Avosetta Questionnaire: The SEA Directive

(plus Appendix on additional questions)

Cork, 28-29 May 2021

Latvia

DIRECTIVE 2001/42/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [2001] OJ L 197/30

[1] National legislative context

Identify and summarise the relevant national legislation transposing Directive 2001/42/EC. In 2017, the Commission concluded that all Member States have transposed the Directive (COM(2017) 234 final, 5 May 2017), but some have transposed it by means of specific national legislation while others have integrated its requirements into existing laws.

There is a specific legislation detailing the requirements on both EIA and SEA in Latvia. The main law in this area is the Law on Environmental Impact Assessment (EIA law).[1] The law delegates the Government to adopt implementing regulations for detailing the requirements on the procedures, consultations etc.[2]

[2] EU infringement proceedings?

Have EU infringement proceedings been brought against your Member State for alleged failure to comply with the SEA Directive? If yes, please provide brief details.

No

[3] Objectives (Art. 1)

The CJEU has frequently referred to Art. 1 as a starting point for its rather expansive interpretation of various provisions of the Directive.

(i) Is the Objective of the Directive reflected in your Member State's national legislation?
No.

(ii) Has the Objective been used by your national courts to assist them in the interpretation of relevant provisions of national law?
No, with respect to the requirement to "provide for a high level of protection of the environment".
Yes, with respect to the second sentence of that Article – on contribution "to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development." This

[1] The Law on EIA, 1998 (as amended quite many times up to 2020). Available in EN: https://likumi.lv/ta/en/en/id/51522-on-environmental-impact-assessment

[2] The main enacting legislation is the Cabinet of Ministers Regulation No 157/2004 on Procedures for Carrying Out a Strategic Environmental Impact Assessment. Available in EN: https://likumi.lv/ta/en/en/id/86512-procedures-for-carrying-out-a-strategic-environmental-impact-assessment

principle has been referred by the Constitutional Court in several cases when a spatial planning was challenged due to *inter alia* defects of the SEA for the plan.[3]

[4] "Plans and Programmes" subject to SEA

(i) **Art. 2 (a) (Definition of "plans and programmes"):** How has this definition been transposed into national law and, in particular, how is the concept "required by legislative, regulatory or administrative provisions" understood – either in national legislation and / or in national jurisprudence?
Keep in mind here that the CJEU has interpreted this concept to include not only "plans and programmes" which the planning authorities are *legally obliged* to prepare, but also those "plans and programmes" which the authorities *may draw up at their discretion* (Case C-567/10). **Note that this was quite a controversial ruling. How was it received in your country?**
The CJEU has also recently interpreted the concept of "plans and programmes" as including an "order and circular" adopted by the Flemish Government concerning the installation and operation of wind turbines (Case C-24/19).

In Latvia, the term "plans and programmes" have not been defined in the context of the SEA. But for transposing the SEA requirements, the term "planning document" is used, which covers different type of strategic planning acts.

At the same time, the substance of Art.2(a) with respect to preconditions to consider an act "plan or programme" for the purposes of the SEA are partly transposed as the rules "when SEA has to be carried out" (Art.4(3) of the EIA Law). The missing part of the substance of Art.2(a) is exactly the precondition on "*required by* legislative, regulatory or administrative provisions." Our legislation provides that SEA is required for those planning documents that are developed by public authorities (including, local) according to legislation. Thus, the focus is not on the fact whether a plan is "required by" but that the authority develops it in accordance with the relevant legislation. There are no case-law or any significant discussions in that context in Latvia so far. It seems that the interpretation stemming from case C-567/10 would not create problems at least in light of our legislation. (not so sure about practice, but as there is no significant discussion or examples on similar problem, difficult to assess). In any case, the legislation does not limit a need for SEA to only those plans that are 'required by law.'

In addition, the Government Regulation on the procedure for conducting SEA provides a list of planning documents for which the SEA is mandatory, for example, land use planning, national development plan, sectoral policy guidelines, also regional development plans.[4] [5]

In addition to 'mandatory' list, other plans or programmes may be subject to SEA if they might affect the environment (and set framework for Ann I an II activities) according to screening assessment and a decision of the competent authority based on case-by-case assessment.

[3] For example, Constitutional Court Judgement of 17.01.2008. Case Nr.2007-11-03 (*Riga Freeport*)
[4] Art.2 of Government Regulation No 157/2004. Available in Eng: https://likumi.lv/ta/en/en/id/86512-procedures-for-carrying-out-a-strategic-environmental-impact-assessment
[5] To list some examples for which SEA has been carried out: the National Climate and Energy plan, the Transport Development Guidelines (in substance Strategy) for 2021-2027 approved by the order of the Government in 2021.

With respect to local/regional level, SEA is usually carried out for Regional development strategies (adopted by the decision of local government). However, there could be planning dox for which SEA has not been required (because it does not fulfil the criteria), for example, Latvian Tourism Development Guidelines for 2014-2020 approved by the Government order.[6] At the same time, there are quite many sectoral policy strategies that are developed under the label "strategy" but approved by the Government through adoption of "informative report." So, considered to be not legally binding act. Usually, for such type of acts SEA is not required. For example, the Bioeconomy Strategy 2030.[7] Consequently, it is quite clear that "label" of the document could be misleading for assessment of the type of document and whether it would require SEA.

With respect to 'regulations/orders' or so, adopted by the Government: according to the explanation provided by the Ministry of Environmental Protection, they tend to admit that acts which do not fall under a concept of "planning documents" (or plans and programmes), but which would fulfil the four criteria of the Directive, can be subject to SEA, including regulatory acts. In fact, land use plans are adopted in the form of 'biding regulations of local government'.[8]

It has to be noted that no other examples found where SEA has been applied for regulations level (for regulations adopted by the government).

(ii) **Art. 3 (Scope):** How has this provision been transposed into national legislation, and, in particular, has your country added any additional categories of "plans and programmes", either in legislation or on a case by case basis (see Art. 3(4) and (5))? Note here Case C-300/20, a reference for a preliminary ruling pending before the CJEU concerning the application of Art. 3(2)(a) to a regulation on nature conservation and landscape management.

This question is covered above under (i). So, there is a list of planning dox for which SEA is mandatory, for other, on case-by-case basis. A decision is adopted by the competent authority (State Environmental Bureau - supervising the SEA procedure). A decision must be based on identical criteria that are provided in Annex II of the Directive (transposed in the national law).

(iii) "likely to have significant environmental effects" – is this concept elaborated on in national legislation? Is there official guidance and / or national jurisprudence on the meaning of the phrase "likely to have significant environmental effects"? Who determines whether a particular plan or programme is "likely to have significant environmental effects"?

This concept is not elaborated in the law, only the reference on criteria that the Competent authority must observe (Annex II criteria) when deciding on a need for SEA. In addition to the Directive's Ann II criteria, Latvian law provides for two more: initiatives that might affect the coastal area of the Baltic Sea and the Gulf of Riga.

[6] It seems the decision was based on conclusion that this planning dox, does not "set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC."
[7] https://www.llu.lv/sites/default/files/2018-07/Bioeconomy_Strategy_Latvia_LV.pdf
[8] It adds specifity to appeal procedures, as these are only administrative (to the Ministry) and before the Constitutional Court as oted below.

There is no case-law with respect to this concept in the context of SEA.

(iv) Is there screening? If yes, in what context(s) and how does it operate? Who makes the screening determination? Is the screening determination available to the public?

Yes, for other type of planning dox, that are not covered by mandatory list (for example, 'conceptual plans' are not). The screening determination is adopted by the Competent authority (SEB). And yes, the decisions (both negative and positive) are made available on their webpage grouping them in two parts (SEA required or not).[9] The availability of the decisions and 'informing the public about the decision' – mandatory requirements of the Law on EIA (Art.23[3]).

(v) " … which set the framework for future development consent of projects" specified in the EIA Directive. Has national legislation / official guidance and / or jurisprudence further elaborated on the meaning of this concept?

The precondition is quite literally transposed providing that a planning dox should "set the framework….". The national law does not elaborate anything more on that. There is no official guidance neither case law on this.

Screening through some decisions, one could note that there could be situations when (formally) there might be some details on activities covered by the EIA Ann I and Ann II, but the Competent authority has not required SEA arguing, e.g., that the effects of such plans have been already covered by other planning dox, or these plans may not have significant effect to the environment (providing reasons how it came to such conclusion).

(vi) "Plans and programmes" that "determine the use of small areas at local level" – how has this provision been transposed and how it is applied in practice?

The EIA Law is quite literally transposing the exemption on 'small areas at local level.' However, to apply this exemption there usually would be a decision of the competent authority obliged to conclude on whether a plan (or amendments) might still affect significantly the environment (e.g. whether there is any vulnerable area concerned). Example of 'small and local level' are 'detailed plans.' (Usually covers one project/development but that needs complex solutions as for example, additional infrastructure needs to be planned or other broader adjustments with respect to one development). At the same, the Law on Spatial Development Planning requires to organize public consultations also during elaboration of detailed plans. So, even if they might be exempted from the SEA, the public needs to be informed and consulted (separate procedure provided under planning legislation).

Other example, amendments of the local plan with respect to one or small area might also be exemption. But usually it will be assessed by the Competent authority whether the amendments might 'significantly affect the environment' and could require SEA, as in the case on "small amendments"/small area/local level, but plan was adding the possibility of the development of wind park.

The Competent authority's opinion (reflected in the Court case):

[9] http://www.vpvb.gov.lv/lv/strategiskais-ivn/lemumi/?type=9&year=2021

> The Bureau holds that envisaging a zone for harvesting wind energy in the spatial plan at that time could have been qualified as a substantial impact, taking into consideration the fact that the local government had wished to define harvesting of wind energy as the permitted additional use throughout the marked site, as well as the area of this site, the fact that no other regulatory pre-requisites regarding the scale and possibilities of performing such activities are envisaged, as well as the fact that the construction of WPS, if the height of the construction exceeds 20 meters, is an activity referred to in Annex 2 to the Law of EIA. Thus, in 2007 there had been grounds for adopting a decision on applying the procedure of strategic assessment. [10]

(vii) Does your national legislation and practice reflect the CJEU's conclusion that it is the "content" rather than the "form" of the planning or programming act that is decisive?

I would say, yes, analysing those examples mentioned also above. However, if one would try to argue that SEA is needed for a 'Government regulation', then I am quite sure that the main argument could be brought about 'legislative' level instead of planning and, therefore, SEA would not be required. However, till so far (as far as I know) nobody has "tested" a possibility to require SEA for Government regulation through the court.

[5] **General obligations (Art. 4):** How has this provision been transposed? In particular, has the obligation to carry out the assessment "during the preparation of" the plan or programme been respected? Are there any practical examples demonstrating the avoidance of duplication of assessment where there is a hierarchy of plans and programmes?

On the first part, I would argue that yes, usually SEA is part of the process and elaborated "during the preparation." At the same time, the work on SEA starts when the first draft of the plan is "on the table."

On the second part, for avoiding duplication: the decision (assessment) with respect to the Regional policy plan was referring significantly to other land use and local development plans claiming integrating the main elements already assessed during SEA for the latter. One may also see quite reflections in sectoral strategies referring to SEA of the National Development Plan.

[6] **Environmental Report (Art. 5, together with Art. 2 (b) and Annex I)**

(i) Is there national jurisprudence and / or practical examples demonstrating significant problems with the range of data included in the Environmental Report and the evaluation presented?

On the EIA yes, on SEA – no jurisprudence, however, according to the competent authority the qualities of reports indeed differs (very much depend on the experts/consultant involved), but the quality notably is improving in recent years.

(ii) Who makes the scoping determination?

Some part of it (to whom to consult, including the society) is set by the law. Other details set by the competent authority taking into account specificities of a plan.

[10] Quoted from the Constitutional Court judgment, Case No 2010-48-03.

(iii) Is the scoping determination available to the public?

There is no obligation to publish. But upon request it would be available. In the end of the process, all package of documents is made available, including opinions of public authorities in the process (that would include scoping decision).

(iv) How is the concept "reasonable alternatives" considered in practice – either in national legislation, official guidance and / or national jurisprudence?

There is no specific definition of a concept "reasonable alternatives" in the national legislation neither jurisprudence. This concept is basically interpreted as different ways of fulfilling the objectives of the plan. National legislation doesn't determine number of reasonable alternatives to be provided by a developer. Developers mostly assesses two alternatives. The "0" alternative or alternative "do nothing" might also be assessed.

Several cases have been identified during analyses of practice where 'alternatives' are indeed questionable whether serious alternatives have been considered at all. However, more problems seems to be appearing in the EIA and Nature 2000 context.

[7] **Consultations (Art. 6 together with Art. 2 (d)):** How has this provision been transposed and is there national jurisprudence and / or practical examples demonstrating significant problems here?

If available, please provide one example of an SEA with regional or national implications (not just local) to illustrate how consultation is carried out.

National legislation sets quite detailed provisions on public consultations within SEA; information is made publicly available, the consultation period is set and public hearings are to be held. These are the mandatory provisions set by the national legislation. The main steps through SEA are:

1) notification on the competent authorities (the Environment State Bureau) home page, as well as on the developer homepage, publication in press (local and/or national level, the latter depend on the level of the document);

2) consultation period set for public to submit written proposals and comments regarding the draft planning document and environmental report. Time period is at least 30 days from the publication day of the notification;

3) a meeting (public hearing) regarding the draft environmental report; (since end of 2020 (due to Covid) online consultations are possible to be carried out for certain planning documents (only national, not local) defined in law on emergency situation due to pandemic. It appears that quite often Online forms of consultation triggered much wider participation at least in quantitative terms – usually from 0 – 15 in average. Now often 50 and more (at least during EIA procedures).

4) the draft environmental report is made publicly available and notification about that needs to be published. (A developer posts on his home page a notice regarding the opportunity for the public to become acquainted with the draft environmental report and planning document; a developer of national planning document shall publish the notification in the

official Gazette of the Republic of Latvia, a developer of a regional or other type of planning document shall publish in at least one local newspaper, as well as send it to the relevant board and local government).

Information as examples on how the process is organized[11] and all relevant documentation seems quite easy to find on all natioanl planning documents for which SEA has been carried out, for example, on the National Energy and Climate Plan.[12] During the preparation of the plan and the environmental report (first draft of the plan) the society has possibility to submit written comments as well as the meeting (hearing) was organized (and some several workshops) to discuss details.

At regional/local level, some ten years ago we had quite many problems connected with the quality of the process of SEA, 'effectiveness' of informing the public, opinions 'not taken into account' etc., but since some landmark cases of the Constitutional Court identifying the problems and emphasizing the role of the SEA and the society in the process of territorial planning, one can note quite significant improvements (at least process wise). In fact, it seems also quite important role has been played by the competent authority supervising the process as they are very open to consult developers of plans and explain the process etc. However, it is difficult to assess whether the quality (not only the process) has been significantly improved as there is no such study made so far.

[8] **Transboundary consultations (Art. 7):** Has this provision come into play in your country? Who decides about initiating transboundary consultations? At what stage are transboundary consultations usually initiated? Is there any significant national jurisprudence and / or practical examples? Does the UN ECE SEA Protocol play a role here?

It seems there is no much experience with applying this procedure when Latvia has been "host" of planning document on which we need to consult with others. But at least one major plan can be identified that went through this procedure – consulting LT and EE on elaboration of our Maritime Spatial Planning. The same competent authority that supervises SEA/EIA process is deciding on possibly affected neighbouring countries and send them all information accordingly, as well receives information from our neighbours.[13] For example, the most recent one about the Danish Marine Spatial Plan and SEA Report on which public consultations are launched from 31.03.21.-30.09.21. The notice about informing Latvia and launching consultations contains the reference to Art.10 of the SEA Protocol as the legal basis for the consultations organized (not EU or other legislation).[14]

[11] Chart about that is provided on the Competent authority's web: http://www.vpvb.gov.lv/lv/strategiskais-ivn/procedura

[12] One can find here all documents, including comments provided by the COM, other institutions and society about the plan (and from the latter two – comments about the environmental report): https://www.em.gov.lv/lv/nacionalais-energetikas-un-klimata-plans

[13] All information on (both way consultations) - we receive/send can be find on the CA webpage: http://www.vpvb.gov.lv/lv/strategiskais-ivn/parrobezu-sivn The competent authority is also one who launches the consultations and collect opinions from the public etc.

[14] See notice: http://www.vpvb.gov.lv/lv/strategiskais-ivn/parrobezu-sivn/?id=2266

[9] **"Taken into account" (Art. 8):** How is this provision understood? Is there any significant national jurisprudence? Are there any specific mechanisms in place to monitor compliance with this particular obligation?

According to the Constitutional Court this requirement mean that opinions may not be ignored, and if refused arguments are provided by the public authority adopting the decision.

[10] **Monitoring the significant environmental effects of implementation of plans / programmes (Art. 10)**
Is monitoring a legal requirement in your country? If so, how it is organised and who is responsible for monitoring? Is it effective in practice? Are there any specific mechanisms to address the results of monitoring?
(**Note:** The REFIT examination suggests that monitoring is poorly executed in many countries).

Yes, the monitoring is legal requirement. The Environmental State Bureau determines the time periods in which the developer of the plan or programme shall submit a report on monitoring of the environmental effects of the implementation of the particular plan or programme. The developer prepares a monitoring report and submits it to the Environmental State Bureau within the time period specified in the opinion regarding the environmental report. The Environmental State Bureau once a year compiles the submitted monitoring reports and submit these reports to the State Company "Latvian Environment, Geology and Meteorology Centre".[15]

The Centre does not "check" or monitor, they just collect information. There seems to be no real control over substance and effects reported.

One could mention the possibilities of the society to complain (firstly to the Ministry then to the Court) if the monitoring requirements are not observed as some type of control mechanism (but again on the process rather than substance. Moreover, this option seems to be never used in the context of SEA.

[11] **Access to justice:**

(i) How are alleged deficiencies in the SEA process dealt with by your national courts? In particular, is a plan or programme declared void if a court determines that the SEA process was deficient / unlawful? (Note here Case C-24/19 paras 80-95 concerning the legal consequences, and the role of the national court, where there has been a breach of EU law).

Till so far, we have only the Constitutional Court case-law with respect to land use plans (and SEA reports), which in some cases had recognized Land use plan deficient *inter alia* due to breaches of the public rights on information and participation within the SEA procedure (or lack of it) and in such type of cases the Contested Plan has been annulled.[16] At the same time, the majority of cases are based on several claims/breaches of the law

[15] Monitoring reports are available http://www.vpvb.gov.lv/lv/strategiskais-ivn/monitorings/monitoringa-zinojumi

[16] See below on Pavilosta case No 2010-56-03. See also: Riga Freeport case No 2007-11-03: See also the case summery here: https://unece.org/DAM/env/pp/compliance/TFon_A_to_J/Latvia_2008_Free_Port_of_Riga.pdf

including with respect to risk significantly affect Natura 2000 site that has led to annulment of the land use plan.[17]

In fact, it was not possible to find the case where the only reason for annulment of the contested plan has been deficient SEA procedure.

At the same time, according to the guidance that the Constitutional Court has provided on a "manifest defect" that may lead to invalidate adopted plan, a deficient/unlawful SEA certainly could be one of such defects.[18] It is worth noting that the Court usually will decide also on temporal effect to such annulment. As in the case of Riga freeport, the Court annulled part of the plan (where SEA has not been appropriately carried out) declaring that previous plan regained its force while the municipality adopts a new plan with respect to the problematic part of the plan. According to the Court:

> When deciding on the date when the Contested Plan becomes invalid, the Constitutional Court takes into account the fact that its task is to eliminate defects made during the process of drafting of the Plan as much as possible. Under the circumstances, it is possible only by declaring this Plan invalid as from the date it became effective. The Constitutional Court is authorised to regulate issues, which are vital so that new violations of the fundamental rights do not appear after declaring of the Contested Plan null and void and "withdrawing of particular norms from application" does not cause disorder in the legal regulation of the Freeport of Riga. Therefore, if it is possible and necessary, the Constitutional Court in the operative part of the Judgment may declare that previous planning is regaining its force, which have been replaced with the contested act, which the Constitutional Court has recognised as incompatible with the legal norms of higher legal rank.[19]

(ii) Are there any restrictions / limitations on access to justice as a result of national provisions concerning either legitimacy or jurisdiction of (administrative) courts (i.e. are plans / programmes excluded from judicial control on the basis of any rule on jurisdiction of courts or legitimacy)?

In Latvia, The Constitutional Court has exclusive competence to adjudicate on legality of legislative acts (either of Parliament, Government or municipalities) as well as on Orders of the Government (except if in substance it is administrative act/authorization). As the majority of planning documents are approved by either the Government (strategies, guidelines, conceptions) or municipalities (land use planning, development plans) then one may challenge them only through the Constitutional Court. For the land use planning there is the administrative complaint procedure providing the right to complain to the Ministry of Environmental Protection and Regional Development (holding competence of supervising lawfulness of regulations of local governments) prior to the Court.

In 2019, the Supreme Administrative Court has refused their competence on the decision of the Competent authority adopting negative screening determination on SEA for local development plan (to be adopted by a regulation of a municipality). The Court argued that it is a part of legislative process and the control of legislative acts are not under the competence of the Administrative court but the Constitutional Court.[20]

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[17] For example, Constitutional Court judgment in case No 2007-11-03, stating: "manifest procedural defect is done by granting authorisation to the Contested Plan before the effects of its implementation on the Natura 2000 sites located in the respective territory and in its vicinity has been assessed."

[18] The Court stated: "Several criteria determine manifest defect. First, a manifest defect of the land use planning process is in case when a decision made differs from the one which could have been made if the procedure would have been observed. Second, a manifest defect is made in cases when the rights of the public participation are considerably disregarded during the process of land use planning. Third, manifest defect is constituted also when other principles of land use planning are violated (see: Judgment of 26 April 2007 by the Constitutional Court in the case No. 2006-38-03, Para 14)

[19] Riga Freeport case No 2007-11-03, para 28.

[20] Supreme Administrative Court, Decision in Case No 670003819, SKA-1162/2019 ECLI:LV:AT:2019:0617.SKA116219.3.L

(iii) Is it possible to challenge a negative screening determination?
Only after the final decision (plan) is approved. On the EIA decisions till 2012 it was possible to challenge a negative screening decision within 30 days after adoption. In 2012 the Supreme Administrative Court ruled that such type of decision is 'interim decision' that needs to be assessed if final decision (approving a development) is challenged. It has been criticized by some scholars, but it seems established practice so far.

(iv) Is it possible to challenge the scoping determination?
Similar answer as under (iii) but no case-law at all on this type

(v) Is there any significant national jurisprudence on access to justice in the SEA context?

Yes, e.g. landmark case on the Riga Free port was the first where the Constitutional Court admitted locus standi for ENGO (referring in fact also to the Aarhus Convention, Art 9(3)). They were entitled to submit complain based on Article 115 (right to healthy environment) of the Constitution and breach of that Article was based on *inter alia* breach of the requirements for SEA and public participation rights (and affects to N2000 site).

However, in recent years, there is rather silence from ENGO, no cases in the context of SEA (although those around 2008-2011 where rather successful)

[12] **Direct effect:** Are there any decisions of the national courts in your country where, because of alleged non-transposition, the direct effect of the Directive has been invoked?

Not yet.

[13] **SEA for proposed policies and legislation:** Have there been any developments in your country as regards SEA requirements for proposed policies and legislation that are likely to have significant effects on the environment, including health? (UN ECE SEA Protocol, Art. 13).

There seems to be not any development with respect to SEA requirements for policies and legislation that I could report in the context of SEA Protocol.

It seems that existing system is considered to suffice. According to the Law on State Administration Structure, public authorities elaborating policies and drafts for legislations are obliged to consult with the society and stakeholders (timely notify, give sufficient time to comment etc.) and to reconcile with other public authorities (including the Ministry of Environmental Protection). Thus, it considered to be appropriate to ensure the requirements on Art.13 to ensure that "environmental, including health, concerns are considered and integrated to the extent appropriate in the preparation of its proposals for policies and legislation that are likely to have significant effects on the environment, including health." So, in a sense it is considered to be the task of the Ministry of Environment to take care about integration of environmental concerns in policies and legislation as appropriate. Ministry of Health with respect to health concerns. Of course, we know how easy or how far it is indeed possible and what are drawbacks of such "ownership" of the responsibility.

[14] **National studies:** Have any significant official (or unofficial) studies of the implementation of the Directive and its impact in your country been published? If yes, please provide brief details and the key findings.

There have not been any significant studies of the implementation of the Directive (apart from those launched by the COM).

[15] **National databases:**

(i) Is there any national database on the number and categories of SEAs carried out each year in your country? If there is, please provide summary data for the most recent year available.

(ii) Is there any national database of SEA reports, Environmental Assessments and the relevant decisions made by the competent authority etc.? If yes, please summarise the position briefly and indicate if the database is available online.

The relevant information is compiled on the Competent authority's data base (which in fact is going to be significantly improved during this year to make more user-friendly interface.)

At this moment, the information is very divided under different subjects/sub-subjects/processes creating difficulties to conclude on the broader "picture". Nevertheless, all information on SEA and EIA mentioned under (i) and (ii) is made available online (but not as 'database' to easy search or make statistics etc., but rather contains descriptive texts/information). Summarizing information available online:

- Short information on SEA as such: (http://www.vpvb.gov.lv/lv/strategiskais-ivn)
- SEA procedure (chart) (http://www.vpvb.gov.lv/lv/strategiskais-ivn/procedura)
- Information, including methodological directions, guidelines (mostly EU, or project based) (http://www.vpvb.gov.lv/lv/strategiskais-ivn/informacija)
- Transboundary SEA (http://www.vpvb.gov.lv/lv/strategiskais-ivn/parrobezu-sivn)
- Notices on SEA, where is also information on public hearings and adopted plans after consultations. http://www.vpvb.gov.lv/lv/strategiskais-ivn/pazinojumi

- **Decisions on SEA** (positive and negative), listed for each year separately (so, to find something concrete you need to know year or try to search through general searchh option). (http://www.vpvb.gov.lv/lv/strategiskais-ivn/lemumi).

In 2021 there are 8 decisions requesting SEA and in 29 cases concluding that SEA is not needed (containing justification)

- Conclusions on the SEA Reports: http://www.vpvb.gov.lv/lv/strategiskais-ivn/atzinumi
  From this information one could count how many SEA have been carried out/concluded per year. For example, this year 2 Conlcusions of the Competent authority, in 2020 – 24, in 2019 – 25 (in contract decisions on SEA (yes/no) – 64.
- Information on **Monitoring** http://www.vpvb.gov.lv/lv/strategiskais-ivn/monitorings

There are also guidelines on monitoring, as well as annually updated information on planning documents for which monitoring reports need to be submitted in respective year.

- Reports on Monitoring are available here: http://www.vpvb.gov.lv/lv/strategiskais-ivn/monitorings/monitoringa-zinojumi

[16] Impact of SEA in practice: Are you aware of draft plans or programmes in your country which have been amended significantly – prior to their adoption or submission to the legislative procedure – as the result of SEA procedures?

There is no such research performed to make any general conclusions, however, there are quite some cases where the plans have been amended, adjusted to take into account the recommendations and directions of the competent authority (especially with respect to risk affecting N2000 sites).

In addition, those cases that have proceeded through the Constitutional Court "check", concluding on inadequacies *inter alia* in the SEA report (next to missing information, ineffective consultations with the society) were quite significantly improved afterwards. So far, the cases are related only to land use planning (and SEA therein). For example, in case on Pavilosta (seaside city) land use plan where some developments (building area, forestry) were planned to be located in area with EU protected habitat (outside and in N2000). The Court admitted that the plan was breaching the law on Protected zones and Article 115 of the Constitution (right to healthy environment). Accordingly, annulled the regulation of the municipality approving the plan.[21] The plan has been changed inter alia limited above-mentioned developments, as well as adjusting territorial locations to avoid affecting N2000 site. There have been aprox. 15 cases (mostly initiated by ENGOs) before the Constitutional Court challenging land use planning (and some of them SEA report or lack of qualitative SEA) during 2006-2018 (no cases recently). The majority of them have concluded with annulled plan (or part of it) based on environmental concerns (and thus, Art.115 claimed to be breached).

[17] Any other significant issues? Are there any other significant issues concerning the implementation of provisions of the Directive in your country which you consider are worth mentioning here?

[18] General assessment and / or any recommendations: Do you have any overall view of the effectiveness of SEA in Europe and / or any recommendations for improvement?

The issue on 'alternatives' (including in case of Habitat Directive Art.6(4) seems indeed something to be clarified/guidance needed. Probably, other MS have something on them?

It would be interesting to discuss whether SEA has been carried out/required for the RRF (Recovery and Resilience Mechanism) in other MS. In our case, the Ministry of Finance started it, sent to the competent authority, launched the consultations, but in the end sent to the Commission for approval without finalized SEA or any decision on that.

[21] Constitutional Court case No 2010-56-03, judgement of 12.05.2011. The case initiated by ENGO. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2010-56-03_Spriedums.pdf#search=

Appendix

SUPPLEMENTARY QUESTIONNAIRE ON "WHO DOES WHAT IN THE SEA PROCESS"?

30-5-2021

In the light of your national (or more relevant) scheme for SEA, please describe briefly:

1. Who has the overall responsibility for the SEA procedure: planning authority (i.e. authority responsible for the preparation of the plan/ programme) or environmental authority?

   The overall responsibility lies on a planning authority (who prepares or is responsible to develop a plan and an SEA report). At the same time, the competent authority[22] for the SEA process holds responsibility as supervising body for the process setting the overall obligations and details for the process, as well as following whether they are complied with, issuing a statement with recommendations on improvements needed (if there are any).

2. What is the role of the planning authority in screening, scoping, public participation, consultation with other authorities, taking into account the results of SEA and in monitoring etc.).

   Planning authority has an active role within the process as responsible for the development of a documents and process for that including consultations to be conducted during the preparation of the SEA report. According to the law it has to submit application (commencing screening process), conduct consultations, to clarify what needs to be included in the SEA report, whom to be consulted in addition to those required by the law, conduct consultations, perform monitoring, prepare monitoring report (to be submitted to the competent supervising authority).

3. What is the role of the authorities having "specific environmental responsibilities" in screening, scoping, public participation, consultation with other authorities, in taking into account the results of SEA in the plan/ programme, and in monitoring?

   The environmental authority – the State Environmental Bureau (SEB) is the competent authority that holds responsibility of supervising the process as noted above. At the same time there are several other environmental authorities involved in the process (consultation process, issuing opinions on specific elements as on nature protection – the Nature Protection authority). The SEB issues also a decision on the SEA report, may consult a planning authority, define how monitoring needs to be done, as well as make assessment whether an SEA report comply with the requirements including on the obligation to take into account the results of public consultations (i.e., opinions are appropriately assessed). The SEB may take a decision that the SEA report needs to be improved including on quality of public consultations.

[22] The State Environmental Bureau (SEB)

4. Are there any other bodies (independent commissions etc.) having a role in screening, scoping, public participation, consultation with other authorities, in taking into account the results of SEA in the plan/ programme, and in monitoring?

   No, there is no 'independent body' involved in the process but there are other institutions involved in the process that needs to be consulted (e.g., the State Environmental Service, the Nature Protection authority, the Health Inspection – these are all involved in the screening process as mandatory requirement to be consulted).

5. Is there only one or more authorities having "specific environmental responsibilities" involved in SEA procedure? If only one - which agency or body performs usually the role of the "environmental authority"?

   Partly answered under the Q4. There are three institutions listed in the law as mandatory to be consulted during the screening process, but some of them also during the scoping (other 'if need be' or required by the supervising authority). In addition, the SEB may require to consult with other authorities when the SEA report is prepared.

6. Which authority is responsible for the preparation of the "environmental report" provided for at art. 5 of the SEA Directive? What is the name given in your legislation to that "report" (original version and in English, if possible)?

   Planning authority (as indicated under the 1Q).
   It is "environmental review" – "*vides pārskats*" (in substance 'report'), but the term chosen is connected with the aim to differentiate from an 'EIA report'….

7. What is the legal form (binding or non-binding) of consultations with authorities having "specific environmental responsibilities" in screening (art.3.6), in scoping (art. 5.4) and in expressing "their opinion on the draft plan or programme and the accompanying environmental report" (art.6.2)?

   There is a difference between opinions issued by other (above listed) environmental authorities (like the Nature Protection authority) and the SEB. The former opinions are not legally binding but have to be taken into account (assessed) by a planning authority while developing a plan and an environmental review. The SEB (the supervising environmental authority) decision on scoping is rather binding. And it adopts a decision about the environmental review that could be also negative requiring improvements of the report or better justification for option chosen in the plan. At the same time, the final decision on the approval of the plan and conditions thereto is upon the planning authority (responsible for the plan) indicating how the opinions of the authorities consulted (and public) have been taken into account. There is no case-law indicating whether ignorance of the SEB conclusions would result in quashed plan. Normally the planning authority tries to follow the opinion of the SEB (through step-by-step consultations during the process.) and certainly follows if there is the conclusion of the SEB that a plan wouldn't comply with the legislation as elaborated.

8. Is there any specific document serving as the "conclusions" derived from the SEA process and documenting due account taken of the results of SEA (art. 8)? If yes – please give its name (original version and in English, if possible). Who prepares it? What is its legal status?
   Yes, the planning authority has to prepare so-called information report where it has to reflect on conclusions derived and how results of the SEA has been taken into account. The report has to be prepared and published on its website during 14 days after the plan is adopted. The Government enactment (No 157/2004) states what the report needs to reflect on (including on how the environmental considerations from the SEA report has been integrated into the plan and justification on the option chosen and information on the monitoring planned).

9. If there is a separation of roles among the "planning" and the "environmental" agencies, what happens in case of a disagreement between them as to the conclusions (or conditions) derived from the SEA or about the way in which the proposed plan should be amended accordingly?
   Yes, the roles are separated as described above. There are conditions provided in the law when a plan may be stopped by the supervising authority (SEB) not allowing to be adopted e.g. it may significantly affect human health or environment and the chosen option is not appropriately justified. (Law on EIA Art.23[5] para 7.). At the same time, the final responsibility and decision on the approval of the plan lies on the planning authority as described under Q1. But if it adopts a plan ignoring the supervising authority it seems only option is the court to settle a disagreement, but again there is no case-law so far in this particular context.

10. Is it possible that the role of the "planning authority" and that of the "environmental authority" coincide in the same body or agency? Could you please provide a practical example thereof?
    No, supervising environmental authority doesn't elaborate planning documents.