

Assessing environmental impacts of plans and programs

Implementation of key requirements of the SEA
Directive in selected EU MS

Comparative Legal Study

Justice and Environment 2018

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1. INTRODUCTION

The environmental assessment undertaken for public plans or programs on the basis of Directive 2001/42/EC (referred to as 'Strategic Environmental Assessment' – SEA Directive) provides a framework for better planning and programming by the integration of environmental considerations into decision making. As the Recital 5 of the Directive states „The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.” The strategic environmental report which assesses the potential impacts of the strategic document and opinions expressed by the relevant authorities, should be taken into account during the preparation of the plan or program and before its adoption or submission to the legislative procedure. At the same time the SEA Directive provides for public participation in decision-making and thereby for strengthening the quality of the decisions.

This study contributes to the regulatory fitness evaluation of the Strategic Environmental Assessment (SEA) Directive (REFIT) initiated by the European Commission in 2017. The SEA Directive is a relatively new piece of EU environmental *acquis* with a transposition date of July 21, 2004. This study covers the application of the Directive in 8 Member States (Austria, Bulgaria, Croatia, Estonia, France, Hungary, Slovakia, Slovenia) with emphasis on some key aspects, including scope of application, public participation, rules governing SEA experts, follow-up and monitoring, and access to justice.

Being “younger” than the EIA Directive, the SEA Directive is in many respects also more abstract/discretionary than EIA Directive, especially after latter’s latest amendments. Although in some cases this wider margin of discretion was or is justified (due to different subject matter, i.e. plans or programs instead of specific projects), the result of more discretion may be more uneven implementation of the mechanism in MS. Large degree of divergence in national rules and application practice inevitably leads to unequal treatment of EU citizens and harms the level playing field the EU aims to create for economic operators, and therefore the current approach may in all cases not be justified.

The aim of this study therefore was to provide an overview at some key mechanisms of the SEA Directive and the way they have been established in the national legislation transposing the Directive. Such overview would help to assess if and to which extent the discretion awarded to the Member States has led to uneven implementation on the national level.

The study is divided in three parts: first the summary of findings with explanatory tables, followed by original country reports compiled by the experts in various Member States. Annex 1 of the study contains a detailed overview of responses on a topic-by-topic manner.

2. SUMMARY OF FINDINGS

Regarding the **scope of application of the SEA instrument**, the national rules transposing the SEA Directive in all countries covered by this study are adhering closely to the definition of the scope of the SEA as provided by Art. 3 of the Directive.

Nevertheless, the national regulative approaches to this area are somewhat different. In Austria there is no central SEA legislation, but rather a scattered regulations in various laws, e.g. in Water Protection Act (“Wasserrechtsgesetz”), Waste Management Act (“Abfallwirtschaftsgesetz”) and others. In Bulgaria, Croatia, Estonia, France, Hungary, Slovakia and Slovenia the procedures and content of SEAs is regulated by a framework environmental act (mostly by the Environmental Protection Act) and by by-laws to this act. SEA procedures have been introduced in other legal acts, too – e.g. in France it is introduced in the French Planning Code. While the approach of having the SEA requirements provided in different laws might serve better the principle of integration, it entails the danger that environmental interests are diluted in the specific interests served by sectoral laws and administrations.

Public participation is a critical element of the SEA procedure having an impact on the quality and inclusiveness of the process. The SEA Directive provides for broad and active public participation in the assessment procedures. According to it Member States shall identify the public, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned (Art.5.4). The detailed arrangements for informing and consulting the public are left at the discretion of the Member States (Art.5.5.).

In the reviewed countries there are no legal restrictions to public participation in SEA procedures. Even though there are modalities of defining the “public”, the **general rule is that everyone could participate**. For example, in Bulgaria the EPA and the SEA Ordinance define the persons who could participate in the SEA process very broadly first as “the public” and secondly, as any “third party likely to be affected by the plan or the programme”. In Croatia the EPA states that “public” (general public) has the right to participate in the process of strategic assessment of strategy, plan and program. In Hungary the right of participation is not explicitly limited by the relevant legislation.

In order to provide timely and effective inputs **public participation should be integrated into the earliest possible stage** in the SEA procedures. In this respect the Member States have the discretion to decide on the detailed arrangements and as the analysed country examples show, the public is involved at different stages of the assessment procedures. The prevailing approach is that public participation starts at the scoping stage of the SEA procedures. The public could be notified about the screening decision but it cannot participate at this stage. In some countries the public participation takes place even after the scoping phase. A poor example in this respect is Austria, where most of the public participation is realized at the very end of the procedure, rendering its effect on the outcome small.

In order to ensure inclusive and effective public participation the public authorities in charge of the SEA procedure are obliged to **provide timely and full information about the on-going procedure** as early as possible. This information needs to be shared via appropriate means of communication, using modern technologies to reach to a wider public. The authorities in the countries covered by the study usually notify the public via traditional notices, newspaper announcements as well as via their websites and electronic media. Different electronic channels are used in all countries covered by the study. In Croatia, for example, the public authorities are obliged to inform the public or interested parties through public notices, advertisements or other appropriate means, and electronic media. In Estonia, the authority in charge notifies the public of a public consultation of the on-going SEA in the official publication *Ametlikud Teadaanded*, in a newspaper, on its website and by other electronic means.

The detailed arrangements for informing and consulting the public are left at the discretion of the Member States and exact ways the opinions of the public are gathered or replied to vary from country to country. In

general, **written consultations and public hearings** are among the most used methods at different stages of the SEA process. It should be noted here, however, that ensuring public participation possibilities goes beyond merely providing information, but the Directive rather foresees a participatory process in which stakeholders can elaborate and express their views, which are then in turn taken into account.

The **deadlines for consulting the public in the SEA procedures** set in the national laws should give the people and organizations an opportunity to provide substantive and timely inputs. The public should have the time needed to read the relevant documents, ask questions and provide its opinions or comments. National practices in this regard differ to some extent. In some countries like Bulgaria, Hungary, Slovenia and Croatia the statutory period is at least 30 days. In Austria, usually the public participation runs for a period of six weeks. In Estonia, the written consultation at the scoping phase lasts for no less than 14 days, and for the report no less than 21 days. Although there are some divergences in the timeframes, the minimal periods seem to be inadequate for most if not all SEAs. Short deadlines that deter or hinder public participation undermine the deliberative processes where opinions collide, are measured and weighed, compromises are forged and expression is found for different social values and interests. Such processes are at the heart of the SEA Directive's regulation and therefore the lack thereof should be considered a gross violation of the initial ideas enshrined in the Directive. Short deadlines are especially disadvantageous for NGOs whose organisational structure and operation inherently lead to the mentioned deliberative processes.

The analysis shows that there are **obstacles to effective and meaningful public participation** in SEA ranging from the normative framework to the practice of involvement the public in the SEAs. Nevertheless, the legal restrictions are not predominant. A reoccurring reason for difficulties the public is facing in these procedures is the vague and abstract nature of the planning documents. This could lead to **lack of understanding in the public of their content and hence to lack of interest in public participation**, especially when results and opinions of the public are not taken into account. The process is also often perceived as a formality in the administrative procedures for approval of strategic documents and the real impact of participation on the resulting final document is unclear to the public.

The statutory requirements regarding qualification and objectivity of **SEA experts** have direct impact on the quality and results of the SEA report and on the whole procedure. The criteria for selection of SEA experts and rules ensuring their independence are different in the countries covered by this study. They range from very detailed, ensuing a higher level of professionalism and objectivity, to very general descriptions of skills and/or experience. In one of the countries studied (Slovenia) there were no requirements regarding the experts. In some of the countries like Bulgaria there are only minimal requirements to the SEA team leader and SEA experts – holding a relevant Master's degree. In practice, the objectivity of the experts could be questioned, at least because of the fact they are commissioned by the planning authority to deliver a SEA report. Such alleged dependence that could undermine the quality of the SEA report and turn the whole SEA into a formal exercise to validate the options chosen in a plan or programme was one of the biggest issues reported in the national reports. Here the experience gained with the EIA Directive and its application regarding ensuring independence and professionalism of experts (e.g. rules of selection, disciplinary procedures etc.) could show a way forward.

The current study also analysed the **follow-up of the SEA and monitoring**, including the statutory obligations to take the results of the SEA into account in the decision-making as well as monitoring and ex-post evaluation of the SEA. These are key requirements that should be put in place to first ensure the proper implementation or necessary amendments of the plan itself and secondly guarantee that the plan is later adhered to on the level of specific projects.

The SEA Directive in its Recital 17 of the Preamble and in Art.8 states that the environmental report and the opinions expressed by the relevant authorities and the public should be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure. If the SEA is to influence the planning processes and decision-making leading to integration of the environmental considerations into plans and programs, its **results should be reflected in the final planning**

documents. The practice of implementation of this requirement across EU as represented by the current study shows that there mostly is such legal obligation in national legislation but it is not always clear or strict enough to ensure proper consideration of environmental concerns. For example, in Estonia, the law states that upon preparation of a strategic planning document the results of strategic environmental assessment, the opinions submitted by authorities and public and the results of transboundary consultations should be taken into account to the extent possible. However, “taking into account” does not mean that the SEA results would be given priority and in practice other (social, economic) interests may override environmental concerns.

Art. 10 of the SEA Directive obliges Member States to **monitor significant environmental effects of the implementation of plans and programmes** in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action. In order to comply with this obligation, existing monitoring arrangements may be used if appropriate, with a view to avoid duplication of monitoring. The monitoring arrangements play an important role in ensuring that the findings, recommendations, measures and other conditions designed during the SEA are followed in the implementation phase. In the countries covered by the study, monitoring measures and indicators are part of the plans and programs and the monitoring results are made public.

In only a few countries covered by this study specific provisions about measures to be taken in case unintended impacts occur or in case impacts exceed the level predicted in the SEA are provided by the law. Where such measures are in place, they could lead to remedial actions, to revision of the plan or program or even to suspension of the operation of the installations covered by the strategic document for a certain period. To detect such impacts, the environmental authority in charge for the monitoring should inform the authority responsible for the plan or program. Such rules, however, are not commonplace. For example, in Croatia, the Regulation on SEA determines that the Environmental Monitoring Program must include a procedure to be used in case of unexpected adverse effects but without providing detailed provisions for such a procedure.

Access to justice is a cornerstone of environmental democracy and governance and often serves as a last resort for interested parties and the public to challenge the outcomes of the SEA and improve the quality of the plan or program. The countries presented in this study have a very wide spectrum of regulation and practice regarding access to justice to challenge SEAs. In some countries like Austria, Croatia, Slovenia the legal system and case law do not provide a right to challenge an SEA decision or the plan or program into which it is integrated in the court of law. In Slovakia the only strategic documents that could be challenged are land use plans. In countries like Bulgaria and Estonia, there is at least a theoretical possibility to challenge (some) SEAs and/or plans and programs. However, even then, hurdles to effective judicial remedies are other present, including excessive costs, high burden of proof as well as the fast-track court reviews. In Hungary, the new Environmental Administrative Court Act that entered into force on 1st January 2018 allows for complaints to be brought against strategic decisions too, removing an earlier barrier of access to justice.

Tables/Figures

Table 1. Framework rules on public participation

	Austria ¹	Bulgaria	Croatia	Estonia	France	Hungary	Slovakia	Slovenia
Who is allowed to participate?	Anyone	the public + anyone affected	anyone	anyone	anyone	anyone	Everyone, incl. a citizens' initiatives	anyone
At which stage?	end of procedure	scoping	during the drafting of the strategy, plan or program ²	scoping	Depends on type of procedure used	"early opportunity" (no clear rules)	scoping	after report checked by the CA
Means of consultation?	written consultation, some-times hearings	different means, e.g. expert or public groups on the scope of the assessment	written consultation + public hearing	written consultation + public hearing	different means	Different means (case-by-case)	written consultation + public hearings	written consultation + public hearing ³
Consultation period	42 days (6 weeks)	at least 30 days	30 days	at least 14/21 days ⁴	at least 30 days for prior concertation - 15 days to 3 months.	at least 30 days	at least 10/21 days ⁵	30 days

¹ As in Austria there is no central regulation on SEAs, the table describe the common rules, to which there may be exceptions in some areas.

² "at an early stage" for spatial plans

³ Public hearing is only required for spatial plans.

⁴ 14 days for scoping report, 21 days for the assessment report

⁵ 10 days for scoping report, 21 days for the assessment report

Table 2. Public notices on SEA procedures required by the law

Public notices required by law	Austria ⁶	Bulgaria <u>7</u>	Croatia ⁸	Estonia	France	Hungary	Slovakia <u>9</u>	Slovenia <u>10</u>
websites/electronic means	+	*	+	+	+	+11	+	+
newspapers	*	*	*	+	*	+	*	*
direct communication w key stakeholders	*	*	*	+	-	-	-	-
public notices (on paper/billboard)	-	*	*	-	*	-	*	*
official publications	-	*	*	+	-	-	-	-

Table 3. Requirements for SEA experts

Experts' requirements	Austria	Bulgaria	Croatia	Estonia	France	Hungary	Slovakia ¹²	Slovenia
recognition from authorities	+					+	+	
education		+		+				
qualification			+					
work experience			+	+		+	+	
special training				+			+	
exam			+	+			+	
signing of a statement		+		+				

⁶ As in Austria there is no central regulation on SEAs, the rules here describe the common rules, to which there may be exceptions in some areas.

⁷ No clear requirements on the publication channels.

⁸ Aside from electronic media, other channels are optional, but must be appropriate.

⁹ Municipalities are required to inform the public in their usual way (which differs between municipalities)

¹⁰ Municipalities are required to inform the public in the customary way (differs between municipalities)

¹¹ A notification must be published on the homepage of developer, if the latter has one.

¹² In Slovakia, these requirements are related to the experts who are carrying out the pre-approval review of the SEA report (so-called expert opinion). This document is not made available for public comments and serves as one of the documents, based on which a final SEA opinion is issued.

3. COUNTRY REPORTS

3.1. AUSTRIA

Scope

1. **What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)? Please provide some short examples where this issue has been debated in the national context, what was the outcome?**

In Austria there is no central SEA legislation, but rather a scattered approach in various laws. They can be found in:

- Water Protection Act (“Wasserrechtsgesetz”)
- Waste Management Act (“Abfallwirtschaftsgesetz”)
- Federal Ambient Noise Act (“Bundes-Umgebungslärmschutzgesetz”)
- Federal Act on SEAs in the area of Traffic (“Bundesgesetz über die strategische Prüfung im Verkehrsbereich”)
- Act on adapting environmental law (“Umweltrechtsanpassungsgesetz 2005”), mainly on air quality
- Several regional laws (building codes, zonal planning laws, national park laws, etc.)
- For a more extensive list see: http://www.arbter.at/sup/sup_rg.html

Thus, SEAs are required in several areas: Waste Management plans, Noise pollution plans, air quality action plans, water management plans (RBMPs), main traffic routes

There is little to no knowledge on SEAs in the public and very little awareness among most public authorities. The SEAs which are done are mostly pro forma assessments which are not really done seriously. There are some very good examples to the contrary though, like the Vienna Waste Management plans.

There is a lack of implementation of the SEA directive regarding energy infrastructure. There is little to no exemption on EIA proceedings.

Public participation

2. **Please briefly describe the rules on public participation in the SEA process, including:**
 - a. **Who can participate?**

There is no real restriction on who can participate. All persons and organisations are invited.

- b. **At which stage of the procedure?**

This varies, but mostly the public participation is done at the very end of the procedure, rendering it almost useless. Again, Viennese Waste Management is an exception as they have participation all the way through.

- c. **How is the public notified?**

Depending on the law, the public is invited via websites, sometimes additionally through publication in newspapers. Certain well-known stakeholders are sometimes contacted directly.

d. How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

In most cases, the public is allowed to send in written opinions. The SEAs which are done well usually have workshops with oral hearings.

e. What are the statutory deadlines for consulting the public?

Usually the public participation runs for a period of six weeks.

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

Main obstacles:

- No real interest in public participation, e.g. results and opinions are simply disregarded
- SEAs are not used to lighten the load of EIAs
- Best practice is not implemented in other areas
- The instrument of SEA is not very well known and/or seen as a nuisance

Experts

4. Are there any statutory requirements regarding qualification and objectivity of the experts?

The experts have to be recognised by public authorities. This means, experts within either NGOs or the companies of project planners are not allowed for the most part.

5. If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.

The market for experts are very small in Austria and heavily, if not exclusively focussed on project planners. It is very hard to find experts who are willing to give expertise input on behalf of NGOs. It is also a monetary issue.

Follow-up

6. Is there a statutory obligation to take the results of the SEA into account in the decision-making? Please shortly describe important good/bad practices you know of in your country.

The SEA is usually part of a legal process and its outcome has a legal form which has to be followed in upcoming procedures. Thus it is not the SEA itself but rather the outcome of the whole process.

Good example: Vienna Waste Management Plan was done with a lot of stakeholders and an open process, its outcome was agreed upon by all of them and thus is followed by them.

Bad example: Water Management Plan Tyrol: many points of criticism raised by NGOs and the public which were simply ignored, no impact of the SEA whatsoever. The plan however is now used in following proceedings

7. Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.

E.g. in the area of traffic: If there has been an SEA, the minister has to monitor the following process and impacts on the environment. The outcome of this monitoring has to be published online. There is little activity in the monitoring area.

8. **Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.**

Not to my knowledge.

Access to Justice

9. **Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public? What are the key limitations to access to justice, if any?**

So far, there was no option to challenge the plans directly. With the recent decisions on C-664/15 and the ruling by the Austrian Highest Constitutional Court, it might be possible, though not directly enshrined in Austrian written law (yet).

3.2. BULGARIA

Scope

- 1. What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)? Please provide some short examples where this issue has been debated in the national context, what was the outcome?**

The main legal provisions regulating the SEA are in the Environmental Protection Act, chapter VI, Sections I and II and the SEA Ordinance. The EPA states that “SEA¹³ shall be conducted of plans or programmes which are in a process of preparation and/or approval by central or local executive authorities, bodies of local self-government and the National Assembly.”

SEA is mandatory for plans and programmes (PP) in the areas of agriculture, forestry, fisheries, transport, energy, waste management, water resources management, and industry, including extraction of subsurface resources, electronic communications, tourism, spatial planning and land use, where the said plans and programmes set the framework for future development of any development proposals listed in Annexes 1 and 2 to the EPA. The screening of other plans and programmes whether they are subject to SEA is conducted by the Minister of Environment and Water or by the Director the competent Regional Inspectorate for Environment and Waters (RIEW) after evaluation of the need of environmental assessment of a plan or programme or modification of any such plan or programme according to the procedure established by the SEA ordinance, in conformity with the criteria, listed in the EPA, Art.85, para.4, for determining the likely significance of the effects.

However, the approach of SEA Ordinance is to list in two Annexes, first the PPs subject to mandatory SEA and those to screening procedure. This dual way of defining PP subject to SEA – by the law setting quality conditions and by the by-law listing concrete PP according to sectors and sectoral laws could lead to some confusion as to which PP should undergo SEA and to exclusion of PP which are not in the annexes to the SEA ordinance. There is no any indication that the SEA Ordinance will be revised in this regard since it has been amended 7 times and the number of PP in both annexes have been reduced and not a single PP added although in the meanwhile the legislative and strategic framework has been developed.

Public participation

- 2. Please briefly describe the rules on public participation in the SEA process, including:**
 - a) Who can participate?**

The EPA and the SEA Ordinance define very broadly the persons who could participate in the SEA process first as “the public” and secondly, as any “third part likely to be affected by the plan or the programme”. The public is defined by EPA as “one or more natural or legal persons and the associations, organizations or groups thereof, established in accordance with national legislation.”

- b) At which stage of the procedure?**

The general rule is that the public and any third party could be involved from the beginning from the very beginning of the procedure and during the whole procedure by different forms of the public involvement and possibility to express an interest to be involved in the consultations. The initiator of

13 The legal term in EPA is “environmental/ecological assessment”.

the PP is organizing consultations with the public, competent authorities and third parties likely to be affected by the plan or the programme throughout the different stages of the preparation of the PP, respectively of the SEA (Art. 19, para. 1 of the SEA Ordinance). The consultations are conducted by a scheme developed by the initiator of the PP including information how the planning process is combined with the main stages of SEA.

c) How is the public notified?

According to Art. 20, para 1 of the SEA Ordinance, consultations on the SEA report include the publication of a notice for consultations, access to the SEA documentation and the draft PP, providing an expert or a person from the planning team with the necessary qualifications to give additional oral explanations on the spot, and means to accept the expressed opinions within a time limit.

d) How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

Art. 20, para 2 of the SEA Ordinance states that consultations with the public, interested authorities and third parties may be carried out by one or more of the following ways:

- Sending messages to the central and local executive authorities and municipal councils;
- Preparation and distribution of a leaflet or brochure with brief information about the plan/program;
- Organizing expert or public groups on the scope of the assessment
- Sending by mail or via the Internet comments, suggestions, opinions and recommendations to the team of the EA report and to the contracting authority;
- Public hearings.

e) What are the statutory deadlines for consulting the public?

According to art. 20, para 1, item 1, letter b of the SEA Ordinance, the deadline for expressing opinions cannot be less than 30 days after the publication of the notice and providing access to documentation.

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

Some of the obstacles to effective public participation is the lack of capacity and knowledge in the public of the planning process and the SEA procedures. This is coupled with the very general and abstract scope of the PP which does not resonate with the concrete problems on the ground. Sometimes the formality of the process could be also a problem as well as the administrative culture of the environmental authorities which are not very susceptible to openness and dialogue.

Experts

4. Are there any statutory requirements regarding qualification and objectivity of the experts?

The SEA assessments are commissioned by the initiator of the PP to a team of experts with a team leader. The team leader and the members of the team may be Bulgarian and foreign natural persons holding a Master's educational degree. The members of the team and the team leader must sign a declaration that they are not personally interested in the implementation of the respective PP, they are familiar with the requirements of the effective Bulgarian and European statutory framework regulating the environment and that they will refer to and comply with these requirements and with applicable

methodological documents in the course of their work on the assessments. The members of the SEA expert team and their leader shall be guided in their work by the principles of human health hazard prevention and ensuring sustainable development in accordance with the effective environmental quality values in the country.

- 5. If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.**

The quality of the SEA depends on the team composition and competences and sometimes SEAs are conducted by 2 or 3 experts instead of at least 10 in different environmental components and this leads to superficial assessments. Some SEA experts claim that such SEA are proceeded quickly and without objections because they are led by former RIEW directors and have some backing.

Follow-up

- 6. Is there a statutory obligation to take the results of the SEA into account in the decision-making? Please shortly describe important good/bad practices you know of in your country.**

The results of the consultations shall be reflected into the SEA report and shall be taken into account in the opinion of the Minister of Environment and Water or the competent RIEW Director (Art. 81, para 2 of the EPA). In the SEA decision taken by the commission or expert council the compliance with the public consultations requirements is considered. The SEA decision is based also on the documentation with the results of the public consultations with the public, interested authorities and third parties, incl. a note with the motives for acceptance or non-acceptance of the collected opinions and suggestions and with motives for acceptance or rejection of assignment for supplementing or extension of the consultations.

- 7. Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.**

As part of the SEA report and the SEA screening information, the initiator of PP is obliged to identify environmental monitoring measures and indicators. At the stage of consultation on the SEA report or the stage of submitting to the screening information, the competent environmental authority propose to the initiator other monitoring measures to be included if these proposed by the developer are not adequate or insufficient. After agreement between the competent environmental authority and the initiator, these monitoring measures become part of the overall monitoring arrangements for the plan/programme implementation. The initiator is obliged to submit periodical monitoring reports to the competent environmental authority. After adoption these reports are made public available by the developer.

- 8. Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.**

SEA should assess the likely significant effects of PP, including on biological diversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural and historical heritage, including architectural and archaeological heritage, landscape and the inter-relationship between the above factors. The impacts must cover any secondary, cumulative, simultaneous, short, medium and long-term, permanent and temporary, positive and negative effects.

The SEA decision includes grounds for selecting of the preferred environmental alternative and for the measures related to monitoring and control of the plan or programme implementation. The measures

are agreed in consultation between the Minister of Environment and Water or an official empowered thereby or the competent RIEW Director and the authority responsible for the implementation of the plan or programme.

Access to Justice

9. Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public? What are the key limitations to access to justice, if any?

The interested persons could appeal the opinion (negative screening decision) or decision on the SEA full procedure pursuant to Administrative Procedure Code within 14 days after the notification. According the latest amendments in the EPA there has been introduced one-instance court review for strategic developments, incl. for SEA of PP, which is a substantial limitation to access to justice. The decisions of the first-instance court are final for realizations of objects designated as objects of national importance with an act of the Council of Ministers and are of strategic importance. The court is hearing the appeals on such case within 6 months after being filed and pronounces its decision within a month after the end of the hearings.

3.3. CROATIA

Scope

1. **What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)? Please provide some short examples where this issue has been debated in the national context, what was the outcome?**

SEA Directive is regulated in Croatian legislation by Environmental Protection Act (EPA, Official Gazette 80/13, 153/13, 78/15, 12/18), by **Regulation on the strategic environmental assessment of strategy, plan and programme** (Regulation on SEA, Official Gazette 3/17) and by **Regulation on information and participation of the public and public concerned in environmental matters** (Official Gazette 64/08). First Regulation on SEA was adopted in 2008 since SEA procedure was introduced into Croatian legislation (EPA from 2007) in 2007.

Art 62 of EPA determines that Strategic Environmental Impact Assessment is a procedure for assessing the likely significant environmental impacts that may arise from the implementation of a strategy, plan or program.

Strategic assessment is mandatory for (Art 63 of EPA):

- strategies, plans and programs, including their amendments at the national, regional and local level in the fields of agriculture, forestry, fisheries, energy, industry, mining, transport, electronic communications, tourism, **spatial planning**, regional development, waste management and water management when providing a framework for interventions that are subject to assessment of the need for environmental impact assessment or environmental impact assessment;
- strategies, plans and programs including their amendments, the implementation of which is funded from the EU funds;
- strategies, plans and programs which, according to a special regulation in the area of nature protection, may have a significant negative impact on the ecological network.

Art 64 para 1 defines that for strategies, plans and programs that determine the use of small areas at the local level and for minor changes and additions to the strategies, plans and programs referred to in Article 63 of this Act, it is necessary to conduct a procedure for deciding on the need for strategic assessment (assessment procedure).

The following strategies, plans and programs are not subject of SEA (Art 65):

- strategies, plans and programs that serve solely for the purposes of national defence and / or civil protection, that is, those that apply in emergency and the external protection and rescue plans,
- financial and budgetary strategies, plans and programs.

Public participation

2. **Please briefly describe the rules on public participation in the SEA process, including:**
 - a. **Who can participate?**

Practically anybody can participate in SEA procedure since EPA determines that “public” (general public) has the right to participate in the process of strategic assessment of strategy, plan and program.

b. At which stage of the procedure?

EPA (Art 67) determines that Strategic assessment shall be carried out during the **drafting** of the strategy, plan or program before the final proposal is send to the adoption procedure. By way of derogation from previous Article, the procedure for the implementation of strategic assessment and information and public participation in that process, carried out during the preparation of **spatial planning documents** including spatial plans at the state, regional and local level, is conducted at an early stage of drafting this plan in accordance with a special law (Act on Spatial Planning) in the part in which it is not in collision with EPA.

c. How is the public notified?

Public authorities at an early stage of proceedings are obliged to inform the public or interested public, through **public notices, advertisements or other appropriate means**, and **electronic media**, or in an appropriate manner on draft strategies, plans and programs for which a strategic assessment is carried out and those for which strategic assessment is not carried out. In addition to the information the notification shall also include information on the right to participate of the public or public concerned in the proceedings, as well as information on the bodies submitting opinions, suggestions and / or questions.

d. How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

The public participate in SEA procedure by giving written opinions, suggestions and objections. During public participation public scrutiny (insight) and at least one public presentation must be provided, depending on the complexity of the procedure.

e. What are the statutory deadlines for consulting the public?

The minimum deadline to be determined for public participation should be **30 days**.

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

In majority of SEA procedures information about the possibility of public participation was available only at website of the public body, which conducted the procedure (Ministry, County, City, Municipality) which is surely not sufficient. Also when public (including NGOs) participate in SEA procedure majority of comments is not accepted so actually there is still lack of will of public authorities to really include public opinion into decision making process, especially in special planning, so also for SEA for such plans on all levels.

Experts

4. Are there any statutory requirements regarding qualification and objectivity of the experts?

Yes. Statutory regulated in Croatia by Regulations on conditions for obtaining permit for legal entities for conducting expertise in the field of environmental protection (Official Gazette 57/10). There is set of rules what conditions does the legal person must fulfil to obtain the permit for expert task in environmental field (SEA, EIA, AA, etc. listed) but there is also set of rules for lead expert in specific environmental tasks and for experts who are in the expert group preparing the study, opinion, etc. Lead expert of the expert group who has a task to prepare a SEA study must:

- be experts in the field of appropriate natural, technical or biotechnical sciences or profession,

- have five years of work experience in professional environmental affairs,
- have passed a professional environmental exam in accordance with the program for the lead experts.

In addition to the fulfilment of the conditions referred above, a legal person who does not have a person of architectural profession in its team is obliged to provide services of an external expert authorized in accordance with the law governing the professional activities of spatial planning.

5. If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.

Not only in SEA procedure, but in all environmental procedures the biggest issue is the objectivity and independence of the expert participating in the preparation of such documents. Usually, these experts are preparing one SEA for example for spatial plan of one county and then in the other SEA procedure they are members of the committee who approves the study.

Follow-up

6. Is there a statutory obligation to take the results of the SEA into account in the decision-making? Please shortly describe important good/bad practices you know of in your country.

Yes, there is an obligation but it is not really clear or strict. So, the Regulation on SEA (Art 10) determines that the competent authority shall consider the opinions, comments and suggestions made by the public in the SEA procedure. In practice, this is done in a way that in the final decision sometimes there is only a list of members of the public, NGOs, experts, etc. who participated in the process and following statement "all opinions, comments and suggestion made by public were taken into consideration". NGOs are trying for years to persuade environmental authorities that this procedure should follow the procedure of spatial planning in which all participants get a table at the end of public participation process in which everybody can see all the comments and short explanations why some comments were not accepted.

Regulation on SEA further regulates that after the public participation process is finished the competent authority shall deliver all opinions, remarks and proposals from the public to the experts. Expert is then, within 15 days, obliged to submit observations on the objections and proposals from the public and participates in the preparation of the public hearing report under a special regulation that regulates spatial planning. The Competent Authority after that is responsible to prepare the final draft strategy, plan and program and submit it to the Competent Body for adoption, except in the process of SEA of the Spatial Plan (it is responsibility of the Ministry of Spatial Planning and Construction, or county/city).

7. Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.

Regulation on SEA further regulates that after the public participation process is finished that the expert, together with its observation on the objections and proposals from the public, the expert will also propose the final environmental protection measures and the environmental monitoring program related to the strategy, plan or program.

Regulation on SEA determines that the Environmental Monitoring Program, including monitoring the state of conservation objectives and integrity of the ecological network area (when AA is conducted within SEA procedure) is an integral part of the strategy, plan or program.

The Environmental Monitoring Program shall in particular include:

- indicators for monitoring of environment and ecological network
- manner of the implementation of environmental protection measures and measures to mitigate negative impacts on the ecological network
- procedure in case of unexpected adverse effects
- other data depending on the scope and features of the strategy, plan, or program
- resources required for the implementation of environmental and ecological network monitoring.

8. Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.

Although Regulation on SEA determines that the Environmental Monitoring Program must also include procedure in case of unexpected adverse effects it is not clear what is meant by that. There are no details about that.

Access to Justice

9. Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public? What are the key limitations to access to justice, if any?

No, as SEA Decision is not adopted by administrative decisions, which could be challenged at Administrative Court.

3.4. ESTONIA

Scope

- 1. What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)?**

The regulation is provided in the Environmental Impact Assessment and Environmental Management System Act (hereinafter, "the Act"). According to the Act, strategic environmental assessment must be initiated if a strategic planning document:

- 1) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications or tourism and on the basis thereof an activity that is with significant environmental impact (either "by default" or on a case-by-case assessment) is proposed;
- 2) is a national spatial plan, a special spatial plan of the state or local authority, a county spatial plan or a comprehensive spatial plan (which covers all or part of a municipality);
- 3) is a detailed plan on the basis of which an activity specified in the Act as having significant environmental impact would be carried out;
- 4) serves as the basis for an activity which may potentially significantly adversely affect the protection purpose of a Natura 2000 site and which is not directly related to or necessary for the protection procedure of the site. (EIA Law § 33(1))

In addition to above mentioned occasions when the SEA is required, the Act also lists occasions when the need for the initiation of strategic environmental assessment must be considered (case-by-case screening undertaken):

- 1) amendments to above-mentioned strategic documents are made;
- 2) a county spatial plan or a comprehensive spatial plan is drawn up as a thematic plan;
- 3) a detailed spatial plan that alters the comprehensive spatial plan is drawn up and the principal purpose of land use determined by the comprehensive plan is extensively modified or other modifications of the comprehensive plan are made that the local authority considers significant or extensive;
- 4) a detailed spatial plan regulating an activity for which an EIA screening must be made. (EIA Law § 33(2))

Please provide some short examples where this issue has been debated in the national context, what was the outcome?

The main issue with SEA scope in recent years has been related to the policy documents. As of late, the ministries have started drawing up "framework policy documents" which are somewhat similar to strategies, but have a higher level of abstraction and usually no clear implementation plan. Examples of such plans are, e.g. the "Guiding Principles of Climate Policy" and "Guiding Principles of Earth Crusts' Policy". Despite their high level of abstraction, these documents still include and limit policy choices which sometimes are then taken over for following strategic plans without further considerations. No SEAs have, however, been conducted, based on the argument that these are policy documents and SEAs would only be required for more specific strategic plans.

Public participation

- 2. Please briefly describe the rules on public participation in the SEA process, including:**
 - a. Who can participate?**

Anyone can participate in the proceedings (EIA Law § 37(4))

b. At which stage of the procedure?

At the stage of scoping, after the authorities concerned have submitted their opinions and the programme (scoping document) has been corrected and modified correspondingly by the lead expert and the author and submitted to the coordinator of the strategic plan (EIA Law § 36¹ and § 37)

At the stage of strategic environmental assessment report, after the authorities concerned have submitted their opinions and the report has been corrected and modified correspondingly by the lead expert and the author and submitted to the coordinator, who has verified the compliance of the report with the requirements for in the Act and the adequacy and sufficiency of the report (EIA Law § 40¹)

c. How is the public notified?

The coordinator for preparation of the strategic planning document will notify the public of a public consultation of the strategic environmental assessment programme or report in the official publication Ametlikud Teadaanded, in a newspaper and on its website as well as by electronic means. They will also inform the consulted authorities, persons more directly impacted and the organisation uniting non-governmental environmental organisations by regular mail or by registered mail. (EIA Law § 37 and § 41)

d. How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

There is a written consultation of a strategic environmental assessment programme and report as well as a public hearing thereafter. The written consultation must last for no less than 14 days for the programme and no less than 21 days for the report (EIA Law § 37 and 41)

Everyone has the right to access a strategic environmental assessment programme/report and other documents at the time of the written consultation of and the public hearing, to submit proposals, objections and questions regarding the programme/report and obtain responses thereto.

The author of the strategic planning document will, in cooperation with the leading expert, make the necessary corrections and modifications to the strategic environmental assessment programme/report on the basis of the proposals and objections submitted at the time of the written consultation and public hearing. Taking proposals and objections into account will be described and refusal to take proposals and objections into account will be justified in the modified programme/report or an annex thereto.

Within 30 days after the public hearing, the author of the strategic planning document or the coordinator of preparation of the strategic planning document will send an explanation or state the reasons as to why the proposals or objections were taken into account or disregarded and respond to the questions of the persons who submitted their proposal, objection or question in writing as well as persons whose proposal, objection or question submitted at the public hearing remained unanswered at the public hearing. (EIA Law § 37 and § 41)

e. What are the statutory deadlines for consulting the public?

The written consultation for the (scoping) programme must last for no less than 14 days, and for the report no less than 21 days. (EIA Law § 37 (3) and § 41)

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

There are no legislative barriers to public participation. However, in practice, in some cases (e.g. with the Rail Baltic high-speed rail link spatial plans) written consultation of voluminous documents are only held for the minimal allowed period, which sometimes also coincides with public holiday periods. In general, the authorities tend to treat the minimal time-frames for publication as “default”, only very rarely providing longer consultation periods.

Experts

4. Are there any statutory requirements regarding qualification and objectivity of the experts?

Yes. Strategic environmental assessment may be led by a leading expert who:

- 1) has obtained a Master’s degree or equivalent qualifications;
- 2) has at least five years of work experience in a field related to environmental protection or similar field;
- 3) has undergone training in strategic environmental assessment, to the extent of at least 60 hours, which covers the assessment of, among other things, at least the aspects listed in the Act, and has passed a corresponding examination;
- 4) has participated in the work of an expert group of strategic environmental assessment as a substantive expert at least four times in the last five years;
- 5) has undergone management training to the extent of at least 60 hours, and has the experience of managing at least two projects;
- 6) has submitted to the coordinator of preparation of the strategic planning document a signed confirmation that the leading expert complies with the requirements established in clauses 1) to 5) of this subsection, knows the principles of strategic environmental assessment, procedure and assessment-related legislation, and is impartial and objective upon strategic environmental assessment. (EIA Law § 34(4))

Additionally, the environmental impact arising from the implementation of a detailed spatial plan may be assessed by or the assessment may be led by a leading expert who holds a licence for environmental impact assessment, or a legal person through an employee holding a relevant licence. (EIA Law § 34(5))

If the qualifications of the leading expert are not sufficient for the strategic assessment of a certain type of environmental impact, the leading expert must involve specialists of the respective field in the strategic environmental assessment. (EIA Law § 34(6))

5. If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.

There are no significant issues regarding expert’s qualifications. Objectivity of experts is hard to assess, but has been called into question in cases of SEAs that are related to a specific project (e.g. detailed spatial plans) and where the developer of that project is financing the expert assessments.

Follow-up

6. Is there a statutory obligation to take the results of the SEA into account in the decision-making?

Yes. The Act states that upon preparation of a strategic planning document, the following must be taken account of:

- 1) the results of strategic environmental assessment;
- 2) the opinions submitted by authorities and persons to the extent possible;

3) the results of transboundary consultations. (EIA Law § 43)

However, “taking into account” does not mean that the SEA results would be binding – other (social, economic) interests may override environmental concerns.

7. Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.

After the public consultation of the SEA report and verifying the compliance of the final version of the report the coordinator of preparation of the strategic planning document will make a proposal on the monitoring measures in its decision to declare the strategic environmental assessment report compliant with the requirements. The purpose of the monitoring measures is to identify at an early stage whether significant environmental impact arises from the implementation of the strategic planning document and to take measures that prevent and mitigate adverse environmental impacts.

The person or a body which adopted the strategic planning document must adopt the monitoring measures along with the adoption of the strategic planning document or submit upon the adoption of the strategic planning document the reasons why the monitoring measures developed in the course of strategic environmental assessment were not adopted. The adopted monitoring measures are mandatory to the person implementing the strategic planning document. (EIA Law § 42)

8. Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.

There are no specific provisions on this.

Access to Justice

9. Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public?

Anyone, whose rights are infringed by a strategic plan or program which has the features of an administrative act (e.g. spatial plans) can challenge them, and along with them the SEA Decisions. Most national strategies, however, cannot be challenged in administrative courts as they do not directly create, modify or terminate individuals’ rights and obligations. For environmental NGOs, standing to challenge environmental administrative acts is presumed. SEA Decisions are not considered administrative acts and therefore can only be challenged with the final act.

As regards spatial plans, the lower-tier plans (comprehensive plans (municipal-level) and detailed (single plot-level) plans) can be challenged by anyone, i.e. the *actio popularis* is provided.

Key limits to effective access to justice are costs (application of loser-pays-principle) and burden of proof. The person who challenges an administrative act is supposed to provide evidence for its claims, unless this is impossible – meaning that an alternative environmental expert assessment must be provided to successfully challenge an SEA.

3.5. FRANCE

Scope

1. **What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)? Please provide some short examples where this issue has been debated in the national context, what was the outcome?**

Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment has been transposed in French law by several acts¹⁴ since 2004. The transposition led to the modification of the Environmental Code (article L.122-4 to L.122-11). In a nutshell, and according to article 3 of SEA Directive, an environmental assessment shall be carried out for all adopted by the State, the local authorities or their groupings and their related public institutions, regarding agriculture, forestry, fisheries, energy or industry, transports, waste management, water management, telecommunications, tourism, and country planning which set the framework for future development (article L.122-4, I (1)); and for plans, programmes, and other planning documents that are likely to have significant environmental effects (article L.122-4, I (2)).

The environmental assessment takes the form of a written report describing environmental effects of the document, the reduction measures or compensation measures for the nuisances caused by the document, and the reasons for the project. This report is made public. Article 1 (I) of Decree n°2012-616 of May 2d 2012 lists 43 documents that are required by French law to undergo an SEA¹⁵ (excluding planning documents), and article 1 (II) lists 10 plans or programmes that could possibly require an SEA after a case-by-case examination.

The principle of an environmental assessment is also introduced in the French Planning Code.

- SEAs mandatory for land-use plans? The order n°2004-489 of June 3rd 2004 transposing the SEA Directive introduced article L. 121-10 in the French Planning Code which provides that an **environmental assessment must be completed** for 1- Regional Development Directives; 2- Île-de-France Region's strategic plan; 3-territorial coherence programme (“schéma de coherence territoriale”); and 4-local urbanism plans which are likely to have significant effects on the environment given the size of the territory to which they apply, the nature and importance of the works and developments they allow and the sensitivity of the environment where these must be carried out.

The decree n°2005-608 of May 27th 2005 created article R.121-14 which gives a detailed list of documents that are subject to an obligation of environmental assessment: Regional Development Directives; the Île-de-France Region's strategic plan; the overseas regional land use and development plans; the local land use and development plan for Corsica; and the territorial coherence programmes; the local urbanism plans allowing works, projects or developments mentioned in article L.414-4 of the Environmental Code (Natura 2000); and when the territories concerned are not covered by any territorial coherence programme which has gone through an environmental assessment -a) local urbanism plans covering a surface area of 5000 hectares or more and comprising a population of 10 000 inhabitants or more -b) local urbanism plans providing for the creation- in agricultural or natural sectors- of urban areas

¹⁴ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000706012&categorieLien=id>

¹⁵ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025794215&categorieLien=id>

or to be urbanized areas covering a total area of more than 200 hectares –c) local urbanism plans of municipalities located in mountainous areas which are planning to create new tourist complexes subject to the authorisation of the mountain range/massif coordinator Prefect –d) local urbanism plans of coastal municipalities, in accordance with article L.321-2 of the Environmental Code, planning the creation in agricultural or natural sectors of urban areas or to be urbanized areas of more than 50 hectares

Public participation

2. Please briefly describe the rules on public participation in the SEA process, including:

a. Who can participate?

Article L.122-8 of the Environmental Code only provides that the written report is made public. The project of plan or document can be submitted to a public enquiry. But the article does not specify who can participate. However, in French law any person can have access to environmental information. The right of access to environmental information held by public authorities, and the right to participate in the public decision-taking process likely to affect the environment are constitutional rights guaranteed in article 7 of the French constitutional charter for the environment¹⁶. The right to have access to environmental information is opened to French, European or other citizens, to natural or legal persons (association, company...). The person asking the access to information does not have to prove any interest, or to motivate the reasons for such request. Article L.122-9 provides that the plans or documents whose implementation is likely to have significant environmental effects on the territory of another Member State are sent to the authorities of this State, at their request or on the initiative of the French authorities. The concerned State is invited to give his opinion. Moreover, when similar plans or documents are sent by another MS to the French authorities, the latter can decide to consult the public.

In addition, article L121-8 of the Environmental Code lists all the persons/entities who can ask the National commission of public debate (Commission nationale du débat public, CNDP), an independent administrative authority, to organise a public debate:

- 10 000 adult citizens of the EU resident in France
- 10 members of parliament
- a Regional council, a County council, a Municipal council, a public institution of inter-municipal cooperation having a territorial planning competence over the relevant territory under its jurisdiction
- an approved association at the national level, pursuant to article L.141-1

Article L.121-10 provides that the Government can organise a public debate at the national level. Besides, since the reform of August 2016, 60 deputies or 60 senators can submit a request for organizing a public debate to the National Commission. Concerning the preliminary concertation, the initiative has been opened to more people: project manager/approving authority, territorially

¹⁶Article 7: "Everyone has the right, in the conditions and to the extent provided for by law, to have access to information pertaining to the environment in the possession of public bodies and to participate in the public decision-taking process likely to affect the environment"

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/charter-for-the-environment.103658.html>

competent prefect (who were asked by a local authority, a federation of association, a certain amount of EU citizens or residents in France).

Ordinance n°2016-1060 of August 3rd 2016, and Decree n°2017-629 of April 25th 2017¹⁷ are recent pieces of legislation which somewhat enlarged the participation channels within the context of the environmental assessment process.

b. At which stage of the procedure?

Prior to the beginning of the decision-making process, the public can participate to the elaboration of certain decisions likely to have a significant effect on the environment or land use planning through a public debate which can be organized by the National commission of public debate. But the latter is not bound to organise a public debate.

The project manager or/ public authority can ask the National commission to conduct a conciliation (L.121-2 and R.121-18) with all the relevant stakeholders. The commission can appoint a conciliator within its members.

Finally, a prior concertation (L.121-15 and following) procedure can be put in place for a period ranging from 15 days to 3 months maximum, with publication of a report, and sometimes a “guarantor” is appointed by the National commission if asked by the project manager/public authority.

Some plans and projects for which an environmental assessment is required can be subjects to a public inquiry. The aim of this procedure is to consult the public on the basis of a document containing, if applicable, the plan or program impact assessment and the opinion delivered by the environmental authority. The public must have been informed of the organization of a public inquiry at least fifteen days before its opening. He is consulted for a minimal period of 30 days if there is an environmental assessment, or 15 days. The inquiry is headed by an independent and impartial “investigating commissioner” (commissaire enquêteur) – or by a commission of inquiry if necessary- who is responsible for ensuring that the procedure is working well. At the end of every inquiry, a report is issued in which the investigating commissioner presents his opinion concerning the project, plan or program. The latter will enable the competent authority who is in charge of approving the project, plan or program to take an informed decision. Since the 2016 reform the procedure is now partly online, the public inquiry file is available online during the inquiry, but is still available in paper format in one or several locations specified at the beginning of the inquiry. A free access to the file is guaranteed on one or several computers in a public place (article L.123-13 Environmental code).

Furthermore, some projects, plans and programs- especially those that are not subject to an environmental assessment- require an online consultation of thirty days (article L.123-19). Unlike the public enquiry, there is no investigating commissioner or commission of enquiry in this procedure. The Environmental code also provides online public consultation procedures regarding the non-individual decisions, or for the individual decisions that are not subject of a specific participation procedure (article L.123-19-1 to L.123-19-7). For these decisions, the participation process are entirely dematerialized, and can be shorter than thirty days.

Finally, the local consultation of voters (L.123-20 and following) is a new procedure that has been introduced in the environmental code in 2016. This new participation tool will enable the French

¹⁷ Decree n°2017-629 of April 25th 2015 *On the procedures for ensuring the information and the participation of the public to the elaboration of certain decisions likely to have a significant effect on the environment and modifying several provisions relating to the assessment of the effects of certain plans and programmes on the environnement* (Translated into French by Serguianne Vitello)

government to inform and consult the public within a given territory on a project that the State is planning to authorize or carry out. An information file is made publicly available at least fifteen days before the consultation. Only the French constituents who are registered on the municipality voters lists where the consultation is organized, and the registered citizens of other member states.

This procedure has been used in June 2016 regarding the Notre-Dame des Landes Airport project, an airport development project in north-west France. On 26 June 2016 Loire Atlantique Department hold a referendum on the planned transfer of services from Nantes Atlantique Airport to a new airport in Notre-Dame-des-Landes. The Department announced that 57% of the general public voted yes on the referendum to relocate Nantes Atlantique Airport. In June 2017, France's Prime Minister Edouard Philippe also launched a "mediation" programme on the construction of Nantes Notre-Dame-des-Landes Airport.

c. How is the public notified?

In many procedures, the public is informed online, and can have access to many documents, such as environmental impact assessments, to information on how the public inquiry is going on for the plans and programs likely to affect the environment (L.123-10). Concerning the latter, the public will be informed online, through official local billboards, and depending on the importance and the nature of the project, in local publications. For instance, article L.123-19 of the Environmental code provides that public participation is organised online for the projects and programs that were not submitted to a public inquiry. Among other forms of notification, the public is informed by an online notice mentioning the contact details of the competent authorities, particularly those from which relevant information can be obtained, those to which comments or questions can be submitted; the website address where the file may be consulted... In recent years, national authorities have made special efforts to offer a broader access to online documents.

d. How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

Depending on the participation process being used, the public can present observations and propositions by electronic or postal way to the guarantor so that he can publish them on the website provided for the prior concertation (article L121-16-1), but can also be heard. For example, during a public inquiry, the investigating commissioner can decide to organise a public meeting to offer the opportunity to the stakeholders to exchange views, and have the obligation to receive all the individuals wishing to be heard. The investigating commissioner has the obligation to give his opinion on the project in the final report. However, the judges considered that he does not have to answer to all the observations made by the public, or to summarize all the propositions, and can regroup similar questions by theme when they are numerous. When he decides not to answer some observations, he has to justify his decision.

e. What are the statutory deadlines for consulting the public?

Refer to answer b)

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

Mr John Knox was the first Independent Expert on human rights and the environment appointed by the Human Rights Council in 2012. His mandate was renewed for another three years in 2015 as Special

Rapporteur¹⁸. In 2015 he made a report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in France¹⁹. He pointed out that many public inquiries were carried out too late in the procedure, at a stage when the decision already seemed to have been taken, according to many observers. The Independent Expert also heard that the decision-making process concerning the projects was too long and complex. This had led the Government to the creation of a working group to study ways to “modernise” the environmental decision-making, and the adoption of the 2016 reforms. In 2015, a special commission worked on the “democratization of the environmental dialogue”, after an environmental activist were killed by the police in 2014 during a protest against the construction of the Sivens dam²⁰.

At first sight, it seems that the prior concertation procedure which can be asked by citizens, environmental protection associations or local authorities is quite easy to open concerning “projects mobilizing important public funds”. But if you look more into details it is not the case. In fact, prior concertation procedure is not possible if the amount of public subsidies granted to the project is superior to five billion euros (L.121-17-1). Moreover, this initiative right is opened to 20% of the registered population coming from the municipalities that are concerned by the project, or to 10% of the population living in the relevant department or region (L.121-19). These conditions are quite strict, and could constitute important barriers to prior public participation in the SEA process.

Nevertheless, since 2015 we can say that many improvements have been made in the French legislation on access to information, public participation and access to justice in environmental matters.

Experts

4. Are there any statutory requirements regarding qualification and objectivity of the experts?

During a public inquiry, the investigating commissioner can have recourse to an expert to assist him. This expert will be appointed by the president of the Administrative Court (article L.123-13 Environmental Code). Environmental Code itself does not specify any particular condition regarding the independence of this expert. Nevertheless, in the majority of the public inquiries, the investigation commissioner is appointed by the president of the Administrative Court (“tribunal administratif”), which guarantees the independence of the investigations commissioner from the project manager, the administration and the public. Since 2015, the National Company of Investigating Commissioners members must adhere to a *Code of Ethics and Professional Conduct* which states that the investigating commissioner should stay out of any conflict of interest (article 9 and 10); ask or accept any undue favour or advantage from an organism or an individual that would have interests in the project (article 11); and treats any attempts at putting pressure or interfering in its mission as unacceptable (article 13).

Moreover, the conciliator can ask the assistance of external experts, who will be paid by the National Commission of public debate (article R.121-18 Environmental Code). Once again, no specific requirement is made regarding the qualification or the objectivity of the expert.

¹⁸ <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/JohnKnox.aspx>

¹⁹ A/HRC/28/61/AA.1, John H.Knox, “Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment- Mission to France”, United Nations Human Rights Council, Twenty-eight session, Agenda item 3, March 25, 2015, p.22.

²⁰The Guardian, “France halts Sivens dam construction after protesters’ death”

<https://www.theguardian.com/world/2014/oct/31/france-halts-sivens-dam-protester-death>

5. If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.

In France, the Environmental Authority must give its opinion on all the projects that are subjects to an environmental assessment. Article R.122-6 of the Environmental Code defines the competent Environmental Authority depending on the nature of the project. This opinion can contain some suggestions for the project manager or the authority in charge of authorizing the project (Mayor, Prefect...), but none of them are bound to follow this opinion.

In 2016, one of the major French environmental association- France Nature Environnement (FNE)- filed a lawsuit against Decree n°2016-519 of 28th April 2016 which was contrary to Directive 2001/42/CE according to FNE. In fact, the Decree provided that the same administrative authority (Region Prefect) could, on the one hand, be competent to give its opinion on the project, and on the other hand authorize the project. There is a confusion between the environmental authority and the decision-making authority. On the 6th December 2016, the Council of State (the highest administrative court)²¹ pointed out that article 6 of SEA Directive does not preclude the competent public authority from giving its opinion on a project, and at the same time, be the competent entity to authorize the project. However, article 6 sets out that a functional separation should be organized within the authority. Within the public authority, there should be an autonomous administrative entity with its own human and administrative resources to fulfil its mission, and give an unbiased opinion on the project. The problem is that Decree n°2016-519 designates the Region Prefect as the competent authority to give its opinion, even when the latter is also competent to authorize the project. The Council of State rules that Decree n°2016-519 was infringing SEA Directive. According to FNE the autonomy of Environmental Authorities is an indispensable condition for restoring trust in the public participation procedures.

Follow-up

6. Is there a statutory obligation to take the results of the SEA into account in the decision-making? Please shortly describe important good/bad practices you know of in your country.

Yes, there are statutory obligations to take the results of the SEA into account in the decision-making. According to article 122-1-1 of Environmental Code, before taking its decision concerning the project, the competent authority must take into account the impact assessment, the opinion of several types of authorities, the results of the public consultations, and the result of the transboundary consultation when applicable. In any case, the project cannot be adopted before the expiry of the consultation period, and the drafting of a synthesis allowing the public to make sure that its observations were taken into consideration.

7. Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.

The Avoid-Mitigate-Compensate (AMC) sequence applies to plans, programs and projects that are assessed by administrative authorities. When designing and implementing their projects, project managers have to define appropriated measures to avoid, mitigate or, when necessary and possible, compensate their negative impacts on the environment. In some cases, when no compensation measures are feasible, the project can question the possible realisation of the project. In order to monitor and control these measures, the administrative authorization must determine the objectives to be achieved and the means to be employed to reach these results. Based on the project manager

²¹ Conseil d'Etat, 6^{ème} chambre- 1^{ère} chambres réunies, 6th December 2017, n°400559

propositions, the authorization defines the monitoring methods of the measures' implementation and effectiveness. For this purpose, the project manager has to establish performance indicators, and a monitoring program. He has to communicate regularly the results of this monitoring. Furthermore, the administrative authority must carry out regular checks. If the results are insufficient, government services can ask the project manager an adaptation of the monitoring mechanism and a complementary expertise.

Several provisions in the Environmental Code organise the monitoring of the SEAs projects. Under the so called Classified Installations for the Protection of the Environment regime (Installations Classées pour la Protection de l'Environnement), which concerns facilities representing important threats, dangers for the area residents, health, security, public sanitation, agriculture, protection of nature and the environment, and for the conservation of sites and monuments (L.511-1 EC), public officials can carry out announced or unannounced inspections. The inspectors check if these facilities are still respecting all the regulatory provisions.

8. Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.

In the event of non-compliance with AMC measures, the administrative authority can use regulatory and judiciary procedures to ensure their respect. On the other hand, the operation of classified installations presenting new dangers or problems which didn't exist when they received their authorization can be suspended during a certain period in order to put in place remedial actions (L.514-7). The sanction can be even stronger and lead to the closing of the plant.

Access to Justice

9. Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public? What are the key limitations to access to justice, if any?

The public can challenge decisions or plans/programs before the administrative judge (annulment action) when it is vitiated by defect in form.

The first key limitation to access to justice for individuals is the necessity to have an interest in taking a legal action in order to be able to file a lawsuit. The interest raised by the parties must be affected certainly and directly enough. However, environmental approved associations have a broader access to justice benefit from a "presumption of interest" (L.142-1) to act against any administrative decision which is directly linked to its objects and mandate activities, and causing harmful effects on the area where its accreditation is valid. Article L.142-3 EC gives the opportunity to private individuals to mandate an approved association in order to sue for damages in their name before any jurisdiction. Since 2003, it is free of charges to lodge a complaint before the administrative courts, but plaintiffs often have to pay legal costs, as for example lawyers' fees, an expertise... If their financial resources are below certain thresholds, they are eligible to receive legal aid. But legal fees can be still deterrent factors impeding access to justice.

3.6. HUNGARY

Scope

- 1. What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)? Please provide some short examples where this issue has been debated in the national context, what was the outcome?**

The transposition of the SEA Directive into Hungarian legislation has been carried out by Act LIII of 1995 on environmental protection (the 'EPA') and Government Decree 2 of 2005 on the Environmental Assessment of Certain Plans and Programmes (the 'SEA Decree').

Art. 43(4) of the EPA defines that plans and programs specified in specific other legislation, which are likely to have a significant impact on the environment, including those plans and programs which are co-financed by the EU, and in connection with the amendments of these

- where its elaboration is prescribed by a law, a resolution of the Parliament, the Government or a municipality, and

- which is drawn up or adopted by an administrative body, or by a non-administrative body discharging administrative duties by authorization conferred under an Act of Parliament or Government decree, or by a local self-government body, or those presented by the Government to the Parliament for adoption ('plan or program') an environmental assessment shall be conducted containing an environmental report in accordance with the SEA Decree. A plan or program may not be presented in the absence of an environmental report.

The SEA Decree defines the plans and programs for which an environmental assessment is mandatory, or may be required subject to a report on the magnitude of their impact on the environment as determined under the criteria laid down in this Decree.

According to the SEA Decree Art. 1(2)(a), the preparation of an environmental assessment is obligatory for all plans and programs listed in Annex 1 of this Decree, these are:

1. Regional plans
2. Settlement structure plans, local construction codes and management plans applicable for the whole settlement
3. National Development Plan
4. Operative Programs of the National Development Plan
5. National, regional, county or local waste management plans, and the joint waste management plans of microregions
6. Mid-term plan of agricultural policy
7. National Water Management Concept and National Programs
8. River basin management plan
9. National or local road network development plan
10. Plans and Programs that are prepared for agriculture, forestry, fisheries, energy, industry, transport, traffic, waste management, water management, electronic telecommunication, tourism, regional development

11. Plans and Programs that may have significant adverse effects on Natura 2000 areas.

Based on Art. 1(2)(b) of the SEA Decree, plans and programs not listed above, but prepared for agriculture, forestry, fisheries, energy, industry, transport, traffic, waste management, water management, electronic telecommunication, tourism, regional development and set a framework for the future development consent of activities or facilities listed in the annex of specific other legislation on environmental impact assessments but – from the point of view of the application of the SEA Decree– are independent from the threshold values and territorial restrictions laid down in specific other legislation; or may have significant adverse effects on Natura 2000 areas as defined in a separate act are also subject to an environmental assessment.

According to Art. 43(5)(b) of the EPA, the necessity of environmental assessment may be decided on a case-by-case determination of the significance of the likely environmental effects in the case of small scale plans and programs such as:

- a) regulatory plans, or local construction codes being prepared for a part of a settlement, or other plans and programs, that determine the use of small areas at the local level;
- b) a minor amendment to a plan or program;
- c) other plans and programs that set a framework for the future development consent of activities or facilities representing environmental uses.

Pursuant to Art. 1(5) of the SEA Decree, this Decree does not apply to:

- a) plans and programs of a financial or budget character only;
- b) plans and programs the sole purpose of which is to serve national defence, and other than home defence or civil protection plans and programs;
- c) home defence or civil protection plans and programs that are prepared when special measures needed in emergency events, conditions or situations as defined in separate acts are applied;
- d) plans and programs required for the authorization of activities.

In case of land-use plans, the environmental assessment shall be concluded where the given plan or program meets two joint requirements:

- the elaboration of the plan or program is prescribed by a law, a resolution of the Parliament, the Government or a municipality, and
- it shall be drawn up or adopted by an administrative body, or by a non-administrative body discharging administrative duties by authorization conferred under an Act of Parliament or Government Decree, or by a local self-government body, or those presented by the Government to Parliament for adoption.

Public participation

2. **Please briefly describe the rules on public participation in the SEA process, including:**
 - a. **Who can participate?**

The right of participation is not explicitly limited by the relevant legislation. For the purpose of planning of the ways of informing the general public, the developer – with regard to significant adverse environmental effects that are potentially transboundary – shall identify the concerned public.

For the purposes of the SEA Decree, concerned public means natural persons, legal entities or organizations without legal entity that:

- are or may be affected by the decision on the plan or program requiring environmental assessment, in particular because of its effects on the environment;
- have an interest with regard to the decision on the plan or program requiring environmental assessment, in particular, that are environmental or other non-governmental organizations whose range of activity are affected by the said decision;
- are otherwise defined as affected by legal instruments, or by the developer in the preparation process of the plans or programs.

If the act or decision requiring the preparation of the plan or program does not contain provisions for the details of disclosure, the general public shall be informed via at least a notification in a national daily paper or local paper. If the concerned public is limited to a single part of settlement, the usual channels of notification shall be satisfactory. If the developer has a homepage, the notification should also be published on this homepage. In addition to disclosure, other ways of informing the concerned public may be used for inviting their comments. If the public concerned is not determined by the developer, and the general public is informed, all persons of the public are entitled to submit their opinion and comments.

b. At which stage of the procedure?

As the SEA Directive regulates, the authorities and the public shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or program and the accompanying environmental report before the adoption of the plan or program or its submission to the legislative procedure. The developer shall place a request for opinion as soon as the necessary information becomes available to it and shall fix a deadline for formulating the opinion. The national legislation does not provide clearer requirements in this regard.

c. How is the public notified?

As mentioned above, if the act or decision requiring the preparation of the plan or program does not contain provisions for the details of disclosure, the general public shall be informed via at least a notification in a national daily paper or local paper. If the concerned public is limited to a single part of settlement, the usual channels of notification shall be satisfactory. If the developer has a homepage, the notification should also be published on this homepage. In addition to disclosure, other ways of informing the concerned public may be used. In case of the public concerned is not determined by the developer, and the general public is informed, all persons of the public are entitled to submit their opinion and comments.

d. How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

Pursuant to Art. 8(3)(bc) of the SEA Decree, the developer shall determine - and publish - how comments and opinions shall be submitted in the given procedure.

e. What are the statutory deadlines for consulting the public?

The developer shall fix a deadline for formulating the opinion, which should not be less than 30 days. For the purpose of making the decision, the developer shall take into account the opinions received before the deadline fixed by it.

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

Basically, public participation in SEA proceedings is not restricted by law. For the purpose of informing the public, the developer shall identify the public concerned which may lead to limitations.

Experts

4. Are there any statutory requirements regarding qualification and objectivity of the experts?

Yes. The provisions of the SEA Decree require that the environmental report shall be prepared by experts working in the fields of environmental protection, nature preservation and/or landscape maintenance. According to the EPA, where an expert is required by law, or where certain legal consequences are prescribed relating to the employment of such an expert, the expert employed must be authorised by the competent authority.

5. If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.

The conditions of qualification are laid down by a separate piece of legislation governing the activities of experts in the fields of environmental protection, nature preservation and/or landscape maintenance. However, objectivity and independence of the expert participating in the preparation of the SEA is not clearly ensured by the relevant legislation.

Follow-up

6. Is there a statutory obligation to take the results of the SEA into account in the decision-making? Please shortly describe important good/bad practices you know of in your country.

Yes. In line with Art. 43(6) of the EPA, the environmental assessment includes:

- preparation of an environmental report
- requesting of the opinion of the environmental protection agencies and from the public,
- consultations with neighbouring countries in the case of significant cross-border impact, and
- taking into account of the environmental report and the results of the consultations in drawing up the plan or program;
- taking into account of the environmental report, opinion, comment and consultation in adopting the plan or the program, or the proposal to be presented to Parliament.

The drafter of the plan or program shall take the environmental report and the results of the consultations take into account in drawing up, and the entity adopting the plan or the program is responsible to take these information into consideration when adopting that plan or program.

This obligation of the drafter and/or the entity is not specified in detail, it is not unusual, that the plan of program only declares that this requirement has been satisfied, the results of the SEA and consultations were taken into consideration.

For example, the environmental report to the NES also refers that the comments were received by the experts participating in the assessment and they took them into account, but neither the content of the comments nor the way of taking those into account were detailed. Furthermore, the SEA working group of the NES recommended the elaboration of research-analysis studies for certain key issues, and commencement of science-based methodology developments, however, it cannot be stated whether this recommendation was considered before the adoption of the strategy.

7. Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.

According to the SEA Decree, the plan or program should include measures on the monitoring of the significant environmental effects arising from the implementation of the plan or program. Monitoring measures specifically include an identification at an early stage of unforeseen adverse effects during the preparation of the plan or program, and the identification of the actions to be taken in case adverse impacts occur.

8. Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.

As mentioned under Q7, the plan or program shall contain the measures to identify the actions to be taken in case adverse impacts occur. The existing detection, measuring and monitoring systems may be used, or the revision of the plan or program may be applied.

Access to Justice

9. Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public? What are the key limitations to access to justice, if any?

According to Article 99 (1) of the Environmental Code (Act LIII of 1995), in case of endangerment of the environment, pollution or harm thereof, environmental civil organizations are entitled to raise a claim at the competent state organs or municipalities and ask proper measures within the scope of their authority. They are also entitled to start a court case against the user of the environment and ask the court to oblige them to take all the necessary measures to prevent or remedy the environmental harm. These rules can be understood in broad sense, encompassing the strategic level planning procedures, too, in the mirror of Article 4(1) of Act I of 2017 on Administrative Court Procedures (that entered into force on first of January, 2018) which provides that administrative courts review any disagreement between concerned legal subjects in connection with administrative acts, including failure to take measures, too. Further interpretation can be found in Article 4(3)c) where the administrative act is defined as any acts taken by administrative bodies that falls outside the scope of the Act on Legislation. Considering that the Act CXXX of 2010 on legislation deals with promulgating laws of the Parliament and decrees of the Government and of the ministers in strict sense, there is no doubt that planning acts fall under the scope of Act I of 2017.

3.7. SLOVAKIA

Scope

- 1. What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)? Please provide some short examples where this issue has been debated in the national context, what was the outcome?**

Under the relevant legislative provisions (Act No. 24/2006 Coll. On Environmental Impact Assessment, which also covers SEA issues), the strategy document is a draft of a plan or program (including those co-financed by the EU)

- prepared, approved or prepared and approved at national, regional or local level, or
- which is prepared for approval by the National Council of the Slovak Republic, the General Assembly, the higher territorial authority or the Government of the Slovak Republic and their preparation requires a generally binding legal regulation, decision or resolution of the body for which it is preparing for approval,
- as well as any change to the documents

Subject to SEA are proposals of strategic documents prepared for the area

- Agriculture,
- forestry,
- fisheries,
- industry
- energy,
- transport,
- waste management,
- water management,
- telecommunications,
- tourism,
- spatial planning or land use,
- regional development, and
- the environment,
- as well as a strategic document co-funded by the European Union,

which are likely to have a significant impact on the environment and at the same time provide a framework for the approval of some of the proposed activities subject to the EIA process.

The SEA process is not subject to strategic documents that determine the use of small areas at local level.

Subject to SEA process are also those strategic documents not specified above, on which it so decides in the screening process in the case of

- a strategy paper setting out the framework for the approval of any of the proposed activities which are subject to the EIA process, including its change,
- a strategic document identifying the use of small areas at local level,
- a small change to the strategic document mentioned above.

The SEA process is also subject to a strategic document (and its change) which requires an appropriate assessment in the sense of Art. 6/3 of the Habitats Directive.

Land-use plans are subject to SEA at the "concept" phase, which contains several variants of solutions land use plan and is subject to comment by the public authorities concerned, the persons concerned and the public.

Public participation

2. Please briefly describe the rules on public participation in the SEA process, including:

a. Who can participate?

The public concerned in SEA is the public interested or likely to be interested in preparing strategic documents prior to their approval, which may be

- a person over 18 years of age,
- a legal person,
- a citizens' initiative (multiple natural persons signed under a common position)

b. At which stage of the procedure?

The public concerned has the right to participate in the preparation and assessment of the impact of the strategy paper until the strategic document has been approved, including the right to submit a written opinion on the draft strategy paper, the scope of its assessment, and the assessment report. The public also has the right to participate in consultations and public discussion of the strategic document.

c. How is the public notified?

All stages of the SEA process are published on a special web portal of the Ministry of Environment of the SR (www.enviroportal.sk) (strategic document, scope of evaluation, evaluation report).

In the case of a strategic document, which concerns a particular municipality (multiple municipalities), it has the obligation to inform the public about the SEA process in the usual way (in particular on its official billboard, but also through local radio or local press).

d. How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

The public gives written opinions on the different phases of the SEA process. The assessment report is the subject of a public hearing (oral). Consultations on a specific SEA process are also being conducted are also oral.

The final opinion of the SEA process must contain a justification as well as a section where it must be stated that the public opinion has been taken into account in the evaluation report on the strategic document as well as the results of the consultations.

There is therefore no explicit obligation to evaluate each public opinion individually. It is sufficient to summarize how the SEA process was based on public opinion.

e. What are the statutory deadlines for consulting the public?

The notice on the SEA process is open to the public for submission of the opinion within 15 days of its publication.

The scope of the assessment should be commented within 10 days from the date of publication of the opinion.

The assessment report should be commented within 21 days from the date of publication of the opinion.

The date of the public consultation must be published no later than 10 days before it is executed.

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

In general, they are referred to above in the introduction - the formality of the process and the impossibility of exploring the strategic document itself. From a formal point of view, public participation in the SEA process is sufficient.

Experts

4. Are there any statutory requirements regarding qualification and objectivity of the experts?

If some person wants to acquire professional competence in the SEA process, (in addition to formal conditions), must have the appropriate education, receive training, take the exam and be included in the list of professional qualified persons. The law also provides for the fact that these persons must also have some practice in the field (its length is not explicitly stated).

5. If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.

The explicit legal obligation to develop some part of the SEA documentation by a professionally qualified person is only given for the - so called - expert opinion, which is an independent evaluation of the SEA process that is developed after the assessment report. The public does not comment on this opinion and serves as one of the bases for processing the final SEA opinion.

The law does not require that the other SEA documentation (in particular the assessment report, which is the most important and most comprehensive part of the SEA process) be drawn up by a professionally qualified person.

In addition, all costs (including expert opinion) associated with the environmental impact assessment of the strategy document are borne by the contracting authority; and because of these financial links, it is not possible to talk about a truly independent SEA implementation by SEA processors (including professionally qualified persons).

Follow-up

6. Is there a statutory obligation to take the results of the SEA into account in the decision-making? Please shortly describe important good/bad practices you know of in your country.

Although the SEA process is mandatory before the strategic documents are approved (without passing through, the strategic document cannot be approved), but the final opinion that is the outcome from SEA process, is not binding for approval. The law only stipulates that the results of the SEA process must be taken into account when approving the strategic document.

Only in the case of SEA, which is also an appropriate assessment within the meaning of Art. 6/3 of the Habitats Directive is valid as a binding document - a strategic document cannot be approved in this case if the negative impact of the strategic document on Natura 2000 is demonstrated.

The second question was answered already (see above).

7. Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.

The Procurer and the affected government body are obliged to ensure the monitoring and evaluation of the impacts of the approved strategic document on the environment or to use existing monitoring for this purpose. This monitoring should consist in systematically monitoring and evaluating its impacts, evaluating its effectiveness, and providing a professional comparison of the predicted impacts given in the assessment report to the actual status.

If the real environmental impacts are found to be worse than stated in the assessment report, the contracting authority is required to provide mitigation measures while ensuring that the strategic document is amended or revised.

The contracting authority and the departmental authority are obliged to notify the competent authority without delay of the information on the results of monitoring and evaluation of the impact of the strategic document on the environment and the latter is required to disclose them.

However, according to our experience, these obligations are not enforced in the practice at all.

8. Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.

N/A

Access to Justice

9. Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public? What are the key limitations to access to justice, if any?

We have cases in which an action against the approved strategic documents is brought in court, the reason being in particular the breach of obligations arising from the SEA process (the SEA did not take place in first case, in the second case a was the document in a wording essentially other than that, which was the subject of the SEA). Cases are still pending. If the court were to admit a judicial review of strategic documents, it would only be on the basis of a considerably wider interpretation of the relevant legal provisions.

The outcome of the SEA process, due to its non-binding nature, cannot be challenged on court.

The only strategic documents against which the public can bring an action are land use plans. It is explicitly stipulated that the public, in cases where the approval of a land use plan leads to a violation of the public interest on the protection of the environment, can bring an action before the court.

3.8. SLOVENIA

Scope

1. **What is the scope of SEA regulation in the national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions)? Please provide some short examples where this issue has been debated in the national context, what was the outcome?**

According to Article 40 of Environmental protection act a SEA should be carried out during the preparation of the plan, program or other general act and its amendments (plan), the implementation of which may have a significant impact on the environment, in order to identify and evaluate environmental impacts and integrate the requirements of environmental protection, nature conservation, protection of human health and cultural heritage into the plan. This includes all such documents adopted by competent authority in the area of spatial planning, water management, forest management, fisheries, mining, agriculture, energy, industry, transport, waste management and waste water supply, drinking water supply, telecommunications and tourism. SEA shall also be carried out for another plan if the Ministry of environment and spatial planning (Ministry) estimates that its implementation could have a significant impact on the environment. Criteria for assessing the significant effects of the implementation of the plan on the environment are declared in Decree on criteria for determining the likely significance of environmental effects of certain plans, programmes or other acts and its modifications in the environmental assessment procedure.

Exemptions SEA shall not be carried out:

- for a plan drawn up on the basis of a plan for which SEA was done if no new or more detailed implementation conditions are specified for the planned interventions unless:
 - o planned activity contains new conditions or
 - o it contains new spatial intervention or
 - o it covers new area according to the plan on the basis of which it is prepared.
- for a plan that is solely for the defence of the state, protection and rescue, and for the budget or financial plans of a state or a municipality.

The competent authority for decision if SEA is obligatory to carry out is the Ministry. The Ministry also decides about acceptability of impacts of the plan on the environment.

Public participation

2. **Please briefly describe the rules on public participation in the SEA process, including:**

- a. **Who can participate?**

Everybody, no limitation.

- b. **At which stage of the procedure?**

Stages of SEA procedure are: 1. The authority which is preparing the plan make notification to the Ministry about preparation; 2. The Ministry decides if SEA has to be carried out; 3. If yes, the authority which is preparing the plan provides environmental report and send the plan and report to the Ministry; 4. the Ministry send these document to other bodies competent or connected to the content of the plan to prepare opinion if the impacts of the plan on environment are acceptable; 5. the Ministry inform the authority which is preparing the plan about the appropriateness of the environmental

report or request it to be supplemented; 6. after the Ministry concludes this procedure – confirm the appropriateness of the environmental report – the public participation stage is taking place; 6a at the same time the other states are included into procedure in the case of possible cross border impact on environment; 7. the Ministry shall take into account the outcomes of public participation, cross border procedure and opinions of authorities competent or connected with content of the plan and confirm or reject acceptability of impacts of plan on environment with (administrative*) decision. (*see section Access to Justice)

c. How is the public notified?

Notification (with announcement of time and place) is published in the customary manner (for municipality) and on the World Wide Web. The customary manner is referring to municipalities that have different practices of informing their citizens (also through local newspapers, local radio or TV). In practice notification is published by ministry on their official website and on the website of municipality or other authority that is preparing the plan.

d. How are the opinions gathered/replied to (is there only written consultation or hearings too, is there an obligation to reply to opinions)?

Written consultation is always enabled; additional to that in the case of spatial plans also public discussion like “hearing” is obligatory (for the draft of spatial plan and environment report) – the authority that prepared the plan and experts that prepared environment report are present, explain the core of documents and answer the questions from public; here is no obligation to answer on written opinions, obligation to answer on comments and opinion is related only with comments on draft of spatial plan.

e. What are the statutory deadlines for consulting the public?

At least 30 days.

3. Name any important obstacles to public participation in the SEA process you know of and provide some short examples, if possible.

When the procedure is going on there are no serious obstacles. The procedure is going on in accordance to Environmental Protection Act. But the system itself has some shortcomings:

1. the Ministry is rather “liberal” by deciding if SEA should be carried out for certain plan (i.e. according to the Act on Forests the forest management plans should be prepared also with spatial planning part – the Ministry always decide that SEA is not needed although these plans are more or less in practice oriented towards exploitation; there is no need for SEA for national transport development program – decision from 2016);
2. the government doesn’t does not take SEA “seriously” i.e. just now the government confirmed and send to parliament the National energy concept although the public discussion one environmental report (SEA) was still open.
3. public participation is more or less formal and it doesn’t include response on comments and opinions of public. Except for spatial planning there are more interactive public participation encouraged regarding spatial plan (consultations, workshops or other ways of inclusion) according to new Spatial Management Act – will come into force on 1. June 2018. The consultation on spatial plan includes also discussion on environmental report.

Experts

4. **Are there any statutory requirements regarding qualification and objectivity of the experts?**

No.

5. **If you know of any issues regarding qualification and objectivity of the experts in practice, describe them in a few sentences.**

Some of experts for EIA are specialised also for SEA environmental reports.

Follow-up

6. **Is there a statutory obligation to take the results of the SEA into account in the decision-making? Please shortly describe important good/bad practices you know of in your country.**

Yes. The authority which prepares a plan must take opinions and comments from the public into account as far as possible (Article 46 of Environmental protection Act).

7. **Please briefly describe provisions on monitoring/ex-post evaluation of the SEAs.**

See answer to Q 8.

8. **Are there any provisions on which measures to take in case of unintended impacts or if impacts exceed the level assessed? If yes, please describe them in brief.**

About monitoring there are two sources of information: 1. the Ministry permanently monitors the state of environment and 2. the environmental report can contain another ways of monitoring for certain plan. If Ministry finds out that impact of implementing the plan on environment has unforeseen negative consequences, it shall inform the competent authority for plan and act in accordance with its competencies to reduce the consequences (Article 48 of Environmental protection Act).

Access to Justice

9. **Can the SEA Decisions or plans/programs for which they were carried out be challenged by members of the public? What are the key limitations to access to justice, if any?**

According to Article 46 of Environmental Protection Act - no. After the Ministry deliver the decision (as administrative decision) about acceptability of impact of the plan on environment. The article allows following legal remedies:

- If the plan is prepared on the level of state body (ministry) the government shall decide on the appeal against the
- If the plan is prepared on the level of municipality, the appeal against the decision is not permitted, but it is possible to start an administrative dispute (at Administrative court).

The comment to this article describes this procedure as “semi administrative” or modified administrative decision regarding legal remedies and it seems like only the body that prepares plan can appeal against the decision. But last year an NGO (Birdwatch Slovenia) with status in public interest on nature conservation succeeded to become a party of the SEA procedure (so decided Administrative court).

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ANNEX 1. DETAILED OVERVIEW OF REPLIES

1. SCOPE

Under this section the country experts addressed the question about the scope of SEA regulations in their respective national law (i.e. in which cases does the law require a plan or program to undergo an SEA, are SEAs mandatory for land-use plans and at which level, are there exemptions).

The regulations transposing the SEA Directive in all countries presented in this study are following more or less closely the definition of the scope of the SEA procedure according to the requirements of Art. 3 of the Directive.

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.
2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,
 - (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or
 - (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.
3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.
4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

However, the legislative approach to regulating the scope of application of the SEA Directive varies from country to country: e.g. in Austria there is no central SEA legislation, but rather scattered regulations in various laws. They can be found in Water Protection Act (“Wasserrechtsgesetz”), Waste Management Act (“Abfallwirtschaftsgesetz”), Federal Ambient Noise Act (“Bundes-Umgebungslärmschutzgesetz”), Federal Act on SEAs in the area of Traffic (“Bundesgesetz über die strategische Prüfung im Verkehrsbereich”) and others. In Bulgaria, Croatia, Estonia, France, Hungary, Slovakia and Slovenia the SEA is regulated by one general environmental act (mostly by the Environmental Protection Act) and by ordinances based on the provisions of this act. SEA has been introduced as a principle in other legal acts, too – e.g. in France it is introduced in the French Planning Code.

In Austria, SEAs are required in several areas: waste management plans, noise pollution plans, air quality action plans, water management plans (RBMPs), plans for main traffic routes. There is a lack of implementation of the SEA directive regarding energy infrastructure. There is little knowledge on SEAs in the public and very little awareness among most public authorities and hence the SEAs which are done are mostly pro forma assessments which are not really done seriously. However, there are some very good examples to the contrary though, like the Vienna Waste Management plans.

In Bulgaria, the main legal provisions regulating the SEA obligation are in the Environmental Protection Act, chapter VI, Sections I and II and in the SEA Ordinance. The EPA states that “SEA22 shall be conducted of plans or programmes which are in a process of preparation and/or approval by central or local executive authorities, bodies of local self-government and the National Assembly.”

The SEA Ordinance lists PPs subject to SEA in two Annexes, the first one with mandatory PPs and the second one with PPs subject to screening procedure case-by-case. This dual way of defining PP subject to SEA – by the law setting qualitative criteria and by the by-law listing concrete PP according to sectors and sectoral laws could lead to some confusion as to which PP should undergo SEA and to possible exclusion of PPs not in the annexes to the SEA ordinance. There is no indication that the SEA Ordinance will be revised in this regard since it has been amended 7 times and the number of PP in both annexes have been reduced and not a single PP added, although in the meanwhile the legislative and strategic framework has been developed.

In Croatia the SEA Directive is transposed into the Croatian legislation by Environmental Protection Act (EPA, Official Gazette 80/13, 153/13, 78/15, 12/18), by Regulation on the strategic environmental assessment of strategy, plan and programme (Regulation on SEA, Official Gazette 3/17) and by Regulation on information and participation of the public and public concerned in environmental matters (Official Gazette 64/08). First Regulation on SEA was adopted in 2008 since SEA procedure was introduced into Croatian legislation (EPA from 2007) in 2007.

Art 62 of EPA determines that Strategic Environmental Impact Assessment is a procedure for assessing the likely significant environmental impacts that may arise from the implementation of a strategy, plan or program.

Art 64, para 1 defines that for strategies, plans and programs that determine the use of small areas at the local level and for minor changes and additions to the strategies, plans and programs referred to in Article 63 of this Act, it is necessary to conduct a procedure for deciding on the need for strategic assessment (assessment procedure).

In Estonia the main issue with SEA scope in recent years has been related to the policy documents. As of late, the ministries have started drawing up “framework policy documents” which are somewhat similar to strategies, but have a higher level of abstraction and usually no clear implementation plan. Examples of such plans are, e.g. the “Guiding Principles of Climate Policy” and “Guiding Principles of Earth Crusts’ Policy”. Despite their high level of abstraction, these documents still include and limit policy choices which sometimes are then taken over for following strategic plans without further considerations. No SEAs have, however, been conducted, based on the argument that these are policy documents and SEAs would only be required for more specific strategic plans. Not all of the framework policy documents indicate that there need to be further strategies. Even in those cases, some choices have been made and will not be revisited in the latter strategies.

In France the transposition of the SEA Directive led to the modification of the Environmental Code (article L.122-4 to L.122-11). In a nutshell, and according to article 3 of SEA Directive, an environmental assessment shall be carried out for all plans or programs adopted by the State, the local authorities or their groupings and their related public institutions, regarding agriculture, forestry, fisheries, energy or industry, transports, waste management, water management, telecommunications, tourism, and country planning which set the framework for future development (article L.122-4, I (1)); and for plans,

22 The legal term in EPA is “environmental/ecological assessment”.

programmes, and other planning documents that are likely to have significant environmental effects (article L.122-4, I (2)).

In some cases SEA is mandatory for land-use plans. Article L. 121-10 of the French Planning Code provides that an environmental assessment must be completed for 1- Regional Development Directives; 2- Île-de-France Region's strategic plan; 3-territorial coherence programme ("schéma de cohérence territoriale"); and 4-local urbanism plans which are likely to have significant effects on the environment given the size of the territory to which they apply, the nature and importance of the works and developments they allow and the sensitivity of the environment where these must be carried out.

There is a detailed list of documents that are subject to an obligation of environmental assessment: Regional Development Directives; the Île-de-France Region's strategic plan; the overseas regional land use and development plans; the local land use and development plan for Corsica; and the territorial coherence programmes; the local urbanism plans allowing works, projects or developments mentioned in article L.414-4 of the Environmental Code (Natura 2000); and when the territories concerned are not covered by any territorial coherence programme which has gone through an environmental assessment:

- a) local urbanism plans covering a surface area of 5000 hectares or more and comprising a population of 10 000 inhabitants or more;
- b) local urbanism plans providing for the creation- in agricultural or natural sectors- of urban areas or to be urbanized areas covering a total area of more than 200 hectares;
- c) local urbanism plans of municipalities located in mountainous areas which are planning to create new tourist complexes subject to the authorisation of the mountain range/massif coordinator Prefect;
- d) local urbanism plans of coastal municipalities, in accordance with article L.321-2 of the Environmental Code, planning the creation in agricultural or natural sectors of urban areas or to be urbanized areas of more than 50 hectares.

In Hungary, The transposition of the SEA Directive into Hungarian legislation has been carried out by Act LIII of 1995 on environmental protection (the 'EPA') and Government Decree 2 of 2005 on the Environmental Assessment of Certain Plans and Programmes (the 'SEA Decree'). Art. 43(4) of the EPA defines that plans and programs specified in specific other legislation, which are likely to have a significant impact on the environment, including those plans and programs which are co-financed by the EU, and in connection with the amendments of these:

- where its elaboration is prescribed by a law, a resolution of the Parliament, the Government or a municipality, and
- which is drawn up or adopted by an administrative body, or by a non-administrative body discharging administrative duties by authorization conferred under an Act of Parliament or Government decree, or by a local self-government body, or those presented by the Government to the Parliament for adoption ('plan or program') an environmental assessment shall be conducted containing an environmental report in accordance with the SEA Decree. A plan or program may not be presented in the absence of an environmental report.

The SEA Decree defines the plans and programs for which an environmental assessment is mandatory, or may be required subject to a report on the magnitude of their impact on the environment as determined under the criteria laid down in this Decree.

According to Art. 43(5)(b) of the EPA, the necessity of environmental assessment may be decided on a case-by-case determination of the significance of the likely environmental effects in the case of small scale plans and programs such as regulatory plans, or local construction codes being prepared for a part of a settlement, or other plans and programs, that determine the use of small areas at the local level.

In case of land-use plans, the environmental assessment shall be concluded where the given plan or program meets two joint requirements:

- the elaboration of the plan or program is prescribed by a law, a resolution of the Parliament, the Government or a municipality, and
- it shall be drawn up or adopted by an administrative body, or by a non-administrative body discharging administrative duties by authorization conferred under an Act of Parliament or Government Decree, or by a local self-government body, or those presented by the Government to Parliament for adoption.

In Slovakia the relevant legislative provisions (Act No. 24/2006 Coll. On Environmental Impact Assessment) covers also SEA issues and defines the strategy document is a draft of a plan or program (including those co-financed by the EU)-prepared, approved or prepared and approved at national, regional or local level, or which is prepared for approval by the National Council of the Slovak Republic, the General Assembly, the higher territorial authority or the Government of the Slovak Republic and their preparation requires a generally binding legal regulation, decision or resolution of the body for which it is preparing for approval, as well as any change to such documents.

Subject to SEA process are also those strategic documents not specified above, on which the decision-maker so decides in the screening process in the case of:

- a strategy paper setting out the framework for the approval of any of the proposed activities which are subject to the EIA process, including its change,
- a strategic document identifying the use of small areas at local level,
- a small change to the strategic document mentioned above.

The SEA process is linked to appropriate assessments for strategic documents (and their amendments) which require an assessment in the sense of Art. 6/3 of the Habitats Directive.

Land-use plans are subject to SEA at the "concept" phase, which contains several alternative solutions for the land use plan and is subject to comments by the public authorities concerned, the persons concerned and the public.

In Slovenia according to Article 40 of Environmental Protection Act a SEA should be carried out during the preparation of the plan, program or other general act and its amendments (plan), the implementation of which may have a significant impact on the environment, in order to identify and evaluate environmental impacts and integrate the requirements of environmental protection, nature conservation, protection of human health and cultural heritage into the plan.

Criteria for assessing the significant effects of the implementation of the plan on the environment are declared in Decree on criteria for determining the likely significance of environmental effects of certain plans, programmes or other acts and its modifications in the environmental assessment procedure.

Exemptions when SEA shall not be carried out include:

for a plan drawn up on the basis of a plan for which SEA was done if no new or more detailed implementation conditions are specified for the planned interventions unless:

planned activity contains new conditions or

it contains new spatial intervention or

it covers new areas according to the plan on the basis of which it is prepared.

for a plan that is solely for the defense of the state, protection and rescue, and for the budget or financial plans of a state or a municipality.

The competent authority for decision if SEA is obligatory to carry out is the Ministry (of Environment). The Ministry also decides about acceptability of impacts of the plan on the environment.

2. PUBLIC PARTICIPATION

2.1. WHO COULD PARTICIPATE

The SEA Directive provides for broad public participation in the assessment procedures. It states that Member States shall identify the public, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned. (Art.5.4) The detailed arrangements for informing and consulting the public are left at the discretion of the Member States. (Art.5.5.)

According to Recital 15 of the Preamble of the SEA Directive in order to contribute to more transparent decision making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, the public should to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing **sufficient time for consultations, including the expression of opinion**. Further Recital 17 emphasises the importance of the opinions expressed by the public that should be **taken into account** during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

In the study countries there are no legal restrictions to public participation in SEA procedures. There are some modalities of defining the “public” but the general rule is that everyone could participate. In Bulgaria the EPA and the SEA Ordinance define very broadly the persons who could participate in the SEA process first as “the public” and secondly, as any “third party likely to be affected by the plan or the programme”. The public is defined by EPA as “one or more natural or legal persons and the associations, organizations or groups thereof, established in accordance with national legislation.” In Croatia the EPA determines that “public” (general public) has the right to participate in the process of strategic assessment of strategy, plan and program. In Hungary the right of participation is not explicitly limited by the relevant legislation. For the purpose of planning of the ways of informing the general public, the developer – with regard to significant adverse environmental effects that are potentially transboundary – shall identify the concerned public. For the purposes of the SEA Decree, concerned public means natural persons, legal entities or organizations without legal entity.

In France, Article L.122-8 of the Environmental Code only provides that the written report is made public. The project of plan or document can be submitted to a public enquiry. But the article does not specify who can participate. However, in French law any person can have access to environmental information. The right of access to environmental information held by public authorities, and the right to participate in the public decision-taking process likely to affect the environment are constitutional

rights guaranteed in article 7 of the French constitutional charter for the environment²³. The right to have access to environmental information is opened to French, European or other citizens, to natural or legal persons (association, company...). The person requesting access to information does not have to prove any interest, or to motivate the reasons for such request. In Slovakia the public concerned in SEA is the public interested or likely to be interested in preparing strategic documents prior to their approval, which may be a person over 18 years of age, a legal person, or a citizens' initiative (multiple natural persons signed under a common position).

2.2. AT WHAT STAGE DOES THE PUBLIC PARTICIPATION TAKE PLACE?

In order to provide timely and effective inputs the public should be involved from the earliest possible stage in the SEA procedures. However, the Member States have the discretion to decide on the detailed arrangements and as we could see from the following examples public is involved at different stages of the assessment procedures in the study countries, thus its impact on the decisions varies, too. The prevailing case is that public participation starts at the scoping stage of the SEA. Usually, the public is only notified after the screening decision has been made but could not participate at this stage.

In Austria, most of the public participation is realized at the very end of the procedure, rendering it almost useless. However, the case of the SEA of the Viennese Waste Management is an exception which shows the benefits of well-designed and carried public participation all the way through.

In Bulgaria, the general rule is that the public and any other third party could be involved from the very beginning of the procedure for SEA of PPs subject to mandatory SEA or after the screening decision for those PP which are assessed case-by-case. The initiator of the PP is organizing consultations with the public, competent authorities and third parties likely to be affected by the plan or the programme throughout the different stages of the preparation of the PP, respectively of the SEA (Art. 19, para. 1 of the SEA Ordinance). The consultations are conducted by a detailed scheme developed by the initiator of the PP including information how the planning process is combined with the main stages of SEA.

In Croatia, Art. 67 of EPA determines that the SEA shall be carried out during the drafting of the strategy, plan or program before the final proposal is send to the adoption procedure. When SEA is carried out for preparation of spatial planning documents including spatial plans at the state, regional and local level, the procedure for the implementation of strategic assessment and information and public participation in that process is conducted at an early stage of drafting this plan in accordance with the special law (Act on Spatial Planning) in the part in which it is not in collision with EPA.

In Estonia, There is no public participation in the screening stage. The public is only notified once the screening decision has been made. Public participation starts at the stage of scoping, after the authorities concerned have submitted their opinions and the programme (scoping document) has been corrected and modified correspondingly by the lead expert and the author²⁴ and submitted to the

23 Article 7: "Everyone has the right, in the conditions and to the extent provided for by law, to have access to information pertaining to the environment in the possession of public bodies and to participate in the public decision-taking process likely to affect the environment"

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/charter-for-the-environment.103658.html>

coordinator of the strategic plan. (EIA Law § 36¹ and § 37). Public participation is also ensured at the stage of SEA report, after the authorities concerned have submitted their opinions and the report has been corrected and modified correspondingly by the lead expert and the author and submitted to the coordinator, who has verified the compliance of the report with the requirements for in the Act and the adequacy and sufficiency of the report. (EIA Law § 40¹)

As the SEA Directive regulates, **in Hungary**, the authorities and the public shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or program and the accompanying environmental report before the adoption of the plan or program or its submission to the legislative procedure. The developer shall place a request for opinion as soon as the necessary information becomes available to it and shall fix a deadline for submitting opinions. The national legislation does not provide clearer requirements in this regard.

In France, prior to the beginning of the decision-making process, the public can participate in the elaboration of certain decisions likely to have a significant effect on the environment or land use planning through a public debate which can be organized by the National commission of public debate. But the latter is not bound to organise a public debate.

In Slovakia, the public concerned has the right to participate in the preparation and assessment of the impact of the strategy paper until the strategic document has been approved, including the right to submit a written opinion on the draft strategy paper, the scope of its assessment, and the assessment report. The public also has the right to participate in consultations and public discussions of the strategic document.

In Slovenia, public participation takes place after the Ministry (of Environment) confirms the appropriateness of the environmental report.

2.3. HOW IS THE PUBLIC NOTIFIED?

In order to ensure inclusive and effective public participation the public authorities in charge of running the SEA procedure should provide timely and full information about the on-going procedure as early as possible and through the appropriate means of communication. In the era of Internet and social media there are many innovative and cheap ways to reach out to a wider audience. The authorities in the study countries notify the public via traditional notices, newspaper announcements as well as via their websites and electronic media.

In Austria, depending on the law regulating the SEA procedure, the public is informed and invited via websites and sometimes additionally through publication in newspapers. Certain well-known stakeholders could be contacted directly with invitations to participate.

In Bulgaria, according to Art. 20, para 1 of the SEA Ordinance, the consultations on the SEA report include the publication of a notice for consultations, access to the SEA documentation and the draft PP, providing an expert or a person from the planning team with the necessary qualifications to give additional oral explanations on the spot.

In Croatia, the public authorities at an early stage of proceedings are obliged to inform the public or interested parties, through public notices, advertisements or other appropriate means, and electronic

The author of the strategic document could be the planning authority, but in some cases (i.e. for spatial plans) it is outsourced to consultants.

media, or in an appropriate manner on draft PPs for which a SEA is carried out and those for which it is not carried out. In addition to the information the notification shall also include information on the right to participate of the public or public concerned in the proceedings, as well as information on the bodies submitting opinions, suggestions and/or questions.

In Estonia, the coordinator for preparation of the strategic planning document notifies the public of a public consultation of the on-going SEA in the official publication *Ametlikud Teadaanded*, in a newspaper and on its website as well as by electronic means. They will also inform the consulted authorities, persons more directly impacted and the umbrella organisation of non-governmental environmental organisations by regular mail or by registered mail. (EIA Law § 37 and § 41)

In France, in many procedures, the public is informed online, and can have access to many documents, such as environmental impact assessments, to information on how the public inquiry is going on for the plans and programs likely to affect the environment (L.123-10). Concerning the latter, the public will be informed online, through official local billboards, and depending on the importance and the nature of the project, in local publications. For instance, article L.123-19 of the Environmental Code provides that public participation is organised online for the projects and programs that were not submitted to a public inquiry. Among other forms of notification, the public is informed by an online notice mentioning the contact details of the competent authorities, particularly those from which relevant information can be obtained, those to which comments or questions can be submitted; and the website address where the file may be consulted. In recent years, national authorities have made special efforts to offer a broader access to online documents.

In Hungary, if the act or decision requiring the preparation of the plan or program does not contain provisions for the details of disclosure, the general public shall be informed via at least a notification in a national daily paper or local paper. If the concerned public is limited to a single settlement, the usual channels of notification shall be satisfactory. If the developer has a homepage, the notification should also be published on this homepage. In addition to disclosure, other ways of informing the concerned public may be used. In case of the public concerned is not determined by the developer, and the general public is informed, all persons of the public are entitled to submit their opinions and comments.

In Slovakia, information about all stages of the SEA process is published on a special web portal of the Ministry of Environment of the SR (www.enviroportal.sk) (strategic document, scoping document, assessment report). In the case of a strategic document, which concerns a particular municipality (or more municipalities), the municipality has the obligation to inform the public about the SEA process in the usual way (in particular on its official billboard, but also through local radio or local press).

In Slovenia, the notification (with announcement of time and place) is published in the customary manner (for municipalities) and on the Internet. The customary manner is referring to municipalities that have different practices of informing their citizens (also through local newspapers, local radio or TV). In practice, the notification is published by ministries on their official websites and on the website of municipality or other authority that is preparing the plan.

2.4. MEANS OF CONSULTING THE PUBLIC

Since the detailed arrangements for informing and consulting the public are left at the discretion of the Member States, the ways and forms the opinions of the public are gathered or replied to vary from country to country but in general, the written opinions and public hearings are mostly used methods at different stages of the SEA process.

In Austria in most cases, the public is allowed to send in written opinions. The SEAs which are carried out well usually have workshops with oral hearings.

In Croatia the public participates in SEA procedure by providing written opinions, suggestions and objections and at least one public presentation must be provided, depending on the complexity of the procedure.

In Hungary pursuant to Art. 8(3)(bc) of the SEA Decree, the developer of the PP shall determine and publish how comments and opinions shall be submitted in the given procedure.

In Bulgaria the consultations with the public, interested authorities and third parties may be carried out by one or more of the following ways:

- sending messages to the central and local executive authorities and municipal councils;
- Preparation and distribution of a leaflet or brochure with brief information about the plan/program;
- Organizing expert or public groups on the scope of the assessment;
- Sending by mail or via the Internet comments, suggestions, opinions and recommendations to the team of the EA report and to the contracting authority;
- Public hearings.

In Estonia the consultation of a strategic environmental assessment programme and report could take place in written form as well as a public hearing thereafter. The written consultation must last for no less than 14 days for the programme and no less than 21 days for the report (EIA Law 37 and 41). Everyone has the right to access a strategic environmental assessment programme/report and other documents at the time of the written consultation of and the public hearing, to submit proposals, objections and questions regarding the programme/report and obtain responses thereto.

The author of the strategic planning document will, in cooperation with the leading expert, make the necessary corrections and modifications to the SEA programme/report on the basis of the proposals and objections submitted at the time of the written consultation and public hearing. Taking proposals and objections into account will be described and refusal to take proposals and objections into account will be justified in the modified programme/report or an annex thereto.

Within 30 days after the public hearing, the author of the strategic planning document or the coordinator of preparation of the strategic planning document will send an explanation or state the reasons as to why the proposals or objections were taken into account or disregarded and respond to the questions of the persons who submitted their proposal, objection or question in writing as well as persons whose proposal, objection or question submitted at the public hearing remained unanswered at the public hearing. (EIA Law 37 and 41)

In France, three main forms of public participation are in place: public debate, conciliation and prior concertation, even though many other forms are also possible.

Prior to the beginning of the decision-making process, the public can participate to the elaboration of certain decisions likely to have a significant effect on the environment or land use planning through a public debate which can be organized by the National commission of public debate. But the latter is not bound to organise a public debate.

The project manager or the public authority can ask the National commission to conduct a conciliation (L.121-2 and R.121-18) with all the relevant stakeholders. The commission can appoint a conciliator within its members.

Finally, a prior concertation (L.121-15 and following) procedure can be put in place for a period ranging from 15 days to 3 months maximum, with publication of a report, and sometimes a “guarantor” is appointed by the National commission if asked by the project manager²⁵/public authority.

Some plans and projects for which an environmental assessment is required can be subjects to a public inquiry. The aim of this procedure is to consult the public on the basis of a document containing, if applicable, the plan or program impact assessment and the opinion delivered by the environmental authority. The public must have been informed of the organization of a public inquiry at least fifteen days before its opening. The public is consulted for a minimal period of 30 days if there is an environmental assessment, or 15 days. The inquiry is headed by an independent and impartial “investigating commissioner” (commissaire enquêteur) – or by a commission of inquiry, if necessary, who is responsible for ensuring that the procedure is working well. At the end of every inquiry, a report is issued in which the investigating commissioner presents his opinion concerning the plan or program. The latter will enable the competent authority who is in charge of approving the project, plan or program to take an informed decision. Since the 2016 reform the procedure is now partly online, the public inquiry file is available online during the inquiry, but is still available in paper format in one or several locations specified at the beginning of the inquiry. A free access to the file is guaranteed on one or several computers in a public place (article L.123-13 Environmental code).

Furthermore, some projects, plans and programs- especially those that are not subject to an environmental assessment- require an online consultation of thirty days (article L.123-19). Unlike the public inquiry, there is no investigating commissioner or commission of inquiry in this procedure. The Environmental Code also provides online public consultation procedures regarding the non-individual decisions, or for the individual decisions that are not subject of a specific participation procedure (article L.123-19-1 to L.123-19-7). For these decisions, the participation process are entirely dematerialized, and can be shorter than thirty days.

The local consultation of voters (L.123-20 and following) is a new procedure that has been introduced in the Environmental Code in 2016. This new participation tool will enable the French government to inform and consult the public within a given territory on a project that the State is planning to authorize or carry out. An information file is made publicly available at least fifteen days before the consultation. Only the French constituents who are registered on the municipality voter’s lists where the consultation is organized, and the registered citizens of other member states will be able to participate.

This procedure has been used in June 2016 regarding the Notre-Dame des Landes Airport project, an airport development project in north-west France. On 26 June 2016 Loire Atlantique Department hold a referendum on the planned transfer of services from Nantes Atlantique Airport to a new airport in Notre-Dame-des-Landes. The Department announced that 57% of the general public voted yes on the referendum to relocate Nantes Atlantique Airport. In June 2017, France's Prime Minister Edouard

²⁵ The private company initiating public plans and programmes; or the public authority initiating or competent to authorize the project. As part of the prior concertation process they have the possibility to ask the National commission of public debate to appoint a “guarantor”.

Philippe also launched a "mediation" programme on the construction of Nantes Notre-Dame-des-Landes Airport²⁶.

In Slovakia the public gives written opinions on the different phases of the SEA process. The assessment report is the subject of a public (oral) hearing). Consultations on a specific SEA process are also being conducted are also oral. The final opinion of the SEA process must contain a justification as well as a section where it must be stated that the public opinion has been taken into account in the evaluation report on the strategic document as well as the results of the consultations. There is therefore no explicit obligation to evaluate each public opinion individually. It is sufficient to summarize how the SEA process was based on public opinion.

In Slovenia the SEA involves written consultations. In addition to that in the case of spatial plans also public discussion in a form of hearing is obligatory (for the draft of spatial plan and environment report). At the hearing the authority that prepared the PP and the experts that prepared environment report are present to explain the core of documents and to answer questions from the public.

There is no obligation to answer to written opinions on SEA in general, only obligation to answer to comments and opinions related to a draft of a spatial plan.

5.5. STATUTORY DEADLINES FOR CONSULTING THE PUBLIC

The deadlines for consulting the public in the SEA procedures set in the national legislations of the study countries are important to give the people and organizations a chance to provide substantive and timely inputs. In this timeframe the public should have the opportunity to read the relevant documents, ask questions and provide its opinion or comment. In some of the countries the statutory period is at least 30 days.

In Austria, usually the public participation runs for a period of six weeks.

In Bulgaria, the deadline for expressing opinions cannot be less than 30 days after the publication of the notice and providing access to documentation. The same period applies in **Hungary, Slovenia** and **Croatia**.

In Estonia, the written consultation for the (scoping) programme must last for no less than 14 days, and for the report no less than 21 days.

In France, a prior concertation procedure can be put in place for a period ranging from 15 days to 3 months maximum, with publication of a report. For PPs subject to a public inquiry. The public must have been informed of the organization of a public inquiry at least fifteen days before its opening and consulted for a minimal period of 30 days if there is an environmental assessment. During the local consultation of voters the information file is made publicly available at least fifteen days before the consultation.

²⁶ In January 2018, the French government has abandoned its plans for the new airport, and decided to modernize the existing airport instead.

In Slovakia, the notice on the SEA process is open to the public for submission of the opinion within 15 days of its publication. The scope of the assessment should be commented within 10 days from the date of publication of the opinion. The assessment report should be commented within 21 days from the date of publication of the opinion. The date of the public consultation must be published no later than 10 days before it is carried out.

2.5. IMPORTANT OBSTACLES TO PUBLIC PARTICIPATION

There could be many obstacles to the effective and meaningful public participation in SEA with real impact on the final decisions and plans and programmes implemented in practice, ranging from the normative framework and conditions to the real practice of involvement in the public in the SEA. The legal restrictions are not predominant, though. One basic precondition for the difficulties the public is facing in these procedures is the vague and abstract nature of the planning documents, which unlike the EIAs for concrete projects are dealing with strategic goals, measures and long-terms projections. The very general and abstract scope of the PP which does not resound with the concrete problems on the ground. This leads to the lack of understanding of the content and impacts and hence to lack of real interest in public participation, especially when results and opinions of the public are simply disregarded. Maybe the biggest problem of the SEA process is its formality and low degree of respect by stakeholders. The process is perceived as a necessary administrative step for the approval of a strategic document and the real impact of public participation on the resulting final document is questionable.

In Austria, the public participation in SEAs faces the problem of lack of real interest in participation, e.g. because often the comments and opinions submitted are simply not taken into account. The instrument of SEA is not very well known and/or seen as a nuisance. On the other hand, SEA are not used to lighten the load of EIAs.

In Bulgaria, obstacles to effective public participation could be the lack of capacity and knowledge in the public of the planning process and the SEA procedures. Sometimes the formality of the process could be also a problem as well as the administrative culture of the environmental authorities which are not very susceptible to openness and dialogue.

In Croatia, in majority of SEA procedures the information about the possibility of public participation is available only at website of the public body, which conducts the procedure (Ministry, County, City, and Municipality) which is surely not sufficient. Also when public (including NGOs) participate in SEA procedure majority of comments are not accepted because of the lack of will of public authorities to really include public opinion into decision making process, especially in special planning.

Although, **in Estonia**, there are no legislative barriers to public participation, in practice, in some cases (e.g. with the Rail Baltic high-speed rail link spatial plans) the written consultation of voluminous documents are held for disproportionately short time, keeping the legal minimum for consultations, which sometimes also coincides with public holiday periods. In general, the authorities tend to treat the minimal time-frames for publication as “default”, only very rarely providing longer consultation periods.

In Slovakia, the main problems are linked to the formality of the process and the impossibility of exploring the strategic document itself.

A report, published in 2015, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in **France**²⁷ states that many public inquiries were carried out too late in the procedure, at a stage when the decision already seemed to have been taken, according to many observers. The Independent Expert also heard that the decision-making process concerning the projects was too long and complex. This had led the Government to the creation of a working group to study ways to “modernise” the environmental decision-making, and the adoption of the 2016 reforms.

At first sight, it seems that the prior concertation procedure which can be initiated by citizens, environmental protection associations or local authorities is quite easy to open concerning “projects mobilizing important public funds”. But if you look more into details it is not the case. In fact, prior concertation procedure is not possible if the amount of public subsidies granted to the project is superior to five billion euros (L.121-17-1). Moreover, this initiative right is opened to 20% of the registered population coming from the municipalities that are concerned by the project, or to 10% of the population living in the relevant department or region (L.121-19). These conditions are quite strict, and could constitute important barriers to prior public participation in the SEA process.

In Slovenia, could be observed also some shortcomings, when e.g. the Ministry is rather “liberal” by deciding if SEA should be carried out for certain plan. For example, according to the Forests Act the forest management plans should be prepared also with spatial planning part – the Ministry always decides that SEA is not needed although these plans are more or less in practice aimed at exploitation; Recently in 2016, it was decided that there is no need for SEA for national transport development program. Often the government doesn’t regard the SEA “seriously” i.e. at the moment the government confirmed and send to Parliament the National energy concept although the public discussion one environmental report (SEA) was still open. The public participation is more or less formal and it doesn’t reflect to a fuller extent the comments and opinions of the public. A good case of exception is the SEA for spatial planning which provides for more interactive public participation regarding spatial plans (consultations, workshops or other ways of inclusion) according to new Spatial Management Act will enter into force on 1. June 2018. The consultation on spatial plans includes also discussion on environmental report.

3. SEA EXPERTS

3.1. STATUTORY REQUIREMENTS REGARDING QUALIFICATION AND OBJECTIVITY OF THE EXPERTS

The quality and results of the SEA report and of the whole procedure depend to a large extent on the qualification and objective assessment of the experts who are commissioned to prepare the SEA report in the field of their expertise. This is important because in most of the countries covered by the study the SEA experts are commissioned by the initiator of the PP and thus accountable to it in first place. The statutory requirements for their expertise and independence could be very detailed ensuing a higher level of professionalism, or are very general or even missing at all like in the case of Slovenia. In some of the cases there are special requirements for the SEA team leader. Below we will present the main statutory requirements for the SEA experts across the EU countries.

In Austria, the experts have to be recognised by public authorities.

²⁷ A/HRC/28/61/AA.1, John H.Knox, “Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment- Mission to France”, United Nations Human Rights Council, Twenty-eight session, Agenda item 3, March 25, 2015, p.22.

In Bulgaria, the SEA assessments are commissioned by the initiator of the PP to a team of experts with a team leader. The team leader and the members of the team may be Bulgarian and foreign natural persons holding a Master's educational and qualification degree. The members of the team and the team leader must sign a declaration that they are not personally interested in the implementation of the respective PP, they are familiar with the requirements of the effective Bulgarian and European statutory framework regulating the environment and that they will refer to and comply with these requirements and with applicable methodological documents in the course of their work on the assessments. The members of the SEA expert team and their leader shall be guided in their work by the principles of human health hazard prevention and ensuring sustainable development in accordance with the effective environmental quality values in the country.

In Croatia, the work of SEA experts is regulated by the Regulation on conditions for obtaining permit for legal entities for conducting expertise in the field of environmental protection (Official Gazette 57/10). There is a set of rules about the conditions the legal person must fulfil to obtain the permit for expert tasks in environmental field (SEA, EIA, AA, etc. listed) but there is also set of rules for lead expert in specific environmental tasks and for experts who are in the expert group preparing the study, opinions, etc.

The lead expert of the SEA team who has a task to prepare a SEA study must:

- be expert in the field of appropriate natural, technical or biotechnical sciences or profession,
- have five years of work experience in professional environmental affairs,
- have passed a professional environmental exam in accordance with the program for the lead experts.

In addition to the fulfilment of the conditions referred above, a legal person who does not have expert in the field of architecture in its team is obliged to provide services of an external expert authorized in accordance with the law governing the professional activities of spatial planning.

The **Estonian** rules represent a good example of detailed professional requirements to an SEA expert:

- 1) a Master's degree or equivalent qualifications;
- 2) at least five years of work experience in a field related to environmental protection or similar field;
- 3) has undergone training in strategic environmental assessment, to the extent of at least 60 hours, which covers the assessment of, among other things, at least the aspects listed in the Act, and has passed a corresponding examination;
- 4) has participated in the work of an expert group of strategic environmental assessment as a substantive expert at least four times in the last five years;
- 5) has undergone management training to the extent of at least 60 hours, and has the experience of managing at least two projects;
- 6) has submitted to the coordinator of preparation of the strategic planning document a signed confirmation that the leading expert complies with the requirements established in clauses 1) to 5) of this subsection, knows the principles of strategic environmental assessment, procedure and assessment-related legislation, and is impartial and objective upon strategic environmental assessment. (EIA Law § 34(4))

Additionally, the environmental impacts arising from the implementation of a detailed spatial plan may be assessed by or the assessment may be led by a leading expert who holds a licence for environmental impact assessment, or a legal person through an employee holding a relevant licence. (EIA Law § 34(5))

If the qualifications of the leading expert are not sufficient for the strategic assessment of a certain type of environmental impact, the leading expert must involve specialists of the respective field in the strategic environmental assessment. (EIA Law § 34(6))

In France, during the procedure of public inquiry, the investigating commissioner can have recourse to an expert to assist him. This expert will be appointed by the president of the Administrative Court (article L.123-13 Environmental Code). The Environmental Code itself does not specify any particular condition regarding the independence of this expert. Nevertheless, in the majority of the public inquiries, the investigation commissioner is appointed by the President of the Administrative Court (“tribunal administratif”), which guarantees the independence²⁸ of the investigation commissioner from the project manager, the administration and the public. Since 2015, the National Company of Investigating Commissioners members must adhere to a *Code of Ethics and Professional Conduct* which states that the investigating commissioner should stay out of any conflict of interest (article 9 and 10); ask or accept any undue favor or advantage from an entity or an individual that would have interests in the PP (article 11); and treats any attempts at putting pressure or interfering in its mission as unacceptable (article 13).

Moreover, the conciliator can ask the assistance of external experts, who will be paid by the National Commission of public debate (article R.121-18 Environmental Code). However, no specific requirement is made regarding the qualification or the objectivity of the expert.

In Hungary, the provisions of the SEA Decree require that the environmental report shall be prepared by experts working in the fields of environmental protection, nature preservation and/or landscape maintenance. According to the EPA, where an expert is required by law, or where certain legal consequences are prescribed relating to the employment of such an expert, the expert employed must be authorised by the competent authority. **In Slovakia**, if a person wants to acquire professional competence in the SEA process, (in addition to formal conditions), must receive training, take the exam and be included in the list of professional qualified persons. The law also provides for the fact that these persons must also have some practice in the field (its length is not explicitly stated).

3.2. ISSUES REGARDING QUALIFICATION AND OBJECTIVITY OF THE EXPERTS IN PRACTICE.

The SEA practice shows often that the qualification and the objectivity of the experts could be questioned, at least because of the fact they are commissioned by the planning authority for the SEA report. Such alleged dependence that could undermine the quality of the SEA report and turn the whole SEA into a formal exercise to validate the PP emerges as one of the biggest issues reported by the study countries.

In Austria, the market for experts is very small and heavily, if not exclusively, populated by project planners. It is very hard to find experts who are willing to provide expert inputs on behalf of NGOs.

In Bulgaria, the quality of the SEA depends on the team composition and their competence and sometimes SEAs are conducted by only 2 or 3 experts instead of more experts specialized in all

28 For example, if it appears that the person who applies to become the investigation commissioner is a former employee of the company with interest in the procedure, the president of the Administrative court may not decide to appoint that person. In fact, his or/her impartiality may be put under question.

environmental components and this could lead to superficial assessments. Some SEA experts claim that many SEA are proceeded quickly and without objections because they are led by former Regional Inspectorates for Environment and Water directors and have some informal backing.

In Croatia, not only in SEA procedure, but in all environmental procedures the biggest issue is the objectivity and independence of the expert participating in the preparation of such documents. Usually, these experts are preparing one SEA for example for spatial plan of one county and then in the other SEA procedure they are members of the committee who approves the study.

In Estonia, there are no significant issues regarding expert's qualifications. Objectivity of experts is hard to assess, but it has been called into question in cases of SEAs that are related to a specific project (e.g. detailed spatial plans) and where the developer of that project is financing the expert assessments.

In Hungary, the conditions of qualification are laid down by a separate piece of legislation governing the activities of experts in the fields of environmental protection, nature preservation and/or landscape maintenance. However, objectivity and independence of the expert participating in the preparation of the SEA is not clearly ensured by the relevant legislation.

In Slovakia, an explicit legal obligation that some parts of the SEA documentation by a professionally qualified person is only given for the, so called "expert opinion" which is an independent evaluation of the SEA process that is developed after the assessment report. The public does not comment on this opinion and serves as one of the bases for processing the final SEA opinion. The law does not require that the other SEA documentation (in particular the assessment report, which is the most important and most comprehensive part of the SEA process) be drawn up by a professionally qualified person. In addition, all costs (including expert opinion) associated with the environmental assessment of the strategy document are borne by the contracting authority; and because of these financial links, it is hard to prove a truly independent SEA implementation by SEA experts (including professionally qualified persons).

In Slovenia, some of experts for EIA are specialised also for SEA environmental reports and since the object of assessment is quite different the quality of the SEA could be questioned.

4. FOLLOW-UP AND MONITORING

4.1. STATUTORY OBLIGATIONS TO TAKE THE RESULTS OF THE SEA INTO ACCOUNT IN THE DECISION-MAKING

According to the Recital 17 of the Preamble to the SEA Directive and Art.8 the environmental report and the opinions expressed by the relevant authorities and the public should be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure. If the SEA is to influence the planning processes and decision-making leading to integration of the environmental considerations into PP, its results should be reflected into the final planning documents. The practice of implementation across EU as represented by the current study shows that on paper there is such obligation but it is not always clear or strict enough to be enforced.

In Austria, the SEA is usually part of a legally defined process and its outcome has a legal form which has to be followed in upcoming procedures. Thus it is not about the SEA itself but rather about the outcome of the whole process. A good example in this regard is the way the Vienna Waste Management Plan was done - with involvement of a lot of stakeholders and an open process, its outcome was agreed upon by all of them and thus is followed by them. A rather bad example is the adoption of the Water Management Plan of Tyrol: many points of criticism raised by NGOs and the public were simply ignored, and there was no impact of the SEA whatsoever on the final document. The plan however is now used in following proceedings.

In Bulgaria, the results of the consultations shall be reflected into the SEA report and shall be taken into account in the opinion of the Minister of Environment and Water or the competent RIEW Director (Art. 81, para 2 of the EPA). In the SEA decision taken by the commission or expert council the compliance with the public consultations requirements is considered. The SEA decision is based also on the documentation with the results of the public consultations with the public, interested authorities and third parties, incl. a note with the motives for acceptance or non-acceptance of the collected opinions and suggestions and with motives for acceptance or rejection of assignment for supplementing or extension of the consultations. The possibility for challenging of the SEA decision serves as a safeguard for the adherence to these rules.

In Croatia, there is an obligation to take into account the results of the SEA but it is not really clear or strict. The Regulation on SEA (Art 10) determines that the competent authority shall consider the opinions, comments and suggestions made by the public in the SEA procedure. In practice, this is done in a way that in the final decision sometimes there is only a list of members of the public, NGOs, experts, etc. who participated in the process and following statement "all opinions, comments and suggestion made by public were taken into consideration". NGOs have been trying for years to persuade environmental authorities that the SEA procedure should follow the procedure of spatial planning in which all participants at the end of public participation process can see all the comments and short explanations why some comments were not accepted.

Regulation on SEA further regulates that after the public participation process is finished the competent authority shall deliver all opinions, remarks and proposals from the public to the experts. Then the experts within 15 days, are obliged to submit observations on the objections and proposals from the public and participate in the preparation of the public hearing report under a special regulation that regulates spatial planning. The Competent Authority after that is responsible to prepare the final draft strategy, plan and program and submit it to the Competent Body for adoption, except in the process of SEA of the Spatial Plan (it is responsibility of the Ministry of Spatial Planning and Construction, or county/city).

In Estonia, the law states that upon preparation of a strategic planning document, the following must be taken account of:

the results of strategic environmental assessment;

the opinions submitted by authorities and persons to the extent possible;

the results of transboundary consultations. (EIA Law § 43)

However, “taking into account” does not mean that the SEA results would be binding and in practice other (social, economic) interests may override environmental concerns. The authority in charge of adopting the strategic PP could decide which concerns are more important. The final decision as such can be challenged, but judicial review of value judgements (such as which interest should prevail) is limited to those cases where the weighing of interests was manifestly irrational or some important aspects were not duly taken into account.

In France, there are statutory obligations to take the results of the SEA into account in the decision-making. According to article 122-1-1 of Environmental Code, before taking its decision concerning the project, the competent authority must take into account the impact assessment, the opinion of several types of authorities, the results of the public consultations, and the result of the transboundary consultation when applicable. In any case, the project cannot be adopted before the expiry of the consultation period, and the drafting of a synthesis allowing the public to make sure that its observations were taken into consideration.

The participation processes seem to be insufficient, because civil society in France still has to organise strong opposition protests to make their voices heard (i.e. Notre-Dame des Landes airport project or Sivens dam). In a research conducted in 2015 the National council of ecological transition (« Conseil national de la transition écologique ») noticed that this strong desire of participation is not being concretized through a mobilization of the procedures that are made available to the public. This behavior may be explained by the fact that there is a predominant feeling of inevitability coming from the fact that public consultation regarding plans, programs and projects comes at a late stage when the project cannot be challenged anymore, and when only marginal changes can be made (OECD, Environmental Performance Reviews, France, 2016). Another interesting observation can be made regarding a recent online public consultation that has been carried out on June 12, 2017 and July 3, 2017 concerning the regulation of the wolves population. In the synthesis written after the consultation, it is mentioned that several contributors are questioning the principle of public participation because they noticed that even when the main outcome of the consultation is an opposition against the PP, they are systematically adopted.

In Hungary, the drafter of the PP shall take the environmental report and the results of the consultations into account in drawing up of the PP, and the entity adopting the plan or the program is responsible to take these information into consideration when adopting that plan or program. This obligation of the drafter and/or the entity is not specified in detail, it is not unusual, that the plan of program only declares that this requirement has been satisfied, the results of the SEA and consultations were taken into consideration. For example, the environmental report to the National Energy Strategy (NES) also refers that the comments were received by the experts participating in the assessment and they took them into account, but neither the content of the comments nor the way of taking those into account were detailed. Furthermore, the SEA working group of the NES recommended the elaboration of research-analysis studies for certain key issues, and commencement of science-based methodology developments, however, it cannot be stated whether this recommendation was considered before the adoption of the strategy.

In Slovakia, although the SEA process is mandatory before the strategic documents are approved (without passing through, the strategic document cannot be approved), the final opinion that is the outcome from SEA process, is not binding for the approval. The law only stipulates that the results of

the SEA process must be taken into account when approving the strategic document. Only in the case of SEA, which is also an appropriate assessment within the meaning of Art. 6/3 of the Habitats Directive, it is valid as a binding document - a strategic document cannot be approved in this case if the negative impact of the strategic document on Natura 2000 is demonstrated.

In Slovenia, the law states that the authority which prepares a plan must take opinions and comments from the public into account as far as possible.

4.2. MONITORING/EX-POST EVALUATION OF THE SEAS

Art. 10 of the SEA Directive provides for obligations of the Member States to monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action. In order to comply with this obligation the existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring. The monitoring arrangements play an important role in ensuring that the findings, recommendations, measures and other conditions designed during the SEA are followed. In the study countries the monitoring measures and indicators are part of the PP and the monitoring results are made public.

In Austria, e.g. in the area of traffic if there has been an SEA, the Minister for Transport, Innovation and Technology has the obligation to monitor the following process and impacts on the environment. The outcome of this monitoring has to be published online. However, on the whole there is little activity in the monitoring area.

In Bulgaria, as part of the SEA report and the SEA screening information, the initiator of PP is obliged to identify environmental monitoring measures and indicators. At the stage of consultation on the SEA report or the stage of submitting to the screening information, the competent environmental authority propose to the initiator other monitoring measures to be included if these proposed by the developer are not adequate or insufficient. After agreement between the competent environmental authority and the initiator, these monitoring measures become part of the overall monitoring arrangements for the plan/programme implementation. The initiator is obliged to submit periodical monitoring reports to the competent environmental authority. After adoption these reports are made public available by the developer. **In Croatia**, the Regulation on SEA stipulates that after the public participation process has finished the SEA expert, together with its observation on the objections and proposals from the public, will also propose the final environmental protection measures and the environmental monitoring program related to the strategy, plan or program. The Regulation determines that the Environmental Monitoring Program, including monitoring the state of conservation objectives and integrity of the ecological network area (when AA is conducted within SEA procedure) is an integral part of the strategy, plan or program.

The Environmental Monitoring Program shall in particular include:

- indicators for monitoring of environment and ecological network,
- manner of the implementation of environmental protection measures and measures to mitigate negative impacts on the ecological network,
- procedure in case of unexpected adverse effects,
- other data depending on the scope and features of the strategy, plan, or program,
- and resources required for the implementation of environmental and ecological network monitoring.

In Estonia, after the public consultation of the SEA report and verifying the compliance of its final version the coordinator of preparation of the strategic planning document proposes the monitoring measures in its decision to declare the SEA report compliant with the requirements. The purpose of the monitoring measures is to identify at an early stage whether significant environmental impact arises from the implementation of the PP and to take measures to prevent and mitigate adverse environmental impacts.

The authority adopting the strategic planning document must adopt also monitoring measures or submit upon the adoption of the strategic planning document reasons why the monitoring measures developed in the course of strategic environmental assessment were not adopted. The adopted monitoring measures are mandatory to the person implementing the strategic planning document. (EIA Law § 42)

In France, the Avoid-Mitigate-Compensate (AMC) sequence applies to PPs assessed by administrative authorities. The project managers have to define appropriated measures to avoid, mitigate or, when necessary and possible, compensate their negative impacts on the environment. In order to monitor and control these measures, the administrative authorization must determine the objectives to be achieved and the means to be employed to reach these results. Furthermore, the administrative authority must carry out regular checks. If the results are insufficient, government services can ask the project manager an adaptation of the monitoring mechanism and a complementary expertise.

Several provisions in the Environmental Code organise the monitoring of the SEAs projects. Under the so called Classified Installations for the Protection of the Environment regime (Installations Classées pour la Protection de l'Environnement), which concerns facilities representing important threats, dangers for the area residents, health, security, public sanitation, agriculture, protection of nature and the environment, and for the conservation of sites and monuments (L.511-1 EC), public officials can carry out announced or unannounced inspections. The inspectors check if these facilities are still respecting all the regulatory provisions.

In Hungary, besides the general requirement that the PP should include measures on the monitoring of the significant environmental effects arising from the implementation of the PP, the monitoring measures specifically include an identification at an early stage of **unforeseen adverse effects** during the preparation of the PP, and the identification of the actions to be taken in case adverse impacts occur. In case of the SEA reports prepared to the operational programmes of the New Hungary Development Plan, the environmental reports identified the relevant impacts and made recommendations on establishing indicators and monitoring measures in relation thereto.

In Slovakia, the Procurer and the affected government body are obliged to ensure the monitoring and evaluation of the impacts of the approved strategic document on the environment or to use existing monitoring for this purpose. This monitoring should consist in systematically monitoring and evaluating its impacts, evaluating its effectiveness, and providing a professional comparison of the predicted impacts given in the assessment report to the actual status.

If the real environmental impacts are found to be worse than stated in the assessment report, the contracting authority is required to provide mitigation measures while ensuring that the strategic document is amended or revised. The contracting authority and the departmental authority are obliged to notify the competent authority without delay of the information on the results of monitoring and evaluation of the impact of the strategic document on the environment and the latter is required to disclose them. However, according to our experience, these obligations are not enforced in the practice at all.

4.3. MEASURES TO DEAL WITH UNINTENDED IMPACTS

Not in all countries covered by this study there are specific provisions on measures to be taken in case of unintended impacts of the PP or if impacts exceed the level assessed in the SEA. Where they are in place, they could lead to remedial actions, to revision of the PP or to suspension of the operation of the installations for a certain period. To detect such impacts existing monitoring systems could be used and the environmental authority in charge for the monitoring should inform the authority responsible for the PP.

For example, **in Croatia** the Regulation on SEA determines that the Environmental Monitoring Program must also include procedure in case of unexpected adverse effects it is not clear what is meant by that because no detailed provisions are in place.

In Bulgaria, the SEA should assess all secondary, cumulative, simultaneous, short, medium and long-term, permanent and temporary, positive and negative effects of the PP but there is no specific provision on unintended impacts which could occur at a later stage.

In France, in the event of non-compliance with Avoid-Mitigate-Compensate (AMC) measures, the administrative authority can use regulatory and judiciary procedures to ensure their respect. On the other hand, the operation of classified installations presenting new dangers or problems which didn't exist when they received their authorization can be suspended during a certain period in order to put in place remedial actions (L.514-7). The sanction can be even stronger and lead to the closing of the plant.

In Hungary, the monitoring measures specifically include an identification at an early stage of unforeseen adverse effects during the preparation of the plan or program, and the identification of the actions to be taken in case adverse impacts occur. The existing detection, measuring and monitoring systems may be used, or the revision of the plan or program may be applied.

In Slovenia, there are two sources of information from the monitoring:

1. the Ministry permanently monitors the state of environment and
2. the environmental report can contain another ways of monitoring for certain plan.

If Ministry finds out that impact of implementing the plan on environment has unforeseen negative consequences, it shall inform the competent authority for plan and act in accordance with its competencies to reduce the consequences (Article 48 of Environmental Protection Act).

5. ACCESS TO JUSTICE

With the public participation during the SEA procedure often formal and the opinion of the public not taken into account the last resort for action to change the outcome of the SEA and improve the quality of the PP is the court. Could be a SEA decision challenged or not – this could determine how effective is access to justice in SEA in a given country. If there are limitations to such access how meaningful is public participation and the SEA if the public could not protect its right to have a real say in the SEA. The presented countries in this study draw a very controversial picture of the access to justice and the existing limitations to exercise such a right. In some countries like Austria, Croatia, Slovenia and Hungary, the legal system and case law do not allow for the right to challenge the SEA decision or the PP into which it is integrated. In Slovakia the only strategic documents that could be challenged are the land use plans. In the other counties among the limitations to access to justice are the costs, standing, the burden of proof as well as the fast-track court reviews.

In Austria, so far, there was no option to challenge the PP directly. With the recent decisions on C-664/15 of the ECJ and the ruling by the Austrian Highest Constitutional Court, it might be possible, though not directly enshrined in Austrian written law yet.

In Croatia, as SEA Decision is not adopted by administrative decisions, which could be challenged at Administrative Court.

In Bulgaria, there is maybe the widest application of the access to justice in SEA. The interested persons could appeal the opinion (even the negative screening decision) or decision on the SEA full procedure pursuant to Administrative Procedure Code within 14 days after the notification. However, most recently this right was partly narrowed down with the latest amendments in the EPA introducing one-instance court review for strategic developments, incl. for SEA of PP, which is a substantial limitation to access to justice. The decisions of the first-instance court are final for realizations of PPs of national importance declared with an act of the Council of Ministers and deemed of strategic importance. The court is hearing the appeals on such cases within 6 months after being filed and pronounces its decision within a month after the end of the hearings.

In Estonia, anyone, whose rights are infringed by a strategic plan or program which has the features of an administrative act (e.g. spatial plans) can challenge them, and along with them the SEA Decisions. Most national strategies, however, cannot be challenged in administrative courts as they do not directly create, modify or terminate individuals' rights and obligations. For environmental NGOs, standing to challenge environmental administrative acts is presumed. SEA Decisions are not considered administrative acts and therefore can only be challenged with the final act adopting the plan or program. As regards spatial plans, the lower-tier plans (comprehensive plans (municipal-level) and detailed (single plot-level) plans) can be challenged by anyone, i.e. the *actio popularis* is provided. Key limitations to effective access to justice are **costs** (application of loser-pays-principle) and burden of proof. The person who challenges an administrative act is supposed to provide evidence for its claims, unless this is impossible – meaning that an alternative environmental expert assessment must be provided to successfully challenge an SEA. This expert assessment could not necessarily be a full SEA report, but at least an alternative expert opinion which demonstrates that the potential impacts are different from those claimed in the PP.

In France, the public can challenge decisions or PPs before the administrative judge (annulment action) when it is vitiated by defect in form. The first key limitation to access to justice for individuals is the necessity to have an interest in taking a legal action in order to be able to file a lawsuit. The interest raised by the parties must be affected certainly and directly enough. However, environmental approved associations have a broader access to justice benefit from a "presumption of interest" (L.142-1) to act against any administrative decision which is directly linked to its objects and mandate activities, and causing harmful effects on the area where its accreditation is valid. Article L.142-3 EC gives the opportunity to private individuals to mandate an approved association in order to sue for damages arising from the PP or the projects adopted based on them in their name before any jurisdiction.

Since 2003, it is free of charges to lodge a complaint before the administrative courts, but plaintiffs often have to pay legal costs, as for example lawyers' fees, an expertise. The general rule is that the losing party have to pay the costs arising directly from the proceedings (including investigation fees or expert fees). But the judge may also require the losing party to pay the winner's irrevocable fees incurred in the proceedings which include the attorney's fees, the expenses incurred in the creation of the case file, travel and accomodation costs. In any case the judge takes into consideration equity and the economic situation of the losing party. If their financial resources are below certain thresholds, they are eligible to receive legal aid. But legal fees are still deterrent factors impeding access to justice.

In Hungary, the Article 4(1) of Act I of 2017 on Administrative Court Procedures (that entered into force on first of January, 2018) defines that the administrative courts review any disagreement between concerned legal subjects in connection with administrative acts, including failure to take measures, too. Further interpretation can be found in Article 4(3)c) where the administrative act is defined as any acts taken by administrative bodies that falls outside the scope of the Act on Legislation. Considering that the Act CXXX of 2010 on legislation deals with promulgating laws of the Parliament and decrees of the Government and of the ministers in strict sense, there is no doubt that planning acts fall under the scope of Act I of 2017.

In Slovakia, there are cases in which an action against the approved strategic documents was brought in the court, the reason being in particular the breach of obligations arising from the SEA process (the SEA did not take place at all in first case, in the second case the wording of the planning document was essentially other than that the one subject to the SEA). Cases are still pending. If the court were to admit a judicial review of strategic documents, it would only be on the basis of a considerably wider interpretation of the relevant legal provisions.

In principal, the outcome of the SEA process, due to its non-binding nature, cannot be challenged in court. The only strategic documents against which the public can bring an action are land use plans. It is explicitly stipulated that the public, in cases where the approval of a land use plan leads to a violation of the public interest on the protection of the environment, can bring an action before the court.

In Slovakia, according to Article 46 of Environmental Protection Act it is not possible to challenge the SEA decision. The comment to this article describes this procedure as “semi-administrative” or modified administrative decision regarding legal remedies and it seems like only the body that prepares the PP can appeal against the decision. But last year an NGO (Birdwatch Slovenia) with status in public interest on nature conservation succeeded to become a party of the SEA procedure (so decided Administrative court) and this might open the door to wider access to justice.

If the plan is prepared on the level of municipality, the appeal against the decision is not permitted, but it is possible to start an administrative dispute (at the administrative court).