



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL

REGIO  
The Director-General

ENVIRONMENT  
The Director-General

Brussels,  
DG ENV/REGIO SA/sb

**Subject: The implementation of the SEA Directive in relation to modifications of Operational Programmes**

Your Excellency,

With this letter, we would like to remind all managing authorities of Operational Programmes (ERDF/Cohesion Fund) administered in the context of cohesion policy of the requirements that apply in relation to Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (also known as the Strategic Environmental Assessment or SEA Directive).

We would appreciate it if you could transmit the attached information note to the relevant authorities.

We consider that this clarification and the examples attached will facilitate compliance of the modifications of the OPs with the SEA Directive and, if respected, will avoid delays in the treatment of requests for OP modification.

Yours faithfully,

Dirk Ahner

Karl Falkenberg

Annex: Information Note to managing authorities

## INFORMATION NOTE TO MANAGING AUTHORITIES

**Subject: The implementation of the SEA Directive in relation to modifications of Operational Programmes**

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (also known as the Strategic Environmental Assessment or SEA Directive) has been applied with success to the relevant Operational Programmes (OPs) for the 2007-2013 period.

The Commission recalls that the obligations under the SEA Directive do not cease with the adoption of the OPs. Monitoring measures are foreseen under Article 10 of the Directive, while Article 3(4) provides that minor modifications to plans and programmes subject to the scope of the Directive shall require an environmental assessment only where Member States determine that they are likely to have significant environmental effects ("screening" procedure). Moreover, other modifications of the content of the plans and programmes should always undergo a new environmental assessment. On 30 September 2008 (ref. 9432), a joint DG Environment-DG Regional Policy letter was sent to managing authorities with a view to facilitating the implementation of the above requirements in due time.

We have now come to a phase where many Member States are presenting or considering amendments to approved Operational Programmes, according to Article 33 of Council Regulation No 1083/2006 laying down general provisions on the ERDF, the ESF and the Cohesion Fund. Despite the above-mentioned letter of 2008, the Commission is often not provided with information from managing authorities on compliance with the SEA Directive, something which constantly creates delays and administrative difficulties. The Commission services have to ensure that the SEA directive is correctly implemented in these cases. In this regard, managing authorities are expected to provide us with information on how they considered the requirements of the SEA Directive when amending their OPs, since they are responsible for the implementation of the Directive. In case of minor modifications, information should be provided with respect to the required "screening" procedure, while in case of other modifications, information should be provided on a full scale SEA procedure.

The Commission services have clarified on several occasions that simple budgetary or pure financial changes do not fall under the SEA Directive<sup>1</sup>. For example, if a financial reallocation is foreseen within the same OP from one priority to another or within the same priority without any change in the physical content of the OP, then clearly this type of modification does not fall under the SEA Directive. However, if the same reallocation changes the physical content of the OP (e.g. by allowing different types or more new projects (falling under the EIA Directive) than initially planned under the programme of origin) or to reduce some environmental actions, then clearly **the SEA applies**.

In order to allow the Commission services to ensure the correct application of the SEA Directive, managing authorities will have to include for all OP modifications the necessary information. In particular, they have to indicate the following for the OPs which were subject to an SEA at the time of their original submission:

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<sup>1</sup> This is based on the interpretation of Article 3(8) of the SEA Directive.

1. If the proposed modifications of the OPs are simply of a budgetary/financial nature, without any change to the physical content of the OP, and/or if the proposed changes have already been covered in terms of substance in the SEA carried out when the OP was initially approved, the SEA Directive is not applicable (see examples 1-3). A statement by the competent authority, in which it will confirm that a new SEA screening procedure according to Article 3(3)-(7) of the SEA Directive 2001/42/EC is not necessary and will provide the reasons for this, will be sufficient in such cases.
2. If the physical content of the OP is to be modified (with changes in the activities originally foreseen which fall under the EIA Directive), then the SEA requirements should be considered, in conformity with the SEA provisions and the national laws transposing this Directive into national legislation:
  - (a) in the case of minor modifications implying changes in substance, a "screening" has to be carried out on the basis of Article 3(5) of the SEA and taking into account relevant criteria set out in Annex II, which requires an assessment of whether these modifications are likely to have significant environmental effects and to determine if a full SEA is necessary or not (see examples 4-5).
    - If the conclusion of the "screening", using the criteria of Annex II of the SEA Directive, is that the modification is not likely to have significant environmental effects and that no SEA is needed, this decision, including the reasons for not requiring an environmental assessment, should be made available to the public, according to Article 3(7) of the SEA Directive and the national legislation transposing this Directive.
    - However, if the conclusion of the "screening" is that an SEA is necessary, then a full SEA should be carried out and the necessary information should be sent to the Commission as for the original SEA (the non-technical summary, the statement foreseen by Article 9(1)(b), the monitoring measures and the information on consultations with the public and the environmental authorities concerned).
  - (b) in case of other modifications which imply important changes in substance that will have significant environmental effects (see examples 6-7), a full SEA should be carried out and the necessary information should be sent to the Commission as for the original SEA (the non-technical summary, the statement foreseen by Article 9(1)(b), the monitoring measures and the information on consultations with the public and the environmental authorities concerned).

We believe that this clarification and the examples attached will facilitate compliance of the modifications of the OPs with the SEA Directive and, if respected, will avoid delays in the treatment of requests for OP modification.

Managing authorities are encouraged to collaborate closely with their colleagues in the relevant national and regional environmental authorities in order to pro-actively address potential problems at an early stage.



## Example 1

### 100 Mio € for an OP

80 Mio € Transport and 20 Mio € Environment  
50 Km highways and 5 WWTP



### Modification:

85 Mio Transport € and 15 Mio € Environment  
50 Km highways and 5 WWTP



SEA Not Applicable

1



## Example 2

### 100 Mio € for an OP

80 Mio € Transport and 20 Mio € Environment  
50 Km highways and 5 WWTP



### Modification:

### 120 Mio € for an OP

95 Mio Transport € and 25 Mio € Environment  
50 Km highways and 5 WWTP



SEA Not Applicable

1



## Example 3

### 100 Mio € for an OP

80 Mio € Transport and 20 Mio € Environment.  
50 Km highways and 5 WWTP

SEA covered 70 km of highways and 7 WWTP, as it was originally conceived as an overall integrated plan, which, because of lack of maturity of projects or lack of funds at the time of planning, was not proposed as a complete OP as such



### Modification:

80 or more Mio € for Transport and 20 or more Mio € for Environment  
60 Km highways and 6 WWTP



SEA not Applicable

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## Example 4

100 Mio € for an OP

80 Mio € Transport and 20 Mio € Environment.  
50 Km highways and 5 WWTP



Modification:

80 Mio Transport € and 20 Mio € Environment  
55 Km highways and 4 WWTP



SEA Applicable ⇒ need for screening

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## Example 5

100 Mio € for an OP

80 Mio € Transport and 20 Mio € Environment.  
50 Km highways and 5 WWTP



Modification:

85 Mio Transport € and 15 Mio € Environment  
55 Km highways and 4 WWTP



SEA Applicable ⇒ need for screening

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## Example 6

100 Mio € for an OP

80 Mio € Transport and 20 Mio € Environment.  
50 Km highways and 5 WWTP



Modification:

130 Mio Transport € and 35 Mio € Environment  
100 Km highways and 8 WWTP



SEA Applicable ⇒ need for a full SEA

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## Example 7

100 Mio € for an OP

80 Mio € Transport and 20 Mio € Environment.

50 Km highways and 5 WWTP



Modification:

80 Mio Transport € and 20 Mio € Environment

55 Km highways with the new 5 km crossing a  
“Natura 2000” site and 5 WWTP



SEA Applicable ⇒ need for a full SEA

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