Imperial College London Consultants

The Relationship between the EIA and SEA Directives

Final Report to the European Commission

Contract Number: ENV.G.4./ETU/2004/0020r

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Executive Summary

The purpose of this study was to identify and explore the potential areas of overlap between the EIA and SEA Directives among the EU 15 Member States. This was undertaken through the use of a wide ranging literature review, a questionnaire to MS experts and to academics, practitioners and NGOs, and interviews. In particular a series of illustrative case study countries were examined in some depth to examine the range of specific situations that might give rise to potential problems.

The key areas identified as likely to give rise to potential overlaps between the Directives were:-

- Where large projects are made up of sub-projects, or are of such a scale as to have more than local significance;
- Project proposals that require the amendment of land use plans (which will require SEA) before a developer can apply for development consent and undertake EIA;
- Plans and programmes (PPs) which, when adopted, or modified, set binding criteria for the subsequent consent for projects, i.e. if a developer subsequently makes an application which complies with the criteria then the consent has to be given;
- Hierarchical linking between SEA and EIA ('tiering').

Such overlaps can create confusion as to the definition of the action concerned, and therefore whether it meets the criteria for requiring the application of either or both of the EIA and SEA Directives. Approaches adopted by Member States in trying to resolve the potential for overlap were seen to relate particularly to where EIA had previously been applied to certain PPs or where certain projects might now be subject to SEA as well as EIA, e.g. particularly large or complex projects. In such cases:-

- There could be parallel procedures where SEA can operate in parallel to EIA;
- There could be joint procedures where both the requirements of the EIA and SEA Directives are met simultaneously.

To be legally compliant Member States will need to ensure they meet the requirements of both Directives where both Directives apply. Applying either EIA or SEA is unlikely to be legally sufficient in such cases.

Recommendations

A number of broad recommendations are made, directed at the Commission and Member States though, rather than being prescriptive, these seek to draw attention to the range of illustrative approaches already in existence among the Member States. Figure 8.1 is reproduced below in this summary, and provides a possible flow diagram to help decide in overlap situations whether EIA, SEA or both might apply.

Short term

1. Member States should consider whether co-ordinated - parallel or joint - EIA/SEA procedures are possible and/or appropriate (see Figure 8.1).

Whether joint procedures are possible or appropriate will depend upon the decision-making processes and particularly the relative timing of EIA and SEA. In many cases it is likely that SEA will and should occur before EIA and so the scope for joint procedures is likely to be limited. However, there may be occasions, as seen in some of the case studies, where EIA and SEA may occur in parallel or where there would otherwise be duplication, where there may be some scope for joint procedures. **Figure 8.1 provides a flow diagram which can be used by Member States to help in thinking through which assessments are needed in a particular case and the scope for implementing joint or parallel procedures. Reference is made to relevant case studies in the report.**

2. Where Member States might be faced with either i) replacing EIA with SEA, or ii) applying EIA to plans/programmes they should consider carefully how the requirements of both Directives shall be met if the object of assessment meets the screening criteria for both Directives.

i) Care will be needed to avoid risk of infringing the requirements of the EIA Directive if only SEA is undertaken, i.e. where a project might otherwise require EIA.

ii) It is unlikely that previous EIA provisions will be legally compliant with the SEA Directive in terms of consideration of alternatives, consultation, and consideration of cumulative effects or monitoring. Enhancements may need to be made to the EIA process in such circumstances, effectively to create a joint EIA/SEA procedure.

3. Member States should examine possible gaps between the EIA and SEA Directives and consider whether and how to address plans/programmes and projects that fall between these Directives (or where neither Directive applies), in order to ensure that likely significant effects on the environment are considered at the most appropriate level of assessment.

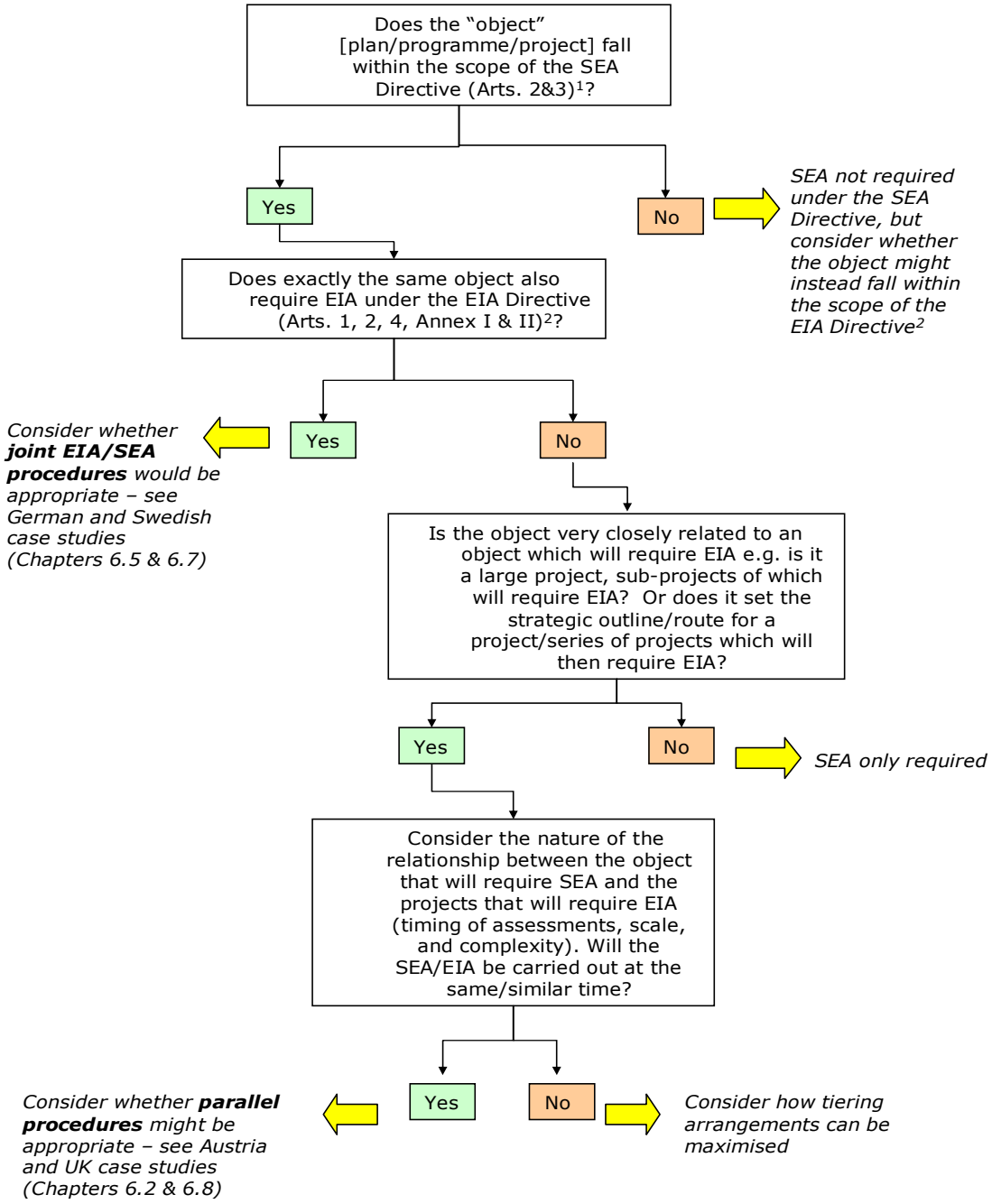
This recommendation, whilst going beyond strict compliance with the text of the Directives (though arguably consistent with the spirit), nevertheless is intended to ensure that a potentially important issue for EIA and SEA *practice* is not overlooked by the fact that in certain cases the SEA Directive may not apply and the EIA procedure, if it applies, does not provide for sufficient consideration of the pertinent strategic issues. This is important since the wider public may perceive there to be 'loopholes' not being addressed, or poor application of the

legislation (which may lead to legal challenge), even though the strict letter of the law is being applied. The use of a **principal project/accessory test** (as in Canada) might help to overcome this deficiency, particularly in relation to avoiding the need for multiple assessments where small plans, programmes or large projects may consist of smaller projects. However, this is likely to require new consent processes to be implemented in MSs, unless it can be achieved through voluntary means and negotiation, supported by guidance. Both the EIA and SEA Directives allow MSs to go beyond the Directives' requirements if they so desire.

4. Where EIA and SEA might both apply, Member States should determine how best to co-ordinate the content of the assessments and the decision-making processes, and should consider whether it is appropriate to create clear differential responsibility for different aspects at different levels.

For example, certain kinds of alternatives could be addressed by the SEA, allowing the EIA to be more focused on location specific or operational alternatives; broad cumulative effects could be addressed by the SEA so that EIAs can pick up on their own contribution to significant cumulative effects in more detail, and how they can be avoided, reduced or mitigated as part of the specific project. This recommendation is intended particularly to avoid duplication and to ensure efficiency in the application of the assessment processes. It is particularly important where responsibility lies with different authorities.

Figure 8.1: Which assessment procedures apply?



Notes:

[1]Or within the scope of MS legislation on SEA if this is broader than the SEA Directive

[2]Or within the scope of MS legislation on EIA if this is broader than the EIA Directive

Medium term

5. The Commission, in undertaking the review processes for the EIA and SEA Directives, should consider the scope for clarification, in either or both Directives, of the definitions of project, programme and plan.

The definition of project in the EIA Directive could be amended to include, for example, 'associated works or installations', which might then be identified through the use of a **principal project/accessory test** (as in Canada). This might help address the problem of multiple consent processes that can fall between the two Directives, though may require significant modification of consent processes in some MSs. The fact that plans are produced that set the framework for subsequent consent of projects, but are not formally required by legislation or administrative provision and therefore do not fall within the scope of the SEA Directive, may need to be revisited in light of experience, not least because of the likely diversity of SEA application across MSs. Further clarification of e.g. 'administrative provisions' may be needed, either in legislation or through guidance, in addition to that already provided in the Commission's Implementation Guidance (CEC, 2003a).

6. Guidance should be provided by the Commission and/or Member States on the content of EISs and ERs to encourage a consistent hierarchical relationship between the two processes ('tiering').

The purpose of guidance should be to encourage better assessments in practice. Certain aspects of SEA documentation, e.g. the Non-technical summary, might be appropriate to be included in EISs of subsequent EIAs. Guidance should also include an explanation of the relationship between SEA documents and future documents in any subsequent hierarchy ('tiering'), including their 'shelf life' (e.g. the normal period for a specific planning cycle), who will be involved in subsequent assessments, how and when they will be involved, how and where potential issues will be addressed and the proposed temporal and spatial scales that will be used when analysing those issues. Framework guidance may be needed from the Commission, drawing on best practice, to encourage a degree of consistency across Member States.

7. The Commission and/or Member States should, after Member States have had more experience of operating both systems together, commission further research in this area, including focused research on the application of EIA and SEA to specific sectors, e.g. urban development projects, and the transport and energy sectors.

The purpose of further research is to better understand current and past experience, to learn any lessons and to inform future guidance or revisions of legislation. More detailed research in specific sectors would provide a good

range of experience of the practical problems encountered in the implementation of both Directives alongside each other. Other areas of research could include more focused bilateral, multilateral and comparative research on specific issues, such as regional implementation in e.g. Germany, Spain and Italy.

8. Member States should consider reviewing their EIA and SEA implementing legislation after more experience of operating both together, to see whether there is scope to create a more consistent or consolidated approach where possible.

The experience from the US case study and interviews suggests that one set of legislation that addresses EIA and SEA in a consistent manner has advantages in helping to avoid some of the overlap problems (particularly of definition) of inconsistent or fragmented legislation. In principle, Member States could consider implementing the EIA and SEA Directives in a consistent legal framework. Some MSs are transposing the SEA Directive through inserting SEA into their EIA legislation, which may offer the opportunity to link the two processes more closely. Where different systems are operated, a review of implementation might be considered after some years' experience with a view to seeing whether a higher degree of consistency could be achieved. This is likely to be of benefit to authorities and developers alike in avoiding legal problems, but also should seek to provide for more effective tiering of assessment in practice. Improved consistency may be achieved through detailed guidance and through revision of legislation. MSs, however, will want to discuss with the Commission its intentions with regard to amending the legislation at EU level in order to determine whether review and possible amendment at MS level is timely and appropriate.

Long term

9. The Commission should, after sufficient experience of the EIA and SEA Directives operating together, consider whether the consolidation of the two Directives might achieve greater consistency and efficiency in environmental assessment across Member States.

The evolution of EIA and SEA legislation in the EU has been a long time in the making, involving lengthy negotiations over each of the directives. However, with both now in existence, and with explicit similarities, overlaps and inter-linkages, there is still an apparent diversity of approaches to the relationship between the two Directives resulting from the different definitions of plans and programmes across MSs. Changes in MSs' law may be sufficient to provide consistency of approach. However, if further research confirms a continuing diversity and inconsistency in application of the two Directives, and the relationship between the Directives, across the MSs this may provide evidence

ultimately supporting consolidation of the legislation at an appropriate time in the future. The purpose of such consolidation would be to achieve harmonisation between the requirements of the two Directives for projects, programmes and plans. However, the pros and cons of such a consolidation would need to be carefully considered to ensure that such a change would have the desired effect.

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Glossary

Cumulative effects: Effects that result from incremental changes to the environment caused by the PP or project together with past, present and future actions (PP or projects.

Environmental Assessment: A generic term for a tool for integrating environmental considerations into decision-making by ensuring that significant environmental effects of the decision are taken into account.

Environmental Impact Assessment (EIA): A public process by which the likely effects of a project on the environment are identified, assessed and then taken into account by the consenting authority in the decision-making process.

Environmental Information: Information required by the EIA Directive to be provided by the developer to the competent authority, as specified in Article 5 and Annex IV of 85/337/EEC as amended by 97/11/EC

Environmental Report (ER): Information required by the SEA Directive, as specified in Article 5 and Annex I, and provided as part of the plan or programme documentation.

Indirect effects: Effects, which are not a direct result of the plan, often occurring away from the action (e.g. quarrying aggregates for road building) or as a result of a complex pathway.

Monitoring: A continuing assessment of conditions relating to an action.

Scoping: The process of determining the parameters, boundaries and key issues to be addressed by an environmental assessment.

Screening: The process of deciding whether a, plan, programme or project should be subject to a form of environmental assessment (SEA or EIA), i.e. whether it is likely to have significant effects on the environment.

Secondary (and tertiary effects): Effects that are consequential from direct or primary effects of the action.

Strategic Environmental Assessment (SEA): A form of environmental assessment intended to identify and assess the likely significant effects of a plan or programme on the environment, the results of which are then taken into account in the decision-making process.

Sustainability Appraisal (SA): This is a form of strategic assessment that integrates environmental, social and economic parameters, compared with SEA which deals primarily with environment.

Synergistic effects: cumulative effects that result when the interaction of a number of impacts is greater than or different from the sum of the individual impacts. Some examples are:

- the combined impact of construction noise from various developments is greater than the sum of the individual noise impacts.
- when a different type of impact occurs from the original impacts, such as when the combination of particular weather conditions and certain pollutants (NOx) produces smog.

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1. Introduction

This report presents the final results of the study undertaken under contract ENV.G.4./ETU/2004/0020r, from July 2004 to March 2005, on *The Relationship between the EIA and SEA Directives.*

The links between the EIA and SEA Directives superficially appear obvious: the wording, for example, is very similar, reflecting the 'translation' of wording across from the earlier EIA Directive to the SEA Directive. On the other hand many links may be subtle, complex and unclear. Environmental assessment has long been held to be a key tool in achieving one of the cornerstones of European Community environmental policy, that of environmental integration. However, it has taken the best part of 30 years to get to the point of implementation of what is commonly known as the EC Strategic Environmental Assessment (SEA) Directive, i.e. Directive 2001/42/EC *on the assessment of the effects of certain plans and programmes on the environment*. This was due for implementation by 21 July 2004, alongside the well established EIA Directive (85/337/EEC as amended by 97/11/EC). Both Directives will be central to future efforts to improve the integration of the environment into decision making – sometimes having to challenge a hostile political agenda. But this will be an essential pre-requisite for moving towards more environmentally sustainable development. The effectiveness of both Directives may be maximised by a much clearer understanding of how they might operate together in complementary and potentially synergistic ways.

The stated objectives (and related tasks) of this study were to:

- Clarify the legal relationship between the two Directives;
- Identify cases whose actual characteristics suggest that overlaps are possible;
- Describe the treatment of projects, plans and programmes in the legislation implementing the Directives in the 15 Member States and in any national legislation on SEA not linked to the Directive (in both cases including legislation at regional level where appropriate); and
- Make recommendations for resolving any problems which emerge.

Task 1 provided the initial focus for the research and sought to identify key areas for further examination. Tasks 2 and 3 were closely related to each other, with Task 3 providing practical illustrations of ambiguities identified in Task 2, and also ways of better classifying problem activities. The changing context in which EIA and SEA are now being implemented, i.e. the increasing move internationally to wider sustainability forms of assessment, is also important as that may determine*, inter alia*, the alternatives that are available for consideration, the relative weight of environmental assessment in the decision-making process, and the nature of any strategic decision-

making processes that may exist (if they do). A better knowledge of such processes and the variety among Member States is important in understanding the potential diversity of relationships that may exist between the Directives. Task 4 involved drawing conclusions and making recommendations.

The Terms of Reference specifically required the research to analyse:

- Overlaps and differences between the requirements of the two Directives;
- How these overlaps/differences affect environmental assessment in practice (e.g. if co-ordinated or joint procedures were to be adopted);
- Interdependencies i.e. where action under one Directive is triggered by something regulated in the other, such as the SEA Directive criterion of setting the framework for future development consent of projects listed in the EIA Directive;
- Apparent similarities (e.g. preparation of the environmental report or ER, or the meaning of words such as "project" which are common to both Directives).

These terms of reference rightly placed significant weight on an understanding of the relationships between the two Directives, their similarities and differences and the potential for ambiguity in project, plan and programme definition. Only through a comprehensive understanding of these issues can the EIA and SEA Directives be successfully implemented in conjunction with each other and within the decision making process, at the earliest possible opportunity, so as to maximise their effectiveness.

2. Research approach

The research approach was structured around two key questions:-

- What are the overlaps and similarities between the two Directives and how can these best operate most effectively and efficiently?
- What are the differences between the two Directives and how might these create difficulties in practice and implementation?

The research utilised two key methods: (1) an extensive literature review of legislation, guidance, and case law; and (2) input from experts and interested parties (via a questionnaire survey and semi-structured interviews (EU, Member State - national & where relevant regional - plus international for comparison). The direct research with Member States was undertaken between October 2004 and March 2005.

Significant discussion took place with the Commission at the start of the research and with the Steering Group at the time of the Interim Report, reflecting on the fact that the SEA Directive was required to be implemented by 21 July 2004; yet only nine of the 25 Member States had done so by that time. This meant that, unfortunately, the timing of the study (which began mid-July 2004) was too late to provide guidance to Member States in preparing for implementation, but too early to provide a breadth of experience of where problems are emerging. Hence it was agreed with the steering group at the interim report meeting in December 2004 that the focus of the final report should be on providing case study examples of where overlaps were most likely to occur, and which would provide useful illustrative examples from which other Member States might be able to learn lessons and benefit when seeking to address similar problems of their own.

Further, it was seen as essential that the research focus on only those areas where there might be overlap, rather than on the potentially wide range of issues that might be associated more generally with SEA implementation (e.g. definitions of which plans and programmes would be caught by the SEA Directive, other than where this relates to the issue of overlap with application of the EIA Directive).

As a starting point a wide ranging literature review was undertaken, including an examination of international experience of the relationship between EIA and SEA, including the EU (e.g. DHV, 1999; Sheate *et al*, 2001; CEC, 2003a, b) and the USA, Canada, Australia, New Zealand and elsewhere (e.g. Bass and Herson, 1999; Buckley, 2000; Noble, 2000, 2003; Marsden and Dovers, 2002; Rossouw *et al*, 2000; Partidario and Clark, 2000; Sadler, 1996; Sadler and Verheem, 1996; Therivel and Partidario, 1996). In reality there is scant academic literature that has addressed directly the legal relationship between the two Directives explicitly and in detail (other than Sheate, 2003; 2004). Robinson and Elvin (2004) have, however, addressed aspects of the legal interpretation involved in implementing the SEA Directive in the UK. The SEA Directive has generated considerable debate in the assessment literature, particularly with regard to general and country specific insights into implementation of the Directive (e.g. Risse *et al*, 2002; and two special issues of *European Environment* journal in 2004, including Aschemann, 2004; Fischer, 2004; Gazzola *et al*, 2004). In some Member States, for example in Austria where SEA is being integrated into community development plans, major difficulties are not expected (Stoeglehner, 2004). In countries such as Italy, where implementation is taking place on a regional basis (in 20 regions), the process of implementation is likely to be more difficult (Gazzola *et al*, 2004).

3. Textual analysis of the Directives

The two Directives were compared in detail, setting the text of the Directives alongside each other to enable a detailed comparison of the legal text, to identify potential areas of overlap, similarity and difference. This analysis was undertaken as background to the study in order to be sure potential key issues had not been overlooked, and built further upon an initial analysis undertaken by Sheate (2003, 2004). The similarities and differences are discussed briefly below and summarised in Tables 3.1, 3.2 and 3.3, providing a simple comparison of the key elements of the two Directives. A review of relevant EIA case law was also undertaken, to examine any legal experience in dealing with potential problem areas of overlap, e.g. in defining what is a project rather than a programme or plan (see Chapter 4).

3.1 Preamble

While the SEA Directive not surprisingly bears significant similarities to the EIA Directive it is worth remembering that the legal context for the origins of the two Directives was quite different. The legal basis for European environmental policy was strengthened and the Co-Decision procedure introduced after the adoption of the EIA Directive and before the adoption of the SEA Directive. However, the recitals of both Directives are broadly comparable, both referring to relevant European Environmental Action Programmes and the need for a common approach to environmental assessment (the EIA Directive referring to the need to harmonise principles and the SEA Directive to adopting common procedures); and both reciting the aims of key provisions of the Directives. Overall the main differences are that:

- the recitals of the EIA Directive refer to the integration of environmental issues into decision-making whereas those of the SEA Directive talk about integrating environmental protection requirements with a view to *promoting sustainable development*, reflecting the prevailing policy context at the time;
- the recitals of the SEA Directive are longer, explicitly referring to strategic assessment obligations arising under other, more recent legislation (Convention on Biological Diversity, UNECE SEA Protocol) and the need to coordinate SEA requirements with assessment requirements arising from other European legislation (EC Habitats Directive 92/43/EC and Water Framework Directive 2000/60/EC).

3.2 Definitions

3.2.1 Level of "object" of assessment

Both Directives define their objects of assessment ("project" and "plans and programmes" respectively). However, the definition of "project" is relatively 'simple' or 'stand alone' concentrating on establishing the *activities* which constitute a project. One of the requirements of the EIA Directive (introduced by the EIA Amendment Directive 97/11/EC) is that a form of development consent *must be put in place* for

projects requiring EIA. By contrast, the definition of "plans and programmes" (PPs) concentrates principally on the body *preparing the PP and its mandate for doing so*, rather than the content of the PP. ('Content' issues are addressed, at least in part, in Art 3 of the SEA Directive which deals with scope – but to reach consideration of Art 3 a PP must already have satisfied the definition of "plans and programmes" in Art 2).

The SEA definition of plans and programmes (PPs), therefore, is more reliant on the interpretation of other terms e.g. "*authority*", "*required by legislation, regulatory or administrative provisions*", which at least in the short term is likely to lead to uncertainty. This perhaps reflects the greater complexity of the types and nature of plans and programmes across the EU, compared with projects. The EU SEA Guidance (CEC, 2003a) offers some guidance on this (see section 3, especially paragraphs 3.1-3.16).

3.3 Scope

3.3.1 Objects requiring mandatory assessment

Both Directives set out categories of "objects" that must be subject to mandatory assessment: the EIA Directive in Art 4(1) and Annex I; the SEA Directive in Art 3(2). The categories of projects requiring mandatory assessment under the EIA Directive, however, are much more specific (Annex I sets out 21 categories of projects), whereas the SEA Directive instead describes criteria that must be met for mandatory SEA to be required. Consequently, there appears to be greater scope for uncertainty and/or interpretation as to what requires assessment under the SEA Directive. The onus is much more on MSs to interpret the criteria and determine which PPs should require SEA, rather than relying on a more detailed list (Annex I, EIA Directive). In practice, however, there has been some uncertainty about which projects need mandatory EIA. For example, the five year EIA report (CEC, 2003b) records MSs' concerns at the *"vagueness of some of the project descriptions e.g. open cast coal mining (Annex I (19))"* (para 3.2.5).

The SEA Directive Art 3(2) (b) requires mandatory SEA for PPs requiring assessment pursuant to the Habitats Directive (92/43/EC) (known as "Article 6 assessment" or "appropriate assessment"). There is no direct equivalent in the EIA Directive[1], where *mandatory* EIA is linked to the *type* of project not the area that will be affected.

3.3.2 Objects which should be screened to determine whether assessment is required

As with objects requiring mandatory assessment, the SEA Directive potentially leaves much greater uncertainty as to the objects which should be screened to identify if assessment is required. However, even with the more detailed list of projects which

[1] Annex III of the EIA Directive does provide that areas designated under the Birds (79/409/EEC) and Habitats (92/43/EEC) Directives are criteria that need to be considered when screening Annex II projects, but these do not provide a trigger for mandatory assessment.

require screening under the EIA Directive (Annex II) issues have arisen in relation to the definitions of some project types. The five year EIA report (CEC, 2003b) records that there have been particular difficulties with the interpretation of Annex II 10(a) (industrial estate development projects) and Annex II 10(b) (urban development projects).

3.4 The assessment and types of effects to be considered

Both Directives require effects on the environment to be identified and described. The EIA Directive requires these to be *assessed* and the SEA Directive *evaluated*. The SEA Directive explicitly refers to synergistic effects, which are generally seen as a particular category of cumulative effects. Presumably the explicit reference to synergistic effects (but not other forms of cumulative effects, such as additive, or time and space crowding) is for the avoidance of doubt. The EIA Directive explicitly refers to direct and any indirect effects among its list of significant effects (Annex IV, footnote 1), whereas the SEA Directive does not use the terms 'direct' or 'indirect'. Instead, the SEA Directive refers only to a list of significant effects in Annex 1 (footnote 1) which, in all other respects (and with the addition of 'synergistic', is identical to the list used in the EIA Directive.

3.5 Elements of the environment to be considered

The EIA Directive requires consideration of effects on the factors listed in Art 3; whereas the SEA Directive requires consideration of "effects on the environment" including the factors listed which, it might be argued, is a wider construction. However, the EIA Directive does have a comparable requirement in paragraph 3 of Annex IV which provides that the environmental information should include "A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population…..".

Comparing the lists of factors, although these are broadly the same – both referring to fauna and flora, soil, water, air, landscape, material assets and cultural heritage - there are several differences:

- the EIA Directive refers to "human beings", the SEA Directive to "population" and "human health", which appears to be a narrower subset of impacts on human beings. However, any more general impacts could be construed as falling within the catch-all reference to "environment, including….."[2]

[2] The five year EIA report (CEC, 2003b) states *"The assessment of health impacts is not a particularly strong feature of current practice. There is considerable variation in coverage from a narrow to a broad interpretation of health effects. There is evidence to suggest that health impacts are considered to be less relevant to EIA, and/or to a certain extent covered by other legislation. There is some evidence to suggest that health impacts are considered under other headings such as pollution or risk."* (para 11, Summary of findings)

- In addition to the reference to fauna and flora the SEA Directive also refers to biodiversity (a more recent construct not prevalent during the development of the EIA Directive).
- The EIA Directive refers to "climate" whereas the SEA Directive refers to "climatic factors"
- The SEA Directive explicitly states that "cultural heritage" should include "architectural and archaeological heritage" (this was presumably added as a clarification, although this issue is not explicitly discussed in the EU SEA Guidance).

3.6 Environmental information and environmental report

3.6.1 Alternatives

The SEA Directive places more emphasis on the need to look at alternatives: where an 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*, are identified, described and evaluated…" (Art 5(1)). Under the SEA Directive, therefore, reasonable alternatives need to be considered in every environmental report. This is a principle widely recognised as fundamental to the assessment of plans and programmes (see e.g. Noble, 2000). By contrast the EIA Directive only requires the environmental information to include "an *outline of the main alternatives studied* by the developer and an indication of the main reasons for his choice, taking into account the environmental effects" (Art 5(3) & Annex IV). The five year EIA report (CEC, 2003b) records, however, that in most MSs there is now a legal obligation to consider alternatives in EIA, taking into account the objectives of the project.

3.6.2 Required information

Both Directives refer to lists of required information – the EIA Directive in Annex IV, the SEA Directive in Annex I - and both set out caveats on how much of this listed information needs to be provided. Both caveats refer to what can reasonably be required, current knowledge and methods of assessment and the stage in the consent procedure/decision-making process. Where the two Directives do differ is that the EIA Directive specifically prescribes a *minimum* of information which must be included (in Art 5(3)).

3.6.3 Consultation

Both Directives have provisions relating to consultation on the scope of the environmental information, though neither mentions consultation of the public. However under the SEA Directive this is a mandatory consultation requirement: the environmental authorities "shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report." (Art 5(4)). Under the EIA Directive scoping is discretionary i.e. as a minimum MSs must

implement a procedure whereby developers can ask competent authorities for an opinion on the information required (a scoping opinion), in which case the competent authority must consult the developer and the environmental authorities before giving its opinion (Art 5(2)). However this article does go on to provide that MSs can make scoping mandatory.

The EIA Directive also explicitly states that the fact that an authority has given an opinion does not preclude it from subsequently requiring more information (Art 5(2)). The SEA Directive does not have a comparable provision (it might be construed that the same principle applies, although this issue is not discussed in the EU SEA Guidance (CEC, 2003a)).

3.7 Consultation

The overall consultation provisions of the SEA Directive are more 'streamlined' and place greater emphasis on *early participation*. Amendments to the EIA Directive introduced by the Public Participation Directive 2003/35/EC[3], however, increase the emphasis on the effectiveness of the participation and bring the requirements closer to those of the SEA Directive. Unlike the EIA Directive, the SEA Directive does not make any detailed suggestions about the method for consulting the authorities and the public.

3.8 Decision-making

The main difference between the decision-making provisions of the two Directives is that the EIA Directive requires the information, the consultation and transboundary consultation opinions to be "*taken into account in the development consent procedure"*. The SEA Directive, on the other hand, requires the comparable information to be "*taken into account during the preparation of the plan or programme and before its adoption or submission".* In theory this difference suggests that the information/consultation opinions should be taken into account at an earlier stage in the SEA process compared to the EIA process. And the EU SEA Guidance (CEC, 2003a) states that "the obligations in Article 8 of the Directive reflect the iterative nature of the process of environmental assessment as applied to plans and programmes" (para 7.30). However, as the SEA Directive Art 6 and 7 consultations are consultations on the draft PP and ER then in practice these opinions will not be available until after consultation on the draft PP/ER, i.e. at a comparable stage to the consultation opinions available in the EIA process. However, this does not preclude earlier consultation as well, perhaps even on early drafts of the PP ("*[the authorities and the public] shall be given an early and effective opportunity……to express their*

[3] *Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice* which was due to be implemented in Member States by 25 June 2005. Referred to in this report as the "Public Participation Directive"

opinion on the draft plan or programme and accompanying environmental report…" – Art 6 (2)).

3.9 Relationship with other Community legislation

The provisions in the SEA Directive on the relationship with other Community legislation are broader than those in the EIA Directive. For example, Art 11(1) of the SEA Directive provides that SEAs under the Directive are without prejudice (i.e. do not replace) EIA or other assessments required by EC legislation. Art 11(2) provides that MSs can establish coordinated or joint procedures for SEA and assessments arising from any other Community legislation. Art 11(3) provides that for PPs co-financed by the EC SEA must be carried out in conformity with the specific provisions in Community legislation – i.e. it explicitly states one of the possible instances of dual obligations for assessment covered generally in Arts 11(1) and (2). Section 9 of the EU SEA Guidance (CEC, 2003a) discusses the relationship of the SEA Directive with other Community legislation in more detail.

In contrast the EIA Directive only explicitly mentions establishing a single procedure for EIA and one other particular form of assessment arising from EC legislation (IPPC). The five year EIA report (CEC, 2003b) states: *"Relationships between EIA and national environmental control regimes are complex and there appears to be little real co-ordination between the EIA Directive and other Directives such as IPPC and the Habitats Directive. Few Member States have taken the opportunity offered by Directive 97/11/EC to provide for the greater consistency and reductions in repetitious documentation and assessments, provided by closer co-ordination of EIA and IPPC. In some Member States a link is said to exist, but this link may simply consist of a recommendation that EIA and other relevant procedure should be dealt with simultaneously."* (para. 10, Summary of findings).

3.10 Information, reporting and review

Both Directives have provisions on information exchange, requiring a Commission report on the effectiveness of the Directive five years after implementation and for the Commission to make proposals (Art 11(4), EIA Directive and 12(3), SEA Directive). However, as the time periods for implementation of the Directives are different the five year effectiveness report on the amended EIA Directive was produced after the Directive had been implemented for 3 years, whereas the SEA effectiveness report is required two years after the implementation deadline.

3.11 Screening criteria

The screening criteria in both Directives (EIA, Annex III; SEA Annex II) require consideration of the characteristics of the object of assessment, characteristics of the location/area likely to be affected and characteristics of potential impacts/effects.

The criteria relating to impacts/effects are similar in both Directives. Most of the criteria are common to both Directives. The only differences are that:

- the EIA Directive refers to the "complexity" of impacts whereas the SEA Directive refers to "the cumulative nature of the effects". Cumulative effects are perhaps more effectively addressed at plan and programme levels than at project level, where there are limited opportunities for developers to consider other projects or activities. There may, however, be complex impacts on the environment resulting from an individual project which may include cumulative effects.
- the SEA Directive refers to risks to human health or the environment as an "effect" characteristic whereas the EIA Directive refers to "the risk of accidents…." as a "project" characteristic[4].
- In general the location/area criteria in the EIA Directive are much more specific; presumably because for the most part projects are more localised and more readily specified than most plans and programmes.

3.12 Information/ER contents

Many of the information requirements are common to both Directives (EIA, Annex IV; SEA Annex I):

- description of the "object" being assessed
- environmental characteristics of the area likely to be affected
- description of the likely significant effects (although as noted above, the elements of the environment listed and the definition of significant effects do vary slightly between the two Directives)
- mitigation measures
- a non-technical summary
- an indication of any difficulties in compiling the required information

However, the SEA Directive provision on alternatives is stronger (see above) and includes a provision relating to the "zero option" (para (b)) which is not explicit in the EIA Directive and provisions relating to environmental protection objectives (para (e)) and monitoring (i), which have no equivalents in the EIA Directive.

[4] The five year EIA report (CEC, 2003b) notes *"Risk is dealt with in a wide variety of ways and at very different levels across the EU, partly in response to the variety of geographical, geological, climate and other conditions. Risk is a screening criterion in Annex III and risk assessments appear in many EIS, and yet for most Member States risk is seen as separate from the EIA process as it is often handled by control regimes to which the EIA Directive is not applied"* (para 10, Summary of findings)

3.13 Process comparison: potential for joint/coordinated procedures

Table 3.1 below summarises the main differences in the procedural requirements of the two Directives which would need to be considered and addressed if joint or coordinated procedures were adopted.

Table 3.1 Main differences in procedural requirements of the EIA and SEA Directives

Stage	EIA	SEA
Screening	No consultation Publicity: determination and reasons [where EIA needed]	Consultation with the environmental authorities Publicity: determination and reasons [where SEA not needed]
Environmental information/report	Minimum information requirement No quality control requirement	Stronger emphasis on alternatives MSs to ensure environmental reports (ERs) are of sufficient quality
Consultation	Public, authorities and where relevant other MSs (The consultation provisions will be made more specific by the Public Participation Directive)	Public, authorities and where relevant other MSs
Decision-making	Environmental information and consultation comments to be taken into account	ER and consultation comments to be taken into account
Info on decision	Required (The information provisions will be made more specific by the Public Participation Directive)	More detailed requirements
Monitoring	Not required	Required

Table 3.2: Summary of main differences in provisions between the two Directives

Issue	Differences
Public/private sector remits	EIA Directive applies to both, SEA Directive is focused on public authorities (although may apply to privatised utilities to some extent)
Who carries out the assessment/ provides the environmental information/ environmental report	EIA Directive - the "developer" is responsible for providing the environmental information, but the detailed consultation arrangements are left to be determined by MSs and therefore may be handled by the decision-making body. SEA Directive - not explicit about who should carry out the SEA, or produce the ER
Exemptions	EIA Directive – wider exemption regarding defence, wider general exemption (although this will be amended by the Public Participation Directive 2003/35/EC) and exemption from the EIA Directive for projects adopted by parliament
Timing of assessment	EIA before consent SEA during Plan/Programme (PP) preparation
Joint procedures	EIA and Integrated Pollution Prevention and Control (IPPC) SEA more generally
Assessment	EIA "assess" SEA "evaluate"
Receptors	EIA specific list of factors SEA environment, including listed factors
Types of effects	Reference to direct and indirect absent in SEA
Scope	– Both require certain objects to have mandatory assessment and others to be screened – SEA Directive makes SEA mandatory for PPs which require appropriate assessment (no equivalent in EIA Directive) – Scope of SEA Directive generally left much more for MSs to determine and much more dependent on basis on which PPs are prepared
Screening	– Consultation: SEA requires consultation of authorities (not required in EIA) – Information: SEA requires publication of determinations and explicitly reasons why SEA not needed. EIA Screening determination to be made public (Art. 4(4))
Environmental information/report	– EIA Directive focuses on the information – SEA on the ER – defined as containing the information. SEA Directive explicitly requires assessment of reasonable alternatives (not required in EIA). – Both Directives have a list of information and then caveats

	on how much of this needs to be provided. – EIA Directive has a list of minimum information (no comparable provision in SEA Directive) – SEA has an explicit general provision about use of information from other sources
Consultation	– EIA has separate provisions for public/authorities compared to SEA which deals with these together – EIA requires the environmental information to be forwarded to environmental authorities, SEA for it to be made available. – EIA requires the information to be made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion. SEA requires the authorities and the public to be given an early and effective opportunity to participate within appropriate timeframes before adoption – (The consultation provisions of the EIA Directive will be made more specific by the Public Participation Directive)
Transboundary consultation	Overall similar. Main difference is the information that must initially be provided to other MSs and the timing of this consultation (The consultation provisions of the EIA Directive will be made more specific by the Public Participation Directive)
Decision-making	Both require environmental information/ER and consultation comments to be taken into account
Information on decision	SEA provision more detailed (The information provisions in the EIA Directive will be made more specific by the Public Participation Directive)
Commercial confidentially	EIA only
Monitoring	SEA only
Quality Control	SEA only
Directive Review	SEA – after 5 years and then at 7 yr intervals EIA after 5 years – then silent as to continuing review

Table 3.3: Overall comparison of the specific Articles of the EIA and SEA Directives

Issue	EIA Directive	SEA Directive
Preamble		
Title	Directive… on the assessment of the effects of certain public and private projects on the environment	Directive… on the assessment of the effects of certain plans and programmes on the environment
Objectives	Although Art 1(5) refers to "the objectives of this Directive" these are not explicitly set out	Statement of objectives (first part Art 1)
Definitions	Art 1(2): – "project" – "developer" – "development consent" – *"the public"* – *"the public concerned"*[5]	Art 2: – "plans and programmes" – "environmental assessment" – "environmental report" – "the public"
General obligations	Art 2(1) & 2(2)	Art 4
Scope	Art 4	Art 3
Exemptions	Arts 1(4), 1(5) & 2(3) *Arts 1(4) & 2(3)*	Arts 3(8) & 3(9)
The assessment and types of effects to be considered	Art 3 the EIA "shall identify, describe and assess…the direct and indirect effects of a project..." Annex IV - types of effects	Art 5(1) in the environmental report "the likely significant effects on the environment… …should be identified, described and evaluated." Annex I – types of effects
Elements of environment to be considered	Art 3 and Annex IV	Annex I (f)
Environmental information/report	Art 5 - Refers to the information which must be provided, the phrase "environmental report" is not used. Annex IV contains a list of information. Art 5(3) the minimum information needed	Art 2(c) defines "environmental report" which contains the information Art 5 contains provisions relating to the environmental report. Annex I contains a list of information
Consultation	Art 6 splits consulting authorities & the public into separate provisions	Art 6 deals with consultation of authorities & the public in the same provisions

[5] Words in italics show amendments introduced by *Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice* which needs to be implemented in Member States by 25 June 2005. Referred to in this report as the "Public Participation Directive"

	Art 6 amended by Directive 2003/35/EC	
Transboundary consultation	Art 7 *Art 7 amended by Directive 2003/35/EC*	Art 7
Decision-making	Art 8	Art 8
Information on decision	Art 9 *Art 9 amended by Directive 2003/35/EC*	Art 9
Commercial confidentiality	Art 10	-
Access to review procedure	*New Art 10a introduced by Directive 2003/35/EC*	
Monitoring	-	Art 10
Relationship with other Community legislation	Art 2(2a)	Art 11
Information, reporting & review	Art 11	Art 12
Implementation	Art 12	Art 13
Entry into force	Art 13	Art 14
Addressees	Art 14	Art 15
Objects requiring mandatory assessment	Annex I *Amended by Directive 2003/35/EC*	Art 3(2)
Objects requiring screening	Annex II *Amended by Directive 2003/35/EC*	Arts 3(3) & 3(4)
Screening criteria	Annex III	Annex II
Information/ER contents	Annex IV	Annex I

3.14 Conclusions

In considering the differences between the requirements of the EIA and SEA Directives it is important, for the purposes of this study into the relationship between the two Directives, to appreciate that whether the EIA or SEA Directives apply is a legal issue, i.e. whether the screening criteria of the EIA or SEA Directives (or both) are met. This is not the same as whether EIA or SEA as assessment processes should apply from the point of view of EIA/SEA theory or practice. The SEA Directive, for example, does not require MSs to produce certain types of plans; it only requires SEA if certain types of plans or programmes meet the criteria laid down in the Directive. Strategic plans or

programmes may not exist in certain sectors, or they may exist and be produced routinely as a matter of good practice, but not 'required' and so will not come under the SEA Directive. Even though there may be very good arguments in terms of SEA theory or practice as to why certain plans or programmes should be subject to SEA, including that they have significant effects on the environment, if they do not meet the screening criteria in full the SEA Directive will not apply. Much will no doubt rest on the European Court of Justice's interpretation in future case law of "required by legislative, regulatory or administrative provisions" (Art 2 (a)). Similarly, theoretical and practical understandings of EIA and SEA, e.g. in terms of their relationship in an 'ideal' tiered system of assessments, in terms of the available range of options and alternatives, the level of uncertainty, nature of impact prediction, geographical scale and detail (see Figure 3.1 below), do not necessarily apply in the context of the legal understanding of EIA and SEA under the two Directives. An EIA and SEA process (and EIS/ER) may have very similar characteristics if the object of assessment (the project, programme or plan) meets the screening criteria of both Directives and must therefore undergo both EIA and SEA or some form of 'co-ordinated (parallel or joint) procedure'.

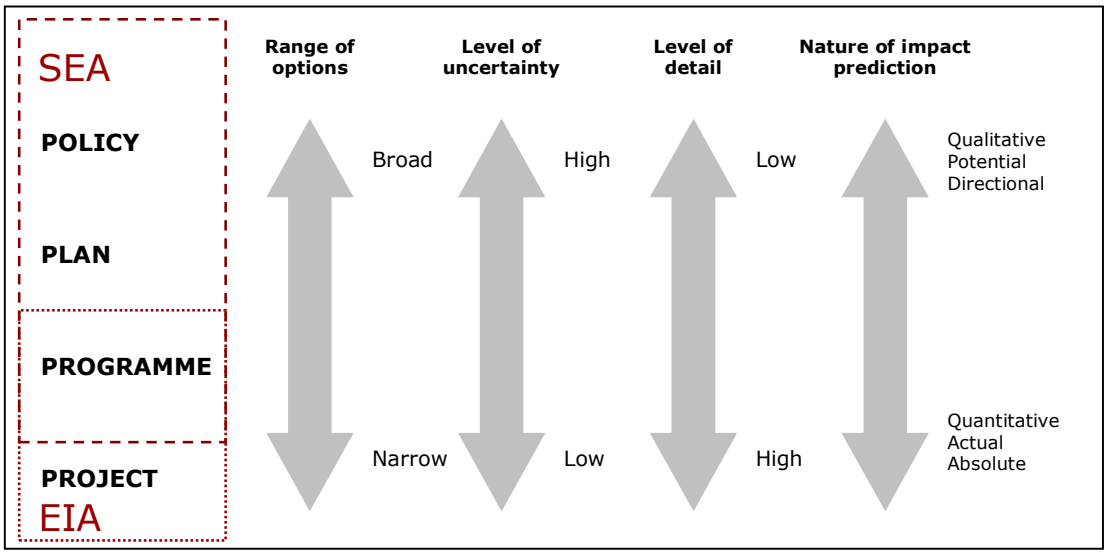


Figure 3.1 Broad trends in the nature of appraisal at different levels in the decision-making hierarchy (adapted from CEP, 2003)

As figure 3.1 makes clear (left-hand side), the real area of overlap between EIA and SEA – in theoretical, practical and legal terms – is at the programme level (typically defined as a collection of projects), though the distinction between a plan and programme at very local level may be difficult to discern in practice. It is this overlap area where EIA and/or SEA may apply in theory and practice, and where compliance with the EIA or SEA Directive may be required. There is, however, a category of 'activities' – forms of projects or programmes – where theoretically EIA *and* SEA should apply, but where the SEA Directive may not be required, leaving an apparent 'gap' where no formal strategic assessment is undertaken prior to project level EIA.

Typically, though, these occur where formal strategic ('tiered') decision-making or planning processes are absent. Examples may be multi-sector and multi-developer projects/programmes involving multiple consent processes, but may also occur in certain transport and electricity infrastructure schemes. These are considered further below, through the case studies and in the discussion (Chapter 7).

4. Case law

4.1 Introduction

Case law experience of the EIA Directive is extensive, but relatively little is directly relevant to the issue of overlap between the Directives. Specifically, the most relevant European Court of Justice (ECJ) cases appear to be those that relate to the interpretation of the word 'project' and the limits of Member States' (MSs') discretion in excluding whole categories of projects from assessment. This also reflects the purposive construction typically applied by the ECJ in EIA cases and recognised by the Commission as likely to apply with respect to the SEA Directive (CEC, 2003b). A brief discussion of the relevance of the EIA case law to SEA and this study is provided below, with examples of the most relevant cases provided in Annex III.

4.2 Relevance of the EIA case law to the SEA Directive and issues of overlap

The relevance of these cases to the SEA Directive and its operation alongside the EIA Directive is that they make clear that the ECJ regards Member States as having only limited discretion with respect to the main objective of the EIA Directive (and therefore by analogy of the SEA Directive), i.e. that projects (or plans/programmes) likely to have significant effects on the environment should be subject to an environmental assessment prior to their approval (or adoption). The reference in the SEA Directive to avoidance of duplication (Art. 4 (3)) should therefore not be a reason for excluding an assessment altogether, only that the appropriate level of detail is addressed at each appropriate level of assessment, with reference to other assessments and plans/programmes that may exist in the relevant hierarchy. Case *C-227/01 - Commission of the European Communities v Kingdom of Spain (2002)* (Appendix 3, 3.6) is a particularly relevant case in this regard in relation to transport schemes as the fact that an EIA had been carried out for the railway reservation general development plan in 1993 did not mean that a subsequent EIA should not be undertaken for each detailed section.

Another relevant aspect from these ECJ rulings could be that they may have an effect on the interpretations of Article 3 (3) (exemption for smaller areas or minor modifications). If the ECJ is consistent with all the Annex II rulings, this may mean that Article 3 (3) is to be interpreted with either great care or little real discretion.

Two UK cases are currently before the ECJ[6] that are particularly pertinent to the issue of the relationship between the EIA and SEA Directives, since they deal with multi-stage procedures governing applications for planning permission, specifically the issue of outline planning permission and the level of detail available to the competent authority at the time of any EIA that may be undertaken. The *Delena Wells* decision (Appendix 3, 3.8), however, suggests that if effects at the time of the principal decision are not identifiable these should be assessed at the later stage. This highlights how, under certain circumstances, it can be difficult in practice to distinguish a project from a plan or programme and the need for assessments to operate in a hierarchical arrangement. A project which is assessed at outline stage, with other matters reserved for later consideration, in practice is rather similar to certain types of local plans or programmes from which arise individual projects for subsequent assessment. Obviously, as no judgment has yet been forthcoming in the two pending UK cases, no conclusions can yet be drawn. The relevance of this is also particularly apparent in relation to the urban development projects discussed in e.g. the UK case studies below. Since there may be considerable time lag between the principal decision and later consideration of reserved matters, there may be a question as to what extent the information provided by the first assessment can be relied upon in drawing up subsequent assessments. However, any EIA or SEA, under the Directives, should be undertaken, *inter alia*, "taking into account current knowledge and methods of assessment" (Art. 5 (1b) EIA Directive; Art. 5 (2) SEA Directive) And so it seems unlikely that relying on information from a preceding SEA would be sufficient defence for utilizing out of date or inadequate information in a subsequent assessment.

5. Questionnaire Survey and Interviews

5.1 Introduction

A questionnaire survey was undertaken among Member State EIA/SEA experts and practitioners, NGOs and academics, seeking information on the means of transposition of the SEA Directive alongside the EIA Directive in the EU 15, and potential areas of overlap that might be identified.

Broad question areas covered included:-

- Part I
  - Degree of transposition of the SEA Directive, how and when.
- Part II
  - Issues to do with definitions of projects and plans and programmes
  - Potential areas of overlap between the Directives.

[6] **Case C-290/03** - Reference for a preliminary ruling by the House of Lords by order of that court dated 30 June 2003, in the case of Regina against London Borough of Bromley, ex parte Diane Barker (FC) (Reference published in OJ 22.08.2003); and **Case C-508/03** - Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (Application notice published in OJ 06.02.2004)

- Part III
  - Any case study examples

Table 5.1 below provides a summary of responses to some of the key questions asked of Member State and other experts regarding transposition of the SEA Directive and the potential for problems in its relationship with the EIA Directive. There were inevitably some gaps where there were no responses from Member State (and/or regional) experts, and this usually corresponded to the fact that the SEA Directive had yet to be transposed. Responses were received also from other NGO and academic experts, and these were used to supplement responses from MS experts where necessary, and provided valuable additional information for exploring case examples, including through follow-up interviews. In general, those countries where the SEA Directive had been transposed in part or in full by 21 July 2004 or by the time of the questionnaire (October 2004), had at least considered whether there were likely to be any issues of overlap between the two Directives. More in depth exploration of the overlap issues was therefore focused on providing illustrative examples from Member States on the basis of evidence available at the time. It was felt that the countries and examples that were emerging from the survey would provide a sufficient range of illustrations to be useful to the Commission and Member States in considering how best to address such issues.

5.2 Regional implementation

The terms of reference for this study focused the research on the EU 15. Since the SEA Directive has not yet been implemented in many countries, and especially in key countries with autonomous regions (such as Spain and Italy) only limited information was available on the potential for overlaps between the Directives in these countries (even though there is considerable experience of operating SEA prior to the SEA Directive).

In Spain the 17 Autonomous Communities (AC) have a different scope of powers for environmental legislation compared to urban planning/property rights. While national government (federal level) is competent to produce basic legislation on environmental matters, which can be supplemented or elaborated by the ACs at the regional level; the ACs have complete power in relation to urban planning/urban development projects. Hence, while the national government can suggest minimum standards which apply to these matters it cannot regulate them. At a federal level the EIA Directive has been implemented by Legislative Royal Decree 1302/1986, of 28 June, on Environmental Impact Assessment as modified by Act 6/2001 of 8 May which provides a common set of minimum standards with which the ACs must comply. At the state level almost all of the ACs have produced their own legislation which includes the federal standards and in some cases goes further. The national Act on SEA which will implement the SEA Directive at a national level was finally approved by the Council of Ministers on 1st April 2005. The implementation of the SEA Directive will be shared

by both national and AC levels and it is expected that the ACs will now develop their own legal instruments. Indeed some of the Regions have SEA regimes which predated the SEA Directive. Four of the Regions (Catalunya, Andalucía, Illes Balears and Murcia) have been cooperating with six of the Italian Regions (Lombardia, Emilia-Romagna, Liguria, Piemonte, Toscana and Valle d'Aosta) in a project aimed at producing a common methodology for SEA to support implementation of the SEA Directive (the EnPlan project)[7].

Potential for EIA/SEA overlap in Spain exists in relation to urban plans produced in some autonomous regions, like Andalusia and Valencia, which already undergo an EIA procedure, and industrial estates and projects within them, depending on the size and level of particular projects.

In Italy, the SEA Directive is being implemented separately in each of Italy's 20 regions. In the region of Emilia-Romagna, for example, SEA has previously been required under the "*General Rules on Protection and Use of the Territory*" (LR 20/2000) passed in 2000. The region is currently working on a bill for full implementation of the SEA Directive, and is considering a joint procedure for evaluating alternatives of those projects subject to EIA where they are part of a PP subject to SEA, so that the alternatives are considered at the same time rather than as part of two separate processes.

In many of the new MSs, the long tradition of central planning has resulted often in a large number of small local plans being produced by local authorities. While there is considerable experience now of implementing forms of SEA in many of the new MSs the issues of overlap with the EIA Directive have not yet been considered in detail. The most likely area of overlap of SEA with EIA is with local level plans. (Cherp, 2005, *pers. comm*.)

5.3 International experience

International experience was also explored from the US, Canada, Australia and New Zealand, through the literature and through selected interviews with practitioners and experts in the US and Canada in particular. The experience was used to help inform an understanding of the potential for overlap and possible solutions that might be available for addressing any problems that might arise from such overlaps.

Examination of the international literature (e.g. Dalal-Clayton and Sadler, 2004; Sigal and Webb, 1989; Noble, 2003; Clark and Richards, 1999; NEPA Task Force, 2003; Spaling *et al*, 2000; Marsden and Dovers, 2002; Wood, 2003) suggests that the US (programmatic EIS), Canadian (separate legislation for SEA and project EIA) and Australian experience (some provincial SEA provisions) provide some general insights into the joint operation of plan and programme SEA and project EIA. However, the

[7] See http://www.interreg-enplan.org/home.htm

nature of the EIA literature is that it is often rather superficial in its legal coverage, and since SEA tends to be a rather recent phenomenon the extent of relevant legal literature is limited. Telephone interviews, therefore, were undertaken with key individuals in the USA and Canada as the most efficient way of understanding how these systems work with respect to SEA and EIA relationships. A summary of the main SEA arrangements for linking SEAs and EIA in some non-EU countries is provided in Table 5.2 below.

A full list of consultees is included in Annex 1.

Table 5.1: Summary of EU15 responses to Key Questions of Questionnaire Survey

Questions	EU Member State														
	Austria	Belgium *Flanders only*	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxem-bourg	Netherlands	Portugal	Spain	Sweden	UK
Part I: Transposition															
1.1 (i) – by 21 July 2004	Partly	Partly	Yes	No	Partly	Partly	n/a	Yes	No	n/a	Partly	No	No	Yes*	Yes
1.1 (ii) – by receipt of questionnaire (October 2004)	Partly	Partly	Yes	No	Partly	Partly		Yes	No		Partly	No	No	Yes*	Yes
Part II: Definitions															
2.1 (i) Does PP definition cover actions traditionally treated as projects	Poss	Yes	Poss	No	Yes	Poss		Poss	Poss		No			Yes	Poss
2.1 (ii) Does EIA cover actions which might be regarded as plans or programmes	Poss	Yes	Poss	Poss	Yes	Poss		Poss	Poss		No			Yes	Poss

Note: n/a = no information available; blank spaces = no answer to the question(s)
* While the SEA Act had been passed, the more detailed Ordinance had still to be approved

Table 5.2: SEA Provision, Procedures and Issues in Non-EU contexts

Non-EU Countries	Application	Provision: Legislation, Administrative order/or Guidance	Approach / Procedure	Issues
USA (federal)	Programmes Plans	Provisions for SEA included in the NEPA, 1970 CEQ Guidelines apply	'actions' to include projects and plans -EIA procedure followed for programmatic EA -tiering approach ensuring a linkage between programme and project EIA	-programmatic EIA (PEIA) useful in encouraging tiering and has resulted in the need for fewer project EIAs. Project EIAs following PEIAs often more focused on project issues - Continuing tension between broad intent of informing policy making and its project specific application
Canada	Policies and Programmes to Cabinet	EIA – legally enacted under the CEAA SEA – non legislated process Cabinet Directive of June 1990, updated in 1999 -SEA Guidelines (2000)	Distinct process for EIA and SEA but the SEA of policies and programmes follow a similar pattern to project EIA	More rigorous basis for EIA process application under the statutory authority of the CEAA while policy and programme assessments are under loosely prescribed administrative responsibilities
Australia	Policies Plans Programmes	No specific provisions at Commonwealth level Western Australia's Environmental Protection Act (1986/1993) allows for the EA of policies, plans and programmes New South Wales and Victoria have established coordinated project EIA and land use planning systems which incorporate SEA elements	No formal procedure SEA frameworks and methodologies built on the experiences and successes of project EIA A combination of statutory and informal mechanisms is used for policy EA, including the use of project EIA and SEA of plans and programmes to influence policy iteratively.	Bottom up approach is useful because it reduces amount of change required.
New Zealand	Policies Plans Programmes	Provisions for SEA under the Resource Management Act (RMA) - no specific guidelines	RMA procedure- SEA integrated within planning process	This framework established a context and parameters for subsidiary EIAs, which are required for resource consents.

6. Selected Country Case Studies

6.1 Introduction

Following the analysis of the questionnaire survey results, the countries below were selected for more detailed analysis of potential areas of overlap between the two Directives. Given the point at which this research was being undertaken (July 2004 - March 2005) these were selected primarily on pragmatic grounds in order to provide a sufficient range of illustrative examples. Countries where potential overlaps were not identified or were believed by MS experts unlikely to yield significant issues at this stage therefore were not selected (e.g. the Netherlands felt there were likely to be few potential overlaps between the Directives and that some years' experience of operation would be required before any such overlaps could be identified).

The following countries (Table 6.1) were selected as case study examples, and the key issues identified through the questionnaires were explored through a combination of telephone and face-to-face interviews and email correspondence, as appropriate. The full list of case study Consultees and sources is included in Annex 2. Where flow diagrams are used to illustrate EIA and SEA processes in the case studies shaded boxes  indicate strategic elements, and dotted arrow lines represent possible connections.

Table 6.1 Key areas of overlap in selected case study countries

Country	Key Issues
Austria	Possible overlap where change in land use plan needed for developer to realise application for consent. SEA then needed for plan amendment and EIA for project.
Denmark	Because of its transposition through the Planning Act, EIA results in the amendment to the original land use plan, which is therefore subject to SEA. Therefore, both procedures have to be fulfilled, and therefore potential for duplication.
France	EIA already applied to certain types of plans and programmes. No overlap intended as EIA will continue to be applied in these cases rather than SEA.
Germany	A joint environmental assessment procedure which complies with both the requirements of the EIA and SEA Directives has been established for certain types of town and country planning plans (land use plans and local level) to overcome possible overlap and definition problems.
Ireland	SEA likely to replace EIA for Strategic Development Zone plans, though EIA will still continue to be required for subsequent projects where appropriate.
Sweden	EIA is required for certain detailed development plans. As these may also require SEA overlaps are likely.

United Kingdom	Potential for overlap in transport schemes, e.g. at which point to address which types of alternatives ('tiering' issues). EIA required for certain types of outline planning permission, e.g. masterplans, where SEA could also be required under certain circumstances.
USA	Programmatic EIA useful in tiering and has resulted in the need for fewer project EIAs as well as focusing project EIA. EIA and SEA under the same legislation.
Canada	More rigorous basis for EIA process application under the statutory authority of the CEAA while policy and programme assessments are under loosely prescribed administrative responsibilities. Generally poor relationship between SEAs and EIAs.

Each case study below describes in summary form the key legislation implementing EIA and SEA in the Member State, any pre-SEA Directive experience of SEA and potential areas of overlap that have been identified.

6.2 Case Study 1: Austria

6.2.1 EIA Directive

EIA is implemented by the Austrian EIA Act 2000 (UVP-G 2000), which also implemented the amendment Directive 97/11/EC. Revisions were made in December 2004 and March 2005. The revision in 2004 implemented the Aarhus Convention in the EIA process. The 2005 revision introduced deadlines and screening of projects in order to speed up the process. The Act provides for two different EIA procedures - a regular and a simplified procedure. The simplified procedure, which is quicker, less detailed and involves less public participation is applied only to some kinds of small infrastructure projects, such as roads and small industrial plants. The regular procedure is applied to large projects.

The Federal Ministry of Agriculture, Environment and Water Management is in charge of implementing the EIA Act. The Ministry of Transport, Innovation and Technology (for federal roads and high capacity railways) and the "Länder" governments (i.e. provincial governments, for all other types of projects) are the competent authorities for EIA.

6.2.2 SEA Directive

At Federal level SEA implementation for waste management, air, noise and water is by amendment of relevant sectoral acts e.g. the Federal Water Management Act. The Federal Transport Plan is not mandatory *('required')* and so does not come under the SEA Directive. However, for transport a stand alone act is under discussion. For planning, SEA is implemented at provincial level, either through amendment of their

planning acts or through SEA Acts. These SEA Acts cover not only planning, but also other sectors. Full implementation is expected by the beginning of 2006.

Current state of provincial SEA:-

- Carinthia – A separate SEA Act for the province uses a list approach to identify all PPs in its competencies, and came into force in 2004;
- Lower Austria – Lower Austrian Spatial Planning Act in force;
- Upper Austria – Draft for amending Land Use Act has been prepared and consultations are on going;
- Salzburg – Amendment of Salzburg Spatial Planning Act, which is now in force. The Provincial Waste Management Act is also being amended and consultations have finished;
- Styria – Land Use Act changed and now in force;
- Tyrol – Provincial SEA Act- is in force; Draft for amending Land Use Act, will soon be in force;
- Vienna – Changed National Park Management Act, Land Use Act and Waste Management Act: the consultation process is finished but not yet in force;
- Vorarlberg – Draft for amending Land Use Act and consultations finished
- One other province (Burgenland) – No draft Act yet.

6.2.3 SEA experience prior to adoption of the SEA Directive

A number of voluntary and pilot SEAs have been undertaken since 1995. For example, a pilot SEA for the Vienna waste management plan, which commenced in 1999, illustrates the hierarchical relationship between SEA and EIA. By 2003, some of the proposed measures had already been implemented, such as the selection of sites for the recommended new incineration plant and new fermentation plant, and project EIAs have been initiated for these new installations.

Another pilot application is the SEA for the waste management plan for Salzburg province, which was undertaken in 2003 to inform the preparation of the Provincial Waste Management Act, but did not refer to specific EIAs. Other pilot SEAs have been: Local Energy Plan for the City of Graz; Weiz Land-Use Plan; Tennengau Regional Programme; Danube corridor demonstration study; Regional development plan for the Danube area in Lower Austria; Urban and transport development in North-East Vienna.

6.2.4 Areas of potential overlap between EIA and SEA

Spatial planning in Austria consists of four levels: provincial, local levels, land use plans and building plans.

- Provincial Land Use Plans/Programmes identify population centres, determine development routes and main traffic routes and include statements about community structures and population density, Under the provincial level, Sectoral Land Use Programmes set out objectives for certain spatial problems and

Regional Land Use Programmes (e.g. for 13 municipalities in a province) establish goals for that region;

- Local level: local development concept containing the aims and goals with measures for implementing the direction in which the community wants to develop. The local development concept includes all spatial sectors and is used as a basis for the land use plans;

- Land use plan: defines for each plot of land of a community whether it is dedicated for building, commerce or transport or as a pasture (the most important instrument for ensuring the implementation of land-related measures;

- Building plan: defines the proposed spatial allocation, density and form of buildings.

Potential overlap between SEA and EIA can occur when a change in the land use plan is required because of a project proposal. These are most likely to occur with respect to urban development projects and industrial estates.

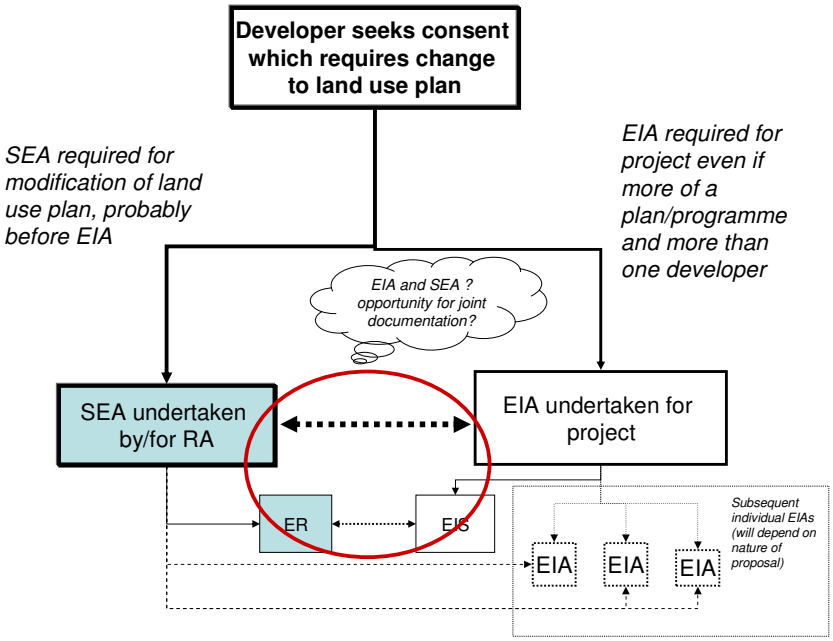
Urban development projects

Change in land use
Overlaps may occur in cases where a developer wants to apply for development consent and as a condition for being able to realize that project a change in the land use plan is necessary (see Figure 6.1 below). This might happen for several project types, but probably most often for industrial estate and development parks or urban development projects. If the necessary land allocation is already in place no overlap exists because these types of projects are identified as projects and regulated by the Austrian EIA Act.

Additional problems concerning these two project types regulated by the EIA Act depend on the status of the planning stage of this project type when applying for the development consent and EIA. The legal zoning of the project area (land use plan) has to be carried out either before or during the EIA procedure. With the transposition of the SEA directive into the spatial planning regulations, for this kind of plan, SEA becomes obligatory. As most of the time the planning of a project accounts for the revision of the land use plan and not vice versa, it is not clear how the two assessments will function together. In this case, EIA and SEA may be carried out at the same time, although it is not a legal requirement to do so and practically it is more likely that first an SEA will be undertaken and immediately afterwards an EIA will be carried out, with the EIA using the information gained by the SEA. This issue is further complicated by the fact that the responsibility may lie with different authorities.

Another area of overlap concerns the project itself. If it is already a very well worked out project and only one developer is behind the urban development project then it has more of a project character, but if it is not clear who and how many developers are behind this type of project, and if it is at the very beginning of the planning phase, then it is more a plan/programme, but still has to be classified as a project according to the EIA Act.

Figure 6.1 Possible SEA and EIA requirements for developer initiated changes to land use plan



Building plan

There could be a problem of overlap at the level of a building plan ('small' plan with site locations). In theory, there is potential for an SEA to be prepared for these building plans (because they are defined as plans, although they relate to specific sites) and therefore result in an overlap with EIA, where EIA is required for certain developments (such as housing or small shopping centres). In practice, the building plan will only very rarely if at all be subject to an SEA since the real framework setting is done by the land use plan. Urban development projects relate to residential buildings according to the EIA Act of 2000, and so these should normally be subject to project level EIA. However, there are as yet no specific cases of such overlaps.

6.2.5 Conclusions

The main opportunities for overlap in Austria appear to be at the local level with respect to small scale plans that overlap with certain development projects, e.g. housing, urban development projects, particularly if the development project necessitates the modification of the land use plan and the project is well worked out, with the project ready to undergo the EIA procedure. There is potential, therefore for

the application of parallel EIA and SEA procedures or possibly for a joint (i.e. merged) procedure so as not to duplicate assessments, depending on the time differences between planning and development consent procedures. This would ensure legal compliance with both the EIA and SEA Directives where such overlaps occur.

6.3 Case Study 2: Denmark

6.3.1 EIA Directive

EIA has been implemented in Denmark since a ministerial order was made under the regional planning legislation in 1989. The Planning Act 1992 was amended on several occasions and in 1999 was amended to include the provisions of the EC Directive 97/11/EC on EIA, including provision of the EIA permit (Nielsen *et al*, 2005). The EIA permit, granted by the authority to the developer) was introduced to fulfil the obligation of the EIA Directive (Art. 2 (1) that those projects subject to EIA must be subject to development consent. EIA is now fully implemented through *Part 3* [on regional planning] of *The Planning Act 1999*.

Before the introduction of the EIA permit linkages had already been made in the Danish EIA legislation between existing environmental permits and the use of EIA. With the changes of the Directive in 1997 this was turned the other way around by the implementation in 1999. From 1999 an EIA-defined project must have an EIA permit. However, where another environmental permit is also needed (e.g. an IPPC permit), this permit can substitute for the EIA permit. While the EIA permit is deemed appropriate for establishing certain specific conditions for the realisation of a project, stricter enforcement conditions related to industrial production are considered to be more suitably controlled by IPPC permits[8].

Each EIA is carried out as an amendment procedure to the existing regional plan and formal adoption of the development consent occurs by way of an amendment of the guidelines in the existing regional plan followed by the EIA-permit given by the regional authority to the developer. Part 3 §6c of the Planning Act states the following:

> "*Projects that are likely to have significant effects on the environment shall not be initiated before guidelines are produced in the regional plan on the location and design of the project with an accompanying report (environmental impact assessment obligation)*" (Breuer, 2000).

Since the 1880s major infrastructure projects in Denmark have been subject to parliamentary legislation. Such projects include motorways, railways, harbours of national importance and smaller projects of national importance e.g. the establishment

[8] According to Christensen *et al* (2003), however, other environmental permits may not necessarily cover the breadth of issues expected of EIA due to the constraints imposed on county administrations by sectoral legislation to regulate across the broader environment.

of a bypass road of more than four kilometres in length (see Kjellerup, 1999). As such projects are subject to parliamentary legislation they are exempt from the normal EIA procedure according to the Directive (Art. 1.5). Bills or other Government proposals, which are presented to Parliament, are subject to a separate, environmental assessment process in accordance with the EIA Directive (ECJ case C-287/98).

6.3.2 SEA Directive

The SEA Directive is implemented by Act No. 316 of 5th May 2004 on Environmental Assessment of Plans and Programmes (the SEA Act). The SEA Act entered into force on 21 July 2004. The plans, which will be assessed under the SEA Act, include all kinds of plans and programmes falling under the scope of the Directive, including plans under the Planning Act. The majority of Danish SEAs will be carried out in relation to 'physical plans' developed by the Counties (regional authorities) and Municipalities.

According to the Danish Planning Act, each county has to prepare a regional land-use plan, which sets the framework for future town development. These plans have legal implications for land-use planning at the municipal level (Hilding-Rydevik, 2002). Regional plans consist of two parts: a 'binding' guideline part, and an account of the plan. The account part can include the environmental report. County councils approve new development projects on the basis of proposed amendments to the regional plan in the form of new 'binding' guidelines and the EIA. For every EIA project an amendment must be made to the regional plan, and these amendments are in their own right plans according to the SEA Act. SEA will also apply to all other kinds of plans and programmes falling under the scope of the Directive e.g. water-resources planning, wastewater management plans, waste management plans, heat-supply plans and raw material extraction plans.

Ministerial guidance for relevant authorities on how to carry out SEA was expected before the end of 2004, but is now expected sometime later in 2005. An Information Letter, produced by the Minister of Environment (1 July 2004), addressed to county and municipal authorities, recommends that the EC Commission Guidance on environmental assessment be consulted until the Danish guidance is adopted. The first draft of the guidelines was expected to be available for comment in April 2005. However, some effort has already been made at the municipality level where small leaflets have been produced outlining the main stages of SEA and relevant contacts.

The responsibility for spatial planning is laid out in the Planning Act, with responsibility falling on the Minister of the Environment at the National/State level; 14 County Councils at the Regional/County level – the county is a regional self-government; and the authorities of the 275 municipalities at the Municipal/Local level – who are responsible for local functions. Planning at any level in Denmark must be in agreement with the framework established at the next level above (Breuer, 2000).

6.3.3 SEA experience prior to adoption of the SEA Directive

A few SEAs have already been undertaken in certain municipalities (at the local level) for local plans. Local plans often include aspects of particular usage of an area in connection with a development that could have previously gone through an EIA (but mostly have not) (an example includes a transport centre to be located outside Aarhus).

6.3.4 Areas of potential overlap between EIA and SEA & other related issues

Projects subject to EIA, but also considered a plan or programme

It is likely that there could be some 'conflict' between certain categories in EIA legislation that may also fall under SEA legislation, i.e. projects subject to EIA, but also considered a plan or programme. In particular, 'construction works/constructions in urban zones' (Annex 2 of the EIA regulation). This type of construction could include anything from quite complex and advanced construction schemes to very simple constructions, and also local plans, which set the framework for future EIA projects and will therefore be required to undergo SEA under the SEA legislation.

Overlap between SEA of regional planning and project EIA

There is potential for overlap between the EIA procedure implemented at the regional level and the SEA procedure that will be undertaken of regional plans. Such overlap cannot be avoided due to the nature of EIA implementation in the Planning Act. Specific examples of such overlap will be more obvious and visible in time, but may be greatly influenced by proposed dramatic changes to the geographic scope of regions within Denmark: a large structural reform is due to come into force in January 2007. This reform involves the division of Denmark into five regions, with limited responsibilities, instead of the current 14, and a reduction from 275 to create approximately 125 larger municipalities.

Large-scale building and engineering projects

The environmental assessment of large-scale building and engineering projects takes place according to the EIA procedure in connection with regional land-use planning (Hilding-Rydevik, 2002). There is potential for overlap between the SEA and EIA for large-scale building and engineering projects, depending on the framework within which the project is developed or adopted. For example, if the project involves the development of a whole new part of a city then it will require an SEA. However, it would also come under the planning category of 'urban zone construction works', which would have required an EIA. This scenario provides an example of EIA taking place at the same time as the SEA, because the EIA is *the* amendment to the plan. It appears that it is the way in which the Directives are implemented in Denmark, through the planning system whereby projects require amendments to land use plans, that generates this potential for overlap even for large-scale projects.

Large infrastructure/construction projects

The application of EIA to large infrastructure/construction projects has been an on-going issue in Denmark. Such projects are mostly specified and adopted by law. Examples of large infrastructure projects (of which there are very few) include the Oeresund Bridge (16 km bridge linking Sweden and Denmark, constructed during 1995-2000). Ministerial Order No. 428 of 2 June 1999 on EIA states that such construction projects are exempt from normal EIA procedures, but have to fulfill the obligation of the EIA Directive (Art. 1.5) and are instead covered by the Ministerial Circular on impact assessment of Bills and Governmental proposals. The SEA Act does not apply to Government proposals. However, Annex III to the SEA Act identifies different types of construction projects, which are approved through the ordinary planning and environmental permitting processes. Therefore, plans and programmes for construction projects are not exempt from the SEA requirements insofar as the plans and programmes fall under the SEA Directive.

Energy sector

One of the first EIA cases brought before the Danish Nature Protection Board of Appeal concerned a power plant in the Northern Part of Jutland. The issues under question were 1) the relationship between the overall Danish energy policy and the specific project, 2) whether considerations of alternative locations for the plant and project alternatives should be considered within the county border, and 3) the EIA of the pipelines.

Energy plans will now be subject to SEA, and this has clarified the relationship between overall energy planning and the relatively few energy producing plants. SEA of the overall national plan is expected to provide an appropriate instrument for addressing the question of alternative location and alternative solutions on a nationwide scale. Counties have in the past co-operated in undertaking EIAs for pipeline projects crossing county borders.

Cumulative effects

The application of SEA to general regional planning would, for example, help to identify the cumulative effects of developments such as pig farming. One such example, where consideration of cumulative effects would have been advantageous, is that of the Wadden Sea area (consisting of two counties). In one county, Ribe County, 351 individual applications for intensive pig-rearing facilities were screened, without the need to apply the EIA procedure to any of the applications. All these applications were filed within a four-year period. The county did, though, already have an obligation to consider the cumulative effect within the screening procedure and the decision concerning the need for an EIA. Had SEA been applied then the cumulative effects of all these pig farms might have been given greater prominence in decision-making on screening.

6.3.5 Conclusions

Due to the nature of the Danish planning system certain large projects are subject to Government promulgation and Parliamentary approval. Land use plans may require amendment as a result of certain types of projects, e.g. urban development projects, in which case SEA would be required for the amendment, while EIA would be undertaken for the project. In this situation parallel EIA and SEA procedures might be appropriate and necessary to ensure legal compliance with both Directives, while also encouraging better coordination and timing between the assessments.

6.4 Case Study 3: France

6.4.1 EIA Directive

EIA existed in France for some time before the EIA Directive (Glasson and Bellanger, 2003), since the Nature Protection Act 76-629 (10 July 1976) and the EIA decree 77.1141 of 12 October 1977 (Études d'impact) which made EIA a mandatory requirement for projects included in Zones of Co-ordinated Planning (Zones d'Aménagement Concerté – ZACs). The 'appreciation générale des impacts des programmes' was introduced by the decree of 25 February 1993 for certain types of large or complex projects (see below). This longer tradition of EIA in France has meant that certain traditions in the application of EIA were already well established by the time of implementation of the EIA Directive. This has some relevance to the way in which potential overlaps between the EIA and SEA Directives are likely to be addressed.

6.4.2 SEA Directive

An 'ordonnance' was adopted on 3 June 2004, allowing amendment of the environment code, which defines the main rules for all categories of plans and programmes. This 'ordonnance' is relatively short, having only a limited number of articles to implement the principles of the directive. As the first step of implementation the wording is in line with the SEA Directive on the most important issues. This text modifies the environment code and also the town and country planning code. The ordonnance is in two parts, the first relates to the general application of the SEA Directive to all kinds of plans and programmes; the second part relates only to land use plans. Two further decrees (décrets) are therefore required to elaborate the specific details and requirements of the Directive in relation to each of the two parts of the ordonnance: i) a general decree relating to all plans and programmes, and ii) a more specific decree in relation to land use plans.

Both general decrees, and others related to forestry and mobility plans, were as a package presented to the French Higher Administrative Court (Conseil d'État). They were approved with some changes in the wording and on the scope of application in February 2005. They were then reviewed by the Government and sent to the Ministers to be signed. Both decrees were finally approved at the end of May 2005.

In addition, several other decrees will be needed to implement specific regulations relating to different sectoral plans and programmes.

6.4.3 SEA experience prior to adoption of the SEA Directive

Environmental assessment at policy level was introduced in 1990 (Decree of 16 July 1990). Any proposed laws must demonstrate that they are both environmentally acceptable and sustainable. Where such laws are deemed to have environmental impacts then an environmental assessment is required (Turlin, 1994).

A number of pilot strategic impact assessments were undertaken during the 1980s and 1990s, e.g. in the land use planning, transport and electricity sectors. EIA has also traditionally been applied to certain types of plans and programmes (see below). In 1999 an SEA was undertaken for the multi-modal proposals (the first of its kind at that time in France) for the North Corridor, an area between North Paris and the South of Brussels with a total of 22,000 kilometres^2 (20,000km^2 in France and 2,000km^2 in Belgium). This Corridor SEA involved three modes of transport: road, rail and river.

6.4.4 Areas of potential overlap between EIA and SEA

France has attempted to avoid the potential for overlap by specifying two different fields of application. Certain PPs will continue to be subject to EIA, as before. Other PPs will be subject to the SEA Directive. A specific article (Article 2) in the 3 June 2004 Ordonnance (implementing the SEA Directive) states that it does not apply to plans and programmes already assessed through the French implementation of the EIA directive.

There are two situations where existing EIA covers plans and programmes:-

i) Zones of Co-ordinated Planning ('Zone d'Aménagement Concerté' - ZACs), and
ii) 'Programmes of interrelated projects' ('Programme de Travaux' - PTs).

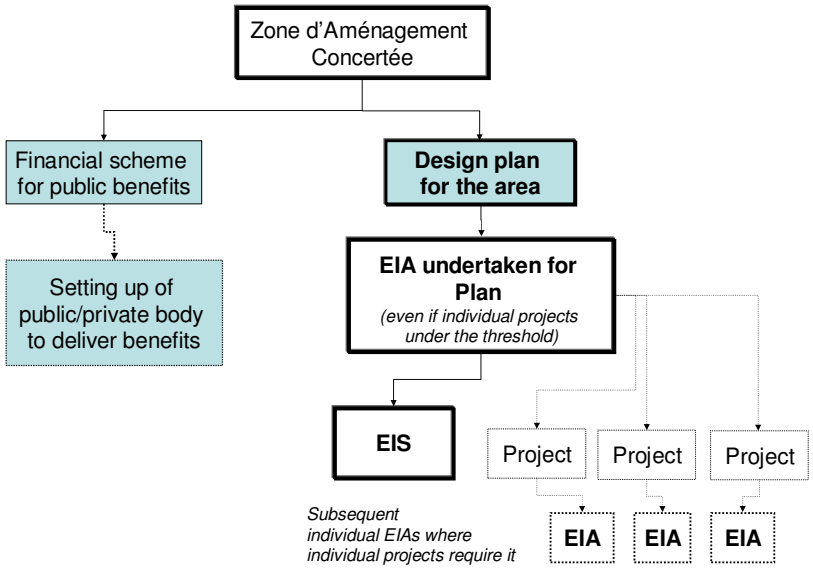
Zone d'Aménagement Concerté

ZACs are planned unit developments which include buildings, constructions and the creation of infrastructure such as sports facilities, hospitals, water supply and sewerage systems. These are presented in a zoning plan and in these areas authorisation consents are required for some of the subsequent projects. The ZAC is thus a planning document, and represents a state in the programming process which frames projects subjected individually to authorisations and EIA. The impact study that is carried out on the ZAC is undertaken at a stage when the detail of the work is not completely known. ZAC plans are made up of two parts. The first part is financial, and details how the developer will provide funds for certain local benefits (e.g. a school, or a park). This then leads to identifying who will undertake these proposals, and involves creating a special public body (a form of public/private body) to

undertake it. The second part of the ZAC is the design plan for the area and it is this part on which the EIA is undertaken.

While ZACs very often relate to urban developments, given the nature of these types of development, they can also be used for tourist resorts, golf courses (e.g. with hotels), and industrial estates (zone industrielle). Each individual project within such a ZAC could then have a separate EIA if required under the normal EIA screening process (Figure 6.2 below). ZACs have different steps to programme de travaux (PTs) below. ZACs contain the general design that then gives rise to specific projects later on. PTs, on the other hand, occur at the project level, i.e. they are relatively detailed, but provide for the interlinking of project elements.

Figure 6.2: Application of EIA to Plans under Zone d'Aménagement Concerté



Programme de travaux

Programme de travaux have existed since 1993. There are two different types of PT i) when projects occur at the same time, and ii) when projects are phased over a long period (see Figure 6.3 below).

i) The first type involves an "***étude d'impact globale***" (a 'global' EIA) that is presented with each separate permit application for each separate sub-project. For example, if a PT included three elements: a dam, a road and powerlines, all being constructed at the same time, each permit, even if following different consents, would be presented with the same global EIA.

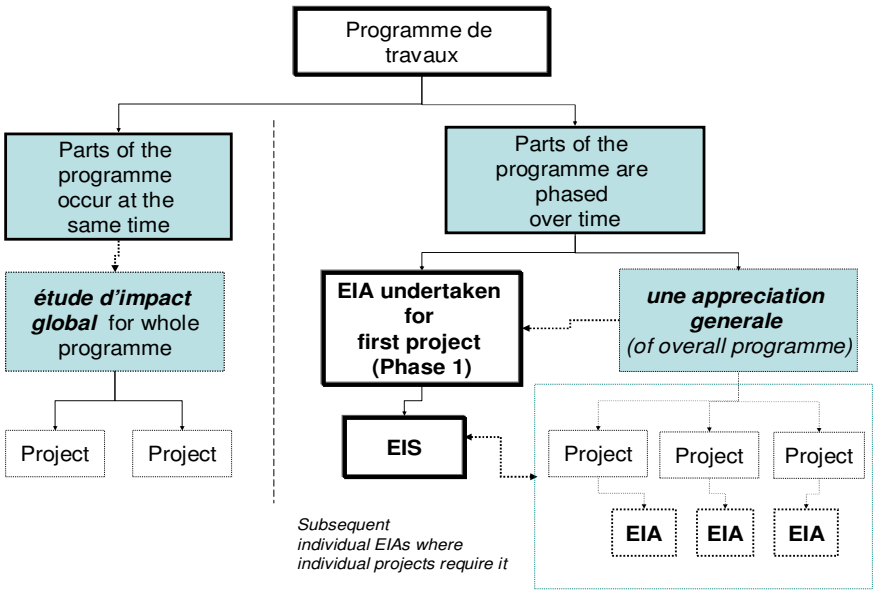
For example, when the *Astérix* Park (near Paris) was proposed the A1 motorway access road was included with the park proposals by the developer and therefore

classed as a PT. Other examples have been: a tourist resort in the mountains included an access road and ski lifts, all under PT; and a new high speed rail line was required to provide a global EIA, to include the power transmission lines associated with it. The advantage of a PT and a global EIA is that it enables EIA to be applied to a scheme even if each individual part is under the normal EIA thresholds (€1.9m). While the Government may seek to apply this approach it is not always feasible as negotiation is required with the relevant developers. The general Regulation – the Circulaire – provides advice for the Ministry/Agency at the local level on how to try to secure these global EIAs. PTs can apply to any sector. No additional EIA is required as the global EIA attaches to each permit. In theory there could be several developers, but there are no known real examples of this, as it is difficult to persuade anyone to pay for the global EIA if there is more than one developer.

ii) The second type of PT is where the elements of the project are phased over time. This may be two or three phases over say 20+ years. Most typical examples of this form of PT are road schemes, where funding may come through structural funds and therefore comes through only periodically. One section is undertaken and then there is a long pause until funds become available for the next section. In the transport field this applies only where roads are being built by the State (railways, for example, tend to be built in one go rather than phased, reflecting a different engineering and planning approach). Another sector where PTs are used is in the river management field. The management works undertaken on rivers are realised over a long period, due to the funding, which comes mainly from the State at the department level ("direction départementes de l'agriculture et de la forêt"). It has now become commonplace to implement these PTs with shareholders of small water syndicates.

Where the elements are phased an EIA is undertaken for the detailed first phase (e.g. section in the case of a road) and at the same time "***une appreciation générale***" is undertaken (a general appraisal). This appreciation générale provides an overview of the rest of the projects which will come along at a later date. The EIA will therefore include general routes and main environmental problems. It will also include monitoring. At Phase 2 (the next section) the EIA for that section will have to show what the real effects have been from Phase 1.

Figure 6.3: Application of EIA to Plans under Programme de travaux



Other issues

Wind farms can cause problems because of separate consent processes for the wind farm and the connecting electricity transmission lines to the national grid system. One permit is required by the developer to build the windfarm, but separate consent is required for the connection to the grid, and involves negotiation between EDF (Electricité de France) and the developer. If it only involves a short length, the developer may agree to connect; but if longer this may not happen. The Ministry of Ecology and Sustainable Development (MEDD) is pushing for *une appreciation générale* to be provided at the time of the wind farm EIA to identify broadly where the line will go. The SEA Directive doesn't help to resolve this problem since there is no statutory strategic planning process and the legal requirements in this sector are rather volatile. This reflects the problem of different developers with different consents processes, where a developer cannot then know sufficient detail about the other schemes. If there is only one developer, even if dealing with different consents, then it is easier to apply the PT approach. In France, however, only plans and programmes of the State and local communities – i.e. public bodies – can be subject to SEA, since the situation of privatised utilities undertaking public duties (as with the water companies in the UK), doesn't exist in that form, although this might arise in the future in the electricity sector.

There is one other possible situation where the EIA Directive might apply to existing plans/programmes, and that is in APSI road projects (Avant-projet sommaire d'itinéraire). These are 'Summary preliminary drafts of route' and relate only to state projects that are not motorways. EIA can be used at this level in a similar way to programme de travaux, but no further EIA subsequently would be required.

6.4.5 Conclusions

The reason for France keeping EIA of the plans and programmes described above appears to be related to the nearly 30 years of tradition of carrying out forms of EIA, and for certain plans and programmes since 1993. Many practitioners accept the principle of application of EIA to certain types of plans and programmes. While the French implementation of the *EIA Directive* to date is not fully compliant with the SEA Directive, the extension of the requirements of the EIA implementation, in such cases, seems a potentially sensible option rather than to remove EIA from these plans and programmes and subject them to an apparently new assessment regime (SEA). However, this is legally quite risky, since these plans would appear to meet the screening criteria of the SEA Directive. Certain aspects of EIA will need to be strengthened to be compliant with the SEA Directive, e.g. consultations, the nature of alternatives considered, provision for monitoring etc. Where there are multiple consent processes, but only one developer, it is possible in France to apply the programme de travaux approach. This is much more difficult, however, where there are also multiple developers.

6.5 Case Study 4: Germany

6.5.1 EIA Directive

In Germany the EIA Directive has been implemented principally via the Environmental Impact Assessment Act[9]. However, some of the types of projects included in Annex II of the EIA Directive ("urban development projects" (10(a)), "industrial estates" (10(b)) and certain tourism and leisure facilities (12(c)-(e)) do not exist in German law. To address this issue, when implementing the EIA Amendment Directive, Germany decided to integrate the EIA requirements for these types of projects into its planning law set out in the German Federal Building Code (Baugesetzbuch – BauGB). In this case, EIA is carried out as part of the process of drawing up the local plan. Hence, implementation of the EIA Directive in Germany has taken place at two levels – the level of project approval, and for certain urban developments, at the level of local plans[10]. These local plans lay down specific binding determinations for the land use of the specific areas covered which give citizens enforceable rights.

6.5.2 SEA Directive

In Germany the SEA Directive needs to be implemented at both Federal and Länder (regional) levels.

Federal level

At the Federal level the SEA Directive is being implemented by two acts – one specific act for the town and country planning and land use sector and a general law with general regulations for all sectors covered by the Directive. For the town and country planning and land use sectors the Directive was implemented by an amendment to the

[9] See http://www.iuscomp.org/gla/statutes/UVPG.htm
[10] See http://www.difu.de/projektforen/plannet/eng/2001/reports/index.shtml

Town and Country Planning Code of 20 July 2004[11]. This Code applies to town and country planning and to regional plans (which are cross-sectoral looking at a range of issues e.g. planning, traffic, environment, etc) and treats EIA/SEA jointly.

For other sectors (e.g. water, industry, waste, traffic, etc) implementation will be via a general implementation act (SEA Act) which will amend the existing EIA Act. In the amended legislation EIA and SEA will be carried out separately e.g. there will be different annexes for EIA project lists and SEA plan and programme lists.

The SEA Act was adopted by the German Parliament in December 2004, but has not yet come into force as it is currently subject to a conciliation process between the Parliament and the Council of the Länder who wished to secure changes to the Act, particularly a reduction in the numbers of types of plans and programmes which would require SEA. At the time of writing progress had been made and there were just two outstanding points to settle. It was hoped that the Act would come into force in May/June 2005. The draft Act contains an Annex which is a list of plans and programmes which will require SEA because they set the framework for projects and are required by national legislation. There are currently 10 types of plans and programmes in the annex. One or two of these are national plans produced by a national body e.g. the National Traffic Plan, but most are plans produced by the Länder or by local authorities e.g. noise plans. Other plans and programmes that fall under the SEA Directive according to Article 3(2) (b), 3(3) and 3(4) are not listed.

Länder level

At the regional level the Länder need partly to transpose their own laws, especially to implement the SEA procedure for regional plans (Town and Country Planning Code) and planning in other sectors (SEA Act). The Länder can choose the approach they adopt e.g. whether to have general assessment legislation or instead to treat each sector e.g. water, regional and landscape plans separately and amend the relevant legislation for that specific sector.

In order to give the Länder time to produce Länder specific legislation, they are to be given a transitional period (to the end of 2006). Until both national and Länder level legislation is fully in place the Federal Ministry for the Environment has recommended that the Länder apply the SEA Directive direct to plans and programmes produced at the Länder level[12]. Some of the Länder already have draft legislation, but are waiting to see the final form of the federal National SEA Act before finalising this.

[11] Baugesetzbuch (BauGB), Bundesgesetzblatt Jahrgang 2004 Teil I Nr. 52, ausgegeben zu Bonn am. 1 Oktober 2004

[12] On 2 August 2004 the Federal Environmental Ministry issued "Recommendations on the direct application of the SEA Directive" addressed to the Länder (http://www.bmu.de/files/pdfs/allgemein/application/pdf/empfehlung_suprl.pdf).

6.5.3 SEA experience prior to adoption of the SEA Directive

In Germany there is significant experience of carrying out forms of strategic assessment. However, most of these assessments are not carried out in such a structured way as is required by the SEA Directive. For example, authorities may currently be carrying out assessments, but not writing them up into environmental reports, or the assessments may not look at all of the elements of the environment specified by the SEA Directive.

6.5.4 Areas of potential overlap between EIA and SEA

Land use plans/local plans

Land use plans covering an entire local authority area and local plans covering a smaller area (urban development plans) fall within the remit of the Town and Country Planning Code and are closely linked. There is, therefore, potential for overlap e.g. it may not be clear cut as to whether the plans (particularly the smaller local plans) require SEA or EIA or both, and so the Government has decided to establish a joint EIA/SEA procedure which will satisfy both the requirements of the EIA and SEA Directives in the Code itself. So, for example, all assessments will require monitoring (because this is required by the SEA Directive), even if there is no clear SEA requirement. This approach was in line with the recommendations of an independent expert commission[13].

Land use plans are only binding on the authority producing them and these do not give permission to build, but set out zones e.g. areas to be used for industrial development, for housing etc over a 10-15 year period. These plans are relatively strategic and are often made or modified within 15 years, whereas the smaller local plans (urban development plans) are more concrete plans which deal with a specific area. These lay down binding general determinations for the use of specific areas. For example, for a housing development such a plan would set the framework for the numbers of houses, the street layout, and include specific figures. These plans are often produced or modified in a shorter time period than the land use plan. Key types of development which are subject to urban development plans and which, as noted above, require EIA as part of the local plan process are "urban development projects" and "industrial estate development projects" (Annex II No. 10 (a) and (b) EIA Directive).

The Town and Country Planning Code does not provide advice about the joint procedure which is called "Environmental Assessment". As far as the plan-making authorities are concerned they are just carrying out one assessment i.e. producing one environmental report and carrying out a consultation exercise on this. As well as covering the EIA and SEA requirements this combined Environmental Assessment also links to the Article 6 (appropriate assessment) procedure required by the Habitats

[13] See http://www.difu.de/projektforen/plannet/eng/2002/reports/germany.shtml

Directive and therefore where necessary this will also be carried out as part of the joint environmental assessment.

No guidance has yet been produced on the Town and Country Planning Code and its combined assessment procedure. Workshops have discussed certain issues such as monitoring, and that tiering may result in fewer assessments of urban development plans if assessment has already been carried out at the local plan level. There is evidence that local authorities are already using the Town and Country Planning Code, especially when modifying local plans. However, the procedure for modifying such plans is quite a lengthy process.

Usually the same authority will produce both land use plans and local plans, and so in theory it may be possible to carry out a joint environmental assessment and/or produce a joint environmental report which covers both a local plan and an urban development plan if these are being produced at the same time. In practice they will usually be produced sequentially. These plans also have very different locations and scales so even if being produced simultaneously, in practice a joint assessment and report is unlikely. However, even if assessments are not carried out jointly, elements of the assessments are likely to be planned and carried out together as far as possible (e.g. data collection) in order to save money. To date, there are no examples of authorities carrying out joint environmental assessments, which is probably due to the long planning cycle. Before the Town and Country Planning Code was brought to Parliament five or six authorities were asked to carry out "pilots" of the Code, which resulted in amendment of the draft.

Transport

Prior to introduction of the SEA legislation motorway route selection was treated as a project or pre-project and subject to EIA. With the introduction of SEA legislation there has been discussion about whether route selection should be treated as a plan/programme or a project. However, the decision has been taken that route selection should continue to be treated as a project and subject to EIA on the basis that this is a fairly detailed process. Hence, because of this decision there will not be an SEA/EIA overlap for route selection. From a practical perspective this decision means that the assessment will be carried out in accordance with the requirements of the Environmental Impact Assessment Act which transposes the EIA Directive. From a legal perspective, however, there do appear to be some risks in adopting this approach, unless it is clear there is no relevant statutory planning process. It could be open to challenge that motorway route selection is in fact a plan/programme which requires SEA under the SEA Directive, rather than a project which requires EIA under the EIA Directive. Alternatively, a challenge could be made that motorway route selection is both a project within the meaning of the EIA Directive and a plan/programme within the meaning of the SEA Directive and should therefore be subject to assessment (either jointly or separately) which complies with the requirements of both Directives.

6.5.5 Conclusions

There is a potential overlap between EIA and SEA for certain local authority plans - land use plans and local plans covering a smaller area (urban development plans). To address this, a joint EIA/SEA procedure which will satisfy the requirements of both Directives has been introduced. From a legal perspective, this approach of requiring a joint EIA/SEA procedure for land use plans and local plans greatly reduces the risk of legal challenge; although compliance would still need to be assessed on a case by case basis i.e. whether the joint assessment process and documentation for a specific plan complies with both Directives. A key issue here would be the level of detail of information required. In practical terms, however, as the plans in question are for relatively small geographical areas (especially in the case of local plans) the level of detail in the environmental documentation would probably need to be fairly high.

6.6 Case Study 5: Ireland

6.6.1 EIA Directive

The framework for the application of EIA in Ireland was originally provided through the planning control procedures within the Local Government (Planning and Development) Acts, 1963 to 1999. The provision of EIA was implemented through the *European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No 349/1989*) which were subsequently amended in 1999 to give effect to Directive 97/11/EC (the European Communities (Environmental Impact Assessment) Regulations 1999 (S.I. No 93/1999). These EIA regulations excluded motorway schemes, the procedures for which were set out in the Local Government (Roads and Motorways) Act 1974 (now the Roads Act 1993). The *European Communities (Environmental Impact Assessment) (Motorways) Regulations, 1988 (S.I. No 221/1988)*, implemented EIA for proposed motorways.

In 1997, however, a review of planning legislation took place and as a result it was decided that previous planning acts and the environmental impact assessment regulations would be consolidated into a new Planning and Development Act 2000. EIA requirements fall under *Part X of the Planning and Development Act 2000*. The regulations, which implement the provisions of the Planning and Development Act, are the Planning and Development Regulations 2001 (S.I. No. 600/2001). EIA comes under *Part 10 of the Planning and Development Regulations 2001*.

6.6.2 SEA Directive

Prior to the SEA Directive there were no formal provisions for SEA in Ireland. However, under EU Structural Fund regulations an environmental assessment was required for national development plans. The Irish Government introduced 'pilot' Eco-Audits (environmental appraisals) in 1999, which was an objectives based appraisal and designed to be proactive in nature and to occur at the policy formation process. The Eco-Audit was piloted at Operational Programme (OP) level and prepared in the framework of Ireland's National Development Plan 2000 – 2006. Following the Eco-

Audit it was hoped that a strategic environmental assessment system would be developed and applied at sectoral plan/programme level (OP level or below); and that the Eco-Audit would continue to be applied at Government policy level (Sheate *et al*, 2001). However, it was never intended that an SEA derivative of Eco-Audit would apply to future National Development Plans.

It would appear that the subsequent implementation of the SEA Directive (2001/42/EC) into Irish law was very much influenced by previous experiences of implementing EIA. Firstly, a study which reviewed the eco-audit process recommended the 'upstream transfer of EIA philosophy, rather than methodology' when transposing the SEA Directive (Scott *et al*, 2003). This was seen as supporting the view of the Irish authorities today that SEA methodology is not always applicable to high level plans. Ireland implemented the provisions of the SEA Directive in full by the 21st July 2004 ensuring that all substantive and procedural requirements of the Directive were met. Secondly, the importance of following the text of a Directive was highlighted when implementing the EIA Directive and this approach was taken when preparing the SEA Regulations. Although the differences between the EIA and SEA processes are recognised, the main issues were the need for environmental assessment to be a process from start to finish and the need for SEA to be integrated into the preparation of plans and programmes.

The SEA Directive was transposed into Irish legislation through:

- The *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No 435/2004)* which covers plans and programmes in respect of all the sectors as listed in Article 3(2) of the SEA Directive *except* for land-use planning. These regulations also made amendments to the *Planning and Development Act 2000*. This Act is the statutory basis for transposing the SEA Directive into Irish legislation with regards land-use planning.
- The *Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I. No 436/2004)* which covers those plans and programmes in relation to land-use planning.

In November 2004 the Minister for DEHLG produced a guidance document to assist relevant authorities and development agencies in implementing the requirements of Directive 2001/42/EC in relation to land-use planning (DEHLG, 2004). There are no immediate plans for drawing up separate guidance in relation to SEA in other sectors, but because of the procedural nature of the current guidance document it is considered applicable to a broader range of sectors, not just land-use planning. There are no examples yet of environmental reports being carried out since the SEA regulations were introduced in 2004. However, the process of SEA screening and scoping has been commenced.

6.6.3 SEA experience prior to adoption of the SEA Directive

In 2003 an SEA was carried out on the Dublin Docklands Master Plan. This SEA was carried out on a non-statutory basis, but followed the terms of the SEA Directive as far as possible. This Master Plan is a land-use plan and is subject to its own Parliamentary Act, the Dublin Docklands Development Authority Act 1997. Other 'voluntary' SEAs include: the Ballymun Renewal Master Plan 1997, involving the demolition of high-rise apartment blocks on the northern edge of Dublin city and their replacement with about 2,800 low-rise units; the Cork Area Strategic Plan 2002, which is a land-use and transportation strategy jointly prepared by Cork City Council and Cork County Council for the Cork metropolitan area (PlanNetEurope, 2002).

6.6.4 Areas of potential overlap between EIA and SEA and other related issues

As the SEA Directive has only recently been implemented it is considered too soon to be able to provide experience of both EIA and SEA operating together, and in order to examine the influence of SEA on the EIA process a number of years of implementing SEA will have to have elapsed. There are no real case examples available. However, there are a number of areas/scenarios where, potentially, there may be some overlap between the two processes or where SEA and EIA can work together.

Local area plans

Local area plans do not themselves provide for planning permission of individual projects. EIA is still required for projects that fall under the Local Area Plan. SEA ought to provide the preparatory framework that would assist in identifying future EIA requirements for individual projects.

Wind energy strategies

SEA and EIA should operate in a tiered hierarchy in future through county level wind energy strategies, e.g. the Cork County Council and Wexford County Council (draft) wind energy strategies. Any future project level wind farm EIAs within the designated zones of a particular county, should be able to proceed with a greater level of confidence.

Modifications/variations of development plans

It is possible that there may be overlap between EIA and SEA as a result of a development plan requiring minor amendments to enable certain EIA projects to be granted consent and if, as a result of 'screening', the relevant variation of the development plan requires an SEA. However, minor amendments such as these do not occur regularly. Development plans can only be modified by a formal process ("Variation" or "Material Contravention"), which includes extensive notification of the public and other agencies. On the other hand, material contraventions to developments plans currently appear in newspapers because some proposed developments do not fit within particular zoned areas etc. Such cases, though, would be project-specific and where an EIS accompanies them, an SEA would not appear

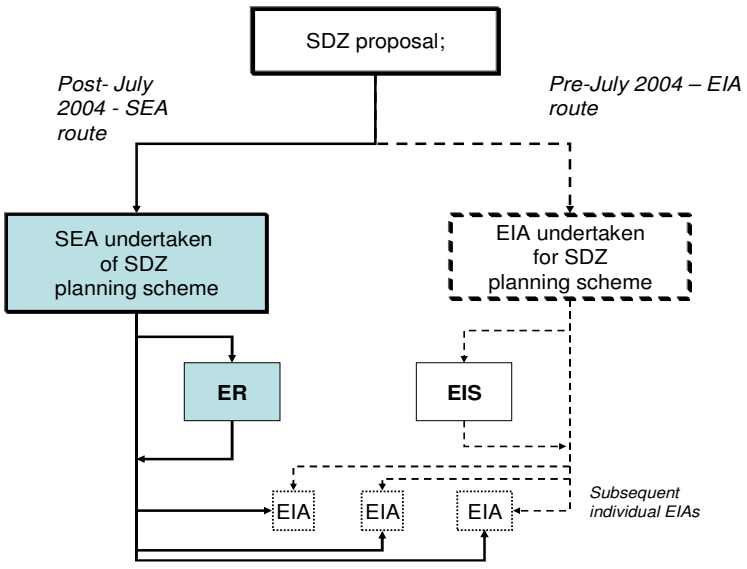
warranted unless it led to a variation involving likely significant effects on the environment beyond the specific project.

Strategic Development Zones - example of EIA being replaced by SEA

In Ireland the Government can designate a particular site as a 'strategic development zone' (SDZ) because of its potential to facilitate development which is of economic or social importance to the State. An SDZ is usually made up of a number of different developments or sub-projects, covering an area of land. If a development agency is interested in developing a site such as an SDZ then it is required to prepare and submit a planning scheme (draft) to the relevant planning authority. Prior to July 2004 these schemes were subject to the requirements of the EIA legislation in that they were required to include as much information as possible having regard to the level of detail in the scheme, in an EIS and to consult the public and other statutory consultees before the scheme was finalised. As SDZs did not strictly meet the criteria for projects subject to the EIA Directive, EIA was applied as a matter of good practice.

However, due to the potential size of an SDZ and the different types of development that can take place, SEA is now considered a more appropriate form of environmental assessment than EIA (see Figure 6.4 below). When planning schemes are being prepared they must now comply with the SEA Directive. Individual development proposals, arising within an SDZ, will still have to comply with EIA legislation where relevant.

Figure 6.4: Post-July 2004 SEA route for Strategic Development Zone plans



Ireland, therefore, has decided that SEA will now apply to SDZs instead of EIA which occurred previously, although EIA will still be required for subsequent projects, as

appropriate, emerging from the SDZs. This approach takes the view that SDZs are strategic and therefore more suited to SEA than to EIA as previously undertaken. This appears to be a practical approach to this particular type of plan. EIA was previously undertaken for SDZs as a matter of good practice in addressing likely significant environmental effects (this was made by reference to the EIA Directive only because the SEA Directive had not yet been introduced). As EIA does not appear to be technically required by the EIA Directive for SDZs then the risk of challenge is not envisaged.

6.6.5 Conclusions

The Irish Government remains of the view that overlap between the EIA and SEA Directives, regardless of the type of plan or programme involved, is not envisaged. The Government's view is that there should be appropriate tiering relationships between SEAs for plans and programmes and EIAs for projects, but that that does not constitute a problem of overlap. In the case of SDZs, the replacement of EIA by SEA is a result of SDZs meeting the criteria of the SEA Directive, and therefore requiring the application of SEA, rather than EIA which had previously been applied out of good practice and only because the SEA Directive had not yet been introduced. However, the question of potential overlap may still arise in the context of SDZs on a case by case basis, depending on the nature of the SDZ and the individual projects that may arise from it. It may be possible to envisage potential overlaps between SEA and EIA where the scope and boundaries of an SDZ closely resemble those for the EIA of a subsequent large complex project (or sub-projects). This may perhaps raise practical rather than legal issues.

6.7 Case Study 6: Sweden

6.7.1 EIA Directive

There are three levels of Swedish government – national, county and municipal, with 21 counties and 289 municipalities. There are 18 elected county councils and for Scania and the west part of Sweden, Västra Götaland, two elected regions that have replaced county councils. Central government is represented in the counties by County Administration Boards whose function is to implement central policies and decisions and to co-ordinate central government and municipal activities. Generally the planning system within Sweden is decentralised with planning responsibility almost entirely at the local level.

In Sweden the EIA Directive is mainly implemented by Chapter 6 of the Swedish Environmental Code,[14] which was adopted in 1998 and entered into force on 1 January 1999, and a supporting Ordinance on EIA (1998:905). This Environmental Code

[14]See http://www.sweden.gov.se/sb/d/574/a/22847 and the Swedish Ministry of Sustainable Development (2001) The Swedish Environmental Code - A résumé of the text of the Code and related Ordinances available from http://www.sweden.gov.se/sb/d/574/a/20549

amalgamates the rules which were previously contained within 15 Acts and includes environmental rules of general importance with more detailed supporting provisions being laid down in Government Ordinances. However EIA is also required under other legislation e.g. the Roads Act, the Construction of Railways Act, the Minerals Act, the Certain Pipelines Act, the Certain Peat Deposits Act, the Electricity Act and the Planning and Building Act. For most of this legislation the EIA requirements are wholly/partly compatible with the general EIA provisions in the Environmental Code. An exception was the EIA provisions in the Planning and Building Act which related to certain detailed development plans which were distinct from the requirements in the Environmental Code. The Planning and Building Act has however now been amended to link these EIA requirements to those in the Environmental Code (see below).

6.7.2 SEA Directive

In Sweden the SEA Directive was transposed by 21 July 2004. A Government Bill containing the legal amendments necessary for the implementation was adopted by the Swedish Parliament on 26 May 2004 and entered into force on 21 July 2004. Most of the provisions of the SEA Directive have been introduced into Chapter 6 of the Environmental Code following the EIA provisions. Amendments referring to the new Environmental Code have also been made to the Planning and Building Act (in relation to municipal comprehensive plans and detailed development plans) and to the Act on municipal energy planning. The Environmental Code will be supported by an Ordinance with more detailed requirements. A draft of the Ordinance was circulated for comments in late 2004, but the final version has yet to be adopted by Government. It is likely that the final version will be adopted by amendment of the Ordinance on EIA and that this will happen very shortly.

The Environmental Code itself does not specify which plans and programmes are subject to the new requirements, although the Government is able to specify by Ordinance the plans and programmes that will always be likely to have significant environmental effects and therefore require SEA and those that will not require SEA. The Government is also able to make further requirements on consultation in such an Ordinance.

However, it is thought that only a few types of plans/programmes (perhaps around five types) will require SEA under the requirements of the SEA Directive. The plans and programmes that are likely to require SEA include:

- County Transport Infrastructure Plans;
- Municipal comprehensive plans;
- Municipal energy plans (although not many of these tend to be produced);
- Certain programmes of measures e.g. for air quality (in big cities), water, waste.

Each one of Sweden's municipalities has to produce a comprehensive plan which covers the whole area of the municipality. Comprehensive plans are not binding, but

have a guiding effect on decisions concerning land use and building. Area regulations can be used for specific areas *inter alia* to safeguard the intentions of the comprehensive plan.

Municipal comprehensive plans will probably always require SEA under the requirements of the Directive. But many of the other plans e.g. detailed development plans will only require SEA if screening determines that they are likely to have significant environmental effects. Hence, screening is likely to be a key issue and one on which guidance would be helpful. The National Board for Building and Planning has been commissioned to produce guidance before the end of 2005.

6.7.3 SEA experience prior to adoption of the SEA Directive

Prior to transposition of the SEA Directive, Sweden already had requirements for a form of environmental assessment for some of the plans and programmes which could potentially fall within the scope of the Directive e.g. municipal detailed development plans.

6.7.4 Areas of potential overlap between EIA and SEA

Detailed Development Plans (DDPs)

DDPs are plans produced by municipalities which allow for a use of land or buildings or other constructions. They are legally binding and give the right to develop in accordance with the regulations of the plan. The plan system is not hierarchical and hence a DDP may contradict a comprehensive plan (although as noted above Area Regulations must be in accordance with the comprehensive plan). The DDPs stipulate criteria for certain activities or projects which are to be allowed in the planned area. They often refer to building activities (housing, shopping, industrial or commercial areas etc.) for which the subsequent application for a building permit has to comply with these stipulated criteria. Most DDPs relate to a very small area e.g. several houses. Under the Planning and Building Act EIA has been required for DDPs (and also Area Regulations) where these are likely to have significant effects on the environment, public health or the management of natural resources (e.g. land, water); although the Act did not set out substantive requirements i.e. how to carry out the EIA, or the required contents of the EIS.

These requirements for EIA of DDPs were introduced as part of the implementation of the EIA Directive, since these plans could act as the development consent for projects listed in the annexes to the EIA Directive; in the sense that although a building permit would subsequently be required (and is thus the final permit), if the application for this meets the criteria set out in the DDP the building permit could not be denied. Hence it is considered to be the DDP which gives the main broad permit for all the projects for which it sets criteria.

The types of project for which DDPs may be required include:

- chemical plants/refineries;
- nuclear reprocessing;
- airports and ancillary buildings/developments;
- ports and ancillary developments;
- wind farms and supporting development;
- industrial developments (industrial estates and projects within them); and
- urban development projects.

The European Commission has criticised Sweden's implementation of the EIA legislation in relation to DDPs for urban development projects. To address this issue (and implementation of the SEA Directive) the Planning and Building Act has recently been amended to set out the following requirements:

a) When a DDP is being drafted the new SEA requirements in the Code shall be applied if the plan is likely to have such environmental effects as are mentioned in the Code (i.e. significant environmental effects)

b) Irrespective of the consequences of a) an EIA shall be carried out if the DDP is likely to have significant environmental effects and the planned area may be used for:

- industrial estate development projects;
- shopping centres, car parks or other projects for urban development;
- ski-runs, ski-lifts or cable-cars and associated developments;
- marinas;
- hotel complexes or holiday villages and associated developments outside urban areas;
- permanent camp sites ;
- amusement parks, or
- zoological parks.

If an EIA is required pursuant to b) the requirements on consultation, EIS contents and post adoption information in the Environmental Code shall be applied. These EIA requirements entered into force on 1 May 2005 and now clearly provide a link between EIA of plans according to the Planning and Building Act and the requirements for EIA set out in the Environmental Code. The National Board for Building and Planning intends to produce general EIA guidance applicable for Planning and Building Act planning and has started to publish some very general information; as has the Swedish Environmental Protection Agency (SEPA). Hence, DDPs will be subject to the requirements of the EIA Directive and also (if they are screened as likely to have significant environment effects) to the requirements of the SEA Directive. This potential overlap could be an important issue as it is thought that DDPs are likely to be the main category of Swedish plans which will require SEA.

As DDPs are not collected centrally, at present there is little overall knowledge about them on which to assess how many are likely to have significant effects and therefore require SEA. As the regional governments (21 Counties) scrutinise all DDPs they have better knowledge and understanding of these plans and some of the Counties believe that only a fraction of DDPs are likely to have significant effects and therefore require SEA. So there is currently great uncertainly about how many DDPs will require SEA. Since the municipalities are required to screen DDPs to determine whether SEA is required, the outcome depends on how they perform this task. Some may adopt a policy to perform an SEA of all their DDPs; others may take a restrictive position.

While the guidance has yet to be issued, the Swedish MS expert strongly believes that for DDPs the best approach would be to carry out a joint EIA/SEA procedure for DDPs. This would simplify the situation for municipalities which would then only be carrying out one assessment process, and would build on the EIA-type assessment which they have been carrying out for these plans to date. The forthcoming Ordinance could be an opportunity to provide for this. In practical terms, the MS expert feels that it should be readily possible to carry out a joint EIA/SEA for DDPs e.g. producing a combined environment report/statement and carrying out a combined consultation. It appears that joint SEA/EIA procedures are a real possibility for certain DDPs, because exactly the same object of assessment (the DDP) will be subject to both EIA and SEA. There will, therefore, be no problems over the timing of the processes, and given that most DDPs relate to very small areas it could be envisaged that the single assessment would look more like an EIA in terms of detail. However, it would obviously also need to be compliant with the SEA Directive, e.g. meet the requirement to assess reasonable alternatives and carry out monitoring.

6.7.5 Conclusions

There is a potential overlap for certain Detailed Development Plans (DDPs). All DDPs will require screening to determine whether SEA is required in a particular case. For DDPs relating to certain types of project (e.g. industrial estate development projects, urban development projects, etc) an EIA will also be required if there are likely to be significant environmental effects. Hence for DDPs relating to these types of development there is a real potential for overlap. Although guidance/advice has yet to be issued, a joint EIA/SEA procedure for these DDPs may well be the practical solution. From a legal perspective, the key to ensuring compliance using this approach is the screening of individual DDPs. Where a DDP is of a type that may require both EIA and SEA (e.g. industrial estate development projects, urban development projects) then a practical approach would appear to be to combine the screening processes given that they both require consideration of whether there are likely to be significant environmental effects. If on the facts of a particular case there are likely to be significant effects then it would seem likely that both EIA and SEA would be required; as for the detailed level of plans being considered here it is hard to see how they could be screened as likely to have significant environmental effects which would trigger EIA and not at the same time trigger SEA. It is not yet clear whether a joint EIA/SEA

procedure will be adopted where plans require assessment which complies with the requirements of both the EIA and SEA Directives. In practical terms, however, as DDPs are for relatively small geographical areas the level of detail in an SEA environmental report would probably need to be fairly high, and it is likely that this would be conducive to producing joint environmental documentation for the DDPs where both EIA and SEA are required.

6.8 Case Study 7: United Kingdom

6.8.1 EIA Directive

The EIA Directive 85/337/EC as amended by Directive 97/11/EC is implemented for most development projects in England and Wales through the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999 No. 293 and in Northern Ireland through the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999. In Scotland, the Directive was implemented under the Environmental Impact Assessment (Scotland) Regulations 1999. Certain types of projects listed in Annexes I and II of the European Directive are authorized outside the British planning system. Thus, additional regulations to extend EIA to theses projects were adopted. These regulations (over 20 sets of regulations in all) include the Highways (Assessment of Environmental Effects) Regulations 1999; the Electricity Works (Environmental Impact Assessment) Regulations 1999 and the Pipe-line Works (Environmental Impact Assessment) Regulations 2000. The term 'project' is not explicitly defined in the EIA regulations.

6.8.2 SEA Directive

The regulations transposing Directive 2001/42/EC (the SEA Directive) into UK law include those of the devolved administrations of Northern Ireland, Scotland and Wales. The SEA Regulations include:

- The Environmental Assessment of Plans and Programmes Regulations 2004;
- The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004;
- The Environmental Assessment of Plans and Programmes (Scotland) Regulations; and
- The Environmental Assessment of Plans and Programmes (Wales) Regulations.

The Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No 1633) which came into force on the 20th July 2004 apply to England. In July 2004, A Draft Practical Guide to the Strategic Environmental Assessment Directive was produced to assist those concerned with SEA in the UK where no specific guidance has been prepared for their types of plans and programmes (ODPM, 2004a). The Regulations themselves do not define 'plans' or 'programmes', but follow the wording of the SEA Directive closely.

The extensive changes to the English planning system through the Planning and Compulsory Purchase Act 2004 included the requirement for mandatory sustainability appraisals (SA). Thus, new guidance on sustainability appraisal, integrating SEA requirements, was published in September 2004 (ODPM, 2004b, Sheate *et al*, 2004). Other SEA guidance has also been prepared for specific types of plans and programmes, e.g. land use and spatial plans, transport plans, and Environment Agency plans and programmes. In Scotland, the Scottish Parliament has introduced legislation to implement the Directive's requirements and has issued guidance: "Circular 2/2004 Strategic Environmental assessment for Development Planning: the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004". In addition, the Scottish Ministers have published a draft SEA Bill for the Scottish Parliament, "The Environmental Assessment (Scotland) Bill", which would have the effect of extending the legal requirement for SEA to almost all plans and programmes in Scotland, including non-statutory plans.

6.8.3 SEA experience prior to adoption of the SEA Directive

A form of SEA was first introduced following environmental duties on local authorities imposed in the Planning and Compensation Act 1991 and Town and Country Planning (Development Plan) Regulations 1991, which resulted in Government Guidance (Planning Policy Guidance Note 12) to local authorities to undertake environmental appraisal for their land use development plans (structure plans, local plans and unitary development plans). There is therefore more than a decade of experience at local authority level of this type of appraisal. It was, however, a relatively simplified form of objectives-led appraisal, which was eventually developed further into sustainability appraisal applied first at regional planning level (for regional planning guidance) and most recently through the Planning and Compulsory Purchase Act 2004, within the new reformed planning system, to regional spatial strategies and local authorities' local development frameworks and related plans. Sustainability appraisal within the new planning system is now also required to implement the SEA Directive and so should be more rigorous and informed by baseline information than the early forms of environmental appraisal.

Other SEA experience includes SEA of the Strategic Defence Review by the Ministry of Defence in 2000 (the first official application of SEA by a Government department); extensive application of SEA by water companies voluntarily to their own water resource and water treatment plans and by the Environment Agency to its national and regional water resource strategies; SEA of offshore oil and gas licensing by the Department of Trade and Industry, and more recently to offshore wind farm licensing; and SEA of multimodal transport studies by the Highways Agency.

6.8.4 Areas of potential overlap

The potential areas of overlap in the UK are considered to be quite limited, primarily relating to urban development projects, industrial estates and certain types of infrastructure, e.g. transport, electricity.

Urban development projects

A key area where there is a potential for overlap is in urban development projects. The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations list infrastructure projects in Schedule 2. Under this category are industrial estate development projects and urban development projects. Both these types of developments often involve the preparation of a masterplan and an EIA which are submitted as part of the application for outline planning permission.

Two UK cases are currently before the ECJ in relation to the issue of outline planning permission. These are ***Case C-290/03*** - *Reference for a preliminary ruling by the House of Lords by order of that court dated 30 June 2003, in the case of Regina against London Borough of Bromley, ex parte Diane Barker (FC)* and ***Case C-508/03*** - *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (2004)* (see Chapter 4 above). Both cases relate to the problem of outline planning permission sometimes being granted without EIA being required and detailed matters being reserved for consideration at a later date when more specific design details are available, but after outline consent has been given, so that EIA cannot then be required on those reserved matters. Also C-508/03 refers to the generic issue rather than just specific cases, and whether it is possible for an EIA at outline application stage to address the requirements of the EIA Directive satisfactorily.

Urban development projects often consist of mixed uses such as residential, live-work units and commercial developments. The EIA Regulations list urban development projects to include "the construction of shopping centres and car parks, sport stadiums, leisure centres and multiplex cinemas". However, in reality, the types of developments that fall under this category are wide ranging. The masterplans often prepared for such areas therefore cover developments that could be considered beyond the scale of a 'project'. This is perhaps rather different to the cases before the ECJ above. Apart from the masterplan EIA, EIAs of specific projects within the masterplan may also be prepared if there are likely to be significant environmental effects. Thus, this allows for a hierarchy ('tiering') of EIAs - EIA of a masterplan and an EIA of a specific project or projects. An example of this type of urban development is discussed below: the Greenwich Peninsula Masterplan by Meridian Delta Ltd. This approach is one that has been used by most planning authorities when dealing with such masterplans to date.

However, another approach which has been used by one local planning authority and which would most likely be used increasingly in the future is the use of SEA of a masterplan. Under the requirements of the Planning and Compulsory Purchase Act 2004, SA is mandatory for Local Development Documents, which includes Development Plan Documents and Supplementary Planning Documents (SPDs). A local authority may choose to adopt a masterplan as the focus for an SPD (more detailed planning guidance relating to the spatial development of the area), and in so doing bring the masterplan within the ambit of the SEA Directive. In situations where SPDs

of masterplans of urban development schemes have been developed, these SPDs under English law would require SA (incorporating SEA). The second example therefore provides an example of an SEA of an urban redevelopment masterplan: the Sustainability Appraisal of the South Kilburn Supplementary Planning Document. The two case studies are discussed further below, illustrating the two approaches: EIA and SEA of urban development schemes.

Greenwich Peninsula Masterplan: EIA approach

The Greenwich Peninsula site occupies an area of 80.69 hectares in the London Borough of Greenwich (MDL, 2002). A masterplan has been prepared comprising the development of a new mixed use district, primarily residential, with commercial uses and the retention of the Millennium Dome as a multi-events Arena for entertainment and sports. The Greenwich Peninsula Masterplan provides for 10,000 new homes, employment space, shops, school, a hotel and local transport improvements. New areas of open space, parkland and a complete river walk and cycle way will also be developed around the Peninsula. The comprehensive 20 year regeneration of the area is expected to result in a community of 20,000 residents and 24,000 jobs. An outline planning application, which included an EIA, was submitted in December 2002 and full planning permission was granted by the London Borough of Greenwich in February 2004 (MDL, 2005). The EIA, which was prepared by the developer, considered the likely environmental effects of the development of the whole site and the surrounding environment. A detailed planning application for the initial development phase has been submitted. Furthermore, EIAs for specific projects identified in the masterplan may be submitted as part of the detailed planning permission as the different phases come forward over the next 20 years of development.

It should be noted that the MDL Masterplan area covers part of the Greenwich Peninsula Development Framework (GPDF) (2002) which was adopted as Supplementary Planning Guidance to the Unitary Development Plan (UDP). The GPDF covers most of the Peninsula, including the Greenwich Millennium Village, riverside and industrial sites and residential areas in the southern part. Under the new planning system, if the GPDF was being developed now, it would go through the SPD process and SA/SEA process. The MDL masterplan, however, would still go through the EIA and planning application process. The Council provides a distinction between a policy strategy document, such as the Development Framework, which could be adopted as SPD and a masterplan, which is prepared for a planning application. The former would require an SEA and the latter, an EIA. The various sub-projects within the MDL masterplan will not formally (under current English law) require EIAs since they were already assessed in the masterplan EIA process (although the developer has suggested that they might be produced voluntarily). Instead, the developer has to submit a certificate of compliance of development. Any alterations to the plan may require an amendment to the masterplan including an Environmental Statement to be submitted to Greenwich Council for their approval.

South Kilburn Supplementary Planning Document Sustainability Appraisal: SEA approach

South Kilburn is a 48 hectare area located at the south eastern part of the London Borough of Brent. The area currently provides homes for 7,143 residents. A masterplan for the regeneration of the area has been developed, which includes the extensive refurbishment and redevelopment of the housing stock, new and improved community facilities including new leisure and health facilities. The South Kilburn SPD, along with the South Kilburn Masterplan sets out the requirements of the Council and the communities for the regeneration of South Kilburn and will be influential in determining planning applications within the area (Brent Council, 2005). The masterplan represents a thorough and approved vision for South Kilburn, but it is not a formal planning document. The SPD, based on the masterplan, establishes guidance on the mix of uses and physical form of the South Kilburn Masterplan, the planning requirements for planning applications, the phasing of development and measures that the Council will pursue to implement all aspects of physical regeneration.

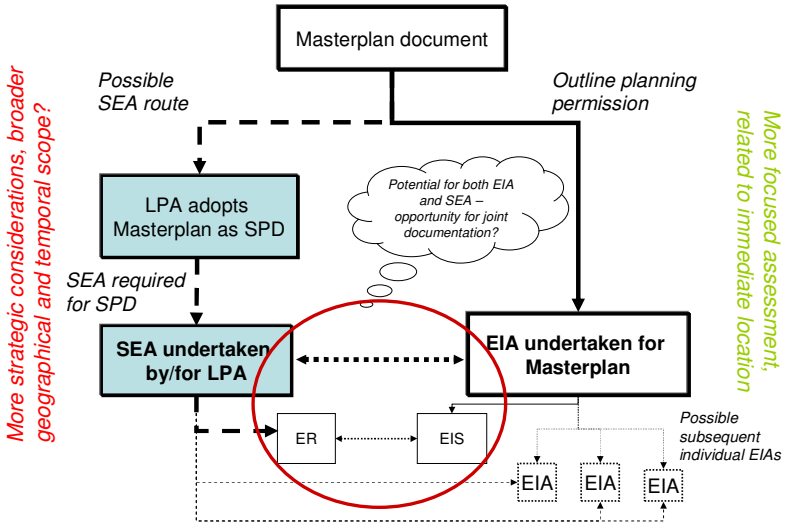
A sustainability appraisal of the South Kilburn SPD, commissioned by Brent Council (CEP, 2005), considered the SPD's implications from social, economic and environmental perspectives by assessing options and the draft SPD against available data and sustainability objectives. The SA followed government guidance in meeting the requirements of the SEA Directive. In terms of the relationship of the SA/SEA to EIA, the Council is presently seeking a single outline planning application to ensure the comprehensive redevelopment of South Kilburn. This planning application will require an EIA (not yet undertaken). Planning applications for subsequent specific elements of the plan may also require detailed EIAs.

Comparison of Approaches

The two environmental assessment approaches described above consist of an EIA approach used by the developer in applying for outline planning permission, and an SEA approach used by the local planning authority to guide development. Both relate to a masterplan for the area, with the SEA for South Kilburn undertaken after the SEA Directive was implemented. In the case of Greenwich, if the GPDF was to be prepared now, it would go through the SPD and SEA processes, but the masterplan would still undergo an EIA process. While both SEA and EIA will eventually have been undertaken in the case of South Kilburn, the SEA has been commissioned by the planning authority and assesses impacts at a more strategic level than would an EIA of a master plan, usually prepared by the developer. Furthermore, the SEA/SA also addressed sustainability issues, while the EIA is more likely to look at site impact issues. Ideally, the SEA should inform and guide the EIA, where detailed, site specific issues can be addressed. However, there is potential for overlap of assessments when an SEA of an SPD masterplan is prepared at the same time as an EIA is produced with an application for outline planning permission. The scope and focus of the SEA and EIA should therefore be clearly defined to avoid overlaps and repetition. Figure 6.5 below

illustrates a possible approach to running both EIA and SEA in parallel in such circumstances.

Figure 6.5: Possible parallel procedure for EIA and SEA relating to Masterplans, e.g. for urban regeneration schemes



Transport and electricity sectors

Overlaps between plan or programme and project assessments could certainly occur in the transport sector in the UK, where there is no statutory process for considering strategic options, e.g. modal alternatives or alternative corridors. These are considered (multi-modal studies, roads programme), but are regarded as policy level and will not be subject formally to the SEA Directive. Project EIA is undertaken only on announcement of the preferred route. Regional Spatial Strategies and Local Transport Plans will be subject to SEA and will address some aspects, but not the alternatives that immediately precede project level EIA, where currently only detailed consideration of route alignment is addressed.

A similar problem could be seen in the case of minerals with regard to alternative site selection (a planning application and EIA is for a preferred site). However, alternative sites information has been seen as integral to EIA in the past, e.g. in the decision to refuse consent for the Nirex Rock Characterisation Facility in Cumbria (GONW, 1997).

In the electricity sector, EIAs for power stations do not usually address other component 'projects' subject to separate developers, consent processes and EIAs, although it is legally questionable whether this is in full compliance with the EIA

Directive[15]. The SEA Directive will have no influence on this since there is no statutory PP produced by a public authority that sets the framework for the various projects. So while the power station EIA should identify the various elements, it will not assess the impact or alternatives of e.g. the power lines, since that will be the responsibility of a separate company (the National Grid Company) and consent process. The only practical solution to this, other than changes in the consent processes, would be a requirement on the developer of such a project/programme to undertake some form of voluntary programme level (or overview) SEA that perhaps attaches to subsequent separate EIAs. For wind farms and renewables, however, there is more scope for strategic planning consideration now regional energy strategies are to be incorporated into Regional Spatial Strategies, which will be subject to SEA/SA.

6.8.5 Conclusions

Urban development projects are often promoted as masterplans submitted for outline planning applications, for which EIA may be required. But such projects may also become subject to the SEA Directive where masterplans or related frameworks form the basis for Supplementary Planning Documents (SPDs). In such cases parallel EIA and SEA procedures may be followed, potentially with differential responsibility for different aspects of assessments. Legally, this should enable compliance with both the EIA and SEA Directives, with sufficient distinction between them to avoid duplication. In the transport sector, modal options are only assessed through non-statutory processes and so it is unclear how or whether these options will be assessed through PPs subject to SEA or at the project EIA level. This is an issue of practice rather than law, in that certain strategic matters may not have been subject formally to the SEA Directive (nor need they have been according to the SEA Directive screening criteria), though they may have been subject to an SEA *process*. Multiple consent processes with multiple developers are particularly apparent in the electricity sector, e.g. power stations and power lines. The SEA Directive, however, will not affect this separation of assessment processes. Again, the issue raised is more one of EIA and SEA theory and practice, rather than law, though there is an issue as to whether separated consent processes allow the proper assessment of projects likely to have significant effects on the environment, as required by the EIA Directive (Art. 2).

6.9 Case Study 8: USA

6.9.1 EIA and SEA legislation

Under the National Environmental Policy Act 1969 (NEPA), major federal actions, which require the preparation of environmental impact statements under the Council on

[15] The European Commission, in a letter from Ludwig Kramer to the Council for the Protection of Rural England (15 November 1993), confirmed their view that *"as a general principle, when it is proposed to construct a power plant together with any power lines either (a) which will need to be constructed in order to enable the proposed plant to function, or (b) which it is proposed to construct in connection with the proposals to construct the power plan, combined assessment of the effects of the construction of both the plant and the power lines in question will be necessary under Articles 3 and 5 of Directive 85/337/EEC when any such power lines are likely to have a significant effect on the environment."*

Environmental Quality (CEQ) regulations, (1508.18) include projects, programmes, rules, regulations, plans, policies, procedures and legislative proposals. NEPA therefore covers both EIA and SEA under the same legislation.

SEA in the US context involves the preparation of ***programmatic*** EAs, EISs or analyses. *Programmatic Environmental Assessments* refer to concise public documents, which a Federal agency prepares to provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or finding of no significant impact ('FONSI'). An example[1] is the "Final Programmatic Environmental Assessment and Draft Comprehensive Conservation Plan for the Cabeza Prieta National Wildlife Refuge and Wilderness".

Programmatic Environmental Impact Statement means a detailed written statement as required by Sec. 102(2) (C) of the Act. EISs for policies, plans and programmes are also called programmatic, regional, cumulative, generic EISs or just EISs (Sigal and Webb, 1989), e.g. "Final Programmatic Environmental Impact Statement-Tennessee Valley Authority Reservoir Operations Study". The types of actions, which may require programmatic EISs (PEISs), are referred to in the CEQ Regulations (Section 1502.4). The scope of PEISs is described in Section 1508.25, and Section 1508.28 refers to "tiering" which includes the coverage of general matters in broader EISs (such as national program or policy statements) with subsequent narrower statements (such as regional or basin-wide program statements or site specific statement).

The CEQ Regulations (Section 1502.4) state that programmatic EISs may be required for broad federal actions, which can be grouped in the following ways:

i) geographically, including actions occurring in the same general location, such as body of water, region or metropolitan area;
ii) generically, including actions which have relevant similarities, such as timing, impacts, alternatives, methods of implementation, media or subject matter;
iii) by stage of technological development, including federal or federally assisted research, development or demonstration.

It is often difficult to distinguish between a programme and a project. Sigal and Webb (1989) argued that PEISs have arisen when an agency is challenged on the adequacy of a site specific EIS when the project is part of a larger programme. The CEQ Regulations define the scope for PEISs (Section 1508.25) by instructing agencies to consider the following activities together:

1. Connected actions, those that are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

i) automatically trigger other actions that may require an EIS;

[1] From the Federal Register Environmental Documents (http://www.epa.gov/fedrgstr/EPA-IMPACT/)

ii) cannot or will not proceed unless other actions are taken previously or simultaneously;
iii) are interdependent parts of a larger action and depend on the larger action for their justification;

2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should be discussed in the same EIS;

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing and geography.

For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the actions within the programme or within that area. The lead federal agency decides whether and how a proposed action is to be assessed (categorical exclusion, EA, EIS or PEIS), but the decision is always subject to legal challenge.

More recently, the NEPA Task Force Report (2003), which examined the implementation of NEPA, used the terms programmatic NEPA analyses or documents. '*Federal agencies have used programmatic analyses for broad categories of activities ranging from facilities and land use planning to sequencing multistage actions*' (NEPA Task Force, 2003, p.35). The Report also found that agencies have used the term programmatic analyses to address a range of issues and uses and that most of the analyses resulted in subsequent tiered documents. However, the task force observed that differing definitions are one reason for the lack of consistency and uniformity when using programmatic NEPA analyses.

6.9.2 Other Issues

The NEPA Task Force Report (2003) noted that some agencies use programmatic analyses to evaluate cumulative effects and formulate mitigation efforts. Programmatic analyses have also been used to address mitigation at the broad landscape, ecosystem or regional level and thus reduce the need to address these measures at project level.

Tiering

According to the task force report, agencies rely on programmatic analyses to focus the scope of alternatives, environmental effects analyses and mitigation in subsequent tiered levels of analyses. However, in practice, the public is concerned that when tiering occurs, the issues are vaguely described at the programmatic level and then not fully explored at the project level. Because of concerns that the project EIS will either not be done or not involve the public, the public is pressuring Federal agencies to

include site-specific analysis in these programmatic analyses. But combining different levels of site specific and programmatic analyses leads to confusion about the purpose, scope, and adequacy of the analysis in the programmatic document.

Content of Programmatic Documents

The Task Force Report observed that there is little formal guidance to distinguish the content requirements of a programmatic analysis and that of a project EIS. The task force recommended that guidance describing the content of programmatic documents should be prepared for their various uses. Such guidance would help in comparing programmatic documents among agencies, in evaluating them and in defining public expectations and help public review and comment on such documents.

The task force also identified other issues: longevity of programmatic documents and links with adaptive management and environmental management systems. There were concerns from agencies and the public relating to the useful life of NEPA documents as some documents have been used for tiering long after the analysis had become irrelevant. Most agencies do not have a formal process for periodic evaluation of programmatic documents. The task force therefore recommended that CEQ should develop criteria for agencies to use when evaluating whether a programmatic document has become outdated and should indicate a time frame for the usefulness of programmatic documents. To address these issues, the task force recommended that the CEQ convene a Federal Advisory Committee to aid in evaluating and improving understanding of the uses and purposes of programmatic NEPA analyses and documents.

The task force also recommended that CEQ provide guidance to agencies relating to the importance of including stakeholders and other agencies early in the programmatic analysis process so that concerns can be addressed effectively and efficiently in subsequent tiered documents. This guidance should also include a section that explains the relationship between programmatic documents and future tiered documents, including who will be involved in subsequent tiering, how and when they will be involved, how and where potential issues will be addressed and the proposed temporal and spatial scales that will be used when analysing those issues. Furthermore, guidance about criteria for agencies to use in determining when an old programmatic document requires supplementation should be provided.

6.9.3 Conclusions

This case study illustrates a joint procedure for EIA and SEA through one set of legislation. Overlaps of assessments can be avoided since the approach to be adopted for the assessment (programmatic or project specific EIS) is usually determined during scoping. Examples of tiering can be found in the EISs prepared under the Minerals Management Service and Forest Service. For example, an overview EIS (SEA) would be prepared for all of the energy activities in a particular area or resulting from a development programme. This overview EIS/SEA would then be followed by site

specific or project specific EISs. Another example of tiering comes from the Bureau of Land Management where EISs have been integrated into the land use planning processes through the preparation of Resource Management Plans EISs. With these strategic EISs in place, the agency tiers specific proposals, indicates that they conform to the strategic EIS and analyses them using a much shorter, streamlined process than preparing a new EIS.

Agencies are encouraged to eliminate repetitive discussions of the same issues and focus on the actual issues that should be decided at each level of environmental review. Several agency guidelines have been produced which provide a definition of programmatic EIS and refer to the relationship between programmatic and site specific EISs (e.g. Bureau of Land Management, Forest Service and CEQ). Programmatic EISs, such as those prepared for resource management plans have provided a broad overview. The focus of these programmatic EISs has been on choosing alternatives and looking at the wider picture while project EISs have been more site specific. Under this system therefore, consultees are of the opinion that there is less likely to be overlap between programmatic and project EISs within an agency. However, overlaps can occur between EISs of different agencies. Each Federal Agency has its own set of NEPA Regulations where programmatic EISs could potentially overlap with those of other agencies, such as land use planning.

6.10 Case Study 9: Canada

6.10.1 EIA and SEA legislation

The Canadian Environmental Assessment Act, which came into force in 1995, requires federal authorities to conduct environmental assessments (EAs) before initiating or funding projects, disposing of lands or any interest therein, or issuing regulatory permits for projects. According to the Act, "project" means:

a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work (e.g. the construction of a bridge), or
b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities, which is listed in the Inclusion List Regulation (such as the cutting and removal of timber from the forests of National Park)

At the strategic level, the SEA Cabinet Directive was issued in 1990, which required federal departments and agencies to apply environmental assessment to policy and programme proposals submitted for Cabinet consideration. However, there is no definition of policies, plans and programmes in either the Directive or the Guidelines for Implementing the Cabinet Directive (CEAA, 2000).

EIA Procedures

There are separate procedures for project EAs and SEA. The assessment of projects that have or require federal involvement, such as road construction and waste facilities is a separate process under the Canadian Environmental Assessment Act. The Act applies to federal projects and there are four types of environmental assessments: screening, comprehensive study, mediation and panel review (CEAA, 1995b). The majority of federal projects are assessed through the first two processes. Screening systematically documents the environmental effects of a proposed project. Small scale, routine projects may be assessed through class screening. Large scale and environmentally sensitive projects usually undergo a comprehensive study, which is a more detailed assessment. The Comprehensive List Regulation identifies projects in this category. Examples include large oil and natural gas developments, projects in national parks, nuclear power developments, major electrical-generation projects and large industrial plants.

The federal government and ten provinces each have their own EIA requirements and there is considerable variation in the requirement among the 11 jurisdictions (Lawrence, 1997). EIA requirements are adapted to different proposal types and proposals in various ways, such as different processes for different proposal types and class assessments. Canada and most provinces apply EIA requirements to large public and private projects. Several jurisdictions have applied EIA requirements to recurrent small projects through class assessments. There have also been examples of individual EIAs for multiple related projects in Canada. Except for Manitoba, however, there are no explicit regulatory provisions for multiple related projects (Lawrence, 1997).

The coverage of EAs is determined in scoping. To assist responsible authorities (RA) in scoping, the Canadian Environmental Assessment Agency issued the document "Establishing the Scope of Environmental Assessment" in 1998 (CEAA, 1998). This document suggests that in determining the scope of the project, the RA should consider:

- which physical works fall within the scope of the project and which undertakings in relation to those physical works fall within the scope of the project; or

- which physical activities not in relation to a physical work (identified in the Inclusion List regulation) fall within the scope of the project.

This guidance also suggests that RAs should consider applying the ***"principal project/accessory"*** test. This test consists of two steps:

1) Determine what the principal project is. The principal project is either the undertaking in relation to a physical work or the physical activity, which triggered the need for an EA.

2) Determine other physical works or activities accessory to the principal project. These may be included as part of the scoped project. To determine what is accessory to the principal project, the RA should apply the following criteria:

   - interdependence: If the principal project could not proceed without the undertaking or another physical work or activity, then that other physical works or activity may be considered a component of the scoped project.

   - linkage: If the decision to undertake the principal project makes the decision to undertake another physical work or activity inevitable, then that other physical works or activity may be considered as a component of the scoped project.

Under the Act, the RA can combine two or more projects into the same EA if it determines that the projects are so closely related that they can be considered to form a single project. In making this determination, the RA should apply the following criteria:

- interdependence: if the principal project could not proceed without the undertaking of another project, the two may be considered to form a single project;
- linkage: if the decision to undertake the principal project makes the decision to undertake another project inevitable, the two may be considered to form a single project;
- proximity: If the geographic study areas developed in relation to the scope of the assessment for the individual projects overlap, the two may be considered to form a single project.

The guide, however, warns that proximity on its own will rarely be sufficient cause for the RA to combine two or more projects into the same EA.

SEA Procedures

EIA requirements in Canada have been primarily applied to projects and its application to policies and programmes is rare (Lawrence, 1997). In the case of Ontario, the Environmental Assessment Act, passed in 1975, requires proponents of new undertakings to take a broad set of environmental factors into account in planning. The Act requires that plans and programmes in the province are developed and evaluated, alternatives considered and the potential economic, social, and environmental consequences evaluated.

At the federal level, the Report of the Commissioner of the Environment and Sustainable Development (Office of the Auditor General of Canada, 2004) noted a low level of commitment in departments and agencies toward undertaking SEA, despite the Cabinet Directive on the Environmental Assessment of Policy, Plan and Programme

Proposals, which was issued 14 years ago. In 1990, the Cabinet issued a directive on the environmental assessment of policy and program proposals. In 1999, the Cabinet Directive was revised and expanded to include the environmental assessment of plans. In addition, a set of guidelines was produced and published. In January 2004, the Directive was modified to include a requirement for a public statement of environmental effects. The directive indicates that it applies to policies, plans and programs that may have important environmental effects. The audit noted that some departments, such as Industry Canada, have determined what types of initiatives could require an SEA, but other departments have not done so. Some departments have developed processes to implement the Cabinet Directive, either as stand-alone systems or integrated the requirements into existing systems. Some departments, such as Environment Canada, Transport Canada and the Department of Foreign Affairs and International Trade have issued guidance and established accountability structures.

6.10.2 Integration of EIA and SEA into decision making

The Report of the Commissioner of the Environment and Sustainable Development (Office of the Auditor General of Canada, 2004) noted that there is limited integration into decision-making and assessment of effects. Departments have sometimes treated SEA as a separate route, which is not integrated with other analyses.

Tiering

The above report found a few examples where there was a follow-through of analysis from a high level SEA to more specific decisions. For example, Natural Resources Canada completed a SEA of its Wind Power Production Incentives in 2002. The Department prepared a guide for conducting project assessments that covered the issues raised in the SEA. This highlighted the important issues that helped decision makers in reviewing project applications. Furthermore, the SEA found that significant negative effects could be reduced by locating turbines away from natural habitats, bird migrating corridors and human settlements. Subsequently, the EA for the Cypress Wind Power Project in Saskatchewan included measures to reduce negative effects by locating wind turbines at least 1000 metres from the nearest residence to minimise noise disturbance and limit their construction during sensitive bird-breeding and nesting periods.

The report also cited an example where there were links between SEAs. Transport Canada's SEA for the Strategic Highway Infrastructure Program stated that SEAs should be undertaken at regional level for provinces with numerous projects in that region. As a result, a regional SEA for the British Columbia Lower Mainland Border Crossing Projects was later undertaken in 2003. Another example of SEA-EIA linkage is that of the SEA of the North American Wildfowl Management Plan which showed how higher level analysis of policies and programmes can provide the rationale and context for lower level assessments as well as limiting the scope of EAs for individual projects (Environment Canada, 2003). The report concluded that current guidance on the

Directive is incomplete and leaves unclear a number of issues that need to be considered.

On the issue of linking the plan or programme assessment to project EA, Gibson (1993) suggested that procedural guidance should include clarification of what general matters are deemed to have been decided at the policy/plan level; under what conditions these decisions may be re-considered; what matters remain to be addressed at the project specific level, such as detailed studies and criteria to be met and how specific assessments will be reviewed. Also, unless it is clear that a rigorous and defined process will be in place for subsequent proposals, concerned parties may insist that all issues, including site specific detail, be addressed and resolved at the class or policy/plan stage, which can lead to confusion.

Cumulative effects

The Canadian Environmental Assessment Act required that cumulative effects be addressed in the assessment of individual projects. But project specific assessments will usually be too limited in focus, resources and implementation authority to provide much overall understanding or any overall control of larger scale effects (Gibson, 1993). These effects are more likely to be assessed more carefully and efficiently on assessments of policies, programmes or plans covering sets of related undertakings.

6.10.3 Conclusions

This case study illustrates a system where SEA and EIA are undertaken as separate processes. Examples of policies and programmes to which SEA could apply include: waste management programmes, federal land management policies, resource development policies and programmes, legislative/regulatory or other measures affecting pollution control. In addition, SEA could be prepared for provincial or municipal plans. SEA has not been widely undertaken, but there are some examples where tiering of SEA and EIA have occurred.

Distinguishing between SEA and EIA, the Environment Canada SEA manual states that *"while project EAs commonly involve detailed analysis of site-specific effects, SEA is more concerned with the broader environmental issues".* The issue of overlap rarely happens (Follen, 2004). In terms of large projects with sub components, consultees have regarded these as projects rather than programmes, which would require an EIA rather than SEA. There are cases though, where individual EIAs were prepared for the project and each of its components. So the potential for overlap could be between those individual EIAs. Another area of potential overlap involves urban development plan EIAs and road development EIAs which are under different legislation and authorities.

However, an example of a grey area between plans and 'activities' relates to the forest management plan which is required under the provincial EA act in Saskatchewan. The forest management plans are essentially proposals to harvest and the plans subject to

an "EIA" under the Act not an SEA (for which there are no requirements). But in practice, what is actually prepared resembles an SEA rather than an EIA. The Pasquia-Porcupine forest management plan is an example of a plan EIA where alternatives were considered based on objectives and impact evaluation (Noble, 2002, 2003).

6.11 Conclusions

The seven EU country case studies provide a useful snap-shot of the potential areas of overlap between the EIA and SEA Directives in different Member States. Obviously, this sample has had to be based on information available at the time of the research and the seven countries selected provide a sample rather than a representative cross-section of the 25 MSs of the EU as a whole.

The scope for overlap between the EIA and SEA Directives is most obvious in the land use and spatial planning sector, where small local level plans have considerable similarity in practical terms with large or multiple projects. In some MSs EIA has already been applied to such plans, either because they met the screening criteria of the EIA Directive, or because it was practical and beneficial to require EIA at that stage in the decision-making process, or the MS EIA legislation went further than the EIA Directive requirements. Where these plans meet the criteria of the SEA Directive, SEA will now also be required. Consequently, in legal terms there is the potential for such local plans to meet the screening criteria of both the EIA and SEA Directives simultaneously, at least on a case by case basis. Legally, MSs must meet their obligations under both Directives and ECJ rulings have confirmed the generally limited discretion MSs have in excluding whole categories of projects under the EIA Directive from assessment. It is likely that similar principles would be applied to future cases under the SEA Directive. The case studies provide examples of different approaches to coping with these overlaps, some of which may be fully compliant with both Directives, while others raise questions as to the legality of adopting an approach which favours either EIA or SEA over the other.

A common theme is the application of EIA and SEA to local level land use plans, particularly in the context of urban development projects and industrial estates (both are project types that have caused problems for EIA implementation in MSs - see section 3.3.2 above). For some MSs (e.g. Austria, Denmark, Germany, Sweden), development projects which require amendment of land use plans in order to be granted consent will trigger SEA of the amendment of the relevant land use plan, and so create the potential for overlap between the requirements of the two Directives. Different countries are adopting slightly different approaches, tailored to their own planning systems, but generally involving some from of 'co-ordinated procedure', either a parallel procedure where both EIA and SEA are undertaken, or a 'joint procedure' where a single form of assessment meets the requirements of both Directives.

Other common areas for potential overlap are in the transport and other infrastructure sectors, such as electricity. In these areas, the overlap is more to do with the practical considerations of the hierarchy of plans, programmes and projects ('tiering'), i.e. at which level are certain considerations taken into account, for example alternative modal options or route selection in transport. The overlap issue is often created because for many MSs strategic decisions on infrastructure do not fall neatly into the typical geographical hierarchy familiar to land use planning. Many plans are often not statutory and therefore fall outside the application of the SEA Directive. So the issue of concern is not necessarily a legal one (if the SEA Directive does not apply, it does not apply, subject to testing in the courts), more a practical one in that certain decisions may have been made outside of a formal SEA Directive-compliant process, raising practical issues of how and when these are best reported (if at all) in any assessment process.

Two country case studies provide examples where only one or the other of EIA and SEA are likely to be applied in certain cases of overlap. The first is in Ireland, where only SEA will in future be applied to strategic development zones (SDZs), where previously EIA had been applied. However, as the case study highlights, the application of EIA to SDZs previously was undertaken as a matter of good practice, not to be compliant with the EIA Directive. The change to applying only SEA to SDZs is a pragmatic one to ensure compliance with the SEA Directive, as they more accurately meet the screening criteria of the SEA Directive. Of course, if SDZs fulfilled the EIA Directive screening criteria, not applying EIA would be legally risky. The other example is France, where EIA has traditionally been applied to a number of specific plans and programmes, and where currently the French Government intends to continue to apply EIA rather than SEA. In this case the French application of EIA to such plans in the past went further than the requirements of the EIA Directive, but it seems most likely that many such plans will now meet the criteria of the SEA Directive and so its requirements will also need to be met, either through a parallel process or a joint procedure. It seems likely that, in practice, existing EIA will be 'enhanced' in to order to meet the additional requirements of the SEA Directive. Effectively, therefore, this is likely to be a joint procedure.

The US and Canadian case studies provide useful comparators to the EU cases. The US has a long history of a single body of legislation that requires environmental assessment for certain types of project, programmes, plans, rules, regulations etc (through NEPA). Overlaps of assessments can be avoided since the approach to be adopted for the assessment (programmatic or project specific EIS) is usually determined during scoping. Tiering is encouraged, for example, by preparing an overview EIS (SEA) for all of the energy activities in a particular area or resulting from a development programme. This overview EIS/SEA would then be followed by site specific or project specific EISs. The focus of these programmatic EISs is on choosing alternatives and looking at the wider picture while project EISs are more site specific. With these strategic EISs in place, the relevant agency tiers specific proposals,

indicates that they conform to the strategic EIS and analyses them using a much shorter, streamlined process than preparing a new EIS from scratch.

In Canada, where EIA and SEA requirements are legislated for separately, similar examples of potential overlap as in the EU can be found, particularly with respect to multiple projects. The Canadian guidance however provides some useful advice for dealing with the practical problem of multiple projects or projects made up of sub-projects – the use of the ***principal project/accessory test***. This test involves the responsible authority determining what the principal project is (either the undertaking in relation to a physical work or the physical activity, which triggered the need for an EA). The authority must then determine what other physical works or activities are accessory to the principal project. These may be included as part of the scoped project. To determine what is accessory to the principal project, the RA should apply the following criteria:

- interdependence: If the principal project could not proceed without the undertaking or another physical work or activity, then that other physical works or activity may be considered a component of the scoped project;

- linkage: If the decision to undertake the principal project makes the decision to undertake another physical work or activity inevitable, then that other physical works or activity may be considered as a component of the scoped project.

A similar such approach may provide a practical solution in MSs to certain problems of overlap, particularly in sectors outside of land use planning. The French approach of EIA for certain types of programme de travaux also has the ability to combine linked projects to require some form of overview assessment of all the elements together (see 6.4 above). The practical difficulty is where multiple developers are involved and multiple consent processes which may be subject individually to EIA.

7. Discussion

7.1 Introduction

This study has highlighted a number of key areas where the interaction and relationship between the EIA and SEA Directives is likely to lead to potential overlap between the requirements of the two Directives within Member States. The extent of the overlap varies significantly among Member States, and at this stage of implementation of the SEA Directive it is still too early to be able to determine the real extent to which such overlap might arise. For some, their planning regime means that the presence of both the EIA and SEA Directives will frequently raise questions as to which assessments are required at what time, e.g. Austria, Denmark. For others the

issue appears clear cut – there is little risk of overlap because plans/programmes and projects are clearly defined as being separate (e.g. France), or joint procedures will provide for both EIA and SEA requirements to be met simultaneously (e.g. Germany).

The research has shown that while the main areas for potential overlap between the Directives are relatively few, there is a useful diversity of approaches to resolving the issue of overlap that have already been attempted. Some are very specific to certain planning and decision-making regimes. Others however may translate quite well to other situations. The discussion below therefore seeks to draw out the lessons from the research, and particularly practical lessons emerging from the country case studies. Common issues, sectoral approaches and possible approaches to resolving overlaps are identified and presented, but it is not the purpose of this research to prescribe which solutions are most appropriate in which situations. In general, the approaches already in existence in Member States offer a suite of approaches to dealing with potential problems of overlap from which Member States can 'pick and mix' those solutions that might work best in relation to their own planning and decision-making regime. There are a number of considerations that need to be taken into account, however, in deciding whether EIA, SEA, both or a joint assessment procedure should apply. These are highlighted after a discussion of the key issues emerging from the analysis of the Directives, the questionnaire survey and the case studies.

7.2 Similarities and differences

Overall, analysis of the text of the two Directives highlights the strong similarities between their requirements. The most obvious similarity is that both Directives apply to projects, plans and programmes which are likely to have significant effects on the environment and that they both provide for an assessment of those effects, and consultation on them. In theory, at least, if an SEA is undertaken at the appropriate strategic level so that the most acceptable environmental options are selected, an EIA may not even be required for subsequent projects *if* they are unlikely to have significant environmental effects. However, this theoretical position is likely to be different to the legal position when it comes to applying the EIA and SEA Directives. For example, if the project is an Annex I project under the EIA Directive, it will require EIA anyway, irrespective of its theoretical relationship with any preceding SEA. The advantage of SEA may be that the information contained in the environmental report (rather than any assessment of effects) may be taken forward and provide a starting point for the EIA, but the EIA procedure still has to be followed. The SEA ER may contain information that might lead to the conclusion that significant environmental effects are unlikely, but this conclusion could only be used in screening projects with respect to projects listed in Annex II of the EIA Directive. This 'front loading' of the decision-making process with environmental assessment should help encourage more environmentally acceptable projects to be promoted. In fact, problems are likely to occur where higher level decisions (e.g. at policy level) that have not been subjected

to SEA, have constrained the consideration in SEA of as wide a range of options as possible or have already foreclosed many decisions. This means that only limited options are then available for project development and EIA. The other possibility is that stakeholders try to broaden the scope of EIAs to try to overcome this lack of proper consideration of alternatives at a more strategic level.

An example from a number of countries where this situation has arisen is in the transport sector (e.g. in Denmark, Germany, UK). This highlights the possible confusion that may arise among the public and practitioners as a result of the strict legal application of the SEA Directive's screening criteria. Which alternatives are appropriate for consideration at which level? Modal alternatives clearly are appropriate at SEA level. Should corridor alternatives (at least mode-specific corridor alternatives) be considered at EIA level (even though undertaken several years before the EIA process is applied)? Where do widening options reside, especially if off-line options are considered? The key practical consideration is the need for sufficient environmental assessment before options are foreclosed, but the SEA Directive's screening criteria appear to be purely mechanical and only concerned with whether a specific plan or programme is caught, rather than whether environmental assessment is desirable[16].

As part of avoiding duplication it may be most appropriate to consider the modal options and corridor options at SEA level, leaving the EIA being more focused on the specific project and route alignments. Arts and van Lamoen (2005), suggest that so-called 'reconnaissance studies', as used in the Netherlands, can form a suitable link between SEA and EIA. Pragmatically, it may be that EIA needs to also address corridor alternatives, if the preceding stages are not subject to statutory processes. Germany has decided that route selection will continue to take place at project EIA level. In Denmark, the Ministry of Transport is considering its own legislation to require SEA for its own plans and programmes. In the UK, it seems likely that, as in Germany, route selection will continue to take place at project EIA level, since there is no other appropriate statutory planning process prior to EIA that will be subject to the SEA Directive. Multi-modal studies currently include voluntary SEA, but are classed as policy and do not meet the SEA Directive criteria. Regional Transport Strategies will be subject to the SEA Directive (as part of Regional Spatial Strategies), but these are at a larger scale than route selection. The Department for Transport's Roads Programme (which identifies individual trunk road schemes for subsequent development) and which might (from assessment theory and practice) appear to be the appropriate level at which to apply SEA to route selection, is also classed as policy and does not meet the SEA Directive criteria. The screening criteria for applying the SEA Directive will therefore appear to create what might be regarded in practical and theoretical terms as anomalous situations, where an outside observer might expect SEA to apply, but it

[16] The likelihood of significant environmental effects is only considered once the plan or programme has met all the other screening criteria: i.e. produced by an authority, is formally required and sets the framework for subsequent development consent. However, it remains to be seen how broadly the ECJ interprets the scope of the Directive in light of the primary objective in Article 1 to ensure that *"an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment."*

does not apply because the SEA Directive criteria are not met. Member States may need to be alive to the potential problems of public perception over the (non-) application of the SEA Directive in these circumstances. Such situations may point to the desirability of considering the application of voluntary forms of SEA.

The key areas of difference between the Directives are that the SEA Directive requires: mandatory consultation of authorities during scoping, monitoring, optional screening of plans and programmes not already defined by the Directive (Art 3 (4), improved consideration of alternatives, and earlier public participation. While these represent differences, however, they also present opportunities for linking with EIA. Key areas where this may occur are in the consideration of alternatives (how and to what extent are these addressed at the plan or programme (PP) and/or project levels); cumulative effects (where consideration at PP level may be more effective and more easily facilitated than at the project level); public participation (where public involvement in environmental assessment at the PP stages may facilitate participation at the subsequent project level); and monitoring, where the requirement for monitoring at PP level could provide better information to the project level EIA. Any object of assessment that might be subject to both the EIA and SEA Directives must therefore be subject to an assessment that meets the requirements of both, including the differences highlighted here.

7.3 Overlaps

The potential for overlaps exist where the 'object' being assessed falls both within the definition of a 'project' set out in the EIA Directive and the definition of 'plans and programmes' under the SEA Directive. From this research it is this issue of "project" and "plan/programme" definition that represents the single largest area of potential complexity and confusion.

The main areas identified by the research where overlaps between the Directives are likely to occur are:-

1) Where large projects are made up of sub-projects, or are of such a scale as to have more than local significance. The determination of whether the proposal is a project or a plan or a programme therefore has significant implications as to whether it is subjected to EIA or SEA or both, and the nature of any such assessment(s) that relate to it. They may be:-
    i. In the same sector, e.g. transport;
    ii. In different sectors e.g. different elements within an industrial development (roads, buildings, etc) could be treated as separate projects or the whole development could be treated as one project or as a PP;
    iii. Be undertaken by different developers;
    iv. Be subject to different consent and EIA processes;

or various combinations of these;

2) Project proposals that require the amendment of land use plans (which will require SEA) before a developer can apply for development consent and undertake EIA;

3) PPs which, when adopted, also effectively give consent for projects (or require an appropriate assessment under the Habitats Directive);

4) Hierarchical linking between SEA and EIA ('tiering').

7.3.1 Case study comparisons

1) Large projects made up of sub- projects

Urban development projects, in most countries studied, appear to have the potential to be defined in national legislation as either a project or a PP, or both. In practice they have been defined as one or the other, but the SEA Directive opens the question as to how best to treat such developments, and raises the question of legality in such definition. For example in Austria and Denmark such developments are treated as projects and subject to EIA, but SEA also may now be needed. In France EIA has been, and will continue to be, applied to *Zone d'aménagement concerté.* In Germany and Sweden EIA has been applied to some urban development plans, but these are now likely to be subject to joint EIA/SEA procedures. Ireland intends to apply SEA to strategic development zones which were previously subject to EIA. And in the UK, while EIA has been applied to urban development projects in the past, it is possible that SEA will also apply to certain types of urban development projects in the future.

Under the EIA Directive, 'urban development projects' fall under Annex II (10 b)
"Urban development projects, including the construction of shopping centres and car parks"

A project is defined in the EIA Directive (Art 1 (2) as:-

"- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;"

and 'development consent' means:-

"the decision of the competent authority or authorities which entitles the developer to proceed with the project."

On the other hand, a statutory land use plan prepared by a local authority that sets the framework for development consent of projects under the EIA Directive and is likely to

have significant environmental effects is a plan requiring SEA under the SEA Directive. If that plan also, in some way, gives consent for a developer to proceed, then it may also be considered a project.

Given these definitions, it is perhaps not surprising that urban development projects can be classified by MSs as projects or plans or programmes. At a local level a plan, which contains proposals for specific projects may be quite detailed in itself, and may contain detail relating to those specific projects. Or it may provide an overview with the detail of the specific projects coming forward at a later date. Prior to the implementation of the SEA Directive, MSs have required EIA for urban development projects in order to meet the requirements of the EIA Directive. A plan, therefore, may have been subject to EIA if it met the criteria of the EIA Directive for project and development consent. It is possible that in requiring EIA for certain plans, some MSs may have gone beyond the requirements of the EIA Directive (if the plan did not actually meet the Annex II criteria). However, it is the advent of the SEA Directive that raises the question of definition, since certain plans may also meet the screening criteria of the SEA Directive as well as the EIA Directive, or only the SEA Directive or maybe do not meet the SEA Directive criteria at all.

Transport and energy sector developments are also typical of this category and most countries have had similar problems with e.g. road schemes made up of smaller sections for consent and EIA purposes (often referred to as 'salami slicing'). The French approach of *programme de travaux*, with global or general assessments that follow through the subsequent EIAs, perhaps offers a possible way of ameliorating this problem in practice, though may not necessarily be legally compliant with both the EIA and SEA Directives.

2) Project proposals that require the amendment of plans

There are close links between this category and (3) below. Project proposals that require the amendment of plans occur in particular in both Denmark and Austria. In Denmark project proposals may result in an amendment to the regional plan, which is itself subject to the SEA Act. In Austria changes may need to be made to the land-use plan as a result of a project proposal for which the appropriate land allocation has not previously been made, if the project is to be given consent.

3) PPs which effectively give consent for projects

Examples of PPs that effectively give consent for projects are the Swedish Detailed Development Plans (DPPs) for certain project types (category (b) in the case study) and German local plans. While formally consent is required for subsequent projects it is in effect inevitable as long as the project is in conformity with the plan. From the countries examined this situation appears almost identical to *'Large projects made up of sub-projects'* - (1) above, except that the nature and scale of the plans concerned offers the opportunity for rather different approaches to resolving the overlap issue (see below). Considerable similarities can be seen in Sweden (DDPs) and the UK

(outline planning permission) even though in one country similar circumstances are defined as a plan and in the other as a project. In reality, in the UK outline planning permission often relates to schemes where there is more than one sub-project and therefore has the characteristics of a programme or plan.

4) Hierarchical linking between SEA and EIA

The SEA Directive makes explicit the link between it and the EIA Directive through the criterion of setting the framework for future development consent of projects listed in the EIA Directive. This hierarchical linking (known by assessment practitioners and academics as 'tiering') raises an issue of the degree of overlap and potential for duplication, or even a lack of formal consideration of real alternatives where the lack of a statutory process prevents a systematic hierarchy of PPs and projects, and their associated assessments, being established.

Respondents to the questionnaire suggest that the issue of definition of plans and programmes is a common one for Member States, particularly what is meant by "required by" (Art. 3) i.e. what is a statutory plan or programme? While plans and programmes may be produced through regular practice, they may not be required by legislation and the administrative provisions may be more open to interpretation. So some plans may not meet both criteria of being "required" and "setting the framework for", but might meet either of these individually. More likely may be plans that are not required, but that in practice do set the framework for future development consent of projects. Examples of this are likely especially in the transport sector (as seen, e.g. in Denmark, UK), in relation to where the line is drawn in the consideration of appropriate alternatives at the SEA level and at the EIA level. In Denmark, for example, there is no legislation that requires the Ministry of Transport to draft plans. Any plans within this sector are usually only investment plans and are made upon the order of the Minister or through the Transport Committee of Parliament (financial plans are not subject to the SEA Directive). The timing of plans will also determine the alternatives available, since the time scale for much transport investment is so long, many plans and projects coming forward will already have been constrained by previous decisions with respect to options and alternatives available. An absence of an appropriate statutory strategic plan process and therefore SEA may result in the public and NGOs seeking to broaden the scope of EIA to cover these strategic issues. In practice, of course, individual transport schemes may come forward, and be subject to EIA, outside a strategic planning process, since political considerations are often significant drivers behind major infrastructure schemes.

7.3.2 Approaches adopted to address overlaps

The approaches adopted by the MSs studied above generally lie in a limited number of options:-

a) The main overlap problem is where EIA has previously applied to certain plans/programmes:-
   i. EIA can be replaced by SEA (e.g. in Ireland for SDZs);

ii. there could be parallel procedures, where SEA can be operated in parallel to EIA (e.g. urban development projects in Austria, Germany and the UK);

iii. there could be joint procedures where both the requirements of the EIA and SEA Directives are met simultaneously e.g. for certain plans in Sweden & Germany;

- it could continue to operate as EIA, but enhanced to meet the SEA Directive's requirements, e.g. EIA for certain types of plans/programmes likely to continue in France.

b) The reverse situation is where certain projects might now be subject to SEA as well as EIA, i.e. particularly large or complex projects, such as airports.

a) Where EIA previously applied to certain plans or programmes

i) Replacement of EIA by SEA

Complete replacement of EIA solely by SEA does not appear to be commonplace among the MSs studied. Legally this is a risky strategy unless the MS is sure that EIA carried out previously was done as a matter of policy and good practice, e.g. under broader MS legislation, rather than being technically required by the EIA Directive. The only example is in Ireland, where strategic development zones (SDZs) are areas designated by government to facilitate development of economic or social importance and can be made up of a number of different developments or sub-projects. A planning scheme has to be submitted to the relevant planning authority by the development agency interested in developing in an SDZ. The scheme was, prior to the SEA Directive subject to EIA. But as a result of the size of the SDZs and the varying type of potential development that can take place, SEA is now considered a more appropriate form of assessment and will replace the EIA at the draft scheme stage. However, projects arising within an SDZ will still be subject to EIA where relevant. Since, in Ireland, SDZs were not strictly required to be subject to the EIA Directive, but went through an EIA process as a matter of policy and good practice, then applying SEA instead should be legally compliant.

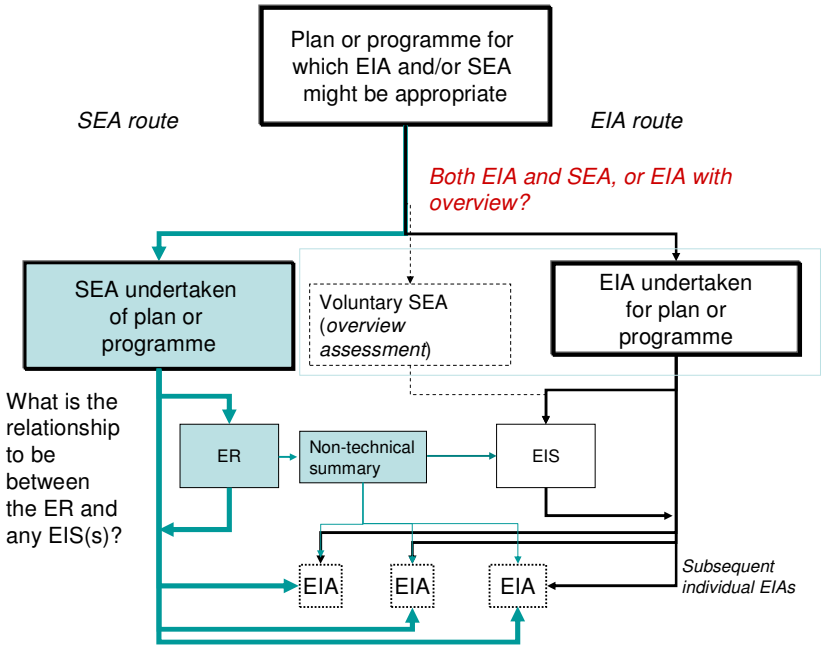
ii) Parallel procedures

There are two forms of what might be termed 'co-ordinated procedures' presented by the case studies and that offer potential solutions to the issue of overlap between the EIA and SEA Directive. The first of these is the 'parallel procedure' of operating EIA and SEA alongside each other, in parallel. Figure 7.1 below illustrates a possible scheme for EIA and SEA to operate in parallel (e.g. for certain urban development projects). A responsible authority might take the view that there would be some practical benefit in securing some form of overview assessment (voluntary SEA) (indicated as an optional box in the centre). Legally, of course, under the SEA Directive, an SEA is either required or it is not. But practically it may be beneficial to provide a framework through which subsequent EIAs are organized (as in the US and Canada case studies). This would require MSs to go beyond the SEA Directive in their

national legislation to enable this to take place, or else it would require case by case negotiation between the appropriate parties on a voluntary basis.

Where EIA is undertaken alone (with or without an overview assessment), this will not be legally compliant if the 'object' of the assessment (the project or PP) meets the screening criteria of the SEA Directive. The EIA process would have to be enhanced to cover the additional requirements of the SEA Directive to address satisfactorily issues of alternatives, cumulative effects, monitoring and adequate consultation, effectively creating a joint procedure. An overview assessment (voluntary SEA) of all the subsequent projects may go some way to achieving this, but not necessarily. If SEA is undertaken, with subsequent EIA of sub-projects, the appropriate level of detail for each assessment will need to be specified. If both SEA and EIA are undertaken, the timing of each may be significant with regard to the exact relationship between the two. If SEA comes well in advance of the EIA, the EIA can be much more focused. If SEA and EIA are carried out more or less in parallel, the SEA should address the wider strategic implications of the scheme (beyond the normal immediate geographical and temporal scope of an EIA), while the EIA can be more focused on the location-specific aspects. In parallel procedures the timing of any SEA and EIA will determine the nature of the information that can be shared from the SEA process to the EIA process (or possibly even the other way around). If the SEA occurs first then information from the SEA process will be available to the EIA process, but in many cases it may not be as neatly sequential as might be desired.

Figure 7.1: Generic scheme for where both EIA and SEA may be required (parallel procedures)



iii) Joint procedures

The second form of co-ordinated procedure is the 'joint procedure', whereby a single assessment procedure is adopted which meets the requirements of both the EIA and SEA Directive simultaneously. Most Member States did not consider joint procedures for EIA and SEA to be particularly advantageous or practical. While there is generally a good understanding among practitioners as to the potential benefits of a hierarchical ('tiered') relationship between EIA and SEA, it is not particularly clear yet as to how the two processes will interact in practice in most Member States. SEA is often identified as being a more dynamic process. As such the feasibility of a 'joint procedure' was questioned by many respondents to the questionnaire survey. SEA (in theory at least) precedes EIA by quite a long time and (in practice) the scale and level of detail of the environmental considerations is likely to differ significantly, making practical joint procedures difficult. However, in areas such as land use planning, local level plans may be of local scale, very detailed and closely linked in time and space to EIA and development consent of projects. In such circumstances the potential for close overlap between EIA and SEA is much greater. Sweden and Germany, in particular, provide examples of planning regimes where for some types of plans both EIA and SEA are likely to be required simultaneously unless some form of joint procedure is established. Joint procedures could also offer benefits, particularly in the identification of cumulative effects at strategic levels and following these through to project level. Efficiencies in public consultation may also be possible. Legally, joint procedures will only be appropriate for those occasions where the screening criteria of both the EIA and SEA Directives are met. A joint procedure will therefore need to ensure both the requirements of the EIA and the SEA Directive are met simultaneously. This will need to be reflected in joint documentation and a possible generic contents list for a joint ER/EIS is provided below in section 7.4.2. As the types of plans/programmes which are likely to require simultaneous SEA/EIA are by their nature more detailed types of plans covering a relatively small geographical area (if they were not then they would be unlikely to fall within the scope of the EIA Directive) then any joint environmental documentation is likely to require a high level of detail.

iv) Enhanced EIA (a subset of (iii))

The most obvious example of this approach is in France, given the particular tradition of applying EIA to certain plans and programmes. The main reason for continuing with EIA rather than replacing it with SEA is that the EIA application in these circumstances is long established and widely accepted. Enhancements will, however, be necessary to meet the requirements of the SEA Directive, to avoid non-compliance. Ultimately (from a theoretical and practical point of view) such an approach can lead to a closer harmonisation of EIA and SEA as environmental assessments, with less distinction of them as different or separate processes, and more akin to a joint procedure. This is essentially a pragmatic, 'bottom-up' approach to SEA (i.e. developing the scope of the EIA to address more strategic aspects). However, if the PP actually falls within the scope of the SEA Directive then to avoid legal risks SEA should be applied. If it is a PP (within the meaning of the SEA Directive) and a project (within the meaning of the EIA

Directive) then a joint EIA/SEA procedure would be more appropriate. In either case, if the planned "enhanced EIA" does not fulfil the requirements of the SEA Directive the legal risks are likely to be high.

b) EIA for projects supplemented by SEA

It may be that in certain circumstances some very large projects, e.g. airports, which may have many sub-projects (and previously subject to EIA) can have much wider strategic effects and as such could be treated as a plan or programme as well as a project. In such situations it may be that the requirements of both Directives need to be met, whether at the same time or sequentially, e.g. an SEA and EIA for the whole airport scheme, or SEA for the whole scheme followed by EIAs for component projects. This might therefore be similar to the situation in Figure 7.1 above. MSs may wish to go beyond the SEA Directive and introduce SEA to catch large projects or groups of projects because it makes practical sense to do so and ties in with EIA/SEA theory, i.e. to prevent these strategic types of project decisions falling into the gap between EIA and SEA. The most obvious manifestation of this problem is the lack of real strategic alternative options often available to be considered by developers of such projects, e.g. alternative modes such as rail to substitute for air travel. In these circumstances this would be a case of MSs requiring SEA as good practice rather than because the SEA Directive required it. There are therefore unlikely to be any legal risks from the European Union if SEA is not introduced, unless there is a strong argument that the large project might be a PP within the meaning of the SEA Directive.

7.4 Joint documentation

7.4.1 Parallel procedures

Where SEA and EIA interact closely (but not as a joint procedure) there may be a need to address this relationship explicitly in the documentation i.e. in the ER and EIS. Options in this situation might be:-

- The ER from the SEA will need to be available to the EIA and the EIS
- Certain aspects form the ER may be appropriate to be included in the relevant EIS(s), e.g. perhaps the non-technical summary.
- Indicators relating to objectives used as part of the SEA process provide a means of monitoring the outcome of the SEA and the plan and provide a direct link to the EIA process below (e.g. identifying key issues for scoping), and could be included in the EIS.

The opportunity for joint documentation (or indeed joint consultation processes) is likely to be limited to those situations where EIA and SEA may be being undertaken in parallel, or where sequential, certain aspects of ERs or EISs could follow through into the other process (as in France where the *appreciation generale* for programme de travaux is attached to subsequent EISs). Where EIA and SEA occur in parallel the potential for earlier public consultation that might be offered by a strategic planning

process may offer real benefits for a more open scoping stage of the EIA process. There may, however, be significant time differences between the plan and any development consent, which might make joint documentation or joint consultation difficult.

In the US, there were concerns from agencies and the public relating to the useful life of NEPA (PEIS) documents as some documents have been used for tiering long after the analysis had become irrelevant. Most agencies in the US do not have a formal process for periodic evaluation of programmatic documents. A useful lesson therefore, may need to be the development of criteria for evaluating whether an SEA ER has become outdated and whether a time frame should be indicated for the usefulness of such documents.

7.4.2 Joint procedures

Where joint procedures are being adopted, covering EIA and SEA simultaneously, there is potential to produce joint versions of all the documentation required throughout the assessment process, e.g. joint:

- Screening determinations
- Scoping determinations
- Environmental reports
- Post decision/adoption information.

However, the most substantial document will obviously be the environmental statement/report and a summary of the environmental information/report requirements of both Directives is included in Table 7.1 below. See Annex 4 for the full environmental information/report requirements of both Directives.

Table 7.1: Summary of the combined key environmental information/report requirements of both Directives

Issue	Key requirements
Description of object[17] being assessed and alternatives [Art 5(3) & Annex IV (1) EIA Directive Art 5(1) & Annex I(a)&(b) SEA Directive]	A description of the object and alternatives (including the do nothing/zero alternative) considered including: - an overview/outline - its main objectives - its relationship with other relevant plans and programmes - its physical characteristics and the land-use requirements during the construction and operational phases - the main characteristics of the production processes, for instance, nature and quantity of the materials used - an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from its operation

[17] Plan/programme/project

Reasons for selection of alternatives [Art 5(3) & Annex IV (2) EIA Directive Annex I(h) SEA Directive]	- An outline of the reasons for selecting the alternatives studied taking into account the environmental effects
Existing environmental situation [Annex IV (3) EIA Directive Annex I(b)(c)(d)(e) SEA Directive]	A description of the existing environment, including: - the aspects of the environment likely to be significantly affected by the object including, biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets and cultural heritage, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors and their likely evolution without implementation of the object - any existing environmental problems which are relevant to the object including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC - the environmental protection objectives, established at international, Community or Member State level, which are relevant to the object and the way those objectives and any environmental considerations have been taken into account during design/preparation of the object
Significant effects [Annex IV (4) EIA Directive Annex I(f) SEA Directive]	- A description [i)] of the likely significant effects of the proposed object on the environment [ii)] resulting from the existence of the object, the use of natural resources and the emission of pollutants, the creation of nuisances and the elimination of waste - A description of the forecasting methods used to assess the effects on the environment
Mitigation measures [Art 5(3) & Annex IV (5) EIA Directive Annex I(g) SEA Directive]	- A description of the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the object
Monitoring [Annex I(i) SEA Directive]	- A description of the measures envisaged concerning monitoring
Method used/difficulties [Annex IV (7) EIA Directive	- A description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information

Annex I(h) SEA Directive]	
Non-technical summary [Art 5(3) & Annex IV (6) EIA Directive Annex I(j) SEA Directive]	- A non-technical summary of the information provided under the above headings

i) These effects should include direct, indirect, secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary, positive and negative effects.

ii) 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.

How much information is needed?

The information required in a particular report will depend on what is reasonable in light of a range of factors including:

- current knowledge and methods of assessment;
- the specific characteristics of a particular action or type of action, for example, its contents and level of detail;
- the stage in the decision-making process and the extent to which certain matters are more appropriately addressed at different levels in that process in order to avoid duplication of assessment; and
- the environmental features likely to be affected (Art 5(1) EIA Directive and Art 5(1) and 5(2) SEA Directive – see Annex 3 for full text of these provisions of the Directives).

Joint reports are most likely to be appropriate for plans/programmes which cover a small geographical area and are relatively detailed e.g. for a Building Plan, in which circumstances the level of detail required in the joint report is likely to be high.

7.5 Cumulative effects

SEA offers the opportunity for picking up significant effects from multiple projects for assessment when individually the projects would have escaped the normal EIA process. Examples can be seen in Denmark at the regional level where prior to SEA there was no effective provision for capturing small pig rearing projects, even though collectively they can have very significant environmental effects; and in France, where the *programme de travaux* process already allows individual projects which would otherwise be screened out from EIA to be included in a global EIA for such a programme. Practically this may be encouraged through voluntary SEA to provide some form of overview assessment, if there is no legal mechanism by which the SEA Directive will apply. The scoping stage in any SEA is particularly important for identifying key cumulative effects (see Cooper, 2004), to ensure these are properly identified and assessed during the SEA process and picked up in subsequent EIAs.

7.6 Other legal issues

7.6.1 Legality of applying only EIA or SEA in certain circumstances

The case studies raise two specific issues relating to legality under EC law in relation to the issue of overlap between the two Directives. In France, certain plans (*Programme de travaux* and *Zone d'Aménagement Concerté*) that have traditionally been subject to EIA will continue to be subject to EIA rather than SEA; and in Ireland, where *strategic development zones* (SDZs), previously subject to EIA, will now be subject to SEA. These circumstances raise questions as to whether Member States have the power under EC law effectively to decide whether or not to apply one or other of the Directives in specific cases. In other words, even if a plan or programme meets the criteria of a plan or programme (as defined in the SEA Directive) can it still be treated as a project (as defined by the EIA Directive) and subject only to the EIA Directive? Conversely, can projects covered by the EIA Directive and listed in the Annexes (such as roads, railways, airports) be subjected only to the SEA Directive and not the EIA Directive, even though they meet the criteria for EIA? Legally it would seem unlikely, since if a project or a PP meets the criteria for one or the other or both Directives, they should be subject to EIA, SEA or both.

In the French cases, EIA implementation does not currently meet the requirements of the SEA Directive as well, since two aspects in particular are not covered to the extent required by the SEA Directive, i.e. consideration of reasonable alternatives, and monitoring. Significant enhancement to the EIA process would be needed to create effectively a joint procedure that complies with both Directives. In Ireland, EIA was only previously applied as a matter of good practice, and projects emerging from the SDZ will still be subject to EIA. So applying SEA to SDZs may be consistent with the avoidance of duplication provided for by Articles 4 (3) and 5 (2) of the SEA Directive, where SEA is more appropriate at the SDZ level than EIA. Nevertheless, whether Member States have the power under EC law not to apply one or other of the Directives in particular circumstances will need to be considered.

This raises a wider point of interest: the existence of the two Directives creates a degree of dissonance between the legal relationship of the EIA and SEA Directives, and the theoretical and practical relationships between EIA and SEA. Theory suggests consistent tiering from SEA at higher levels down to project level is desirable. Practice suggests that project level EIA is likely to require more detail and tend to be more quantitative than SEA. But legally, an SEA may be required under the SEA Directive for a small area, local plan that involves considerable detail, because it meets the SEA Directive criteria. Such a plan might also meet the criteria of the EIA Directive. A large project made up of small projects might also meet the criteria of the SEA Directive and be considered to be a plan or programme as well as a project under the EIA Directive. Legally, under the two Directives, EIA or SEA are required only if the project or PP meets the specific requirements of the relevant Directive. The issue is perhaps more acute for the SEA Directive where the definition of plans and

programmes varies so much across MSs. Consequently many plans that might have significant effects on the environment may still not meet the SEA Directive screening criteria and so may not be subject to SEA, even though theory and practice might indicate that they should be subject to an SEA process. The option remains, of course, for Member States to go beyond the SEA Directive's requirements if they consider it appropriate to do so, either by extending the application of the SEA Directive in their own national legislation (e.g. as in Scotland) or through encouraging the voluntary application of forms of SEA, whether consistent with the SEA Directive or not.

7.6.2 Project definition

One aspect of the relationship between the EIA and SEA Directive that raises particular difficulties concerns those projects or programmes that fall uncertainly between the two Directives, and tend to relate to multi-sector, multi-developer and multi-consent processes e.g., certain types of infrastructure and urban development schemes, and parts of the electricity sector, e.g. in France and the UK. The Canadian example of a '*principal project/accessory' test* may be an option to consider (pp 62-63 above), which may be open to some Member States to incorporate into their own implementing legislation. This may be easier in some MSs than others, since it may require new consent processes to be introduced. Amendments to the definitions of project, programme and plan in the EIA and SEA Directives may offer a means of clarifying this, for example, by requiring some sort of principal project/accessory test for projects. 'Project' definition under the EIA Directive could perhaps be amended to include 'associated works or installations', though this will necessitate changes to consent processes in MSs.

7.6.3 Long-term relationship between the EIA and SEA Directives

A number of respondents and consultees suggested that ultimately consolidation of the requirements of the two Directives might be beneficial, while others felt that any legislative proposals to provide formal linkages between SEA and EIA should be deferred until there has been sufficient practical experience of implementation.

8. Conclusions and Recommendations

8.1 Conclusions

While there are limited areas of overlap between the EIA and SEA Directives these have the potential to be problematic in some countries. Because the overlap issues often relate to urban projects or large projects or linear infrastructure, they have the potential to affect large numbers of people and therefore also to be controversial. Such overlap issues therefore may give rise to problems that are greater than their potential frequency might suggest. There are a limited number of countries with experience of operating both EIA and SEA processes together. Those that do have

adopted a number of variations on approaches to dealing with potential problems of overlap.

Given the timing of this research – very soon after implementation of the SEA Directive – it should be seen as a first attempt at evaluating the nature and scale of the problem. More focused research should be undertaken, e.g. on specific sectors or problem areas identified by this research, after two or three years of experience of operating both Directives together. Whether the two Directives would ultimately be better consolidated into one – as some Member State respondents have suggested – could then be better informed from a deeper understanding of the practicalities of operating the two regimes closely together. The experience in the US where EIA and SEA operate under the same legal framework is that SEA (or PEIS) does offer some benefit in focused EIAs. But even in the US, where there is much longer experience of strategic and project assessment operating together, a lack of consistency in approaches adopted can still occur. It may be that this simply has to be accepted – the perfect system is unlikely to exist.

8.2 Resolving overlaps

For MSs, the overriding consideration is that of legal compliance, with both Directives. The starting point in deciding how to resolve issues of overlap is therefore to look at the facts of particular cases to see whether the "object" requires both SEA and EIA. Deciding this requires close examination of the relevant provisions of both Directives (i.e. Art 2(a) and 3(2), (5) and (6) of the SEA Directive; Arts 1(2) [meaning of project] and Art 4 (and Annexes I & II) of the EIA Directive) and the related guidance (e.g. the Commission SEA interpretation guidance) and case law. Where the object of assessment does require both SEA and EIA or there is a strong argument that it does – then the next consideration would be the practicalities of whether some form of co-ordinated (parallel or joint) procedures are possible. Where it is questionable whether an object requires both SEA and EIA a risk avoidance approach would be to treat it as requiring both forms of assessment.

A more risky (but perhaps pragmatic) approach would be to think about which form of assessment would be most appropriate on the facts of the case and in relation to the theory of EIA and SEA, i.e. is the object more strategic than not, for example, because there is a good range of alternatives available for consideration (and so SEA is more appropriate). Or is the object much less strategic, for example, alternatives are genuinely very limited because of earlier decisions, and therefore EIA is more appropriate. However, these aspects relate primarily to content of the assessments (under either Directive) and the need to avoid duplication, rather than as a means of screening. For MSs this risks mixing the practice of EIA and SEA with the legal obligations to comply with the Directives, and as discussed in 3.14 above, there are clear differences between when the Directives might apply and what might be considered desirable from EIA/SEA theory and practice.

Figure 8.1 below suggests a relatively simple flow diagram approach that Member States could use for identifying overlap issues and options for deciding which assessment approaches should apply where problems of definition between project, plan and programme arise. The diagram refers back to specific case studies discussed in Chapter 6 as illustrative examples of e.g. joint or parallel procedures.

8.3 Recommendations

Recommendations are presented here as illustrative examples of approaches to resolving potential areas of overlap between the Directives, and as questions or issues that need to be considered. It is not considered either practical or appropriate to attempt to develop prescriptive approaches to resolving the potential areas of overlap between the Directives. Which approach is appropriate will depend upon the individual Member State and its own legal and administrative arrangements. The recommendations are grouped as short, medium and long-term recommendations for the attention of Member States and the Commission.

Short term

1. Member States should consider whether co-ordinated - parallel or joint - EIA/SEA procedures are possible and/or appropriate (see Figure 8.1).

Whether joint procedures are possible or appropriate will depend upon the decision-making processes and particularly the relative timing of EIA and SEA. In many cases it is likely that SEA will and should occur before EIA and so the scope for joint procedures is likely to be limited. However, there may be occasions, as seen in some of the case studies, where EIA and SEA may occur in parallel or where there would otherwise be duplication, where there may be some scope for joint procedures. **Figure 8.1 provides a flow diagram which can be used by Member States to help in thinking through which assessments are needed in a particular case and the scope for implementing joint or parallel procedures. Reference is made to relevant case studies in the report.**

2. Where Member States might be faced with either i) replacing EIA with SEA, or ii) applying EIA to plans/programmes they should consider carefully how the requirements of both Directives shall be met if the object of assessment meets the screening criteria for both Directives.

iii) Care will be needed to avoid risk of infringing the requirements of the EIA Directive if only SEA is undertaken, i.e. where a project might otherwise require EIA.

iv) It is unlikely that previous EIA provisions will be legally compliant with the SEA Directive in terms of consideration of alternatives, consultation,

and consideration of cumulative effects or monitoring. Enhancements may need to be made to the EIA process in such circumstances, effectively to create a joint EIA/SEA procedure.

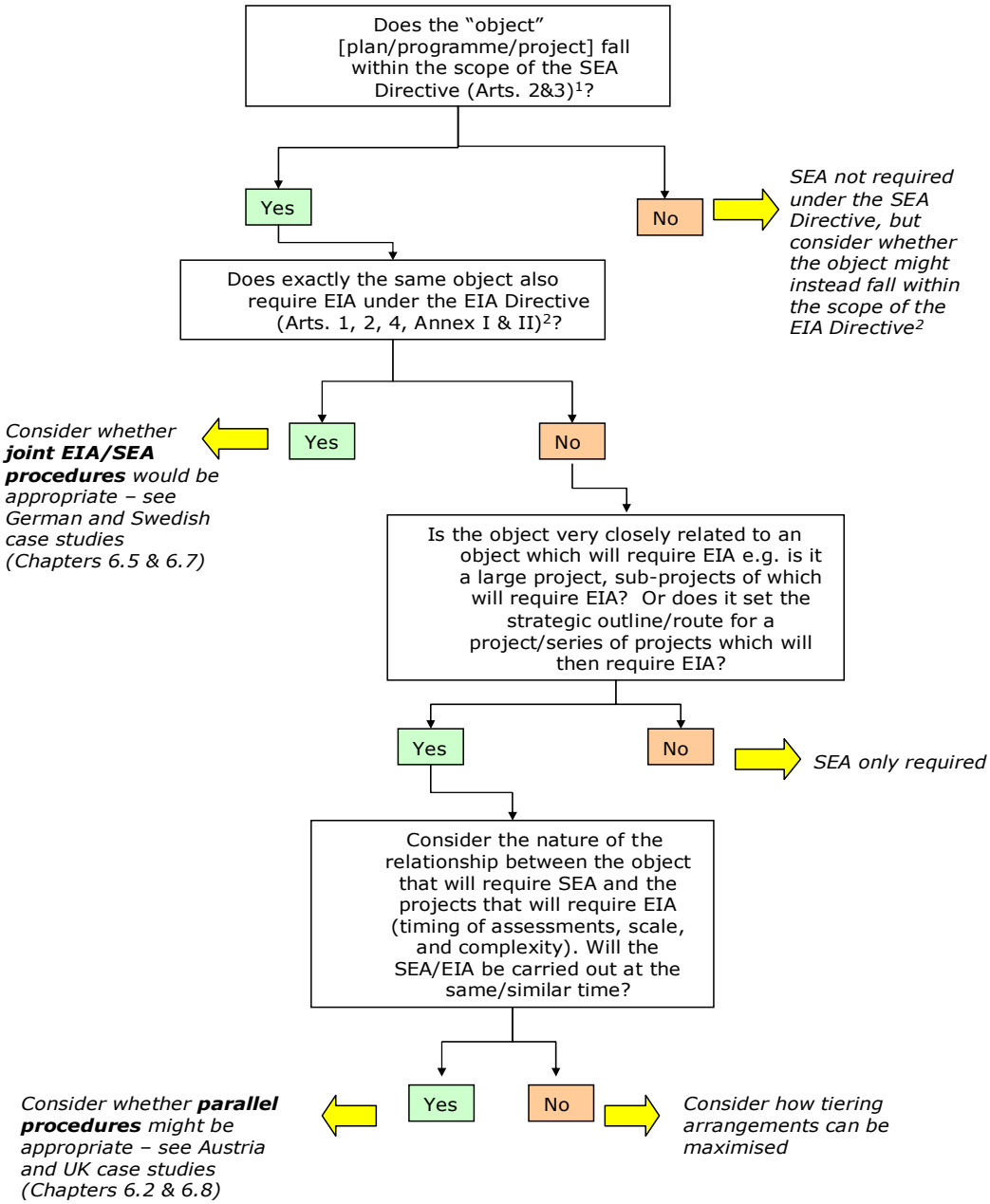
3. Member States should examine possible gaps between the EIA and SEA Directives and consider whether and how to address plans/programmes and projects that fall between these Directives (or where neither Directive applies), in order to ensure that likely significant effects on the environment are considered at the most appropriate level of assessment.

This recommendation, whilst going beyond strict compliance with the text of the Directives (though arguably consistent with the spirit), nevertheless is intended to ensure that a potentially important issue for EIA and SEA *practice* is not overlooked by the fact that in certain cases the SEA Directive may not apply and the EIA procedure, if it applies, does not provide for sufficient consideration of the pertinent strategic issues. This is important since the wider public may perceive there to be 'loopholes' not being addressed, or poor application of the legislation (which may lead to legal challenge), even though the strict letter of the law is being applied. The use of a **principal project/accessory test** (as in Canada) might help to overcome this deficiency, particularly in relation to avoiding the need for multiple assessments where small plans, programmes or large projects may consist of smaller projects. However, this is likely to require new consent processes to be implemented in MSs, unless it can be achieved through voluntary means and negotiation, supported by guidance. Both the EIA and SEA Directives allow MSs to go beyond the Directives' requirements if they so desire.

4. Where EIA and SEA might both apply, Member States should determine how best to co-ordinate the content of the assessments and the decision-making processes, and should consider whether it is appropriate to create clear differential responsibility for different aspects at different levels.

For example, certain kinds of alternatives could be addressed by the SEA, allowing the EIA to be more focused on location specific or operational alternatives; broad cumulative effects could be addressed by the SEA so that EIAs can pick up on their own contribution to significant cumulative effects in more detail, and how they can be avoided, reduced or mitigated as part of the specific project. This recommendation is intended particularly to avoid duplication and to ensure efficiency in the application of the assessment processes. It is particularly important where responsibility lies with different authorities.

Figure 8.1: Which assessment procedures apply?



Notes:

[1]Or within the scope of MS legislation on SEA if this is broader than the SEA Directive

[2]Or within the scope of MS legislation on EIA if this is broader than the EIA Directive

Medium term

5. The Commission, in undertaking the review processes for the EIA and SEA Directives, should consider the scope for clarification, in either or both Directives, of the definitions of project, programme and plan.

The definition of project in the EIA Directive could be amended to include, for example, 'associated works or installations', which might then be identified through the use of a **principal project/accessory test** (as in Canada). This might help address the problem of multiple consent processes that can fall between the two Directives, though may require significant modification of consent processes in some MSs. The fact that plans are produced that set the framework for subsequent consent of projects, but are not formally required by legislation or administrative provision and therefore do not fall within the scope of the SEA Directive, may need to be revisited in light of experience, not least because of the likely diversity of SEA application across MSs. Further clarification of e.g. 'administrative provisions' may be needed, either in legislation or through guidance, in addition to that already provided in the Commission's Implementation Guidance (CEC, 2003a).

6. Guidance should be provided by the Commission and/or Member States on the content of EISs and ERs to encourage a consistent hierarchical relationship between the two processes ('tiering').

The purpose of guidance should be to encourage better assessments in practice. Certain aspects of SEA documentation, e.g. the Non-technical summary, might be appropriate to be included in EISs of subsequent EIAs. Guidance should also include an explanation of the relationship between SEA documents and future documents in any subsequent hierarchy ('tiering'), including their 'shelf life' (e.g. the normal period for a specific planning cycle), who will be involved in subsequent assessments, how and when they will be involved, how and where potential issues will be addressed and the proposed temporal and spatial scales that will be used when analysing those issues. Framework guidance may be needed from the Commission, drawing on best practice, to encourage a degree of consistency across Member States.

7. The Commission and/or Member States should, after Member States have had more experience of operating both systems together, commission further research in this area, including focused research on the application of EIA and SEA to specific sectors, e.g. urban development projects, and the transport and energy sectors.

The purpose of further research is to better understand current and past experience, to learn any lessons and to inform future guidance or revisions of legislation. More detailed research in specific sectors would provide a good

range of experience of the practical problems encountered in the implementation of both Directives alongside each other. Other areas of research could include more focused bilateral, multilateral and comparative research on specific issues, such as regional implementation in e.g. Germany, Spain and Italy.

8. Member States should consider reviewing their EIA and SEA implementing legislation after more experience of operating both together, to see whether there is scope to create a more consistent or consolidated approach where possible.

The experience from the US case study and interviews suggests that one set of legislation that addresses EIA and SEA in a consistent manner has advantages in helping to avoid some of the overlap problems (particularly of definition) of inconsistent or fragmented legislation. In principle, Member States could consider implementing the EIA and SEA Directives in a consistent legal framework. Some MSs are transposing the SEA Directive through inserting SEA into their EIA legislation, which may offer the opportunity to link the two processes more closely. Where different systems are operated, a review of implementation might be considered after some years' experience with a view to seeing whether a higher degree of consistency could be achieved. This is likely to be of benefit to authorities and developers alike in avoiding legal problems, but also should seek to provide for more effective tiering of assessment in practice. Improved consistency may be achieved through detailed guidance and through revision of legislation. MSs, however, will want to discuss with the Commission its intentions with regard to amending the legislation at EU level in order to determine whether review and possible amendment at MS level is timely and appropriate.

Long term

9. The Commission should, after sufficient experience of the EIA and SEA Directives operating together, consider whether the consolidation of the two Directives might achieve greater consistency and efficiency in environmental assessment across Member States.

The evolution of EIA and SEA legislation in the EU has been a long time in the making, involving lengthy negotiations over each of the directives. However, with both now in existence, and with explicit similarities, overlaps and inter-linkages, there is still an apparent diversity of approaches to the relationship between the two Directives resulting from the different definitions of plans and programmes across MSs. Changes in MSs' law may be sufficient to provide consistency of approach. However, if further research confirms a continuing diversity and inconsistency in application of the two Directives, and the relationship between the Directives, across the MSs this may provide evidence

ultimately supporting consolidation of the legislation at an appropriate time in the future. The purpose of such consolidation would be to achieve harmonisation between the requirements of the two Directives for projects, programmes and plans. However, the pros and cons of such a consolidation would need to be carefully considered to ensure that such a change would have the desired effect.

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Annexes

Annex 1: List of consultees

Grateful thanks are extended to all who responded or contributed to our enquiries.

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Austria

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Jeffrey Barnes, (Principal, Jacques Whitford Consultants) interview 11 January 2005.

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William Ross, (Professor, University of Calgary) interview 1 November 2004.

Annex 3: Relevant ECJ Case Law

3.1 C-72/95 – Aanemersbedrijf PK Kraaijeveld BV and Others v Gedepputeerde Staten van Zuid-Holland (Judgment 21.10.1996)

This case dealt with the degree of discretion for setting thresholds for screening Annex II projects. The Court found against the Netherlands and held that MSs' discretion is limited (whole classes of projects cannot be excluded from assessment), and that the Directive also applied to modifications of Annex II projects where there were likely to be significant effects (even though not explicitly listed in the Directive).

3.2 C-133/94 – Commission of the European Communities v Kingdom of Belgium (Judgment 02.05.1996)

This case was concerned with screening and the degree of discretion to exclude Annex II projects (also considered transfrontier effects). The Court found against Belgium, confirming again that MSs' discretion is limited.

3.3 C-301/95 – Commission of the European Communities v Federal Republic of Germany (Judgment 21.10.1998)

This case also dealt with screening, specifically the exclusion of whole classes of Annex II projects. The court found that Germany, in not requiring EIA for all projects for which an environmental assessment had to be carried out in compliance with the Directive, and, in excluding whole classes of projects listed in Annex II of the Directive, had not complied fully with the Directive.

3.4 C-392/96 – Commission of the European Communities v Ireland (Judgment 21.09.1999)

This case dealt with screening Annex II projects solely on the basis of size. The establishment of thresholds that only took account of the size of projects exceeded the discretion given to the MS through the directive. Article 4(2) confers upon Member States a measure of discretion to establish the applicable criteria or thresholds. However, the limits of that discretion are restricted by the requirements in Article 2(1) that projects likely by virtue, inter alia of their nature, size and location, to have significant effects on the environment are to be subject to an environmental impact assessment. Thus a Member State that establishes criteria or thresholds that take into account only of the size of projects, without also taking their nature and location into consideration, exceeds the limits of its discretion. The Court also found that the cumulative effects of projects have to be taken into account prior to an EIA not being required. The question of whether a Member State went beyond the limits of its discretion under Article 4(2) cannot be determined in relation to the characteristics of a single project, but depends on an overall assessment of the characteristics of projects of that nature. Therefore, a Member State that establishes criteria and/or thresholds at a level that, in practice, all projects of a certain type are exempted in advance of an impact assessment would exceed the limits of its discretion under Articles 2(1) and 4(2).

3.5 C-474/99 - Commission of the European Communities v Kingdom of Spain (Judgment 13.06.2002)

Again, this case related to screening and the exemption of Annex II projects. The ECJ reiterated prior rulings that the Directive does not permit the Member States to exclude generally and definitively from the obligation of EIA one or more classes of projects mentioned in Annex II. However, the Member States may establish the criteria and/or thresholds necessary to determine which of the projects covered by Annex II are to be subject to an assessment. In establishing those thresholds and criteria, Member States are required to take into account the size, nature and location of the projects. The Court then considered provisions of Spanish national law put forth by Spain and concluded that they were insufficient to transpose the directive. With regards to Royal Decree No. 1997/1995, which, according to the Spanish Government, reproduces all the classes of projects listed in Annex II to the directive, the Court found that in fact it only applied to special areas of conservation established under the Habitats Directive. This effectively exempted a considerable number of projects, which are likely to have significant effects on the environment, from an EIA. This exceeded the discretion of the Member States under the directive. Furthermore, there has been no legislation adopted in the autonomous community of La Rioja and in the autonomous cities of Ceuta and Melilla that would be sufficient to transpose the directive. In addition, the Court found gaps in the implementation of the directive by some autonomous regions. Accordingly, the Court granted the Commission's application.

3.6 C-227/01 - Commission of the European Communities v Kingdom of Spain (Judgment 16.09.2004)

In this case the Commission's application was against the Spanish government for failure to screen and carry out an environmental impact assessment for the Valencia-Tarragona railway project, Las Palmas-Oropesa section, which forms part of the project known as the Mediterranean corridor. The complaint (first made in 1999) refers to the construction of a 13.2km railway line, which crosses the communes of Castellon, Benicassim and Oropesa, without a public inquiry or environmental impact report having been carried out. The Spanish authorities (in 2000) stated that an EIA was not necessary because the route was included in the railway reservation provided for in the 1993 general development plan, which had been the subject of an environmental impact report and had been approved (in 1994). The subsequent argument centred around whether the project falls under Point 7 of Annex I or Point 12 of Annex II of Directive 85/337/EEC and the failure of Spain to fulfill its obligations arising from Articles 2, 3, 5(2) and 6(2) of Directive 85/337. The Commission stated that the development plan for Benicassim did not meet the minimum conditions laid down by the Directive (85/337) and that the Kingdom of Spain had indeed failed to fulfill it obligations under the Directive. The Court held that Spain had indeed failed in its obligations under the Directive.

3.7 Case C-117/02 – Commission of the European Communities v Portuguese Republic (Judgment 29.04.2004)

This case dealt with screening thresholds for Annex II projects and sensitive areas. In this case the Commission took action against the Portuguese authorities for allowing consent to be given (in 1998) to two planned tourism complexes located in the area of Cabo Raso and Ponta do Abano without an environmental assessment being undertaken and therefore failing to fulfill its obligations under Article 2(1) of Council Directive 85/337/EEC and Article 6(2), (3) and (4) of Directive 92/43/EEC.

The Commission claimed that consent was given for tourism projects located in an area which appears in the national list of sites and which should have been proposed as a site of Community importance to be included in the Natura 2000 network. The Portuguese authorities responded saying that consent had not been given in the area of Cabo Raso, but that the location of the project in Ponta do Abano had been decided (in 1996, on the basis of the development plan for Sintra-Cascais natural park) well before approval of the national list of sites drawn up in accordance with Directive 92/43/EEC. The Commission considered that the projects would have produced significant environmental effects since the areas in question included habitat types referred to in Annex 1 to Directive 92/43 and species mentioned in Annex II of the Directive.

The Portuguese authorities ascertained that the project was compatible with the specifications laid down in the development plan for Sintra-Cascais, in accordance with Article 21 of Regulatory Decree No. 9/94 approving the development plan and that sensitivity of the area where it is located, as well as the nature and size of the project, were duly taken into account. Therefore they did not fail in their obligations under Directive 85/337 since a specific examination of the project was carried out with regards possible significant effects on the environment (in accordance with Article 2(1) of the Directive). However, the Commission's view was that they merely determined that the project satisfied the conditions laid down in national legislation. The action was dismissed in court on the grounds that the Commission was making the assumption that a project located in a national park is likely to have significant effects on the environment. Such an assumption is seen as insufficient for the purpose of establishing the existence of an infringement of Article 2(1) of Directive 85/337.

3.8 Case C-201/02 - Reference for a preliminary ruling in the proceedings pending before the High Court between The Queen on the application of Delena Wells and Secretary of State for Transport, Local Government and the Regions (Judgment 07.01.2004)

Prior to the Town and Country Planning Act 1947, the Town and Country Planning (General Interim Development) Order 1946 empowered the competent authorities to grant, by interim development orders, consents for mineral extraction (old mining permissions) in order to respond to the need for construction materials which arose during the period immediately following World War II. By virtue of paragraphs 1 and

11 of Schedule 9 to the Town and Country Planning 1990, the competent authorities may by order require discontinuance of the use of land for the winning and working of minerals or impose certain conditions on the continuance of such use.

At the beginning of 1991, the owners of Conygar Quarry applied to the competent Mineral Planning Authority for registration of the old mining permission under the Planning and Compensation Act 1991. Registration was granted by a decision of 24 August 1992, which stated that no development could lawfully be carried out unless and until an application for the determination of new planning conditions had been made to the MPA and finally determined (the registration decision). The owners of Conygar Quarry therefore applied to the competent MPA for determination of new planning conditions. After the MPA, by decision of 22 December 1994, had imposed more stringent conditions than those submitted by the owners of Conygar Quarry, the latter exercised their right of appeal to the Secretary of State. By decision of 25 June 1997, the Secretary of State imposed 54 planning conditions, leaving some matters to be decided by the competent MPA. Those matters were approved by the competent MPA by decision of 8 July 1999. Neither the Secretary of State nor the competent MPA examined whether it was necessary to carry out an environmental impact assessment pursuant to Directive 85/337. At no time was a formal environmental statement considered.

The court held that Article 2(1) of the EIA Directive, read in conjunction with Article 4(2), is to be interpreted as meaning that, in the context of applying provisions such as section 22 of the Planning and Compensation Act 1991 and Schedule 2 to that Act, the decisions adopted by the competent authorities, whose effect is to permit the resumption of mining operations, comprise, as a whole, a development consent within the meaning of Article 1(2) of that directive, so that the competent authorities are obliged, where appropriate, to carry out an assessment of the environmental effects of such operations. Significantly, the court also held that where national law provides that the consent procedure is to be carried out in several stages, one involving a principal decision and the other involving an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which the project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision. It is only if those effects are not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of that procedure.

Annex 4: Full environmental information/report requirements of both Directives

EIA Directive (as amended): Article 5 and Annex IV

Article 5

1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:
— a description of the project comprising information on the site, design and size of the project,
— a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
— the data required to identify and assess the main effects which the project is likely to have on the environment,
— an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
— a non-technical summary of the information mentioned in the previous indents.

2. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.

ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5 (1)

1. Description of the project, including in particular:
   - a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,
   - a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,
   - an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description [(1)] of the likely significant effects of the proposed project on the environment resulting from:
- — the existence of the project,
- — the use of natural resources,
- — the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

[(1)] This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

SEA Directive: Article 5 and Annex I

Article 5
Environmental report

1. Where an environmental assessment is required under Article 3(1), 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, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex I.

3. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.

ANNEX I
Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

(d) 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 79/409/EEC and 92/43/EEC;

(e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;

(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;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings.

[(1)] These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.