

LEGAL CONDITIONS AND REQUIREMENTS

The SEA Ordinance and the Law on Biological Diversity stipulate in their provisions the specific requirements for consultations of the competent environmental authorities with other administrative bodies. The followings will shortly present the legal provisions, and will propose tools for integrating biodiversity protection aspects in the SEA process.

1. OVERALL INSTITUTIONAL SETUP

Context: *When the proponent of a plan or project submits his/her request for a review by the competent authority – which is either the Ministry of Environment and Water or the relevant Regional Inspectorate for Environment and Water and environmental authorities – these shall evaluate the quality and sufficiency of information. The competent body shall review the request and its annexes thereto within 14 days, and shall specify the procedure applicable. In case incomplete documents are received, omissions or inaccuracies are encountered in the request or the documentation submitted, the proponent shall be required to correct these in writing and/or to submit additional information within a specified term. (Art. 12 SEA Ordinance).*

Biodiversity considerations: Environmental authorities – the Minister of Environment and Water and the directors of the relevant Regional Inspectorates for Environment and Water – are supported by specialized administration units directly responsible for Environmental Impact Assessment (EIA) and Environmental Audit (EA). They review the information submitted by the proponent considering its territorial scope and affected elements of the National Ecological Network (NEN). The later consists of special areas for conservation (SAC) and protected territories outside the SAC (Art.3, par. 2 Law on Biological Diversity), which incorporate CORINE sites, Ramsar sites, Important Plant Areas (IPA) and Important Bird Areas (IBA) as priority elements. In addition, information on characteristics of the affected territory and anticipated effects on the environment (on the habitats and species within and outside the protected areas) should be presented, including maps, other graphical material of the affected territory and other supplements.

The first round of consultations can be performed within the relevant ministry administration. Within a two weeks period a decision is made on the completeness of the information provided and whether any requests/statements are to be issued to require further information. Units specialized in biodiversity protection within the same body – e.g. National Directorate

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for Nature Protection of the Ministry of Environment and Water and the Protected Areas Monitoring Directorate of the Executive Environmental Agency (EEA) – should be also involved in this process. The National Directorate for Nature Protection has its functions to manage and control the National Ecological Network by establishing the network of protected areas (PA) according to the Protected Areas Act (PAA). The establishment and maintenance of the network of Special Areas for Conservation (SAC) is also within the responsibilities of the directorate. The Protected Areas Monitoring Directorate of the Executive Environmental Agency – with its special department dealing with the monitoring of land, biodiversity and protected areas – will carry out a first check upon the quality of the information provided, on the basis of the data that can be found in special registers, maps and management plans of protected areas or SAC.

2. SCREENING AND SCOPING

Context: *As the next step in the process of screening and scoping the information submitted to environmental authorities is consulted with the Ministry of Health, municipalities expected to be affected by the plan or project, and other relevant bodies (Art.13, par.1 SEA Ordinance). This round of consultations shall last up to 30 days.*

Biodiversity considerations: Environmental authorities can prepare a list of institutions and reference materials on biodiversity protection. Institutions that possess relevant expertise, knowledge and might have additional information concerning the effects of the plan/project on SAC and other elements of the National Ecological Network shall be contacted directly. As this phase of consultation is still of strictly administrative character, NGOs and academic entities are not involved. On the other hand certain research centers and project implementation bodies can be requested to submit relevant reports, analysis and other baseline information. Depending on the complexity and territorial range of the plan/project, environmental authorities may organize a topic meeting with institutions involved, where new information and suggestions raised during that process can be discussed.

3. ASSESSMENT OF CONSISTENCY WITH RELEVANT ENVIRONMENTAL OBJECTIVES

Context: *The request of the proponent should state the main objectives of the plan/project.*

Biodiversity considerations: Objectives of the plan or project shall be compared for consistency with objectives set in national strategies, programmes and action plans for biodiversity protection. In this respect both general and the special strategies should be

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considered, as presented in the box below. Environmental authorities are in most of the cases proponents and implementation bodies of biodiversity plans and projects. The SEA report shall take into consideration the relations between biodiversity objectives and the plan or project in question, as well as the possible negative effects emerging through its implementation. Environmental authorities can oblige the Strategic Environmental Assessment team and the proponent to review the plan and select the most biodiversity friendly alternative, with no adverse effects. The hierarchy of all plans and projects that can be affected by the proposed plan should be considered, and contradicting objectives and the effected geographical scope should be clearly identified.

The scoping of the SEA shall also take into account the different levels of biodiversity – ecosystems, habitats, communities, species, individuals, population and genes – and it should assess impacts of the plan on that basis. For example, in some cases the impact on the water quality can affect adversely the ecosystem in a river or lake, while in another a land use plan that proposes changes in land use can endanger habitats of species setting barriers for their distribution, amounts, etc. Environmental authorities shall guide the SEA process in a way that a clear set of objectives and indicators for measuring results achieved in terms of biodiversity protection is produced.

Box 1 – Plans, programmes and strategies to be considered in the SEA process

I. General national strategies, programmes and action plans:

- The National Strategy on Biodiversity Protection (1995),
- National Strategy for Environment 2005-2014 and the Action Plan for 2005-2009,
- National Plan for the Protection of Biological Diversity 2005-2010,
- Action plans for the protection of globally endangered birds,
- The National Forestry Policy and Strategy,
- The National Strategy on Ecotourism and Action Plan,
- Management plans for protected areas.
- Operative Programme for Environment, 2007-2013 (draft) - which sets as one of its three main specific objectives and priorities the protection and recovery of the biological diversity.

II. Strategies, programmes and plans according to biodiversity laws

Law on Biological Diversity:

For Special Areas of Conservation (SAC) management plans shall be elaborated (Art. 27), which shall be commissioned and endorsed under the terms and according to the procedure established by the Protected Areas Act, depending on the category of protection (Art.28).

Protected Areas Act:

For protected areas management plans shall be elaborated according to the terms and procedures set in the regulation endorsed by the Council of Ministers. Management plans of National Parks and Nature Parks shall be elaborated within three years, while management plans of strict and managed nature reserves shall be elaborated within two years after designation. Management plans shall be updated once every ten years (Art. 55).

Ordinance on the Elaboration of Management Plans for Protected Areas:

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The elaboration of the management plans of protected areas shall be commissioned by the Ministry of Environment and Water (Art.9). The elaboration of management plans for protected areas can be commissioned by other state authorities, municipalities, owners, non-governmental organizations and associations or through international projects only after a written endorsement by MoEW (Art.10).

- *Law on Hunting and Game Protection:*

The acclimatization and re-acclimatization of game in the country is carried out according to a long term programme coordinated with the Ministry of Environment and Waters and approved by the Head of the National Forestry Board (Art.41).

- *Law on fishery and aquacultures*

A national programme on fishery and aquacultures shall be adopted by the Council of Ministers following the proposal of the Ministry of Agriculture and Forestry, Ministry of Transport and Communication and Ministry of Environment and Waters. One of the components of the programme is the protection of the biodiversity in the aquatic ecosystems and sustainable development of fish resources (Art.4).

- *Law on medical plants*

The Minister of Environment and Water shall manage and coordinate the development and implementation of State Policy concerning the conservation and sustainable exploitation of medicinal plants, including its integration into sectors' policies (Art.43).

4. THE SEA REPORT

Context: *The SEA report shall be drafted with reference to the baseline information, sources and results of consultations, including a review of expressed opinions, proposals on alternatives and the expert evaluation on each part of the study.*

Biodiversity considerations: Members of the team carrying out the SEA responsible for biodiversity aspects (in Bulgarian SEA studies these include five subcomponents, namely: flora, fauna, ecosystems, landscape and protected areas) shall work in close contact with the proponent of the plan or project as well as experts from respective administrations responsible for biodiversity protection, and in case of a local scale project with relevant local authorities. Joint meetings with experts and public officials can lead to clarifications concerning the baseline information used and for the development of viable alternatives. The information used can be clustered in categories and levels of details that should be considered when evaluating the significance of the effects. Parts of this evaluation should be clearly quantitative and involve measurements and data from before and after the implementation of the project, as well as the alternative options suggested. NGOs active in the field of biodiversity and nature conservation can provide inputs at this stage by giving their research results and empirical data. Academic researchers in the area shall be also consulted in this respect. Before the report is completed main positions and the selected leading alternatives should be presented in a workshop inviting representative of the planning team, the SEA team, external experts, NGO's and local people.

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5. PUBLIC PARTICIPATION

Context: *The general public, interested bodies and third parties that might be affected by the plan or project shall be consulted according to a scheme developed by the proponent.*

Biodiversity considerations: The structure of consultations should reflect the findings and the specific concerns identified in previous stages – e.g. if there is a probability that a Special Area for Conservation or a population of species of European Community importance will be affected, all experts in that field should be consulted as well as NGOs that can comment and propose alternatives for avoiding, reducing, or compensating for the adverse effects. When public hearing proves not to be the appropriate form for consultation, scientific institutions and academics (Bulgarian Academy of Sciences, Biological Departments of Universities, etc.) should be consulted first, before submitting the issue to open discussions. Consultations with experts however shall not replace broader discussions, but they should rather be treated as an integral part of the process. The decision of environmental authorities is prepared by relevant consultancy bodies: special board of the Supreme Expert Ecological Council (SEEC) to the Minister of Environment and Waters, and the Ecological Expert Council (EEC) to the Regional Inspectorate for Environment and Waters. Members of these bodies are partially the representatives of administrations of the main ministries – i.e. ministries responsible for agriculture and forestry, regional development and public works and health. Members are either “permanent” or “non-permanent”, the second category including NGO representatives and external experts. These bodies shall represent the variety of experts and institutions and the non-governmental sector, and include at least two experts in Biodiversity, one of which should be a non-permanent member.

6. SEA STATEMENT CONCLUDING THE SEA PROCEDURE

Context: *The environmental authorities shall within their SEA statement that concludes the SEA procedure clearly prescribe measures for avoidance, mitigation and elimination of the possible negative effects on the environment as well as measures for monitoring and control.*

Biodiversity considerations: Clear indicators and mechanisms shall be identified for measuring and monitoring the effects of the project in question on biodiversity. The implementing authority shall be obliged to present a report on the current status of biodiversity and the respective SAC, as well as on conditions of species and habitats after the implementation of the project. Public access to relevant data and information should be provided, in a way that this can be compared with the feed back of NGOs, local people and

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experts. Additional information might be collected concerning the effects of different types of plans and projects on effected sites and habitats. A comparison of expected and actual effects can be later assessed and used in other SEA studies.

SPECIAL ASSESSMENT UNDER THE LAW ON BIOLOGICAL DIVERSITY

Amendments to the Law on Biological Diversity, entering into force after the accession of Bulgaria to the EU, introduce special assessment requirements, which mainly focus on ensuring that the planning process is coherent with conservation objectives of the SAC in question, and that a statement on the significance of the effects of the project is prepared by the competent authority. This will become a precondition to be fulfilled before proceeding further with the SEA assessment and the final draft of the project plan. In case the project plan is endorsed, the competent authority shall give clear instructions to the proponent on conditions, requirements and measures concerning the protection of the SAC throughout the implementation of project. The information and analyses prepared under this special assessment shall be used in the SEA report.