average score by stakeholder group for CP, Agriculture and Fisheries: Strongly hinders: 1; slightly hinders: 2; Neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)



The findings of the consultation are supported by the literature, which confirms that the SEA process can play an important role in supporting the implementation of these sectoral EU policies, if carried out in an effective way. The evaluation study provides a comprehensive overview of the literature discussion on the topic¹¹¹. The study also identified some cases where SEA helped to highlight important environmental issues and to develop indicators and project selection criteria that promote and encourage more environmentally sound projects. Some examples are presented in Box 3.

Box 3: Examples of good practice

- In Poland, the relevant authorities introduced energy efficiency as a horizontal principle in all operational programmes for 2007-2013 and this was subsequently

¹¹¹ Evaluation study, Section 5.4.2.3.2.

reflected in the project selection criteria.

- In Finland, the impact categories of the regional operational programme for Southern Finland have been adapted to better suit the relevant issues in the operational programme as well as the aims of the EU Sustainable Development Strategy. Project applicants use SEA to assess the environmental impacts of project proposals during the project application stage. The managing authority must also consider the SEA and its impact categories when assessing individual projects.
- The SEA of the operational programme for Central Baltic INTERREG IVA specifically includes guidelines for project selection criteria.

Energy and transport policies

EU energy and transport policies have the potential to have a significant impact on the environment, and under Article 3(2) of the SEA Directive all plans and programmes in both these sectors require SEA.

Since 2013, the Trans-European Networks for Energy (TEN-E) strategy has paved the way for the construction of ‘projects of common interest’, which are key cross-border infrastructure projects that link the energy systems of EU countries. Article 7 of the TEN-E Regulation¹¹² specifically requires Member States to take measures to ‘streamline’ all environmental assessment procedures stemming from EU legislation, with the aim of improving efficiency and reducing the time required when preparing their national energy policies and plans. This includes SEA. In line with the requirements of the TEN-E Regulation, in 2013 the Commission issued guidance to Member States on how to ensure streamlining¹¹³. The guidance promotes early SEA of strategic-level energy plans and recommends that SEAs are made mandatory at the planning stage for national energy plans (e.g. network development plans submitted by transmission system operators and approved by the competent authorities, in accordance with the Directive on common rules for the internal market in electricity and natural gas). According to the Commission’s guidance, the application of SEA to these grid development plans enables the early assessment of the environmental suitability of different types of energy sources, as well as different locations for energy projects. It encourages a more integrated and efficient approach to territorial planning, with environmental considerations taken into account much earlier in the planning process and at a more strategic level.

In the transport sector, for the Trans-European Transport Networks (TEN-T) projects co-funded by the Cohesion Fund, a thematic *ex ante* conditionality was introduced as a precondition to benefiting from the EU funding. With the aim of supporting sustainable transport and removing bottlenecks in key network infrastructure, the thematic *ex ante* conditionality¹¹⁴ requires Member States to establish a comprehensive transport plan(s) or framework(s) for transport investment, including in public transport at regional and local level, which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks. One of the criteria for fulfilment of the *ex ante* conditionality is that the plan or framework and its specific sections on rail and waterborne transport comply with the legal requirements for SEA. To support national authorities in

¹¹² Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

¹¹³ European Commission, 2013, *Streamlining environmental assessment procedures for energy infrastructure 'Projects of Common Interest' (PCIs)*, http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf

¹¹⁴ Thematic *ex ante* conditionality 7 in Part 1 of Annex XI to the CPR.

setting their comprehensive transport plan, JASPERS¹¹⁵ prepared a guidance document, providing methodological support in the development of the transport plan. A section of the guidance is dedicated to SEA, describing the main elements of the SEA process and providing some recommendations, although not going into detail on the practical implementation of the SEA process or good practices that would ensure the quality of the SEA.

Just over 40% of respondents to the targeted consultation questionnaire (33 for energy and 34 for transport, out of 76) believe that the SEA Directive supports the effective implementation of EU legislation and policy in the transport and energy sectors. Here, again, a large number of respondents did not reply to the question (42% for energy and 37% for transport) or considered SEA to neither contradict nor support the effective implementation of EU legislation and policies in these sectors. More positive results were evident in the open public consultation, with more than 50% of respondents (106 (energy) and 104 (transport), out of 187) believing that the SEA Directive supports the effective implementation of EU energy legislation and policies.

When asked to justify their answers, many respondents to the targeted consultation questionnaire explained that SEA had led to greater environmental emphasis and analysis in energy and transport plans and programmes. This was reiterated by several interviewees, who underlined how SEA can help to reduce the conflict between different policies (e.g. energy vs. water/air; transport vs. soil/landscape/ecological networks) by ensuring that environmental considerations are fully factored in. SEA thus constitutes an important basis for decision-making at strategic level in these two sectors.

The interviewees saw the greatest benefit in the possibility to identify and consider alternatives at the strategic level, as well as in the structured involvement of the public. Evidence from consultation suggests that these benefits are not achieved if SEA is not carried out in an effective manner, something which is heavily dependent on the political culture within the planning authorities and national priority settings. Some planning authorities highlighted that SEA can sometimes slow down the planning process, but they also acknowledged that the costs of such delays are counterbalanced by the benefits of the SEA in the longer term. The study supporting this evaluation illustrates examples of the benefits of SEA in the energy and transport sector (see Box 4)¹¹⁶.

Box 4: Examples of the benefits of SEA in the energy and transport sector

- The Dutch environmental authority stated that SEA supports the need to consider alternative locations and take decisions in a well-founded way, for example when developing wind turbines at sea.
- A practitioner from Poland presented the example of the Polish programme of nuclear energy, which was substantially modified as a result of public consultation and comments received (including from NGOs) during the environmental assessment process.
- A representative of the Czech government stated that SEA influenced the final content of transport infrastructure plans and programmes because more alternatives were examined (e.g. roads, tunnels, rail).

¹¹⁵ JASPERS, Joint Assistance to Support Projects in European Regions, is a technical assistance partnership between three partners (European Commission, the European Investment Bank and the European Bank for Reconstruction and Development) which provides independent advice to beneficiary countries to help prepare high quality major projects to be co-financed by two ESIF (ERDF and the Cohesion Fund), <http://jaspers.eib.org/>.

¹¹⁶ Evaluation study, Section 5.4.2.3.2.

Water, waste and marine policies

A number of environmental Directives at EU level are designed to protect and preserve the environment and promote sustainable development in different sectors. Of these, the Directives regulating water, waste, and marine policies all require the preparation of plans and programmes that may be subject to the SEA Directive.

The SEA Directive is explicitly referenced in some of the relevant directives, for example the Maritime Spatial Planning Directive. However, other directives, such as the Floods Directive, define the relationship differently, i.e. that the flood-related measures taken under the SEA Directive should be included in the flood risk management plans. In any event, all river basin management plans, programmes of measures, waste management plans and maritime spatial plans (MSP) have to be examined to check whether they fulfil all four criteria of the SEA Directive and are thus liable to SEA.

The majority of respondents to the public consultation consider that the SEA supports (either strongly or slightly) the objectives of both water and waste management. The response for MSP was less positive, largely because many respondents replied ‘don’t know’. This is understandable, given that the Directive is new and that it is less likely to affect the general population. Overall, very few respondents believe the SEA hinders the effective implementation of EU legislation and policy in water, waste and the marine environment. While many respondents mentioned how the SEA has had a positive impact on plans or programmes, very few gave practical examples when asked to justify their answer.

The analysis of respondents’ replies to the open questions showed that stakeholders tend to agree that SEA enhances environmental integration in these sectors’ plans and programmes. They also agreed it helps to provide a systematic way to identify wider environmental effects and alternatives, and organise consultations with the public, authorities, and neighbouring countries. Several respondents to the consultations mentioned the importance of alternatives in waste plans, including alternatives being defined for landfills and incinerators, and the importance of improving the efficiency of existing waste disposal plants. On the other hand, another respondent noted that since waste plans are renewed multiple times, there is little room to introduce alternatives by the time the plan has been through several iterations.

The Water, Waste and Marine Framework Directives all require some form of consultation, usually with ‘interested parties’. The Water Framework Directive, for example, sets out very specific requirements for consultations, including timeframes. However, only the Waste Framework and MSP Directives specifically mention consultations with other (relevant) authorities. The SEA Directive, on the other hand, requires consultations with authorities likely to be concerned by the environmental effects of plans or programmes. Comments from public consultation and the targeted consultation questionnaire highlighted how requiring an SEA helps the relevant authorities, including those from different sectors, give input at an early stage of the decision-making process, either through carrying out consultations with authorities who would not otherwise have been considered, or by providing further definition of ‘relevant authorities’. Several interviewees confirmed that undertaking an SEA facilitated greater cooperation between the planning authority and the SEA competent authority, resulting in a better plan or programme.

The Water, Waste and Marine Framework Directives include specific provisions to undertake the necessary cooperation with other Member States, and it has been noted¹¹⁷ that this may cause overlap with the requirements of the SEA Directive. In view of such overlap, the MSP platform recommends that the two processes be coordinated in order to make effective use of stakeholder resources, given the consultations carried out under MSP, SEA, MSFD, etc. The study supporting this evaluation illustrates examples of benefits of SEA in waste management planning¹¹⁸.

Climate change policy

Climate change is a cross-cutting issue that influences key natural and human living conditions. The climate change policy sector is not mentioned among the list of sectors whose plans and programmes should be subject to SEA (Article 3(2)). However, climate change issues are more frequently integrated within energy plans and programmes that are likely to have significant environmental effects and are thus subject to SEA. More broadly, the Directive considers climate change a horizontal issue that must be considered in all types of plans and programmes that undergo an SEA. Under Annex I(f) the authorities are required to assess the likely significant effects of their plans and programmes on a number of environmental issues, including climatic factors and the interrelationship between the factors. These effects should include secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary, positive and negative effects.

Literature has shown that in the years immediately following the adoption of the SEA Directive, SEA was used to consider climate change solely in the context of the geographical area covered by the plan being assessed, rather than considering the global implications of the resulting emissions¹¹⁹. At the same time, practitioners and planning authorities struggled to consider how projected changes in climate would impact the plan or programme, due to the complexity and uncertainty of such impacts in the long term.

The Irish European Protection Agency¹²⁰ recognises SEA as the most flexible instrument available internationally that is capable of integrating climate policy. In recent years, particular attention has been paid to SEA as a tool to promote the inclusion of suitable actions for adapting to climate change in the planning process, and as a tool to highlight possible adaptation conflicts with other existing regional/national plans and programmes. The literature overview presented in the study supporting this evaluation shows that SEA can help to ensure that plans and programmes take full account of climate change issues.

Summary of the findings for Section 5.4.2. on coherence of the SEA Directive sectoral EU policies such as cohesion, transport, energy and climate change

The **SEA Directive** plays an important role in the effective implementation of certain EU sectoral policies and legislation.

Overall, literature and the stakeholders held a positive view of **sectoral coherence in**

¹¹⁷ <https://www.msp-platform.eu/faq/strategic-environmental-assessment-sea>

¹¹⁸ Evaluation study, Section 5.4.2.3.2.

¹¹⁹ Wende, W., Bond, A., Bobylev, N., & Stratmann, L., 'Climate change mitigation and adaptation in strategic environmental assessment', *Environmental Impact Assessment Review* 32(1), pp. 88-93.

¹²⁰ Environmental Protection Agency (Ireland), 2015, *Integrating Climate Change into Strategic Environmental Assessment in Ireland, A Guidance Note*, <http://www.epa.ie/pubs/advice/ea/Climate-Change-SEA-Ireland-Guide-Note.pdf>

practice, although some problems arise in implementation. Evidence from literature and the consultations shows that the SEA can support sectoral objectives if it is carried out in an effective manner. In particular, **alternatives are considered as a critical component of the SEA process because they ensure that sectors' objectives can be achieved** without causing environmental damage.

The evidence shows that the SEA supports EU policies and legislation in the fields of biodiversity, water management and climate change.

As regards the cohesion, rural development and common fisheries policies, which have high-level objectives that are in line with those of the SEA Directive, the Directive has become an intrinsic part of the *ex ante* evaluation carried out prior to the adoption of plans and/or programmes that are prepared under these policies.

Concerning energy and transport policies, many stakeholders underlined how SEA can help to reduce the conflict between different policies and bring benefits, for example by identifying alternatives at the strategic level and involving the public. SEA thus constitutes an important basis for decision-making at strategic level in these two sectors.

5.4.3. *To what extent is the intervention coherent with EU international obligations?*

To properly understand the coherence of the SEA Directive with EU international obligations this section discusses in particular the obligations stemming from the United Nations Economic Commission for Europe (UNECE) Protocol on Strategic Environmental Assessment (SEA Protocol) and the UNECE Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The evaluation has found that the **SEA Directive is broadly coherent with the SEA Protocol and the Aarhus Convention, although there are some gaps and inconsistencies.** Like the SEA Directive, the SEA Protocol and the Aarhus Convention provide for a system of procedural guarantees aiming at a high level of environmental protection. They are thus, overall, coherent with one another at the level of objectives. The SEA Protocol was drafted after the adoption of the SEA Directive in 2001 and is based on the Directive, thus some provisions are very similar. There are, however, a number of differences in the procedural provisions of the two legal instruments.

An important difference between the Protocol and the Directive, and one which may affect their coherence and the ways in which Member States apply SEA requirements, relates to their scope of application. While the **SEA Directive specifically refers to plans and programmes and does not mention policies and legislation, the SEA Protocol differentiates between plans and programmes and policies and legislation**, without providing a clear definition. However, policy and legislation are excluded in the text of the Protocol from formal SEA requirements and should be subject to SEA only 'to the extent appropriate', leaving considerable discretion to Member States in their application. Consultations carried out for this evaluation found that some national authorities are concerned that the outcome of recent CJEU judgments discussed in previous sections of this document might expand the application of the SEA Directive to a broader range of documents, including those considered to be policies and legislation. Instead, they suggested that the SEA Directive should align with the SEA Protocol's scope of application.

Article 9(3) of the Aarhus Convention provides for access to justice in environmental matters. The SEA Directive does not contain specific provisions on access to justice concerning plans and programmes relating to the environment. Nevertheless, the position of

the Commission and CJEU case law maintain that access to administrative and/or judicial review procedures is to be ensured for plans and programmes related to the environment. However, there is currently limited evidence on the degree to which this access is practically available across the Member States.

Respondents to the public consultation were asked whether they felt there were procedures available to allow for judicial or other impartial means of review of an SEA procedure, or of plans and programmes that have been subject to SEA. In both cases, respondents were divided on the issue, with NGOs considerably more likely to reply negatively. Figure 9 and Figure 10 below present the results of the public consultation questionnaire addressing the possibility to review the SEA procedure and the respective plans/programmes before a court or other independent and impartial body established by law.

Figure 9: To what extent do you agree or disagree with the following statement: there are procedures in place that allow an SEA procedure to be subject to a review before a court of law or other independent and impartial body established by law [Public consultation] (share of total respondents by stakeholder group, n=187)

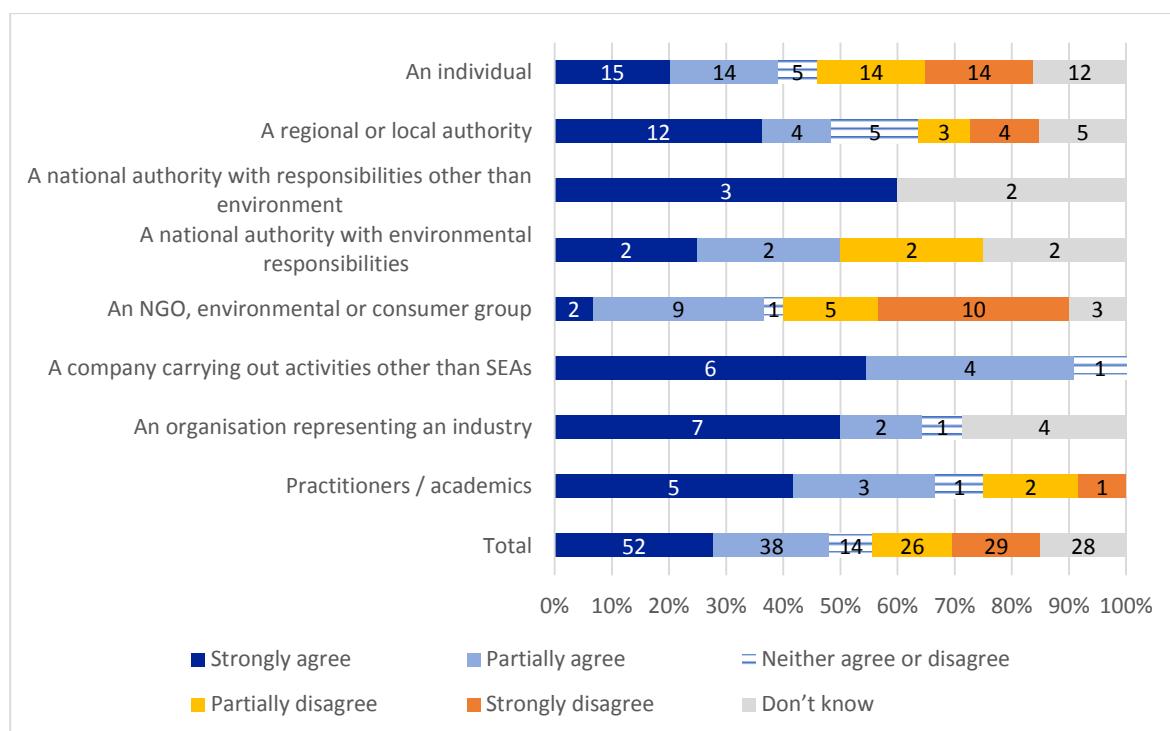
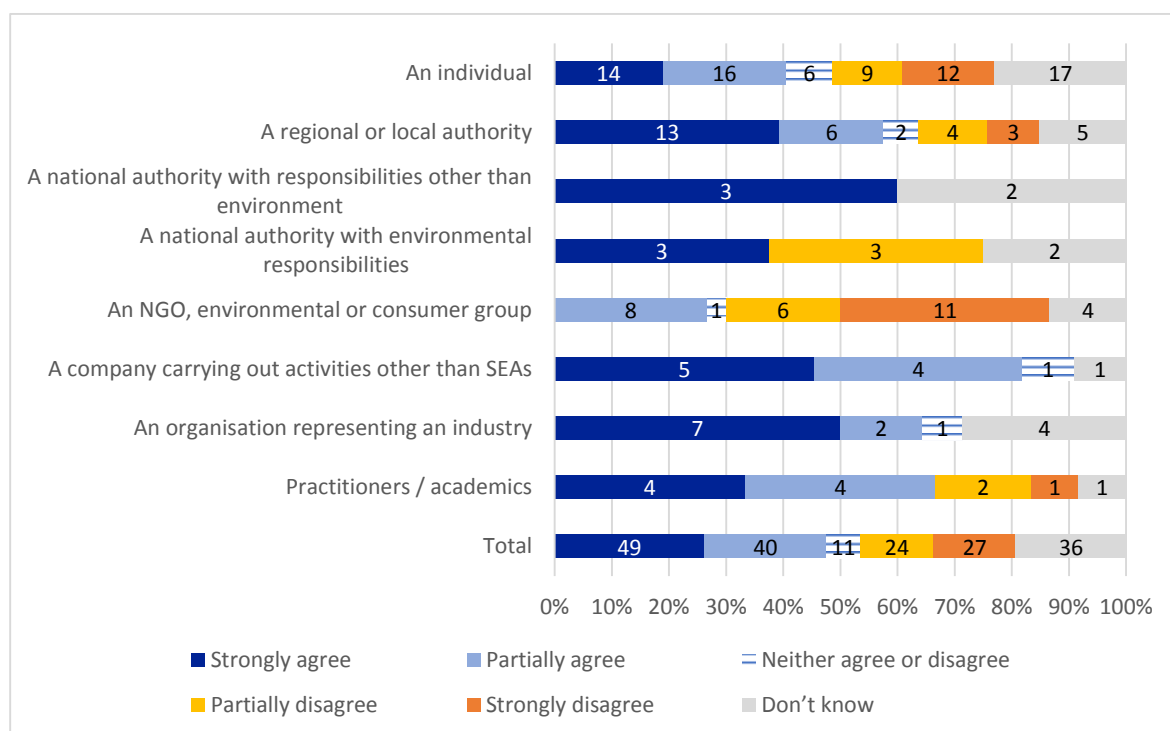


Figure 10: To what extent do you agree or disagree with the following statement: there are procedures in place that allow plans that have been subject to SEA procedure to be subject to a review procedure before a court of law or other independent and impartial body established by law [Public consultation] (share of total respondents by stakeholder group, n=187)



Overall, the majority of the respondents to the targeted consultation questionnaire believe that the SEA Directive is consistent with and supports the SEA Protocol and the Aarhus Convention. Again, it should be noted that around one third of respondents did not provide an answer to these questions.

Around 19% of respondents believed there to be some gaps, overlaps and inconsistencies, but only one (an academic expert) provided an explanation, stating that the main inconsistencies between the SEA Protocol and the SEA Directive relate to the scope of application and the consideration of policies in addition to plans and programmes under the SEA Protocol. The expert mentioned that the main gap between the SEA Directive and the Aarhus Convention is the absence of provisions to ensure access to justice in the SEA Directive. This point was also raised during the evaluation workshop, with one panellist suggesting that the relationship between the SEA Directive and the Aarhus Convention needs to be improved in the area of access to justice.

Finally, some of the respondents to the targeted consultation questionnaire outlined national authorities' concerns that the outcome of recent CJEU judgments (especially case C-290/15) might expand the application of the SEA Directive to a broader range of documents, including those considered to be policies and legislation. They suggested that the SEA Directive should align with the SEA Protocol wording 'to the extent appropriate' (see Article 13 of the Protocol on 'Policies and legislation') so that it also applies to policies and legislations. This argument was also made in the discussion paper of the ad hoc working

group published in September 2018¹²¹. By contrast, some interviewees commented that, in line with the recommendations in the European Commission guidance document on SEA, Member States should not make a plan or a programme subject to a SEA only because the word ‘plan or programme’ appears in its title, because it does not necessarily cause any likely significant negative effect on the environment. They believed that the Directive allows sufficient flexibility to deal with ambiguous cases. In addition, the SEA Protocol recognises the importance of SEA for policies, even with light wording. Hence, and as mentioned also by other respondents, the SEA is relevant also for policies.

One interviewee confirmed that some inconsistencies exist between the SEA Directive and the SEA Protocol, especially with regard to the definitions of ‘plan’ and ‘strategy’, and the involvement of the health authorities. However, the interviewee also pointed out that such inconsistencies do not create problems in the implementation of the Directive (e.g. health authorities are involved in the SEA process even if they are not clearly mentioned in the text of the Directive).

Summary of the findings for Section 5.4.3. on coherence of the SEA Directive with EU international obligations

The **SEA Directive** is broadly coherent with the SEA Protocol and the Aarhus Convention.

While the SEA Directive specifically refers to plans and programmes and does not mention policies and legislation, the SEA Protocol differentiates between plans and programmes and policies and legislation, without providing a clear definition.

Compared to the SEA Directive and the SEA Protocol, **the Aarhus Convention** has more detailed provisions on public participation. The SEA Directive does not contain specific provisions on access to justice concerning plans and programmes relating to the environment. Nonetheless, the access to administrative and/or judicial review procedures should be ensured for such plans and programmes.

5.5. EU added value

This section looks at **challenges that can reasonably be attributed to EU intervention rather than to other factors** (i.e. results of interventions initiated at regional or national levels by public authorities or other stakeholders), whether there is a need for continued EU action and the consequences of not having the Directive.

5.5.1. What has been the added value of the SEA Directive compared to what could be achieved by Member States at national and/or regional levels, and to what extent do the issues addressed by the Directive continue to require action at EU level?

The likely situation without the SEA Directive

The 2016 SEA study showed that prior to the development of the SEA Directive, some Member States already considered environmental issues in the preparation of plans and programmes. These preceding legal arrangements in the Member States addressed only certain areas, such as transport. In addition to the overall deficiencies discussed above, there were considerable differences between the stage at which Member States developed their environmental assessment systems for plans and programmes. A briefing document by the

¹²¹ Ad Hoc Working Group Discussion Paper: <https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/d7e4ef55-21a8-4491-b132-045466320cae/details>

European Environment Agency¹²² found that a number of Member States had a legislative framework requiring systematic SEAs of plans and programmes, at least in the area of transport.

Although a number of Member States considered environmental issues in the preparation of plans and programmes before the SEA Directive was adopted, the Directive can be considered to have added value by providing a systematic procedure applicable to all relevant plans and programmes, and by including a series of mandatory procedural steps, such as the assessment of alternatives and public participation. The targeted consultation showed that stakeholders believed there would probably have been some assessment of environmental impacts without the Directive because it would have been required under international obligations and/or national legislation or other EU legislation (e.g. planning and monitoring requirements under the Water Framework Directive, or requirements under the Habitats Directive).

The likely situation without the SEA Directive in the EU legal order is the continuous fulfilment of the subsidiarity principle. The SEA policy's objective of helping to integrate environmental considerations into the preparation of plans and programmes in order to promote sustainable development cannot be sufficiently achieved by the Member States, and continuous EU action will better ensure the attainment of these objectives. The stakeholders acknowledged that a thorough SEA procedure, including all procedural steps, would not be carried out either systematically or for all types of plans and programmes had the Directive not been adopted. As a result, environmental impacts would not be considered as early in the process and there would be significant discrepancies across Member States, and even within a single Member State. In particular, the horizontal approach and broad scope of the Directive would be lost, as the Birds and Habitats Directives only cover biodiversity and not the broad scope of environmental impacts included in Annex I to the SEA Directive. Therefore we can conclude that the SEA Directive complies with the subsidiarity principle.

The European Union has been a party to the Protocol on Strategic Environmental Assessment (SEA Protocol) under the Espoo Convention since 12 November 2008. The objective of the Protocol is to provide for a high level of protection of the environment, ensuring that environmental considerations are thoroughly taken into account in the development of plans and programmes. The SEA Directive and the SEA Protocol are very similar. The EU is acting under the SEA Protocol, using its competence under the founding EU Treaties.

Added value of EU legislation vs. different approaches at national level

The SEA Directive has an added value because it provides a consistent framework governing the practice of SEA in all Member States. Evidence from the consultation activities shows that having the same legislation in all Member States facilitates the consideration of transboundary issues, as all parties have a shared understanding of the requirements and processes¹²³. It also facilitates transboundary consultation and ensures that transboundary issues are systematically taken into account. Stakeholders also reported benefits from sharing good practices and knowledge, as it is easier to transfer experience in one Member State to another. This provides a level playing field, increases public awareness and helps resolve conflicts in respect of the environmental impacts of development.

¹²² European Environment Agency, 2001. Implementation of strategic environmental assessment (SEA) in the transport sector.

¹²³ Evaluation study, Section 3.5.3.

Summary of the findings for Section 5.5.1. on the added value of the SEA Directive and the extent to which the issues addressed by the Directive continue to require action at EU level

The SEA Directive has helped establish a **systematic approach to assessing the environmental impacts of plans and programmes**. It is unlikely that a systematic approach of the sort established through the Directive would have been put in place in all Member States without the adoption of the Directive.

The Directive has led to **more transparent and participatory decision-making**.

The Directive has **contributed to attaining the objectives set in other EU and international instruments**.

Evidence shows that applying the Directive in all Member States has **facilitated the consideration of transboundary issues**.

6. CONCLUSIONS

The evaluation looks at whether the SEA Directive delivers its intended benefits 15 years after it entered into force. This assessment is based on the significant experience gained by a range of stakeholders, including sectoral, environmental and local/regional authorities, as well as external practitioners, but it is limited by the lack of data on its costs and benefits.

The evaluation was carried out using the five standard evaluation criteria (effectiveness, efficiency, relevance, coherence and EU added value). It has established the following findings:

The SEA Directive performs effectively. The evidence shows that it has helped achieve a high level of protection of the environment and that this continues to be a valid objective. The SEA Directive can affect the planning and decision-making process and influence the content of plans and programmes, as well as the siting, design and implementation of projects developed under those plans and programmes. Consultation with the environmental authorities and the public, the process of gathering environmental data and the technical knowledge and experience of the environmental authorities all contribute to attaining the main objective of the Directive, i.e. ensuring a high level of protection of the environment. All these foster a meaningful decision-making process and a sense of an ownership of the SEA processes and the plan or programme subject to assessment.

The degree of influence of the SEA Directive depends on the type of plan or programme and the decision-making level (national, local, regional). However, the evidence shows that there are also some factors that hinder the effectiveness of the SEA Directive. First and foremost, the lack of a clear definition of the terms ‘plans and programmes’ and other (political, economic, or social) interests mean hinder the full potential of the SEA to influence the final decisions taken. This affects the consideration and the assessment of alternatives, both of which are important in ensuring the effectiveness of the SEA Directive. The evaluation also revealed that the SEA process is more effective when it is carried out at strategic levels in early planning stages when there is still room to influence decision-making and better integrate any environmental concerns. Second, the monitoring arrangements are often inadequate and this limits the effectiveness of the SEA in contributing to its main objective.

The evaluation has shown that the SEA meets the criterion of efficiency. Some stakeholders noted that the level of complexity and the scale of the plan or programme can influence the SEA costs. The results of the evaluation do not allow a thorough understanding of the relevant costs applied to the application of the SEA Directive. The available data and evidence gathered for the sake of this evaluation do not show that the SEA Directive poses

excessive and disproportionate burden, in terms of administrative and implementation arrangements. A number of national authorities expressed concerns about the impact of the CJEU case law and the potential broadening of the interpretation of the terms ‘plans and programmes’. However, at this stage there is no data or evidence to back up these concerns on excessive administrative burden on the competent authorities. Moreover, **there is consensus among stakeholders that in principle the SEA costs are reasonable and that the benefits of carrying out a SEA outweigh the costs.**

The evaluation has found that the SEA Directive is still very relevant to promoting and delivering a high level of protection of the environment and sustainable development. Furthermore, the SEA still has the capacity to continue to do so in the future. This is due, due to its flexible character allowing its application to a wide set of areas, such as climate change and ecosystem services. The flexibility of the Directive lies in providing a framework for the assessment procedure, which enables the adoption of new methods or models, and the Directive’s application to any new types of plans or programmes. Moreover, the evaluation showed that the implementation of the SEA Directive has largely kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development. Citizen participation is a key means of ensuring social acceptance for strategic decisions.

The scope of SEA application reportedly varies between policy areas and governance levels. SEA appears to facilitate increased consideration of broad cross-sectoral issues, going beyond typical sectoral environmental issues and policies. This is largely because of its holistic approach and interactions with other relevant plans, programmes and policies.

The evaluation demonstrated that the SEA Directive is largely coherent with other relevant environmental legislation and sectoral policies, as well as EU international obligations. In particular, evidence confirms that the SEA process complements the other environmental assessment policies (EIA and AA), helps achieve sectoral objectives, makes plans and programmes more environmentally robust and sustainable, and works well as an instrument to implement the SEA Protocol and the Aarhus Convention. In addition, the SEA Directive plays an important role in the implementation of certain EU sectoral policies, in particular those that require the preparation of plans and/or programmes that may impact the environment (i.e. directives regulating water, waste, and marine policies). The overall objectives of these policies – protecting and preserving the environment and promoting sustainable development – show that they are coherent with the objectives of the SEA Directive. Lastly, the SEA supports EU policies and legislation in the fields of biodiversity and climate change.

More specifically, the ongoing preparation of guidance on climate proofing of infrastructure for e.g. InvestEU and Connecting Europe Facility (CEF) in the period 2021-2027 clearly shows the important role of SEA in relation to climate proofing investments. In relation to the mitigation of climate change, i.e. reducing greenhouse gas emissions, the SEA can provide an important framework to ensure that infrastructure investments projects are aligned with the goals of the Paris Agreement and compatible with having a place in the transition to net zero greenhouse gas emissions by 2050 and climate neutrality. In relation to the adaptation to climate change, i.e. ensuring an adequate level of resilience to the impacts of climate change, the SEA can provide an important framework for the *climate vulnerability and risk assessment* and the identification and implementation of relevant adaptation measures. For both mitigation and adaptation, the SEA can play an important role in ensuring the principle of ‘do no significant harm’ to environmental and climate objectives as derived from sustainable finance and the EU taxonomy. The SEA can also contribute to

the framework for undertaking Environmental Impact Assessment (EIA) of infrastructure investment projects with due consideration of climate change. Other sectors outside the field of environment (e.g. cohesion policy, rural development policy, the common fisheries policy (ESIF policies) and energy and transport policies) have high-level sustainability objectives that are in line with those of the SEA Directive. Over the years, the regulations governing these policies have established specific mechanisms to strengthen the link with the SEA Directive (e.g. *ex ante* evaluation). The SEA constitutes an important basis for decision-making at strategic level in these sectors.

The SEA Directive can be considered to have added value by providing a systematic approach to assessing the environmental impacts of plans and programmes under its scope and by including a series of mandatory procedural steps, such as public participation and the assessment of reasonable alternatives. The objectives of other EU and international instruments (the EIA Directive, Habitats Directive, SEA Protocol, the Aarhus Convention) would have been only partially achieved without the SEA Directive. Last but not least, the SEA Directive has added value by providing a consistent framework governing the practice of SEA in all Member States.

Lessons learned and next steps

The evaluation showed that the SEA Directive brings multiple benefits to the EU, contributing to wider goals on sustainable development and environmental protection by integrating environmental concerns into the appropriate plans and programmes. Notwithstanding these positives elements, the evaluation revealed a few issues of concern that limit the Directive's potential to achieve its objectives in an efficient and effective way.

The effectiveness, efficiency, relevance and coherence of the SEA Directive significantly depend on how the Directive is transposed into national law and further implemented in practice, in each Member State by all relevant stakeholders (national, regional and local authorities, practitioners, industry, civil society) involved in the decision-making process. Many practical factors can influence the effectiveness and efficiency of the SEA process, for example the political will to support an open and comprehensive *ex ante* strategic approach, the timing of the SEA, its synchronisation with the plan and programme subject to SEA, the use of scoping in order to limit the costs and frame the content of the environmental report, the character of plans and programmes, and the interest of the public concerned. The optimal use of digital tools can also contribute to sustainable decision-making. In addition it can also address the fact of limited availability of data that can serve and contribute to the effective and efficient performance of the SEA Directive.

The scope of the Directive is the key challenge that has emerged from the evaluation. Some stakeholders (mainly environmental organisations, academics and practitioners) would like to see the SEA Directive applied in a broader and more strategic manner and to tackle the global and longer term sustainability challenges the EU now faces, such as social issues, climate change or over-population. These stakeholders consider that many strategic decisions are not subject to any environmental assessment and that the application of SEA often starts too late when all issues have been 'politically' agreed, thus leaving little space for environmental issues to be properly considered.

However, other stakeholders (mainly national authorities) do not see the merit in assessing the environmental impact of policies or acts which are at too 'strategic' levels; they would prefer to use SEA to assess environmental issues at a lower level, using traditional science-

based indicators. These stakeholders also have great concerns about the broad interpretation of the SEA Directive by the Court¹²⁴ and consider that the definition of ‘plans and programmes’ should be restricted¹²⁵. The EU Policies and most of the related legislation are submitted to Impact Assessments to evaluate the impacts of the proposals on the environment, economy and social aspects and the extension of the SEA implementation on them would not be necessary. Moreover, the EU Policies and the related legislation are mainly general frameworks, which are concretely developed by the Member States, at a subsequent stage, in programmes and plans to be assessed under the SEA Directive.

Consensus emerged among stakeholders on the need to clarify the application of the SEA Directive due to uncertainty about its scope. Clarification could take many forms, ranging from an amendment of the SEA Directive to preparing guidance. The Commission services will further assess the information and evidence available and will carefully follow the development of the case law.

Challenges remain, but they do not impede the overall positive aspects of having an EU-wide procedure that reflects the principles of sustainable development and provides for the systematic inclusion of environmental concerns in the plans and programmes that authorise developments and other activities likely to impact the environment. SEA should therefore be promoted as the main EU instrument, since it allows a comprehensive approach that can help effectively implement the sustainable development goals at local, regional and national level.

¹²⁴ Judgment of 27 October 2016, *D’Oultremont and Others*, C-290/15, EU:C:2016:816; Judgment of the Court of 7 June 2018, *Inter-Environnement Bruxelles ASBL and Others v Région de Bruxelles-Capitale*, Judgment of the Court of 7 June 2018, *Inter-Environnement Bruxelles ASBL and Others v Région de Bruxelles-Capitale*, C-671/16, ECLI:EU:C:2018:403; Judgment of the Court of 7 June 2018, *Thybaut and Others*, C-160/17, ECLI:EU:C:2018:401; Judgment of the Court of 12 June 2019, *Terre wallonne*, C-321/18, ECLI:EU:C:2019:484; Judgement of 12 June 2019, *Compagnie d’entreprises CFE SA v Région de Bruxelles-Capitale*, C-43/18, ECLI:EU:C:2019:483, Judgment of 8 May 2019, *Associazione "Verdi Ambiente e Società - Aps Onlus" and Others*, C-305/18, ECLI:EU:C:2019:384.

¹²⁵ Ad Hoc Working Group Discussion Paper: <https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/d7e4ef55-21a8-4491-b132-045466320cae/details>

ANNEX 1: PROCEDURAL INFORMATION

- The SEA REFIT evaluation was referenced in the Commission's work programme: COM (2014) 910 final, Annex 3.
- The Directorate-General for Environment coordinated the evaluation. An inter-service steering group (ISG) supported and contributed to the evaluation exercise. The ISG involved representatives of the fifteen Commission services, i.e. the Secretariat-General, the Legal Service, DG Climate Action, DG Energy, DG Agriculture and Rural Development, DG Economic and Financial Affairs, DG Energy, DG European Civil Protection and Humanitarian Aid Operations, DG European Neighbourhood Policy and Enlargement Negotiations, DG Health and Food Safety, DG Internal Market, Industry, Entrepreneurship and SMEs, DG Joint Research Centre, DG Maritime Affairs and Fisheries, DG Mobility and Transport, and DG Regional and Urban Policy.
- The evaluation relied on a database of published documents, including the two Commission implementation reports (2009 and 2017), as well as relevant academic literature and policy and guidance documents.
- The initial phase of the evaluation involved the publication of the roadmap and the preparation of terms of reference, the call for tender and the award of a supporting study. The evaluation study kicked off in December 2017 (ENV. E.1/ETU/2017/0016). The study was conducted by Milieu Ltd. and Collingwood Environmental Planning. The final study was approved in July 2019.
- The roadmap was published on 11 July 2017 with a four-week period for the public to provide feedback.
- The evaluation exercise was presented to the members of the Commission group of national EIA/SEA experts at its meetings on 27-28 March 2018 and 20-21 September 2018¹²⁶.
- A webpage has been set up to provide information on the evaluation process:

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

¹²⁶ Meetings of the Commission Group of EIA/SEA national experts: https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/c04306be-13d8-4c03-8e3e-d5bb5a13c291?p=1&n=10&sort=modified_DESC

ANNEX 2: SYNOPSIS REPORT ON CONSULTATION ACTIVITIES

This annex provides a synopsis of the stakeholder consultation carried out as part of the SEA Directive REFIT evaluation. In line with the Better Regulation guidelines on stakeholder consultation, the synopsis report summarises the methodology and results of all of the consultation activities undertaken for the study to support the evaluation of the SEA Directive.

The approach for the stakeholder consultation was outlined in the consultation strategy approved by the ISG. The consultation strategy was based on the evaluation roadmap.

1. Evaluation roadmap and consultation strategy

The roadmap was published on 11 July 2017 with a four-week period for people to give feedback¹²⁷. Feedback was received from the following nine bodies:

- i. Austria – Federal Ministry for Transport, Innovation and Technology;
- ii. Belgium - EIM European Rail Infrastructure Managers;
- iii. Belgium - Environmental and (spatial) planning Department of the Flemish administration (Flemish Region);
- iv. Belgium - BirdLife Europe;
- v. Czech Republic - Association Justice & Environment z.s.;
- vi. Ireland - Environmental Protection Agency (Ireland) - Office of Evidence and Assessment;
- vii. Hungary - Senior Corporate Silver Spoon, Environment and Nature Association;
- viii. Spain – Secretary of Environment and Sustainability. Government of Catalonia;
- ix. Switzerland – Ocean Care.

The respondents underlined that the evaluation process has to take into account particular issues, such as the definitions provided in the SEA Directive; the linkages between the EIA and SEA procedure; the role and means of the SEA procedure in the sustainable development agenda, as well as its impact on decision-making. Some respondents noted the importance of the transboundary SEA procedure. The majority showed interest in the follow-up of the SEA REFIT evaluation.

The ISG steering the evaluation considered the reactions to be supportive of the evaluation as described in the roadmap. There was no need to modify the roadmap since all the issues raised could be accommodated in the published version.

Subsequently, the consultation strategy was developed during the inception phase of the study. The draft consultation strategy was discussed by the members of the ISG in its second meeting in February 2018. It was subsequently finalised in written procedure and published in May 2018¹²⁸.

2. Identification of stakeholders and consultation strategy

¹²⁷ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3481432_en

¹²⁸ <https://ec.europa.eu/environment/eia/pdf/Consultation%20Strategy.pdf>

The approach of the consultation strategy aimed to serve the dual objective of collecting the evidence necessary to answer the evaluation questions, and providing sufficient opportunities to all interested parties to provide input and comply with the Better Regulation guidelines. The target group selected was necessarily large, encompassing stakeholders with expertise or experience in carrying out SEA as well as all citizens, groups or organisations that might have an interest in the issue. The following stakeholder groups were identified:

- National environmental authorities, which are the **competent authorities responsible for the implementation and enforcement of the SEA Directive** in the Member States. Authorities with environmental responsibilities in the Member States also play a key role in the SEA procedure, as they are consulted on the scope and level of detail to be considered in the environmental report, as well as on the content of the report itself.
- **Specifically designated bodies**, which are established in some Member States to supervise the quality of the SEA procedure and/or advise the authority responsible for the SEA procedure.
- **Public authorities in charge of the preparation and adoption of plans and programmes at national, regional and local level** in different areas, such as agriculture, forestry, transport, energy, water, town and country planning, and land use. These authorities are generally responsible for carrying out the SEA procedure for their plans and programmes.
- **Practitioners carrying out SEAs.** Public authorities frequently outsource the preparation of an SEA to expert consultants, who typically carry out several SEAs per year and are thus familiar with the functioning of the process.
- **Economic operators and NGOs.** The SEA procedure applies to certain plans and programmes that set an operating framework for many areas of economic activity, such as infrastructure (roads, ports, energy installations), agriculture and forestry activities, or tourism. Although the operators of those activities are generally not directly responsible for carrying out the SEA procedure, SEA outcomes can have a major impact on their activities. Environmental groups also have a keen interest in the SEA procedure. These groups are often directly involved in the public participation procedures provided for by the Directive.
- **Other stakeholders, such as academics and think tanks** that may also have an interest in the SEA Directive, given its nature as a cross-cutting tool related to environmental governance and decision-making.
- **Members of the public**, who have the right to an early and effective opportunity to express their opinions on draft plans and programmes and the SEA environmental report.

To achieve the objectives of the consultation and ensure that all groups of stakeholders were given the opportunity to provide their input, the following consultation methods were used:

- A 12-week online **public consultation**;
- A **targeted consultation questionnaire** sent electronically to stakeholders such as selected authorities, practitioners, academic experts, NGOs and industry associations representing environmental and economic interests;
- **Interviews** with authorities and other relevant stakeholders in 11 selected Member States;

- **Evaluation workshop and expert meetings**, including meetings of the Commission group of EIA/SEA national experts, and the final evaluation workshop with stakeholders.

More information of each of these tools is provided in the following sections.

3. Public consultation

A 12-week public consultation (including each of the five mandatory evaluation criteria) is an obligatory element of REFIT evaluations. The public consultation ran from 23 April to 23 July 2018 and was available in 23 official EU languages. The online questionnaire was accessible on the Commission's consultation webpage¹²⁹. The objective of the public consultation was to collect the views of a wide range of stakeholders and the general public. It gave stakeholders and citizens from all EU Member States the opportunity to express their opinion on all evaluation criteria.

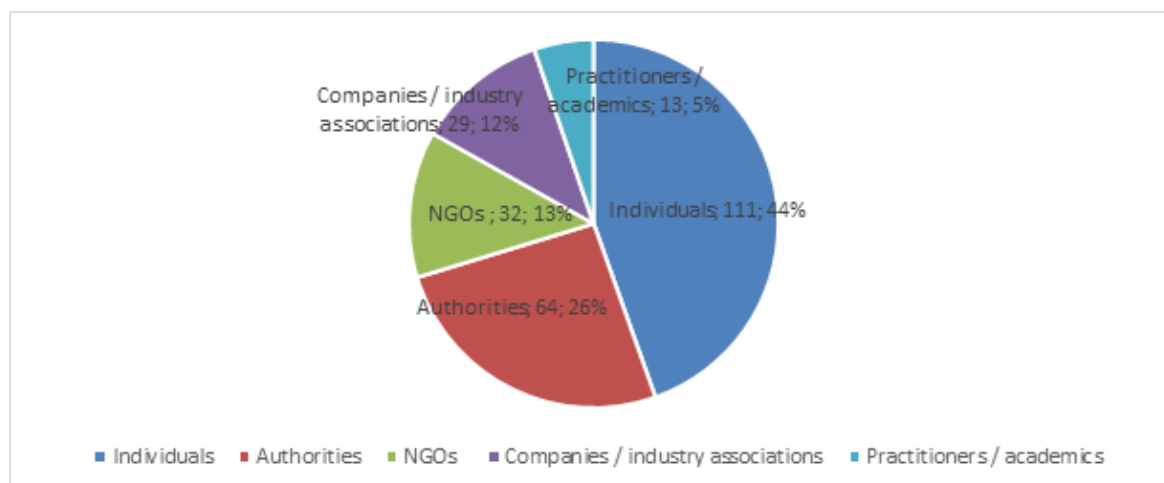
The questionnaire was divided into two parts: the first included general questions on the relevance of the SEA Directive to EU citizens and was aimed at all respondents; the second included more detailed questions on the implementation of the Directive and its performance according to five evaluation criteria. This second part was particularly aimed at respondents directly involved with or affected by the Directive and its requirements.

The survey results were compiled and checked. The data were analysed and summary statistics were produced for each question. The detailed results are available on the SEA REFIT webpage¹³⁰ and in Annex III to the evaluation study.

3.1. Respondents to the public consultation

A total of 249 responses were received. 187 respondents replied to both parts of the questionnaire, while 62 replied to the first part only. The results of the public consultation reveal that 45% of the respondents (111) replied to the questionnaire in a personal capacity, while the remainder replied on behalf of an organisation. After individuals, the largest group of respondents was national, regional or local authorities (64).

Figure 11: Respondents to the public consultation (n=249)



¹²⁹ SEA consultation webpage: https://ec.europa.eu/info/consultations/public-consultation-evaluation-strategic-environmental-assessment-directive_en

¹³⁰ Idem.

The consultation received replies from 26 Member States (all except Croatia and Malta), with almost three quarters of responses (72%) coming from the EU-15 Member States. The largest groups of respondents came from Ireland and Portugal.

Three respondents were from non-EU countries (Albania, Turkey and Ukraine). Very few EU-level organisations (four EU organisations and one international organisation) replied to the consultation.

Main results

The public consultation showed that stakeholders and the public consider the SEA Directive to be an important piece of legislation, which has fostered the integration of environmental issues into plans and programmes, brought environmental benefits, improved the plan and programme preparation process and increased public awareness and the transparency of the plan preparation process. The consultation also highlighted that stakeholders and the public regard public information and participation as critical in the SEA process, both to improve the quality of the SEA and of the plan/programme and to increase public awareness of the impacts of plans and programmes. However, it found they are divided on the effectiveness of current public participation processes, for example because consultation is carried out late when options are already decided, the dissemination of information is too limited, and inadequate information on how consultation results have been taken into account). Some of the most important outcomes of the general part of the public questionnaire are listed below.

- On the **relevance of the SEA procedure** and its **impact for assessing environmental impacts**, the vast majority of respondents (86%) from all respondent groups considered it very important that public plans and programmes be subject to an assessment of possible impacts on the environment. 84 respondents explained that SEA is very or moderately important, as it allows for negative environmental impacts to be identified at an early stage, together with possible alternatives and compensation/mitigation measures. Some pointed out that without SEA, environmental issues would not be considered (or not to the same extent) in the preparation of plans and programmes.
- The vast majority of respondents (88%) considered it very important that stakeholders and the **public be informed about the potential environmental impacts of public plans and programmes**. 33 of the respondents underlined that the public has a right to be informed about the environmental impacts of plans and programmes in their surrounding environment, as they are directly affected by the implementation of plans and programmes (13 respondents explicitly pointed this out). Many respondents underlined the benefits of public information and participation in improving the quality of plans and programmes and the effectiveness of the decision-making process. The majority of respondents (62%) believed that information about draft plans and programmes and their environmental impacts has generally been made available to stakeholders and the public.
- Nearly a half of the respondents (46%) stated that in their experience, stakeholders and the public have generally been given an **early and effective opportunity to express opinions on draft plans and programmes** that are likely to impact the environment. By contrast, 41% disagreed, while 13% replied 'don't know'. Respondents (including those who replied 'yes', 'no' or 'don't know' to both questions) pointed to a **number of flaws** in the way information is provided to the public and stakeholders, and the way in which public participation is carried out:

- **Information** about draft plans and programmes **needs to be more widely disseminated** through various channels¹³¹.
- **The timing of the consultation** is not conducive to effective participation¹³². Public participation often comes at a later stage (of the draft plan/programme), when the objectives (and/or targets) and options have already been decided. In that context, the public consultation can result in only marginal changes to the plan/programme. These comments were most often made by NGOs and individuals.
- The respondents considered that the most clearly identified benefits of the application of the SEA is the integration of environmental issues into sectoral plans and programmes and town and country planning. Between 50-60% of respondents stated that the Directive brought greater public awareness, improved the plan and programme preparation process, and influenced other environmental assessments and projects, at least to a moderate extent. Respondents were divided on the effectiveness of the SEA Directive in ensuring the integration of environmental issues into ESIF programmes and on the Directive's contribution to the UN SDGs.

4. Targeted consultation

The targeted consultation addressed a narrower group of stakeholders than the public consultation and focused on those stakeholders responsible for implementing the policy or whose contribution is necessary for the success of the policy, and those with a stated interest in the policy. The targeted consultation was designed in two stages: (i) an online questionnaire targeting a wide range of stakeholders, including authorities, practitioners, NGOs and economic actors; (ii) interviews in 11 selected Member States with authorities and practitioners.

4.1. Targeted consultation questionnaire

The consultation ran from 7 May to 7 September 2018. **76 responses** were received from 35 national environmental authorities and/or EIA/SEA bodies from all Member States, 22 authorities responsible for the preparation of plans and programmes from 15 Member States¹³³, 16 practitioners and academics from nine countries¹³⁴, and three EU environmental NGOs.

The targeted consultation questionnaire was sent to environmental authorities in all Member States, SEA designated bodies (where they exist), selected authorities responsible for the preparation of plans or programmes subject to SEA in all Member States, selected academic experts and practitioners operating in the field of SEA, and NGOs and industry associations representing environmental and economic interests relevant to SEA at EU level.

Two authorities responsible for the preparation of plans or programmes subject to SEA were selected from each Member State. These authorities were selected at the suggestion

¹³¹ 31 respondents to the first question (information about draft plans and programmes) and 17 to the second question (opportunities to express opinions on draft plans and programmes) addressed communication channels in their answer.

¹³² 15 respondents to the first question, 37 to the second.

¹³³ Belgium, Croatia, Czechia, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia and Sweden.

¹³⁴ Austria, Croatia, Czech Republic, Denmark, Finland, Germany, Ireland, Portugal, and the UK.

of the members of the Commission group of EIA/SEA national experts. A shortlist was established, with a view to maintaining a balance between types of plans or programmes (operational programmes, sectoral plans and environmental plans) and between sectors (spatial planning, cohesion policy, energy, transport, agriculture, water, waste, fisheries, forestry and industry). Where no feedback was received from a Member State, the study team conducted desk research to find contact details of authorities. In total, 58 planning authorities were contacted.

4.2. Interviews in selected Member States

To complement the responses to the targeted consultation questionnaire, interviews were carried out in 11 Member States (Austria, Czechia, Denmark, Ireland, France, Italy, Latvia, Poland, Romania, Spain and Sweden). The selection of Member States intended to achieve a representative sample of Member States from different geographical regions, a mix of EU-15 and EU-13 Member States and of federal and non-federal countries. A total of 49 interviews were carried out between June and November 2018, most with regional and local authorities responsible for plans and programmes (21) and practitioners (16).

The purpose of the interviews was to allow for more in-depth and focused responses from selected stakeholders on some of the issues that were key to determining the evaluation findings. As the interviews were carried out by national experts with the capacity to conduct stakeholder interviews in the national language, these interviews could reach targets that could not be included via other consultation tools. Interviews in each country were a mix of follow-up interviews with respondents to the targeted consultation questionnaire and interviews with new stakeholders identified based on contacts suggested by national authorities and through desk research.

The in-depth interviews aimed to: *(i)* test emerging issues of importance for the evaluation, including draft findings and conclusions on specific evaluation questions, especially where consensus was mixed or understanding was unclear; *(ii)* generate clear practical examples to illustrate a specific concept and serve as evidence; *(iii)* broaden the range of targeted stakeholders, with a focus on regional and local level authorities and practitioners who might be more difficult to target through a written questionnaire in English.

The interviews were semi-structured, relying on a pre-established interview guide covering common themes and questions, which the interviewer adapted to the specifics of each interview (type of stakeholder, Member State context, etc.). The questions to ask in follow-up interviews were determined on a case-by-case basis by the interviewer, together with a member of the evaluation team, based on the questionnaire completed by the interviewee. The questions concerned specific points of the targeted consultation questionnaire, requesting more detailed explanations and illustrative examples. Interviews were carried out by 11 national experts in the respective national language.

4.3. Evaluation workshop

The evaluation workshop presenting the initial findings took place on 6 December 2018 in the Breydel auditorium in Brussels. The workshop gathered 85 participants, including Member State authorities (40), practitioners carrying out SEA and academics (14),

representatives of NGOs and industry (10), members of the EU institutions (13) and the consultants (8)¹³⁵.

The main session of the workshop was structured around the evaluation criteria, with a one-hour discussion of effectiveness, efficiency, relevance and coherence. The conclusions of the workshop included the first findings and reflections on EU added value. Each session began with the consultants giving a brief overview of the preliminary findings, followed by a panel session led by three or four stakeholders, each of whom provided their views and feedback on the key issues raised under each of the evaluation criteria. Afterwards, the audience had an opportunity to ask questions of the panel, the consultants and the Commission.

The objective of the evaluation workshop was to validate the preliminary conclusions of the evaluation and to determine the relative importance of different issues related to the text or implementation of the Directive. More information about the workshop and the workshop report is available on the website of the European Commission¹³⁶.

5. Overview of the consultation result

5.1. Effectiveness

The results of the targeted and public consultation revealed the consensus that the SEA Directive has contributed to the high level of protection of the environment and promotion of sustainable development. Stakeholders reported, however, that the Directive is more effective in addressing environmental issues like biodiversity, water, fauna, flora and landscape and cultural heritage, and rather less effective for material assets, population, human health, climatic factors and emerging environmental concerns in SEA, such as climate change, ecosystem services and natural capital.

The targeted and public consultation, as well as the evaluation workshop, showed that the effectiveness of the SEA Directive depends on how the SEA procedure is implemented. Respondents often mentioned that the ability of SEA to prevent the negative environmental impacts of planning was hindered by issues related to the timing of the SEA (i.e. frequent late start of the SEA in the plan preparation process); the lack of feasible alternatives and predefined options; the fact that implementation of the plan is not monitored, and challenges with understanding the SEA requirements (i.e. lack of clear definition of ‘plans and programmes’ and ambiguity in what is meant by ‘set the framework for’ projects subsequently subject to the EIA Directive) leading to higher level strategies not being subject to SEA. In the targeted consultation, stakeholders reported that effective consultation with relevant environmental authorities and the public is one of the key factors in supporting the effectiveness of the SEA Directive.

Respondents to the public consultation also strongly value public and stakeholder participation in the SEA process, although they identified some issues in the implementation of public consultations, such as the timing of the consultation (i.e. too late, when decisions have already been taken), the limited advertisement of consultations, the lack of proactive engagement with the public by plan developers, or the complex language and presentation of information. Despite these challenges, stakeholders had a generally

¹³⁵ Figures based on the attendance list signed by participants at the evaluation workshop. It should be noted that the list might be incomplete if attendees did not sign in.

¹³⁶ REFIT Evaluation of the SEA Directive: <http://ec.europa.eu/environment/eia/sea-refit.htm>

positive opinion of the effectiveness of the Directive, as it ensures that environmental issues are considered at an early stage of the planning process.

The targeted and public consultations showed that the SEA Directive has contributed to improving the process of preparing plans and programmes by setting mandatory requirements for consideration of environmental issues, introducing public participation, increasing transparency of planning processes, and raising environmental awareness among decision makers. Stakeholders also reported that the SEA Directive has influenced the final content of plans and programmes by adding more emphasis and systematically addressing environmental issues, including the opinions of various stakeholders and the public, adding mitigation and compensation measures, and considering new alternatives. However, concerns were raised – mainly by SEA practitioners and academics, but also by local and regional authorities responsible for the preparation of plans and programmes – that SEA does not affect the content of final planning outputs as much as it should. This is because of prevailing (political, economic, social) interests, ‘closed’ and pre-determined decision-making, poor integration of SEA into planning and decision-making processes or the late start of the SEA process in relation to the development of the plan or programme assessed. Finally, the stakeholders consulted believed that the Directive has influenced the siting, design and implementation of projects developed from plans and programmes. However, some noted that the Directive has little influence as the nature of SEA is too general and strategic to influence siting, and there is a lack of clarity on the (legal) obligations to follow up on the outcomes of the SEA process.

The targeted consultation also revealed that the effectiveness of the Directive varies according to the type of plan/programme, the governance level at which the SEA is carried out, and the sector concerned. Stakeholders tended to report higher effectiveness in sectors where the plans are more operational and obviously set the framework for projects, such as town, country and spatial planning, transport and energy developments. Similarly, the stakeholders believed that the Directive is most effective at local level, where the planned measures/interventions are more defined and thus the effects are easier to project and assess. This may also reflect the greater experience with SEA at this lower governance level and in spatial planning. Generally, stakeholders reported that the Directive is less effective for higher level SEAs, partly because of the more general nature of these plans and less-measurable data indicators at these levels. However, participants in the evaluation workshop strongly supported the idea that it is precisely at these strategic levels that SEA is most required, and that type and focus of the information required under the Directive need to be adapted to enable it to be more readily applied at higher levels.

5.2. Efficiency

Given the difficulties associated with a quantitative assessment of the costs and benefits of the SEA Directive (low accuracy and comparability of cost data, difficulties in quantifying benefits), consultation activities were critical to assessing its efficiency. These consultation activities allowed for the costs and benefits to be mapped and understood, their magnitude to be identified, and cost data to be collected. The assessment of the acceptability of costs by those who bear them and the extent to which costs are proportionate to the effects brought by the Directive depended heavily on the consultation activities. Information relevant for that evaluation criterion was gathered through the targeted consultation questionnaire, complemented by the interviews and the validation of findings at the evaluation workshop. The public consultation provided a general understanding of the comparison between costs and benefits.

The consultation did not yield a comprehensive and accurate set of cost data that would have allowed an understanding of the cost of SEA at EU level, or the presentation of average estimates by type of plan/programme or even by Member State. The cost data collected showed considerable variation, reflecting the diversity of plans and programmes subjected to SEA (nature of the plan, size, sector, level of details, new plan vs. plan modification, etc.). Respondents – environmental authorities, competent authorities, and practitioners – often only provided consultancy costs, as these are more visible to authorities and can be tracked directly. Very little data have been collected on administrative costs.

Authorities and practitioners reported in the targeted consultation questionnaire and in the interviews that carrying out the SEA and preparation of the environmental report represent the most significant costs of the SEA procedure. As the drafting of the environmental report is often subcontracted to external consultants, hiring external expertise was mentioned as a significant cost by competent authorities. Stakeholders were divided on whether SEA causes significant procedural delays, with a larger number of authorities reporting that it does. When justifying their answers, stakeholders often mentioned that delays were due to the poor synchronisation of the SEA with the plan preparation process or factors external to the SEA, in particular political factors.

The main benefits reported by all stakeholder categories in the targeted consultation questionnaire and interviews were the integration of environmental issues into plans and programmes (in particular sectoral plans and programmes and land use plans), and environmental benefits. Greater public awareness was also mentioned as a significant benefit.

Generally, targeted and public consultation results showed a consensus among stakeholders that the costs of implementing the SEA Directive – to authorities in terms of administrative burden and for implementation and plan/programme level – are not excessive and are proportionate to the benefits of SEA, both in terms of integrating environmental and stakeholder concerns into planning, and as a safeguard mechanism. However, some of the regional and local authorities interviewed suggested that costs are high for small municipalities, which face resource constraints.

The costs are strongly influenced by the way in which the SEA is carried out. Stakeholders identified a tendency to produce lengthy and overly detailed environmental reports based on time-consuming data collection in order to avoid non-compliance, as well as a tendency to assess concrete and specific impacts rather than gaining an understanding of the strategic-level environmental aspects of a plan/programme. They called for more proportionate SEA, focused on the environmental aspects that matter most at plan/programme level. Stakeholders also identified the timing of the SEA as an important factor influencing efficiency, with procedural delays reduced where the SEA is well synchronised with the plan preparation.

Overall, few issues were raised in relation to unnecessary burden. Those that were raised concerned the renewal and modification of plans and programmes (for which a full SEA appeared burdensome to some stakeholders) and the screening process. Issues were also raised in respect of the applicability of the SEA Directive and the potential excessive burden on competent authorities if the scope of the Directive were extended to policies and legislation. However, the study did not specifically gather cost estimates of the application of the SEA Directive to normative acts considered as plans or programmes in the sense of the Directive. One illustrative example was provided by one Member State, showing that

the application of the Directive to policies and legislation might be complex and costly. However, this one example is not sufficient to draw firm conclusions on this issue.

5.3 Relevance

There was a strong consensus among the stakeholders consulted that the Directive is still relevant to promoting a high level of protection of the environment and sustainable development. The continued need for a specific procedure requiring environmental considerations to be integrated into planning so as to highlight the most important environmental aspects, ensure the identification of alternatives and the broad involvement of stakeholders, was reaffirmed by the targeted consultation.

The results of the targeted consultation questionnaire indicated that the SEA Directive is still consistent with the needs of other EU environmental policies, although some respondents stated that there should more integration of issues like resource efficiency and the circular economy, climate change adaptation and mitigation, sustainable cities and soil protection into plans and programmes. The targeted consultation also suggested that the implementation of the SEA Directive has largely kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development. On the other hand, the Directive has had more limited success in keeping pace with certain recent developments, such as planetary boundaries, ecosystem limits, ecosystem services, and natural capital accounting. The stakeholders generally considered the Directive sufficiently flexible in allowing the integration of new concepts, topics, methods or models into SEA practice. That flexibility also ensures that the Directive can keep pace with scientific advances.

The targeted consultation suggested that SEA facilitates the consideration of broad cross-sectoral issues, going beyond typical sectoral environmental issues and policies, largely because of its holistic approach and consideration of interactions with other relevant plans, programmes and policies. However, the targeted consultation and the discussions at the evaluation workshop stressed that SEA is increasingly implemented on a smaller scale and is thus moving away from its initial purpose – to assess higher level strategic plans and programmes in the ‘spirit’ of the Directive’s objective (Article 1) of contributing to ‘promoting sustainable development’. The possibility of extending the scope of application of the Directive to policies and legislation was discussed at the evaluation workshop, with participants holding diverging views on the practical implementation of the SEA procedure for legislative acts. Despite the lack of consensus on the tool to apply, some of the participants – practitioners in particular – stressed the need to apply SEA to more strategic plans.

The importance of informing the public and involving citizens in plan preparation and the SEA process was emphasised in the targeted and public consultations. Stakeholders considered public participation relevant, as it improves the quality of the SEA and contributes to well-informed decisions by providing a larger set of opinions and expertise, local knowledge and critical feedback, thereby helping to identify issues and blind spots in the plan/programme. Benefits such as increasing environmental awareness among citizens, and increasing public acceptance of plans, programmes and subsequent projects were also mentioned. There were, however, some discrepancies in stakeholder views, with competent authorities for plans and programmes having a more reserved opinion of the importance of public participation in the context of SEA than national environmental authorities and practitioners. In their view, citizens find it less important to take part in strategic/early stages of planning which are perceived as dealing with complex strategic issues that are less directly relevant to the affected public, compared to issues related to a

particular local project, for instance. The consultation outcomes show that the Directive is firmly believed to remain a suitable and relevant instrument to promote environmental protection and sustainable development.

5.3. Coherence

The targeted and public consultations showed that the SEA Directive is generally coherent with the EIA Directive. However, the stakeholders consulted suggested that, in practice, there are risks of overlap between SEA and EIA, for example, when an SEA is required for a plan or programme that contains projects that will require EIA. Stakeholders were divided with regard to the significance of the risk of duplication. Another challenge noted is that authorities and developers sometimes find it difficult to clearly distinguish the purpose and scope of SEA and EIA, resulting in overlaps, especially when inexperienced SEA practitioners fail to narrow down the scope of the assessment, resulting in 'mega EIAs'. However, the stakeholders frequently referred to opportunities to maximise synergies between the SEA and EIA procedures. For instance, conducting an SEA can help to ensure a sound strategic basis for subsequent EIAs of projects.

The targeted and public consultations showed that the SEA Directive is coherent with the Habitats Directive. The clear differences in scope between SEA and AA mean that these assessments are largely complementary. The stakeholders also stressed the possible synergies between the SEA and AA procedures in relation to integrated reporting, data-sharing, more efficient and effective public participation, and higher quality assessments. According to the stakeholders, the implementation of joint or coordinated procedures can support these synergies.

Little insight on sectoral coherence emerged from the targeted and public consultations. A large number of respondents did not reply to these questions and few interviews provided clear or relevant answers to the coherence questions. However, the targeted consultation showed that, in general, stakeholders have not experienced major conflicts in applying the SEA Directive to plans and programmes in various sectors. On the contrary, SEA can improve plans and programmes by identifying possible environmental problems and ways to avoid them.

Overall, the majority of the respondents to the targeted consultation questionnaire believe that the SEA Directive is consistent with and supports the SEA Protocol and the Aarhus Convention. The targeted consultation and the evaluation workshop raised some issues of coherence between the SEA Directive and the Aarhus Convention, in particular in the area of access to justice, as there are no provisions to ensure access to justice in the SEA Directive. On this matter, respondents to the public consultation were asked whether they felt there were procedures available to allow for judicial or other impartial means of review of an SEA procedure or plans that have been subject to SEA. In both cases, respondents were divided on the issue, with NGOs considerably more likely to reply negatively.

5.4. Added value

According to the stakeholders consulted, the primary added value of the Directive is that it imposes a systematic procedure that is applicable to a broad range of plans and programmes, covers a wide range of environmental impacts and provides for the development of alternatives, public participation, and monitoring. The stakeholders agreed that it is unlikely that with such a procedure would have been put in place in all Member States in the absence of the SEA Directive. During the interviews in particular,

stakeholders reported that the Directive has led to more transparent and participatory planning processes.

The stakeholders consulted also reported that the SEA Directive has added value by providing a consistent framework governing the practice of SEA in all Member States, as having the same legislation in all Member States facilitates the consideration of transboundary issues. Stakeholders also reported benefits from sharing good practices and knowledge, as well as providing a level playing field, increasing public awareness and resolving conflicts in respect of the environmental impacts of development.

ANNEX 3: METHODS USED IN PREPARING THE EVALUATION AND EVALUATION QUESTIONS

This annex provides a summary of the methodology used to prepare this evaluation. The methodology is described in detail in Section 3 of this document and in Chapter 4 of the evaluation study. The 11 key evaluation questions, presented in Box 6 below, formed the basis for the evaluation. These are structured around the five evaluation criteria effectiveness, efficiency, relevance, coherence and EU added value.

Box 6: Evaluation questions

Effectiveness	
EQ 1	To what extent has the SEA Directive contributed to ensuring a high level of protection of the environment?
EQ 2	To what extent has the SEA Directive influenced Member States' planning processes, the final content of a plan/programme, and eventually project development?
EQ 3	What factors (e.g. gaps, overlaps, inconsistencies) influenced effectiveness?
Efficiency	
EQ 4	To what extent are the costs involved proportionate, given the identified changes/effects achieved?
EQ 5	What factors influenced the efficiency with which the achievements observed were attained?
EQ 6	What is the cause of any unnecessary regulatory burden or complexity associated with the SEA Directive?
Relevance	
EQ 7	To what extent is the Directive still relevant to promote a high level of protection of the environment and sustainable development?
Coherence	
EQ 8	To what extent is the intervention coherent with other parts of EU environmental law and policy, in particular those setting out provisions for environmental assessment procedures, such as the EIA Directive (Directive 2011/92/EU, as amended), the Habitats Directive (Directive 92/43/EC), etc.?
EQ 9	To what extent are sectoral EU policies, such as the Cohesion Policy, transport, climate change and energy policies coherent with the SEA Directive?
EQ 10	To what extent is the intervention coherent with EU international obligations?
EU added value	
EQ 11	What has been the added value of the SEA Directive compared to what could be achieved by Member States at national and/or regional levels, and to what extent do the issues addressed by the Directive continue to require action at EU level?

Methods

Each of the five evaluation criteria was analysed in relation to specific elements of the SEA Directive, presented in the roadmap intervention logic. The 11 evaluation questions were developed into an evaluation framework, presented in Box 7.

Box 7: Evaluation framework

- **Sub-questions:** These reformulate the questions in an operational way.
- **Judgment criteria:** These clearly define the actual issues that need to be objectively assessed to effectively answer the evaluation question.
- **Indicators:** These specify the (quantitative and qualitative) data that need to be collected in order to assess the judgment criteria.
- **Required information and analysis:** This sets out the information to be gathered, both quantitative (e.g. data) and qualitative (e.g. legal provisions, programme results, experiences and perspectives), together with the analysis required to answer the question. It guides the content of the data collection and analysis tasks.
- **Data collection tools and analysis methods:** This sets out the exact method to be used to collect and analyse the data. It guides the identification of the type and scope of data collection and analysis tasks to be carried out, while the analysis methods define the means of synthesising, triangulating and interpreting data and information from various sources in order to develop sound, evidence-based conclusions.

The evaluation framework linked the evaluation questions to sub-questions; judgment criteria; indicators and data collection and information sources. The evaluation framework ensured that all aspects of the evaluation questions are answered in a systematic and traceable manner.

The main analytical method used for most questions was content analysis, based on the aggregation and analysis of the information collected with literature review, desk research, public consultation, targeted questionnaires, interviews, and workshop. Data were analysed according to the principles of synthesising and interpreting, as well as triangulating evidence from different perspectives and sources.