Avosetta Questionnaire: The SEA Directive

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Croatian Report

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[1] National legislative context

Strategic environmental assessment of strategies, plans and programmes is regulated by the Environmental Protection Act (EPA)[1] and the Decree on strategic environmental assessment of strategies, plans and programmes[2]. The Decree on information and participation of the public and public concerned in environmental matters[3] applies to issues concerning public participation in SEA. The Government was required to pass the new Decree on information and participation of the public and public concerned in environmental matters within one year from the entry into force of the EPA, i.e. by 06 July 2014. This has not been done yet. Until the new Decree enters into force, the previous one from 2008, which is not fully harmonized with the Aarhus Convention, remains in force.

[2] EU infringement proceedings?

None.

[3] Objectives (Art. 1)

(i) Is the Objective of the Directive reflected in your Member State's national legislation?

Yes. The EPA defines the following: "Strategic assessment creates a basis for promoting sustainable development by integrating environmental protection conditions into strategies, plans and programmes of a particular area. This enables relevant decisions on the adoption of the strategy, plan and programme to be made while knowing the possible significant impacts that the strategy, plan and programme may have on the environment through its implementation, and provides stakeholders with framework for action and the possibility of including essential elements of environmental protection in decision making."

[1] Articles 62–75, Official Gazette (OG) no. 80/2013, 153/2013, 78/2015, 12/2018, 118/2018.
[2] OG no. 3/2017.
[3] OG no. 64/2008.

(ii) Has the Objective been used by your national courts to assist them in the interpretation of relevant provisions of national law?

Not to my knowledge. Case law concerning SEA is very scarce. One of the reasons is that the SEA procedure is not regulated as an administrative procedure. Final SEA decision cannot be challenged before the courts in Croatia. The only exemption is when SEA includes appropriate assessment (prescribed by the Habitats Directive, i.e. implementing legislation: Nature Protection Act) when there is a possibility to challenge certain decision before the administrative court, but there is still no case law.

[4] "Plans and Programmes" subject to SEA

(i) **Art. 2 (a) (Definition of "plans and programmes"):** How has this definition been transposed into national law and, in particular, how is the concept "required by legislative, regulatory or administrative provisions" understood – either in national legislation and / or in national jurisprudence?

Pursuant to the EPA, strategic assessment is mandatory for strategies, plans and programmes, and amendments thereto, including the ones whose implementation is financed by the EU. The EPA does not prescribe the definition of strategies, plans or programmes.

The SEA was introduced as a new environmental protection instrument in the Croatian EPA in 2007. The major inconsistency with SEA Directive was that plans and programmes adopted on the local level were excluded from the SEA procedure. This was contrary to Article 2 (a) of the SEA Directive. Today, on the basis of the amendments to the EPA from 2015, SEA is mandatory for strategies, plans and programmes, including their amendments, which are adopted not only at the state and regional level, but also at the local level.

The concept "required by legislative, regulatory or administrative provisions" is understood as prescribed by the EPA.

In Croatia, there is, generally speaking, lack of knowledge of the CJEU case law in environmental matters. There haven't been any articles/papers concerning the cases C-567/10 and C-24/19. Croatian administrative courts are not inclined to refer questions to the CJEU for a preliminary ruling. As an illustration, Croatia has been an EU Member State since 1 July 2013, and so far only one case has been referred to the CJEU by the Croatian administrative court in a tax case.

(ii) **Art. 3 (Scope):** How has this provision been transposed into national legislation, and, in particular, has your country added any additional categories of "plans and programmes", either in legislation or on a case by case basis (see Art. 3(4) and (5))?

Pursuant to the EPA, strategic assessment is mandatory for:

- strategies, plans and programmes, and amendments thereto, including the ones whose implementation is financed by the EU, which are adopted at the national, regional and local level, in the following sectors: agriculture, forestry, fisheries, energy, industry, mining, transport, electronic communications, tourism, spatial planning, regional development, waste management and water management which set the framework for projects subject to environmental impact assessment (EIA) or for projects subject to evaluation of the need for EIA (i.e. screening)

- strategies, plans and programmes that may have a significant negative impact on the ecological network Natura 2000, which is determined under special legislation in the field of nature protection i.e. Nature Protection Act.

The following strategies, plans and programmes are not subject to strategic assessment:

- strategies, plans and programmes which serve exclusively for purposes of national defence and/or civil protection, and strategies, plans and programmes which are applied in emergency situations as well as external plans for protection and rescue

- financial and budgetary strategies plans and programmes.

(iii) "likely to have significant environmental effects" – is this concept elaborated on in national legislation? Is there official guidance and / or national jurisprudence on the meaning of the phrase "likely to have significant environmental effects"? Who determines whether a particular plan or programme is "likely to have significant environmental effects"?

The concept "likely to have significant environmental effects" is not elaborated on in national legislation. There is no official guidance and no national jurisprudence on the meaning of this concept. In 2014 within the project financed by the EU a manual was published on the web site of the Ministry competent for Environmental Protection. However, the EPA and the Decree which regulates the SEA have been changed/amended thereafter.

Strategic assessment, as well as screening for strategic assessment, is carried out by the competent authority for the area for which the strategy, plan or programme is being adopted (e.g. for forestry – Ministry of Agriculture, for tourism – Ministry of Tourism) in cooperation with the Ministry competent for environmental protection or the administrative body competent for environmental protection in the county. Prior to the commencement of proceedings, the authority in charge of drafting the strategy, plan or programme is required to obtain an opinion from the Ministry competent for environmental protection or the administrative body competent for environmental protection in the county on the need for the implementation of strategic assessment or screening.

(iv) Is there screening? If yes, in what context(s) and how does it operate? Who makes the screening determination? Is the screening determination available to the public?

The screening procedure is mandatory for the strategies, plans and programmes which determine the use of small areas at local level and minor modifications to strategies, plans and programmes that are subject to mandatory strategic assessment (referred to above under point ii). The screening for strategic assessment is carried out for all strategies, plans and programmes that provide a framework for projects subject to EIA or to the evaluation of the need for an EIA. The decision made in the screening procedure must be based on case-by-case examination and criteria for determining the likely significant environmental impact prescribed by the Decree on strategic environmental assessment of strategies, plans and programmes (Annex II). The criteria for determining the likely significance of effects are the same as the criteria prescribed in Annex II of the SEA Directive.

The need to perform the appropriate assessment of the strategy, plan or programme is determined by a special legislation i.e. Nature Protection Act.

(v) " … which set the framework for future development consent of projects" specified in the EIA Directive. Has national legislation / official guidance and / or jurisprudence further elaborated on the meaning of this concept?

The provision of the EPA prescribes the following: "when they provide a framework for projects that are subject to EIA or EIA screening".

(vi) "Plans and programmes" that "determine the use of small areas at local level" – how has this provision been transposed and how it is applied in practice?

In case of strategies, plans and programmes which determine the use of small areas at local level the screening for strategic assessment is carried out.

(vii) Does your national legislation and practice reflect the CJEU's conclusion that it is the "content" rather than the "form" of the planning or programming act that is decisive?

No.

[5] General obligations (Art. 4): How has this provision been transposed? In particular, has the obligation to carry out the assessment "during the preparation of" the plan or programme been respected? Are there any practical examples demonstrating the

avoidance of duplication of assessment where there is a hierarchy of plans and programmes?

Strategic assessment is carried out during the development of the draft proposal of the plan or programme, prior to the conclusion of the final proposal and its submission into the adoption procedure.

When the strategic assessment also includes appropriate assessment i.e., assessment of the acceptability of strategies, plans and programmes for the ecological network Natura 2000 according to a special legislation (NPA), the procedure for appropriate assessment shall be carried out as part of the strategic assessment.

For the purpose of avoiding duplication, a strategic assessment for a strategy, plan or programme shall not be carried out on a lower level if a strategic assessment of the strategy, plan or programme has already been carried out for its starting points at a higher level, for which the obligation of conformity of the lower level with the higher level has been prescribed by the EPA or a special regulation.

In the SEA procedure a strategic environmental assessment study (hereinafter: strategic study) is developed. Strategic study is an expert document that is submitted with the strategy, plan and programme. It is prepared by the persons authorized for performing professional environmental protection activities. Strategic study defines, describes and assesses the expected significant impacts on the environment which may be caused by the implementation of the strategy, plan or programme and the reasonable alternatives related to environmental protection, which take into account the goals and scope of the strategy, plan or programme in question. Strategic assessment is carried out on the basis of the results set out in the strategic study.

The authority implementing strategic assessment shall deliver the strategic study and the draft proposal of the strategy, plan or programme to the public authorities designated by special regulations for obtaining their opinion (e.g. local government and public authorities competent for nature protection, water and cultural heritage). They must submit their opinion within thirty days; otherwise it shall be deemed that there are no special impacts and environmental protection requirements pursuant to special regulations which need to be taken into consideration in the strategy, plan or programme. The authority carrying out a strategic assessment shall also request the opinion of the Ministry competent for environmental protection or the administrative body competent for environmental protection in a county on the strategic assessment prior to submitting the proposal of the strategy, plan or programme into the adoption procedure.

[6] Environmental Report (Art. 5, together with Art. 2 (b) and Annex I)

(i) Is there national jurisprudence and / or practical examples demonstrating significant problems with the range of data included in the Environmental Report and the evaluation presented?

No.

(ii) Who makes the scoping determination?

The scoping determination is made by the authority competent for carrying out the SEA procedure i.e. the competent authority for the area for which the strategy, plan or programme is being adopted (e.g. for forestry – Ministry of Agriculture, for tourism – Ministry of Tourism).

In the scoping procedure, the competent body is obliged to obtain opinions from the public authorities determined by special regulations on the content and level of data to be processed in the strategic study (e.g. local government and public authorities competent for nature protection, water and cultural heritage).

If the competent body deems it necessary, depending on the scope and other features of the strategy, plan and programme which is developed for the state level, it shall obtain the opinions of regional self-government units in whose area the strategy, plan and programme will be implemented and in whose areas the implementation of the strategy, plan and programme may be affected.

The competent body is also obliged to ensure public participation in the scoping procedure.

(iii) Is the scoping determination available to the public?

Yes.

(iv) How is the concept “reasonable alternatives” considered in practice – either in national legislation, official guidance and / or national jurisprudence?

The strategic study is developed by the persons authorized for performing professional environmental protection activities (hereinafter: authorized person). They are legal persons or natural persons who can perform tasks related to the protection of the environment that are individually identified in the EPA (e.g. developing strategic studies, state of the environment reports, EIA studies, environmental monitoring etc.). The authorized persons may commence with the performance of activities after obtaining the approval of the Ministry competent for the environmental protection for performing the activities in question.

Prior to defining the draft proposal of the strategy, plan or programme to be submitted for public debate, the advisory expert committee (hereinafter: strategic assessment committee) shall review the draft strategy, plan and programme, evaluate the results of the strategic study and

give its opinion. The strategic assessment committee is appointed for each individual strategy, plan or programme by the head of the authority competent for carrying out strategic assessment. The composition and number of members of the strategic assessment committee are determined on the basis of the scope and other features of the strategy, plan or programme. The members of the committee are appointed from the list of persons selected by the Minister from among scientific and expert professionals, representatives of regional and local self-government, representatives of state administration bodies, representatives of legal persons with public powers and representatives of the Ministry.

According to the Manual for conducting SEA for strategies, plans and programs at the local level (2014) the recommendation is to actively look for alternative solutions and that in most examples an alternative solution that is acceptable for the environment can be found. The competent authority i.e. the developer of the strategy, plan and programme and the authorized person should work on this together. The authorized persons are the ones who find alternatives, but also the developer of the strategy, plan and program should be involved in this process. When the strategic study is finalized the following questions should be answered:

Does the strategic study evaluate all planned alternatives from the strategy, plan or programme?

Does it suggest possibilities for the development of new alternative solutions (in case none of the proposed alternatives from the strategy, plan or programme is environmentally acceptable)?

Does the strategic study propose the best alternative solutions for the environment even though they are not included in the strategy, plan or programme?[4]

[7] Consultations (Art. 6 together with Art. 2 (d)): How has this provision been transposed and is there national jurisprudence and / or practical examples demonstrating significant problems here?

After the draft of the strategy, plan or programme and the strategic study have been prepared, a public discussion follows. The public hearing lasts at least 30 days and includes public access to documentation (on the web site of the developer of the strategy, plan or programme) and public presentation of the draft and the strategic study. At the same time, the competent authority must seek the opinion of the authorities to which the request for an opinion on the content of the strategic study has been addressed.

There is no national jurisprudence on this process.

[4] Ministry of Environmental and Nature Protection, Manual for conducting SEA for strategies, plans and programs at the local level (Priručnik za provedbu strateške procjene utjecaja na okoliš za strategije, planove i programe na lokalnoj razini), Zagreb, 2014, p. 19.

[8] **Transboundary consultations (Art. 7):** Has this provision come into play in your country? Who decides about initiating transboundary consultations? At what stage are transboundary consultations usually initiated? Is there any significant national jurisprudence and / or practical examples? Does the UN ECE SEA Protocol play a role here?

There is a web site of the Ministry competent for the environmental protection which is dedicated to transboundary consultations.[5] The Ministry competent for the environmental protection decides about initiating transboundary consultations. The UN ECE SEA Protocol plays a role here, since all the transboundary consultations are made pursuant to the Protocol.

There is no national jurisprudence on this process.

Regarding practical examples, it is interesting to note that in many cases all the documents are not translated into Croatian language (e.g. Management plans in the Danube and Adriatic Sea river basins for the period 2016 - 2021 of the Republic of Slovenia (Slovenian language), Program for the implementation of the Energy Development Strategy of the Republic of Serbia for the period from 2017 to 2023 (English language), Transport development strategy in the Republic of Slovenia (English language)).

[9] **"Taken into account" (Art. 8):** How is this provision understood? Is there any significant national jurisprudence? Are there any specific mechanisms in place to monitor compliance with this particular obligation?

After the public hearing, the developer of the strategy, plan or programme and the authorized person should respond to all received opinions and proposals. The report on the implementation of the SEA procedure, which is then prepared, must clarify how the proposals and conclusions reached in the SEA procedure are included and adopted in the strategy, plan or programme.

Prior to submission into the adoption procedure, when defining the final proposal of the strategy, plan or programme, the body competent for carrying out strategic assessment is required to take into account the results of strategic assessment, opinion of the strategic assessment committee, opinion of the Ministry competent for environmental protection or the administrative body of a county competent for environmental protection, opinions of authorities designated by special regulations (e.g. for nature protection, water, cultural heritage) and to review the objections, proposals and opinions of the public as well as the results of any transboundary consultations, which have been made concerning the draft proposal of the strategy, plan or programme.

There is no national jurisprudence on this process.

[5] https://mingor.gov.hr/prekogranicni-postupci-strateske-procjene-4039/4039.

[10] Monitoring the significant environmental effects of implementation of plans / programmes (Art. 10)

Is monitoring a legal requirement in your country? If so, how it is organised and who is responsible for monitoring? Is it effective in practice? Are there any specific mechanisms to address the results of monitoring?

There is just a general provision in the EPA according to which during the implementation of the strategy, plan and programme, the authority that adopted it must ensure the monitoring of environmental protection measures which are included in the strategy, plan and programme.

To my knowledge monitoring is not effective in practice and there are no specific mechanisms to address the results of monitoring.

[11] Access to justice:

(i) How are alleged deficiencies in the SEA process dealt with by your national courts? In particular, is a plan or programme declared void if a court determines that the SEA process was deficient / unlawful? (Note here Case C-24/19 paras 80-95 concerning the legal consequences, and the role of the national court, where there has been a breach of EU law).

There is no case law. Final SEA decision cannot be challenged before the courts in Croatia. The only exemption is when SEA includes appropriate assessment when there is some possibility to challenge the decisions before the administrative court (e.g. decision stipulating that there is no need to carry out the main assessment and that the strategy, plan or programme is acceptable for the ecological network Natura 2000), but there is still no case law.

There was only one case before the Croatian High Administrative Courts where the Ministry competent for environmental protection challenged Waste Management Plan of the city Velika Gorica because strategic assessment was not carried out at all, which was contrary to the EPA. As a result, the High Administrative Court repealed the Waste Management Plan (Usoz-135/15-5, judgement from 22 March 2016).

(ii) Are there any restrictions / limitations on access to justice as a result of national provisions concerning either legitimacy or jurisdiction of (administrative) courts (i.e. are plans / programmes excluded from judicial control on the basis of any rule on jurisdiction of courts or legitimacy)?

This is very problematic and controversial topic which is difficult to answer in simple words. Access to justice is restricted and complicated by the fact that there is the division of competence between the Constitutional Court and High Administrative Court.

If the strategy, plan or programme was adopted by the state body (e.g. Parliament, Government, Ministry) it can be challenged by anyone only before the Constitutional Court and only if the

Constitutional Court accepts its competence (if it deems that the strategy, plan or programme has the quality of "regulation" and if it finds enough reasons for accepting the proposal for challenging). According to the Constitutional Court regulation is "external general normative and legally binding act adopted by a state authority for the purpose of regulating certain issues, execution and/or implementation of laws, i.e. implementation of other regulations of higher legal force, which regulates relations in a general manner and acts towards all who find themselves in a legal situation in which the act in question is to be applied to them".

There is no case law before the Constitutional Court regarding the strategies, plans or programmes in the field of environment that were subject to or should have been subject to strategic assessment.

If the strategy, plan or program was adopted by the local or regional self-government unit it can be challenged before the High Administrative Court. The limitation is that, in order to be able to challenge the strategy, plan or programme, the petitioner must prove that the public authority issued an individual decision which is based on a strategy, plan or programme which resulted in a violation of his right or legal interest. In environmental matters it is very unlikely that petitioners (local residents, NGOs) would be able to fulfill this requirement (for instance, they would have to apply for a waste management permit in order to obtain an individual decision issued on the basis of the Waste Management Plan and, thus, be able to challenge the Plan).

If the citizens or NGOs do not possess an individual decision which is issued on the basis of a strategy, plan or programme, they can file a communication to the High Administrative Court, but it is left to the Court to decide whether it would initiate proceedings on its own motion.

(iii) Is it possible to challenge a negative screening determination?

No. Only in case of decision stipulating that there is no need to carry out the appropriate assessment and that the strategy, plan or program is acceptable for the ecological network Natura 2000.

(iv) Is it possible to challenge the scoping determination?

No.

(v) Is there any significant national jurisprudence on access to justice in the SEA context?

No. Only one case mentioned above at point (i) (Usoz-135/15-5, judgement from 22 March 2016).

[12] Direct effect: Are there any decisions of the national courts in your country where, because of alleged non-transposition, the direct effect of the Directive has been invoked?

No.

[13] **SEA for proposed policies and legislation:** Have there been any developments in your country as regards SEA requirements for proposed policies and legislation that are likely to have significant effects on the environment, including health? (UN ECE SEA Protocol, Art. 13).

SEA relates, not only to plans and programs, but also to strategies.

[14] **National studies:** Have any significant official (or unofficial) studies of the implementation of the Directive and its impact in your country been published? If yes, please provide brief details and the key findings.

No.

[15] **National databases:**

(i) Is there any national database on the number and categories of SEAs carried out each year in your country? If there is, please provide summary data for the most recent year available.

Statistical data is available every four years in the State of the Environment Report of the Republic of Croatia. The last available data is for the period 2013 to 2016. In that period:

- 5 SEA procedures were initiated for which the Ministry in charge of environmental protection was responsible,
- 34 SEA procedures for which another central state administration body was responsible (Ministry of Agriculture, Ministries of Regional Development and European Union Funds, Ministry of Maritime Affairs, Transport and Infrastructure, Ministry of Economy, Ministry of Construction and Physical Planning, State Institute for Radiological and Nuclear Safety) or an administrative body of the county and the City of Zagreb (mostly concerning Spatial Plans), and
- 14 screening assessments were conducted.

(ii) Is there any national database of SEA reports, Environmental Assessments and the relevant decisions made by the competent authority etc.? If yes, please summarise the position briefly and indicate if the database is available online.

There is no database. There is a web site of the Ministry competent for environmental protection with all the information and all the decision regarding SEA procedures, but only for strategic assessments that the Ministry carries out.[6]

[6] https://mingor.gov.hr/postupci-strateske-procjene-nadlezno-tijelo-je-ministarstvo-gospodarstva-i-odrzivog-razvoja/4037.

If other state bodies or local/regional self-government units carry out SEA procedures, there is a link to their web sites with all the documentation and decisions issued within the SEA procedure.[7]

[16] **Impact of SEA in practice:** Are you aware of draft plans or programmes in your country which have been amended significantly – prior to their adoption or submission to the legislative procedure – as the result of SEA procedures?

According to the Justice and Environment Comparative Study[8] an example of a good practice was mentioned in Croatia by national experts which related to SEA for Amendments to Karlovac County's Spatial Plan. Within this procedure around 10 hydropower plants were planned on rivers in Karlovac County. Due to cumulative impacts (and also lack of data) all proposed hydropower plants were excluded from those amendments.[9]

[17] **Any other significant issues?** Are there any other significant issues concerning the implementation of provisions of the Directive in your country which you consider are worth mentioning here?

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[18] **General assessment and / or any recommendations:** Do you have any overall view of the effectiveness of SEA in Europe and / or any recommendations for improvement?

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[7] https://mingor.gov.hr/postupci-strateske-procjene-nadlezno-tijelo-je-drugo-sredisnje-tijelo-drzavne-uprave-ili-jedinica-podrucne-regionalne-ili-lokalne-samouprave-4038/4038.

[8] Justice and Environment, IS THE SEA "FIT FOR PURPOSE"? Recommendations for the Improvement of the Strategic Environmental Assessment (SEA), http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2021/SEA_EA-Team_JE_recommendations_2021.pdf.

[9] Ibid., p. 31.