

## Netherlands (The)

### SEA profile

**Updated to:** 10 February 2015

#### Overview SEA procedure

The full procedure for EIA of complex projects and SEA contains the following steps:

- EIA registration and screening
- Public announcement, public consultation and consultation of designated authorities
- Scoping
- Assessment
- Review ( incl. publication of EIA report, public consultation, consultation of designated authorities and mandatory review advice of NCEA)
- Decision
- Evaluation

#### Establishing context

##### Screening process

Screening is a required step in the EA regulation. The competent authority decides on the applicability of an EA in cooperation with relevant administrative bodies.

To know if an EA is required, there are two lists, (C- and D-list) with specific activities and thresholds.

- Part C contains activities, plans and projects for which an EA is mandatory.
- Part D contains activities and projects for which a judgement whether EA is required is needed. This means that on a case-by-case basis a judgement must be obtained first on whether an EA is required or not. This judgement depends on the seriousness of the negative effects on the environment and the sensitivity of the affected environment. If a threshold is reached, an SEA is mandatory without prior judgement.

To be more specific:

1. The 'plans' column in the C/D list contain the relevant plans per activity. These are plans that possibly create the frameworks for a project, as included in column 4, and can therefore be subject to SEA requirements.

There are three possible outcomes:

- a. The plan is immediately subject to an SEA, because it creates a framework for activities subject to project EIA requirements (C list) or activities subject to project EIA review requirements (D list).

- b. The plan creates a framework for activities that are from the D-list but are under the threshold. If there are still reasons to draw up an EIA for activities, then the plan is still subject to SEA. If there are no reasons for this, there is no SEA.
  - c. The activity or activities or the plan and/or project in question are not referred to in the EIA Decree: there is no SEA requirement.
2. A plan for which a suitable review (in the context of the Nature Conservation Act 1998) is required due to the activity or activities contained therein is subject to SEA requirements.

### **Timeline Screening**

No timeline

### **Identification of stakeholders**

During the first step of the SEA procedure, the competent authority identifies advisors and policy departments suitable to participate in drafting the Terms of Reference of the SEA report.

## **Implementing SEA**

### **Scoping process**

The following steps are required:

- Public notification (the official go-ahead);
- Possibility of submitting perspectives on the proposal and the scope and detail level of the investigation to be performed;
- Consulting advisors and administrative bodies about the scope and detail level of the investigation to be performed.

These steps ensure that the scope of the content of the investigation to be performed is discussed in the preliminary stages in some manner. In any case, the competent authority must consult advisors and the administrative bodies involved about their wishes with respect to the scope and the detail level. Furthermore, in practice, the perspectives submitted relate at least in part to the question of what must be investigated in this regard.

Outcome: (Report with ) Term of Reference for SEA required.

### **Participation in scoping**

The plan, for which an SEA is required, is public at an early stage. In this publication, dates and places are mentioned where the public is invited to submit their view.

### **Baseline data**

No specific requirements for data collection. However, there is a requirement for information on baseline data in the SEA report. The detail level of the information must be aligned with the detail level of the plan.

## Alternatives

It is necessary to describe relevant alternatives in the SEA report. Furthermore a motivation why these alternatives are described.

## Assessment/mitigation of effects

There are no specific methods required for assessment and mitigation of impacts as part of SEA. However, an SEA report requires information (a chapter) on mitigating measures.

## Content of SEA report

1. Objective
2. Proposed activity & alternatives
3. Relevant plans & projects
4. Current situation & autonomous development
5. Effects
6. Comparison
7. Mitigating & compensating measures
8. Gaps in information
9. Summary

## Review process

The **full-fledged procedure** contains the legal requirement for the NCEA to review the SEA report. The competent authority submits the SEA report to the NCEA for this purpose, after which the NCEA elaborates what is called a 'review recommendation'. This is done by a working group that the NCEA creates for every separate plan or project. Such a working group contains specialists with expertise in the specific fields relevant to the plan or project in question. The working group issues an independent opinion on the SEA. A basic principle in this regard is the definition of scope and detail level that you have set out in the preliminary stages. However, the NCEA also especially checks whether the environmental information needed for the decision is present. This means that the NCEA also examines the quality of the content (whether it is correct, complete, sufficiently recent, balanced, etc.).

The NCEA evaluates the SEA and draws up a draft recommendation. In practice, this means that the NCEA will often pose questions to the competent authority or the initiator. The answers to these questions can be used in the review, in which case it is important that any additional information is published (for example, together with the decision).

## Participation in review

Compare document for EIA: regulates master procedure, safety net in 7.11 of the Environmental Management Act.

## Timeline review

Depends on full-fledged procedure. Usually six weeks. If perspectives are included in the recommendation process, then three additional weeks.

## Informing decision making

### SEA and planning decision-making

When the competent authority publishes the SEA report, anyone can submit their views, on the SEA report as well as the plan itself. Furthermore, it is a mandatory requirement that the NCEA reviews the SEA report.

When taking decisions, the competent authority should take into account all impacts on the environment and what the role of the SEA report has been.

The EIA procedure is connected to the procedure that must be followed for the plan or project in question. This means that plans or projects must primarily comply with the requirements of the 'full-fledged procedure' or the 'simplified procedure'. These requirements are set down in very diverse laws and regulations. This depends on the type of plan or project and the administrative body that is authorised for the preparation or adoption of these, i.e. the competent authority.

### Justification of decision

The plan includes an explanation of how account was taken of / what was considered with respect to (article 7.14 of the Environmental Management Act):

- The possible consequences for the environment described in the SEA report;
- The alternatives described in the SEA report
- The perspectives submitted with respect to the SEA report;
- The required recommendations issued by the NCEA;
- Any major negative cross-border environmental consequences and the outcome of the consultations on this with the administrative bodies in the other country concerned.

## Follow-up

### Monitoring and evaluation

After adopting a plan subject to SEA the competent authority concerned must evaluate the actual environmental consequences resulting from the performance of the plan. The time periods for the start of the investigation and the way in which this will be performed will have already been determined for the plan or project.

Not the actual SEA rapport or procedure, but the plan for which the SEA is made, is subject to evaluation.

Please note, that although the specific article in the EIA Decree (7.39 for SEA) does not mention this procedure, the intention of parliament has been that this evaluation could also serve as a learning mechanism for carrying out environmental assessment and improve the quality.

## SEA practice

### Central SEA database

There is no central SEA database, however, the Netherlands Commission for Environmental Assessment (NCEA) compiled a database with SEA (and EIAs) cases where advice by the NCEA was mandatory or voluntary requested (please view "procedure" to learn more about the role of the NCEA). Since the NCEA is not a mandatory party in all EIAs, the database does not contain all EIAs carried out in the Netherlands.

### Professional bodies

[Association of Environmental Professionals \(VVM\)](#)

## Background information

### History of SEA

In 1987, the EIA tool was officially introduced in the Netherlands (the Environmental Management Act.) In the EIA Decree (part of the Act), not only projects, but also certain plans and programmes are specified which are subject to the procedure laid down in the Act. These include national plans for waste management, electricity generation, water supply and regional land use plans for the location of major new housing, industrial or recreational areas. Therefore, although not literally mentioned, it is a general understanding that 'SEA' was implemented in 1987.

### *Transposition of the SEA Directive (2001/42/EG)*

The European SEA directive was transposed by amending the Environmental Management Act from 1987 on 28 September 2006 and by amending the relevant regulatory provisions of the EIA Decree.

### *Modernisation of the EA in the Netherlands*

On 1 July 2010, the Dutch EA legislation was modernised as a result of a change in the Environmental Management Act. The objective of this modernisation process is to enable customisation by means of fewer and simpler yet more consistent rules that nevertheless remain focused on the environmental objective. A number of additional requirements with respect to the European directive on projects (referred to as 'gold-plating') were eliminated.

For all plans and complex projects subject to EA the so-called full-fledged EA procedure must be followed.

## Legal framework

### Enabling law

Environmental Impact Assessment (EIA) is established in law in [Chapter 7 of the Dutch Environmental Management Act \(EMA\) \(article 7.1 to article 7.42\)](#). The existence, function and working method of an independent Commission Environmental Assessment (NCEA) is set out in [section 2.2 of the EMA \(article 2.17 to 2.24\)](#). [Section 14.2 of the EMA \(article 14.4a to 14.16\)](#) provides for the coordination for drawing

up an environmental impact assessment (EIA)

#### **National detailed regulation**

SEA procedures are laid down in the Environmental Assessment Decree (latest amendment 2010). The EA Decree (Chapter 7 of Environmental Management Act) is based on EU directive 1985 (EIA) and later amendments on EU (SEA) directive 2001).

#### **Sector specific procedures/regulations**

There are no sector specific procedures concerning SEA. Sector specific thresholds may be part of the EA screening criteria. For example specific criteria are in place concerning nuclear power facilities.

#### **Guidelines**

Guidance on carrying out an SEA in the Netherlands is put down in the 'Handreiking MER' (in Dutch)

#### **Scope of application**

SEA is applied to specified plans, policies and programmes.

#### **Exemptions from application**

Article 7.3 of the Environmental Management Act makes an exception for plans that relate exclusively to defending the country or to an emergency situation as referred to in the National Emergencies Coordination Act as well as plans that relate to the budget or finances of the government, the province, the municipality or a water board district. These plans are not subject to the EIA requirement.

#### **SEA approach**

SEA was an integral part of the 1987 Environmental Management Act. Not separately mentioned, but implicitly part of the obligation of EIA for certain plans and programmes. The transposition of the EU SEA directive in 2006, separated the EIA and SEA procedures.

In 2010 however, the Environmental Assessment Modernisation Bill, intergrated both procedures once again. The difference is not strictly on projects vs plans, but on the complexity of projects and plans. Whereby plans/policies always are defined as complex and therefore always require (if screened) the full fledged procedure. Projects either fall under the simplified procedure or the full-fledged procedure.

#### **SEA tiering with ESIA**

##### *Combined assessments in Dutch legislation*

Dutch legislation specifically accommodates three options for combined impact assessment procedures, one of which is the EIA/SEA combination (one form of tiering).

The detailed arrangements for combined environmental assessment are set out in Chapter 14 of the Dutch Environment Management Act. The chapter is titled "Coordination", and a large part is devoted to the required coordination between the authorities involved when different assessments are combined in one procedure. The chapter addresses both:

- coordination of specific steps in the EIA/SEA procedure (e.g. where does the general public submit their written comments on the assessment, who makes public announcements on the EIA/SEA, etc.)
- coordination of plan or project approval decision making, meaning coordination of separate decisions with regard to environmental permitting, project licensing, and/or plan (amendment) adoption.

*When may EIA and SEA be combined?*

Specifically for activities that require both EIA and SEA, the Dutch legislation states:

(article 14.4b) "If, for an activity a (permitting) decision and plan revision decision are prepared at the same time, and the plan revision decisions is solely prepared to accommodate that activity within the plan, then one environmental assessment report shall be prepared".

Note that the legislation explicitly emphasises that a plan revision should only apply to the activity that also requires the EIA. If the revision is more comprehensive, and includes other activities as well, the clause does not apply, and in principle, separate assessments will have to be carried out. It is possible to request a voluntary combined procedure in this case, but then the combined assessment will, of course, need to cover all the activities proposed.

The legislation further states that when EIA and SEA procedure are combined, the most comprehensive procedure is leading. This way essential requirements are not "lost" when the procedures are combined.

## **Institutional setting**

### **Central SEA authority**

Ministry of Infrastructure and Environment

### **(De)centralisation of SEA mandates**

Decision-making takes place at national, regional and local level.

### **Initiator of the SEA**

National, provincial or local authority.

## **Contact**

The [Ministry of Infrastructure and Water management](#) is the responsible authority for SEA.

The Dutch knowledge centre InfoMil, part of the ministry, is the primary source of information and best practices in matters of EIA/SEA and other environmental legislation and policies in The Netherlands.

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