

Background

The European Union (EU) recalls its previous submissions¹ to the Secretariat of the Espoo Convention and the SEA Protocol and the Implementation Committee explaining its competence under the Protocol on Strategic Environmental Assessment (SEA Protocol). The EU primary legislation does not confer any competence on the EU to perform strategic environmental assessment for plans and programmes. Therefore, the EU is not in position to provide information as regards the questions asked in the questionnaire on the implementation of the SEA Protocol in the period 2019-2021.

The EU is responsible for the performance of those obligations resulting from the SEA Protocol which are covered by EU law.

Pursuant to its competence and the powers conferred on it, the EU adopted in 2001 Directive 2001/42/EC of the European Parliament and the Council concerning the assessment of the effects of certain plans and programmes on the environment (SEA Directive)². The Directive is binding as to the results to be achieved upon each Member State to which it is addressed but shall leave to the national authorities the choice of form and methods. In accordance with the EU legal and institutional system, the Member States have transposed the SEA Directive in their national legislation.³ Thus the national authorities are vested with the responsibility to ensure that the SEA procedure is put in place in their national legislation.

Despite the fact that not all Member States have ratified the SEA Protocol to date⁴, the SEA Protocol is part of the EU legislation and all Member States are bound to abide by the SEA Directive and the SEA Protocol.

SEA policy making and application guidance

To facilitate the **application** of the SEA procedure and ensure its compliance with the applicable legislation the European Commission services prepare reports, studies and guidance documents. In 2019 the European Commission released the results of its **first internal evaluation of the SEA Directive**.⁵ The evaluation has examined the extent to which the SEA Directive is fit for purpose by looking into what works and what can be improved, the extent to which the

¹ First review of Implementation (2013-2015): [EU SEA 2013-2015 07.12.2015 \(unece.org\)](https://unece.org/esa/eia/2013-2015-07-12-2015)

Second review of Implementation (2016-2018): [Questionnaire 2016 2018 SEA Protocol EU reply2019.pdf \(unece.org\)](https://unece.org/esa/eia/2016-2018-07-12-2018)

² Directive 2001/42/EC of the European Parliament and the Council on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001, p. 30–37. [See: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0042>]

³ National transposition measures communicated by the Member States concerning: 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 [See: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32001L0042&qid=1487172800769>];

⁴ To date 28 April 2022, Belgium, France, Greece and Ireland have not ratified the SEA Protocol.

⁵ <https://ec.europa.eu/environment/eia/sea-refit.htm>

objectives of the Directive have been achieved and why some elements or features are successful or not.

The evaluation concluded that the SEA Directive is a major piece of EU environmental legislation and remains relevant for attaining the objectives that it has set. The evaluation has shown that the SEA Directive brings multiple benefits to the EU, contributing to wider goals on attaining the sustainable development goals (SDGs) and environmental protection, by integrating environmental concerns into the appropriate plans and programmes. To this end, it has clear EU added value. As established the SEA procedure is coherent with other EU legislation prescribing environmental assessments. The benefits it provides do not cause disproportionate costs for the national administrations. The lessons learned and the implementation challenges have not affected the overall positive aspects consisting of having an EU-wide procedure that reflects the principles of sustainable development and provides for the systematic inclusion of environmental concerns in the plans and programmes that authorise developments and other activities likely to impact the environment.

- The **Commission Staff Working document (SWD (2019) 414 final)** on the Evaluation of the SEA Directive is accessible here:
https://ec.europa.eu/environment/eia/pdf/Doc%201%20SWD_2019_SEA%20REFIT.pdf
- The evaluation was supported by an **external study** to help the Commission gather and assess relevant information and evidence. It is accessible here:
<https://ec.europa.eu/environment/eia/pdf/REFIT%20Study.pdf>

SEA enforcement

The European Commission is the guardian of the EU Treaties. Therefore, it should ensure that the Treaties and any secondary legislation are properly enforced. Hence this role is exercised mainly through the procedure applied to Member States where they have failed to fulfil an obligation under the Treaties, as set out in Article 258 of the Treaty on the Functioning of the European Union.

Currently there are two on-going SEA Directive infringements against two Member States. These are for non-conformity, non-transposition and bad application of the SEA Directive.

SEA uniform interpretation and application

The Court of Justice of the European Union (CJEU) is the judicial institution that ensures that the EU law is enforced, interpreted, understood and uniformly applied in all EU Member States.⁶ Thus the CJUE is the **only sources of definite interpretation of the EU law**.

In the period 2019-2021 the CJEU delivered the following SEA related judgments:

⁶ Articles 251-281 of the TFEU describe the CJEU competences, including the type of proceedings it handles. The various types of proceedings of the Court of Justice include: references for preliminary rulings; actions for failure of Member States to fulfil obligations under EU law; actions for annulment; actions for failure to act; appeals; reviews.[See: https://curia.europa.eu/jcms/jcms/Jo2_7024/en/#competences]

Judgment of the Court (Sixth Chamber) of 8 May 2019

Associazione "Verdi Ambiente e Società - Aps Onlus" (VAS) and "Movimento Legge Rifiuti Zero per l'Economia Circolare" Aps v Presidente del Consiglio dei Ministri and Others, Case C-305/18 [ECLI:EU:C:2019:384]

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio

Reference for a preliminary ruling — Environment — Directive 2008/98/EC — Disposal or recovery of waste — Establishment of an integrated waste management system guaranteeing national self-sufficiency — Construction of incineration facilities or increase in capacity of existing facilities — Classification of incineration facilities as 'strategic infrastructure and installations of major national importance' — Compliance with the 'waste hierarchy' principle — Directive 2001/42/EC — Need to carry out an 'environmental assessment'

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=213860&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7244674>

Judgment of the Court (First Chamber) of 12 June 2019

Terre wallonne ASBL v Région wallonne, Case C-321/18, [ECLI:EU:C:2019:484]

Request for a preliminary ruling from the Conseil d'État (Belgium)

Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Decree — Establishment of conservation objectives for the Natura 2000 network, in accordance with Directive 92/43/EEC — Definition of 'plans and programmes' — Obligation to undertake an environmental assessment

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=214887&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7245075>

Judgment of the Court (First Chamber) of 12 June 2019

Compagnie d'entreprises CFE SA v Région de Bruxelles-Capitale, Case C-43/18, [ECLI:EU:C:2019:483]

Request for a preliminary ruling from the Conseil d'État (Belgium)

Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Decree — Designation of a special area of conservation pursuant to Directive 92/43/EEC — Setting of conservation objectives and provision of certain preventive measures — Concept of 'plans and programmes' — Obligation to carry out an environmental assessment

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=214886&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7245459>

Judgment of the Court (Grand Chamber) of 25 June 2020

A and Others v Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen, Case C-24/19, [ECLI:EU:C:2020:503]

Request for a preliminary ruling from the Raad voor Vergunningsbetwistingen

Reference for a preliminary ruling — Directive 2001/42/EC — Environmental impact assessment — Development consent for the installation and operation of wind turbines — Article 2(a) — Concept of 'plans and programmes' — Conditions for granting consent laid down by an order and a circular — Article 3(2)(a) — National instruments setting the framework for future development consent of projects — Absence of environmental assessment — Maintenance of the effects of national instruments, and of consents granted on the basis of those instruments, after those instruments have been declared not to comply with EU law — Conditions

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=227726&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13621444>