

STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) AND EX-ANTE EVALUATION FOR THE EMFF OPERATIONAL PROGRAMMES (OP)

The SEA Directive (Directive 2001/42/EC¹) requires Member States to identify and assess the environmental impact of their plans and programmes, before they are adopted. This is meant to *'provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development'*.

This annex provides guidance on the application of the procedures required by the SEA Directive to the EMFF Operational Programmes (OP) More in-depth information on the SEA Directive, is provided in the Commission's Guidance on the *'Implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment'*².

1. Applying the SEA Directive to the EMFF Operational Programmes

According to Article 2 of the SEA Directive, programmes co-financed by the European Union (in particular those co-funded by the ESI-Funds), fall under the scope of the SEA Directive. Paragraph 2 of this same Article 3 further stipulates that an SEA is mandatory for all types of programmes *"which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent for projects listed in Annexes I and II to Directive 2011/92/EU"*³ (the *"Environmental Impact Assessment (EIA) Directive"*). All EMFF Operational Programmes thus require an SEA.

2. SEA as an integral part of the programming process

The SEA must be carried out during the preparation of the programmes and must be completed before their submission to and adoption by the Commission. In order to strengthen environmental integration, to contribute to social acceptance, and to ensure that potentially conflicting objectives and likely significant negative impacts are addressed, a SEA needs to begin in the very early stages of developing a programme. Aligning the SEA with the preparation of the programme and of its ex-ante evaluation will also avoid amendments of the programme at a later stage.

In principle it is the responsibility of Member States to decide how best to meet the requirements of the SEA Directive in relation to their programmes including their EMFF operational programmes. The ex-ante evaluation should then summarise the SEA process and outline how it was taken into account in the programme design.

¹ OJ L 197, 21.7.2001

² <http://ec.europa.eu/environment/eia/sea-support.htm>

³ OJ L 26, 28.1.2012

3. Main elements of the SEA

Depending on the approach taken by the Member State, ex ante evaluators may be asked to:

- prepare the environmental report, facilitate consultations or make recommendations on how the results of the report and/or consultations should be reflected in the programme;
- work closely with those responsible for carrying out the SEA, to ensure the necessary linkages between this SEA and the ex-ante evaluation, and to avoid duplication of work.

The SEA process includes the following 5 steps, which should all be completed before an EMFF OP can be adopted by the Commission:

1. An environmental report
2. Consultations with environmental authorities, the public and other Member States when required
3. Taking into account the environmental report and the results of the consultations in the decision-making
4. Information on the decision
5. Monitoring of the effects of the programme during its implementation.

3.1 Scope. Environmental report

The environmental report should focus on the likely significant impacts on the environment of the relevant EMFF programme, and environmental authorities must be consulted beforehand to define the scope and level of detail of the information in that report. If the environmental assessment is carried out through the ex-ante evaluation, then the terms of reference for that evaluation need to include the gathering of the necessary information.

The content of the report is described in Annex I of the SEA Directive. Member States may find it helpful to develop the environmental report and the EMFF OP in parallel. This will help avoid delays and help produce programmes where the environment is well integrated; Member States must ensure that the environmental reports meet the requirements of the SEA Directive (Article 12(2)).

3.2 Consultations

The SEA Directive requires the consultation of environmental authorities, NGOs and the public, on the draft programme, the environmental report and the non-technical summary. This consultation must be carried out at an early stage and must give an opportunity to the parties consulted to express their opinion in an effective way, so that it can be integrated in the SEA drafting and OP designing processes.

If all or part of the environmental assessment is carried out through the ex-ante evaluation, then the ex-ante evaluation report should include a section on the SEA and be made available to the public and to environmental authorities.

Public consultations provide useful information that may lead to significant changes to the programme and consequently to its impact on the environment. In some cases, as a result of the consultation, a revision of the report and further consultations⁴ may have to be considered.

⁴ See Commission Guidance, Implementation of Directive 2001/42/EC, page 34

Detailed arrangements for such consultations are regulated by the transposing national legislation. As the SEA Directive does not specify a time frame for these consultations, it is up to Member States to determine their duration, provided that the public and the environmental authorities are given an "*early and effective opportunity within appropriate time frames to express their opinion*" (Article 6(2)).

The SEA Directive does not specify how this information should be made available to the public. Member States should make appropriate arrangements to inform the public and to receive feedback. Public consultations may take the form of public hearings, seeking written comments on proposals, steering groups, advisory committees or interviews. Information about the preparation of the programme can be published in national and regional newspapers, in a publicly accessible place and/or on a website.

The SEA Directive also envisages consultations when a programme is likely to have significant effects in another Member State (Article 7). In such cases, before its adoption, the Member State should forward the programme together with the relevant environmental report to the Member State in question. The Member States concerned may then agree on arrangements to ensure that environmental authorities and the public in the Member State likely to be affected are informed and given the chance to give an opinion within a reasonable time-frame.

3.3 Decision. Taking account of the environmental report and the results of the consultations
During the preparation of the programme, the programming authority shall take into account the environmental report and the opinions expressed during the consultation process. The timeline for the decision-making process should allow the programming authority to take into account the comments received before deciding on the content of the programme.

3.4 Information on the final decision

The designated environmental authorities, the public (and any Member State consulted) must be informed of the adoption of the programme and be provided with some explanations, including a statement summarising how environmental considerations and the results of the consultations have been taken into account.

3.5 Monitoring

The SEA Directive requires that significant environmental effects of the implementation of the programme should be monitored in order, *inter alia*, to identify unforeseen negative impacts, and to be able to undertake appropriate remedial actions. This should include the selection of appropriate indicators.

3.6 Revision of the programme after submission to the Commission

Where the programme requires a significant revision as a result of the Commission's observations, an updated/revised SEA process should be also considered (e.g. update of the environmental report, additional consultations etc.).

4. Information to be submitted to the Commission in relation to an SEA

The programming authority must provide the following information to the Commission:

- A non-technical summary of the environmental report, as foreseen by Annex I (j) of the Directive;

- A description of the monitoring measures foreseen in Articles 9 (1) (c) and 10 (monitoring);
- Information on the consultations of the public and of environmental authorities concerned (Article 6 of the Directive);
- Information on the decision. After the adoption of the programme by the Commission, the MS must issue a statement summarizing how environmental considerations and the opinions expressed have been integrated into the programme (Article 9 (b)).

The Commission may request a MS to submit additional documentation.

5. Other considerations

5.1 Relation with other EU environmental policies and legislation

There are many linkages between the SEA Directive and other EU environmental policies and legislation. The SEA Directive specifically requires that the programmes take into account environmental protection objectives established at international, EU or Member State level. Many programmes subject to a SEA may also require other types of environmental assessments under different environmental legislation.

In the case of EMFF programmes, particular attention should be paid to biodiversity and climate change policies and legislation in the context of the SEA. As regards biodiversity in particular, certain programmes co-financed under EMFF, are likely to have significant effects on biodiversity and on the Natura 2000 network. Programmes that may have significant effects on Natura 2000 sites may require an appropriate assessment under Article 6(3) of the Habitats Directive (92/43/EEC); such assessment should be part of the SEA process. However, this should be reported separately.

The Commission 'Guidance on integrating climate change and biodiversity into SEA' is available at: <http://ec.europa.eu/environment/eia/pdf/SEA%20Guidance.pdf>

5.2 SEA for transnational and cross-border programmes

If the SEA Directive is applicable to a transnational or cross-border programme, the managing authority should decide whether to carry out separate SEAs in each Member State according to their national rules or whether some of the steps could be carried out jointly. For instance, joint environmental reports could be subject to consultation of the environmental authorities and of the public in each one of the Member States concerned. When a SEA is carried out for a transnational and cross-border programme, separate Article 9(1) statements (prepared separately or jointly by the managing authorities) should be made available in each Member State.

CONTENT OF THE SEA ENVIRONMENTAL REPORT⁵

- (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;
- (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;
- (c) the environmental characteristics of areas likely to be significantly affected;
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
- (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;
- (j) a non-technical summary of the information provided under the above headings.

⁵ Information referred to in Article 5(1) and Annex I of Directive 2001/42/EC (SEA Directive).