



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL ENVIRONMENT
 Directorate D - Implementation, Governance & Semester
ENV.D.3 - Enforcement, Cohesion Policy & European Semester, Cluster 3
 Head of Unit

Brussels, **08 MAI 2014**
 ENV.D.3/SG/ad/Ares(2014)

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Dear Mr Davidson

I understand that you have asked for some general guidance on the application of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the so called Strategic Environmental Assessment or SEA Directive) for the forthcoming discussions of your Environment and Sustainability Committee on 21 May 2014. As my colleague Ms Grohs explained, we try to avoid taking position on specific national development projects when these are in the national decision making process. However, we can assist in responding to more general queries. I will therefore try to answer some of the questions you forwarded to her by your e-mail of 1 April 2014. In answering these questions I would suggest that regard should be had to the Commission Guidance on the implementation of the Directive from 2003 (SEA Guidance) which can be found at <http://ec.europa.eu/environment/cia/sea-support.htm>. Numerous other materials can also be found on this webpage and may be of assistance to your committee.

What constitutes a reasonable alternative for the purposes of the Directive? When a planning authority is considering what constitutes a reasonable alternative what factors should they consider?

Article 5(1) of the Directive requires that the environmental report be prepared in which reasonable alternatives taking into account the objectives and geographical scope of the plan or programme are identified, described and evaluated. Reference is made to Annex I. Annex I (h) in particular requires an outline of the reasons for selecting the alternatives dealt with. The SEA Guidance provides information on how to approach the question of alternatives and the factors to be considered in paragraphs 5.11 to 5.14. In summary the assessment of alternatives should be a genuine exercise. As the Explanatory Memorandum to the proposal for this Directive made clear a particular benefit of the SEA Directive is that alternatives can and should be properly assessed whilst the options remain open, whereas options for changes later on at the EIA stage are more limited.

Can an authority begin an SEA process and then rescind the consultation on the grounds that it has re-considered whether or not its proposals constitute a draft plan for the purposes of the Directive?

This question is difficult to answer as it would appear to be rather unusual to start a consultation process and then rescind it unless there was a serious error of judgment or interpretation of the applicability of the SEA Directive vis-à-vis the respective plan or programme. However, if a serious error has appeared and needs to be remedied then a fresh start to the process should be possible.

It should be born in mind that the consultation process should address both the draft plan or programme and the accompanying environmental report before the adoption of the plan and programme.

Does an SEA need to include information about why certain reasonable alternatives were selected and why they are believed to represent reasonable alternatives?

Yes. There needs to be an outline of what alternatives were chosen and why. See also para 5.28 of the Guidance.

What constitutes good practice in terms of consultation under the Directive?

In contrast to the EIA Directive, the SEA Directive does not specify any details about the method for consultation. Analogies can however be made to the experience under the EIA Directive in terms of what works for ensuring optimal consultation. See paragraph 7.16 and 7.17 of the SEA Guidance on who to include in public affected and relevant NGOs. Since the guidance was drafted there was also some guidance in case C-474/10 Seaport pointing out that whilst the Directive does not require precise periods for consultation to be laid down Article 6(2) does require 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.*

Whether the SEA needs to set out recommendations made by statutory environmental bodies during the scoping phase and how these have been addressed in drafting the SEA?

The Directive requires Member States under Article 6(3) to designate authorities to be consulted which by reason of their specific environmental responsibilities are likely to be concerned by the environmental effects of implementation plans and programmes. Given the importance attached to these bodies and specific reference made to them in Article 6(3) it would seem advisable to set out their recommendations and how these are addressed within the SEA. Reference should also be made here to Articles 8 and 9.1.b of the Directive which require information to be provided on how the information made available during the consultation process was taken into account.

To what extent should an SEA take account of other Union Environmental legislation such as the Water Framework Directive?

Article 11 of the Directive indicates that the assessment is without prejudice to other EU legislation. The EIA Directive is specifically mentioned but other legislation such as Directive 2000/60/EC (Water Framework Directive) is also relevant. The Commission Guidance gives information on this question in paragraphs 9.1 to 9.12 with particular information on the Water Framework Directive at paragraph 9.7.

Furthermore, since this guidance was drafted the Court of Justice has provided additional guidance in its judgment in joined cases C-105/09 and C-110/09 concluding that an action programme for nitrate vulnerable zones under Directive 91/676/EEC could itself be subject to the requirements of the SEA Directive. I would also refer you to the provisions in Annex I (c) and (d) and the relevant sections of the SEA Guidance on these. Annex I (c) provides that account should be taken of the environmental characteristics of areas likely to be significantly affected. Annex I (d) provides that account should be taken of any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 2009/147/EC and 92/43/EEC.

To what extent should an SEA take account of domestic policies on Climate Change and Sustainable Development?

Our recent *Guidance on integrating climate change and biodiversity into SEA* published in 2013 and available at <http://ec.europa.eu/environment/eia/pdf/SEA%20Guidance.pdf> is relevant to this issue and provides a step by step account of how climate change considerations and biodiversity impacts should be taken into account.

Once a decision has been reached on a final option whether the authority needs to issue a report on how consultation responses to the SEA were taken into account and set out reasons for its final selection?

Yes. Article 9(1) of the Directive requires Member States to ensure that information is provided in a summary statement outlining how environmental considerations have been integrated into the plan or programme as adopted and how the environmental report and the consultation responses received were taken into account with regard for the choice of plan or programme adopted in the light of the other reasonable alternatives dealt with.

In making a final decision what information should be provided on the monitoring or mitigation of any adverse impact on the environment?

The Commission SEA Guidance also provides information on how Member States should implement the requirements of Article 10 of the Directive in paragraphs 8.1 to 8.19. Monitoring is required to cover the significant environmental effects of the implementation of plans and programmes which includes not just the realisation of the projects envisaged but also other activities such as management schemes which form part of that plan or programme. Another element of the monitoring is to identify unforeseen adverse effects which may for example bring to light shortcomings in the previous assessment which could be remedied in future.

Yours sincerely



Paul Speight

