

Module 3: Introduction to the UNECE SEA Protocol

- Linkages between UNECE SEA Protocol and SEA Directive
- What plans and programs require SEA under the Protocol?
- Treatment of policies and legislative proposals in the Protocol
- Main requirements of the SEA Protocol for plans and programs

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Linkages between UNECE SEA Protocol and SEA Directive



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SEA Directive and SEA Protocol

European Union – Directive 2001/42/EC

- Directly applicable in EU 25 and Accession Countries
- Came into force on 21 July 2004
- European Commission's guidance on implementation

United Nations Economic Commission for Europe

- SEA Protocol to the UNECE "Espoo" Convention on EIA in Transboundary Context
- Signed in May 2003 by 36 UNECE member countries and EC – open for signature to other UN countries
- Will not come into force for some time

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UNE/ECE SEA Protocol

- Almost identical (SEA Directive served as a benchmark for negotiations by EU member states)

More detailed provisions for:

- Treatment of environment, including health, issues
- non-binding provisions on public participation in screening and scoping
- Non-binding provisions on SEA for policies and legislation (Art. 13)
- Looks like a more linear (EIA-based) procedure – however open for transposition as integrated procedure into strategic planning



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What plans and programs require SEA under the UNE/ECE SEA Protocol?



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Definition of plans and programs (Art. 2.5)

Plans and programmes (P/Ps) – at all levels and any modifications to them - that are:

- Required by legislative, regulatory or administrative provisions; and
- Prepared and/or adopted by a public authority (at all levels).

Can strategies, policies, concepts, etc. be treated as P/P?

Name is not a reliable guide – documents having all the above characteristics of a plan or programme as defined in the Directive may be found under a variety of names (e.g. 'strategy', 'guidelines', etc)



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Mandatory SEA (Article 4.2)

SEA is required for plans and programs that:

- are prepared for agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use

and

- set the framework for future development consent of projects in Protocol's Annex I & II or require EIA under national legislation



Discretionary SEA (Art. 5) – I.

SEA is required only when the following P/Ps are likely to have significant environmental effects:

- minor modifications to P/Ps that require mandatory SEA
- P/Ps that require mandatory SEA that determine use of small areas on local level, and
- Other plans and programmes which set the framework for future development consent of projects



When is SEA not required (Art. 4.5)

SEA is not required for:

- Plans and programmes whose sole purpose is to serve national defence or civil emergencies;
- Financial or budget plans and programmes.



Discretionary SEA (Art. 5) – II.

When determining whether SEA is needed for these P/Ps:

- criteria in the Protocol's Annex III need to be considered
- relevant environmental and health authorities need to be consulted
- public needs to be have timely access (through public notices or other appropriate means - e.g. electronic media) to results of this determination, including the reasons for not requiring an SEA.

Practical issues

- Mandatory application – list of P/Ps
- Discretionary application – case-by-case screening for each P/P
- Combination (most common option)

Expected application:

- Czech Republic – maybe 50 SEAs each year
- Poland – possibly over 1000 SEAs annually

Treatment of policies and legislative proposals in the SEA Protocol



Application to policies and legislation (Art. 13)

- Policies and legislation are *not defined* (every strategic document which does not qualify as project, plan and program);
- Each Party *should ensure consideration* of environmental concerns of proposals for policies and legislation
- Each Party should *determine practical elements* of SEAs of policies and legislation taking into account need for transparency in decision making.
- Each Party shall *report on application* of this article to the meeting of the Parties.



Key considerations

- What SEA elements (if any) of those established for P/Ps would be “practical” for policies and legislation?
 - Screening?
 - Scoping?
 - Environmental report?
 - Public participation?
 - Consultations with authorities?
 - Due account in the decision-making ?
 - Monitoring?
- Or something totally different?



Main requirements of the UN/ECE SEA Protocol for SEA of plans and programs



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Scoping (Art. 6)

- Determination of content of Environmental Report
- Environmental and health authorities need to be consulted
- Public participation “to the extent appropriate”
- No publication of scoping outcome/report required

Scoping – Key considerations

- No formal scoping decision required
- Scoping is not a rigid procedural step
- There may be separate scoping consultations in each stage of SEA or plan/program-making process

Environmental Report (Art. 7 + Annex V) “rough outline”

- Content of the P/P and how it relates to other P/Ps;
- Key environmental (and health) trends and problems;
- Relevant environmental (and health) objectives and how they were taken into account;
- Likely significant environmental (and health) effects;
- Measures to offset or mitigate negative effects;
- Comparison of alternatives;
- Monitoring plan;
- Non-technical summary.

Environmental Report (Art. 7 + Annex V) “Fit for purpose”

Environmental report should provide information that can be reasonably required taking into account:

- Current knowledge and methods of assessment;
- The contents and the level of detail of the plan or programme and its stage in the decision-making process;
- The interests of the public; and
- The information needs of the decision-making body.

Environmental Report – Key issues

- It does not have to cover all issues outlined in the Protocol
- Should it be a separate document or part of P/P (e.g. annex)?
- How to most effectively carry out the requested analyses during the elaboration of P/P?
- How to ensure quality of env. report (cont. consultations, accreditation of SEA experts, formal reviews at the end of SEA process ...)

Public Participation (Art. 8)

- Identification of public concerned, (affected and interested public and NGOs);
- Early, timely and effective opportunities, when all options are open in SEA;
- Public availability of at least proposed P/P and of Environmental Report;
- Opportunities to express opinion within the reasonable time frames.


Public Participation - Key issues

- How to identify public concerned? (*e.g. registers of interested NGOs in Poland*)
- How to inform and consult? (*public hearings are not prescribed and are usually ineffective + written submission complicate the process – new methods needed e.g. workshops in Slovakia*)
- What additional stages of consultations would be helpful (*e.g. review of proposed objectives of P/Ps in Czech Republic*)

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Consultation with Env. and Health Authorities (Art. 9)

- Authorities having environmental or health responsibilities...
- ...must be identified & given early and effective opportunity to express opinion in
- Screening
- Scope of Environmental Report
- Draft P/P and its Environmental Report

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Consultation with Env. and Health Authorities (Art. 9) – Key issues

- How to organise effective consultations between authorities?
- Formal commenting not effective
- Roundtables (Austria)
- Workshops (Czech Republic), etc.

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Transboundary Consultations (Art. 10)

- Notification if Party of origin determines that plan or programme is likely to have significant transboundary effects, or if Party likely to be significantly affected so requests (*no recourse to an inquiry commission*)
- Notification of affected Party by the Party of origin
- Affected Party indicates whether it wishes to be consulted

Transboundary Consultations – Key issues

- What are specific screening criteria for transboundary impacts?
- How to organise transboundary consultations – when in the process of elaboration of P/P, which level of documentation should be exchanged, etc.?
- Are transboundary scoping consultations needed to obtain data on environment in the affected party's territory, etc.?
- How to organise transboundary public participation?

Decision-making (Art.11)

Decision on P/P must take due account of:

- Conclusions of the Environmental Report
- Comments received (public, authorities, transboundary consultations)

Public and env./health authorities must be informed:


- How the environmental considerations have been integrated into the plan or programme;
- How the comments received been taken into account (why changes and why not?);
- Why the plan or programme has been adopted in the light of reasonable alternatives

Decision-making – Key issues

- Should there be one single point of „taking account“ of outputs of SEA in the planning/programming process?


or

- Should information produced within SEA be taken into account in various stages of planning/programming process?


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Monitoring (Art. 12)

- To identify and mitigate unforeseen effects;
- Focused on significant environmental effects of implementation of P/P;
- Monitoring reports publicly available.



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Monitoring – Key issues

- How to deal with many possible impacts within one monitoring framework?
- How to ensure that monitoring measures only impacts attributed to the implementation of the plan and does not count those that occur because of other developments (e.g. other plans and investments, new legislative frameworks, etc.)
- How to ensure data gathering

Lesson from the Czech practice:

- Monitoring indicators measure attribution of implementation of the P/P to relevant env. objectives
- Data gathered through single evaluation system for implementing actions


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