
Questionnaire for the report of the Netherlands on the implementation of the Protocol on Strategic Environmental Assessment in the period 2016–2018

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Part one

Current legal and administrative framework for the implementation of the Protocol

In this part, please describe the legal, administrative and other measures taken in your country to implement the provisions of the Protocol. This part should describe the framework for your country's implementation, and not experience in the application of the Protocol.

Article 3

General provisions

I.1. Please provide the main legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (more than one option may apply):

(a) Law on SEA (please indicate number/year/name):

(b) SEA provisions are transposed into another law(s) (please specify):

- *Wet van 5 juli 2006 tot wijziging van de Wet milieubeheer in verband met de uitvoering van richtlijn nr. 2001/42/EG van het Europees Parlement en de Raad van de Europese Unie van 27 juni 2001 betreffende de beoordeling van de gevolgen voor het milieu van bepaalde plannen en programma's (PbEG L 197) (milieu-effectrapportage plannen) (Stb. 2006, nr. 336)*

- *Wet Modernisering van de regelgeving over de milieueffectrapportage (Stb. 2010, nr. 20)*

(c) Regulation (please indicate number/year/name):

(d) Administrative rule (please indicate number/year/name):

- *Besluit van 4 juli 1994, houdende uitvoering van het hoofdstuk Milieu-effectrapportage van de Wet milieubeheer („Besluit milieueffectrapportage”), amended in 2011 (Besluit tot wijziging van het Besluit milieueffectrapportage en het Besluit omgevingsrecht (reparatie en modernisering milieueffectrapportage) (Staatsblad 102, jaargang 2011), amended in 2015 (Wijziging Besluit Mer - Wet windenergie op zeeBesluit) (Staatsblad 2015, nr. 263.*

(e) Other (please specify):

Your comments:

*The SEA Directive was formally transposed by amending the Environmental Management Act (1987) in 2006 and amending the relevant regulatory provisions of the Administrative Rule (“Besluit milieueffectrapportage”), separating the EIA and SEA procedures. On July 1, 2010 the Dutch Environmental Assessment legislation changed (**Environmental Assessment Modernisation Act**), modifying the procedures of EIA/SEAs (although the categories of plans/programmes/projects*

requiring an SEA/EIA were unchanged), effectively integrating the SEA and EIA processes again.

Article 4

Field of application concerning plans and programmes

I.2. List the types of plans and programmes that require SEA in your legislation:

An SEA is mandatory if the legal and administrative plan or programme is a framework for activities that may be subject to an EIA or EIA screening.

Part C and Part D of the Annex to the EIA Decree explicitly describe which types of plans are included and where these plans are mentioned in relevant laws .

An SEA must also be carried out as part of the preparation of a plan which must be adopted pursuant to a statutory or administrative provision and require an appropriate assessment pursuant to the Wet natuurbescherming (Nature Conservation Act) (the Dutch implementation of the Birds and Habitats Directive) due to an activity included in the plan. This assessment (commonly called an appropriate assessment) has to be incorporated in the environmental impact report.

I.3. Explain how you define whether a plan or programme “set the framework for future development consent” (art. 4, para. 2):

We don't have a specific definition, but in the EMA it is stated that: A plan will, in any event, be considered the framework for such activities if:

- *it designates a site or route for such activities, or*
- *in the plan one or more sites or routes are considered for those activities.*

(Environmental management Act, art. 7.2, sub 2)

I.4. Explain how the terms “plans and programmes ... which determine the use of small areas at local level” (art. 4, para. 4) are interpreted in your legislation:

It is possible for the Ministry of Infrastructure and Water Management to designate categories of cases of small areas and small modifications that cannot have significant environmental effects under the Environmental Act, section 7.2a, part 2. This only applies to plans/projects that would require an SEA consequently to being subject to an “appropriate assessment” pursuant to the Birds- and Habitats Directive. So far, this possibility has not been used.

I.5. Explain how you identify in your legislation a “minor modification” to a plan or programme (art. 4, para. 4):

Please see the answer under question I.4.

Article 5

Screening

I.6. How do you determine which other plans and programmes should be subject to a SEA as set out in article 4, paragraphs 3 and 4, in accordance with article 5, paragraph 1? Please specify:

-
- (a) On a case-by-case basis
 - (b) By specifying types of plans and programmes
 - (c) By using a combination of (a) and (b)
 - (d) Other (please specify):

Your comments:

Please see the answers to questions I.2 and I.3. The case by case basis (a) applies to deciding whether a specified (b) plan or program is setting a framework for future developments that possibly require an EIA (directly or after screening). This decision is made by the competent authority. There are no specific screening arrangements for other plans and programmes, except for plans or programmes that are subject to an "appropriate assessment" pursuant to the Birds- and Habitats Directive.

I.7. Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation (art. 5, para. 3, and art. 6, para. 3)?

No

Yes (please specify (more than one option may apply)):

- (a) By sending written comments to the competent authority
- (b) By sending written comments to the local municipality
- (c) By providing answers to a questionnaire
- (d) By taking part in a public hearing
- (e) By sending written comments to the consultants/SEA experts or persons preparing the plans and programmes
- (f) Other (please specify): *In addition to written comments oral comments may be given as well when there is the opportunity to express views in the scoping phase. Also competent authorities may organise hearings or meetings for the public or specific stakeholders.*

Your comments:

Regarding scoping: the SEA procedure prescribes that the public is informed at an early stage about the intention to develop a plan or program and to carry out a SEA for this plan or program. In this publication the competent authority is obliged to – amongst other things such as information on the outline of the plan - give information on who is given the opportunity to express their views on what. In practice this is more or less always the public (concerned) which is given the opportunity to express their views on the intention to develop a specific plan or program together with the scope and level of detail of the SEA (alternatives etc).

Article 6 Scoping

I.8. How do you determine what is the relevant information to be included in the environmental report, in accordance with article 7, paragraph 2 (art. 6, para. 1)?

Annex IV is translated in section 7.7 EMA.

Advisors and relevant authorities are consulted on the scope and detail of the SEA report (e.g. the relevant information to include in the environmental report). The public has to be consulted during the scoping phase; those comments may be taken into account as well when determining the scope and level of detail of the SEA report.

Article 7

Environmental report

I.9. How do you determine “reasonable alternatives” in the context of the environmental report (art. 7, para. 2)? Please specify:

- (a) On a case-by-case basis
- (b) As defined in the national legislation (please specify):
- (c) By using a combination of (a) and (b)
- (d) Other (please specify):

Your comments:

I.10. How do you ensure sufficient quality of the reports? Please specify:

- (a) The competent authority checks the information provided and ensures it includes all information required under annex IV as a minimum before making it available for comments
- (b) By using quality checklists
- (c) There are no specific procedures or mechanisms
- (d) Other (please specify): *It is mandatory for the competent authority to ask the Netherlands Commission for Environmental Assessment (NCEA) for an advice on the environmental report (does the SEA contain all relevant information necessary for the decision on the plan or program at stake). On a voluntary basis the competent authority can also ask for an advice of the NCEA on the scope and level of detail of the environmental report (which information the report should contain). The responsibility for ensuring a sufficient quality of the environmental report lies ultimately with the competent authority of the plan or program.*

Article 8

Public participation

I.11. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (more than one option may apply):

- (a) Through public notices
- (b) Through electronic media
- (c) Through other means (please specify):

Your comments:

The draft plan or draft program and the environmental report are made public by a publication in one or more daily national, regional and/ or local (news)papers or in

another suitable manner. In the case of a national plan, a notification about the draft-plan and SEA report is also published in the governmental gazette. The draft-plan or program is made available for the public both through physical form and optionally electronic medium..

I.12. How do you identify the public concerned (art. 8, para. 3)? Please specify (more than one option may apply):

- (a) Based on the geographical location of the plans and programmes
- (b) Based on the environmental effects (significance, extent, accumulation, etc.) of the plans and programmes
- (c) By making the information available to all members of the public and letting them identify themselves as the public concerned
- (d) By other means (please specify):

Your comments:

It is a combination of a, b and c. By law everybody is entitled to express their views on any draft-plan or program if they wish to do so. When it concerns a local or regional plan, the publication is usually made in the regional and/or local (news)papers, as in practice the competent authority usually identifies the relevant stakeholders (including the public) for a certain plan or program as part of the process in order to communicate as effectively and efficiently as possible.

I.13. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (more than one option may apply):

- (a) By sending comments to the relevant authority/focal point
- (b) By providing answers to a questionnaire
- (c) Orally
- (d) By taking part in a public hearing
- (e) Other (please specify):

Your comments:

By law everybody is entitled to express their views on the environmental report and draft plan or programme by sending comments to the relevant authority. Sometimes the possibility is provided to provide comments orally or by taking part in a public hearing. This is however not required by legislation.

I.14. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify:

- (a) No, the time frame is determined by the number of days fixed for each commenting period
- (b) No, it is defined case by case
- (c) Yes (please provide the definition): *The timeframe to put forward views on the SEA report (together with the draft plan or program) is stipulated by law and is six weeks.*
- (d) Other (please specify):

Your comments:

Article 9

Consultation with environmental and health authorities

I.15. How are the environmental and health authorities identified (art. 9, para. 1):

- (a) On a case-by-case basis:
- (b) As defined in the national legislation:
- (c) Other (please specify)

Your comments:

Governance and governmental authority in the Netherlands is decentralised, with the Ministry of Infrastructure and Water Management the main responsible authority for environmental management. There is no national environmental management authority. Both EIAs and SEAs can be performed at national, provincial or municipal level. The 'competent authority' is the administrative body deciding on the potential plan or programme, who therefore also has to perform the SEA. For national plans and programmes this means the responsible minister, for provincial plans the Provincial Executive and for municipal (land use or zoning) plans the responsible town council.

In Dutch SEA practice the main authorities are

- the competent authority; the government body which decides upon the plan or programme and therefore also has to do the SEA;*
- 'all relevant authorities', whom the competent authorities have to inform about the plan or programme and about the SEA; this may be local or provincial authorities, state services, water boards or others, depending on the plan or programme in question.*
- The Cultural Heritage Agency of the Netherlands who have to be informed by the competent authority about the plan or programme and about the (scope of the) SEA*

In addition to those, there is the Netherlands Commission for Environmental Assessment (NCEA): an independent committee of experts in the various fields of knowledge covered by the SEA, who have to be asked for advice by the competent authority on completeness and correctness of the information in the SEA .

I.16. How are the arrangements for informing and consulting the environmental and health authorities determined (art. 9, para. 4):

- (a) On a case-by-case basis:
- (b) As defined in the national legislation:
- (c) Other (please specify)

Your comments:

The responsibility for the decision on both the plan/programme and the SEA report lies with the 'competent authority', who has to consult 'all authorities that have a legal predetermined role in the preparation of the plan or programme' on both the scope of the SEA and the SEA report. It also is compulsory for the competent authority to ask for an advice of the NCEA on the quality and completeness of the environmental report.

I.17 Does your national legislation call for consultations with environmental and health authorities?

- (a) Yes
- (b) No

I.18. How can the environmental and health authorities express their opinion (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 3):

- (a) By sending comments
- (b) By providing answers to a questionnaire
- (c) In a meeting
- (d) By other means (please specify)

Your comments:

Please see the answer to question I.16.

Article 10 Transboundary consultations

I.19. As a Party of origin, when do you notify the affected Party (art. 10, para. 1)? Please specify:

- (a) During scoping
- (b) When the draft plan or programme and the environmental report have been prepared
- (c) At other times (please specify):

Your comments:

The Affected Party is notified in the scoping phase when important potential transboundary effects are expected / are not unlikely to occur. Often this is preceded by an "informal notification" giving information on the plan or project and – when available - information on the possible transboundary effects. This also gives the opportunity to request assistance of the Affected Party on matters such as which authorities to consult in the transboundary procedure etc. When the draft plan or program and the environmental report are prepared, the Affected Party is provided with this information and notified again. When the Affected Party has not been notified in the scoping phase because at the time potential transboundary effects were not to be expected, it is also possible that the Affected Party is notified as soon as possible in case the information gathered for the environmental report shows that there are important potential transboundary effects, e.g. when the draft plan and/or environmental report has been prepared.

I.20. As a Party of origin, what information do you include in the notification (art. 10, para. 2)? Please specify:

- (a) The information required by article 10, paragraph 2
- (b) The information required by article 10, paragraph 2, plus additional information (please specify):

Your comments:

I.21. As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party (art. 10, para. 2)? Please specify:

- (a) No
- (b) Yes (please indicate how long): *six weeks*

Your comments:

The time frame given to the Affected Party for the transmission of comments is identical to the timeframe given nationally, which is six weeks (General Administrative Act).

I.22. If the affected Party has indicated that it wishes to enter into consultations, how do the Parties agree on detailed arrangements to ensure that the public concerned and the authorities in the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, paras. 3 and 4)?

- (a) Following those of the Party of origin
- (b) Following those of the affected Party
- (c) Other (please specify):

Your comments:

Basically the procedure of the Party of Origin is followed, as agreed in bilateral agreement/arrangements with Germany and the Flanders Region (Belgium).. However, on request of the Affected Party certain working arrangements may be agreed upon in consultation (e.g. which matters to address, whether or not to organise a meeting etc).

Article 11 Decision

I.23. When a plan or programme is adopted, explain how your country ensures, in accordance with article 11, paragraph 1, that due account is taken of:

- (a) The conclusions of the environmental report
- (b) Mitigation measures
- (c) Comments received in accordance with articles 8 to 10

Your comments:

The Environmental Law obligates the competent authority to motivate the (draft) plan or program (decisions taken). The plan should describe:

- *the way in which environmental effects described in the environmental report are taken into account (including mitigation and possibly compensation measures)*
- *the considerations of the competent authorities regarding the comments and views (and consultations) expressed by the public, all relevant authorities and the NCEA (including the public and authorities of the Affected Party).*

I.24. How and when do you inform your own public and authorities (art. 11, para. 2)?

Plans and programs are made public through a publication in a governmental paper and/or a daily, news or local paper, or in another suitable manner. A national plan has to be published in all events in the Government Gazette, unless stipulated otherwise in a legal provision. Electronic publication can only take place in a governmental paper, unless stipulated otherwise in a legal provision. Also, all persons or organisations (private, governmental, advisory) that have submitted comments or advice are informed about the final plan or program (decision) and through which channel it has been made publically available.

- I.25. How do you inform the public and authorities of the affected Party (art. 11, para.
- (a) By informing the point of contact
 - (b) By informing the contact person of the ministry responsible for SEA, who then follows the national procedure and informs his/her own authorities and public
 - (c) By informing all the authorities involved in the assessment and letting them inform their own public
 - (d) Other (please specify): *the public (private persons), NGO's, private companies and authorities that have submitted comments are informed about the final plan or program (decision). In other words, this is identical to the way the national public and authorities are informed.*

I.26. How do you ensure that, when a plan or programme is adopted, the public, the authorities and the Parties consulted are informed and that the information mentioned in article 11, paragraph 2, is made available to them?

- (a) Pursuant to national legislation (please refer to specific provisions and provide citations in order to clarify the procedure followed):
- (b) Other (please specify): *Please see the answers above.*

Article 12 Monitoring

I.27. Describe the legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted under article 11 (art. 12, paras. 1 and 2):

Under the Environmental Management Act the competent authority (which has taken the decision regarding a certain plan or program) is obligated to assess the consequences of the execution of the plan.

Part two

Practical application during the period 2016–2018

In this part, please report on your country's practical experiences in applying the Protocol (and not your country's procedures, which were described in part one). The focus of this section should be on identifying good practices as well as difficulties encountered in applying the Protocol in practice. The goal is to enable Parties to share solutions. Please therefore provide appropriate examples highlighting application of the Protocol in your country and innovative approaches to improve its application.

II.1. Does your country object to the information on SEA procedures provided in this section being compiled and made available on the website of the Protocol? Please specify (indicate "yes" if you object):

(a) Yes

(b) No

Your comments:

1. Consideration of health effects

II.2. Does your SEA documentation always include specific information on health effects? Please specify:

(a) Yes

(b) No, only when potential health effects are identified

2. Domestic and transboundary implementation in the period 2016–2018

II.3. Does your SEA documentation always include specific information on potential transboundary environmental, including health, effects? Please specify:

(a) Yes

(b) No, only when potential transboundary effects are identified

However, in case of plans close to national borders but not having any recognized transboundary effects, it is recommended -and common practice- that this is explicitly mentioned in the SEA report. Ultimately this is up to the competent authority. Our bilateral agreements/arrangement with Germany and the Flanders region (Belgium) specify that in case of plans or programs which cover an area within 5 km of the border the neighbouring country is also informed when there are no important transboundary effects (to be expected).

3. Cases during the period 2016–2018

II.4. Please provide the (approximate) number of transboundary SEA procedures initiated during the period 2016–2018 and list them, grouped by the sectors listed in article 4, paragraph 2:

Transboundary SEA procedures are not separately administrated so it is unfortunately impossible to give a number. We estimate a total of on average 85 SEA procedures per year (this includes both domestic and transboundary SEAs). Mostly, those are domestic procedures with no expected important transboundary effects. It is not possible to categorize them as the SEAs are not registered by sector as referred to in article 4, paragraph 2 of the Protocol. However, a large part are SEAs on spatial plans (either on national, provincial or local level), water plans or spatial planning strategies concerning a certain theme (e.g. wind energy or pipelines).

There are also a number of examples of (transboundary) plans that have been subject to SEA. To name a few:

- SEA Electricity Line A-Nord Emden-Osterath (Germany)
- SEA National Environment and Planning Vision (Netherlands)
- SEA Federal Marina Spatial Plan (Belgium)
- SEA National Programme for Nitrogen Deposition (Belgium)
- SEA Danish Order for the Waddensea (Denmark)
- SEA National Policy Statement Geological Disposal Infrastructure (UK)

4. Experience with the strategic impact assessment procedure in 2016–2018

II.5. Has your country experienced substantial difficulties in interpreting particular terms (or particular articles) in the Protocol?

- (a) No
- (b) Yes (please indicate which ones):

II.6. How does your country overcome the(se) problem(s), if any, for example by working with other Parties to find solutions? Please provide examples:

II.7. With regard your country's experience with domestic procedures, in response to each of the questions below, either provide one or two practical examples or describe your country's general experience. You might also include examples of lessons learned in order to help others. Please detail:

(a) Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes (cite good practice cases or good practice elements (e.g., consultation or public participation), if available)? *Yes, monitoring was carried out for plans and programmes but it is difficult to cite good practice cases. The number and kinds of plans and programmes that were subject to SEA monitoring were not yet centrally administered.*

(b) Would your country like to present a case to be published on the website of the Convention and its Protocol as a "case study fact sheet"?

- (i) No
- (ii) Yes (please indicate which ones):

II.8. With regard your country's experience with transboundary procedures, in response to each of the questions below, either provide one or two practical examples or describe your country's general experience. You might also include examples of lessons learned in order to help others. Please detail:

(a) What difficulties has your country experienced and what solutions has it found?

(i) Translation and interpretation

(ii) Other issues

Guaranteeing equal transboundary timeframes for public consultation. Sometimes we received the notification from the party of origin when the consultation period already started or where there was insufficient time to organise the transboundary consultation before the starting date of the public consultation. In all cases an equal consultation period was demanded but this caused delays in the transboundary SEA procedures.

(b) What does your country usually translate as a Party of origin? The competent authority that is responsible for the final decision on the plan or programme.

(c) As an affected Party, has your country ensured the participation of the public concerned and the authorities pursuant to article 10, paragraph 4?

(i) No

(ii) Yes (please indicate how):

By informing affected authorities and by announcing the start of the public consultation period in in a governmental paper and/or a daily, news or local paper, or in another suitable manner. In numerous SEA procedures public hearings are organised in both the Netherlands and the affected country.

(d) What has been your country's experience of the effectiveness of public participation?

Effectiveness of public participation is very dependant on the level of detail or concreteness of the plan or programme. Stakeholders are often less interested to participate when the plan or programme and consequently the SEA is more strategic, abstract and vague.

(e) Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes?

(i) No

(ii) Yes (please describe):

- SEA Electricity Line A-Nord Emden-Osterath (Germany)
- SEA National Environment and Planning Vision (Netherlands)

(f) As an affected Party, how do you ensure that the public concerned and the authorities are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, para. 4)?

Plans and programs with transboundary effects are made public through a publication in a governmental paper and/or a daily, news or local paper, or in another suitable manner. Stakeholders and affected authorities will have the same time frame to forward their opinion is the time frame that was set by the party of origin.

5. Experience regarding guidance in 2016–2018

II.9. Are you aware of any use in your country of the online *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment* (ECE/MP.EIA/17)?¹:

- (a) No:
- (b) Part of it (Please specify):
- (c) Yes (please describe your experience):

Your comments on how the Guidance might be improved or supplemented:

6. Awareness of the protocol

II.10. Does your country see a need to improve the application of the Protocol in your country?

- (a) No:
- (b) Yes Please describe how your country intends to improve application of the Protocol:

7. Suggested improvements to the report

II.11. Please provide suggestions for how this report may be improved:

¹ Available from http://www.unece.org/env/eia/pubs/sea_manual.html.