

## SEA and legal policy developments

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1970 U.S. *National Environmental Policy Act* (1969) – requires ‘proposals for legislation and other major federal actions significantly affecting the...environment’ to include a ‘detailed statement on the environmental impa

*California Environmental Quality Act* – modelled after NEPA and applies to activities proposed or approved by state agencies, including programmes, plans & staged projects (Guidelines Sec. 15165 - 15168)

mid-1970s Public inquiries and environmental reviews of major proposals – consideration of policy issues (e.g. Mackenzie Valley Pipeline Inquiry, Canada, 1974-1977, Ranger Uranium Environmental Inquiry, Australia, 1975-1977)

1978 NEPA *Regulations* issued by Council on Environmental Quality – specify actions subject to programmatic EIS as those that can be grouped generically, geographically or by technology (Sec 1052.4 (b))

1987 Netherlands *EIA Act* (amended 1994) – applies to specified national plans and programmes, including all those fixing the locations of projects for which an EIA is mandatory

1989 Australia *Resource Assessment Commission Act* – establishes independent inquiry body on resource policy issues (Commission disbanded in 1993, legislation retained);

World Bank *Operational Directive 4.00* (amended 1991, 1999) – refers to preparation of sectoral and regional EA (Annex A 6-8)

1990 Canada *Environmental Assessment Process for Policy and Programme Proposals* by Order-in-Council (amended 1999) – applies to proposals submitted to Cabinet

1991 New Zealand *Resource Management Act* – landmark sustainability law combining policy, planning and regulatory functions into omnibus regime;

UK *Guide on Policy Appraisal and the Environment* – advice for central government agencies (updated by good practice guidance, 1994; amended 1998)

UNECE (Espoo) *Convention on EIA in a Transboundary Context* (entered into force 1997) calls on the Parties ‘to the extent appropriate ...shall endeavour to apply’ the

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principles of EIA to policies, plans and programmes (Article 2(7))

1992 UNECE pilot study of EIA of Policies, Plans and Programmes – recommends its application by member countries;

Hong Kong *Environmental Implications of Policy Papers* by decision of then Governor – applies to proposals to Executive Council (later development plans)

1993 Denmark *Environmental Assessment of Government Bills and Other Proposals* by Prime Minister's Office (PMO) circular (amended 1995, 1998 when it became legally binding) – applies to draft legislation to Parliament and to strategic proposals on which Parliament must be consulted

European Commission *Environmental Assessment of Legislative Programme* by Internal Communication – applies to legislative proposals and other actions by Commission

1994 UK Guide on *Environmental Appraisal of Development Plans* – advice to local authorities on how to carry out their responsibilities under planning legislation (updated 1998);

Norway *Assessment of White Papers and Government Proposals* by Administrative Order – contains provisions relevant to environment but applies primarily to economic & administrative consequences

Slovakia *EIA Act* – contains requirement to assess basic development policies, territorial plans in selected areas and any legislative proposal that may have an adverse impact on the environment (Art. 35)

1995 Netherlands *Environmental Test* by Cabinet Directive – applies to draft legislation, part of comprehensive review of enforceability, feasibility and impact on business

1996 *Proposal* by European Commission for a Directive on the assessment of the effects of certain plans and programmes (COM (96) 511; amended by COM (99) 73) and *Common Position* (5865/00)

1998 Finland *Guidelines on Environmental Impact Assessment of Legislative Proposals* by Decision-in-Principle – apply to law drafting, also decrees, resolutions and decisions

UNECE (Aarhus) *Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters* (entered into force 2001) – provision for public participation in Articles 7 & 8, respectively, refers to plans, programmes and policies and to laws and regulations relating to environment;

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*Declaration* by the Environment Ministers of the UNECE region on Strategic Environmental Assessment (ECE/CEP/56) – inviting countries and international finance institutions to introduce and/or carry out SEA ‘as a matter of priority’

1999

Australia *Environmental Protection and Biodiversity Conservation Act* – introduces provisions enabling SEA of policies, plans and programmes

Finland *Act on Environmental Impact Assessment Procedure* applies to policy, plans and programmes;

UK *Proposals for a Good Practice Guide on Sustainability Appraisal of Regional Planning*

2000

South Africa *SEA Guidelines* – non-mandatory application to plans and programmes

2001

*SEA Directive* (2001/42/EC) – enters into force in EU member states in July 2004;

*Decision* to negotiate an SEA Protocol by the Parties to the Espoo Convention – for possible adoption at fifth Ministerial ‘Environment for Europe’ Conference (Kiev, May 2003)

*Source: Sadler, 2001*

**Principles for good practice of SEA**

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**A detailed list of principles for good practice of SEA***Policy framework*

- Effective application of SEA requires open and accountable political and organizational systems
- SEA should be undertaken in the context of national and or institutional sustainability policies and strategies
- Action plans for sustainable development can provide specific and quantitative environmental objectives as benchmarks to environmental impacts of strategic actions
- Identify the relationship between SEA and other policy instruments in decision-making and establish mechanisms that ensure integrated decision-making
- Identify criteria and mechanisms to evaluate significance and determine acceptability against policy framework of environmental objectives and standards

*Institutional*

- Provide for an institutional framework that will facilitate integrated decision-making
- Establish internal and external organizational frameworks that will ensure a continuous flow and interaction along the various stages of the SEA process
- Assign specific responsibilities and accountability relatively to key decision-making points
- Provide for a regulatory framework that is appropriate and necessary

*Procedural*

- SEA should be an intrinsic element of policy and programme development processes and should be applied as early as possible
- The focus of SEA should be on the fundamental elements of policy proposals
- Establish to what kind of instruments should SEA apply
- Establish when should SEA be applied
- Be focused and ask the right questions when using SEA
- The scope of SEA must be comprehensive and wide-ranging to be able to act as a sustainability tool
- The scope of the assessment must be commensurate with the proposals potential impact or consequence for the environment
- SEA must help with the identification and comparison of equally valid options
- Relevant factors, including physical, ecological, socio-economic, institutional and political factors should be included in the SEA as necessary and appropriate

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- Public involvement should be a fundamental element in the process of SEA, consistent with the potential degree of concern and controversy of proposals
- Objectives and terms of reference should be clearly defined
- Develop guidance that will set SEA in motion
- Use simple methodological approaches
- Provide for public reporting of assessment and decisions (unless explicit, stated limitations on confidentiality are given)
- Establish monitoring and follow-up programmes to track proposals
- Establish independent oversight of process implementation, agency compliance and government-wide performance

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 Procedures and methods for carryout SEA
 

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**Selected examples of institutional frameworks for SEA**

Country/ Organisation	Provision	Scope and relationship to decision making	Elements of process and procedure
Australia	<i>Assessment Commission Resource Act</i> (1989) – legislation retained, but Commission disbanded (1993)	Major resource issues referred by Prime Minister's Office	Public inquiry, review of ecological, social and economic aspects
Canada	Cabinet Directive 1990, (amended 1999)	Policy, plan and programme proposals submitted to Cabinet	Informal procedure, separate from project EIA
Denmark	Prime Minister's Office circular (1993, amended 1995 & 1998 – when requirement became legally binding)	Bills and other Government proposals sent to Parliament or on which Parliament must be consulted	Informal procedure, separate from project EIA
The Netherlands	<i>Environmental Impact Assessment Decree</i> (1987, amended 1994)	Listed plans and programmes, referred to as strategic EIA (SEIA)	EIA procedure applies in full
	Cabinet Order (1995)	Legislative proposals to Cabinet, referred to as environmental [E]-test	Informal, separate procedure, linked to business and regulatory tests
New Zealand	<i>Resource Management Act</i> (1991)	SEA elements provided by policy statements, regional and district plans, which govern resource consents	No definable procedure; part of 'effects-based' policy and plan-making
United Kingdom	Guidance on Policy Appraisal and the Environment (1991; amended 1997)	Policies, plans and programmes developed by central government agencies	Internal procedure of environmental cost benefit appraisal
	Planning and Guidance Note 12 (1992; amended 1998) to local authorities	Development plans prepared by local planning authorities at county level	Environmental appraisal integral part of plan-making
	Proposals for sustainability appraisal of regional plans	Regional strategy to guide development at county level	Sustainability appraisal integral part of strategy-making
USA	<i>National Environmental Policy Act</i> (1969) and <i>Regulations</i> (1978)	Legislation and programmes – actions that can be grouped	NEPA process applies; specific guidance on

## Principles for good practice of SEA

		geographically, generically or by technology	preparing generic and programmatic EISs
European Community	Council Directive on the assessment of certain plans and programmes (2001)	Plans and programmes in defined areas, including sectors and land use	Framework law, specifies minimum procedure to be followed by member states
World Bank	Operational Directive on Environmental Assessment (OD 4.00, Annex A, 1989; amended as OD 4.01, 1991, 1999)	Bank financed plan, programme or series of projects for a particular sector or region	Policy encourages use of sector and regional EA by borrowing country

Source: Sadler and Verheem, 1996 (updated and amended)