



SEA: WHICH plans and programmes? (1/3)

Art 2(a) "plans and programmes"

- ✓ prepared and/or adopted by an **authority** at national, regional or local level **AND**
- ✓ **required** by legislative, regulatory or administrative provisions.

=> **Normative acts** adopted by law or regulation are covered (C-290/15)!





SEA: WHICH plans and programmes? (2/3)

Non-exhaustive examples of p/p required under the EU legislation

- Nitrates Action Programmes (Directive 91/676/EEC)
- River Basin Management Plans (Water Framework Directive 2000/60/EC)
- Flood Risk Management Plans (Directive 2007/60/EC)
- Programmes of measures (Marine Strategy Framework Directive 2008/56/EC)
- Waste management plans (Waste Framework Directive (2008/98/EC)
- Transitional National Plans (Industrial Emissions Directive (2010/75/EU)





„subject to preparation and/or adoption by an authority“

- Includes public/private partnerships: plans and programmes which were prepared by an authority in collaboration with a developer of the project concerned fall within the scope of the Directive (C-9/22, An Bord Pleanála, para 29).
- The fact that that plan was prepared jointly by the private project developer and Dublin City Council is irrelevant.



'Required'

- Plans and programmes whose adoption is **regulated by national legislative or regulatory provisions**, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as '**required**' within the meaning, and for the application, of the SEA Directive (Inter-Environnement Bruxelles, case C-567/10).
- **A requirement to adopt the measure in question is not necessary.** Excluding from the scope of the SEA Directive those plans and programmes whose adoption is not compulsory would compromise the practical effect of that directive (Inter-Environnement Bruxelles, case C-671/16, para 38).





SEA: WHICH plans and programmes? (3/3)

Art. 3(2): Plans and programmes (P/Ps) that **always** undergo an SEA are:

- *prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/water management, telecommunications, tourism, town & country planning or land use **AND** which set the framework for future development consent of projects listed in the EIA Directive;*
- *which have been determined to require an assessment under Articles 6 or 7 of the Habitats Directive.*

Art. 3(3)(4): P/Ps that must be **screened**:

- *P/Ps using small areas at local level.*
- *minor modifications to P/Ps.*
- *P/Ps setting the framework for future "non-EIA projects" and "non-sector" P/Ps.*

Art. 3(8): P/Ps the sole purpose of which is to serve **national defence** or **civil emergency, financial or budget** plans are outside the scope of the SEA.





What are 'plans and programmes' ?

- The notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, "**a significant body of criteria and detailed rules** for the grant and implementation of one or more projects likely to have significant effects on the environment" (C-290/15, D'Oultremont, para 49).
- That interpretation of the concept of 'plans and programmes' is "intended to ensure that provisions which are **likely to have significant effects on the environment** are subject to an environmental assessment" (C-671/16, Inter-Environnement Bruxelles, para 54).
- The concept of 'a significant body of criteria and detailed rules' must be construed **qualitatively** and not quantitatively. It is necessary to avoid strategies which may be designed to circumvent the obligations laid down in the SEA Directive by splitting measures (C-671/16, Inter-Environnement Bruxelles, para 55).





Setting the framework for an EIA

" and which set the framework for future development consent of projects listed in the EIA Directive";

"**Only acts of a mandatory nature** are capable of limiting the discretion enjoyed by those authorities and thus of excluding certain modalities of implementation of projects which might prove to be more favourable to the environment, which is why such acts must be subject to an environmental assessment within the meaning of Directive 2001/42" (C-9/22, An Bord Pleanála, para 50)



Relation SEA-EIA

- The SEA is carried out **as soon as possible** so that it may still influence any decision-making (it is at that stage that many options are still open, and **strategic choices** may be made (e.g. addressing climate change and biodiversity)).
- A combined procedure of SEA and EIA is not excluded, provided the requirements of both Directives are met (C-295/10, Valciuckiene, para 60-62). An assessment under the EIA Directive cannot lead to an exemption from the obligation to carry out the assessment under the SEA Directive (C-160/17, Tyhbaut, para 60-64).
- A plan or programme adopted without an SEA, in breach of the SEA Directive, must be **suspended, annulled or disapplied** by the national court. Consents for projects based on such a plan or programme must be treated in the same way (C-24/19, A, Wind turbines at Aalter and Nevele, para 116-117).





SEA: WHICH plans and programmes?

Example: Sectoral plans in the field of energy in Austria (1/4)

- Austrian legislation did not provide for an SEA for plans for gas pipelines and power grids. The network development plan (§ 37 ElWOG), the long-term plan (§ 22 GWG) and the coordinated network development plan (§ 63 GWG) were not subject to an SEA.
- A project for a 380 kV overhead power line (Annex I point 10 EIA Directive) "Salzburgleitung", included in the 'network development plan', was approved although this underlying plan had not been subject to an SEA.
- The Commission received numerous complaints from citizens and environmental organisations.





SEA: WHICH plans and programmes?

Example: Sectoral plans in the field of energy in Austria (2/4)

Network development plan (§§ 37 EIWOG)

- Is this plan subject to preparation and/or adoption by an authority?
- Is this plan required by legislative regulatory or administrative provisions ?
- Is this plan prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use ?
- Does this plan set the framework for future development consent of EIA projects ?





SEA: WHICH plans and programmes?

Example: Sectoral plans in the field of energy in Austria (3/4)

- In the view of the Commission these plans set a framework for future development consent. It was – in practice - impossible to carry out projects not included in these plans. Only projects included in these plans were in the public interest thus enabling expropriation of private property. In addition, network operators were legally obliged to realise them. As the execution of these plans was likely to have significant environmental effects, a broad interpretation of the SEA Directive was necessary (see C-567-10 para. 37, C-473/14 para. 50, C-290/15 para. 39 and the Commission's SEA guidelines)
- The Commission started infringement proceedings against Austria [INFR(2017)4072] and sent a LFN in 2019.





SEA: WHICH plans and programmes?

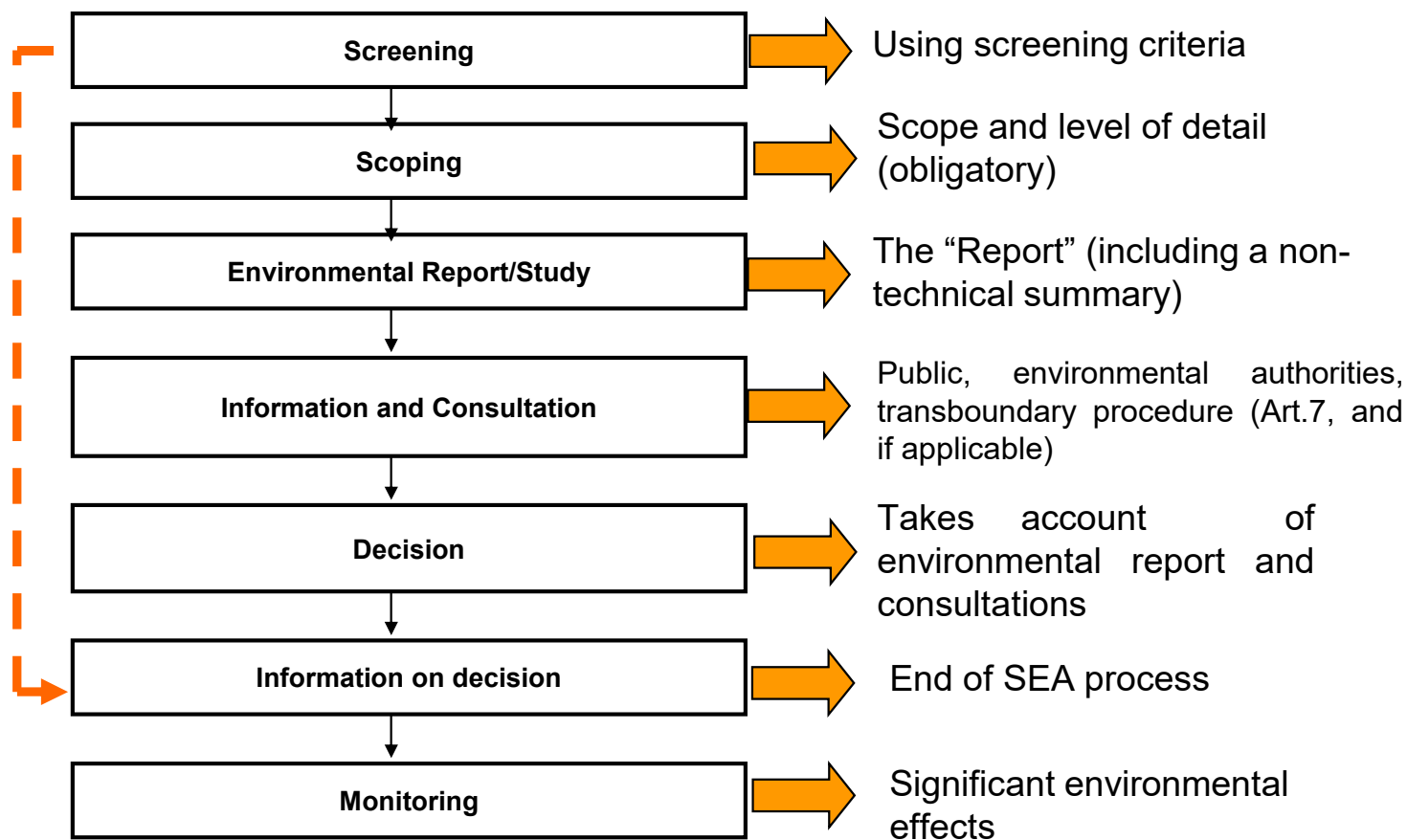
Example: Sectoral plans in the field of energy in Austria (4/4)

- Austria considered that its legislation was in conformity with EU law. These plans did not set a framework for future development consent of projects since they were not formally required for granting future EIA permits. It was not excluded that projects not included in these plans obtained development consent.
- Nevertheless, Austria agreed to modify its legislation and to provide for an integrated network plan subject to an SEA (Law on renewable energy, EAG - BGBl. I 150/2021).
- This law did not provide for an ex-post SEA of approved projects, such as the 380 kV power line. (VwGH: 15 October 2020, Ro 2019/04/0021-0024 – the VwGH examined the legality of the EIA consent as if the underlying plan (NEP) did not exist (it 'disapplied' the plan) and found that public interest did not only result from the national plan but also from the inclusion of the project in the TEN-E regulation).
- In 2022 the Commission closed INFR(2017)4072 on grounds of opportunity.





The SEA procedure





What is "screening"?

Determination whether a plan or programme is likely to have significant environmental impacts.

Why carry out a "screening"?

- To determine whether SEA is required.

For which plans/programmes carry out a "screening"?

- P&P local level + minor modifications of P&P;
- P&P setting the framework for future development consent of projects; not covered by Art 3.2.

How to carry out "screening"? (Art. 3(5) and Annex II)

- **Case-by-case** decision or specifying **types** of plans and programmes or a **combination** of both;
- Annex II criteria: characteristics of p/p; characteristics of effects and areas likely to be affected.





Integration of the SEA procedure in the planning process

Art. 4 and 11 of the SEA Directive

- **SEA should be carried out:**
 - ✓ *During the preparation of plans/programmes;*
 - ✓ *Before their adoption.*
- **SEA may be integrated** in existing planning procedures for the adoption of plan and programmes or in new ones for the requirements of the Directive.
- **SEA ≠ EIA:** an environmental assessment carried out under the SEA is to be without prejudice to any requirements under the EIA Directive.



SEA can address a wide range of issues

Climate change mitigation	Climate change adaptation	Biodiversity
• energy demand (industry) • energy demand (housing & construction) • GHG emissions in agriculture • GHG emissions (waste management) • travel patterns and GHG emissions (transport) • GHG emissions from energy production • land use, land-use change, forestry and biodiversity • ...	• heat waves • droughts • flood management and extreme rainfall events • storms and high wind • landslides • sea level rise, extreme storms, coastal erosion and saline intrusion • cold spells • freeze-thaw damage • ...	• degradation of ecosystem services • loss of habitats, fragmentation • loss of species diversity • loss of genetic diversity • ...



Key elements of SEA - the Environmental Report (1/3)

Must identify, describe and evaluate:

- the likely significant **environmental effects of implementing the plan/programme**, including
 - effects on biodiversity, soil, water, air, climatic factors
 - effects on population, human health, architectural and archaeological heritage, landscape.
- reasonable **alternatives** taking into account the objectives and the geographical scope of the plan/ programme
 - ! **alternatives must include the « zero » alternative**, i.e. the current state of the environment and the likely evolution of environment without implementation of the plan or programme.





Key elements of SEA - the Environmental Report (2/3)

- Outline of the plan/programme and **relationship with other plans/programmes**
- Environmental characteristics of the area.
- **Environmental protection objectives**, how they were taken into account.
- Mitigation measures (envisaged to prevent, reduce and as fully as possible compensate any significant adverse effects on the environment of implementing the plan or programme).
- **Monitoring measures.**
- **Non-technical summary (important).**





Key elements of SEA - Consultation (3/3)

- **Environmental authorities**
 - in screening
 - in scoping
 - on the **draft** plan/programme and the environmental report
- **The public**
 - on the **draft** plan/programme and the environmental report
- **Transboundary consultations**
 - on the **draft** plan/programme and the environmental report





Key elements of SEA - Monitoring

- Member States have to monitor the significant environmental effects of the implementation of the plan/programme in order to:
 - identify at an early stage unforeseen adverse effects;
 - be able to undertake remedial action.
- Existing monitoring arrangements may be used.
- Monitoring measures must be covered in the SEA Report.





Key elements of SEA - Decision making

Art. 8 of the SEA Directive

The competent authorities have to take account of the:

- Environmental report.
- Opinions expressed pursuant to the consultation (public, environmental authorities).
- Results of any transboundary consultation.





Key elements of SEA - Information on the decision

Art. 9 of the SEA Directive

Information about final decision has to be provided to the public, environmental authorities, other countries (if consulted):

- Adopted plan/programme;
- Statement summarising how environmental report and results of consultations have been taken into account, and reasons for choosing between alternatives;
- Monitoring measures.





Access to Justice

The SEA Directive does not provide for specific rules on the access to justice. In the Commission's view, it results from Art. 9(3) of the Aarhus Convention, in conjunction with Article 19(1) TEU and Article 47 of the Charter on Fundamental Rights, that **members of the public**, in particular NGOs, **have the possibility of legal action in case an authority failed to carry out an SEA or did not carry out the assessment as required by the Directive**, including the procedural requirement of public participation. This applies independently of the legal nature of the act adopting the plan and **includes also regulatory acts** (Verordnungen).



SEA Guidance

- 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;
- Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment (March 2013);
- Report from the Commission on the application and effectiveness of the SEA Directive, COM/2009/469;
- GRDP Handbook on SEA for Cohesion Policy 2007-2013 (Interreg IIIC, GRDP greening regional development programmes).





EIA/SEA Europa website

http://ec.europa.eu/environment/eia/index_en.htm

Thank you