

## **Comparative analysis of OECD/DAC Guidance and other internationally important SEA regimes**

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### **Purpose**

The purpose of this briefing note is to provide a short, factual comparison of the differences and similarities among SEA approaches promoted and adopted internationally with particular reference to the implications for the donor community.

### **Introduction**

In June 2006, the OECD/ DAC published the *Good Practice Guidance on Applying SEA in Development Cooperation* for use by its members and partner countries. This guidance now serves as a commonly agreed framework for strengthening and harmonising the use of SEA in support of international development policies, plans and programmes, as called for in the Paris Declaration on Aid Effectiveness 2005. Currently, the guidance is being pilot tested by a number of multilateral and bilateral aid agencies as part of their ongoing activities.

This process is designed to assist donor agencies to come to a better understanding of the ways that the Guidance can improve SEA application across a broad scope of development assistance activities. It also is expected to identify opportunities for coordination of their SEA procedures within partner countries, helping to implement a more coherent approach consistent with the harmonisation agenda agreed by the donor community.

At the same time, the Guidance calls for donor agencies to take a flexible approach to SEA, adapting processes and tools to the particular context and issues encountered. This is a difficult challenge within the harmonisation agenda but not a contradictory one, since adaptation to purpose provides a convergence point for different processes. Lessons gained on this aspect from 'road tests' of the Guidance should be particularly valuable for donors and their partners.

On a broader level, there are overlaps and differences between the SEA approach promoted in the Guidance and that established under other legal and policy regimes that apply to or bear upon development cooperation.. Given the Guidance is recent, this situation could be potentially confusing, especially for partners, and, at worst, it might undermine efforts to increase the effective take up of SEA.

Accordingly, this briefing note reviews the main differences and similarities in the approaches to SEA and the reasons for them. It provides a comparative analysis of internationally important SEA regimes against the reference standard established by OECD/ DAC Guidance. Specific attention is given to the European SEA Directive, the UNECE SEA Protocol and the World Bank, where the use of SEA and similar

diagnostic tools is relatively diversified. For ease of comparison, the salient requirements and procedures of these approaches are cross-related in a summary matrix. This information is in Annex 1.

### **Background: Synopsis of DAC Guidance**

The DAC Guidance benchmarks SEA good practice as applied to development cooperation. It is intended to promote and support the SEA use and up take by donor agencies and partner countries, consistent with the fundamental shift that has taken place towards more strategic programmes of aid delivery and the use of new instruments such as direct budgetary support and policy reform. More broadly, the Guidance responds to the harmonisation and alignment agenda set out in the *Paris Declaration on Aid Effectiveness* (March 2005), which, inter alia, calls for the donor community ‘to develop and apply common approaches’ to SEA [emphasis added].

In this context, SEA is defined flexibly<sup>1</sup> and understood to encompass a family of approaches. These are ranged in the Guidance along a *continuum* of increasing integration from the traditional emphasis on environmental mainstreaming to the emerging area of sustainability appraisal, which addresses the economic, environmental and social effects of proposed actions. Across this spectrum, many permutations of focus, procedure and application are evident, particularly in the field of development cooperation. SEA is variously institutionalised in donor agencies alongside an increasing number of other strategic processes and diagnostic tools, such as poverty and social impact analysis (PSIA) and country environmental analysis (CEA).

Given this diversity, the Guidance underlines the importance of a flexible, creative approach to SEA, one that is adapted to the purposes and processes of development cooperation and adds value to decision-making. It focuses on general principles, core elements and the large kit of tools that can be used for mainstreaming the environment consistent with MDG 7 and other key priorities for aid and lending.

The Guidance outlines a menu of entry points for SEA application in relation to aid and lending instruments, illustrated with case examples of good practice. Above all, it emphasises that recommended approaches should be considered on a case-by-case basis, tailored to the nature of the strategic action and reflecting the context and circumstances of the partner country.

### **SEA Instruments used for Comparison**

The DAC guidance represents an important addition to the legal and policy benchmarks now used or influential in the area of development cooperation. It offers a very different approach to the prescriptive arrangements enshrined in the European Directive and UNECE Protocol, which are widely referenced internationally as minimum procedural standards and also impinge on development cooperation activity (as described below). Similarly, the Guidance differs from the SEA requirements set out in World Bank environmental and social safeguards (ESS) policy and procedure

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<sup>1</sup> As specifically defined: *This Guidance...uses the term SEA to describe an analytical and participatory approach that integrates environmental considerations into policies, plans and programmes and evaluates the inter linkages with economic and social considerations.*

(OP/BP 4.01). The latter describes the elements and steps that are to be taken to meet Bank requirements, including a specification of the content of an environmental report.

However, in encouraging their flexible application, Bank procedure converges with the approach recommended in the Guidance. Beyond the ESS framework, the approach of the Guidance has many points of correspondence with the wider scope of SEA application at the Bank, which covers development policy lending and non-lending economic and sector work, amongst other areas.

The above three regimes represent the main reference points for placing the role and potential contribution of DAC guidance on SEA good practice in development cooperation in a broad, comparative perspective. A brief profile of the key features of the three regimes is given below, preparatory to focusing on their differences and similarities to the Guidance (for further analysis, see Therivel 2004, Dalal-Clayton and Sadler 2005):

The **European SEA Directive** (2001/42/EC) came into operational force in mid-2004 and now in its implementation stage. It has the character of a framework law, comprising 15 articles and two annexes that are critical to the nature and scope of application of the Directive (which covers only plans and programmes).<sup>2</sup> Stated objectives are *to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of plans and programmes with a view to promoting sustainable development* (Art 1). The main body of the Directive is made up of the EIA-based procedural requirements that must be incorporated into the SEA processes of EU member states (through transposition into national legislation).<sup>3</sup>

Detailed guidance on implementation of the SEA Directive issued by the EC (2003) is now paralleled by comparable materials in many member states, notably in the UK where the requirements of the Directive have been folded into a new statutory process of sustainability appraisal in the case of land use plans (but not sector plans or programmes). On one level, the Directive has been at the leading edge of a trend toward greater standardisation of SEA procedure at the level of plans and programmes. Yet as UK experience suggests, it is also possible to use the Directive as a platform on which to base a more integrative approach, lying at the other end of the SEA spectrum to strictly environmental mainstreaming (described in the Guidance).

As a supra-national model of SEA, the Directive is also considered to have wider international influence on process development in transitional and developing countries. This may occur as a direct response of countries with close EU associations, for example as part of economic cooperation activities or it may be transmitted less directly through EC-funded training and capacity building activities, including those undertaken by individual member states.

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<sup>2</sup> The Directive covers certain plans and programmes, essentially those which prepared for listed sectors and which set a framework for future development consent of projects subject to the EIA Directive (85/3337/EEC) and any that would require an assessment pursuant to the Habitats Directive (92/43/EEC). However, there remain a number of grey areas regarding the actions that subject to SEA.

<sup>3</sup> EU member states were required to have brought the necessary laws or regulations before 21 July 2004. It is clear that not all did so and some still may not be in legal or operational compliance. Anecdotal information also suggests there are wide variations in SEA implementation across the EU.

The SEA Directive also enters into or bears upon the role of the EU in international development cooperation. For example, the European Consensus on Development (July 2005) included a commitment to apply SEA to mainstream the environment including for budget and sector aid

In addition, the standard TOR for country environmental profile (CEP) state that “consultants should pay particular attention to the possibility of recommending a SEA for focal sectors”. Since April 2006, joint programming framework guidance requires country strategy papers to include diagnostic analysis, based on CEP and review existing SEA policies, legislation and use including other programmes funded by the EC or other donors and recommendations on initiating an appropriate SEA process.

The **UNECE SEA Protocol** (adopted in 2003, not yet in force) is a multi-lateral legal instrument, negotiated under the Espoo Convention on EIA in Trans-boundary Context but largely generic and free-standing in its application. It also has the character of a framework law but is more comprehensive than the Directive, comprising 26 Articles and five annexes. Many of the requirements of the Protocol are based on or correspond to those in the Directive but others are individual or different such as the provisions relating to trans-boundary consultation and more detailed arrangements for public participation (Article 8, Annex 5).<sup>4</sup>

The Protocol is legally binding on Parties for defined plans and programmes (similar in scope to those delineated in the Directive) and there is also flexible provision for application of the Protocol to policies and legislation.

Given its potential reach, the Protocol also can be expected to influence SEA practice internationally and has potential implications for the development cooperation and harmonisation in the future. For example, as an international law, the Protocol might eventually be ratified by partner countries and apply to SEA applications of certain donor-funded plans and programmes that meet that the criteria defined in Article 4 (see Annex).

The Protocol has been signed by 35 member states of the UNECE region, including countries in transition from the Caucasus and Central Asia, and, once ratified, will be open to accession by other countries.<sup>5</sup> A work-plan to support implementation of the Protocol has been agreed by the signatories and includes the preparation of a resource manual (Bonvoisin et al 2004, draft recently issued for consultation) and identification of capacity development needs in countries in transition. If earlier work to support the application of the EIA Convention in (then) non-EU states is any guide, these activities can be expected to assist Balkan, Caucasian and Central Asian countries in SEA development, possibly raising issues of donor coordination and coherence in this region.

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<sup>4</sup> These provisions reflect the sister UNECE (Aarhus) *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (1998, ratified 2002)

<sup>5</sup> The Protocol comes into force on ratification by the sixteenth Party, expected in the near future. At that point, other UN member states may accede (upon approval of the existing Parties) and several reportedly have indicated an interest in doing so [com from UNECE Secretariat].

The **World Bank** has a ) loosely structured SEA regime that encompasses a range of approaches, adapted to purpose along the lines recommended in the Guidance. For present purposes, the main forms of SEA can be differentiated in relation to three distinct types of lending and assistance activities (Mercier 2005, also Mercier and Ahmed 2005):

1) Environmental assessment (EA) is a formal, mandatory procedure under the Bank's environmental and social safeguards (ESS) policy and compliance system. It applies to environmentally significant investment lending in key infrastructure and development sectors and follows the requirements laid out in OP/BP 4.01. This policy includes provision for sectoral or regional assessment of a strategy, policy, plan or programme. Undertaking this process is the responsibility of the borrowing country and increasing use of both instruments is reported, although experience with regional assessment is more limited than is the case for sectoral EA (Green and Raphael 2002). Bank policy and requirements have been instrumental in introducing SEA in a number of developing countries.

2) SEA is used flexibly in the context of development policy lending (DPL), which supports institutional strengthening and requires the Bank to determine whether or not the reforms being supported are likely to have significant effects on the country's environment and natural resources (OP/BP 8.60). In which case, the adequacy of the borrower's systems for managing these effects should be assessed to identify and address any gaps or shortcomings. A number of diagnostic tools can be used for this purpose, including SEA at the sector level and country environmental analysis (CEA) at the broader, national level. This type of analytical work is still at a relatively early stage but the use of SEA as tool for policy and institutional reform is expected to increase (World Bank 2005).

3) SEA and SEA-type approaches are undertaken as part of economic and sector work (ESW) in support of non-lending, technical assistance to developing countries. A significant part of ESW activity is directed at environmental and resource management issues, priorities and processes for addressing them. This analytical work has a strong capacity development emphasis and may provide a basis for initiating DPL or other support for a borrowing county to undertake policy reforms. In this context, a broader 'institution-centred' approach to SEA is now being promoted within the Bank (DAC Guidance and World Bank Report No 32783, see below).

Finally, to round out the picture, **other more integrative approaches** that lie at the opposite end of the DAC spectrum to mainstream SEA processes should be mentioned. Examples include:

- UNEP framework for integrated assessment and planning for sustainable development, which has been piloted tested in a number of developing and transitional countries (UNEP 2004);
- EC process for integrated impact assessment for proposed regulations, directives, expenditure programmes and negotiating guidelines for the international agreements (COM(2002)276 final, for review of experience see Renda 2006); and
- EC process for sustainability impact assessment of WTO trade negotiations including detailed sector studies for the Doha round (George and Kirkpatrick 2003).

## **Main Similarities and Differences and their Implications**

A comparative profile of the four SEA regimes described above can be found in Annex 1. This matrix annotates and contrasts the main differences and similarities among the European Directive, the UNECE Protocol, the World Bank with particular reference to the ESS policy framework and the DAC Guidance. Internationally, they represent cardinal points of reference for the development of SEA process and practice in developing and transitional countries. Their relationship is subject to a preliminary review along eight dimensions in the accompanying matrix.

In this section, the findings and the issues raised are discussed more discursively, addressed to the aspects of interest identified in terms of reference for this contract:

### *1) Legal and policy provisions*

The ‘authority’ for the Guidance derives from the work programme of the DAC ENVIRONET and the mandate comes from the *Paris Declaration on Aid Effectiveness* (2005). In this regard, the Guidance does not provide the basis for SEA, comparable to the jurisdiction-specific provisions enshrined in the legal instruments of the Directive and Protocol or contained in Bank safeguard policy and procedure (or, more generally, mandated in the 2001 Environment Strategy). Such provisions establish the requirements for a particular type of SEA regime or approach, whereas the Guidance does not. Rather it is an advisory document that gives policy ‘support’ for strengthening and harmonization of the SEA processes for which provision has been made already by individual donors and for their wider take up including by partner countries.

In that regard, the Guidance derives legitimacy from its status as a commonly agreed framework, reached through a ‘consensus’ of DAC members and co-opted advisors. This process, *prima facie*, appears distinct but on closer examination both the Directive and Protocol also were negotiated, respectively by member states and Parties to the EIA Convention, and arguably may be said to represent a ‘consensus’ that was then given legal force through EC and UN machinery. At the Bank, the increasing adaptation and use of SEA within and outside of ESS policies in response to shifting priorities in aid and lending have been documented annually in issues of *Environment Matters*. Similar forces can be said to have shaped the design of the Guidance.

### *2) Main objectives and principles*

The Guidance can be said to have an ‘intermediary’ purpose rather than a primary aim of environmental protection or realising sustainable development as variously set out in the legal and policy frameworks. It is intended to facilitate SEA good practice, improve cooperation and coherence among donor processes and contribute to development effectiveness.

By doing so, the Guidance also will help these processes better achieve their objectives and thus contribute indirectly to the substantive and procedural benefits outlined in Chapter 3, e.g. improving development decision-making and contributing

to good governance. Although arms length in its role, the impact of the Guidance should not be automatically assumed to be minimal or insignificant. There may be a multiplier effect if the Guidance influences SEA practice positively across a number of donor agencies and partner countries or realizes its larger purpose of supporting greater harmonisation and alignment.

The Guidance may be thought of as principles- rather than requirements-based, contrasting with the approach taken in the European Directive, UNECE Protocol and Bank ESS policy. In the Guidance, twelve basic principles for SEA application of SEA are listed in the Guidance along with three additional prerequisites that are fundamental for effective development cooperation. Yet the principles are only itemised with no direction as to their relationship and use and some may see this as a missed opportunity. In the other frameworks, guiding principles are not stated as such but for the most part they can be inferred or interpreted from the core requirements and elements such as the language used with regard to public participation in the Protocol (see Annex 1). A more formal enunciation of key principles can be found in the Bank's adaptation of IAIA criteria for a good quality process. These have been used to review of SEA cases as part of the structured learning programme (SLP) but it is unclear if they have wider currency.

### 3) *Scope and coverage of SEA*

SEA definitions vary among the four regimes, prefacing their different scope and coverage. The Guidance defines SEA inclusively and flexibly as a family of approaches, in contrast to the prescriptive, procedural definition in the two legal instruments. In the Directive, for example, SEA 'means the preparation of an environmental report, the carrying out of consultations' and other elements related to provision of information for decision-making. The Protocol uses similar language but takes SEA to mean the evaluation of likely environment, including health, effects. Bank OP/BP 4.01 defines EA basically as instrument that examines environmental issues and impacts and adds certain detail for sectoral and regional assessment (footnote 2 in Annex1). The Bank also defines SEA generically as a *participatory approach for upstreaming environmental and social issues to influence... decision-making* (which has been adapted for the Guidance).

The Guidance promotes a broad scope of SEA application, in contrast to the prescribed focus of the legal frameworks but similar to collective Bank practice, taking into account both formal (ESS) and informal use of SEA instruments (as indicated by many examples in the Guidance from this source). It covers all types of development cooperation policies, plans and programmes and the use of SEA is explained in relation to key areas and instrument for aid and lending.<sup>6</sup> By contrast in the Directive and the Protocol, SEA is mandatory only for specified plans and programmes, primarily those that set a framework for listed projects subject to EIA. Sectoral and regional assessment of Bank-financed plans and programmes under ESS policies are reasonably comparable although more flexibly applied.

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<sup>6</sup> Backed by comprehensive notes, this section may be seen as the practical spine of the Guidance, comprising a menu of opportunities of what 'can be done'. It shows rather than just says how SEA can add value to development cooperation, and represents a significant contribution to 'hands on' understanding of SEA generally

A major distinction among the four SEA regimes is their coverage of policy. The Directive makes no reference to it; the Protocol encourages the parties to integrate environmental considerations into policy and legislation, using its provisions as appropriate; and the Bank uses SEA to address policy reforms as part of DPL preparation (OP/BP 8.60) and in certain ESW activities. More generally, policy and institutional assessment is a component of country assistance strategies and programmes, where SEA is part of a larger mix of strategic diagnostic tools. Recently, the Bank proposed taking a more 'institution-centred' approach to policy-level SEA, bringing in governance and capacity strengthening dimensions rather than focusing only on information needed for specific decision, and leaving open ways and means of putting it into effect (Report No 32783).

This approach is also explained in the Guidance. It follows two tracks (and it is their relationship which is important here). First, there is a call (long standing) for adjusting SEA to the 'messy' realities of policy-making, often a non-linear, politically charged process) to better identify the effects of options and proposals. This involves embedding SEA in the institutional arrangements that govern policy formation, opening the way to applying it on a more continuous basis. Second, the support for policy and institutional reform now favoured in development assistance has a range of potential environmental effects that are complex and often indirect. The use of SEA (together with other strategic tools) to address these effects, opens opportunities to assess and strengthen institutional capacities for this purpose and a two step methodology is outlined in the Guidance. Although these two tracks have evident linkages, it remains to be demonstrated how the conventional, decision-specific focus of SEA will be folded into the broader, institution-centred approach (which confusingly is also called decision-oriented in the Guidance). This should be a priority for future pilot testing.

#### *4) Main steps and elements involved in each process*

Of the four SEA regimes, the Guidance arguably contains by far the most comprehensive statement of the steps and tasks of the SEA process. However, it is emphasised that these actions are not necessarily to be followed in full or imitatively, rather they need to be abridged, amended and adapted as the issues and circumstances require. Possibly to reinforce this message, they are organized into four generic, planning stages and then subdivided into the more familiar steps and elements of SEA process. For example, screening and stakeholder identification are components of the first stage (establishing the context of SEA) and scoping, baseline data gathering, identification of alternatives, impact analysis, mitigation and report preparation form part of the second stage (implementing the SEA). Relatively detailed advice is given on undertaking these stages and steps.

Bank EA policy and procedure describes most of the same steps in less detail, some by reference to the contents of an environmental report and others with a different emphasis (e.g. documentation for implementation and supervision). Only core elements are enshrined in the legal instruments, although they are not always formally identified as steps, particularly in the Directive. The Protocol is more explicit with specific reference to screening and scoping and more detailed with regard to public participation. In both instruments, the cornerstones are preparation of a report including information to be provided, consultations with the public and designated

authorities and requirements for decision-making. These are taken as internationally accepted minimum standards of due process, although the Guidance corresponds to them in general rather than specific terms.

Looked at in the round, the key steps and elements of SEA are the same across all frameworks, although certain variations can be picked out. Examples include the Bank's requirement for an environmental management plan in Bank procedure and the role of EA procedure in applying other ESS policies (which have no parallels in the other frameworks as a system of no harm assurance). More telling, perhaps, is the difference in emphasis or orientation. The Directive outlines the art of the possible, the 'may do's', in contrast to the procedural 'musts' of the legal instruments or the combination of mandatory requirements and procedural 'shoulds' of Bank OP/BP 4.01.

To prevent too much being read into this, it is important to note that each may be seen as appropriate to the purpose for which they were designed.

### **Concluding Comments and Recommendations**

The Directive, the Protocol, World Bank OP/BP's and the DAC Guidance are the four cornerstones of SEA requirements that apply internationally across a spectrum of applications. In this context, they offer a menu of choices for developing countries, here simplified into instituting basic or minimum international standards of SEA or aligning with World Bank requirements or flexibly utilising DAC guidance on SEA good practice. These are not either/ or choices and have their own rationale.

From the perspective of development cooperation, the Guidance emphasizes that there is no single 'one size fits all' SEA procedure or methodology and any attempt to do so would be inappropriate and premature. This presumption is sound and it should be bolstered in further work to ground or make transparent the relationship of SEA and other strategic tools, particularly those associated with poverty reduction.

More generally, there is a critical need to spell out how SEA should be applied to deliver specifically on MDG 7. At present, ensuring environmental sustainability remains a "motherhood" goal on which development cooperation falls short. The issue here is how SEA can deliver specifically or step by step on this agenda.

A specific area for attention is the application of SEA at the policy level and the relationship to and the institution-centred approach recommended in Guidance and promoted by the World Bank. This concept is rich in potential but it needs to be firmly grounded in practical examples. While the main lines of argument appear to be clear (more or less), the concern is whether and how the proposal specific and macro-policy reform dimensions relate to each other (at least for those who consider this is not spelled out clearly in the Guidance). This can best be bottomed through practical examples in pilot testing. On a broader level, the differences (and similarities) among policy, plans and programmes in a development cooperation context could benefit from practical elaboration.

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