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REPORT FROM THE COMMISSION

RELATIONSHIP BETWEEN THE SEA DIRECTIVE AND COMMUNITY FUNDS

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1. BACKGROUND TO AND PURPOSE OF THE REPORT

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the 'Strategic Environmental Assessment' (SEA) Directive)¹ was adopted in July 2001 and was to be transposed in the Member States by 21 July 2004. It requires a wide range of plans and programmes to undergo an environmental assessment before they are adopted.

Similar, but not identical, requirements for an *ex ante* environmental evaluation have applied, during the current programming period (2000-2006), to Structural Fund (SF) development plans, assistance and programme complements in accordance with Regulation (EC) No 1260/1999 of 21 June 1999, laying down general provisions on the Structural Funds.^{2,3} This Regulation defines 'Structural Funds' as meaning the European Regional Development Fund (ERDF), European Social Fund (ESF), European Agricultural Guidance and Guarantee Fund (EAGGF) under Regulation (EC) No 1257/1999 and Financial Instrument for Fisheries Guidance (FIFG).⁴

These SF plans and programmes were specifically exempted from the application of the SEA Directive for the current programming period.⁵ The reason was that SF plans and programmes would almost certainly have been adopted before the Directive was due to be transposed in the Member States (i.e. 21st July 2004) and would have undergone *ex ante* environmental evaluation. The exemption avoided any risk of duplicate or conflicting requirements for assessment arising from the application of the two legal instruments and any uncertainty which might ensue. The exemption does not apply to future programming periods (from 2007 onwards) under the new Regulations.⁶

¹ OJ L 197/30, 21.7.2001. The word 'strategic' does not appear in the Directive or its title. It is used here for convenience only.

² OJ L 161/1, 26.06.1999.

³ SF plans and programmes are also subject to *ex ante* evaluation in respect of the social and economic situation and of equality between men and women. These aspects are not the subject of Directive 2001/42/EC and are not discussed further in this report.

⁴ See Article 2 of Regulation 1260/1999. Article 49 of the EAGGF Regulation (Council Regulation (EC) No 1257/1999 of 17 May 1999, on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, OJ L 160/80, 26.6.1999) requires that evaluations of plans and programmes under that Regulation must follow the principles of Articles 40-43 of Regulation 1260/1999. Article 1 of the FIFG Regulation ((EC) No 1263/1999) requires the structural measures implemented with financial assistance under that Regulation to support the objectives set out in (amongst others) Regulation (EC) 1260/1999.

⁵ Article 3(9) of Directive 2001/42/EC.

⁶ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999; Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD); Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (EFF).

Article 12(4) of Directive 2001/42/EC requires the Commission to ‘report on the relationship between this Directive and Regulations (EC) No 1260/1999 and (EC) No 1257/1999 well ahead of the expiry of the programming periods provided for in those Regulations, with a view to ensuring a coherent approach with regard to this Directive and subsequent Community Regulations.’

This report is intended to meet that obligation. It outlines the policy and legal background to the environment and EC co-financing, explains how the scope of application of the SEA Directive should be identified and how it relates to the 2007-2013 programming period, compares *ex ante* environmental evaluation for 2000-2006 with SEA under the Directive, and draws some conclusions about the SEA-SF relationship based on past experience.

2. THE ENVIRONMENT AND EU CO-FINANCING

The EC Treaty provides in Article 6 that environmental protection requirements must be integrated into the definition and implementation of EU policies. Article 174 (2) and (3) provides that ‘Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community,’ and that ‘in preparing its policy on the environment, the Community shall take account of ... environmental conditions in the various regions of the Community ... the economic and social development of the Community as a whole and the balanced development of its regions.’ In addition, one of the purposes of the Cohesion Fund is to provide a financial contribution to projects in the field of the environment (Article 161).

The EU’s strategy for sustainable development, endorsed by the Gothenburg European Council in 2001, underlined the political imperative that all policies must have sustainable development as their core concern. It emphasised that better information is needed in order to assess proposals systematically.⁷ The SEA Directive is an important instrument in providing such information so that environmental factors can be better integrated in sectorial proposals as they are developed, and more sustainable solutions can thereby be found. Its objectives are:

‘to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development’ (Article 1).

These objectives are to be achieved by:

ensuring first, that ‘an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment’ (Article 1) ; and second, that the ‘effects of implementing [these] plans and programmes are taken into account during their preparation and before their adoption’ (Preamble, paragraph 4).

For the **current programming period** of Structural Funds, Council Regulation (EC) N° 1260/1999 takes into account Article 6 of the EC Treaty by linking pursuit of the Funds’ priority objectives with, *inter alia*, sustainable development and the protection and improvement of the environment (Article 1), and by requiring the Commission and the

⁷ COM(2001)264 final. The Presidency Conclusions are SN 200/1/01 REV 1.

Member States to integrate the requirements of environmental protection in the definition and implementation of the operations of the Structural Funds (Article 2). In particular it makes provision for the *ex ante* assessment of Community assistance, including its environmental aspects (Article 41).

Similarly, Regulation (EC) No 1257/1999 includes ‘the preservation and promotion of a high nature value and a sustainable agriculture respecting environmental requirements’ as one of the purposes of the EAGGF (Article 2).

During the current programming period (2000-2006) the Cardiff process has improved the focus on environmental integration and the longer term effects of sectorial strategies; and there has been more use of environmental targets and indicators, environmental assessment of projects and *ex ante* evaluation of programmes in accordance with the requirements of Article 41 of Regulation 1260/1999. Use of the funds has thus been an important plank for the delivery of EU environmental policy.

For the **next programming period (2007-2013)**, the funding process has been simplified and decentralised. Within the overall context of reform, the objectives of furthering sustainable development and the protection and improvement of the environment in accordance with the Gothenburg Conclusions have been retained.

The Financial Perspectives 2007-13 have reduced the number of Structural Funds. The SFs in the period 2007-13 will consist of the ERDF and the ESF, plus the Cohesion Fund (CF). The European Fisheries Fund (EFF) and the European Agricultural Fund for Rural Development (EAFRD) are no longer SFs in the strict sense and are located under a different heading of the Financial Perspectives. For consistency and because the same rationale applies in each case, this Report discusses the relationship between the SEA Directive and all of these Funds, including the CF which, under the new Regulation, will be in the form of a programme.

Although *ex ante* evaluation is required for Operational Programmes (OPs), it is not required for National Strategic Reference Frameworks (NSRFs) (or National Strategic Plans in EAFRD and EFF) nor is a separate *ex ante* environmental evaluation now required (being in effect superseded by the SEA Directive).

Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999⁸ states that ‘the action taken under the Funds shall incorporate, at national and regional level, the Community’s priorities in favour of sustainable development by strengthening growth, competitiveness, employment, and social inclusion, and by protecting and improving the quality of the environment’ (Article 3). It also makes clear that the objectives of the Funds shall be pursued in the framework of sustainable development and the Community promotion of the goal of protecting and improving the environment as set out in Article 6 of the Treaty (Article 17).

The overall mission of the EAFRD⁹ is to ‘contribute to the promotion of sustainable rural development throughout the Community’ (Article 3) and amongst its objectives is that of ‘improving the environment and the countryside by supporting land management’ (Article 4(b)).

⁸ OJ L 210/25, 31.7.2006

⁹ Council Regulation (EC) No 1698/2005 of 20th September 2005

Similarly, Council Regulation No 1198/2006 on the European Fisheries Fund (EFF) includes the objective of fostering 'the protection and the enhancement of the environment and natural resources where related to the fisheries sector' and of encouraging 'sustainable development and the improvement of the quality of life in areas with activities in the fisheries sector' (Article 4(e) and (f)).

In the next programming period, therefore, support from these European co-financing instruments will continue to be a major catalyst for environmental improvement.

3. APPLYING THE SEA DIRECTIVE TO PLANS AND PROGRAMMES UNDER COMMUNITY FUNDS

The SEA Directive applies to any plan or programme which comes within its scope of application as defined in Articles 2 and 3. The exemption for SF plans and programmes will not apply in the 2007-2013 programming period, and both Regulations 1083/2006 and 1698/2005 refer explicitly to the need to take environmental impact assessment (EIA) and SEA legislation into account in the evaluations which are to be carried out under the Funds.¹⁰ It follows that any post-2006 plan or programme under the new Regulations which comes within its scope of application will require assessment as provided for in the Directive.¹¹

Articles 2 and 3 of the SEA Directive contain a series of tests which must be applied in order to decide whether SEA is required for a plan or programme. Annex 1 below (which is based on earlier guidance produced by the Commission)¹² briefly analyses how these tests apply to plans and programmes under the Community Funds. The Commission's conclusion (without prejudice to the role of the European Court of Justice in interpreting EC law) is that, for the programming period 2000-2006, many SF plans and programmes met the criteria in Articles 2 and 3 of the SEA Directive and would have required assessment under it if it had applied when they were prepared.

For the period 2007-2013, Regulation 1083/2006 does not require *ex ante* evaluation of NSRFs but does require it of OPs (Article 48(2)). The absence of a requirement for a specific *ex ante* environmental evaluation means that no danger of legal incoherence in Community law or inconsistency with the SEA Directive could arise as was feared for the programming period ending in 2006.

The requirement under Article 47 of Regulation 1083/2006 for evaluations to take account of Community legislation concerning environmental impact and strategic environmental assessment emphasises that the respective directives apply when the criteria they contain are met.

Because of the way the scope of application of the SEA Directive is defined and of variations in the nature of the plans and programmes under the Funds, it is not possible to say

¹⁰ See Article 47 of Council Regulation (EC) No 1083/2006, and Article 84 of Council Regulation (EC) No 1698/2005. Article 44 of the EFF Regulation refers in a more general way to taking the environmental impact into account.

¹¹ The only exceptions would be cases in which a Member State determined under Article 3 (3) or (4) that, because the plan or programme would not be likely to have significant environmental effects, assessment was not necessary, or cases which fell within the exemptions in Article 3(8).

¹² Implementation of Directive 2001/42/EC; see <http://ec.europa.eu/environment/eia/sea-support.htm>

categorically in advance which plans and programmes might be within its scope but SEA is most likely to be needed for OPs.

The key test in deciding on application in this context is normally whether the OP in question sets the framework for future development consent of projects since it is expected that the other criteria (those in Article 2) will be met in relation to OPs.

OPs should therefore be screened to assess the need for SEA and, so far as the Structural and Cohesion Funds are concerned, many may require assessment under the Directive, particularly (but not exclusively) if they include projects that are listed in Annex I or II to the EIA Directive.¹³

Provided the Member States keep to the minimum requirements of Regulation 1083/2006, the Commission does not consider that SEA will be required for NSRFs (because they will not set the framework for future development consent of projects) although Member States may nevertheless find it useful.

The same rationale applies to the national strategic plans for rural development, and rural development programmes required under the EAFRD Regulation, and the national strategic plans and OPs required under the EFF Regulation. Here too it is not expected that the plans at national level which adhere to the minimum requirements of the respective Regulation will need SEA (because they do not set the framework for future development consent) but rural development programmes and OPs (for fisheries) will be likely to require it. Accordingly they should be screened against the Directive's requirements, as should any regional programmes which might meet the Directive's criteria.

Authorities will need to exercise caution in considering the application of the SEA Directive, in order to avoid any risk of non-compliance and, when it applies, Member States must be able to demonstrate, before the adoption of the OP, that they have met its requirements.

Member States have been reminded of their obligations towards the SEA Directive in guidance on *ex ante* evaluation prepared by the Commission which also suggested how SEA could be made complementary to *ex ante* evaluation (a question touched on in section 6 below).¹⁴

4. ENVIRONMENTAL ASSESSMENT REQUIREMENTS UNDER THE SEA DIRECTIVE

Environmental assessment in accordance with **the SEA Directive** contains the following elements:

a) The scoping of the environmental report

Environmental authorities designated by the Member State must be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report (scoping) (Article 5(4)).

¹³ Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) as amended by Directives 97/11/EC and 2003/35/EC.

¹⁴ See http://ec.europa.eu/comm/regional_policy/sources/docoffic/working/doc/exante_sf2007-2013_en.pdf

b) The preparation of the environmental report

The report (which must be of sufficient quality) must contain the information that may reasonably be required (Article 5(2)) and its detailed contents are prescribed in Annex I of the Directive (see Annex 2 below).

c) Carrying out consultations

Once the draft plan or programme and the environmental report have been drawn up, the public and the environmental authorities must be given the opportunity of commenting on the draft plan or programme and the environmental report (Article 6). 'The public' is defined as meaning 'one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.' The public must be identified and must include 'the public affected or likely to be affected by, or having an interest in, the decision-making subject to [the] Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.' The Directive is thus aligned with the Aarhus Convention.¹⁵

Other Member States that are likely to be affected by the environmental impacts of the plan or programme must also be informed and asked if they wish to enter into consultations (Article 7).

d) Taking account of the environmental report and the results of the consultations in the decision-making process

The environmental report and the opinions received during the consultation process must be taken into account during the preparation of the plan or programme (Article 8). Hence it may be found necessary or desirable to introduce amendments to the draft plan or programme.

e) Notification of decision

The designated environmental authorities and the public (and any Member State consulted) must be informed of the adoption of the plan or programme and certain additional information (including how environmental considerations and the results of consultation have been taken into account) must be made available to them (Article 9).

f) Monitoring

Monitoring is not included in the definition of environmental assessment in Article 2 but in Article 10 the Directive requires the significant environmental effects of the implementation of the plan or programme to be monitored in order, *inter alia*, to identify unforeseen adverse effects, and to be able to undertake appropriate remedial actions. To avoid duplication, existing monitoring arrangements may be used, if appropriate (Article 10). The precise arrangements for monitoring will depend on the

¹⁵ United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, 25th June 1998.

nature and content of the plan or programme concerned. For example, what is appropriate for a small-scale fisheries programme envisaging only one or two projects will be very different from one involving heavy investment in infrastructure.

5. COHERENCE BETWEEN PRACTICE UNDER CURRENT SF REGULATIONS AND THE SEA DIRECTIVE'S REQUIREMENTS.

The requirements for *ex ante* environmental evaluation under Article 41(2)(b) of Regulation (EC) 1260/1999 are relatively brief. It must include:

- an evaluation of the environmental situation of the regions concerned, especially those environmental sectors that may be considerably affected by the environmental impacts of the SF assistance.
- The arrangements to integrate the environmental dimension into the SF assistance and the coherence with existing short- and long-term national, regional and local environmental objectives.
- The arrangements for ensuring compliance with the Community rules on the environment.
- An estimation of the expected environmental impacts of the strategy and the SF assistance.

In putting these requirements into practice, authorities in some Member States used guidance produced either on a national basis or by the Commission,¹⁶ or found inspiration in Directive 2001/42/EC even though it did not apply at that time.

The main differences between the SEA procedure and best practice in the *ex ante* environmental assessment of plans and programmes in the current programming round can be summarised as follows:

- (i) under the Directive, environmental authorities must be consulted on the scope and level of detail of the information to be included in the environmental report;
- (ii) there is a formal requirement to consider reasonable alternatives in the SEA;
- (iii) the information requirements of the Directive are expressed more fully and rigorously, and explicitly include an assessment of environmental problems and objectives and how they have been taken into account (see Annex 3 below);

¹⁶ 'A Handbook on Environmental Assessment of Regional Development Plans and EU Structural Funds Programmes', prepared by Environmental Resources Management for the European Commission, DGXI, Environment, Nuclear Safety and Civil Protection, August 1998.
See <http://www.europa.eu.int/comm/environment/eia/home.htm>

'Environment and Sustainable Development, A guide for the *ex ante* evaluation of the environmental impact or regional development programmes' prepared by Ecotec Research and Consulting on behalf of DG XVI of the European Commission. Evaluation and Documents No 6, May 1999.

- (iv) the Directive contains a formal requirement to consult the general public (and, explicitly, environmental authorities) on the plan or programme and the environmental report and it provides for transboundary consultation when appropriate; and
- (v) the environmental report and the results of consultation must be taken into account during the preparation of the plan or programme and, when it is adopted, a statement summarizing how this has been done must be made available to the public, environmental authorities and any Member States consulted.

It seems clear therefore that, although there are marked differences in the way the requirements of the respective legal instruments are expressed, in practice the move from *ex ante* environmental evaluation to SEA in accordance with the Directive should be a development from previous best practice which should not present Member States with insuperable difficulties. It should be noted, however, that the Directive is specific in its requirements and that it introduces some additional elements compared with Article 41(2)(b). It is moreover legally enforceable unlike the previous guidance.

Annex 2 compares the SEA process with the requirements for the 2000-2006 programming period.

6. THE 2007-2013 PROGRAMMING PERIOD

The relationship between the SEA Directive and the Regulations governing the 2007-2013 programming period appears legally coherent and complementary, and observance of the SEA requirements should achieve some worthwhile improvements in comparison with the current procedure.¹⁷ To a considerable degree, these requirements formalize what was already best practice in carrying out *ex ante* environmental evaluations but in order to ensure that programming and assessment both proceed smoothly, and to derive maximum benefit from the SEA in developing the programme, authorities will need to plan the activities carefully.

The absence of any requirement for an *ex ante* environmental evaluation, coupled with the provisions of Article 11(2) of the SEA Directive which allows co-ordinated or joint procedures to be established to avoid duplication means that there is no legal obstacle to establishing a single assessment procedure at the programming level.

It will be in authorities' interest to consider the application of the SEA Directive and involve environmental authorities at the earliest moment so as to avoid delays in completing OPs and rural development programmes. Assessment and programming will need to begin at about the same time and each should inform the other in an iterative manner. The environmental report required for the SEA should be completed as the programme is being developed so that the design of the programme can benefit from the growing understanding of the likely effects. There will need to be close co-operation between the programming team and the assessment team (if indeed these activities are not combined within a single team).

¹⁷ Annex 3 of Working Paper 'The *ex ante* evaluation of the Structural Funds interventions' advises on the procedures for *ex ante* evaluation and strategic environmental assessment and is available at: http://ec.europa.eu/regional_policy/sources/docoffic/working/sf2000_en.htm

In particular, it will be advisable for authorities to consider at an early stage the requirements for early and effective public consultation and how they propose to provide for it. Failure to consider this sufficiently early in the planning process could lead to delays at a late stage of the evaluation when time can be at a premium. Experience in, for example, Germany and Great Britain in the 2001-2006 period shows that consultation can be carried out while respecting time limits. Careful planning of the evaluation should enable an environmental assessment to be carried out which conforms to Directive 2001/42/EC without unduly prolonging the planning process. Provided environmental interests are adequately represented in partnership arrangements, environmental issues can be addressed and documented (and opportunities of achieving positive environmental outcomes incorporated) during the development of the programme.

The environmental report is an important tool for integrating environmental considerations into the preparation and adoption of plans and programmes. It must contain the information that may be reasonably required, taking account amongst other things of the contents and level of detail in the plan or programme. This implies that in the report for a general, broad-brush plan, very detailed information and analysis may not be necessary whereas much more detail would be necessary for a plan or programme which itself contained a higher level of detail. In other words, while meeting the requirements of Annex I, environmental reports should be in proportion to the nature of the plan or programme to which they relate.

If SEA is carried out at the strategic level (NSRF, NSP), it would examine the broad areas proposed for support so as to ensure that, so far as possible, environmentally beneficial programmes and measures result. At the programme level, SEA would be more detailed. The assessment would need to relate the description of the environment to the types of effect which are likely to result from the measures proposed, in order to show clearly how action supported by the Funds is likely to affect the environment. Irrespective of the type of plan or programme, the validity and robustness of the chosen indicators should have been established in the light of experience and they should be carefully selected in order both to demonstrate over time the environmental benefits delivered by the measures in the programmes and to enable their achievement to be satisfactorily monitored, and to enable unforeseen adverse effects to be identified and remedied as appropriate.

OPs and rural development programmes may pave the way for a variety of eventual actions not all of which will be projects in the meaning of the Directive. In such cases it makes little sense to attempt to restrict the SEA to the project-related elements of the programme alone. Indeed this may not be compliant with the Directive. The point of SEA is to improve planning and it makes more sense to carry out an evaluation of the whole programme (with appropriate coverage of each aspect of it) than to attempt to introduce artificial distinctions which may distort the assessment.

While SEA will help to optimize programmes' contribution to sustainable development, where no SEA is required, the challenge will be to formulate, implement and evaluate programmes in the light of the sustainable development needs and to identify ways in which sustainable development principles can be integrated into projects so as to add value to their outputs and impacts and to the broader development objectives of the programme. In these cases *ex ante* evaluation will need to consider the environmental implications of proposals. There are ESF

examples from the current programming period which have successfully incorporated such principles.¹⁸

Many authorities should be able to build on previous experience of environmental evaluation for the forthcoming programming period but others may find it necessary to engage in some capacity-building. Amongst other sources of information, practical guidance on application of SEA in the context of the Cohesion Policy can be found in a handbook produced in early 2006 by the Greening Regional Development Programmes Network (GRDP).¹⁹

7. CONCLUSION

The *ex ante* environmental evaluations carried out for the current period to 2006 appear to have had a beneficial influence on the design of SF programmes thanks to a more developed approach when compared with the preceding period (up to 2000). In particular, evaluations have considered more than simply the level at which particular targets should be set but also the rationale for them (whether they are the right targets) and what is the best way of achieving them. It is very important for the *ex ante* evaluation to establish a clear connection between results, outputs and impacts and the causal relationships between them. It is clear that the evaluation requirements of Regulation 1260/1999 have helped to promote an evaluation culture and capacity in the Member States. In some cases very little evaluation was carried out prior to the advent of significant SF applications.

The overall lesson from past experience is that a well-organised and adequately resourced evaluation system, underpinned by appropriate structures and a clear sense of purpose or focus, is an important instrument in maximising the benefits of Community co-funding. Evaluations carried out at an early stage in planning, by experienced evaluators, focused on appropriate questions and with the commitment of key stakeholders, can deliver a rounded approach to sustainable development which takes account of the interest of different stakeholders and enables environmental opportunities to be developed. There is no clear evidence of whether the decision taken to exempt the programming period 2000-2006 of SEA had harmful consequences on the environment since a separate *ex ante* environmental evaluation was required. During the 2007-2013 programming period, this separate evaluation will be effectively superseded by the SEA, which will be an important tool in promoting sustainable development, and will benefit in turn from the evaluation expertise developed during the programming period 2000-2006.

¹⁸ Macleod C, (2005), 'Integrating Sustainable Development into Structural Funds Programmes: An Evaluation of the Scottish Experience. *European Environment*, 15, 313-331.

¹⁹ GRDP, Handbook on SEA for Cohesion Policy, February 2006.