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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document SWD(2019) 414 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION
of the

**Directive 2001/42/EC on the assessment of the effects of certain plans and programmes
on the environment**

{SWD(2019) 413 final}

Introduction

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, known as the Strategic Environmental Assessment (SEA) Directive, is a cross-cutting tool of EU horizontal environmental legislation. It applies to plans and programmes which meet the following four cumulative criteria:

- (i) the plan and programme should be subject to preparation and/or adoption by a national, regional or local authority;
- (ii) it is required by legislative, regulatory or administrative provisions;
- (iii) it is prepared by any of the sectors listed in Article 3(2)(a) of the SEA Directive;
- (iv) it sets the framework for future development consent of projects listed in Annexes I and II to the Environmental Impact Assessment (EIA) Directive.

The general objective of the SEA process is to provide for a high level of environmental protection and to promote sustainable development. In line with the principle of environmental integration (Article 11 of the Treaty on the Functioning of the European Union), the SEA Directive helps integrate environmental considerations into decision-making, and ensures that an environmental assessment is carried out prior to the adoption of certain plans and programmes which are likely to have significant effects on the environment. It also transposes into the EU legislation international obligations from the Protocol on Strategic Environmental Assessment to the Convention on the Environmental Impact Assessment in a Transboundary Context.

To achieve these objectives, the SEA Directive sets out a procedure that must be undertaken when assessing a plan or programme to which the SEA procedure applies. These steps include scoping; the preparation of the environmental report, with due consideration of the baseline information and the reasonable alternatives; public consultation and participation; and decision-making and monitoring. The SEA Directive also provides that a screening procedure must be carried out for plans and programmes determining the use of small areas at local level and minor modifications to plans and programmes, as well as for plans and programmes different from those listed in Article 3(2), but which set the framework for consent to develop future projects.

Hence, the SEA Directive is intended to improve the quality of the ‘plan-making’ process, and ensure that the environmental concerns are properly taken into account in decision-making. At the same time, the public participation provided for under the SEA Directive helps improve transparency and social acceptance. Since the SEA Directive is cross-cutting, it is a flexible tool which, when properly applied, will help to implement key EU policy actions and to achieve the sustainable development goals.

Main findings

This evaluation has examined the extent to which the SEA Directive is fit for purpose by looking into what works and what can be improved, the extent to which the objectives of the Directive have been achieved and why some elements or features are successful or not.

The evaluation was carried out using the five standard evaluation criteria (effectiveness, efficiency, relevance, coherence and EU added value) and the following findings were established.

Effectiveness

The evidence shows that the SEA Directive has contributed to the high level of environmental protection in the EU. This continues to be a valid objective. One of the key factors showing the effectiveness of the SEA Directive in contributing to a high level of protection of the environment is effective consultation with relevant environmental authorities and the public. The application of the SEA procedure has influenced the final content of plans and programmes, including siting, design, and implementation of projects developed on the basis of plans and programmes. The degree of the impact depends on the type of the plan and/or programme (e.g. spatial plan, strategy, policy) and the decision-making, governance level of the plan and programme (e.g. national, regional, local). However, different stakeholder groups have highlighted that the influence of the SEA Directive is often limited to the final content of plans and programmes due to prevailing (political, social or economic) interests.

Efficiency

Various factors, such as the scale and complexity of the plan or programme, determine the cost of the SEA procedure. Nonetheless, the available data do not allow an understanding of the costs of the SEA process at EU level, or average estimates by type and plan/programme or even by a Member State. There is consensus among the stakeholders that in principle the costs of SEA are reasonable and that the benefits of carrying out an SEA outweigh the costs. Therefore, the application of the SEA Directive is perceived as efficient.

The Member States have concerns about the broad interpretation of the term ‘plans and programmes’ in the Court of Justice of the European Union case law establishing that the SEA would be applicable to any act, including normative one, fulfilling the above four criteria.¹ For the time being there is no evidence on whether these costs are proportionate or

¹ Judgment of 27 October 2016, *D’Oultremont and Others*, C-290/15, EU:C:2016:816; Judgment of the Court of 7 June 2018, *Inter-Environnement Bruxelles ASBL and Others v Région de Bruxelles-Capitale*, C-671/16, ECLI:EU:C:2018:403; Judgment of 7 June 2018, *Thybaut and Others*, C-160/17, ECLI:EU:C:2018:401; Judgment of the Court of 12 June 2019, *Terre wallonne ASBL v Région wallonne*, C-321/18, ECLI:EU:C:2019:484; Judgment of 12 June 2019, *Compagnie d’entreprises CFE SA v Région de Bruxelles-Capitale*, C-43/18, ECLI:EU:C:2019:483; Judgment of 8 May 2019, *Associazione "Verdi Ambiente e Società - Aps Onlus" and Others*, C-305/18, ECLI:EU:C:2019:384.

not. In addition, some stakeholders noted that the level of complexity and the scale of the plan/programme can influence the cost of SEA.

Relevance

There is consensus that the SEA Directive remains very relevant to delivering a high level of protection and contributing to sustainable development. This is because the flexibility of the Directive allows the Member States to accommodate the procedure required under the Directive to the different environmental issues at stake. Citizen participation is a key means of taking strategic decisions. Moreover, the evidence has shown that the sectoral authorities are becoming more aware and engaged in the SEA process than they were before the adoption of the Directive.

Coherence

The SEA Directive is generally coherent with other EU legislation and policy instruments, such as EIA, appropriate assessment, cohesion policy, climate change, biodiversity and transport, as well as EU international obligations. The SEA process helps achieve sectoral objectives, making plans and programmes more environmentally robust and sustainable. Stakeholders have frequently referred to the opportunities for maximising the synergies between SEA and EIA procedures, and between the SEA and appropriate assessment.

Added value

The SEA Directive has an added value since it provides for a systematic approach to assessing the environmental impacts of plans and programmes through the series of procedural steps, such as an assessment of the alternatives and public participation. The evidence has shown that the Directive has led to a more transparent and participatory planning process on the environmental impacts of plans and programmes.

Conclusion

The SEA Directive is a major piece of EU environmental legislation and remains relevant for attaining the objectives that it has set. The evaluation has shown that the SEA Directive brings multiple benefits to the EU, contributing to wider goals on attaining the sustainable development goals (SDGs) and environmental protection, by integrating environmental concerns into the appropriate plans and programmes. To this end, it has clear EU added value. The Directive is coherent with other EU legislation prescribing environmental assessments. The benefits it provides do not cause disproportionate costs for the national administrations. The effectiveness of the Directive differs between sectors and the types of plans and programmes to which it is applied, but depends significantly on how it is transposed into national law and further implemented in each Member State. In addition, the broad scope of application that has been provided for in the case law of the CJEU needs to be considered on a case-by-case basis and against the specific legal order transposing the SEA Directive in the individual Member States.

The SEA Directive remains fit for purpose. Its effectiveness and efficiency can be affected by many practical factors, for example the timing of the SEA, its synchronisation with plans and

programmes subject to SEA, and the use of scoping in order to limit the costs and frame the content of the environmental report. The central issue for the future is the scope and purpose of the SEA Directive. While some stakeholders have favoured a broader and more strategic application of the Directive, others have abstained from acknowledging its merits when applied to high level planning and would prefer to see it applied at a lower level.

The abovementioned lessons learned and challenges have not affected the overall positive aspects consisting of having an EU-wide procedure that reflects the principles of sustainable development and provides for the systematic inclusion of environmental concerns in the plans and programmes that authorise developments and other activities likely to impact the environment.