

## Quick inventory of scope of application of SEA – Examples from across the world

At the request of the Ministry of Environment, Rwanda



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## Advice of the Secretariat

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**Title** Quick inventory of scope of application of SEA

**To** Rwandan Ministry of Environment

**Attn** Ms Juliet Kabera, DG Environment

**Date** 4 June 2020

**From** The Netherlands Commission for Environmental Assessment

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**Reference** 7015-04

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# 1. Background

In August 2018, Rwanda published a new Environment Law which regulates both EIA and SEA. Ministerial orders setting the procedures for both instruments are currently being developed. On and off, throughout the course of development of this regulatory framework, the Rwandan Ministry of Environment asked the NCEA for advice. This time, by way of an email d.d. 14 May 2020, DG Environment Juliet Kabera asked input on defining the scope of application for SEA. Specifically, she asked to share any documentation that can help the Ministry in the process of defining which policies or strategies should be considered for SEA and which ones should not be.

In response to this request, the NCEA compiled a set of documentation illustrating the way international organisations, as well as selected individual countries, dealt with this issue. This document presents this inventory, which is not intended to be exhaustive but will hopefully serve as inspiration for the Rwandan government on how to define the scope of application for SEA in Rwanda. Characteristics that differ between organisations and countries are *underlined and in italics*.

If any questions arise after reading this short inventory, the NCEA remains available to provide further input or information.

## 2. International organisations

### 2.1 EU Directive 2001/42/EC

The EU has published the Directive on the assessment of the effects of certain plans and programmes on the environment in 2001. The Directive does not require all plans and programmes to be submitted to SEA, rather it aims to focus on which plans and programmes are expected to have significant effects on the environment and should therefore be subject to an SEA. It provides general context on this scope in its preamble and further details in article 3. The approach is to determine, case-by-case, whether a plan or programme is likely to have significant effects. To this end, criteria are provided in Annex II.

See Annex 1 for excerpts of the Directive relevant to the scope of application of SEA. For the full text of the Directive, see: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0042>

### 2.2 The Espoo Convention

The UNECE<sup>1</sup> has five multilateral environmental conventions, among them the Espoo convention on environmental impact assessment in a transboundary context. In 2003, the Espoo convention was complemented by the Kyiv Protocol on Strategic Environmental Assessment. The SEA Protocol augments the Espoo Convention by ensuring that individual Parties integrate environmental assessment into their plans and programmes at the earliest

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<sup>1</sup> United Nations Economic Council for Europe

stages – so helping to lay the groundwork for sustainable development. The Protocol also provides for extensive public participation in the governmental decision-making process. Like the EU Directive, the protocol requires (in its Article 4) that a strategic environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are *likely to have significant environmental, including health, effects*.

See Annex 2 for the text of Article 4. For the full text of the Protocol, see:  
[https://www.unece.org/env/eia/about/sea\\_text.html](https://www.unece.org/env/eia/about/sea_text.html)

## 2.3 The OECD-DAC<sup>2</sup> good practice guidance on SEA

This guidance explains the benefits of using SEA in development co-operation and sets out key steps for its application based on practical experiences. OECD-DAC recognises that it depends on the country's screening system which *policies, plans and programmes* (PPP) should undergo an SEA, but observes that an SEA can be initiated in response to:

- a legal requirement at the international or national level for SEA when developing certain PPPs;
- a decision by a ministry in a partner country concerned about the impacts of an existing or proposed PPP;
- the need to meet policy requirements of a development cooperation agency for assessing the impacts of the programmes it supports;
- a decision by a donor to support SEA capacity development.

It identifies entry points for the application of SEA at the country level in Table 5.1, which is presented in Annex 3. Download the entire OECD-DAC good practice guidance on SEA through: <https://www.oecd.org/dac/environment-development/applying-sea-good-practice-guidance.htm>

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<sup>2</sup> OECD-DAC: Organisation for Economic Co-operation and Development – Development Assistance Committee

### 3. Some country examples

In this table, a few examples are provided of countries that have been applying SEA for some time now and that have gained experience that may be relevant for Rwanda: three African countries, Canada and a European country, the Netherlands.

Country	SEA scope of application
Cameroon	<p>In Cameroon's regulation on environmental assessment, it is stated that not only <i>all policies, plans and programmes</i>, but also <i>projects with multiple components (PPPP's)</i> should be submitted to SEA. In a separate arrest, the latter group has been specified to include <i>industrial zones, industry-port complexes, the creation of new cities, and projects with multiple components individually submitted to ESIA and located in different regions of the country, or multiple projects in the same area.</i></p> <p>Other than that, there is no focus on specific PPPPs nor is there an exemption for certain categories. However, PPPP's with multiple components which are related to national security and defence, are free of public consultation and public hearing procedures.</p> <p>Sources:</p> <ul style="list-style-type: none"> <li>Decree 2013/0171/PM provides the regulation and can be accessed (in French) through <a href="http://extwprlegs1.fao.org/docs/pdf/Cmr179401.pdf">http://extwprlegs1.fao.org/docs/pdf/Cmr179401.pdf</a>.</li> <li>In addition, Arrêté 00001 of MINEPDED of February 2016 establishing the category of activities that should be subject to ESIA or SESA can be accessed (in French) through <a href="http://extwprlegs1.fao.org/docs/pdf/Cmr172054.pdf">http://extwprlegs1.fao.org/docs/pdf/Cmr172054.pdf</a>.</li> </ul>
Canada	<p>In Canada, the situation is different. There, SEA is to be applied to all <i>departmental</i> policies, programs and plans submitted <i>to the Minister or Cabinet</i>. Also, SEAs should be completed on <i>any other important activity or strategy which has important environmental effects or is of concern to the public</i>, and on which Ministerial approval is sought.</p> <p>This approach is laid down in the <a href="#">2010 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals</a>.</p>
Ghana	<p>Ghana applies SEA to <i>national</i> policies and strategies, <i>sector</i> plans and <i>district</i> plans that <i>may have a significant impact on the environment</i>. There is no separate SEA regulation: the current EIA regulation provides the framework for SEA. It requires environmental assessment for <i>undertakings</i> which may impact the environment. An <i>undertaking</i> is defined as: any enterprise, activity scheme of development, construction, project, structure, building, work, investment, plan, programme and any modification, extension, abandonment, demolition, rehabilitation or decommissioning of such undertaking, the implementation of which <i>may have a significant impact</i>.</p> <p>For more information on Ghana's system: <a href="https://www.eia.nl/en/countries/ghana">https://www.eia.nl/en/countries/ghana</a></p>

The Netherlands	<p>As in all EU countries, the Netherlands' SEA procedure is based on the EU Directive (see paragraph 2.1) as transposed in the Environmental Management Act. SEA is required for plans, policies and programmes (PPP) that set frameworks for activities in a planning area as mentioned in that Act. Also, SEA is required when a PPP or developments within the PPP may have a significant impact on Natura 2000<sup>3</sup> sites. To screen whether an SEA is required, there are two lists, (C- and D-list) with <u>specific activities and thresholds</u>.</p> <ul style="list-style-type: none"> <li>Part C contains activities, plans and projects for which an environmental assessment is mandatory.</li> <li>Part D contains activities and projects for which a judgement whether EA 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 <u>seriousness of the negative effects on the environment</u> and <u>the sensitivity of the affected environment</u>. If a threshold is reached, an SEA is mandatory without prior judgement.</li> </ul> <p>In its Environmental Management Act, the Netherlands makes an exception for PPP that relate exclusively <u>to defending the country or to an emergency situation</u> as referred to in the National Emergencies Coordination Act as well as PPP that relate to <u>the budget or finances of the government, the province, the municipality or a water board district</u>.</p> <p>For more information on the SEA system in the Netherlands, see <a href="https://www.eia.nl/en/countries/netherlands+(the)/sea-profile">https://www.eia.nl/en/countries/netherlands+(the)/sea-profile</a></p>
Uganda	<p>Uganda in its National Environment Act 2019 not only focuses on impacts on the environment, but also on human health: SEA shall be undertaken for government PPP which are likely to have a <u>significant impact on human health or the environment</u>. In addition, attention is paid to the sensitivity of the area: SEA shall also be carried out for activities in <u>landscapes or other areas</u> where there are likely to be large investments or where cumulative impacts <u>are likely to have a significant impact on human health or the environment</u>.</p> <p>Uganda recently published an SEA regulation (March 2020) which further specifies its screening process for SEA. In Schedule 1 to the regulation, a list of PPP is provided for which SEA is required. Screening is to be done using a form, provided in schedule 2, in which it shall be indicated whether the implementation of the policy, plan or programme may result in <u>significant environmental, health and social effects</u>; a statement on the <u>scale, scope and possible cumulative effects of potential environmental, health or social issues</u>; and <u>a justification</u> for undertaking or not undertaking the strategic environmental assessment. Based on this combined information, a multi-sectoral technical committee shall then decide whether an SEA is needed.</p> <p>Sources:</p> <ul style="list-style-type: none"> <li>the National Environment Act 2019, article 47 (a full copy can be accessed through:</li> </ul>

<sup>3</sup> Natura 2000 is a network of core breeding and resting sites for rare and threatened species, and some rare natural habitat types across all 27 EU countries: [https://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](https://ec.europa.eu/environment/nature/natura2000/index_en.htm)

	<p><a href="https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20(1).pdf">https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20(1).pdf</a>,</p> <ul style="list-style-type: none"><li>• The National Environment (Strategic Environmental Assessment) Regulations, 2020 (Statutory Instruments 2020, No. 50), article 8 and schedules 1 and 2.</li><li>• For more information on Uganda's system: <a href="https://www.eia.nl/en/countries/uganda">https://www.eia.nl/en/countries/uganda</a></li></ul>
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# Annex 1: EU Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment

In this Annex, sections of the EU Directive relevant to the scope of application of SEA are presented. For the full text of the Directive, see: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0042>

## Preamble

In several points of its preamble, the Directive explains issues related to the scope of application of SEA:

(9) This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.

(10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (1), and all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna (2), are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local level or are minor modifications to the above plans or programmes, they should be assessed only where Member States determine that they are likely to have significant effects on the environment.

(11) Other plans and programmes which set the framework for future development consent of projects may not have significant effects on the environment in all cases and should be assessed only where Member States determine that they are likely to have such effects.

(12) When Member States make such determinations, they should take into account the relevant criteria set out in this Directive.

(13) Some plans or programmes are not subject to this Directive because of their particular characteristics.

## Article 3: Scope

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.
2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and

programmes, (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.
4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.
5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.
6. In the case-by-case examination and in specifying types of plans and programmes in accordance with paragraph 5, the authorities referred to in Article 6(3) shall be consulted.
7. Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public.
8. The following plans and programmes are not subject to this Directive:
  - plans and programmes the sole purpose of which is to serve national defense or civil emergency,
  - financial or budget plans and programmes.
9. This Directive does not apply to plans and programmes co-financed under the current respective programming periods (1) for Council Regulations (EC) No 1260/1999 (2) and (EC) No 1257/1999 (3). (1) The 2000–2006 programming period for Council Regulation (EC) No 1260/1999 and the 2000–2006 and 2000–2007 programming periods for Council Regulation (EC) No 1257/1999. (2) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ L 161, 26.6.1999, p. 1). (3) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations (OJ L 160, 26.6.1999, p. 80).

## Annex II

To determine which plans and programme are likely to have significant effects, the following criteria are presented in Annex II of the EU Directive:

Criteria for determining the likely significance of effects referred to in Article 3(5).

1. The characteristics of plans and programmes, having regard, in particular, to:

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,

- the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,
  - the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,
  - environmental problems relevant to the plan or programme,
  - the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to:
- the probability, duration, frequency and reversibility of the effects,
  - the cumulative nature of the effects,
  - the transboundary nature of the effects,
  - the risks to human health or the environment (e.g. due to accidents),
  - the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),
  - the value and vulnerability of the area likely to be affected due to:
    - special natural characteristics or cultural heritage,
    - exceeded environmental quality standards or limit values,
    - intensive land-use,
    - the effects on areas or landscapes which have a recognised national, Community or international protection status.

## Annex 2: The Espoo Convention

The Kyiv Protocol on Strategic Environmental Assessment augments the Espoo Convention by ensuring that individual Parties integrate environmental assessment into their plans and programmes.

In article 4 of the protocol, the scope of application of SEA is defined. Article 4 is shown below, for the full text of the Protocol see:

[https://www.unece.org/env/eia/about/sea\\_text.html](https://www.unece.org/env/eia/about/sea_text.html).

### ***Article 4***

#### **FIELD OF APPLICATION CONCERNING PLANS AND PROGRAMMES**

1. Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects.
  
2. A strategic environmental assessment shall be carried out for plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent for projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation.
  
3. For plans and programmes other than those subject to paragraph 2 which set the framework for future development consent of projects, a strategic environmental assessment shall be carried out where a Party so determines according to article 5, paragraph 1.
  
4. For plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and for minor modifications to plans and programmes referred to in paragraph 2, a strategic environmental assessment shall be carried out only where a Party so determines according to article 5, paragraph 1.
  
5. The following plans and programmes are not subject to this Protocol:
  - (a) Plans and programmes whose sole purpose is to serve national defence or civil emergencies;
  - (b) Financial or budget plans and programmes.

## Annex 3: The OECD-DAC good practice guidance on SEA

This guidance identifies entry points for the application of SEA at the country level in Table 5.1, which is presented below. Download the entire OECD-DAC good practice guidance on SEA through: <https://www.oecd.org/dac/environment-development/applying-sea-good-practice-guidance.htm>

### II.5. APPLICATIONS OF STRATEGIC ENVIRONMENTAL ASSESSMENT IN DEVELOPMENT CO-OPERATION

**Table 5.1. Key entry points for SEA: Country level**

Lead authorities	Focus area/Entry point	Instruments	Potential for SEA application
<b>National Government and Cross-Sector Ministries</b> <i>(e.g. Departments of Finance/Planning)</i>	National-level overarching strategies, programmes and plans	Poverty Reduction Strategy Papers National Sustainable Development Strategies 5 and 10 year plans MDG-based national development strategies	Strategic planning frameworks risk being severely flawed without SEA. There is an important opportunity to ensure environmental considerations underwrite the sustainability of strategies, plans, etc. <b>See Guidance Note 1.</b>
	National Policy reforms and Budget Support programmes	Development Policy Lending (DPL) Direct Budgetary Support (DBS) Aid-funded debt relief	Policy reforms and budget allocations create complex and often indirect environmental effects and opportunities. More up-streamed SEAs focused on institutions and governance systems for dealing with complex indirect and cumulative effects are required. <b>See Guidance Note 2.</b>
<b>Sector or Line Ministries</b> <i>(e.g. Mining, Health or Agriculture)</i>	National sectoral policies, plans or programmes, e.g. energy or health sector reform	Sector-Wide Approach (SWAp) Sector Budget Support Sector Policy Lending	The sustainability of these initiatives can be enhanced by the application of SEA, encouraging inter sector consultation and focusing on institutions and governance. <b>See Guidance Note 3.</b>
	Infrastructure investments plans and programmes	Loans Equity investment Grants Investment lending Technical assistance etc.	The scale, nature and regional or sectoral reach of major infrastructure investments require more than traditional EIA and CIA to account for induced downstream economic and social changes which may cause significant environmental and social effects, and for strategic choices available to enhance development impact. <b>See Guidance Note 4.</b>
<b>Sub-national, regional and local Governments</b>	National and sub-national spatial development plans and programmes	Technical assistance and investment	The sustainability of initiatives can be enhanced by the application of SEA, encouraging multi-stakeholder consultation. <b>See Guidance Note 5.</b>
<b>International/transboundary agencies</b>	Trans-national Plans and programmes (including multi country plans and investment programmes)	Technical assistance and investment	SEA and CIA can increase the sustainability of these programmes, and also reduce the risk of conflict by encouraging international co-operation. <b>See Guidance Note 6.</b>