Protocol on SEA and the EU SEA Directive transposition into national legislation

European experience and good practice examples

National roundtable
Yerevan, 26 September 2014

Secretariat of Espoo Convention and Protocol on SEA
Content

• Origins, concept and development
• The international and EU legal framework
• SEA and related instruments
• SEA Directive vs. SEA Protocol
• National legal frameworks for SEA
• Scope of application
• Key procedural steps
Environmental assessment
Origins and development

• 1969: US National Environmental Policy Act
  • Applies to plans, programmes, policies, legislative proposals, projects

• TODAY
  • All developed environmental national frameworks
  • International and supranational (EU) framework (harmonization and transboundary procedures)
Environmental assessment in international law

• **General principles** of international law
  – Trail Smelter case (United States, Canada arbitral award 1938, 1941)
  – Nagymaros-Gabcikovo case (Hungary/Slovakia) – ICJ 1997
  – Pulp Mill case (Uruguay/Argentina) – ICJ 2010

• **1992 Rio Declaration** on Environment & Development
  – Integration principle – Principle 4
  – **Environmental Assessment** – Principle 17
  – Responsibility for transboundary environmental damage - Principle 2
  – Transboundary procedure (Principles 18 and 19)
Environmental assessment in Europe

- 1982 SEVESO Directive (as amended)
- 1985 EIA Directive (impact of projects)
- 1991 Espoo Convention (transboundary, projects)
- 1992 CBD and Habitats Directive (impact of plans, programs & projects on protected habitats - Natura 2000 sites)
- 1992 Convention on the Transboundary Effects of Industrial Accidents
- 1998 Aarhus Convention
- 2001 SEA Directive – impact of plans & programs
- 2003 Public Participation Directive
- 2003 SEA Protocol - impact of plans & programs (including transboundary)
EU funding conditional upon EA

• Since 1994 environmental assessment has been gradually introduced
• Regulation 1303/2013 of the European Parliament and of the Council (main legal basis, supplemented by delegated regulation)
• Before the approval of a major project, the managing authority ensures the availability of the information necessary for the project approval, including:
  
  – an analysis of the environmental impact, taking into account climate change adaptation and mitigation needs, and disaster resilience.

(Article 101 of the Regulation)
Concepts and definitions

• Environmental assessment

• Alternatives

• “Tiering”
“Environmental assessment”

• Preventive tool related to planned activities which may have significant impact on the environment

• Scope
  – Environmental impact assessment (EIA):
    • individual projects / specific activities
  – Strategic environmental assessment (SEA):
    • plans and programs
    • Policies and legislation
  – Habitat/biodiversity assessment
    • EIA and SEA limited to impact on habitat
Role of environmental assessment

• Collection of information
• Consideration of alternatives
• Integration of environmental concerns with economic, social etc concerns
• Avoidance of irreversible effects
• Procedural tool
  – Advisory vs decisive role
  – Specific situation in case of significant adverse effects on integrity of Natura 2000 site
Alternatives...

• ...for the activity
  – For example: highways or railroads
• ...within the activity
  – Locational (northern or southern bypass)
  – Technological (concrete or asphalt)
  – Mitigation measures (speed limit or noise ecran)
• „Zero”
• Variant „the most ecological”
„Tiering”

- Transport policy (SEA)
  - highways or railroads
- National highway program (SEA)
  - locational alternatives
- Regional/local land use plan (SEA)
  - locational alternatives
- Stretches (EIA)
  - technological and mitigation alternatives
SEA and EIA

• Procedural similarities
• Scope of assessment
  – Physical impact in EIA vs achievement of environmental objectives in SEA
  – Larger scale and less precise data
• Role in the procedure: developers in EIA vs planning agencies in SEA (see General Guidance)
• Legal framework
  – One law with separate schemes for EIA and SEA – **YES**
  – One scheme for EIA and SEA – **NO**
Procedural steps

- Screening and informing about its results
- Stages
  - scoping
  - submitting assessment documentation
  - taking into account information gathered
  - informing about the decision together with reasons
- Obligatory elements (at various stages)
  - consultation with environmental authorities
  - public participation
- Transboundary consultation (if applicable)
Habitats assessment

• **Any project** or **plan/program** likely to have a significant effect on **Natura 2000** site (individually or in combination with other plans/programs or projects)
  
• For plans/programs – part of SEA
  
• For projects (annex I and II) - usually part of the EIA
  
• For any other project – usually separate habitat assessment
  
• Broad range of activities/decisions (including IPPC permits, water pollution permits, mechanical cockle fishing license)
Protocol on SEA vs EU SEA Directive

• Health issues in SEA Protocol
  – Substantive part of assessment
  – Role of health authorities

• Natura 2000 in SEA Directive
  – Not mentioned in the SEA Protocol
  – Impact on biodiversity required by art. 14 CBD

• Relation to projects subject to EIA (different approach, screening in the EIA scheme)
SEA Directive – scope of application

• Plans and programs (label does not matter)

• In certain areas
  – if set the framework for future development consent of projects listed in Annexes I and II to EIA Directive

• Any plan/program – if has impact on Natura 2000 site

• Any other plans and programs with significant environmental effect – to be determined by member State
SEA Directive - procedure

- Screening (art. 3.5-7)
- Scoping (art. 5.4)
- Environmental report (art. 5 and Annex III)
- Consultation with environmental authorities (art. 6)
- Public participation (art. 6)
- Transboundary procedure (if applicable) (art. 7)
- Decision-making and informing thereof (art. 8, 9)
- Monitoring (art. 10)
SEA in numbers (EU)

• Full SEA procedures
  • about 1500 yearly in Finland
  • about 400-500 yearly in the UK and France
  • about 270 yearly in Austria

• Screening procedures
  – in Salzburg region (Austria) - about 300 yearly!
Environmental authorities

• Role in
  – Screening (their opinion often binding )
  – Scoping (their opinion often binding )
  – Consultation (their opinion usually not binding – unless negative impact on Natura 2000 sites )

• Central authorities for plans and programs at central level and regional authorities for all other plans and programs

• In some countries environmental authorities determined by law, in some countries – ad hoc

• Time-frames - between 10 and 45 days
National legal framework

• Always law of the Parliament (no secondary legislation)
• Role of definitions
• Legal techniques
  – Only „main” act - not effective
  – „Main” act and cross-references in sectoral acts (SEA procedure added to sectoral procedure) - sufficient
  – Procedural details also in sectoral acts (SEA procedure build into the sectoral procedure) – most effective
Legislative approaches on SEA

• SEA in one law only (special SEA law or general environmental law): NO

• SEA procedure in one law and references to SEA procedure in all laws envisaging preparation of plans, programs etc – YES

• SEA procedure integrated into all laws envisaging preparation of plans, programs, etc – YES (but difficult)

• Pros and cons of the above approaches
Types of SEA law and sectoral laws

• Types of the „main” law on SEA
  – General environmental protection law
  – Special EIA/SEA law
  – Special SEA law

• Types of sectoral legislation
  – Law on land use planning, energy, highways, regional development, forests, waste management
### Field of application

**Which sectors of economy covered?**

<table>
<thead>
<tr>
<th>Multitude of sectors including but not limited to:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture and fisheries</td>
<td>Forestry</td>
</tr>
<tr>
<td>Energy including mining</td>
<td>Transport</td>
</tr>
<tr>
<td>Regional development</td>
<td>Waste management</td>
</tr>
<tr>
<td>Water management</td>
<td>Telecommunications</td>
</tr>
<tr>
<td>Tourism</td>
<td>Town and country planning, land use</td>
</tr>
</tbody>
</table>
Field of application

For which documents is SEA required?

• In principle: for “plans” and “programmes” but...

• Names/labels in domestic law: not relevant! (policies, strategies, concepts, conditions, “strategic documents”)

• Legal effects - documents that:
  – set the framework (location, nature, size, operating conditions, or allocating resources)
  – directly (eg binding requirements regarding location, seize, nature etc of projects) or indirectly (influence other plans through binding requirements for lower level plans)
  – for future development consent (Espoo: “final decision”) for
  – Projects that require EIA (Annex I to the Espoo Conv, Annex II to the EIA Directive)
Field of application

Examples

– Yearly investment plan of the Transport Ministry (Denmark)

– Forrest management plans (including private forests) (France)

– Plans encouraging investments (Hungary)

– Urban renovation programmes (Poland)
Field of application

Exceptions

• National defence and civil emergencies
  – „sole purpose”
  – Examples

• Financial or budget
  – Strict sense
    • exemption can be used only for those subject to special rules regarding budget
    • Exemption can not be used for documents providing financial means for planned therein activities
Screening

• The definition of SEA does not include screening!
• Categorical vs case-by-case screening: pros and cons
• Procedure – role of environmental and health authorities
• Methods
  – positive
  – negative
Scoping

• Early at planning process (at the stage of blueprint or outline/concept for strategic document)

• Role of
  – environmental and health authorities
  – planning authorities
  – SEA consultants
  – the public

• Procedure – scoping meeting

• Scoping „decision”
Environmental report and quality control

- Key elements of SEA report
- Role of scoping
- Quality control: pros and cons of different approaches and relation to public tendering
  - Accreditation of SEA consultants
  - EIA/SEA Commissions
  - Independent review
  - General requirements in legislation
Consultation with other authorities

- Environmental and health authorities clearly identified at each applicable stage (for example: Environment Ministry, Regional Sanitary Inspectorate etc)

- Decision-making vs co-decision-making vs consultative role

- Role in screening and scoping vs role in adopting the final strategic document

- Role of Foreign Ministry in case of transboundary procedure
Public participation in SEA

• **Mandatory** element of SEA
• Requirement for “**early** in the decision-making when all options are open”
• Experience in the EU:
  – sometimes at screening
  – often in scoping (could be combined with commenting on outline/concept for strategic document)
  – always: commenting on SEA Report and the draft strategic document
Public participation
key elements

• Art. 7 of Aarhus Convention
• Public vs public concerned
• Identify the public which should participate
• Inform the public effectively (not only webpage!)
• Time-frames for public participation vary (depends on the nature and magnitude)
  • Belgium and Italy - 60 days
  • Spain, the Netherlands and Latvia - 40-45 days
  • Other countries - usually 30 days
Transboundary procedure

- Art. 7 of SEA Directive and art. 10 of SEA Protocol
- Stage I initiation of the procedure
  - Notification
  - Confirmation from affected country
- Stage II full procedure
  - Provision of information and documentation
  - Possibility for commenting by foreign local authorities and public
  - Inter-governmental consultations
  - Final decision (adoption of strategic document) and Information about the decision
- „Party of origin” and „Affected party”
- Practical arrangements needed to be established
  - Ad hoc or through bilateral agreements
Defining time-frames

• Common terms in a given country (legal and administrative tradition)
  – E.g. months or week or days, calendar or working days

• Clearly set for the involvement of environmental/health authorities and the public, where applicable (in screening, scoping, SEA reports, strategic plan)

• **No time-frame for**
  – The entire SEA procedure; or
  – Transboundary procedure (set individually in notification)
Decision and monitoring

- **Decision** = adoption of a strategic document according to national legislation
- Statement of **reason** needed
- **Informing** about the decision:
  - Environmental/health authorities
  - The public
  - Transboundary partners
- **Monitoring** – included
  - In strategic document or
  - In decision adopting the document
EU guidance and reports

REPORT FROM THE COMMISSION
on the application and effectiveness of the
Directive on Strategic Environmental
Assessment (Directive 2001/42/EC)

http://ec.europa.eu/environment/eia/sea-support.htm
Thank you!