

# IS THE SEA “FIT FOR PURPOSE”?



**Recommendations for the improvement of the  
Strategic Environmental Assessment (SEA)**

**Comparative Study - Update**

**Justice and Environment 2023**

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## Introduction

Strategic Environmental Assessments are time to time in the focus of Justice and Environment. It was the case in 2020/2021 when the bulk of the below study was prepared. We find its findings still relevant today, however, we also wanted to update it with recent information acquired in 2023. Parts that are highlighted with a light grey background were added to the original study in 2023. Information used for the update was received from one of our member organizations, UfU (Germany) that worked on a project in 2023 called 'Aarhus Strong'. This project generated input from a number of countries regarding modalities of electronic public participation. We thank UfU for its generosity when sharing the information with us which made it possible to extend our scope of research to Estonia, Germany, Slovenia and Spain in this special regard.

The strategic environmental assessment ("SEA"), introduced by the *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* ("SEA Directive") is a systematic approach for the evaluation of environmental impacts of a proposed plan or programme. The aim is to examine cumulative effects and interactions at an early stage of decision-making. In December 2019, the European Commission adopted a working paper on the question of whether or not the SEA directive is "fit for purpose".<sup>1</sup> This was ascertained by handing out questionnaires to NGOs, national legal experts and decision-makers in the field, asking them to identify best practice examples, the state of transposition and the qualification of the people involved in the SEA process. While the consensus is that the directive brings benefits to the EU, is coherent with other legislation and does not cause disproportionate costs, the evaluation has also underlined that its efficiency and effectiveness differs a lot depending on the national transposition. This paper aims to sum up our results and issue recommendations for a better implementation of the EU legislation. The following findings and conclusions are based on the research of Justice and Environment in Austria, Bulgaria, Hungary, Croatia and Czechia. A detailed summary of all national answers is enclosed as Annex to this study.

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<sup>1</sup> SWD (2019) 414 final, online available at:  
[https://ec.europa.eu/environment/eia/pdf/Doc%201%20SWD\\_2019\\_SEA%20REFIT.pdf](https://ec.europa.eu/environment/eia/pdf/Doc%201%20SWD_2019_SEA%20REFIT.pdf)



## Overall Observations

The SEA offers the opportunity to integrate environmental impacts and the loss of biodiversity into the process of drawing up official plans and programmes (e.g. plans for waste management, land use zoning etc.) at an early decision-making stage. Ideally, it should take place with the strategic planning considerations, before the specific planning of specific projects commences, in order to identify, evaluate and avoid possible negative impacts. In fact, the SEA can help to recognize certain problems that may arise with a plan or programme and address them in time. Furthermore, the early and effective involvement of the public could help increase their acceptance, reduce the costs for changes in the plan or programme as well as compensatory measures. As part of an SEA, different alternatives to achieve the aim of the plan or programme can be considered and evaluated. In sum, the goal of an SEA is to attach the same level of importance to the environment as to socio-economic aspects.

The consensus of the surveys carried out in Austria, Hungary, Bulgaria, Croatia and Czechia shows that the SEA procedure has great potential, but that results and public participation vary greatly depending on how the SEA is done. In other words: if used in an open and accessible way, the instrument of an SEA can be of great benefit. Otherwise, it can degenerate to become purely a matter of duty without any real impact on subsequent procedures or plans.

The outcomes of our research show the following:

- Some **plans have very general strategic content** and offer little details for future projects. It is difficult to estimate their impact on the environment, so valuations tend to be qualitative rather than quantitative. There is a lack of common assessment methodologies.<sup>2</sup>
- Plans or programmes that do not legally require an SEA are generally not given one. The survey shows that SEAs are usually only done in areas where the law specifically requires them.
- In Austria and Bulgaria there is **no official pool of experts**, which is different in Hungary, Croatia and Czechia. In general, experts are required to have sufficient work experience and/or an academic degree in the respective field. It tends to be non-transparent which experts are actually involved in the assessment procedure. Furthermore, concerns have been expressed by the respondents regarding the experts' independence.
- There are **no centralised websites on a national level** containing all the plans/programmes that could or should be the subject of an SEA. Websites only exist for SEA procedures that were carried out.
- Overall, **structured and transparent overviews of SEA decisions are not available** in most countries. SEA decisions are published collectively on one website in Bulgaria<sup>3</sup>. In Austria, a list of open and closed SEA procedures is annually published online on the website of the Federal Ministry for Agriculture, Regions and Tourism.<sup>4</sup> The only country where all the statistics can be accessed in a structured and transparent way is Czechia. In Hungary and Croatia there are no official databases on SEA proceedings, thus the number thereof cannot be stated or calculated accurately.
- In most countries the **outcomes of SEA procedures are not binding** for the ensuing procedures.
- There is also a question of challenging any SEA decision. In most countries there are **no legal remedies for NGOs**, but the SEA decision can be challenged by NGOs in Bulgaria under certain circumstances - mostly based on administrative procedure or dispute acts. In Croatia if the SEA includes an AA, then there is a possibility to challenge it

<sup>2</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

<sup>3</sup> Online available at: <http://registers.moew.government.bg/eo/>

<sup>4</sup> Online available at: [https://www.bmlrt.gv.at/umwelt/betriebl\\_umweltschutz\\_uvp/sup/supoesterreich.html](https://www.bmlrt.gv.at/umwelt/betriebl_umweltschutz_uvp/sup/supoesterreich.html)

but there is still no practice. But not all SEA decisions are challengeable, for example in Czechia where the final decision is made in the form of a “binding opinion”.

- According to Article 12(2) of the SEA Directive, member states are obliged to ensure that environmental reports are of sufficient quality. Overall, the country evaluation shows that most **SEA regulations do not provide for specific systems of ensuring quality**. This, however, is broadly not regarded as a problem, due to the fact that authorities and project applicants have long-term experience with SEA and professional requirements are set by law.<sup>5</sup>
  - Most countries report about the necessary requirements for the experts preparing the environmental reports, opinions expressed by the authorities from different areas, public participation and verification of the competent authority as main tools for ensuring the quality of the reports.
  - Furthermore, the experts who are working on the reports are generally obliged to have certain qualifications such as a relevant academic degree and/or work experience.
  - In Austria, a specific website provides practical information and good practice examples.<sup>6</sup> In Hungary, the SEA report is an independent part or working document of the plan or programme documentation. In Bulgaria, consultations with the public, the authorities concerned and third parties likely to be affected on the SEA report start after a ruling of the competent SEA authority giving a positive assessment of the quality of the report for assessing the degree of impacts of the plan/programme.<sup>7</sup>

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<sup>5</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

<sup>6</sup> Online available at: <https://www.strategischeumweltpruefung.at/>

<sup>7</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

## Findings concerning transposition

In the EU, the SEA Directive created a general framework for examining environmental impacts at the level of plans and programmes in a strategically foresighted manner. It was implemented differently within the EU member states depending on the respective national legal frameworks. While some countries have one main act regulating the SEA procedure (e.g. Environmental Protection Act in Bulgaria - in short: “EPA”; Environmental Protection Act in Croatia - in short “EPA” and Act No. 100/2001 Coll. on Environmental Impact Assessment in Czechia - in short: “EIA Act”), the specific distribution of competences in Austria for example means that the SEA Directive is implemented not in a single law, but separately in several laws for different areas. At the regional/state level, the SEAs are most prominently implemented regarding spatial planning, which also makes up for the most SEAs regarding the number of procedures in Austria.

The surveys carried out in the four countries show that SEAs are usually only done in areas and with regard to plans/programmes for which they are required by law. This means that plans and programmes that do not legally require an SEA are generally not given one. Overall, the SEA is a tool that could be given a broader application.

In sum, there are around 100 SEA procedures carried out in Austria per year, the majority of which concerns spatial planning at a regional level. The Federal Ministry for Agriculture, Regions and Tourism maintains a website where SEAs can be put in on a voluntary basis. It serves as an archive for examples of SEA procedures.<sup>8</sup> This is similar in Czechia where on the average about 47 SEA procedures are carried out annually. Providing an official database on SEA proceedings proves quite useful. Since this is not available in Hungary and Croatia, the number of SEA processes cannot be stated or calculated accurately.

The research has shown that the outcome of SEA procedures is mostly not binding for follow-up procedures, even though it must be considered. This, however is different in Czechia where the SEA process is completed by issuing a “binding opinion” by the responsible authority. In **Croatia**, all decisions issued in environmental procedures including SEA decisions are binding according to the national legislation, but the question remains how it is in practice. The public can participate during the process but the opinion cannot be challenged. The latter is true for most countries. In most countries there are no legal remedies for NGOs provided (e.g. in

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<sup>8</sup> The full list of plans/programmes for which an SEA was carried out is online available at: [https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Grundlagen/Gesetze/Bund/LISTE\\_SUP-Verfahren\\_2019.pdf](https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Grundlagen/Gesetze/Bund/LISTE_SUP-Verfahren_2019.pdf)

Austria). In **Bulgaria**, access to justice is ensured regarding the screening statement and the final SEA decision for the public, the affected and the interested parties and in each state in case of transboundary effects to be affected by the application of the plan/programme following the rules stipulated in the SEA Ordinance. The interested parties may appeal the statement or the decision under the Administrative Procedural Code (in short: “APC”) within 14 days from its announcement. Environmental NGOs that meet the criteria of national law have standing in the judicial proceedings before a court.<sup>9</sup> In Czechia the SEA process is completed by issuing a “binding opinion”. NGOs can participate in the ensuing procedure or sue the final approval of the assessed plan, provided that the final approval has the form of a decision and is not a mere political act. In Hungary, the courts are still reluctant to accept any cases concerning such “general decisions” of the “state’s discretionary policy making”. This means that in general, the decision on SEA screening or on the adoption of the SEA report do not have the form of an administrative act that could be the subject of an appeal. Where the conditions stipulated by Act CLI of 2011 on the Constitutional Court are met, the legal review of laws and normative resolutions can be initiated before the Constitutional Court. Overall, the concept of the administrative legal character of state plans/programmes is being discussed. However, recent developments might bring a shift in that direction. Final SEA decisions cannot be challenged before the Court in Croatia which is due to the fact that an SEA decision is not an administrative act which can be brought to administrative court for a judicial review. The only exemption is when an SEA is including an AA when there is a possibility to go to court but there is still no practice.

Overall, the public authority in charge of SEAs depends on the area and law the SEA is performed in. This can be a Federal Ministry, a state governor or a local mayor/district commissioner. In Austria, Bulgaria, Hungary, Croatia and Czechia there are different competent bodies.

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<sup>9</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.



## Findings concerning screening

Screening is mostly done on a case-by-case basis; it may also depend on the competence and SEA experience of the decision-maker in charge. At the level of ministries, requirements are mostly clearer compared to e.g. spatial planning done by lower or local authorities.

In most cases, screenings are not necessary in Austria, as the law clearly outlines the plans and/or programmes for which an SEA is mandatory. If there is no clear requirement, the public authority in question will assess whether the plan is likely to have impacts on Natura 2000 sites and/or provide a framework for upcoming EIA<sup>10</sup> projects. In doubt, an SEA should be done. The assessment of likely impacts is usually done by in-house experts of the relevant public authority, and then later confirmed by the same experts. The results must be published. In Bulgaria, the screening procedure is determined within the legislation (EPA and the Ordinance on the SEA of plans and programmes). This is similar in Hungary: where an SEA is not obligatory, the decision on the significance of the likely environmental effects of the implementation of a plan or programme is made by considering the criteria listed in Annex 2 to the 'SKVr'<sup>11</sup>. In Czechia, the screening process is carried out only in a few specific cases. The screening procedure determines if an SEA is necessary for smaller area plans and changes in already existing plans. Other plan proposals go through the screening process only to specify the contents and the extent of the ensuing SEA procedure.

The public is usually not involved in the screening procedures in Austria, but that involvement is up to the authority in question. Screening decisions usually cannot be challenged. The outcome is published on the website of the relevant public authority. However, there is no webpage listing strategic plans and programmes that could be subject to an SEA. Our NGO expert added that they were a driving force behind the screening of the RHESI project in Vorarlberg that is about flood prevention at the Rhein river between Switzerland and Austria. Through political pressure, the project was assessed on whether it needs an SEA, but the NGO as well as the public were not adequately consulted. This is similar in Czechia where the general public might be formally involved but they usually do not influence the result of the screening process. Furthermore, non-governmental organisations can send their opinions during the screening procedure.

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<sup>10</sup> Short for Environmental Impact Assessment

<sup>11</sup> Short for Governmental Decree No. 2/2005 on the Environmental Assessment of Certain Plans and Programmes

The result of the screening procedure can be challenged (§ 156 Act No. 500/2004 Coll. Administrative Code) in Czechia. The decisions and the state of SEA processes can be found on the public database of the CENIA agency.<sup>12</sup>

In Bulgaria, the NGOs and other interested parties are part of the preliminary consultations in the screening process. The competent authority must receive a consultation scheme with all stakeholders involved. SEA decisions are published collectively on one webpage.<sup>13</sup>

This is different in Hungary, where their involvement is not possible. Furthermore, the 'SKVr.' requires the developer to publish the decision on screening and the SEA report. If the act or decision requiring the preparation of the plan/programme does not contain provisions for the details of disclosure, the public shall be informed at least via a notification in a national daily or local newspaper. If the developer has a homepage, it should also be published there.

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<sup>12</sup> Online available at: [https://portal.cenia.cz/eiasea/view/sea100\\_koncepce](https://portal.cenia.cz/eiasea/view/sea100_koncepce)

<sup>13</sup> Online available at: <http://registers.moew.government.bg/eo/>

## Findings concerning experts and the Environmental Report

The measures taken by the states to ensure that environmental reports are of sufficient quality widely vary in the different countries. Overall, the country evaluation shows that most SEA regulations do not provide for a specific system of ensuring quality. This however is broadly not regarded as a problem, due to the fact that authorities and project applicants have long-term experience with SEA and professional requirements are set by law. Especially during larger tenders, usually renowned organisations/companies are employed. In some countries, a lack of transparency on ensuring sufficient quality could be noted.

In Austria, the SEA is a process in which the concerned public authority can decide how involved the public should be. Therefore, the environmental reports are often only presented to the public as a final product with no transparency on the process, according to NGOs. Our expert reported that the quality of the reports relate to the persons involved, but that there are guidance papers on how the reports should be done and what they must contain. Overall, the regulations regarding the quality of environmental reports are held very general, e.g. providing that they must be drafted according to the current state of the art. Case-specific guidance and the “SEA Practice Sheet Number 5” (*SUP Praxisblatt 5*)<sup>14</sup> lays down minimum requirements for environmental reports. The relevant responsibility lies within the officially appointed experts (*Amtssachverständige*). If they notice significant shortcomings of the environmental report, the report must be reviewed/adapted and re-published.<sup>15</sup> In Hungary, the SEA report is an independent part or working document of the plan or programme documentation. Like in Austria, the report shall be prepared by competent (authorised) experts who are working in cooperation with the experts preparing other parts of the plan or the programme documentation.

There are no binding rules to ensure the quality of environmental reports in Czechia. There are some measures which should help increase the quality of environmental reports such as, for example, an independent certified evaluator of the documentation. It was criticized that the environmental reports are usually accepted - regardless of their quality or sustainability. This was seen differently by one of the decision-makers: according to this expert, the reports can only be processed by natural persons authorized in accordance with § 19 EIA Act.

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<sup>14</sup> Online available at: [https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Praxis/SUP\\_Praxisblatt\\_5.pdf](https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Praxis/SUP_Praxisblatt_5.pdf)

<sup>15</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

If the assessment does not correspond with the requirements laid down in Annex 9 of the EIA Act, the relevant authority will return it for amendment within a 10-day period (§ 10f/2 EIA Act). To ensure a high quality of the SEA, the Czech Ministry of Environment has published an SEA guideline which offers suitable practices to apply during an SEA process.<sup>16</sup>

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<sup>16</sup> This guideline is available online on the SEA information system website at: [Metodická doporučení a aktuality](#)

## Findings concerning cumulative effects

An SEA offers the possibility to consider options and alternatives. But as the plans and/or programmes are usually done before specific projects are known, the question of cumulative effects is rarely an issue. The Austrian NGOs replied that they would wish for more SEA procedures when it comes to the planning for, e.g., several hydropower plants on the same river like the River Isel in Tyrol. The ministry's expert mentioned a best practice example called "Round Table SEA" also known as the "Vienna Model" which was done several years ago in Vienna. It was special due to the heavy involvement of the public at every stage and it being open-ended: in order to reduce public resistance against the construction of new waste incineration plants the public, environmental protection organisations and independent experts were brought together to develop a waste management plan for the following years (1999). They examined various scenarios and alternatives to waste incineration which made it possible to show that the latter was indeed the most environmentally friendly waste disposal method. This, however, raised public awareness, promoted the development of support measures for waste avoidance and generally improved public acceptance.

In Hungary, Annex 2 to the 'SKVr.' requires that the evaluation of likely environmental effects cover the cumulative or synergistic nature thereof. According to Hungary's national legislation, the SEA report shall contain the information that may be required for complying with the 'Kvt.'<sup>17</sup> and the 'SKVr.', taking into consideration the current knowledge and methods of assessment, the contents and level of detail of the plan or programme. For the purpose of preparing an environmental evaluation, any information available from past or ongoing planning or programming work related to the environmental effects of the plan or programme in question or generated as part of the implementation of other Community acts may be used.

This is different in Czechia where cumulative effects are not considered. This is seen differently by one decision-maker: according to this expert, the evaluation of potential cumulative and synergistic impacts is one of the obligatory requirements of the assessment (Annex 9 of the EIA Act). These are already analysed in the screening phase.

In Bulgaria, the cumulative effects of a plan or programme are part of the overall SEA.

In Croatia, the authority questioned stated that the cumulative effects are being considered and are processed in every SEA report, regarding the nature and complexity of the strategy, plan or programme as it is a part of mandatory content of the SEA report as defined in the Regulation

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<sup>17</sup> Short for Act 53 of 1995 on environmental protection

on SEA. However, other experts indicated that cumulative impacts are usually just mentioned, and almost all SEAs conclude the same: cumulative impacts are possible but not significant which is a result of a very poor cumulative assessment.

An example of a good practice was mentioned here by national experts in Croatia related to the SEA for Amendments to Karlovac County's Spatial Plan. Within this procedure around 10 HPPs were planned on the rivers in the Karlovac County (one on Slunjčica, one on Korana, and all others on Mrežnica). Due to cumulative impacts (and also lack of data) all proposed HPPs from those amendments were removed.

## Findings concerning expert opinions

In Austria and Bulgaria, a specific pool of experts eligible to perform SEA could not be identified.

This is different in Hungary and Czechia where in order to work in this field, the experts must fulfil certain criteria depending on their field of expertise. Usually this is either an academic degree or work experience. The pool of experts is managed by the Czech Environmental Information Agency (“CENIA”) under the Ministry of Environment.<sup>18</sup>

In Austria, most SEAs are prepared by either in-house experts or by external experts hired by the public authority in question. The NGO criticised that in some instances they do not even know which experts worked on the report as they only see the final product. Additionally, they mentioned that regarding external experts the financial pressure by project solicitors/large companies can be high and potentially compromise the formally assured independence. Formally, the experts are liable for their expert testimony.

In Hungary, the ‘SKVr.’ requires that the SEA report shall be prepared by environmental experts who are authorised under a separate piece of legislation on environmental experts. Their independence shall be ensured by the Code of Ethics of the Hungarian Chamber of Engineers.

This is similar in Czechia where experts need an EIA/SEA authorisation, which can only be granted by the Ministry of Environment and the Ministry of Healthcare. There are no rules concerning their independence. Choosing the team for the assessment lies within the competence of the authorized person. Furthermore, the announcement of the plan and its assessment is given to the specialized departments of the relevant authority for commenting. Via public participation everyone can send their opinions even the expert public.

In Bulgaria, the experts’ independence is ensured by a personal declaration they sign. The requirements are determined by Article 16 (3) of the Ordinance for SEA.

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<sup>18</sup> Online available at: <https://portal.cenia.cz/eiasea/osoby/osoby?sea=1>,  
<https://portal.cenia.cz/eiasea/osoby/osoby>

## Findings concerning Best Practice Examples

Regarding best practice examples, the Austrian NGOs mentioned a process which was not officially done as an SEA but was held in an open and SEA-similar way. The process to determine the criteria for hydropower projects in Tirol ("*Kriterienkatalog Wasserkraft Tirol*") initially was open to the public, consulted experts and allowed for lively exchange with an open end. Ultimately the outcome was considered well-crafted but was later on changed due to political pressure and prompted NGOs to leave the process. Therefore, the beginning could be considered best practice, but not so the final result.

The expert from the Austrian ministry reported that there is no single best practice example that comes to mind. In general, the outcome is best if the SEA process is conducted in an open way, with a regular exchange between experts, the public and the public authority. The more closed-up the process is, the less sense it makes to use the tool of an SEA. Unfortunately, this is often the case. The SEA process is done almost entirely in the absence of the public, which is then presented with the results and the option to comment on it for a limited period of time (6 weeks), often resulting in both a lack of interest and impact of statements.

In general plans and programmes are better if an SEA was done. Most SEAs are done by the states (*Bundesländer*), which on a voluntary basis report back to the ministry.<sup>19</sup> The experts reported one project as best practice. The SEA itself was done prior to 2018, but the subsequent process is still ongoing: the SEA for the area between the airport Vienna and Bruck an der Leitha. At the beginning nobody knew how to deal with the issue, but they managed to get a lot of valuable input through stakeholder management. The results of this procedure are still visible today, as the planning moves on and can build on the results of this SEA process. One aspect for this success is that all dimensions of sustainability have been taken into account on both positive and negative impacts.<sup>20</sup>

For Czechia well-proven practices of SEA processes are contained in the SEA guideline. Generally, the decision-makers recommend using a preliminary hearing with the relevant authority according to § 15 of the EIA Act and prepare sufficient time reserves.<sup>21</sup>

<sup>19</sup> Examples of SEAs are online available at:

[https://www.strategischemeuweltpruefung.at/ms/strategischemeuweltpruefung/sup\\_praxis/sup\\_sektoren/index.htm](https://www.strategischemeuweltpruefung.at/ms/strategischemeuweltpruefung/sup_praxis/sup_sektoren/index.htm)

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<sup>20</sup> Online available at:

[https://www.bmk.gv.at/themen/verkehrsplanung/strategische\\_pruefung/pruefungen/flughafenspange.html](https://www.bmk.gv.at/themen/verkehrsplanung/strategische_pruefung/pruefungen/flughafenspange.html)

<sup>21</sup> The assessed plans and information regarding SEA procedures can be found online within the SEA information system: [https://portal.cenia.cz/eiasea/view/sea100\\_koncepce](https://portal.cenia.cz/eiasea/view/sea100_koncepce)



## Conclusions

Based on our research it can be concluded that the SEA is indeed “fit for purpose”. Overall, the evaluation showed, that the SEA Directive brings benefits to the EU, is coherent with other legislation and does not cause disproportionate costs. On the contrary, if done well, it helps bringing down the overall duration of project permission proceedings while improving public participation. It also showed that the efficiency and effectiveness of the Directive differs a lot - depending on the national transposition. In Austria, the “Round Table SEA”, also known as the “Vienna Model”, has been mentioned as a best practice example.

- Since only the plans and programmes determined by the law, i.e. acts or regulations, have to undergo an SEA, there are many high-level strategic plans or policies not evaluated (e.g. in Austria with regard to energy networks).
- As shown by the best practice examples, the early and effective involvement of the general public helps reduce or even avoid negative environmental impacts and increase public acceptance of a plan or programme. However, in practice, their involvement is limited. They are mostly not involved in the screening process. In most countries, there are no websites on the national level containing all the plans and programmes that could or should be subject to SEA, making it more difficult to get an overview. There are some possibilities for electronic participation in SEA procedures, however, they are frequently limited to sending comments by email. Furthermore, in most countries there are no legal remedies for NGOs provided.
- There is often no official pool of experts that are involved in the SEA process, creating a rather non-transparent situation.
- In the screening phase there are two systems:
  1. the screening decision authority differs from the authority that prepares the plan and
  2. the authority preparing a plan or programme is also responsible for the screening decision.

Even though the notification processes are defined, we do not know if all plans that should go through a strategic environmental assessment are then actually proposed for an SEA.

## Recommendations

As a result of our research, Justice & Environment recommends the following:

1. *The tool of the SEA should be given a broader application (e.g. for urban development areas or energy networks) and it should be binding.*

- ✓ SEAs should be applied in more instances, all strategies and framework programmes should undergo such an assessment, especially on the federal level in a federal country.
- ✓ There should be online platforms allowing easy access to all ongoing and finalised SEA procedures for the public to check. Participation relies on timely and easy access to information.
- ✓ Results should inform and bind subsequent procedures.

2. *Ensure more transparency and consultation in the SEA procedures.*

- ✓ The information about SEAs in the early (screening) phase should be accessible to the broader public and consultation open from the beginning of the process - in the last stage of a plan or an environmental report, it is usually hard to change anything.
- ✓ It should be transparent which experts are involved in the procedure.
- ✓ Organisations that are independent from the administrative branch of the government, such as environmental agencies, the ombudsmen, public prosecutors, state auditors and others might also play an important role in raising the environmental quality of the SEA reports.
- ✓ Procedural mechanisms to facilitate broader publicity for the SEA screening decisions and reports should be promoted.
- ✓ Easy-to-use tools for electronic public participation should be made widely available.
- ✓ There should be funded continuous watchdog activity by NGOs concerning the relevant websites and they should be allowed to participate in the entire SEA procedure and have access to legal remedies in accordance with the Aarhus Convention.

## Annex – Summary of the Questionnaires

In order to identify the state of national transposition as well as best practice examples from the countries, questionnaires were given to NGOs, experts and decision-makers in the field. Within these, priorities were placed on screening, cumulative effects, the independence and qualification of experts. The questionnaire was divided into six parts:

- Section I focused on the national regulation of specific aspects of the SEA procedure for national legal experts to answer - these are the experts from Justice & Environment member organisations;
- Section II was concentrated on the screening procedure. National experts prepared the answers for Section II to Section VI on the basis of interviews with SEA decision-makers and experts who prepare environmental reports;
- Section III focused on the experts involved in the SEA process as well as the environmental report;
- Section IV was concentrated on cumulative effects;
- Section V was focused on expert opinions;
- Section VI discussed overall best practice examples.

The names and contact data of the national legal experts and decision-makers can be provided upon request after an approval of the person concerned. The same stands for the national answers in the questionnaire.

Countries involved included Austria, Bulgaria, Hungary, **Croatia** and Czechia.

I. **General - regarding the legal implementation (for national legal experts)**

1. **Which act(s) regulate(s) the SEA procedure (if there are more, please add a short description)?**

In the EU, the SEA directive created a general framework for examining environmental impacts at the level of plans and programmes. It was implemented differently within the EU member states depending on the respective national legal framework. In several countries, there is a main act regulating the SEA procedure (e.g. Environment Protection Act in **Bulgaria**, Environmental Protection Act in **Croatia** and Act No. 100/2001 Coll. on Environmental Impact Assessment in the **Czech Republic**). **Bulgaria** additionally passed a Government Ordinance on SEA and Croatia additionally has Regulation on SEA and Regulation on Information and Participation of the Public and Public Concerned in Environmental Matters

In **Hungary** the transposition of the SEA directive into the Hungarian legislation has been carried out by amendment to the Act LIII of 1995 on environmental protection (in short: the 'Kvt.')

and by adoption of the Governmental Decree No. 2/2005 on the Environmental Assessment of Certain Plans and Programmes (in short: the 'SKVr.').

In **Austria** there is no specific act implementing SEA legislation for it is split among many different acts on federal and provincial level. Most SEA procedures are regulated on provincial level in the nine different acts on spatial or land use planning, the provincial waste management acts, or the roads acts of the different provinces.<sup>22</sup> The most important plans requiring an SEA on the federal level include plans for waste management (stipulated in the Waste Management Act), against noise pollution (stipulated in the Federal Ambient Noise Protection Act), plans to reduce air pollution (stipulated in the Federal Ambient Air Protection Act), plans regarding water bodies (stipulated in the Water Protection Act), protection against nuclear radiation (stipulated in the Radiation Protection Act) and energy infrastructure. In case of the latter there are, however, ongoing infringement procedures due to a lack of SEA provisions regarding electrical power grid planning.

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<sup>22</sup> For further information see overview on the Austrian implementation of SEA, online available at: [https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Umsetzung/List\\_of\\_SEA\\_Implementation\\_2018\\_AT.pdf](https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Umsetzung/List_of_SEA_Implementation_2018_AT.pdf)

2. While the SEA directive sets boundaries to what projects absolutely require an SEA, the tool can be given a broader application. Do you know of plans in your legislation which would not require an SEA, but are given one?

This is highly unusual. Plans or programmes that do not legally require an SEA are generally not given one in the **Czech Republic, Hungary, Croatia or Austria**.

3. How many SEA procedures (screening and full) are carried out in your country usually per year (2015-2019)? Based on your experience and personal assessment is it the appropriate amount?

On the average, there are 100 SEA procedures carried out in **Austria**<sup>23</sup> and 47 SEA procedures carried out in the **Czech Republic** per year (2015: 42; 2016: 64; 2017: 37; 2018: 47; 2019: 45). In **Hungary** there is no official database on SEA proceedings, thus, the number thereof cannot be stated or calculated accurately. According to the national legal expert, individual SEA studies and decisions may be published on the homepage of the authorities running the SEA procedure, yet they are soon removed from the homepages due to the limited space available. Especially in the case of state plans/ programmes, the authorities usually implement the publicity rules laid down in the 'SKVr'. and publish the data of the procedure, together with a non-technical summary. Data on the number of SEA procedures (screening and full) which are carried out in **Croatia** was part of the Report on the state of the environment (Cro: Izvješće o stanju okoliša) but the last available report is issued for 2016 and no data are available for years after that so the number thereof cannot be stated or calculated accurately

4. Are the outcomes of such procedures binding to any following procedures, especially Environmental Impact Assessments (EIAs), but also assessments of the Water Framework Directive (WFD) and the habitats directive (HD)?

In **Austria** the outcomes of SEA procedures are generally not binding. However, the results may be subject to a decree which in turn is binding. This is similar in **Hungary**, where the national legislation does not expressly require that the results of an SEA procedure have to be taken into consideration during EIAs or assessments according to Article 4 (7) WFD and to

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<sup>23</sup> The full list of plans and programs for which an SEA was carried out is online available at: [https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Grundlagen/Gesetze/Bund/LISTE\\_SUP-Verfahren\\_2019.pdf](https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Grundlagen/Gesetze/Bund/LISTE_SUP-Verfahren_2019.pdf)

Article 6 (3) HD. It can be argued, however, that the binding nature of the SEA could be deduced from several environmental requirements and the right to a healthy environment laid down by the Fundamental Law.

In the **Czech Republic** the resulting document of an SEA procedure (called “binding standpoint”) is binding with regard to habitats and bird areas: According to § 45i/8 Act No. 114/1992 Sb. it is generally not possible to approve an assessed plan, if a possible negative impact was found (apart from a few legally defined exceptions, e.g. regarding national defense). The outcomes are not binding to other following procedures. If the authorities deviate from the outcome of the SEA procedure, they are obliged to provide an explanation (§ 10g/4 Act No. 100/2001 Sb.).

In **Croatia** according to national legislation outcomes of environmental procedure such as EIAs, assessment of the WFD and other similar procedures are binding but the question remains how it is done in practice. It should be noted that there is also no possibility for challenging some of these decisions before court such as for an example SEA.

## 5. Which is the competent authority for SEA procedures?

In **Austria, Bulgaria, Hungary, Croatia** and the **Czech Republic** there are different competent bodies, depending on the legal area and level (national/federal, provincial/regional, local/municipal). In case of the latter, the authorities include the regional bureaus and the ministry of environment:

In **Hungary** Governmental Decree No. 71/2015. (III. 30.) on determining the organization for environmental protection and nature protection, for environmental protection administrative tasks assigns the regional environmental authorities to be the County level general administrative body (Government Office).

Responsibilities are fulfilled by the planning authority, while for the screening decision an opinion from the environmental authority as well as of other authorities that have responsibilities relevant for environmental protection shall be requested and taken into consideration.

In **Bulgaria**, the SEA competent authority performing the screening is different than the authority preparing the plan or programme; however, there are plans/ programmes which are prepared within the same administration, e.g., the river basin management plans. Within the screening procedure the developer asks the SEA competent authority to determine the applicable SEA procedure and submits to the competent authority a notification about the plan/ programme. The SEA competent authority then determines the applicability of the SEA procedure, gives instructions on the need to carry out a full SEA and on the actions to be taken. In the **Czech**

**Republic** there are also different authorities. In cases where the authority differs, the exchange of information is regulated by the Act No. 100/2001 Coll., and in practice, it is carried out through the official SEA website.<sup>24</sup> In the other countries (**Austria, Hungary**), the authority responsible for SEA screening mostly does not differ from the authority preparing the plan or programme.<sup>25</sup>

In **Croatia** the competent authorities for SEA procedures are the Ministry of Economy and Sustainable Development<sup>26</sup> (Environment Protection is integrated in it) and the counties (20+ City of Zagreb which has the status of the county).

## 6. Who can challenge the final SEA decision? Can NGOs challenge it?

The situation differs as follows - from binding opinions to challengeable administrative SEA decisions:

In **Austria**, only a certain right to review before the Constitutional Court exists, which is limited to a small number of cases, if the plan/ programme was issued in form of an ordinance and interferes with an individual's constitutionally granted rights. This right does not include NGOs.

In **Bulgaria**, access to justice is ensured regarding the screening statement and the final SEA decision for the public, the affected and the interested parties and each state in case of transboundary effects to be affected by the application of the plan or the programme following the rules stipulated in SEA Ordinance. The interested parties may appeal the statement or the decision under the APC within 14 days from its announcement. Environmental NGOs that meet the criteria of national law, namely registered under the relevant procedure, have standing in the judicial proceedings before a court.<sup>27</sup>

In the **Czech Republic** the SEA process is completed by issuing a "binding opinion" of the responsible authority. The public can participate during the process, but the opinion cannot be challenged. NGOs can participate in the following procedure or sue the final approval of the assessed plan, provided that the final approval has the form of decision and is not just a political act.

<sup>24</sup> Online available at: [https://portal.cenia.cz/eiasea/view/sea100\\_koncepce](https://portal.cenia.cz/eiasea/view/sea100_koncepce)

<sup>25</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

<sup>26</sup> <https://mingor.gov.hr/>

<sup>27</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

In **Hungary**, the courts are still reluctant to accept any cases concerning such “general decisions” of the “state’s discretionary policy making”. This means that in general, the decision on SEA screening or on the adoption of the SEA report do not have the form of an administrative act that could be the subject of an appeal. However, plans/ programmes that are subject to an SEA can be adopted by different public bodies or by norms which can be not legally binding or can have the force of law. Where the conditions stipulated by Act CLI of 2011 on the Constitutional Court are met, the legal review of laws and normative resolutions can be initiated before the Constitutional Court. Overall, the concept of the administrative legal character of state plans/ programmes is being discussed.

However, recent developments might bring a shift in that direction: Act I of 2017 on administrative court cases determines administrative cases in such a way that, apart from the regular administrative decisions (e.g. obliging, permitting, fining in individual cases), allows the examination of general decisions by the court - supposing that they influence individual legal positions. In addition, NGOs are mentioned, when determining the plaintiff’s procedural position, whereas they can step up in administrative cases in the public interest within the framework of their (registered) field of activity in the territory of their operation. This provision echoes similar provisions of the ‘Kvt.’, which entitles environmental associations to cooperate with the authorities in developing environmental and spatial planning plans/ programmes, as well as demand certain measures taken by state administrative or municipality authorities.

In **Croatia** the final SEA decision cannot be challenged before the Court, and this is due to the fact that SEA decision is not an administrative act (Cro: rješenje) which can be brought to Administrative Court for a judicial review. The only exemption is when SEA is including AA, then there is a possibility to go to court but there is still no practice.

**II. Praxis - regarding the screening procedure** (for SEA experts, national legal experts and decision-makers)

**7. How does a screening procedure work in your country?**<sup>28</sup>

In **Austria**, the plans that are provided for in the various laws implementing the SEA directive include the requirement to conduct an SEA, which means that no screening is required. In other cases where screening is required, the relevant authority must assess whether a plan provides the framework for EIA projects or may have a significant impact on Natura 2000 sites.

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<sup>28</sup> See also Annex II of the SEA Directive



In case of doubt, an SEA should be carried out. Usually an expert witness will assess the need to do an SEA, while the final decision lies with the public authority in question. The result has to be published.

Where an SEA is not obligatory in **Hungary**, the decision on the significance of the likely environmental effects of the implementation of a plan or programme is made by taking into account the criteria listed in Annex 2 to the 'SKVr'. For the purpose of decision-making, the developer shall place a request for the opinion of the administrative bodies responsible for the protection of the environment, as defined in Annex 3 to the 'SKVr'. When placing such a request, the developer shall provide at least the following information:

- terms of reference of planning (e.g. title, type, content of the plan/programme, area);
- objectives of the plan/programme;
- in the case of an amendment, the essence and the significance of the amendment within the entire plan/programme;
- information necessary for the application of the criteria listed in Annex 2 to the 'SKVr'.

For making a decision on the significance of the likely impacts, the developer shall take into account the opinions received before the deadline fixed by it. If the opinion of the developer on the necessity of environmental assessment is different from that expressed in the opinions received from the environmental bodies, the developer - to clarify the reasons of such differences in opinion - shall consult with the concerned bodies before making a final decision. The developer shall disclose the decision together with its justifications in the official journal or via other media suitable for informing the general public (e.g. through the homepage, if one exists). In case the developer decides that there is no need for environmental assessment and this decision is at variance with the opinions received from the environmental bodies, the developer shall also disclose the fact of difference of opinions.

In the **Czech Republic** the screening process is defined in §§ 10c and 10d of the EIA Act. The screening procedure determines if an SEA is necessary for smaller area plans ("perimeter of one or more municipalities that establish utilization of area of local importance") and changes in existing plans. Other plan proposals go through the screening process only to specify the contents and the extent of the following SEA procedure. The screening process can last up to 35 days. According to the Czech SEA decision-maker the SEA screening process is carried out only in a few specific cases.

In **Bulgaria** the screening procedure is determined within the legislation (the EPA and the Ordinance on the SEA of plans and programmes). It is carried out in two steps:

First a notification is sent to the competent authority (ministry of the environment and water or regional inspectorate of the environment and water) about the planning initiative with the Annexes about the scope and the contents of the plan or programme, links with other programmes etc. according to the provided template. Subsequently, a request for the need for an SEA is made. In 2019, the response time of the competent authority has been reduced from 1 month to 14 days. Despite the efforts to reduce the administrative burden and to follow a faster and simpler procedure the time for screening takes longer.

In **Croatia** SEA screening procedure is defined in detail by the provisions of the EPA, Regulation on SEA and Regulation on Information and Participation of the Public and Public Concerned in Environmental Matters. Screening procedure is carried out by the body in charge of developing the Strategy, Plan or Program with regional or national authority for environment and nature protection. Screening includes the procedure of giving the opinion of bodies and/or persons determined by special regulations and the opinion of regional self-government units or local self-government units and other bodies, the results of cross-border consultations if they were mandatory. Screening procedure should also include public consultations, but public participation in these procedures is very limited because of authority's lack of interest to include public in decision-making.

In Estonia, in January 2022, the Planning Act was amended, and provisions were added to it according to which:

1) The relevant authority may enable participation also in public hearings by electronic means, or in an electronic way, which allows the participants of the public hearing to follow the discussion and express an opinion. This means that the authority may organise a meeting in hybrid format, provided that all the participants (including those participating by electronic channels) have a chance to hear what is said and to speak up.

2) If it is not possible to hold public hearings in designated places due to the current restrictions on public gatherings, public hearings may be held only by electronic means that allow the participant of the public hearing to follow the hearing and express an opinion. Organizing a public hearing in such manner is only permitted if all those who wish to participate in the public hearing have agreed to it.

In Germany, digital public participation has already found its way into some sectoral laws and in some states (Länder) before the COVID-19 pandemic. However, these regulations served to inform the public rather than ensuring a broad public participation. Only in the course of the COVID-19 pandemic, the "Planning Security Act (PlanSiG)" started to enable digitization of public participation to a larger extent. For the first time it enacted uniform provisions for the

implementation of optional digital procedural steps in public administration in the area of planning and licensing procedures. The Planning Security Act was extended several times, most recently until the end of 2023, because the government saw the need for digitization independently from the pandemic.

The Planning Security Act enables the possibility to publish the public announcement as well as the documents and decisions of the project online. Furthermore, the authorities can hold a so-called “online consultation” instead of a public hearing in presence to discuss comments from the public. The online consultation is a written procedure where comments from the public and environmental associations are exchanged via a portal or via e-mail. This form of exchange does not adequately replace a dialogical exchange format like the public hearing. A telephone or video conference can only replace the online consultation if all parties involved have given their consent. Thus, this hinders effective electronic public participation.

In Hungary, according to the SEA Decree, it is the drafter of the plan or program who shall define the public that may be affected by the environmental impacts; the latter information is needed to define the modalities of informing the public (Art. 7). The drafter shall publish the goal of the plan or program, the availability of the consultation document of the plan or program that should include the environmental report, the modalities and dates of the submission of comments and the environmental information relevant to the plan or program (Art. 8). The publication of the foregoing information is happening online in case the drafter has a website. At least 30 days shall be ensured for the submission of comments. After the adoption of the plan or program, it must be published. Electronic public participation is still in its early stages in Hungary and is mostly limited to sending emails to policy-makers.

In Slovenia, in practice, digital participation is available in core environmental procedures and matters, such as the EIA, SEA, construction and environmental permits, adopting legislation at the Parliament or Government level, including strategic plans. Any kind of electronic message, comment, proposal or other form of document, formal or informal, can be a substitution for a physical copy. The new Spatial Planning Act, adopted in 2021, included Article 56, which demands that spatial planning is publicly available in the digital ‘Spatial Information System’, and that the information there is correctly prepared and understandable for the public.

In Spain, in terms of the national participation portal, it is easily accessible through the MITECO website (in the environmental quality and assessment section). To access the e-portal with all the plans, programmes and projects that are currently under a public participation procedure, the citizen is only required to complete three steps from the moment they enter the MITECO website. The configuration of the portal is the result of a project developed by the Sub-

Directorate General for Environmental Assessment to improve the overall management of public participation in EIA procedures, by incorporating their georeferences and creating an interface for the remote processing of all allegations presented in the public information phase. This new organisation allows citizens to access the environmental documentation of all plans, programmes and projects that are subject to an EIA, consequently guaranteeing the effective exercise of the right of access to environmental information.

#### 8. Are NGOs and the general public involved in the screening procedure? Can they challenge it?

In **Austria** this is not usual. Their involvement is possible, but rarely done. Challenging the outcome is not possible. Often the NGOs only get the opportunity to give feedback at the end.

In the **Czech Republic** the general public can express their opinion to the proposal up to 20 days after its public announcement (§ 10c/3 Act No. 100/2001 Sb.). While they are formally involved, they usually do not influence the result of the screening process or the rest of the SEA procedure in reality. Furthermore, non-governmental organisations can send their opinions during the screening procedure. The result of the screening procedure can be challenged via objection against the result of the screening procedure, which is a legal act proceeding from part IV. of the Act No. 500/2004 Coll. Administrative Code (§ 156 Act No. 500/2004 Coll. Administrative Code). In **Bulgaria**, the NGOs and other interested parties are part of the preliminary consultations in the screening process. The competent authority has to receive a consultation scheme with all stakeholders involved, including most appropriate NGOs.

This is different in **Hungary**, where their involvement is not possible. The possibility of legal remedies depends on the legal form of the decision: The decision on SEA screening or on the adoption of the SEA report usually do not have the form of an administrative act that could be the subject of an appeal.

In **Croatia**, even though information on screening procedures can be found on authority's website - it is clear that this communication channel is not sufficient so, usually public (and also expert NGOs) do not participate in these procedures since the screening procedure in Croatia is not transparent enough, and needs to be improved when it comes to public participation.

#### 9. Are SEA decisions (screening and final decisions) published on the website of the decision-making body or made public in any other way?

In **Austria**, the outcome is usually published on the website of the public authority. According to one expert, newspapers often bring a short news-item when the SEA decision is online undergoing public scrutiny.

However, there is no webpage listing adopted strategic plans and programmes that could be subject to the SEA directive and information like time of conducting the SEA or reaching the decision is not clear/visible.<sup>29</sup>

The same is true for the **Czech Republic**, where the decisions and the state of SEA processes can be found on the public database of the CENIA agency.<sup>30</sup>

In **Hungary** the 'SKVr.' requires the developer to publish the decision on screening and the SEA report. If the act or decision requiring the preparation of the plan or programme does not contain provisions for the details of disclosure, the general public shall be informed at least via a notification in a national daily or local newspaper. 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.

SEA decisions are published collectively on one webpage in **Bulgaria**<sup>31</sup>.

In Croatia, according to the regulations related to SEA decision-making body has an obligation to publish the Report on the conducted SEA and the adopted strategy, plan and programme on their website and/or official gazette but decisions for screening procedure only include names of all the bodies that gave their opinion, including the final decision, but do not include any assessment details behind the made decision. When it comes to final SEA decision, it usually has more information.

III. **Praxis - regarding experts and the environmental reports** (for SEA experts, national legal experts and decision-makers)

10. **How is the quality of the environmental reports according to Art 12 (2) of the directive managed/ ensured?**

<sup>29</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

<sup>30</sup> Online available at: [https://portal.cenia.cz/eiasea/view/sea100\\_koncepce](https://portal.cenia.cz/eiasea/view/sea100_koncepce)

<sup>31</sup> <http://registers.moew.government.bg/eo/>

Overall, the country evaluation shows that most SEA regulations do not provide for a specific system of ensuring the quality. The measures widely differ in the different countries. Apart from the public consultation phase there are the following main steps:

In **Austria** the experts who are working on the reports are obliged to have certain qualifications such as a relevant academical degree and/ or work experience. The quality of the environmental reports depends on the persons involved. Generally, there are guidance papers that lay down the relevant provisions for these environmental reports (e.g. how they have to be designed, what they have to include). These papers can be by an authority, by experts on behalf of the authority and sometimes by expert organisations. The regulations regarding the quality of environmental reports are mostly held very general, e.g. providing that they must be drafted according to the current state of the art.

Case-specific guidance and the “SEA Practice Sheet Number 5” (*SUP Praxisblatt 5*)<sup>32</sup> lays down minimum requirements for environmental reports. The relevant responsibility lies within the officially appointed experts (*Amtssachverständige*). If they note significant shortcomings of the environmental report, the report must be reviewed/ adapted and re-published.<sup>33</sup> It was noted, however, that there is a large area of discretion for the public authority to assess the environmental report. It heavily depends on the project/plan on how much information the report contains. Additionally, there is a lack of transparency on how it is created. In fact, only its final form is presented.

In **Hungary** the SEA report is an independent part or working document of the plan or programme documentation. Like in Austria, the report shall be prepared by competent (authorised) experts who are working in cooperation with the experts preparing other parts of the plan or the programme documentation.

In the **Czech Republic** there are no binding rules to ensure the quality of the environmental report. There are some measures which should help to increase the quality of environmental reports in general such as an independent certified evaluator of the documentation, etc.<sup>34</sup> It was criticized that the environmental reports are usually accepted - regardless of their quality or sustainability - meaning that their quality is not strictly managed or ensured. This was seen differently by one of the decision-makers: According to this expert, the reports can only be

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<sup>32</sup> Online available at: [https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Praxis/SUP\\_Praxisblatt\\_5.pdf](https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Praxis/SUP_Praxisblatt_5.pdf)

<sup>33</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

<sup>34</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

processed by natural persons authorized in accordance with § 19 EIA Act. If the assessment does not correspond with the requirements laid down in Annex 9 of the EIA Act, the relevant authority will return it for amendment within a 10-day period (§ 10f/2 EIA Act).

In **Bulgaria**, consultations with the public, the authorities concerned and third parties likely to be affected on the SEA report start after a ruling of the competent SEA authority giving a positive assessment of the quality of the report for assessing the degree of impacts of plan/programme.<sup>35</sup> This practice is criticized to be highly subjective, inconsistent with the expert capacity of the competent authority on the regional level and creates conditions for corruption. The procedure follows the requirements of the Regulations for SEA of plans/ programmes.

In **Croatia**, the authorized person of the environmental reports in the SEA procedures is responsible for the quality, credibility and accuracy of the SEA report. Further quality is ensured by the work of the advisory expert committee established in every SEA procedure that is being conducted. The final control of the quality of the SEA report is being conducted during consultations with the relevant authorities and public/public concerned. In this way, the Ministry believes that the provisions of the Article 12 (2) of the SEA Directive are fulfilled in every SEA procedure. However, it was expressed during interviews with national experts that sometimes although we have SEA committee, which should work as quality control for SEA reports members sitting in this committee usually lack experience in strategic assessments.

## 11. Do you have best practice examples to share regarding the quality management of environmental reports in SEAs?

In **Austria** there are guidelines by the ministry on how certain aspects of SEAs have to be assessed.<sup>36</sup> These guidelines are intended to improve the quality of SEA processes. There are no such examples for **Hungary**. For **Bulgaria** publications on the Internet, some EU funded projects within the area and the guidelines, where mentioned.

To ensure a high quality of the SEA the **Czech** ministry of environment has published a SEA guideline, which offers suitable practices to apply during an SEA process.<sup>37</sup>

<sup>35</sup> Assessing the Impact on Climatic Factors. Recommendations for the improving of the Strategic Environmental Assessment, Comparative Study J&E 2020.

<sup>36</sup> These are online available at:

[https://www.bmk.gv.at/themen/verkehrsplanung/strategische\\_pruefung/gesetz\\_leitfaden.html](https://www.bmk.gv.at/themen/verkehrsplanung/strategische_pruefung/gesetz_leitfaden.html),  
[https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Sammlung\\_2015/Verkehr/Rheintal/A1-SUP\\_Leitfaden\\_V.pdf](https://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Sammlung_2015/Verkehr/Rheintal/A1-SUP_Leitfaden_V.pdf), <https://www.uvp.de/de/service/praxistipps> as well as <https://www.iaia.org/fasttips.php>

<sup>37</sup> This guideline is available online on the SEA information system website at: [Metodická doporučení a aktuality](#)

**Croatian** Ministry suggested some best practice examples such as: Environmental (SEA) report on the Development Strategy of Osijek-Baranja County for the period until 2020, SEA report on Energy Development Strategy of the Republic of Croatia until 2030 with a view to 2050, Plan for the use of renewable energy in the Dubrovnik-Neretva County, Changes and amendments (VI) of Šibenik-Knin County, Development strategy of the Zagreb urban agglomeration for the period until 2020. These SEAs are available on the competent authorities' websites.

#### IV. Praxis - regarding cumulation (for SEA experts, national legal experts and decision-makers)

##### 12. How do the SEA procedures consider cumulative effects/projects? The SEA provides for an easier inclusion of cumulation into assessments, is this applied in your country?

In **Austria** the main SEA application is on a level where projects are not yet seen. Sometimes the cumulation can be considered, sometimes this could still be improved. One expert expressed the opinion that the SEA offers possibilities of assessing cumulative effects, but that this would rarely be used. He mentioned the River Isel as an example, where there are many individual projects, but no overall plan.

According to **Hungary's** national legislation, the SEA report shall contain the information that may be required for complying with the 'Kvt.' and the 'SKVr.', taking into consideration the current knowledge and methods of assessment, the contents and level of detail of the plan/ programme. For the purpose of preparing environmental evaluation, any information available from past or ongoing planning or programming work related to the environmental effects of the plan/ programme in question or generated as part of the implementation of other community acts may be used. Furthermore, Annex 2 to the 'SKVr.' requires that the evaluation of likely environmental effects cover the cumulative or synergistic nature thereof, as well.

In the **Czech Republic** cumulative effects are not considered. This is seen differently by one decision-maker: According to this expert, the evaluation of potential cumulative and synergic impacts is one of the obligatory requirements of the assessment (Annex 9 of the EIA Act). These are already analysed in the screening phase (Annex 8 of the EIA Act).

In **Bulgaria** the cumulative effects of a plan or programme are part of the overall SEA. The effects are assessed for each one of the environmental components and factors as well as for the human health on the basis of the methods applied by the experts involved.

In **Croatia** the Ministry stated that cumulative effects are being considered and are processed in every SEA report, regarding the nature and complexity of the strategy, plan or programme.



This subject is a part of every SEA report and is part of mandatory content of the SEA report, as it is defined with the Regulation on SEA. However, other experts indicated that throughout SEA cumulative impacts are usually mentioned, and almost all SEAs conclude the same: cumulative impacts are possible but not significant. These conclusions are result of very poor cumulative assessment. Very few examples of SEA include good or good enough cumulative impact assessment.

### 13. Do you have best practice examples to share regarding cumulative effects/ projects?

The very open processes “SEA at the round table” have been mentioned for **Austria**. There are no recent examples though. However, one expert mentioned the recent spatial planning concept (*Raumordnungskonzept*) concerning skiing areas in Tyrol as a negative example. Nobody was involved until the final result was made public. No best practice examples were mentioned for **Hungary**.

With regard to the **Czech Republic**, the guideline on SEA mentioned above, which also focuses on the topic of cumulative and synergic impacts of assessed plans/ programmes was mentioned. In one of the first SEAs carried out in **Bulgaria**, for the Master plan of the Capital city and Sofia municipality in 2000 and its amendments in 2009, GIS and satellite images were used to evaluate the impact on human health and the most polluted zones.

An example of a good practice was mentioned in **Croatia** by national experts, and it is from 2014 and related to SEA for Amendments to Karlovac County’s Spatial Plan. Within this procedure around 10 HPPs were planned on rivers in Karlovac County (1 on river Slunjčica, 1 on Korana, and all others on river Mrežnica). Due to cumulative impacts (and also lack of data) all proposed HPPs were excluded from those amendments.

## V. Praxis - regarding expert opinions (for SEA experts, national legal experts and decision-makers)

### 14. What experts are usually called upon in SEAs?

In **Austria** SEAs by the state are done by in-house experts of the public authority in question or prepared by external experts. It was pointed out, however, that this might be quite non-transparent: Often it is not clear which experts worked at the project, as only the final result is available.

In **Hungary** the ‘SKVr.’ requires that the SEA report shall be prepared by environmental experts (in their respective fields of expertise) who are authorised under a separate piece of legislation on environmental experts (Gov. Decree 279/2009 XII.21.).

In the **Czech Republic**, the documentation, the conception plan notice and expert opinions can only be delivered by individuals with an EIA/SEA authorisation, which can only be granted by the ministry of environment and the ministry of healthcare. It was negatively mentioned that these experts might be biased as to ensure the approval of the assessed project. Choosing the team for assessment lies within the competence of the authorized person. Furthermore, the announcement of the plan and its assessment is given to the specialized departments of the relevant authority for opinions. Via public participation everyone can send their opinions, even expert public.

In **Bulgaria** the experts’ requirements regarding their qualifications, knowledge and experience have declined, after closing the register of the ministry of environment and water of the SEA/EIA experts.

In **Croatia**, experts from various fields are being called upon in the SEA procedure: water protection, biodiversity and Natura2000, air protection, forestry and agriculture, from the energy sector, waste management, heritage protection, etc. When some company is hired for SEA study in house consultants prepare SEAs with their own resources and when consultants lack a certain expert (e.g. cultural heritage expert or sociologists), then they call them in their team.

## 15. How is their independence ensured?

In **Austria** the in-house experts are independent in their assessments. The external experts are privately liable for their expert opinions. Yet it was mentioned that the financial pressure on the experts is high, compromising their independence. In **Hungary** the Code of Ethics of the Hungarian Chamber of Engineers requires the experts to act independently. However, based on the interviews made with an NGO expert and an environmental policy expert, in practice the independence of experts is arguable as they are employed by the developer.

This is different in the **Czech Republic**, where there are not any binding rules to ensure the independence of the experts.

In **Bulgaria**, the experts’ independence is ensured with a personal declaration they signed. The requirements are determined according to Art.16 (3) of the Ordinance for SEA. The experts of para 1 shall be not personally interested when:

- they are not assignor of the plan/ programme;
- they are not related persons in the context of § 1 of the additional provisions of the Commerce Act or are not in legal relation of employment, civil or official legal relation with the assignor of the plan or programme;
- they are not in employment, civil or official legal relation with the competent bodies of Art. 10 of the EPA;
- they are not members of the commission/ expert environmental council of Art. 5 of the Supreme Environmental Expert Council of Art. 12, para 1, item 1 of the EPA.

In Croatia, as a representative of the body that delegated it, the member of the advisory expert committee represents the opinion and professional knowledge of that body in the SEA procedure. In this way, impartiality and independence of the specific member of the SEA committee are ensured. However, it was stated in some interviews that the independence of experts and consultant companies is a problem in environmental impact assessment, which includes also SEAs. Some national experts have experienced rejection of an opinion because the body that develops a certain plan/programme/strategy did not agree (and that body hired the expert/consultant).

#### 16. What qualifications are necessary to be recognised as an expert by the authorities?

In **Austria** people willing to work in this field, have to fulfil certain criteria depending on their area of expertise. Usually this is either an academic degree, or long work experience. In-house experts are chosen by the public authority and usually have this qualification. There is no official examination.

In **Hungary** Articles 5 to 7 and Annex 2 of Gov. Decree 279/2009 XII.21. lay down the criteria and necessary qualifications. The expert shall have a diploma from a college or university certifying a higher education level and a professional qualification, and a diploma obtained at a postgraduate course certifying a respective specialized qualification and practical experience of 5 to 10 years (depending on the level of qualification - college or university).

In the **Czech Republic** the individual has to meet the following requirements in order to be granted the authorization: probity, 3 years of experience, legal capacity as well as professional competence (university level education and certificate of professional competence).

In **Bulgaria**, generally a master's degree is sufficient (however, with no clarifications about the scientific area of the education).

## 17. Is there a pool of experts in your county? If so, how is it managed?

In **Austria** there is no publicly available pool of experts. There is a list of officially recognised experts of the courts, but it is neither complete nor publicly available. In **Bulgaria** the situation is similar to Austria. The pool of experts was better managed by the ministry of environment and water, when the ministry provided accreditation for additional training centers and maintained a register of SEA/ EIA experts.

This is different in **Hungary**: The register of environmental experts is kept and published by the competent authority on its website and by the minister responsible for the environment in January and July of each year in the Official Gazette. Similarly, in the **Czech Republic** there is a pool of experts. It is managed by Czech environmental information agency (CENIA) under the ministry of environment.<sup>38</sup>

There is a pool of experts in Croatia and this list<sup>39</sup> is published on the website of the Ministry of Economy and Sustainable development and the list is managed by the same Ministry.

## 18. Do you have best practice examples to share, regarding expert opinions in SEAs?

In **Austria** the guidelines by the ministry to improve the expert input by setting standards was mentioned. There have been processes, apart from SEA, which involved the public and experts, for example the criteria catalogue for hydropower in Tyrol ("*Kriterienkatalog Wasserkraft Tirol*") from 2011/12. The result was excellent, but then changed due to political reasons, prompting the public to leave the process. Nothing was mentioned in **Hungary**, **Croatia** or the **Czech Republic** or **Bulgaria**.

## VI. Best practice example (for SEA experts, national legal experts and decision-makers)

### 19. Can you present a best practice example of an SEA and describe what you would like to see in other SEAs from that case? (From 2018-2020)<sup>40</sup>

<sup>38</sup> Online available at: <https://portal.cenia.cz/eiasea/osoby/osoby?sea=1>,  
<https://portal.cenia.cz/eiasea/osoby/osoby>

<sup>39</sup> [https://mingor.gov.hr/UserDocImages/UPRAVA-ZA-PROCJENU-UTJECAJA-NA-OKOLIS-ODRZIVO-GOSPODARENJE-OTPADOM/Strucne%20osobe/Popis\\_strucnjaka.pdf](https://mingor.gov.hr/UserDocImages/UPRAVA-ZA-PROCJENU-UTJECAJA-NA-OKOLIS-ODRZIVO-GOSPODARENJE-OTPADOM/Strucne%20osobe/Popis_strucnjaka.pdf)

<sup>40</sup> Implementation of Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment is online available at:

In **Austria** plans and programmes are generally better if an SEA was done. Also, the more open the SEA process, the better the outcome. Most SEAs are done by the states (*Bundesländer*), which on a voluntary basis report back to the ministry.<sup>41</sup> Furthermore, the SEA for the area between the airport Vienna and Bruck an der Leitha was described. At the beginning nobody knew how to deal with the issue, but through thorough stakeholder management a lot of valuable input was received. The results of this procedure can still be seen, as the planning progresses draw on the results of the SEA. One aspect for this success is, that all dimensions of sustainability have been taken into account on both positive and negative impacts.<sup>42</sup>

Nothing was mentioned for **Hungary** or in **Croatia** as an example of best practice. For the **Czech Republic** well-proven practices of SEA processes are contained in the SEA guideline. Generally, the decision-maker recommends using preliminary hearing with the relevant authority according to § 15 EIA Act and prepare big enough time reserves.<sup>43</sup>

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<https://op.europa.eu/en/publication-detail/-/publication/7c2796c8-2786-4faf-bafd-e7bb93082b16> ;  
<https://op.europa.eu/en/publication-detail/-/publication/c85d0724-a131-11e9-9d01-01aa75ed71a1/language-en/format-PDF/source-search>

<sup>41</sup> Examples of past SEAs are online available at:

[https://www.strategischeumweltpruefung.at/ms/strategischeumweltpruefung/sup\\_praxis/sup\\_sektoren/index.htm](https://www.strategischeumweltpruefung.at/ms/strategischeumweltpruefung/sup_praxis/sup_sektoren/index.htm)

<sup>42</sup> Online available at:

[https://www.bmk.gv.at/themen/verkehrsplanung/strategische\\_pruefung/pruefungen/flughafenspange.html](https://www.bmk.gv.at/themen/verkehrsplanung/strategische_pruefung/pruefungen/flughafenspange.html)

<sup>43</sup> The assessed plans and information regarding SEA procedures can be found online within the SEA information system: [https://portal.cenia.cz/eiasea/view/sea100\\_koncepce](https://portal.cenia.cz/eiasea/view/sea100_koncepce)

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