

IMPROVING DECISION-MAKING
FOR THE ENERGY TRANSITION

Guidance for using Strategic
Environmental Assessment

CHAPTER 3

LEGAL REQUIREMENTS AND COMMITMENTS TO APPLYING SEA, AND INSTITUTIONAL ROLES



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CHAPTER 3

LEGAL REQUIREMENTS AND COMMITMENTS TO APPLYING STRATEGIC ENVIRONMENTAL ASSESSMENT, AND INSTITUTIONAL ROLES

3.1 THE LEGAL BASIS FOR STRATEGIC ENVIRONMENTAL ASSESSMENT

Environmental impact assessment (EIA) was first introduced in the USA under the National Environmental Policy Act (NEPA) in 1969. The Act applies to “proposals for legislation and other major federal actions significantly affecting the environment.” The US Council on Environmental Quality interpreted this to include policy, programs, and plans (PPPs). While EIA practice in the US tended to mainly address projects, programmatic environmental impact statements (focused on PPPs) also became an integral element of the implementation of the Act.

From the late 1980s and during the 1990s, strategic environmental assessment (SEA) and similar procedures were introduced by legislation and experimented with as a separate process from EIA in a small number of high-income countries, e.g., Australia, Canada, Denmark, and the Netherlands. But since then, nearly all high-income countries have adopted SEA (particularly European countries under the EU SEA Directive; see Section 3.2), and the number of low- and middle-income countries adopting SEA is rapidly increasing, with around 100 countries across the world now having legal provisions for its application. While many of these countries have formalized SEA through regulation and have established mandatory procedures, in others the legislation remains more of a framework with regulation pending. In countries without legal provisions for SEA, it is often applied on a voluntary basis.

Processes across countries vary considerably. In those countries with no formal provision for SEA, it is often applied on a voluntary basis, and some countries have developed an active body of voluntary SEA practice (e.g., Colombia, South Africa, and Thailand). Thus, several categories of practice can be recognized:

- Mandatory regulation for SEA, including a procedural regulation;
- General provisions for SEA but no procedural regulation;
- Application of EIA regulation for policies, plans, and/or programs;
- Voluntary regulation of SEA, often based upon a policy and guidelines but no procedure;
- No regulation of SEA, but voluntary practice.

Some countries have made statutory provision for SEA under EIA or planning law. In these systems, EIA-like requirements and procedures are usually followed and apply particularly to SEA for plans and programs. Other countries have established SEA through administrative order, cabinet directive, or policy guidelines. In these systems, SEA is applied as a separate or modified process from EIA, as in Denmark, Hong Kong, The Netherlands, and the UK (in England, SEA for land use/spatial planning is integrated into sustainability appraisal). In Canada, the 2010 Cabinet Directive on the Environmental Assessment of Policy, Plan, and Program Proposals (SEA) was rescinded and archived on 1st April 2024. It was replaced by a Cabinet Directive on Strategic Environmental and Economic Assessment.¹

3.2 INTERNATIONAL DIRECTIVES, PROTOCOLS, SAFEGUARDS, DECLARATIONS, AND COMMITMENTS

A number of international directives and protocols have set legal requirements to undertake SEA. Most notable is the EU SEA Directive 2001, which introduced a standardized approach and was

¹ Government of Canada (2024) This new Directive focuses on the potential environmental and economic considerations of key government decisions, with a special focus on climate change and biodiversity. It applies to proposals submitted to Cabinet for decision, specifically Memoranda to Cabinet and Treasury Board Submissions, regulatory proposals subject to the Cabinet Directive on Regulation, and funding requests submitted to the Prime Minister and the Minister of Finance for decision.

transposed into domestic law by 2004 in all 27 member states of the EU. The Directive applies to a wide range of public plans and programs (but not policies), including those prepared for agriculture, forestry, fisheries, **energy**, industry, transport, waste/water management, telecommunications, tourism, town and country planning, or land use, and which set the framework for future development consent of projects.

The provisions of the Directive strongly influenced those of the SEA Protocol to the UN Economic Commission for Europe (UNECE) Convention on EIA in a Transboundary Context ² (agreed in 2003). The latter is similar to the EU Directive on SEA but with distinctive features, such as a special emphasis on health impacts alongside environmental ones. The protocol is legally binding on convention signatories with regard to plans and programs and is discretionary concerning policies and legislation.

Some UN conventions have started to recognize the value of SEA. The Convention on Biological Diversity (CBD) has prepared voluntary guidelines on the integration of biodiversity in EIA and SEA, 2006.³ In March 2023, a new treaty on protecting marine life in international waters (the High Seas Treaty) was concluded under the Convention on the Law of the Sea (UNCLOS) and was formally adopted in May 2023. Under the treaty, participating parties are obliged to conduct environmental impact assessments when a planned activity may have an effect on the marine environment or when there is insufficient knowledge about its potential effects. In such cases, the party possessing jurisdiction or control over the activity is required to conduct the assessment. Parties under the treaty are required to consider conducting a SEA for plans and programs related to their activities in areas beyond national jurisdiction but are not obliged to conduct one.⁴

A number of multilateral development banks have adopted environmental and social safeguards that either promote or require borrower countries to undertake SEAs, SESAs, or equivalent processes for particular proposed initiatives that they are financing (e.g., the World Bank, the Inter-American Development Bank; see Table 3.1).

Other international organizations have also made commitments to promote SEA. For example, the Paris Declaration on Aid Effectiveness was adopted in 2005 and reaffirmed in Accra in 2008 at ministerial-level forums convened by the Organisation for Economic Co-operation and Development (OECD). It committed bilateral donors and partner countries to “develop and apply common approaches to SEA.” More recently, the fifth session of the UN Environment Assembly (March 2022) adopted a resolution supporting strategic planning of sustainable infrastructure by applying SEA.⁵

By identifying and focusing on the key environmental and socioeconomic concerns related to a PPP, SEA is able to identify where opportunities can be maximized and risks/impacts avoided or mitigated in relation to environmental and socioeconomic commitments made under international legal conventions and agreements to which a country is a signatory and to regional and UN organizations. Similarly, for the same reason, SEA can also support countries and agencies to ensure that individual PPPs contribute positively to the achievement of the Sustainable Development Goals and meet international commitments to combat climate change and promote corporate social responsibility.

² UNECE (n.d.). The UNECE Protocol on SEA was negotiated under the 1991 UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) to extend the scope of the Convention, but it is a legally distinct instrument. It is an international agreement open to all UN member states; so far, 37 states and the EU are signatories. The Protocol provides for legal obligations and a procedural framework for the implementation of SEA in countries that are parties to it.

³ Convention on Biological Diversity (n.d.)

⁴ Read more about the High Seas Treaty (https://en.wikipedia.org/wiki/High_Seas_Treaty)

⁵ UNEP (2022)

Table 3.1: International financial institutions (IFI) requirements for and reference to SEA

IFI	Requirement for or Reference to SEA
UN Development Program	<ul style="list-style-type: none"> • Social and Environmental Standards (2019).⁶ • Social and environmental screening procedure (2019). P.21, entry 58.
World Bank	<ul style="list-style-type: none"> • Environmental and Social Safeguards framework (2017): ESS 1: Part B. Entry 23.
African Development Bank	<ul style="list-style-type: none"> • Integrated Safeguards System Policy Statement and Operational Safeguards (2023).⁷
Asian Development Bank	<ul style="list-style-type: none"> • Safeguard Policy Statement (June 2009) (p66). • Draft revision (2023)
Inter-American Development Bank	<ul style="list-style-type: none"> • Environmental and Social Policy Framework (2020)⁸: (Ch 3.5). • Implementation Guidelines for the Environment and Safeguards Compliance Policy, Revised version, July 2019. Policy Directives B.3 and B.5 (new guidelines are currently under review).
European Investment Bank	<ul style="list-style-type: none"> • Statement on Environmental and Social Principles (2009)⁹ • Environmental, Climate and Social Guidelines on Hydropower Development (2019)¹⁰; Cumulative Basin Wide impacts, P.7.

3.3 SCOPE AND CONTENT OF LEGAL INSTRUMENTS

Laws prescribing the use of SEA vary considerably in their scope and content. In some countries they are of a framework or enabling nature and merely make provision for its introduction. They assign responsibility for SEA to a designated authority (e.g., ministry or agency), establishing a new government body or designating additional responsibility to an existing agency, but leave such a body to make subsequent regulations for the formal activation of the SEA system. In other countries, laws are more detailed and set out all the major provisions for the SEA system. Thus, either a law or a regulation will usually:

- State the objectives of the law/regulation;
- Set out any general principles;
- Assign functions, powers, roles, responsibilities, and staffing for aspects of the SEA process;
- Establish any related or supporting bodies (e.g., Advisory Council), their composition, terms of reference, and regulatory of meetings;
- Indicate the types of PPPs for which SEA is mandatory;
- Define terms used in the law/regulation;
- Set out the required steps and procedures;
- Establish appeals procedures (e.g., concerning decisions);
- Indicate reporting requirements;
- Describe administrative arrangements;
- Set any fees or payments that may be due.

A regulation for SEA may cover some of the above elements, but would usually focus much more on specific aspects of the SEA process, such as:

- Preliminaries, e.g., definitions, objectives, role of SEA proponents, access to information, modalities, and general requirements;
- Screening to determine which PPPs require SEA;
- Public participation requirements;
- Scoping requirements;

⁶ UNDP (2019)

⁷ AfDB (2023)

⁸ IADB (n.d.)

⁹ EIB (2009)

¹⁰ EIB (2019)

- Steps in the main assessment stage;
- Reporting requirements;
- Monitoring and evaluation;
- Notification and registration of documents and decisions;
- Administrative matters;
- Annexes (e.g., forms).

3.4 RESPONSIBILITY FOR SEA IMPLEMENTATION AND INSTITUTIONAL ROLES

Legislation and associated regulations provide a formal national (and in some cases sub-national/regional) platform setting out the circumstances in which SEA must be undertaken, the policies, plans, and programs (PPPs) to which it must be applied, and the specific requirements for how the process should be conducted, including roles, responsibilities, required documentation, monitoring procedures, etc.

The government ministry developing or revising the PPP will usually be the **lead agency** responsible for instigating an SEA. For renewable energy PPPs, this will normally be the ministry with a mandate for energy, or a sub-directorate specifically responsible. The lead agency will be responsible for conducting the SEA (usually through hiring experts or consultants to undertake the technical work). However, increasingly, an inter-agency **Steering Committee** is established for an SEA to share responsibility and decision-making and to foster buy-in to the process, with the lead agency as the chair or convenor. In some situations, it has been found useful to include representatives not only of the key authorities (executive staff), but also other authorities, NGOs, and stakeholders.

Where there is a formal SEA system, usually prescribed by legislation and regulations (or their equivalent), a government agency will normally be designated as the “**competent authority**” for SEA (usually a department within the ministry responsible for environmental affairs or a specialist environmental protection agency) and will have responsibility to develop guidelines and, in some countries, to review and approve SEA reports. Depending on the particularities of the legislation/regulations, such competent authorities may also be designated to issue approvals or authorizations (normally in writing and possibly notified in the government gazette or equivalent). To ensure close integration of social, labor and health issues, multiple ministries may require to be consulted and coordinated early in the SEA process.

For a renewable energy sector PPP, the SEA Steering Committee should be convened and chaired by the lead agency (ministry responsible for energy). It should include members from:

- All key sector ministries;
- Financing organizations (e.g., MDBs, donors);
- Renewable energy associations;
- Private sector companies (or the representative body) involved in investing in renewable energy facilities;
- National NGOs, civil society organizations, Indigenous Peoples, and others (as appropriate, e.g., women’s organizations and vulnerable groups, special interest groups, and labor unions).

Its role will be to provide overall support and guidance for the SEA process, to facilitate access to critical information, to review reports, to build ownership of the SEA process amongst key actors, to disseminate information about the SEA process and its results, to advocate for the uptake of its recommendations, and to review the latter.

Having a Steering Committee in place helps to provide transparency for the SEA process and provide a mechanism for holding the government to account over how it addresses the recommendations put forward in the SEA. It also helps to build credibility, trust, and transparency, and provides an additional senior-level platform for all stakeholders to channel their views into the SEA process.

The **Strategic Environmental and Social Management Plan** (SESMP) produced alongside the SEA report will set out the proposed institutional arrangements, roles and responsibilities for its

implementation, and grievance mechanisms. These will aim to ensure maximum efficacy to deliver environmental and social safeguards and required mitigation and management actions to minimize environmental and socioeconomic risks and impacts and maximize opportunities for benefits. A SESMP often acts as an action and investment plan. See also Chapter 14 for more on SEA and institutions.

3.4 THE CHALLENGE OF MEETING GOOD PRACTICE IN SEA

Chapters in Part A of this guidance describe good practice in undertaking SEA. They draw from the best elements of existing international and national guidelines and build on experience from SEA practice over the last 30 years of what works well and what is required to deliver credible and beneficial outputs and influential outcomes. This guidance is also framed around internationally agreed principles for SEA, as described in Section 1.3. It can therefore be viewed as a standard to aim for. But this guidance may differ from the specific requirements set out by a country's SEA regulations or guidelines.

A country's SEA system requirements and regulations may differ from those of an external financier or organization (e.g., a multilateral development bank). The latter usually set their requirements at a high level based on good practice principles.

There is no one-size-fits-all approach or single recipe for SEA. Each one must be designed to be fit and appropriate for purpose and tailored to the specific need and context. The SEA practitioners/consultants must interpret the terms of reference for each SEA, then propose, discuss, and agree on the approach to be followed with the client, and aim to pursue the best practice possible in the prevailing circumstances. The goal should always be to try to undertake the SEA according to the principles in Chapter 1, Section 1.3.

In some countries, SEA is still a relatively new process where skills and experience may be limited or lacking. So, it must be acknowledged that it might not always be feasible to achieve or meet the ambitions of international good practice. For everyone, SEA remains a journey of 'learning by doing' with progressive improvement through usage and iteration.

A compendium of available SEA guidelines for countries, regions, and various organizations is provided on the IAIA website (see: <https://www.iaia.org/pdf/hot-topics/Inventory-of-SEA-guidelines.pdf>)