

Study to support the REFIT evaluation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive)

Final report

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ABSTRACT

This evaluation study supports the evaluation of Directive 2001/42/EC on the assessment of the effects of certain public plans and programmes on the environment (SEA Directive) as part of the European Commission's Regulatory Fitness Check and Performance (REFIT) programme. This assessment is based on five evaluation criteria: effectiveness, efficiency, relevance, coherence and EU added value.

The study found that the SEA Directive brings considerable benefits to the EU, contributing to wider goals on sustainable development and environmental protection through integration of environmental concerns into the appropriate plans and programmes. The study however raised some issues of concern limiting the Directive's potential to achieve its objectives in an efficient way: uncertainties about the scope of application and the risk of ensuing legal challenges; the challenges in the application of the Directive to strategic planning addressing global and longer term sustainability challenges; the necessity for a flexible application of the SEA procedure and a more efficient practice, in particular in the drafting of environmental reports. The study also identified a few priority issues that should be considered for further action: the clarification of the scope of application of the Directive, a more strategic approach to scoping and the dissemination of good practices.

RÉSUMÉ

La présente étude est une contribution à l'évaluation de la directive 2001/42/CE relative à l'évaluation des incidences de certains plans et programmes sur l'environnement (Directive EES), dans le cadre du programme pour une réglementation affûtée et performante (REFIT) de la Commission européenne. Cette évaluation repose sur cinq critères d'évaluation : efficacité, efficience, pertinence, cohérence et valeur ajoutée Européenne.

L'étude a montré que la Directive EES apporte des avantages considérables à l'UE en contribuant à la réalisation de ses objectifs globaux de développement durable et de protection de l'environnement par l'intégration des préoccupations environnementales dans les plans et programmes. L'étude a toutefois soulevé certaines questions importantes qui limitent la capacité de la Directive à atteindre ses objectifs de manière efficace : des incertitudes quant au champ d'application de la Directive et le risque de contentieux qui en découlent ; les défis que pose l'application de la directive a des plans et programmes plus stratégiques adressant des défis globaux et de long terme en matière de durabilité ; la nécessité d'une application souple de la procédure EES et de développer une pratique plus efficace, notamment pour la rédaction des rapports sur les incidences environnementales. L'étude a également identifié quelques questions prioritaires qui devraient faire l'objet d'une action ultérieure : la clarification du champ d'application de la Directive, une approche plus stratégique de la phase de cadrage préalable et la diffusion des bonnes pratiques.

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ABBREVIATIONS

AA	Appropriate assessment
BAT	Best Available Techniques
CEF	Connecting Europe Facility
CJEU	Court of Justice of the European Union
CFP	Common Fisheries Policy
CP	Cohesion policy
CPR	Common Provisions Regulation
EEA	European Environmental Agency
EFSI	European Fund for Strategic Investment
EIA	Environmental Impact Assessment
ESIF	European Structural and Investment Funds
FRMP	Flood Risk Management Plan
FTE	Full Time Equivalent
GHG	Greenhouse Gases
GIS	Geographic information system
IPCC	Intergovernmental Panel on Climate Change
JASPERS	Joint Assistance to Support Projects in European Regions
MSFD	Marine Strategy Framework Directive
MSP	Maritime Spatial Planning
NGO	Non-Governmental Organisation
OP	Operational Programme
PCI	Project of Common Interest
PoM	Programme of Measures
RBMP	River Basin Management Plan
RDP	Rural Development Plan
REFIT	European Commission's regulatory fitness and performance programme
RIA	Regulatory Impact Assessment
SDGs	Sustainable Development Goals
SEA	Strategic Environmental Assessment
SOER	State of the Environment Report
TEN-E	Trans-European Networks for Energy
TEN-T	Trans-European Transport Networks
TFEU	Treaty on the Functioning of the European Union
TSO	Transmission system operator
UNECE	United Nations Economic Commission for Europe
WFD	Water Framework Directive
WHO	World Health Organisation

EXECUTIVE SUMMARY

The evaluation study

This evaluation study has been commissioned by DG Environment to support the evaluation of Directive 2001/42/EC on the assessment of the effects of certain public plans and programmes on the environment (SEA Directive) as part of the Commission's Regulatory Fitness Check and Performance (REFIT) programme. The REFIT programme assesses European Union law to ensure it is 'fit for purpose'.

Milieu and Collingwood Environmental Planning were awarded the contract to carry out the evaluation study in December 2017. Based on the Commission Roadmap, which established the scope of the evaluation, the purpose of this study was to assess the Directive based on the five criteria of effectiveness, efficiency, relevance, coherence and EU added value of the Directive, through the analysis of 11 evaluation questions. The study provides an evidence-based judgement to support the REFIT evaluation carried out by the Commission. The study is underpinned by the *Study concerning the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC)*, prepared by Milieu and Collingwood Environmental Planning in 2015-16, which comprised an implementation component and an evaluation component.

The SEA Directive

The SEA Directive was adopted on 27 June 2001 and came into force on 21 July 2004. The main objective of the Directive is to achieve high-level protection of the environment and promote sustainable development, by contributing to the integration of environmental considerations into the preparation and adoption of plans and programmes. Concretely, the SEA Directive requires that public authorities carry out an SEA during the preparation of certain plans and programmes which are likely to have significant effects on the environment, before their adoption or submission to a legislative procedure. To this end, the Directive establishes a specific set of rules (i.e. preparation of an environmental report on the likely significant effects of a plan or programme on the environment; informing and consulting the public and the environmental authorities; transboundary consultations with potentially affected Member States; identification of measures to address and monitor significant environmental impacts) applying to the decision-making related to the approval of plans and programmes.

Methodology for the evaluation

The work on the study took place from December 2017 – April 2019. The study team gathered available evidence to answer the 11 evaluation questions through a **documentary review** (including academic literature, grey literature, policy and guidance documents, and case law), a **targeted consultation questionnaire** aimed at key stakeholders (environmental authorities in all Member States, authorities responsible for the adoption of plans or programmes subject to SEA in all Member States, academic experts and practitioners operating in the field of SEA, EU-level NGOs and industry associations), **interviews in 11 Member States** (CZ, DK, IE, ES, FR, IT, LV, AT, PL, RO, SE) with selected stakeholders (in particular authorities responsible for the adoption of plans and programmes at regional and local level and practitioners), and a 12-week online **public consultation**. Finally, a **workshop** was held with key stakeholders from all EU Member States to validate the findings of the study.

Several challenges were encountered in relation to availability of certain information and data, the quality of consultation inputs and the limited possibility (in certain cases) to triangulate sources and opinions. The significant reliance of the study on consultation input exacerbated some challenges related to the availability and quality of these inputs, in particular the representativeness of the sample of stakeholders

surveyed and interviewed. In spite of efforts to collect the opinions of a large and diverse set of stakeholders, reaching a balance between environmental and sectoral perspectives proved difficult. As a result, there is a moderate numerical bias in favour of stakeholders with an environmental perspective. In addition, the available data did not allow for a quantitative assessment of the costs and benefits of the SEA Directive. As a result, the data did not allow an understanding of the cost of SEA at EU level, nor did they permit average estimates by type of plan/programme or by Member State. Clear quantification of the benefits of SEA was similarly impossible, largely because the benefits directly attributable to SEA are procedural benefits and thus not easily quantifiable.

Effectiveness

The evidence from this study showed that the SEA Directive **has contributed to the high level of protection of the environment**. The Directive was considered most effective in addressing environmental issues, like biodiversity, water, fauna, flora and landscape and cultural heritage, and less effective for material assets, population, human health, and addressing global and emerging environmental concerns such as climate change, ecosystem services and natural capital. **The SEA Directive has also influenced planning and decision-making processes** to some extent by setting mandatory requirements for consideration of environmental issues in plans and programmes; introducing public participation; increasing transparency of planning processes; and raising environmental awareness among decision makers. Finally, the study found that the SEA Directive is considered **to influence the content** of plans and programmes by: adding more emphasis on environmental issues; including the opinions from (public and stakeholder) consultations; adding mitigation and compensation measures; and considering new alternatives. The **SEA Directive has also influenced the siting, design and implementation of projects developed from plans and programmes.**

Different factors as well as aspects of the SEA process affect the effectiveness of the Directive. The effectiveness of the SEA Directive is significantly dependent on **political will**, experience and meaningful engagement of the authorities and plan developers in the SEA process, and willingness to make changes. Effective **consultation practices** are one of the key factors supporting the Directive in contributing to high level protection of the environment, as well as in influencing the planning and decision-making processes. **Consultation** (with environmental authorities as well as the public) **fosters communication among actors at different governance levels, enables public participation and increases transparency of the SEA process.**

However, some evidence suggested that **the SEA Directive is hindered in achieving its purpose.** Issues related to **timing,** such as **only initiating SEA late** in the development process of the plan or programme, hamper comprehensive assessment of environmental impacts and consideration of alternatives, challenge meaningful stakeholder participation, and affecting the quality of the SEA outcomes. **Challenges with understanding the SEA requirements** (i.e. lack of clear definition of 'plans and programmes' and ambiguity in what is meant by 'set the framework for' projects subsequently subject to the EIA Directive); inadequate consideration of **alternatives** (i.e. too late consideration and/or unfeasibility of proposed options); **lack of guidance** on how to conduct SEA in specific sectors (e.g. transport, tourism); and **poor environmental monitoring** also obstruct the effectiveness of the SEA Directive.

The effectiveness of the SEA Directive **differs between sectors**. It is most effective for town, country and spatial planning due to well-embedded processes, practice, knowledge, better availability of guidance, and extensive experience. Although SEA is generally considered to be effective in transport and energy, some examples of **low effectiveness** of the SEA Directive were also reported in these sectors, as well as

forestry, agriculture and **other sectors where economic and/or social interests might be emphasised** (e.g. tourism, mining) and/or there is **a lack of guidance**.

The challenges of the SEA Directive seem to be more obvious for more high-level SEAs as the SEA process might be more challenging due to data indicators at these levels being more difficult to measure. Many respondents to the consultation activities believed the Directive to be **most effective at local level**, where the planned measures/interventions are best defined, and where there is most experience, and thus the effects are easier to project and assess.

The evidence of this study as well as the evaluation workshop indicated that the effectiveness of the SEA Directive depends on how it is transposed into national laws and further implemented in practice in each individual Member State. Equally important are the planning and decision-making practices, laws and cultures of individual Member States.

Efficiency

The study showed a general consensus among stakeholders that the **costs of implementing the SEA Directive** – both to authorities in terms of administrative burden, and for implementation at plan/programme level – **are not excessive and are proportionate to the benefits of SEA**, both in terms of integrating environmental concerns and stakeholder concerns into planning, and as a safeguarding mechanism. However, for individual plans and programmes, this is **strongly influenced by the way in which the SEA is carried out**. The need to develop a more efficient SEA practice, proportionate to the needs and avoiding procedural delays, was particularly underlined by the stakeholders consulted.

The stakeholders consulted identified a **tendency to produce lengthy and overly detailed Environmental Reports**, based on time-consuming data collection, with a view to avoiding non-compliance and a tendency to assess concrete and specific impacts rather than gaining an understanding of the strategic level environmental aspects of a plan/programme. A **more proportionate and focused Environmental Report** on the environmental aspects that matter most at plan/programme level, informed by an **effective public scoping process** (e.g. scoping process and consultation extended beyond environmental authorities to a dialogue with wider stakeholders, in order to focus the SEA on most critical factors and engage stakeholders early) could help to streamline the overall assessment process and reduce the cost of the entire SEA procedure. In addition, **more effective management of the SEA procedure, an early start to the SEA, better synchronisation with the plan/programme** would also have a positive impact on the costs of the SEA process and reduce the likelihood of procedural delays.

The study found that the **SEA Directive does not cause a major unnecessary burden on authorities**. However, some issues were raised in relation to the screening process (uncertainty over whether a plan or programme met the SEA Directive criteria) and the renewal and modification of plans and programmes (for which a full SEA appeared burdensome to some stakeholders). Some Member States also expressed concern that the **recent CJEU cases** (Case C-290/15: D'Oultremont and others v Région Wallonne; Case C-671/16: Inter-Environnement Bruxelles and others v Brussels Capital Region; Case C-160/17: Thybaut and others v Région Wallonne) providing a broad interpretation of the definition of plans and programmes and potentially including policies and legislation, **could lead to excessive burden on competent authorities**. These concerns question the suitability of this procedure to apply to policies and legislation, and **whether a 'lighter' or more appropriately tailored procedure might be needed**.

Relevance

The study showed that the SEA Directive remains a suitable and relevant instrument to promote a high level of protection of the environment and contribute to sustainable development. **The flexibility of the Directive, alongside factors such as the quality of planning processes, availability of new technology and the expertise, skills and training of those managing/undertaking the SEA, are seen as essential for maintaining the continuing relevance of this legislation**.

The implementation of the SEA Directive has largely kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development. It has had more limited success in keeping pace with certain more recent developments, such as planetary boundaries and natural capital accounting among others. However, **the Directive is sufficiently flexible**, setting out general direction and broad objectives to be met by Member States **to allow developments in these areas to be incorporated into planning and SEA, as appropriate, through best practice**. The provision of guidance on various elements of SEA implementation would be useful, particularly the adaptation of scientific and technological advances to different decision-making levels and planning processes.

It also appeared that the Directive has remained consistent with the needs of other EU environmental policies and has become an embedded element in the context of planning, with no other instruments achieving the same objectives.**There is also increased recognition that SEA is needed at higher decision levels** (above plans/programmes), as these set the broad direction for subsequent plans and programmes. **This is particularly true for sustainable development.**

Finally, the SEA Directive is highly relevant to delivering citizens' participation and is a key means by which such participation is enabled at strategic level to permit their input into the potential environmental impacts of public plans and programmes. Those SEA processes that include the views and expertise of citizens and civil society tend to have better management, with well-informed decisions leading to better environmental outcomes. An increase in engagement is desired; improving participation in the scoping process and providing less technical non-technical summaries are among the options considered to achieve this.

Coherence

The study found that the SEA **Directive is largely coherent with other relevant EU environmental legislation and sectoral policies, as well as EU international obligations**. Evidence confirmed that SEA complements the other environmental assessment instruments (EIA and AA). The SEA and EIA Directives support complementary objectives, with the SEA Directive introduced specifically to complement the EIA Directive and address a gap in environmental assessment and decision-making. The SEA and the Habitats Directive each address a different objective, with the scope and purpose of the assessments appearing relatively clear to stakeholders. In practice, stakeholders refered frequently to **opportunities to maximise synergies between the SEA and EIA procedures and the SEA and AA procedures**. However, **practical implementation challenges still exist** and can prevent the achievement of these synergies, e.g. different timing for the assessments (when EIA is carried out before the SEA procedure) and difficulties in coordinating the work of the authorities and developers.

The SEA reinforces the achievement of sectoral objectives, making plans and programmes more environmentally robust and sustainable. Overall, literature and the stakeholders held a positive view of **sectoral coherence in practice, although some problems arise in implementation**. Evidence from literature and the consultations shows that the SEA can support sectoral objectives only if it is carried out in an effective manner. In particular, **alternatives are considered as a critical**

component of the SEA process in terms of ensuring that sectors' objectives can be achieved without causing environmental damage. In addition, there seems to be a general trend whereby the sectoral authorities are becoming more aware and engaged in the SEA process, compared to the early years after the adoption of the Directive. A common finding across all sectors is that **there is a learning curve for the planning authorities** that are asked to subject their plans and programmes to SEA **and it takes time and years of experience for them to fully understand its benefits**.

The evaluation found that the **SEA Directive is broadly coherent with the SEA Protocol and the Aarhus Convention, although some gaps and inconsistencies** may affect the effective implementation of the SEA Directive and should be addressed. An important difference between the Protocol and the Directive, and one which may affect their coherence and the ways in which Member States apply SEA requirements, relates to their scope of application. While the **SEA Directive specifically refers to plans and programmes and does not mention policies and legislation, the Protocol differentiates between plans and programmes and policies and legislation**, without providing a clear definition. Policy and legislation, however, are excluded in the text of the Protocol from formal SEA requirements and should be subject to SEA only '*to the extent appropriate'*, leaving considerable discretion to Member States in their application.

Compared to the SEA Directive and the SEA Protocol, the Aarhus Convention has more detailed provisions on public participation. The two international instruments require that public participation occurs at an early stage of development of the relevant activity when 'all options are still open', while the SEA Directive only requires that the public is given the opportunity to give its opinion on the Environmental Report. This means that it takes place towards the end of the SEA procedure, after alternatives have been developed and assessed, leaving little room for the public to really be part of the procedure. Such inconsistency may affect the effective implementation of the Directive, as Member States tend to comply with the minimum requirements of the Directive and are not incentivised to initiate the involvement of the public at earlier stages (e.g. scoping), despite this being demonstrably good practice.

Article 9(3) of the Aarhus Convention provides for access to justice in environmental matters. The SEA Directive does not contain specific provisions on access to justice concerning plans and programmes relating to the environment. Nevertheless, the position of the Commission and CJEU case law maintain that access to administrative and/or judicial review procedures is to be ensured for plans and programmes related to the environment. There is, however, limited evidence currently available on the degree to which this is practically available across the Member States.

EU Added Value

Although a number of Member States were considering environmental issues in the preparation of plans and programmes before the adoption of the SEA Directive, **the Directive can be considered to have added value in the provision of a systematic approach to the assessment of environmental impacts of plans and programmes**, applicable to all plans and programmes and including a series of mandatory procedural steps, such as the assessment of alternatives and public participation. It is unlikely that a systematic procedure with such a broad coverage of plans and programmes would have been put in place in all Member States without the adoption of the SEA Directive. The Directive also **led to more transparent and participatory planning processes** on the environmental impacts of plans and programmes.

In addition, existing EU and international instruments (the EIA Directive, the Habitats Directive, the SEA Protocol and the Aarhus Convention) would have only partially achieved the objectives of the SEA Directive, had it not been adopted. Most of these

instruments have a different scope, which would not have addressed the broad objective of integrating environmental considerations into planning. **Although the SEA Protocol is very similar to the SEA Directive in its content, there are considerable differences between the two instruments in applicability and enforcement.**

Finally, the SEA Directive has added value through the **provision of a consistent framework governing the practice of SEA in all Member States**. Evidence from the consultation activities showed that having the same legislation in all Member States facilitates the consideration of transboundary issues, as all parties have a shared understanding of the requirements and processes. Stakeholders also reported benefits from sharing good practices and knowledge, as well as providing a level playing field, increasing public awareness and resolving conflicts in respect of the environmental impacts of development.

Issues for further action

The study identified a few priority issues that should be considered for further action: the clarification of the scope of application of the Directive, a more strategic approach to scoping and the dissemination of good practices.

- ***Clarification of the scope of application of the Directive***

Consensus emerged among stakeholders on the need for clarification of the application of the SEA Directive, due to existing uncertainty about when to carry out an SEA. While authorities were previously comfortable excluding from SEA anything that was considered 'legislation or policy' as determined by the legal procedure applied to its adoption, it now seems that this is no longer possible, as there are cases where legislation and policy do effectively 'set the framework' for future development consent of projects. This has been underlined by recent CJEU decisions[1] and pending cases[2]. Clarification could take many forms, ranging from modification of the Directive to various types of guidance.

- ***Timing of the SEA procedure – a more strategic and inclusive approach to scoping***

A common issue across the study findings is that of the timing of the SEA procedure in relation to the development of the plan or programme. Good practice emphasises that the SEA should start as early as possible in the planning or programming process, with the two procedures ideally carried out simultaneously, while the study found that this is often not the case. Critical elements to address the timing issue are the scoping procedure and the timing of public participation. Requiring public participation in scoping could prompt an earlier start of the SEA, increase the effectiveness and efficiency of the SEA procedure and make the SEA Directive more consistent with the requirements of both the SEA Protocol and the Aarhus Convention.

- ***Further dissemination and uptake of good practices***

It is almost 15 years since the SEA Directive came into force, and practice in carrying out SEAs has evolved over this period. Stakeholders frequently pointed out the fact that the implementation guidance for the SEA Directive was issued by the Commission in 2003, and that there is considerable scope for updating this guidance based on practical experience, similar to the EIA guidance issued in 2017. Such guidance could include good practice examples on the different steps of the SEA procedure. It could also support a more strategic and long term understanding of environmental impacts of higher level strategic documents and of how SEA can add value at this level.

[1] CJEU, C-290/15, C-671/16 and C-160/17.

[2] CJEU, C-43/18, C-321/18 and C-305/18.

RÉSUMÉ ANALYTIQUE

A propos de l'étude

Cette étude a été commandée par la DG Environnement afin de contribuer à l'évaluation de la Directive 2001/42/CE relative à l'évaluation des incidences de certains plans et programmes sur l'environnement (Directive EES), dans le cadre du programme pour une réglementation affûtée et performante (REFIT) de la Commission européenne. Le programme REFIT évalue le droit de l'Union européenne pour s'assurer qu'il est adapté à son objectif.

Le contrat pour la réalisation de l'étude a été attribué à Milieu et Collingwood Environmental Planning en décembre 2017. Sur la base de la Feuille de route de la Commission, qui a défini le cadre de l'évaluation, l'objectif de cette étude est d'évaluer la Directive sur la base des cinq critères d'efficacité, d'efficience, de pertinence, de cohérence et de valeur ajoutée communautaire de la Directive, en analysant 11 questions d'évaluation. L'étude fournit une base factuelle pour assister la Commission dans son évaluation. La présente étude s'appuie sur une étude élaborée par Milieu et Collingwood Environmental Planning en 2015-2016 afin de préparer le rapport sur l'application et l'efficacité de la Directive EES[3], qui comprenait un chapitre sur la mise en œuvre et un chapitre comprenant une évaluation rapide de la Directive.

La Directive EES

La Directive EES a été adoptée le 27 juin 2001 et est entrée en vigueur le 21 juillet 2004. Son objectif principal est d'assurer un niveau élevé de protection de l'environnement, et de promouvoir un développement durable, en contribuant à l'intégration de considérations environnementales dans l'élaboration et l'adoption des plans et programmes. Concrètement, la Directive EES exige que les autorités publiques procèdent à une évaluation environnementale lors de l'élaboration de certains plans et programmes susceptibles d'avoir des incidences notables sur l'environnement, avant que ceux-ci ne soient adoptés ou soumis à la procédure législative. Pour cela, la Directive établit un ensemble de règles spécifiques s'appliquant au processus décisionnel lié à l'adoption des plans et programmes : la préparation d'un rapport environnemental sur les possibles les incidences notables d'un plan ou d'un programme sur l'environnement ; l'information et la consultation du public et des autorités environnementales ; une consultation transfrontalière dans les États membres potentiellement affectés ; l'identification des mesures pour remédier et assurer le suivi des incidences environnementales notables.

Méthodologie de l'évaluation

La préparation de l'étude s'est déroulée de décembre 2017 à avril 2019. L'équipe chargée de l'étude a rassemblé les informations disponibles pour répondre aux onze questions d'évaluation au moyen d'une recherche documentaire (comprenant publications spécialisées et recherche académique, littérature grise, documents de politique, notes méthodologiques, ainsi que la jurisprudence), une consultation ciblée – au moyen d'un questionnaire – destinée aux principaux acteurs (autorités environnementales dans tous les États membres, autorités responsables de l'adoption de plans ou programmes soumis à évaluation environnementale dans tous les États membres, experts universitaires et professionnels travaillant dans le domaine de l'évaluation environnementale, ONG et associations professionnelles européennes), des entretiens dans 11 États membres (CZ, DK, IE, ES, FR, IT, LV, AT, PL, RO, SE) avec certains acteurs (en particulier des autorités responsables de l'adoption des plans et programmes aux niveaux régional et local et des professionnels de l'évaluation environnementale), et une consultation publique en ligne de douze semaines. Enfin,

[3] Milieu and Collingwood Environmental Planning (2016) *Study concerning the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC)*. Report prepared for the European Commission, DG Environment.

une conférence a été organisée avec des participants de tous les Etats membres pour valider les conclusions de l'étude.

Des difficultés liées à la disponibilité de certaines informations et données, la qualité des contributions aux différentes consultations et la possibilité limitée (dans certains cas) de croiser les sources et les opinions ont émaillé le projet. Le fait que l'étude se soit largement appuyée sur les résultats des consultations a exacerbé certaines difficultés liées à la disponibilité et à la qualité de ces résultats, en particulier la représentativité de l'échantillon d'acteurs ayant répondu au questionnaire ou à un entretien. Malgré les efforts déployés pour recueillir les opinions d'un large éventail d'acteurs, il s'est avéré difficile de parvenir à un équilibre entre les perspectives environnementales et sectorielles. On peut ainsi constater un biais numérique modéré en faveur des intervenants ayant une perspective environnementale. En outre, les données disponibles n'ont pas permis une évaluation quantitative des coûts et des bénéfices de la Directive EES. En conséquence, il n'a pas été possible, avec les données collectées, d'estimer les coûts de la Directive au niveau de l'UE, ni le coût moyen de l'évaluation environnementale par type de plan/programme ou par État membre. De même, il a été impossible de quantifier clairement les bénéfices liés à la Directive EES, en grande partie car les bénéfices directement attribuables à la Directive sont procéduraux et donc difficilement quantifiables.

Efficacité

Les résultats de cette étude ont montré que la Directive EES a contribué à assurer un niveau élevé de protection de l'environnement. D'après les acteurs consultes, la Directive a été plus efficace pour traiter des questions environnementales telles que la biodiversité, l'eau, la faune, la flore, les paysages et le patrimoine culturel, et moins efficace pour traiter de sujets tels que les biens matériels, la population et la santé humaine, ainsi que pour traiter de problèmes environnementaux globaux et émergents tels que le changement climatique, les services rendus par les écosystèmes et le capital naturel. La Directive EES a également influencé, dans une certaine mesure, les processus de planification et de prise de décision par l'établissement d'obligations de prise en compte des questions environnementales dans les plans et programmes, l'introduction de la participation du public obligatoire, l'augmentation de la transparence des processus de planification et la sensibilisation des décideurs aux questions environnementales. Enfin, l'étude a montré l'influence de la Directive EES sur le contenu des plans et programmes en mettant davantage l'accent sur les questions environnementales, en incluant les avis issus des consultations (publiques et des acteurs concernés), en ajoutant des mesures d'atténuation et de compensation et en envisageant des solutions de substitution. La Directive a également influencé l'implantation, la conception et la mise en œuvre des projets élaborés à partir des plans et de programmes.

Différents facteurs ainsi que la mise en œuvre de certains aspects du processus d'évaluation influencent l'efficacité de la Directive EES. Son efficacité dépend en grande partie de la volonté politique, de l'expérience et de l'engagement des autorités et professionnels participant à l'élaboration du plan dans l'évaluation environnementale, ainsi que de leur volonté d'apporter de réels changements. La mise en place de méthodes de consultation efficaces est l'un des principaux facteurs qui contribuent à l'efficacité de la Directive – faisant en sorte qu'elle contribue à un niveau élevé de protection de l'environnement, et qu'elle influence les processus de planification et de décision. Les consultations avec les autorités environnementales, les acteurs concernés et le public favorisent la communication entre les acteurs à différents niveaux de gouvernance et accroît la transparence du processus d'évaluation environnementale.

Toutefois, les résultats de l'étude ont aussi montré que la Directive ne réalise pas entièrement ses objectifs. Certaines pratiques, comme le fait de commencer l'évaluation tard dans le processus d'élaboration du plan / programme, entravent l'évaluation de l'ensemble des impacts environnementaux et l'examen des solutions de

substitution, compromettent une participation efficace des acteurs concernés et réduisent la qualité des résultats de l'évaluation environnementale. D'autres facteurs peuvent compromettre l'efficacité de la Directive tels que : une mauvaise interprétation des exigences de la Directive (venant en particulier de l'absence de définition claire des termes "plans et programmes" et de l'ambiguïté des termes "définir le cadre dans lequel la mise en œuvre des projets pourra être autorisée à l'avenir") ; l'évaluation insuffisante de solutions de substitution (évaluation trop tardive et/ou options proposées irréalistes) ; l'absence d'orientations sur la manière de réaliser une évaluation environnementale dans certains secteurs (transports, tourisme) ; et un suivi insuffisant des incidences environnementales.

L'efficacité de la Directive EES varie d'un secteur à l'autre. Elle semble être plus efficace dans les domaines de l'aménagement du territoire, en particulier grâce à des processus d'évaluation et d'élaboration des plans mieux synchronisés, une vaste expérience, des connaissances nombreuses et une plus grande disponibilité d'outils méthodologiques. Bien que l'évaluation environnementale soit généralement considérée comme efficace dans les secteurs des transports et de l'énergie, on peut constater des cas où l'évaluation environnementale a été peu efficace dans ces secteurs, ainsi que dans les secteurs de la gestion des forêts, de l'agriculture et d'autres où les intérêts économiques et/ou sociaux sont prégnants (par exemple, le tourisme, l'extraction minière) et/ou il existe un manque d'outils méthodologiques.

L'application de la Directive EES est plus complexe pour les plans / programmes plus globaux et stratégiques, car les indicateurs sont plus difficiles à mesurer à ce niveau. De nombreux acteurs consultés ont estimé que la Directive était la plus efficace au niveau local, là où les mesures/interventions prévues sont mieux définies, où l'expérience est plus vaste, et où les effets sont plus faciles à anticiper et évaluer.

Les résultats de cette étude et de la conférence ont montré que l'efficacité de la Directive EES dépend de la manière dont elle est transposée dans la législation nationale et mise en œuvre en pratique dans chaque État membre. Tout aussi importants sont les processus d'élaboration des plans et les processus décisionnels, les lois et les cultures administratives des différents États membres.

Efficience

Les résultats de l'étude ont montré qu'un large consensus se dégage parmi les acteurs consultés sur le fait que les coûts de mise en œuvre de la Directive EES pour les autorités – tant en termes de charge administrative que pour que pour la mise en œuvre du plan / programme – ne sont pas excessifs, et sont proportionnés aux bénéfices de la Directive, tant en termes d'intégration des préoccupations environnementales et des différents acteurs dans l'élaboration des plans, que comme mécanisme de protection de l'environnement. Toutefois, cela est fortement influencé par la manière dont l'évaluation environnementale est réalisée pour chaque plan/programme. Les acteurs consultés ont particulièrement insisté sur la nécessité de développer une pratique de l'évaluation plus efficace, proportionnée aux besoins et évitant les retards de procédure.

Les acteurs consultés ont constaté une tendance à produire des rapports sur les incidences environnementales très longs et détaillés, fondés sur une collecte de données exhaustive, afin d'éviter tout manquement aux exigences de l'évaluation. Cela correspond également à une volonté d'évaluer des impacts concrets et spécifiques plutôt que d'envisager les aspects environnementaux d'un plan/programme à un niveau plus stratégique. Un rapport sur les incidences environnementales plus proportionné et mieux ciblé sur les aspects environnementaux les plus importants du plan/programme, s'appuyant sur un processus efficace et ouvert au public de cadrage préalable de l'évaluation environnementale (c.-à-d. s'étendant au-delà des autorités environnementales pour établir un dialogue plus étendu avec les acteurs concernés, afin de concentrer l'évaluation sur les points essentiels et d'inclure rapidement tous les acteurs dans le processus) pourrait

permettre de simplifier et de réduire le coût de la procédure d'évaluation dans son ensemble. En outre, une gestion plus efficace de la procédure d'évaluation, un démarrage rapide de d'évaluation et une meilleure synchronisation avec le processus d'élaboration du plan/programme auraient également un impact positif sur les coûts et réduiraient la probabilité de retards de procédure.

L'étude a montré que la Directive EES ne représente pas une charge administrative excessivement lourde pour les autorités compétentes. Toutefois, certaines questions ont été soulevées concernant l'application de la Directive (incertitudes sur le fait qu'un plan ou programme tombe dans le champ d'application de la Directive) et les cas de renouvellement et/ou modification de plans et programmes (pour lesquels une évaluation complète est apparue fastidieuse à certains acteurs consultés). Certains États membres ont également attiré l'attention sur les conclusions de récents arrêts de la CJUE (affaire C-290/15 : D'Oultremont et autres contre Région wallonne ; affaire C-671/16 : Inter-Environnement Bruxelles ASBL et autres contre Région de Bruxelles-Capitale ; affaire C-160/17 : Raoul Thybaut et autres contre Région wallonne) donnant une interprétation large de la définition de "plans et programmes", y incluant potentiellement les textes politiques et législatifs, ce qui pourrait entraîner une charge excessive pour les autorités compétentes. Ces préoccupations remettent en question l'applicabilité de la procédure contenue dans la Directive EES à des textes politiques et législatifs, et soulignent la nécessité d'une procédure plus "légère" et/ou mieux adaptée à ce type de textes.

Pertinence

L'étude a montré que la Directive EES reste un instrument approprié et pertinent pour assurer un niveau élevé de protection de l'environnement et promouvoir le développement durable. La flexibilité de la Directive, ainsi que des facteurs tels que la qualité des processus de planification, la disponibilité de nouvelles technologies et l'expertise, les compétences et la formation de ceux qui conduisent l'évaluation environnementale, sont considérés comme essentiels pour maintenir la pertinence de cette législation.

La mise en œuvre de la Directive EES a largement suivi le rythme des politiques, objectifs et concepts européens et internationaux en matière de développement durable. Elle n'a eu qu'un succès plus limité pour suivre le rythme de certains développements plus récents, tels que, entre autres, les concepts de frontières planétaires et de comptabilité du capital naturel. Toutefois, la Directive est suffisamment souple, définissant une orientation générale et des objectifs généraux que les États membres doivent atteindre, pour que les développements dans ces domaines puissent être intégrés dans l'élaboration des plans et les évaluations environnementales de ces plans, le cas échéant, grâce à la diffusion de bonnes pratiques. Il serait utile de fournir des orientations sur divers éléments de l'évaluation, en particulier l'adaptation des progrès scientifiques et technologiques aux différents niveaux de décision et processus de planification.

Il est également apparu que la Directive est restée compatible avec les besoins des autres politiques environnementales de l'UE et qu'elle est devenue un élément de planification à part entière, aucun autre instrument n'atteignant les mêmes objectifs. Il est également de plus en plus reconnu que l'évaluation environnementale stratégique est nécessaire à des niveaux de décision plus élevés (au-delà des plans/programmes), car ceux-ci définissent l'orientation générale des plans et programmes ultérieurs. C'est particulièrement vrai pour en matière de développement durable.

La Directive EES reste pertinente pour assurer la participation des citoyens et constitue l'un des principaux moyens par lesquels cette participation est rendue possible au niveau stratégique. Elle permet aux citoyens de donner leur avis sur les incidences environnementales potentielles des plans et programmes. Les processus d'évaluation qui intègrent les points de vue et les connaissances des citoyens et de la

société civile tendent à être mieux gérés et à donner lieu à des décisions mieux informées et à de meilleurs résultats environnementaux.

Il est souhaitable d'accroître cette participation. L'accroissement de la participation lors de la phase de cadrage préalable et la publication de résumés non techniques plus simples peuvent aider à y parvenir.

Cohérence

L'étude a montré que la Directive EES est en grande partie cohérente avec les autres législations environnementales et politiques sectorielles de l'UE, ainsi qu'avec ses obligations internationales. L'étude a confirmé que l'évaluation environnementale des plans et programmes complète les autres instruments d'évaluation environnementale (EIE et évaluation des incidences Natura 2000). Les Directives EES et EIE contribuent à des objectifs complémentaires, la Directive EES ayant été adoptée spécifiquement pour compléter la Directive EIE et combler les lacunes existantes dans l'évaluation environnementale et l'adoption des plans et programmes. L'évaluation environnementale des plans et programmes et l'évaluation des incidences Natura 2000 répondent chacune à un objectif différent ; néanmoins le contenu et les objectifs de ces évaluations paraissent relativement clairs aux autorités compétentes. Dans la pratique, les acteurs consultés ont fréquemment évoqué les possibilités de maximiser les synergies entre les procédures d'évaluation environnementale des plans et programmes, d'étude d'impact environnementale et d'évaluation des incidences Natura 2000. Toutefois, des problèmes de mise en œuvre subsistent encore et peuvent empêcher la réalisation de ces synergies, par exemple des différences dans le calendrier des évaluations (lorsque l'étude d'impact est réalisée avant l'évaluation environnementale du plan/programme) et des difficultés dans la coordination du travail des autorités et des développeurs.

La Directive EES renforce également la réalisation des objectifs des politiques sectorielles, en rendant les plans et programmes plus aboutis et plus respectueux sur le plan environnemental. Dans l'ensemble, la littérature et les acteurs consultés ont une opinion positive de la cohérence en pratique de la Directive avec les politiques sectorielle, bien que certains problèmes de mise en œuvre se posent. Il ressort que l'évaluation environnementale ne peut soutenir les objectifs sectoriels que si elle est réalisée de manière efficace. En particulier, la considération de solutions de substitutions réalistes est considérée comme un élément essentiel du processus d'évaluation pour garantir la réalisation des objectifs sectoriels sans causer d'impacts environnementaux négatifs. En outre, on observe une tendance générale indiquant que les autorités sectorielles sont de plus en plus conscientes et engagées dans le processus d'évaluation, par rapport aux premières années qui ont suivi l'adoption de la Directive. On constate dans tous les secteurs qu'il existe une phase d'apprentissage pour les autorités chargées de l'élaboration et adoption de plans et programme soumis à évaluation environnementale et qu'il leur faut du temps et de l'expérience pour appréhender pleinement ses bénéfices.

L'évaluation a montré que la Directive EES est globalement cohérente avec le Protocole de Kiev et la Convention d'Aarhus, bien que certaines incohérences puissent affecter la mise en œuvre de la Directive EES et puissent être rectifiées. Une différence importante entre le Protocole et la Directive, qui peut affecter leur cohérence et la manière dont les États membres appliquent les exigences de la Directive EES, a trait à leur champ d'application. Alors que la Directive EES fait spécifiquement référence aux plans et programmes et ne mentionne pas les textes politiques ou législatifs, le protocole établit une distinction entre les plans et programmes et les textes politiques ou législatifs, sans en donner une définition claire. Toutefois, textes politiques ou législatifs sont exclus dans le texte du Protocole des exigences de la procédure d'évaluation environnementale stratégique et ne devraient être soumis à évaluation que dans la mesure du possible, ce qui laisse aux États membres une grande latitude dans son application.

Par rapport à la Directive EES et au Protocole de Kiev, la Convention d'Aarhus contient des dispositions plus détaillées sur la participation du public. Les deux instruments internationaux exigent que la participation du public intervienne à un stade précoce du développement de l'initiative concernée lorsque "les options sont encore ouvertes", tandis que la Directive EES exige seulement que le public ait la possibilité de donner son avis sur le rapport environnemental et le plan. Elle a ainsi lieu plutôt vers la fin de la procédure d'évaluation, après l'élaboration et l'évaluation des solutions de substitution raisonnables, laissant peu de place au public pour participer réellement à la procédure d'élaboration du plan. Cette incohérence peut affecter la mise en œuvre effective de la Directive, étant donné que les États membres tendent à se conformer aux exigences minimales de la Directive et n'ont pas d'incitations à commencer la consultation du public à un stade plus précoce (par exemple, au niveau du cadrage préalable de l'évaluation environnementale), bien que cela puisse être recommandé.

L'article 9, paragraphe 3, de la Convention d'Aarhus garantit l'accès à la justice en matière d'environnement. La Directive EES ne contient pas de dispositions spécifiques sur l'accès à la justice en ce qui concerne les plans et programmes liés à l'environnement. Néanmoins, la position de la Commission et la jurisprudence de la CJUE maintiennent que l'accès aux procédures de recours administratif et/ou judiciaire doit être assuré pour les plans et programmes liés à l'environnement. Toutefois, il y a actuellement peu d'éléments d'information sur l'accès réel à ces procédures dans les États membres.

Valeur ajoutée communautaire

Bien que certains États membres aient eu des procédures en place pour tenir compte des questions environnementales lors de l'élaboration des plans et programmes avant l'adoption de la Directive EES, la valeur ajoutée de celle-ci réside en ce qu'elle prévoit une approche systématique de l'évaluation des incidences environnementales des plans et programmes, qu'elle est applicable à tous les plans et programmes et qu'elle comprend une série de procédures obligatoires, telles que l'évaluation des alternatives et la participation du public. Il est peu probable qu'une procédure systématique s'appliquant à un nombre aussi large de plans et programmes ait été mise en place dans tous les États membres sans l'adoption de la Directive EES. La Directive a également conduit à des processus de planification plus transparents et participatifs concernant les incidences environnementales des plans et programmes.

En outre, les instruments communautaires et internationaux existants (la Directive EIE, la Directive Habitats, le Protocole de Kiev et la Convention d'Aarhus) n'auraient atteint que partiellement les objectifs de la Directive EES si celle-ci n'avait pas été adoptée. La plupart de ces instruments ont une portée différente, ce qui n'aurait pas permis d'atteindre l'objectif général d'intégrer les considérations environnementales dans la planification. Bien que le contenu du Protocole de Kiev soit très similaire à celui de la Directive EES, il existe des différences importantes entre les deux instruments en ce qui concerne leur applicabilité et leur mise en œuvre.

Enfin, la valeur ajoutée de la Directive EES réside également dans la mise en place d'un cadre cohérent régissant la pratique de l'évaluation environnementale dans tous les États membres. Il ressort des activités de consultation qu'avoir la même législation dans tous les États membres facilite l'examen des questions transfrontalières, puisque toutes les parties ont une compréhension commune des exigences et des processus de l'évaluation environnementale. Les acteurs consultés ont également fait état des bénéfices liés au partage de connaissances et de bonnes pratiques, ainsi qu'à la création d'une situation équitable pour tous les acteurs, la sensibilisation du public et à la résolution des conflits concernant les incidences environnementales des plans / programmes.

Priorités d'actions

L'étude a identifié quelques questions prioritaires qui pourraient faire l'objet d'une action future : la clarification du champ d'application de la Directive, une approche plus stratégique de la phase de cadrage préalable et la diffusion des bonnes pratiques.

- ***Clarification du champ d'application de la Directive***

Un consensus s'est dégagé parmi les acteurs consultés sur la nécessité de clarifier le champ d'application de la Directive EES, en raison de certaines incertitudes quant à son applicabilité à certains textes. Alors que les autorités excluaient jusqu'à présent du champ d'application de la Directive tout texte adopté par procédure législative et tout texte règlementaire, cela est remis en cause aujourd'hui, car, dans certains cas, ces textes "définissent le cadre dans lequel la mise en œuvre des projets pourra être autorisée à l'avenir". Cela a été souligné dans de récents arrêts de la CJUE ainsi que dans des affaires en cours. Une telle clarification pourrait prendre de nombreuses formes, allant de la modification de la Directive à l'adoption de divers documents d'orientations.

- ***Temporalité de la procédure d'évaluation : une approche plus stratégique et ouverte de la phase de cadrage préalable de l'évaluation environnementale***

Un problème régulièrement mis en lumière dans l'étude est celui de la temporalité de la procédure d'évaluation et de sa synchronisation avec le processus d'élaboration du plan / programme. Il est généralement considéré comme une bonne pratique de commencer l'évaluation environnementale le plus tôt possible dans l'élaboration du plan ou programme et de conduire idéalement les deux processus simultanément. Les résultats de l'étude ont montré que ce n'était pas toujours le cas. La phase de cadrage préalable de l'évaluation environnementale et la temporalité de la phase de participation publique sont essentielles pour résoudre ce problème. Exiger que la phase de consultation se déroule au moment du cadrage préalable de l'évaluation environnementale pourrait accélérer le démarrage de l'évaluation, accroitre l'efficacité et l'efficience du processus et rendre la Directive plus conforme aux exigences de la Convention d'Aarhus.

- ***Diffusion et adoption des bonnes pratiques***

Près de quinze ans se sont écoulés depuis l'entrée en vigueur de la Directive EES et la pratique de l'évaluation environnementale a beaucoup évolué au cours de cette période. Les acteurs consultés ont fréquemment souligné le fait que le document d'orientation sur la mise en œuvre de la Directive EES a été publié par la Commission en 2003 et que ce document pourrait être mis à jour, sur la base de l'expérience pratique qui s'est développé, à l'instar du document d'orientation sur la Directive EIE, publié en 2017. Ce document pourrait inclure des exemples de bonnes pratiques sur les différentes étapes de la procédure d'évaluation. Il pourrait également favoriser une compréhension plus affinée des incidences environnementales de documents stratégiques et programmatiques, ayant une vision à long terme, et de la façon dont l'évaluation peut apporter une valeur ajoutée à ce niveau.

1. INTRODUCTION

1.1. PURPOSE AND SCOPE OF THE EVALUATION

This evaluation study has been commissioned by DG Environment to support the evaluation of Directive 2001/42/EC on the assessment of the effects of certain public plans and programmes on the environment (SEA Directive) as part of the Commission's Regulatory Fitness Check and Performance (REFIT) programme.

The evaluation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment was included in the list of pieces of legislation targeted for REFIT evaluation in 2015[4]. This first REFIT evaluation of the SEA Directive since the date of its application (July 2004) follows the Commission's second implementation report on the SEA Directive in 2017 (European Commission, 2017a), as required by Article 12(3). The report provides an overview of the implementation of the Directive, reflecting on its effectiveness and relationship with other EU environmental assessment legislation. The report is underpinned by the *Study concerning the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC)*, prepared by Milieu in 2015-16 (hereafter referred to as the '2016 SEA Study'), which comprised an implementation component and an evaluation component. While the evaluation component was based on the Better Regulation approach and addressed similar questions to those proposed for this REFIT evaluation, it was not carried out as part of the REFIT initiative, and therefore had a more limited scope, particularly in terms of consultation. The purpose of undertaking this REFIT evaluation was to conduct a full evaluation of the performance of the Directive, respecting the Better Regulation guidelines while benefitting from the higher level of scrutiny given to REFIT evaluations and inviting input from all interested stakeholders.

The evaluation assesses the actual performance of the SEA Directive compared to initial expectations. It specifically considers:

- **Effectiveness**: the extent to which the Directive's objectives have been achieved;
- **Efficiency**: consideration of the resources required to achieve the Directive's objectives;
- **Relevance**: the extent to which the Directive continues to meet the needs of the EU and its citizens;
- **Coherence**: how the Directive interacts with other relevant areas of EU policy;
- **EU added value**: the value of the Directive in comparison to Member State action alone.

The scope of the evaluation study is defined in the Evaluation Roadmap[5], which established the intervention logic of the SEA Directive and developed the 11 evaluation questions that are addressed by this study.

The evaluation covers the application of the SEA Directive from the date of its application (21 July 2004) to the present day. It is a retrospective exercise that considers the performance of the Directive in the years since 2004. However, as the results of the evaluation will be used to inform decisions on the future of the SEA

[4] European Commission, Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2015, A New Start, Annex 3 Refit Actions, COM(2014) 910 final, 16 December 2014, p. 9.

[5] European Commission, Evaluation Roadmap, July 2017: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3481432_en

Directive, the study considers recent and upcoming developments (e.g. the 2016-2018 judgment of the CJEU in cases C-290/15, C-671/16 and C-160/17), as these will affect the relevance of the conclusions. The study does not, however, provide recommendations for future action. The evaluation covers the implementation of the SEA Directive in all Member States.

1.2. STRUCTURE OF THIS REPORT

The report is structured as follows:

- **Section 2: Background to the Directive.** This section details the purpose of the Directive, its history and evolution, and how it is intended to work in practice. It also includes the intervention logic for the Directive, which provides the basis for evaluating its performance.
- **Section 3: Methodology.** This section outlines the methodology used for the analysis, including the evaluation framework, consultation strategy, data collection tools and analytical methods.
- **Section 4: State of Play.** This section summarises the current situation with respect to implementation of the Directive.
- **Section 5: Evaluation and analysis of effectiveness, efficiency, relevance, coherence and EU added value.** This section summarises the analysis for each of the evaluation questions, including details on the interpretation of the question and the main sources of information used to determine the response.
- **Section 6: Conclusions.** This section provides a set of overall conclusions on the effectiveness, efficiency, relevance, coherence and EU added value of the Directive.

2. BACKGROUND TO THE DIRECTIVE

2.1. PURPOSE AND SCOPE OF THE DIRECTIVE

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (hereafter 'the SEA Directive' or 'the Directive') requires Member States to ensure that certain public plans and programmes likely to have significant environmental effects undergo a Strategic Environmental Assessment (SEA) before they can be adopted or submitted to a legislative procedure. The main objective of the Directive is to achieve high-level protection of the environment and promote sustainable development, by contributing to the integration of environmental considerations into the preparation and adoption of plans and programmes.

Article 11 of the Treaty on the Functioning of the European Union (TFEU) sets out the EU's intention to integrate environmental protection requirements into the definition and implementation of EU policies and activities, and to promote of sustainable development. The SEA Directive is a core instrument in implementing these two principles. It complements several pieces of legislation imposing environmental assessments, such as Directive 2011/92/EU as amended by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (Environmental Impact Assessment (EIA) Directive, originally adopted in 1985) and Council Directive 92/43/EEC (Habitats Directive), in particular Article 6(3). More specifically, the SEA Directive responded to concerns that the environmental assessment of projects required by the EIA Directive may take place too late in the planning process to avoid significant environmental damage, and may not account for the cumulative impacts of many individual projects[6]. The SEA Directive was intended to close this gap and to ensure that plans and programmes setting the framework for projects subjected to EIA would undergo environmental assessment. Addressing the causes of environmental problems early in the decision-making process was expected to facilitate steps to remove or mitigate the effects. SEA was also intended to facilitate EIA and any other subsequent environmental assessment at plan, programme or project level, including relevant permitting processes, as well as providing an overview of the cumulative effects at these subsequent levels. In addition, the Directive provides for public participation and information and was expected to increase the transparency of planning processes and strategic decisions, as well as social acceptance.

The SEA Directive establishes procedural requirements ensuring that certain plans and programmes likely to have significant environmental effects undergo an environmental assessment before their adoption.

According to Article 3, the Directive applies to plans and programmes prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use planning, as well as those setting the framework for development consent of projects subject to EIA. In addition, plans and programmes that require an appropriate assessment (AA) under Articles 6 and 7 of the Habitats Directive (Directive 92/43/EEC) are required to undergo SEA. Plans determining the use of small areas at local level or minor modifications to existing plans or programmes fall under the SEA Directive only in the case of significant effects on the environment. Duplication of the assessment is to be avoided where plans and programmes form part of a hierarchy (Article 4)

[6] Commission amended SEA Proposal, COM(96) 511 final, 1996, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51996PC0511&from=EN

Whether a plan or programme, which does not meet the criteria listed in the paragraph above, requires an SEA is determined through 'screening', which is based on criteria set out in Annex II of the SEA Directive or on a case-by-case basis, depending on the effect of the plan or programme on the environment. Where an SEA is required, an Environmental Report is prepared according to Article 5, outlining the likely significant effects on the environment and identifying, describing and evaluating reasonable alternatives. Further requirements are set out in Annex I of the SEA Directive.

Article 6 of the Directive requires that authorities with specific environmental responsibilities are to be consulted, as is the public. Article 7 goes on to state that any other Member States who may be significantly affected must also be consulted. The results of such consultations are to be taken into account during the preparation of the plan or programme (Article 8). All such parties are then informed of the outcome, as stipulated by Article 9.

Member States are to monitor the significant environmental effects in order to identify unforeseen adverse effects and take the appropriate remedial action (Article 10). Where there is a risk of duplication – through either other EU legislation or legislation already in place in the Member States - coordinated or joint procedures may be carried out (Article 11), including for monitoring.

2.2. CONTEXT OF ADOPTION OF THE SEA DIRECTIVE

The SEA Directive was adopted on 27 June 2001 and came into force on 21 July 2004. However, discussions on the need for a comprehensive system of environmental assessment that goes beyond individual projects dates back to the 1970s, when discussions on Directive 85/337/EEC (the EIA Directive[7]) first began. At the time of the adoption of EIA Directive in 1985, the Commission considered the possibility of extending its field of application, commitments confirmed by both the Fourth and Fifth Environmental Action Programmes (Farmer, 2012).

In 1991 the Commission proposed a first internal draft of the SEA Directive. In the same year, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention[8]) was adopted. The proposal for the SEA Directive, however, met with political opposition from several Member States, not least because of technical difficulties associated with the concept of environmental assessment applied to strategic documents including 'policies', 'plans', and 'programmes'. The official proposal for the SEA Directive, published in 1996, accordingly restricted its scope to certain plans and programmes, solely for town and country planning[9].

At the same time, heads of government at the Cardiff Summit in June 1998[10] committed to integrating the environment into policy-making, sparking the development of strategies for environmental integration at a number of workshops, summits and meetings. The Sustainable Development Strategy (European Commission, 2001) was subsequently adopted in June 2001, which included adding the environmental pillar to the Lisbon Process of social and economic reform (see, for example, Sheate *et al*., 2003 for further information).

7 Now Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.

8 Convention on Environmental Impact Assessment in a Transboundary Context, available at: http://www.unece.org/env/eia/welcome.html

9 European Commission, Proposal for a COUNCIL DIRECTIVE on the assessment of the effects of certain plans and programmes on the environment, COM(96) 511, final, Brussels, 4 December 1996.

10 See http://www.europarl.europa.eu/summits/car1_en.htm; Presidency Conclusions.

The SEA Directive was eventually adopted in 2001, slightly before the United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (1998) entered into force. In 2003 the Espoo Convention was supplemented by a Protocol on Strategic Environmental Assessment (the SEA Protocol), which provides a framework for SEA beyond the EU. The EU is a party to each of the Espoo Convention, the SEA Protocol, and the Aarhus Convention.

Since its adoption, there have been several studies on the application and effectiveness of the SEA Directive. The European Commission 2009 Report on the application and effectiveness of the SEA Directive (European Commission, 2009) concluded that Member States had experienced difficulties assessing impacts at the strategic level, where there is often greater uncertainty and a higher incidence of complicated cumulative effects. Several other studies, such as Sheate & Eales (2016), also considered the effectiveness of national SEA instruments. The most comprehensive study on the implementation of the SEA Directive in the Member States is the 2016 SEA Study, prepared for the Commission's second implementation report on the SEA Directive in 2017 (European Commission, 2017a), which present the main findings and conclusions of the study.

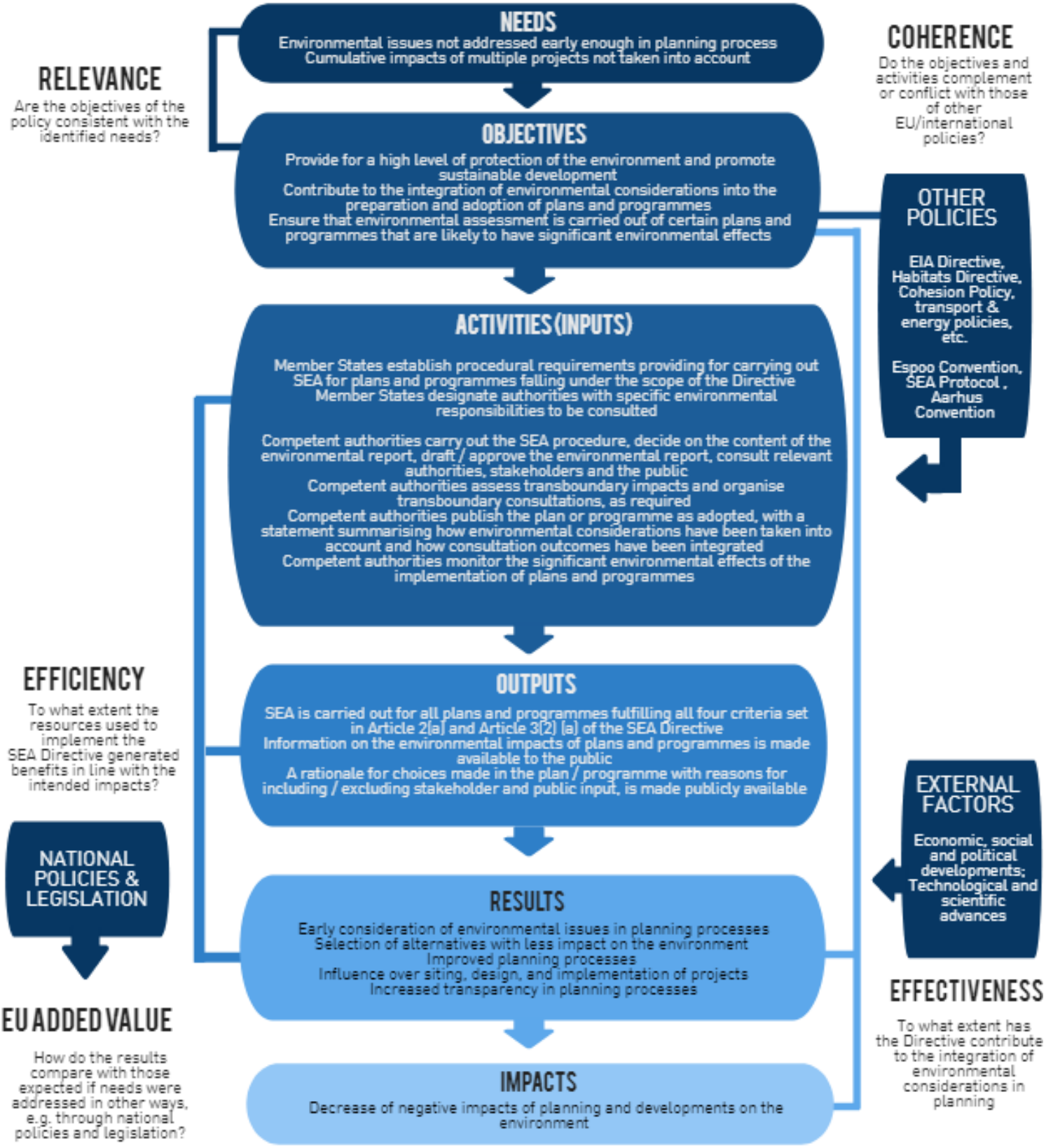
2.3. INTERVENTION LOGIC

The model of intervention logic presented in Figure 1 below defines how the SEA Directive was designed to work at the time of its adoption. It describes the needs, objectives (both general and specific), activities or inputs that would be required to achieve these objectives, and links the objectives to the outputs, outcomes and impacts that should be achieved through the Directive's implementation.

The **general objective** of the SEA Directive is to provide for a high level of protection of the environment and to promote sustainable development. This leads to a more **specific objective**: to contribute to the integration of environmental considerations into the preparation of plans and programmes. Both of these are, in turn, reflected in an **operational objective**, which aims to ensure that an environmental assessment is carried out for certain plans and programmes which are likely to have significant effects on the environment.

To achieve these objectives, a range of actions are developed, which lead to the **outputs** that are immediately result from the activities undertaken (i.e. the procedural requirement laid down in the Directive). These correspond to the operational objective of the SEA Directive. These outputs should achieve certain **results** (e.g. the selection of alternatives to limit negative impacts) or improved transparency and social acceptance, and contribute to longer-term **impacts** at EU level, with the ultimate objective of providing for a high level of protection of the environment and promoting sustainable development.

Figure 1: Intervention logic



3. STATE OF PLAY

3.1. INTRODUCTION

According to the 2016 SEA Study, Member States may undertake anywhere between five and 2,700 SEAs per year. The wide range in the numbers of SEAs undertaken across Member States might be due to how SEAs are counted, e.g. whether the number includes those plans or programmes where screening was carried out but not a full SEA, whether transboundary SEAs are included, methods of counting SEAs spanning more than one year, etc. In addition, the national authorities in some Member States do not keep track of these sub-national SEAs, making these approximate figures. The Study noted that smaller Member States carried out fewer SEAs in a year, as did newer EU Member States (although this number has grown over time).

The 2016 SEA Study did not specifically ask Member States to identify which plans and programmes are subject to an SEA, although this information was available in some cases. Spatial plans, town and country planning, and land use planning made up the significant majority of SEAs. Of the remainder, water plans were the most common (such as River Basin Management Plans (RBMPs) or Flood Risk Management Plans, but also local and regional plans and programmes), followed by transport, rural development and energy plans. Tourism and agriculture were also mentioned. It was clear that the vast majority of plans are carried out at local level. Operational programmes (OPs) developed as part of Cohesion Policy and funded through European Structural and Investment (ESI) Funds also systematically require an SEA.

This section goes on to outline the current state of play in the EU-28, focusing on the transposition and implementation of the Directive by the Member States. It draws heavily from the 2016 SEA Study on preparation of the report on the application and effectiveness of the SEA Directive, although steps have been taken to update the information where possible, using national research undertaken as part of this current study, relevant information from the targeted and public consultation, and the inclusion of recent case law from the Court of Justice of the European Union (CJEU).

3.2. TRANSPOSITION AND APPLICATION OF THE SEA DIRECTIVE

3.2.1. Legal and administrative arrangements in Member States

3.2.1.1. Legislative framework

The 2016 SEA Study found that the SEA legislative framework varies between Member States depending on their administrative structure and how they carried out environmental assessments before the SEA Directive came into force. Most Member States transposed the requirements of the SEA into new legislation, although, in some cases, the requirements were integrated into existing (including sectoral) legislation. Several Member States have been involved in infringement procedures following their transposition of the SEA Directive, primarily relating to issues with public consultation (inappropriate timing (Finland), inadequate or absent information available to the public at different stages of SEA (Finland, Lithuania, Portugal, Slovakia and Sweden), transboundary consultation (Belgium), the definition of the scope of the Directive (Denmark, Lithuania and Slovakia), and the functional separation between the decision-making authority and the environmental authority (France). In all cases, the problems were addressed either at the letter of formal notice or at reasoned opinion stage.

The majority of Member States had various guidance and methodological documents available online to aid practitioners in developing an SEA, with some Member States updating these documents regularly. Guidance documents are often quite specific, relating to a particular sector or even to a particular section of the SEA process. Most Member States also have less formal tools to aid practitioners. Information is often available online, as are online databases. Several Member States use standardised forms or checklists, especially at regional level, to ensure consistency and completeness of the information submitted. Training and professional development courses were reported in several Member States.

3.2.1.2. Organisational arrangements and authorities

In the majority of Member States, the competent authority for SEA is the authority in charge of preparing and adopting the plan or programme (the plan/programme developing authority), at the administrative level at which plans and programmes are prepared (i.e. national, regional, or local). In some Member States, however, other authorities share responsibility with the plan/programme developing authority to carry out the assessment, i.e. in some Member States, the Ministry of Environment/the Environmental Agency are considered concerned authorities with specific environmental responsibilities and which must be consulted, while other Member States give them a more important role throughout the procedure, cooperating closely with the competent authority, or even leading the SEA process itself (especially for plans and programmes at national level). Other Member States have a specifically designated body to supervise and monitor the quality of the SEA procedure (for instance the Netherlands Commission for Environmental Assessment in the Netherlands).

According to Article 6(3) of the SEA Directive, Member States must designate the authorities to be consulted, which, by reason of their specific environmental responsibilities, are likely to be affected by the plan or programme in question. According to Article 6(5), the specific arrangements for the information and consultation of these authorities are left to the discretion of the Member States. Although few Member States have defined or interpreted the concept of 'specific environmental responsibilities' in the SEA legislation, the CJEU (in its judgment in Case C-474/2010[11], see Box 1) clarified situations where the environmental authorities also act as the plan/programme developing authorities designated and consulted under Article 6; in such cases, the entity consulted under Article 6 must have functional separation (autonomy, especially in terms of administration and human resources). Several Member States changed their national legislation on foot of this ruling.

Box 1: CJEU judgment on Case C-474/10 (Department of the Environment for Northern Ireland v Seaport (NI) Ltd. and Others)

'… Article 6(3) of 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 does not require that another authority to be consulted as provided for in that provision be created or designated, provided that, within the authority usually responsible for undertaking consultation on environmental matters and designated as such, a functional separation is organised so that an administrative entity internal to it has real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to fulfil the tasks entrusted to authorities to be consulted as provided for in Article 6(3) and, in particular, to give an objective opinion on the plan or programme envisaged by the authority to which it is attached.

[11] CJEU, Case C-474/10, available at:

http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-474/10&td=ALL.

3.3. IMPLEMENTATION OF THE MAIN STAGES OF SEA

This section sets out the steps taken in an SEA, which are undertaken if a plan or programme falls under scope of the Directive – that is, the following four criteria are *all* met: it is subject to preparation and/or adoption by an authority at national, regional or local level, it is required by a legislative, regulatory or administrative provision, it is prepared for any of the sectors listed in Article 3(2)(a) of the Directive, *and* it sets the framework for future development consent of projects listed in Annex I and II of the EIA Directive[12]. Plans and programmes, meeting the first two criteria and requiring an assessment pursuant to Article 6 or 7 of the Habitats Directive also fall automatically under the scope of the Directive.

3.3.1. Definition of plans and programmes and determination of the application of the Directive – Article 2(a)

Article 2(a) of the Directive defines plans and programmes as follows: ”plans and programmes” shall mean plans and programmes, including those co-financed by the European Union, as well as any modification to them:

- Which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by the Member States national/regional/local parliaments or governments, and
- Which are required by legislative, regulatory or administrative provisions.’

Definitions can be found in several guidance documents, manuals, and handbooks. For example, the Commission’s SEA guidance document[13] suggests that a ‘plan’ is a document which sets out how a scheme or policy is to be carried out, while a ‘programme’ is a plan covering a set of projects in a given area. However, based on the 2016 SEA Study, case law, and various publications (including those from Member States, such as the discussion paper from the Commission Group of EIA/SEA National Experts’ *ad hoc* working group, presented at the Commission Group’s meeting in Vienna in September 2018[14]), the definition of ‘plans and programmes’ remains unclear for Members States, thus there may be cases of plans and/or programmes either undergoing an unnecessary SEA, or neglecting to undertake a required SEA.

The definition of plans and programmes - in particular, the requirements for adoption by legislative, regulatory or administrative provisions - was interpreted by the CJEU in its judgment on Case C-567/10[15] (see Box 2). The judgment confirmed that plans and programmes that do not require adoption may still be subject to SEA if they meet the relevant criteria.

Box 2: CJEU judgment on Case C-567/10 (Inter-Environnement Bruxelles ASBL, Pétitions-Patrimoine ASBL, Atelier de Recherche et d’Action Urbaines ASBL v Région de Bruxelles-Capitale)

28. It must be stated that an interpretation which would result in excluding from the

[12] See the Evaluation Roadmap published in July 2017: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3481432_en.

[13] European Commission, 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, 2006, p. 6.

[14] The discussion paper is available at: https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/d7e4ef55-21a8-4491-b132-045466320cae/details

[15] CJEU, Case C-567/10 - Inter-Environnement Bruxelles and Others, available at:

http://curia.europa.eu/juris/liste.jsf?language=en&num=C-567/10

scope of Directive 2001/42 all plans and programmes, inter alia those concerning the development of land, whose adoption is, in the various national legal systems, regulated by rules of law, solely because their adoption is not compulsory in all circumstances, cannot be upheld.

29. The interpretation of Article 2(a) of Directive 2001/42 that is relied upon by the abovementioned governments would have the consequence of restricting considerably the scope of the scrutiny, established by the Directive, of the environmental effects of plans and programmes concerning town and country planning of the Member States.

30. Consequently, such an interpretation of Article 2(a) of Directive 2001/42, by appreciably restricting the Directive's scope, would compromise, in part, the practical effect of the Directive, having regard to its objective, which consists in providing for a high level of protection of the environment (see, to this effect, Case C-295/10 Valčiukienė and Others [2011] ECR I-8819, paragraph 42). That interpretation would thus run counter to the Directive's aim of establishing a procedure for scrutinising measures likely to have significant effects on the environment, which define the criteria and the detailed rules for the development of land and normally concern a multiplicity of projects whose implementation is subject to compliance with the rules and procedures provided for by those measures.

31. It follows that 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 Directive 2001/42 and, accordingly, be subject to an assessment of their environmental effects in the circumstances which it lays down.

32. It follows from the foregoing that the answer to the second question is that the concept of plans and programmes 'which are required by legislative, regulatory or administrative provisions', appearing in Article 2(a) of Directive 2001/42, must be interpreted as also concerning specific land development plans, such as the one covered by the national legislation at issue in the main proceedings. (paragraphs 28-32)

The notion of 'plans and programmes' was further interpreted by the CJEU in its judgement on Case C-290/15[16]. In her opinion to this judgment the Advocate General stated that ' [...] *Where is any doubt the distinction between the two terms in question and other measures should therefore be drawn by reference to the specific objective laid down in Article 1 of the SEA Directive to the effect that plans and programmes which are likely to have significant effects on the environment are subject to an environmental assessment"*. The judgment confirmed that the SEA Directive applies to any acts, even normative ones, fulfilling the four criteria laid down in Articles 2 and 3(a) of the SEA Directive, in which circumstances the SEA procedure is automatically applicable.

To this end the respective acts are plans and programmes in the sense of the SEA Directive and therefore subject to SEA.

Box 3: CJEU judgment on Case C-290/15 D'Oultremont and Others

49. Having regard to that objective, it should be noted that the notion of 'plans and programmes' relates to any measure which establishes, by defining rules and

[16] CJEU, Case C-290/15 (D'Oultremont and Others), available at:

http://curia.europa.eu/juris/document/document.jsf;jsessionid=0485D6D6A50D1EAF795FA7CBA44AEF51?text=&docid=184892&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4202948

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 (see, to that effect, judgment of 11 September 2012, Nomarchiaki Aftodioikisi Aitoloakarnanias and Others, C 43/10, EU:C:2012:560, paragraph 95 and the case law cited).

[…]

52. In that regard, it should be noted that it is apparent from the actual wording of Article 2(a), first indent, of that Directive, borne out by the case law referred to in paragraph 49 of the present judgment, that the notion of 'plans and programmes' can cover normative acts adopted by law or regulation. (Paragraphs 49 and 52)

The definition of plans and programmes was further considered in the Opinions of the Advocate General in Cases C-671/16 and C-160/17 (both issued on 25 January 2018) and reconfirmed the conclusions of Case C-290/15.(D'Oultremont and others), i.e. that the concept of plans and programmes can cover normative acts. However, the Advocate General drew the attention that *"it cannot be ruled out that even a law proposed by a government of a Member State which is passed by the Parliament satisfies all of the conditions laid down in Article 2(a) of the SEA Directive. After all, a law is regulated in national legislation, namely in the respective constitution which determines the competent 'authorities' for adopting them and the procedure for preparing them*. […] *As has already been said, the fact that a measure is regulated by national legislative or regulatory provisions which determine the competent authorities for adopting them and the procedure for preparing them should be sufficient. (20) Therefore, a rather rare requirement to adopt the measure in question is not necessary; rather, it suffices if it is made available as a tool. This extends the obligation to carry out an environmental assessment significantly. As I have already stated, this interpretation that is based on the legitimate objective of applying an environmental assessment covering all relevant measures, (21) is contrary to the recognisable intention of the legislature. (22) The Supreme Court of the United Kingdom has therefore strongly criticised this, (23) without, however, making a request for a preliminary ruling to that effect to the Court"*[17]

Referring to paragraph 49 of the D'Oultremont case (Case C-290/15), the CJEU concluded that: '*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'*. In addition, Case C-671/16: Inter-Environnement Bruxelles and others v Brussels-Capital Region explained further: '*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, thereby reducing the practical effect of that Directive'* (paragraph 55).

Article 3 defines the scope of the SEA Directive. It establishes that an environmental assessment must be carried out for plans and programmes which are likely to have significant environmental effects, either those plans and programmes for which SEA is mandatory (Article 3(2), see below), or those plans and programmes determined by the Member States ("screening") to have likely significant environmental effects (Article 3(3) and 3(4)). The CJEU provided its interpretation of the plans and programmes covered by the Directive and on the margin of discretion of the Member States in its judgment on Case C-295/10[18] (see Box 4).

[17] Advocate General Opinion, C-671/17, paragraphs 33 and 42, ECLI:EU:C:2018:39.

[18] CJEU, Case C-295/10 (Genovaitė Valčiukienė and Others v Pakruojorajonosa-vivaldybė and Others), available at:

Box 4: CJEU judgment on Case C-295/10 (Genovaitė Valčiukienė and Others v Pakruojorajonosa-vivaldybė and Others)

Whenever the Member States decide on the scope of their national legislation implementing the Directive they should bear in mind that their margin of discretion *'pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans which are likely to have significant environmental effects is limited by the requirement under Article 3(3) of that Directive, in conjunction with Article 3(2), to subject the plans likely to have significant effects on the environment to environmental assessment, in particular on account of their characteristics, their effects and the areas likely to be affected'* (paragraph 46).

In another judgment, the Court clearly stated that national legislation should not create exemptions which run contrary to the objectives of the SEA Directive (Judgment on Case C-463/11, L v M [19] – see Box 5).

Box 5: CJEU Judgment on Case C-463/11 (L v M)

'31. At the outset, it should be recalled that, as it is apparent from Article 1 of the Directive, the fundamental objective of that Directive is to ensure that plans and programmes which are likely to have significant effects on the environment are subject to an environmental assessment when they are prepared and prior to their adoption (Case C–295/10 Valčiukienė and Others [2011] ECR I–0000, paragraph 37, and Case C–41/11 Inter-Environnement Wallonie and Terre Wallonne [2012] ECR I–0000, paragraph 40).

[…]

43. Moreover, it is clear from the case law of the Court that, where a plan, within the meaning of the Directive, should, prior to its adoption, have been subject to an assessment of its environmental effects in accordance with the requirements of the Directive, the national courts hearing an action for annulment of such a plan are obliged to take all general or particular measures for remedying the failure to carry out such an assessment (see, to that effect, Inter-Environnement Wallonie and Terre Wallonne, paragraphs 44 to 46).

44. Consequently, in the main proceedings, it is for the referring court, within the exercise of its jurisdiction, to apply the provisions of European Union law and to give full effect to those provisions, refusing to apply any provision of the BauGB, in particular Paragraph 214(2a)(1) thereof, which would lead that court to deliver a decision contrary to the Directive (see, to that effect, Case 106/77 Simmenthal [1978] ECR 629, paragraph 24, and Case C–617/10 Åkerberg Fransson [2013] ECR I–0000, paragraph 45).'

3.3.2. Certain plans and programmes developed in the sectors under Article 3(2)

Article 3(2) of the SEA Directive defines two types of plans and programmes which are deemed likely to have significant environmental effects and are thus subject to SEA. These pre-defined sets of plans and programmes are those that have been prepared specifically for the following sectors: agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, and

http://curia.europa.eu/juris/liste.jsf?language=en&num=C-295/10

[19] CJEU, Case C-463/11 (L v M), available at:

http://curia.europa.eu/juris/liste.jsf?language=en&num=C-463/11.

town and country planning or land use. At the same time, they must also set the framework for future development consent of projects listed in Annex I and II to the EIA Directive.

Plans and programmes that require an assessment under the Habitats Directive must undergo an SEA *ex lege* (Article 3(2)(b) SEA Directive). The CJEU provided further interpretation on how to apply Article 3(2)(b), in its judgment on Case C-177/11 (see Box 6).

Box 6: CJEU judgment on Case C-177/11 (Eighth - Sillogos Ellinon Poleodomon kai Khorotakton v Ipourgos Perivallontos, Khorotaxias kai Dimosion Ergon and Others)

'… Article 3(2)(b) of the SEA Directive must be interpreted as meaning that the obligation to make a particular plan subject to an environmental assessment depends on the preconditions requiring an assessment under the Habitats Directive, including the condition that the plan may have a significant effect on the site concerned, being met in respect of that plan. The examination carried out to determine whether that latter condition is fulfilled is necessarily limited to the question as to whether it can be excluded, on the basis of objective information, that that plan or project will have a significant effect on the site concerned.' (paragraph 24)

According to the 2016 SEA Study, all Member States have identified certain types of plans and programmes for which SEA is mandatory: around half of the Member States have transposed Article 3(2)(a and b) literally, with most making only minor adjustments and additions to the type or name of the sectoral planning documents, in line with their own national arrangements. Several Member States, however, have expanded beyond Article 3(2), adding provisions covering a wider range of sectors, often with respect to a particular type of plan (mining, marine, drinking water, or regional development plans, for example).

3.3.3. Setting the framework for future development consent of projects

Article 3(2)(a) of the SEA Directive requires that plans and programmes prepared for the listed sectors should also comply with the following requirement: 'set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC'. There is no further definition of the term in the text of the Directive, although it is described in more detail in the European Commission's guidance on the implementation of the Directive (European Commission, 2004). In addition, the 2017 European Commission Implementation Report (European Commission, 2017a) states (based on CJEU case-law) that plans and programmes set a framework for decisions which influence any subsequent development consent of projects, in particular with regard to location, nature, size and operating conditions or allocating resources. It is, however, up to Member States to further define and interpret this requirement as they deem appropriate.

Comprehensive consideration was given to the phrase 'plans and programmes … which set the framework for future development consent of projects' in Article 3(2)(a) in the Advocate General's opinion in Terre Wallone ASBL v Région Wallone and the subsequent judgment on Joint Cases C-105/09 and C-110/09[20] (see Box 7 below).

[20] CJEU, Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne, available at: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-105/09

Box 7: CJEU judgment on Joint Cases C-105/09 and C-110/09, Terre Wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région Wallonne.

To understand whether a plan or programme 'sets the framework for future development consent', it is necessary to examine the content and purpose of those programmes, taking into account the scope of the environmental assessment of projects as provided for by that Directive.

[…]

'An action programme adopted pursuant to Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources is in principle a plan or programme covered by Article 3(2)(a) of Directive 2001/42/EC … since it constitutes a "plan" or "programme" within the meaning of Article 2(a) of the latter Directive and contains measures compliance with which is a requirement for issue of the consent that may be granted for carrying out projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997'.

According to the 2016 SEA Study, 25 of the 28 Member States have transposed the phrase "setting the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC" directly into national SEA legislation, with little in the way of interpretation. In a number of Member States, however, criteria for setting the framework can be expanded in further national or sub-national legislation, guidance documents, or in other ways, or a common definition has been implicitly adopted.

3.3.4. Small areas and minor modifications to plans and programmes

Article 3(3) requires an environmental assessment of plans and programmes which determine the use of small areas at local level and minor modifications to plans and programmes only if Member States determine they are likely to have significant environmental effects. With regard to plans and programmes concerning small areas at local level, the CJEU ruling C-444/15, Associazione Italia Nostra Onlus is relevant, which found that small areas at local level are prepared and/or adopted by a local authority, as opposed to a regional or national authority, and that the area inside the territorial jurisdiction of the local authority is small in size relative to that territorial jurisdiction. According to the 2016 SEA Study, plans and programmes determining small areas do not usually require an SEA, based on the results of the screening procedure. This is typically decided on a case-by-case basis, although there are several instances of guidance at Member State level.

On the other hand, Member States have different definitions of what constitutes a 'minor modification'. In practice, however, the 2016 SEA Study found that many Member States have undertaken an SEA on plans or programmes that are considered modifications. Member States reported that whether a modification requires an SEA may also be determined by whether screening had been undertaken, why the modification was introduced, the sector the plan concerns, the size of the modification and the expected impact of the modification.

3.3.5. Screening (Article 3(4)-(5))

Article 3(4) of the Directive states that Member States shall determine whether plans or programmes, other than those referred to in Article 3(2), which set the framework for future development consent of projects, are likely to have significant environmental effects. As outlined above, Member States have the option either to define a list of plans and programmes requiring an SEA, or to undertake screening on

a case-by-case basis. Almost all Member States have adopted a mixed approach. Guidance for practitioners can be found in various pieces of national legislation or through screening guidance documents, as well as through procedural obligations requiring completion of certain steps. Standard checklists are used in several Member States, while commonly accepted criteria are used in others.

Article 3(5) of the Directive requires Member States to take into account the criteria listed in Annex II when determining whether plans and programmes are likely to have significant effects on the environment. The 2016 SEA Study found that more than two thirds of the Member States have transposed the significant criteria of Annex II directly. Of those that did not, several Member States extended the provision by adding complementary requirements, for example related to natural values, the vulnerability of areas which might be affected, and consideration of socio-economic and cultural behaviour.

Article 3(6) requires the relevant environmental authorities to be consulted if significant environmental effects are to be determined on a case-by-case basis, but implementation of this varies between Member States. In some cases, the authorities consulted provide a (formal) opinion, while, in others, the environmental authorities decide whether plans or programmes are likely to have significant environmental effects, based on the information provided by the planning authority.

Several key issues were identified in the 2016 SEA Study, including a lack of clarity in some instances as to whether a plan or programme should undergo an SEA. This resulted in some plans or programmes undergoing unnecessary screening. Those Member States with a rigid list of plans and programmes requiring an SEA noted that this reduced flexibility, others noted that taking a case-by-case approach was expensive, while still others highlighted a lack of data available to those undertaking the screening process within the SEA.

3.3.6. Scoping

Annex I of the SEA Directive sets out what is to be included in the Environmental Report, with the required level of detail then established at the scoping phase of the SEA procedure. This phase establishes what is to be assessed, providing all actors, authorities and evaluators with an idea of what is to be achieved and the information to be gathered. Article 5 of the Directive lists the factors to be considered when deciding what information is to be included in the Environmental Report, and makes a direct reference to Annex I, however, the SEA Directive does not formally define the scoping process - the organisation of which is at Member States' discretion - with the only obligation being that those authorities with specific environmental responsibility and who are likely to be concerned by the environmental effects of implementation plans and programmes are consulted on the scope of the Report (Article 5(4)). The 2016 SEA Study found that despite the flexibility in the Directive, Member States may have legal provisions that go beyond the minimum requirements of the Directive and lay down obligations for public consultations at the SEA scoping stage – in at least two Member States, the specific requirements are set out in the national EIA Act.

According to the 2016 SEA Study, in practice scoping is often done on a case-by-case basis, with no formal definition in legislation, although this may depend on the plan or programme and whether it is local/regional/national. Some Member States do, however, have additional requirements set out in national legislation, or have developed guidance documents or checklists (other than Annex I itself).

Not all Member States provided information on the duration of the scoping phases in the 2016 SEA Study, however, of those that did, the scoping process takes on average one to three months. It was noted that consultations and the time needed by authorities were the steps that took the longest to complete and were the main reasons for extending the scoping period.

While not required by the Directive, there is usually a scoping document, either formal or informal. This may take the shape of a guideline of what will be included in the final Environmental Report, a prescriptive list, or a record of discussions on the subject. In a number of Member States, according to the 2016 SEA Study, the scoping report is specifically required by law, while in others, it is common practice to prepare one, especially as a way to engage with consultation bodies and other interested parties. On the other hand, a small number of Member States do not produce a scoping report. In those Member States where the scoping report is not formally required, the opinion of the competent body and other relevant environmental and nature protection institutions is recorded as the outcome of the scoping procedure.

The 2016 SEA Study provided information on the content of the scoping report for around half of the Member States – regardless of whether such a report is required by law. In some cases, the information set out in Annex I was clearly set out, while in other Member States, Annex I is used as a guideline rather than a prescriptive list of what should be included. In some Member States, a timeline for the SEA or consultations may be set out, or aims, indicators, or methods to be used may be identified.

When it comes to consultation on the scope of the Environmental Report, the 2016 SEA Study found that the legislation and practices of Member States varied considerably. The environmental authorities may offer advice, approve the scoping decision, or have a direct influence on the content. In some Member States, 'consultations' are required, without any further information being provided on the extent to which this is done in practice.

3.3.7. Baseline reporting/environmental information

Information on the likely evolution of the current state of the environment (Annex I (b, c, d)) is necessary in order to understand how the plan or programme could significantly affect the environment in the area concerned. However, according to the 2016 SEA Study, very few Member States have requirements in respect of the description of the current environmental status. Despite this, there are a number of guidelines at national or regional level (including factsheets and examples) or indications of where data may be found. Indeed, several Member States compile information into databases or other published documents, which SEA practitioners can then access. In addition, the SEA Directive allows for the use of relevant available information on the environmental effects of the plans and programmes, including any data obtained at other levels of decision-making, or through other Community legislation.

Several Member States reported difficulties establishing a baseline, usually due to lack of data, along with costs, relevance and level of data. In some cases, information was identified as being out-of-date or not comparable between locations (due to different data collection methods). It was also noted that the environmental sector or administrative level could determine the availability and quality of the data. In some Member States, the scope of data collection was reported to be difficult, with vast amounts of data collected and subsequently unused in the assessment.

3.3.8. Environmental Report and the Non-Technical Summary

The Environmental Report is defined in Article 2(c) of the SEA Directive as 'the part of the plan or programme documentation containing the information required in Article 5 and Annex I'. As such, it is the cornerstone of the SEA, bringing together the identification, description and evaluation of the likely significant environmental effects and the reasonable alternatives. It also forms the basis for monitoring the significant effects. Despite this, the SEA Directive specifies neither the form this Environmental Report should take nor who is responsible for its preparation.

According to the 2016 SEA Study, almost half of the Member States reported that the content of the Environmental Reports goes beyond the requirements of the Directive, for example, including social, economic, or human health factors in the assessment, or including the results of public consultations. By contrast, almost all Member States reported that the Non-Technical Summary (which is to be included under Annex I) covers all of the elements required by Annex I of the Directive.

The Environmental Report takes on average between two and nine months to prepare, although this depends on the type of plan (for example, spatial and land use plans often take longer), as well as the duration of the planning process, if the SEA is run in parallel. It was noted that the time taken to prepare the Environmental Report also depends on the outcome of the scoping phase since that should determine the key issues to be covered, the methodological approach to be adopted and the nature of reasonable alternatives to be considered.

Article 5(1) of the SEA Directive requires reasonable alternatives to be identified, described and evaluated in the Environmental Report. According to the 2016 SEA Study, no Member States have formally defined 'reasonable alternative', but some have addressed the issue in their guidance documents. Other Member States report that a common understanding has been established. There seems to be no standardised approach to either the types of alternatives identified or the number required. In most Member States, two or three alternatives are identified, but this number may or may not include the do-nothing/zero-alternative. The do-nothing alternative is, however, always considered by most Member States. Other alternatives can be locational, qualitative/quantitative, technical, or more strategic. According to the 2016 SEA Study and various other sources, identifying alternatives is one of the key difficulties experienced by SEA practitioners, despite the various guidance documents available.

The Environmental Report also includes the assessment of the likely environmental effects of plans and programmes. According to the 2016 SEA Study, the Member States use various assessment, with many noting that the method is decided on a case-by-case basis. Despite this, many Member States could identify frequently used assessment methods. Qualitative methods were the most popular, as quantitative analysis is more difficult to carry out. Guidelines to assist practitioners in choosing assessment methods are available in many Member States, although these may be general or specific (for example, to a certain sector).

According to the 2016 SEA Study, various difficulties were identified in the development of the Environmental Report:

- Lack of data – especially given the strategic and often general nature of plans and programmes;
- Inadequate expertise among practitioners and authorities – including their ability to assess cumulative effects;
- Time (both the time spent developing the Report itself, and that allowed by legislation/other procedures);
- Assessment of alternatives;
- Consultations (public and with other authorities, especially if this was not done during scoping);
- Monitoring of environmental impacts (including the identification of appropriate monitoring indicators).

3.3.9. Consultation and public participation

Consultation and the consideration of its results in the finalisation of the plan or programme are a key step within the environmental assessment procedure. At certain stages of the SEA, consultation must be undertaken with both the authorities concerned and the public, with Member States obliged to ensure early and effective

consultation procedures. According to Article 6(5), Member States are to define the specific arrangements for the information to be provided and the methods for consultation with the authorities and the public. The text of the Directive does not specify the timeframes for the consultation procedure, simply requiring that the consultations are carried out in the 'appropriate timeframes' (Article 6(2)). The CJEU confirmed, in its judgment on Case C-474/1038 (see Box 8), that such periods may be prescribed by law or on a case-by-case basis.

Box 8: CJEU judgment on Case C-474/10 CJEU, Judgment on Case C-474/10 (Department of the Environment for Northern Ireland v Seaport (NI) Ltd. and Others)

'*… Article 6(2) of Directive 2001/42 must be interpreted as not requiring that the national legislation transposing the Directive lay down precisely the periods within which the authorities designated and the public affected or likely to be affected for the purposes of Article 6(3) and (4) should be able to express their opinions on a particular draft plan or programme and on the Environmental Report upon it. Consequently, Article 6(2) does not preclude such periods from being laid down on a case-by-case basis by the authority which prepares the plan or programme. However, in that situation, Article 6(2) requires that, for the purposes of consultation of those authorities and the public on a given draft plan or programme, the period actually laid down be sufficient to allow them an effective opportunity to express their opinions in good time on that draft plan or programme and on the Environmental Report upon it.' (paragraph 50)*

Table 1 below sets out (in the first column) what is required in terms of consultation, as well as the information that must be made available (second column). It also summarises the relevant findings from the 2016 SEA Study (third column).

Table 1: Information and consultation requirements and trends

Consultation requirements	Information requirements	2016 SEA Study findings
• **Consultation at the screening phase:** In the screening phase, the obligation to consult authorities is laid down in Article 3(6). • **Consultation at the scoping phase:** When deciding on the scope and level of detail of the assessment, authorities must be consulted (Article 5(4)). • **Consultation on the Environmental Report and draft plan or programme**: The opportunity to express an opinion on the draft plan and the Environmental Report is given to the public according to Article 6(1) and (2). Their opinions must be taken into account during the finalisation of the plan and programme and before its adoption or submission to the legislative procedure (Article 8). • **Consultation with other Member States' authorities and the public:** Where a Member State considers that the implementation of a plan or programme is likely to have significant effects on the environment in another Member State(s), it must forward a copy of the draft plan or programme and the Environmental Report to the other Member State(s) which then considers whether or not to enter into consultations or communication (Article 7(1) and (2).	• **Information at the screening phase:** The public must be informed of the screening decision (Article 3(7)). • **Information on the Environmental Report and draft plan or programme:** Information on the Environmental Report and draft plan or programme must be made available to the authorities concerned and the public, pursuant to Article 6(1). • **Information about the decision:** When a plan or programme is adopted, information must be made available to authorities and the public, in accordance with Article 9, including the environmental statement.	• **Information at screening phase:** The screening decision is usually made public online but, in some cases, more formally (Official Journal/Gazette). • **Consultations with the public on screening:** Some Member States, undertake consultation on screening (going beyond the Directive). • **Consultations with the public on scoping:** Some Member States undertake consultation on scoping (sometimes on an *ad hoc* basis). • **Information to the public on the Environmental Report:** The Report is usually made public at the same time as the draft plan or programme (although can be done earlier). • **Consultation with the public on the Environmental Report:** Comments are received (usually via email/dedicated online platform). Public hearings or meetings may be used (this often depends on the plan/programme) • **Consultations with authorities in other Member States on the Environmental Report**: The methods and timeframes for consultation are generally the same as those used for consultation with the public. All Member States receive the comments submitted and may hold meetings, working groups, or committee meetings.

According to the 2016 SEA Study, few Member States provided information on the timeframes used for consultations – although it was noted that the timeframes used for consultations with the authorities were similar to those used when consulting the public. In the case of screening, a small number of Member States specified a time limit within which the screening decision should be made public, ranging from three days after the decision is taken to 28 days after. With regard to scoping, the 2016 SEA Study did not provide any trends across Member States, although it seems from the examples highlighted that consultations with the public and authorities last around a month (although it should be noted that good practice examples are illustrated in the Study, so this may not be the case in the remaining Member States).

On the other hand, the duration of the public consultations on the Environmental Report is usually set out in national legislation, with many Member States setting a minimum timeframe – the most common being 30 days, with other common minimum timeframes being 35 days, 45 days, and 60 days. In a few Member States a minimum is set at 21 days, however, in practice the timeframe is often extended, especially for high level national plans or programmes. The 2016 SEA Study also presented average values experienced in practice, all of which were longer than the minimum timeframes. In some Member States, consultations can last up to six months, or even 10 months for certain plans. In one Member State consultations could last more than two years.

According to the 2016 SEA Study, the most common authorities consulted under Article 6 are Ministries (including the Ministry of Environment), Environmental Protection Agencies, and governmental and municipal institutions responsible for environmental protection. The 2016 SEA Study found that more than half of the Member States designate the authorities to be consulted on a case-by-case basis, depending on the type of plan and programme in question, and its geographical coverage. The remaining Member States use a combined approach, where the legislation provides guidance or mandates the public bodies to be consulted (depending on their competence) but the competent authority for SEA can choose to involve other authorities on a case-by-case basis. Some Member States may also have a specific committee, which must also be consulted.

The 2016 SEA Study found that most Member States define 'the public', either in legislation or guidance documents. In almost all cases, NGOs are either explicitly or implicitly included. The minimum timeframes for public consultation are usually set out in legislation and typically last between four and six weeks, although they often last longer, in practice, than the stipulated minimum timeframe. The duration may depend on the type of plan or programme, or the length or complexity of the adopting procedure.

Article 9 requires Member States to inform the public and the consulted authorities about: the plan or programme as adopted; consideration of the results from the consultations under Article 6 and 7; the reasons for choosing the alternative compared to other alternatives; and the monitoring measures. The 2016 SEA Study showed that the public is generally informed via the Official Journal/Gazette and through information made available at the premises of the responsible authorities. Regional/local plans are also usually announced in local newspapers/websites. It is worth noting that the authority responsible for publication of the final decision differs across Member States; while it is typically done by the authority responsible for preparing the plan or programme, in some Member States it is done by the competent environmental authority.

3.3.10. Transboundary consultations

Article 7 of the SEA Directive sets out the requirements for transboundary consultations. According to the 2016 SEA Study, all but two Member States have experience with transboundary consultation, either as the initiating partner or in

response to an SEA of a neighbouring country. In some Member States the procedure is not set out in any legislation, although others report using the requirements of the SEA Directive and the SEA Protocol. Transboundary consultations are usually the responsibility of the Ministry of Environment (or a special department within the Ministry), although in several Member States the Ministry of Foreign Affairs may also play some role.

Member States identified several issues in the 2016 SEA Study, mostly relating to translation. Several examples were given of poor translations, or translations of key documents only. In addition, the timeframes of the two neighbouring Member States did not align, leading to short deadlines or consultations being carried out either too early or too late in the process.

3.3.11. Monitoring

Article 10 of the Directive lays down the obligation for Member States to monitor the significant environmental effects of the implementation of plans or programmes. The 2016 SEA Study established a lack of clarity on whether Member States undertake such monitoring systematically or take remedial action in the case of unforeseen adverse effects. Many Member States were unable to comment on the frequency of monitoring, although some noted that this depends on the type of plan. In other cases, it was stated that monitoring reports are submitted 'regularly' for certain plans.

Monitoring can be done using standard monitoring indicators (which may or may not be set out in legislation), or defined case-by-case or at sub-national level. Existing monitoring mechanisms can also be used, for example those set out in other legislation, either at EU level (e.g. the Water Framework Directive, the Habitats Directive, the Ambient Air Quality Directive) or at national level. According to the 2016 SEA Study, there are at least several Member States which have based monitoring mechanisms on the requirements set out in these Directives.

The plans or programmes themselves may set out monitoring indicators or refer to those set out in guidance documents. Just under half of the Member States establish monitoring indicators on a case-by-case basis, except where they fall under another EU Directive.

3.3.12. Following completion of the SEA procedure

Article 8 of the SEA Directive requires the results of the SEA to be taken into account during the preparation of the plan or programme. Article 9(1)(b) also requires a statement summarising how environmental considerations have been integrated into the plan or programme. According to the 2016 SEA Study, almost all Member States stipulate that the decision taken by the environmental authority following the SEA procedure must be considered in the finalisation of the plan or programme. In at least 10 Member States, this decision is binding. In others, it is not binding, although the environmental authorities may demand justification if the plan or programme developing authority disregards any part of its opinion. In some Member States there was evidence that the SEA was ultimately excluded in the preparation of the plan or programme, but others reported that the recommendation/opinion of the environmental authorities was followed.

3.3.13. Key findings of the 2016 SEA Study

Some of the key findings of the 2016 SEA Study are set out below:

- There can be a lack of clarity on whether or not a plan or programme should undergo an SEA. This has resulted in plans and programmes undergoing the screening process when it was clear from the outset that the plan or programme will not have significant environmental effects. Member States with

a set list of plans and programmes requiring an SEA cite a lack of flexibility, while those that undertake screening highlight the high costs.

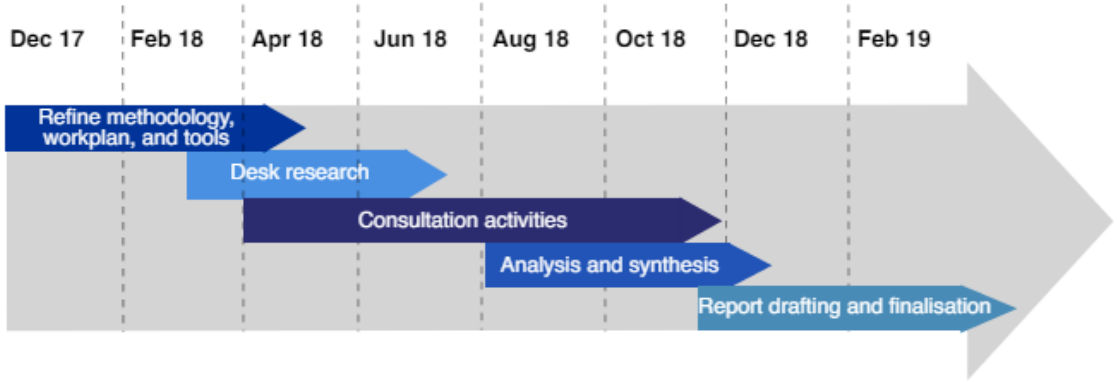
- Some Member States reported difficulties in establishing a baseline and preparing the other sections of the Environmental Report, due to a lack of relevant data, excessive costs, and the strategic (and often general) nature of plans and programmes.
- Despite the various guidance documents available, identifying alternatives is one of the key difficulties reported by Member States, as is the monitoring of significant environmental effects of the implementation of plans and programmes.
- Consultations with the public and other authorities, as well as transboundary consultations, were identified as another difficulty, especially where such consultations are not undertaken early in the SEA process, e.g. during scoping.
- In some cases, the expertise of practitioners and authorities impacts the quality of the SEA process and the Environmental Report. This includes their ability to assess cumulative effects and to utilise the available data effectively.

4. METHODOLOGY

This section describes the evaluation framework and methodology that guided the design and implementation of the evaluation study. It presents the evaluation questions, the data collection methods and consultation strategy, and the analysis methods. It also provides an overview of the challenges and limitations of the study. The methodology was developed by the consortium in close cooperation with the Commission (DG Environment unit E1), in line with the Better Regulation principles and guidelines.

The work on the study took place from December 2017 – February 2019 and consisted of four overlapping phases: inception (i.e. refining the methodology, workplans and designing consultation tools), evidence gathering (desk research and consultation activities), analysis and synthesis, and report drafting.

Figure 2: Study timeline



4.1. EVALUATION FRAMEWORK

The purpose of this evaluation study is to determine the extent to which the SEA Directive is fit for purpose, by examining its effectiveness, efficiency, relevance, coherence and EU added value.

Effectiveness considers the extent to which objectives of the SEA Directive have been achieved. It assesses the extent to which progress has or has not been achieved, and the significant factors that have contributed towards or inhibited progress.

Efficiency considers the relationship between the resources used to implement the SEA Directive and the changes generated by the Directive. It aims to provide an understanding of the extent to which the benefits of having and implementing the SEA Directive justify the costs.

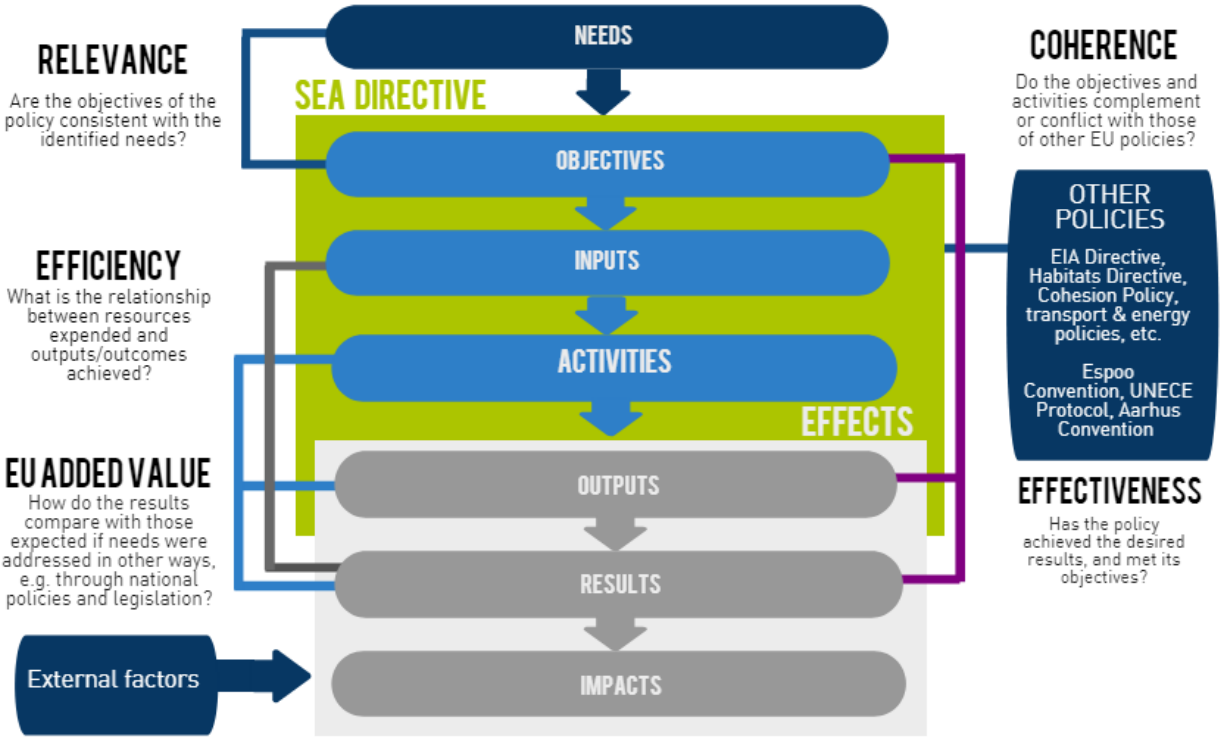
Relevance assesses whether the original objectives of the SEA Directive continue to correspond to the needs of current and future EU environmental policy. It looks at whether or not the objectives of the legislation remain necessary and appropriate, and if the objectives and requirements set out in the Directive are still valid in achieving sustainable development.

Coherence considers how the SEA Directive interacts with other relevant areas of EU policy and whether there are significant contradictions or conflicts that stand in the way of their effective implementation or which prevent the achievement of their objectives.

EU added value assesses the value of the Directive in comparison to Member State action alone.

The interactions between the five criteria are illustrated in the figure below.

Figure 3: Intervention logic



The Directive was evaluated using the 11 questions listed in the Roadmap. These are listed in Box 9 below.

Box 9: Evaluation questions

Effectiveness

1. To what extent has the SEA Directive contributed to ensuring a high level of protection of the environment?
2. To what extent has the SEA Directive influenced Member States' planning processes, the final content of a plan/programme, and eventually project development?
3. What factors (e.g. gaps, overlaps, inconsistencies) influenced effectiveness?

Efficiency

4. To what extent are the costs involved proportionate, given the identified changes/effects achieved?
5. What factors influenced the efficiency with which the achievements observed were attained?
6. What is the cause of any unnecessary regulatory burden or complexity associated with the SEA Directive?

Relevance

7. To what extent is the Directive still relevant to promote a high level of protection of the environment and sustainable development?

Coherence

8. To what extent is the intervention coherent with other parts of EU environmental

law and policy, in particular those setting out provisions for environmental assessment procedures, such as the EIA Directive (Directive 2011/92/EU, as amended), the Habitats Directive (Directive 92/43/EC), etc.?
9. To what extent are sectoral EU policies, such as the Cohesion Policy, transport, climate change and energy policies coherent with the SEA Directive?
10. To what extent is the intervention coherent with EU international obligations?

Added value
11. What has been the added value of the SEA Directive compared to what could be achieved by Member States at national and/or regional levels, and to what extent do the issues addressed by the Directive continue to require action at EU level?

These questions were developed into an evaluation framework, including sub-questions, judgment criteria and indicators, and outlining the information to be gathered for each question, together with the data collection and analysis methods to be used. All of this information was compiled in an evaluation matrix, which was established at the inception stage and revised in the course of the project, following discussions with DG Environment and the Inter-service group on the scope and understanding of the evaluation questions, initial desk research and the development of the consultation questionnaires.

Box 10: Evaluation framework

- Sub-questions**: These reformulate the questions in an operational way.**
- Judgment criteria**: These clearly define the actual issues that need to be objectively assessed to effectively answer the evaluation question.**
- Indicators**: These specify the (quantitative and qualitative) data that need to be collected in order to assess the judgment criteria.**
- Required information and analysis**: This sets out the information to be gathered, both quantitative (e.g. data) and qualitative (e.g. legal provisions, programme results, experiences and perspectives), together with the analysis required to answer the question. It guides the content of the data collection and analysis tasks.**
- Data collection tools and analysis methods**: This sets out the exact method to be used to collect and analyse the data. It guides the identification of the type and scope of data collection and analysis tasks to be carried out, while the analysis methods define the means of synthesising, triangulating and interpreting data and information from various sources in order to develop sound, evidence-based conclusions.**

This matrix was critical in guiding the data collection and the subsequent use of data for the analysis. It ensured that evaluation questions were answered in a systematic way, based on clearly defined criteria and indicators, and supported by all available evidence identified in the course of the study. See Annex I for the final version of the matrix.

4.2. DATA COLLECTION

The information and evidence gathering process sought to ensure that the evaluation was based on the best available evidence. Between April and October 2018, information was collected through desk research of publicly available documents, as well as consultation with a wide range of stakeholders across the EU. The list of references is available at the end of this report.

4.2.1. Documentary review

The review drew on and complemented the literature review conducted for the 2016 SEA Study (Milieu and Collingwood Environmental Planning (CEP), 2016). Additional

sources were identified by Scopus searches, focusing on newly defined effectiveness, efficiency, and relevance criteria using the following keywords:

Effectiveness:
- *SEA Directive OR strategic environmental assessment AND effective* OR influence*

Efficiency:
- *SEA Directive OR strategic environmental assessment AND costs OR benefits OR proportional* OR efficient* OR complex* OR burden.*

Relevance:
- *SEA OR strategic environmental assessment AND env* policy integration*
- *SEA OR strategic environmental assessment AND sustainable development policy integration OR sustain* policy integration*
- *SEA OR strategic environmental assessment AND practice AND current knowledge OR current methods of assessment*
- *SEA OR strategic environmental assessment AND citizen engage* OR public engage**

A specific search in Scopus focused on the coherence criterion did not yield any additional sources, while EU added value was based on the keywords from other criteria, as it was not itself a readily searchable topic. The research was limited by applying the following inclusion/exclusion criteria:

(a) country/territory - EU/European countries only, and
(b) publication year -2016 onwards.

Newly identified sources were imported into Mendeley, together with the references from the 2015-16 SEA Study.

In total, 101 references were included in Mendeley. These were further analysed by abstracts, annotated, and tagged with key words referring to evaluation criteria, Member States, sectors, policy areas and or legislation, environmental impacts, implementation practices, etc.

These steps allowed the sources identified to be allocated to the relevant evaluation criteria/questions. Through this analysis, documents out of territorial scope (EU) or with no clear relation to SEA (e.g. no mention of SEA, focus on other environmental assessments, general discussions on assessment or participatory processes) were further excluded, with a total of 69 documents selected as relevant for the current evaluation study.

In addition to the review of academic literature, the study team reviewed grey literature sources, such as guidance documents, national studies, studies and other documents from EU institutions and EU organisations, etc. Finally, a systematic review of case law relating to the SEA Directive was carried out.

4.2.2. Public and targeted consultation

4.2.2.1. Consultation strategy

Consultation activities served the dual objective of collecting the evidence necessary to answer the evaluation questions and providing sufficient opportunities to all interested parties to provide input and comply with the Better Regulation guidelines. The target group selected was necessarily large, encompassing stakeholders with expertise or experience with carrying out SEA, as well as all citizens, groups or organisations that might have an interest in the issue. The following stakeholder groups were identified:

- National environmental authorities, which are the **competent authorities responsible for the implementation and enforcement of the SEA Directive** in the Member States. Authorities with environmental responsibilities in the Member States also play a key role in the SEA procedure, as they are consulted on the scope and level of detail to be considered in the Environmental Report, as well as on the content of the Report itself.
- **Specifically designated bodies**, established in some Member States, to supervise the quality of the SEA procedure and/or advise the authority responsible for the SEA procedure.
- **Public authorities in charge of the preparation and adoption of plans and programmes at national, regional and local level** in different areas, such as agriculture, forestry, transport, energy, water, town and country planning, land use, etc. These authorities are generally responsible for carrying out the SEA procedure for their plans and programmes.
- **Practitioners carrying out SEAs**, as public authorities frequently outsource the preparation of an SEA to expert consultants, who typically carry out several SEAs per year and are intimately familiar with the functioning of the process.
- **Economic operators and NGOs**. The SEA procedure applies to certain plans and programmes that set an operating framework for many areas of economic activity, such as infrastructure (e.g. roads, ports, energy installations), agriculture and forestry activities, tourism, etc. Although the operators of those activities are generally not directly responsible for carrying out the SEA procedure, SEA outcomes can have important impacts on their activities. Environmental groups also have a keen interest in the SEA procedure. These groups are often directly involved in the public participation procedures provided for by the Directive.
- **Other stakeholders, such as academia, think tanks**, etc. that may also have an interest in the SEA Directive, given its nature as a cross-cutting tool related to environmental governance and decision-making.
- **Members of the public** who have the right to an early and effective opportunity to express their opinions on draft plans and programmes and the SEA Environmental Report.

To achieve the objectives of the consultation and make sure that all groups of stakeholders were given the opportunity to provide their input, the following consultation methods were used:

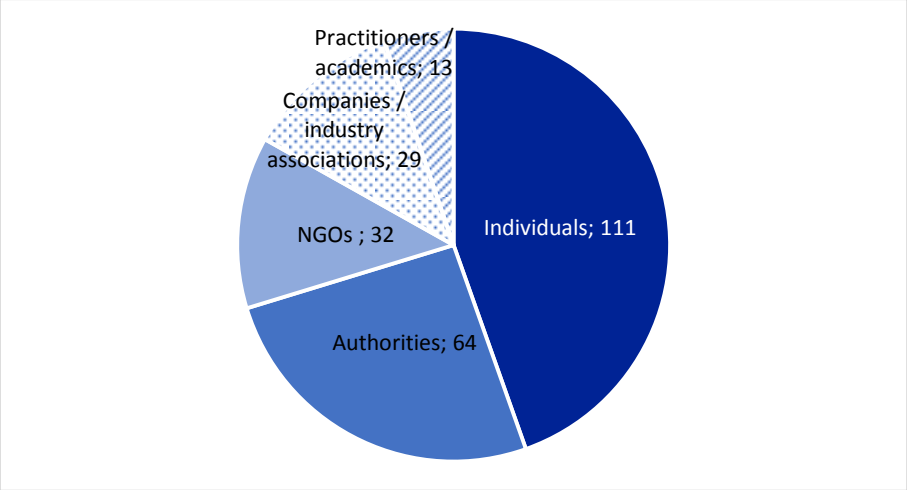
- A 12-week online **public consultation;**
- An **online targeted consultation questionnaire** sent to stakeholders such as selected authorities, practitioners, academic experts, NGOs and industry associations representing environmental and economic interests;
- **Interviews** with authorities and other relevant stakeholders in 11 selected Member States;
- **Evaluation workshop and expert meetings**, including meetings of the Commission group of EIA/SEA national experts, and the final evaluation workshop with stakeholders.

4.2.2.2. Public consultation

A 12-week public consultation (including each of the five mandatory evaluation criteria) is an obligatory element of REFIT evaluations. The public consultation is accessible to every citizen and ensures that all interested parties have the opportunity to provide their input. Here, the public consultation ran from 23 April-23 July 2018 and was available in all 23 official EU languages. The questionnaire was divided into two parts: the first included general questions on the relevance of the SEA Directive to EU citizens and was aimed at all respondents; the second included more detailed questions on the implementation of the Directive and its performance, according to five evaluation criteria. This second part was particularly aimed at respondents directly involved with or affected by the Directive and its requirements. A total of 249

responses were received. 187 respondents replied to both parts of the questionnaire, while 62 replied to the first part only.

Figure 4: Respondents to the public consultation, by stakeholder group (n=249)



A full report on the results of the public consultation is available in Annex III.

4.2.2.3. Targeted consultation

The targeted consultation addressed a narrower group of stakeholders than the public consultation and focused on those stakeholders with responsibility for the implementation of the policy or whose contribution is necessary for the success of the policy, and those with a stated interest in the policy. The targeted consultation was designed in two stages:

- An online questionnaire targeting a wide range of stakeholders, including authorities, practitioners, NGOs and economic actors;
- Interviews in selected Member States with authorities and practitioners.

Targeted consultation questionnaire

Using an online questionnaire allowed the project team to reach a wide range of stakeholders in an efficient way. The questionnaire was sent to environmental authorities in all Member States, SEA designated bodies (where they exist), selected authorities responsible for the preparation of plans or programmes subject to SEA in all Member States, selected academic experts and practitioners operating in the field of SEA, and NGOs and industry associations representing environmental and economic interests relevant to SEA at EU level.

Two authorities responsible for the preparation of plans or programmes subject to SEA were selected from each Member State. The selection of these authorities relied on the suggestions of the members of the Commission group of EIA/SEA national experts. A shortlist was established, with a view to maintaining a balance between types of plans or programmes (OPs, sectoral plans and environmental plans) and between sectors (spatial planning, Cohesion Policy, energy, transport, agriculture, water, waste, fisheries, forestry and industry). Where no feedback was received from a Member State, the study team conducted desk research to find contact details of authorities. For two Member States, more than two authorities responsible for plans and programmes were included in the list. For the UK, it was agreed to contact two authorities in England and two in Scotland, as the Scottish transposition of the SEA Directive differs significantly from that of England. In Belgium, one federal authority was included on the list, together with two authorities from each region. In total, 58 planning authorities were contacted.

The list of EU organisations was established largely from desk research, while the list of practitioners was primarily based on the suggestions made by Member States' environmental authorities, completed by desk research. 42 practitioners were contacted.

The targeted questionnaire was structured according to evaluation criteria and was based on the evaluation questions proposed by the Commission. It contained a combination of closed and open questions to allow some quantification of responses, while enabling the collection of well-argued opinions, examples and evidence. As the consultation targeted a diverse range of stakeholders, and the evaluation questions covered many different aspects of the SEA Directive, respondents were asked to respond only to the questions for which they had sufficient expertise or experience to provide a credible and informed answer. Respondents were also encouraged to provide concrete evidence to support their answers, as well as using examples from specific plans and programmes.

The consultation ran from 7 May-7 September 2018; 76 responses were received. This includes 35 national environmental authorities and/or EIA/SEA bodies from all Member States. In addition, 22 authorities responsible for the preparation of plans and programmes from 15 Member States[21], 16 practitioners and academics from nine countries[22], and three EU environmental NGOs (CEE Bankwatch Network, Birdlife Europe, Justice & Environment). The strategy to compensate for the low response rate to the targeted consultation questionnaire is explained in section 4.4.

Figure 5: Respondents to the targeted consultation questionnaire, by stakeholder group (n=76)

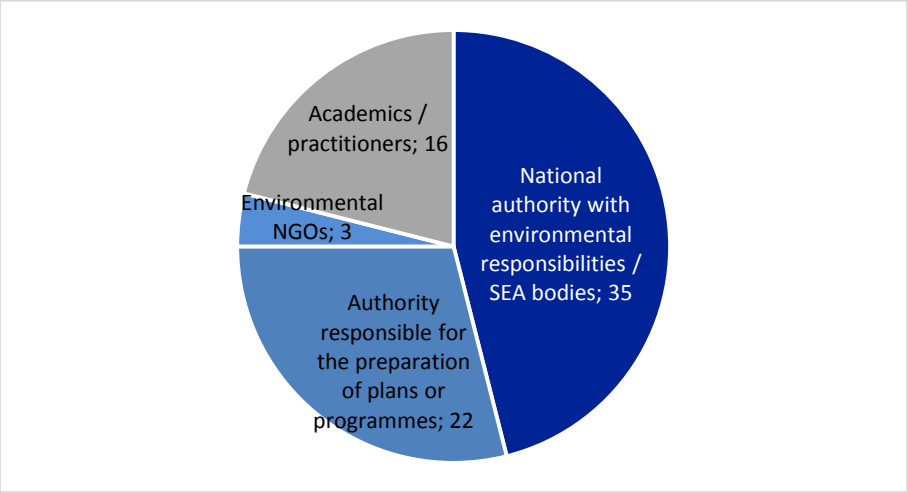


Table 2: Targeted consultation questionnaires sent and received, by stakeholder group

Stakeholder group	Number of questionnaires sent	Number of questionnaires received
National environmental authorities	32	28 (88%)
SEA bodies (other than environmental authority)	9	7 (77%)
Competent authorities (i.e. responsible for plans and programmes)	58	22 (38%)

[21] Belgium, Croatia, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia and Sweden.

[22] Austria, Croatia, Czech Republic, Denmark, Finland, Germany, Ireland, Portugal, and the UK.

Stakeholder group	Number of questionnaires sent	Number of questionnaires received
Practitioners / academics	42	16 (38%)
EU level organisations	20	3 (15%)

Interviews in selected Member States

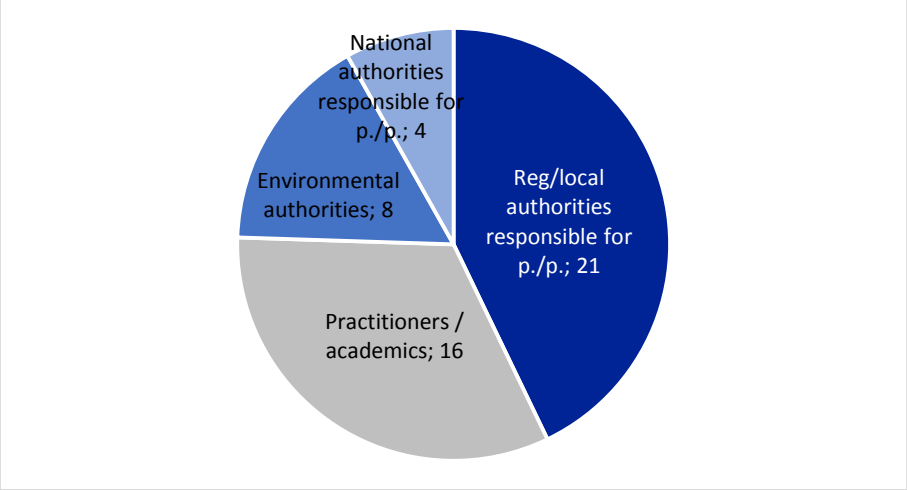
To complement the responses to the targeted consultation questionnaire, interviews were carried out in 11 Member States (CZ, DK, IE, ES, FR, IT, LV, AT, PL, RO, SE). The selection of Member States intended to achieve a representative sample of Member States from different geographical regions, a mix of EU-15 and EU-13 Member States and of federal and non-federal States. The interviews were designed to allow for more detailed and focused responses from selected stakeholders on some of the issues that were key to determining the evaluation findings. As the interviews were carried out by national experts with the capacity to conduct stakeholder interviews in the national language, these interviews could reach targets that could not be included via other consultation tools. Interviews in each country were a mixed of follow-up interviews with respondents to the targeted consultation questionnaire and interviews with new stakeholders, identified based on contacts suggested by national authorities and through desk research.

The overall objectives of the in-depth interviews were to:

- Test emerging issues of importance for the evaluation, including draft findings and conclusions on specific evaluation questions, especially where consensus is mixed or understanding is not clear;
- Generate clear practical examples to illustrate a specific concept and serve as evidence;
- Broaden the range of targeted stakeholders, with a focus on regional and local level authorities and practitioners who might be more difficult to target through a written questionnaire in English.

Interviews were semi-structured, relying on a pre-established interview guide including common themes and questions, which were adapted to the context of each specific interview (type of stakeholder, Member State context, etc.). A total of 49 interviews were carried out between June and November 2018, most of whom were with regional and local authorities responsible for plans and programmes (21) and practitioners / academics (16).

Figure 6: Interviewees by stakeholder group (n=49)



4.2.2.4. Expert meetings and evaluation workshop

Progress reports were presented twice, at meetings of the Commission group of EIA/SEA national experts (Sofia, 27-28 March 2018 and Vienna, 20-21 September 2018)[23]. The second meeting in Vienna was an opportunity to present the outcomes of the consultation activities and the first findings to the Member State authorities.

The evaluation workshop presenting the initial findings took place on 6 December 2018 in the Breydel Auditorium. The workshop was an opportunity to collect Member State and stakeholder feedback and reactions to these findings. The feedback collected through the workshop was integrated into the evaluation study.

The main element of the workshop was structured around the evaluation criteria, with a one-hour session dedicated to effectiveness, efficiency, relevance and coherence. The conclusions of the workshop included the first findings and reflections on EU added value. Each session started with a brief overview of the preliminary findings by the consultants, followed by a panel session involving three or four stakeholders, who provided their views and feedback on the key issues raised under each of the evaluation criteria. Afterward, the audience had an opportunity to ask questions of the panel, the consultants and the Commission.

The workshop was attended by 85 participants, including Member State authorities (40), practitioners carrying out SEA and academics (14), representatives of NGOs and industry (10), members of the EU institutions (13) and the consultants (eight)[24]. Minutes of the workshop were prepared by the study team and are available in Annex V.

4.3. ANALYSIS AND EVALUATION OF EVIDENCE

The evaluation framework formed the basis for the detailed review of evidence and analysis of each evaluation question. The evaluation framework (Annex I) identifies the linkages between the evaluation questions, the information required and the data collection tools used in the study. The analysis was carried out by different team members from Milieu and CEP for each evaluation criterion, with a 'lead evaluator' responsible for leading and coordinating the analysis. The lead evaluators refined the evaluation framework at different points in the project to reflect the outcomes of the data collection.

The analysis followed basic rules of content analysis, i.e. it focused on the categorisation and summary of the data from dispersed sources (documentary review, targeted consultation questionnaire, public consultation, interviews) and thus the identification of important issues and linkages between different aspects of a subject. The analysis has both quantitative and qualitative elements.

Both the targeted consultation questionnaire and the public consultation were made available online, using EU Survey. Results from both questionnaires were downloaded in Excel format, which facilitated the statistical analysis. General results of all closed questions, as well as results by stakeholder group were computed and provided in a readable format to the entire study team. The lead evaluators then selected the relevant data to present in the report in graphical form for each criterion, with results presented either generally or by stakeholder group. For some of the questions,

[23] Meetings of the Commission Group of EIA/SEA National Experts:

https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/c04306be-13d8-4c03-8e3e-d5bb5a13c291?p=1&n=10&sort=modified_DESC

[24] Figures based on the attendance list signed by participants at the evaluation workshop. It should be noted that the list might be incomplete, if attendees did not sign in.

average scores were presented to allow easier comparison between the different elements. However, these average scores should be regarded as indicative, as they were not based on a symmetric scale with equidistant points, and the numerical scale was largely subjective.

Responses to open questions and interviews were analysed separately, although using a similar method for analysing qualitative data. The methodology involved assigning parts of the responses to the entries of a coding system, consisting of main categories related to the different elements of an evaluation question (e.g. types of costs, factors influencing efficiency) and sub-categories or statements, summarising what was said by respondents on these topics. The methodology to establish the coding system was a combination of pre-defined codes, chiefly based on the response choices in the closed questions, and codes developed while cataloguing the responses. When an open-ended question in the targeted consultation questionnaire was related to a closed-ended question (i.e. where an open question requested justification for the reply to a closed-ended question), this relationship was taken into account in the analysis. The coding was done by different members of the team, who were working on each specific criterion. Qualitative content analysis software was used to support this process. Although the interview questions were structured by evaluation criteria, keeping this strict structure was sometimes difficult for interviewers. As a result, the team members reviewing the responses looked not only at the responses to their own specific criterion but also to relevant comments made under other criteria. Once all responses to the open questions and interviews were coded, the frequency with which topics and statements were mentioned by respondents or interviewees could be quantified. It was thus possible to identify recurring issues, as well as less prominent topics, and to attribute statements to stakeholder groups and identify distinct opinions held by each group as a whole.

All of the documentary sources identified were tagged and allocated to relevant evaluation criteria/questions and subsequently reviewed by the team members working on each criterion. All relevant excerpts were referenced in the analysis of the evaluation questions.

Finally, the evaluation workshop was used to validate the preliminary conclusions of the evaluation and to determine the relative importance of different issues relating to the implementation of the Directive or the text of the Directive.

The team attended carefully to all of the evidence available at that stage and the quality of evidence used to develop conclusions. Triangulation - looking at multiple (ideally three or more) sources of evidence from different perspectives – was the basis for the content analysis and the distillation of judgments and conclusions. This is a complex undertaking which relied to a certain extent on professional judgment, supported in each case by clear presentation of the available evidence.

4.4. CHALLENGES, LIMITATIONS AND MITIGATION MEASURES

A number of challenges were encountered during the data collection phase of the study in relation to the availability of certain information and data, the quality of consultation inputs and the limited possibility (in certain cases) to triangulate sources and opinions. The main challenges encountered are summarised below.

4.4.1. Considerable reliance on consultation results

Findings presented in this study rely heavily (and, for some evaluation questions, almost exclusively) on the results of the consultation activities described above. This stems from the limited availability of literature on certain aspects related to evaluation questions, e.g. costs, regulatory burden in comparison to the effectiveness of the Directive. In addition, new issues, such as the impact of recent case law (Case C-

290/15: D'Oultremont and others v Région Wallonne; Case C-671/16: Inter-Environnement Bruxelles and others v Brussels-Capital Region; Case C-160/17: Thybaut and others v Région Wallonne, see Section 3 of this report, 'State of play') have not yet been analysed in depth in the literature.

The significant reliance on consultation input exacerbated some challenges related to the availability and quality of these inputs, in particular the representativeness of the sample of stakeholders surveyed and interviewed. The consultation strategy emphasised the need to collect the views of stakeholders other than environmental stakeholders (national environmental authorities, practitioners, academics who often have an environmental perspective, and environmental NGOs), as these were not sufficiently captured in the 2016 SEA Study. However, although competent authorities for sectoral and spatial plans were contacted in every Member State, and EU organisations representing different sectors were invited to contribute, reaching a balance between environmental and sectoral perspectives proved difficult, as shown by the profiles of the respondents to the targeted consultation questionnaire presented above. To collect the opinions of a larger number and diversity of stakeholders, the deadlines for replying to the targeted consultation questionnaire were extended considerably. The planning of interviews was also modified to provide another opportunity for those stakeholders who had not replied to the questionnaire to make their contributions. As a result, some of the follow-up interviews and interviews planned with new stakeholders became interviews with stakeholders who had been targeted but did not reply to the questionnaire. These mitigating measures, however, had some impact on the sample of stakeholders. Nevertheless, there remains a moderate numerical bias - in the analysis of the closed questions in particular - in favour of stakeholders with an environmental perspective. However, this did not lead to a uniformly positive picture of SEA, as environmental stakeholders were also critical about the implementation of the Directive.

In addition to sampling issues, the nature of the closed questions – which were sometimes very high level and too complex to answer by ticking a box - proved difficult for some respondents and led, in certain cases, to many respondents choosing middle responses (e.g. 'to a moderate extent'). This was partly overcome by the explanations that respondents provided in open-ended questions and did not hinder a good overview of stakeholders' opinions on key aspects of the Directive.

4.4.2. Limited availability of data to assess the efficiency of the SEA Directive

The available data did not allow for a quantitative assessment of the costs and benefits of the SEA Directive. Although cost data were collected through the consultation activities, they did not provide a clear indication of the costs of implementation of the SEA Directive across the EU. This was because the data provided by stakeholders presented large variations, were often not completely accurate (notably because of authorities' difficulties in gauging administrative cost estimates) and not comparable, as there is no consistent method of tracking the costs of implementing SEA. As a result, the data did not allow an understanding of the cost of SEA at EU level, nor did they permit average estimates by type of plan/programme or by Member State. Clear quantification of the benefits of SEA was similarly impossible, largely because the benefits directly attributable to SEA are procedural benefits and thus not easily quantifiable. The approach to assessing efficiency was therefore essentially qualitative, focusing on the acceptability of costs to the authorities bearing them, and the perceived proportionality of costs compared to the benefits of SEA.

5. EVALUATION AND ANALYSIS

5.1. EFFECTIVENESS

Effectiveness assesses the extent to which a certain intervention, legal provision, act or set of acts (in this case the SEA Directive) has achieved the objectives it set out to achieve. The objectives that are subject to the effectiveness evaluation are set out in Article 1 of the SEA Directive:

*'to **provide for a high level of protection of the environment** and to contribute to the **integration of environmental considerations into the preparation and adoption of plans and programmes** with a view to promoting sustainable development, by ensuring that, in accordance with the Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.'*

There are a variety of ways in which 'high-level of protection of the environment' may be interpreted, from contributing to a wider package of measures (e.g. legislation) that seek to provide environmental protection (i.e. one part of the environmental *acquis*) through to preventing or reducing environmental damage on the ground (e.g. implementation of plans and programmes, including mitigation measures).

The evaluation establishes certain changes or effects that have taken place since the legislation was adopted and attempts to determine the extent to which these observed effects correspond to the objectives of the legislation. It may also uncover and analyse unforeseen effects in order to get a more complete picture of the situation.

'Factors contributing to or inhibiting progress' can relate to the Directive (e.g. the clarity of definitions) and to the SEA process itself, or to external factors such as the lack of political will, resource limitations, lack of cooperation of other actors, or other factors.

The effectiveness of the SEA Directive can be assessed in different ways, depending on the specific definitions of its objectives. Studies evaluating the effectiveness of SEA (van Doren *et al*., 2013; Sheate & Eales, 2016; Zhang *et al*., 2013) distinguish between 'substantive effectiveness' and 'procedural effectiveness'.

Procedural effectiveness looks at whether or not SEA is conducted in line with legal requirements, providing insights into the compliance of Member State SEA procedures with the Directive's requirements. Substantive effectiveness is more useful in understanding the extent to which the SEA Directive achieves its ultimate purpose, as it examines if – and how - environmental issues were considered in decision-making processes (van Doren *et al*., 2013), as well as the long-term impact on the environment through changes in plans and programmes.

5.1.1. Question 1: To what extent has the SEA Directive contributed to ensuring a high level of protection of the environment?

5.1.1.1. Interpretation and approach

Question 1 concerns the overarching objective set out in Article 1 of the SEA Directive, '*providing for a high level of protection of the environment'*. This relates to the concept of substantive effectiveness (Cashmore *et al*., 2014; van Doren *et al*., 2013), i.e. whether or not SEA achieves its purpose. For question 1, this relates to the

environmental outcomes (e.g. protection and enhancement of biodiversity, high water, air, and soil quality) that the Directive may or may not be delivering, in combination with numerous other EU environmental policies and actions undertaken by Member States. However, as stated in its preamble, the Directive is of a 'procedural nature', making it perhaps overly ambitious to expect to clearly attribute environmental outcomes directly to the Directive itself. Demonstrating correlation between the SEA Directive and the delivery of such outcomes (i.e. via statistical testing) is thus a challenging endeavour for evaluation science, and one which is beyond the scope of this study. Instead, potential causality was explored on the basis of the existing literature, interviews and surveys, including consultation with the public, experts, and Member State SEA and relevant authorities. Current trends in Europe (The European environment- state and outlook report- SOER, 2015) indicate a continuing decline in biodiversity and air quality, among others. However, it is not possible to distinguish the role that the SEA Directive plays in preventing further decline or encouraging recovery of ecosystems, as the Directive works in conjunction with the rest of the environmental *acquis* and Member States' own environmental legislation, and it is not possible to compare against a counterfactual (no environmental acquis/environmental protection legislation).

5.1.1.2. Main sources of evidence

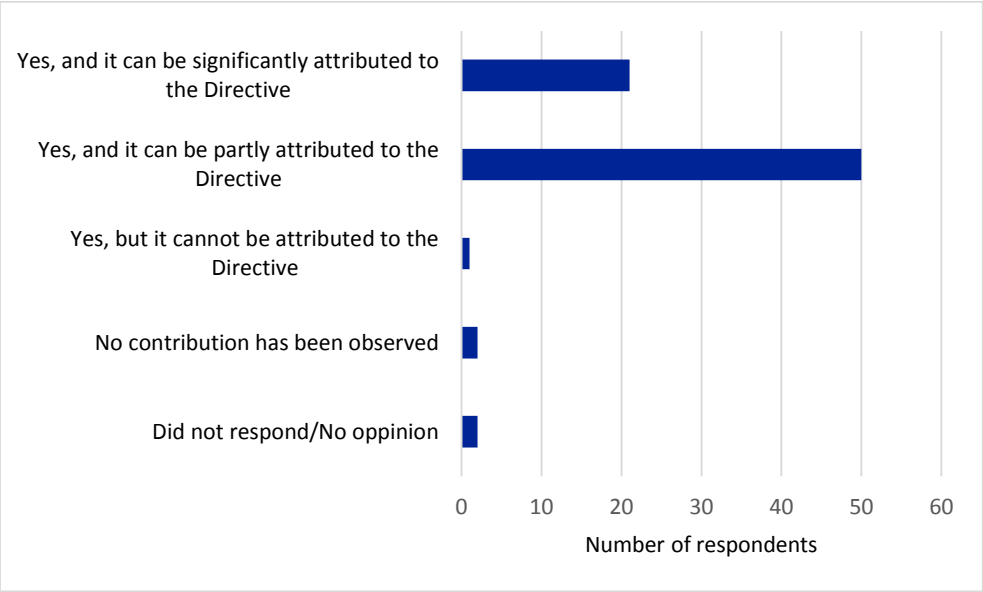
- The findings on the extent to which the SEA Directive has contributed to ensuring a high level of protection of the environment are based primarily on the outcomes of the consultation activities. The more detailed insights (the extent of supporting/inhibiting factors, for example) come chiefly from the targeted consultation and interviews.
- A review of relevant literature, studies and publications yielded additional information.
- The findings also reflect the discussions, comments and challenges raised at the evaluation workshop on emerging findings of this evaluation study, which took place in Brussels in December 2018.

5.1.1.3. Analysis of the question according to available evidence

5.1.1.3.1 Contribution to a high level of protection of the environment

The evidence gathered for the study shows, generally, that the SEA Directive has contributed to a high level of protection of the environment. The majority of the interviewees, together with almost half of the national environmental authorities who responded to the targeted consultation questionnaire, consider the Directive to make a significant contribution. Other respondents to the targeted consultation questionnaire (i.e. authorities responsible for the preparation of plans and programmes, academics and SEA practitioners), as well as the majority of the respondents to the public consultation, attribute the high level of environmental protection at least partially to the Directive. The respondents, like those at the evaluation workshop, believe that other environmental protection mechanisms and tools (e.g. EU/national environmental legislation, Environmental Impact Assessment (EIA) and Appropriate Assessment (AA)) also contribute to environmental protection, as do good planning and development practices that consider environmental implications regardless of the requirements of the Directive. Figure 7 below shows the total responses to the targeted consultation questionnaire on the contribution of the SEA Directive to a high level of environmental protection.

Figure 7: In your opinion, has SEA contributed to a high level of protection of the environment? And if so, to what extent can this be attributed to the SEA Directive? [Targeted consultation questionnaire] (number and share of total respondents, n=76)



The evidence suggests that the perception of the Directive's partial contribution to high level environmental protection may stem from the broader understanding of the Directive's objectives. The aim of the Directive might be understood as going beyond environmental protection to focus on achieving sustainable development, an interpretation that some Member States have included explicitly in their legislation transposing the Directive. Interestingly, some interviewees perceive the SEA Directive as a strategic tool whose purpose is to support sustainable development, primarily insofar as it relates to the environment, but also in respect of economic and social aspects (e.g. to support public and other authorities and organisations in preparing plans and programmes to contribute to national objectives on low carbon or the circular economy, climate change mitigation/adaptation, employment and health).

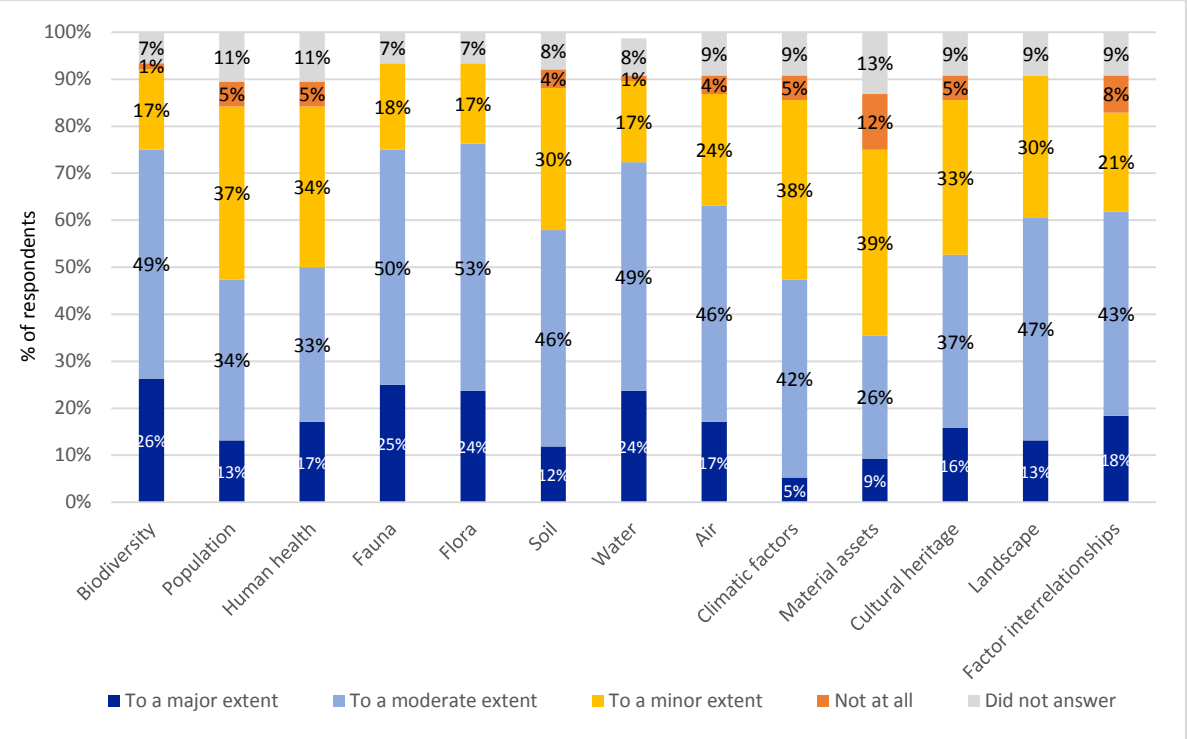
Some concerns may relate to this type of broad consideration of the Directive's objectives. The evaluation workshop discussed the notion that if sustainable development is understood as the main aim of the SEA Directive, then the environment becomes only one of three sustainability pillars, posing a risk that economic and social interests could be emphasised – or even prevail - in plans or programmes that undergo SEA. This could weaken the environmental emphasis of the SEA process, and thus oppose the original primary intention underlying the SEA Directive, i.e. to protect the environment in view of increasing economic and social development pressures. On the other hand, a broad view of the Directive's role in supporting sustainable development is not inconsistent with SEA providing primarily the environmental input to sustainable development (2016 SEA Study).

5.1.1.3.2 High level protection for specific environmental issues

The evidence strongly suggests that the Directive is not considered equally effective for all environmental issues listed in its Annex I and other environmental challenges, such as climate change, ecosystem services, planetary boundaries, etc., that are not listed in Annex I of the SEA Directive. The consultation activities indicate that the SEA Directive's contribution to ensuring a high level of protection of the environment is most evident in environmental issues like biodiversity, water, fauna, flora and landscape and cultural heritage. This point was echoed at the evaluation workshop. The targeted consultation results show respondents having a slightly less positive perception of issues like material assets, population, human health, climate factors and cultural heritage (Figure 8). Similarly, the literature has found that SEAs pay less

or inadequate attention to effects on human health, including from a social and behavioural perspective (Fisher *et al*., 2010; Baumgart *et al*., 2018).

Figure 8: In your opinion, to what extent has the SEA Directive contributed to a high-level protection of different environmental issues? [Targeted consultation questionnaire] (share of total respondents, n=76)



As reflected by respondents and interviewees alike, the effectiveness of the Directive in considering various environmental issues depends (at least partly) on:

- The objectives, sector (e.g. housing development, transport, energy), type (e.g. spatial plan, strategy, policy) and (governance) level (e.g. national, regional, local) of the plan, project or programme assessed;
- Synergies with and requirements of other environmental regulations (e.g. Water Directive, Habitats Directive) and assessments (e.g. AA, EIA);
- Knowledge and practice, and availability of methods, tools and data for impact evaluation (e.g. higher effectiveness in evaluation practices with longer traditions and better availability of tools and data for measurable environmental impacts, such as air or water quality, in particular for lower level plans with a spatial dimension);
- Societal awareness of various environmental challenges at any given time.

The analysis of the evidence suggests that there are challenges (e.g. limited methods, tools, and data) in addressing increasingly recognised global and other emerging environmental concerns and topics in SEA, such as climate change, ecosystem services and natural capital. The literature review shows a need for more coherent and improved assessment of biodiversity and (related) ecosystem services (Söderman & Saarela, 2010; González *et al*., 2013; Honrado *et al*., 2013), as well as cumulative effects (Cooper, 2011) in SEA practice, if the Directive is to achieve its objectives effectively.

5.1.1.3.3 Key supporting and inhibiting factors

When looking at factors that support or inhibit the progress of the SEA Directive in contributing to a high level of environmental protection, the findings show that national environmental authorities generally have a more positive view than other respondents (practitioners, academics, SEA practitioners and authorities preparing the plans and programmes), and consider the factors to be supporting, in the main. The evaluation workshop suggested that the preliminary results of a study in Germany (Schreider et al. 2019, quoted by Geißler et al. (2019))[25] show a similar picture, with SEA considered generally effective, although with challenges evident at lower (administrative) levels. One explanation for this might be that people dealing with SEA in practice have more specific experience with the process (e.g. within a certain sector, or with a certain level and type of plans and programmes) and are more aware of challenges within their areas of expertise.

Overall, the key factors listed in the targeted consultation questionnaire that were recognised by respondents as (strongly or slightly) supporting the progress of the SEA Directive in contributing to a high level of protection of the environment are:

- Effective consultation with relevant environmental authorities (78% of respondents);
- Availability and quality of relevant and up-to-date environmental data to support the assessment (76% of respondents);
- Availability of technical knowledge and experience within the environmental authorities (75 % of respondents).

Over 60% of the respondents to the targeted consultation questionnaire believe that other listed factors also support the SEA Directive in contributing to a high level of environmental protection, including: availability of technical knowledge and experience of those preparing SEA; effective consultations with the public and relevant stakeholders; availability of guidance on the SEA process and procedures; integration and communication between those preparing SEAs and those responsible for preparing plans or programmes; and quality of Environmental Reports.

The respondents and interviewees noted that effective consultation with environmental authorities (and the public) is important for environmental protection, as it fosters a meaningful decision-making process where environmental concerns and opportunities (among others) can be recognised and discussed openly. The evaluation workshop discussed the potential of consultations to give stakeholders and the public a sense of ownership of the SEA process and of the plan evaluated, which can facilitate successful implementation of the SEA process and acceptance of the plan. Respondents considered consultation to be effective where the authorities and decision makers are open to considering feedback and are willing to make changes to the plan or programme, where appropriate. The openness and willingness to consider alternative options in the light of achieving better environmental outcomes is equally important when it comes to the integration and communication between those that undertake SEAs and those responsible for the development of plans or programmes.

The quality of relevant and up-to-date environmental data to support the assessment, as well as the availability of technical knowledge and expertise among the environmental authorities and those preparing SEAs, are considered crucial to the Directive's contribution to the high level of environmental protection. However, interviewees and targeted consultation questionnaire respondents from a variety of Member States generally recognise that there have been major improvements in these areas. Although challenges remain (particularly in relation to more strategic plans/programmes and emerging, transboundary, or global environmental concerns),

[25] An SEA evaluation project funded by the German Federal Environment Agency, focusing on more than 100 SEA case studies (Schreider et al. 2019) is still ongoing.

the environmental information, knowledge, practice and expertise related to SEA has improved significantly since the adoption of the Directive and continues to do so, as also acknowledged by participants at the evaluation workshop.

National environmental authorities consider the availability of the methodologies to assess significant environmental effects to be one of the most important supporting factors. By contrast, half of the academic experts and SEA practitioners consider it to be either (slightly or strongly) inhibiting, or neither a supporting nor an inhibiting factor. It is perceived quite negatively by almost half of the authorities responsible for preparation of plans and programmes.

Some factors related to the SEA process, including availability of SEA sectoral guidance, understanding of the SEA Directive's requirements by those responsible for preparing plans or programmes, and the start time of SEAs in relation to the plan or programme preparation process, received mixed responses. About half of the respondents to the targeted consultation consider these factors to support the SEA Directive in contributing to a high level of environmental protection, with an equal number recognising them as (strongly or slightly) inhibiting, or neither supporting nor inhibiting. The literature mentions specific difficulties relating to baselines, establishing trends and predicting (cumulative) effects at strategic level (Söderman & Saarela, 2010; Cooper, 2011).

5.1.1.3.4 Obstacles to contribution to a high level of environmental protection

Some evidence from the targeted consultation indicates that the SEA Directive is hindered in achieving its purpose of contributing to a high level of protection of the environment. One reason given is that the SEA process often starts too late in relation to the development progress of the plan or programme assessed. In spatial planning practices, for example, development plans have often already been 'politically' agreed, thus environmental issues do not get properly considered. The other reasons identified reflect challenges in understanding SEA requirements. Policies and legislation at 'higher' governance levels (e.g. strategic, national, international) with significant environmental impacts are often not subject to SEA (e.g. trade policies, budgetary and financial policy, national building regulations, tourism strategies, etc.), with some respondents pointing to the lack of a clear definition of 'plans and programmes' that should undergo SEA, and ambiguity in what is meant by 'set the framework for' projects subsequently subject to the EIA Directive. One respondent felt that the SEA process could be applied to policies themselves in order to improve the setting of long-term goals, or applied in a more integrated way, considering the possible trade-offs among the European environmental policies. Another expert felt that synchronising the objectives of SEA with those of other directives with environmental objectives would be beneficial. The Directive does not make a clear distinction between 'plans and programmes' and 'legislation and policies' (as in the SEA Protocol and Aarhus Convention). Indeed, reference to 'policies' was explicitly excluded during the early negotiations for the SEA Directive (Sheate, 2012), even while the logic of applying SEA to policies/legislation was recognised in very early debates on EIA/SEA and explicitly in the 3rd Environmental Action programme (OJ, 1983)[26].

Issues with the availability of guidance on conducting SEAs in sectors other than spatial planning, such as transport, energy, mining, agriculture, forestry and other

[26] The Third Environmental Action programme (1982-1986) states (Paragraph 11): '*Environmental impact assessment is the prime instrument for ensuring that environmental data is taken into account in the decision-making process. It should be gradually introduced into the planning and preparation of all forms of human activity likely to have a significant effect on the environment such as public and private development projects, physical planning schemes, economic and regional development programmes, new products, new technologies, and legislation'* OJ, C46 (1-16), 17.2.83.

industries, have also been recognised as a potential hindrance to SEA Directive. Again, these challenges were all also raised and discussed at the evaluation workshop in Brussels.

Overall, the results of the consultation activities show that there are challenges in the quality of monitoring the environmental effects of the implementation of plans or programmes, especially when it comes to identifying unforeseen effects and undertaking remedial action. Almost half of the respondents to the public consultation believe that environmental effects are not adequately monitored after the adoption of plans and programmes, and more than half of the targeted consultation respondents think poor monitoring hinders the Directive's success. The same point was stressed by some interviewees and also reflected at the evaluation workshop. Similarly, the second implementation report on the SEA Directive (European Commission, 2017a) also reflects challenges with monitoring, as most Member States were not able to provide information on the frequency of monitoring. However, as mentioned during the evaluation workshop, environmental monitoring is not only a requirement of the SEA process but also exists as a part of environmental, health or other regulations (e.g. for water and air quality, noise) in all Member States. The evaluation workshop noted that a case could be made for a more explicit link between the SEA requirements of an individual plan or programme and existing monitoring activities, in order to avoid unnecessary duplication of these actions (e.g. by establishing an open national/regional database of environmental monitoring activities).

The evaluation workshop was concerned by the apparent disconnect between the very positive results of this study with respect to the contribution of the SEA Directive to the high level protection of the environment (in particular to biodiversity protection but not excluding other environmental issues) and the findings presented by the European Environment Agency (EEA) in *The European environment — State and Outlook of the Environment Report 2015* (SOER, 2015) and the 2050 vison set out in the 7th Environmental Action Programme. The SOER 2015 report reveals that the '*main EU target of "halting the loss of biodiversity and the degradation of ecosystem services" by 2020 remains a serious challenge*, stating that achievement of the long-term air pollution objectives will require additional measures, and aquatic ecosystem health continues to be affected by pollutants and/or altered habitats (EEA, 2015).

This disconnect could perhaps be explained by another point made at the evaluation workshop. Although the Directive's primary objective of *a high level of environmental protection* is related to substantive effectiveness, the strength of the Directive may lie in promoting a well-informed, transparent, structured and (ultimately) measurable decision-making process which evaluates environmental implications of plans and programmes in order to avoid and/or mitigate related negative impacts on the environment, i.e. the SEA process. Following the theory of change, successful implementation of the SEA process should therefore support a high level of protection of the environment, as reflected in the evidence analysed here. The effectiveness of the SEA Directive is likely to be more procedural, thus it can be assumed that it is also, ultimately, substantive, once the environment is better integrated into plans and programmes that implement a high level of protection of the environment

It can be argued that other Directives and Regulations focus more on substantive environmental outcomes (e.g. Habitats Directive, Water Directive, Seveso Directive) than the SEA Directive, and it should be seen as simply one part of the wider environmental *acquis*. However, as explained in the evaluation approach, showing a (statistical) correlation between the SEA Directive and environmental outcomes is extremely challenging (and may not even be possible) and is beyond the scope of this study. It is equally difficult to project what the state of the environment in Europe would be like in the absence of the Directive (i.e. no counterfactual is possible), although environmental trends might well be even more challenging.

The fact that many respondents to the targeted consultation questionnaire believe that the SEA Directive contributes to a high level of environmental protection, despite the evidence of continued environmental degradation in Europe, is not in itself contradictory. Many respondents appear to believe that the SEA process helps to ensure that the environment is heard in decisions in which it would otherwise be overlooked. These respondents have practical experience of the ways in which good SEA can facilitate that hearing. Despite implementation problems, a well-implemented SEA process under the Directive retains the potential to help deliver a high level of environmental protection. The evidence from the study suggests this high level of environmental protection continues to be a valid objective for the SEA Directive. Some improvements are needed, however, to ensure that this high level of protection can be delivered in practice in the Member States.

5.1.1.4. Key findings

- Results from the consultation activities show that the SEA Directive **has contributed to the high level of protection of the environment**.
- **Key factors** supporting this are:
  - **Effective consultation with environmental authorities;**
  - **Availability and quality of environmental data;**
  - **Technical knowledge and experience of environmental authorities**.
- **Key challenges** hindering the Directive's contribution **are**:
  - **Timing** of the start of the SEA in relation to the plan/programme preparation process;
  - Quality of **environmental monitoring**;
  - **Understanding the requirements** of the SEA Directive.
- **'Higher' level policies and legislation are often not subject to SEA**, which in some cases **points to a lack of clear definition of 'plans and programmes'** that should undergo SEA.

5.1.2. Question 2: To what extent has the SEA Directive influenced the Member States' planning process, the final content of a plan/programme, and eventually projects' development?

5.1.2.1. Interpretation and approach

Question 2 considers a composite indicator of SEA effectiveness in terms of the extent to which the requirements have influenced the process of preparing plans and programmes and the final outputs of this process (i.e. the plans and programmes adopted) as set out in Article 1 of the Directive. Significantly, Question 2 goes beyond the scope of previous pan-EU reviews and evaluations of the SEA Directive by considering the influence of qualifying plans and programmes on projects (i.e. the extent to which the influence of the SEA process can be traced through to lower level consent or decision-making processes for projects). Question 2 relates primarily to substantive effectiveness, i.e. the degree to which SEA influences the content of plans and programmes adopted and subsequent lower level decisions concerning projects. In other words, has it made a difference on the ground? It also covers aspects of procedural effectiveness, which is a measure of the SEA process adopted, and whether this is in line with legal requirements (Sheate & Eales, 2016).

5.1.2.2. Main sources of evidence

- The findings on the extent to which the SEA Directive has influenced Member State planning processes, the final content of a plan/programme, and eventual project development were largely based on the outcomes of the consultation

activities. The more detailed insights (e.g. the extent and supporting/inhibiting aspects of the SEA process) came primarily from the results of the targeted consultation.
- The findings were further supported with a review of relevant literature and studies.
- The findings also reflect the discussions, comments and challenges raised at the evaluation workshop on emerging findings of this study that took place in Brussels in December 2018.
- It should be noted that majority of the SEAs in Member States are conducted for spatial development plans. Thus, when discussing the influence of SEA on planning processes and decision-making, the majority of the literature describes spatial planning practices, as do the participants of the consultation activities.

5.1.2.3. Analysis of the question according to available evidence

5.1.2.3.1 Influencing planning and decision-making process

The evidence collected in this study on the influence of the SEA Directive on planning and decision-making processes resonates with the 2016 SEA Study. The results of the consultation activities show that a large majority of respondents believe that the SEA Directive has influenced the planning and decision-making process to some degree (e.g. 96% of respondents to the targeted consultation), two-thirds of whom to a moderate extent (for targeted consultation respondents). As discussed at the evaluation workshop, some consultation respondents and interviewees think the influence of the Directive is less significant, due in part to the legislation already established and good (transparent, participatory, inclusive) planning and decision-making practices, which would consider the environment and environmental aspects of/in plans and programmes irrespective of the Directive. Some state that the influence of the Directive on planning and decision-making is limited, as the SEA process is seen as an administrative burden by some plan or programme developers and potential investors (e.g. corporations, businesses, authorities), and is therefore unlikely to be used proactively (e.g. by engaging the public as early as possible).

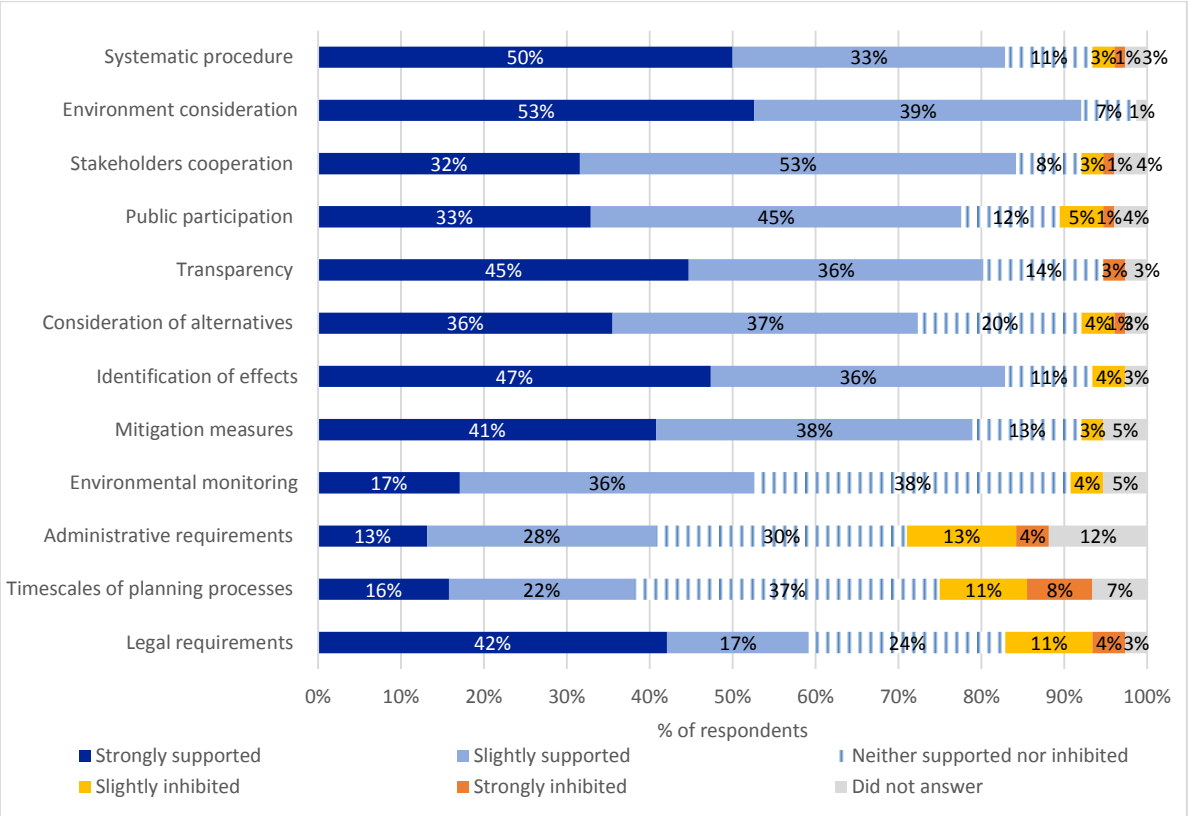
Some interviewees and over 80% (151 respondents) of respondents to the public questionnaire believe that the SEA Directive has improved the process of preparing plans and programmes, compared to about 9% (18 respondents) who think it has not, and a similar percentage who do not know. This aspect - and the procedural effectiveness of the SEA Directive generally - was also reflected in the evaluation workshop, as described in Sections 5.1 and 5.1.1.3 of this report. Some of the reasons given by the interviewees and workshop participants are:
- The Directive's mandatory requirements for consideration of environmental aspects at early planning stages;
- Introducing public participation;
- Fostering (intersectoral/ interinstitutional) dialogue, increasing transparency of planning procedures;
- Raising environmental awareness among decision makers.

The consultation results suggest that the SEA Directive has influenced planning and decision-making practices in all sectors (particularly in spatial and land use planning) and at all levels of decision-making. Interestingly, some respondents think that the Directive's influence is even more significant in sectors like transport and energy, as environmental aspects in these areas were previously less well considered (with other economic and social interests prevailing), and general planning practices may have been less transparent and engaging.

Key supporting and inhibiting aspects of the SEA process

Generally, the consultation activities reveal that all aspects of the SEA procedure support the Directive's ability to affect planning and decision-making. A large majority (more than 80%) of the targeted consultation questionnaire respondents believe that elements such as the consideration of environmental issues, the systematic nature of the SEA procedure, transparency in the planning process, and identification of significant effects of the plan or programme (strongly or slightly) support the Directive's ability to affect planning and decision-making (see Figure 9 below). Overall, authorities responsible for the preparation of plans and programmes have a slightly less positive view compared to other respondents (i.e. national environmental authorities, academics and SEA practitioners).

Figure 9: In your opinion, have the following aspects of the SEA process supported or inhibited the ability of the SEA Directive to influence planning and decision-making processes? [Targeted consultation questionnaire] (share of total respondents, n=76)



Respondents explain that the aspects of the SEA process which are legally required by the Directive (e.g. Environmental Report, consideration of environmental impacts, public consultation, consideration of alternatives) also contribute considerably to the effect of SEA on planning and decision-making activities. Another factor recognised by all groups of respondents as influencing the effectiveness of nearly all aspects of the SEA process, is timing, which was also recognised by the 2016 SEA Study. For example, consideration of environmental issues is considered to support the Directive's influence on decision-making and planning; however, if not conducted in the early development stages of a plan or programme, this aspect of the SEA process is likely to be significantly less effective in terms of assuring adequate consideration of environmental issues in the plan/programme developed. The same applies to the identification of significant (environmental) effects of the plan or programme. The 2016 SEA Study highlights the importance of achieving the right balance between the sufficient availability of information in the plan or programme to make the evaluation meaningful, and the time window when the drafting of the plan or programme can still be significantly influenced. A recurring comment among interviewees on the relevance

of the SEA Directive was the importance of its contribution (in the early stages of a plan or programme) to the analysis and identification of alternatives. One authority pointed out that this enables the Directive to be a useful tool in bringing environmental impact and sustainability to the forefront, both in terms of public debate and ensuring dialogue about the impacts internally in the municipality. (it is not surprising, therefore, that the consultation activities reveal that one of the aspects of the SEA that least supports the Directive to influence planning and decision-making processes is the timescale of the planning process. Similarly, the evaluation workshop discussed the tight deadlines for the SEA process tied mainly to the planning and development timelines of the plan/programme assessed and the fact that the SEA process often starts late (compared to the development stage of the plan/programme), hindering comprehensive assessment of environmental issues and consideration of alternatives. These factors also challenge the possibilities for meaningful participation and engagement of relevant stakeholders and the public in decision-making processes (i.e. insufficient time to organise consultations or secure engagement), and potentially affect the quality of the SEA outcomes (e.g. Environmental Report, and a 'post adoption' statement summarising the integration of environmental consideration and consultation responses, as well as the reasoning for the plan/programme adopted in the light of other respected alternatives). Time constraints and related challenges pose a risk that the SEA becomes a 'box ticking' exercise rather than a meaningful evaluation and support to the decision-making process.

Administrative and legal requirements are also considered less supportive of the Directive's ability to influence decision-making and planning. Consultation activities reveal the SEA procedure is sometimes perceived as an 'unnecessary administrative burden' (e.g. where there are strong planning processes already in place) and there are legal issues and uncertainties related to the broad definition of plans and programmes (see Section 5.1.1.3 of this report). Some respondents to the targeted consultation are concerned that the recent Court of Justice of the European Union (CJEU) judgments (Case C-290/15: D'Oultremont and others v Région Wallonne; Case C-671/16: Inter-Environnement Bruxelles and others v Brussels Capital Region; Case C-160/17: Thybaut and others v Région Wallonne) might set a precedent requiring SEA for 'high-level' plans and programmes, including polices, strategies, or legislation, suggesting that the SEA Directive might become disproportionately influential as a result of undue expansion of its scope. This could cause unnecessary administrative burden, costs, and a slowing down of decision-making processes at the highest (political) levels of authority.

By contrast, one authority highlighted what it saw as the limited legal capacity of the SEA Directive (due to its procedural nature) to reject a proposed plan with significantly negative environmental impacts. An example of an urban plan was provided, as one where negative impact to biodiversity and land use was recognised by the SEA but yet had to be challenged in court, as the plan could not be rejected on the grounds of the SEA Directive alone.

Issues of impunity for not (adequately) conducting an SEA process have also been mentioned in relation to the unclear definition of plans and programmes. Concerns were raised at the evaluation workshop and by consultation respondents that, given the unclear wording of the Directive on the plans for which SEA is compulsory, some 'high-level' plans are not, or may not be, subject to SEA despite their significant environmental impacts (e.g. because they are not seen to 'set the framework' *directly* for projects). The case of HS2 (high speed railway in the UK[27]) was one such example (Carvalho et al, 2017; Sheate, 2017).

[27] UK Supreme Court judgement (2014) in *R (on the application of HS2 Action Alliance Limited) (Appellant) v Secretary of State for Transport and another (Respondents)*: https://www.supremecourt.uk/cases/uksc-2013-0172.html

Indeed, some participants at the evaluation workshop argued that the SEA is most necessary at precisely these strategic levels, and that the Directive needs to adapted (in terms of nature and focus of information required) to enable it to be more readily applied at these higher levels.

The evaluation workshop also noted other challenges in conducting SEA for 'high level' policies and legislation. Questions raised included: are consultations and inclusion of the public in 'high-level' policy development processes (which are sometimes confidential) even possible? Should the public be involved in making such decisions? And where are the boundaries of the SEA in terms of environmental, economic, social and other implications posed by plans and programmes of such nature?

Evidence from consultation activities and the evaluation workshop suggests that environmental monitoring is another aspect of the SEA process that is less supportive of the Directive's ability to influence planning and decision-making practices. As explained, SEA is often seen to end with the adoption of the plan or programme, and monitoring requirements are poorly implemented. Monitoring for higher level, strategic plans and programmes might be more challenging, given less tangible data and (measurable) indicators at these levels. However, that might reflect a rather 'traditional' interpretation of SEA (as noted at the workshop) as simply an (EIA-style) impact assessment tool, and a corresponding emphasis on certain familiar types of indicators at the plan/programme/project level, rather than seeing it as a proactive design tool to support more sustainable policies.

According to the targeted consultation, regional and local authorities responsible for preparation of plans and programmes, as well as academics and SEA practitioners, perceive the less supporting aspects of the SEA process more negatively than do the national environmental authorities.

5.1.2.3.2 Influencing the final content of plans and programmes

The evidence from the consultation activities corresponds with the 2016 SEA Study findings, showing that stakeholders generally believe that the SEA Directive *has* influenced the final content of plans and programmes (about 96% of the targeted consultation and about 70% of the public consultation respondents). The majority of respondents to the targeted consultation questionnaire, as well as interviewees, feel that the Directive affected the content of plans and programmes to a moderate extent, at least. Some state that the changes in plans and programmes can be only partially attributed to the Directive, as there were regulations in place before the implementation of the Directive which influenced the content of developments from an environmental perspective. However, the respondents recognise that the legal requirements of the Directive resulted in environmental issues being more systematically considered in plans and programmes, and in greater detail.

Nevertheless, concerns were raised by SEA practitioners, academics, and local and regional authorities responsible for the preparation of plans and programmes that SEA does not affect the content of final planning outputs as much as it should. That might be due to other prevailing (political, economic, social) interests, 'closed' and pre-determined decision-making, poor integration of SEA into planning and decision-making processes, or late start of the SEA process in relation to the development of the plan or programme assessed. The respondents argue that at the later stages of the planning process the proponents of the plan are generally less open to new perspectives and are less willing to make changes. As reflected at the evaluation workshop, (major) changes to a near-finalised and frequently politically agreed plan or programme are often accompanied by potentially high costs at a late stage and are therefore less likely to be considered. On the other hand, an early start to the SEA process and consideration of environmental issues in the early development stages of

the plan or programme can significantly contribute to the influence of the Directive on their final content.

How has the SEA Directive influenced plans and programmes?

Respondents to the public and targeted consultations, as well as the interviewees, generally believe that the SEA Directive influences plans and programmes by adding more emphasis and addressing environmental issues, integrating the public and considering opinions of various stakeholders, and adding mitigation and compensation measures into plans and programmes. This response corresponds with the evidence of the 2016 SEA Study. Some respondents also pointed to the content of plans or programmes being changed due to new environmental information coming to light (a reason frequently observed in the 2016 SEA Study), as well as the involvement of various experts in the SEA process.

Some interviewees mention that the influence of the Directive on the content of plans and programmes was significant, as the SEA progress and recommendations made in the Environmental Report, alongside (transnational) consultation activities, led to changes in provisions of the documents assessed, influenced the scope of activities suggested for environmental preservation and protection, limited or even prevented certain developments, and reflection on the objectives of the plans and programmes from an environmental perspective before any action was taken.

Although mitigation and compensation measures were generally considered positive in terms of their influence on the content of planned activities, they were also mentioned as providing leeway for the approval of developments despite their potentially adverse environmental implications and avoiding addressing the environmental implications in plans and programmes as thoroughly as required. Some respondents state that although the consultations and public participation practices are important in influencing the key decision makers, their actual effect in the SEA process is sometimes limited or constrained, as the responses from these activities are not adequately considered in the final content of plans and programmes, nor are they reflected in the 'post adoption' outputs (as set out in Article 9 of the SEA Directive).

The evidence of this study shows that plans and programmes were also strongly influenced by applied modifications resulting from consideration of new alternatives or environmental impacts *during* the SEA process. Although the assessment of alternatives is generally considered very important, the consultations reveal challenges with this part of the SEA process, such as (too) late consideration and the general unfeasibility of other proposed options. It seems that, particularly in spatial planning practice, it is not uncommon for the most environmentally sound solutions to be overridden by socioeconomic interest. The planning-making process remains a political one, which hinders the ability of SEA to influence the content of plans and programmes. However, the evaluation workshop also highlighted that alternative options may be considered (and rejected) in the plan-making process without being recorded. The SEA can help to make consideration of those alternative options more explicit and informed.

5.1.2.3.3 Influencing siting, design and implementation of projects developed from plans and programmes

The evidence clearly shows that the SEA Directive has influenced the siting, design and implementation of projects developed from plans and programmes (about 70% of the public and over 80% of the targeted consultation respondents). Nearly two-thirds of the targeted consultation respondents considered the Directive to have a moderate (at least) influence on siting, design and implementation of projects. SEA practitioners and academics were the most positive group in this respect.

The respondents to the targeted consultation questionnaire and interviewees provide examples from various sectors (e.g. transport, waste and water management, environmental protection, forestry, spatial maritime planning, town and country planning) where the SEA has altered (e.g. changed the site of the construction or engineering development) or even prevented the development, or introduced new technology (e.g. best available technologies- BAT for waste incineration plant exhausts). They also explain that, in some cases, the SEA has fostered and supported the implementation of the EIA process (e.g. less conflict, frictionless procedure, already established baseline), which has subsequently led to changes in the design and siting of projects. However, some think that the SEA has no influence on siting design and implementation of projects. Compared to the targeted consultation questionnaire respondents, the interviewees are slightly less positive, in general, typically among the regional and local authorities responsible for the preparation of plans and programmes.

Some of the respondents to the consultation activities explain that the nature of the SEA Directive and related processes is too general and strategic to influence the siting, design and implementation of projects. Although the plan or programme that has undergone SEA can be used as guidance for the subsequent developments, there is often no clear link between the two. That might be due to the mismatch in scale (strategic vs. local) and nature (abstract vs. concrete) of the SEA evaluated plans and programmes and the subsequent developments. Others mention that changes in projects are triggered by other sectoral legislation, such as Directives (e.g. Habitats Directive, Floods Directive, Seveso Directive, Water Framework Directive and Marine Strategy Framework Directive) as well as national regulations, rather than resulting from the SEA process. However, they see the benefit of SEA in that the report gathers all of these sectoral requirements in a single document. Another reason mentioned for the lack of influence is the absence of clarity on the (legal) obligations to follow-up on the outcomes and recommendations of the SEA process. Consequently, there is insufficient incentive for developers to consider SEA recommendations when it comes to siting, design and implementation of subsequent projects.

The influence of the SEA Directive on the siting, design and implementation of projects depends on the type (e.g. spatial plan, strategy, policy), decision-making/governance level (e.g. international, national, regional, local), sector (e.g. spatial planning and land use, transport, energy) and sectoral hierarchies of the plan or programme assessed, planning cultures, laws and practices across Member States, and quality and robustness of the SEA process. As expected, the consultations showed that more explicit plans that have undergone SEA (e.g. spatial development plans) at lower governance levels (e.g. local) appear to affect the subsequent projects more significantly than more abstract 'high-level' (e.g. international, national) plans and programmes (e.g. strategies, policies). However, the value of certain environmental or landscape/large-scale elements can be recognised through the evaluation of strategic spatial development plans or policies and this needs to be considered in subsequent local level plans and projects. The SEA Directive seems to be more influential in relation to infrastructure development projects (e.g. transport, energy).

Like the consultation activities, the literature largely acknowledges that the SEA Directive has influenced the planning processes and content of plans, programmes and

projects. The factors influencing how the SEA affects the planning practices and outcomes include: the role, power and discretion of planners, decision makers and governance (Zhang *et al*., 2010; Kørnøv *et al*., 2015; Monteiro & Partidário, 2016); public participation and engagement; different types/levels of knowledge (Partidario & Sheate, 2013); and quality of Environmental Reports (De Montis *et al*., 2016); as well as high levels of uncertainty in the SEA process (Lyhne, 2012).

5.1.2.4. Key findings

- **The SEA Directive has** to some extent **influenced and even improved planning and decision making processes** by setting **mandatory requirements for consideration of environmental issues** in plans and programmes; introducing **public participation**; increasing **transparency** of planning process; and **raising environmental awareness** among decision-makers.
- **The Directive has** to some extent **influenced the final content of plans and programmes by:**
  - Adding more **emphasis on** addressing **environmental issues**;
  - **Involving the public and** considering various **stakeholders**' opinions; **Introducing mitigation and compensation measures**;
  - **Applying and assessing alternatives**.
- **The aspects of the SEA process limiting the influence of the SEA Directive on the final content** of plans and programmes include:
  - **Other prevailing** (political, social, economic) **interests**;
  - **'Closed' decision-making favouring a specific pre-conceptualised version of a plan or programme**, for example in spatial planning when the (political/economic) decisions on location, scale and even technical design of certain activities are taken before the start of the SEA process, which allows little room for meaningful (public) participation in decision-making process, or consideration of alternatives;
  - **Poor integration of SEA** into planning and decision-making processes;
  - **Challenges in the assessment of alternatives** in the SEA process.
- **The SEA Directive has** to some extent **influenced the siting, design and implementation of projects** developed on the basis of plans and programmes, with the influence **depending on the type** (e.g. spatial plan, strategy, policy) **and decision-making/governance level of the plan or programme** (e.g. national, regional, local).

5.1.3. Question 3: What factors (e.g. gaps, overlaps, inconsistencies) influenced the effectiveness?

5.1.3.1. Interpretation and approach

Questions 2 and 3 are closely related. Question 3 looks at the objectives of SEA more broadly, focusing on understanding the main factors at play in determining the effectiveness of the Directive. This question therefore relates to procedural effectiveness, but also a third concept of SEA effectiveness concerned with 'transformative' or 'incremental' benefits that are often less tangible but might make SEA more effective (Zhang *et al*., 2013; van Doren *et al*., 2013; Sheate, 2017). Examples include improved learning outcomes, social learning and knowledge exchange, governance outcomes and attitudinal and value changes.

5.1.3.2. Main sources of evidence

- The sections on the factors influencing the effectiveness of the SEA Directive were based chiefly on the outcomes of the consultation activities. The more detailed insights (e.g. the extent and supporting/inhibiting factors of the SEA process) stemmed mainly from the results of the targeted consultation and interviews.
- A review of relevant literature and studies yielded additional information and findings.
- The findings also reflect the discussions, comments and challenges raised at the evaluation workshop on emerging findings of this study that took place in Brussels in December 2018.

5.1.3.3. Analysis of the question according to available evidence

5.1.3.3.1 Sectors

The consultation activities reveal that the effectiveness of the SEA Directive differs between sectors. According to the respondents, the Directive seems to be most effective in relation to spatial and land use planning (including town and country planning, and municipal/council development plans). This is believed to be due to well-embedded processes, practices and knowledge, and better availability of guidance documents and good practice examples, as large numbers of SEAs are applied in this sector. Other sectors where the SEA Directive is also considered to be generally effective are water and waste management, transport, energy and air quality improvement.

Although the SEA is generally considered effective in the transport and energy sectors, some examples of low effectiveness in these sectors are also reported. The same applies to forestry and agriculture and other sectors where economic and/or social interests might be emphasised (e.g. tourism, mining). As reflected in both the consultation activities and the evaluation workshop discussions, these sectors seem to lack relevant guidance and good practice examples of SEA practices.

The literature shows that the SEA Directive has supported the delivery of objectives from other sectors, although SEAs are most frequently applied in spatial and land use planning. A study of five SEAs from different EU countries showed that SEA supports the health aspects connected with the planning of urban green space by working with developers and decision makers and making improvements within decision-making processes (Fisher *et al*., 2018). Both the evaluation workshop and the consultation activities saw the SEA Directive as contributing positively to value changes by raising environmental awareness among sectors and industries that were traditionally more development focused (e.g. transport, energy, tourism, agriculture, mining), as well as among authorities at all decision-making levels. Some interviewees commented that developers and decision-makers are now more thoughtful, careful, and considerate of environmental issues, and the opinions of the public and other stakeholders, due to the more transparent decision-making practices introduced by the SEA Directive.

5.1.3.3.2 Governance levels and stages of planning process

Views on the effectiveness of the SEA at higher (e.g. international, national, strategic) decision-making and governance levels vary. The consultations show that the Directive is perceived as less effective for 'high-level' programmes and plans (e.g. legislation and policies), where the (environmental) effects are less tangible. The evidence also supports the opposite assertion, i.e. that the SEA is more effective at strategic levels in early planning stages, as there is still 'enough' room for consideration of environmental (and sustainability) objectives and possible alternatives. The respondents explain that the environmental repercussions of the

strategic choices made in plans and programmes are now 'formalised' and specifically addressed during the planning and decision-making processes, which was not the case before the adoption of the SEA Directive. Many consulted stakeholders think that the Directive is most effective at local level, where the planned measures/interventions are more defined and thus the effects are easier to project and assess. This inconsistent observation may simply reflect the sample of consultees, with respondents from local planning levels reflecting their experience at local level, and respondents from national or regional level reflecting their more strategic experience. Ultimately, it appears to be a matter of perception, according to the context in which SEA is experienced.

The consultation activities show that the aspects considered important within the SEA process vary between sectors, as well as between governance levels of plans and programmes. For example, social sustainability often appears to be considered within the mining and transport sectors (because of the significant community impacts possible from such sectors), while it features less regularly in SEAs conducted in other sectors. The evaluation workshop noted that other aspects of sustainability (i.e. social and economic) should perhaps be emphasised more within SEA. However, that carries an associated risk of weakening the environmental emphasis of the SEA process (see Section 5.1.1.3 of this report). The sustainability dimension of the SEA Directive seems to be more commonly considered in the SEAs of strategic national or regional plans and programmes than in (detailed) local level plans.

5.1.3.3.3 Aspects of the SEA process

The consultation outcomes show that different aspects of the SEA process (i.e. consultation practices, approach to addressing reasonable alternatives, and methods, scope and level of detail in the environmental assessment) affect the effectiveness of the SEA to some degree. In this context, consultation practices and approaches to addressing reasonable alternatives seem to be of greater importance among academics and SEA practitioners, while national environmental authorities give more weight to the methods, scope and level of detail in the environmental assessment.

A study by Zhang *et al*. (2013) identifies key 'general' factors (i.e. those that are more general in nature but which influence the SEA more broadly) and 'stage' factors (i.e. relating to stages of the SEA process) that influence the success of SEA. The general factors include the 'importance of understanding the SEA concept, conceptualising it, and having the ability to learn new things, methods and techniques', as well as acceptance of uncertainty connected with knowledge, and communication and interaction between different stakeholders (Zhang et al., 2013, p. 93). Other key factors relate to resources and capacities (i.e. time, money and resources), as well as organisation (e.g. early integration/in parallel with the policy/plan-making process), and will and trust. For example, insufficient political will is recognised as the most significant barrier to SEA implementation, together with the concepts of accountability and trust, which can promote stakeholder engagement.

Similar to the 2016 SEA Study, the consultation activities show that the effectiveness of the SEA Directive is significantly dependent on **political will** and the experience and meaningful engagement of the (national, regional or local) authorities and plan developers in the SEA process, as well as their openness and willingness to make changes and adequately consider the evaluation outcomes. The impartiality, ethics and expertise of consultants conducting the SEA process also plays an important role in the effectiveness of the SEA Directive, as they frequently lead (public) consultations and give assurances that the environment is adequately taken into account when adopting new plans and programmes. The interviews reveal that it is not uncommon for the SEA to be conducted by the same people who prepared the plan or programme, which raises concerns regarding the impartially, quality and effectiveness of the SEA evaluation process. The Directive does not provide any clear guidance on who should or should not conduct SEA. The interview results also show the importance

of allocating sufficient financial resources (by those preparing the plan or programme) for the SEA procedure as a factor in the Directive's effectiveness.

Another influencing factor raised during the interviews is the **perception of the SEA** process by governance authorities and plan developers. The SEA process seems to be less effective if perceived as a separate rather than an integrated part of the planning and decision-making activity. This relates to the sense of ownership of the SEA process by those preparing the plan or programme, as well as ownership of the plan by the SEA practitioners. Where the SEA process is seen as a necessity imposed by the EU, creating additional (development) limitations, costs, and administrative burden, it negatively influences the effectiveness of SEA Directive.

Consultation practices foster communication between various actors at different governance levels, as well as enabling public participation and increasing transparency of the SEA process. Such activity supports the positive perception of 'plan ownership' by different stakeholders (see Section 5.1.1.3), as well as identification of potential 'conflicts of interest' in the early planning stages, potentially making the plan more successful in the long run.

Several authorities interviewed highlighted that the involvement of a wide range of actors (environmental and non-environmental) in consultation meetings enabled the discussion and promotion of environmental protection issues early on. Another authority noted that there is no other instrument that can assure this widespread involvement and broad process.

However, concerns were raised that the public does not, in practice, engage in the SEA process as much as it should. The evidence from the public consultation, targeted consultation questionnaire and interviews points to a range of issues associated with citizen participation. Both the authorities and the practitioners interviewed agree that greater citizen awareness of the SEA Directive is desirable. Some authorities questioned citizens' awareness of the SEA process, as the consultation of the draft plan and the SEA are run simultaneously, with the focus often on the plan itself, especially at local level.

Many interviewees report that the technical nature of SEA reports is an obstacle to greater participation by the general public. In practice, it is very challenging for authorities to communicate the often complex concepts from the SEA process to the public. However, public participation can only work if citizens can comprehend the content/impact of a plan or a programme. Some practitioners stress that the ambiguity of some plans/programmes can also be an issue for public engagement, as citizens might not recognise the practical aspects of such documents, viewing them as abstract and too far removed from their everyday lives. A correlation between the concreteness of a plan/programme and citizen participation can therefore be observed - the less concrete a plan/program, the less citizens are interested in participating in the SEA. Based on experience, one practitioner stated that even the non-technical summary of the SEA remains too technical to be understood by the general public. This was a view shared by participants in the evaluation workshop.

The interviewees also noted issues in relation to the organisational aspects of SEA implementation. The length of consultation exercises, representativeness of stakeholder groups, public information on the consultation event, materials presented and dissemination of the consultation outcomes in the public domain are all important factors that require careful attention. Substandard organisation can turn these into obstacles for active public participation in either an ongoing or a future SEA process. Some respondents recognised the value of online platforms (e.g. SIVAS, SILVIA) for communicating with the public. However, the existence of such tools would require better promotion, as many citizens are not aware of their existence and in any case may not have ready internet access. It was also highlighted that partial representation of the evidence (reflecting political agendas) can impact citizens' perspectives of the

issues, as they are not aware of all of the potential repercussions of the plan or programme. A consequence of being misinformed could lead to citizens losing trust in the process and ignoring any future consultations. The issue of under-representation of certain stakeholder groups among those who actively engage in the process, was stated by several practitioners. Typically, these groups include women, youth and foreign-born populations. It is common for the same champions and NGO representatives to attend consultation events, thus an obligation to involve more stakeholders from under-represented groups was suggested. The quality of engagement is of similar importance, as respondents stressed that institutions are occasionally represented by people with limited interest in the process and who are only present to meet the requirements of the SEA.

The interviews highlighted the key role of visible and transparent alternatives, allowing citizens to have a better understanding of the decision-making process and encouraging participation. This also enables the decision makers to be held accountable for their decisions. However, one practitioner suggested that there can be limited legal options for the public to challenge inadequate SEA procedures or the majority of strategic documents in the courts.

The quality of citizens' responses was another factor raised by the authorities and practitioners interviewed, who highlighted that it requires consideration in the SEA process. Often, the comments by citizens are specifically driven by private interest and are not always based on facts. In other circumstances they may be based on ideology (e.g. environmentalism), effectively ignoring the specific plan that is subject to SEA. In these cases, the information received may be of limited value for the SEA practitioners, although this may suggest that earlier and more deliberate engagement might be appropriate.

Finally, as acknowledged by consultation respondents, interviewees and the evaluation workshop participants, the extent of citizens' participation in the SEA process may vary considerably depending on the type of plan/programme, the number of citizens directly affected and the differences in participation culture across Member States. For example, citizens appear to be more interested in participating in consultations on local plans that directly affect them, rather than more overarching or very strategic plans. The differences in participation culture could be observed between the eastern and southern European regions and those of central and northern Europe. For example, the respondents noted that citizens in Poland, Spain and Italy are not very active in the participation process, while the literature recognises the much more participative culture, for example, in northern Europe (Scandinavia, the Netherlands).

While addressing **reasonable alternatives** is, from an environmental protection perspective, considered to be a significant contribution of the SEA Directive to the planning and decision-making process, it presents considerable challenges, as reflected in question 2 (Section 5.1.2.3) and recognised in the 2016 SEA Study.

Although all of these factors are considered important for the success of the SEA process, a study reviewing 30 papers identifying factors influencing the performance of SEA application concluded that tracing the cause and effect is difficult, as 'critical factors interact in complex ways and appear in different combinations in different stages of the implementation process' also suggesting that there is no 'single way' of putting SEA into practice (Zhang *et al*., 2013, p. 88). For example, a study undertaken at a regional level in Italy recognised four ways ('taxonomies') in which SEA legislation evolved in Italian regions, based on how legislation incorporates the key principles of SEA (Baresi *et al*., 2017).

The consultation activities and the evaluation workshop discussions suggest that the SEA process seems to be more effective if the context, content and objectives of the plan and programme are closely aligned with the SEA evaluation framework. For example, the SEA process is likely to be less challenging when evaluating a spatial

development plan with clear environmental objectives compared to the evaluation of a high-level sectoral development strategy. As every plan is different (each deals with a specific problem within a specific decision-making culture), any assessment of the implementation and tool must appreciate the context in which the SEA operates (Van Doren *et al*., 2013).

Like the 2016 SEA Study, the evidence analysis and workshop discussions here show that the effectiveness of the SEA Directive depends significantly on how the Directive is transposed into national law and further implemented in practice. Equally important are the planning and decision-making practices, laws and cultures of individual Member States (Sheate & Eales, 2016). For example, the level of detail in the legislative requirements, guidance, availability and transparency of information, as well as capacity and resources for the implementation of the SEA Directive and related processes, seems to vary considerably between Member States. In some cases, plans and programmes which require an SEA are identified through a statutory process, using a set of specific evaluation criteria (e.g. size/scale of proposed interventions, type of planed activities, and sector). Some Member States have detailed legal requirements determining which stakeholders must be involved in the SEA process, and how and when to conduct consultation activities, while others offer guidance and information on the implementation of the SEA Directive and related processes at various governance levels (e.g. national, regional, and local), or for specific sectors (e.g. agriculture, housing, transport, tourism) and stakeholders (e.g. practitioners, developers, environmental and other relevant authorities, public, etc.).

5.1.3.4. Key findings

- The **effectiveness of the Directive differs between sectors** (most effective for spatial planning) **and governance levels** (higher at local level, lower for high-level plans and programmes of more strategic and abstract nature).
- **The most important barrier to the effectiveness** of the SEA Directive **is insufficient political will**.
- **Consultation practices and impartiality, ethics and expertise of SEA practitioners are important factors influencing the effectiveness** of the SEA process.
- While **addressing reasonable alternatives is considered to be a significant** contribution of the SEA Directive, **challenges remain in implementing this aspect of the SEA process**.
- The **effectiveness** of the SEA Directive **depends to a significant extent on transposition and implementation**, as well as **planning and decision-making practices, laws and cultures within individual Member States**.
- **Although the Directive is generally considered to be effective**, this study reveals that **there are challenges when looking at the SEA practices in more detail, at lower** (administration) **levels**, particularly from the perspective of SEA practitioners and the authorities responsible for the preparation of plans and programmes.

5.2. EFFICIENCY

Efficiency considers the relationship between the resources used by an intervention and the changes generated by that intervention (which may be positive or negative). It aims to provide an understanding of the extent to which the benefits of having and implementing the SEA Directive justify the costs. Both costs and benefits can be monetary and non-monetary. The evaluation of efficiency also needs to provide an understanding of the factors that influence efficiency and look at the administrative burden the Directive imposes on key stakeholders, such as public authorities.

5.2.1. Question 4: To what extent are the costs involved proportionate, given the identified changes/effects achieved?

5.2.1.1. Interpretation and approach

Question 4 examines whether the costs of SEA are proportionate, in view of the changes or effects achieved by the Directive. Ideally, costs and benefits should be quantified in monetary terms to facilitate comparison. However, there are several practical difficulties associated with a primarily quantitative assessment of the costs and benefits of the SEA Directive:

- *Low comparability of cost data*: cost data provided by stakeholders present large variations, which might depend on a number of factors, such as the type of plan or programme, the scope or scale (national, regional, local) of the plan or programme, labour costs in different Member States (for costs of external services) or the capacity or willingness of the authority to invest in SEA. These data are often not completely accurate – authorities often cannot distinguish administrative costs linked to SEA from their business as usual costs – and not comparable, as there is no consistent method among authorities to track costs of implementing SEA. It was not possible, therefore, to aggregate cost data to provide an understanding of the costs at EU or national level.
- *Difficult quantification of benefits*: the benefits of SEA are long-term in nature and their direct links to SEA are often difficult to establish, e.g. general environmental benefits are the results of a combination of factors and environmental policies. No attempts to quantify the benefits of SEA were identified in the literature.

The approach to this question was therefore to map and understand the costs and benefits and their magnitude. Cost data were collected from authorities, but, for the issues outlined above, the analysis will be essentially qualitative. As no direct comparison is possible between costs and benefits, considerations of cost-effectiveness mainly rely on the evidence from the consultation on the acceptability of costs by those who bear them, the occurrence and perceived magnitude of changes/effects, and how costs compare to these changes/effects.

5.2.1.2. Main sources of evidence

There is a limited literature and few studies that directly address costs or cost-effectiveness of SEA. Several general and case-specific studies provided some input to a general typology of costs and benefits, while others collected information on the time spent/costs of carrying out SEA through surveys of Member States authorities or practitioners, or case studies on specific SEAs. Farmer *et al*. (2015) surveyed 11 Member State authorities (of which only four provided a full quantitative assessment) to obtain costs of SEA by stage of implementation (screening, scoping, environmental assessment and reporting, and full consultation) and understand cost drivers. The 2016 SEA Study compiled cost data provided by Member State authorities in the Commission's reporting questionnaire.

Some studies considered costs against a qualitative understanding of the extent to which the SEA impacted the plan or the value of the interventions laid down in the plan.

In the absence of definitive literature or studies on the issue of cost proportionality and the scope of benefits, the evidence for responding to this question stems primarily from the consultation activities, in particular the targeted consultation and interviews.

5.2.1.3. Analysis of the question according to available evidence

5.2.1.3.1 Types of costs and their relative significance

This evaluation considers both direct costs (e.g. resulting from the requirement to carry out SEA of plans and programmes) and indirect costs (e.g. as a consequence of the measures needed to carry out SEAs of plans and programmes). Direct costs include compliance costs (e.g. costs incurred by various stakeholders to comply with obligations and requirements contained in the SEA Directive). Compliance costs can be further broken down (based on Tool 59 Methods to assess costs and benefits, Better Regulation toolbox) into the following:

- **Implementation costs:** incurred by regulated entities in adapting their legal frameworks, building strategies and capacity to comply with the Directive. These are one-off or short-term costs.
- **Direct labour costs:** staff time devoted to completing the activities required to achieve regulatory compliance in organising and carrying out the SEA procedure.
- **Costs of external services:** costs of payments to external suppliers providing assistance in achieving regulatory compliance.
- **Equipment or material costs:** costs incurred by stakeholders to purchase / maintain or change the material input needed to ensure regulatory compliance. These are likely to be minor and may only concern public consultation, data collection and monitoring.

A typology of costs is presented below. This was established based on the 2016 SEA Study, together with other literature, and was subsequently used in the targeted consultation for this study.

Table 3: Types of direct costs resulting from implementation of the SEA Directive

Type of cost	Examples
Implementation costs	■ Legal transposition ■ Capacity development ▪ Allocating responsibilities for completing compliance-related tasks ▪ Developing compliance strategies ▪ Familiarising staff with new or amended regulatory compliance obligations ■ Training courses and development of guidance material and tools
Compliance costs	■ Administration of the system ▪ Screening / decision-making on whether specific plans and programmes are required to undergo SEA ▪ Scoping SEA reports ▪ Review and approval of SEA reports ■ Assessing the plan/programme and preparation of the Environmental Report ■ Screening/SEA of modifications to plans/programmes ■ Public consultations ▪ Identifying relevant stakeholders ▪ Informing relevant stakeholders

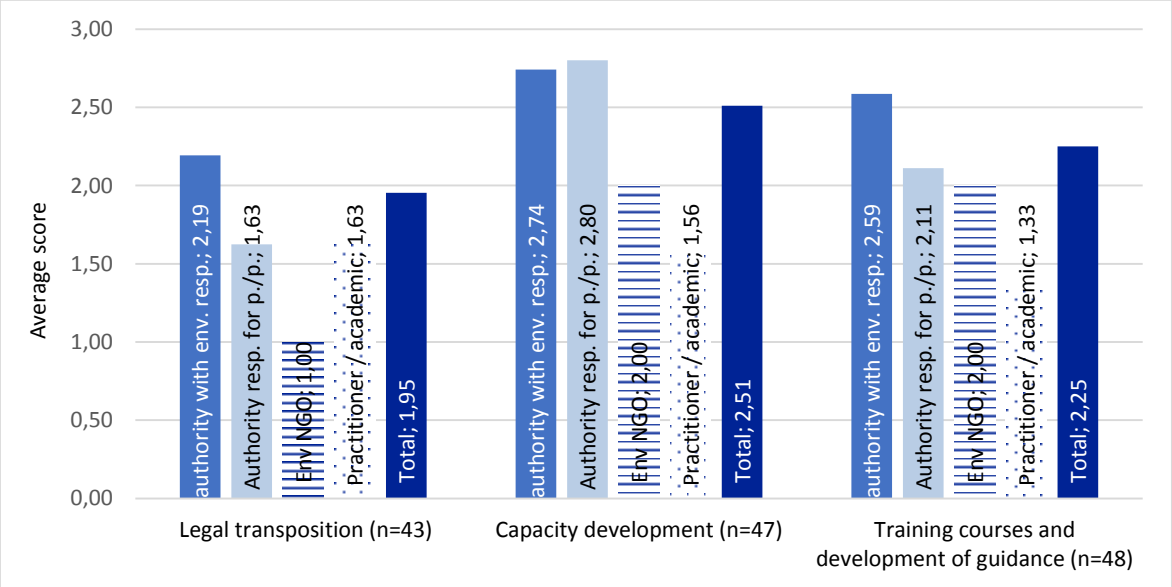
Type of cost	Examples
	▪ Considering stakeholder feedback ■ Preparation and publication of the decision through which the plan/programme is adopted (usually referred to as the 'SEA Statement') ■ Monitoring (of significant environmental effects) ■ Implementing remedial action, if relevant

Indirect costs primarily relate to possible procedural delays in the adoption of plans and programmes, leading to increased labour costs. Procedural delays can also be the consequence of the SEA process being subject to legal challenge.

Implementation costs

Question 26 of the targeted consultation questionnaire asked about the significance of the main direct costs of the Directive. Respondents[28] were asked to score a list of proposed costs on the following scale: not significant, slightly significant, moderately significant, and very significant. Respondents generally found implementation costs slightly to moderately significant[29]. Capacity development and the development of training courses and guidance materials were considered the main costs, while legal transposition was considered only slightly significant. National environmental authorities (which are responsible for the transposition and overall implementation of the Directive) and authorities responsible for plans and programmes, both of which had to train their staff on implementing SEA, tended to consider these costs more significant than NGOs and practitioners / academics.

Figure 10: How significant have the main types of direct implementation costs been in your Member State? [Targeted consultation questionnaire] (average score stakeholder group: 1=not significant, 2=slightly significant, 3=moderately significant, 4=very significant)



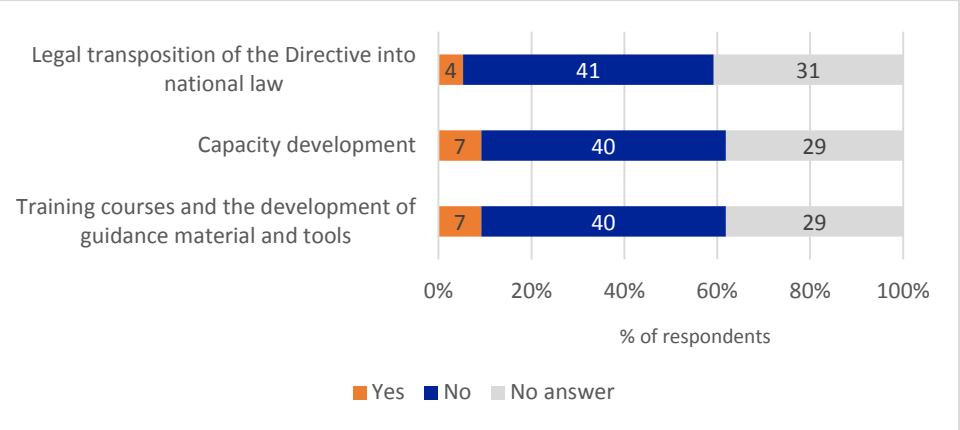
Question 28 of the targeted consultation questionnaire asked whether any of the proposed costs represent an excessive burden (i.e. the benefits do not justify the cost,

[28] Around 60% of the respondents answered this question.

[29] It should be noted that respondents were asked to consider implementation costs in relation to the application of the Directive to date, not in relation to the application of the Directive to legislative acts that could be considered plans and programmes in the light of the recent case law (Case C-290/15).

or the cost could be easily reduced through simplification measures). Respondents did not view any of the proposed costs as an excessive burden[30].

Figure 11: Do any of the costs listed above represent an excessive burden, i.e. the benefits do not justify the cost or the cost could be easily reduced through simplification measures? [Targeted consultation questionnaire] (share of total respondents, n=76)



Compliance costs

- *Results from targeted consultation questionnaire (closed questions)*

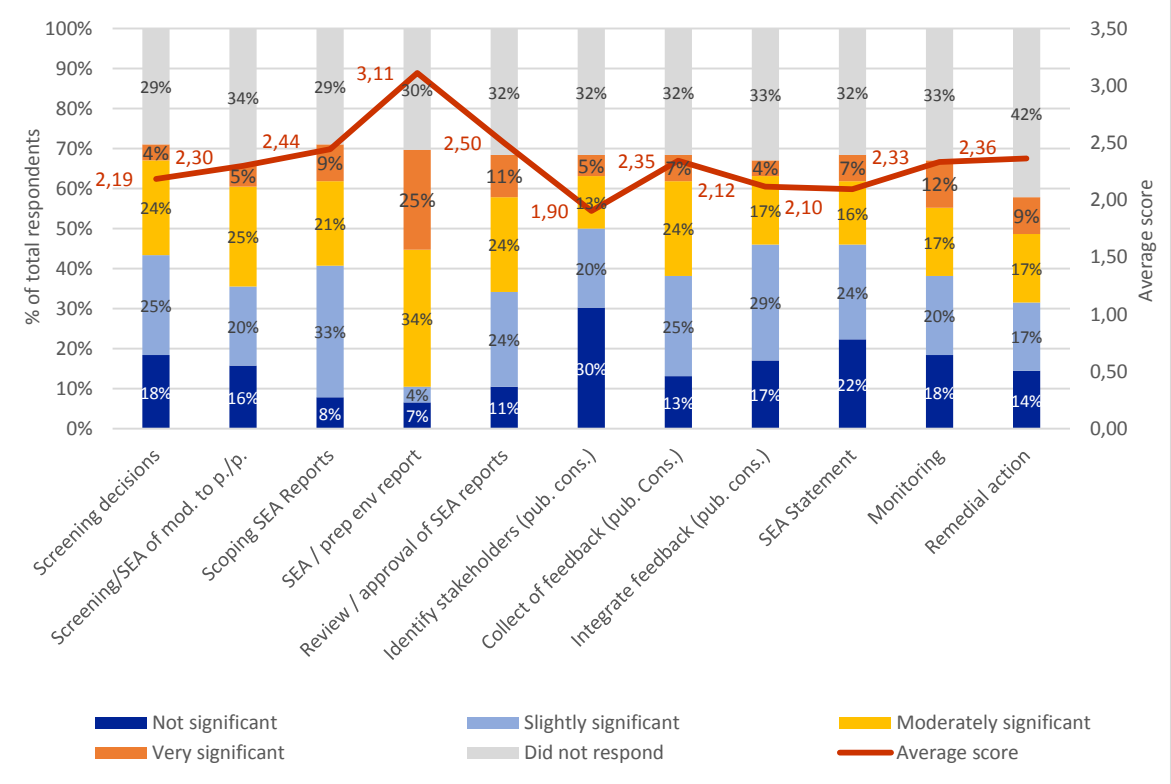
Respondents to the targeted consultation questionnaire (question 26)[31] considered all proposed compliance costs slightly to moderately significant, except 'conducting/carrying out the SEA and preparation of the Environmental Report', for which the average score was slightly above 3 (moderately to very significant). Other than carrying out the SEA and preparation of the Environmental Report, the review and approval of SEA reports was reported to be the most significant cost[32].

[30] Respondents who replied 'yes' for any of the three costs presented in Figure 10 did not provide an explanation for their views.

[31] Between 60% and 70% of respondents answered this question.

[32] As previously mentioned, respondents were asked to consider compliance costs in relation to the application of the Directive to date, not in relation to the application of the Directive to legislative acts that could be considered plans and programmes in the light of the recent case law (Case C-290/15).

Figure 12: How significant have the main types of direct compliance costs been in your Member State? [Targeted consultation questionnaire] (share of total respondents n=76; average score of total respondents: 1=not significant, 2=slightly significant, 3=moderately significant, 4=very significant)



National environmental authorities and authorities responsible for plans and programmes generally tended to score these costs higher than other groups of respondents. In particular, environmental authorities scored 'screening', 'conducting/carrying out the SEA and preparation of the Environmental Report', 'review and approval of SEA reports', 'public consultations – taking feedback into consideration' and 'implementing remedial action' higher than the average. Authorities responsible for plans and programmes tended to score 'review and approval of SEA reports', 'public consultation: provision of information and collection of feedback', 'screening/SEA of modifications to plans/programmes', and 'monitoring of significant environmental effects' higher than average.

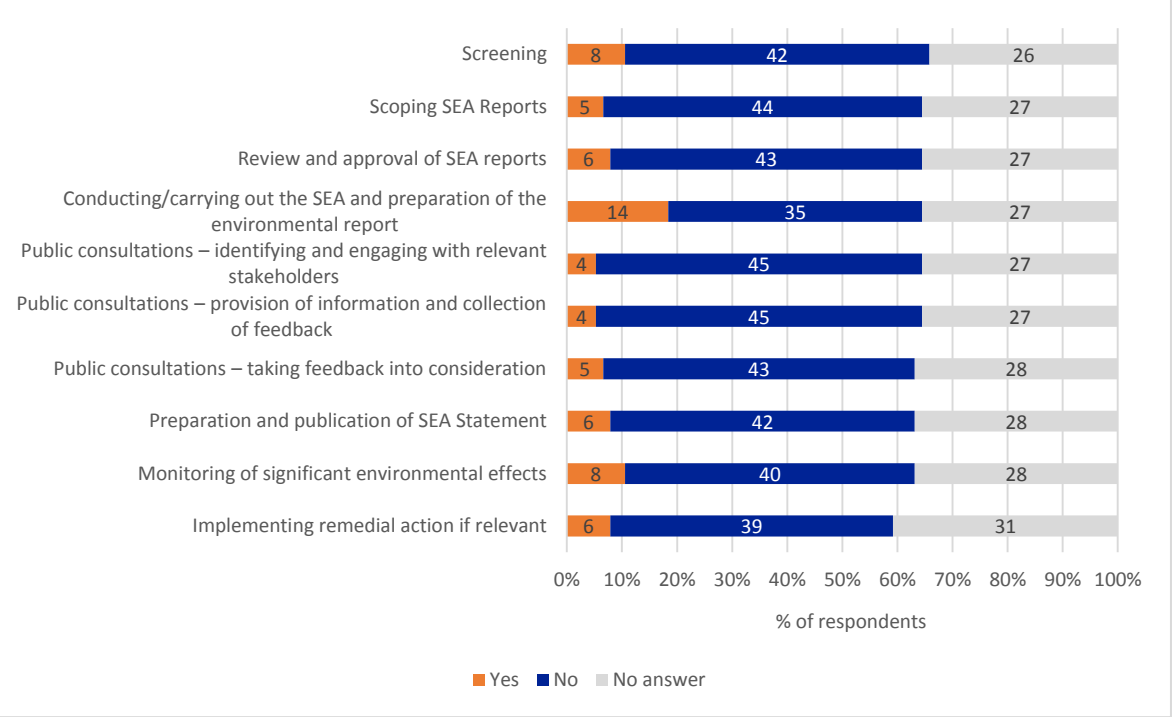
It should be noted that some respondents indicated that in considering the costs of monitoring and implementation of remedial actions they selected the answer 'not significant' or 'slightly significant' because they do not believe that monitoring is carried out or remedial actions are taken, thus the authorities incur little or no cost.

Respondents did not consider any of the proposed costs as an excessive burden (question 28): the share of respondents who answered positively was around 5-10%[33,34]. The only cost for which the share is more significant is 'conducting/carrying out the SEA and preparation of the Environmental Report', which 18.4% of respondents considered an excessive burden (14 respondents: 12 authorities – seven environmental authorities and five authorities responsible for plans and programmes – and two practitioners/academics).

[33] Around 60-65% of respondents answered this question.

[34] Issues related to administrative burden brought up by respondents in this question were integrated into Question 6 of the evaluation related to regulatory burden.

Figure 13: Do any of the costs listed above represent an excessive burden, i.e. the benefits do not justify the cost or the cost could be easily reduced through simplification measures? [Targeted consultation questionnaire] (share of total respondents, n=76)



- *Results from targeted consultation questionnaire (open questions) and interviews*

Interviews confirmed that carrying out the assessment and drafting the Environmental Report is considered the most significant cost (17 interviews – including 10 regional and local authorities and two national authorities responsible for plans and programmes, five practitioners, and two environmental authorities). 10 interviewees / respondents to the targeted consultation questionnaire (national, regional or local authorities responsible for plans / programmes) mentioned that hiring external expertise is a significant cost in the SEA procedure.

According to interviewees, consulting stakeholders and organising public participation is also a significant cost (10 interviews, seven of which mainly referred to public consultation, three referred to consulting and gathering feedback from consulted authorities). Interviewees, however, stated that the extent of the public consultation depends on the scale and type of plan / programme. Those who stated that public and stakeholder participation does not add significant costs often noted that these procedures are carried out simultaneously with public and stakeholder participation in the process of preparing the plan.

Five practitioners and authorities indicated that establishing the baseline (e.g. collecting environmental data), and carrying out specific sectoral studies (e.g. biodiversity, noise etc.) represent a significant cost.

- *Documentary review*

Much like the results of the consultation activities outlined above, Farmer *et al*. (2015, pp. 62-64) found that the preparation of Environmental Reports accounts for the majority of days and costs, and that some Member States (in the context of the study, Finland and the Netherlands) allocate a significant amount of time to consultations.

Indirect costs

The main indirect costs stem from potential procedural delays in the adoption of plans and programmes, which can have an impact on the administrative costs of the competent authority in charge of preparing the plan.

- *Results from targeted consultation questionnaire (open questions) and interviews*

Question 30 of the targeted consultation questionnaire asked respondents about the significance of costs related to procedural delays in the adoption of plans and programmes, the causes of these costs and whether they are justified by improvements made to plans and programmes. 27 respondents replied to the question. A similar question was asked during interviews, with 28 out of 49 interviewees raising the issue of procedural delays. Results from the targeted consultation questionnaire and interviews are analysed jointly in the following paragraph.

Stakeholders were divided on whether SEAs cause procedural delays, with a slim majority (31) stating they do. The 24 respondents that stated they do not cause procedural delays noted that delays are due to other factors. Of the 31 claiming SEA leads to procedural delays, many highlighted delays that in fact related to the plan preparation process as a whole rather than to the SEA procedure itself, such as poor synchronisation of the SEA with the plan preparation process, or poor management of the SEA procedure by the competent authorities, stakeholder consultation. They stated that delays are particularly likely to stem from the time needed to collect feedback from the authorities consulted and reach consensus, the public consultation and the time need to incorporate the feedback and amend the plan, and the lack of collaboration between the competent authorities and the SEA team. Two respondents mentioned legal challenges as significant causes of delay, an issue that was also raised at the evaluation workshop. The 24 respondents who do not believe that SEA delays the adoption of a plan mentioned the same factors but stressed that these stem from political decision-making. A number of respondents indicated that procedural delays could be minimised through better management of the procedure, in particular through the integration of the SEA and the plan preparation procedures, or the alignment of SEA and non-SEA stakeholder consultation and public participation procedures. Very few respondents answered the last part of the question (whether delays are justified by improvements to the plan), with four practitioners/academics replying positively, even questioning whether these constitute procedural delays at all, given that they are beneficial to the plan.

- *Documentary review*

The 2016 SEA Study (pp. 130-131) found that many national authorities consider SEA likely to cause procedural delays. In their responses to the Commission's questionnaire, 11 Member States (including Belgium, both the Brussels-Capital and Flanders Regions) indicated that, in their experience, the SEA tends to prolong the plan/programme making process, with another eight Member States indicating that delays depend considerably on the type of plan/programme or specific circumstances. Around one-third of Member States noted that the SEA process is integrated into the planning process, making it is difficult to attribute delays to SEA alone.

Summary: types of costs and their relative significance

- According to the targeted consultation (questionnaire and interviews) and previous consultations with national authorities (Farmer *et al*., 2015) carrying out the SEA and preparation of the Environmental Report is the most significant cost element of the SEA procedure. Scoping and the review and approval of SEA reports are also considered significant costs. As the drafting of the Environmental Report is often subcontracted to external consultants, hiring external expertise was also mentioned as a key cost.

- Delays in the adoption of the plan/programme are often due to poor synchronisation of the SEA with the plan preparation process or factors external to the SEA, particularly political factors. Delays could be minimised through better management of the SEA procedure.

5.2.1.3.2 Available quantitative cost estimates

- *Results from targeted consultation questionnaire (open questions) and interviews*

Question 31 of the targeted consultation questionnaire asked respondents to provide estimates of consultancy costs and total administrative management costs for the whole SEA procedure for different types of plans: large, national level sectoral plans; regional level sectoral plans; Operational Programmes (OPs) for ESI Fund programmes at national / sectoral level; OPs at regional level; local level land use plans[35]. A breakdown of were not requested by stage of the SEA procedure. Few respondents provided cost estimates and those who did rarely provided estimates for all types of plans. Respondents often quoted consultancy costs for external expertise (i.e. generally corresponding to the cost of the environmental report) rather than administrative costs, as these are more visible and can be tracked directly. These cost estimates are presented in Table 4. Although the administrative costs were requested in numbers of hours, some estimates were also provided in monetary units.

Table 4: Cost estimates provided by respondents to the targeted consultation questionnaire

Consultancy costs (EUR)		Administrative costs (hours)	
A large, national level sectoral plan			
Three national authorities (CZ, EE, HR) + 1 practitioner	Below EUR 50,000	4 national / regional authorities (BE, CZ, EL, LT)	150 – 320
4 national authorities (BE, EL, MT, SK) + 3 practitioners	between EUR 50,000 and EUR 100,000	2 national authorities (NL, SE)	1000 – 3000
3 national authorities (MT, NL, SE) + 1 practitioner	EUR 150,000	1 national authority (MT)	At least 2 FTE
1 practitioner	between EUR 20,000 and EUR 100,000	1 national authority (MT)	EUR 20,000
		1 practitioner	300,000 (EUR)
Regional-level sectoral plan			
1 national authority (CZ) + 2 practitioners	EUR 10,000 and EUR 19,000	4 national / regional authorities (BE, CZ, EL, LT)	110-320
2 national authorities (HR, EL) + 2 practitioners	between EUR 20,000 and EUR 39,000	1 practitioner	300,000 (EUR)
2 practitioners	EUR 40,000 to EUR		

[35] As previously mentioned, respondents were asked to estimate the costs of the SEA procedure in relation to the application of the Directive to date, not in relation to the application of the Directive to legislative acts that could be considered plans and programmes in the light of the recent case law (Case C-290/15).

Consultancy costs (EUR)		Administrative costs (hours)	
	60,000		
1 regional authority (BE)	EUR 130,000 + 67,000 for modelling (excluding public participation)		
ESIF OP at national, sectoral level			
2 national authorities (EE, EL) + 5 practitioners	between EUR 20,000 and EUR 60,000	2 national / regional authorities (BE, EL)	150 – 320
1 practitioner	EUR 80,000	1 national authority (EE)	7000 (EUR)
		1 practitioner	300,000 (EUR)
ESIF OP at regional level			
2 national authorities (HR, EL) + 4 practitioners	EUR 20,000 – EUR 35,000	2 national / regional authorities (BE, EL)	130 – 320
1 practitioner	EUR 40,000- EUR 60,000	1 regional authority (BE)	1300
1 regional authority (BE) + 1 practitioner	EUR 80,000 – EUR 120,000	1 practitioner	300,000 (EUR)
A local-level town and country or land use plan			
2 national authorities (HR, EL) + 5 practitioners	below EUR 50,000	3 national / regional authorities (BE, EL, LT)	100-320
1 national authority (LU) + 2 practitioners	between EUR 50,000 and EUR 100,000	1 practitioner	300,000 (EUR)
1 regional authority (BE)	between EUR 30,000 and 270,000		
General estimates (all types of plans programmes			
Regional authority, BE		EUR 30,000 – 90,000	
National authority, HR		EUR 10,000 – 30,000, a few bigger SEA up to 90,000	

Interviewees were also asked to provide cost estimates for the type of plans they had experience with. 16 interviewees provided cost estimates, in monetary units. Estimates provided by practitioners are assumed to be mainly consultancy costs. Authorities did not specify whether the estimate provided was for the Environmental Report or for the entire process or, indeed, if they referred to consultancy or internal costs, making comparison difficult. It should also be noted that these data might correspond to different years and that some were converted to EUR using current conversion rates.

Table 5: Cost estimates provided by interviewees

Type of plan	Type of interviewee / MS	Cost estimates
All types of plans / programmes	Practitioner (PL)	EUR 50-100,000
All types of plans / programmes	Practitioner (RO)	EUR 2,000–50,000
All types of plans / programmes	Practitioner (FR)	EUR 30,000–90,000
National sectoral plan	National authority (PL)	EUR 7,000
All types of plans /	Practitioner (PL)	EUR 2,000–20,000

Type of plan	Type of interviewee / MS	Cost estimates
programmes		
All types of plans / programmes	Practitioner (AT)	EUR 10,000–100,000
National OP	National managing authority (PL)	EUR 90,000 (for the whole process)
Regional level sectoral plan	Regional authority (SE)	EUR 68,000
Regional level sectoral plan	Regional authority (IT)	EUR 15-20,000 (for the whole process)
Regional level sectoral plan	Regional authority (AT)	EUR 140,000 (including large external support)
Regional sectoral plans	Regional authority (LV)	EUR 10,000–14, 000
Regional sectoral plan	Regional authority (SE)	EUR 29,000
Local land use plan	Practitioner (LV)	EUR 2000–6000 (consultancy costs)
Local land use plan	Regional environmental authority (ES)	EUR 2,000–300,000
Local land use plans	Practitioner (ES)	EUR 2,000–5,000
Local land use plans	Practitioner (ES)	EUR 3,000–30,000

In addition, three authorities provided cost estimates as a percentage of the cost of the plan, indicating that the SEA represents 10-15% of the total cost of preparing the plan.

As shown in the Tables 4 and 5, cost data provided by stakeholders vary considerably, from a couple thousand euros to several hundred thousand euros. Some stakeholders provided very broad cost ranges, or for many types of plans and programmes. Some responses differ significantly to the others, being either considerably higher or lower. Cost variations can be partly explained by the nature and size of the plan / programme. The cost estimates provided by respondents for sectoral plans show that regional level sectoral plans tend to be less costly than those at national level. The lowest cost estimates were provided for local land use plans, although these also show the broadest cost range. This might reflect the diversity of spatial planning documents, in particular the area covered (municipality, intercommunal area, wider living area), and the fact that SEAs are often carried out for revisions of land use plans rather than for new plans. As some of these plans can have quite concrete environmental impacts, they can require field studies, which creates additional costs in certain cases (see Question 5 on factors influencing efficiency below). It is not possible to accurately determine the reasons for the discrepancies in the cost ranges provided - or the outlying responses – from the respondents' explanations. Similar cost ranges were provided for national OPs and regional Ops under ESI Funds.

Cost estimates can be influenced by other factors, such as the cost of labour in different Member States, which influences both administrative and consultancy costs. The financial resources of the competent authority can also influence the budget allocated to carrying out the SEA, in particular the budget allocated to hiring external expertise. In addition to financial capacity, the interest shown by the competent authority in SEA can also influence its willingness to allocate a higher budget to SEA.

- *Documentary review*

The 2016 SEA Study (pp.133-134) compiled the cost data provided by Member State environmental authorities in the Commission's reporting questionnaire. The cost estimates collected showed similarly large variations and raised the same issues of comparison as those experienced here.

Farmer *et al.* (2015, p.60-64) surveyed 11 Member State authorities (of which only four provided a full quantitative assessment: Finland, Hungary, the Netherlands and Scotland) to obtain costs of SEA by stage of implementation (screening, scoping, environmental assessment and reporting, and full consultation). The authors of the study drew attention to the low sample of individual SEA cases whose cost data were collected (24 cases in four countries), which was likely too low to provide a fair representation of SEA costs across the EU. The study found that the average cost of the whole SEA procedure was between EUR 60,000 and EUR 69,000 across the four Member States surveyed (a small range, despite differences in SEA implementation in the four Member States) and that the average time needed to complete the procedure was around 217 FTE days. T

Craglia *et al*. (2012, p.11) reported the findings of a 2009 survey of practitioners from most EU countries, Norway, Switzerland and Turkey, involved in preparing evidence and materials for SEAs and EIAs. The article indicated that the average consultancy costs for SEAs (e.g. cost of the study to the client) had decreased from EUR 73,000 in 2002-2003 (date of the previous survey) to EUR 34,000 in 2009. The authors attributed this decrease to the increased experience of consultants in preparing these studies, together with the increased use of screening in many countries (which is faster than completing a full SEA). The article also showed that the time needed to complete an SEA (or EIA) report had decreased from six months on average to between one and three months.

Summary: available cost estimates

- Collected cost data show considerable variation, reflecting the diversity of plans and programmes subject to SEA (nature of the plan, size, sector, level of details, new plan vs. plan modification).
- Respondents often provided consultancy costs, as these are more visible to authorities and can be tracked directly. Very little data have been collected on administrative costs.

5.2.1.3.3 Types of benefits and their relative significance

A typology of benefits is presented below, based on the 2016 SEA Study (pp. 135-137). This list was used in the targeted consultation questionnaire to collect stakeholders' opinion on the magnitude of benefits.

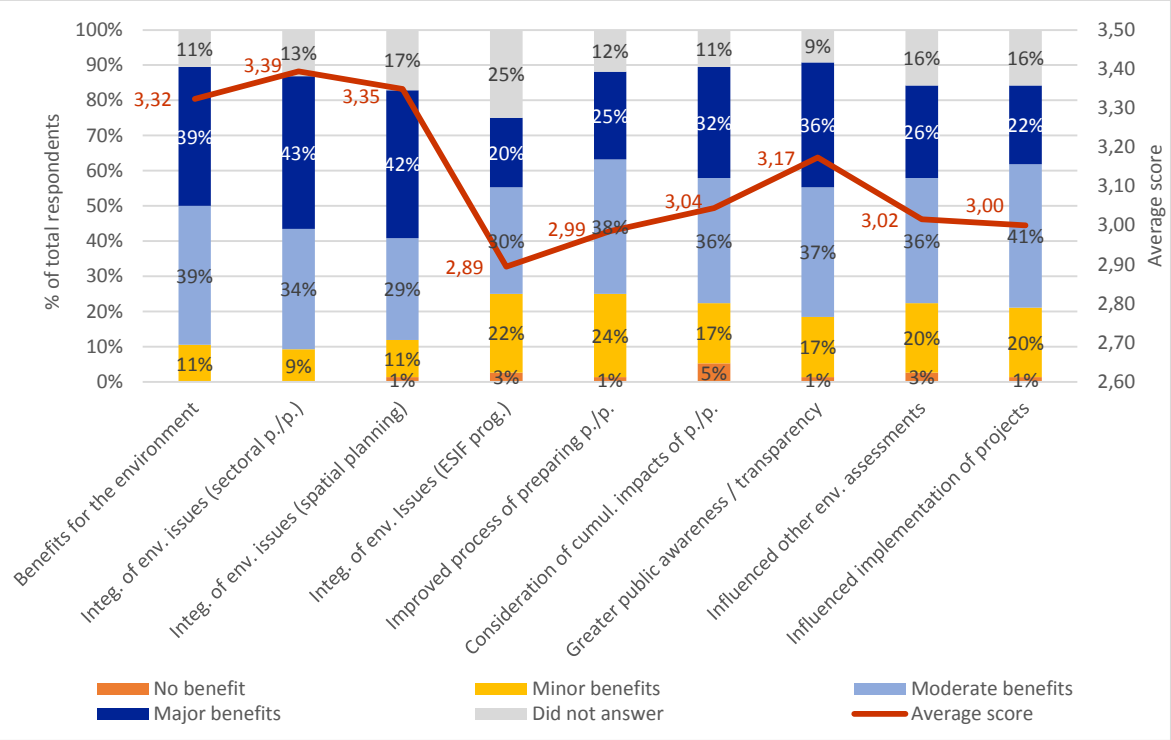
Box 11: Types of benefits resulting from implementation of the SEA Directive

- Benefits for the environment (e.g. preventing, reducing and - as fully as possible - offsetting any significant adverse effects on the environment resulting from the implementation of the plan or programme; introduction of measures to enhance the environment);
- Integration of environmental issues into plans and programmes subject to SEA (e.g. town, country and land use plans, ESI Fund programmes, etc.) at an early stage of the planning process;
- Enabling consideration of the cumulative impacts of plans and programmes on the environment;
- Improved process of preparing plans or programmes through the introduction of a systematic process;
- Greater public awareness (and transparency) of the process of preparing plans or programmes as a result of informing and consulting the public and enabling its participation in decision-making;
- Influence on other environmental assessments (e.g. EIA, AA, etc.). For instance, more efficient EIA procedures (input on the scope of EIA, anticipation of issues that would have only been considered at EIA stage, etc.);
- Influence on the siting, design and implementation of projects that are likely to have an impact on the environment;

- *Results from targeted consultation questionnaire (closed questions)*

Question 32 of the targeted consultation questionnaire asked about the significance of the main benefits of the Directive. Respondents[36] were asked to score a list of proposed benefits on the following scale: no benefits, minor benefits, moderate benefits, and major benefits. Respondents considered most proposed benefits to be moderate to major benefits (average scores equal to or above three). Only two of the proposed benefits were considered minor to moderate benefits (average scores below three). According to the respondents, the main benefits are the integration of environmental issues in sectoral plans and programmes, in town and country planning, and environmental benefits. The integration of environmental issues in ESI Funds programmes was considered the least significant benefit[37].

Figure 14: In your opinion, how significant are the benefits associated with the Directive? [Targeted consultation questionnaire] (share of total respondents, n=76; average score: no benefits: 1, minor benefits: 2, moderate benefits: 3, major benefits: 4)



Responses showed that national environmental authorities generally considered the benefits associated with the Directive more significant than the authorities responsible for plans and programmes and practitioners/academics.

A similar question was asked in the public consultation, where respondents generally considered the benefits associated with the Directive to be minor to moderate (most proposed benefits reached average scores between two and three). However, the ranking of the three main benefits mirrored that of the targeted consultation questionnaire, with the integration of environmental issues in sectoral plans and programmes reaching the highest average score (3.02), the integration of environmental issues in town and country planning the second highest average score (2.89) and environmental benefits the third highest average score (2.89). For four of

[36] 75-90% of the respondents answered this question.

[37] As previously mentioned, respondents were asked to consider benefits in relation to the application of the Directive to date, not in relation to the application of the Directive to legislative acts that could be considered plans and programmes in the light of the recent case law (Case C-290/15).

the proposed benefits, respondents to the public consultation were significantly more negative than respondents to the targeted consultation questionnaire (i.e. minus 0.45-0.5 in average score): enabled consideration of the cumulative impacts (2.53), greater public awareness (2.65), environmental benefits (2.84) and integration of environmental issues in town and country planning (2.89).

- *Results from targeted consultation questionnaire (open questions) and interviews*

Interviews confirmed that the main benefits of the SEA Directive were environmental benefits and the integration of environmental considerations into sectoral and land use plans and programmes. Several interviewees emphasised that the systematic nature of SEA - both in terms of application to a wide range of plans and programmes and in terms of scope (i.e. the wide range of environmental issues to be covered) – brings the greatest benefits in terms of integrating environmental considerations into planning. Greater public awareness was also mentioned as a significant benefit, in both interviews and open comments from that targeted consultation questionnaire. Respondents argued that the public consultation and the publication of the Environmental Report were a good opportunity to disseminate information on the state of the environment and mitigation measures taken to reduce the impacts of planning. A small number of respondents (four) also stated that SEA raises awareness among authorities and planners of the environmental impacts of planning.

Few respondents to the targeted consultation questionnaire or interviewees commented on the SEA's influence on environmental assessments of projects. In several cases, stakeholders referred to the use of information contained in SEAs in EIAs, or the consistency between the two assessments, often acknowledging that SEA only supports and facilitates the EIA procedure to a limited extent. Two practitioners, however, underlined that SEA could lead to time and cost savings in project implementation because the work done at SEA level (scoping and data collection) can be used in the EIA. An example provided was the Viennese waste management plan, where the SEA reduced the costs of the subsequent EIAs of waste treatment facilities.

Few respondents to the targeted consultation questionnaire commented on the influence of SEA on the siting, design and implementation of projects. However, several mentioned that SEA prevented the implementation of projects likely to have negative impacts on the environment or high social impacts (such as noise exposure, health impacts or impacts on landscape) (see Question 2 (effectiveness)). One example provided by a practitioner was the SEA of a municipal climate plan, where the public protest against windmills led to the choice of an alternative (biogas). It is likely that, without the SEA, the alternative option would not have been identified. This can also have a significant impact on project implementation by reducing public protest – and potentially significant implementation delays – at EIA stage.

- *Documentary review*

No studies were identified during the documentary review that attempted to quantify the benefits of SEA.

Carvalho, Partidario, & Sheate (2017, p.12) explored the influence of SEA on decision-making processes in high-speed rail planning, using three case studies in Portugal and the UK. The article found that in two cases, public controversy and related delays at project level could have been reduced by a high-level strategic discussion at the planning stage, which could have been done as part of the SEA procedure but was omitted.

Summary: types of benefits and their relative significance

- The targeted consultation activities (questionnaire and interviews) showed that the main perceived benefits of the SEA Directive relate to the integration of environmental issues into plans and programmes, as well as substantial environmental benefits. With the exception of greater public awareness,

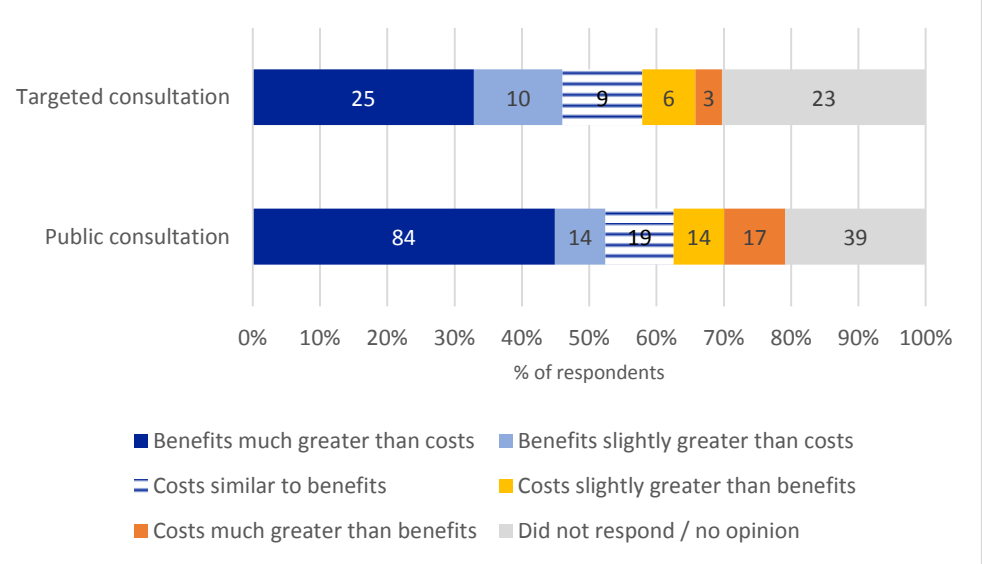
stakeholders tended to perceive more indirect benefits, such as the improvement of planning processes or influence over environmental assessments and implementation of projects.
- The systematic nature of SEA, both in terms of application to a wide range of plans and programmes and scope (i.e. the wide range of environmental issues to be covered) is associated with most benefits.
- Little evidence was found on the capacity of SEA to facilitate and accelerate the EIA procedure by anticipating issues with the siting or design of projects or averting public opposition to the project.

5.2.1.3.4 Comparison of costs / benefits

- *Results from targeted consultation questionnaire (closed questions)*

Question 33 of the targeted consultation questionnaire and question 22 of the public consultation asked respondents' opinions on how the costs of implementation of the SEA Directive compared to the benefits brought by the Directive. Generally, respondents believed that the benefits outweigh the costs, but this varied by respondent group. Around half of the respondents to the targeted and public consultation questionnaires felt that the benefits outweigh the costs. In both cases, however, a large number of respondents expressed no opinion. Only a minority considered costs to outweigh benefits. In the targeted consultation questionnaire, national environmental authorities and practitioners/academics were more positive that benefits exceed costs than the authorities responsible for plans and programmes (of which 30% stated that benefits are higher than costs and 40% that costs are similar or slightly greater than benefits). In the public consultation, a majority of NGOs and practitioners/academics and half of the individuals stated that benefits are greater than costs. Other groups were more divided, in particular authorities. Industry associations most strongly felt that costs exceed benefits.

Figure 15: In your opinion, how do the costs of implementation (including financial costs, time, human resources etc.) of the SEA Directive compare with the benefits brought about by the Directive? [Targeted consultation questionnaire and public consultation] (share of total respondents, targeted consultation n=76, public consultation n=187).



- *Results from targeted consultation questionnaire (open questions) and interviews*

21 respondents to the targeted consultation questionnaire and 110 respondents to the public consultation commented on their answers, a number of which (nine in the targeted consultation questionnaire and 14 in the public consultation) stated that they

could not form an opinion because costs and benefits cannot be quantified. 20 interviews addressed cost-benefit comparisons, confirming the results of the targeted consultation, as the 14 interviewees (six practitioners, six regional and local authorities responsible for plans/programmes and two national authorities) stated that costs of SEA are not excessive and/or that benefits are greater than the costs.

Various reasons motivated respondents' opinions on cost-effectiveness. Some considered the costs of SEA in comparison to the overall cost of preparing the plan or programme, or to the economic value of the plan/programme (i.e. the value of the investments it contained). Others considered the costs of SEA in relation to the effectiveness of the SEA process, in particular the impact on the plan or programme. Respondents to the public consultation, in particular, compared the one-time costs of carrying out an SEA to the long-lasting nature of the effects, or to avoidance of the long-term remediation costs to compensate for negative environmental impacts. Respondents who stated that costs are higher than benefits typically stated that SEA has brought few benefits and has only marginally improved environmental integration in plan-making, making costs disproportionate compared to the impact on the plan/programme.

Although most respondents and interviewees considered the costs of carrying out SEAs to be reasonable, 10 interviewees (from regional and local authorities or practitioners mostly working on SEAs of spatial planning documents) stated that these costs could be excessive for small local authorities. They pointed to the limited financial resources and administrative capacity of local authorities, which increases their reliance on external service providers, and linked it to the wider economic context of reductions in the budgets of regional and local authorities. Some interviewees added that authorities responsible for plans and programmes sometimes carried out low budget SEAs, due to limited financial capacity and (sometimes) less willingness to invest in good quality environmental assessments. Such reports bring few benefits. Several respondents also indicated that local authorities do not have the resources to ensure proper monitoring of the impacts of the plan/programme, which, in turn, reduces benefits.

- *Documentary review*

The 2016 SEA Study (p. 128) showed that, overall, SEA is perceived by most national environmental authorities as a relatively cost-effective mechanism for addressing environmental impacts. In their responses to the Commission's questionnaire, nearly half of the Member States answered positively when asked about the overall cost-effectiveness of SEA. The other half, however, indicated that cost-effectiveness depends on the type of plan and the manner in which it is carried out. In particular, the study found that carrying out SEA in an adaptive and tailored manner, considering the specificities of each planning level and focusing the assessment on significant impacts, is a pre-condition for cost-effectiveness.

Yaron & Nelson (2014, p.11) emphasised the weakness of the evidence relating to cost effectiveness of SEA, as little systematic cost-effectiveness and no cost-benefit analyses are available. They cited a number of studies that attempted to assess the cost effectiveness of SEA by comparing the cost of SEA with the cost of the interventions proposed by the plan/programme (e.g. Hirji & Davis, 2009). These studies found that the most effective SEAs were those under USD 100,000 that have a high level of influence on significantly larger spending. The comparison with the value of the plan, however, is considerably limited by the fact that at the time of adoption of the plan, the impact of its actual implementation is unknown. Yaron & Nelson (2014) mentioned another study by the Scottish Environmental Protection Agency from 2011 (SEPA, 2011) that considered SEAs cost-effective when they are 'plan shapers' and not 'fine tuners', meaning that the SEA is considered more cost-effective if its influence on the plan preparation process is significant.

Summary: comparison of costs / benefits

- Targeted and public consultation results generally showed that stakeholders believed benefits to outweigh costs, but this varied across the groups, with a less positive trend for authorities responsible for plans and programmes compared to environmental authorities and practitioners.
- Some of the regional and local authorities interviewed suggested that costs can be perceived as too high for small municipalities, which face resource constraints.
- Cost-effectiveness of SEA is to a large extent dependent on effective and proportionate implementation of the SEA procedure.

5.2.1.4. Key findings on Question 4

- The available data do not allow an understanding of the costs of SEA at EU level or average estimates by type of plan/programme, or even by Member State. Many contextual factors determine the cost of an SEA procedure (such as the complexity of the plan, the extent to which it sets the framework for projects, the number of alternatives, the scale of the plan/programme, labour costs, the availability of budget, etc.), making it difficult to get a solid understanding of how much SEA typically costs. In addition, the cost data provided are limited by authorities' ability to track such costs. As a result, the cost data collected were often simply the costs of hiring external consultants. However, the stakeholders consulted agreed that the main cost of the SEA procedure is the drafting of the Environmental Report, which is frequently carried out by external consultants.
- The costs of SEA were generally considered reasonable by the authorities consulted, although some of the regional and local authorities interviewed stated that SEA can be unaffordable for small local authorities.
- Stakeholders generally believed that the benefits of SEA outweigh the costs, although this varied by type of stakeholder, with a less positive trend evident among authorities responsible for plans and programmes, compared to environmental authorities and practitioners.
- The quantification of benefits of SEA was not possible, primarily because benefits directly attributable to SEA are procedural benefits. The stakeholders did state that the Directive is providing benefits in respect of the integration of environmental issues into plans and programmes, as well as substantial environmental benefits. However, the tendency of the stakeholders to reply based on their experience with specific plans makes it difficult to gain a understanding of the global benefits of SEA a safeguard mechanism.
- Overall, the consensus is that the costs of implementing the SEA Directive – both to authorities in terms of administrative burden, for implementation and at plan/programme level – are not excessive and are proportionate to the benefits of SEA, both in terms of integrating environmental concerns and stakeholder concerns into planning, and as a safeguarding mechanism. However, for individual plans and programmes, this is strongly influenced by the way in which the SEA is carried out (see Questions 5 and 6 of Efficiency).

5.2.2. Question 5: What factors influenced the efficiency with which the achievements observed were attained?

5.2.2.1. Interpretation and approach

Question 5 aims to identify and assess factors and practices that influence the efficiency of the Directive's performance. These factors can be contextual, such as the type of plan or programme, or the institutional set-up in a Member State. They can also be more practical, such as the capacity and expertise of the practitioner, or the

timing of the SEA vs. the planning process. These factors can be positive (i.e. good practice) or negative. The answer to this question considers how these factors impact the efficiency of the SEA procedure and how important these impacts are on the overall efficiency of the Directive. Finally, it is important to distinguish this question from Question 3, which assesses factors influencing the effectiveness of the Directive in achieving its objectives. The approach to answering this question focuses solely on factors that impact the resources required to carry out SEA, compared to the changes/effects achieved.

5.2.2.2. Main sources of evidence

- Answers from the targeted consultation questionnaire, complemented by interview responses, formed the basis for determining the main factors influencing efficiency and their relative importance.
- For good practices to increase efficiency of the SEA procedure, the analysis draws on consultation activities and literature.

5.2.2.3. Analysis of the question according to available evidence

The 2016 SEA Study, together with other literature and studies reviewed for the evaluation, were used to compile a list of factors potentially influencing efficiency. The distinction was made between contextual factors (i.e. relating to the nature of the plan or programme or institutions) and practical factors (i.e. relating to the way SEA is carried out). This list was then used in the targeted consultation questionnaire to collect stakeholder feedback on the significance of these factors.

Table 6: Contextual and practical factors influencing efficiency

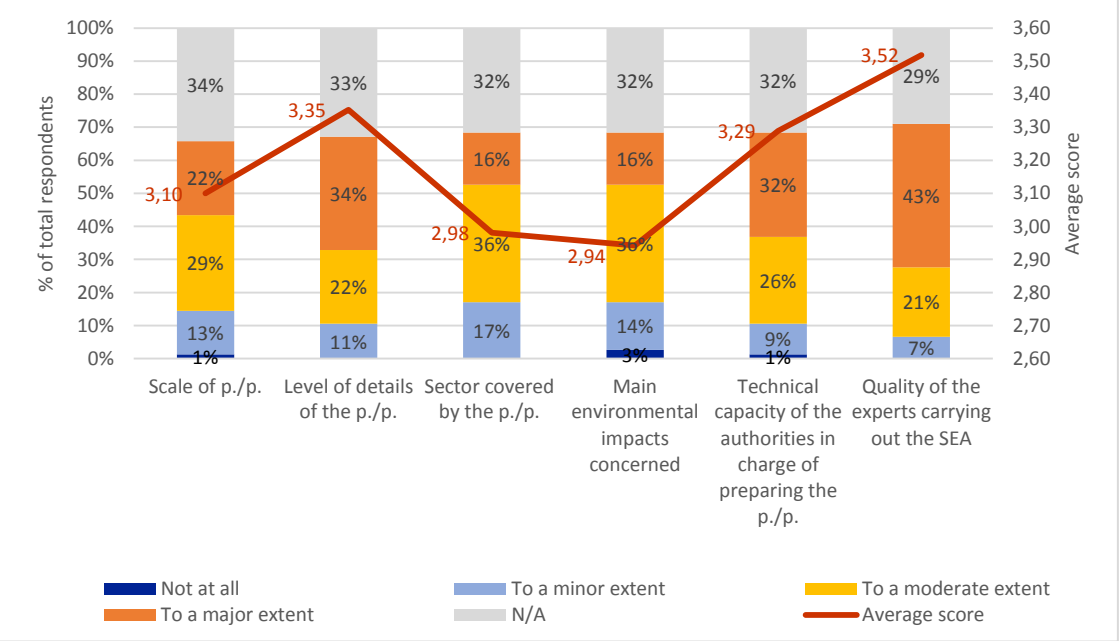
Contextual factors	Practical factors
■ Scale of plan or programme (e.g. national, regional, local) ■ Level of detail of the plan or programme ■ Sector covered by the plan or programme (e.g. cohesion, energy, transport, agriculture) ■ Main areas of the environment impacted (e.g. air, climate water, soil) ■ Technical capacity of the authorities responsible for preparing the plan/programme ■ Quality of the experts carrying out the SEA	■ Timing of the SEA and its synchronisation with the plan or programme in question ■ Effective use of scoping ■ Use of external experts vs. competent authorities to carry out preparation of the Environmental Report ■ Approaches to carrying out data collection (including availability and quality of data) ■ Factors related to the selection and investigation of alternatives ■ Factors related to stakeholder and public consultation

Contextual factors

- *Results from targeted consultation questionnaire (closed questions)*

Question 34 of the targeted consultation questionnaire asked about the significance of the impacts of certain factors on the efficiency of the SEA Directive, with respondents asked to score a proposed list of factors on the following scale: not at all, to a minor extent, to a moderate extent, to a major extent. Respondents generally considered that the contextual factors proposed have a moderate to major impact on efficiency (average score above three or very close to three). The quality of the experts carrying out the SEA and the level of detail or complexity of the plan were considered to be the most significant contextual factors.

Figure 16: To what extent do the following factors impact the efficiency of implementing the SEA Directive? [Targeted consultation questionnaire] (share of total respondents, n=76; average score: not at all:1, to a minor extent: 2, to a moderate extent: 3, to a major extent: 4)



- *Results from targeted consultation questionnaire (open questions) and interviews*

Of the 20 responses to the targeted consultation questionnaire on factors influencing efficiency, 11 commented on the results presented above. These respondents reflected on the quality of experts, the technical capacity of the authority, the scale of the plan, the sector covered and level of detail of the plan. In particular, interviewees noted the scale of the plan/programme (11 interviewees) and the level of detail or complexity of the plan (nine interviewees).

Respondents pointed out that more detailed plans/programmes require more in-depth assessment and data collection, often field studies (biodiversity, noise etc.) and more expertise generally, warranting greater reliance on external contractors. Some of the respondents made a link with the scale of the plan, arguing that lower level plans such as land use plans (which have more concrete impacts on a given area) can require a more detailed assessment and the involvement of a lot of authorities. A number of respondents also indicated that the larger the spatial area covered by the plan, the more expensive the SEA. However, respondents to the targeted consultation questionnaire and interviewees also tended to provide lower cost estimates for SEAs of local land use plans than for other types of plans (see section 5.2.1.3). This could be explained by a lower capacity of investment at local level (as several mentioned) or, in certain cases, by less willingness to set aside significant resources for the SEA. For instance, one practitioner explained that the cost of SEA is proportional to the overall plan preparation costs, as it is easier to set aside more resources for the SEA in the case of a larger plan for which a lot of resources are committed.

Although these are some of the factors that were scored the highest by respondents to the targeted consultation questionnaire, the capacity of competent authorities and the quality of experts carrying out SEA were mentioned by few interviewees, generally as a factor influencing effectiveness rather than efficiency. Several interviewees, however, mentioned that a good-quality SEA reduces the risk of getting a negative opinion from the environmental authority, saving time and cost on revisions. The capacity of the authority and the quality of experts are likely to influence the general quality of the SEA and thus the time spent on revisions.

- *Documentary review*

Farmer *et al*. (2015) found a correlation between the complexity of a plan/programme and the costs of SEA, as the complexity of the plan can result in higher uncertainty on the scope and impact of the plan/programme, greater data needs, more options to be assessed and a larger number of stakeholders to be consulted.

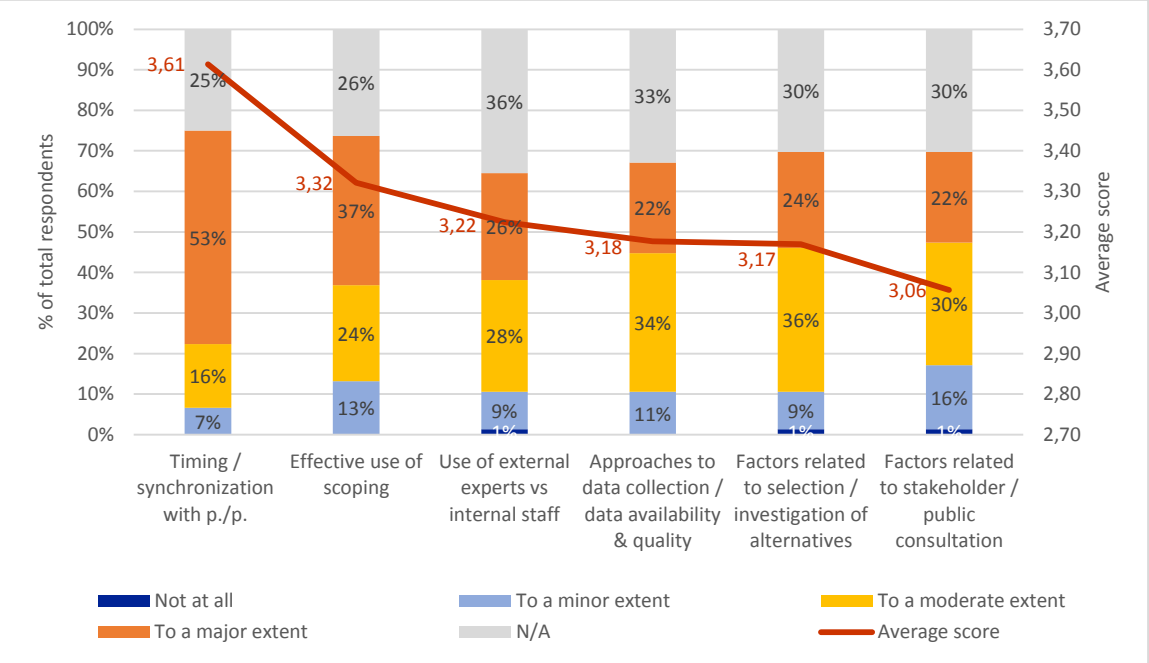
Practical factors

- *Results from targeted consultation questionnaire (closed questions)*

Respondents considered that all of the practical factors proposed (question 34) have a moderate to major impact on efficiency (average scores above three). Some of the explanations given in open questions or interviews (described below) suggested that it was difficult for some respondents/interviewees to distinguish between factors influencing effectiveness and those influencing efficiency, potentially skewing the results of question 34. The timing of SEA and its synchronisation with the preparation of the plan or programme being assessed, as well as the effective use of scoping, were the most significant practical factors, according to respondents.

Authorities responsible for plans and programmes scored the use of external experts to carry out the preparation of the Environmental Report higher than other groups, while they scored all other factors lower. Practitioners/academics and NGOs scored higher than the average and higher than other respondents' groups on the timing/synchronisation of SEA with the plan preparation process, the effective use of scoping, and factors related to the selection and investigation of alternatives and public/stakeholder consultation. National environmental authorities scored each factor close to the average.

Figure 17: To what extent do the following factors impact the efficiency of implementing the SEA Directive? [Targeted consultation questionnaire] (share of total respondents, n=76; average score: not at all:1, to a minor extent: 2, to a moderate extent: 3, to a major extent: 4)



- *Results from targeted consultation questionnaire (open questions) and interviews*

Of the 20 respondents on factors influencing efficiency, 17 respondents commented on the results presented above. The synchronisation of the SEA with the plan preparation process, the effective use of scoping, and level of detail of Environmental Reports were the factors receiving most comments. They were also the most cited factors in the interviews.

- *Timing of SEA and its synchronisation with the plan*

Respondents typically linked the timing of the SEA and its synchronisation with the plan preparation process and the costs of SEA because of the influence of SEA timing on its quality, and the capacity of the competent authority to complete the procedure on time. Respondents reported that higher quality SEAs are more efficient, as they deliver more substantial benefits, reduce the risk of duplication of work (e.g. a negative opinion from the environmental authority and/or the request of additional field studies) and legal challenges. The synchronisation between the SEA and the plan preparation process also guaranteed that both procedures are completed on time and avoids procedural delays in the adoption of the plan/programme, according to some stakeholders.

- *Effective use of scoping*

Commenting on the use of scoping, respondents often indicated that the level of detail of the Environmental Report is a significant cost driver. They often mentioned that Environmental Reports are very comprehensive and detailed, based on time-consuming data collection, which can be disproportionate in comparison with the objectives and content of the plan/programme and which drive up the costs of the SEA procedure. In particular, when the plan covers a large territory or is a broad strategy addressing a wide range of topics, competent authorities (according to some respondents) tend to get lost in establishing comprehensive baselines and/or covering a very wide range of impacts instead of focusing on the most relevant ones. A negative consequence of such an approach is that it places too much emphasis on the Environmental Report and not enough on the process and necessary iteration between the preparation of the plan/programme and the Environmental Report, which eventually increases the separation between the two processes.

Respondents proposed two main explanations for this problem: a precautionary approach to avoid non-compliance; and the tendency to assess concrete and specific impacts rather than gaining an understanding of the strategic level environmental aspects of a plan/programme. Several respondents made the case for more proportionate SEAs, seeking an appropriate level of information (feasible for both the authority and contractors, and sufficient in terms of environmental protection) and prioritising the environmental aspects that matter the most for a specific plan/programme. This could be achieved by spending more time at the scoping stage identifying the most relevant environmental issues and defining the content of the Environmental Report.

- *Use of external experts vs. internal staff*

Although over half of the respondents to the targeted consultation questionnaire indicated that the use of external experts moderately or significantly impacts the efficiency of SEA, very few respondents commented on this issue. A small number of respondents highlighted that external expertise is a significant cost in the SEA procedure, with authorities needing time to set up and manage tendering procedures. Eight regional and local authorities interviewed mentioned the costs of external expertise compared to internal costs. Interviewees were divided on whether carrying out all of the SEA process in the authority is more or less cost-effective than outsourcing parts of it. Opinions diverged mostly on the quality of external expertise, with interviewees supporting the added value of the experience gained by external experts on different plans and contexts and the necessary input from highly specialised experts in certain environmental fields, and those criticising external

support as creating higher costs for little added value. Similar divisions were evident during the evaluation workshop.

- *Data availability and quality*

The issue of data availability and quality was addressed by eight interviewees, who raised issues relating to access to environmental data (especially at local level, as the need for spatial data is more prominent for SEAs of spatial planning documents) and underlined the cost of data collection and field studies. Several interviewees also emphasised the need for more data sharing to avoid collecting the same data for each SEA and duplicating costly field studies. Others mentioned the existence of databases providing free access to spatial/environmental data, or cooperation with a national or regional agency providing access to spatial or environmental data to regional and local authorities. Several also argued that the environmental diagnoses carried out for the purposes of SEA are not sufficiently reused when new SEA procedures are started, although some of the analysis and data interpretation could be reused in several SEAs covering the same geographical area.

Factors related to the selection and investigation of alternatives were often not addressed by respondents to the targeted consultation questionnaire or in the interviews. Some mentioned that the number of alternatives developed and assessed was a factor increasing the costs. The few interviewees who addressed factors related to stakeholders and public consultation argued that early involvement of all authorities and stakeholders to be consulted reduces procedural delays. In question 35 of the targeted consultation questionnaire, several respondents mentioned the SEA Gateway (a Scottish Government initiative, which manages the formal correspondence between the competent authorities and consulted authorities) as a good practice to reduce delays in stakeholder consultation and to promote data-sharing between authorities.

- *Documentary review*

In the case studies carried out by Farmer *et al*. (2015, pp. 65-67), the lack of integration of the SEA and plan preparation processes was the most cited factor influencing time and costs of SEA implementation. Findings from the case studies showed that soft factors, such as the cooperation between the plan makers and the SEA team (whether in house or external) and the early engagement of the SEA team in the process, are important components of an efficient SEA procedure, as it increases the quality of the SEA and ensures that the plan is adopted on time. Data collection needs were the second most cited factor by the consulted authorities. Describing good practices, Farmer *et al*. (2015) indicated that focused scoping is a key success factor for an efficient SEA procedure as it leads to a more focused and proportionate assessment. The case studies showed that having an internal SEA team in national or regional authorities resulted in direct benefits in some Member States, such as reduced costs of SEA and development of in-house expertise.

Several other articles reflected on the use of scoping. Yaron & Nelson (2014, p. 10) argued that fewer and more focused SEAs would make better use of available capacity. Zhang *et al.* (2013, p. 91) reviewed 30 articles on EU and non-EU countries, published between 2000 and 2010, identifying critical factors influencing the performance of SEA implementation. Their literature review found that the scope of SEA was often too extensive, covering a large and unmanageable range of issues, objectives and indicators.

One article highlighted issues related with access to spatial data. Craglia *et al*. (2012, pp. 16-17) report that 60% of the practitioners included in their 2009 survey indicated that finding spatial data continues to be an important concern, which impacts the preparation of EIA/SEA reports in terms of time spent in their preparation (according to 68% of surveyed practitioners), higher uncertainty of impacts (50% of surveyed practitioners), lower accuracy (47% of surveyed practitioners) and higher costs (47% of surveyed practitioners). The article concludes that removing the barriers to spatial

data access and interoperability could potentially save more than EUR 150 million per year (based on an average cost per study of EUR 40,000 and an overall market for EIAs/SEAs of EUR 1 billion each year).

5.2.2.4. Key findings

- Generally, high quality SEAs are more efficient as they deliver larger benefits and reduce the risk of duplication of work (in case of a negative opinion from the environmental authority) and legal challenges. As a result, the quality of experts carrying out the SEA is an important factor influencing the efficiency of the SEA procedure.
- The level of detail or complexity of the plan/programme and, to a lesser extent, the scale of the plan strongly influence the costs of SEA, as more complex plans and programmes require more in-depth assessment, data collection and field studies, the involvement of more experts and stakeholders and might require the development and assessment of more alternatives.
- The practical factors primarily influencing efficiency, according to consultation respondents, are the timing of the SEA and its synchronisation with the plan or programme being assessed, and the use of scoping. The technical capacity of the authority responsible for preparing the plan or programme, as well as its financial and human resources, is also mentioned as an important factor.
- The efficient use of scoping can strongly determine costs as it influences the content of the Environmental Report (identified as the most prominent cost in the SEA procedure). The stakeholders consulted criticised the tendency to produce lengthy and overly detailed Environmental Reports as being inefficient and called for reports that are more proportionate and focused on the environmental aspects of greatest significant at plan/programme level.

5.2.3. Question 6: What is the cause of any unnecessary regulatory burden or complexity associated with the SEA Directive?

5.2.3.1. Interpretation and approach

Question 6 aims to identify and assess any unnecessary regulatory burden or complexity associated with the Directive and, if such a burden exists, to understand how the Directive causes this excessive burden. Regulatory burden includes costs resulting from the mandatory obligations a piece of legislation places on public authorities, businesses, citizens and civil society organisations. The approach to this question is to identify and assess whether perceived unnecessary costs are due to compliance with the SEA Directive (rather than inefficient implementation of the SEA procedure) and how these costs could be mitigated.

5.2.3.2. Main sources of evidence

In the absence of literature or studies directly addressing the issue of administrative burden linked to the implementation of the SEA Directive, the evidence for responding to this question relies mainly on the consultation activities, in particular the targeted consultation questionnaire and interviews.

5.2.3.3. Analysis of the question according to available evidence

5.2.3.3.1 Unnecessary regulatory burden or complexity

Respondents to the targeted consultation questionnaire did not consider any of the costs proposed in the questionnaire an excessive burden (question 28). However, stakeholders drew attention to certain activities required by the SEA Directive that pose unnecessary burden.

Some respondents mentioned that the requirement to carry out a full SEA, including the development of alternatives, might not be appropriate for certain plans/programmes, in particular in the case of the renewal of a plan/programme that already underwent SEA at the time of its adoption. Respondents indicated that it is particularly burdensome when there is a short period of time between the two plans. Noise management action plans renewed every five years were mentioned by one respondent as an example. Local spatial planning documents, which are frequently revised and often dependent on higher-level spatial plans, were also mentioned by some stakeholders, who argued that the hierarchical nature of some spatial plans would call for more coordinated SEA procedures or lighter SEA procedures at local level. The development of feasible alternatives in the context of limited modification of a plan/programme was considered difficult and potentially hindered the preparation of both the plan and the SEA.

A number of issues were raised in relation to the screening of plans and programmes to determine whether they should undergo SEA. This was mentioned several times as a burden, as it requires an assessment to justify whether a full SEA is needed for all plans and programmes, even those for which a full SEA is not likely to be required. Two authorities mentioned they were considering establishing a pre-screening stage to more quickly identify the plans and programme most likely to have significant environmental effects and focus resources accordingly.

Another issue raised in the targeted consultation questionnaire and the evaluation workshop was the lack of clarity of the terminology 'plans and programmes which set the framework for future development consent of projects'. This phrase can be interpreted in a limited sense, i.e. including plans and programmes that list future projects and/or determine their location, or in a broader sense, i.e. including any plans and programmes that contain provisions that determine the authorisation and implementation of future projects. Further clarification of this phrase was requested during the workshop to avoid complexities at the screening stage.

A final issue mentioned in the targeted consultation questionnaire related to SEAs of plans and programmes determining the use of small areas at local level (Article 3(3) of the SEA Directive). In light of the Court of Justice of the European Union (CJEU) judgment in C-444/15 (Associazione Italia Nostra Onlus v Comune di Venezia and Others), to be considered as determining the use of a small area at local level, a plan or programme must be prepared and/or adopted by a local authority rather than by a regional or national authority (see Section 3, State of play). One respondent argued that this narrow interpretation causes excessive burden as, in certain cases, authorities at regional or national levels are adopting plans and programmes determining the use of small areas at local level but cannot make use of the exemption laid down in Article 3(3) and therefore have to carry out a full SEA. According to this respondent, the administrative level is not an appropriate criterion.

5.2.3.3.2 Concerns related to the potential extension of the scope of the SEA Directive

Some Member States expressed concern that the recent CJEU cases (Case C-290/15: D'Oultremont and others v Région Wallonne; Case C-671/16: Inter-Environnement Bruxelles and others v Brussels Capital Region; Case C-160/17: Thybaut and others v Région Wallonne, see Section 3, State of play) providing a broad interpretation of the definition of plans and programmes and potentially including policies and legislation, could lead to excessive burden on competent authorities by increasing the number of SEAs to be carried out.

To reflect on the potential consequences of case C-290/15, an *ad hoc* working group of the Commission Group of EIA/SEA National Experts was created at the Commission Group's meeting in October 2017 in Tallinn. This working group includes six Member States (Austria, Belgium (Flanders region), Czech Republic, Denmark, France, and

Ireland). The *ad hoc* working group published a discussion paper in September 2018[38], which concluded that policies and legislation should not be regarded as falling within the scope of the SEA Directive, either from a legal point of view (i.e. Article 2(a) of the SEA Directive is likely to exclude policies and legislation since they are not required by legislative, regulatory or administrative provisions) or a practical point of view (considering the additional costs and complexity that this would entail). In particular, the discussion paper argued that applying the SEA procedure to high-level initiatives that have yet to crystallise into plans and programmes would require significant time demands from public authorities without leading to the effective assessment of impacts on the environment, because policies are not sufficiently concrete and the requirements of the SEA Directive are too detailed for such an assessment, nor do they allow for any lighter procedure. In addition, the paper reiterated that the SEA Protocol makes a distinction between plans and programmes and policies and legislation, which are excluded from formal SEA requirements, but whose preparation should consider environmental concerns 'to the extent appropriate'. The paper suggested that this is a more appropriate approach as it provides discretion to authorities to adopt the most appropriate tool to assess environmental impacts. The discussion paper added that Regulatory Impact Assessment (RIA) already exists in many Member States for this purpose.

A similar rationale to that of the discussion paper was presented by the national authorities in their replies to the targeted consultation questionnaire, during interviews and at the evaluation workshop. In addition to the points mentioned in the discussion paper, these Member States authorities emphasised the uncertainty created by the case law and the risk of an overly strict application of the Directive. Ensuring that plans/programmes being prepared are not annulled after adoption because of procedural fault would lead to increased administrative burden and delays in the implementation of the measures contained in the plans/programmes. Similar concerns were expressed at having past policies deemed invalid because they were adopted without SEA or permits annulled because they were based on policies or legislation adopted without SEA.

To date, there is little evidence of the extent to which this broad interpretation would impact Member State efficiency in complying with the SEA Directive, as there is limited experience, in only a few Member States, in the application of the SEA procedure to legislative acts that could be defined as plans/programmes. Few Member States transposed the SEA Directive beyond the scope and requirements of the Directive. Scotland has applied SEA to 'strategies', including policies and legislation, in addition to plans and programmes. The Scottish authority argued during the evaluation workshop that SEA could remain an efficient process when applied to policies and legislation, provided it remains flexible and adaptable to the iterations of the policy-making process and is well integrated into the policy-making process. However, the recent experience of Belgium, following case C-290-15 (d'Oultremont and others v Walloon Region), showed that the application of the Directive to a normative act might be technically complex – as the act has a broad scope of application and sets legal ground for action – and can be costly (see). This example, however, remains illustrative and is not yet sufficient to draw firm conclusions on this issue.

Box 12: Information provided by the Walloon Region (as part of the targeted consultation) on the follow-up to case C-290/15

Following case C-290-15 (d'Oultremont and others v Walloon Region), the Belgian Council of State issued, on November 2016, its judgment No 239.886 annulling the Walloon Government's order of 13 February 2014 on sectoral conditions related to wind farm (i.e. order subject of proceedings in C-209/15). Through the act of annulment, the Belgian Council of State temporarily maintained the legal effects of the

[38] Ad Hoc Working Group Discussion Paper: https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/d7e4ef55-21a8-4491-b132-045466320cae/details

annulled order for a period of 3 years, aiming to ensure legal certainty during the time of rectifying the failure to perform SEA on that governmental order. The SEA procedure is still ongoing, but it is known so far that the preparation of the draft Environmental Report has taken approximately one year. Up to now, the cost of the preparation of the Environmental report amounted to EUR 154,880; the cost of the public consultation and environmental declaration amounted to EUR 300,000.

The potential burden on Member States, as well as the benefits of carrying out these additional SEAs, would need to be further investigated to understand whether direct costs and regulatory burden would be likely to be disproportionate compared to the effects achieved.

5.2.3.4. Key findings

- Consultation results led to the identification of few provisions that could pose unnecessary complexity or burden. These concern the renewal and modification of plans and programmes and the screening process. Issues related to plan modification questioned the relevance of carrying out a full SEA procedure in all cases and the flexibility of the procedure in cases where it might not be appropriate to develop full alternatives. Issues related to screening called for more guidelines on the definition of plans and programmes subjected to SEA.
- Some Member States expressed concerns that the recent CJEU cases (Case C-290/15: D'Oultremont and others v Région Wallonne; Case C-671/16: Inter-Environnement Bruxelles and others v Brussels Capital Region; Case C-160/17: Thybaut and others v Région Wallonne) providing a broad interpretation of the definition of plans and programmes, potentially including policies and legislation, could lead to excessive burden on competent authorities as it could significantly increase the number of SEAs to be carried out. A number of Member States called for the explicit exclusion of policies and legislation from the SEA Directive.
- Extending the scope of application of the SEA Directive to certain types of policies and legislation could also negatively impact the efficiency of SEA, as it is difficult to provide a useful assessment of the possible environmental impacts of very high-level initiatives that have yet to crystallise into plans and programmes. If the scope of plans and programmes subject to SEA were to be extended, the SEA procedure might become cumbersome in cases where the necessity of the SEA is questionable and/or the effects achieved are considered low.
- Debates held during the evaluation workshop on the extension of the scope of the Directive questioned the flexibility and adaptability of the SEA procedure and the suitability of this procedure to apply to policies and legislation. As specified in the Directive, the SEA procedure is specific and all steps need to be completed to ensure compliance. The Directive does not allow for a lighter procedure. The example of Scotland showed that the SEA procedure could be applied in the context of the policy-development process.

5.3. RELEVANCE

Relevance assesses whether the original objectives of the SEA Directive continue to correspond to the needs of current and future EU planning, assessment and environmental policy. It looks at whether the objectives of the legislation remain necessary and appropriate, and if the objectives and requirements set out in the Directive are still valid in contributing to sustainable development.

5.3.1. Question 7: To what extent is the Directive still relevant to promote a high level of protection of the environment and sustainable development?

5.3.1.1. Interpretation and approach

Sustainable development is a fundamental objective of the EU, enshrined in Article 11 of the Treaty on the Functioning of the European Union (TFEU) and recognised in the EU Sustainable Development Strategy (SDS) (2001 Gothenburg strategy and 2006 adoption of SDS for an enlarged EU). This commits the EU to the conservation and management of natural resources, sustainable consumption and production, sustainable transport, climate change and energy, public health, social inclusion, demography and migration, and global poverty and sustainable development challenges (i.e. the seven key challenges in the 2006 updated SDS). The commitment to sustainable development requires the integration of environmental considerations into the preparation and adoption of plans and programmes across a range of development sectors. This involves the participation of environmental authorities, experts and the public in the process for developing and adopting plans and programmes. This question seeks to understand whether the SEA process (as set out in the Directive and implemented in practice across the Member States) remains relevant in ensuring a high level of environmental protection and contributing to sustainable development as outlined in the EU SDS.

The relevance of the SEA Directive to the aims and principles of sustainable development was examined further through the following sub-questions:

- How consistent is the SEA Directive and its implementation with the current and likely future needs of areas relevant to sustainable development including sustainable growth, climate change mitigation and adaptation, resource efficiency and the circular economy, biodiversity conservation, natural capital, sustainable cities, human health and wellbeing, water quality, flood risk protection and soil protection?
- Has the implementation of the SEA Directive kept pace with particular areas of emerging international policy, objectives, targets and concepts for sustainable development?
- How well adapted is SEA to technological or scientific advances (e.g. in planning processes, types of plans/programmes etc)?
- How important is it to citizens to have the opportunity to be informed and to provide input on the potential environmental impacts of public plans and programmes?

5.3.1.2. Main sources of evidence

Three key sources of information were used to address this question:

- A literature review of peer-reviewed sources and other grey literature on SEA practice and sustainable development.
- Responses to the targeted consultation questionnaire from Member State SEA authorities, relevant NGOs and SEA experts, and the public consultation.

- Responses from semi-structured interviews with stakeholders in selected Member States.

The results from the targeted consultation questionnaires, together with the responses from the semi-structured interviews, provide the main basis for the findings presented in section 5.3.

5.3.1.3. Analysis of the question according to available evidence

Relevance to environmental protection and sustainable development

This section explores the relevance of the SEA Directive for environmental protection and sustainable development and the extent to which SEA remains consistent with EU environmental policies since the adoption of the Directive. The SEA Directive was agreed in 2001, prior to many of the most recent developments on sustainable development, e.g. concepts of planetary boundaries (as an expression of environmental limits intrinsic to sustainable development), Rio +20 Earth Summit (in 2012), and the development of the Sustainable Development Goals (SDGs) in 2015. It is appropriate, therefore, to explore the relevance of the SEA Directive to the continually evolving conceptions of sustainable development.

Consultees showed a strong consensus on the relevance of the SEA Directive for environmental protection and sustainable development. A considerable majority of respondents to the targeted consultation (97%) believe that the SEA Directive (and its implementation) remains relevant or partially relevant to promoting a high level of protection of the environment and sustainable development. None of the respondents believe the Directive to be irrelevant. The consultation outcomes show a prevailing belief that the SEA Directive sets a general direction that highlights the most important environmental aspects and ensures broad involvement of stakeholders.

The practitioners and authorities interviewed had a common understanding of the SEA Directive's strong relevance for environmental protection and sustainable development. This appears to be the case for larger scale plans and programmes, in particular, as the Directive sets a general direction while highlighting important environmental aspects. The relevance of the SEA Directive, according to these interviewees, appears to lessen as plans and programmes lower in scale, where environmental impact assessment (EIA) of projects becomes more important and relevant, and/or where the overlap between EIA (e.g. of large projects) and SEA (of local plans) becomes most pronounced (European Commission, 2005). Overall, the interviewees believe the Directive to be a suitable instrument to promote environmental protection. Similar to the 2016 SEA Study, interviewees report that the Directive has become an embedded element in the context of planning, with no other instrument achieving the same objectives.

Some consultation evidence indicates the limitations of the SEA Directive with respect to promoting protection of the environment and sustainable development. Several practitioners suggest that while the implementation of SEA describes a process, implementation of each element is not prescribed (in keeping with the nature of a Directive), weakening its ability to prevent the pursuit of unsustainable and environmentally harmful activities due to differing interpretations of the requirements of key steps in the process. One respondent suggested that there may be favouritism towards a particular group of stakeholders related to the resources they have available in the implementation process. For example, stakeholder groups with more resources available to them may experience a bias in their favour during the consultation procedures, with the opinions of the general public less favoured. Another respondent addressed the issue on limitations by noting that the SEA Directive is relevant even though its implementation can be improved (see Section 5.1 of this report, on Effectiveness). The evaluation workshop in December 2018 agreed that the SEA Directive is more relevant now than ever before.

Examples were given of plans where SEA contributes to satisfy the evolving needs of the citizens and environment, such as hydrology, flood protection, air quality and others. One such example was the SEA of the West Dunbartonshire Local Development Plan (Scotland), which showcased the importance of the Directive for the current needs of biodiversity and flood risk protection. The SEA identified the potential for significant environmental impacts in relation to sea level rise that may have not been the priority at the time the Directive came into force in 2001. The new developments planned were recognised to potentially constrain sensitive habitats, resulting in coastal squeeze. The SEA highlighted the importance of these habitats and the need for the Local Development Plan to safeguard against habitat loss. As a result of the SEA process, a buffer area was identified within the plan, which would prevent any impact on habitats as a result of coastal squeeze. This demonstrates the flexibility and continued relevance of the Directive to capture current needs (and in relation to biodiversity and climate change, specifically supported by recent guidance from the Commission (European Commission, 2013a)).

The practitioners and NGOs consulted frequently referred to the importance of applying the SEA Directive at a strategic planning level instead of near-project level. Recognising that future needs in the context of changing environmental conditions can only be addressed appropriately at the strategic level can be considered a sign of good implementation of the Directive. Carvalho *et al*. (2017) suggested that the outcome of an SEA depends greatly on its entry point in the planning process, which affects its capacity to influence decision-making. The respondents to the targeted consultation questionnaire suggest that SEA is a helpful tool at the strategic planning level, particularly in answering two questions:

- Does the particular policy/plan correspond with the sustainable future society desired?
- Will the particular policy/plan contribute to the transformation to that sustainable future society?

The literature acknowledges the 'added value' and potential benefits of linking SEA with spatial planning, where environmental awareness and accountability in the decision-making process lead to sustainable development (Belčáková, 2016; Sheate, 2012).

The evaluation workshop, during its discussions on Relevance, raised the issue of training, recognising the need for capacity-building to deliver effective implementation of the SEA Directive in relation to plan-making and monitoring, and to address evolving needs in view of sustainable development. Various participants in the consultation activities noted that the actual effects of the SEA Directive depend on the quality of implementation of specific SEA on individual plans and programmes, for which the institutional capacity of the authorities reviewing and approving the SEA is a recognised pre-condition. Often, most - if not all - are experts on biophysical environmental aspects and may look at the issue in solely thematic silos. A similar issue is the skills and available training of the personnel carrying out the SEA, with one expert stressing the serious lack of training for environmental authorities' personnel, which paves the way to the production of inadequate materials, without an appropriate critical review.

Many respondents to the targeted consultation questionnaire considered the relevance of the SEA Directive and its implementation in view of the many advantages it provides, including those that enable increased effectiveness of the Directive (see section 5.1). Particular emphasis was placed on the holistic approach it enables, in combination with the main objective set out in Article 1 of the Directive. Representatives of authorities pointed out that this facilitates increased consideration of broad cross-sectoral issues, going beyond sectoral environmental issues and policies (e.g. water, air, climate, waste etc). This is achieved by considering other key relevant plans and programmes and including all relevant (national and international)

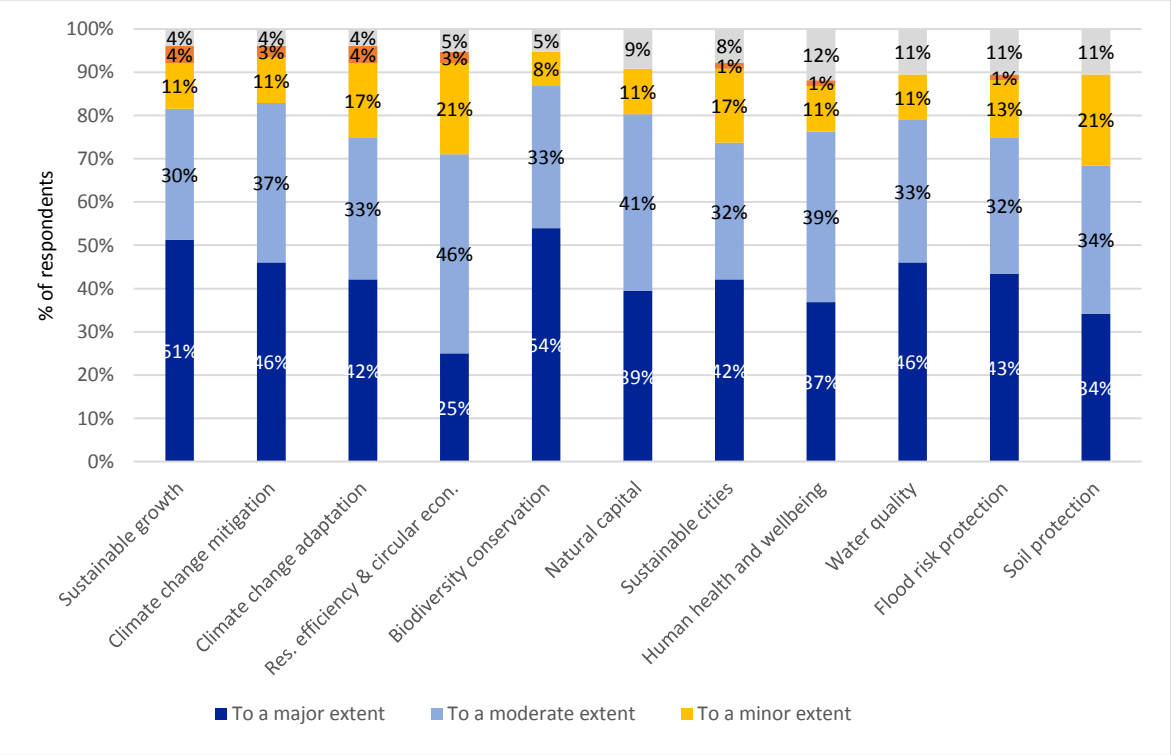
policies or objectives in determining the full range of likely significant effects. Other advantages that can be attributed to the holistic nature of the Directive are adaptability to individual requirements, the applicability of necessary and useful methods, and exposing potential trade-offs between environmental goals (e.g. biodiversity vs. climate) to decision makers.

Several SEA practitioners and NGOs participating in the consultation highlighted the value of implementing the SEA Directive properly. In those circumstances, the SEA could be a key tool to ensure the transition of the EU's economy and society to a truly sustainable path and would have the capacity to direct development away from areas of biodiversity value and flood risk. As such, it could play a key role in natural capital protection and climate change adaptation, in particular.

A recurring comment among the interviewees on the relevance of the SEA Directive was its important contribution to the analysis and identification of alternatives at the early stages of a plan or programme. One authority pointed out that this enables the Directive to be a useful tool to bring environmental impact and sustainability to the forefront, both in terms of public debate and ensuring dialogue on impacts within municipalities.

Stakeholders hold a positive view of the Directive's consistency with the needs of other EU environmental policies (see Figure 18). The vast majority (88%) of the respondents to the targeted consultation consider (to a major or moderate extent) that the SEA Directive and its implementation is consistent with the current and likely future needs of EU citizens and environmental policies. In fact, approximately 60% of respondents from authorities and 62% of academic experts and practitioners believe that the SEA Directive is consistent with current and future needs to a major extent.

Figure 18: In relation to the particular needs of the EU's citizens, environment and economy, to what extent is the SEA Directive and its implementation consistent with current and likely future needs of the following areas? [Targeted consultation questionnaire] (share of total respondents, n=76)



This belief is particularly strong in the areas of sustainable growth and biodiversity conservation, where participants note the significant contribution of the SEA in

considering biodiversity and natural capital in all sectoral plans and programmes. By contrast, resource efficiency and the circular economy, climate change adaptation and mitigation, and sustainable cities and soil protection were the themes whose needs were considered least consistent with the SEA Directive. Here, SEA practitioners and planning authorities were generally more critical than environmental authorities. As one expert stated at interview, 'in relation to these areas the SEA requires some rethinking in order to ensure better integration'.

However, views on the SEA Directive's consistency with current and likely future needs of EU environmental policies varied for some themes. While certain respondents to the targeted consultation questionnaire noted that the Directive has a key role in climate adaptation, others felt that SEA should take a more robust look at the continuously evolving information on climate change and reflect the magnitude of those challenges. Soil protection also showed contrasting views, with one respondent highlighting the Directive's lack of application to the relevant policies and legislation, while another pointed to the Directive's contributions to the avoidance and mitigation of land take.

The SEA Directive's consistency with current and likely future needs on sustainable growth was viewed differently by the respondents. One suggested that the SEA process mostly matches the sustainable growth targets. However, like the 2016 SEA Study, the academic experts and practitioners noted that the Directive is more focused on the biophysical environment, with limited contribution to economic development properly integrated with social and environmental aspects. This focus on the environmental aspects (as opposed to the economic and social aspects) has been highlighted as one of the issues associated with sustainable development implementation more generally (Drexhage & Murphy, 2010).

The non-prescriptive procedural nature of the Directive means that specific EU objectives relating to the environmental aspects of sustainable development are not defined in detail as key areas for review. Some indication is given, however, of the types of information required within Environmental Reports and the criteria for determining the likely significance of impacts:

- Information on '(f) the likely significant effects (1) on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors'[39].

Respondents highlighted the improvements needed in relation to legislative issues, with some pointing to the potential for ambiguity in what constitutes a plan/programme and legislation/policy under the SEA Directive, which affects its relevance to current and future needs of EU environmental policies. One expert pointed out that although the SEA Directive itself does not refer to specific environmental goals or targets, those from policies related to the specified areas (sustainable growth, natural capital etc.) could be used in the SEA implementation process. This would enable SEA to recognise the interlinkages of different policies and goals and to reflect on the challenges of their implementation. Another expert echoed this view, stating that the presence of legislation for some of the specified areas make the environmental consideration more prominent in the SEA process. In addition, the requirements of the SEA Directive are believed to strengthen other legislation, e.g. the requirements of the Habitats Directive are strengthened by the need to assess biodiversity and ensure monitoring as part of SEA.

During the interviews, the practitioners and authorities noted several requirements for the SEA Directive to remain consistent with current and likely future needs in the specified areas. One issue emphasised by interviewees was the scope and scale of

[39] Annex I to the SEA Directive.

SEA. It appears that SEA is increasingly implemented on a smaller scale and is thus moving away from what many see (including contributors to the evaluation workshop) as its initial purpose - to assess high-level (i.e. strategic) plans and programmes. According to some authorities, focusing on small projects/plans (i.e. urban plans) is not the purpose of the SEA Directive. The application of the SEA Directive to other (higher level) instruments and not only to plans and programmes was also proposed as a means of accommodating emerging needs. The example given was where plans that typically require SEA (e.g. urban plans) may effectively cease to exist in the future (in response to trends towards simplifying planning processes in some jurisdictions, e.g. through using direct permits or 'fast-tracking processes). This would increase the risk that environmental concerns would not be properly considered, as there would no longer be a plan to be assessed. Given these emerging trends, the respondent suggests that the requirement for SEA should be based on the significance of the changes that the plan/programme will produce in an area (in line with the view of the CJEU), rather than the legal status of the document. Runhaar (2017) also concludes that SEAs that are conducted on a voluntary basis (i.e. where there are likely to be significant effects, irrespective of whether the plan/programme meets the screening criteria) seem to contribute more to the integration of environmental and other sustainability objectives than mandatory ones.

Evidence from the interviews with practitioners and authorities shows that the requirements for application of the SEA Directive to plans and programmes at different levels (local/national) could be clarified to enable better recognition of the relevance of the Directive in protecting the environment and promoting sustainable development. In addition, one expert suggested that more good practice examples of SEA implementation would be a valuable showcase for the Directive's relevance.

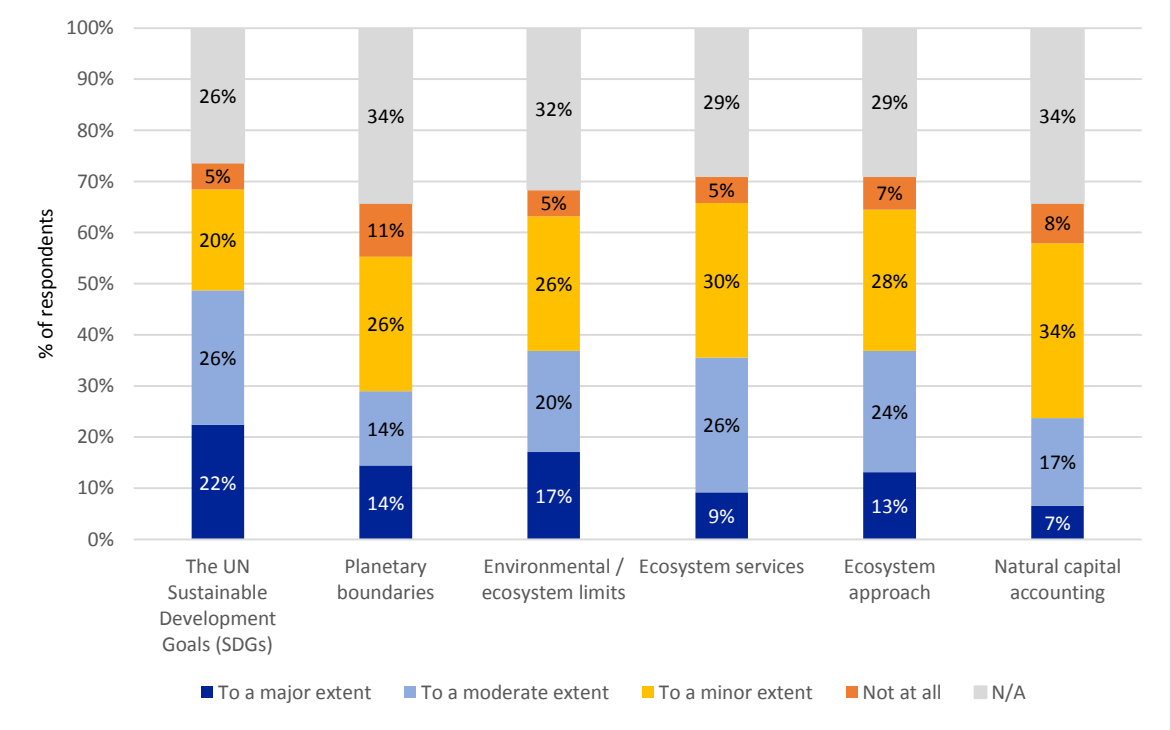
Given the procedural nature of the Directive, more detail in some provisions of the Directive (e.g. public involvement in the scoping process) was suggested, recognising the value of similar amendments to the EIA Directive that proved particularly useful in some Eastern European countries.

Relevance to EU / global policies and objectives

This section discusses the extent to which SEA implementation reflects/integrates and has kept pace with the evolution of EU sustainable development policies.

The majority of respondents to the targeted consultation believe that the implementation of the SEA Directive has kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development to a major or moderate extent (see Figure 19 below). Again, SEA practitioners and planning authorities were generally more critical than environmental authorities.

Figure 19: Has the implementation of the SEA Directive kept pace with particular areas of emerging international policy, objectives, targets and concepts for sustainable development? [Targeted consultation questionnaire] (share of total respondents, n=76)



According to some respondents to the targeted consultation questionnaire, the procedural, non-prescriptive nature of SEA facilitates keeping pace with development in these areas of EU and international policy. The majority of interviewees also recognise that the SEA Directive has kept pace with the specified areas of emerging international policy, objectives, targets and concepts for sustainable development, given its adaptability to relevant aspects and objectives.

It is evident from the consultation with stakeholders that there are certain aspects that require consideration if the Directive is to maintain its relevance to particular areas of emerging international policy and the objectives, targets and concepts for sustainable development. A key issue raised by several practitioners and authorities (both in the targeted consultation questionnaire and interviews) was the fact that the Directive has not been amended since its first adoption. They emphasised the need for a review and update of those areas where further guidance is needed (e.g. link between the ecosystem approach and SEA), as well as an integration of the concepts and objectives of these specific areas. One of the practitioners interviewed felt that the Directive should be revised in order to better encourage an objective-led approach for strategic plans. Another noted that links to the digital environment have yet to be established. The idea that some reform of SEA is likely to be needed to adapt it to the purpose of wider global environmental sustainability is also found in the literature (Sadler & Dusik, 2016).

Recognising the general principles that have been established by the Directive, some respondents from authorities and NGOs called for the introduction of guidelines to interpret the provisions of the Directive in the context of emerging international policy and sustainability concepts, targets, objectives, etc. and how these could be integrated into the assessment process at Member State level.

A number of academic experts and practitioners highlighted the importance of the ability of the person doing the SEA to recognise the concepts, targets and objectives of sustainable development, and to link those to the SEA process. Another key factor

is the willingness of a proponent (e.g. planning authority) to include these aspects in the evaluation, as the Directive itself does not prevent the inclusion of such concepts, targets and objectives. In Sweden, for example, there is an increasing focus on the various environmental certification schemes (e.g. certification for Sustainable cities based on the British version 'BREEAM Communities'", the ISO 14001-standard, the EMAS Community eco-management and audit scheme (Regulation (EC) No 761/2001)), with stakeholders putting considerable voluntary effort into attaining this formal recognition. If the Directive is to keep pace with these concepts, targets and objectives, much depends on the authorities in charge of the SEA process, as well as the experts involved.

The experts/practitioners and authorities interviewed suggested that the SEA process would benefit from clearer linkages between the high-level policy goals/ objectives and those at regional/local level. There is potential to align SEA with the SDGs, for example, if the Directive considers plans/programmes from a strategic level while also including social and economic aspects in the assessment process, given that SDGs and ecosystem services do not concern solely environmental aspects. An alternative perspective is that the SEA Directive is intended to provide an explicitly environmental contribution to sustainable development, in recognition of the fact that the environment is otherwise typically downplayed in decision-making. This issue was also noted at the evaluation workshop.

Similarly, respondents highlighted the areas where they believe the SEA Directive has had limited success in keeping pace: planetary boundaries, environmental / ecosystem limits, ecosystem services, ecosystem approaches and, particularly, natural capital accounting. Yet, it is questionable whether the SEA Directive itself (the legal text) should keep pace explicitly with all these initiatives. For example, natural capital accounting is, by definition, an accounting approach and thus very different from an assessment approach, with the former accepting trade-offs in the tool (net values) compared to an assessment approach, which seeks to maintain transparency by keeping positive and negative values separate, and leaves the decision to the decision-maker. The limited integration of ecosystem services within SEA is to be expected as there is as yet little (legal) incentive to do so (since it is not required by the Directive), and the extent to which a Directive should dictate particular assessment methods (which can be better supported by guidance) is questionable. However, some experts point to SEA practitioners beginning to explore how natural capital and ecosystem services can play a role in SEA and spatial planning, with this adaptation also recognised in the literature (e.g. Baker *et al*., 2003; Geneletti, 2012; Partidario & Gomez, 2013; Cortinovis & Geneletti, 2018). This may eventually translate into their consideration in SEA and planning processes, particularly in those planning processes that already integrate ecosystem services and which thus 'speak the same language' (EKN/CEP, 2018). Some targeted consultation questionnaire respondents noted the role of ecosystem services and natural capital concepts in SEA by viewing them as tools instead of objectives/targets/concepts (as presented in this evaluation study). As such, they are believed to improve the management of environmental assets. Additionally, one authority argued that a link exists between both of these concepts, with progress in one helping to achieve the goals of the other. Both concepts can be applied during the SEA implementation process and the results of the SEA process can then be used by these concepts as a source of data for further analysis.

One authority questioned the general need to link SEA with these international policy areas/objectives on a practical level. In response, another suggested that, in practice, SEA should elaborate on these policy areas by converting them into useful and applicable methodological instruments, e.g. using ecosystem services as a way of looking at cumulative effects across silos.

In their responses, some authorities and NGOs stated their belief that the Directive has not practically kept pace with the specified areas of emerging international policy,

objectives, targets and concepts for sustainable development. These respondents noted that although the Directive enables these concepts to be applied in the SEA process (although not explicitly), their experiences suggested that few were ever considered in practice, particularly at local level. However, this is an issue of implementation rather than legislation. The nature of a Directive is that it sets out broad objectives to be met, leaving Member States to decide on the appropriate means of implementation (according to the subsidiarity principle) and, in the case of SEA, subject to current knowledge and methods of assessment, and appropriate levels of decision-making (Article 5(2) SEA Directive).

Respondents suggested several reasons for the Directive having limited capability to keep pace with developments. One pointed to the underdeveloped concepts and links to international policies (e.g. planetary boundaries, natural capital accounting, etc.) in the implementation of the SEA Directive at regional/local level. Other justifications were the lack of amendments to the Directive and the limited impact of SEA responses in plans/programmes, which often lead to lack of consideration of best practice in emerging concepts such as SDGs. The current scope of environmental issues and the relatively recent appearance of these new areas of international policy were also considered to have impacted on keeping pace. Again, it would be inappropriate for a Directive to make specific reference (other than perhaps in the preamble) to the SDGs as a particular means of contributing to or delivering sustainable development, since over time they may be replaced (as the Millennium Development Goals were). The reference in the Directive to sustainable development (Article 1) appears to be enduring, allowing interpretation in light of current conceptualisations of what sustainable development involves, such as planetary boundaries (as a recent way of interpreting priority environmental limits) or SDGs as a current expression of internationally-agreed sustainable development objectives.

Scientific advances

Approximately half of the respondents to the targeted consultation questionnaire believe that the implementation of the SEA Directive is well adapted to technological and scientific advances to a major or moderate extent. Examples of the types of plans and programmes that considered particular technological and scientific advances included energy programmes, flood hazard management plans, and territorial plans at regional level. Meanwhile, the use of geographical information systems (GIS) and other new methods of EIA (e.g. flood risk modelling) in SEA procedures for regional/local plans and programmes were some of the examples provided of adaptation to such advances.

By contrast, environmental modelling frameworks such as those for ecosystem services, habitat networks or flood risk, as well as natural capital accounting, were identified as areas of technological and scientific advances where SEA implementation has adapted to only a minor extent. Again, particular methods/techniques should not necessarily be explicitly required within SEA requirements. Some areas (e.g. high-resolution environmental data and online environmental data platforms) received mixed responses, with respondents split over whether these were areas where SEA implementation has adapted to a major, moderate or minor extent. The consultation also suggests that national environmental authorities, academics and SEA practitioners perceive these aspects of SEA adaptability more positively than do the regional authorities responsible for preparation of plans and programmes and NGOs, perhaps reflecting the realities of resource capacity and skills constraints.

Respondents to the targeted consultation questionnaire emphasised possible opportunities to enhance SEA's adaptability to scientific and technological advances via the provision of best practice guidance on the integration of such advances into SEA at regional/local level. Such a document could also address the detection of scientific and objective standards of assessment methodologies and technologies. This would help to improve the use and adoption of these advances. Another opportunity for SEA is the

potential to exploit big data from environmental sensors as a means of achieving more accurate and up-to-date assessments.

Respondents highlighted the flexibility inherent within the SEA Directive (it provides a framework for the evaluation procedure) that enables the adoption of any new method or model for any new types of plans and programmes. Several experts and authorities responding to the targeted consultation questionnaire agreed that the individuals implementing the SEA process are crucial, both in the extent to which these advances are applied, and the level of success achieved. One authority highlighted that the extent to which substantive Member State legislative requirements for plans and programmes keep pace with these advances also determines how well the implementation of the SEA Directive is adapted to these advances (i.e. SEA needs the planning process to keep pace with advances as well). The practitioners and authorities consulted were in broad agreement that online data sharing platforms can be useful to create an environmental baseline (if maintained) and can enable practitioners to examine new tools, methodologies and approaches to support SEA. According to one expert, the use of analytical webtools can play a role in transforming SEA into a more consistent, transparent and participatory process, with the example given of the Environmental Sensitivity Mapping (ESM) webtool40, which brings spatial data to the forefront of planning processes and supports evidence-based decisions.

By contrast, respondents also recognised a number of factors with a limiting influence on the adaptability of the SEA to these advances. As previously mentioned, access to data sharing platforms is valued, yet the spatial coverage of such tools can be an issue (e.g. in Ireland, where relevant datasets are still missing). In practice, this results in an unsatisfactory assessment and consideration in planning decisions. One respondent stressed the issue of the length of time it might take for some authorities to implement these technical and scientific advances. This may well be the case in municipalities, for example, where the support and opportunities for the adoption of scientific and technological advances is limited by resource and skills constraints (among others).

At the same time one respondent pointed to the importance of proportionality, i.e. whether there is a need for adaptation to all scientific and technological advances. The objectives of the SEA may be able to be achieved using existing knowledge and methods, depending on the nature, scale and sensitivity of the issues. Nevertheless, new approaches may be helpful to close gaps or enhance efficiency, for example, thus an ongoing awareness and responsiveness to new techniques is appropriate in order to better meet the objectives of the SEA Directive.

Citizens' involvement

The final element of this sub-section addresses the extent to which EU citizens value the environment and use SEA as a means of engaging with planning and environmental policies.

Most respondents to the targeted and public consultations believe it is very important for citizens to be informed and provide input on the potential environmental impacts of public plans and programmes. These respondents strongly value citizen involvement as it provides important input to SEAs. This sentiment was also supported by interviewees, who stressed the importance of citizens having the opportunity to be involved in the policy-making and planning process, with SEA representing a useful tool to achieve this. The views of national environmental authorities on the extent to which EU citizens value the opportunity to be informed and use SEA were more positive than those of other respondents, in particular the plan/programme developing authorities.

[40] airomaps.nuim.ie/id/ESM

Value of citizen involvement in SEA

The practitioners and authorities provided several arguments to illustrate the importance for citizens to be informed and provide input to SEA. The Aarhus Convention and the rights of citizens to express their views on environmental aspects of strategic plans and policies were identified as key pillars underpinning the need to engage them in the SEA process.

A recurring argument from many of the authorities, academic experts/practitioners and NGOs on citizen participation was that those SEA processes that consider the views and expertise of citizens and civil society are likely to have better management, with well-informed decisions leading to better environmental outcomes. According to one authority, practice in the Netherlands has shown that early public involvement has led to a better SEA process and decision-making. In cases where harmful effects on the environment are not routinely taken into consideration by plan/programme proponents, the participation of citizens is of particular importance. One practitioner interviewed noted that the SEA process is the only opportunity during the development of plans/programmes for citizens to provide input into environmental impacts that can actually lead to their modification.

A number of authorities pointed to public acceptance of plans/programmes, future projects and more sustainable approaches/solutions as essential benefits from citizen participation in the consultation process. Likewise, citizen involvement helps to minimise the prospect of delays caused by legal challenges.

The outcomes of both the consultation and interviews indicate that participation in the SEA process contributes to increasing environmental awareness among citizens. This is crucial, as citizens need to understand the nature of plans/programmes and their expected impacts on the environment. Citizen awareness is achieved by: the SEA Directive enabling easy access to information (including remote access) on the environmental implications of the planned activities; educating citizens; and collectively building public consciousness of the value of the environment and the ways it can be protected. From the interviews, one authority emphasised the role of the SEA in enhancing education on environmental aspects of policies and spatial planning.

In terms of benefits for SEA practitioners from citizen engagement, the respondents mentioned the provision of local knowledge that may be useful in the assessment process. It also enables decision makers to recognise the issues and potential blind spots in the plan or programme.

Public participation was recognised as important in the context of sustainability goals at European level. Although EU citizens' interest in the environment is increasing, the risk of citizen disengagement with environmental protection issues could augur future difficulties in maintaining public support for the implementation of more sustainable approaches to meet EU's goals.

While the focus on participation in SEA process is on citizens, many of the authorities interviewed recognised the essential role of NGOs here. The information suggests that representatives of NGOs are often the most active participants in the consultation process and provide the majority of comments. In Spain, for example, public participation - beyond a handful of citizens directly affected by a plan or a programme - is done exclusively through environmental NGOs. These NGOs also have a role in raising the confidence of the general public by proving that citizens have the ability to influence processes relating to plans and programmes at high levels of governance. In Poland, for example, citizen engagement has improved in recent years, largely due to NGO activity. Although the NGOs often present well justified claims and add more value to the SEA process, more direct citizen participation remains both necessary and

valuable. For example, direct citizen participation can ensure the provision of specific local knowledge, which NGOs may lack.

Conversely, several representatives from authorities expressed a more reserved opinion on the importance of citizens' participation. This opinion was mostly expressed by respondents representing authorities responsible for the preparation of a plan or programme. In particular, one respondent argued that citizens find it less important to take part in more strategic/early stages of planning as it is perceived as being more relevant for more specific plans/programmes (e.g. construction of a highway).

5.3.1.4. Key findings

- The SEA Directive remains very relevant to delivering a high level of protection and contributing to sustainable development. This is enabled by the flexibility of the Directive and impacted by factors such as the quality of plans/programmes, availability of technology and the expertise of those managing/undertaking the SEA, among other things.
- Recent developments in sustainable development may not be explicitly referenced in the Directive. This is not necessary, however, as such conceptualisations change over time, and the Directive sets out broad general objectives to be met by Member States, rather than specific assessment approaches and methods. The Directive is sufficiently flexible to allow these new developments to be incorporated into planning and SEA through best practice. Guidance may be the most appropriate way to deliver any such developments.
- There is increased recognition that SEA is needed at higher decision levels (above plans/programmes), as these set the broad direction for subsequent plans and programmes. This is particularly true for sustainable development.
- Technical advances (e.g. data, technological tools, mapping) can all be accommodated within SEA and the Directive. Guidance could usefully be given as to how these and other types of information can be best adapted to different decision levels and planning processes.
- The SEA Directive is highly relevant to delivering citizens' participation and is a key means by which such participation is enabled at strategic level. More could be done to increase engagement, however, such as improving participation in scoping process and providing less technical non-technical summaries.

5.4. COHERENCE

Evaluating the coherence of legislation, policies and strategies means assessing if they are logical and consistent with each other and with other legislation, as well as with relevant policies. This includes determining whether there are significant contradictions or conflicts that stand in the way of their effective implementation or which prevent the achievement of their objectives. The following section presents findings in the assessment of the extent to which the SEA Directive is coherent with other relevant EU environmental legislation and sectoral policies, as well as EU international obligations.

5.4.1. Question 8: To what extent is the intervention coherent with other parts of EU environmental law and policy, in particular those setting provisions for environmental assessment procedures, such as the EIA Directive (Directive 2011/92/EU, as amended), the Habitats Directive (Directive 92/43/EC) etc.?

5.4.1.1. Interpretation and approach

Question 8 focuses on the coherence of the SEA Directive with EU environmental law and policy. More specifically, this question asks whether the Directive is consistent with other legislation that sets out requirements for environmental assessment, namely the EIA Directive (Directive 2011/92/EU, as amended) and Article 6(3) of the Habitats Directive (Directive 92/43/EC).

The evaluation reviews each of these instruments in turn, first examining the coherence of the instruments in *theory*, i.e. whether the SEA Directive is coherent with the scope and key measures set out in the legislation for each instrument. The evaluation then considers whether or not the instruments are coherent in *practice*, i.e. how the implementation of each instrument supports or undermines the overall coherence of EU legislation and policy on environmental assessment.

5.4.1.2. Main sources of evidence

Question 8 reviews the EIA and Habitats Directives to assess coherence with SEA based on the text of the documents. The results of the targeted consultation questionnaire and stakeholder interviews are used to identify coherence issues that may arise in implementation, such as synergies, overlaps, or conflicts. The evaluation of coherence, in both theory and practice, is supported by a review of relevant literature, in particular the 2016 SEA Study.

5.4.1.3. Analysis of the question according to available evidence

The analysis focuses on the coherence of the SEA Directive with assessment procedures under the EIA Directive and the Habitats Directive, each of which is discussed in turn below.

5.4.1.3.1 SEA and the Environmental Impact Assessment (EIA) Directive

Coherence of legislation

The EIA Directive (Directive 2011/92/EU, as amended) aims to ensure that 'effects on the environment are taken into account at the earliest possible stage in all the technical planning and decision-making processes' by harmonising the ways in which

Member States assess the environmental impacts of certain projects[41]. This section compares EIA and SEA based on the legislative requirements for each procedure, briefly examining the relationship between the procedures – particularly their scope – as set out in the Directives.

While the SEA Directive applies to plans and programmes, the EIA Directive applies to projects that might have significant negative effects on the environment. At the time of its adoption in 1985, this was the EU's first attempt to promote environmental considerations at an early stage of the process of issuing development consent for projects. It soon became clear that decisions made at higher policy levels had considerable influence at the project level (Jiricka & Pröbstl, 2009), leading to the 2001 adoption of the SEA Directive to ensure that environmental considerations are taken into account in the preparation and adoption of plans and programmes, specifically those which set the framework for future development consent of projects covered by the EIA Directive (Article 3(2)(a)).

This has resulted in two Directives with complementary scopes. The SEA applies to plans and programmes, focusing on the more strategic level of assessment, while the EIA applies to projects, allowing for more detailed and specific assessment. The carrying out of an assessment under the SEA Directive does not negate the requirement for an assessment under the EIA Directive, as established by Article 11(1) of the SEA Directive, which specifies that an environmental assessment carried out under this Directive is without prejudice to any requirements under the EIA Directive (or under any other EU law).

In principle, the SEA and EIA Directives should not overlap, given the differences in their scope of application. However, overlaps may occur when plans or programmes also include several projects to which the EIA Directive applies (e.g. land use plans, transport plans). In such cases the application would be cumulative, i.e. assessments under both the SEA and the EIA Directives would be required, usually at different points in time during the development of the plan/programme and project.

The SEA Directive also lays down provisions to avoid duplication in cases where both Directives apply cumulatively. Article 11(2) allows Member States to undertake coordinated or joint procedures which fulfil the requirements of the relevant Community legislation (in this case both the SEA and the EIA Directives). The rationale behind this provision is to avoid two similar assessments (SEA and EIA) being carried out on the same proposal.

The CJEU interpreted Article 11(1) and (2) of the SEA Directive in its judgment on Case C-295/10[42] (see Box 13), clarifying that an environmental assessment carried out under the EIA Directive (then Council Directive 85/337/EEC of 27 June 1985) does not nullify the obligation to carry out such an assessment under the SEA Directive.

Box 13: CJEU, Judgment on Case C-295/10 (Genovaitė Valčiukienė and Others v Pakruojorajonosa-vivaldybė and Others)

'*Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 [i.e. the EIA Directive],* ***does not dispense with the obligation to carry out such an assessment under Directive 2001/42****. However, it is for the referring court to*

[41] Recitals 2 and 3 EIA Directive.

[42] CJEU, Case C-295/10 (GenovaitėValčiukienė and Others v Pakruojorajonosa-vivaldybė and Others), available at:

http://curia.europa.eu/juris/liste.jsf?language=en&num=C-295/10

assess whether an assessment which has been carried out pursuant to Directive 85/337, as amended, may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.

Article 11(2) of Directive 2001/42 must be interpreted as not placing Member States under an obligation to provide, in national law, for joint or coordinated procedures in accordance with the requirements of Directive 2001/42 and Directive 85/337, as amended.'

Where both assessments must be carried out, there are opportunities for synergies. Throughout the early development phase of plans, programmes and projects, authorities and project promoters should ideally identify the type of environmental assessment and the point at which it should take place. This has the potential to improve both the speed and efficiency of assessment, as well as enhancing its quality (European Commission, 2013b).

Information from one assessment can be used for another. Article 4(5) of the EIA Directive requires competent authorities to take into account the assessment of environmental impacts carried out under other EU legislation, including the SEA Directive, during the EIA screening phase. Similarly, Article 5(1) of the EIA Directive requires developers to take into account the available results from other relevant assessments under EU law, including the SEA Directive, when preparing the environmental impact report, in a bid to avoiding duplicate assessments.

To support synergies, Article 5(3) of the SEA Directive allows for the use of relevant information from other EU legislation – including the EIA Directive – in the preparation of the Environmental Report. Sharing information not only reduces the potential for duplication and improves efficiency, but also supports better quality assessments under each Directive. Where a project falls within the framework of an earlier plan or programme that was subject to an SEA, the EIA for the project can take into account the strategic analysis from that earlier assessment. The reverse can also be true: while, in theory, a plan or programme is developed first at a strategic level, with projects developed later, Sheate *et al*. (2005) point out that in many cases the procedures may not be sequenced in this way, creating the potential for SEAs to benefit from information from the EIA process.

A further synergy may be achieved in the interpretation of key terms in the SEA Directive, for example the term 'significant environmental effects', which is not explicitly defined in either the EIA or SEA Directive. As noted in the 2016 SEA Study, the recitals in the EIA Directive provide some guidance on this term: 'experience has shown that projects using or affecting valuable resources, projects proposed for environmentally sensitive locations, or projects with potentially hazardous or irreversible effects, are often likely to have significant effects on the environment'. Article 3 of the EIA Directive also provides further guidance on how to interpret this term by requiring that an EIA assess the direct and indirect significant effects with regard to: population and human health; biodiversity (in particular, the Birds and Habitats Directives); land, soil, water, air and climate; material assets, cultural heritage and landscape (Sheate *et al.*, 2005). Further guidance on the meaning of 'significant environmental effects' is provided in EIA provisions on the contents of the EIA Report, as these provisions include requirements for information on a project's significant effects. Point 5 of Annex IV to the EIA Directive, on the information to be included in the Environmental Impact Assessment Report, provides more information on the effects that should be described in the EIA Report. Similarly, Guidance on EIA Reports[43] provides further guidance on the meaning of 'significant effects'. This detail

[43] European Commission, *Environment Impact Assessment of Projects – Guidance on the preparation of the Environmental Impact Assessment Report*, 2017

from the EIA Directive, and its supporting guidance, may support Member States in their interpretation and application of the SEA Directive.

Coherence in practice

When considering the SEA and EIA Directives in light of their legislative texts alone, the Directives can be considered coherent: they seek to address different but complementary objectives; they identify opportunities for synergies; and they encourage Member States to avoid duplication. Indeed, the SEA Directive was specifically introduced to complement EIA. However, there is evidence to suggest that implementation issues at national, regional and/or local level can result in overlaps in assessments or failure to achieve synergies. This section reviews the evidence provided by stakeholders through the public consultation, targeted consultation questionnaire and interviews in order to evaluate the coherence of SEA and EIA assessments in practice.

In general, stakeholders consider the SEA Directive to be coherent with the EIA Directive.

Figure 20: In your opinion, is the SEA Directive consistent with and supportive of the following EU environmental legislation which set provisions for environmental assessment procedures (EIA Directive) or do you see significant gaps, overlaps or inconsistencies? [Targeted consultation questionnaire] (share of total respondents, by stakeholder group, n=76)

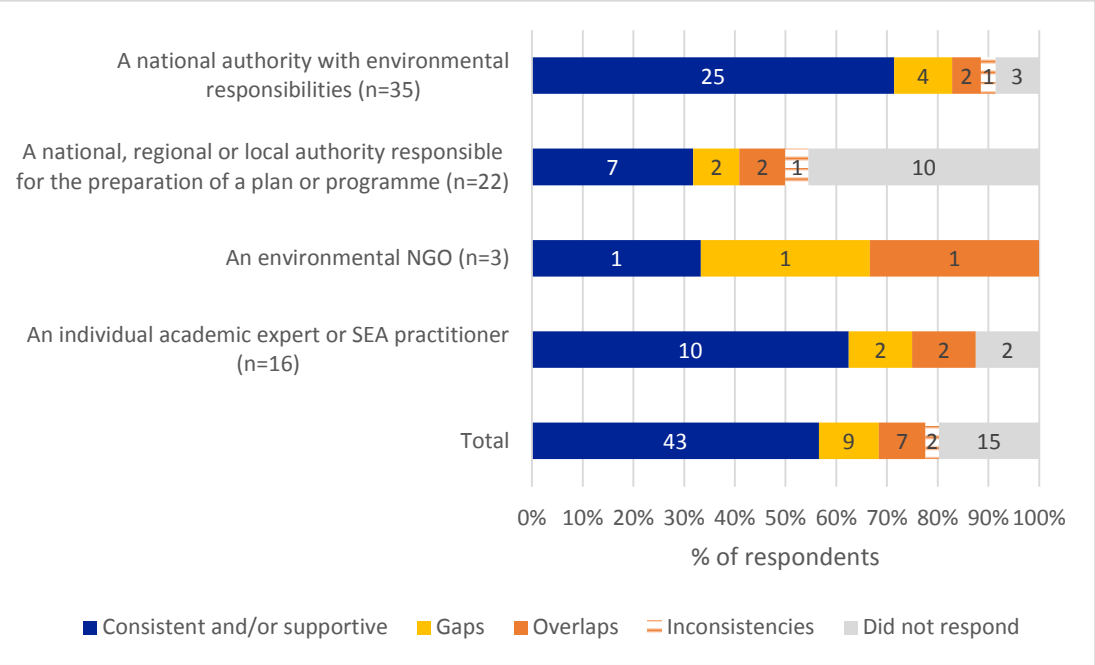
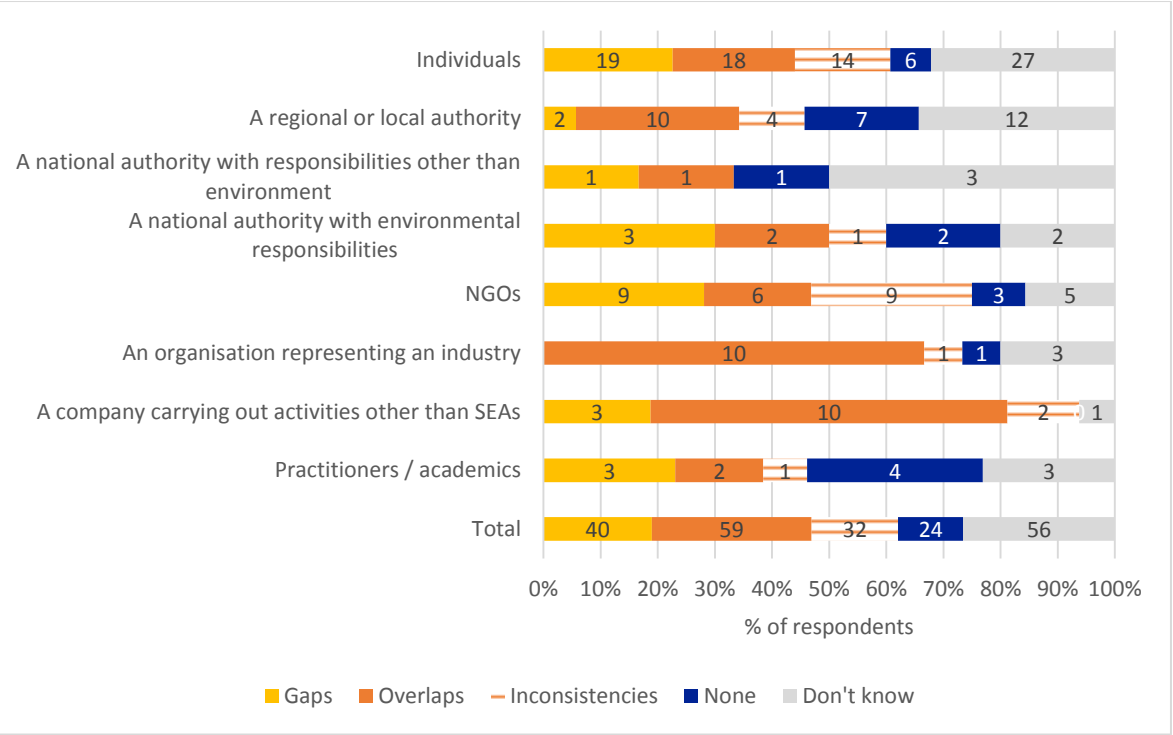


Figure 21: In your opinion, are there any significant gaps, overlaps or inconsistencies between the SEA Directive and Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU (EIA Directive) [Public consultation] (share of total respondents by stakeholder group, n=187; multiple choices possible)



In the targeted consultation questionnaire, 56.6% of respondents reported that the SEA Directive is consistent with and supportive of the EIA Directive. National environmental authorities were in particular agreement with this sentiment (71.4%), while national, regional or local authorities responsible for the preparation of a plan or programme under the Directive were the least likely to agree (31.8%). Around one-third of respondents to the public consultation reported that there were overlaps between the SEA and EIA Directives, with 19% finding gaps in the parallel implementation of both pieces of legislation, and 15% finding inconsistencies.

Respondents to the targeted and public consultations suggested that, in practice, there are risks of overlap between assessments under the two Directives. This can arise, for example, where an SEA is required for a plan or programme that contains projects that will subsequently require EIA. As assessments carried out pursuant to the SEA Directive and the EIA Directive differ for several reasons, it is necessary to comply with the requirements of both. Stakeholders were divided on the significance of the risk of duplication, with several mentioning it as a coherence concern, while others reported that duplications can be avoided through coordination between the relevant authorities and developers.

Implementation issues that can potentially cause overlaps between SEA and EIA assessments include national, regional or local approaches to screening plans and programmes for SEA, or project planning, that result in the need for both an SEA and an EIA. Stakeholders in interviews and in response to the targeted consultation questionnaire reported that Member State legislation on the screening or definition of plans/programmes can sometimes result in duplicate EIA and SEA procedures. Overlaps appear to be a particular issue in spatial planning, as some countries' spatial plans also include projects, thus fall within the scope of both assessments. Again, a number or stakeholders specifically noted that duplication and overlap can be avoided through joint or coordinated procedures at Member State level.

Some interviewees also referred to specific cases where SEAs may be carried out for a document that is titled a 'plan' but which may not necessarily merit an SEA. They also pointed to national legislation that requires EIA for changes to spatial plans over a particular (area) threshold, resulting in both an SEA and an EIA being conducted for the same plan. In Spain, a regional government reported duplication of SEA and EIA for public sector 'construction plans' for projects, due to the project planning document being labelled a plan. Other stakeholders reported that while the Directives generally work well together, they had observed some cases of duplication or overlap.

Similarly, some stakeholders reported that the distinction between the two assessments was unclear or not well understood, potentially leading to overlaps in the scope of assessments. The 2016 SEA Study found that inexperienced practitioners were afraid of omitting something important and thus failed to narrow down the scope of the assessment, resulting in 'mega EIAs', whereby the SEA starts to encroach on the scope of the EIA. Practitioners in a number of Member States similarly observed that the distinction between EIA and SEA is not always well understood, potentially resulting in overlaps or poor-quality SEAs that miss opportunities to achieve synergies with EIA. Some stakeholders commented that where the distinction between SEA and EIA is not well understood, SEA and EIA are often essentially the same document.

There are a number of opportunities to achieve synergies between the application of the EIA and SEA Directives in practice. This was an important factor contributing to the effectiveness of the Directive (as pointed out in Question 1 (Section 5.1.1.3)). Implementation experience has shown that the SEA Directive provides a good mechanism to identify possible gaps that may appear in assessing 'down-stream' environmental impacts, for example, the cumulative impacts of projects and potential alternatives. The synergies between the two Directives include, for example the use of data in assessments under both SEA and EIA (Article 5(3) SEA Directive and Article 5(1) EIA Directive), and the potential to use a tiered process, under which the SEA provides a strategic framework for projects later subject to EIA. A significant number of stakeholder responses pointed to these synergies, noting that tiering can benefit the EIA process, as the earlier SEA can help to ensure a sound strategic basis for a project, minimising the distraction of political or strategic issues that are outside the scope of the project and helping the EIA to focus specifically on the environmental impacts at the project level. The SEA can also help to highlight the key environmental issues to be considered in the EIA and generate data for use in project level assessments.

A significant number of stakeholders noted that implementation issues may limit the achievement of synergies between the two Directives, pointing to the fact that such synergies are impossible without a high-quality SEA. Other implementation issues that may undermine synergies involve challenges in coordination, timing or information-sharing. The assessment of effectiveness carried out for this evaluation looks more specifically at the extent to which SEAs have influenced the siting, design and implementation of projects developed on the basis of plans and programmes subjected to SEA. Consultation on this point indicated strong agreement that the SEA Directive is effective in influencing the siting, design and implementation of projects subsequently carried out under assessed plans and programmes (see Section 5.1.2.3.3).

Tiering of SEAs and EIAs can be a challenge, with the timing of assessments being a key issue. In some cases, EIA is carried out (and development consent issued) prior to the preparation of a plan or programme subject to an SEA, thus the opportunity for synergies can be lost. Or a project may be carried out within the framework of a policy or legislation (rather than a plan or programme), which is not subject to an SEA. In other cases, there may be years between an SEA and an EIA, meaning information has become outdated. Such timing or sequencing issues were reported by interviewees and targeted consultation questionnaire responses. Stakeholders also reported that coordination issues can prevent the realisation of synergies, e.g. data-sharing between authorities and developers.

In practice, it appears that synergies are often not achieved because data is not used across assessments. In some cases, stakeholders reported that the information needs for SEAs and EIAs are too different to allow information to be reused in subsequent assessments, e.g. some stakeholders reported that the level of detail required for an EIA is not available in the information provided in an SEA. While some stakeholders reported positive experiences of data-sharing between assessments, others did not, with one practitioner reporting that 'there is a lot of information, but it is not available to the right people to be reused'. Another reported that SEAs could potentially use the monitoring data from previous EIAs to determine whether the objectives of previous plans were achieved at the project level. However, this monitoring data is not available in practice: 'if you need to make a new plan, you don't know what the lessons learned from the old strategy are'.

Many stakeholders noted that integrating procedures within a Member State can help to avoid these challenges, reporting that joint or coordinated procedures in their Member States supported the coherence of assessments. In some cases, these procedures reportedly improved the efficiency of assessments through synergies such as joint consultation processes. The implementation report carried out as part of the 2016 SEA Study showed that 10 Member States had joint or coordinated procedures for SEA and EIA.

Stakeholders reported that, in some cases, assessments were well coordinated, even in the absence of a formal coordination mechanism. However, the lack of integration between the assessments – both in the Directives themselves and in practice – was a common theme in stakeholder comments. While stakeholders agreed that the Directives are generally coherent, they believe that improved integration could build synergies between assessments. According to one, a key challenge in integrating procedures is the question of how to allocate responsibilities and costs between the relevant authorities and developers.

The absence of an EU-level requirement to link SEA and EIA procedures is considered a weakness by some stakeholders, who argued that such a requirement in EU legislation may avoid the risk of duplication. Some stakeholders called for the formal integration of procedures in legislation or in the Directives themselves, arguing that this would help to streamline processes. Others argued that improved guidance for authorities would support better coherence between SEA and EIA assessments. These concerns are in line with the findings of the 2016 SEA Study, which found that the absence of an explicit link between the two Directives at EU level (i.e. within the texts of the Directives themselves) makes it very difficult for this link to be established in national legislation. Stakeholders in that study argued that linking the EIA and SEA is difficult because there are no formal, direct links in the EU legislation, e.g. there is no specific requirement in legislation for EIA to look specifically at the results of SEA.

Some stakeholders argued that the SEA should be able to take the place of the EIA (and vice versa), where appropriate. The 2016 SEA Study reported that this approach of a common SEA and EIA procedure is not common and tends to take place either in very specific circumstances, or subject to strict restrictions. Specific examples were provided in that study for France, Estonia, Belgium and Bulgaria. In France, a common procedure, which is optional, is provided for in the Code de l'Environnement, while an 'integrated procedure' is provided for in the Code de l'Urbanisme, which can only be used for certain projects of public interest. In both cases, if a project subject to an EIA implies a modification to a preceding plan or programme subject to an SEA, a new SEA for the modified plan or programme is not required if the developer has already integrated the environmental assessment of that modification, thereby reducing the risk of duplication. In Estonia, an EIA is not required if the environmental impacts have already been assessed during the SEA, provided there is sufficient information available for granting development consent. According to legislation in the Flanders region of Belgium, if an EIA is needed after an SEA, the content of the EIA can be

limited to specific aspects that were not analysed by the SEA. Bulgaria also has provisions for land use plans, whereby either an SEA or EIA is carried out in situations where duplication is expected. These examples suggest that, in the right circumstances, some flexibility in allowing assessments to serve the requirements of both the SEA and the EIA Directives can improve coordination and reduce the risk of duplication between the two instruments.

5.4.1.3.2 SEA and the Habitats Directive

Coherence of legislation

The Habitats Directive (Directive 92/43/EC) seeks to support biodiversity through the conservation of natural habitats and of wild fauna and flora in the EU. The Habitats Directive sets up a network of special areas of conservation (the 'Natura 2000 network'). It requires Member States to designate sites as special areas of conservation (Natura 2000 sites) (Articles 3 and 4), in accordance with the criteria and processes set out in the Directive. Article 6 of the Directive requires Member States to establish necessary conservation measures for special areas of conservation and 'to take appropriate steps to avoid' the deterioration of natural habitats in the designated sites.

The Directive sets out provisions for the assessment of plans and projects that would be likely to impact on special conservation areas. Under Article 6(3), any plan or project likely to have a significant impact on a special conservation area must undergo an AA of its implications for the site. The Member State can only permit the plan or project to proceed if the AA confirms that the plan or project will not adversely affect the integrity of the site[44].

Plans and programmes subject to AA are also subject to SEA. Article 3(2)(b) of the SEA Directive specifically states that plans and programmes that require an assessment under the Habitats Directive will always require an SEA. This provision applies on its own merits, as clarified by CJEU Judgment on Case C-177/11 (see Box 14 below).

Box 14: CJEU, Judgment on Case C-177/11 (Eighth - Sillogos Ellinon Poleodomon kai Khorotakton v Ipourgos Perivallontos, Khorotaxias kai Dimosion Ergon and Others)

'… Article 3(2)(b) of the SEA Directive must be interpreted as meaning that the obligation to make a particular plan subject to an environmental assessment depends on the preconditions requiring an assessment under the Habitats Directive, including the condition that the plan may have a significant effect on the site concerned, being met in respect of that plan. The examination carried out to determine whether that latter condition is fulfilled is necessarily limited to the question as to whether it can be excluded, on the basis of objective information, that that plan or project will have a significant effect on the site concerned.' (paragraph 24)

The scope of SEA differs from that of AA in three main respects: the trigger for the assessment, the focus of the assessment, and the environmental impacts to be assessed. The decision to carry out an SEA is made based on the criteria fulfilled due to the nature of the plan or programme itself, while the AA is triggered by the likelihood of impacts on a protected site (i.e. a Natura 2000 area). The AA focuses on the conservation objectives of the Natura 2000 site in question, while the SEA must consider all environmental issues, including other relevant plans and programmes, transboundary effects, and cumulative effects. The SEA must assess the full range of

[44] Under Article 6(4), plans or projects may be permitted despite a negative AA in the case of 'imperative reasons of overriding public interest' as defined in the Directive.

environmental impacts, as presented in Annex I of the Directive, while the AA focuses on the conservation objectives of the Natura 2000 sites.

These three key differences in scope provide ample opportunity for synergies where a plan or programme falls under the application of both the SEA and the AA procedures. The AA's focus on specific habitat types or species of European interest and/or bird species protected within the concerned Natura 2000 sites results in a much more targeted and detailed assessment, which is a key element of the SEA assessment as far as impacts on biodiversity are concerned. Conversely, while not strictly necessary for the AA, assessment of certain impacts on biodiversity, e.g. on species of fauna and flora protected by national law, national parks, nature reserves, landscape parks etc., if not covered by Natura 2000 sites, would normally be part of the SEA and not AA.

A further difference between the SEA and AA is the legal implication of the assessment outcome for the plan or programme concerned. The conclusions AA decision are binding and determines whether or not a plan or project may proceed. If the AA determines that the plan or project has a significant effect on a Natura 2000 site, it can only progress if it fulfils the conditions of Article 6(4) of the Habitats Directive, i.e. there are no alternatives, sufficient compensation measures have been adopted, it is carried out for 'imperative reasons of overriding public interest', and, in certain cases, further to the Commission opinion.

By contrast, Article 8 of the SEA Directive states that the Environmental Report must be 'taken into account' during the plan or programme preparation and before its formal adoption. This reflects the different objectives of the two assessments, with the SEA supporting 'the integration of environmental considerations into the preparation and adoption of plans and programmes' (Article 1), and AA more focused on the conservation and protection of listed sites and species.

Public participation affords another opportunity for synergy. Public consultation is a requirement for the SEA, with the public to be given an 'early and effective opportunity' to express its opinions on the draft plan or programme and the Environmental Report (Article 6(2)). The public must also have access to the outcome of the screening decision, including reasons for not requiring an SEA (Article 3(7)). For an AA, public consultations are not required, although they should take place if appropriate (Article 6(3)). Day (2015) suggested that this is because the Habitats Directive was adopted relatively early in the integration of public participation rights into domestic and EU law. Regardless, the Commission SEA Guidelines note that if an AA is incorporated into an EIA or SEA, the public may then be consulted on aspects of the AA[45].

This has the potential to strengthen AA. The public consultations held as part of the SEA can be tailored to include issues relating to the specific conservation objectives of the Natura 2000 site in question. Not only does this strengthen the quality of the decision-making, it brings it in line with the Aarhus Convention provisions relating to access to information, public participation in decision-making and access to justice in environmental matters. It also meets the recognised need for more public participation in the designation of Natura 2000 sites (see Bouwma *et al*., 2010).

Coherence in practice

In general, the relatively clear differences in scope between assessments under the SEA Directive and the Habitats Directive mean that these assessments are largely

[45] European Commission, *2000, Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC* (Natura 2000 Article 6, General Commission Guidance Office for Official Publications of the European Communities, Luxembourg).

complementary. Stakeholders appeared to support this conclusion. In the targeted consultation questionnaire, 63.2% of respondents agreed that the SEA Directive is consistent with and supportive of the Habitats Directive. National environmental authorities were in particular agreement (74.3%), while national, regional or local authorities responsible for the preparation of a plan or programme under the Directive were least likely to agree (31.8%). In the public consultation, 26% of respondents indicated that the SEA Directive overlapped with the Habitats Directive, 14% reported gaps in the implementation of the two Directives, and 17% found inconsistencies.

Figure 22: In your opinion, is the SEA Directive consistent with and supportive of the following EU environmental legislation which set provisions for environmental assessment procedures (Habitats Directive) or do you see significant gaps, overlaps or inconsistencies? [Targeted consultation questionnaire] (share of total respondents by stakeholder group, n=76)

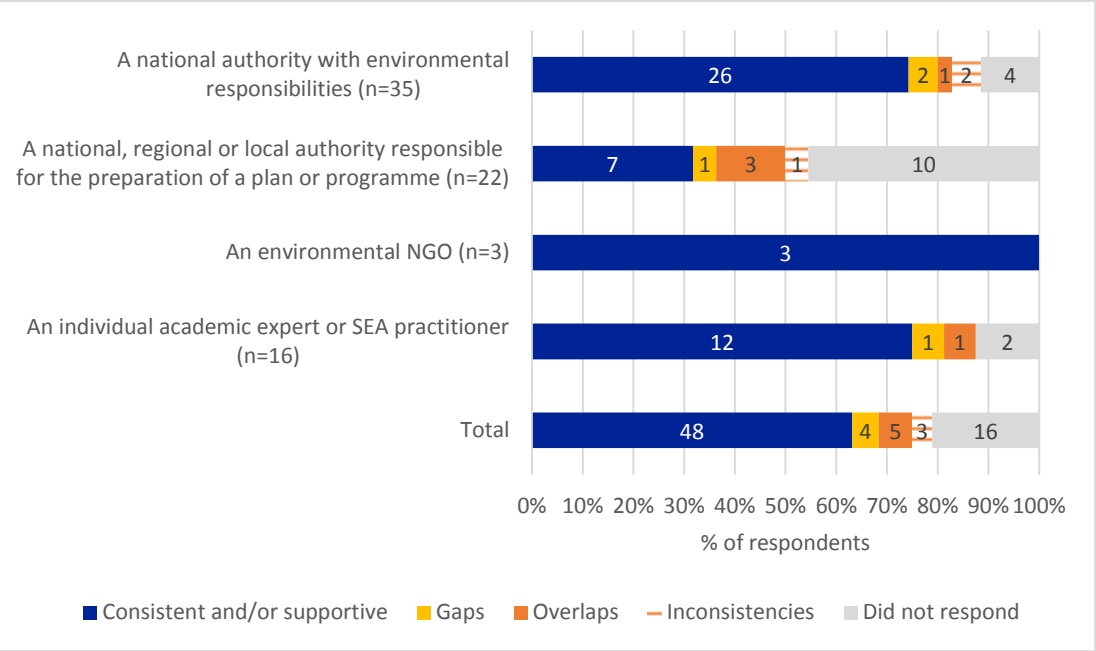
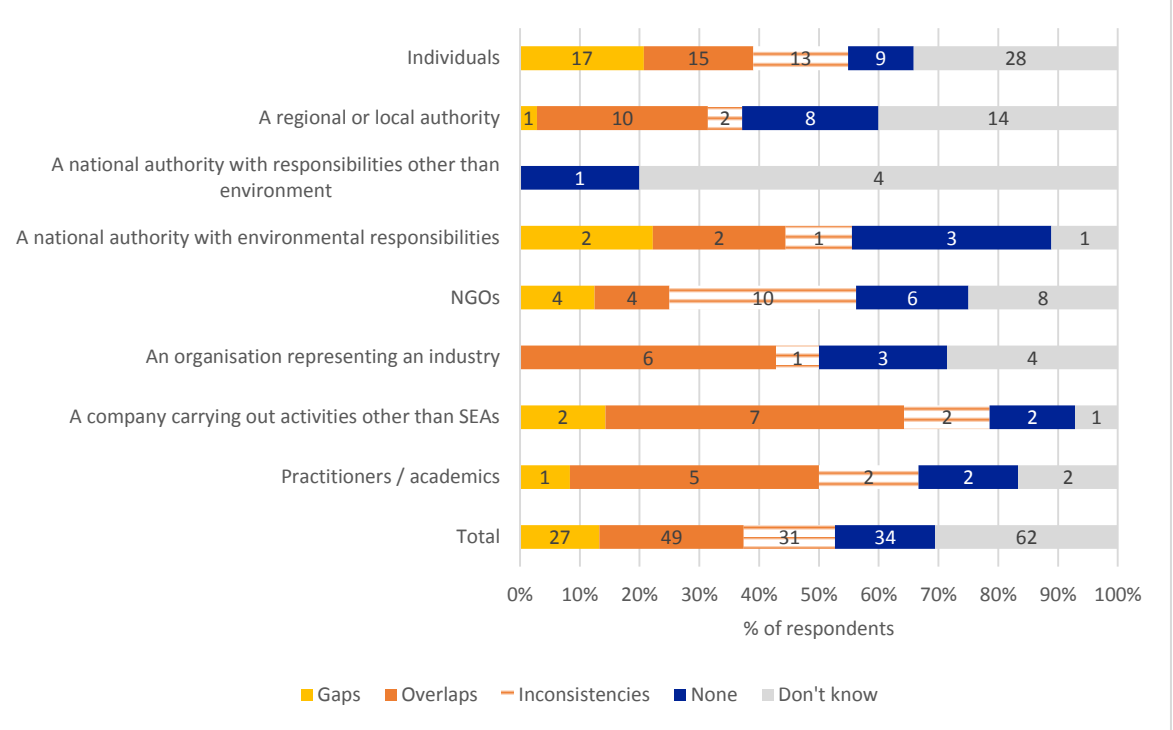


Figure 23: In your opinion, are there any significant gaps, overlaps or inconsistencies between the SEA Directive and Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) [Public consultation] (share of total respondents, n=187; multiple choices possible)



When asked how the SEA supports and is consistent with the Habitats Directive, many responses focused on the limited risk of overlap due to the specific scope of each assessment. The existence of joint SEA-AA procedures at Member State level (or the option in the Directive allowing Member States to adopt such combined procedures) was also frequently cited by stakeholders as evidence of coherence. Three stakeholders noted that while they were not aware of legislation formally linking or coordinating assessments in their country, such coordination nevertheless occurs in practice. Often, this is due to the participation of the same individuals – within authorities and practitioner organisations – in assessments. Stakeholders reported that authorities and practitioners have a clear understanding of the nature and scope of SEA and AA and are able to coordinate the assessment and avoid duplication. This is potentially a point of difference with the experiences reported by stakeholders in coordination of SEA and EIA, where a lack of clear understanding of the different purpose of each assessment appears to lead to overlaps.

Stakeholders identified four main areas where synergies can be found: integrated reporting; data-sharing; more efficient and effective public participation; and higher quality assessments. In terms of integrated reporting, stakeholders in four countries reported that SEA and AA assessments are integrated into the same document, i.e. the AA is included as a chapter in the SEA. Linked to this is the issue of data-sharing, with the possibility of using AA data for the SEA, and vice versa. A relatively limited number of stakeholders mentioned the option of conducting joint public consultations for both assessments as a synergy.

A number of stakeholders noted that the existence of two complementary assessment procedures supports better overall quality of assessments. It was noted that the SEA Directive supports the better integration of broader environmental considerations into AA under the Habitats Directive. Similarly, the Habitats Directive supports stronger assessment of impacts on biodiversity in SEA procedures, through better availability of data. Coordinated procedures that include joint public participation may also support more effective consultation of the public and promote public consultation for AA (which

is not currently mandated under the Habitats Directive). One practitioner interviewed reported an experience where the results of the AA impacted on the Environmental Report for the SEA, leading to better consideration of biodiversity impacts in the SEA than would have otherwise been achieved.

Challenges in practice undermine potential synergies, with stakeholders reporting that these typically stem from issues in implementation at Member State level. For example, in some cases, data from one assessment is not made available for another, preventing the realisation of synergies. This appears to be a problem of coordination among authorities, whereby data is not transferred to relevant authorities, often when an AA is conducted for a project within the framework of a plan or programme that previously underwent SEA.

The capacity and coordination of authorities may prevent other synergies or lead to overlaps. One practitioner reported that the SEA and AA are carried out by separate authorities, with limited coordination between the two, while another reported overlaps between SEA and AA, with authorities failing to integrate SEA and AA due to concerns about being seen to comply with the Directives.

A small number of stakeholders expressed concern about the different legal nature of the assessment outcomes, which, they suggest, make it difficult to ascertain the right level of detail to be assessed in the SEA in order to allow an AA within the Environmental Report to meet the requirements of the Habitats Directive.

Finally, a small number of stakeholders reported that a more formal link or requirement for coordinating SEA with AA, or better guidance for Member States on coordinating procedures, would improve coherence between the two assessments.

5.4.1.4. Key findings

5.4.1.4.1 SEA and the EIA Directive

- The SEA and EIA Directives support complementary objectives, with the SEA Directive introduced specifically to complement the EIA Directive and address a gap in environmental assessment and decision-making.
- There is strong evidence from stakeholders with respect to synergies between the SEA and EIA Directives. In particular, it was noted that where timing allows for optimal sequencing of assessments, conducting an SEA can help to ensure a sound strategic basis for projects that are carried out subsequently. However, practical implementation challenges can prevent the achievement of these synergies. These challenges include timing and coordination among authorities and developers.
- Authorities and developers can struggle to understand the different purpose and scope of SEA and EIA. Some stakeholders commented that where the distinction between SEA and EIA is not well understood, SEAs and EIAs are often essentially the same document, with significant overlaps and thus limited added value from the SEA procedure.

5.4.1.4.2 SEA and the Habitats Directive

- Assessments under the SEA and Habitats Directives are broadly coherent. Each assessment addresses a different objective, while the scope and purpose of the assessments appear to be relatively clear to stakeholders. Together, the Directives provide a complementary framework for environmental assessment, with limited overlaps.
- There is also potential for synergies between SEA and AA procedures, particularly in relation to integrated reporting, data-sharing, more efficient and effective public participation, and higher quality assessments.

- Joint or coordinated procedures can support these synergies. Stakeholders reported that even where Member State legislation does not provide for joint procedures, such coordination usually occurs in practice, where possible.
- Implementation challenges can undermine these synergies. This is particularly true for data-sharing – if the assessments do not occur at the same time or within a coordinated procedure, data may not be shared between assessments.

5.4.2. Question 9: To what extent are sectoral EU policies, such as the Cohesion, transport, climate change and energy policies coherent with the SEA Directive?

5.4.2.1. Interpretation and approach

Question 9 examines the coherence between the SEA Directive and several EU sectoral policies. The SEA Directive plays an important role in the implementation of certain EU sectoral policies, in particular those that require the preparation of plans and/or programmes that may impact the environment and thus require an SEA.

The coherence analysis aims to establish the extent to which the SEA Directive supports or hinders the effective implementation of relevant EU sectoral policies and to highlight the practical implications of both situations. It focuses on the existence of synergies and obstacles and their respective impacts on the objectives of the sectoral policy and/or SEA.

The EU sectoral policies most likely to have important interactions with the SEA Directive have been included in this evaluation, with the assessment covering those EU policies that require the preparation of plans and programmes likely to be subject to an SEA, and where there is already considerable experience of applying the SEA Directive. These are: the three policies supported by the ESIF, i.e. Cohesion Policy (CP), the Rural Development Policy (RDP) and the Common Fisheries Policy (CFP); energy and transport policies; water, marine, waste and climate policies.

The assessment first examines coherence between legislation, policy and guidance at the level of their objectives, before moving on to analyse Member States' practical experiences in the application of SEA to these sectors' plans and programmes. Since most replies to the sectoral coherence question in the targeted consultation questionnaire and the public consultation were general comments that can be applied to all sectoral plans, the general findings common to all sectors are first presented. Specific findings for each sector follow.

5.4.2.2. Main sources of evidence

The assessment of coherence of SEA Directive objectives with those of other sectoral policies is based on the analysis of EU level legislation and policy documents, including any available guidance documents that support SEA in practice in a specific sector[46].

The sources of evidence vary by sector. The analysis of practical experience is based on the responses to the targeted consultation questionnaire, the public consultation and the stakeholder interviews. However, practical experience with European Structural and Investment Funds (ESIF) programmes is based primarily on Member State responses to the Commission's 2015 implementation questionnaire, which asked for their experiences with the application of the SEA Directive to the 2014-2020 ESIF

[46] Milieu undertook an analysis of coherence at objective level for the sectors under consideration for the 2016 SEA Study. Some of the text under the sections 'Coherence of objectives' is taken directly from that earlier report, complemented and updated as needed.

Operational Programmes (OPs), which remains the most recent and detailed evidence in this area.

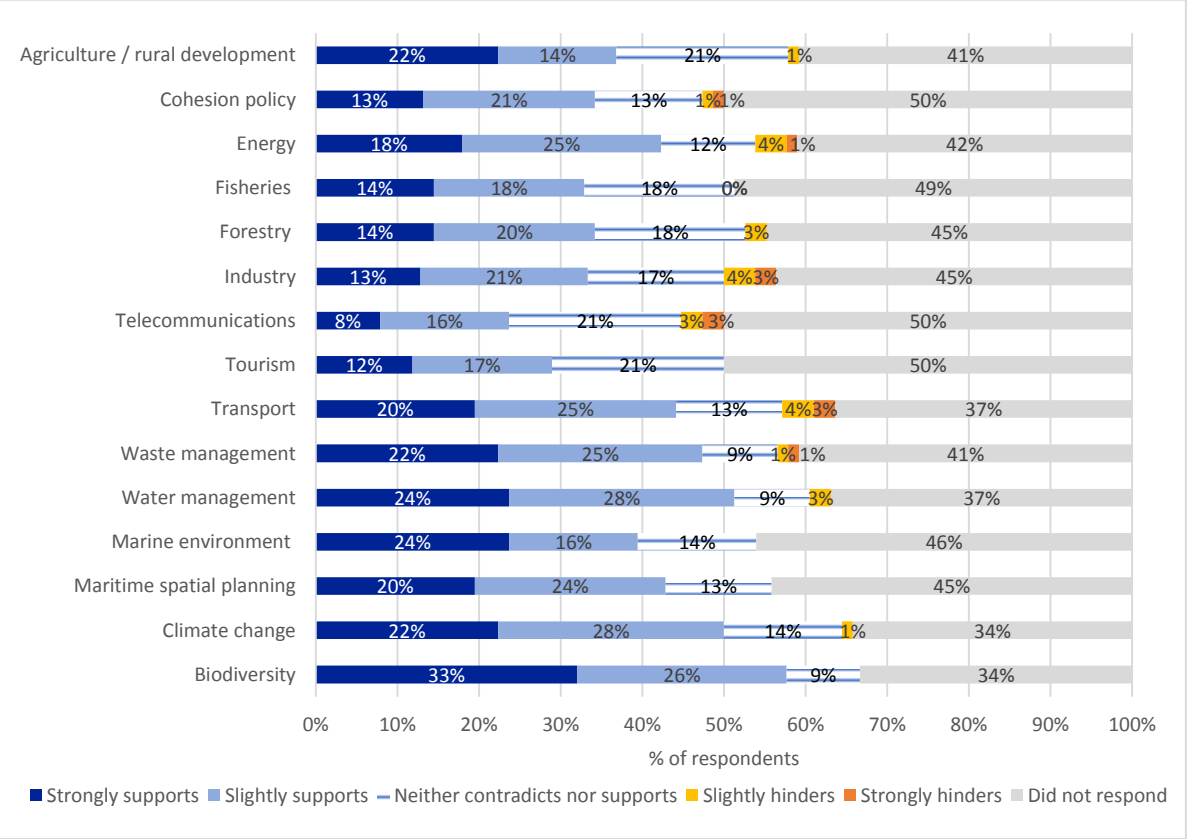
Results from the consultation activities are complemented by desk research, literature review and the results of stakeholder interviews.

5.4.2.3. Analysis of the question according to available evidence

5.4.2.3.1 General findings applicable to all sectors

Question 49 of the targeted consultation questionnaire asked whether the SEA Directive supports or hinders the effective implementation of EU legislation and policies in different sectors. Respondents were asked to score the sectors' relationship with the SEA Directive on the following scale: strongly supports, slightly supports, neither contradicts nor supports, slightly hinders and strongly hinders. Most of the respondents generally considered that the SEA Directive strongly supports or slightly supports the effective implementation of the sectors. However, a considerable number did not reply, while others did not have a clear idea, stating that the SEA Directive neither hinders nor supports the effective implementation of EU legislation and policies in the following sectors.

Figure 24: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (share of total respondents, n=76)

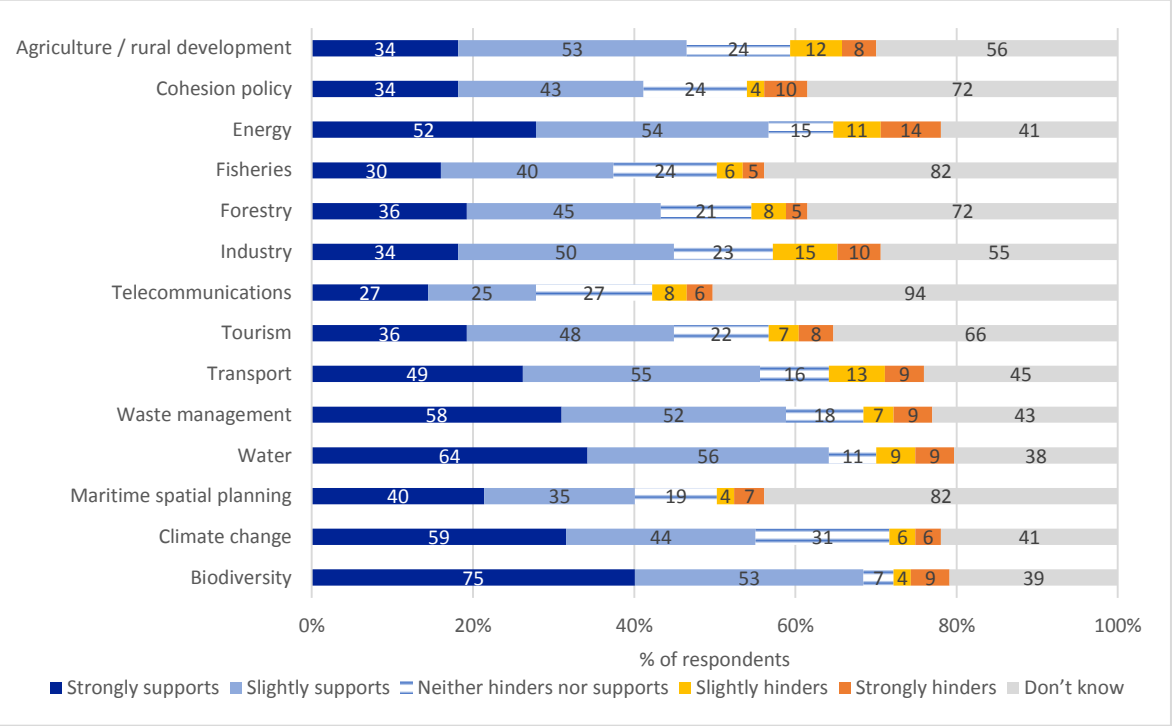


Overall, respondents were more positive for biodiversity, water management and climate change, with the proportion of respondents replying 'strongly supports' and 'slightly supports' above 50%. Respondents were less positive for tourism and telecommunications, for which the proportion of respondents who replied 'strongly supports' and 'slightly supports' is below 40%.

Similar results came from the public consultation, where the same question was asked, although it should be noted that a large proportion of respondents (between

21% and 50%) replied 'don't know'. Several respondents (reaching a maximum of 13%, for energy and industry) stated that the Directive hinders sectoral policies. Figure 25 below presents the responses from all stakeholders for all sectoral policies proposed.

Figure 25: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Public consultation] (share of total respondents, n=187)

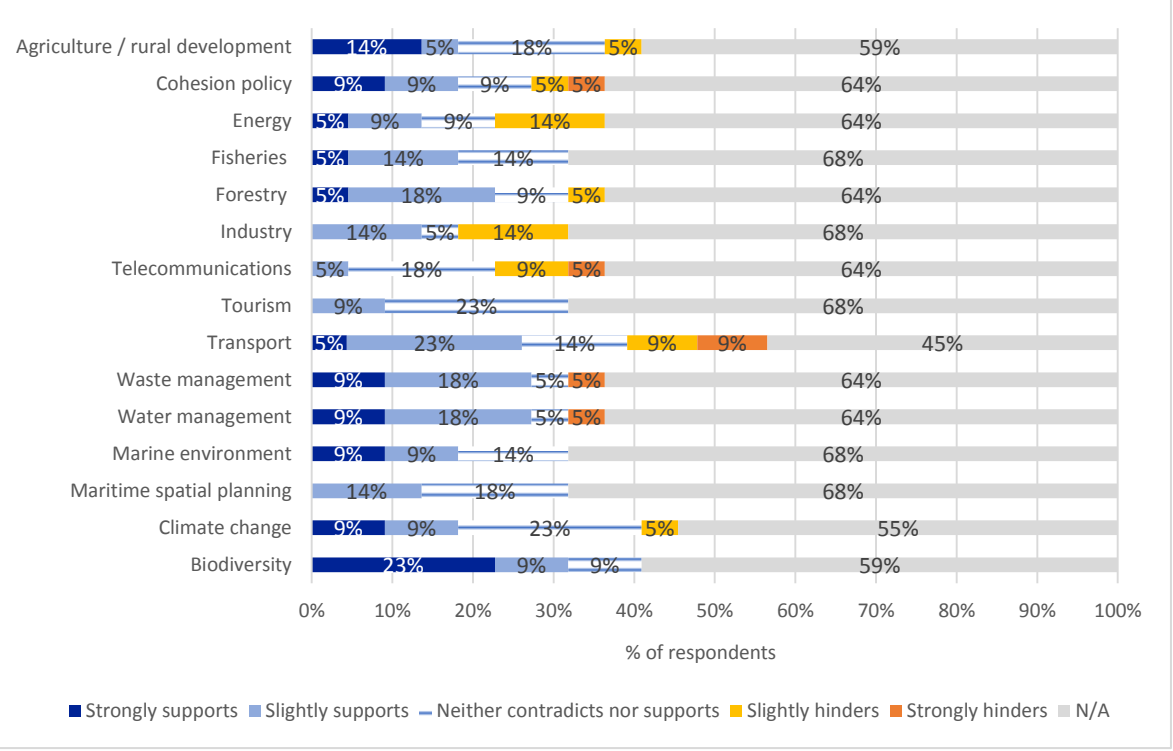


Question 50 of the targeted consultation questionnaire then asked stakeholders to justify their answer for each of the sectors mentioned in the reply to the previous question. Most of the respondents commented generally, stating that SEA supports the achievement of sectoral objectives by contributing to their environmental robustness and sustainability.

Around half of the respondents also specified that this is the case only where SEA is carried out in an effective manner, reiterating the most important factors influencing effectiveness: decision-making culture and awareness of the benefits of SEA, strong coordination between all authorities involved, broad public participation, evidence-based decision-making and identification of alternatives. In particular, alternatives are considered a critical component of the SEA process in ensuring that sectoral objectives can be achieved without causing environmental damage.

Figure 26 shows the replies from national, regional or local authorities responsible for the preparation of a plan or programme to the same question for each sector.

Figure 26: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (share of replies from national, regional or local authorities responsible for the preparation of a plan or programme n=22)



The proportion of national, regional or local authorities responsible for the preparation of a plan or programme who answered positively (strongly or slightly supports) is much higher – double, in most cases – than those who gave a negative answer. This is valid for all sectors except energy, where positive and negative replies were equal in number. The respondents' explanations, as well as findings from the interviews, confirm a general trend whereby sectoral authorities are becoming more aware and engaged in the SEA process. However, some respondents pointed out that many sectoral authorities still see SEA as a pure formality and administrative burden.

Only five respondents mentioned that SEA has the potential to hinder the achievement of sectoral objectives that may have more impact on the environment, such as CP, energy and transport. However, three also indicated that those are the sectors for which SEA is most necessary and – ultimately - effective. The main constraint is the fact that SEA lengthens the decision-making process and may pose a delay to the adoption of plans and programmes, thus influencing the timely delivery of sectors' objectives. By contrast, the respondents also identified clear synergies between SEA and sectors that incorporate environmental objectives from the onset, such as water, waste, marine, climate, explaining that SEA can improve the functioning of these other sectors by verifying their credibility and the applicability of measures.

These findings were largely confirmed by the 49 interviews carried out. 15 interviewees provided clear and relevant answers to the coherence questions, with most stating that they have not experienced any conflict in applying the SEA Directive to plans and programmes in various sectors and that, on the contrary, SEA can improve plans and programmes by identifying possible environmental problems and ways to avoid them. Several interviewees mentioned that SEA can help to avoid conflicts between sectors.

However, four interviewees pointed to the general lack of knowledge of the tool and its usefulness for the authorities responsible for plans and programmes. They reported that it is not only economic sector authorities that view it as a box-ticking exercise,

but even those authorities responsible for plans and programmes in the environmental sectors sometimes see SEA as a redundant exercise, with a significant learning curve involved in understanding its benefits. Two interviewees mentioned that SEA would be more meaningful and more willingly embraced if it focused on contributing to positive effects and identifying synergies between sectoral objectives and the environment, rather than solely on reducing adverse effects.

Finally, question 51 of the targeted consultation questionnaire asked about the availability and usefulness of guidance documents that help in carrying out SEA in a specific sector or policy area. 37 of 76 respondents replied to this question, with the majority agreeing that guidance is really useful, including the European Commission guidance (European Commission, 2004). Some suggested that it should be updated based on best practice examples and CJEU case law. Others pointed to the generic nature of other types of guidance documents, which are often only available in English and are not regularly updated. Specific guidance on how to carry out SEA in a particular sector is not available and would be very beneficial.

5.4.2.3.2 Specific findings for each sector

Cohesion Policy, Rural Development Policy and Common Fisheries Policy

The SEA Directive has an important role to play in the implementation of key EU policies - such as CP, the RDP and the CFP - that require the preparation of plans and programmes that may impact the environment and thus require an SEA. These policies cover a broad range of sectors and are financed by specific funds (ESIF[47]) that are used to invest, for instance, in infrastructure, environment, employment and training, research and development, agriculture, forestry and fisheries development, overall contributing to the quality of life of EU citizens.

Each of the three policies under consideration has a strategic planning and programming process in place, as well as a governing framework defined for each seven-year EU budget cycle. Member States are required to prioritise investments through the preparation of national and/or regional plans and programmes that are approved by the European Commission: OPs for CP and the CFP, and Rural Development Programmes (RDPs) for the Rural Development Policy (RDP).

This section will look at how SEA is applicable to programmes under the CP, RDP and CFP (hereinafter ESIF programmes), both currently and in the previous 2007-2013 period. The first part will assess coherence at the level of objectives by analysing the relevant EU legislation and guidance, while the second part will look at sectoral coherence in practice.

Coherence of objectives
The main objectives of these three policies are summarised in the following box. While not primarily dedicated to environmental objectives, all three policies consider high-level sustainability objectives and have increasingly begun to incorporate environmental components.

[47] CP is delivered through three main funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF). The RDP is financed by the European Agricultural Fund for Rural Development (EAFRD) and the CFP is financed by the European Maritime and Fisheries Fund (EMFF). For the 2014-2020 programming period, the five funds have been brought together under the label 'European Structural and Investment Funds' (ESIF) and are governed by a single Common Provisions Regulation (CRP), as well as fund-specific regulations.

Box 15: Objectives of Cohesion Policy, Rural Development Policy, Common Fisheries Policy

The main objective of **Cohesion Policy** is to reduce significant economic, social and territorial disparities between European regions through co-financing investments targeting socioeconomic development. With the adoption of the Europe 2020 Strategy in 2010, Cohesion Policy and its funds became the 'key delivery mechanisms to achieve the priorities of smart, sustainable and inclusive growth in Member States and regions'.

The main objectives of **Rural Development Policy** are threefold[48]: fostering the competitiveness of agriculture; ensuring the sustainable management of natural resources and climate change, and achieving a balanced territorial development of rural economies and communities, including the creation and maintenance of employment.

The **Common Fisheries Policy** aims to ensure that fishing and aquaculture are environmentally, economically and socially sustainable and that they provide a source of healthy food for EU citizens.

Since 2000, the integration of environmental considerations into all aspects of programme development and implementation within these policies has gradually become more systematic and comprehensive (Hjerp *et al*., 2011). According to Article 8 of the Common Provisions Regulation (CPR) for the 2014-2020 programming period, the objectives of ESIF should be pursued in line with the principles of sustainable development aimed at preserving, protecting and improving the quality of the environment, as set out in Article 11 and Article 191(1) TFEU. This is consistent with the aim of the SEA Directive to enable the incorporation of environmental considerations into plans or programmes, with a view to promoting sustainable development.

Article 2(a) of the SEA Directive states that it applies to plans and programmes 'including those co-financed by the European Community as well as modifications to them'. Therefore, CP OPs, RDPs under RDP, and the OPs prepared under the CFP are, by definition, subject to an SEA. In many Member States, ESIF programmes are often important strategic planning documents for both economic development and key sectoral policies. Funding is available to directly support the environmental protection measures, but also for activities that may directly affect the environment, such as transport, energy and other infrastructure under CP, and irrigation measures under the RDP. As such, the application of SEA to these large-scale, highly strategic programmes that govern significant amounts of public investment in many Member States and regions has been an important element of the implementation of the SEA Directive over the past decade.

Over the years, the regulations governing these policies have established specific mechanisms to strengthen the link between CP, RDP and CFP and the SEA Directive. For the 2014-2020 period, the link between SEA and the programming process for the ESIF is quite explicit, with SEA firmly established as part of the *ex ante* evaluation. The requirement to fulfil specific *ex ante* conditionality takes this further, addressing the pre-conditions that Member States must meet in order to ensure the capacity to carry out the SEAs effectively.

An ***ex ante* assessment** is required by the regulations governing the EU funds under the CP, RDP and CFP. As this *ex ante* assessment could, in theory, overlap with SEA, the legislation governing the funds has evolved to take this into account. The CPR for

[48] Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development.

the 2014-2020 period specifies that *ex ante* evaluations 'shall incorporate' the requirements of the SEA Directive where appropriate[49]. Guidance on how to do this is given in three policy-specific guidance documents issued by the Commission to support *ex ante* evaluation in the 2014-2020 period. A summary of the main points of this guidance is presented in Box 16 below.

Box 16: Guidance on *ex ante* evaluation

The guidance document prepared for CP OPs 2014-2020 (European Commission, 2013c) specifies that the SEA must be carried out during the preparation of the programmes and must be completed before their adoption and submission to the Commission. It also points out that aligning the SEA with the process of developing the OP and the *ex ante* evaluation will reduce the need to make last-minute amendments to the OP based on the SEA outcomes. The guidance also lists the documents that the programming authority must submit to the Commission (i.e. the Non-Technical Summary, the monitoring measures, information on consultation and a summary of the how environmental considerations and opinions expressed have been taken into account) 'either in a separate document annexed to the *ex ante* evaluation or incorporated in a specific part of the *ex ante* evaluation'.

In view of the lessons learned from the 2007-2013 period, the guidance document for the *ex ante* evaluation of 2014-2020 RDPs provides several recommendations in relation to more effective use of SEA during the *ex ante* evaluation of RDPs. Among these are recommendations to: 'combine SEA with the *ex ante* meetings in order to infuse social and economic considerations; integrate the SEA process (both in timing and administratively) in the programming process, e.g. through a single contract with the *ex ante* evaluation; and introduce public consultation early in the process, reaching out beyond the customary authorities and stakeholders' (European Evaluation Network for Rural Development, 2014).

The CPR for the 2014-2020 period further reinforces the link with the SEA Directive through the so-called ***ex ante* conditionalities**. These are specific conditions to be satisfied by Member States in order to benefit from the funds and were introduced as part of reforms to ensure that all institutional and strategic policy arrangements were in place for effective investment (European Commission, 2013c). The conditions also support the implementation of existing EU legislation. The general *ex ante* conditionality number 6 (CPR) requires Member States to demonstrate the existence of 'arrangements for the effective application of Union environmental legislation related to EIA and SEA'[50]. More precisely, criteria for fulfilment of the conditionality require that the following arrangements are in place:

- Arrangements for the effective application of the EIA Directive and SEA Directive;
- Arrangements for training and dissemination of information for staff involved in the implementation of the EIA and SEA Directives;
- Arrangements to ensure sufficient administrative capacity.

Where an applicable *ex ante* conditionality is not fulfilled at the time of preparation of the OP or RDP, Member States needed to set out the actions to be taken to ensure it was fulfilled no later than the end of 2016, as well as the bodies responsible and an implementation timetable (European Commission, 2014). The preliminary assessment of the *ex ante* conditionality mechanism undertaken by the Commission (European Commission, 2017b) showed that such mechanisms triggered structural changes and policy reforms in the Member States and addressed a number of deficiencies in the transposition of EU legislation.

[49] Article 55(4) CPR.

[50] Annex XI Part II CPR.

Another *ex ante* conditionality related to SEA was introduced for investment priorities under the transport sector[51]. This is discussed in the section on 'Energy and transport policies' below.

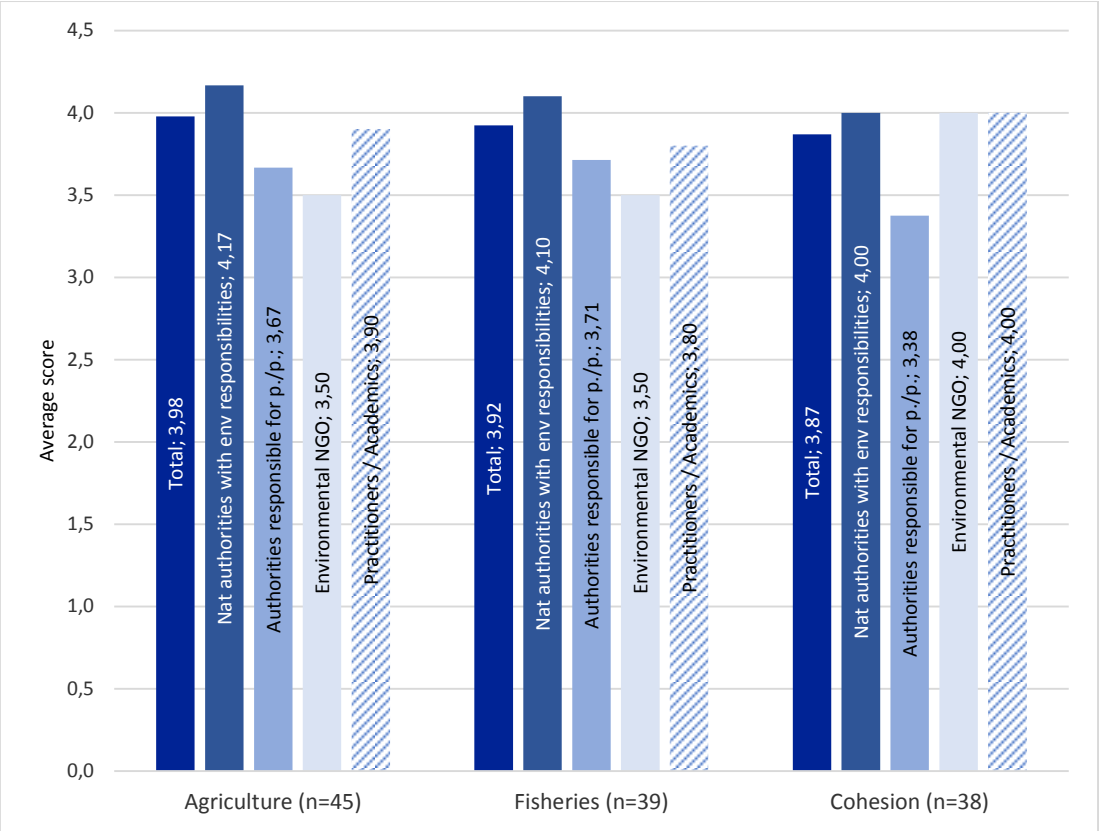
Coherence in practice
The results of the targeted consultation (see Figure 24 above) show that, for each of the three sectors, almost 40% of respondents considered SEA to support (strongly or slightly) their effective implementation (26 CP, 28 RDP and 25 CFP, respectively, out of 76 respondents). Only three respondents replied that it slightly hindered it, being from a national, regional, or local authority responsible for preparing a plan or programme (two for CP, one for RDP). The majority of respondents did not reply (50% CP, 49% CFP and 41% agriculture and rural development) or considered SEA to neither contradict nor support the effective implementation of EU legislation and policies in these sectors.

The results of the public consultation confirm these findings, with similar proportions of positive and negative replies, except for the fisheries sector, for which the proportion of respondents who replied 'strongly supports' and 'slightly supports' was below 40%.

Looking at the average scores of the targeted consultation by type of response (see Figure 27 below) for all three sectors, national authorities with environmental responsibilities were most likely to state that SEA supports sectoral objectives, as were SEA experts, while authorities responsible for the preparation of plans and programmes held more negative views.

[51] Part I of Regulation (EU) No 1303/2013 of the European Parliament and the Council of 17 December 2013 laying down common provisions on the ERDF, the ESF, the CF, the EARFD and the EMFF and laying down general provisions on the ERDF, the ESF, the CF and the EMFF and repealing Council Regulation (EC) No 1083/2006, O.J., L 347, 20.12.2013, p. 320.

Figure 27: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (average score by stakeholder group for CP, Agriculture and Fisheries: Strongly hinders: 1; slightly hinders: 2; Neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)



The findings of the consultations are supported by the literature, which confirms that SEA can play an important role in supporting the implementation of these sectoral EU policies, if carried out in an effective way.

While there is a lot of literature on the link between SEA and CP, less is available about the links with RDP and the CFP. Nevertheless, it is expected that most of the findings would apply to all three types of programmes, given their common structure and framework. The following academic articles and publications complemented the results of the consultation activities for this section: Smutny *et al*. (2016), Hjerp *et al*. (2011) and Jiricka & Probstl (2013) provide a thorough analysis of SEA applied to CP OPs; Guarino *et al*. (2017), Costantini (2016) and Gottero & Cassatella (2017) identified benefits of carrying out SEA of RDPs, while Brown and Hjerp (2006), as well as other non-academic publications (i.e. Mott MacDonald (2008)), analysed the application of SEA to the fisheries sector.

Firstly, effective consultation with relevant stakeholders is a key factor for successful SEA of ESIF programmes. Smutny *et al*. (2016) noted that the entire planning process for the preparation of ESIF programming documents involves many different actors (managing authorities, as well as other ministries, regional authorities, socioeconomic partners, and the European Commission) and can be more complicated than 'standard' planning procedures in terms of inputs and time schedule. In this context, SEA facilitates better involvement of stakeholders and the public in programmes and allows information to be shared on methods and data sources (Brown and Hjerp, 2006). Close collaboration between key actors ensures that environmental considerations are successfully integrated into decisions. This is particularly important for the RDPs and OPs for the fisheries sector, where SEA can facilitate the involvement of rural communities and communities of fishermen which have been often neglected (Mott MacDonald, 2008; Guarino *et al*., 2017). However, findings from Milieu, IEEP and ICF,

(2016) highlighted that, as these policies have traditionally had economic objectives, there have been some instances where environmental partners (both authorities and non-governmental experts) have struggled to mainstream their role in the procedures. The situation varies across Member States and is closely linked to issues of capacity and political culture.

In their review of SEAs applied to CP OPs, Smutny *et al*. (2016) identified some cases where SEA helped to highlight important environmental issues and contributed to the development of indicators and project selection criteria to promote and encourage more environmentally sound projects. Some examples are presented in the box below.

Box 17: Instances where SEA helped to define project selection criteria (Smutny *et al*. (2016))

- In Czech Republic, the OP Enterprise and Innovation 2007-2013 formulated 16 environmental criteria for project evaluation and selection. These criteria followed objectives used as a framework for the impact evaluation. The beneficiary (the Ministry of Industry and Trade) selected five of the most relevant criteria and integrated them into the overall evaluation and monitoring scheme – the total weight of environmental criteria is 8%, i.e. a project application has the potential to achieve a score of 8/100 points on the environmental criteria.
- In Poland, the relevant authorities introduced energy efficiency as a horizontal principle in all OPs for 2007-2013 and this was subsequently reflected in the project selection criteria.
- In Finland, the impact categories of the regional OP for Southern Finland have been adapted to better suit the relevant issues in the OP as well as the aims of the EU Sustainable Development Strategy. SEA is used by project applicants to assess the environmental impacts of project proposals during the project application stage. The managing authority must also consider the SEA and its impact categories when assessing individual projects.
- The SEA of the OP Central Baltic INTERREG IVA specifically includes guidelines for project selection criteria.

The authors also suggest that developing criteria related to the environmental and health issues addressed in SEA are important in establishing efficient monitoring schemes, which, in general, presents one of the challenges in SEA (see Effectiveness, section 5.1.1.3.4).

Literature and some responses to the consultations, however, identified some implementation issues that affect the effective application of SEA to OPs and RDPs. These primarily relate to:

- The general nature of ESIF programmes;
- Timeframes set by the Commission;
- Understanding the benefits of SEA;
- Capabilities of the SEA experts.

Evidence shows that SEA practitioners often have difficulty in assessing the OPs and RDPs, as they can be very general, making definitive conclusions on environmental effects difficult. As a result, the available information about the possible environmental effects of the programmes was solely qualitative and quite general. Challenges stemming from the general nature of programmes were frequently associated with cross-border and transnational programmes. These typically consist of soft measures in an abstract form (policy recommendations, studies, strategies, action plans, instruments and procedures) and include investments only to a very limited extent, meaning that the SEA contained only a few general recommendations and did not have much influence on planning. Other experts highlighted that OPs can be just a list of projects, i.e. their purpose is not to solve identified problems but, rather, to provide

a basis for implementing a list of already agreed projects. This makes the substantive application of the SEA more difficult (2016 SEA Study).

Another practical issue that impacts the SEA of OPs and RDPs is the timeframe for the assessment. As the programmes are developed according to a strict timetable imposed by the European Commission, the Environmental Report is often prepared under considerable time constraints. Political pressure can also be substantial, limiting the leeway for environmental experts to change parts of the programmes that have already been decided (2016 SEA Study). An interviewee confirmed that both RDPs and OPs are very structured documents as their framework is already defined by the European regulations, thus there is only a small margin to introduce changes, alternatives and mitigation measures. This makes further proposals to enhance the programme difficult to make.

As Hjerp *et al.* (2011) explain, even though there is an increasing comprehension that the SEA is an important tool for environmental integration into ESIF programmes, it has often been perceived as a burdensome procedure. The benefits that this planning instrument can offer decision makers remain undervalued and some authorities see SEA as a duplication of work. The two respondents to the targeted consultation questionnaire who stated that SEA can hinder the achievement of CP objectives (both representatives of the Ministry of Transport of their respective countries) argued that SEA applied to transport OPs can result in duplication with the SEA carried out on national transport plans, as well as being time consuming and creating additional costs. One respondent to the Member State authorities' questionnaire in the 2016 SEA Study raised the same issue, explaining that in many cases the activities planned in the OPs (e.g. infrastructure) are already covered by a corresponding national infrastructure plan, which is also subject to SEA.

Many decision makers involved for the first time in SEA considered it an expensive and time-consuming obligation (Smutny *et al*., 2016). As a result, for some of the OPs reviewed by the authors, SEA started relatively late in the programming process, and only after key strategic decisions had been taken on objectives, priorities and content of the Ops, and funds had been allocated. Jiricka and Probstl (2013) confirm that in several cases the active involvement of SEA experts was limited to contributions only after the development of the first draft of the programme.

Evidence from literature and the consultations shows that the capabilities of the SEA experts are another important factor in effective SEA. According to both Smutny *et al*. (2016) and Hjerp *et al*. (2011), limited experience and methodological guidance appear to be the main reason for the poor or variable quality of SEA of OPs in the 2007-2013 programming period. Countries that had experience with SEA before 2005-2006 were better able to define the scope of SEA application, to develop a robust methodological approach and to raise at least a certain level of general awareness among the planning authorities of the importance of SEA (Smutny *et al*., 2016). In this context, the positive example of the Alpine Space OP was presented by Jiricka and Probstl (2013) and was also mentioned during the evaluation workshop. In that case, the previous experience for Alpine Space II created a shared understanding among key stakeholders of the role of SEA, as well as the benefits resulting from involving SEA experts in the discussions from the beginning of the planning process in the SEA for Alpine Programme III.

The stakeholders consulted stated that the Handbook on SEA in EU Cohesion Policy in 2007-2013 (Greening Regional Development Programmes, 2006) was a useful tool for less experienced countries to support the application of the SEA Directive to OPs, although stakeholders noted that it should be updated to reflect recent policy developments and practice. Other guidance documents deemed useful in the 2014-2020 programming period were those available at EU level (e.g. the Commission Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment (European Commission, 2013a), and Commission Guidance documents on

ex ante evaluation, which also include guidance on SEA (European Commission, 2013c). Milieu, IEEP and ICF (2016) also acknowledged the usefulness of JASPERS[52] in providing support and guidance in the preparation of OPs and in carrying out SEA.

Overall, the application of SEA to OPs and RDPs seems to have been less problematic in the 2014-2020 period, demonstrating that conducting SEA repeatedly for the same programme can lead to better practice in coordinating the SEA with the programming process. This point was confirmed by the 2016 SEA Study, where the majority of the authorities consulted reported experiencing no problems in carrying out SEA for ESIF programmes. Smutny *et al*. (2016) suggest that better exchange of information on the current practice in handling the SEA process (including success stories and failures) would further support and promote efficient SEA practice. They also suggest that the Commission could take the lead in facilitating this exercise. This corresponds to stakeholders' requests for updated and specific guidance.

Energy and transport policies

EU energy and transport policies have the potential for significant impact on the environment, and both sectors are among those for which all plans and programmes require SEA, according to Article 3(2) of the SEA Directive.
This section first reviews the linkages between the SEA Directive and key EU policies in the energy and transport sectors, then analyses the application in practice of SEA to plans and programmes in these sectors.

Coherence of objectives
EU energy and transport sectoral policies have the potential to negatively impact the environment; however, both are based on principles of sustainable development and contain specific objectives aimed at sustainability within the sectors.

EU energy policy focuses on the availability of affordable energy across the EU, as well as sustainable energy production and use, in line with the EU's climate change targets for 2020[53] and 2030[54]. EU energy policy is guided by the 2015 EU's Energy Union strategy, consisting of five closely related and mutually reinforcing dimensions: supply security; a fully integrated internal energy market; energy efficiency; decarbonisation of the economy; and research and innovation (European Commission, 2015b). In support of the EU Energy Union strategy and both 2020 and 2030 goals, the EU adopted the Clean Energy for All Europeans package in 2016, consisting of sets of legislative measures covering various aspects of energy and climate[55]. Three key pieces of legislation, on new Renewables, Energy Efficiency and Governance legislation, came into force on 24 December 2018[56]. The revised legislation includes new Governance Regulation (EU) 2018/1999 obliging the Member States to draw up integrated National Energy and Climate Plans for 2021 to 2030 outlining how they plan to achieve their national climate and energy targets. The Regulation specifically refers

[52] JASPERS, Joint Assistance to Support Projects in European Regions, is a technical assistance partnership between three partners (European Commission, the European Investment Bank and the European Bank for Reconstruction and Development) which provides independent advice to beneficiary countries to help prepare high quality major projects to be co-financed by two ESIF (ERDF and the Cohesion Fund), available at: http://jaspers.eib.org/

[53] 20% cut in greenhouse gas emissions (from 1990 levels), 20% of EU energy from renewables, 20% improvement in energy efficiency.

[54] At least 40% cut in GHG (from 1990 levels), at least 27% share for renewable energy, at least 27% improvement in energy efficiency.

[55] European Commission, Energy, News, Commission proposes new rules for consumer centred clean energy transition, available at: https://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition

[56] European Commission, News, New Renewables, Energy Efficiency and Governance legislation comes into force on 24 December 2018, available at: https://ec.europa.eu/info/news/new-renewables-energy-efficiency-and-governance-legislation-comes-force-24-december-2018-2018-dec-21_en

to the SEA Directive in its preamble, stating that Member States should ensure that the public is given early and effective opportunities to participate and be consulted on the preparation of the integrated national energy and climate plans, in accordance, where applicable, with the provisions of the SEA Directive.

In the transport sector, the EU sets out broad transport policy objectives in a number of documents: the 2011 Transport White Paper, the Low-Emission Mobility Strategy, and the three recent Mobility Packages. The 2011 Transport White Paper 'Roadmap to a single European transport area' establishes a vision that integrates efficient mobility and accessibility objectives with resource efficiency and sustainability goals (European Commission, 2011a). The main goals of EU transport policy include creating a Single European Transport Area with increased mobility and creating favourable conditions for growth and jobs, while at the same time improving sustainability and minimising negative environmental impacts. An impact assessment accompanying the White Paper refers to the Sustainable Development Strategy, according to which sustainable transport is 'to ensure that our transport systems meet society's economic, social and environmental needs whilst minimising their undesirable impacts on the economy, society and the environment' (European Commission, 2011b). The 2016 Low-Emission Mobility Strategy sets out the European Commission's strategy for achieving the shift to low-carbon transport while also meeting the mobility needs of people and goods. The Strategy emphasised the important role of transport in contributing towards reducing the EU's emissions, stemming from the EU commitment under the Paris Agreement on climate change and the 2030 Agenda on Sustainable Development (European Commission, 2016). The three Mobility Packages released by the European Commission in 2017 and 2018 provide more detail on the measures to be taken in transport policy under the Strategy. While EU energy and transport policies incorporate the principle of sustainable development (which is coherent with the SEA Directive), their objectives also imply the need for the construction of infrastructure across the EU, which may result in negative impacts on the environment. Specific mechanisms have been put in place to better control these potential negative impacts and strengthen the link between energy and transport policies and the SEA Directive. The Trans-European Networks (TENs) policies, which foresee energy and transport infrastructure construction across the EU, reflect the need to comply with environmental assessment legislation. In addition, streamlining measures and *ex ante* conditionalities help to make SEA more meaningful for these two sectors.

In the energy sector, the Trans-European Networks for Energy (TEN-E) strategy focuses on linking the energy infrastructure of EU countries with a view to integrating energy markets, ensuring security of energy supply and meeting EU and national climate and energy goals[57]. The Trans-European Networks for Transport (TEN-T) Regulation[58] which governs the implementation of this policy across the EU, states that TEN-T networks shall be planned, developed and operated in a resource efficient way through the assessment of strategic environmental impacts (among others), with the establishment of appropriate plans and programmes and mitigation of the effects of climate change[59].

Since 2013, the TEN-E strategy has paved the way for the construction of so-called Projects of Common Interest (PCIs), which are key cross-border infrastructure projects that link the energy systems of EU countries. Article 7 of the TEN-E

[57] European Commission, DG Energy, Infrastructure, Connecting energy markets and regions, available at: https://ec.europa.eu/energy/en/topics/infrastructure/trans-european-networks-energy

[58] Regulation (EU) No 1315/2013 of the European Parliament and of the Council, of 11 December 2013, on Union guidelines for the development of the Trans-European Transport Network and repealing Decision No 661/2010/EU.

[59] Article 5(e) of the TEN-T Regulation.

Regulation[60] specifically requires Member States to take measures to 'streamline' all environmental assessment procedures stemming from EU legislation, with the aim of improving efficiency and reducing the time required when preparing their national energy policies and plans. This includes SEA and, in line with the requirements of the TEN-E Regulation, the Commission issued guidance to Member States in 2013 on how to do this (European Commission, 2013b). The guidance promotes early SEA of strategic-level energy plans and recommends that SEAs are made mandatory at the planning stage for national energy plans (e.g. network development plans submitted by Transmission System Operators (TSOs) and approved by the competent authorities, in accordance with the Directive on common rules for the internal market in electricity and natural gas). According to the Commission's guidance, the application of SEA to these grid development plans enables the early assessment of the environmental suitability of different types of energy sources, as well as different locations for energy projects. It encourages a more integrated and efficient approach to territorial planning, with environmental considerations taken into account much earlier in the planning process and at a more strategic level. However, the TEN-E Regulation itself does not include a specific requirement for PCIs to be included in a national energy plan or programme which has already undergone an SEA (2016 SEA Study).

In the transport sector, for the TEN-T projects co-funded by the Cohesion Fund, a thematic *ex ante* conditionality was introduced as a precondition to benefit from the EU funding. With the aim of supporting sustainable transport and removing bottlenecks in key network infrastructure, the thematic *ex ante* conditionality[61] requires Member States to establish a comprehensive transport plan(s) or framework(s) for transport investment, including public transport at regional and local level, which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks. One of the criteria for fulfilment of the *ex ante* conditionality is that the plan or framework and its specific sections on rail and waterborne transport comply with the legal requirements for SEA. To support national authorities in setting their comprehensive transport plan, JASPERS[62] prepared a guidance document (based on JASPERS' experience in the Member States), providing methodological support in the development of the transport plan. A section of the guidance is dedicated to SEA, describing the main elements of the SEA process and providing some recommendations, although not going into detail on the practical implementation of the SEA process or good practices to ensure the quality of the SEA.

With the third 'Europe on the Move' mobility package from 2018[63], the Commission completed its ambitious agenda for the modernisation of mobility. One of the measures introduced is a legislative initiative to streamline permitting procedures for projects on the core TEN-T. Like the existing TEN-E Regulation, it proposes time limits to stimulate more efficient handling of procedures without compromising the Union's high standards for environmental protection and public participation.

[60] Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

[61] Thematic *ex ante* conditionality 7 in Part 1 of Annex XI to the CPR.

[62] JASPERS, Joint Assistance to Support Projects in European Regions, is a technical assistance partnership between three partners (European Commission, the European Investment Bank and the European Bank for Reconstruction and Development) which provides independent advice to beneficiary countries to help prepare high quality major projects to be co-financed by two ESIF (ERDF and the Cohesion Fund), http://jaspers.eib.org/

[63] Europe on the Move: Commission completes its agenda for safe, clean and connected mobility, available at: https://ec.europa.eu/transport/modes/road/news/2018-05-17-europe-on-the-move-3_en

Coherence in practice

Just over 40% of respondents to the targeted consultation questionnaire (33 for energy and 34 for transport, out of 76) believe that the SEA Directive supports the effective implementation of EU legislation and policy in the transport and energy sectors. Here, again, a large number of respondents did not reply to the question (42% for energy and 37% for transport) or considered SEA to neither contradict nor support the effective implementation of EU legislation and policies in these sectors (see Figure 24 above).

More positive results were evident in the open public consultation, with more than 50% of respondents (106 (energy) and 104 (transport), out of 187) believing that the SEA Directive supports the effective implementation of EU energy legislation and policies.

On average, in both sectors, the authorities responsible for plans and programmes were less positive than the other types of stakeholders consulted. By contrast, results from the public consultation showed homogeneity of positive and negative answers across the different types of stakeholders (see Figure 28 and Figure 29 below). It is worth noting that the transport sector garnered more negative views than the energy sector.

Figure 28: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (average score by stakeholder group for energy and transport: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)

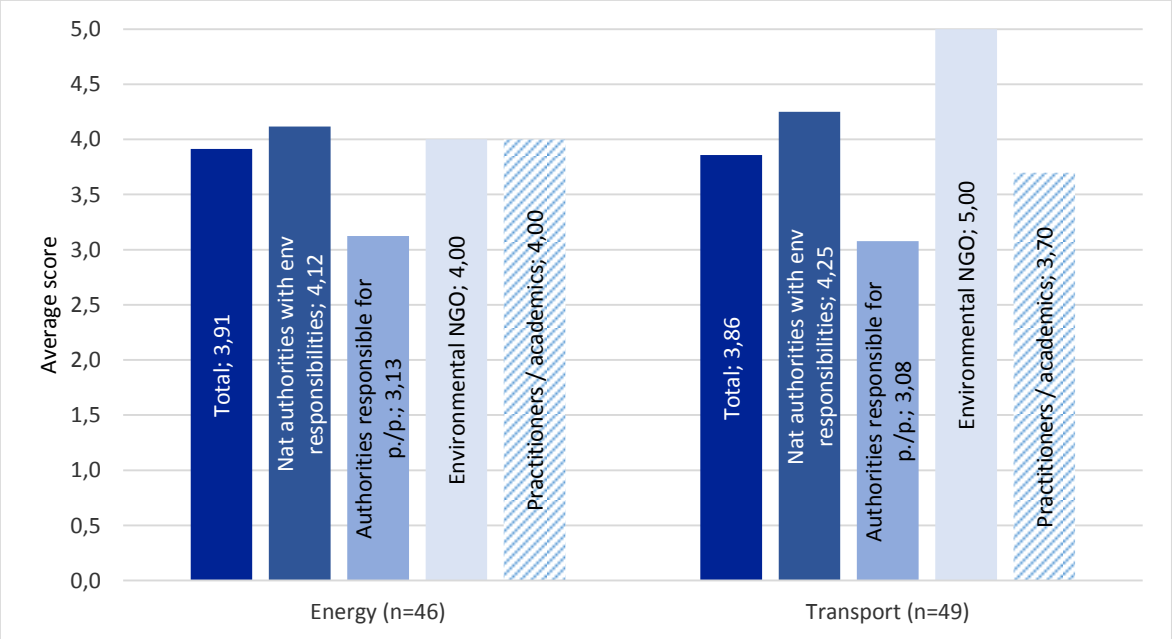
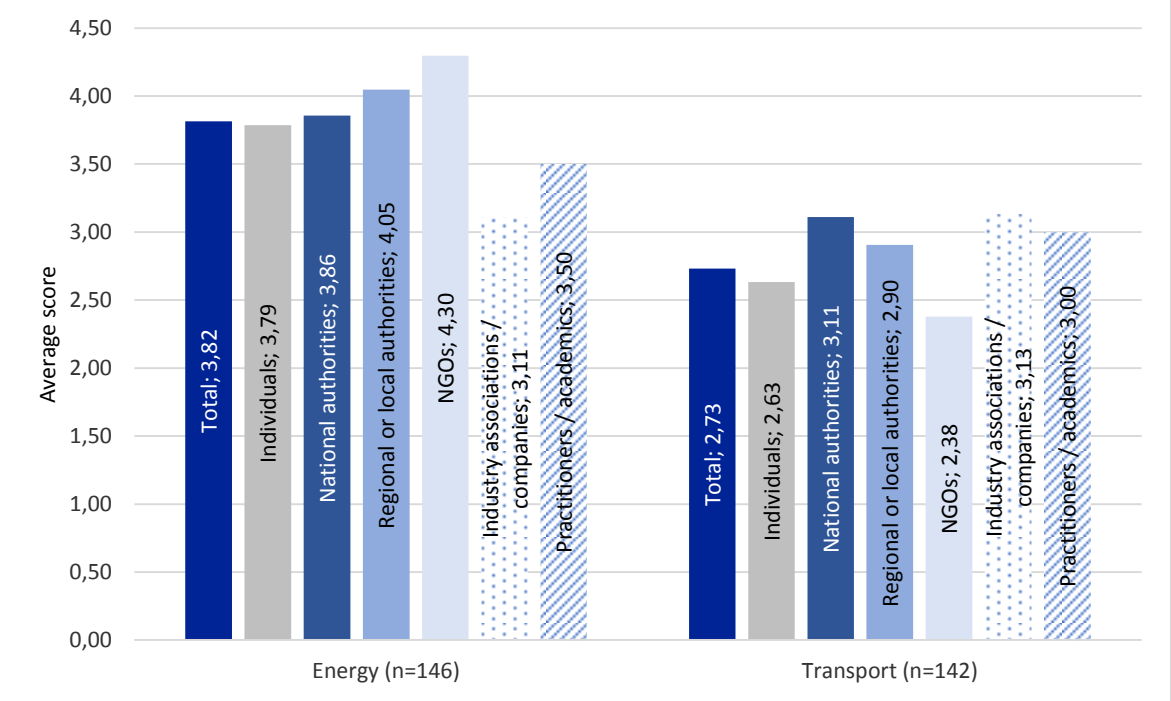


Figure 29: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Public consultation] (average score by stakeholder group for energy and transport: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)



When asked to justify their answers, many respondents to the targeted consultation questionnaire explained that SEA had led to greater environmental emphasis and analysis in energy and transport plans and programmes. This was reiterated by several interviewees, who underlined how SEA can help to reduce the conflict between different policies (e.g. energy vs. water/air; transport vs. soil/landscape/ecological networks) by ensuring that environmental considerations are fully factored in. SEA thus constitutes an important basis for decision-making at strategic level in these two sectors.

According to the interviewees consulted, the greatest benefit is seen in the possibility to identify and consider alternatives at the strategic level, as well as in the structured involvement of the public. Some examples given by respondents on how SEA has positively influenced energy and transport planning are presented in the box below.

Box 18: Examples of benefits of SEA in energy and transport planning

- When interviewed, an academic expert from Denmark mentioned the example of an SEA carried out by a municipality for a climate change project, which considered alternative energy sources: the planned windmills were opposed by the general public and the alternative biogas refinery was identified as the best option. If the SEA and public consultation had not been conducted early in the planning process, viable alternatives would not have been identified.
- A representative from a Dutch environmental authority who replied to the targeted consultation questionnaire stated that SEA supports the need to consider alternative locations and take decisions in a well-founded way, for example when developing wind turbines at sea.
- A practitioner from Poland, when interviewed, presented the example of the Polish Programme of Nuclear Energy, which was substantially modified as a result of public consultation and comments received (including from NGOs) during the environmental assessment process.
- An Austrian interviewee stated that SEA had the greatest influence on plans and programmes where no publicly available process was carried out before the SEA Directive: e.g. SEA for federal highways and railways plans.

- A representative of the Czech government stated during the interview that SEA influenced the final content of transport infrastructure plans and programmes because more alternatives were examined (e.g. roads, tunnels, rail).

The positive interactions presented above are in line with the broader findings of the 2016 SEA Study, which also concluded that SEA, if applied properly, offers clear opportunities to make energy and transport plans and programmes more sustainable and environmentally robust. A key finding from the focus group discussions for this study was that SEA applied to these two sectors led to the possibility of reviewing alternatives at the strategic level, particularly with regard to siting issues and Natura 2000 sites, where network investments have important potential environmental impacts, as well as considering other negative environmental effects (such as using wood and other biomass for energy production), which would otherwise be ignored.

Evidence from consultations suggests that these benefits are not achieved if SEA is not carried out in an effective manner, which is heavily dependent on the political culture within the planning authorities and national priority settings. Some interviewees pointed out that the energy and transport planning authorities in some Member States (which can be private actors (e.g. a TSO preparing an energy network development plan)) are generally more reluctant about SEA and see it as merely a legal requirement to fulfil. Some interviewees stressed that it remains common practice for energy and transport planning authorities to share plans and programmes with environmental authorities only after most strategic decisions have been taken; they include limited environmental considerations in the first draft of the plan and initiate consultation with the environmental authority too late in the process, making it difficult to propose changes. Some planning authorities highlighted that SEA can sometimes slow down the planning process, but they also recognised that the costs of such delays are counterbalanced by the benefits of SEA in the longer term.

This finding is confirmed by Milieu and Tractebel (2016), who identified that poor (or absent) strategic planning resulted in significant delays in the development consent procedures because applications were started for projects at an immature stage, when there was considerable uncertainty on the viability of the project, or disagreements over its necessity or its route remained and alternatives had not been properly developed and assessed. The study concluded that the establishment of a transport plan - undergoing SEA - has the potential to reduce problems and delays in the development consent procedure. Another finding of the study on TEN-T permitting was that public acceptance was often a major challenge for large transport infrastructure projects. A strong strategic planning phase, with a full SEA ensuring timely public involvement, can address this potential issue early on. The value of strategic planning and environmental assessment depends, however, on the quality of both documents, in particular the ability of competent authorities to identify the need for infrastructure projects, select the alternatives to be assessed and identify relevant environmental issues at the scoping stage of the SEA. The preliminary assessment of the *ex ante* conditionality mechanism by the Commission indicated that comprehensive master plans led to better prioritisation of funds and the establishment of more mature project pipelines. It also ensured better coordination of investments at EU, national and regional levels, and the coordinated use of the different EU funding sources (ESIF, Connecting Europe Facility (CEF) and the European Fund for Strategic Investments (EFSI)) (European Commission, 2017b).

Finally, some respondents raised concerns over the risk that ambiguity in the definition of plans and programmes and the application of the SEA procedure could impact sectoral coherence. The 2016 SEA Study found some ambiguity in respect of where to apply SEA in the energy sector, whether at strategic sectoral level or for more specific grid plans. Commission guidance on streamlining environmental assessments for TEN-E projects advises the application of SEA to strategic-level energy plans, but evidence showed that this is not always done in practice.

Consultation carried out for this evaluation has found that many national authorities are concerned that recent CJEU judgments could expand the required application of the SEA Directive to a broader range of documents, including those considered policies and legislation. According to consultees, this could result in repetition of environmental assessment outcomes and could delay progress in achieving sectoral objectives, including energy and transport. On the other hand, some of the stakeholders interviewed expressed the opposite opinion, i.e. that perhaps an SEA of the policies themselves should be made in order to improve the setting of long-term goals and to do so in a more integrated way from the various directives. According to these stakeholders, the problem is not necessarily that the plans do not consider the environment, but that the policies that result in the development of these plans and programmes did not fully take into account their large-scale environmental implications, leaving limited room for alternatives that might be more sustainable in the long-term.

Water, waste and marine policies

A number of environmental Directives at EU level are designed to protect and preserve the environment and promote sustainable development in different sectors. Of these, the Directives regulating water, waste, and marine policies all require the preparation of plans and programmes that may be subject to the SEA Directive. These policies are discussed together in this section as they all have similar planning requirements.

Coherence of objectives
A review of the legislation underpinning EU water, marine, waste policies and their overall objectives shows that they are coherent with the objectives of the SEA Directive. The overall objectives of these policies are to protect and preserve the environment and to promote sustainable development.

An overview of the main objectives and relevant requirements of these Directives is presented in Table 7 below.

Table 7: Objectives and requirements of main water, waste, and marine EU legislation

Sector	Directive and its provisions
Water	The Water Framework Directive (WFD) establishes a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. It requires Member States to prepare and implement Programmes of Measures (PoMs) and River Basin Management Plans (RBMPs) to prevent the deterioration of the status of all water bodies, as well as to protect, enhance, and restore them, while promoting efficient and sustainable water use. The Floods Directive aims to reduce the adverse consequences for human health, the environment, cultural heritage and economic activity associated with floods in the Community, as well as to reduce the likelihood of flooding. Member States must adopt flood risk management plans (FRMPs).
Waste	The Waste Framework Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste, by reducing the overall impacts of resource use and improving the efficiency of such use. Member States must adopt waste management plans and waste prevention programmes.
Marine	The Marine Framework Strategy Directive (MSFD) sets specific and measurable quality targets for the marine environment. Member States must develop a strategy for marine waters (Marine Strategy) and outline a series of PoMs. The Maritime Spatial Planning (MSP) Directive also requires Member States to draw up maritime spatial plans to map existing human activities in their marine waters and to identify their most effective future spatial development.

As seen in Table 7 above, the Directives underpinning these sectoral policies set specific targets and actions to be undertaken and achieved, usually within a set

timeframe, and thus do not interfere or contradict the more high-level objective of the SEA Directive.

Coherence in practice
Article 3(2)a of the SEA Directive requires an environmental assessment to be carried out for all plans and programmes which are prepared for (among other sectors) waste management and water management[64] and which set the framework for further development consent of projects listed in the EIA Directive. While the first part of this provision clearly sets out the relationship between the SEA Directive and waste and water sectors, the second part means that an SEA is not automatically required for plans and programmes developed under the sectoral policies described in this section[65]. It is possible, for example, that a waste management plan does not set the framework for projects falling under the EIA Directive, e.g. if the disposal capacities are sufficient for current waste levels and no further disposal installations are foreseen.

The SEA Directive is specifically referenced in some of those Directives that do not predate it: the MSP Directive, for example, specifically notes in its preamble that 'where maritime spatial plans are likely to have significant effects on the environment, they are subject to (the SEA) Directive 2001/42/EC'. Other Directives define the relationship differently – the Floods Directive states that flood-related measures taken under the SEA Directive should be included in the FRMPs. In any case, all RBMPs, PoMs, Waste Management Plans and MSPs need to be screened for SEA. With regard to the WFD, academic researchers (Sheate and Bennet, 2007) stress the importance of undertaking an SEA on both the plans and the PoMs (in the case of the WFD) due to the difference in scope of the two planning instruments. In practice, evidence shows[66] that most plans and programmes concerning water and marine undergo an SEA as a matter of formality, regardless of whether or not they fulfil the second criteria of setting the framework for projects falling under the EIA Directive. While RBMPs and PoMs under the WFD are already in their second cycle, less experience is yet available for FRMPs and PoMs under the MSFD, which were adopted for the first time in 2015.

Results from the public consultation show that the majority of respondents consider the SEA to (either strongly or slightly) support the objectives of both water and waste management. The response for MSP was less positive, largely because of the large number of respondents replying: 'don't know'. This is understandable, given that the Directive is new and that it is less likely to affect the general population. Overall, very few respondents believe the SEA hinders the effective implementation of EU legislation and policy in water, waste and marine. While many respondents mentioned how the SEA has had a positive impact on plans or programmes, very few gave practical examples when asked to justify their answer.

For all fours sectors, environmental authorities and SEA experts were, on average, more positive than the other types of stakeholders consulted. By contrast, results from the public consultation showed more homogeneity of positive and negative answers across the different types of stakeholders, with national authorities giving the most favourable replies (strongly/slightly support) and the private sector representatives giving the least favourable replies (see Figure 30 and Figure 31 below).

[64] RBMPs and PoMs developed under the WFD, FRMPs under the Floods Directive, PoMs developed under the MSFD and waste management plans under the Waste Framework Directive.

[65] The CJEU joint ruling C-105/09 and C-110/09 Terre wallonne ASBL and Inter-Environnement Wallonie ASBL, paragraph 43 states, 'Article 3(2)(a) of Directive 2001/42 provides that a systematic environmental assessment is to be carried out for all plans and programmes which (i) are prepared for certain sectors and (ii) set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337'

[66] Two ongoing projects carried out for the European Commission: Providing support to the assessment of the Water Framework Directive and Floods Directive plans and implementation; and Service Contract to Support the Implementation of the Marine Strategy Framework Directive (2008/56/EC).

Figure 30: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Targeted consultation questionnaire] (average score by stakeholder group for water, waste and marine sectors: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)

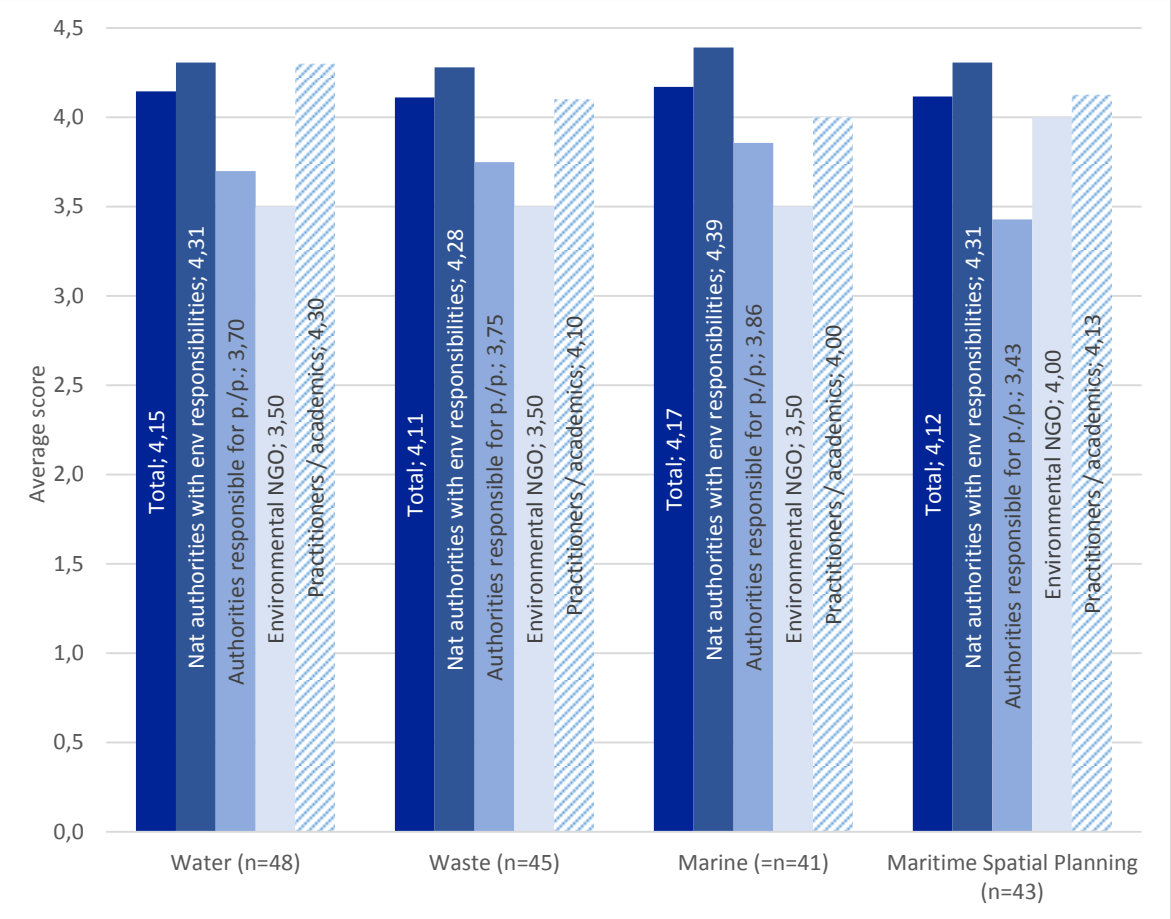
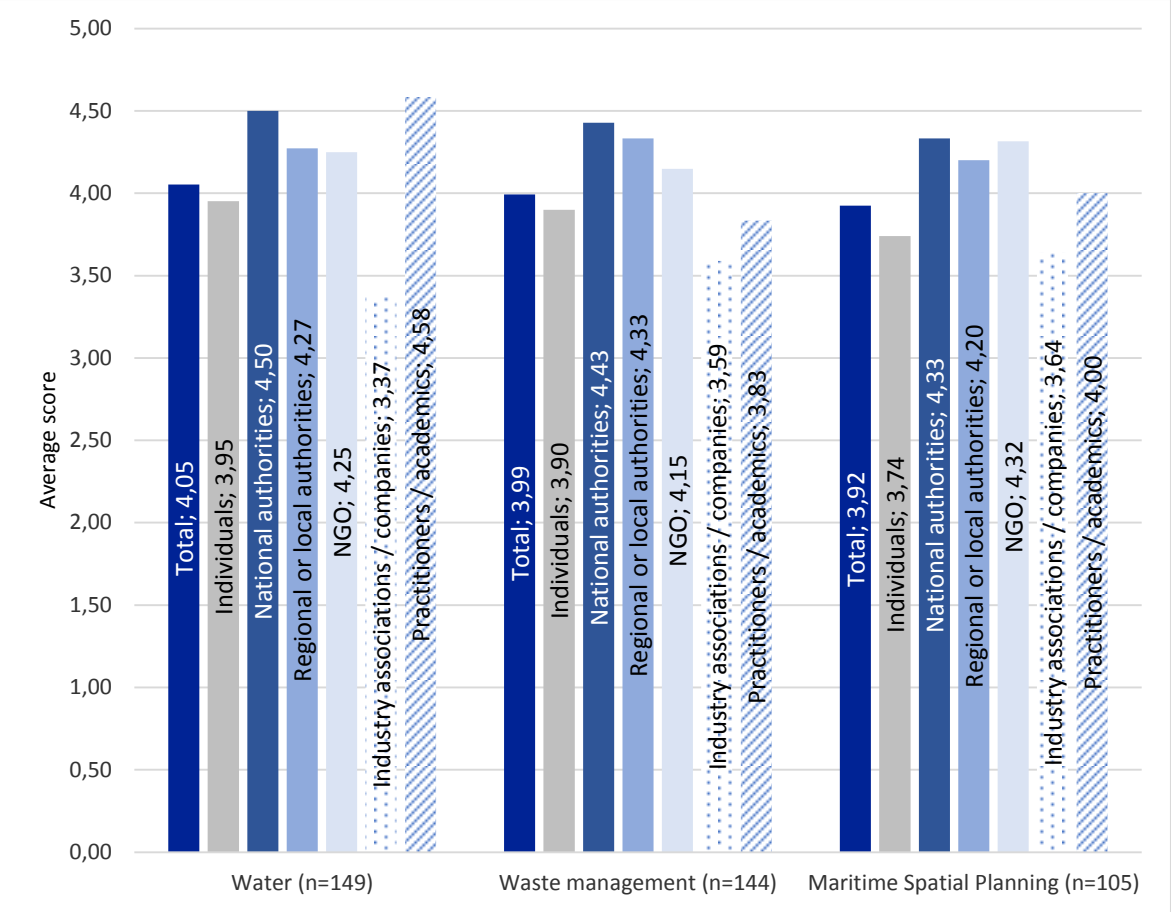


Figure 31: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? [Public consultation] (average score by stakeholder group for water, waste and marine sectors: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)



The analysis of respondents' replies to the open questions showed that stakeholders tend to agree that SEA enhances environmental integration in these sectors' plans and programmes and helps to provide a systematic way to identify wider environmental effects and alternatives, and organise consultations with the public, authorities, and transboundary neighbours.

In Water, Waste, and Marine Framework Directives, plan or programme developers are not specifically required to consider alternatives, although measures usually undergo at least some evaluation or cost-benefit analysis. The importance of alternatives in waste plans was mentioned by several respondents to the consultations, including alternatives being defined for landfills and incinerators, and the efficiency of existing waste disposal plants. On the other hand, another respondent noted that since waste plans are renewed multiple times, there is little room to introduce alternatives by the time the plan has been through several iterations.

The Water, Waste and Marine Framework Directives all require some form of consultation, usually with 'interested parties'. The WFD, for example, sets out very specific requirements for consultations, including timeframes. However, only the Waste Framework and MSP Directives specifically mention consultations with other (relevant) authorities. The SEA Directive, on the other hand, requires consultations with authorities likely to be concerned by the environmental effects of plans or programmes. Comments from public consultation and the targeted consultation questionnaire highlighted how the SEA requirement enhances the framework for the contribution of the relevant authorities, including those from different sectors, at an early stage of the decision-making process, either through carrying out consultations

with authorities who would not otherwise have been considered, or by providing further definition of 'relevant authorities'. Several interviewees confirmed that undertaking an SEA facilitated greater cooperation between the planning authority and the SEA competent authority, resulting in a better plan or programme. One interviewee, in particular, noted that even if consultation with environmental authorities does not lead to changes to the plans or programmes, this practice provides the public and other stakeholders with a guarantee that the environment has been considered. Only one respondent to the targeted consultation questionnaire raised any concern about public participation, noting that local level waste plans can result in the political decision being taken based on public opinion rather than expert advice or with a view to protecting the environment.

The Water, Waste and Marine Framework Directives include specific provisions to undertake the necessary cooperation with other Member States, and it has been noted[67] that this may cause overlap with the requirements of the SEA Directive. In view of such overlap, the MSP platform recommends that the two processes be coordinated in order to make effective use of stakeholder resources, given the consultations carried out under MSP, SEA, MSFD, etc.

Some examples given by respondents on how SEA has supported waste management planning are presented in Box 19 below.

Box 19: Examples of benefits of SEA in waste management planning

- An interviewee from an **Austrian regional authority** explained that, with reference to the regional waste management plan, decision-making was improved due to the SEA Directive: public bodies, NGOs, other interest groups and the general public were involved and participated in *ad hoc* working groups. As a result of the involvement of different experts throughout the process, lots of information and relevant improvements were considered and ultimately improved the quality of the plan and the decision-making process.
- An **SEA practitioner from France**, which provides technical and scientific assistance to the regional services, explained that for the waste management plan, a meeting with the environmental authority was organised before starting the SEA. The authority responsible for the preparation of the plan then began to integrate some of the issues to be addressed by the SEA directly into the plan-making process: the authority looked into external coherence and likely scenarios to explain the underlying hypothesis of the plan at an early stage. Since the organisation of the meeting proved to be a positive experience, they are trying to replicate the same practice for other types of plans, hoping to move towards complete integration of the SEA and the plan-making process so that the competent authority really feels responsible for the SEA.
- An **SEA practitioner from Austria** reported that the SEA process had allowed specific alternatives to be considered for the regional waste management plan and, as a result, the new waste incinerator was upgraded with the best available filter technologies for exhausts, while the filters of older incinerators were renewed.

Aside from the procedural requirements identified above, one of the biggest opportunities for synergy between the SEA Directive and water, waste and marine sectoral policies is the sharing of data. The SEA Directive requires the establishment of a baseline, for which the availability of relevant data often proves difficult[68]. Under the Water, Waste and Marine Framework Directives, various data are collected and reported, for example, on the quality of water. SEA practitioners can use these data to

[67] https://www.msp-platform.eu/faq/strategic-environmental-assessment-sea

[68] See Section 5.1.1.3.2 on effectiveness.

produce SEAs without having to collect the data from scratch, including for SEAs not primarily concerning water, waste, or marine. However, there are conflicting views on this point, as the 2016 SEA Study showed that some Member State authorities identified a risk of duplication of effort, with the data collected under the WFD being similar to that required for the SEA, while others identified it as an opportunity for synergy between the WFD and the SEA, as information can be shared between the two policy instruments. As another example, the MSP has specific provisions for data use and sharing. A comprehensive data-sharing system set up for MSP would reduce data-collection efforts for the SEA. However, since the WFD and MSFD reporting obligations require a large amount of specific and specialised data, not all of which is necessary for an SEA, care must be taken to avoid overburdening the SEA with superfluous data on water.

Another example of how SEA can improve sectoral plans for water was identified in the SEA Directive Guide of the UNECE[69] in respect of the application of derogations, as set out in Article 4 of the WFD. The guidance document recommends that whenever the terms 'the wider environment', 'significantly better environmental option' or 'sustainable human development' are used as criteria for applying a derogation, the findings of the SEA environment report may be useful in justifying the derogation on the basis of those criteria.

By contrast, several respondents to the consultations and interviews (at least three) stated that an SEA is sometimes considered superfluous or a duplication of effort by the planning authority for plans and programmes whose primary goal is to protect the environment. However, they also note that SEA is not a costly procedure and proves useful to the planning authorities, as it provides for all of the procedural steps (scoping, consultation, preparation of the Environmental Report, public participation) that would otherwise be organised in a less systematic way. The consultation activities also showed that, like other types of plans and programmes, SEA can lead to delays in the final approval of the plan/programme. One interviewee pointed out that these delays are due to implementation problems rather than a lack of coherence with the SEA Directive. In some cases, these delays were deemed worthwhile, with respondents giving examples of waste management plans being improved in the light of alternatives that considered the circular economy or the designation of different locations for measures.

Climate change policy

Climate change is a cross-cutting issue that influences key natural and human living conditions. At the same time, society's priorities on sustainable development influence the GHG emissions that cause climate change and associated vulnerabilities. The objective of climate change policies is to minimise climate change that has the potential to affect the environment. The impact of climate policy responses and associated socioeconomic development will affect the ability of Member States to achieve environmental objectives and sustainable development goals. Climate change policies are closely interrelated with environmental policies and are thus considered coherent with the objectives of the SEA Directive.

The climate change policy sector is not mentioned among the list of sectors whose plans and programmes should be subject to SEA (Article 3(2)). However, climate change issues are more frequently integrated within energy plans and programmes that are likely to have significant environmental effects and are thus subject to SEA. More broadly, the Directive considers climate change a horizontal issue that must be considered in all types of plans and programmes that undergo an SEA. According to Annex I(f), the authorities are required to assess the likely significant effects of their plans and programmes on a number of environmental issues, including climatic factors

[69] https://www.unece.org/fileadmin/DAM//env/eia/sea_ec_guide/sect9.htm

and the interrelationship between the factors. These effects should include secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary, positive and negative effects. Integrating concerns on climate change into the early stages of the planning process would enhance sustainable development and ensure that impacts with a higher level of uncertainty, such as climate change, are taken into account throughout the various phases of developing plans and programmes (Willekens *et al*., 2011).

Assessing climate change in SEA is different from assessing other effects. Firstly, climate change is one of the most significant and complex cumulative effects, being due to the combination of many actions, each of which has only a limited impact but all of which together cause serious effects. Secondly, in climate change there are two sets of impacts to contend with: the impact/constraints set by climate change on the plan (normally part of the SEA context/baseline stage); and the effects of the plan on future GHG emissions (in the SEA prediction/assessment stage) (EPA, 2015).

Literature has shown that in the years immediately following the adoption of the SEA Directive, SEA was used to consider climate change solely in the context of the geographical area covered by the plan being assessed, rather than considering the global implications of the resulting emissions (Wende *et al*., 2012). At the same time, practitioners and planning authorities struggled to consider how projected changes in climate would impact the plan or programme, due to the complexity and uncertainty of such impacts in the long-term.

Literature gradually began to focus on the importance of considering climate factors in plans and programmes, and started to explore how SEA could be used to understand the impact of a changing baseline on the implementation of the plan and programme and how it may respond (adapt) over time.

Literature shows that SEA can help to ensure that plans and programmes take full account of climate change issues. The Irish European Protection Agency (EPA 2015) recognises SEA as the most flexible instrument available internationally that is capable of integrating climate policy. In recent years, particular attention was paid to SEA as a tool to promote the inclusion of suitable actions for adapting to climate change in the planning process, as well as to highlight possible adaptation conflicts with other existing regional/national plans and programmes. According to the UNECE (2010), SEA can be an effective tool for climate change adaptation and mitigation, by introducing climate change considerations into development planning. The conclusions of the Intergovernmental Panel on Climate Change (IPCC) stated that consideration of climate change impacts at the planning stage is key to boosting adaptive capacity (UNECE 2010).

In 2007, the European Commission Green Paper on Adaptation (European Commission, 2007) stated that climate change proofing must be integrated into the EIA and SEA Directives, as policy impact assessments had to address impacts on ecosystems. The subsequent White Paper of Adaptation to Climate Change called on Member States, stakeholders and the Commission to work together to '*ensure that account is taken of climate change impacts when implementing the EIA and SEA Directives'* (European Commission, 2009b, p.13). Some years later, in 2013, the Commission adopted the Climate Change Adaptation Strategy (European Commission, 2013d) which encouraged Member States to adopt climate adaptation strategies at national level and, at the same time, stated that mainstreaming climate change adaptation into EU policies is one of the phases to improve the EU's resilience in dealing with the impact of climate change. As part of the strategy, the Commission issued its Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment (European Commission, 2013a) to help planning authorities to integrate climate change into SEA.

The SEA Directive does not mention adaptation strategies. Instead, whether or not an SEA is required for these types of policy documents will depend on their level of detail. If such a strategy simply describes the general framework of the effects of climate change on a region or country to build understanding, knowledge and capacity, an SEA will not be required. If, on the other hand, the adaptation strategy sets out detailed guidelines and a framework for adaptation measures to be taken, it could cause significant environmental effects and an SEA would be required. Nevertheless, strategy makers can always choose to subject the strategy to an SEA on a voluntary basis (Willekens *et al*., 2011). In fact, one panellist at the evaluation workshop suggested that a clear reference should be made in the Directive to ensure that Member States subject adaptation strategies to SEA.

Evidence gathered via the targeted consultation questionnaire and the interviews showed that some Member States have carried out SEA on climate change strategies, which include both mitigation and adaptation components (at national, regional or local level). Stakeholders have mixed views about how climate change concerns have been considered within the SEA process. Some confirmed the findings of literature, stating that SEA has provided the right framework or checklist to assess climatic factors and that climate change factors (e.g. GHG emissions, carbon storage in soil) are in fact addressed more frequently in SEAs. Others, however, mentioned that it is a relatively new area and remains very complicated to assess (e.g. it is difficult to define a monitoring approach for climate change due to its uncertainty), thus more up-to-date guidance would be useful.

5.4.2.4. Key findings

The SEA Directive plays an important role in the implementation of certain EU sectoral policies, in particular those that require the preparation of plans and/or programmes that may impact the environment, and which require an SEA under the provisions of the SEA Directive.

The evaluation found that the SEA Directive is broadly coherent with all EU sectoral policies at objective level:

- CP, RDP, the CFP (ESIF policies) and energy and transport policies are not primarily dedicated to environmental objectives, although all have high-level sustainability objectives and some have environmental components.
- Since 2000, the integration of environmental considerations into all aspects of programme development and implementation within ESIF policies has gradually become more systematic and comprehensive. According to Article 8 CPR for the 2014-2020 programming period, objectives of ESIF should be pursued in line with the principles of sustainable development aimed at preserving, protecting and improving the quality of the environment, as set out in Article 11 and Article 191(1) TFEU. This is consistent with the aim of the SEA Directive to enable the incorporation of environmental considerations into plans or programmes, with a view to promoting sustainable development.
- Over the years, regulations governing the ESIF policies have established specific mechanisms to strengthen the link with the SEA Directive. For the 2014-2020 period, the link between SEA and the programming process for the ESIF programmes is quite explicit, with SEA firmly established as part of the *ex ante* evaluation. The requirement to fulfil specific *ex ante* conditionalities takes this further, addressing the pre-conditions that Member States must fulfil in order to ensure their capacity to carry out SEA effectively.
- While EU energy and transport policies incorporate the principle of sustainable development, their objectives also imply the need for the construction of infrastructure across the EU, which may result in negative impacts on the environment. Specific mechanisms have been put in place to better control these potential negative impacts and strengthen the link between energy and transport policies and the SEA Directive. The TENs policies, which foresee

energy and transport infrastructure construction across the EU, reflect the need to comply with environmental assessment legislation. In addition, the implementation of streamlining measures and *ex ante* conditionalities help to make SEA more meaningful for these two sectors.

- Directives regulating water, waste, and marine policies all require the preparation of plans and programmes that may be subject to the SEA Directive. The overall objectives of these policies (i.e. protection and preservation of the environment and sustainable development) shows that they are coherent with the objectives of the SEA Directive.

When looking at coherence in practice, the situation is more complex, but still positive:

- Evidence shows that, overall, the SEA Directive supports the effective implementation of EU sectoral policies by contributing to making them more environmentally robust and sustainable.
- Most of the respondents to the targeted consultation questionnaire considered the SEA Directive to strongly or slightly support the effective implementation of sectoral policies. However, a large number did not reply, while others were unsure, stating that the SEA Directive neither hinders nor supports the effective implementation of EU legislation and policies in those sectors.
- Evidence from literature and the targeted and public consultations confirms that the SEA can support sectoral objectives only if it is carried out in an effective manner. The most important factors influencing effectiveness of SEA applied to sectoral plans and programmes were: decision-making culture and awareness of the benefits of SEA; strong coordination between all authorities involved; capabilities of the SEA experts; widespread public participation; evidence-based decision-making; and identification of alternatives. In particular, alternatives are considered a critical component of the SEA process in terms of ensuring that sectoral objectives can be achieved without causing environmental damage.
- Another common finding is that there is a learning curve for those planning authorities asked to subject their plans and programmes to SEA. Some planning authorities, especially in the energy and transport sectors, are initially reluctant and see it as a box-ticking exercise. Some authorities responsible for plans and programmes in the environmental sectors think SEA should not be strictly necessary for these types of plans and programmes as they already integrate environmental objectives from the onset. It takes time and years of experience for them to fully understand its benefits.
- The majority of the stakeholders consulted agreed that guidance is really useful, particularly the SEA European Commission guidance. Some suggested that it should be updated based on best practice examples and CJEU case law. Other types of guidance documents were criticised for being too generic, often only available in English and not regularly updated. Specific guidance on how to carry out SEA in a particular sector is not available and would be very welcome.

- In addition to these general findings applicable to all of the EU sectoral policies assessed, several differences were noted between sectors in terms of the benefits and implementation problems:
  - SEA practitioners often have difficulty in assessing the ESIF programmes as they can be very general, making definitive conclusions about environment difficult. Another practical issue that impacts the SEA of ESIF programmes is the timeframe for the assessment. As the programmes are developed according to a strict timetable imposed by the European Commission, the Environmental Report is often prepared under considerable pressure.
  - Some constraints were mentioned (by several stakeholders) with regard to the energy and transport sectors: primarily the fact that SEA lengthens the decision-making process and may pose a delay in the

adoption of plans and programmes, thus influencing the timely delivery of sectoral objectives.

- There is a risk that ambiguity in the definition of plans and programmes and the application of the SEA procedure could impact sectoral coherence. The 2016 SEA Study found some ambiguity in respect of where to apply SEA in the energy sector, whether at strategic sectoral level or for more specific grid plans. Commission guidance on streamlining environmental assessments for TEN-E projects suggests the application of SEA to strategic-level energy plans, but evidence suggests that this is not always done in practice. Consultations carried out for this evaluation found that many national authorities are concerned that recent CJEU judgments could expand the application of the SEA Directive to a broader range of documents, including those considered to be policies and legislation. They believe that this could result in repetition of environmental assessment outcomes, delaying progress in achieving sectoral objectives.
- By contrast, clear synergies were noted between SEA and sectors that incorporate environmental objectives from the onset, such as water, waste, marine and climate. SEA is seen as a useful procedure that provides for each of the steps (scoping, consultation, preparation of the Environmental Report, public participation) that would otherwise be organised in a less systematic way. Although these sectors' Directives require relevant stakeholders, authorities and the general public to have the opportunity to participate in the development of plans and programmes, comments from public consultation and the targeted consultation questionnaire highlighted how the SEA requirement enhances the framework for the contribution of the relevant authorities, including those from different sectors, at an early stage of the decision-making process. SEA and these sectoral policies also support one another through the sharing of methods and data.

5.4.3. Question 10: To what extent is the intervention coherent with EU international obligations?

5.4.3.1. Interpretation and approach

Question 10 considers international obligations. While SEA is very likely to contribute to a wide range of international environmental commitments in the EU, the assessment of coherence with the UNECE SEA Protocol to the Espoo Convention and the Aarhus Convention is directly relevant. This assessment of coherence is important in understanding how these instruments have enhanced or hindered implementation of the SEA Directive since its adoption and vice versa.

To properly understand the coherence of the SEA Directive with EU international obligations, two aspects are considered: theoretical coherence of the legal text as written and interpreted through guidance, case law and other documentation; and the extent to which the international commitments are implemented and enforced in the Member States.

5.4.3.2. Main sources of evidence

The assessment of coherence of the SEA Directive with the EU international obligations is based on the analysis of EU and international legislation and policy documents, including guidance documents, as well as literature on the topic. The analysis was complemented – to a limited extent - by stakeholder responses to the targeted consultation questionnaire.

5.4.3.3. Analysis of the question according to available evidence

The EU international obligations relevant to the SEA Directive are the United Nations Economic Commission for Europe (UNECE) Protocol on Strategic Environmental Assessment (SEA Protocol) and the UNECE Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The SEA Protocol supplements the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) by ensuring that individual Parties integrate environmental assessment into their plans and programmes at the earliest stage. It was adopted in 2003, ratified by the EU in 2008 and came into force in 2010. The Aarhus Convention is an international agreement that enables individuals and groups of people to actively participate in environmental protection and sustainable development. It was adopted and ratified by the EU in 1998 and came into force in 2005.

Like the SEA Directive, the SEA Protocol and the Aarhus Convention provide for a system of procedural guarantees aiming at a high level of environmental protection. They are thus, overall, coherent with one another at the level of their objectives.

According to Article 216(2) TFEU, international agreements concluded by the EU are binding on its institutions and its Member States. According to the case law of the CJEU[70], the provisions of a treaty signed by the EU form an integral part of the EU legal order. International agreements signed by the EU rank above the internal secondary legislation. It follows, therefore, that directives and regulations must be interpreted consistently with the obligations resulting from the Aarhus Convention and SEA Protocol.

To comply with these international obligations, the SEA Directive officially transposes the Protocol in the EU legislation[71], while implementation of the Aarhus Convention is supported by several pieces of EU legislation[72], including the Directive on Public Access to Environmental Information and the Directive on Public Participation in the Drawing up of Plans and Programmes Relating to the Environment. The obligations of the Aarhus Convention have not been transposed into the SEA Directive. The Convention came into force for the EU after the SEA Directive was adopted (in 2001) and the Directive was not subsequently amended based on the new Public Participation Directive (Marsden, 2011). However, provisions for public participation in environmental decision-making (in line with the principles of the Aarhus Convention) are found in the SEA Directive and a number of other environmental directives, including those requiring plans and programmes that can be subject to SEA, such as the WFD and the Waste Framework Directive.

The SEA Protocol was drafted after the adoption of the SEA Directive in 2001 and is based on the Directive, thus some of its provisions are very similar. There are, however, a number of differences in the procedural and enforcement provisions of the two legal instruments, which might affect their coherence in practice.

The differences between the three instruments relate to the following issues:

- Consideration of health issues;

[70] C 459/03 Commission v Ireland [2006]; Case C 344/04 IATA and ELFAA [2006].

[71] http://ec.europa.eu/environment/eia/sea-legalcontext.htm

[72] Directive 2003/4/EC on Public Access to Environmental Information; Directive 2003/35/EC on Public Participation in the Drawing up of Plans and programmes Relating to the Environment; Directive 2003/98/EC on the re-use of public sector information; and Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).

- Scope of application;
- Public participation rights and timeframes;
- Access to justice;

Consideration of health issues
As the SEA Protocol was a joint undertaking of UNECE and WHO, it attaches considerable importance to health issues (Jendroska, 2016). The analysis of health issues is specifically indicated as an integral part of the environmental assessment and health authorities must be formally involved in the SEA procedure (Article 9). This is not specified in the SEA Directive, although health issues are also considered there. Its Annex I(f) lists the information to be provided in the Environmental Report according to Article 5, establishing that likely significant effects on the environment include human health.

Scope of application
Several differences between the three instruments are found in relation to their scope of application.

The first difference relates to the way in which the Directive and the Protocol refer to the plans and programmes which set the framework for future development consents. The SEA Directive makes a reference to '*setting the framework for future development consent of projects listed in Annexes I and II to the EIA Directive'* (Article 3(2)), while the SEA Protocol makes a similar reference (Article 4(2)) to setting the framework for future development consent for projects '*listed in Annex I and any other project listed in Annex II that requires an environmental impact assessment under national legislation'*. While the list of projects in the respective annexes to both instruments is almost identical, the SEA Directive reference to projects covers all projects listed in annexes to the EIA Directive, while the SEA Protocol reference is much less clear, as it refers to '*any other project listed*'. In addition, the SEA Directive also requires SEA for those plans and programmes which require an Appropriate Assessment (AA) under the Habitats Directive in view of the impact that they may have on Nature 2000 sites. The Protocol does not refer to AA in the definition of its scope of application (Jendroska, 2016).

Another important difference between the Protocol and the Directive - and one which may affect their coherence and the ways in which Member States apply SEA requirements - relates to the types of strategic documents that must be subject to SEA. While the SEA Directive specifically refers to *'plans and programmes'* and does not mention '*policies and legislation'*, the Protocol differentiates between *'plans and programmes and policies and legislation'*. Policy and legislation, however, are excluded in the text of the Protocol from formal SEA requirements and should be subject to SEA only '*to the extent appropriate'* (Article 13). These terms, however, have not been clearly defined in the Protocol, leaving considerable discretion to Member States in their application. The Protocol (like the SEA Directive) provides some instruction on the main characteristics of plans and programmes (Article 2 in both instruments) but does not indicate the differences between plans, programmes, policies and legislation. Jendroska (2016) argued that, while the term 'legislation' may be similarly understood in national legal frameworks, plans, programmes and policies can be used interchangeably in many countries. Strategic documents can also have identical characteristics to those called plans, programmes or policies which take other names, like for example 'strategies', 'concepts', 'guidelines', etc. (Jendroska, 2016). The official EU guidance document on the SEA Directive clearly aknowledges that 'documents having all the characteristics of a plan or programme as defined in the Directive may be found under a variety of names' and recommends that the name of the document 'will not be sufficiently reliable guide' to define the types of documents subject to SEA (European Commission, 2004).

There are also some inconsistencies between the SEA Directive and the Aarhus Convention in the ways in which plans and programmes are defined. The Aarhus

Convention does not establish a clear definition of 'plans'. Article 7 of the Convention refers to 'plans, programmes and policies relating to the environment'. These consist of types of documents somewhere between 'decisions' pursuant to Article 6 (which are subject to the EIA Directive 2011/92/EU) and 'executive regulations and/or generally applicable legally binding normative instruments' according to Article 8. Although the definition is similar, there is a subtle difference between 'plans relating to the environment' (Article 7) and plans 'likely to have significant environmental effect' (Article 3(1), (4) and (5) of the SEA Directive), with a broader scope under the Aarhus Convention (UNECE 2014).

Public participation rights and timeframes
Compared to the SEA Directive and the SEA Protocol, the Aarhus Convention has more detailed provisions on public participation.

A difference is noted between the three instruments in the ways in which they define public participation rights. While both the SEA Protocol and the SEA Directive clearly invoke the Aarhus Convention, the SEA Protocol is quite unclear as to the subject of participation rights in SEA, referring to both 'the public' and 'the public concerned' throughout the text. The SEA Directive is much more in line with the broader approach in Article 7 of Aarhus Convention, referring to 'the public' which should be identified for the purpose of participating in SEA (Article 6).

The SEA Directive clearly requires appropriate timeframes to be fixed for public participation and consultation with environmental authorities (Article 6(2)). Similar requirements are in the SEA Protocol in relation to public participation and consultations with environmental and health authorities ('each Party shall determine detailed arrangements'). Similarly, both the Protocol and the Directive require reasonable timeframes for transboundary procedures to be agreed between the States involved. Articles 6 and 7 of the Aarhus Convention provide for clear instructions on the information and timeframes for members of the public to participate in planning processes. It establishes that 'each Party shall take the necessary legislative, regulatory and other measures, to establish and maintain a 'clear, transparent and consistent framework' to implement its provisions' (Article 3(1) and (7) limiting somehow the amount of discretion for national SEA frameworks in that respect (Jendroska, 2016).

The text of the SEA Directive differs from that of the SEA Protocol and the Aarhus Convention in the timing of public participation. The two international instruments require public participation to take place at an early stage of development of the relevant activity (Article 8(1) of the SEA Protocol and Article 6(4) of the Aarhus Convention)[73], when options are still available. By contrast, the SEA Directive requires the public to be given 'an early and effective opportunity…to express their opinion on the draft plan or programme and the accompanying Environmental Report before the adoption of the plan or programme or its submission to the legislative procedure' (Article 6(2)). In practice, the requirement that the public has the opportunity to give its opinion on the Environmental Report means that it takes place towards the end of the SEA procedure after alternatives have been developed and assessed. As noted in the Question 3 (5.1.3.3), this may affect the effective implementation of the Directive, as Member States tend to comply with the minimum requirements of the Directive and are not incentivised to initiate the involvement of the public at earlier stages (e.g. scoping), despite it being demonstrably good practice. However, there is no concrete comparison available of the differences in practical implementation between the 'when all options are open' and the 'early and effective' requirements.

Access to justice

[73] The language is identical in the SEA Protocol and the Aarhus Convention: 'Each Party shall provide for early public participation, when all options are open and effective public participation can take place'.

The Aarhus Convention provides for access to justice concerning plans relating to the environment (Article 9(3) Aarhus Convention). The provision leaves some discretion as to who can challenge acts, as it establishes that *'each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures'*. The SEA Directive, like many other pieces of EU environmental legislation, does not have specific provisions on access to justice. When concluding the Aarhus Convention, the EU declared that the legal instruments in force do not cover fully the implementation of the obligations resulting from Article 9(3) and that, consequently, its Member States are responsible for the performance of these obligations until the Community would adopt provisions of EU law covering those obligations[74]. It follows from Article 9(3) of the Aarhus Convention as well as Article 47 of the EU Charter on fundamental rights (on right to an effective remedy and to a fair trial), that Member States are obliged to allow parties to contest before a court a decision that may be contrary to an obligation stemming from specific EU legislation, even without an express provision to access to justice in the EU legislation. The Commission underscores this in its 2017 Notice[75] on this issue, notes that express provisions on access to justice are absent in most EU secondary environmental legislation, but that CJEU case law nevertheless has affirmed the rights of individuals and environmental NGOs to have legal standing for decisions, acts or omissions on individual plans and programmes. No explicit additional requirements in the SEA Directive are therefore necessary as long as effective judicial review procedures are granted by the Member States.

There is, however, limited evidence currently available on the degree to which this is practically available across the Member States. Respondents to the public consultation were asked whether they felt there were procedures available to allow for judicial or other impartial means of review of an SEA procedure as well as a plans that have been subject to SEA. In both cases, respondents were divided on the issue, with NGOs considerably more likely to reply negatively.

[74] Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (2005/370/EC)

[75] Commission Notice on access to justice in environmental matters, 2017/C 275/01, points 59 and 99.

Figure 32: To what extent do you agree or disagree with the following statement: there are procedures in place that allow an SEA procedure to be subject to a review before a court of law or other independent and impartial body established by law [Public consultation] (share of total respondents by stakeholder group, n=187)

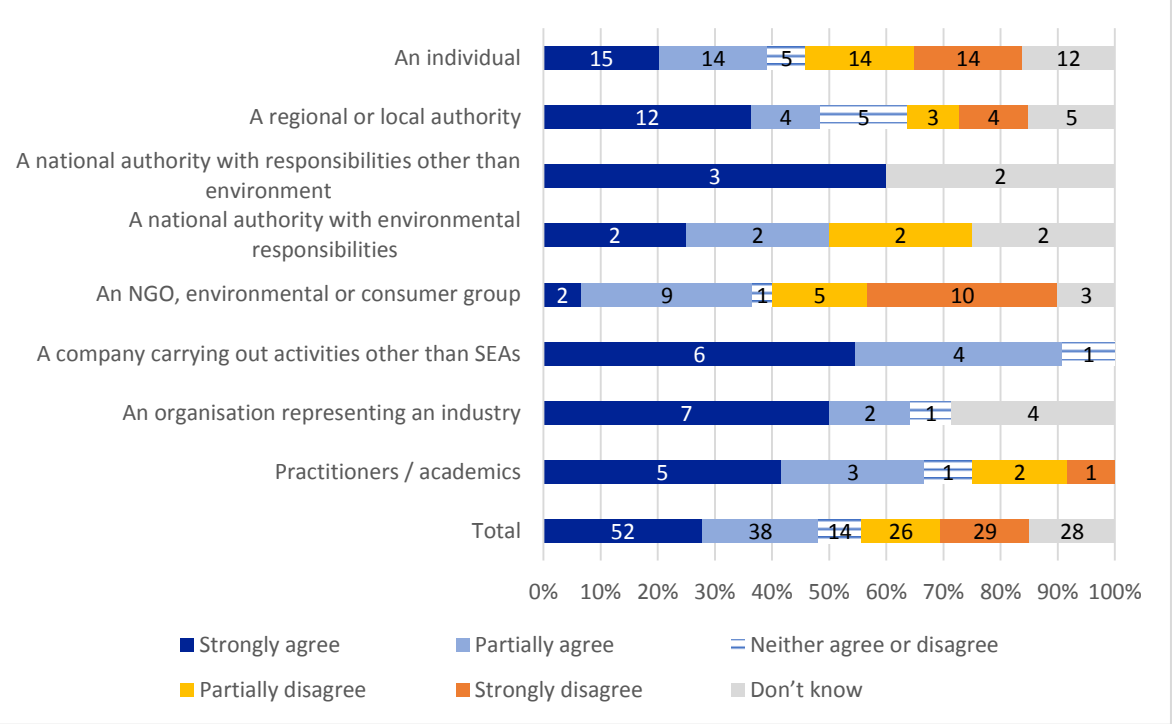
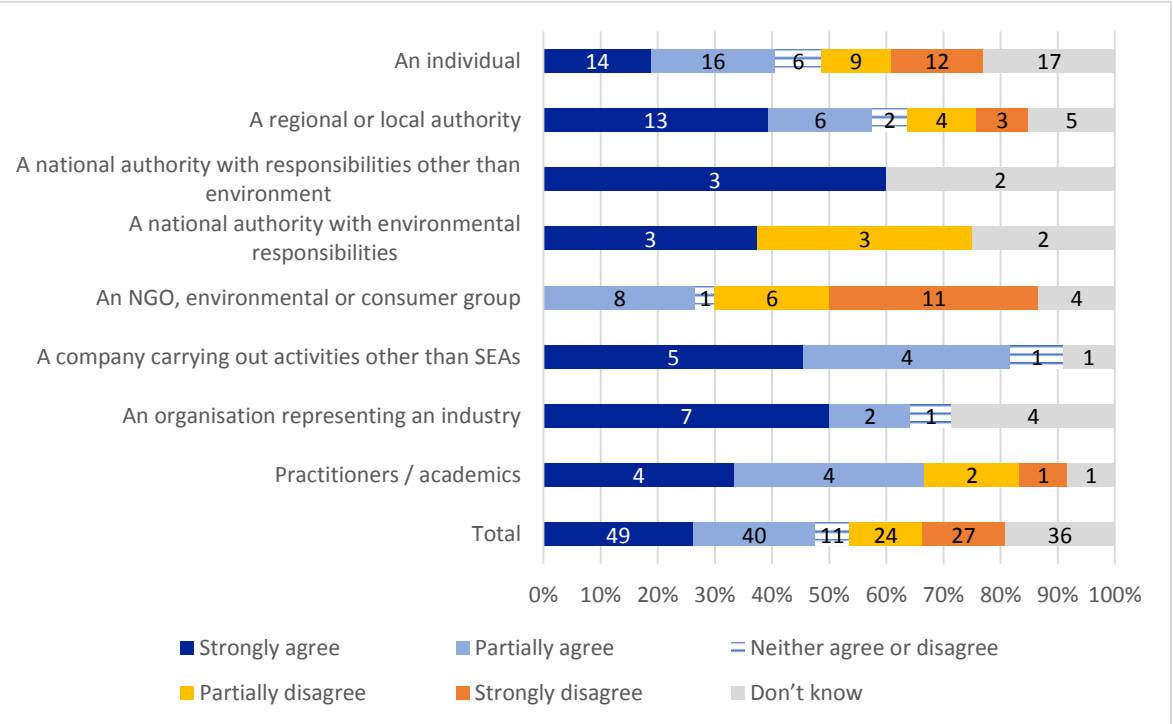
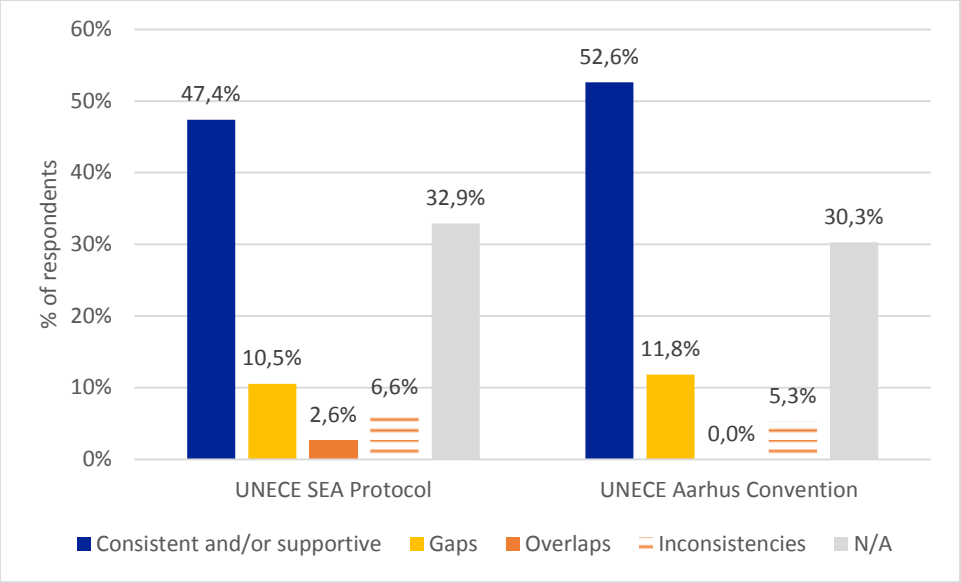


Figure 33: To what extent do you agree or disagree with the following statement: there are procedures in place that allow plans that have been subject to SEA procedure to be subject to a review procedure before a court of law or other independent and impartial body established by law [Public consultation] (share of total respondents by stakeholder group, n=187)



Overall, the majority of the respondents to the targeted consultation questionnaire believe that the SEA Directive is consistent with and supports the SEA Protocol and the Aarhus Convention. Again, it should be noted that around one-third of respondents did not provide an answer to these questions.

Figure 34: In your opinion, is the SEA Directive consistent with and supportive of the following international obligations or do you see significant gaps, overlaps or inconsistencies? [Targeted consultation questionnaire] (share of total respondents, n=76)



Around 19% of respondents believed there to be some gaps, overlaps and inconsistencies, but only one (an academic expert) provided an explanation, stating that the main inconsistencies between the SEA Protocol and the SEA Directive relate to the scope of application and the consideration of policies in addition to plans and programmes under the SEA Protocol. The expert mentioned that the main gap between the SEA Directive and the Aarhus Convention is the absence of provisions to ensure access to justice in the SEA Directive. This point was also raised during the evaluation workshop, with one panellist suggesting that the relationship between the SEA Directive and the Aarhus Convention needs to be improved in the area of access to justice. In one publication, the environmental NGO Justice and Environment (J&E, 2012) points to need for access to justice provisions in the SEA Directive in light of the powers that the EU has exercised concerning public participation in environmental plans.

Finally, some of the respondents to the targeted consultation questionnaire outlined national authorities' concerns that the outcome of recent CJEU judgments (especially Case C-290/15) might expand the application of the SEA Directive to a broader range of documents, including those considered to be policies and legislation. They suggested that the SEA Directive should align with the SEA Protocol wording *'to the extent appropriate'* (see Article 13 of the Protocol on 'Policies and legislation') with regard to its application to policies and legislations. This argument was also made in the discussion paper of the *ad hoc* working group published in September 2018[76]. By contrast, some interviewees commented that, in line with the recommendations in the European Commission guidance document on SEA, Member States should not subject a plan or a programme to SEA only because the word 'plan or programme' appears in its title, as they may not cause any likely significant negative effect on the

[76] Ad Hoc Working Group Discussion Paper: https://circabc.europa.eu/ui/group/26370f9e-245c-4c09-8a75-68655a74875b/library/d7e4ef55-21a8-4491-b132-045466320cae/details

environment. They believed that the Directive's provisions allow sufficient flexibility to deal with ambiguous cases.

One interviewee confirmed that some inconsistencies exist between the SEA Directive and the SEA Protocol, especially with regard to the definitions of 'plan' and 'strategy', and the involvement of the health authorities. However, the interviewee also pointed out that such inconsistencies do not create problems in the implementation of the Directive (e.g. health authorities are involved in the SEA process even if they are not clearly mentioned in the text of the Directive).

5.4.3.4. Key findings

The EU international obligations relevant to the SEA Directive are the UNECE's SEA Protocol and Aarhus Convention. The evaluation found that the SEA Directive is broadly coherent with these two EU international obligations, although some gaps and inconsistencies were identified that might affect the effective implementation of the SEA Directive.

- Like the SEA Directive, the SEA Protocol and the Aarhus Convention provide for a system of procedural guarantees aiming at a high level of environmental protection. They are thus broadly coherent with one another at the level of their objectives.
- The SEA Protocol was drafted after the adoption of the SEA Directive in 2001 and is based on the Directive, thus some provisions are very similar. There are, however, a number of differences in the procedural and enforcement provisions of the two legal instruments, which might affect their coherence in practice.
- As the Protocol was a joint undertaking of the UNECE and WHO, it attaches a lot of importance to health issues, unlike the SEA Directive. Examination of health issues is clearly indicated as a substantive part of the assessment and health authorities must be formally involved in the SEA procedure. Another difference relates to AA: in the SEA Directive, the AA under the Habitats Directive is formally linked to SEA by a reference to the impact on Natura 2000 sites as one of factors triggering the need for SEA, but the SEA Protocol makes no such reference to AA.
- An important difference between the Protocol and the Directive - and one which may affect their coherence and the ways in which Member States apply SEA requirements - relates to their scope of application. While the SEA Directive specifically refers to plans and programmes and does not mention policies and legislation, the Protocol differentiates between plans and programmes and policies and legislation. Policy and legislation, however, are excluded in the text of the Protocol from formal SEA requirements and should be subject to SEA only *'to the extent appropriate'* (Article 13). These terms, however, have not been precisely defined in the Protocol, leaving considerable discretion to Member States in their application.
- Consultations carried out for this evaluation found that some national authorities are concerned that the outcome of recent CJEU judgments might expand the application of the SEA Directive to a broader range of documents, including those considered to be policies and legislation. Instead, they suggested that the SEA Directive align with the SEA Protocol scope of application provisions.
- Compared to the SEA Directive and the SEA Protocol, the Aarhus Convention has more detailed provisions on public participation. The two international instruments require that public participation occurs at an early stage of development of the relevant activity when 'all options are still open', while the SEA Directive only requires that the public is given the opportunity to give its opinion on the Environmental Report, i.e. towards the end of the SEA procedure after alternatives have been developed and assessed. Such inconsistency may affect the effective implementation of the Directive, as Member States tend to comply with the minimum requirements of the Directive

and are not incentivised to initiate the involvement of the public at earlier stages (e.g. scoping), despite evidence suggesting that this is good practice.
- Finally, a gap was identified in the provisions for access to justice. The Aarhus Convention provides for access to justice concerning plans relating to the environment, provided those plans are reviewable (Article 9(3) Aarhus Convention). The SEA Directive makes no such provision, with stakeholders agreeing that this gap should be addressed.

5.5. EU ADDED VALUE

The assessment of EU added value considers the benefits and changes resulting from implementation of the SEA Directive that are additional to those that would have resulted from action taken solely at regional and/or national level.

5.5.1. Question 11: What has been the added value of the SEA Directive compared to what could be achieved by Member States at national and/or regional levels, and to what extent do the issues addressed by the Directive continue to require action at EU level?

5.5.1.1. Interpretation and approach

The approach to this question considers the value of having an EU Directive compared to taking different approaches across the Member States, looking back at the motivations for proposing an EU Directive and the situation in different Member States before the Directive was adopted. To assess the value of EU action in the area of SEA, it is necessary to develop an understanding of the counter-factual, i.e. what the situation would be had the Directive not been adopted. Stakeholders were asked to comment on the likely situation in their Member State in that case and to assess the main factors driving that situation.

5.5.1.2. Main sources of evidence

- The section builds on literature, in particular the 2016 SEA Study, to provide an understanding of the situation before the adoption of the SEA Directive.
- Consultation results were crucial to understanding stakeholder views on the likely counter-factual, as well as the benefits of an EU Directive compared to national legislation alone.

5.5.1.3. Analysis of the question according to available evidence

5.5.1.3.1 The situation before the SEA Directive

As explained in the 2016 SEA Study, prior to the development of the Directive, Member States had substantially different environmental assessment systems for plans and programmes. The 2016 SEA Study found that a small number of Member States already had a legislative framework requiring systematic SEAs in certain areas, such as transport. Denmark, Finland, Sweden and the Netherlands had the most extensive experience with SEA, according to a briefing document by the European Environment Agency published in 2001, while Fischer (2007) added the UK and Germany to that list. Fischer found that, prior to the Directive, 17 of the 25 Member States had conducted at least one SEA, either under a pre-existing national framework for SEA or in preparation for the Directive (2016 SEA Study, pp. 191-192). However, experiences with SEA prior to the adoption of the Directive was neither consistent nor systematic across Member States, and it lacked a standardised procedure. The 1996 Commission Proposal for a Council Directive on the assessment of the effects of

certain plans and programmes on the environment[77] highlighted that those Member States that had put in place some requirements for SEA did not have comprehensive coverage of plans and programmes and, in some cases, did not fulfil basic requirements, such as the consideration of all significant environmental impacts and public participation (2016 SEA Study, pp. 191-192).

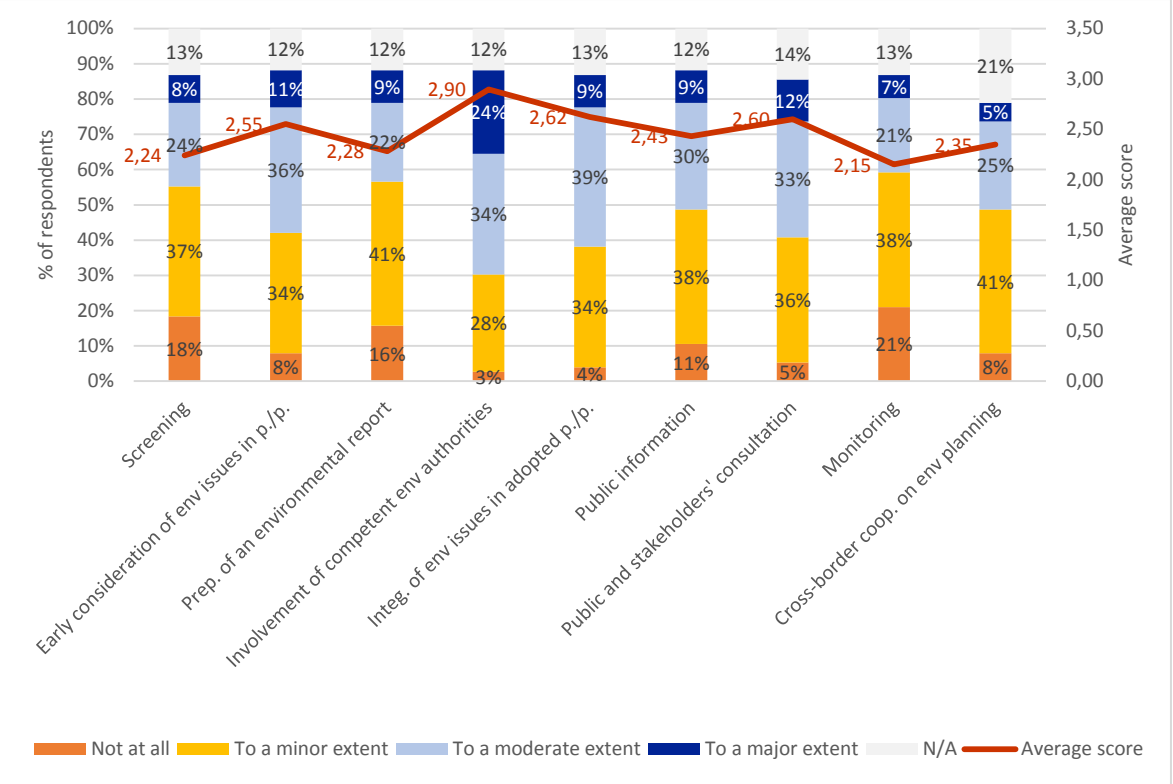
5.5.1.3.2 The likely situation without the SEA Directive

Although a number of Member States were considering environmental issues in the preparation of plans and programmes before the adoption of the SEA Directive, the Directive can be considered to have added value in the provision of a systematic procedure, applicable to all plans and programmes and including a series of mandatory procedural steps, such as the assessment of alternatives and public participation. Results from the targeted consultation showed that respondents believed that these specific steps would not be happening had the Directive not been adopted.

Question 55 of the targeted consultation questionnaire asked respondents whether the steps of the SEA procedure and some of its benefits would have taken place in their Member State had the SEA Directive not been adopted. Respondents generally believed that these outcomes would have taken place to a minor or moderate extent in the absence of the Directive, with all proposed elements reaching an average score between 2 and 3. Respondents were divided on whether the objective of the Directive – the early consideration of environmental impacts in plans and programmes – would have been achieved without the adoption of the Directive, with 47% of respondents replying that environmental issues would have been considered to a moderate or major extent and 42% believing that environmental issues would have been considered only to a minor extent or not at all. This result confirms that some assessment of environmental impacts would likely have existed without the Directive. However, the main procedural steps introduced by the SEA procedure – screening, the preparation of an Environmental Report and monitoring – achieved the lowest average scores, indicating that such formal requirements would likely not have been implemented. Conversely, elements that were more likely to part of planning processes before the adoption of the Directive (at least in some form), such as the involvement of environmental authorities and public and stakeholder consultation, reached slightly higher average scores. Practitioners and NGOs tended to reply more negatively to this question than authorities, while there were no notable differences between environmental authorities and the authorities responsible for plans and programmes.

[77] European Commission, 1996. Proposal for a Council Directive on the assessment of the effects of certain plans and programmes on the environment, COM(96) 511 final, 04.12.1996.

Figure 35: In your opinion, during the period since the adoption of the SEA Directive, to what extent would the following have taken place in your Member State if the Directive had not been adopted? [Targeted consultation questionnaire] (share of total respondents n=76; average score of total respondents: 1=not at all, 2=to a minor extent, 3=to a moderate extent, 4=to a major extent)



Respondents were invited to justify their answers and 35 respondents provided an explanation. 20 believed that these activities would have happened to some extent, based on international obligations (seven respondents) and/or national legislation (nine respondents) or other EU legislation (e.g. planning and monitoring requirements under the Water Framework Directive, requirements under the Habitats Directive, etc.). They acknowledged that these activities would not be carried out systematically nor for all types of plans (for instance, it would be more likely for spatial planning documents than for more general strategies). They explained that Environmental Reports would not be as comprehensive and detailed as required under the SEA Directive, and that the consideration of environmental impacts would not take place as early in the process. A smaller number of respondents (six) stated that it is very unlikely that such activities would have taken place, even where national legislation contained provisions on public consultation or limited obligations to integrate environmental considerations. Five respondents explained that the level of integration of environmental considerations into plans and programmes would have depended on the willingness and competence of planners, authorities and practitioners, indicating that there would be significant discrepancies, even within a single Member State, in the way in which environmental issues are taken into account. The Netherlands Commission for Environmental Assessment, for example, mentioned that an independent survey in the Netherlands showed that the obligation to undertake EIA/SEA played a major role in whether or not authorities took environmental aspects into account.

A similar question was asked in interviews, with the responses echoing those of the targeted consultation questionnaire. 18 interviewees (including 10 authorities responsible for plans and programmes and five practitioners) indicated that environmental issues would be considered in plans and programmes and that some sort of assessment would exist. Six mentioned that formal legal requirements existed before the adoption of the Directive. However, nine interviewees (four regional and

local authorities responsible for plans and programmes and five practitioners) stated that there would be no compulsory environmental assessment of plans and programmes. Six of these were from Italy and Spain. Interviewees highlighted three benefits of the SEA Directive that would likely not have materialised even had national requirements been put in place: the systematic nature of the Directive, which equally applies to all plans and programmes and requires a standard procedure with stakeholder and public participation and monitoring to be carried out (16 interviewees); the broad scope of environmental issues to be considered in the Environmental Report (seven interviewees); and the transparency of the process (10 interviewees).

Results from the targeted consultation confirmed those of the 2016 SEA Study. Focus groups discussions held for this study also highlighted that the added value of the Directive lay chiefly in the adoption of a more holistic approach, and broader and more consistent coverage of plans and programmes (2016 SEA Study, p. 193).

5.5.1.3.3 The possibility of achieving the objectives of the SEA Directive with other instruments

Question 58 of the targeted consultation questionnaire asked respondents whether the objectives of the SEA Directive could have been partly or entirely achieved with relevant existing international conventions, programmes or other instruments. Respondents were asked to score four instruments – the UNECE SEA Protocol, the Aarhus Convention, the EIA Directive, and the Birds and Habitats Directives on the following scale: not at all, to a minor extent, to a moderate extent, to a major extent. Respondents generally indicated that these four instruments would achieve the objectives of the SEA Directive to a minor to moderate extent, with all instruments reaching an average score between 2 and 3. The SEA Protocol was considered the most suitable instrument (with an average score of 3.1) followed by the Aarhus Convention (2.8), the Birds and Habitats Directives (2.7) and the EIA Directive (2.6).

27 respondents commented on their answers, the majority of whom explained that those instruments would only partially achieve the objectives of the SEA Directive, and, even in combination, could not substitute for the SEA Directive. In particular, the horizontal approach and broad scope of the Directive would be lost, as the Birds and Habitats Directives only cover biodiversity and not the broad scope of environmental impacts included in Annex I of the SEA Directive. The strategic approach and the possibility to assess cumulative impacts of projects would also be lost, as the EIA Directive applies only to specific projects.

Although a number of respondents acknowledged that the SEA Protocol could partially achieve the objectives of the SEA Directive, they also questioned its non-binding character and applicability, given that not all Member States have ratified the Protocol. NGOs considered the SEA Directive a more effective instrument, as compliance with its requirements is ensured by the European Commission and the CJEU and Member States have an obligation to report every seven years on the implementation of the Directive at national level.

According to Article 216(2) TFEU, international agreements concluded by the EU (such as the SEA Protocol) are binding on its institutions and its Member States. This was confirmed by CJEU case law, which established that the provisions of a treaty signed by the EU form an integral part of the EU legal order[78]. Nevertheless, the SEA Directive benefits from being part of the European law system, with a role for the Commission and the CJEU in ensuring compliance, while enforcement of the SEA Protocol is undertaken by an Implementation Committee whose primary purpose is to

[78] Case C 459/03 Commission v Ireland [2006] ECR I 4635, paragraph 81-82; Case C 344/04 IATA and ELFAA [2006] ECR I 403, paragraph 36.

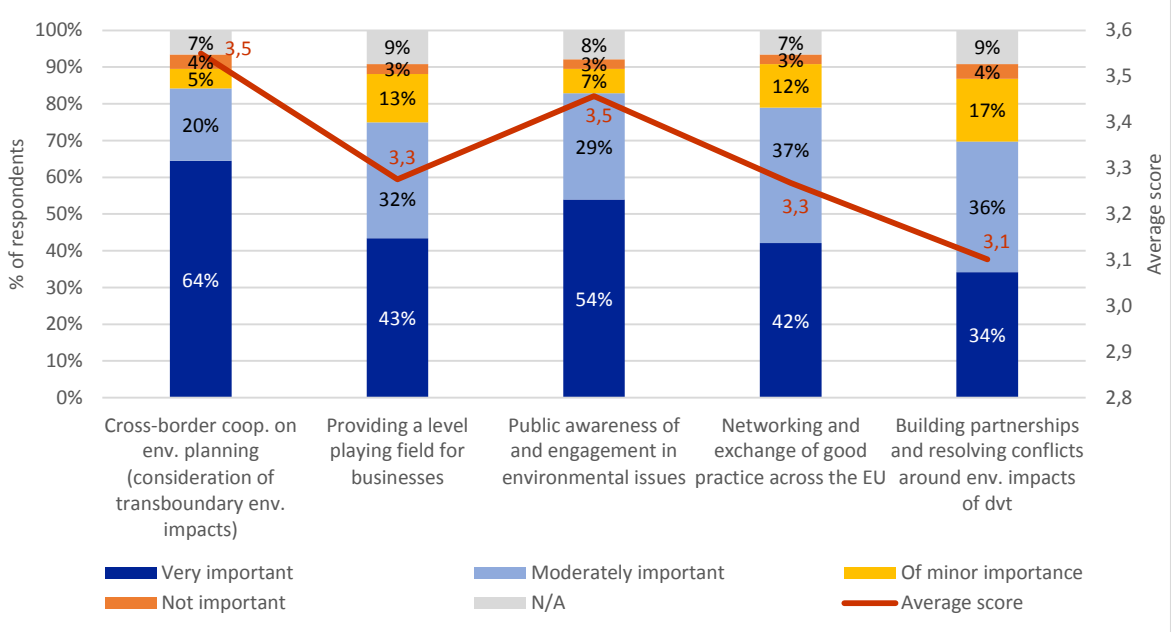
report on and assist with compliance of the Parties with the terms of the Convention[79]. It is unlikely that the SEA Protocol would have the same effect as the Directive when it comes to Member State action on implementation of SEA.

Few respondents to the targeted consultation questionnaire stated that the combination of these instruments could achieve the objectives of the SEA Directive, if implemented appropriately.

5.5.1.3.4 Added value of EU legislation vs. different approaches at national level

Question 57 of the targeted consultation questionnaire asked respondents to score the significance of a short list of benefits of having the same legislation in all EU Member States on the following scale: very important, moderately important, of minor importance, not important. All of the benefits listed were perceived by respondents as moderate to major, reaching average scores above 3. Benefits scoring highest were the consideration of transboundary impacts and public awareness/engagement on environmental issues.

Figure 36: How important do you see the following benefits of having the same legislation requiring the systematic environmental assessment of plans and programmes in all EU Member States? [Targeted consultation questionnaire] (share of total respondents n=76; average score of total respondents: 1=not important, 2=of minor importance, 3=moderately important, 4=very important)



21 respondents commented on their answers, of whom seven (national environmental authorities, practitioners and NGOs) highlighted that having a common procedure facilitates the consideration of transboundary issues, as all parties understand the requirements and the process. It also facilitates transboundary consultation and ensures that transboundary issues are systematically taken into account. None of the authorities responsible for plans/programmes commented on this aspect. Those authorities also rated the consideration of transboundary issues as a less important benefit than national environmental authorities did (with scores of 3.2 and 3.7, respectively).

[79] Decision III/2 on Review of Compliance of the Espoo Convention, June 2004. Available at: https://www.unece.org/?id=2805

Four respondents (authorities and NGOs) mentioned that having a common procedure facilitates the exchange of good practice, as there is there is greater transferability of experience in one Member State to another. One respondent suggested the creation of a platform for plan makers and authorities to discuss and exchange good practice, improve guidance and approaches to SEA. The same respondent proposed that the model of the Commission group of EIA/SEA national experts could be expanded to facilitate wider collaboration between sectors. Conversely, however, two respondents indicated that plans and programmes differ too substantially between sectors to allow fruitful exchange of good practices.

One national environmental authority added that having the same legislation across Member States facilitates the exchange of knowledge and the creation of consistent data, in particular during transboundary SEAs, where exchanges between the authorities of the different Member States involved can provide an opportunity to identify inconsistent or lack of data. Here, they gave the example of the cooperation between Poland and Land Brandenburg (Germany) on a common model for forecasting flood risk on both sides of the border, after having identified inconsistencies in hydrological data.

Interviewees raised relatively similar issues, in particular the transparency of the procedure, the possibility for citizens and stakeholders to engage, the integration of transboundary issues, and the systematic consideration of environmental issues in plans and programmes.

5.5.1.4. Key findings

- Although a number of Member States were considering environmental issues in the preparation of plans and programmes before the adoption of the SEA Directive, the Directive added value in the provision of a systematic approach to the assessment of environmental impacts of plans and programmes, applicable to all plans and programmes and including a series of mandatory procedural steps, such as the assessment of alternatives and public participation. It is unlikely that a systematic procedure with such a broad coverage of plans and programmes would have been put in place in all Member States without the adoption of the SEA Directive. The Directive also led to more transparent and participatory planning processes regarding environmental impacts of plans and programmes.
- Existing EU and international instruments (the EIA Directive, the Habitats Directive, the SEA Protocol and the Aarhus Convention) would have only partially achieved the objectives of the SEA Directive had the Directive not been adopted. Most of these instruments have a different scope and would not have addressed the broad objective of integrating environmental considerations into planning. Although the SEA Protocol is very similar to the SEA Directive in its content, there are considerable differences between the two instruments in applicability and enforcement.
- The SEA Directive has added value through the provision of a consistent framework governing the practice of SEA in all Member States. Evidence from consultation activities shows that having the same legislation in all Member States facilitates the consideration of transboundary issues, as all parties have the same understanding of the requirements and process. Stakeholders also reported benefits from sharing good practices and knowledge, as well as providing a level playing field, increasing public awareness and resolving conflicts in respect of the environmental impacts of development.

6. CONCLUSIONS

This section summarises the main findings described in Section 5 of this report. Section 6.1 presents the key conclusions for each criterion, while Section 6.2 outlines a series of priority issues to be considered for further action in order to improve the functioning of the SEA Directive.

6.1. MAIN CONCLUSIONS FOR EACH EVALUATION CRITERION

6.1.1. Effectiveness

Contribution of the SEA Directive to a high level of protection of the environment

The evidence shows that **the SEA Directive has contributed to the high level of protection of the environment** and this continues to be a valid objective. **The Directive is** considered **most effective in addressing certain environmental issues, such as biodiversity, water, fauna, flora and landscape and cultural heritage**, and rather less effective for material assets, population, human health, and climatic factors. **There are challenges** (limited methods, tools, and data) **in addressing global and emerging environmental concerns in SEA**, such as climate change, ecosystem services and natural capital.

One of the key **factors supporting the effectiveness of the SEA Directive in** contributing to a high level of protection of the environment is effective **consultation with relevant environmental authorities as well as the public.** It fosters a meaningful decision-making process and a sense of ownership of the SEA process and plan or programme evaluated, which are important both for successful implementation of the SEA and the plan in question. Although the **quality of relevant and up-to-date environmental data, and availability of technical knowledge and experience among environmental authorities and those preparing SEAs** remain an issue in some cases, major improvements are noted in these areas. More recent **challenges relate to the appropriate use of data and application of methods for more strategic high-level SEAs** as opposed to the environmental assessments of more 'concrete' local level plans and programmes. Issues with data availability are becoming less critical.

Some evidence from this study also suggests that **the SEA Directive is hindered in achieving its purpose, to contribute to a high level protection of the environment**. Reasons include: a **late start of the SEA process** in relation to the development process of the plan or programme; **challenges with understanding the SEA requirements** (i.e. lack of clear definition of 'plans and programmes' and ambiguity in what is meant by 'set the framework for' projects subsequently subject to the EIA Directive); **availability of guidance** on how to conduct SEA in specific sectors (e.g. transport, tourism); and **poor environmental monitoring**.

Although the Directive's primary objective of *a high level of environmental protection* is related to substantive effectiveness**, the strength of the Directive is**, perhaps, **more procedural** (i.e. in promoting a well-informed, transparent, structured and – ultimately - auditable decision-making process). Consequently, it can be assumed (through the intervention logic of the Directive) that it is also substantive if and when the environment is better integrated into plans and programmes and those plans and programmes implement a high level of protection for the environment.

The influence of the Directive on the planning processes, the final content of plans/ programmes, and eventual project development

The study found that **the SEA Directive has influenced planning and decision-making processes** to some extent. In particular, the **SEA Directive** is widely

believed **to have improved the process of preparing plans and programmes** by: setting **mandatory requirements for consideration of environmental issues** in plans and programmes; introducing **public participation**; increasing **transparency** of planning processes; and **raising environmental awareness** among decision makers. All aspects of the SEA process are considered supportive, although the **timescales of the planning process and administrative and legal requirements** of the SEA Directive, as well as **poorly implemented monitoring, might hinder** the ability of the SEA Directive to actually influence planning and decision-making.

The study found that the SEA Directive is considered **to influence the content** of plans and programmes by: **adding more emphasis and systematically addressing environmental issues; including the opinions of various stakeholders and the public; adding mitigation and compensation measures; and considering new alternatives**. However, concerns were raised - mainly by SEA practitioners and academics, but also by local and regional authorities responsible for the preparation of plans and programmes - that **SEA does not affect the content of final planning outputs as much as it should**. As explained, that might be due to **other prevailing (political, economic, social) interests**, '**closed' and pre-determined decision-making**, **poor integration of SEA into planning and decision-making processes** or **late start of the SEA process** in relation to the development of the plan or programme assessed.

The evidence clearly shows that the **SEA Directive has influenced the siting, design and implementation of projects developed from plans and programmes.** Respondents to the consultation activities provided examples where SEA has altered or prevented the development or introduced new technology. However, some respondents believe that **SEA has little influence on siting design and implementation of projects**, as the nature of the SEA Directive and related processes is too general and strategic to influence the siting, and **there is a lack of clarity regarding the (legal) obligations to follow up on the outcomes of the SEA process**.

Factors influencing effectiveness

While the evidence shows that a high level of environmental protection, influence on the planning and decision-making process, the content of plans and programmes and eventual projects can be attributed to the Directive, at least in part, clearly there are other mechanisms and tools in place (e.g. EU/national legislation) that also contribute to environmental protection and planning and decision-making processes which affect plans and programmes. Despite continuing evidence of decline in biodiversity and air quality (among others) in the EU, it is important to recognise that the SEA Directive is only one part of the wider EU environmental acquis. It is not possible to assess the likely state of the EU environment in the absence of the acquis or the SEA Directive, although, in the absence of such protection, it seems probable that it would be worse.

The outcomes of this study show that the effectiveness of the SEA Directive is significantly dependent on **political will**, experience and meaningful engagement of the authorities and plan developers in the SEA process, and willingness to make changes. Another factor which influences effectiveness is the **perception of the SEA process** by governance authorities and plan developers, as it seems to be less effective if perceived as a separate rather than an integrated part of the planning and decision-making activities.

Different aspects of the SEA process affect the effectiveness of the Directive to some extent. **Consultation practices** are important, as they foster communication among actors at different governance levels, enable public participation and increase transparency of the SEA process. However, concerns were raised that the public does not engage in SEA processes to the desired extent. That might be due to overly technical reports and difficulty in understanding evaluations, especially at higher

governance levels. Although the assessment of the **alternatives** is generally considered very important, there are challenges with this part of the SEA process, such as (too) late consideration, and general unfeasibility of other proposed options, which hinders the ability of the Directive to achieve its objectives. Although mitigation and **compensation measures** were generally considered positive in terms of their influence on the content of planned activities, they were also mentioned as providing leeway for approval of developments with potentially adverse environmental implications. **Environmental monitoring** appears to be poorly implemented, as the SEA process seems to stop with the adoption of the plan. Issues of duplication of monitoring activities required under other environmental regulations were also raised.

According to this study, **timing** is a significant influence on the Directive's effectiveness. **Tight deadlines for the SEA** process (related mainly to the planning schedule of the plan/programme assessed) and the **SEA process starting late** in relation to the development of the plan or programme **hinder comprehensive assessment of environmental issues**, in particular **consideration of alternatives.** Timing issues also **challenge meaningful stakeholder participation and engagement** in decision-making processes, as well as potentially **affecting the quality of the SEA outcomes**. Time constraints and related challenges **create a risk that the SEA will become a 'box-ticking' exercise** rather than a meaningful evaluation and support to the decision-making process.

Legal requirements of the SEA Directive seem to **pose certain challenges**. Stakeholders noted that the wording of the Directive does not clearly identify the plans for which SEA is compulsory, thus some 'high' level plans with significant environmental impacts are not subject to SEA (e.g. because they are not seen to 'set the framework' *directly* for projects or it is not clear if they fit the definition of 'plans and programmes'), which might have adverse effects on the environment.

The effectiveness of the Directive **differs between sectors**. It is **most effective for town, country and spatial planning**, due to well-embedded processes, practice, knowledge and better availability of guidance. This is also the sector where there is most experience, given the high number of plans and programmes. Although SEA is generally considered to be effective in transport and energy, some examples of **low effectiveness** of the SEA Directive was also reported in these sectors. The same is true of forestry, agriculture and **other sectors where economic and/or social interests might be emphasised** (e.g. tourism, mining) and/or there is **a lack of guidance**.

Views vary in respect of the **effectiveness of SEA at higher** (e.g. international, national, strategic) **decision-making and governance levels, in comparison to the lower levels.** Evidence from the consultations undertaken for the study show that the **Directive is perceived as less effective for 'high' level programmes and plans (e.g. strategies, legislation and policies)**, where the (environmental) effects may be less tangible. The evidence also supports the opposite assertion, i.e. that **SEA is more effective at strategic levels in early planning stages, as there is still 'enough' room for consideration of environmental (and sustainability) objectives and possible alternatives**. Many respondents to the consultation activities believed the Directive to be **most effective at local level**, where the planned measures/interventions are best defined and thus the effects are easier to project and assess, although this may simply reflect the greater experience with SEA at this level. Ultimately, it appears to be a matter of perception, depending on the context in which SEA is experienced.

The challenges of the SEA Directive seem to be more obvious for more high-level SEAs. Overall, the SEA process, including identification and assessment of significant environmental impacts, as well as monitoring for higher level strategic plans and programmes, might be more challenging due to data indicators at these levels being more difficult to measure. However, that might reflect a rather

'traditional' interpretation of SEA as simply an (EIA-style) impact assessment tool, and the corresponding emphasis on, and experience of, certain types of indicators more familiar at the plan and programme (and indeed project) level. Considering SEA as a proactive design tool for supporting more sustainable decision-making and policies, some participants at the evaluation workshop argued that **it is precisely at these most strategic levels that SEA is most required**, and that the Directive needs to be adapted (in terms of nature and focus of information required) to enable it to be more readily applied at such higher levels.

Nevertheless, as indicated by this study, it should be noted that that the effectiveness of the SEA Directive depends significantly on **how the Directive is transposed into national laws and further implemented in practice** in each individual Member State. Equally important are the **planning and decision-making practices, laws and cultures of individual Member States**.

6.1.2. Efficiency

The analysis of the evidence collected for the study showed a general consensus among stakeholders that the **costs of implementing the SEA Directive –** both to authorities in terms of administrative burden, and for implementation and plan/programme level – **are not excessive and are proportionate to the benefits of SEA**, both in terms of integrating environmental concerns and stakeholder concerns into planning, and as a safeguarding mechanism. However, for individual plans and programmes, **this is strongly influenced by the way in which the SEA is carried out**. The need to develop a more efficient SEA practice, proportionate to the needs and avoiding procedural delays, was particularly underlined by the stakeholders consulted.

A more effective use of scoping would greatly improve efficiency in SEA practice. This is likely to include the scoping process and consultation being extended beyond the environmental authorities to a dialogue with wider stakeholders, including NGOs and the public Drawing from good practice, public consultation on a formal scoping report would be able to input to the approach/methodology to be adopted, the type of reasonable alternatives to be considered and the key environmental issues to be addressed. This would allow the SEA to focus on the most important or critical factors while engaging all stakeholders in the nature, purpose and process of assessing potentially significant environmental effects of the proposed plan and alternatives.

The stakeholders consulted identified a **tendency to produce lengthy and overly detailed Environmental Reports**, based on time-consuming data collection, with a view to avoiding non-compliance and a tendency to assess concrete and specific impacts rather than gaining an understanding of the strategic level environmental aspects of a plan/programme. A public scoping process could help to streamline the overall assessment process. A more proportionate and focused Environmental Report on the environmental aspects that matter most at plan/programme level, informed by an effective public scoping process, would help reduce the cost of the entire SEA procedure. In **addition, more effective management of the SEA procedure, an early start to the SEA, better synchronisation with the plan/**programme (i.e. iteration of the assessment into the development of the plan**, and early involvement of stakeholders and the public** (at scoping) **would also have a positive impact on the costs** of the SEA process and reduce the likelihood of procedural delays.

The evidence found that the **SEA Directive does not cause a major unnecessary burden on authorities**. However, some issues were raised in relation to the screening process (uncertainty over whether a plan or programme met the SEA Directive criteria) and the **renewal and modification of plans and programmes** (for which a full SEA appeared burdensome to some stakeholders). Issues were also raised in respect of the applicability of the SEA Directive. Some Member States

expressed concern that the recent CJEU cases (Case C-290/15: D'Oultremont and others v Région Wallonne; Case C-671/16: Inter-Environnement Bruxelles and others v Brussels Capital Region; Case C-160/17: Thybaut and others v Région Wallonne) providing a broad interpretation of the definition of plans and programmes and **potentially including policies and legislation, could lead to excessive burden on competent authorities**, as it could significantly increase the number of SEAs to be carried out. These Member States also argued that extending the scope of application of the SEA Directive to certain types of policies and legislation could also negatively impact the efficiency of SEA, as it is difficult to provide a fruitful assessment of the possible environmental impacts of very high-level initiatives that have yet to crystallise into plans and programmes. These concerns **question the flexibility and adaptability of the SEA procedure**, the suitability of this procedure to apply to policies and legislation, and **whether a 'lighter' or more appropriately tailored procedure might be needed for policies and legislation.**

6.1.3. Relevance

The evidence found that **the Directive is still relevant to promoting a high level of protection of the environment and sustainable development** and that it **has the capacity to continue to do so in the future.** The flexibility of the Directive, alongside factors such as the quality of planning processes, availability of new technology and the expertise, skills and training of those managing/undertaking the SEA, are seen as essential for maintaining the continuing relevance of this legislation. The consultation outcomes show a prevailing belief that **the SEA Directive sets a general direction** that **highlights the most important environmental aspects and ensures broad involvement of stakeholders**.

The consultation showed that the implementation of the SEA Directive **has largely kept pace with relevant EU and international policies**, objectives, targets and concepts for sustainable development. On the other hand, recognising the continually evolving conceptions of sustainable development also means that the Directive has had more limited success in keeping pace with certain more recent developments, such as planetary boundaries, ecosystem limits, ecosystem services, and natural capital accounting. However, the consultations revealed that **the Directive is sufficiently flexible to allow developments in these areas to be incorporated into planning and SEA, as appropriate, through best practice.**

The study suggests that **the provision of guidance on various elements of SEA implementation would be useful.** This includes **the integration of emerging international policy and sustainable development concepts and objectives** (e.g. sustainable development goals) into the assessment process, and the adaptation of scientific and technological advances to different decision-making levels and planning processes.

The scope of SEA application reportedly varies between policy areas and governance levels. SEA appears to **facilitate increased consideration of broad cross-sectoral issues**, going beyond typical sectoral environmental issues and policies, largely because of **its holistic approach** and consideration of interactions with other relevant plans, programmes and policies. SEA is believed by many respondents **to be increasingly implemented on a smaller scale and is thus moving away from its initial purpose, to assess higher level strategic plans and programmes.** Such higher level application would seem to be more in the 'spirit' of the Directive's objective (Article 1) of contributing to 'promoting sustainable development', i.e. **that more sustainable plans, programmes and projects should be promoted by the effective application of the SEA Directive**, through the integration of the environment into strategic plans and programmes.

The evidence indicates **a positive view among respondents of the Directive's consistency with the needs of other EU environmental policies**, particularly in

areas of sustainable growth and biodiversity conservation. Similar to the 2016 SEA Study, the Directive appears to **have become an embedded element in the context of planning, with no other instruments achieving the same objectives.** Its focus is primarily on the environmental - as opposed to the economic and social - aspects of plans and programme, which is considered its principal role in contributing to sustainable development. An alternative perspective is that while the SEA Directive is intended to provide an explicitly environmental contribution to sustainable development, recognising that the environment is otherwise downplayed in decision-making and particularly at higher decision levels, the boundaries between environmental and social objectives become blurred or overlap. **The Directive has a role to play in providing an opportunity for more considered participation at these levels.**

The flexibility of the Directive lies in providing a framework for the assessment procedure, which enables the adoption of new methods or models, and the Directive's application to any new types of plans or programmes. A number of factors contribute to this flexibility, most notably: the individuals implementing the SEA process (their willingness and enthusiasm to embrace new ideas); the availability of online data sharing platforms; and the extent to which substantive Member State legislative requirements for plans and programmes keep pace with scientific advances (e.g. big data, technological tools, mapping etc.). Although these advances can all be accommodated within SEA and the Directive, a number of factors are recognised to have a limiting influence on the adaptability of these advances for SEAs. These include limited spatial coverage in data-sharing platforms and (possibly) long timeframes for some authorities to implement these advances, among others.

The significance of citizens' awareness of the SEA Directive and their input into the potential environmental impacts of public plans and programmes **was widely recognised in this study**. The Aarhus Convention also highlights the rights of citizens to express their views on environmental aspects of strategic plans in an 'early and effective' manner. A recurring theme among respondents was that **SEA processes that include the views and expertise of citizens and civil society are likely to have better management, with well-informed decisions leading to better environmental outcomes.**

Overall, the outcomes of the study indicate that the Directive remains a suitable and **relevant instrument to promote environmental protection and sustainable development**.

6.1.4. Coherence

Assessing the **extent to which the SEA Directive is coherent with other relevant legislation and policies** is important in determining whether there are significant contradictions or conflicts that stand in the way of effective implementation or prevent the achievement of objectives. It also serves to capture **key synergies and identify good implementation practices.**

The study found that the SEA **Directive is largely coherent with other relevant EU environmental legislation and sectoral policies, as well as EU international obligations**. Evidence confirmed that SEA complements the other environmental assessment instruments (EIA and AA), reinforces the achievement of sectoral objectives, making plans and programmes more environmentally robust and sustainable, and works well as an instrument to implement the SEA Protocol and the Aarhus Convention. However, some gaps and inconsistencies were identified, which may affect the effective application of the SEA Directive.

In general, **there is consistency and coherence between the SEA Directive and the EIA and Habitats Directives**, primarily due to requirements found in the

legislation, guidance to coordinate the instruments, and differences in scope. The SEA and EIA Directives support complementary objectives, with the SEA Directive introduced specifically to complement the EIA Directive and address a gap in environmental assessment and decision-making. The SEA and the Habitats Directive each address a different objective, with the scope and purpose of the assessments appearing relatively clear to stakeholders.

In practice, stakeholders refer frequently to **opportunities to maximise synergies between the SEA and EIA procedures and the SEA and AA procedures**. In particular, it was noted that where timing allows for optimal sequencing of assessments, conducting an SEA can help to ensure a sound strategic basis for EIA of projects that are carried out subsequently. However, **practical implementation challenges still exist** and can prevent the achievement of these synergies, e.g. different timing for the assessments (when EIA is carried out before the SEA procedure) and difficulties in coordinating the work of the authorities and developers. Another challenge is that authorities and developers can sometimes find it difficult to clearly distinguish the purpose and scope of SEA and EIA, resulting in overlaps, especially when inexperienced SEA practitioners fail to narrow down the scope of the assessment, resulting in 'mega EIAs'.

Synergies between the SEA and AA procedures are achieved in relation to: integrated reporting; data-sharing; more efficient and effective public participation; and higher quality assessments. The implementation of joint or coordinated procedures can support these synergies. Stakeholders reported that even when Member State legislation does not provide for joint procedures, such coordination usually occurs, where possible. **Challenges were noted in data-sharing**, i.e. if the assessments do not occur at the same time or within a coordinated procedure, data may not be shared between assessments.

The SEA Directive plays an important role in the implementation of certain EU sectoral policies, **in particular those that require the preparation of plans and/or programmes that may impact the environment**. Directives regulating water, waste, and marine policies all require the preparation of plans and programmes that are likely to be subject to the SEA Directive. The overall objectives of these policies - protection and preservation of the environment and sustainable development - show that they are coherent with the objectives of the SEA Directive.

Other sectors outside the field of environment (e.g. CP, RDP, the CFP (ESIF policies) and the energy and transport policies) have high-level sustainability objectives that are in line with those of the SEA Directive. Over the years, the regulations governing these policies have established specific mechanisms to strengthen the link with the SEA Directive. For the 2014-2020 period, the link between SEA and the programming process for the ESIF programmes is quite explicit, with SEA firmly established as part of the *ex ante* evaluation. In addition, the requirement to fulfil a specific *ex ante* conditionality takes this further, addressing the pre-conditions that Member States must meet in order to ensure their capacity to carry out SEAs effectively.

The TENs policies (which foresee energy and transport infrastructure construction across the EU) reflect the need to comply with environmental assessment legislation. In addition, the implementation of streamlining measures and *ex ante* conditionalities help to make SEA more meaningful for these two sectors.

Overall, literature and the stakeholders held a positive view of **sectoral coherence in practice, although some problems arise in implementation**. Evidence from literature and the consultations shows that the SEA can support sectoral objectives only if it is carried out in an effective manner. The most important factors influencing effectiveness of SEA applied to sectoral plans and programmes were found to be: decision-making culture and awareness of the benefits of SEA; strong coordination

between all authorities involved; capabilities of the SEA experts; widespread public participation; evidence-based decision-making; and identification of alternatives. In particular, **alternatives are considered as a critical component of the SEA process in terms of ensuring that sectors' objectives can be achieved** without causing environmental damage.

Overall, there seems to be a general trend whereby the sectoral authorities are becoming more aware and engaged in the SEA process, compared to the early years after the adoption of the Directive. A common finding across all sectors is that **there is a learning curve for the planning authorities** that are asked to subject their plans and programmes to SEA **and it takes time and years of experience for them to fully understand its benefits**. Some planning authorities, especially in the energy and transport sectors, are initially reluctant, seeing it as a box-ticking exercise. **Updated guidance documents are therefore crucial** to help the planning authorities to understand and master the SEA procedure, as well as to ensure better exchange of information on success stories and good practices. Some of the stakeholders consulted stressed the importance of having **sector-specific SEA guidance.**

The evaluation found that the **SEA Directive is broadly coherent with the SEA Protocol and the Aarhus Convention, although some gaps and inconsistencies** may affect the effective implementation of the SEA Directive and should be addressed. Like the SEA Directive, the SEA Protocol and the Aarhus Convention provide for a system of procedural guarantees aiming at a high level of environmental protection. They are thus, overall, coherent with one another at the level of objectives. The SEA Protocol was drafted after the adoption of the SEA Directive in 2001 and is based on the Directive, thus some provisions are very similar. There are, however, a number of differences in the procedural provisions of the two legal instruments.

An important difference between the Protocol and the Directive, and one which may affect their coherence and the ways in which Member States apply SEA requirements, relates to their scope of application. While the **SEA Directive specifically refers to plans and programmes and does not mention policies and legislation, the Protocol differentiates between plans and programmes and policies and legislation**, without providing a clear definition. Policy and legislation, however, are excluded in the text of the Protocol from formal SEA requirements and should be subject to SEA only '*to the extent appropriate'*, leaving considerable discretion to Member States in their application. Consultations carried out for this evaluation found that some national authorities are concerned that the outcome of recent CJEU judgments might expand the application of the SEA Directive to a broader range of documents, including those considered to be policies and legislation. Instead, they suggested that the **SEA Directive should align with the SEA Protocol's scope of application provisions.**

Compared to the SEA Directive and the SEA Protocol, the Aarhus Convention has more detailed provisions on public participation. The two international instruments require that public participation occurs at an early stage of development of the relevant activity when 'all options are still open', while the SEA Directive only requires that the public is given the opportunity to give its opinion on the Environmental Report. This means that it takes place towards the end of the SEA procedure, after alternatives have been developed and assessed, leaving little room for the public to really be part of the procedure. Such inconsistency may affect the effective implementation of the Directive, as Member States tend to comply with the minimum requirements of the Directive and are not incentivised to initiate the involvement of the public at earlier stages (e.g. scoping), despite this being demonstrably good practice.

Article 9(3) of the Aarhus Convention provides for access to justice in environmental matters. The SEA Directive does not contain specific provisions on access to justice

concerning plans and programmes relating to the environment. Nevertheless, the position of the Commission and CJEU case law maintain that access to administrative and/or judicial review procedures is to be ensured for plans and programmes related to the environment. There is, however, limited evidence currently available on the degree to which this is practically available across the Member States.

6.1.5. EU added value

Although a number of Member States were considering environmental issues in the preparation of plans and programmes before the adoption of the SEA Directive, **the Directive can be considered to have added value in the provision of a systematic approach to the assessment of environmental impacts of plans and programmes**, applicable to all plans and programmes and including a series of mandatory procedural steps, such as the assessment of alternatives and public participation. It is unlikely that a systematic procedure with such a broad coverage of plans and programmes would have been put in place in all Member States without the adoption of the SEA Directive. The Directive also **led to more transparent and participatory planning processes** on the environmental impacts of plans and programmes.

In addition, existing EU and international instruments (the EIA Directive, the Habitats Directive, the SEA Protocol and the Aarhus Convention) would have only partially achieved the objectives of the SEA Directive, had it not been adopted. Most of these instruments have a different scope, which would not have addressed the broad objective of integrating environmental considerations into planning. **Although the SEA Protocol is very similar to the SEA Directive in its content, there are considerable differences between the two instruments in applicability and enforcement.**

Finally, the SEA Directive has added value through the **provision of a consistent framework governing the practice of SEA in all Member States**. Evidence from the consultation activities shows that having the same legislation in all Member States facilitates the consideration of transboundary issues, as all parties have a shared understanding of the requirements and processes. Stakeholders also report benefits from sharing good practices and knowledge, as well as providing a level playing field, increasing public awareness and resolving conflicts in respect of the environmental impacts of development.

6.2. ISSUES FOR FURTHER ACTION

Overall, the study found that the SEA Directive brings considerable benefits to the EU, contributing to wider goals on sustainable development and environmental protection through integration of environmental concerns into the appropriate plans and programmes. In the 14+ years since its entry into force, a range of stakeholders, including sectoral, environmental and local/regional authorities as well as external practitioners, have gained significant experience in implementing the SEA procedure, including institutional arrangements, as well as the practical aspects of carrying out the assessments. There are lessons learned and challenges that remain, but these do not impede the overall positive aspects of having an EU-wide procedure that provides for the systematic inclusion of environmental concerns into the plans and programmes that authorise developments and other activities most likely to impact the environment.

Notwithstanding these positives, the study raised a few issues of concern that limit the Directive's potential to achieve its objectives in an efficient way. Uncertainties about the scope of application and the risk of ensuing legal challenges are a major concern for many authorities responsible for adopting plans and programmes, as well as those responsible for ensuring the correct implementation of the Directive in their countries. The SEA procedure has many requirements, whose mandatory nature even in cases

where there might be limited practical impact, threatens the efficiency of the legislation and raises the risk of legislative burden.

There is also debate across the stakeholder community as to the purpose of SEA. Some would like to see it applied in a broader and more strategic manner, adapted to face the global and longer term sustainability challenges the EU now faces, such as climate change or over-population. Others do not see the merit in assessing environmental impacts on plans and programmes that are too 'strategic' or high-level to allow a specific understanding of how the environment would be impacted, using traditional science-based indicators. While the SEA procedure set out in the Directive was designed to be flexible, some stakeholders believe that this is not the case in practice, suggesting that greater flexibility would be required in order to apply the Directive to different types of plans and programmes.

The study conclusions allowed for the identification of a few priority issues that should be considered for further action. Linked to the Directive itself and its interaction with other related legislation, as well as to implementation and practice, these issues are presented in the following sub-sections.

6.2.1. Clarification of the scope of application of the Directive

The evidence gathered for this study across the different evaluation criteria and sources shows that there is uncertainty around the scope of application of the SEA Directive, i.e. which plans and programmes require an SEA. The Directive and the CJEU judgments define the terms 'plans and programmes' (Article 2(a)) and specifies the conditions whereby an SEA is required (Articles 3(1) and 3(2)).

Over time, however, implementation practice has shown that these elements of the Directive are not always clear. The definition of 'plans and programmes' in Article 2 seems to exclude legislation and general regulatory acts, which do not stem from a pre-existing legal basis. At the same time, Article 3(2)(a) requires that SEA be carried out for all plans and programmes within specific sectors and/or that are likely to have significant effects on the environment when they 'set the framework for future development consent' of projects that will require an EIA. Nevertheless, recent experience has shown that there are cases where acts that can be considered as legislation or policy (e.g. legal decrees or orders) can also be considered to set the framework for development consent of projects that would require EIA, thereby triggering the requirement for SEA. This has been underlined by recent CJEU decisions[80] and pending cases[81], and is seen by many as broadening the interpretation of the concept of 'plans and programmes' and possibly opening the door for the systematic extension of SEA to national legislation and general regulatory acts. This has caused concern among Member State authorities in particular, which have noted the high-level strategic nature of policy-making and the possibility that political and/or constitutional conventions could apply that would make it difficult to apply the SEA procedure as currently specified in the Directive (ad hoc Working Group of EIA/SEA National Experts, 2018).

The concept of extension of scope of the SEA Directive to legislation and policies - and the resulting risk of inefficiency and administrative burden - was one of the issues most frequently raised across the evidence collected for this evaluation, particularly from the Member State authorities responsible for the overall implementation of the SEA Directive in their countries. They questioned the utility of carrying out the procedure as required by the Directive (in particular the time-consuming and often costly baseline data collection, development of alternatives and consultation of stakeholders and the public) for higher-level policies and legislation.

[80] CJEU, C-290/15, C-671/16 and C-160/17.

[81] CJEU, C-43/18, C-321/18 and C-305/18.

At the same time, other stakeholders - mainly academics and practitioners, but also some authorities – pointed to the relevance and effectiveness of the Directive as it was originally conceived, i.e. a tool to integrate strategic level environmental considerations into the early stages of decision-making in order to set the framework or boundaries around which decisions such as siting or technical standards would be considered. These stakeholders noted that, currently, many SEAs are carried out in a manner similar to EIAs, with policy makers and stakeholders expecting very concrete and specific results, based on verifiable data. In the absence of such detail, they are likely to consider the SEA ineffective. Evidence collected for this study shows that consensus is forming around the idea that SEA can be more 'strategic' and should consider the long-term, higher-level effects of planning ambitions and priorities. SEA could, in such cases, be less about data collection and prediction of location-specific impacts, in favour of being more considered, including brainstorming with stakeholders on longer term strategic options for integrating sustainability into higher level planning.

As found in the assessment of coherence, the scope of application of the SEA Protocol is different and somewhat broader than that of the SEA Directive. The SEA Protocol mentions that policies and legislation should be subject to SEA 'to the extent appropriate' (Article 13), but does not make a distinction between what should be considered 'policies and legislation'. Its definition of plans and programmes is identical to that of the SEA Directive. Member State authorities (ad hoc Working Group of EIA/SEA National Experts, 2018) have advocated that this should mean that a '*softer* and more flexible approach for the environmental assessment of policies/legislation' is envisaged by the Protocol. This could, for example, build on the regulatory impact assessment that is applied in many Member States during the preparation of legislative proposals, assuming the public participation elements of SEA could be retained.

Consensus emerged among stakeholders on the need for clarification of the application of the SEA Directive, due to existing uncertainty about when to carry out an SEA. While authorities were previously comfortable excluding from SEA anything that was considered 'legislation or policy' as determined by the legal procedure applied to its adoption, it now seems that this is no longer possible, as there are cases where legislation and policy do effectively 'set the framework' for future development consent of projects. The uncertainty in this regard has led to numerous legal challenges in some Member States. Over-reliance on courts at national and/or European levels leads to inefficiencies that impact authorities as well as stakeholders, all of whom rely on the timely approval and implementation of plans and programmes.

Clarification could take many forms, ranging from modification of the Directive to various types of guidance. Based on the outcomes of this evaluation study, it appears that there is an opportunity not only to provide greater legal clarity, but also to reinforce the objective and purpose of SEA in tackling the strategic challenge of integrating sustainability issues into planning, including higher level policies and strategies where appropriate. This must necessarily take account of the need to avoid unnecessary duplication of assessment. SEAs can be carried out at subsequent levels of plans and programmes (where they meet the Directive's screening criteria) that are more focused on the appropriate issues and level of detail for the decision level. Applying SEA to higher level plans and programmes can enable subsequent levels of SEA to be much more focused, through 'tiering'. This is consistent with the concern expressed by several authorities that application of SEA at subsequent but similar levels of plan/programme decision-making would result in unnecessary administrative burden, and the need to move away from the detailed, data-heavy 'EIA-style' SEA that is often applied.

6.2.2. Timing of the SEA procedure – a more strategic and inclusive approach to scoping

A common issue across the study findings is that of the timing of the SEA procedure in relation to the development of the plan or programme. Good practice emphasises that the SEA should start as early as possible in the planning or programming process, with the two procedures ideally carried out simultaneously. Study findings indicate that this is often not the case, primarily due to a lack of coordination between institutions and the individuals responsible for the different processes, as well as a common perception that plans or programmes must first be detailed before their environmental effects can be established. There are several factors behind this.

A crucial element is the scoping procedure. Although scoping - 'deciding on the scope and level of detail of the information which must be included in the Environmental Report' (Article 5(4)) - is mandatory in the SEA Directive and the environmental authorities must be consulted on this, the study findings indicate that scoping is not always effective in practice. This is often because a wider array of stakeholders are not involved in the scoping process, which could otherwise provide the trigger for a more effective and open consideration of issues and alternatives to the plan or programme under consideration. Picking up key issues early is also critical for allocating appropriate resources to the assessment process from the beginning.

Linked to this is the timing of the required consultation procedures. The public participation requirements of the SEA Directive require the Environmental Report to be made available for public review. The Report is typically completed near the end of the SEA procedure and few authorities go beyond these requirements and arrange for consultation procedures earlier in the process. Meanwhile, both the SEA Protocol and the Aarhus Convention explicitly state that consultation should occur early, when all options are still open. In practical terms, this would occur during the scoping stage of an SEA procedure. Requiring public participation in scoping would thus make the SEA Directive more consistent with the requirements of both the SEA Protocol and the Aarhus Convention.

At the same time, some stakeholders noted that consultation procedures are often ineffective due to lack of interest on the part of the public concerned, and that this likely stems from the fact that the plans and programmes under assessment are not concrete enough to present tangible environmental impacts that would engage the public. There is no consensus on this, however, with other stakeholders believing it is simply due to a lack of good practice in making the outcomes of SEAs truly accessible to stakeholders. There is therefore room for improvement in implementation practice.

6.2.3. Further dissemination and uptake of good practices

It is almost 15 years since the SEA Directive came into force, and practice in carrying out SEAs has evolved over this period. Stakeholders agreed that a large part of the EU added value of having the same legal basis for the SEA procedure across all Member States lies in opportunity to share and learn from good practice. The 2016 SEA Study identified a number of interesting practices that could be transferred from one Member State to another[82] and also underlined the need for further promotion of platforms for exchange of experience and guidance. Stakeholders frequently pointed out the fact that the implementation guidance for the SEA Directive was issued by the Commission in 2003, and that there is considerable scope for updating this guidance based on practical experience, similar to the EIA guidance issued in 2017. Such guidance would accompany clarification on the scope of application of the Directive.

[82] Examples include the option of asking screening/scoping advice from Netherlands Commission for Environmental Assessments (NCEA) in the Netherlands, or the promotion of knowledge exchange and sharing of data and information via national or regional networks (e.g. Scotland's SEA Gateway).

Based on the findings of this study and building on those from the 2016 SEA Study, there is scope for updated practical guidance that would cover the following:

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- Support for more strategic, long-term thinking in understanding the environmental impacts of higher level strategic documents and adding value through SEA at this level;
- Scoping and the appropriate levels of information and data to be collected for different types of plans and programmes, including de facto support for more focused SEAs;
- Strategies for developing and assessing alternatives;
- Early, effective and more considered public participation approaches;
- Guidance on SEA for specific sectors;
- Monitoring plans and examples of successful implementation approaches, including strategies for ensuring long-term sustainability of monitoring approaches.

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ANNEX I: EVALUATION MATRIX

Evaluation questions	Sub-questions	Judgement criteria	Indicators	Required information	Data collection / analysis method
Effectiveness					
1. To what extent has the SEA Directive contributed to ensuring a high level of protection of the environment?	Has SEA contributed to the high level of protection of the environment? If so, to what extent can this be credited to the SEA Directive? Is the SEA equally effective in terms of high level protection for different environmental issues (as listed in Annex I of the SEA Directive)? What factors have contributed to, or have inhibited progress in, the SEA contributing to ensuring a high level of protection of the environment?	Extent to which SEA has contributed to the achievement of environmental outcomes across the EU Extent to which SEA has contributed to a high-level protection of different environmental issues Whether any obstacles or other negative factors may have supported or prevented SEA from contributing to the achievement of environmental outcomes across the EU	# of stakeholder and expert responses stating whether SEA has or has not and to what extent contributed to the achievement of environmental outcomes **# of stakeholder and expert responses indicating the extent of SEA contribution to various environmental issues** **Information contained in literature on contribution of SEA to achieving high level protection of environment** **# of stakeholder and expert responses identifying factors and their magnitude that inhibit/support SEA from achieving high level environmental protection**	Range (e.g. major, moderate, minor extent) and number of responses from Member States experts Overall impressions and specific examples from full range of stakeholders and literature Information on how SEA is carried out in different Member States	Consultation activities – questionnaires (public and targeted), interviews Literature review Content analysis, framework matrices, diagramming
2. To what extent has the SEA Directive influenced the Member States' planning process, the final content of a plan/programme, and eventually projects' development?	Has SEA influenced planning and decision-making processes? If so, how and to what extent? If not, what are the reasons for this? What aspects of the SEA process supported or inhibited the ability of the SEA Directive to influence planning and decision-making processes?	Extent to which SEA has influenced the process of preparation and adoption of plans and programmes across the EU Extent to which SEA has influenced the content of plans and programmes across the EU Whether any obstacles or other negative factors may have	# of stakeholder and expert responses stating whether SEA has or has not and to what extent influenced planning and decision making process. # of stakeholder and expert responses identifying extent to which certain aspects of the SEA process have supported/inhibited SEA to influence planning and decision making	Range (e.g. major, moderate, minor extent) and number of responses from Member States experts Overall impressions and specific examples from full range of stakeholders and literature	Consultation activities – questionnaires (public and targeted),, interviews Semi-structured interviews with Member States authorities and, experts to follow-up on key issues from questionnaires and literature review and

	Has SEA influenced the final content of plans/programmes? If so, how and to what extent? If not, what are the reasons for this? Has SEA resulted in the integration of environmental considerations into the preparation and adoption of plans/programmes? If so, how and to what extent? If not, what are the reasons for this? Has SEA influenced the projects developed following on from plans/programmes (i.e. siting, design and implementation of projects) ? If so to what extent this be attributed to the Directive, and how specifically have the projects changed?	supported or prevented SEA from impacting plans and programmes Extent to which SEA has influenced projects developed following on from plans/programmes	# of stakeholder and expert responses stating whether SEA has or has not and to what extent influenced the content of plans/programmes **# of stakeholder and expert responses indicating how SEA has influenced the content of plans/programmes** **# of stakeholder and expert responses stating whether SEA has or has not and to what extent influenced siting, design and implementation of projects** **Incidence of cases/examples related to SEA influence on decision making and plan/ programme/ project implementation processes to illustrate stakeholder perspectives from questionnaires, interviews, and literature**	Information on how SEA is carried out in different Member States	gather details of specific examples. Literature review Content analysis, framework matrices, diagramming
3. What factors (e.g. gaps, overlaps, inconsistencies) influenced the effectiveness?	What key factors have influenced the success of SEA or prevented SEA from influencing plans/programmes (both process and content)? What are the main sector specific factors? What are the main factors at different levels and stages of governance and planning? To what extent do differences in consultation practices affect the effectiveness of	Identification of the main factors that have contributed to or stood in the way of SEA's influence on plans and programmes Identification of the influence of consultation practices, approach to alternatives, approach to environmental assessment, and other aspects of SEA process on the effectiveness of SEA	Stakeholder views and perspectives / evidence from literature on factors that have contributed to or stood in the way of SEA's influence on plans and programmes **# of stakeholder and expert responses identifying to what extent do different aspects of SEA process affect the effectiveness of SEA** Identified gaps and weaknesses in SEA policy / legislation / guidance / practice affecting the ability of SEA to	Overall impressions and specific examples from full range of stakeholders response (e.g. questionnaires, interviews) and literature	Consultation activities – questionnaires, interviews, etc. Semi-structured interviews with Member State authorities and, experts to follow-up on key issues from questionnaires and literature review and gather details of specific examples. Literature review

	SEA? To what extent do differences in the approach to addressing reasonable alternatives affect the effectiveness of SEA? To what extent do differences in the methods, scope and level of detail in environmental assessment affect the effectiveness of SEA?		influence plans and programmes including from different **Member States** Number and type of common SEA implementation problems / legal infringements across **Member States**		Content analysis, framework matrices, diagramming
Efficiency					
4. To what extent are the costs involved proportionate, given the identified changes/effects achieved?	What are the main types of costs associated with the implementation of the SEA Directive? When and to whom do these costs occur? What factors drive or influence these costs? How do costs compare across sectors, types of plans/programmes and MS? What are the main benefits (changes / impacts) associated with the implementation of the SEA Directive? What drives these benefits in terms of context and practice? How do benefits compare across sectors, types of plans/programmes and MS? To what extent are the costs proportionate to the identified benefits? How does this compare across sectors, types of plans/programmes and MS?	**Identification of the main costs of implementation and compliance with the SEA Directive and their relative magnitude** **Mapping of the main costs to the stakeholders that bear the costs** **Identification of the main benefits of the SEA Directive and their relative magnitude** The extent to which the main stakeholders and experts believe that the costs are proportionate to the benefits: •The benefits strongly outweigh the costs •The benefits outweigh the costs •The benefits equal the costs • The benefits are lower than the costs •The costs strongly outweigh the benefits.	**<u>For each cost type</u>** **Existing cost estimates** **Relative magnitude of individual costs as expressed by stakeholders and other evidence** **<u>For each identified benefit</u>** **Types of benefits** **Relative magnitude of individual benefits as expressed by stakeholders and other evidence** #, range and types of experts and stakeholders expressing judgement about whether costs are proportionate to benefits for different scenarios (MS, sectors, plan/programme types, etc.) Information contained in literature, cases and other sources on the extent to which the costs of SEA are reasonable and/or justify the benefits	Inventory of costs, **magnitude**, actors and drivers by types of costs and for types of plans/programmes, sectors and MS – based on literature and stakeholder input Inventory of benefits and their **magnitude** Stakeholder and expert judgement on the proportionality of the costs and benefits. **Additional evidence from literature/reports on the costs, benefits and extent to which costs are reasonable or proportionate to benefits**	Consultation activities – questionnaires, interviews, etc. OPC Literature review Studies and documents detailing actual cost tracking in MS (where available) Mapping of costs and benefits through matrices Content analysis summing up stakeholder judgement + other evidence on magnitude of costs/benefits and the extent to which costs are proportionate to benefits

		Perspectives from other evidence on this issue (literature, studies, reports)			
5. What factors influenced the efficiency with which the achievements observed were attained?	What are the main factors (**contextual and practical) that impact the efficiency of implementing the SEA Directive?** **How do they occur across sectors, MS, plan/programme types (contextual factors)?** **How do they occur within the process of carrying out SEA (practical factors)?** **What is the relative importance or magnitude of these factors?**	Identification of the main factors **impacting efficiency** Extent to which the different factors impact cost efficiency and reasons for this	List of factors # and range of stakeholders attributing importance/magnitude to a factor References to or mention of factors impacting efficiency in literature, studies, reports	Review of literature, documents and stakeholders Stakeholder and expert judgement on factors	Consultation activities – questionnaires, interviews, etc. Literature review Mapping of factors through matrices Content analysis summing up stakeholder judgement on scope and magnitude of factors
6. What is the cause of any unnecessary regulatory burden or complexity associated with the SEA Directive?	Are there any unnecessary regulatory burdens associated with the implementation and compliance of the SEA Directive? Is there any regulatory complexity causing significant costs or hindering the beneficial impacts of the Directive? What is the cause of the identified unnecessary regulatory burdens or complexities?	**Existence of unnecessary regulatory burden or complexity - requirements or provisions** for which the costs outweigh the benefits or where the same objectives could be achieved in a simpler and less burdensome way. **Concrete reasons explaining and justifying** the any unnecessary regulatory burden or complexity according to the nature of the costs (vs benefits) and the source of the burden (regulatory vs	# and range of stakeholders and experts citing a cost or provision as unnecessary burden or complexity and supporting evidence/detail on causes References to burden or complexities in literature/documents and their causes Provisions or requirements of the SEA Directive linked to or causing the burden/complexity (and/or guidance or court cases providing interpretation)	Cases of unnecessary burden or complexities from stakeholders and literature Information on causes of unnecessary burden or complexities from stakeholders and literature Content of the legal/policy documents and guidance or court cases providing interpretation	Results from evaluation question 4 and 5 Consultation activities – questionnaires, interviews, etc. Literature review Content analysis summing up stakeholder judgement Analysis of legal texts, guidance documents and court cases relating to the Directive

	What changes can be made in order to remove the unnecessary regulatory burdens and complexities? Are they policy/legislative action or implementation improvements?	implementation)		Suggestions of possible legal/policy actions and/or implementation improvements to correct burden	
Relevance					
7. To what extent is the Directive still relevant to promote a high level of protection of the environment and sustainable development?	How consistent is the SEA Directive with the current (and likely future) needs of and environmental policies? To what degree has EU (and international) policy, objectives and targets on sustainable development evolved since the adoption of the SEA Directive? How has implementation of the Directive kept pace with relevant objectives and targets? How well adapted is SEA to technological or scientific advances (e.g. in planning processes, types of plans/programmes etc)? How relevant is SEA to EU citizens? To what degree is SEA used by EU citizens as a means of engaging with planning and environmental policy?	Extent to which SEA remains consistent with EU environmental policies since the adoption of the Directive Extent to which SEA implementation reflects and integrates EU sustainable development policies. Extent to which SEA implementation has kept pace with evolution of EU sustainable development policies. Extent to which EU citizens value the environment and use SEA as a means of engaging with planning and environmental policies.	**# of stakeholder and expert responses identifying to what extent SEA is still relevant for achieving and promoting high level environmental protection and sustainable development,** **# of stakeholder and expert responses identifying to what extent SEA is still consistent with current and future needs of EU environmental/ sectoral policies** **# of stakeholder and expert responses identifying to what extent SEA kept pace with EU efforts for sustainable development and emerging international policy** **# of stakeholders and experts responses identifying how well adapted SEA is to technological and scientific developments** **# of stakeholder and expert responses identifying how important the opportunity is to the citizens to be informed on potential environmental impacts of developments** **Existence of literature and citizens views on how well SEA**	Content of the legal/policy instruments Overall impressions and specific examples from full range of stakeholders and literature Opinions of EU citizens	Desk research + identification, mapping and review of EU law and policy. Consultation activities – questionnaires, interviews, etc. Eurobarometer survey of EU citizens' attitudes to the environment Content analysis, framework matrices, diagramming and SWOT analysis

			ha/has not kept pace with: **current and emerging EU environmental protection, sustainable development and other relevant polices** **planning and decision making practices** **technological and scientific developments** **attitudes towards environment**		
Coherence					
8. To what extent is the intervention coherent with other parts of the EU environmental law and policy, in particular those setting provisions for environmental assessment procedures, such as the EIA Directive (Directive 2011/92/EU, as amended), the Habitats Directive (Directive 92/43/EC) etc.?	For each instrument: ***In theory (analysis of legislation):*** How do the objectives, scope and key measures of the instrument compare with those of the SEA Directive? Are there inconsistencies between the different instruments' objectives and key measures? What is the potential for synergies? Are there coordination mechanisms in place, at EU and MS levels? ***In practice (analysis of implementation)*** How does implementation in practice interact with the SEA Directive? Are there overlaps, inconsistencies or confusion in implementation at EU and MS levels? How can they be	Extent to which objectives and measures support the objectives of SEA The extent to which measures when implemented support or impede SEA Extent to which SEA influences (facilitates) the EIA of projects derived from the plan/programme Existence of coordination mechanisms/streamlining practices (at EU and MS level) between two different instruments that lead to improved benefits or reduced costs (intended/unintended) Existence of inconsistencies, overlaps, confusion in implementation that reduce benefits or increase costs (intended/unintended) Extent to which inconsistencies and gaps impact/impede the achievement of the legislation's objectives	Stated objectives of the instruments and their commitment to factors supporting or inhibiting environment/SD Evaluation of how measures aim to contribute to the relevant objectives Interactions between the measures when implemented # of MS where coordination mechanisms are in place #s and types of stakeholders expressing experience of synergy or inconsistency	Content of the legal/policy instruments Literature assessing the legal/policy instruments and concrete case studies 2016 study Natura 2016 study Recent academic papers EC and MS guidance documents Perspectives of the range of stakeholders on implementation and practices/examples supporting these perspectives	Desk research Consultation activities – questionnaires, interviews, etc. Synthesis of evidence including stakeholder views and examples Expert judgement linking implementation experience to legislation and conclusions on the root causes of synergies and inconsistencies

	avoided? Is the potential for synergy realized in practice?				
9. To what extent are sectoral EU policies, such as the Cohesion, transport, climate change and energy policies coherent with the SEA Directive?	For each sector: ***In theory (analysis of legislation/policy documents):*** What are the main legal and policy instruments and documents guiding the sector? **Are the objectives and measures of the sector in line with the SEA Directive objectives?** ***In practice (analysis of implementation)*** Which plans and programmes are subject to SEA? ***(link to effectiveness – screening issues identified)*** Does SEA contribute to the achievement of the objectives of the sectors? **Does SEA contribute to making the sector more sustainable?** Does the requirement to do SEA impede the objectives of the sector and if so how?	Extent to which objectives and measures support or impede the objectives of SEA (and vice-versa) Extent to which measures when implemented support or impede SEA – interactions and synergies with SEA Extent to which SEA supports or impedes sectoral policy objectives **Extent to which specific procedures stemming from EU environmental legislation are coordinated with the SEA procedure**	Stated objectives of the instruments and their commitment to factors supporting or inhibiting environment/SD Types of plans/programmes subject to SEA across sectors Existence of synergies and obstacles and the extent to which they impact the objectives of the sector policy and/or SEA **Existence of guidance document to help carrying out SEA in a specific sector** **Existence of coordination mechanisms** #s and types of stakeholders expressing experience of synergy or inconsistency	Content of the legal/policy instruments Literature assessing the legal/policy instruments and concrete case studies **2016 study** **Natura 2016 study** **Recent academic papers** **EC and MS guidance documents** Perspectives of the range of stakeholders on implementation and practices/examples supporting these perspectives	Desk research Consultation activities – questionnaires, interviews, etc. Synthesis of evidence including stakeholder views and examples Expert judgement linking implementation experience to legislation and conclusions on the root causes of synergies and inconsistencies
10. To what extent is the intervention coherent with EU international	What are the main EU international obligations that interact with SEA? How do they apply at EU and	The degree of similarity and interaction between identified international obligations and SEA Directive – where does one go beyond the other etc.	# of international obligations and relevant provisions # of stakeholder and expert responses expressing degrees of	Content of the legal instruments Literature assessing the legal/policy instruments	Desk research Consultation activities – questionnaires, interviews, etc.

obligations?	MS level? How do the objectives and provisions of the key obligations (SEA protocol, Aarhus, etc) compare with the SEA Directive? Are there synergies and/or conflicts (gaps, inconsistencies) between the obligations and the SEA Directive? What provisions exist in the MS to implement relevant provisions that go beyond the SEA Directive?	The existence of synergies and conflicts and their potential magnitude and impact on effectiveness, efficiency of the SEA Directive (applicability, overlaps, inconsistencies, etc.)	synergy, inconsistency, etc. Existence of specific examples to back up or illustrate the above factors	and concrete case studies Perspectives of the range of stakeholders on implementation and practices/examples supporting these perspectives	Synthesis of evidence including stakeholder views and examples Expert judgement linking implementation experience to legislation and conclusions on the root causes of synergies and inconsistencies
EU Added Value					
11. What has been the added value of the SEA Directive compared to what could be achieved by Member States at national and/or regional levels, and to what extent do the issues addressed by the Directive continue to require action at EU level?	**To what extent have the improvements brought about by the SEA Directive occurred over and above what could have been achieved through national or regional legislation?** **What have been the main benefits of having the same legislative basis for SEA in all EU Member States?**	**The extent to which a counterfactual situation would enable the benefits of SEA to have taken place and the reasons for that** The benefits of SEA as an EU Directive over and above national/regional legislation **– both as a legal instrument itself and in the context of uniform legislation across the EU (e.g. coordination gains, legal certainty, synergies, raising standards, etc)**	# types of stakeholders indicating that various activities/benefits would have taken place without the Directive and the main reasons for this # and types of stakeholders indicating existence and importance of improvements brought by the Directive - both as a legal instrument itself and in the context of uniform legislation across the EU	Perspectives of the stakeholders and details supporting them **Any information from the literature supporting the interpretation of the criteria and indicators**	Synthesis of previous evaluation question results and discussion/ranking of impacts, gains and losses by project team (in conclusions section of study) Verification by stakeholders (workshop, ISG etc) Synthesis of stakeholder responses and any relevant examples

ANNEX II: PUBLIC CONSULTATION QUESTIONNAIRE

PUBLIC CONSULTATION AS PART OF THE EVALUATION OF THE STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) DIRECTIVE (DIRECTIVE 2001/42/EC) ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT

ABOUT THE CONSULTATION

This consultation is part of the evaluation of Directive 2001/42/EC on the assessment of the effects of certain public plans and programmes on the environment (SEA Directive). This evaluation is part of the European Commission's Regulatory Fitness and Performance Programme (REFIT) which involves a comprehensive, evidence-based assessment of whether the current regulatory framework is proportionate and fit for purpose and delivering as expected.

With this evaluation, the European Commission (Directorate General for Environment) will assess the results achieved by the SEA Directive with regard to its objectives. The main objective of this Directive is to achieve high level protection of the environment and promote sustainable development. To achieve this objective, Member States need to ensure that environmental considerations are integrated into the preparation and adoption of plans and programmes. Concretely, the SEA Directive requires that public authorities carry out an SEA during the preparation of certain plans and programmes which are likely to have significant effects on the environment, before their adoption or submission to a legislative procedure. Examples of the types of plans and programmes typically subject to an SEA are town and country plans, land use or spatial plans; plans addressing sectors such as energy or transport; or plans setting the framework for future economic development, including for many EU-funded programmes.

The SEA Directive establishes a specific set of rules (i.e. preparation of an environmental report on the likely significant effects of a plan or programme on the environment; informing and consulting the public and the environmental authorities; transboundary consultations with potentially affected Member States; identification of measures to address and monitor significant environmental impacts) applying to the decision-making related to the approval of plans and programmes. The Directive applies at an early stage when certain plans and programmes are being developed. Note that, whilst similar and related, the procedures required by the SEA Directive are distinct from those required under Directive 2011/92/EU (as amended) on the assessment of the effects of certain public and private projects on the environment - the Environmental Impact Assessment (EIA) Directive – which applies to certain individual projects.

This open public consultation aims to gather information and the views of stakeholders and the wider public on how the SEA Directive has performed. This includes the value of having uniform EU legislation requiring the environmental assessment of certain plans and programmes, and the value of the opportunity the legislation provides for public and stakeholder input in the preparation and adoption of certain plans and programmes.

Further information on the evaluation, including the evaluation criteria and questions and the different consultation activities it involves, can be found on the Commission's website.

The questionnaire consists of two parts. The first part includes general questions on the relevance of the SEA Directive to EU citizens, and is aimed at all respondents to this consultation questionnaire. The second part of the questionnaire includes more

detailed questions on the implementation of the Directive and its performance according to five evaluation criteria:

- Effectiveness (Have the objectives been met?)
- Efficiency (Were the costs involved reasonable?)
- Coherence (Does the policy complement other actions or are there contradictions?)
- Relevance (Is EU action still necessary?)
- EU added value (Can or could similar changes have been achieved at national/regional level, or did EU action provide clear added value?)

This second part is particularly aimed at respondents directly involved with or affected by the Directive and its requirements.

Replies may be submitted in any EU official language. It takes approximately 20 to 40 minutes to fill in the questionnaire, depending if you respond only to Part 1 or to Part 1 and 2. You may interrupt your session at any time and continue answering at a later stage. If you do so, please remember to keep the link to your saved answers as this is the only way to access them. Only questions marked with a red asterisk are mandatory. Once you have submitted your answers online, you will be able to download a copy of the completed questionnaire.

PUBLICATION OF CONTRIBUTIONS

Please note that the responses received will be published on the European Commission's website.

1. Please indicate your preference as regards publication of your contribution*

☐ My contribution may be published, mentioning my name or the name of my organisation as well as country of residence

☐ My contribution may be published, but my name or that of my organisation (if relevant) and my country of residence should be kept anonymous

Please note that, whatever option chosen, your answers may be subject to a request for public access to documents under Regulation (EC) N°1049/2001. Please also read the specific privacy statement referred to on the consultation webpage.

ABOUT THE RESPONDENT

2. Are you replying as or on behalf of*:

☐An individual
☐An EU institution
☐A national authority with environmental responsibilities
☐A national authority with responsibilities other than environment
☐A regional or local authority with environmental responsibilities
☐A regional or local authority with responsibilities other than environment
☐A research organisation/university
☐An organisation representing an industry
☐A company carrying out SEAs
☐A company carrying out activities other than SEAs
☐An NGO, environmental or consumer group
☐Other

If other, please specify*:

3. If you are replying as an individual, please state your name and main field of activity. If you are replying on behalf of an organisation, please state the name of your organisation. * (published)

4. If you are replying as an individual, please state your name and main field of activity. If you are replying on behalf of an organisation, please state the name of your organisation. * (anonymous)

5. Please provide an email address *(please note that regardless of the option you chose above under 'Publication of Response', your email will not be made public)* *

[Questions 6 and 7 for consultancies, research organisations; industry organisations, NGOs and other]

6. Is your organisation registered in the Transparency Register of the European Commission? *
☐Yes
☐No

If your organisation is not registered, you have the opportunity to register now.

[question 7 for respondents who said yes in question 8]
7. Please enter the identification number*

8. How familiar are you with the SEA Directive? *
☐Very familiar
☐Moderately familiar
☐Slightly familiar
☐Not at all familiar

9. How many SEAs have you or your organisation been involved with (e.g. had the responsibility for as an authority, carried out as an authority or contractor, been involved with as an expert, consulted as an authority, a citizen or an NGO etc.) since the entry into force of the Directive? *
☐None
☐1
☐2 – 5
☐6 – 10
☐11 – 20
☐21 – 50
☐>50

10. What is your main country of residence or activities? * (published)
Austria
Belgium
Bulgaria
Czech Republic

Croatia
Cyprus
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom
EU-level organisation
Other

If other, please specify*: **(published)**

11. What is your main country of residence or activities? * (anonymous)
Austria
Belgium
Bulgaria
Czech Republic
Croatia
Cyprus
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

United Kingdom
EU-level organisation
Other

If other, please specify*: **(anonymous)**

12. Which types of plans and programmes are you most familiar with? (Please mark all that apply) *
Those prepared for:
☐Agriculture
☐Cohesion Policy
☐Forestry
☐Fisheries
☐Energy
☐Industry
☐Transport
☐Waste management
☐Water management
☐Telecommunications
☐Tourism
☐Town and country planning or land use
☐Other
☐None of the above

If other, please specify:

QUESTIONNAIRE

PART 1 – GENERAL QUESTIONS

13. How important is it to you that public plans and programmes such as local spatial plans, sectoral (e.g. transport, energy) plans or economic development plans are subjected to an assessment of possible impacts on the environment? *
☐Very important
☐Moderately important
☐Slightly important
☐Not at all important
☐Don't know

Please provide a brief justification for your answer (500 characters)

14. How important is it to you that stakeholders and the public are informed about the potential environmental impacts of public plans and programmes? *
☐Very important
☐Moderately important
☐Slightly important
☐Not at all important
☐Don't know

Please provide a brief justification for your answer (500 characters)

15. How important is it to you that stakeholders and the public are given the opportunity to provide input on the potential environmental impacts of public plans and programmes? *

☐Very important
☐Moderately important
☐Slightly important
☐Not at all important
☐Don't know

Please provide a brief justification for your answer (500 characters)

16. In your experience, has information about draft plans and programmes and their environmental impacts been made available to stakeholders and the public? *

☐Yes
☐No
☐Don't know

Please provide a brief justification for your answer (500 characters)

17. In your experience, have stakeholders and the public been given early and effective opportunity to express opinions on draft plans and programmes that are likely to impact the environment? *

☐Yes
☐No
☐Don't know

Please provide a brief justification for our answer (500 characters)

18. Would you like to respond to the second part of the questionnaire on the implementation and the performance of the SEA Directive. *

☐Yes
☐No

PART 2 – SPECIFIC QUESTIONS

19. Generally speaking, with regard to the implementation of the SEA Directive in your Member State, to what extent do you agree or disagree with the following general statements: *

	Strongly agree	Partially agree	Neither agree or disagree	Partially disagree	Strongly disagree	Don't know
An SEA is carried out for all plans and programmes that are likely to have significant effects on the environment	☐	☐	☐	☐	☐	☐
All likely significant environmental effects of the plans/programmes are identified, described and evaluated comprehensively	☐	☐	☐	☐	☐	☐

All reasonable alternatives are identified, described and evaluated comprehensively	☐	☐	☐	☐	☐	☐
Environmental effects of the plans/programmes in neighbouring Member States are identified, described and evaluated comprehensively	☐	☐	☐	☐	☐	☐
Relevant authorities are consulted on all environmental reports	☐	☐	☐	☐	☐	☐
The public concerned are consulted on all environmental reports	☐	☐	☐	☐	☐	☐
Relevant authorities are consulted in a manner that you judge sufficiently open, transparent, and meaningful	☐	☐	☐	☐	☐	☐
The public concerned are consulted in a manner that you judge sufficiently open, transparent, and meaningful	☐	☐	☐	☐	☐	☐
When relevant, consultations across Member States happen in a manner that you judge sufficiently open, transparent, and meaningful	☐	☐	☐	☐	☐	☐
Adopted plans and programmes are made publicly available as required	☐	☐	☐	☐	☐	☐
A statement explaining how comments received during consultations have been taken into account is published together with the adopted plan/programme	☐	☐	☐	☐	☐	☐
Member States monitor environmental effects of the implementation of plans/programmes to identify unforeseen effects and undertake remedial action	☐	☐	☐	☐	☐	☐
There are procedures in place that allow an SEA procedure to be subject to a review before a court of law or other independent and impartial body established by law	☐	☐	☐	☐	☐	☐
There are procedures in place that allow plans that have been subject to SEA procedure to be subject to a review procedure before a court of law or other independent and impartial body established by law	☐	☐	☐	☐	☐	☐

20. In your opinion, for which type of environmental issue(s) is SEA most effective? (Please mark all that apply.) *

☐Biodiversity

☐Water

☐Air

☐Climatic factors

☐Soil
☐Human health
☐Landscape and cultural heritage
☐No opinion
☐Other

If other, please specify*:

21. To what extent do you consider that overall since its implementation the Directive has brought about the following benefits? *

	To a major extent	To a moderate extent	To a minor extent	Not at all	Don't know
Benefits for the environment (e.g. reduction of negative environmental impacts of developments or introduction of measures to enhance the environment)	☐	☐	☐	☐	☐
Integration of environmental issues in sectoral plans and programmes	☐	☐	☐	☐	☐
Integration of environmental issues in town and country planning	☐	☐	☐	☐	☐
Integration of environmental issues in European Structural and Investment Funds programmes	☐	☐	☐	☐	☐
Improved process of preparing plans or programmes overall	☐	☐	☐	☐	☐
Enabled consideration of the cumulative impacts of plans and programmes	☐	☐	☐	☐	☐
Greater public awareness (and transparency) of the process of preparing plans or programmes	☐	☐	☐	☐	☐
Influenced other environmental assessments (e.g. environmental impact assessment, appropriate assessment, etc.)	☐	☐	☐	☐	☐
Influenced the siting, design and implementation of projects that are likely to have an impact on the environment	☐	☐	☐	☐	☐
Contribution to the United Nations' Sustainable Development Goals	☐	☐	☐	☐	☐

Please elaborate and provide examples to justify your answer (500 characters)

22. In your opinion, how do the costs of implementation (including financial costs, time, human resources etc.) of the SEA Directive compare with the benefits brought about by the Directive (listed in the previous question)? *
☐Benefits much greater than costs
☐Benefits slightly greater than costs
☐Costs similar to benefits
☐Costs slightly greater than benefits
☐Costs much greater than benefits
☐No opinion

Please elaborate and provide examples to justify your answer (500 characters)

23. In your opinion, are there any significant gaps, overlaps or inconsistencies between the SEA Directive and the following EU pieces of environmental legislation setting provisions for environmental assessment procedures? *

	Gaps	Overlaps	Inconsistencies	None	Don't know
2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU (EIA Directive)	☐	☐	☐	☐	☐
Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)	☐	☐	☐	☐	☐

Please elaborate and provide examples to justify your answer (500 characters)

24. Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? *

	Strongly supports	Slightly supports	Neither hinders nor supports	Slightly hinders	Strongly hinders	Don't know
Agriculture / rural development	☐	☐	☐	☐	☐	☐
Cohesion policy	☐	☐	☐	☐	☐	☐
Energy	☐	☐	☐	☐	☐	☐
Fisheries	☐	☐	☐	☐	☐	☐
Forestry	☐	☐	☐	☐	☐	☐
Industry	☐	☐	☐	☐	☐	☐
Telecommunications	☐	☐	☐	☐	☐	☐
Tourism	☐	☐	☐	☐	☐	☐
Transport	☐	☐	☐	☐	☐	☐
Waste management	☐	☐	☐	☐	☐	☐
Water	☐	☐	☐	☐	☐	☐
Maritime spatial planning	☐	☐	☐	☐	☐	☐
Climate change	☐	☐	☐	☐	☐	☐
Biodiversity	☐	☐	☐	☐	☐	☐

Please elaborate and provide examples to justify your answer (500 characters)

25. If you wish to add further comments, within the scope of this questionnaire, please feel free to do so here. These may concern the effectiveness, efficiency and relevance of the application and implementation of the SEA Directive, as well as its coherence with other legislation and economic sectors, or the added value of having the same legislation in all EU Member States. (1000 characters)

26. If your responses rely on any source(s) (e.g. evaluation at national, regional, or local level etc.), please provide the sources (title, link etc.)

If you wish to submit additional documentation within the scope of this questionnaire, please upload your files here. Please note that all uploaded documents will be published together with your contribution, and that you should not include personal data in the document(s) if you opted for anonymous publication.

ANNEX III: PUBLIC CONSULTATION REPORT

INTRODUCTION

This open public consultation was carried out as part of the evaluation of Directive 2001/42/EC on the assessment of the effects of certain public plans and programmes on the environment (SEA Directive). This evaluation is part of the European Commission's Regulatory Fitness and Performance Programme (REFIT), a comprehensive, evidence-based assessment of whether or not the current regulatory framework is proportionate, fit for purpose and delivering as expected.

This evaluation will allow the European Commission (Directorate General for Environment (DG ENV)) to assess the results achieved by the SEA Directive with respect to its objectives. The main aim of the Directive is to achieve a high level of protection of the environment and promote sustainable development. Member States thus need to ensure that environmental considerations are integrated into the preparation and adoption of plans and programmes. More specifically, the SEA Directive requires public authorities to carry out an SEA during the preparation of certain plans and programmes which are likely to have significant effects on the environment, before their adoption or submission to a legislative procedure. Examples of the types of plans and programmes typically subject to an SEA are town and country plans, land use or spatial plans, plans addressing sectors such as energy or transport, or plans setting the framework for future economic development, including for many EU-funded programmes.

The SEA Directive establishes a specific set of rules (i.e. preparation of an Environmental Report on the likely significant effects of a plan or programme on the environment; informing and consulting the public and the relevant environmental authorities; transboundary consultations with potentially affected Member States; identification of measures to address and monitor significant environmental impacts) that apply to decision-making in respect of the approval of plans and programmes. The Directive applies at an early stage of development of certain plans and programmes. It should be noted that while similar and related, the procedures required by the SEA Directive are distinct from those required under Directive 2011/92/EU (as amended) on the assessment of the effects of certain public and private projects on the environment (the Environmental Impact Assessment (EIA) Directive), which applies to certain individual projects.

This public consultation used a questionnaire to gather information and views from stakeholders and the wider public on the achievements of the SEA Directive (see Annex 1 for the questionnaire). The questionnaire consisted of two parts: the first included general questions on the relevance of the SEA Directive to EU citizens and was intended for all respondents to the consultation questionnaire; the second part included more detailed questions on the implementation of the SEA Directive and its performance according to five evaluation criteria:

- Effectiveness (Have the objectives been met?)
- Efficiency (Were the costs involved reasonable?)
- Coherence (Does the policy complement other actions or are there contradictions?)
- Relevance (Is EU action still necessary?)
- EU added value (Can or could similar changes have been achieved at national/regional level, or did EU action provide clear added value?)

This second part was particularly aimed at respondents directly involved with or affected by the SEA Directive and its requirements.

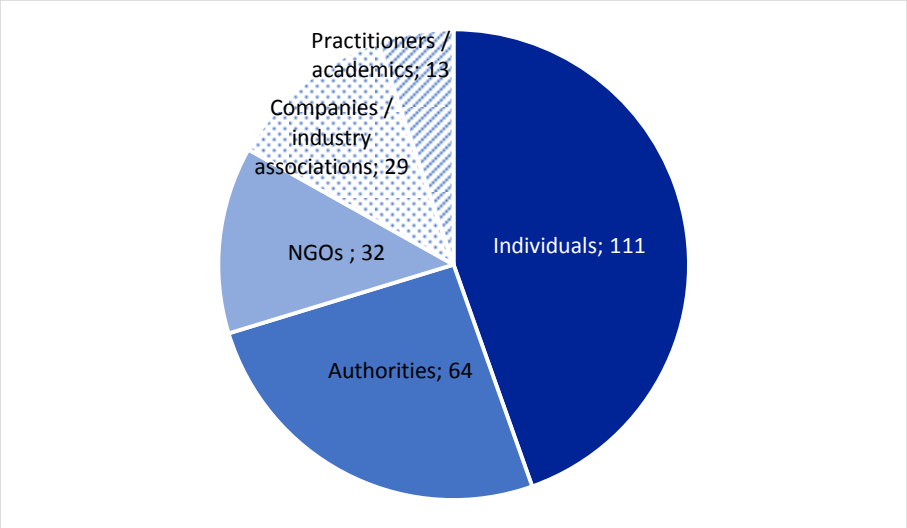
The questionnaire was available in all EU official languages. The consultation ran for 12 weeks (23 April-23 July 2018) and received 249 responses[83]. 187 respondents replied to both parts of the questionnaire, while 62 replied only to the first part.

PROFILE OF RESPONDENTS

Respondent groups

45% of the respondents (111) replied to the questionnaire in a personal capacity, while the remainder replied on behalf of an organisation. After individuals, the largest group of respondents was national, regional or local authorities (64). Figure 1 shows the distribution of respondents by type[84].

Figure 1: Respondents by type (all respondents, n=249)[85]



Individuals

Based on the description they provided, individuals were grouped according to their field of activity (see Table 1). 24 respondents indicated that their activity is related to the environment (e.g. engineering, research, environmental protection or NGO-related work), eight work in spatial planning, and 10 respondents were identified as practitioners or academics specialising in environmental assessment, including SEA. Respondents that did not indicate any activity, mentioned an activity unrelated to SEA, environment or spatial planning, or indicated that they were interested citizens were grouped under 'other'.

Table 1: Distribution of individuals

Type of respondent	Number	% of total
Individuals	**111**	**45**
Environment	24	
Practitioners / academics	10	
Spatial planning	8	
Academic research (other than environment and spatial planning)	4	
Authorities	2	

[83] The survey received 250 responses in total. One response was excluded as the respondent had provided the same contribution twice.

[84] For the purposes of the analysis, and in view of consistent stakeholder grouping, respondents' answers were scanned for errors and inconsistencies and corrected where relevant.

[85] Originally, 15 respondents replied 'other'. However, as some appeared to correspond to existing types, these were moved into the relevant groups.

Other (either not specified or not belonging to categories listed above)	63	

Authorities
The majority of public authorities that replied to the questionnaire are regional and local authorities.

Among the national authorities, seven are environmental authorities and 11 have responsibilities in other fields, such as European funds/regional development (four), agriculture (three), transport (two), health (one) and defence (one). One response was a joint contribution from several ministries and this was grouped with 'national authorities with environmental responsibilities' in the analysis of closed questions.

Table 2: Distribution of authorities

Type of respondent	Number	% of total
Authorities	**64**	**26**
National authorities	**19**	**8**
• With environmental responsibilities	7	
• With responsibilities other than the environment	11	
• Joint answer from authorities with environmental responsibilities and authorities with responsibilities other than the environment	1	
Regional and local authorities	**45**	**18**
• With environmental responsibilities	40	
• With responsibilities other than the environment	5	

The distinction between regional and local authorities with and without environmental responsibilities was blurred, as most respondents replied on behalf of a municipality or regional council, which are competent in several areas. This might explain the imbalance between the two groups. Notwithstanding the reasoning, this distinction was used only infrequently in the analysis of responses.

NGOs
Most of the 32 NGOs (13% of respondents) that replied to the consultation operate at national level, with only two being EU or international organisations. The majority are environmental associations (working in the fields of nature protection, waste management, noise, access to justice and law enforcement, and environmental education), while four are citizens' groups focused on local interests.

Companies and industry associations
Companies (carrying out activities other than SEA) and industry associations replied to the consultation in almost equal numbers. These are mostly Chambers of Commerce and utility companies or associations[86]. Most industry associations are national associations, with only four out of 14 being EU or international organisations.

Table 3: Distribution of companies and industry associations

Type of respondent	Number	% of total
Companies and industry associations	**29**	**12**
• Companies carrying out activities other than SEA	15	6

[86] For consistency purposes, all utilities companies – including public companies managed by authorities – were grouped together in the group 'companies carrying out activities other than SEAs'.

Type of respondent	Number	% of total
• Organisations representing an industry	14	6
Sectoral distribution		
Electricity, gas, heat distribution	7	
Chamber of commerce	6	
Water management and distribution	5	
Consultancies/law firms	3	
Oil and gas	2	
Transport infrastructure	2	
Fisheries	1	
Mining	1	
Construction	1	
Gardening and landscape design	1	

Practitioners and academics
The practitioners and academics group comprised companies carrying out SEAs (mostly consultancies) and research organisations specialising in environmental assessment.

Table 4: Distribution of practitioners and academics

Type of respondent	Number	% of total
Practitioners and academics	**13**	**5**
• Companies carrying out SEAs	10	
• Research organisations/universities	3	

Distribution by Member State
The consultation received replies from 26 Member States (all except Croatia and Malta), with almost three-quarters of responses (72%) coming from the EU-15 Member States. The largest groups of respondents came from Ireland and Portugal.

Three respondents were from non-EU countries (Albania, Turkey and Ukraine). Very few EU-level organisations (four EU organisations and one international organisation) replied to the consultation. Table 5 presents the distribution of respondents by country.

Table 5 : Distribution of respondents by country (all respondents)

Country	Number of respondents	Country	Number of respondents
Austria	10	Lithuania	10
Belgium	13	Luxembourg	2
Bulgaria	12	Netherlands	5
Cyprus	2	Poland	3
Czech Republic	8	Portugal	27
Denmark	6	Romania	6
Estonia	5	Slovak Republic	1
Finland	11	Slovenia	5
France	10	Spain	16
Germany	14	Sweden	3
Greece	8	United Kingdom	9
Hungary	6	EU/international organisation	6
Ireland	31	Non-EU	3
Italy	14	Multi-country[87]	1

[87] The respondent is a regional NGO programme.

Country	Number of respondents	Country	Number of respondents
Latvia	2	**Total**	**249**

The consultation received replies from authorities in 17 Member States. In some Member States, such as Austria, Finland or Portugal, the authorities represented a significant share of the respondents.

Table 6: Distribution of authorities by country (by national, regional/local, total)

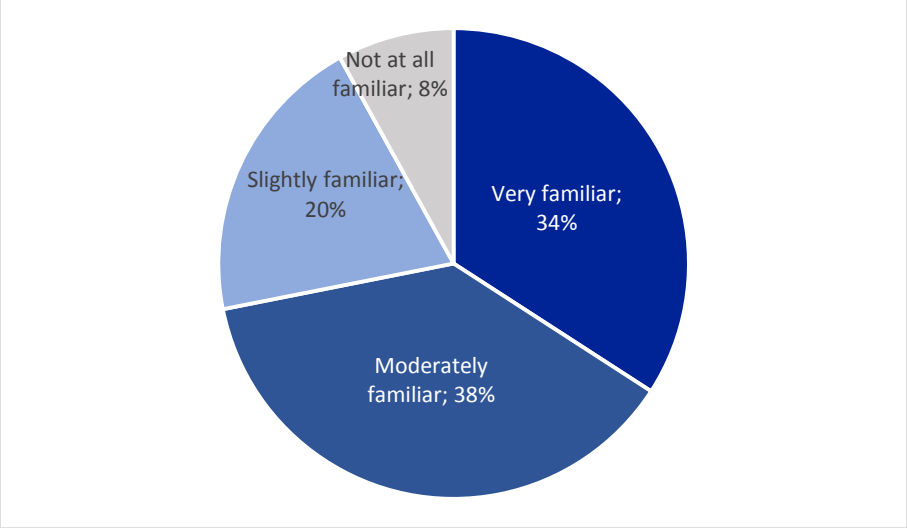
Country	Number of respondents			Country	Number of respondents		
	N	R/L	T		N	R/L	T
Austria	1	6	7	Latvia	1		1
Belgium	0	2	2	Lithuania	5		5
Bulgaria	2	3	5	Netherlands		2	2
Estonia	2	0	2	Portugal	2	13	15
Finland	0	6	6	Slovenia	1		1
France	1	0	1	Spain	1	1	2
Germany	0	2	2	Sweden		1	1
Ireland	2	5	7	United Kingdom	1		1
Italy	0	4	4	**Total**	**19**	**45**	**64**

Experience with SEA

Generally speaking, respondents to the public consultation have a good knowledge of the SEA Directive and have been involved in SEAs.

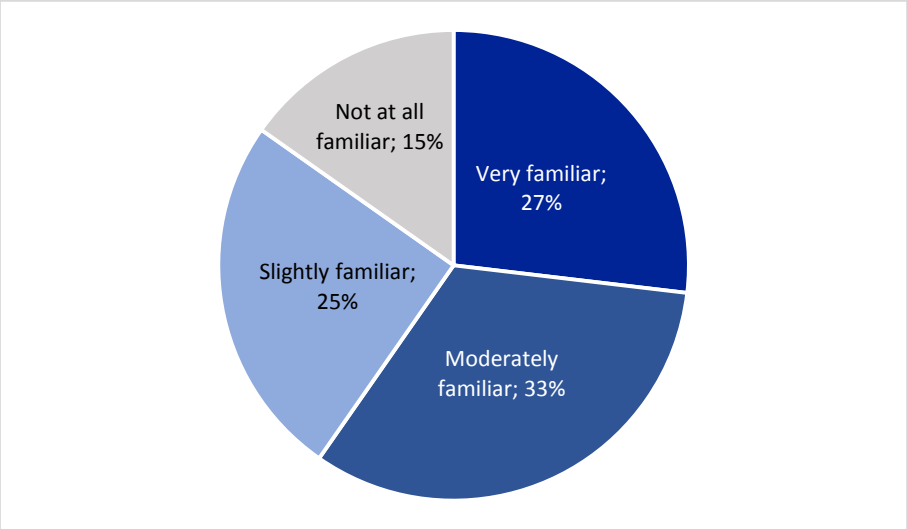
The vast majority of respondents (72%) are moderately to very familiar with the SEA Directive.

Figure 2: How familiar are you with the SEA Directive? (all respondents, n=249)



Respondents who replied in an individual capacity are slightly less familiar with the Directive – the shares of respondents slightly familiar or not familiar at all are higher for individuals only, compared to those for all respondents.

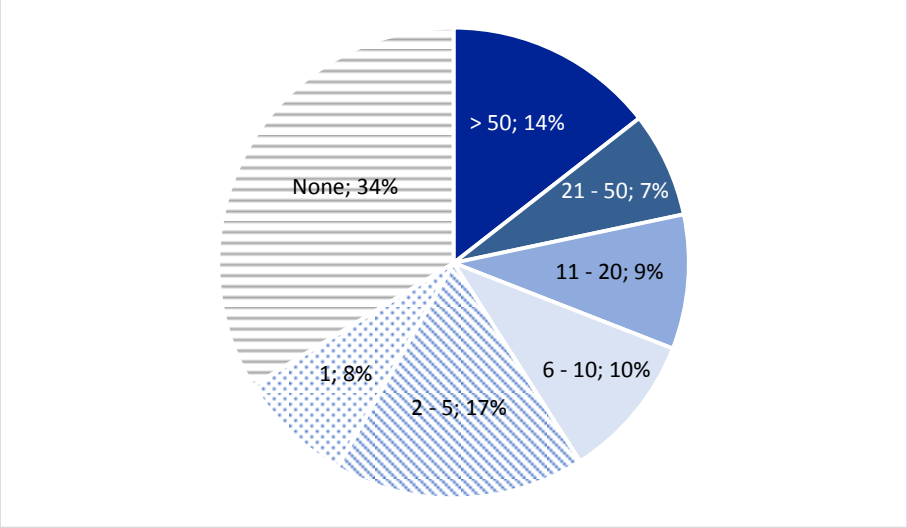
Figure 3: How familiar are you with the SEA Directive? (individuals, n=111)



This is also true of companies carrying out activities other than SEAs, with only 20% very familiar, 40% moderately familiar and 40% slightly familiar with the Directive.

The majority of respondents (66%) have been involved[88] with at least one SEA.

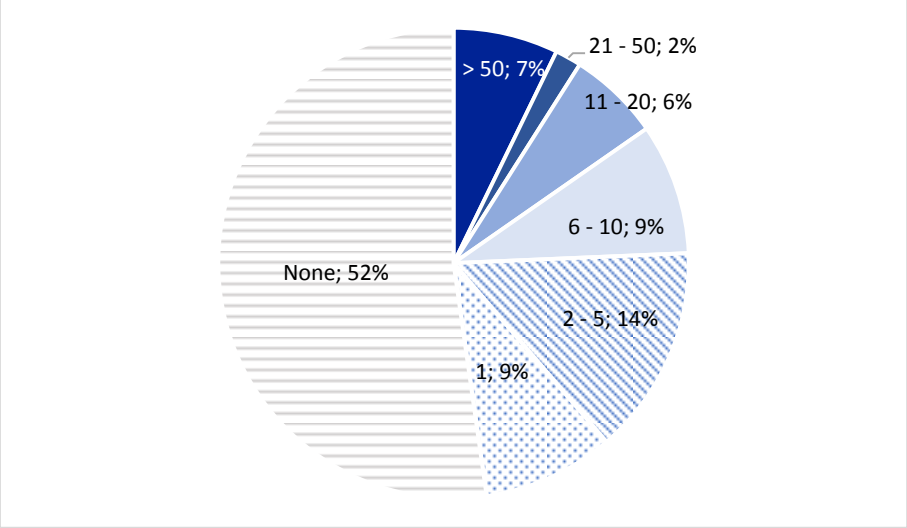
Figure 4: How many SEAs have you or your organisation been involved with? (all respondents, n=249)



This proportion is significantly lower among individuals, 52% of whom have never been involved in an SEA.

[88] The term 'involved' was broadly defined in the questionnaire as 'having responsibility for SEA as an authority, carrying out an SEA as an authority or contractor, being involved with an SEA as an expert, or being consulted as an authority, a citizen or an NGO'.

Figure 5: How many SEAs have you or your organisation been involved with? (individuals, n=111)



Around 20% of the authorities that replied to the consultation have not been involved in an SEA.

Table 7: How many SEAs have you or your organisation been involved with? (authorities, n=64)

Respondents	> 50	21 - 50	11 - 20	6 - 10	2 - 5	1	None	Total
National authorities	6	3	1	0	2	3	4	19
Regional or local authorities	12	4	7	5	7	1	9	45

Respondents are generally familiar with spatial or land use plans, energy plans and water and waste management plans.

Table 8: Which types of plans and programmes are you most familiar with? (all respondents, respondents could select as many replies as they wanted)

Types of plans and programmes	Number of respondents
Town and country planning or land use	143
Energy	107
Water management	95
Waste management	89
Transport	78
Agriculture	54
Industry	43
Cohesion Policy	37
Forestry	37
Tourism	28
Fisheries	24
Telecommunications	16
Other	24
None of the above	19

A large number of authorities are also familiar with spatial or land use plans (which might be due to the high number of regional and local authorities that replied) and environmental plans, such as water and waste management plans.

Table 9: Which types of plans and programmes are you most familiar with? (authorities, respondents could select as many replies as they wanted)

Types of plans and programmes	Number of authorities
Town and country planning or land use	46
Water management	27
Waste management	26
Transport	23
Energy	21
Agriculture	16
Industry	14
Cohesion Policy	13
Forestry	12
Fisheries	11
Tourism	9
Telecommunications	5
Other	6
None of the above	2

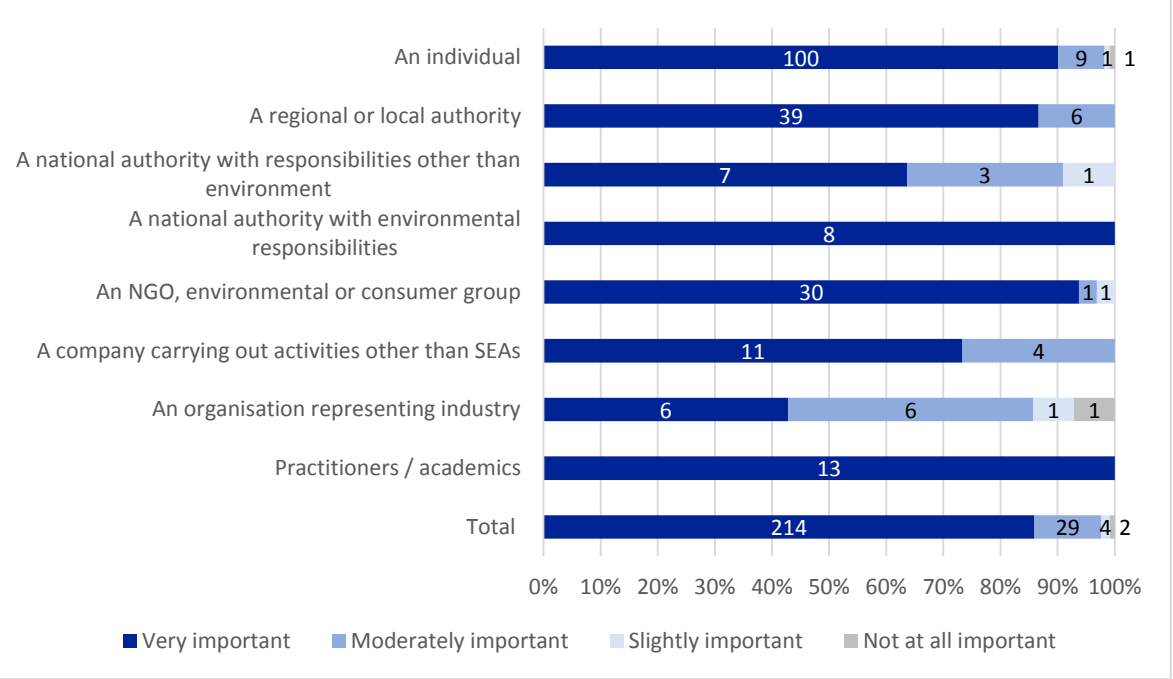
PART 1: GENERAL QUESTIONS

Relevance of SEA

- ***How important is it to you that public plans and programmes such as local spatial plans, sectoral (e.g. transport, energy) plans or economic development plans are subjected to an assessment of possible impacts on the environment?***

The vast majority of respondents (86%) from all respondent groups considered it very important that public plans and programmes are subject to an assessment of possible impacts on the environment. 12% (29 respondents) replied that it is 'moderately important', while 2% said it was 'slightly important' or 'not at all important'. The six respondents who replied 'slightly important' and 'not at all important' are individuals (two), industry associations (two), one national authority and one NGO. Industry associations, companies carrying out activities other than SEAs, and national authorities with responsibilities other than the environment had the highest shares of respondents who replied 'moderately important'.

Figure 6: How important is it to you that public plans and programmes such as local spatial plans, sectoral (e.g. transport, energy) plans or economic development plans are subjected to an assessment of possible impacts on the environment? (n=249)



Respondents were invited to justify their answers, with 177 taking up this option. 12 were excluded because they were not directly relevant to the question (e.g. not explaining why SEA is relevant). A small number of responses (six) were clearly coordinated (i.e. the text was exactly similar in the answers of four industry associations and companies from Czech Republic, and in the answers of two individuals from Ireland).

29 respondents underlined that plans and programmes can have significant impacts on the environment and should thus be subject to environmental assessment. Nine respondents mentioned that the current environmental context (in particular, climate change) warrants the assessment of environmental impacts before the adoption of a plan. 84 respondents explained that SEA is very or moderately important, as it allows for negative environmental impacts to be identified at an early stage, together with possible alternatives and compensation/mitigation measures. Some pointed out that without SEA, environmental issues would not be considered (or not to the same extent) in the preparation of plans and programmes. 22 respondents indicated that SEA enables the public to be informed of environmental impacts and makes the process more open and transparent. 16 respondents believed that SEA supports the sustainable development of development projects.

Eight respondents who stated that SEA is moderately or slightly important, explained that there should be a balance between environmental and socioeconomic aspects and that the objectives of the plan itself should not be undermined.

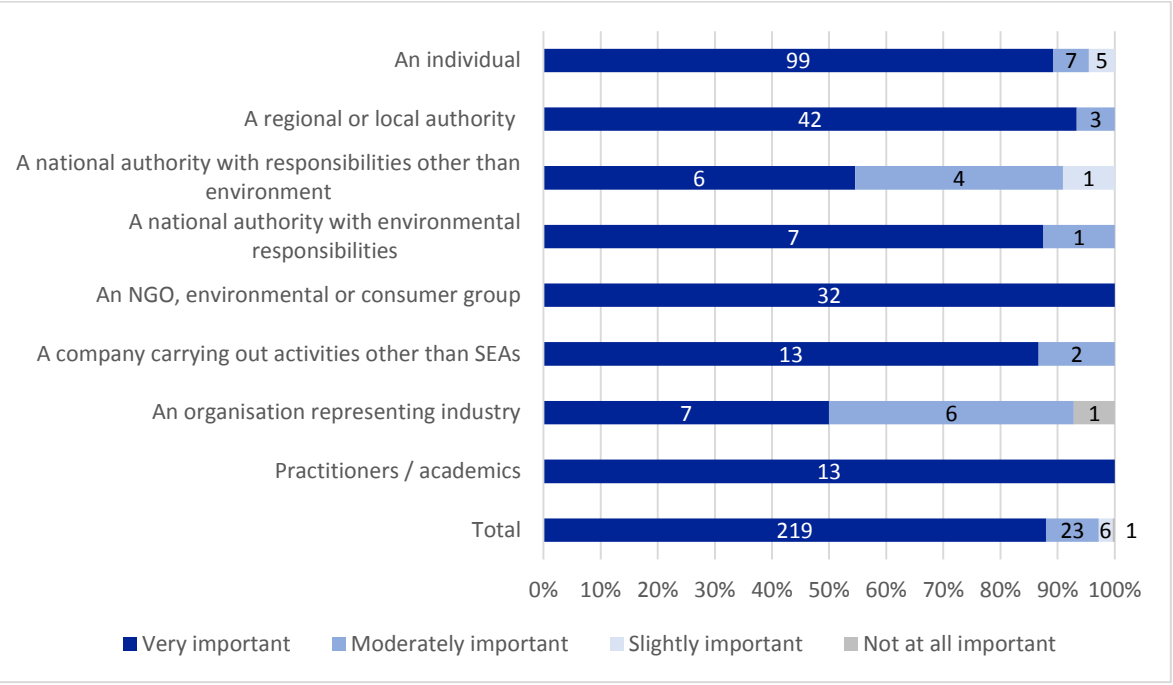
Public participation and information

- ***How important is it to you that stakeholders and the public are informed about the potential environmental impacts of public plans and programmes?***

The vast majority of respondents (88%) considered it very important that stakeholders and the public are informed about the potential environmental impacts of public plans and programmes. 9% (23 respondents) replied that it is 'moderately important' and 3% said it is 'slightly important' or 'not at all important'. Respondents who replied 'slightly important' and 'not at all important' are individuals (five), one

national authority and one industry association. Like the previous question, the highest shares of respondents who replied 'moderately important' are industry associations and national authorities with responsibilities other than the environment.

Figure 7: How important is it to you that stakeholders and the public are informed about the potential environmental impacts of public plans and programmes? (n=249)



Respondents were invited to justify their answers, with 173 respondents taking up this option. 21 replies were excluded because they were not directly relevant to the question (e.g. not addressing the importance of public information). Six responses were coordinated (i.e. the text was exactly similar in the answers of four industry associations and companies from Czech Republic, and in the answers of two individuals from Ireland). 33 respondents underlined that the public has a right to be informed about the environmental impacts of plans and programmes in their surrounding environment, as they are directly affected by the implementation of plans and programmes (13 respondents explicitly pointed this out). 28 respondents added that the availability of information on the impacts of plans and programmes is an issue of transparency and democratic governance.

43 respondents argued that public information is the first step to effective public participation, explaining that when stakeholders and the public have an informed view of the impacts of plans and programmes, they can participate more effectively and draw attention to key local issues. 14 respondents also underlined that access to information on the environmental impact of plans and programmes contributes to raising awareness of environmental issues.

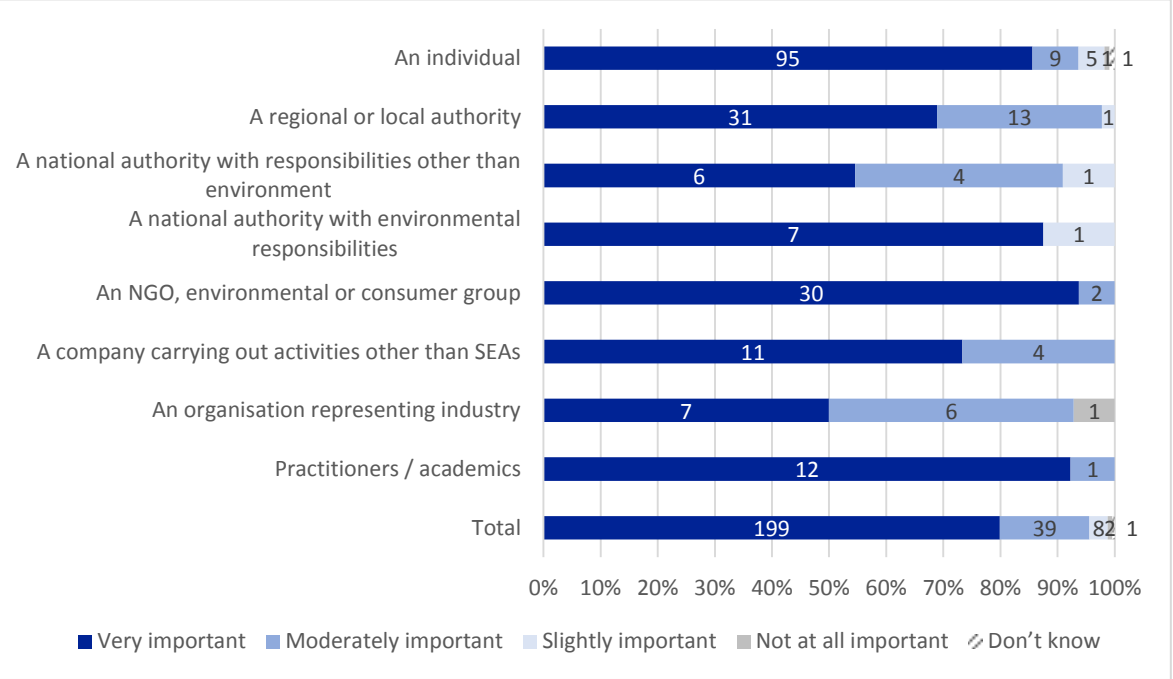
Finally, many respondents underlined the benefits of public information and participation in improving the quality of plans and programmes and the effectiveness of the decision-making process. 24 respondents mentioned that the participation of local stakeholders and the public brings a larger set of views, expertise and local knowledge and perspectives that can identify issues that might otherwise be overlooked. 22 respondents also argued that it increases public acceptance and support for plans and programmes and increases public confidence in the decision-making process. Finally, 10 respondents stated that public scrutiny ensures that plans and programmes address the right issues and that authorities are held accountable if the implementation of plans and programmes fails to prevent environmental impacts.

Several respondents underlined the poor quality of public information and participation, with only two comments stating that it is a slightly important issue.

- ***How important is it to you that stakeholders and the public are given the opportunity to provide input on the potential environmental impacts of public plans and programmes?***

Again, a large majority of respondents (80%) considered it very important that stakeholders and the public are given the opportunity to provide input on the potential environmental impacts of public plans and programmes. A significant share of respondents (16%) considered it moderately important, in particular industry associations, national authorities with responsibilities other than the environment, and regional and local authorities, unlike previous questions. 4% replied that it is 'slightly important' or 'not at all important'.

Figure 8: How important is it to you that stakeholders and the public are given the opportunity to provide input on the potential environmental impacts of public plans and programmes? (n=249)



Respondents were invited to justify their answer, with 168 taking up this option. 27 were excluded, as they either referred to their response to the previous question (e.g. 'see question 14') or were not directly relevant to the question (e.g. not addressing the importance of public participation).

Respondents' explanations of the important of public participation were broadly similar to those of the previous question. 63 respondents underlined the importance of obtaining both the expert knowledge of stakeholders and the insights of citizens on the local conditions, as this helps to avoid negative impacts on the local environment. Respondents made similar comments as in the previous question, including: the right to public participation and issues of transparency and democratic governance (29 respondents); the right of participation stemming from impacts on citizens of the implementation of plans and programmes (17 respondents); the increased acceptance and support towards plans and programmes following public participation (12 respondents).

A smaller number of respondents argued that stakeholder consultation should prevail over public consultation or that public consultation should be somewhat proportionate and not lead to administrative burden (11 respondents). 12 respondents also mentioned that public opinion could be uninformed, biased towards individual interests rather than public interest (not-in-my-back-yard (NIMBY) movements) or focused on local issues that are not relevant to the plan or programme.

Finally, 17 respondents stated that stakeholder and public participation processes were not effective for a variety of reasons, including: they happen too late, when decisions have already been made; there are doubts as to whether the results are taken into account; or greater effort is needed to provide information that all participants understand.

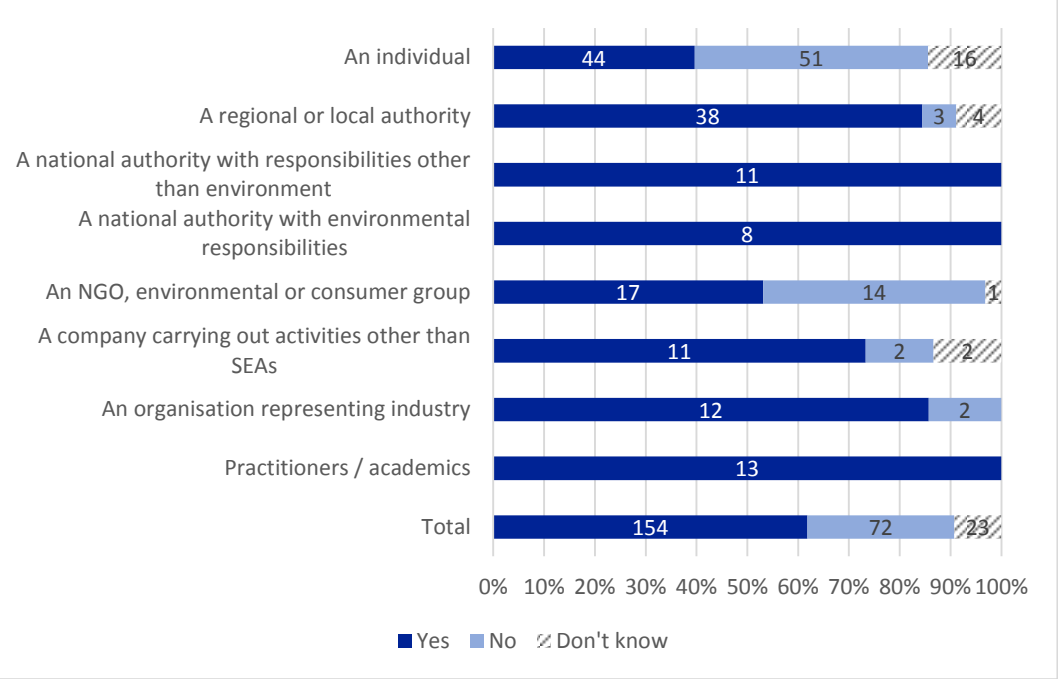
- ***In your experience, has information about draft plans and programmes and their environmental impacts been made available to stakeholders and the public?***

The majority of respondents (62%) believed that information about draft plans and programmes and their environmental impacts have generally been made available to stakeholders and the public. By contrast, 29% felt it had not and 9% didn't know. The analysis of the replies by type of stakeholder shows a significant divide between individuals and NGOs and other stakeholders consulted in the SEA process (industry associations, companies carrying out activities other than SEAs), as well as with stakeholders with responsibility for the SEA procedure or who are involved in it as experts (authorities and practitioners). Notably, 46% of individuals stated that information has not generally been made available.

Respondents who are less familiar with the Directive ('slightly familiar' and 'not at all familiar') tended to reply more negatively than respondents who are 'moderately' or 'very familiar' with the Directive. The same observation was true of respondents who have been involved in less than 10 SEAs, compared to those involved in more than 10. This needs to be interpreted with caution, however, as it does not entirely hold true for specific groups of individuals and NGOs[89].

[89] Individuals who stated they have been involved in over 50 SEAs replied mostly negatively; NGOs that stated they have been involved in over 50 SEAs replied positively but those that have been involved in 10-50 SEAs replied more negatively. In certain cases numbers of respondents were very low and did not allow for robust conclusions.

Figure 9: In your experience, has information about draft plans and programmes and their environmental impacts been made available to stakeholders and the public? (n=249)



Respondents were invited to justify their answers, with 153 respondents choosing to do so. Most comments came from individuals (62), NGOs (26), and regional and local authorities (25)[90]. 10 comments were excluded as they were not directly relevant to the question. As most respondents did not distinguish between 'information about draft plans and programmes' and 'opportunities to express opinions on draft plans and programmes' in their responses, the justifications provided for this and the next question are analysed jointly.

- ***In your experience, have stakeholders and the public been given early and effective opportunity to express opinions on draft plans and programmes that are likely to impact the environment?***

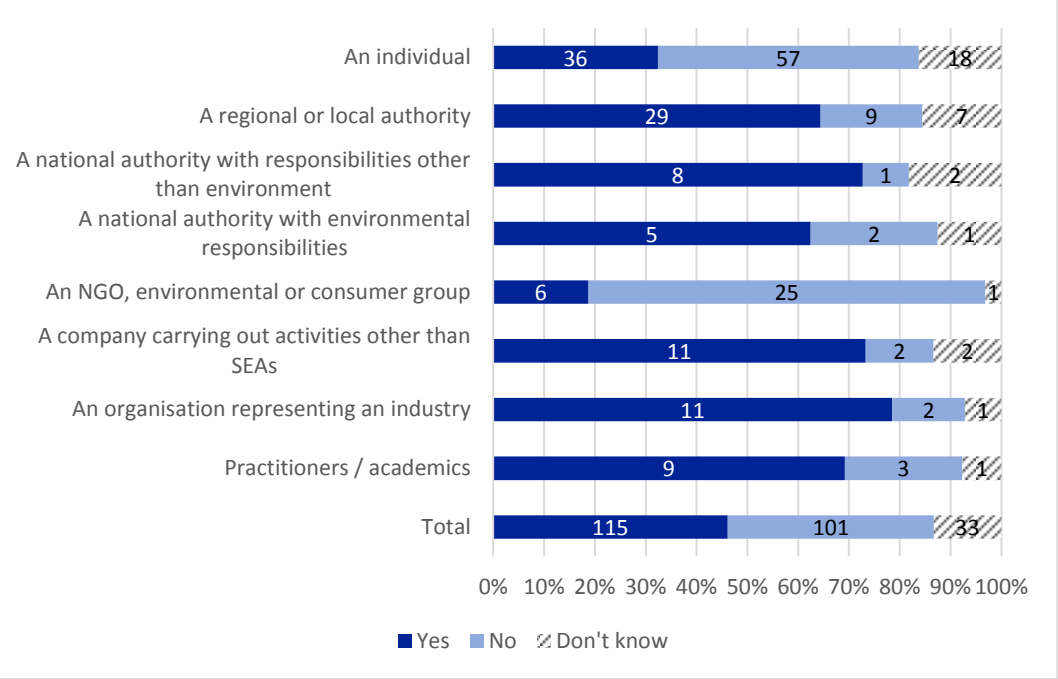
46% of respondents stated that in their experience, stakeholders and the public have generally been given early and effective opportunity to express opinions on draft plans and programmes that are likely to impact the environment. By contrast, 41% disagreed, while 13% replied 'don't know'. The results show the same divide as in the previous questions, with 51% of individuals and 78% of NGOs replying negatively to the question, while in other groups the majority of respondents replied positively. Compared to the previous question, however, larger numbers of regional and local authorities and practitioners replied negatively.

As in the previous question, the shares of respondents who replied 'no' are higher among respondents who are less familiar with the Directive, although this is less marked here than in the previous question, in particular for individuals and NGOs. The number of SEAs with which respondents have been involved had less influence on the replies than in the previous question[91].

[90] Other stakeholder groups are: companies and industry associations (20), national authorities (11), and practitioners and academics (nine).

[91] Although shares of respondents who replied 'no' are lower in respondents' groups who have been involved with 11-20 and >50 SEAs.

Figure 10: In your experience, have stakeholders and the public been given early and effective opportunity to express opinions on draft plans and programmes that are likely to impact the environment? (n=249)



Respondents were invited to justify their answers, with 156 respondents choosing to do so, including 62 individuals, 27 NGOs and 27 regional and local authorities[92]. 32 explanations were excluded, as they either referred to their response to the previous question (e.g. 'see previous answer') or were not directly relevant to the question. Most respondents who provided a justification to the previous question (information about draft plans and programmes) also replied to this question (opportunities to express opinions on draft plans and programmes)[93]. As mentioned above, the issues addressed in both questions were very similar, justifying their joint analysis.

Most respondents who replied that information about draft plans and programmes has been made available to stakeholders and the public stated that it happens according to the (national) legislation (78 of 98 respondents). Six respondents specifically mentioned that the situation has improved over the years or underlined that there is good access to documents and consultation materials (four). Respondents who replied that stakeholders and the public been given early and effective opportunity to express opinions on draft plans and programmes provided similar justifications. Slightly less than half of these respondents stated that it happens according to the (national) legislation (29 of 63 replies) or that the situation has improved (four). Of the respondents who replied 'yes', a larger share criticised public participation (57%) than information about draft plans and programmes (30%).

Respondents (including those who replied 'yes', 'no' or 'don't know', to both questions) pointed to a number of flaws in the way information is provided to the public and stakeholders, and the way in which public participation is carried out:

[92] Other stakeholder groups were: companies and industry associations (18), practitioners and academics (12) and national authorities (10).

[93] 14 respondents (of 153) only provided justifications on 'information about drafts plans and programmes'; 18 respondents (of 156) only provided justifications on 'opportunities to express opinions on draft plans and programmes'.

- Information about draft plans and programmes needs to be more widely disseminated through various channels[94]. A number of respondents indicated that while the information is made available, it is often not visible enough on authorities' websites, requiring time and effort to find it. Without prior knowledge of the plan preparation process and the SEA, there is little chance that citizens will know where to find such information. Similar comments were made concerning public participation announcements, which prevents wider participation. Several respondents also indicated that more effort should be made to proactively engage with stakeholders and the public to ensure that they are aware of consultations and the means by which they can contribute. A small number of respondents (usually NGOs and individuals) highlighted that deadlines for participation were too short.
- The timing of the consultation is not conducive to effective participation[95]. Public participation often comes at a later stage (of the draft plan/programme), when the objectives (and/or targets) and options have already been decided. In that context, the public consultation can result in only marginal changes to the plan/programme. These comments were most often made by NGOs and individuals.
- The quality of information provided to stakeholders and the public, including in participation processes, should be improved. Two main comments were made by respondents (mostly 'individuals'):
  - The information provided is insufficient to form a judgment on the plan and its impacts. In particular, the description of activities, their impacts and the alternatives (why an option was chosen) need to be improved[96].
  - Information is often too technical and not accessible to citizens, thus the provision of non-technical information should be improved[97].
- A number of individuals expressed doubts about how the input from stakeholder and public consultations is taken into account, as they have only a limited impact on the plan/programme. These respondents questioned the willingness of competent authorities to cooperate with stakeholders and consult the public[98].

Other comments were related to the absence of SEA (and thus public participation) in cases where an assessment should have been carried out. A number of individuals and NGOs regretted that, in these cases, citizens were not informed of the impacts of the plans/programmes and were deprived of their right to provide their opinion[99]. Finally, some respondents mentioned that the quality of public participation depends on the competent authority and that it varies greatly from one plan to another[100].

PART 2: SPECIFIC QUESTIONS

187 respondents replied to the second part of the questionnaire. Stakeholder groups that lost the greatest numbers of respondents were national authorities with responsibilities other than environment (minus 55%), individuals (minus 33%), companies carrying out activities other than SEAs (minus 27%), and regional and local authorities (minus 26%).

[94] 31 respondents to the first question (information about draft plans and programmes) and 17 to the second question (opportunities to express opinions on draft plans and programmes) addressed communication channels in their answer.

[95] 15 respondents to the first question, 37 to the second.

[96] 13 respondents to the first question, six to the second.

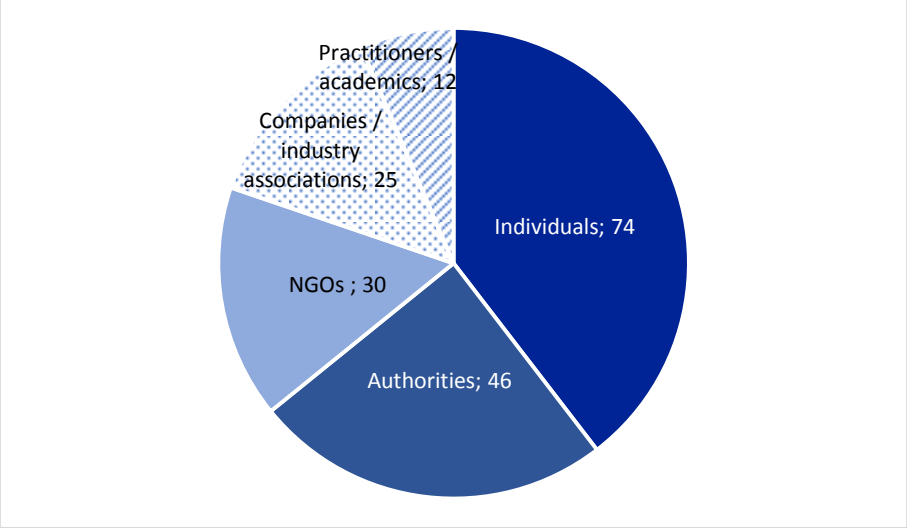
[97] 10 respondents to the first question, four to the second.

[98] Two respondents to the first question, 10 to the second.

[99] 10 respondents to the first question, 10 to the second.

[100] 11 respondents to the second question.

Figure 11: Would you like to respond to the second part of the questionnaire on the implementation and the performance of the SEA Directive? (respondents who answered 'yes', n=187)



Of the 62 respondents who did not reply to the second part of the questionnaire, 39 (63%) indicated that they were 'slightly familiar' or 'not at all familiar' with the SEA Directive, and 49 (80%) indicated that they have not been involved with any SEAs.

It seems clear, therefore, that the 187 respondents who completed the second part are slightly more familiar with the Directive and have been involved in more SEAs than the total group of respondents.

Figure 12: How familiar are you with the SEA Directive? (n=187)

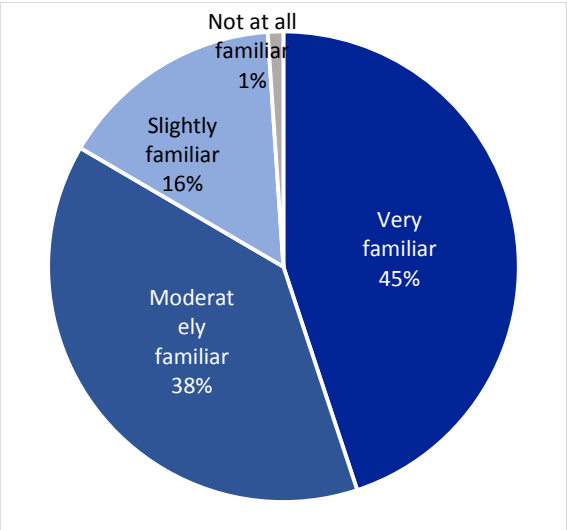
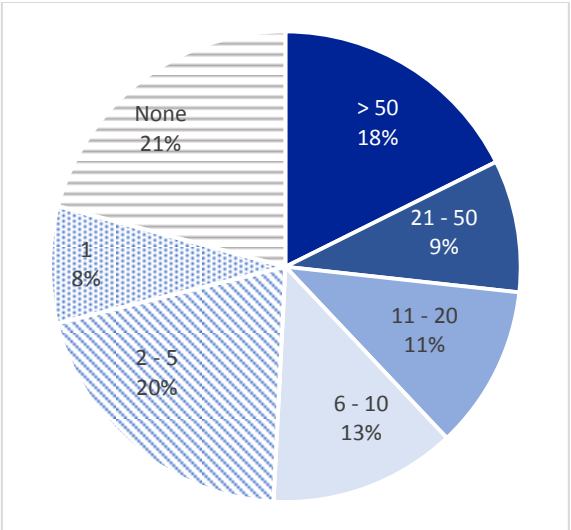


Figure 13: How many SEAs have you or your organisation been involved with? (n=187)



Effectiveness

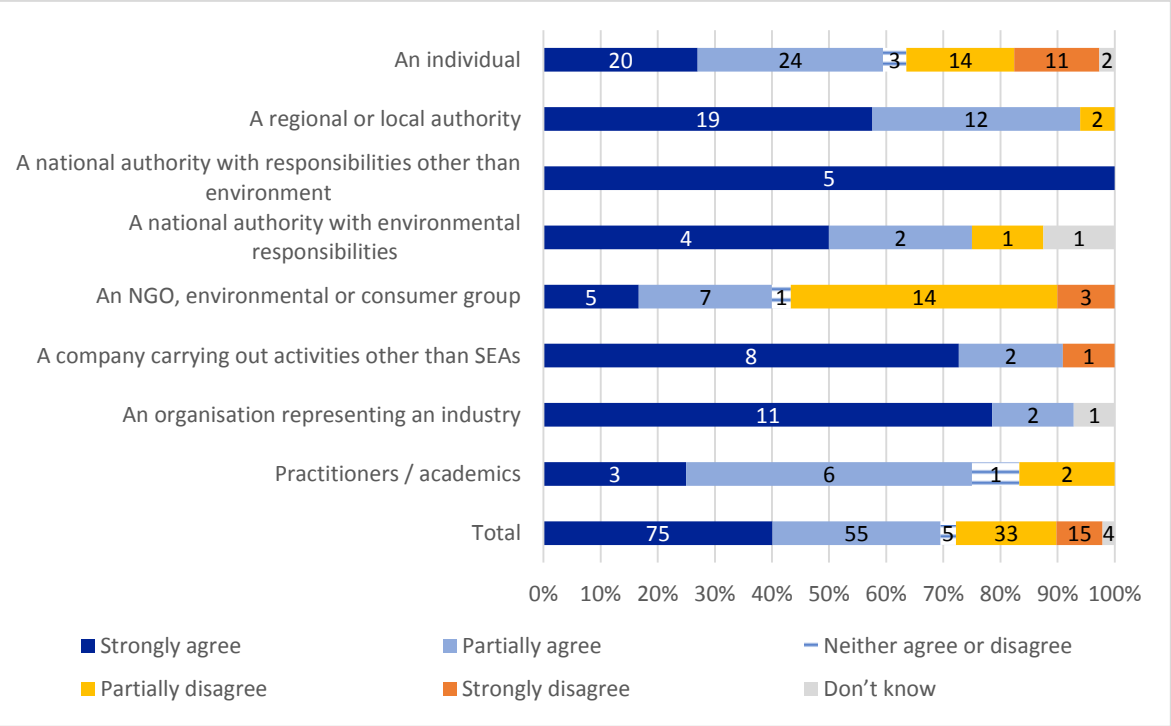
Implementation of the SEA Directive

Respondents were asked for their opinions on a list of statements on the implementation of the SEA Directive according to the following scale: strongly agree, partially agree, neither agree nor disagree, partially disagree and strongly disagree. All statements were related to the different steps of the SEA procedure.

- ***An SEA is carried out for all plans and programmes that are likely to have significant effects on the environment***

70% of the respondents strongly or partially agreed that an SEA is carried out for all plans and programmes that are likely to have significant effects on the environment. Individuals and NGOs had the highest shares of respondents who disagreed with the statement.

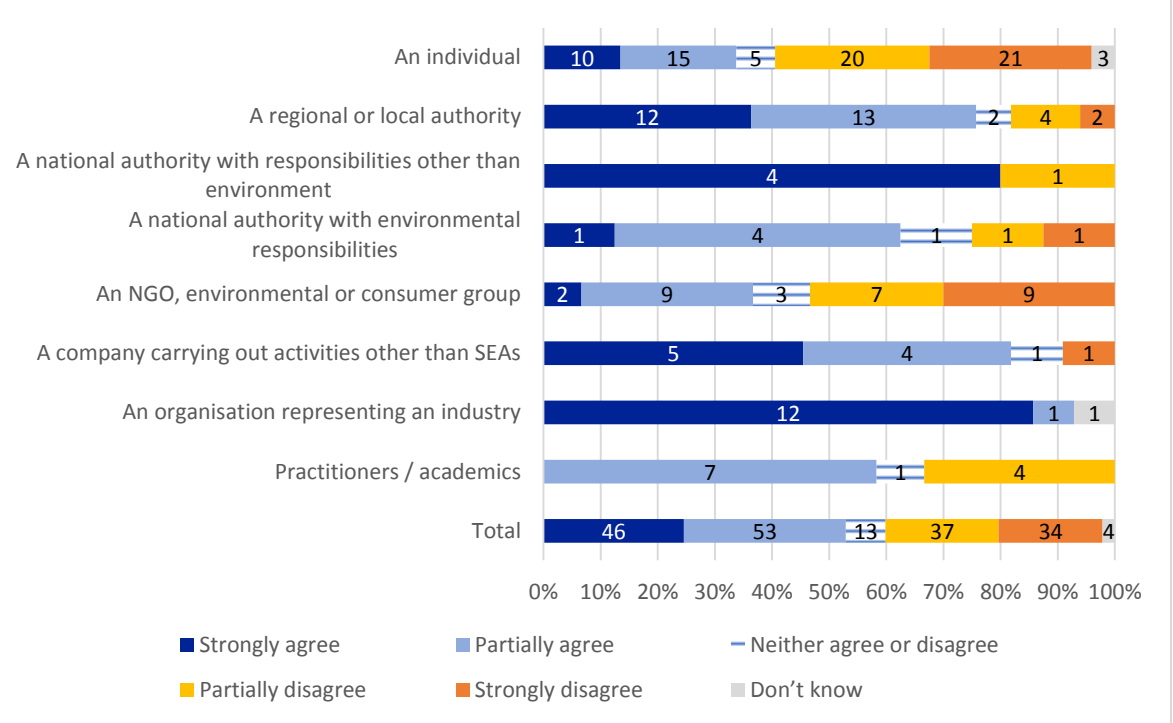
Figure 14: An SEA is carried out for all plans and programmes that are likely to have significant effects on the environment (n=187)



- ***All likely significant environmental effects of the plans/programmes are identified, described and evaluated comprehensively***

Just over half of the respondents believed that all likely significant environmental effects of the plans/programmes are identified, described and evaluated comprehensively in the Environmental Report. As in the previous question, individuals and NGOs had the highest shares of respondents who disagreed with the statement. In addition, one-third of practitioners and academics partially disagreed with statement.

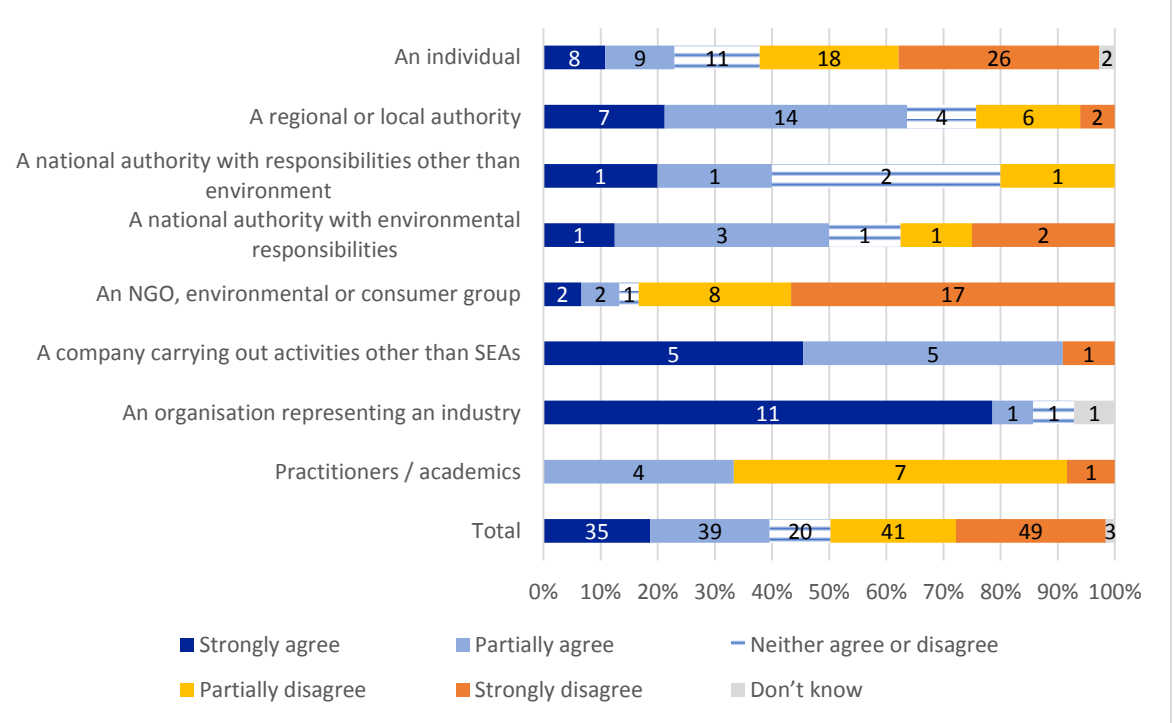
Figure 15: All likely significant environmental effects of the plans/programmes are identified, described and evaluated comprehensively (n=187)



- ***All reasonable alternatives are identified, described and evaluated comprehensively***

Almost half of the respondents partially or strongly disagreed with the statement that 'all reasonable alternatives are identified, described and evaluated comprehensively, with 26% disagreeing strongly. Again, the most critical groups were NGOs, practitioners/academics and individuals.

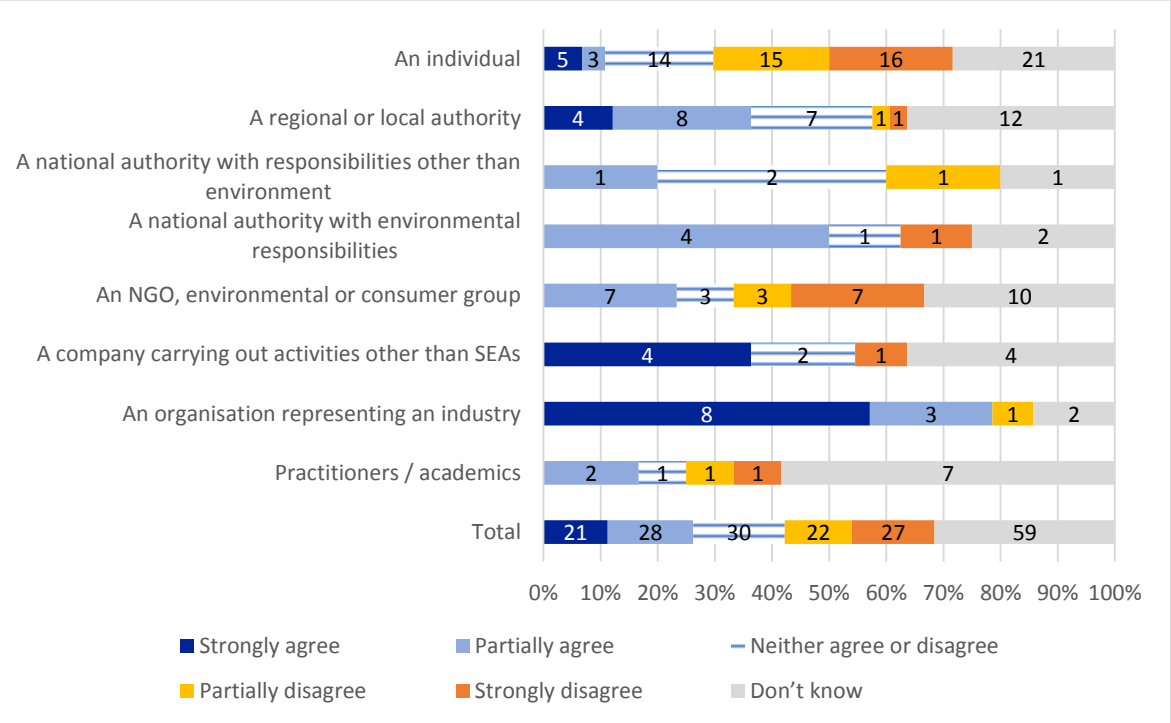
Figure 16: All reasonable alternatives are identified, described and evaluated comprehensively (n=187)



- ***Environmental effects of the plans/programmes in neighbouring Member States are identified, described and evaluated comprehensively***

Respondents were divided on the identification and evaluation of environmental effects of the plans/programmes in neighbouring Member States. 26% of respondents agreed (strongly or partially) that those effects were identified, described and evaluated compressively, while 26% disagreed. 16% remained neutral and 32% expressed no opinion on the issue. Individuals and NGOs had the highest shares of respondents who disagreed with the statement.

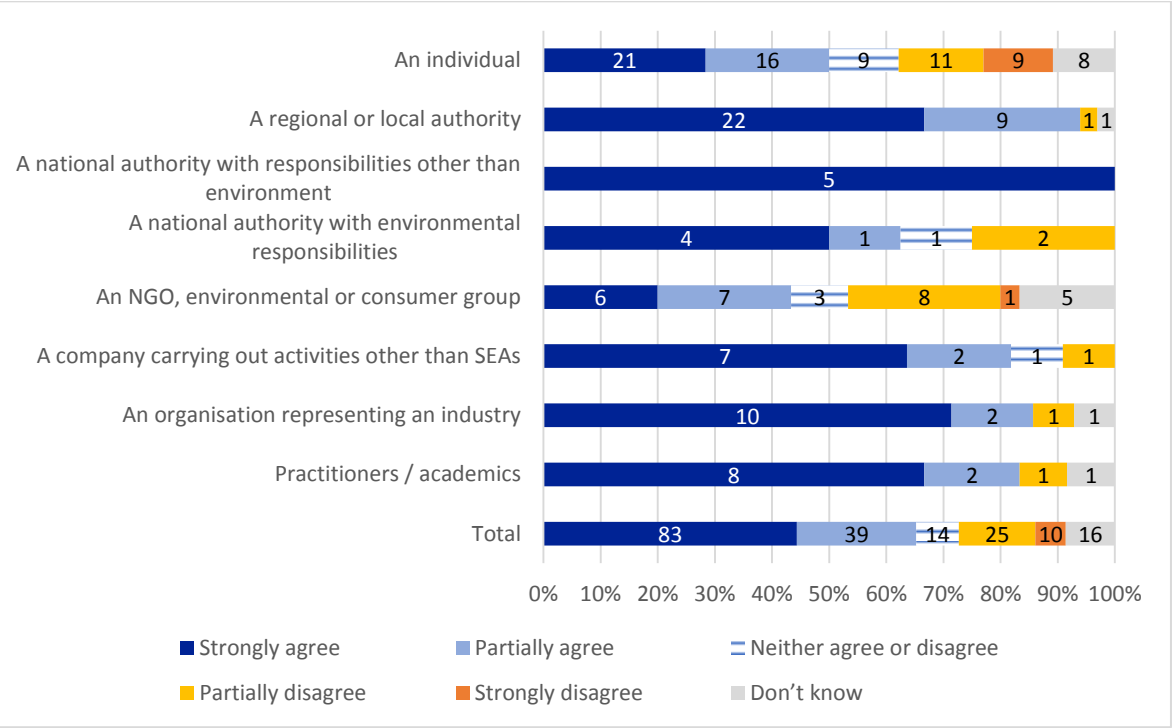
Figure 17: Environmental effects of the plans/programmes in neighbouring Member States are identified, described and evaluated comprehensively (n=187)



- ***Relevant authorities are consulted on all Environmental Reports***

The majority of respondents (65%) believed that all relevant authorities are consulted on all Environmental Reports, while 19% disagreed. Around 30% of individuals and NGOs disagreed with the statement.

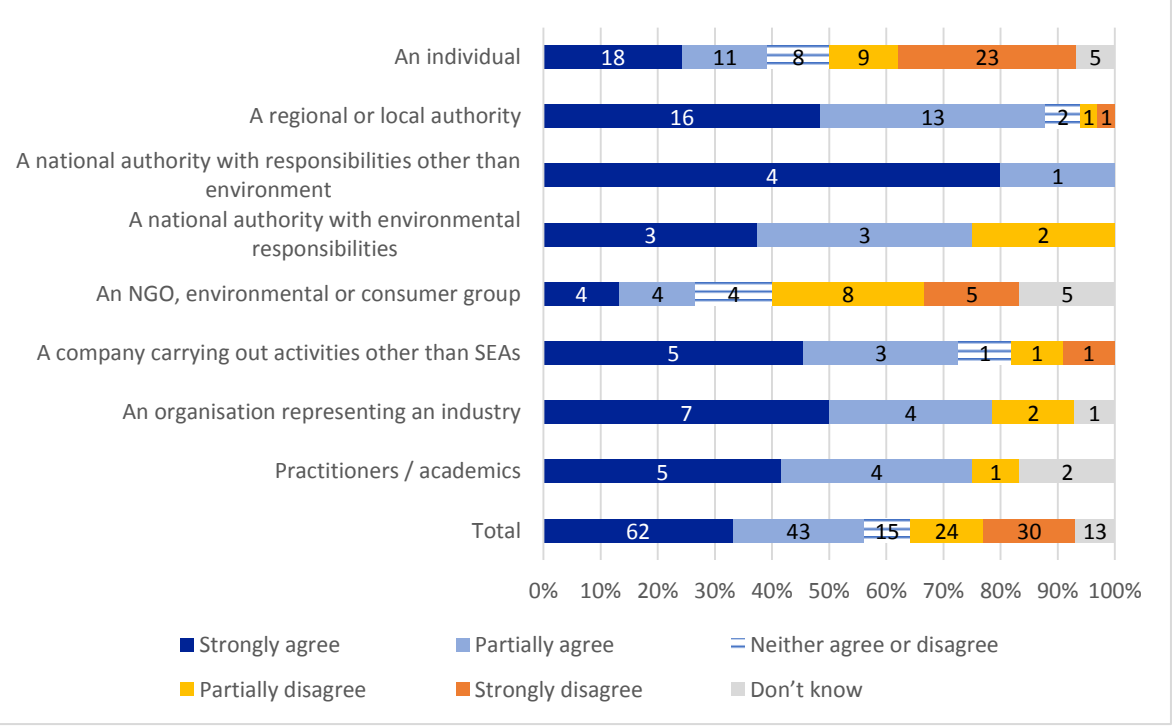
Figure 18: Relevant authorities are consulted on all Environmental Reports (n=187)



- ***Relevant authorities are consulted in a manner that you judge sufficiently open, transparent, and meaningful***

On the quality of the consultation with relevant authorities, 56% of respondents considered such consultations to be carried out in an open transparent and meaningful way, while 29% disagreed. Individuals and NGOs had the highest shares of respondents who disagreed with the statement, while those authorities that replied to the questionnaire were universally positive on the quality of the consultation.

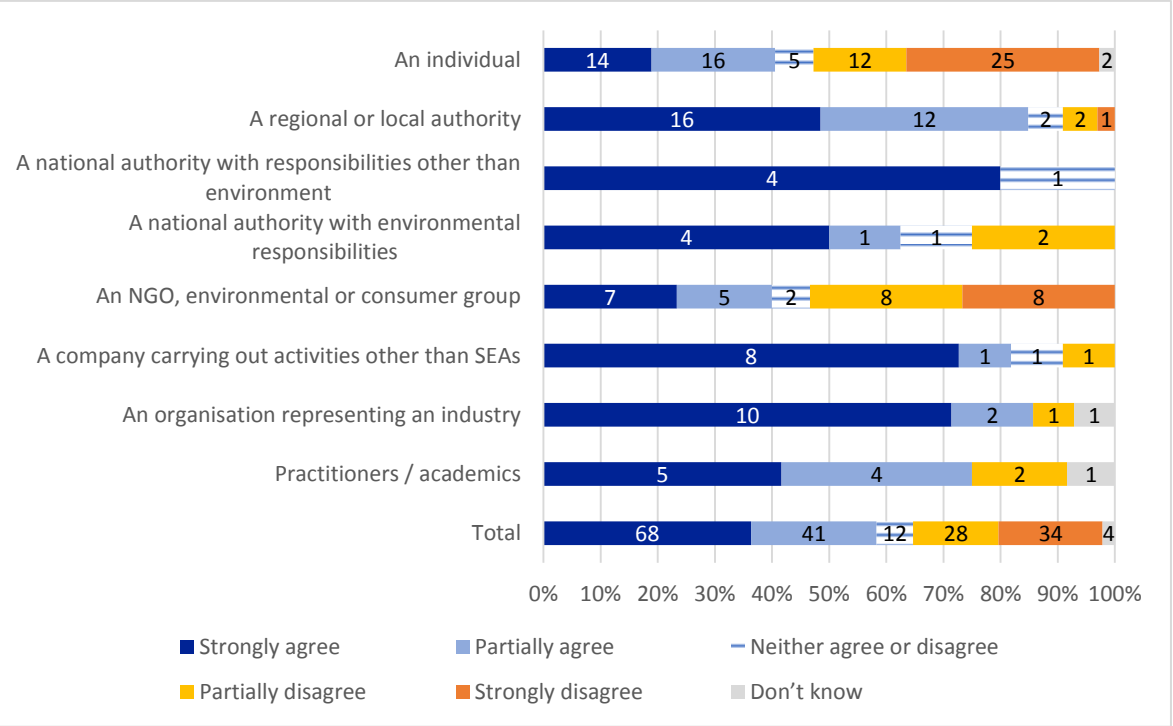
Figure 19: Relevant authorities are consulted in a manner that you judge sufficiently open, transparent, and meaningful



- ***The public concerned are consulted on all Environmental Reports***

60% of respondents replied that the public concerned is consulted on all Environmental Reports, while 33% disagreed. Half of the individuals and NGOs disagreed with the statement.

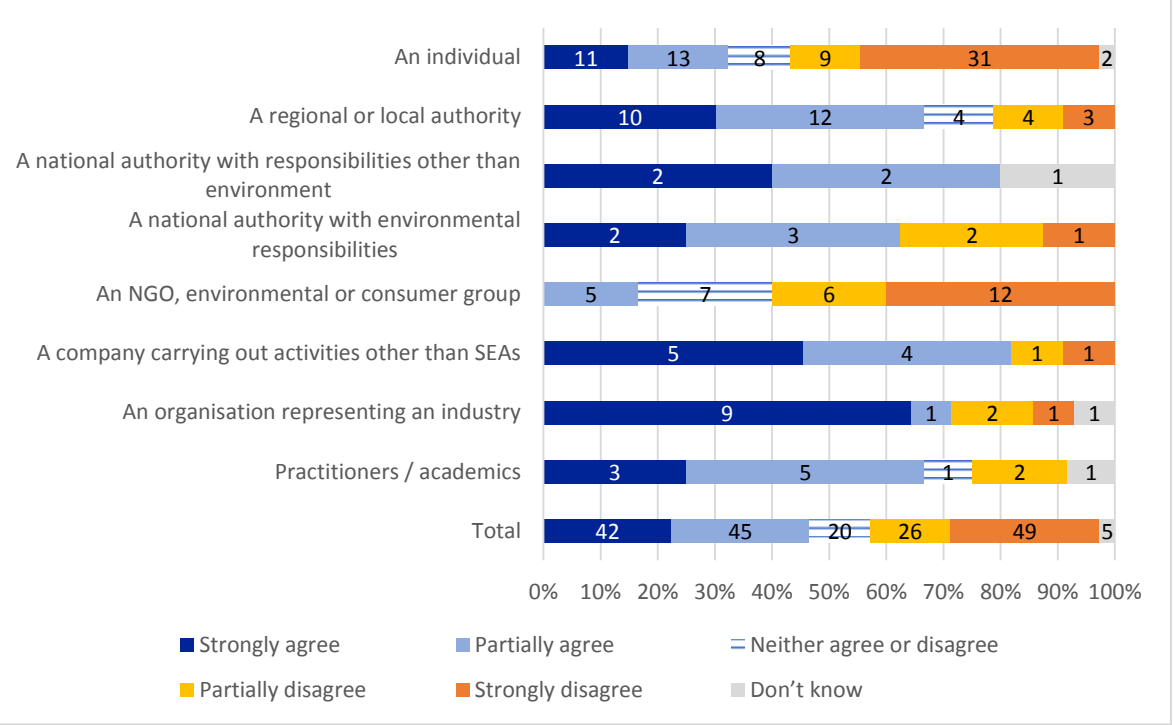
Figure 20: The public concerned are consulted on all Environmental Reports (n=187)



- ***The public concerned are consulted in a manner that you judge sufficiently open, transparent, and meaningful***

Respondents were divided on the quality of public consultations, with 47% believing that the public is consulted in an open, transparent and meaningful way, 40% disagreeing and 11% remaining neutral. Over half of the individuals and 60% of the NGOs strongly or partially disagreed. Around 40% of national authorities with environmental responsibilities disagreed with the statement, in contrast to their answers to the three previous questions.

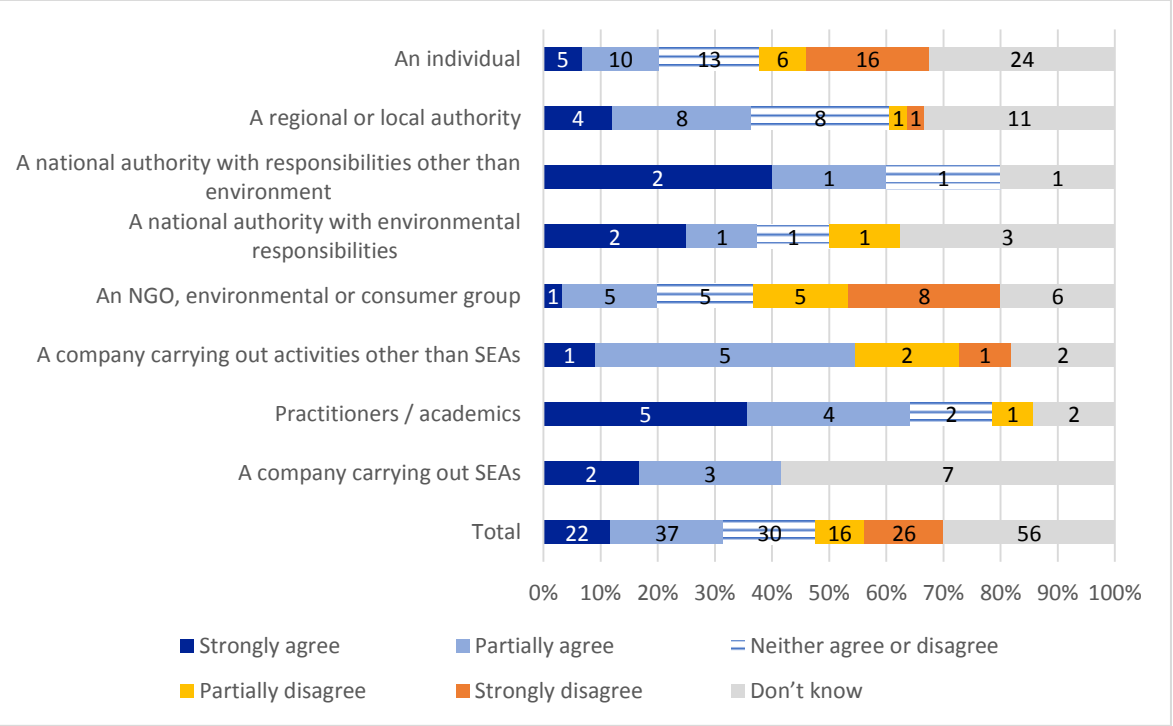
Figure 21: The public concerned are consulted in a manner that you judge sufficiently open, transparent, and meaningful



- ***When relevant, consultations across Member States happen in a manner that you judge sufficiently open, transparent, and meaningful***

Respondents were divided on cross-border consultations. 32% of respondents considered cross-border consultations to be carried out in an open, transparent, and meaningful way, 22% disagreed, 16% remained neutral and 30% did not provide an opinion.

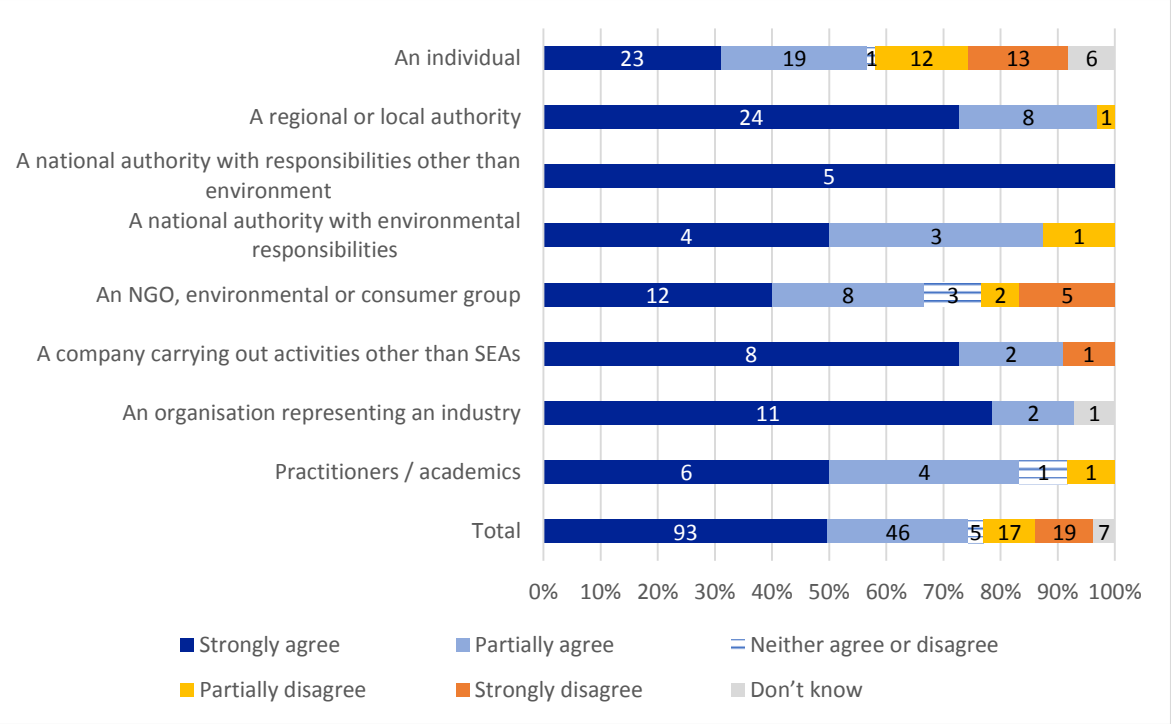
Figure 22: When relevant, consultations across Member States happen in a manner that you judge sufficiently open, transparent, and meaningful



- ***Adopted plans and programmes are made publicly available, as required***

The vast majority of respondents (76%) replied that adopted plans and programmes are made publicly available.

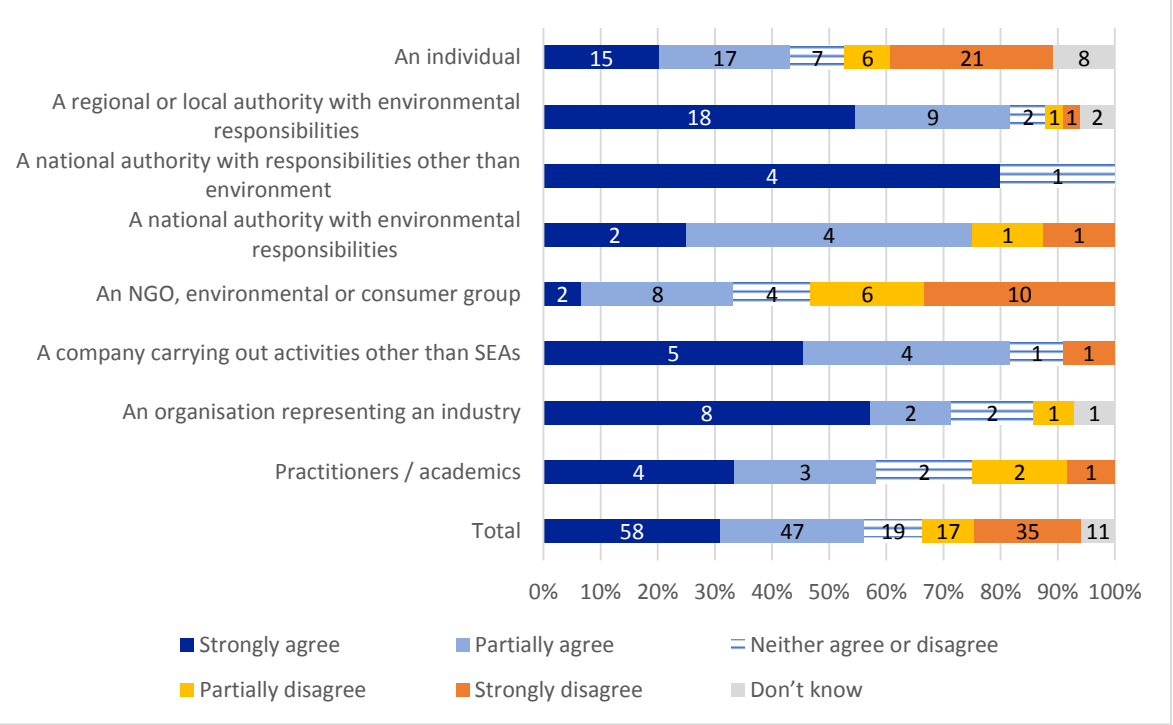
Figure 23: Adopted plans and programmes are made publicly available, as required



- ***A statement explaining how comments received during consultations have been taken into account is published together with the adopted plan/programme***

56% agreed that a statement explaining how comments received during consultations were taken into account is published together with the adopted plan/programme. Individuals and NGOs had the highest shares of respondents disagreeing with the statement.

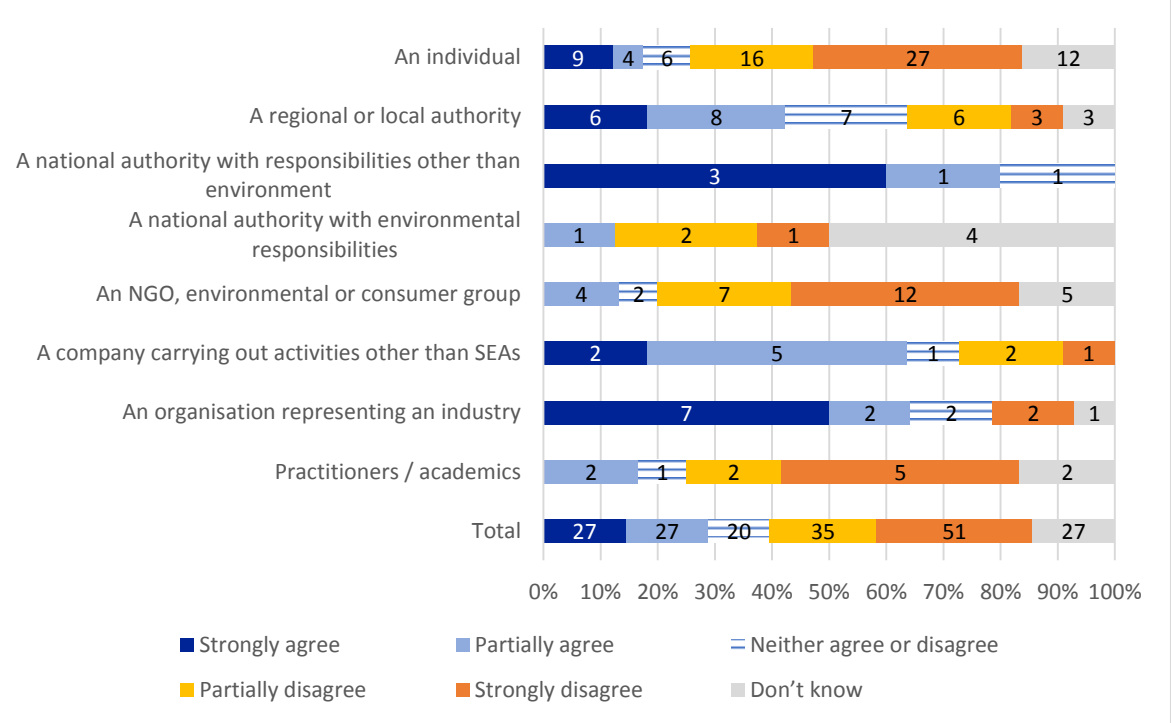
Figure 24: A statement explaining how comments received during consultations have been taken into account is published together with the adopted plan/programme



- ***Member States monitor environmental effects of the implementation of plans/programmes to identify unforeseen effects and undertake remedial action***

Almost half of the respondents (46%) stated that Member States do not monitor the environmental effects of the implementation of plans/programmes, 29% said that they do, 11% were neutral and 14% provided no opinion. NGOs, individuals and practitioners had the highest shares of respondents who disagreed with the statement. Half of the national authorities with environmental responsibilities replied 'don't know', while around 40% disagreed with the statement.

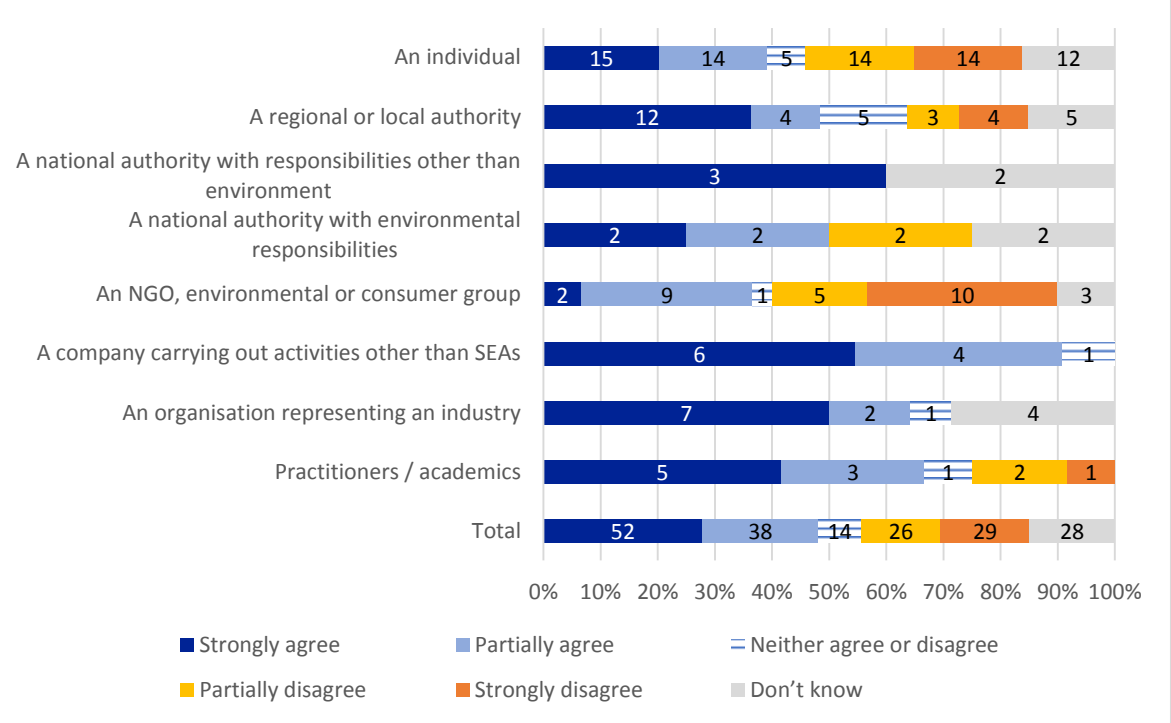
Figure 25: Member States monitor environmental effects of the implementation of plans/programmes to identify unforeseen effects and undertake remedial action



- ***There are procedures in place that allow an SEA procedure to be subject to a review before a court of law or other independent and impartial body established by law***

Respondents were divided on the existence of procedures subjecting an SEA procedure to a review before a court of law. Almost half of the respondents replied that such procedures are in place, while 30% stated they were not, 7% were neutral and 15% did not provide an opinion. Half of the NGOs disagreed with the statement, and individuals were particularly divided on the issue.

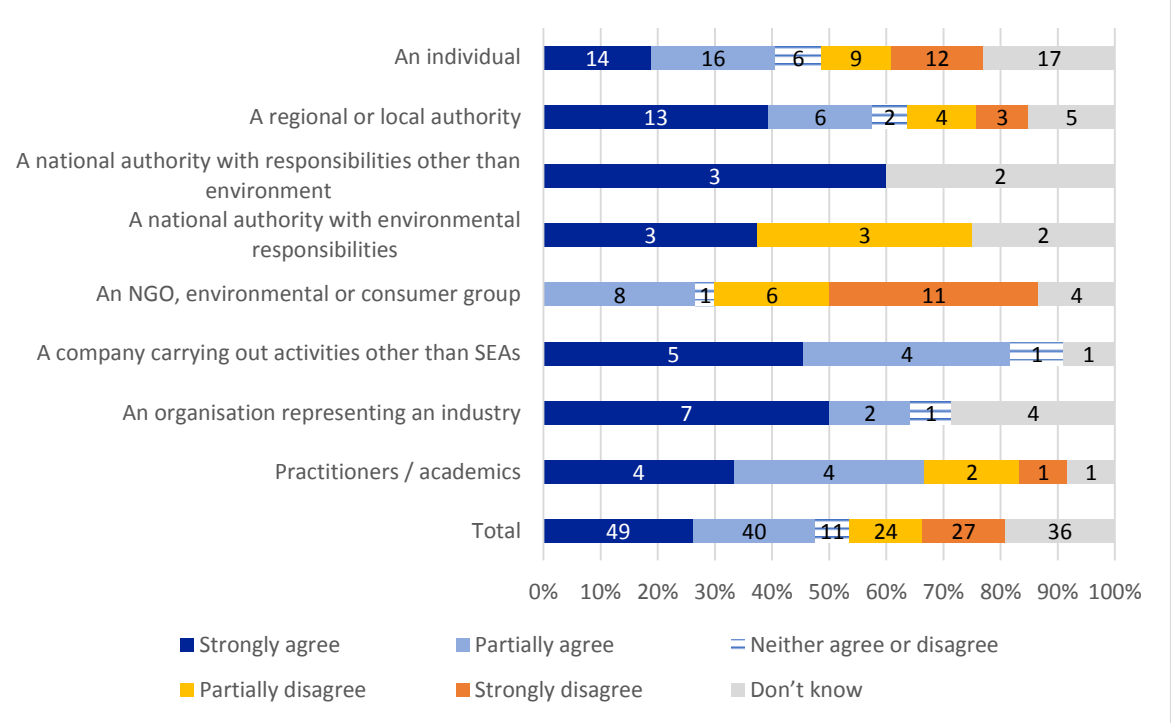
Figure 26: There are procedures in place that allow an SEA procedure to be subject to a review before a court of law or other independent and impartial body established by law



- ***There are procedures in place that allow plans that have been subject to SEA procedure to be subject to a review procedure before a court of law or other independent and impartial body established by law***

Around half of the respondents (48%) replied that procedures allowing plans that have been subject to SEA procedure to be subject to a review procedure before a court of law are in place. By contrast, 27% stated that no such procedures are in place, 6% stayed neutral and 19% did not provide an opinion. Over half of the NGOs disagreed with the statement.

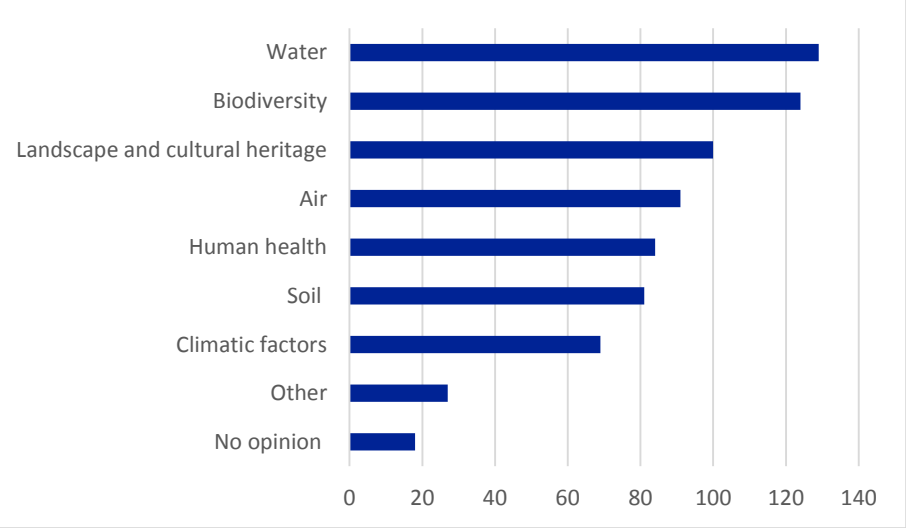
Figure 27: There are procedures in place that allow plans that have been subject to SEA procedure to be subject to a review procedure before a court of law or other independent and impartial body established by law



- ***In your opinion, for which type of environmental issue(s) is SEA most effective?***

Respondents considered water and biodiversity the environmental issues for which SEA is the most effective.

Figure 28: In your opinion, for which type of environmental issue(s) is SEA most effective? (n=187; multiple choices possible)



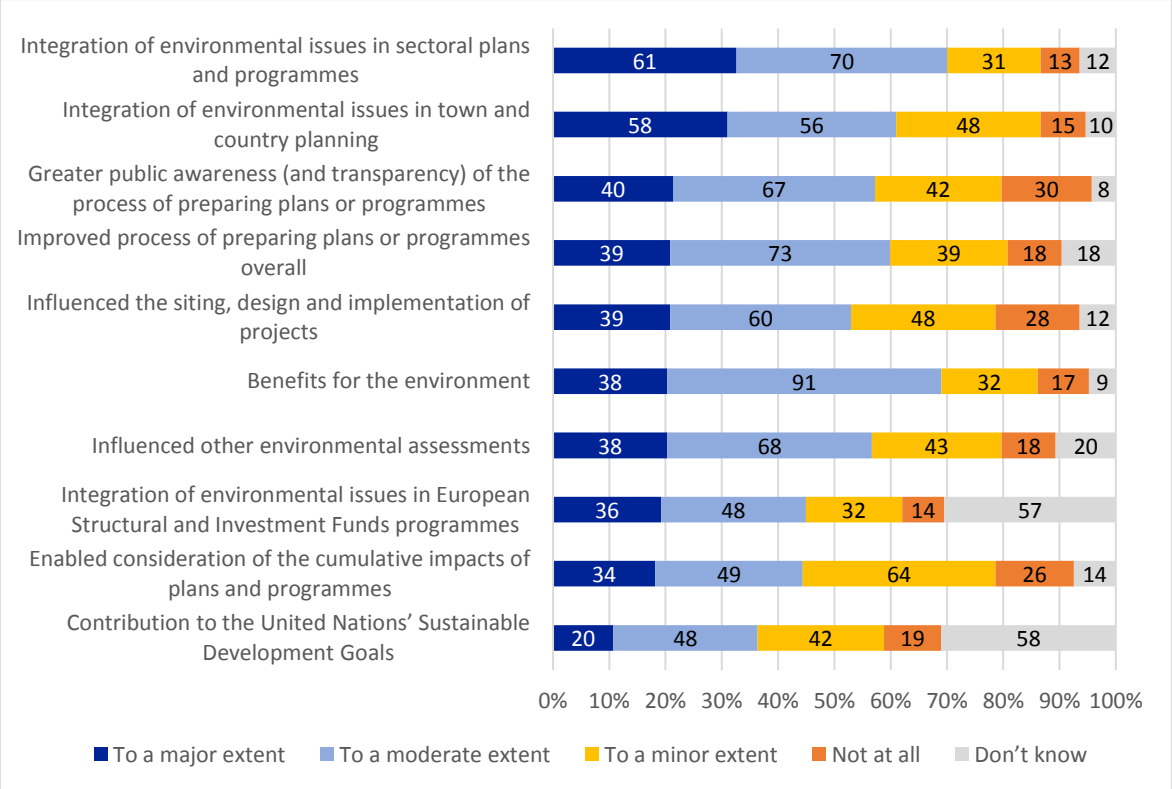
Benefits of the SEA Directive

Respondents were asked to provide their opinions on the extent to which benefits from the SEA Directive have materialised since 2004, according to the following scale: to a major extent, to a moderate extent, to a minor extent, not at all, don't know. The proposed list of benefits was:

- Benefits for the environment (e.g. reduction of negative environmental impacts of developments or introduction of measures to enhance the environment).
- Integration of environmental issues into sectoral plans and programmes.
- Integration of environmental issues into town and country planning.
- Integration of environmental issues into European Structural and Investment Funds (ESIF) programmes.
- Improved process of preparing plans or programmes overall.
- Enabled consideration of the cumulative impacts of plans and programmes.
- Greater public awareness (and transparency) of the process of preparing plans or programmes.
- Influenced other environmental assessments (e.g. EIA, appropriate assessment (AA)).
- Influenced the siting, design and implementation of projects that are likely to have an impact on the environment.
- Contributed to the United Nations' Sustainable Development Goals (SDGs).

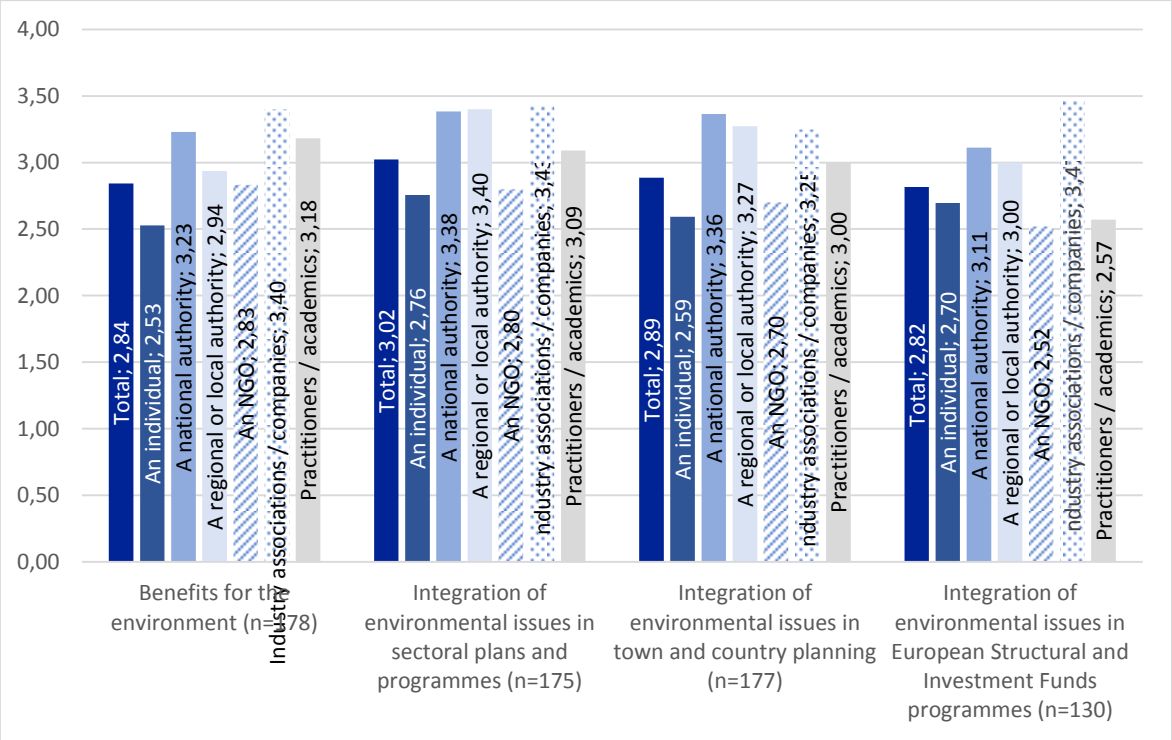
The benefits that were most clearly identified by respondents were the integration of environmental issues into sectoral plans and programmes and town and country planning. Around one-third of respondents considered these benefits to have materialised to a major extent. 70% of respondents considered the implementation of the SEA Directive to have environmental benefits, although 48% believed this to be to a moderate extent. Between 50-60% of respondents stated that the Directive brought greater public awareness, improved the plan and programme preparation process, and influenced other environmental assessments and projects, to a moderate extent at least. Nearly half of the respondents, however, stated that the Directive has not led to better consideration of the cumulative impacts of plans and programmes. Respondents were divided on the effectiveness of the SEA Directive in ensuring the integration of environmental issues into ESIF programmes and on the contribution of the Directive to the UN SDGs.

Figure 29: To what extent do you consider that, overall, since its implementation, the Directive has brought about the following benefits? (all respondents, n=187)



Figures 30, 31 and 32 present the results by stakeholder group. Individuals and NGOs had the lowest average score in most cases, indicating that they considered the benefits to have materialised to a lesser extent than other stakeholder groups.

Figure 30: To what extent do you consider that, overall, since its implementation, the Directive has brought about the following benefits? (average score by type of respondent: not at all: 1; to a minor extent:2; to a minor extent: 3; to a moderate extent: 4; to a major extent: 5)[101]



[101] In Figures 30, 31 and 32, 'don't knows' were not counted in the average scores.

Figure 31: To what extent do you consider that, overall, since its implementation, the Directive has brought about the following benefits? (average score by type of respondent: not at all: 1; to a minor extent:2; to a minor extent: 3; to a moderate extent: 4; to a major extent: 5)

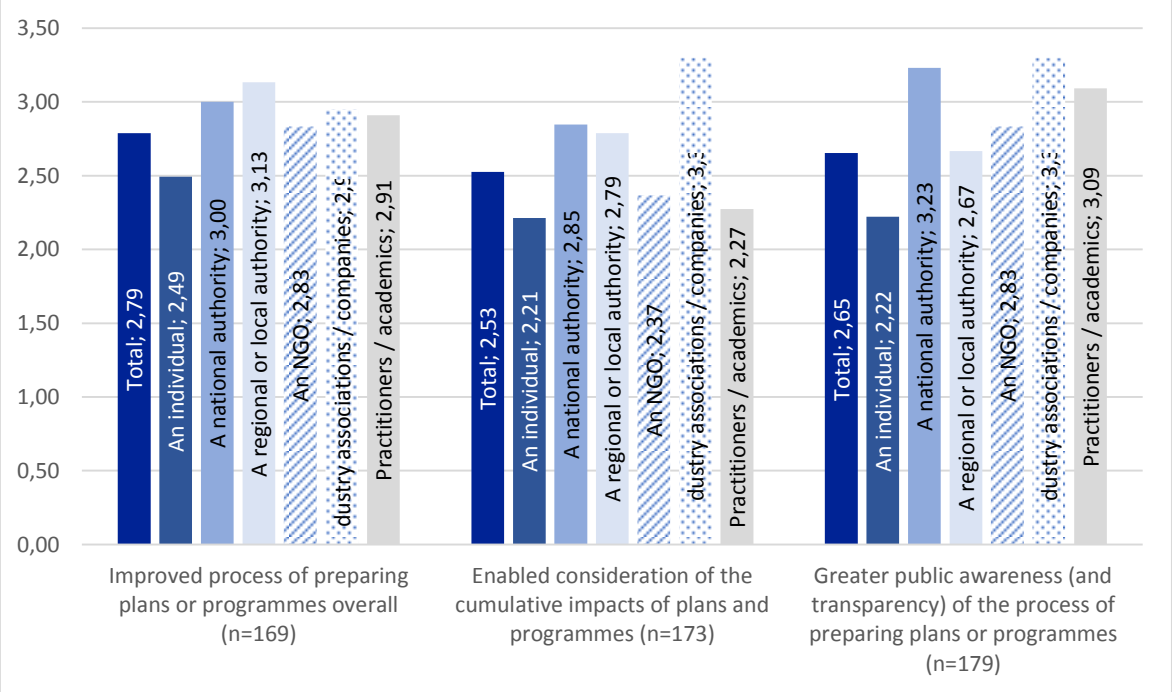
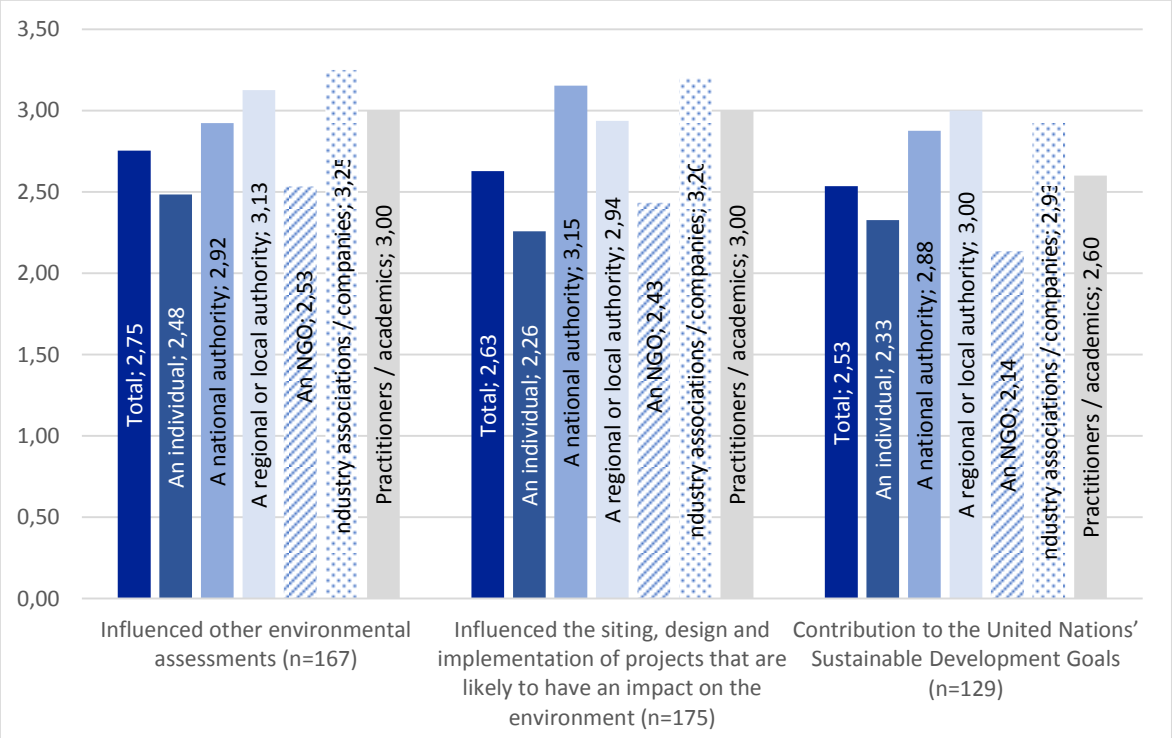


Figure 32: To what extent do you consider that, overall, since its implementation, the Directive has brought about the following benefits? (average score by type of respondent: not at all: 1; to a minor extent:2; to a minor extent: 3; to a moderate extent: 4; to a major extent: 5)



Respondents were invited to comment on their answers and provide examples, with 99 respondents[102] providing such a commentary. Eight comments were excluded because they were not directly relevant to the question (e.g. explaining that they have insufficient knowledge, or their answer is specific to a single Member State).

22 respondents noted that the SEA Directive facilitated the integration of environmental issues, with five specifically noting that cumulative impacts and/or alternatives are better considered and another four saying that the public are more involved. However, almost all respondents - even those that responded positively - identified shortcomings. 12 specifically referred to implementation problems, while 10 others specifically stated that the SEA Directive 'has the potential' to bring about the benefits identified. 18 respondents, for example, noted that cumulative effects, alternatives, and monitoring cause difficulties, while 13 pointed out issues with public participation or transparency (nine and four respondents, respectively). 13 respondents noted that benefits are hindered by the fact that the SEA is carried out too late in the planning process, or even retrospectively, while nine respondents attributed a lack of benefits to inexperienced/inadequate practitioners. Eight respondents replied that the strategic level of the SEA is too vague or the assessment is too general to be of real benefit. Eight respondents identified the fact that in certain sectors such as energy (windmills) or spatial planning, an SEA is often not required. At least six respondents noted that the benefits of an SEA depend on the sector to which they are applied.

Overall, 13 respondents replied that the SEA is seen as a regulatory burden or a box-ticking legal exercise rather than beneficial in itself, and 12 stated that the SEA did not change the final plan or programme. Seven respondents replied that the SEA provides a framework for an environmental assessment that would have been done regardless of the Directive, although only four respondents could give examples of instances where the final plan or programme was changed based on the SEA.

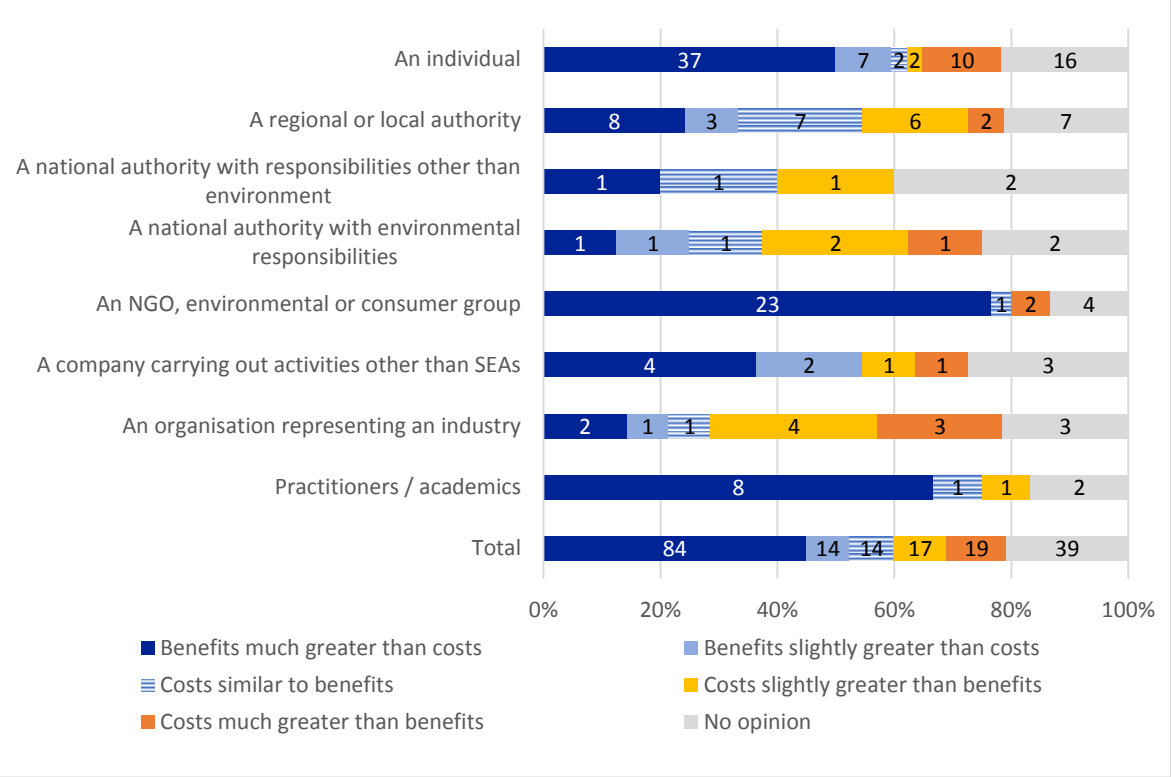
Efficiency

Just over half of the respondents (52%) stated that the benefits of the SEA Directive are higher than the costs, with 45% considering the benefits to far outweigh the costs. 8% replied that costs are similar to benefits and around 20% of the respondents noted that costs exceed benefits. 21% gave no opinion.

A majority of NGOs and practitioners/academics and half of the individuals agreed with the statement that the benefits of SEA are greater than the costs. Other groups were more divided, in particular the authorities. Industry associations most clearly stated that costs exceed benefits.

[102] 99 respondents, including 39 individuals, 22 NGOs, 14 regional and local authorities, six national authorities (five with environmental responsibilities and one with responsibilities other than the environment), six organisations representing industry, five companies carrying out activities other than SEA, and seven practitioners/academics.

Figure 33: In your opinion, how do the costs of implementation (including financial costs, time, human resources, etc.) of the SEA Directive compare with the benefits brought about by the Directive?



Respondents were invited to comment on their answers and provide examples, with 110 respondents[103] taking up this option. 28 comments were excluded because they were not directly relevant to the question (e.g. not expanding on costs and benefits of the Directive). Four answers were clearly coordinated (i.e. the text was exactly similar in the answers of two NGOs and two individuals).

14 of these respondents replied that benefits and/or costs cannot be quantified. 13 (six NGOs, three individuals, three regional authorities and one practitioner) reiterated that the costs of carrying out the SEA are not very significant and are outweighed by their benefits. Of the 84 respondents who previously indicated that benefits are much greater than the costs, 15 explained that the long-term remediation costs avoided (to compensate for negative environmental impacts) are much higher than the costs of carrying out the SEA. These 15 respondents are individuals (seven), NGOs (four), practitioners (three) and one regional authority. Nine respondents believed that environmental protection automatically outweighs any costs, and that cost considerations should not be weighed against those types of benefit. Five respondents indicated that the SEA can prevent conflicts at project level and accelerate the EIA and development consent procedures. Four mentioned that the SEA is beneficial if ecosystem services are included in the assessment, and three respondents mentioned that the SEA leads to the better use of public funding, avoiding unnecessary costs and based on the assessment of alternatives.

However, four respondents who had previously indicated that the benefits of the SEA outweigh its costs, stated that the SEA should be proportionate to the possible impacts and should seek better efficiency. One respondent also added that while the benefits

[103] 110 respondents including 43 individuals, 24 NGOs, 17 regional and local authorities, nine national authorities (six with environmental responsibilities and three with responsibilities other than the environment), six organisations representing industry, five companies carrying out activities other than SEA, and four practitioners.

are significant, SEAs could be costly for local plans or programmes covering small areas.

Among those respondents who were of the opinion that costs are similar or greater than benefits, seven stated that poor implementation of the Directive results in a high burden and little benefit. Four respondents mentioned that the involvement of external contractors (which is often a necessity, given the complexity of assessments) is an important cost for the public sector. Three respondents mentioned that the SEA is a time-consuming and burdensome exercise, while three others stated that costs are greater than benefits because there are overlaps between SEA and EIA or because the SEA creates delays and costs for projects later on.

Coherence

Respondents were asked two questions on coherence, one addressing coherence between SEA and other environmental assessments required by European legislation (i.e. EIA and AA under the Habitats Directive), and the other on the coherence with sectoral policies and legislation.

Coherence with other environmental assessments

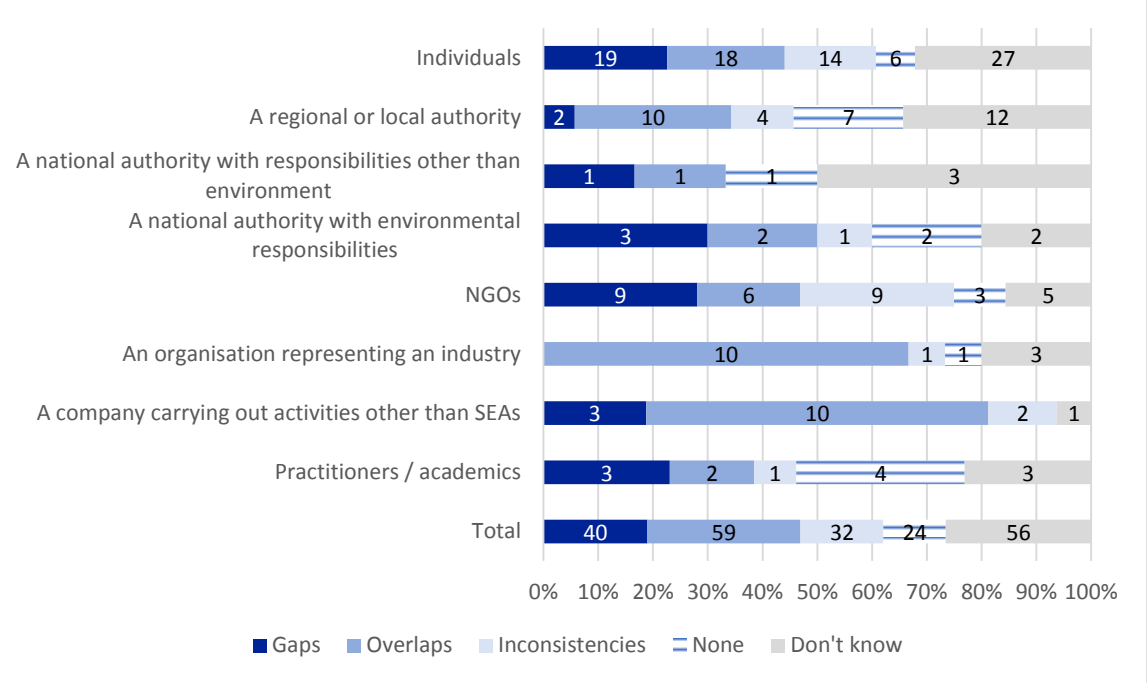
- ***Coherence with the EIA Directive***

Around one-third of respondents stated that the SEA Directive overlapped with the EIA Directive. 21% found gaps in the parallel implementation of both, and 17% found inconsistencies. 13% found neither gaps nor consistencies, instead indicating that both Directives are consistent. 30% did not provide an opinion.

Overlaps were identified by most stakeholder groups, but most clearly by industry associations (71%) and companies carrying out activities other than SEA (91%). Most other respondent groups were divided between the three choices[104]. Gaps and inconsistencies were identified by almost one-third of NGOs.

[104] Although multiple choice was possible, most respondents chose only one response (overlaps: 44 respondents; gaps: 26 respondents; inconsistencies: 17 respondents, none: 24, don't know: 56 respondents). 20 respondents chose several responses.

Figure 34: In your opinion, are there any significant gaps, overlaps or inconsistencies between the SEA Directive and Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU (EIA Directive) (n=187; multiple choices possible)

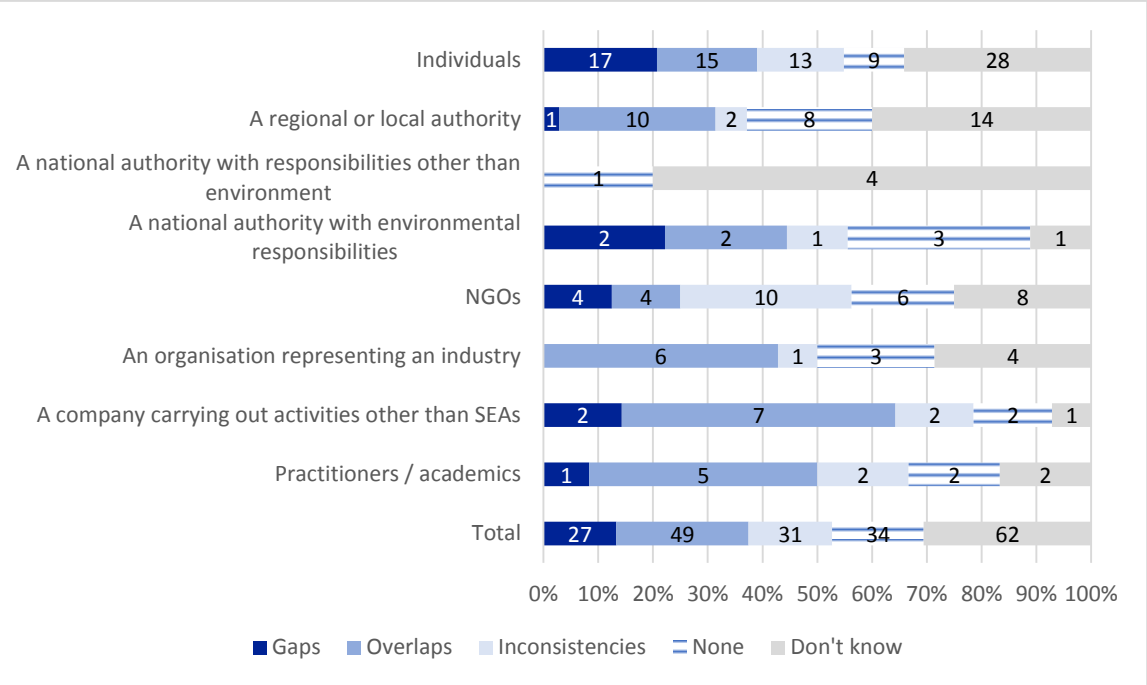


- ***Coherence with the Habitats Directive***

26% of respondents indicated that the SEA Directive overlapped with the Habitats Directive. 14% found gaps in the implementation of the two Directives and 17% found inconsistencies. However, 18% of respondents stated that there are no gaps, overlaps or inconsistencies in the implementation of the SEA and Habitats Directives. One-third of respondents did not answer.

Like the previous questions, overlaps were more readily identified by industry associations (43%) and companies carrying out activities other than SEAs (50%). In addition, almost half of the practitioners and academics and one-third of the regional and local authorities identified overlaps. One-third of the NGOs pointed out inconsistencies.

Figure 35: In your opinion, are there any significant gaps, overlaps or inconsistencies between the SEA Directive and Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) (n=187; multiple choices possible)



Respondents were invited to comment on their answers on the coherence of the SEA Directive with both the EIA and Habitats Directives, 95 of whom did so[105]. 30 comments were excluded because they were not directly relevant to the question, as the notion of coherence was not always understood by respondents. A small number of responses (eight) were coordinated (i.e. the text was exactly similar in the answers of three industry associations and companies from Czech Republic, those of two NGOs, and those of three individuals from Ireland).

Most comments addressed the coherence between the SEA and EIA Directives (55 respondents). 14 respondents underlined the synergies between both Directives, 11 highlighted the different but complementary scopes of the Directives, four stressed that SEA can facilitate EIA because some of the findings of the SEA can be reused at project level and because the SEA can highlight potential environmental impacts of projects at an early stage. However, 11 respondents mentioned that implementation issues result in overlaps between the two procedures or failures to achieve synergies, because the plans/programmes are not sufficiently concrete, preventing the assessment of potential cumulative impacts of measures contained in the plan, or – by contrast - because the SEA is too detailed and overlaps with the assessment at project level. Some respondents also mentioned that the findings of the SEA do not sufficiently inform the EIA. A small number of respondents (eight) saw overlaps in the content of Environmental Reports at SEA and EIA stages. Other respondents (11) explained that the distinction between projects and plans setting the framework for development consent of projects remains unclear in some Member States, leading to the duplication of environmental assessments.

The absence of an EU-level requirement to link SEA and EIA is considered a significant gap by 15 respondents, as it could reduce overlaps between the two assessments and ensure that SEA can inform better subsequent project preparation and EIA.

[105] 95 respondents including 33 individuals, 18 NGOs, 14 regional and local authorities, nine national authorities, nine organisations representing industry, six companies carrying out activities other than SEAs, and six practitioners/academics.

Finally, 10 respondents mentioned that the SEA and the EIA procedures were to some extent inconsistent and that requirements and definitions should be fully harmonised. A few respondents highlighted that the 2014 amendments to the EIA Directive (consultation timeframes, requirement that the EIA report is prepared by competent experts) should be also be introduced in the SEA Directive.

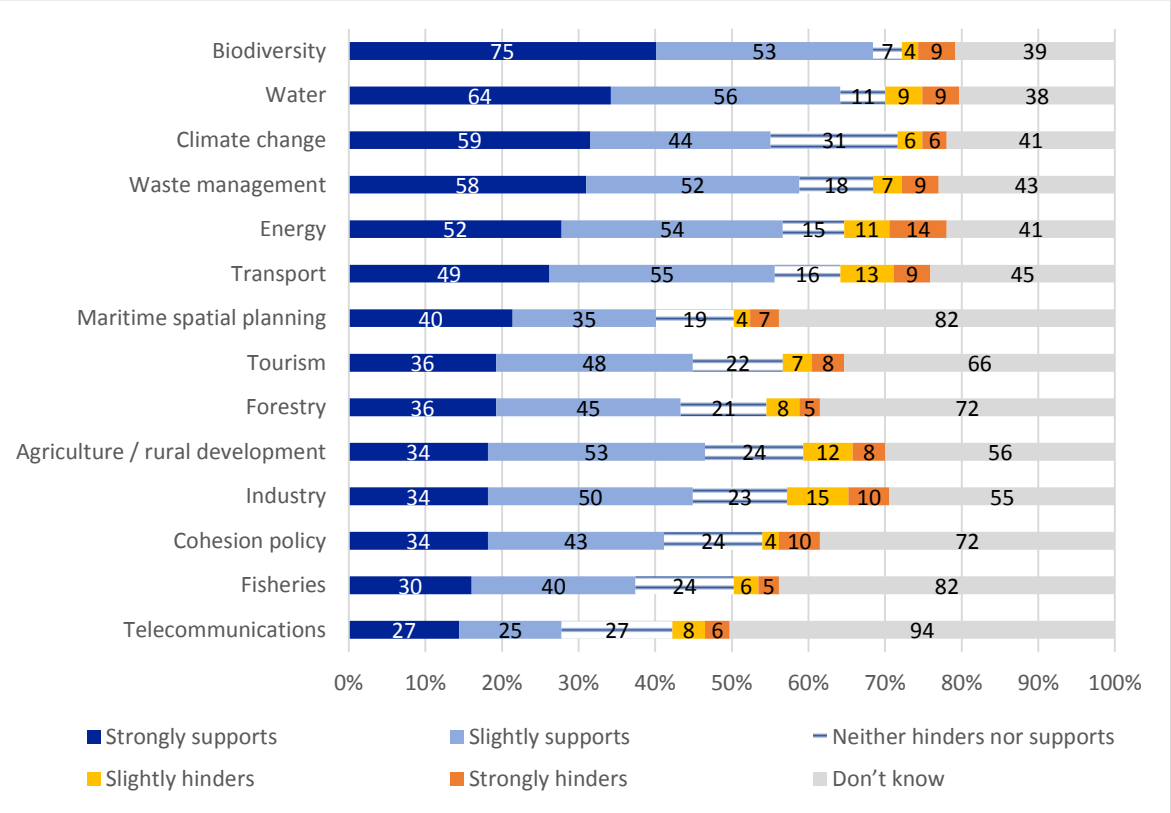
Only a few respondents (18) mentioned the link between the SEA Directive and the Habitats Directive, with most pointing to the need to enhance coordination between the SEA and AA.

Coherence with sectoral policies

Respondents were asked for their opinions on the coherence of the SEA Directive with a number of EU sectoral policies, according to the following scale: strongly supports, slightly supports, neither hinders or supports, slightly hinders and strongly hinders.

Respondents generally indicated that the SEA Directive strongly or slightly supports most sectoral policies listed. Some respondents (maximum 13% for energy and industry) stated that the Directive hinders sectoral policies, although the results should be read taking into account that a large proportion of respondents (between 21% and 50%) replied 'don't know'. Figure 36 presents the responses from all stakeholders for all sectoral policies proposed. Respondents were less positive for fisheries and telecommunications, for which the proportion of respondents selecting 'strongly supports' and 'slightly supports' was below 40%.

Figure 36: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? (n=187)



Figures 37 to 40 present the results by respondent group. In most cases, national authorities had the highest average score, indicating that they consider the SEA Directive to support sectoral policies to a larger extent than other stakeholder groups.

Figure 37: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? (average score by type of respondent: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)

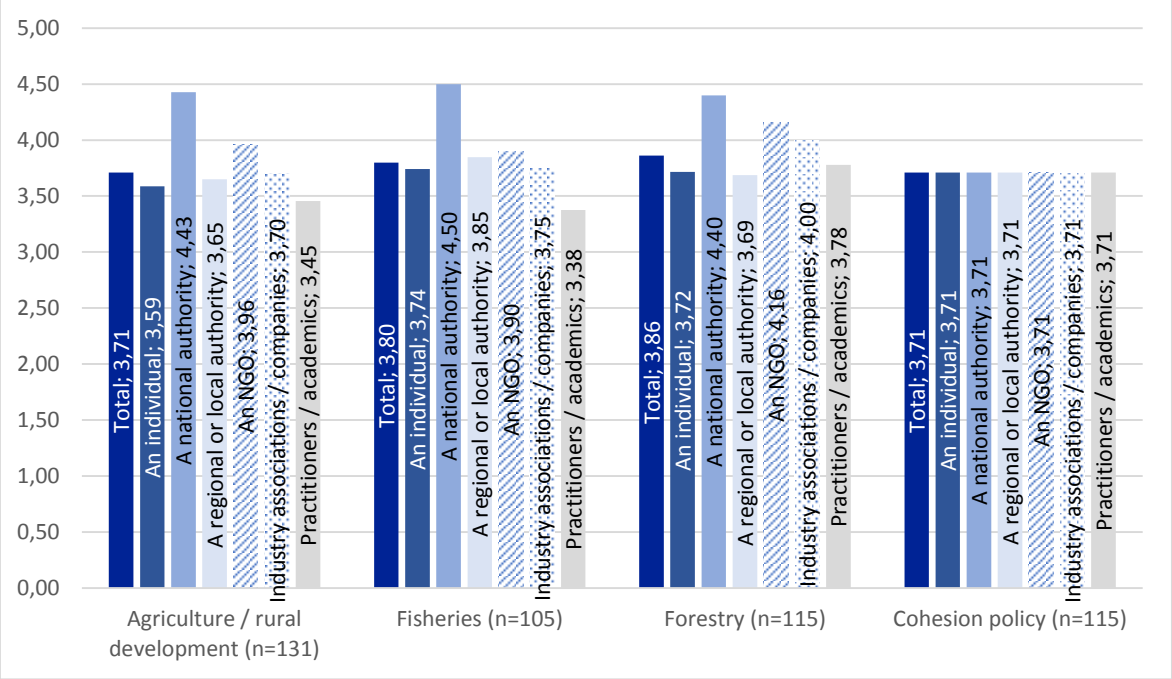


Figure 38: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? (average score by type of respondent: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)

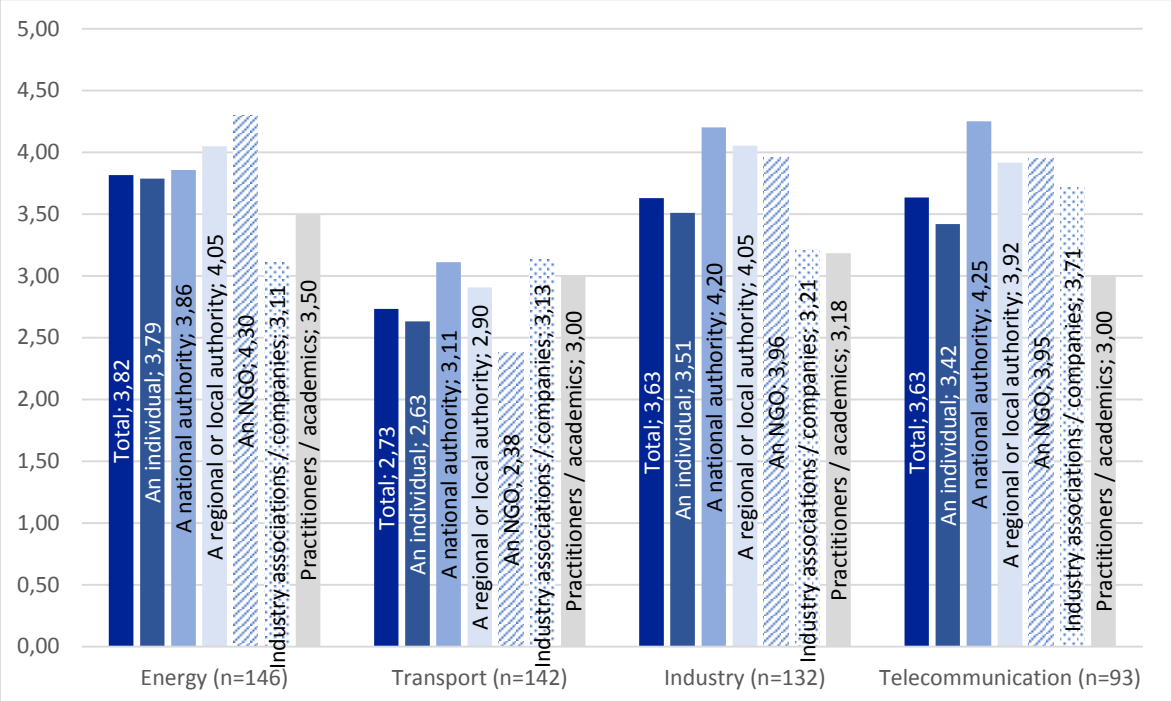


Figure 39: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? (average score by type of respondent: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)

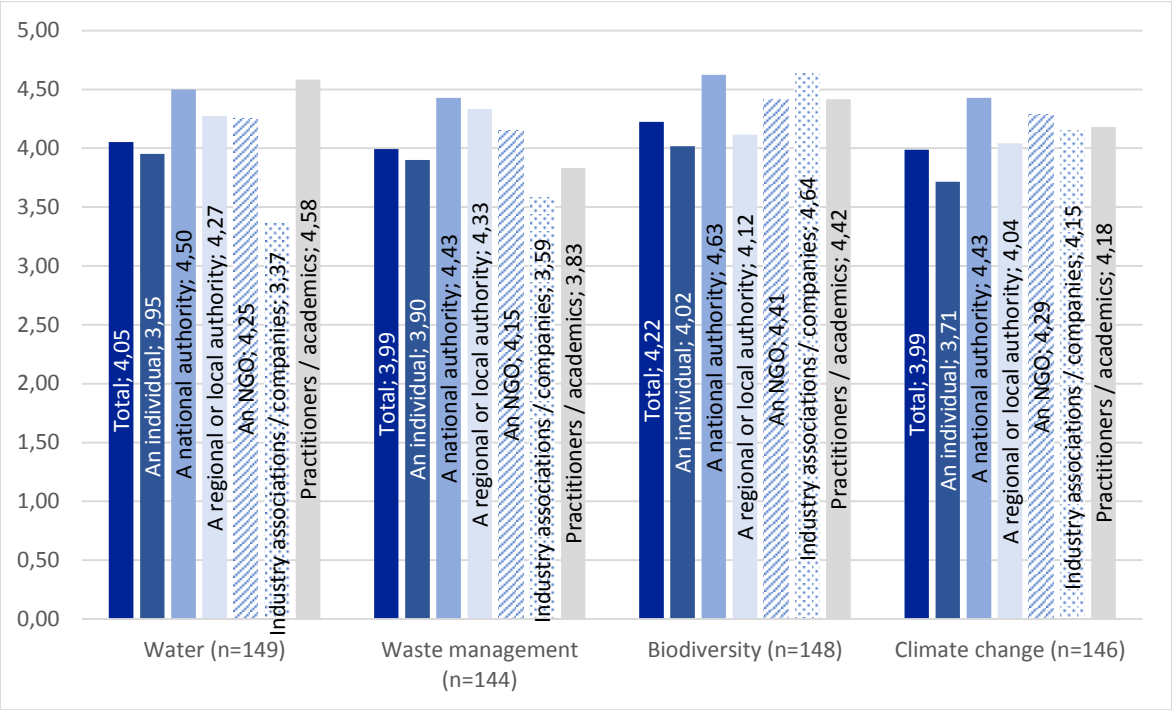
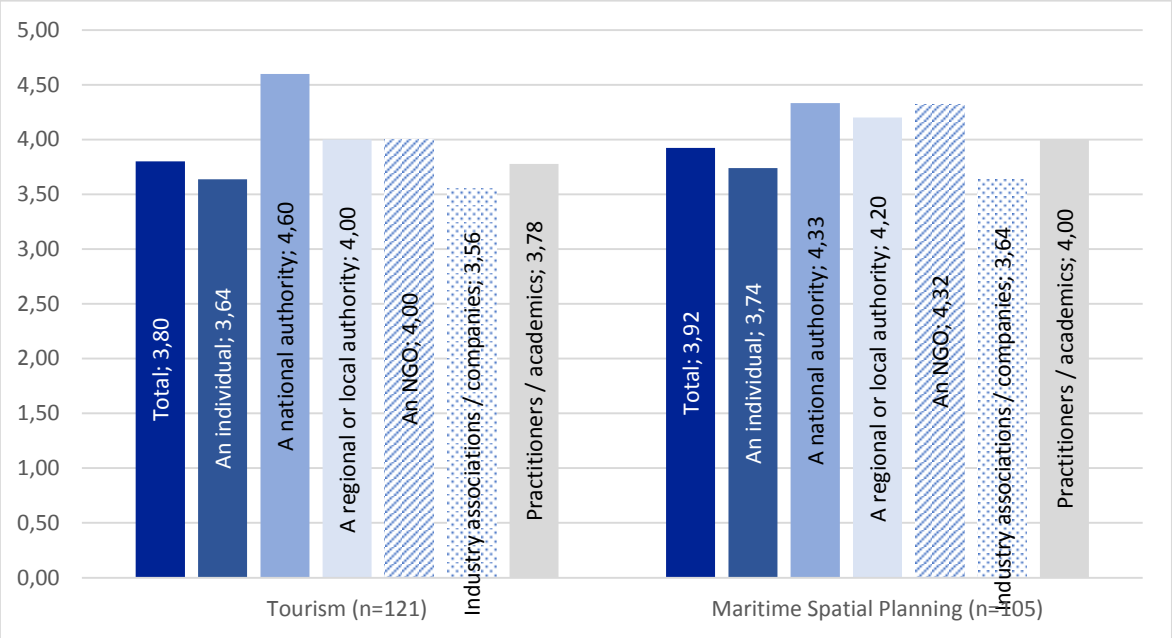


Figure 40: Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors? (average score by type of respondent: strongly hinders: 1; slightly hinders: 2; neither hinders nor supports: 3; slightly supports: 4; strongly supports: 5)



Respondents were invited to explain their answers, with 85 choosing to do so[106]. 15 comments were excluded because they were not directly relevant to the question, as the notion of coherence was not always understood by respondents. A small number of responses (eight) were coordinated (i.e. the text was exactly similar in the answers of four industry associations and companies from Czech Republic, those of two NGOs, and those of two individuals from Ireland).

[106] 85 respondents including 32 individuals, 16 NGOs, 12 regional and local authorities, seven national authorities, eight organisations representing industry, five companies carrying out activities other than SEA, and five practitioners/academics.

Generally, respondents did not comment on specific sectors but provided an overall opinion on whether SEA supports or hinders sectoral policies. Most respondents understood the question to mean whether SEA is effective to support the sustainable development of sectoral policies. Respondents were divided on that question, with 26 respondents (including 10 NGOs and nine national/regional/local authorities) arguing that SEA supports the implementation of EU legislation, in particular the sustainable development objectives of the various EU sectoral policies, while 16 respondents (including eight individuals) stated that SEA does not support the sustainable development of sectoral policies. 14 respondents believed that SEA could contribute more to support the sustainable development of sectoral policies if the Directive was better implemented. A few respondents (eight) specified that SEA is more effective for environmental plans than for sectoral plans. Finally, seven respondents indicated that SEA could hinder the achievement of sectoral policies by causing delays in the adoption of plans.

ADDITIONAL CONTRIBUTIONS

The final question allowed respondents space to provide additional ideas and opinions on the implementation and performance of the SEA Directive, with 80 respondents[107] choosing to do so. Nine comments were excluded because they did not address the SEA Directive or only provided information relevant for another question (e.g. SEA/EIA relationship) in which case, they were addressed in the relevant question. A small number of responses (five) were coordinated (i.e. the text was exactly similar in the answers of two NGOs and those of three individuals from Ireland).

41 respondents highlighted issues with the implementation of the SEA Directive, such as lack of monitoring, poor identification and assessment of alternatives, quality of public participation, late start of the SEA and its poor integration with the plan preparation process, unnecessarily lengthy Environmental Reports, or the interference of pre-determined decisions regarding the content of plans and programmes. Among these respondents, nine mentioned compliance issues, i.e. SEAs not carried out for certain plans and programmes that should have been subject to SEA, in particular in the fields of energy and urban planning. This omission of an SEA also meant that the public was not consulted on the plans/programmes. Six respondents pointed out the lack of access to justice, i.e. the ability to legally challenge plans adopted in spite of the adverse environmental impact identified in the SEA, or to challenge poor quality SEAs. A small number of respondents called for more guidance on implementation issues (i.e. guidance on public participation, specific sectoral guidance) and more investment in training.

22 respondents highlighted the improvements that they would like to see in the Directive. Each of the proposed ideas, however, was suggested by only two or three respondents, with no visible significant trend. Improvements included:

- Stronger enforcement mechanisms (including infringement procedures from the EU).
- Stronger requirements to include the conclusions from the SEA in the plan/programme.
- Stronger quality assurance mechanism (e.g. those included in the amendments to the EIA Directive related to the quality of experts carrying out the assessment, as well as general quality assurance mechanisms).
- Clarification of the scope of the Directive, in particular in respect of plans and programmes 'setting the framework for future development consent of projects'.

[107] 80 respondents including 33 individuals, 17 NGOs, 10 regional and local authorities, six national authorities, four organisations representing industry, four companies carrying out activities other than SEAs, and six practitioners/academics.

- Better integration of climate change into SEA.

Several respondents also referred to a possible extension of the scope of the Directive to strategies, policies and/or legislation adopted by governments. Here, views were contradictory, with some in favour because they define strategic goals influencing subsequent plans and programme and others not in favour, because of the burden it would impose on competent authorities.

ANNEX IV: TARGETED CONSULTATION QUESTIONNAIRE

TARGETED CONSULTATION AS PART OF THE EVALUATION OF THE STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) DIRECTIVE (DIRECTIVE 2001/42/EC) ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT

ABOUT THE CONSULTATION

This consultation is part of the evaluation of Directive 2001/42/EC on the assessment of the effects of certain public plans and programmes on the environment (SEA Directive). This evaluation is part of the European Commission's Regulatory Fitness and Performance Programme (REFIT) which involves a comprehensive, evidence-based assessment of whether the current regulatory framework is proportionate and fit for purpose and delivering as expected. The study to support the Commission's evaluation is being carried out by a team of consultants from Milieu Ltd and Collingwood Environmental Planning Ltd (CEP).

With this evaluation, the European Commission (Directorate General for Environment) will assess the results achieved by the SEA Directive with regard to its objectives. The main objective of this Directive is to achieve high level protection of the environment and promote sustainable development. To achieve this objective, Member States need to ensure that environmental considerations are integrated into the preparation and adoption of plans and programmes. Concretely, the SEA Directive requires that public authorities carry out an SEA during the preparation of certain plans and programmes which are likely to have significant effects on the environment, before their adoption or submission to a legislative procedure. Examples of the types of plans and programmes typically subject to an SEA are town and country plans; land use or spatial plans; plans addressing sectors such as energy or transport; or plans setting the framework for future economic development, including for many EU-funded programmes.

The SEA Directive establishes a specific set of rules (i.e. preparation of an environmental report on the likely significant effects of plan or programme on the environment; informing and consulting the public and the environmental authorities; transboundary consultations with potentially affected Member States; identification of measures to address and monitor significant environmental impacts) applying to the decision-making related to the approval of plans and programmes. The Directive applies at an early stage when certain plans and programmes are being developed. Note that, whilst similar and related, the procedures required by the SEA Directive are distinct from those required under Directive 2011/92/EU (as amended) on the assessment of the effects of certain public and private projects on the environment - the Environmental Impact Assessment (EIA) Directive – which applies to certain individual projects.

This targeted consultation aims to gather information and the views of stakeholders on how the SEA Directive has performed, since its adoption in 2001. The evaluation will specifically consider the Effectiveness (the extent to which objectives have been achieved; Efficiency (consideration of the resources required to achieve the objectives); Relevance (the extent to which the Directive continues to meet the needs of the EU and its citizens); Coherence (how the Directive interacts with other relevant areas of EU policy) and EU Added Value (the value of the Directive in comparison to Member State action alone). The different parts of the questionnaire address each of these evaluation criteria.

Further information on the evaluation, including the evaluation criteria and questions, and the different consultation activities it involves can be found on the Commission's website.

RESPONDING TO THE QUESTIONNAIRE

The questionnaire is being sent to:

- Member States' environmental authorities;
- Other Member States' bodies involved in the SEA procedure as monitoring / advisory bodies, in Member States where such bodies have been established;
- Member State authorities responsible for the preparation of plans or programmes subjected to SEA in different fields, including some regional and local planning authorities
- Selected academic experts and practitioners operating in the field of SEA across the EU and at EU level
- NGOs/industry associations representing environmental and economic interests relevant to SEA at EU level

Member State authorities responsible for the preparation of plans or programmes subjected to SEA have been selected with a view to ensure the balance between the different types of plans and sectors. To keep the number of responses to the questionnaire manageable, two such authorities have been targeted for each Member State. The selection was made on the basis of suggestions made by Member States' environmental authorities and research carried out by the evaluation team at Milieu and CEP. If you have any questions regarding the consultation, please contact: evalsea@milieu.be

As the consultation targets a diverse range of stakeholders, and the evaluation questions cover many different aspects of the SEA Directive, the questionnaire is somewhat lengthy. **Respondents are asked to respond only to the questions for which they feel they have the expertise or experience to enable an informed answer. If you do not know or do not have an opinion, simply do not provide an answer.** Only questions marked with a red asterisk are mandatory.

It is also important that answers are substantiated to the extent possible. The open text fields provide the possibility to explain answers, and also to provide concrete evidence to support the answers. Wherever possible, we ask you to identify and describe real-life examples from specific plans, programmes or other situations that can concretely illustrate the response. You can provide links and/or upload documents to support these examples.

You may interrupt your session at any time and continue answering at a later stage. **If you do so, please remember to save the link to your answers as this is the only way to access them.** Once you have submitted your answers online, you will be able to download a copy of the completed questionnaire.

We kindly ask you to fill in the questionnaire by **15 June 2018**.

PUBLICATION OF THE CONTRIBUTIONS

Please note that the responses received will be published on the European Commission's website.

1. Please indicate your preference as regards publication of your contribution*

☐ The contribution may be published with information concerning the respondent (i.e. name of the organisation, name and position of the respondent).

☐ The contribution may be published, but information concerning the respondent (i.e. name of the organisation, name and position of the respondent) should be kept anonymous.

Please note that, whatever option chosen, your answers may be subject to a request for public access to documents under Regulation (EC) N°1049/2001.

If you opted for anonymous publication, please be mindful of not including information that might allow the identification of your organisation or yourself in the open text questions.

ABOUT THE RESPONDENT

2. Are you replying as*:
☐A national authority with environmental responsibilities
☐A national body/authority involved in the SEA procedure (other than the environmental authority)
☐A national, regional or local authority responsible for the preparation of a plan or programme
☐An individual academic expert or SEA practitioner
☐An environmental NGO
☐An organisation representing an industry

3. If you are replying on behalf of an organisation, please state the name of the organisation, and the name and position of the respondent. If you are replying as an individual expert, please state your name and position. (published) *

4. If you are replying on behalf of an organisation, please state the name of the organisation, and the name and position of the respondent. If you are replying as an individual expert, please state your name and position. (anonymous) *

6. Please provide an email address (please note that regardless of the option you chose above under 'Publication of Response', your email will not be made public) *

7. If you are an authority responsible for the preparation and adoption of a plan(s) or programme(s) subjected to SEA, please indicate the name and/or type of plan(s) or programme(s) *.

7. In which country(ies) do you have experience with SEA? (Please mark all that apply) *
☐Austria
☐Belgium
☐ Bulgaria
☐ Czech Republic
☐ Croatia
☐ Cyprus
☐ Denmark
☐ Estonia
☐ Finland
☐ France
☐ Germany
☐ Greece
☐ Hungary
☐ Ireland

☐ Italy
☐ Latvia
☐ Lithuania
☐ Luxembourg
☐ Malta
☐ Netherlands
☐ Poland
☐ Portugal
☐ Romania
☐ Slovakia
☐ Slovenia
☐ Spain
☐ Sweden
☐ United Kingdom
☐ EU-level
☐ Other

If other, please specify*

QUESTIONNAIRE

Effectiveness
Assessing the effectiveness of the SEA Directive means analysing the extent to which its objectives have been met and identifying any significant factors that may have contributed to or inhibited progress towards meeting those objectives.

High protection of the environment

8. In your opinion, has SEA contributed to a high level of protection of the environment? And if so, to what extent can this be attributed to the SEA Directive?
☐Yes, and it can be significantly attributed to the Directive
☐Yes, and it can be partly attributed to the Directive
☐Yes, but it cannot be attributed to the Directive
☐No contribution has been observed

9. Please explain your answers to Question 8 above, based on your experience, including examples (where possible), and information supporting the contribution of the SEA Directive to a high-level protection of the environment.

10. In your opinion, to what extent has the SEA Directive contributed to a high-level protection of different environmental issues?

	To a major extent	To a moderate extent	To a minor extent	Not at all
Biodiversity	☐	☐	☐	☐
Population	☐	☐	☐	☐
Human health	☐	☐	☐	☐
Fauna	☐	☐	☐	☐
Flora	☐	☐	☐	☐
Soil	☐	☐	☐	☐
Water	☐	☐	☐	☐
Air	☐	☐	☐	☐

Climatic factors	☐	☐	☐	☐
Material assets	☐	☐	☐	☐
Cultural heritage, including architectural and archaeological heritage	☐	☐	☐	☐
Landscape	☐	☐	☐	☐
The interrelationship between the above factors	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please list and explain additional environmental issues for which the SEA Directive has contributed to a high level of protection.

11. Please explain your answers to Question 10 above, based on your experience and including examples (where possible).

12. In your opinion, have the following factors supported, or inhibited, progress in the SEA Directive contributing to ensuring a high level of protection of the environment?

	Strongly supported	Slightly supported	Neither supported nor inhibited	Slightly inhibited	Strongly inhibited
Availability of technical knowledge and experience of those preparing SEAs	☐	☐	☐	☐	☐
Availability of technical knowledge and experience within the environmental authorities	☐	☐	☐	☐	☐
Existence of adequate mechanisms to ensure the high quality of SEA outputs	☐	☐	☐	☐	☐
Understanding of the SEA Directive's requirements by those responsible for preparing plans or programmes	☐	☐	☐	☐	☐
Availability of guidance on the SEA process and procedures	☐	☐	☐	☐	☐
Availability of SEA sectoral guidance	☐	☐	☐	☐	☐
The start time of SEAs in relation to the plan or programme preparation process	☐	☐	☐	☐	☐
Integration and communication between those preparing SEAs and those responsible for preparing plans or programmes	☐	☐	☐	☐	☐
Availability and quality of relevant and up-to-date environmental data to support the assessment	☐	☐	☐	☐	☐
Availability of methodologies to assess likely significant environmental effects	☐	☐	☐	☐	☐
Consideration of reasonable alternatives as part of SEAs	☐	☐	☐	☐	☐
Quality of environmental reports	☐	☐	☐	☐	☐
Conducting effective consultation with relevant environmental authorities	☐	☐	☐	☐	☐

Conducting effective consultation with the public	☐	☐	☐	☐	☐
Conducting effective consultation with relevant stakeholders (i.e. ENGOs)	☐	☐	☐	☐	☐
When relevant, conducting effective and timely consultation with neighbouring Member States	☐	☐	☐	☐	☐
Quality of post-adoption procedures (i.e. publishing a statement explaining how the SEA process and comments received during consultations have been taken into account in the adopted plan or programme)	☐	☐	☐	☐	☐
Quality of monitoring environmental effects of the implementation of plans or programmes to identify unforeseen effects and undertake remedial action	☐	☐	☐	☐	☐
Availability and use of methods, data, practical experience etc for conducting SEAs of plans or programme for different sectors (e.g. agriculture, water management, waste management, etc)	☐	☐	☐	☐	☐
Availability of methods, data, practical experience etc for conducting SEAs of plans or programme at different scales (e.g. national, regional, local)	☐	☐	☐	☐	☐
Consideration of the difficulties encountered in compiling the required information.	☐	☐	☐	☐	☐
Availability of other relevant Plans/ Programmes	☐	☐	☐	☐	☐
Other	☐	☐	☐	☐	☐

If other, describe these factors below and explain if they have supported or inhibited the progress in the SEA Directive contributing to ensuring a high-level protection of the environment

13. Please explain your answers to Question 12 above, based on your experience and including examples (where possible).

14. In your opinion, are there specific factors covered in Q.12 above that are most relevant to certain levels of decision-making (e.g. national, regional, local)? If so, please describe how.

Influencing planning and decision-making processes

15. In your opinion, to what extent has the SEA Directive influenced planning and decision-making processes?

☐ To a major extent
☐ To a moderate extent
☐ To a minor extent
☐ Not at all

16. In your opinion, have the following aspects of the SEA process supported or inhibited the ability of the SEA Directive to influence planning and decision-making processes?

	Strongly supported	Slightly supported	Neither supported nor inhibited	Slightly inhibited	Strongly inhibited
A systematic procedure	☐	☐	☐	☐	☐
Consideration of environmental issues	☐	☐	☐	☐	☐
Cooperation between authorities and stakeholders	☐	☐	☐	☐	☐
Public participation in the planning process	☐	☐	☐	☐	☐
Transparency in the planning process	☐	☐	☐	☐	☐
Consideration of alternatives	☐	☐	☐	☐	☐
Identification of likely significant effects	☐	☐	☐	☐	☐
Mitigation and enhancement measures	☐	☐	☐	☐	☐
Environmental monitoring	☐	☐	☐	☐	☐
Administrative requirements	☐	☐	☐	☐	☐
Timescales of planning processes	☐	☐	☐	☐	☐
Legal requirements	☐	☐	☐	☐	☐
Other	☐	☐	☐	☐	☐

If other, please describe the aspects and explain how they can support or inhibit the ability of the SEA Directive to influence planning and decision-making processes.

17. Please explain your answers to Question 16 above, based on your experience and including examples (where possible) of how you think that the SEA Directive has influenced, or not influenced, the planning and decision-making processes and the reasons for this.

Influencing the content of final plans and programmes

18. In your opinion, to what extent has the SEA Directive influenced the final content of plans and programmes?

☐ To a major extent
☐ To a moderate extent
☐ To a minor extent
☐ Not at all

19. In your opinion, how has the SEA Directive influenced the final content of plans and programmes? (please mark all that apply)

☐New environmental data influenced the final content of plans and programmes
☐ Integration of public opinions into plans and programmes
☐ Monitoring measures included in plans and programmes
☐Alterations to the plan or programme as a result of new alternatives or consideration of environmental impacts

☐ More environmental emphasis added to plans and programmes
☐ New alternatives added to plans and programmes with more of an environmental focus
☐ Mitigation and/or compensation measures added to plans and programmes
☐ Remedial action during implementation phase of plan
☐ Influencing key decision makers
☐Other

20. Please explain your answers to Question 19 above, based on your experience and including examples (where possible). If you ticked 'other', please specify.

Influencing the siting, design and implementation of projects

21. In your opinion, to what extent has the SEA Directive influenced the siting, design and implementation of projects developed following on from plans and programmes?
☐ To a major extent
☐ To a moderate extent
☐ To a minor extent
☐ Not at all

22. Please explain your answers to Question 21 above, based on your experience and including examples (where possible) of where and how the SEA Directive has influenced (or not) the projects developed following on from plans and programmes and the reasons for this.

Overall effectiveness of SEA

23. In your opinion, does the effectiveness of SEA differ between plans and programmes prepared for different sectors? If yes, please explain how.
Note that Article 3.2a of the SEA Directive includes a non-exhaustive list of sectors that may require the preparation of plans and programme and that may impact the environment and which therefore require an SEA. This list includes: agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, and town and country planning or land use.

24. In your opinion, to what extent do different ways of carrying out the following aspects of the SEA process affect the effectiveness of SEA?

	To a major extent	To a moderate extent	To a minor extent	Not at all
Consultation practices	☐	☐	☐	☐
Approach to addressing reasonable alternatives	☐	☐	☐	☐
Methods, scope and level of detail in the environmental assessment	☐	☐	☐	☐
Other	☐	☐	☐	☐

25. Please explain your answers to Question 24 above, based on your experience and including examples (where possible). If you ticked 'other', please specify.

Efficiency

The central question asked here is whether the costs involved in the implementation of the Directive are reasonable and in proportion to the changes or effects achieved. It is important to get an understanding of the type and magnitude of the costs and benefits of the Directive, which can be understood in both monetary and non-monetary terms.

It is also important to understand the factors that influence the efficiency of implementation, which can be contextual (e.g. the scale or type of a plan or programme) or related to practice (e.g. the qualifications of experts carrying out the SEA; the use of scoping, etc.) The evaluation will identify and assess these factors, noting where costs may be reduced through implementation of good practice.

Finally, the assessment should identify whether any costs are truly unnecessary and whether such costs are due to unnecessary complexity or burden associated with the SEA Directive itself.

26. Since the adoption of the Directive, how significant have the main types of direct costs been in your Member State? For each listed cost, please evaluate its relative importance in terms of the overall costs of implementing the SEA Directive. *(Please note that this question addresses the relative significance of the various types of costs to each other and overall, in order to get an idea of the magnitude of cost types.)*

Implementation costs: the costs incurred by regulated entities in adapting their legal framework and building strategies

	Very significant	Moderately significant	Slightly significant	Not significant
Legal transposition of the Directive into national law	☐	☐	☐	☐
Capacity development: allocating responsibilities for tasks; developing compliance strategies; staff familiarizing themselves with new or amended regulations	☐	☐	☐	☐
Training courses and the development of guidance material and tools	☐	☐	☐	☐

Compliance costs

	Very significant	Moderately significant	Slightly significant	Not significant
Screening / decision making on whether specific plans and programmes are required to undergo SEA	☐	☐	☐	☐
Scoping SEA Reports	☐	☐	☐	☐
Review and approval of SEA reports	☐	☐	☐	☐
Conducting/carrying out the SEA and preparation of the environmental report	☐	☐	☐	☐
Public consultations – identifying relevant stakeholders	☐	☐	☐	☐
Public consultations – provision of information and collection of feedback	☐	☐	☐	☐
Screening/SEA of modifications to	☐	☐	☐	☐

plans/programmes				
Public consultations – taking feedback into consideration	☐	☐	☐	☐
Preparation and publication of SEA Statement	☐	☐	☐	☐
Monitoring of significant environmental effects	☐	☐	☐	☐
Implementing remedial action if relevant	☐	☐	☐	☐

27. If there are other important types of costs, or parts of the costs that merit specific attention, please explain them below:

28. Do any of the costs listed above represent an excessive burden, i.e. the benefits do not justify the cost, or the cost could be easily reduced through simplification measures? If so, please explain your reasons for that in the following question.

Implementation costs: the costs incurred by regulated entities in adapting their legal framework and building strategies

	Yes	No
Legal transposition of the Directive into national law	☐	☐
Capacity development: allocating responsibilities for tasks; developing compliance strategies; staff familiarizing themselves with new or amended regulations	☐	☐
Training courses and the development of guidance material and tools	☐	☐

Compliance costs

	Yes	No
Screening / decision making on whether specific plans and programmes are required to undergo SEA	☐	☐
Scoping SEA Reports	☐	☐
Review and approval of SEA reports (by SEA authority or by plan making authority, whichever is relevant in your Member State)	☐	☐
Conducting/carrying out the SEA and preparation of the environmental report	☐	☐
Public consultations – identifying and engaging with relevant stakeholders	☐	☐
Public consultations – provision of information and collection of feedback	☐	☐
Preparation and publication of SEA Statement	☐	☐
Public consultations – taking feedback into consideration	☐	☐
Monitoring of significant environmental effects	☐	☐
Implementing remedial action if relevant	☐	☐

29. If you identified any of the above costs (or others) as an excessive burden, please state your reasons for this:

30. How important are any costs related to procedural delays in the adoption of plans and programmes? What is the major cause of these costs and are they justified by eventual environmental or other improvements to plans and programmes?

These may be caused by delays in completing or reviewing SEAs, issues related to public consultation, lawsuits, legal uncertainty or other factors.

31. Please estimate the following costs of carrying out SEAs:

Please estimate the costs, on average, of carrying out individual SEAs for the following different types of plans or programmes. When doing so, please include external consultancy costs in monetary terms (EUR), and -for public administration - the internal administrative management costs (from screening to plan adoption) in terms of administrative hours.

	Consultancy costs (EUR)	Internal administrative management costs (hours)
A large, national-level sectoral plan (e.g. for energy, transport, forestry etc)	*Free text*	
ESIF OP (e.g. Operational Programme setting forth the plans for spending under the European Structural and Investment Funds) at national, sectoral level		
Regional-level sectoral plan		
ESIF OP at regional level		
A local-level town and country or land use plan		
Other		

If other, please specify

Please add any necessary explanations regarding the costs presented in the following box:

32. In your opinion, for each of the items below, how significant are the benefits associated with the Directive?

	Major benefits	Moderate benefits	Minor benefits	No benefit
Benefits for the environment (e.g. reduction of negative environmental impacts of developments or introduction of measures to enhance the environment)	☐	☐	☐	☐
Integration of environmental issues in sectoral plans and programmes	☐	☐	☐	☐
Integration of environmental issues in town and country planning	☐	☐	☐	☐
Integration of environmental issues in European Structural and Investment Funds programmes	☐	☐	☐	☐
Improved process of preparing plans or programmes overall	☐	☐	☐	☐
Enabled consideration of the cumulative impacts of plans and programmes on the environment	☐	☐	☐	☐
Greater public awareness (and transparency) of the process of preparing plans or programmes	☐	☐	☐	☐
Influenced other environmental assessments (e.g. environmental impact assessment,	☐	☐	☐	☐

appropriate assessment, etc)				
Influenced the siting, design and implementation of projects that are likely to have an impact on the environment	☐	☐	☐	☐
Contribution to the United Nations' Sustainable Development Goals	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please specify

Please justify your replies with evidence, including examples where you see clear benefits.

33. In your opinion, how do the costs of implementation (including financial costs, time, human resources etc.) of the SEA Directive compare with the benefits brought about by the Directive (listed in the previous question)?

☐Benefits much greater than costs
☐Benefits slightly greater than costs
☐Costs similar to benefits
☐Costs slightly greater than benefits
☐Costs much greater than benefits
☐No opinion

Please provide examples or evidence to justify your response.

34. To what extent do the following factors impact the efficiency of implementing the SEA Directive? Please consider how does of the following factors impacts the cost of carrying out SEA versus the benefits received? For example, are the costs of SEA typically greater for one type of programme than another (without proportional gains in benefits)? You can explain your answers in the box following the table.

Contextual factors (i.e.) related to the nature of the plan or programme or institutions

	To a major extent	To a moderate extent	To a minor extent	Not at all
The scale of plan or programme (e.g. national, regional, local)	☐	☐	☐	☐
The level of details of the plan or programme	☐	☐	☐	☐
The sector covered by the plan or programme (e.g. cohesion, energy, transport, agriculture)	☐	☐	☐	☐
The main environmental impacts concerned (e.g. air, climate water, soil, etc.)	☐	☐	☐	☐
Technical capacity of the authorities in charge of preparing the plan/programme	☐	☐	☐	☐
Quality of the experts carrying out the SEA	☐	☐	☐	☐

Practical factors (i.e. related to the way SEA is carried out)

	To a major extent	To a moderate extent	To a minor extent	Not at all
Timing of the SEA and its synchronization with the plan or programme being assessed	☐	☐	☐	☐
Effective use of scoping	☐	☐	☐	☐
Use of external experts vs authorities to carry out preparation of the environmental report	☐	☐	☐	☐
Approaches to carrying out data collection (including availability and quality of data)	☐	☐	☐	☐
Factors related to the selection and investigation of alternatives	☐	☐	☐	☐
Factors related to stakeholder and public consultation	☐	☐	☐	☐

Please justify your replies with evidence, including examples:

35. Do you know any good practices in terms of cost-effective implementation of the SEA Directive? If yes, please provide examples and specify the areas where the costs involved in the implementation of the SEA Directive are reasonable and proportionate.

Relevance

Relevance concerns the extent to which the original objectives of the SEA Directive are consistent with the current needs of EU planning, assessment and environmental policy. It relates to whether the objectives of the legislation are still necessary and appropriate and whether the objectives and requirements set out in the Directive are still valid.

36. In your opinion, is the SEA Directive and its implementation still relevant to promoting a high level of protection of the environment and sustainable development?

☐ Fully relevant
☐ Partially relevant
☐ Not relevant

37. Overall, in your opinion, to what extent is the SEA Directive and its implementation consistent with the current and likely future needs of EU environmental policies?

☐ To a major extent
☐ To a moderate extent
☐ To a minor extent
☐ Not at all

38. In relation to the particular needs of the EU's citizens, environment and economy, to what extent is the SEA Directive and its implementation consistent with current and likely future needs of the following areas?

	To a major extent	To a moderate extent	To a minor extent	Not at all
Sustainable growth	☐	☐	☐	☐
Climate change mitigation	☐	☐	☐	☐
Climate change adaptation	☐	☐	☐	☐
Resource efficiency & circular economy	☐	☐	☐	☐
Biodiversity conservation	☐	☐	☐	☐
Natural capital	☐	☐	☐	☐
Sustainable cities	☐	☐	☐	☐
Human health and wellbeing	☐	☐	☐	☐
Water quality	☐	☐	☐	☐
Flood risk protection	☐	☐	☐	☐
Soil protection	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please list the areas of need and describe the extent to which you think the SEA Directive and its implementation is consistent with these

39. Please explain your answer to Question 38 above, based on your experience and including examples (where possible).

40. Overall, in your opinion, to what extent has the implementation of the SEA Directive kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development?

☐ To a major extent
☐ To a moderate extent
☐ To a minor extent
☐ Not at all

41. In your opinion, has the implementation of the SEA Directive kept pace with particular areas of emerging international policy, objectives, targets and concepts for sustainable development?

	To a major extent	To a moderate extent	To a minor extent	Not at all
The UN Sustainable Development Goals (SDGs): *the 17 SDGs are the extant international framework for sustainable development, set by the UN and covering various aspects of social and economic development, linked to ecological integrity. The SDGs were launched in 2015 (replacing the Millennium Development Goals) and are aimed towards 2030.*	☐	☐	☐	☐
Planetary boundaries: *a concept of nine earth system*	☐	☐	☐	☐

processes (e.g. climate change, biodiversity loss, land conversion) with notional boundaries that define a safe 'operating space' for humanity. Interpretations of the planetary boundaries concept include the (e.g. the 'doughnut' model of sustainability, comprising social foundations and ecological ceilings, both of which act together to define the safe operating space for humanity)				
Environmental / ecosystem limits: *the biophysical or socially defined limits beyond which ecosystems and / or their components undergo changes, resulting in loss of biodiversity, breakdown of ecosystem function and degradation / loss of ecosystem services*	☐	☐	☐	☐
Ecosystem services: *the contributions that ecosystems make to human wellbeing, distinct from the goods and benefits that people subsequently derive from them*	☐	☐	☐	☐
Ecosystem approach: *a strategy for the integrated management of land, water and living things that promotes conservation and sustainable use, established originally under the auspices of the Convention on Biological Diversity. The ecosystem approach combines the need to manage in terms of dynamic ecosystems whilst involving people in decision-making. The 12 Malawi Principles provide a framework for the ecosystem approach*	☐	☐	☐	☐
Natural capital accounting: *an approach that integrates information on stocks of natural assets (e.g. soils, forests, wetlands), changes in these stocks and related physical flows of ecosystem services and the benefits (sometimes valued in monetary terms) derived from them to provide a coherent picture of trends in ecosystems.*	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please list the areas of emerging policy, objectives, targets and concepts for sustainable development and describe how these are relevant to the SEA Directive and its implementation.

Please explain your answer to Question 41 above, based on your experience and including examples (where possible).

42. Overall, in your opinion, to what extent is the implementation of the SEA Directive well adapted to technological and scientific advances?

☐ To a major extent
☐ To a moderate extent
☐ To a minor extent
☐ Not at all

43. In relation to particular technological and scientific advances, to what extent is the implementation of the SEA Directive well adapted to these advances?

	To a major extent	To a moderate extent	To a minor extent	Not at all
New types of plans and programmes (e.g. renewables plans, marine spatial plans, energy infrastructure decommissioning programmes – oil and gas, nuclear etc)	☐	☐	☐	☐
Online environmental data platforms (e.g. Climate-ADAPT)	☐	☐	☐	☐
Participatory geographic information systems (PPGIS)	☐	☐	☐	☐
Environmental modelling frameworks (e.g. for ecosystem services, habitat networks, flood risk)	☐	☐	☐	☐
High resolution environmental data (e.g. the different forms of flood hazard data required under the Floods Directive)	☐	☐	☐	☐
Natural capital accounting	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please list the areas of technological and scientific advance and describe how these are relevant to the implementation of the SEA Directive.

44. Please explain your answer to Question 43 above, based on your experience and including examples (where possible).

45. In your opinion, how important is it to citizens that they have the opportunity be informed about and to provide input on the potential environmental impacts of public plans and programmes?

☐Very important
☐Moderately important
☐Slightly important
☐Not at all

46. Please explain your answer to Question 45 above, based on your experience and including examples from SEA policy and practice (where possible).

Coherence

Evaluating the coherence of the SEA Directive means assessing how well it works in conjunction with other relevant laws and EU policies. To assess its performance, it is important to understand the interactions that the SEA Directive has with other EU environmental law and policy, key EU sectoral policies and EU international obligations.

The SEA Directive relates closely to other parts of EU environmental law and policy, in particular the legislation that contains provisions for additional environmental assessment procedures. It is important to understand how potential synergies between assessment procedures are maximized, for example through the set-up of coordination mechanisms and streamlining practices, as well as what overlaps and inconsistencies may exist and how they can be avoided.

In addition, the SEA Directive has a very important role to play in the implementation of the key EU sectoral policies, as many of them require the preparation of plans and/or programmes that may impact the environment and will require an SEA under the provisions of the SEA Directive. It is important here to understand the extent to which the SEA Directive supports sectoral policies or if - conversely- it stands in their way.

Finally, to assess coherence, it is important to understand whether and how EU international obligations such as the UNECE SEA Protocol to the Espoo Convention and Aarhus Convention have worked in conjunction with the SEA Directive since its adoption.

47. In your opinion, is the SEA Directive consistent with and supportive of the following EU environmental legislation which set provisions for environmental assessment procedures or do you see significant gaps, overlaps or inconsistencies?

	Consistent and/or supportive	Gaps	Overlaps	Inconsistencies
EIA Directive, 2011 (Directive 2011/92/EU as amended by Directive 2014/52/EU)	☐	☐	☐	☐
Birds Directive, 2009 (Directive 2009/147/EC) and Habitats Directive, 1992 (Council Directive 92/43/EEC)	☐	☐	☐	☐

48. Please elaborate and provide practical examples to justify your answer.

A. If you think it is consistent and supportive: what synergies are in place between the SEA Directive and other EU environmental legislation

setting the provisions for environmental assessment procedures? Are there coordination mechanisms in place and do they work in practice?

B. If you think there are gaps, overlaps or inconsistencies: what are these and how do they impact the achievement of the SEA Directive's objectives on one side and the achievement of the objectives of the other EU environmental legislation on the other side? Do gaps, overlaps or inconsistencies result in delays, uncertainties and/or additional administrative burden? What would be your suggestion to resolve these problems?

49. Does the SEA Directive support or hinder the effective implementation of EU legislation and policies in the following sectors?

The list of sectors below is not exhaustive. It is based upon the sectors that are mentioned by Art. 3.2(a) and fall within the competence of EU legislation and policies. Please provide a response only for the sectors with which you are familiar, and feel free to add to this list in the 'other' line.

If you believe there are cases where the SEA Directive both supports and hinders the effective implementation of EU legislation and policies in any of the sectors below, you may choose multiple answers.

	Strongly supports	Slightly supports	Neither contradicts nor supports	Slightly hinders	Strongly hinders
Agriculture / rural development	☐	☐	☐	☐	☐
Cohesion policy	☐	☐	☐	☐	☐
Energy	☐	☐	☐	☐	☐
Fisheries	☐	☐	☐	☐	☐
Forestry	☐	☐	☐	☐	☐
Industry	☐	☐	☐	☐	☐
Telecommunications	☐	☐	☐	☐	☐
Tourism	☐	☐	☐	☐	☐
Transport	☐	☐	☐	☐	☐
Waste management	☐	☐	☐	☐	☐
Water management	☐	☐	☐	☐	☐
Marine environment	☐	☐	☐	☐	☐
Maritime spatial planning	☐	☐	☐	☐	☐
Climate change	☐	☐	☐	☐	☐
Biodiversity	☐	☐	☐	☐	☐
Other	☐	☐	☐	☐	☐

If other, please specify

50. For each sector you have addressed above, please elaborate and provide practical examples to justify your answer.

A. How does SEA support the objectives of the sector? What are the main interactions at practical level? Are there positive cases of synergies between SEA and the sector? Are there specific coordination

mechanisms in place for the implementation of sectoral legislation and/or policies and the SEA Directive?

B. How does the requirement to carry out an SEA hinder the achievement of the objectives of the sector? Do gaps, overlaps or inconsistencies result in delays, uncertainties and/or additional administrative burden? What would be your suggestion to resolve these problems?

C. Are these problems due to specific pre-conditions (e.g. the nature of plans and programmes and the sector) or more practical issues (e.g. the expertise of authorities and practitioners tasked with carrying out SEAs)? What would be your suggestion(s) to overcome these problems?

51. Are you aware of EU guidance documents that help carrying out SEA in a specific sector or policy area? How useful are they? Do you think more guidance is needed?

52. In your opinion, is the SEA Directive consistent with and supportive of the following international obligations or do you see significant gaps, overlaps or inconsistencies?

	Consistent and/or supportive	Gaps	Overlaps	Inconsistencies
UNECE SEA Protocol	☐	☐	☐	☐
UNECE Aarhus Convention	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please specify

53. Please elaborate and provide practical examples to justify your answer to question 52

A. What synergies are in place between the SEA Directive and other EU international obligations?

B. What gaps, overlaps or inconsistencies do exist and how do they impact the achievement of the SEA Directive's objectives and the achievement of the objectives of EU international obligation?

54. Are you aware of any provisions at national level that implement EU international obligations and go beyond the requirements of the SEA Directive?

EU added value

EU Added Value is defined as the additional value resulting from EU legislation compared to what would have been achieved by Member States acting in isolation. EU

added value questions ask whether EU action was needed and is still needed. To support the assessment of EU Added Value, it is important to try to define a counterfactual scenario, i.e. to envision what might have happened with regard to the environmental assessment of plans and programmes if the SEA Directive had not been adopted. The questions below aim to support the development of a counterfactual scenario, as well as better understand the overall benefits of having common EU legislation across all Member States regulating SEA.

55. In your opinion, during the period since the adoption of the SEA Directive, to what extent would the following have taken place in your Member State if the Directive had not been adopted?

	To a major extent	To a moderate extent	To a minor extent	Not at all
Effective screening to determine which public plans and programmes are likely to impact the environment	☐	☐	☐	☒
Early consideration of environmental issues in plans and programmes likely to impact the environment	☐	☐	☐	☐
The preparation of an environmental report following specific standards and understandable to non-experts	☐	☐	☐	☐
The involvement of competent environmental authorities in the content of sectoral or territorial (spatial or land use) plans and programmes	☐	☐	☐	☐
Integration of environmental considerations in the adopted versions of plans and programmes	☐	☐	☐	☐
Early and effective information made available to stakeholders and the public on environmental impacts of plans and programmes	☐	☐	☐	☐
Opportunity for stakeholders and the public to provide input on the environmental impacts of plans and programmes	☐	☐	☐	☐
Monitoring the environmental effects of implementing plans and programmes	☐	☐	☐	☐
Cross-border cooperation on environmental planning	☐	☐	☐	☐

Please explain your answer to Question 55 above, based on your experience and judgement.

56. How important are the following factors in determining the extent to which the activities in Question 55? would have taken place in your Member State without the adoption of the SEA Directive? Are there other important factors?

	Very important	Moderately important	Of minor importance	Not important

Pre-existing legislation regulating the environmental assessment of plans and programmes	☐	☐	☐	☐
The likelihood that the Member State would adopt legislation regulating the environmental assessment of plans and programmes	☐	☐	☐	☐
The applicability of other EU or international legal instruments	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please list below.

Please explain your answer to Question 56 above, based on your experience and judgement.

57. How important do you see the following benefits of having the same legislation requiring the systematic environmental assessment of plans and programmes in all EU Member States?

	Very important	Moderately important	Of minor importance	Not important
Cross-border cooperation on environmental planning (consideration of transboundary environmental impacts)	☐	☐	☐	☐
Providing a level playing field for businesses	☐	☐	☐	☐
Public awareness of and engagement in environmental issues generally	☐	☐	☐	☐
Networking and exchange of good practice on approaches to carrying out SEAs across the EU	☐	☐	☐	☐
Building partnerships and resolving conflicts around environmental impacts of development	☐	☐	☐	☐
Other	☐	☐	☐	☐

If other, please list below.

Please explain your answer to Question 57 above, based on your experience and judgement.

58. In your opinion, to what extent could the objectives of the SEA Directive be partly or entirely achieved with the relevant existing international conventions, programmes or other instruments?

Such instruments include the UNECE Protocol on SEA; the Environmental Impact Assessment Directive (Directive 2011/92/EU, as amended by Directive 2014/52/EU); the Birds Directive (Directive 2009/147/EC) and Habitats Directive (Council Directive 92/43/EEC).

	To a major extent	To a moderate extent	To a minor extent	Not at all
UNECE Protocol on SEA	☐	☐	☐	☐
The Aarhus Convention	☐	☐	☐	☐
The EIA Directive (Directive 2011/92/EU, as amended by Directive 2014/52/EU)	☐	☐	☐	☐
The Birds Directive (Directive 2009/147/EC) and Habitats Directive (Council Directive 92/43/EEC)	☐	☐	☐	☐

59. Please explain your reply regarding the above instruments.

60. If you wish to submit additional documentation in support of your responses, please upload your files here. Please note that all uploaded documents will be published together with your contribution, and that you should not include personal data in the document(s) if you opted for anonymous publication in question 1.

ANNEX V: REPORT ON THE EVALUATION WORKSHOP

Introduction

The stakeholder workshop on the evaluation of the SEA Directive took place on 6 December 2018, in the Breydel Auditorium. The purpose of the workshop was to share the preliminary findings of the evaluation with Member States and stakeholders and to collect their feedback and reactions to these findings. The feedback collected through the workshop will feed into the evaluation study, which will be completed by February 2019. The workshop gathered 85 participants, including Member State authorities (40), practitioners carrying out SEA and academics (14), representatives of NGOs and industry (10), members of the EU institutions (13) and the consultants (eight)[108]

The main part of the event was structured around the evaluation criteria. A one-hour session was dedicated to each of the following: effectiveness, efficiency, relevance and coherence. The conclusions of the workshop included the first findings and reflections on EU added value. Each session started with a brief overview of the preliminary findings by the consultants (Milieu Consulting, Collingwood Environmental Planning). This was followed by a panel session involving three to four stakeholders, who had an opportunity to provide their views and feedback on the key issues raised under each of the evaluation criteria. Afterward, the audience had an opportunity to ask questions to the panel, the consultants and the Commission.

Workshop proceedings

- **High-level introductory session**

A general welcome was given at the start of the workshop by Sabine Bourdy, Head of Unit E1 Mainstreaming and Environmental Assessments in DG Environment, who presented the objectives of the workshop and the agenda of the day. She underlined that this evaluation was the first since the adoption of the Directive. Ms Bourdy thanked all stakeholders who participated in the evaluation process so far and all participants to the workshop.

Commissioner Karmenu Vella addressed the participants with a short welcoming video message. The Commissioner recalled that the SEA Directive is a core piece in the EU environmental legislation, in that it ensures achieving one of the cornerstones of the EU environmental policy – that of environmental integration. He highlighted that securing the SEA legislation has been a milestone on the way to sustainable development and that the SEA Directive plays an important role in attaining the SDGs' objectives.

The Commissioner acknowledged that after 15 years of application this evaluation will take stock of what has worked well and what may need to be adjusted to the current needs. He added that the results of the consultation confirm that the SEA has contributed to the high level of protection of the environment and that the SEA procedure has influenced the planning and decision-making process.
The Commissioner then called for keeping a cool head with regard to the issue of possible extension of the scope of application of the Directive when defining plans and programmes that can fall under the scope of application of the SEA Directive, with due account taken of the recent CJEU case-law. He stressed that we must keep a sense of proportion and common sense in applying the Directive without compromising the most important goal of the SEA Directive – to provide for a high level of protection of the environment with view of promoting sustainable development. The Commissioner thanked everyone who contributed to the REFIT evaluation process and stressed that

[108] Figures based on the attendance list signed by participants at the evaluation workshop. It should be noted that the list might be incomplete if attendees did not sign in.

the outcomes of the discussion in this workshop will mark the Commission's follow-up on the Directive.

Joanna Drake, Deputy Director of DG Environment, noted that the discussion about the effective and efficient application of the SEA Directive is extremely relevant in the context of pursuing the attainment of the SDGs. She stressed the key importance that the Directive plays in facilitating decision-makers to take informed decisions and thus facilitating environmental integration across various sectors. She reminded that the REFIT evaluation is an evidence-based exercise and its objective will be to examine what might have not produced the expected results and what had worked well over the last 15 years of application.

Joanna Drake acknowledged that the SEA procedure is bridging the policy governance with the preparation and implementation of strategic decisions. Anticipating environmental impacts, informing the public and taking into account the concerns expressed is a guarantee for an informed decision-making. This finding, she said, has emerged from what the public and stakeholders have pointed out. Moreover, when properly applied the procedure can facilitate the implementation of 'problematic' types of projects. A smart application of the SEA procedure can improve the business and administrative environment, as it saves time and money at a later stage.

In her concluding remarks, Joanna Drake repeated that the SEA procedure remains relevant and with undisputable EU added value. It leads to better environmental protection and promotes sustainable development through integrating environmental considerations into the preparation and adoption of certain plans and programmes, which are likely to have significant effects on the environment. She said that the discussion today is of key importance on the follow-up of the SEA Directive and that it will pave the way to the Commission's evaluation and any subsequent decision whether it is necessary to amend the SEA Directive.

- **Introduction to the evaluation study**

Jennifer McGuinn, Director at Milieu, presented the scope and methodology for the evaluation study. She noted that this is a support study for DG Environment and that it is the first formal evaluation of the SEA Directive since its adoption in 2001. The study will build on the most recent implementation report, published in 2017 and a study carried out by Milieu in 2016 to support that report. The evaluation study aims to determine the extent to which the SEA Directive remains 'fit for purpose' and will assess performance of the Directive since its adoption based on five criteria: effectiveness, efficiency, relevance, coherence and EU added value.

Data collection for the study in nearly complete and involves desk research as well as consultation. A consultation strategy for the evaluation has been prepared by the Commission in cooperation with Milieu and is published on the website of the Fitness Check[109]. Stakeholders to be consulted include public authorities; SEA experts and practitioners, NGOs and industry associations and the general public. Consultation activities include: an open public consultation, which took place during May – July and received 249 responses; a targeted online questionnaire which completed in September and received 76 responses; around 50 in-depth interviews with additional stakeholders in 11 Member States; discussions with Member State environmental authorities at two meetings of the EIA/SEA expert group; and this stakeholder workshop.

An emerging findings report based on desk research and an initial review of the consultation findings was distributed in November as a background document for this workshop. The full draft of the evaluation study will be prepared in December and

[109] http://ec.europa.eu/environment/eia/sea-refit.htm

January, based on review and analysis of additional data, as well as the complete results of the consultation activities.

- **Effectiveness**

The first session of the day was related to the effectiveness of the SEA Directive. This session was moderated by William Sheate, technical director at Collingwood Environmental Planning.

- Emerging findings of the evaluation study

Špela Kolarič, senior consultant at Collingwood Environmental Planning, presented the emerging findings of the evaluation on effectiveness. She recalled that the effectiveness criterion assesses the extent to which the SEA Directive achieved its objectives to provide for a high-level protection of the environment and contribute to the integration of environmental consideration into the preparation and adoption of plans and programmes. More specifically, evidence was gathered on the Directive's contribution to a high-level protection of the environment, and on the extent to which the Directive influenced the planning process in the Member States, the final content of plan/programme, and eventually projects' development. The evaluation also looked at the factors that influenced the effectiveness of the Directive – both factors related to the Directive itself and external factors.

The collected evidence, in particular the targeted consultation activities have shown that SEA Directive has contributed to some extent to the high level of protection of the environment. Some key challenges however remain such as the starting time of the SEA and its synchronisation with the plan/programme preparation process. SEA still often starts too late in the planning process, which prevents proper integration of the SEA with plan preparation and reduces the effectiveness of the SEA to influence the choices made in the plan / programme. The quality of environmental monitoring remains an issue; environmental effects are often not monitored after the adoption/implementation of plan programme. Another issue is that 'higher' level policies and legislation are often not subject to SEA, which, in some cases, points to a lack of clear definition of 'plans and programmes' that should undergo SEA. This indicates there are challenges with the understanding of the Directive's requirements.

The SEA Directive has also influenced planning and decision-making processes in the Member States. Elements such as the consideration of environmental issues, the systematic nature of the SEA procedure, transparency in the planning process and identification of significant effects of the plan or programme supported the ability of the Directive to affect planning and decision-making processes. Evidence from the consultation activities also showed that the SEA Directive has influenced the final content of plans and programmes by adding more emphasis on addressing environmental issues, involving stakeholders and the public and adding mitigation and compensation environmental measures into plans and programmes. However, concerns were raised that SEA does not affect the content of plans and programmes as it should, in particular because of other prevailing (social, economic or political) interests, closed and pre-determined decision-making, poor integration of SEA into planning and decision-making processes, and challenges with the assessment of alternatives. Concerning the Directive's influence on subsequent project development, the collected evidence showed that the Directive has to some extent influenced the siting, design and implementation of the projects developed on the basis of plans and programmes assessed, although these effects are more difficult to trace.

The Directive seems most effective in relation to spatial and land use planning, water and waste management, transport, energy and air quality. Effectiveness can be lower when economic/social interests are high (energy, transport, forestry, agriculture). According to stakeholders, the Directive seems most effective at the local level, although views on the effectiveness at higher decision-making and governance levels

vary. Important factors influencing the effectiveness of the SEA Directive are political will, consultation practices, expertise of consultants, and specific challenges with certain aspects of the SEA process such as alternatives.

- Reactions from the panel

Veronica Ten Holder, general secretary/director of the Netherlands Commission for Environmental Assessment (NCEA), an independent advisory body (with a legal status) in the Netherlands, on scoping and review of EIA/SEA, highlighted that a clear definition of plans and programmes for which SEA is compulsory is lacking. One of the requirements in the Directive is that SEA applies to plans and programmes that 'set the framework' for EIA projects. However, this terminology is open for interpretation. Does set the framework for projects means setting specific site location, routing and design or does it also mean setting the direction for future action, on a more strategic level? This discussion is ongoing in the Netherlands and will be even more intense in future years as in 2021 the Netherlands are going to adopt a new law (National Environment and Planning Act), which aims to change the nature of plans, to make them more strategic, to allow more flexibility when implementing the plan or programme. The objective is to have in the future more strategic plans, which are dealing with ambitions and targets, and avoid going at that level into very concrete choices. Ms Ten Holder indicated that she would like to put forward the discussion on the definition of plans 'setting the framework for projects' and ask the Commission whether the Directive could be clarified on this issue. This would have an influence on effectiveness of SEA because at the moment quite a lot of the strategic plans in the Netherlands are not subject to SEA because they are 'too strategic' (i.e. they do not include site selection, routing or determine design), but they do set ambitions and priorities.

Ms Ten Holder then indicated that participation is essential for the effectiveness of SEA. However, participation in SEA procedure could be more effective than it is now; the public does not engage in the SEA process. There is therefore a need for plan makers to translate strategic ambitions and targets of government into more concrete possible solutions (including viable alternatives) and to show the concrete effects of plan on the environment but also on peoples' health and wellbeing. On that matter exchanges of experience with other countries of the EU would be very welcome.

Steven Smith, technical director at Aecom in London, recalled that his experience with SEA in the past 15 years relates to spatial planning in the UK primarily. Regarding the discussion on substantive vs procedural effectiveness, Steven Smith indicated that the SEA Directive, contrary to other Directives that have more substantial targets, focuses in practice on promoting more transparent, more structured and well-informed and ultimately more auditable decision-making processes. The focus of the Directive is on the procedure, as stated in its preamble, so it's perhaps unreasonable to necessarily expect clearly attributable substantive outcomes. Another important development in the past 15 years is growing stakeholder awareness. Stakeholders' expectations have increased as they became more familiar with the Directive, and now they expect to see the assessment of reasonable alternatives in an SEA, and if they don't see it, they demand it.

Steven Smith then explained that, for spatial planning, in his view, SEA is reasonably good at ensuring that valuable environmental assets are protected and that future developments avoid these assets. The environmental receptors which benefit most from this are biodiversity, the landscape and historic/cultural assets. Along with the Habitats Directive, the SEA Directive makes it harder for new development to impinge on these areas without strong justification. SEA is less effective in instances where financial investment rather than simply avoiding locating development in environmentally valuable areas is necessary to protect the environment (e.g. in relation to air and water quality). SEA is more effective for preserving what we have rather than for improving the environment or restoring degraded natural capital.

As a final point, Mr Smith mentioned that the UK Government is currently consulting on the possibility of making biodiversity net gain mandatory and exploring the possibility of securing environmental net gain. This is the missing link – the SEA Directive has a very strong procedural focus, what it lacks is the focus on ensuring that plans and programmes deliver a net gain for the environment. The emphasis of the 'net gain' agenda on achieving substantive environmental outcomes could helpfully complement SEA's focus on process with SEA helping to identify deficits in natural capital/ecosystem services and where net gain could be delivered to best effect.

Matthew Cashmore, Professor in Environmental Planning at the Norwegian University of Life Sciences, started by putting into perspective the evidence collected in the evaluation, and the emerging findings, which are quite positive as regards the contribution of the SEA Directive to a high level of protection of the environment. As shown by another set of evidence, The European environment — state and outlook 2015 report of the European Environmental Agency (SOER 2015), the progress towards the Europe 2020 targets set out in the 7th Environmental Action Plan is mixed and that the 2050 goals are, at least in some cases, unlikely to be realised without further action. The emerging findings state that SEA is working better for biodiversity, water and traditional components of environment policy, however, the EEA shows that the EU has not yet managed to reverse the loss of biodiversity and that not all water bodies met the 2015 targets related to quality of surface water. Are these two sets of evidence incompatible? Can we say that SEA contributes to a high level of protection of the environment when environmental targets are not met? The answer is not straightforward but the relationship between these two observations warrants further attention.

Mr Cashmore continued by suggesting focusing more attention on the second part of the objective of the Directive – contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes. Environmental integration can be achieved by multiple routes, for instance by training and environmental competence building. In the evaluation, integration is mostly understood as the improvement of the final content of plans and programmes. This is only part of the picture. There are other valued outcomes, such as transparency.

Finally, Mr Cashmore explained that the focus on gaps, constraints, barriers, and inconsistencies to the effectiveness of the SEA Directive and related procedures as presented in question 3 (section 2.3) of the Emerging findings report, the SEA Directive can be criticised as being of limited explanatory value in other fields of environmental science and policy (e.g. climate change). Creative policy developments may require us to think outside of so-called 'black box' interpretations of decision-making. Mr Cashmore concluded by saying that we should not lose the big picture of environmental trends across Europe, which remain problematic, when discussing how to innovate and how to promote environmental integration to achieve a high level of environmental protection.

Marie Hanusch, vice president of the German EIA Association and project manager at Bosch & Partner consultants, first mentioned that they are currently carrying out a study in Germany, which is similar to the REFIT evaluation. She highlighted the difficulties to evaluate effectiveness of SEA given the broad variety of SEAs that are carried out. Ms Hanusch then indicated that the interim findings of their evaluation also shows that SEA is predominantly considered effective, but that when asking more specific questions, , more nuanced views appear due to a different understanding of SEA, depending on the administrative level or the sector they are familiar with. Stakeholders mention to some extent that the quality of SEAs is quite good – especially at higher planning levels – because the environmental reports are very comprehensive and detailed, and they cover most of the topics required and fulfil most of the requirements of an SEA according to the Directive and national guidelines. However, opinions on the impacts of SEA on the plans are more mixed. Environmental

reports do not always help authorities to identify the most important environmental aspects that should be integrated into the plan as they tend to address all the aspects of environment required by the Directive, rather than focus on those that are most relevant. Therefore the purpose of the SEA is sometimes not met.

Regarding the process, Ms Hanusch indicated that the interim findings of their study are similar to the ones presented in the emerging findings of the evaluation. In terms of process, the most important is to start early and take all stakeholders on board since the beginning, otherwise the SEA risks to be a formality without getting into the main relevant aspects of the plan/programme assessed. Another element to be noted is that, although the quality of SEA is to some extend considered to be quite good, and although a lot of methodology and standards are already existing, practitioners are still in favour of having more methodology and guidelines, in particular regarding cumulative effects, or alternatives. However, there is also a demand for keeping the flexibility of the SEA Directive and related national regulations to be able to adapt the SEA process to all the specific cases of SEAs for different plans and programmes. Ms Hanusch concluded by saying that it is important to keep in mind that the generally positive picture in terms of the objectives of the SEA Directive provided by the stakeholders hides the problematic aspects of it which are revealed when going into more detail and evaluating the practice of SEA.

- Questions and answers

Before giving the floor to the audience, William Sheate summarised the main points made by the panellists.

The first intervention was made by Siim Vahtrus, chairman of Justice and Environment, a network of environmental law NGOs, who reflected on the disconnect between the state of the environment and the general satisfaction with the SEA Directive, indicating that this disconnect can be largely explained by the problems in the implementation of the framework provided by the Directive in individual SEAs. Siim Vahtrus then pointed out the specific problems in the implementation of the Directive, in particular the consideration of reasonable alternatives. He mentioned that to make the SEA Directive useful in practice, an honest consideration of a wide range of alternatives would be needed rather than slight modifications of a plan, where the content has already been largely decided. One of the reasons it does not work is the politicisation of some of these plans and programmes, and the fact that short term political considerations determine the content rather than long-term needs.

A representative from a regional authority mentioned that monitoring is a major missed opportunity of SEA, because monitoring is to a large extent not done. SEA is too often done to get the plan approved and then forgotten about. There is a lot of information collected that is only shelved and a lot of knowledge that is not used. On the contrary, concerns identified in the SEA should be linked to indicators that are later monitored. In addition, the disconnect between the quality of the SEA and the poor environmental situation could be partly explained by the fact that plans and programmes are not monitored.

The floor was given to the panel to respond to the first interventions. Veronica Ten Holder agreed that the identification of the reasonable alternatives play a key role in making SEA effective. She then reacted to the second observation made by Siim Vahtrus that SEA is preoccupied with short-term policy goals while not giving enough attention to the long-term necessities. She mentioned that there is a link between the consideration of alternatives and the consideration of both short- and long-term realities, and that SEA should focus on both. She added that this is what the NCEA is trying to promote now in the SEA practice in the Netherlands because long-term strategies should be better dealt with within SEA procedures and because SEA should be become an instrument for supporting the long-term decision-making and moving away from the short-term political priorities.

Matthew Cashmore indicated that one of the reasons explaining the disconnect between the positive opinion on the SEA Directive and the environmental trends could be the methodology and the type of data used in the evaluation study, which relies extensively on expressed opinions of individuals who can be conditioned by their beliefs, their values, biases etc. This should be borne in mind when interpreting the responses. The way the questions are asked also influences the answers. It is not easy for respondents to relate the questions they are asked to the bigger picture of broad EU environmental trends. Mr Cashmore advised that the evaluation should reflect on the strengths and limitations of all the sources of data used in the study. He continued by commenting on monitoring and explained that some Member States justify the failure to implement the monitoring activities as suggested by the SEA Directive by explaining that monitoring does occur in another context and there is no need to duplicate the efforts. There is some legitimacy in that argument, as monitoring the same things under several sets of different legislation is inefficient. However, what was not mentioned in the comment made is the effective link (e.g. national database of monitoring activities) between the SEA requirements and other monitoring activities (e.g. subject to various sectoral legislation or permitting processes), which is often missing. However, this link is crucial to improve the existing monitoring practices related to SEA and make them more efficient and effective.

Marie Hanusch mentioned that the first three interventions from the audience pointed out the two weakest points of the SEA Directive, alternatives and monitoring. Speaking as a practitioner, she underlined that assessing alternatives is often undoable, because there are no alternatives within the plan / programme itself. For a practitioner it is impossible to force the authority to think about alternatives because practitioners typically cannot intervene in decision-making processes. Ms Hanusch added that the German research showed that there is very little consideration of alternatives and that, although monitoring is referred to in the plan it is rarely implemented, in part because there is no legal obligation to do it. These are the main two aspects on which to judge the quality of the work done by plan makers in terms of effective SEA and this is why the authorities are often reluctant to provide information on these aspects.

William Sheate added that, concerning alternatives, in some cases that the authorities do identify and reject alternatives while elaborating the plan without realising it, do not document that process. The alternatives requirement in the SEA Directive can force them to go back and assess the alternatives more formally.

Steve Smith mentioned that the Directive refers to 'reasonable alternatives taking into the account the objectives of the plan / programme' and explained that quite often plans and programmes' objectives are quite narrowly conceived, and consequently so are the alternatives. He added that 'reasonable' should mean implementable, otherwise there is a risk that stakeholders are presented with unrealistic alternatives for consultation. Finally, he mentioned that the wording of the article in the Directive referring to alternatives could be changed to alternatives "Where an environmental assessment is required… an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme and the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme, are identified, described and evaluated".

The floor was given to the audience for a second round of questions/interventions. Jerzy Jendrośka, environmental lawyer, managing partner at Jendrośka Jerzmański Bar and professor at Opole University (Poland), indicated that the quality of the SEA is generally understood as the quality of the SEA reports. However, the environmental report is only one of the elements that contribute to the effectiveness of the SEA, which is a process. The effectiveness of the SEA should be understood as the impacts

of the SEA on the decision-making process. Referring to a common discussion during the adoption of the SEA Protocol, he argued that the objective of SEA is not to calculate the number of frogs killed by transport projects, but that the decision makers think about the frogs in the first place, which for example can change the attitude towards consideration of the environment in the planning process. There have been cases where very good environmental reports did not contribute at all to a viable planning process, and other cases where poor quality environmental reports actually contributed to significant changes in the plan / programme. Regarding monitoring Mr Jendrośka mentioned that his experience shows that monitoring of SEA is rarely useful if it is a standalone exercise; general monitoring of the entire plan and programme, which includes the monitoring of environmental impacts, is much more effective.

Maria Partidario, professor at the University of Lisbon and SEA consultant, came back to the discussion on data used in the evaluation study and mentioned that it was confusing to say in the report that on one hand the Directive contributes to a high level of protection of the environment, and that on the other hand there is poorly implemented monitoring and a weak understanding of the SEA Directive's requirements. She asked what could potentially be concluded from this type of negative feedback on the implementation of the SEA Directive. She continued by saying that the exercise (i.e. the evaluation) should be more ambitious and not only focus on what exists, or compare it to the situation if there was no SEA Directive, but focus on what should be done to make the SEA Directive more useful. She added that there are certain aspects in the Directive that are subject to interpretation, like 'setting the framework', as mentioned by the NCEA, or 'quality', as mentioned by Jerzy Jendrośka – is it about the quality of the report or the quality of the process, what does quality mean. As there are different realities, even within the same country, there are different interpretations of what SEA should do, which means that the Directive cannot be too detailed, because it would never meet all expectations. Ms Partidario then reacted to the comment of the NCEA and said that she was happy to hear that the Netherlands is considering developing a concept of planning that is not short-term policy oriented, but forward looking and that aims to be more flexible. She added that one of the very purposes of the SEA Directive was to improve the quality of plans and their capacity to consider strategic long-term realities. Instead, the SEA has been used to fit the realities of short-term looking plans, only looking at the potential impact of projects. Ms Partidario concluded by saying that the Directive should be revised to make the SEA a more forward-looking instrument.

Ursula Platzer-Schneider, SEA expert at the Austrian Federal Ministry of Sustainability and Tourism, indicated that in her opinion, planning processes influence the quality of the SEA. She then asked what could be the criteria of good planning processes that could support SEA.

Lone Kørnøv, professor at Aalborg University and Head of The Danish Centre for Environmental Assessment (DCEA) asked a question to the evaluation team, regarding the inclusion of policy and decision makers in the consultation activities as they don't seem to be represented. Considering that the SEA is a decision-making support tool, this is surprising.

Martine Moris, policy officer on EIA and SEA at the Department of Environment and Spatial Development of the Flemish Government expressed the support of the Flemish region to the Netherlands and stated that a clarification on the meaning of 'setting the framework for future development consent of projects' would be very useful, especially in view of the recent Court cases.

William Sheate gave the floor back to the panel to respond to the second round of comments. Steve Smith indicated that the point made about planning practices is a critical point as good planning is linked to good SEA. The Directive tries to set minimum standards such as carrying out public consultation but ultimately much depends on the way in which particular plans and programmes are prepared.

Matthew Cashmore added that one of the criteria for good planning is resources. In the current financial context, and even more in some national contexts, resources are often scarce. Making sure that the budget is provided to prepare a good plan is important to ensure the quality of the SEA.

William Sheate then responded to Lone Kørnøv that policy makers and decision makers are represented in the consultation activities. The confusion might come from the way some of the stakeholders have been categorised in the study.

Marie Hanusch mentioned that their evaluation showed that, in theory, there might be a point where the planning process is of such high quality and so participatory and balanced, and already includes all significant environmental aspects, that the SEA might become superfluous at this point. However, as reflected in the participants discussion, it should be noted that planning and decision-making practices and the SEA process are, or should be, interlinked as the reality is that there are not many cases of good planning practices. SEA still has the task and the potential to enhance planning processes.

After these last remarks, William Sheate closed the session on effectiveness.

- **Efficiency**

The second session was dedicated to the efficiency of the SEA Directive. The session was moderated by Jennifer McGuinn.

- Emerging findings of the evaluation study

Lise Oulès, policy advisor at Milieu, presented the emerging findings of the evaluation on efficiency. She recalled that the efficiency criterion considers the relationship between the resources involved in the implementation of the SEA Directive and the effects generated by the Directive and tries to understand to what extent the benefits of having and implementing the SEA Directive justify the costs. She then presented the three evaluation questions related to efficiency and the approach taken by the evaluation team to answer them: 1/ are costs of SEA proportionate in view of the effects achieved by the Directive, 2/ what are the factors influencing the efficiency of the Directive's performance and 3/ does the SEA Directive causes unnecessary regulatory burden and if so, what are the causes of such burden.

Lise Oulès presented the results from consultation activities, which suggested that the costs of implementing the SEA Directive have overall been acceptable to competent authorities and in general perceived as reasonable in comparison to the benefits brought by the SEA Directive. Regarding factors influencing the efficiency of the SEA Directive, stakeholders have generally stated that higher quality SEAs are perceived as more efficient as they deliver larger benefits. Other factors often mentioned were the scale of the project, the timing of the SEA procedure, which can lead to procedural delays, and the use of scoping. A tendency to focus on the production of comprehensive and overly detailed environmental reports was pointed out as a significant cost driver. Finally, results from consultation activities did not allow the identification of any excessive regulatory burden or complexity associated with the SEA Directive. However, concerns were raised that an extension of the application of SEA to policies and legislation, based on the recent judgements from the Court of Justice of the European Union, could be an excessive burden on competent authorities as it would likely increase the number of SEAs to be carried out.

- Reactions from the panel

Helle Ina Elmer, expert in environmental impact assessment at the Danish Ministry of Environment and Food, underlined the challenges associated with extending the application of the SEA Directive to legislation and statutory/administrative orders. The concept of plans and programmes is too vague to be used as a specific description, when it comes to legislation and statutory/administrative orders. In addition, legislation and administrative orders are drafted based on a political mandate, which makes it difficult to include alternatives, and which leaves a limited scope for the SEA to change the original objectives and provisions of the draft legislation or order. When ministerial orders are modified, the amendments usually depend on other legislation, which questions the relevance of SEA in these cases and raises the issue of assessing existing rules and regulations. The process for adopting legislation is also different from the process of adopting plans and programmes as the former requires that negotiations happen in smaller, often closed committees. The SEA procedure is very comprehensive and has not been designed with the legislative process in mind. Ms Elmer then stressed that an amendment of the SEA Directive making clear that the Directive does not apply to legislation would be welcomed. This does not mean that authorities would not assess environmental impacts of legislation, but not through the rigid procedure laid down in the Directive. An alternative would be to amend the Directive to make it better adapted to being applied to legislation and orders.

Cara Davidson, head of Environment and Natural Resources, in the Planning and Architecture Division in the Scottish Government, provided first an overview of the Scottish context and explained that the Scottish transposition of the SEA Directive goes beyond the requirements of the Directive as it applies to a wider range of authorities and applies to plans, programmes and strategies, including policies and legislation. To ensure that the implementation of the Directive is effective, Scotland has put in place a number of tools such as the SEA Gateway, which coordinates all SEA correspondence between the authority responsible for the plan and the consultation authorities, and the SEA Database which is a one-stop-shop for accessing information on SEAs undertaken over the years and which serves as a pool of data. Cara Davidson also mentioned that the Scottish Government has an in-house SEA team, with over 10 years' experience undertaking SEA at national level across a wide range of sectors.

Cara Davidson then raised some points based on the Scottish experience. The implementation of SEA requires flexibility; the policy-making process is often messy, not linear, facing resources constraints and difficult timelines. Close integration between the preparation of the plan and the SEA requires flexible legislation which is capable of adaptation to fit the circumstances of individual cases. In addition, it is not possibly to fully separate out considerations of efficiency from effectiveness, therefore the Scottish approach aims to achieve proportionate and effective SEA. The close relationship between the plan maker and the SEA team is very important to achieve this. Much of the work of the SEA team is to explain the process and support the plan maker to identify needs, alternatives etc. Scoping is not necessarily a 'stage' of SEA but rather an on-going and iterative process which relies greatly on the relationship between the plan maker and the SEA team. Finally, Ms Davidson indicated that there is scope for efficiency savings if screening were made available for plans and programmes which set the framework for development consent of projects listed in the EIA Directive. The SEA team has carried out SEAs for plans and programmes that were considered to be required by the Directive but which were not likely to have environmental effects.

Martin Smutný, partner in Integra Consulting Ltd, in Czech Republic, discussed the findings of the report from an SEA practitioner point of view, and reflecting the SEA practice in Central European countries, in particular the Czech Republic. Mr Smutný indicated that the emerging findings only briefly mentions costs of external inputs from consultants although it can actually represent a significant cost. A survey regarding the effectiveness of SEA was recently carried out in Czech Republic. It showed that the time spent by authorities on the environmental report (around 10

days) and for administrating the procedure (another 10 days) is low in comparison to the time spent by external service providers to make the assessment and the environmental report (around 100 days). Regarding procedural delays, Mr Smutný mentioned that they are not usually caused by the SEA process but rather due to complications in the plan making process. However, there are cases when SEA results in plan making process delays – for instance if the SEA is started too late with insufficient quality of analyses, leading to the redrafting of the environmental report (based on the request of SEA Competent Authority). Regarding benefits, a very important one is that SEA is used by planning agencies as a justification to reject proposed plans that would have very negative impact on the environment, which can give more weight and credit to the decision especially if the plan is politically sensitive. Mr Smutný added that, in his opinion, extending SEA to policies and legislation would not dramatically increase the number of SEAs, but would require the introduction of a less demanding approach to SEA. The SEA process is often quite rigid in Eastern European countries and does not leave the possibility of a more flexible approach. It would also require a careful screening process to identify policies for which SEA would be beneficial (e.g. energy and transport policies).

- Questions and answers

Before opening the floor to the participants, Jennifer McGuinn summarised the main points made by the panel. She underlined in particular that a lot of the discussion touched upon the need for greater flexibility of the SEA process to make it applicable to different contexts, which might be difficult as the Directive imposes a step-by step process to be followed for all plans and programmes.

The discussion opened with an intervention from Stephanos Ampatzis, Deputy Head of Unit E1 Mainstreaming and Environmental Assessments in DG Environment, who recalled that the Directive leaves flexibility to Member States in the application of SEA, except for two preconditions that, if met, make SEA compulsory (i.e. plans or programmes likely having significant environmental effects required under national law and setting the framework for future development consent of projects). Whether the SEA process is flexible or not also depends on the traditions of Member States and the transposition into national law. It is for Member States to decide how to best use this tool.

The discussion continued on the flexibility of the procedure. Eamonn Kelly, Principal Officer on Environmental Planning Policy at Ireland's Department of Housing, Planning and Local Government, asked, in particular to Cara Davidson from the Scottish Government, what she though of the practical solution to the consequences of the D'Oultremont Case to apply the rules of the UNECE's SEA Protocol to the assessment of policies or legislation, as specifically provided for in the SEA Protocol, instead of trying to apply the SEA Directive's procedure, which was only specifically drafted for plans and programmes, to policies or legislation.

The floor was given to the panel to respond to the first comments. Responding to Eamonn Kelly, Cara Davidson explained that SEA was extended to strategies in Scotland because there was political buy-in for it, and that this is a pre-condition for extending the scope of application of SEA. The applied screening process is not really focused on the type of impacts but rather on their significance. She added that Scotland has in place a pre-screening process for plans which are not 'caught' by the Directive requirement to undertake SEA. This aims to identify more quickly which strategies will have no or minimal environmental effects to avoid further time being spent on them.

Martin Smutný added that indeed SEA could convince politicians to green policies. However, the rigidity of the procedure in some Member States, for instance the fact that applying SEA would require in some Member State a comprehensive baseline, can explain why some countries are afraid to implement SEA for policies and legislation.

The floor was given to the audience for a second round of questions / interventions. David L'Estrange, Programme and Project Manager at CAAS, an Irish consultancy providing services on planning and environmental issues to public sector bodies and planning authorities, mentioned that a recent Court case related to the Habitats Directive (C-323/17 - *People Over Wind and Sweetman*) is increasing the number of plans and programmes requiring Appropriate Assessment, and consequently is increasing the number of plans and programmes requiring a full SEA. Mr L'Estrange argued that this could negatively affect the efficiency of the Directive and that further clarity is needed on this issue.

Nektaria Moskofidis, legal officer at the Department of Environment and Spatial Development of the Flemish Government, reiterated concerns linked to the recent Court cases, and indicated that public authorities need to have legal certainty on when they have to carry out SEA. She indicated that there is a need for guidance on this issue or for a modification of the Directive to exclude policies and legislation from the scope of the SEA Directive. In addition, Ms Moskofidis highlighted that there is no possibility to carry out screening when a plan/programme is on a regional or national level and sets the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92. In those cases, and a full SEA has to be carried out, even when there are no significant effects on the environment.

Jerzy Jendrośka reacted on two points of the discussion. First that SEA is a process and that it should be carried out by authorities and not by consultants. The environmental report can be supported by experts but ultimately the SEA is the responsibility of the authority. Second, regarding the costs of procedural delays, Mr Jendrośka recalled that delays are not necessarily bad and are actually proving that the process is working as authorities should take the time to revise and improve the plans and programmes.

Panellists were given the floor to respond. Cara Davidson mentioned that there is an in-house team in the Scottish Government dedicated to SEA, which does the SEAs at national level and provides guidance to local level practitioners. The relationship between the plan-maker and the SEA is very important at national level. In this sense, having an in-house team in the Government is considered more effective and efficient than contracting external service providers.

Martin Smutný responded that the perception in Member States like Czech Republic or Slovakia is that SEA is something you hire a consultant to do. This is the understanding and the habit. Regarding administrative costs, authorities usually consider SEA as part of their job and do not think in terms of additional costs.

The floor was given to the audience for a last round of comments. WWF Greece remarked that to have an effective evaluation, there should be a separation between the authority proposing the plan and the authority ratifying it to guarantee a level of independence.

A representative from a regional authority noted that when plans and/or programmes are developed and adopted in a 'tiered' approach, it often does not make sense to develop new alternatives for those at lower levels, as such decisions would have already been made at a higher strategic level. Nevertheless, there have been cases where a failure to establish alternatives in SEA for lower-level plans/programmes have been challenged in the court and the court upheld the requirement to develop and assess alternatives. He warned that the costs of such court procedures can be significant, along with delays of as much as 5 – 10 years in adoption of plans/programmes. He mentioned that in this way the SEA can sometimes be used as a political tool by those with obstructionist intent.

David Catot, head of the Environmental Evaluation Unit in the French Ministry for an Ecological and Solidary Transition, came back to the consequences of the D'Oultremont case (Case C-290/15) and indicated that it has problematic consequences for pieces of legislation that are not drafted as plans and that cannot be considered as plans. He added that even though policies and legislation should not be excluded from all environmental assessment, a more practical instrument should be put in place for very general laws. On the subject of procedural delays, he mentioned that, even if the process of SEA has an added value and is supported by his Ministry, it is not always perceived in a positive way by other stakeholders. Certain representatives of sectors do find that SEA is a burden sometimes that slows down the adoption of local plans, which might represent an issue that should not be overlooked.

Martin Smutný mentioned that the first Czech 'SEA law' adopted in 1992 before the adoption of the SEA Directive was only a short paragraph on SEA. This was sufficient to establish the SEA practice in the country with both good and bad examples of SEA, which continued in more or less the same way further with legal framework significantly elaborated to transpose requirements of SEA Directive. Therefore, the legal framework does not necessarily need to be very detailed to be effective.

- **Relevance**

The third session of the day was dedicated to the relevance of the SEA Directive. This session was moderated by William Sheate.

- Emerging findings of the evaluation study

Špela Kolarič presented the emerging findings from the evaluation on relevance. She recalled that the relevance criterion assesses whether the original objectives of the SEA Directive continue to correspond to the needs of current and future EU planning, assessment and environmental policy. It looks at whether or not the objectives of the legislation remain necessary and appropriate, and if the objectives and requirements set out in the Directive are still valid in achieving sustainable development.

The targeted stakeholder consultation showed a strong consensus on the relevance of the SEA Directive for environmental protection and sustainable development. Stakeholders generally indicated SEA Directive and its implementation is consistent with the current and likely future needs of EU environmental policies, in particular in areas of sustainable growth and biodiversity conservation. According to responses to the targeted questionnaire, the Directive appears less consistent with areas of resource efficiency and the circular economy, climate change adaptation and mitigation, sustainable cities, and soil protection, which are more recent developments in environmental policy. The SEA Directive has also largely kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development, although some effort may be needed to reflect the latest developments in sustainability.

Regarding citizen's involvement, the Directive facilitates and ensures public support for more sustainable approaches and solutions. There is more active engagement at local/regional level where citizens more directly affected. However, there is a need for greater public participation on strategic level, which calls for a greater public awareness of the SEA Directive.

- Reactions from the panel

Henrietta Enikő Csató, head of the Major Project and Phasing Unit at the Monitoring and Evaluation Department of the Hungarian Ministry of Innovation and Technology, first explained that her unit is the coordinating body for Operational Programmes (OPs) of Cohesion Policy and that she would speak mainly from that perspective. She mentioned that the Monitoring and Evaluation Department started a programme to

help the programme managers of OPs in the SEA screening process. The same Department also started a monitoring programme to follow the recommendations of all SEAs carried out in the 2014-2020 programming period. This task consisted in assessing how the recommendations of the SEAs were integrated in the text of the OPs. A first conclusion was that addressing the horizontal recommendations of the SEAs is not easy for programme managers and that they require assistance. Ms Csató then explained that to further investigate this issue, an SEA working group was created gathering the programme managers of the different OPs as well as policy-makers. Interviews were also carried out with programme managers, which helped to understand their needs and what type of support they asked for. This work has been instructive for all parties. Ms Csató then mentioned that through this work, the Monitoring and Evaluation Department also identified that the requirements of the SEAs were not entirely fulfilled, in part because programme managers lacked guidance or supervision. The Monitoring and Evaluation Department needs to take more responsibility to ensure that it is done. Ms Csató then raised the issue of programme modifications, for which the relevance of carrying out a complete SEA should be examined to determine whether a simplification of the procedure might be warranted. Ms Csató concluded by saying that a clarification of the requirements for application of the SEA Directive for plans and programmes at different levels would be welcome.

Maria Rosario Partidario, professor at the University of Lisbon, Portugal and the University of Aalborg, Denmark, and consultant on strategic assessment for sustainability, started her intervention by questioning the relevance of the requirements of the Directive to achieve the objectives of the Directive. Is SEA, with a rather reactive nature as required by the Directive, the right instrument to achieve a high level or protection of the environment and to ensure that environmental considerations are integrated into strategic decision making? Ms Partidario stated that there are a number of reasons to refocus the Directive. One reason is that too much attention is given in the Directive to short-term policy objectives, particularly to the siting of projects. There is a missed opportunity to address global issues, such as climate change, that cannot be addressed project by project, or plan by plan. Current SEA practice as required by the Directive is mainly about anticipating Environmental Impact Assessments, which is very limiting in view of the broader environmental challenges faced by the EU.

Ms Partidario stressed that global challenges require more inventive and open discussions, and different forms of public and stakeholder engagement, which can be achieved through more strategic oriented forms of SEA, which is not what is required in the Directive. Following up on the morning's discussions, she suggested that, since policy-making is non-linear, a different form of environmental assessment might be needed for policies or strategic decisions, which are not necessarily legislation, but can be national, regional or even local long-term strategies that set a direction for the future. Ms Partidario indicated that it is necessary to encourage planning and policy makers to reach out to these global issues, and that SEA has the potential to be an instrument to support this if it is used to its full strategic potential. She concluded by questioning whether the type of SEA that is required in the Directive is really the instrument that we need, an instrument to control decision-making, in similar lines to environmental impact assessment, or if instead SEA should be a constructive instrument, which is going to help planners and policy makers to build more sustainable policies for the future, and which may be more useful even for countries that already have an advanced planning system in place. If an instrument to tackle current and future challenges, and to build a more sustainable future, is created, there would also be more willingness from planners and policy makers to do SEAs.

Lone Kørnøv, professor at Aalborg University and Head of The Danish Centre for Environmental Assessment (DCEA) structured her intervention around the two following questions: Is the SEA Directive still relevant? And how can the SEA Directive stay relevant? On the first question, she first mentioned that the SEA Directive is relevant to a larger scope of plans and programmes and that there are still decisions

that are likely to have significant effects on the environment that are taken without a proper environmental assessment. She then mentioned that the relevance of the SEA Directive has been found to go beyond the formal scope of the Directive, that SEA is used beyond what is required. Private actors are seeking to innovate by changing the focus from assessment of effects to using SEA as a facilitator for sustainable decision-making in business. This proactive perception and use include that environmental concerns are perceived as an opportunity for development, and that SEA is a facilitator and becoming more strategy based. This is a trend mainly in the industrial sector and energy sector and it relates to the circular economy and climate change mitigation. The fact that SEA becomes more and more relevant to business is also due to their general less reactive and more pro-active approach to social and environmental issues.

On the second question, Ms Kørnøv explained that for the SEA Directive to stay relevant, the type and speed of change inside the Directive has to reflect the type and speed of change around the Directive, as we are in a rapidly changing world. She mentioned that although the purpose of the evaluation is to take stock of what has happened in the past, she would encourage the evaluators to produce findings that can inform future developments and reflect on how the Directive can stay relevant. Ms Kørnøv then raised three main points that would support the continued relevance of the Directive: the first point was to decide to be relevant – and take the leadership, because being relevant and staying relevant is an intentional choice; the second point was to apply SEA or some form of SEA to legislation and administrative orders because SEA is relevant for these acts; and the last point was to support practice beyond the formal scope of the Directive, because there are very interesting practices outside the policy sphere, not entirely visible yet. These private-led processes towards more proactive planning and use of SEA as a facilitator require a type of support that would enable further exploration and sharing of experiences and opportunities, while respecting national discretion in implementation.

Marius Costin Nistorescu, environmental consultant and managing director at EPC Consultanţă de Mediu SRL in Romania, explained that, based on his experience, one of the difficult part of preparing environmental reports is to determine what are the significant effects. The Directive is based on the idea of 'significance' of effects, but there are no thresholds, no indication of when an effect becomes significant. Coming back to the earlier discussion of calculating the number of frogs killed as a result of implementing a transport plan, he enquired, whether three frogs killed during the construction of a road results in a significant impact. can be considered as significant. He then explained that although it is possible to do modelling of population trends and set thresholds, what is really needed from a strategic point of view is to link the environmental assessment to the targets laid down in EU environmental legislation. For example, in the field of biodiversity, this would link to the conservation status, e.g. whether the plan or programme is going to change the conservation status. In the field of water protection, to the status of surface water bodies, e.g. whether the plans will help or impede reaching the good status. There are objectives and targets in many pieces of EU legislation. The focus of the assessment should be on whether the plan is supporting or is blocking the achievement of these thresholds. Mr Nitorescu then suggested that SEA needs to better integrate the green infrastructure approach, particularly the assessment of ecosystem services and ecological connectivity, because it contains everything that is needed in biodiversity assessment, but also for achieving the targets of the Water Framework Directive. He suggested as an example the environmental assessment of a transport master plan, where some of the questions that should be answered relate to the amount of green infrastructure that should be maintained or identification of connectivity issues.

- Questions and answers

The first intervention was made by Siim Vahtrus who noted the disconnect between the positions that were expressed in the different sessions of the workshop. He

referred in particular the disconnect between the academics in the relevance session who indicated that for the Directive to be relevant and stay relevant it needs to have a wider and more long-term perspective and apply to policies, while the authorities in the session on efficiency argued that SEA should not apply to legislation and orders. He then remarked that since the main obligations under the Directive are to make decisions based on evidence and to organise public participation, one can wonder what kind of policies were referred to here that should be afraid of public scrutiny. Then Siim Vahtrus asked Maria Partidario what are the critical shortcomings of the Directive blocking the use of SEA as a long term strategic instrument, and questioned whether the obstacle is really the way the Directive is drafted or whether it is rather poor implementation practices.

Luis Martins Dias, senior advisor at the Netherlands Ministry of Infrastructure and Water Management reacted to Maria Partidario's intervention saying that SEA practice to a large extent confirms her conclusion that SEA is too focused on plans setting the framework for EIA projects rather than on long-term strategies or policies. He indicated that based on his experience SEA is also not always perceived as a constructive instrument for the development of plans but rather as an obstacle. He then asked the panel what could be the solutions to this problem, what could be an appropriate instrument for strategic planning.

Ursula Platzer-Schneider stressed that the Directive does not impose a lot of obligations on authorities, it requires carrying out SEA for certain plans and programmes, to do scoping, to draft the environmental report, to carry out public consultation, and take the feedback of this consultation into account. It does not require anything more than these procedural elements. She indicated that the Directive is flexible, that it does not indicate to which level of detail the environmental report is supposed to go into, it does not say that the environmental report has to be lengthy – a ten-page environmental report for a strategic plan can be a good environmental report. The Directive is flexible enough to be adapted to the needs of the authorities. Ms Platzer-Schneider then reflected on one of the points raised by the Emerging Findings Report, that stakeholders seem to believe that SEA seems is more effective at local level than at the strategic level. She indicated that the reason for this is that the measures of these plans are more concrete while more strategic documents, whether they are plans or policies, lack details, present only general measures, leaving everything open. This shows that if there is not a strong planning will at national level, the will to propose more concrete measures on a longer-term basis, then the SEA cannot contribute very much to the planning process.

Stephanos Ampatzis indicated that when the SEA is combined with Appropriate Assessment or when it is supported by another EU policy that defines substantive requirements or thresholds, such as the Water Framework Directive, it is more robust and more relevant than when the SEA is not accompanied by such an EU policy. When there is a strong environmental policy at EU level, then the SEA can be a very powerful tool, setting both for procedural and substantive requirements. He then asked the panel whether to make SEA more relevant we need the parallel development of EU sectoral policies.

The floor was given back to the panel to respond to the first round of comments. Maria Partidario agreed that the Directive is flexible to some extent. However, there are requirements to fulfil, and if the decision-making culture in the Member State allows that, then the Directive can be adapted to the needs of plan makers. However, the culture might not be flexible and in that case, plan makers first need to comply with the legislation before reflecting on what they really need to do. She then mentioned that the problem is that SEA is seen as the production of an environmental report – that often the first thing done in an SEA is the table of content of the environmental report – and that this is linked to the way the Directive is drafted because SEA is defined there as the production of the environmental report. This is one of the limitations of the Directive. SEA becomes a bureaucratic process, dependent on the

budget allocated to the production of the environmental report – if the budget is low the report will be of poor quality but the requirements of the Directive will be met anyway. Many Member States are solely focused on fulfilling the requirements of the Directive.

Ms Partidario acknowledged that SEA appears easier to be carried out for local plans that have more concrete effects on a given area because in these cases SEA is assessing effects, and this is what planners know about. More high-level plans, that have less concrete territorial materialisation, are often considered too strategic for SEA. However, she explained that to achieve the objective of a high-level protection of the environment the plans and policies that really matter are not those local concrete plans – for which EIA could be used – but the high-level policies and strategic planning that is done at national level.

Going on to the possible solutions to make SEA more relevant, Ms Partidario mentioned four elements. First, the timing of the SEA procedure is crucial and the SEA should be started at the same time as the preparation of the plan. If the SEA is only started when there is a proposal on the table it is already too late. Second, plan-makers, decision-makers need to feel that they own the SEA process, that this is their instrument. Third, SEA is an instrument that is supposed to help building the plan, so it should be integrated to the plan preparation process, and meetings of the plan makers and the SEA team should occur very regularly, not just a few times in the whole process. The fourth element is that plan makers should have a very clear vision of the objectives of the plan and of the timeline to achieve these objectives

Lone Kørnøv reacted to the idea that there would be a disconnect between to the comments made in the effectiveness and relevant sessions by stressing that the SEA Directive is one of the most important pieces of EU environmental legislation and that it is still very relevant nowadays. She then mentioned that she agreed with the comments made by Ursula Platzer-Schneider, that the Directive is flexible and that it should remain as flexible as possible and should keep the focus on procedural aspects. But the Directive should be complemented in practice by developing 'regulatory sandboxes', by prototyping SEA processes, tools and approaches across the Member States and maybe with the support of the Commission.

Marius Nitorescu explained that when preparing a plan, the plan maker should think of how the plan is going to affect objectives and targets that are in the legislation, for instance to think about how the plan is going to affect the conservation status. He mentioned that this approach can be taken at all levels, local, regional, national, and for all sectors. He referred to two EU funded projects in the Carpathian region trying to incorporate the green infrastructure approach – i.e. how much land should be kept to maintain the animal population levels and how can infrastructure be developed in the region without affecting the conservation status.

Henrietta Enikő Csató indicated that flexibility can be dangerous because it can reduce the sense of responsibility of plan makers regarding SEAs. She explained that in her experience, programme managers need to be guided to implement the SEA recommendations and that we should be careful with adding more flexibility.

William Sheate intervened, before giving the floor back to the audience, to recall that the Directive is still quite recent – there are fifteen years of practice across the EU – and that it is probably not surprising that some of the practice has been built off EIA, especially regarding the level of details and the evaluation of effects. However, this is not incompatible with applying SEA to more strategic planning that drives long term policy actions. The two approaches are compatible, and there could be different requirements for different types of plans, programmes, and policies/strategies in the same Directive if there is support for such an arrangement.

The floor was given back to the audience for a last round of comments. Veronica Ten Holder provided some insights from the Dutch experience related to SEA of long-term strategic plans. Following intense discussions with competent authorities, the Netherlands is now trying to change the SEA from a static document to a dynamic environmental assessment, where the SEA becomes an outline of the potential outcomes of different policies. In time, through monitoring and evaluating whether ambitions have been met, the plan and the risk assessment can be adjusted. Veronica Ten Holder explained that this is a development that is happening now in the Netherlands because there is general will to make plans more flexible and long-term. She added that in these monitoring and evaluation processes, there has to be room for stakeholder participation. She also stressed that it is important that the monitoring and evaluation procedures for both the plan and the SEA are included in the plan.

Marie Hanusch then asked Veronica Ten Holder what could be an efficient way to document these monitoring and evaluation processes in a dynamic process such as the one she described. She asked whether there is a focus on some aspects of the plan, on a specific set of indicators or if the monitoring process covers everything that is covered by the environmental report.

Veronica Ten Holder replied that they would advise to focus on a specific set of indicators to ensure that the monitoring process is done efficiently, without an excessive amount of research and monitoring to be done. She mentioned that the risk in doing that was to overlook certain indicators that did not seem significant at the beginning but become important during implementation. However, the selection of indicators relies on expert judgement. She added that there is some current reflection on how SEA can include milestones at which policies should be reconsidered and ambitions should be revised. She concluded by saying that the whole point of this reflection is to integrate the SEA in the planning process.

Jerzy Jendrośka came back to the discussion on the flexibility of the Directive and stressed that the Directive should not be more flexible but on the contrary more prescriptive to ensure that it is actually implemented in the Member States. He then indicated that, in agreement with what was said before, the SEA should start very early in the decision-making. The Directive only says that the SEA should happen before the adoption of the plan or programme, which allows the SEA to start very late. It should be a requirement of the Directive to start SEA early in the decision-making process when options are still open.

William Sheate reacted to the last comment stressing that there are a lot of good practices related to SEA that could be further disseminated and that some experiences like the Scottish one, where the SEA team is really guiding plan makers to improve the planning process are interesting in that regard. He then thanked all participants and closed the session on relevance.

- **Coherence**

The last session of the day focused on the coherence of the SEA Directive with other relevant EU legislation and policies. This session was moderated by Sarah O'Brien, senior policy advisor at Milieu.

- Emerging findings of the evaluation study

Paola Banfi, policy advisor at Milieu, presented the emerging findings of the evaluation on coherence. She recalled that evaluating coherence means assessing the relationship between legislation, policies and strategies including determining whether there are significant contradictions or conflicts that stand in the way of their effective implementation or which prevent the achievement of their objectives. The evaluation looks at whether the SEA Directive is logical and consistent with other relevant

environmental legislation, with key sectoral policies and with relevant EU international obligations.

A review of the legislation shows that the SEA and EIA Directives and the SEA and the Habitats Directive are coherent. The provisions of the SEA Directive specifically cover interactions between SEA and EIA and between SEA and Appropriate Assessment (AA) (Article 3(2)). The SEA and EIA Directives apply on their own merits (plans/programmes – SEA Directive and projects – EIA Directive) and AA is focused on biodiversity impacts, allowing for a more detailed assessment of this aspect, while the SEA is focused on all environmental impacts. Stakeholders consulted highlighted that risk of overlaps is higher between SEA and EIA and more limited between SEA and AA and that this risk can be mitigated if Member States implement joint or coordinated procedures. Practical synergies between the Directives include the use of data in assessments under both SEA and EIA (Article 5(3) SEA Directive and Article 5(1) EIA Directive) and the potential to use a tiered process. Higher quality assessment is a key synergy between the SEA and Habitats Directives. However, implementation issues (timing of assessments, capacity of actors, failure to share data) may hinder these synergies.

When presenting coherence of the SEA Directive with other sectoral policies, Paola Banfi explained that coherence is clear at the level of objectives - all the sectoral legislation analysed incorporates the principle of sustainable development and some sectors (water, waste, marine) integrate environmental objectives from the onset. However, some of the sectoral policies (energy, transport, ESIF policies) govern the funding of interventions that potentially result in both positive and negative impacts on the environment. Specific mechanisms are therefore put in place to strengthen the link between these policies and the SEA Directive: e.g. as a pre-condition to benefitting from Cohesion Policy funding Member States must fulfill an ex-ante conditionality that requires them to set up arrangements for the effective application of the SEA and EIA Directives and, in the case of transport projects, to establish a comprehensive transport plan(s) or framework(s) for transport investment and to undertake an SEA. In the energy sector, the TEN-E Regulation requires Member States to take measures to 'streamline' all environmental assessment procedures stemming from EU legislation, including SEA. Paola Banfi presented the results from consultation activities which suggest that SEA supports the achievement of these sectors' objectives. SEA applied to these sectors' plans and programmes ensures better coordination between responsible authorities, more systematic public participation and ultimately more environmentally robust plans and programmes. There is a risk, however, that these benefits are not achieved if SEA is not carried out in an effective manner.

SEA Protocol and the Aarhus Convention, like the SEA Directive, provide for a system of procedural guarantees aiming at a high level of environmental protection and are therefore considered coherent with it. The text of the SEA Protocol is very similar the SEA Directive. There are, however, a number of differences between the two legal instruments (i.e. larger emphasis to health issues – SEA Protocol; reference to Appropriate Assessment – SEA Directive). Another important difference between the Protocol and the Directive relates to their scope of application: while the SEA Directive specifically refers to plans and programmes and does not mention policies and legislation, the Protocol differentiates between plans and programmes and policies and legislation. Finally, compared to the SEA Directive, the Protocol and Aarhus Convention have more detailed provisions on public participation.

- Reactions from the panel

Vesna Kolar Planinšič, Head of the Strategic Environmental Assessment Division in the Slovenian Ministry of the Environment and Spatial Planning, presented on the experience in Slovenia in implementing the SEA Directive and links with other EU policies, including the EIA Directive. The synergies between the SEA and EIA

Directives were noted, with both supporting EU environmental policy objectives. The SEA also supports the objectives of other EU environmental and sectoral policies, including water, waste, transport and energy.

The SEA Directive supports the integration of environmental protection objectives into Member State urban and spatial planning, supporting overall EU policy objectives. Assessment under the SEA Directive supports better quality of plans and programmes; where the quality of plans and programmes, the projects carried out within their frameworks tend to better reflect EU environmental policy objectives (e.g. in nature or climate protection), thereby supporting their coherence with EU policy.

In implementation, coordination of SEA and EIA assessments is critical. Limited technical capacity in carrying out assessments can impede this coordination. In Ms Kolar Planinšič's view, assessments under the SEA and EIA Directives should not be merged due to the risk that they would be too complex. Instead developers and environmental authorities should be supported in coordinating assessments through capacity building actions when needed.

Assessments of cross-border programmes is also challenging, and Ms Kolar Planinšič shared some of Slovenia's positive experiences in this area.

Jerzy Jendrośka, environmental lawyer, managing partner at Jendrośka Jerzmański Bar and professor at Opole University (Poland) started by discussing the relationship between the SEA Directive and the EIA Directive and came back to the discussion on the meaning of plans 'setting the framework for development consent of projects'. He explained that the common misunderstanding about the meaning of this phrase is to define it as mentioning the implementation or even listing projects subject to EIA, and that a clarification of the meaning of this phrase would be useful. Mr Jendrośka then mentioned that it would be useful to link the monitoring requirements under Article 10 of the SEA Directive to post-project analysis under the EIA Directive. It would also be useful to clarify what should be the content of screening decisions, because a lot of countries are asking for such clarifications. Mr Jendrośka also called for an EU database of SEAs that would give an overview of SEA practices in the Member States and share knowledge. He continued by commenting on the relationship between the SEA Directive and the Habitats Directive. He underlined that the main issue is that there is no clear rules regarding Appropriate Assessment (AA) in relation to plans and programmes referred to in Article 3(3) of the SEA Directive: for plans and programmes determining small areas, you might not make an SEA, although under the Habitat Directive, AA is mandatory. This creates legal uncertainty. He added that some Member States misinterpret the Directive and consider that AA applies only if SEA applies to the plan or programme. Regarding the relationship between the SEA Directive and the Seveso III Directive, Mr Jendrośka indicated that there should be a clear reference in the Directive to industrial safety in the screening criteria.

Going on to sectoral coherence, Mr Jendrośka stressed that although some sectoral policies are largely determined at EU level, such as energy or transport, SEA is only done for plans and programmes adopted at national level, which raises the issue of the assessment of pan-European cumulative impacts of these polices. Under the SEA Protocol, the EU should be responsible for such an assessment, but there is no EU-level instrument to do this. The pan-European impacts of Projects of Common Interest for instance should be assessed with an appropriate instrument (that might not be SEA Directive). Regarding climate change, Mr Jendrośka indicated that climate change plans are covered by the Directive, but that a clearer reference to adaptation strategies could be made to ensure that Member State subject these to SEA.

Mr Jendrośka concluded on the relationship between the SEA Directive and the Aarhus Convention, mentioning that a number of areas, in particular access to justice, need to be improved.

Johannes Drielsma, deputy director of Euromines, mainly focused his intervention on the coherence of the SEA Directive with sectoral EU policies. He indicated that the emphasis on the Directive on a 'high level of protection of the environment' shows that the Directive starts to be slightly dated as nowadays the focus should be placed on achieving sustainable development, and ensuring a high level of social protection as well as environmental protection, in particular in view of the EU 2020 objectives on poverty reduction, toward which no progress has been made. The way plans, programmes or legislation are adopted in the Member States can impair social and financial capital, so it might be useful consider more broadly the coherence with sustainable development. Mr Drielsma mentioned that strategic assessment could facilitate the development of win-win solutions for both environmental and social capitals if social capital was better considered. He indicated that the Directive should not be an instrument to prevent programmes, it should be an instrument to signpost environmental issues to take into consideration but not pre-empt the definition or assessment of individual options or alternatives. Mr Drielsma added that EU sectoral policies such as transport or even policies related to climate change do require the input of raw materials, and that, in this perspective, a minerals policy would be recommended. This policy would need to undergo some sort of strategic assessment. He then mentioned that there has been so far some uncertainty regarding the level of details between SEA and EIA, and maybe some SEAs have gone into a level of details that should have been left to EIAs, which leads to legal uncertainty. He stressed that legal uncertainty prevents investments and has an impact on employment and wealth creation. Mr Drielsma continued with a remark on the way effectiveness is measured in the evaluation as the level of changes made to the final content of plans and programmes, which might not be the right measure as it should be expected that in the future all planning and programming will take into account environmental considerations, and that in more and more cases the SEA will conclude that the plan / programme does not have to be changed. He then brought up the specificity of the mining sector, which, in relation to environmental assessments that assess different options for the siting of projects, is different from other sectors as the location of the operations cannot be changed. Although it does not mean that mining should be allowed everywhere there are resources, it means that, when doing SEAs, it should then be kept in mind that some sectors do not have the flexibility to shift to other areas. Mr Drielsma finally made a parallel between the suggestion from the NCEA to move towards more dynamic SEAs and the practice in the mining sector to prepare long-term closure plans, which aim to anticipate the closure of the operations and the rehabilitation of the land before the extraction starts. This has to be a dynamic process driven by the local community.

- Questions and answers

The first intervention was made by Siim Vahtrus who reacted on the inclusion of sustainable development and social aspects in SEA, indicating that although he agrees that SEA should to a certain extent take into account sustainable development in a wider sense, not just related to environmental issues, there is however a risk that, if SEA is taken as an overly broad tool, trying to assess everything, it then becomes a super assessment that replaces decision-making, which is not the purpose of SEA. The SEA is supposed to look first and foremost at the environmental impacts of plans and programmes to find the most environmentally suitable option. Siim Vahtrus added that this trend can be observed in EIA practice in some Member States, where the EIA has become some kind of super assessment substituting itself to decision-making and this has not led to good results.

A representative from a Member State's environmental authority asked to the evaluation team if the assessment of coherence will take into account future policies under the new Environment Action programme or Multiannual Financial Programme or the next Cohesion Policy. Sarah O'Brien replied that, in line with the Better Regulation Guidelines, the evaluation looks backwards at past experience and not forward. New policies will therefore not be taken into account in the assessment of coherence.

The floor was given back to the panel to reply to the first round of comments. Johannes Drielsma replied to the comment from Justice and Environment, indicating that SEA should not become a super assessment, that would be going too far, but that however, to stay relevant, the SEA should be open nonetheless to other important factors such as preserving social and financial capital. He added that ultimately, the balance between these issues should be integrated in the planning process and SEA should not be needed anymore.

Jerzy Jendrośka recalled that it was a long struggle to get the SEA Directive adopted and that the Directive is still in an early stage of implementation. The purpose of SEA, integrating environmental concerns into planning, is still challenging and not well achieved, so the scope of the Directive should not be expanded to take into account other aspects. He added that social impact assessments are carried out in some Member States, or different tools, such as sustainability appraisals in the UK, that can be used for that purposes, but SEA should not be transformed into such an instrument.

Johannes Drielsma replied that he was not suggesting a new Directive or a new instrument but a change of focus within the actual framework.

Henrietta Enikő Csató reacted to the previous remarks on the integration of social aspects in SEA, mentioning that social aspects should be taken into account in various environmental issues, such as energy poverty, air quality. SEA is a good tool to highlight these issues as well.

David Catot indicated that the SEA Directive is not a Directive on sustainable development but that its objective is to reach a high level of environmental protection. He explained that the directive was needed in the 1990s to ensure that environmental protection was treated equally to social and economic aspects. It is because this was lacking that the EIA and the SEA Directives were needed. He added that in his opinion it is not a solution to include social and economic aspects into an assessment that is primarily an environmental assessment. It would weaken the environmental assessment. Although social and economic aspects are important, they should be dealt with separately from the environmental assessment.

Jochen Ritter, Deputy Head of Division at the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, agreed with the French authorities that including social and economic aspects would weaken the Directive. The SEA Directive focuses the environmental dimension of sustainability, but as other dimensions of sustainability are connected, enhancing the environmental dimension of sustainability has benefits on other aspects as well.

The floor was given back to the panel for reactions. Johannes Drielsma agreed that at the time of adoption of the SEA Directive, environmental protection needed to be better integrated in decision-making. However, he pointed out that the world has changed since the 1990s pretty rapidly. The concept of sustainable development is widely used in policy development and is part of the objectives of the SEA Directive. He added that it is not necessary to reword the Directive, but simply to shift the focus from environmental protection to sustainable development, so that its objectives keep up with the time and stay relevant. Mr Drielsma then indicated that the primacy given to environmental protection can lead to overly cautious decisions from authorities, blocking projects that do not destroy the environment. He insisted on the need to preserve the social capital and mentioned that this is not necessarily a threat for the environment.

Giacomo Luciani, policy officer in Unit E.1 Mainstreaming and Environmental Assessments in DG Environment, raised the issue of the transnational aspects of the

Directive and asked Ms Vesna Kolar Planinšič to elaborate on the challenges related to the SEA of cross-border Cohesion Policy programmes.

Martin Smutný indicated that certain social and economic aspects are already included in the Annex I of the Directive listing the information that should be provided in the environmental report. The Annex mentions health and population aspects but it's a matter of scoping, sometimes covering environmental aspects is enough, sometimes the SEA needs to cover more social aspects. The SEA should be driven by decision-making, so the key point is to understand what is needed to take an informed decision. What is in the Directive is sufficient, it is up to the competent authority to decide on each particular case what should be covered in the SEA.

Luis Martins Dias indicated that the Directive leaves margin to include social aspects if needed. He then mentioned that a social impact assessment implies a whole process involving stakeholder and public participation and goes therefore beyond looking at social aspects in the SEA report. He added that in the Netherlands also a cost-benefit assessment is carried out for large projects to capture the economic aspects and that these assessments, social and economic, should in his view be kept separated from the environmental assessment. All these assessments should remain separate and be given equal consideration in decision-making.

The floor was given back to the panel for comments. Vesna Kolar Planinšič replied to the question related to cross-border programmes, in particular the Alpine Spatial programme. She mentioned that in this example the SEA really helped achieving a good programme. There was a very good cooperation between the different countries that participated in the meetings. She explained that this example illustrates the value of starting SEA early in the process. All the early phases (e.g. scoping) were completed on time and that allowed to carry out the procedure on time. The main lesson learned from this process was that the SEA procedure should be very carefully planned.

Jerzy Jendrośka indicated that there are merits in having specific instruments for different issues. The SEA is an instrument to address the gaps in the political decision-making, to ensure that social and economic issues are not the only issues taken into account but that environmental issues and sustainability are also considered. He explained that making SEA the overarching instrument covering everything would not work. The final political decision should take into account all aspects and SEA is here to support that.

Sarah O'Brien thanked the panellists and closed the session on coherence.

- **Preliminary conclusions and Added Value**

Jennifer McGuinn first provided some preliminary findings on the last evaluation criterion, the EU Added Value of the SEA Directive. She recalled that EU Added Value looks at counterfactual scenarios – i.e. could the same results be achieved without the EU intervention, and also at whether these issues continue to require action at EU level. She mentioned that the discussions during the different workshop panels have made in clear that the Directive does add value, although there might be problems with its implementation, but it would be unimaginable to go twenty years backward. She added that there is an added value in having the same legislation across all Member States as, without the Directive, there would likely not be a systematic environmental assessment of all plans and programmes in all the Member States. Only a handful of Member States had any type of national legislation requiring the assessment of plans and programmes before the adoption of the Directive, and even then, it was not done in a consistent and systematic way for all kinds of plans and programmes as required by the SEA Directive. This should be kept in mind especially as a lot of the discussion focused on flexibility. Other benefits of having the same legislation across the EU include facilitating transboundary planning, creating a level

playing field across Member States, and sharing good practices and experience. She stressed that the discussions showed that there is a knowledgeable community behind the practice of SEA that has a lot to learn from each other. Jennifer McGuinn thanked all the panellists for interesting contributions and the audience for a lot of interactions during the whole day and underlined that these contributions shed light on the key issues that the evaluation team should keep in mind to put the evidence collected into perspective.

Jennifer McGuinn then summarised the key points mentioned during the day. She recalled that Joanna Drake mentioned in her intervention at the beginning of the workshop the long-term strategic challenges that we have ahead such as climate change, biodiversity loss, trade-offs between social needs, economic development and environmental protection and how SEA is the right instrument to take all of these into account. This echoes the discussion in the effectiveness session about the value of the process and the need to focus the assessment at a strategic level. She then mentioned that real challenges have been raised during the day, such as the fact that a tendency on the part of authorities and experts towards determining concrete environmental effects, vs keeping the focus at the strategic level, may be linked to the short-term nature of planning in most Member States. There are some weaknesses in implementation as well – such as starting the SEA too late in the process, or where alternatives can be inefficient or impossible to develop. There were also issues raised in relation to the possible expansion of the scope of the Directive, triggered by Court decisions, but also because of the evolution of the actual needs, which may be shifting towards more long-term strategic thinking. Many also expressed the need for clarity with regard to the meaning of 'setting the framework for development consent of projects', and perhaps more flexibility in the way the SEA procedure must be applied at different levels of decision-making and to different situations. She concluded by saying that the discussions showed a lot of enthusiasm and ambitions for the Directive but that there are still a lot of issues to be addressed and in some cases conflicting points of views.

- **Closing remarks**

Aurel Ciobanu-Dordea, Director, DG Environment, Directorate E Implementation and Support to Member States, thanked all workshop participants for their diverse and inspiring feedback. He recalled that the REFIT exercise is a helpful moment of reflection to take stock of the implementation of an intervention and of the challenges encountered so far. Mr Ciobanu-Dordea mentioned that a lot of suggestions have been made during the discussions to improve the wording of the provisions of the Directive. He recalled however that the Directive had been originally drafted as a procedural Directive in part to cater for subsidiarity and in part to cater for the different situations, culture and administrative arrangements in the Member States. The Directive cannot offer a one-size-fits all formula that would solve every problem for all plans and programmes. He then reflected on the expansion of the scope of the Directive, mainly following the recent case law of the European Court of Justice; he indicated that these Court rulings do not come as a surprise, are in accordance with the spirit and the letter of the Directive and do not entail an expansion of the scope of the Directive. He added that perhaps the Directive has not been so far implemented to its full extent. He then mentioned that the Directive has offered a fairly flexible and sufficient framework to ensure that environmental issues are considered and integrated in the decision-making. He concluded by saying that the Commission now needs to reflect on the suggestions that have been made, look at the evidence and the results of the evaluation to bring forward some conclusions and suggestions of actions, whether these are amendments to the Directive or guidance etc., keeping in mind what can be realistically achieved.

ANNEX VI: SYNOPSIS REPORT

Introduction

In line with the Better Regulation guidelines on stakeholder consultation, the synopsis report summarises the methodology and results of all of the consultation activities undertaken for the study to support the evaluation of the Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive). It is the result of the consultation strategy that was developed for Directorate-General Environment (DG ENV) and approved by the Steering Group.

This report presents the key issues raised in the consultation activities. The detailed overview of quantitative and qualitative results of the public consultation is contained in a separate report. The results from the targeted consultation questionnaire and interviews are presented at length in the evaluation study.

Consultation strategy

Consultation activities served the dual objective of collecting the evidence necessary to answer the evaluation questions and providing sufficient opportunities to all interested parties to provide input and comply with the Better Regulation guidelines. The target group selected was necessarily large, encompassing stakeholders with expertise or experience in carrying out Strategic Environmental Assessment (SEA), as well as all citizens, groups or organisations that might have an interest in the issue. The following stakeholder groups were identified:

- National environmental authorities, which are the **competent authorities responsible for the implementation and enforcement of the SEA Directive** in the Member States. Authorities with environmental responsibilities in the Member States also play a key role in the SEA procedure, as they are consulted on the scope and level of detail to be considered in the Environmental Report, as well as on the content of the Report itself.
- **Specifically designated bodies**, which are established in some Member States to supervise the quality of the SEA procedure and/or advise the authority responsible for the SEA procedure.
- **Public authorities in charge of the preparation and adoption of plans and programmes at national, regional and local level** in different areas, such as agriculture, forestry, transport, energy, water, town and country planning, land use, etc. These authorities are generally responsible for carrying out the SEA procedure for their plans and programmes.
- **Practitioners carrying out SEAs.** Public authorities frequently outsource the preparation of an SEA to expert consultants, who typically carry out several SEAs per year and are thus familiar with the functioning of the process.
- **Economic operators and NGOs**. The SEA procedure applies to certain plans and programmes that set an operating framework for many areas of economic activity, such as infrastructure (e.g. roads, ports, energy installations), agriculture and forestry activities, tourism, etc. Although the operators of those activities are generally not directly responsible for carrying out the SEA procedure, SEA outcomes can have important impacts on their activities. Environmental groups also have a keen interest in the SEA procedure. These groups are often directly involved in the public participation procedures provided for by the Directive.
- **Other stakeholders, such as academics, think tanks**, etc. that may also have an interest in the SEA Directive, given its nature as a cross-cutting tool related to environmental governance and decision-making.
- **Members of the public**, who have the right to an early and effective opportunity to express their opinions on draft plans and programmes and the SEA Environmental Report.

To achieve the objectives of the consultation and ensure that all groups of stakeholders were given the opportunity to provide their input, the following consultation methods were used:

- A 12-week online **public consultation;**
- A **targeted consultation questionnaire** sent electronically to stakeholders such as selected authorities, practitioners, academic experts, NGOs and industry associations representing environmental and economic interests;
- **Interviews** with authorities and other relevant stakeholders in 11 selected Member States;
- **Evaluation workshop and expert meetings**, including meetings of the Commission group of EIA/SEA national experts, and the final evaluation workshop with stakeholders.

Consultation methods

- **Public consultation**

- *Questionnaire and target group*

criteria) is an obligatory element of REFIT evaluations. The public consultation was available to all online and aimed to collect the views of a wide range of stakeholders and the general public. It gave stakeholders and citizens from all EU Member States the opportunity to express their opinion on all evaluation criteria. The public consultation ran from 23 April-23 July 2018 and was available in all 23 official EU languages. The questionnaire was accessible from the Commission's consultation webpage[110].

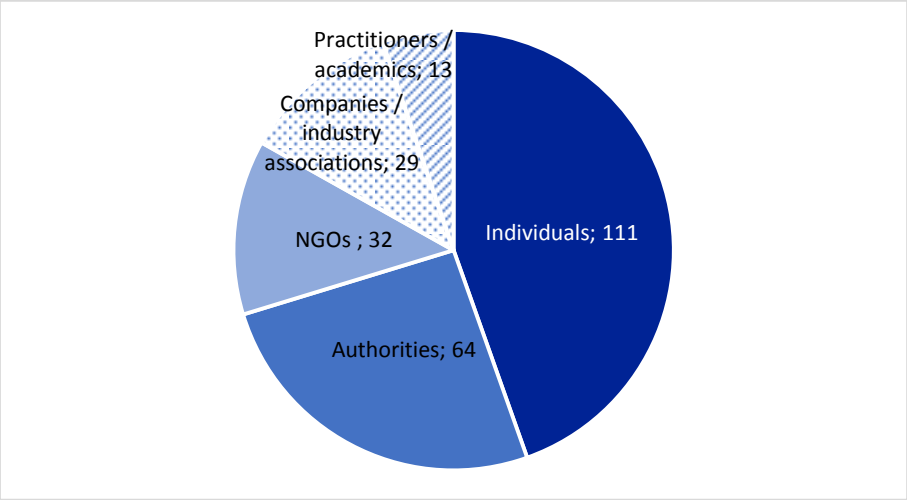
The questionnaire was divided into two parts: the first included general questions on the relevance of the SEA Directive to EU citizens and was aimed at all respondents; the second included more detailed questions on the implementation of the Directive and its performance, according to five evaluation criteria. This second part was particularly aimed at respondents directly involved with or affected by the Directive and its requirements.

- *Respondents*

A total of 249 responses were received. 187 respondents replied to both parts of the questionnaire, while 62 replied to the first part only.

[110] SEA consultation webpage: https://ec.europa.eu/info/consultations/public-consultation-evaluation-strategic-environmental-assessment-directive_en

Figure 1: Respondents to the public consultation, by stakeholder groups (n=249)



- *Use of answers*

Contributions to the public consultation were published on the SEA REFIT webpage[111]. In line with the Better Regulation guidelines on stakeholder consultation, respondents to the consultation were provided with two options for the publication of their contributions:

- Published with their name or the name of their organisation, as well as their country of residence;
- Published anonymously.

Results from the public consultation were downloaded in Excel format from EU Survey. A full report was drafted, presenting the distribution of respondents by stakeholder group, the general results of the closed questions, as well as results by stakeholder group and summaries of responses to open-ended questions. This report was used as input to the evaluation study. Full responses to open-ended questions were also provided to the entire study team. This report is available on the SEA REFIT webpage[112] and in Annex III of the evaluation report.

The public consultation showed that stakeholders and the public consider the SEA Directive as an important piece of legislation, which has fostered the integration of environmental issues into plans and programmes, brought environmental benefits, improved the plan and programme preparation process and increase public awareness and the transparency of the plan preparation process. The consultation also highlighted that stakeholders and the public regard public information and participation as critical in the SEA process, both to improve the quality of the SEA and of the plan / programme and to increase public awareness on impacts of plans and programmes, although they are divided on the effectiveness of public participation processes as they are currently carried out (e.g. late consultation when options are already decided, too limited dissemination of information, statement not reflecting enough on how consultation results have been taken into account etc.).

[111] REFIT Evaluation of the SEA Directive: http://ec.europa.eu/environment/eia/sea-refit.htm

[112] Idem.

- **Targeted consultation**

The targeted consultation addressed a narrower group of stakeholders than the public consultation and focused on those stakeholders with responsibility for the implementation of the policy or whose contribution is necessary for the success of the policy, and those with a stated interest in the policy. The targeted consultation was designed in two stages:

- An online questionnaire targeting a wide range of stakeholders, including authorities, practitioners, NGOs and economic actors;
- Interviews in 11 selected Member States with authorities and practitioners.

- *Targeted consultation questionnaire*

    - *Questionnaire and target group*

Using an online questionnaire allowed the project team to reach a wide range of stakeholders efficiently. The targeted consultation questionnaire was sent to environmental authorities in all Member States, SEA designated bodies (where they exist), selected authorities responsible for the preparation of plans or programmes subject to SEA in all Member States, selected academic experts and practitioners operating in the field of SEA, and NGOs and industry associations representing environmental and economic interests relevant to SEA at EU level.

Two authorities responsible for the preparation of plans or programmes subject to SEA were selected from each Member State. These authorities were selected at the suggestion of the members of the Commission group of EIA/SEA national experts. A shortlist was established, with a view to maintaining a balance between types of plans or programmes (Operational Programmes (OPs), sectoral plans and environmental plans) and between sectors (spatial planning, Cohesion Policy (CP), energy, transport, agriculture, water, waste, fisheries, forestry and industry). Where no feedback was received from a Member State, the study team conducted desk research to find contact details of authorities. In the UK, two authorities in England were contacted, along with two in Scotland, as the Scottish transposition of the SEA Directive differs significantly from that of England. Similarly, in Belgium, one federal authority was included on the list, together with two authorities from each region. In total, 58 planning authorities were contacted.

The list of EU organisations was established largely from desk research, while the list of practitioners was primarily based on the suggestions from Member State environmental authorities, completed by desk research. 42 practitioners were contacted.

The targeted consultation questionnaire was structured according to the evaluation criteria and was based on a series of evaluation questions proposed by the Commission. The scope of the questionnaire was broad and covered all aspects of the 11 evaluation questions. However, questions were also designed with the objectives of collecting information on topics where documentary evidence was particularly scarce (for instance costs and benefits). The questionnaire contained a combination of closed and open questions, allowing for some quantification of responses while enabling the collection of well-argued opinions, examples and evidence. As the consultation targeted a diverse range of stakeholders, and the evaluation questions covered many different aspects of the SEA Directive, respondents were asked to respond only to the questions for which they had sufficient expertise or experience to provide a credible and informed answer. Respondents were also encouraged to provide concrete evidence to support their answers, as well as using examples from specific plans and programmes.

- *Respondents*

The consultation ran from 7 May-7 September 2018. **76 responses** were received from 35 national environmental authorities and/or EIA/SEA bodies from all Member States, 22 authorities responsible for the preparation of plans and programmes from 15 Member States[113], 16 practitioners and academics from nine countries[114], and three EU environmental NGOs.

Figure 2: Respondents to the targeted consultation questionnaire, by stakeholder group (n=76)

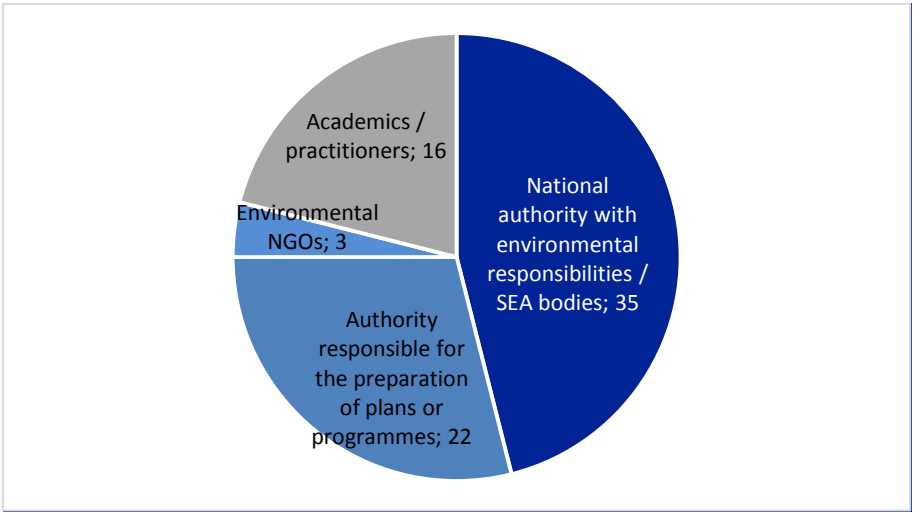


Table 1: Targeted consultation questionnaires sent and received, by stakeholder group

Stakeholder group	Number of questionnaires sent	Number of questionnaires received
National environmental authorities	32	28 (88%)
SEA bodies (other than environmental authority)	9	7 (77%)
Authorities responsible for plans and programmes	58	22 (38%)
Practitioners / academics	42	16 (38%)
EU level organisations	20	3 (15%)

- *Use of answers*

Contributions to the targeted consultation questionnaire were published on the Commission website. Respondents to the questionnaire were provided with two options for the publication of their contributions:

- Published with their name or the name of their organisation, as well as their country of residence;
- Published anonymously.

Results from the targeted consultation questionnaire were downloaded in Excel format from EU Survey. General results from all of the closed questions and results by stakeholder group were computed and provided in a readable format to the entire study team. Some of these data are presented in graphical form in the report.

[113] Belgium, Croatia, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia and Sweden.

[114] Austria, Croatia, Czech Republic, Denmark, Finland, Germany, Ireland, Portugal, and the UK.

Responses to open-ended questions were analysed by team members, using the qualitative content analysis method[115] and taking into account their inter-relationship with the closed questions (i.e. when an open-ended question requested justification for the reply to a closed question). The results of this analysis were integrated into the analysis of the evaluation criteria, according to the evaluation framework.

- *Interviews in selected Member States*

To complement the responses to the targeted consultation questionnaire, interviews were carried out in 11 Member States (Austria, Czech Republic, Denmark, Ireland, France, Italy, Latvia, Poland, Romania, Spain and Sweden). The selection of Member States intended to achieve a representative sample of Member States from different geographical regions, a mix of EU-15 and EU-13 Member States and of federal and non-federal States. The purpose of the interviews was to allow for more in-depth and focused responses from selected stakeholders on some of the issues that were key to determining the evaluation findings. As the interviews were carried out by national experts with the capacity to conduct stakeholder interviews in the national language, these interviews could reach targets that could not be included via other consultation tools. Interviews in each country were a mix of follow-up interviews with respondents to the targeted consultation questionnaire and interviews with new stakeholders, identified based on contacts suggested by national authorities and through desk research.

The in-depth interviews were intended to:

- Test emerging issues of importance for the evaluation, including draft findings and conclusions on specific evaluation questions, especially where consensus is mixed or understanding is unclear;
- Generate clear practical examples to illustrate a specific concept and serve as evidence;
- Broaden the range of targeted stakeholders, with a focus on regional and local level authorities and practitioners who might be more difficult to target through a written questionnaire in English.

- *Interview questions and guidelines*

Interviews with new stakeholders were semi-structured, relying on a pre-established interview guide covering common themes and questions, adapted to the specifics of each interview (type of stakeholder, Member State context, etc.) by the interviewer. The questions to ask in follow-up interviews were determined on a case-by-case basis by the interviewer, together with a member of the evaluation team, based on the questionnaire completed by the interviewee. The questions concerned specific points of the targeted consultation questionnaire, requesting more detailed explanations and illustrative examples. Interviews were carried out by 11 national experts in the relevant national language.

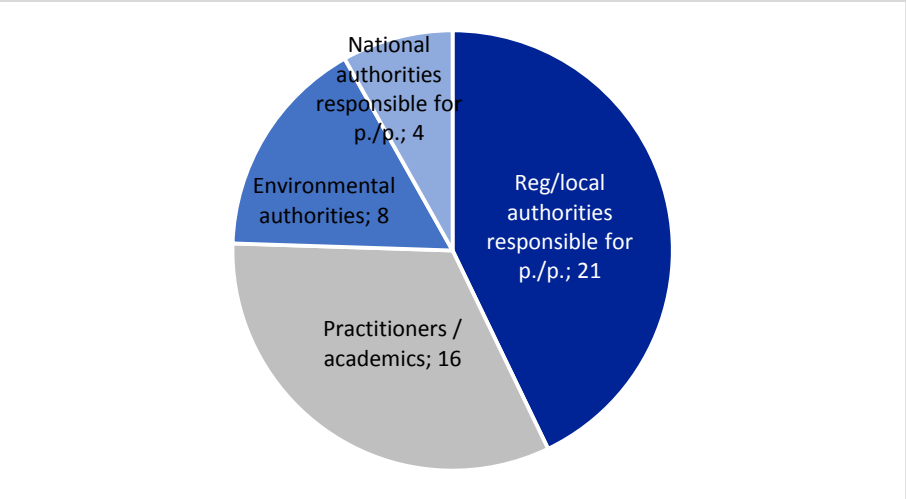
The project management team developed interview guidelines for the preparation and execution of the interviews. This guidance document included information on: the purpose of the interviews; the targeted stakeholders; instructions for contacting stakeholders, preparing (and tailoring as needed) the questions; and conducting the interviews. A meeting was organised with all national experts to prepare the interviews and answer questions.

[115] Assigning parts of the responses to the entries of a coding system, consisting of main categories related to the different elements of an evaluation question (e.g. types of costs, factors influencing efficiency) and sub-categories or statements, summarising what was said by respondents on these topics.

- *Stakeholders interviewed*

A total of 49 interviews were carried out between June and November 2018, most with regional and local authorities responsible for plans and programmes (21) and practitioners (16).

Figure 3: Interviewees by stakeholder group (n=49)



- *Use of answers*

Transcripts were requested for each interview. Once drafted, the transcripts were submitted to the interviewee for approval and additional input. Transcripts were then analysed using the qualitative content analysis method. Input from interviews was then integrated into the analysis of the evaluation criteria.

- **Evaluation workshop**

The evaluation workshop presenting the initial findings took place on 6 December 2018 in the Breydel auditorium in Brussels. The main session of the workshop was structured around the evaluation criteria, with a one-hour discussion of effectiveness, efficiency, relevance and coherence. The conclusions of the workshop included the first findings and reflections on EU added value. Each session began with a brief overview of the preliminary findings by the consultants, followed by a panel session led by three or four stakeholders, each of whom provided their views and feedback on the key issues raised under each of the evaluation criteria. Afterwards, the audience had an opportunity to ask questions of the panel, the consultants and the Commission.

The workshop was attended by 85 participants, including Member State authorities (40), practitioners carrying out SEA and academics (14), representatives of NGOs and industry (10), members of the EU institutions (13) and the consultants (eight)[116].

The evaluation workshop was used to validate the preliminary conclusions of the evaluation and to determine the relative importance of different issues related to the text or implementation of the Directive. More information about the workshop and the workshop report is available on the website of the European Commission[117].

[116] Figures based on the attendance list signed by participants at the evaluation workshop. It should be noted that the list might be incomplete if attendees did not sign in.

[117] REFIT Evaluation of the SEA Directive: http://ec.europa.eu/environment/eia/sea-refit.htm

Overview of consultation results

- **Effectiveness**

There was a consensus in the targeted and public consultation that the SEA Directive has contributed to the high level of protection of the environment and promotion of sustainable development. Stakeholders reported, however, that the Directive is more effective in addressing environmental issues like biodiversity, water, fauna, flora and landscape and cultural heritage, and rather less effective for material assets, population, human health, climatic factors and emerging environmental concerns in SEA, such as climate change, ecosystem services and natural capital.

The targeted and public consultation, as well as the evaluation workshop, showed that the effectiveness of the SEA Directive depends on how it is implemented. Issues related to the timing of the SEA (i.e. frequent late start of the SEA in the plan preparation process), the lack of feasible alternatives and predefined options, the absence of monitoring of the implementation of the plan, and challenges with understanding the SEA requirements (i.e. lack of clear definition of 'plans and programmes' and ambiguity in what is meant by 'set the framework for' projects subsequently subject to the EIA Directive) leading to higher level strategies not being subject to SEA were often mentioned as factors hindering the ability of SEA to prevent the negative environmental impacts of planning. In the targeted consultation, stakeholders reported that effective consultation with relevant environmental authorities and the public is one of the key factors in supporting the effectiveness of the SEA Directive. Respondents to the public consultation also strongly value public and stakeholder participation in the SEA process, although they identified some issues in the implementation of public consultations, such as the timing of the consultation (i.e. too late, when decisions are already made), the limited advertisement of consultations, the lack of proactive engagement with the public by plan developers, or the complex language and presentation of information. Despite these challenges, stakeholders had a generally positive opinion of the effectiveness of the Directive, as it ensures that environmental issues are considered at an early stage of the planning process.

The targeted and public consultations showed that the SEA Directive has contributed to improving the process of preparing plans and programmes by setting mandatory requirements for consideration of environmental issues, introducing public participation, increasing transparency of planning processes, and raising environmental awareness among decision makers. Stakeholders also reported that the SEA Directive has influenced the final content of plans and programmes by adding more emphasis and systematically addressing environmental issues, including the opinions of various stakeholders and the public, adding mitigation and compensation measures, and considering new alternatives. However, concerns were raised - mainly by SEA practitioners and academics, but also by local and regional authorities responsible for the preparation of plans and programmes - that SEA does not affect the content of final planning outputs as much as it should, because of prevailing (political, economic, social) interests, 'closed' and pre-determined decision-making, poor integration of SEA into planning and decision-making processes or the late start of the SEA process in relation to the development of the plan or programme assessed. Finally, the stakeholders consulted believed that the Directive has influenced the siting, design and implementation of projects developed from plans and programmes. Some, however, noted that the Directive has little influence, as the nature of SEA is too general and strategic to influence siting, and there is a lack of clarity on the (legal) obligations to follow up on the outcomes of the SEA process.

The targeted consultation also revealed that the effectiveness of the Directive varies according to the type of plan/programme, the governance level at which the SEA is carried out, and the sector concerned. Stakeholders tended to report higher

effectiveness in sectors where the plans are more operational and obviously set the framework for projects, such as town, country and spatial planning, transport and energy developments. Similarly, the stakeholders believed that the Directive is most effective at local level, where the planned measures/interventions are more defined and thus the effects are easier to project and assess. This may also reflect the greater experience with SEA at this lower governance level, as well as in spatial planning. Generally, stakeholders reported that the Directive is less effective for higher level SEAs, partly because of the more general nature of these plans and less-measurable data indicators at these levels. However, participants in the evaluation workshop strongly supported the idea that it is precisely at these strategic levels that SEA is most required, and that the Directive needs to be adapted (in terms of its nature and the focus of information required) to enable it to be more readily applied at higher levels.

- **Efficiency**

Given the difficulties associated with a quantitative assessment of the costs and benefits of the SEA Directive (low accuracy and comparability of cost data, difficulties in quantifying benefits), consultation activities were critical to the assessment of the efficiency of the SEA Directive. These consultation activities allowed for the costs and benefits to be mapped and understood, including their magnitude, as well as collecting cost data. The assessment of the acceptability of costs by those who bear them and the extent to which costs are proportionate to the effects brought by the Directive depended heavily on the consultation activities. Information relevant for that evaluation criterion was gathered through the targeted consultation questionnaire, complemented by the interviews and the validation of findings at the evaluation workshop. The public consultation provided a general understanding of the comparison between costs and benefits.

The consultation did not yield a comprehensive and accurate set of cost data that would have allowed an understanding of the cost of SEA at EU level, or the presentation of average estimates by type of plan/programme or even by Member State. The cost data collected showed considerable variation, reflecting the diversity of plans and programmes subjected to SEA (nature of the plan, size, sector, level of details, new plan vs. plan modification, etc.). Respondents – environmental authorities, competent authorities, and practitioners – often only provided consultancy costs, as these are more visible to authorities and can be tracked directly. Very little data have been collected on administrative costs.

Authorities and practitioners reported in the targeted consultation questionnaire and in the interviews that carrying out the SEA and preparation of the Environmental Report represent the most significant costs of the SEA procedure. As the drafting of the Environmental Report is often subcontracted to external consultants, hiring external expertise was mentioned as a significant cost by competent authorities. Stakeholders were divided on whether SEA causes significant procedural delays, with a larger number of authorities reporting that it does. When justifying their answers, stakeholders often mentioned that delays were due to the poor synchronisation of the SEA with the plan preparation process or factors external to the SEA, in particular political factors.

The main benefits reported by all stakeholder categories in the targeted consultation questionnaire and interviews were the integration of environmental issues into plans and programmes (in particular sectoral plans and programmes and land use plans), and environmental benefits. Greater public awareness was also mentioned as a significant benefit.

Generally, targeted and public consultation results showed a consensus among stakeholders that the costs of implementing the SEA Directive – to authorities in terms of administrative burden and for implementation and plan/programme level – are not

excessive and are proportionate to the benefits of SEA, both in terms of integrating environmental and stakeholder concerns into planning, and as a safeguard mechanism. However, some of the regional and local authorities interviewed suggested that costs are high for small municipalities, which face resource constraints.

The costs are strongly influenced by the way in which the SEA is carried out, with stakeholders identifying a tendency to produce lengthy and overly detailed Environmental Reports, based on time-consuming data collection, in order to avoid non-compliance, as well as a tendency to assess concrete and specific impacts rather than gaining an understanding of the strategic-level environmental aspects of a plan/programme. They called for more proportionate SEA, focused on the environmental aspects that matter most at plan/programme level. Stakeholders also identified the timing of the SEA as an important factor influencing efficiency, with procedural delays reduced where the SEA is well synchronised with the plan preparation.

Overall, few issues were raised in relation to unnecessary burden. Those that were raised concerned the renewal and modification of plans and programmes (for which a full SEA appeared burdensome to some stakeholders) and the screening process. Issues were also raised in respect of the applicability of the SEA Directive and the potential excessive burden on competent authorities that would result from an extension of the scope of the Directive to policies and legislation. However, the study did not specifically gather cost estimates of the application of the SEA Directive to normative acts considered as plans or programmes in the sense of the Directive. One illustrative example was however provided by one Member State, showing that the application of the Directive to policies and legislation might be complex and costly. This example is however not sufficient to draw firm conclusions on this issue.

- **Relevance**

There was a strong consensus among the stakeholders consulted that the Directive is still relevant to promoting a high level of protection of the environment and sustainable development. The continued need for a specific procedure requiring environmental considerations to be integrated into planning so as to highlight the most important environmental aspects, ensure the identification of alternatives and the broad involvement of stakeholders, was reaffirmed by the targeted consultation.

The results of the targeted consultation questionnaire indicated that the SEA Directive is still consistent with the needs of other EU environmental policies, although some respondents stated that there should more integration of issues like resource efficiency and the circular economy, climate change adaptation and mitigation, sustainable cities and soil protection into plans and programmes. The targeted consultation also suggested that the implementation of the SEA Directive has largely kept pace with relevant EU and international policies, objectives, targets and concepts for sustainable development. On the other hand, the Directive has had more limited success in keeping pace with certain recent developments, such as planetary boundaries, ecosystem limits, ecosystem services, and natural capital accounting. The stakeholders generally considered the Directive sufficiently flexible to allow the integration of new concepts, topics, methods or models into SEA practice. That flexibility also ensures that the Directive can keep pace with scientific advances.

The targeted consultation suggested that SEA facilitates the consideration of broad cross-sectoral issues, going beyond typical sectoral environmental issues and policies, largely because of its holistic approach and consideration of interactions with other relevant plans, programmes and policies. However, the targeted consultation and the discussions at the evaluation workshop stressed that SEA is increasingly implemented on a smaller scale and is thus moving away from its initial purpose – to assess higher level strategic plans and programmes in the 'spirit' of the Directive's objective (Article 1) of contributing to 'promoting sustainable development'. The possibility of extending

the scope of application of the Directive to policies and legislation was discussed at the evaluation workshop, with participants holding diverging views on the practical implementation of the SEA procedure for legislative acts. Despite the lack of consensus on the tool to apply, some of the participants – practitioners in particular – stressed the need to apply SEA to more strategic plans.

The importance of informing the public and involving citizens in plan preparation and the SEA process was emphasised in the targeted and public consultations. Stakeholders considered public participation relevant, as it improves the quality of the SEA and contributes to well-informed decisions through the provision of a larger set of opinions and expertise, local knowledge and critical feedback, thereby helping to identify issues and blind spots in the plan/programme. Benefits such as increasing environmental awareness among citizens, and increasing public acceptance of plans, programmes and subsequent projects were also mentioned. There were, however, some discrepancies in stakeholder views, with competent authorities for plans and programmes having a more reserved opinion of the importance of public participation in the context of SEA than national environmental authorities and practitioners. In their view, citizens find it less important to take part in strategic/early stages of planning which are perceived to deal with complex strategic issues that are less directly relevant to the affected public, compared to issues related to a particular local project, for instance.

The consultation outcomes show that the Directive is firmly believed to remain a suitable and relevant instrument to promote environmental protection and sustainable development.

- **Coherence**

The targeted and public consultations showed that the SEA Directive is generally coherent with the EIA Directive. However, the stakeholders consulted suggested that, in practice, there are risks of overlap between SEA and EIA, for example, when an SEA is required for a plan or programme that contains projects that will require EIA. Stakeholders were divided with regard to the significance of the risk of duplication. Another challenge noted is that authorities and developers sometimes find it difficult to clearly distinguish the purpose and scope of SEA and EIA, resulting in overlaps, especially when inexperienced SEA practitioners fail to narrow down the scope of the assessment, resulting in 'mega EIAs'. However, the stakeholders frequently referred to opportunities to maximise synergies between the SEA and EIA procedures. For instance, conducting an SEA can help to ensure a sound strategic basis for EIA of projects that are carried out subsequently.

The targeted and public consultations showed that the SEA Directive is coherent with the Habitats Directive. The clear differences in scope between SEA and AA mean that these assessments are largely complementary. The stakeholders also stressed the possible synergies between the SEA and AA procedures in relation to integrated reporting, data-sharing, more efficient and effective public participation, and higher quality assessments. According to the stakeholders, the implementation of joint or coordinated procedures can support these synergies.

Little insight on sectoral coherence emerged from the targeted and public consultations. A large number of respondents did not reply to these questions and few interviews provided clear or relevant answers to the coherence questions. However, the targeted consultation showed that, in general, stakeholders have not experienced major conflicts in applying the SEA Directive to plans and programmes in various sectors. On the contrary, SEA can improve plans and programmes by identifying possible environmental problems and ways to avoid them.

Overall, the majority of the respondents to the targeted consultation questionnaire believe that the SEA Directive is consistent with and supports the SEA Protocol and the

Aarhus Convention. The targeted consultation and the evaluation workshop however raised some coherence issues between the SEA Directive and the Aarhus Convention, in particular in the area of access to justice, as there are no provisions to ensure access to justice in the SEA Directive. On this matter, respondents to the public consultation were asked whether they felt there were procedures available to allow for judicial or other impartial means of review of an SEA procedure as well as a plans that have been subject to SEA. In both cases, respondents were divided on the issue, with NGOs considerably more likely to reply negatively.

- **Added value**

According to the stakeholders consulted, the primary added value of the Directive is that it imposes a systematic procedure that is applicable to a broad range of plans and programmes, covers a wide range of environmental impacts and provides for the development of alternatives, public participation, monitoring etc. The stakeholders agreed that it is unlikely that with such a procedure would have been put in place in all Member States in the absence of the SEA Directive. During the interviews in particular, stakeholders reported that the Directive led to more transparent and participatory planning processes.

The stakeholders consulted also reported that the SEA Directive has added value by providing a consistent framework governing the practice of SEA in all Member States, as having the same legislation in all Member States facilitates the consideration of transboundary issues. Stakeholders also reported benefits from sharing good practices and knowledge, as well as providing a level playing field, increasing public awareness and resolving conflicts in respect of the environmental impacts of development.

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