



Netherlands Commission for
Environmental Assessment

Independent advice by the NCEA

1. The NCEA's approach
2. General conditions
3. Protocol of Independence





Part 1: Approach

The Netherlands Commission for Environmental Assessment (NCEA) is an independent advisory body of experts established by law in 1987. The international department was established in 1993. One of the main tasks of the international department is providing independent advice on the scope, quality of content and process of ESIA and SEA at the request of an authority in a selected number of low- and middle-income countries. Contact the NCEA for the list of countries. The **purpose of this guidance** is to describe how the NCEA works and how it secures its independent position. This guide consists of three parts:

- 1) Description of the NCEA's approach.
- 2) Conditions under which the NCEA can start issuing advice.
- 3) Protocol securing the independent position of the NCEA.

Part 1. The NCEA's approach

This note describes the approach taken when the NCEA is requested to prepare an advice on ESIA or SEA.

1. Request for advice

A request for advice often begins with an informal meeting between a representative of the NCEA and an eligible authority. An eligible authority has the mandate to advise or decide on ESIA/SEA, for instance by issuing and environmental license. The following points are discussed: the objectives of the advice, the technical and contextual aspects of the project or plan, the added value of a site visit, as well as the NCEA's conditions for advice. Part 2 describes these conditions. Based on this information, an internal screening is conducted to check whether the NCEA's conditions are met. If the screening is positive, a formal letter of request can be sent to the director of the NCEA. This letter should acknowledge the NCEA conditions for independent advice and any other agreements made between the NCEA and the requesting authority.

2. Quality assurance

The NCEA's advice is founded on three principles: independence, expertise and transparency. How the last two principles are secured is described in this Part 1, Section 5 and 7. Part 3 of this note comprises a protocol describing how independence is secured.

3. Advice on preparation and screening, scoping, reviewing, follow-up

Advice can be provided during the preparation including screening, scoping, reviewing and follow-up phase.

Preparation and screening

- An advice for the process of an SEA resulting in a starting document or road map.
 - A review of a draft starting document for an SEA.
- An advice is only offered for SEA.

Scoping

- A review of a draft scoping report for an ESIA/SEA.

Reviewing

- A review of a draft or final ESIA/SEA report.

Follow-up

- A review of a (draft) monitoring report.

An advice for this phase can only be offered, after the NCEA has prepared an advice during the scoping and or reviewing phase.

4. Working group of experts

Following a positive screening, the NCEA composes a tailor-made working group:

- The chair of the working group is responsible for contacts with the competent authorities and for a well-balanced advice and clear messages for decision makers. A chair typically has significant (international) experience with complex and politically sensitive projects or plans. The chair of the working group is also deputy chair of the NCEA. Chairs are appointed by His Majesty the King.
- The experts of the working group collectively cover the relevant fields of expertise for the project or plan in question. They are selected for their specific project/plan relevant expertise, experience with ESIA/SEA and site specific knowledge. They are not

NCEA employees. They act in a personal capacity, and thus cannot have others stand in for them. They do not represent the organization that employs them. They are never involved with the project/plan they assess. The NCEA aims to compose a diverse group of experts in terms of gender and local vs non-local experts. It is often difficult to find local experts who are independent. Than a local expert can be assigned as a resource person providing site-specific information. A resource person is not a member of the working group.

- A technical secretary is appointed by the NCEA secretariat to coordinate the activities of the working group and to draft the advice based upon expert input. The technical secretary is a staff member of the NCEA secretariat.

To secure consistency in advisory reports a co-reader is assigned by the director of the secretariat. The co-reader is also a technical secretary.

5. Composition of the working group

The requesting authority will be notified of the selected experts and will be given the opportunity to provide arguments of possible (perceived) conflict of interest of these experts. If there is any reasonable doubt as to whether an expert can advise independently, the NCEA will reconsider the assignment of this expert. The NCEA's secretariat will take the final decision when this situation arises.

6. Review framework

The NCEA uses the national legislation and international Good Practice Principles as a review framework. The review framework will be determined by the working group who is aware of the latest developments, guidelines and standards in their field of expertise. At the request of the authority, additional guidelines can be applied.

If the NCEA has been involved in the scoping phase, the scoping advice of the NCEA can be part of the review framework. However, this also depends on whether and to what extent the advisory report has been adopted by the authority.

7. Site visit

In most cases, the working group visits the country requesting the advice to understand the decision-making context, assess the local situation first-hand and meet stakeholders. The working group meets with relevant (representatives of) stakeholders who have an interest in the project or plan and those that might be

affected by it. These stakeholders provide important project and site-specific information. The decision-making context is discussed with the requesting authority this is important to identify the scope for alternatives and mitigating measures. A visit of the project and study area provides a better understanding of the possible impacts and the causes as well as the opportunities for developing alternatives and mitigating measures. Finally, a site visit contributes to the credibility of an NCEA's advice.

8. Advisory report

An advisory report typically is finalised in eight to ten weeks, i.e. from the moment the formal request for advice is received.

With support from the requesting authority, the NCEA in most cases will bring a one week visit to the country. The NCEA's main preliminary findings are usually presented to the requesting authority before the country has been left. The aim is not to negotiate the findings, but to answer questions and identify inaccuracies. In consultation with the requesting authority a press release or conference can be organized where the NCEA can present its preliminary findings.

After the visit to the country a draft of the advice will be prepared and sent to the requesting authority. The draft advice can in person be presented by the chair, technical secretary, possibly supported by one or two experts. In consultation with the requesting authority a decision will be made, whether or not a press release and/or press conference will be organised. The NCEA can take care of the costs. The NCEA makes its advisory reports publicly available via its website and informs consulted stakeholders on its publication. The requesting party is asked to cooperate in the monitoring and evaluation of the outcome of the advisory report.

All costs for the preparation of an advice are covered by the NCEA.

The working group cannot give a verdict on the acceptability of a particular solution in respect of environmental or social impact and the conditions under which it is acceptable. Neither is it for a working group to prescribe how a project should be executed or a plan should be implemented. This is the responsibility of the governmental bodies concerned.



Part 2: Conditions

The Netherlands Commission for Environmental Assessment (NCEA) is an independent advisory body of experts established by law in 1987. The international department was established in 1993. One of the main tasks of the international department is providing independent advice on ESIA and SEA at the request of an authority in a selected number of low- and middle-income countries. The **purpose of this guidance** is to describe how the NCEA works and how it secures its independent position. This guide consists of three parts:

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Part 2. General Conditions

This note describes the general conditions under which the NCEA can start issuing advice.

1. Definitions

- **Advice:** advisory report on ESIA or SEA prepared by the NCEA at the request of an eligible authority.
- **Requesting authority:** The authority or authorities requesting the NCEA for advice that have a formal role in the ESIA/SEA process (hereafter 'the authority').
- **NCEA secretariat:** consists of two directors, technical secretaries and supporting staff. All are permanent staff members of the NCEA.
- **NCEA working group:** Consists of experts assigned for the duration of the advisory trajectory. The chair of the working group is deputy chair of the NCEA. The working group is supported by a technical secretary, who is staff member of the NCEA secretariat. The working group advises on behalf of the NCEA.

2. Start advisory trajectory

- a. A formal request for advice on the ESIA/SEA by the authority responsible for advice or decision making as regards the project or strategic decision will be sent to the director of the NCEA. This request will be made publicly available in an appendix to the advisory report.
- b. Agreement on the review framework applied by the NCEA. Reference to the framework will be made in the advice.
- c. Agreement on project specific issues will be included in the advice.

3. Site visit

The working group of the NCEA will have access to all available information, the project site and can meet all relevant stakeholders.

4. Presentation and publication of the advice

- a. The draft advisory report will be presented to the requesting authority to verify whether this report is clear and the facts presented are accurate. The content is non-negotiable. The NCEA will decide how to act on any suggestions or arguments raised to adjust the advisory report.
- b. The final advisory report will be sent to the requesting authority/ies and all actors met during the NCEA visit. Simultaneously, it will be made publicly available on the website of the NCEA (www.eia.nl).
- c. The requesting authority cooperates in the monitoring and evaluation of the outcome of the advisory report.

4. Costs

The requesting authority will bear the costs of the contact person/coordinator and staff members of the requesting authority, if they accompany the working group during the site visit and meetings.

Part 3: Independence

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Part 3. Protocol independence

This protocol describes how the independent position of NCEA working group members – experts, chair and technical secretary – is secured.

1. The NCEA

The Netherlands Commission for Environmental Assessment (NCEA) provides advice on ESIA or SEA at the request of an authority. This protocol provides information on how the independent position of NCEA working groups is secured.

A tailor-made working group is assembled for each advice and consists of a chair, experts and is supported by a technical secretary. The working group provides advice on behalf of the NCEA. The chair and experts jointly determine the content of the advice that is written by the technical secretary.

For the advice of the NCEA to be perceived as independent, it is of the utmost importance that the appointed experts, the chair and technical secretary, are considered independent. This means they cannot have any personal or private interest in the plan or project related to the SEA or ESIA in question.

2. Experts of the working group

Experts are not staff members of the NCEA. They are selected by the chair and technical secretary and assigned by the NCEA's director after a thorough screening of their independence. To ensure the independence of the experts, the following screening mechanisms have been put in place:

- Screening by the technical secretary; when an expert is approached for a specific advisory assignment, the technical secretary will enquire about possible conflicts of interest of the expert.
- Screening by the potential expert; the potential expert is expected to carry out a thorough check of his/her independence. Previous and current personal and professional ties to the project or plan through their employer, colleagues, partner/spouse/children, place of residence, other consulting/advisory positions, etc. should be considered and disclosed.
- Screening by the requesting authority: the requesting authority will be notified of the selected experts and will be given the opportunity to present arguments of possible (perceived) conflict of interest of these experts. If there is any reasonable doubt about the independence of an expert, the NCEA will reconsider the assignment of this expert. The NCEA's secretariat will take the final decision when this situation arises.
- Screening by the expert: in the event that an expert develops a personal or professional interest in a project or plan during the advisory process, or in between the scoping phase and the review phase, the expert should immediately report this to the technical secretary. In such cases, the expert can no longer be part of the advisory process and will be replaced.
- If there is any discussion about whether there is or may be a conflict of interest in the case of the chair, expert or technical secretary, the basic principle is, "when in doubt, don't do it." Someone else will then be appointed.

3. Chair and Technical secretaries

For the chair of the working groups and the technical secretaries and (co-readers/quality controllers), the same independence requirements apply as for experts. Furthermore, their additional positions and employment history are described on the NCEA's website.

4. Examples of conflict of interest

Based on the NCEA's experiences in recent years, here are some concrete examples of (potential) conflicts of interest:

- An ecology expert works at a large consultancy firm. The traffic department of this consultancy firm delivers the traffic calculations for the ESIA report to be reviewed.
- The organisation where the expert is employed, submitted a proposal less than one year ago to perform (part of) the work for the ESIA under consideration (but did not win the tender).
- During the scoping phase, the expert's employer submits a tender and is awarded the contract to perform the ESIA.
- A previous employer of the expert/chair (less than five years ago) is the initiator or competent authority for the ESIA. The five-year term is used as a rule of thumb in situations where previous employment history plays a role.
- In a previous assignment (less than five years ago) the expert advised on a plan, which now forms the basis of the SEA.
- As a self-employed consultant, the expert regularly works for the consultancy firm writing the ESIA report, the initiator, or the competent authority.
- The expert's/ chair's/technical secretary's partner works for the project initiator.
- The project or plan is directly related to an (additional) position that the chair or technical secretary currently holds.
- There may be (an appearance of) involvement because of the private situation (partner, child) or a private contact of the expert/chair/technical secretary with a stakeholder.