

*Alan Gray/Paul Winter/Riki Therivel*

## Implementation of the SEA Directive in the United Kingdom

### STRATEGIC ENVIRONMENTAL ASSESSMENT

TOWARDS  
IMPLEMENTATION  
in  
The United Kingdom

### GREETINGS FROM THE UNITED KINGDOM

- |                 |                |
|-----------------|----------------|
| ■ Bonsoir       | ■ Hyvää Päivää |
| ■ Buenas tardes | ■ Buona sera   |
| ■ Boa tarde     | ■ Hej          |
| ■ Hallo         | ■ Hello        |
| ■ God dag       |                |

### THE UNITED KINGDOM TEAM

ALAN GRAY  
Office of the Deputy Prime Minister  
PAUL WINTER  
Eversheds  
RIKI THERIVEL  
Levett-Therivel

### THE UK GOVERNMENT'S PERSPECTIVE

- Experience of EIA
- Minimum extra regulation
- Need for certainty
- Self-regulatory
- Minimum resources
- Maximum benefit
- A light touch

### SEA - POSSIBLE PROBLEMS A UK Lawyer's Perspective

Paul Winter  
Eversheds

### OVERVIEW OF THE ISSUES

- PROBLEMS OF DEFINITION
  - Screening, Scoping, Reasonable Alternatives & "Public"
- IMPLEMENTATION MECHANISMS?
- INTERACTION WITH OTHER LEGAL REGIMES
- DELAYS AND COSTS?

## SCREENING ISSUES - Art 2

### Definition of “Plans and programmes” -

Plans & programmes ... “prepared by an authority at national regional or local level or which are prepared by an authority for adoption through a legislative procedure by Parliament or Government... And ... which are required by legislative, regulatory or administrative provisions.”

- Will a privatised utilities be “an authority”?
- What does “prepared by an authority for adoption, through a legislative procedure...” cover?
- How will we be able to identify P & P which are required by administrative provisions?

## SCREENING ISSUES - Art. 3

P & P ... which are “likely to have significant environmental effects”

“(a) which set the framework for future development consent of projects listed in Annexes I & II of EIA Directive.. Or

(b) which, in view of the likely effect on sites require an appropriate assessment under the Habitats Directive.

AND

“determine the use of small areas at local level and minor modifications”

- “significant effects” in screening process?
- What does “set the framework for future development consents” mean?
- “small areas at local level” & “minor modifications”?

## THE ENVIRONMENTAL REPORT - Art 5.

Likely significant effects on the environment of implementing the plans or programmes

Reasonable alternatives - taking account of the objectives and geographical scope

Taking into account -

- contents and level of detail
- stage in the decision-making process
- extent to which matters are more appropriately assessed at different levels..to avoid duplication
- Significant effects - different from screening?
- How rigorous will the test for “reasonable alternatives” be?
- Factors to be taken into account - a loophole?

## PUBLIC PARTICIPATION

Article 2(6) - screening decisions to be made publicly available - including negative decisions.

“the public” - affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant NGOs ...or other organisations concerned.

- What room for dispute on these concepts?

## PURPOSIVE APPROACH

Directive Objective is:

“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an EA is carried out of certain plans and programmes which are likely to have significant effects on the environment.”

## IMPLEMENTATION AND DIRECT EFFECT?

Either integrated in existing procedures or part of separate regime to comply with this Directive.

- Which is the safest approach?!
- Required level of certainty?
- Lessons learned from implementation of the EIA directive?

## Coming soon to your organisation....

Riki Therivel, Levett-Therivel

## THE SEA DIRECTIVE

### Directive

Local and regional  
land use plans

Sectoral plans  
& programmes

### Directive

Local and regional  
land use plans

Sectoral plans  
& programmes

Cyclical (5-10 years)

50-100 per year

Sustainability appraisal already  
done

Often one-off

~ 10-100 per year

Little SEA experience

Very varied

Privatisation

## Guidance on applying SEA Directive to local and regional land use plans

### 1. INTRODUCTION

### 2. BACKGROUND AND CONTEXT

What is SEA?

Links to environmental and sustainability appraisal (SA)

What are the outputs of SEA/SA?

Who should undertake the SEA/SA?

How long will the SEA/SA take?

### 3. STAGES OF SEA

A. Identify relevant policies, plans and programmes and their relation to the plan, issues, vision and problems

B. Derive draft SEA/SA objectives, indicators and targets, collect baseline data

C. Identify (more sustainable) options for dealing with issues

D. Prepare Environmental Report 1 as part of plan issues report, consult

E. Assess the plan option's effect on the SEA/SA objectives and their consistency with relevant PPPs, choose preferred option & propose mitigation measures

F. Screen plan policies, assess their effect on the SEA/SA objectives, propose mitigation measures in dealing links to EIA

G. Prepare monitoring

H. Prepare Environmental Report 2 as part of draft plan, consult, take the consultation response into account

I. Provide information on the decision, monitor

### 4. QUALITY ASSURANCE

### 5. REFERENCES AND FURTHER READING

Draft guidance completed Aug. 2002

Internal ODP discussions

Consultation draft Sept. 2002

7 pilots

3 months consultation

Final guidance Jan/Feb 2003

Some  
issues  
raised by  
the  
guidance



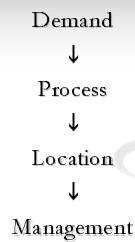
### Links with existing system of sustainability appraisal

Sustainability appraisal...

- covers wider range of issues (including economic and social)
- tests whether plan meets sustainability objectives
- is less quantified and 'rigorous'
- ... but also faster and cheaper

How to keep good aspects of sustainability appraisal when implementing Directive?

### Alternatives



- Very limited range of alternatives considered

- Alternatives considered too late

⇒ Link to 'Issues and options' paper

### Cumulative and indirect impacts

	A	B	C	D	
Biodiversity	Orange	Green	Green	Green	
Human health	Orange	Red	Orange	Red	
Air	Green	Green	Orange	Orange	
...					
Comments/changes:					

### Cumulative and indirect impacts

	A	B	C	D	A+B+C+D
Biodiversity	Orange	Green	Green	Green	Green
Human health	Orange	Red	Orange	Red	Red
Air	Green	Green	Orange	Orange	Orange
...					
Comments/changes:					

### Cumulative and indirect impacts

	A	B	C	D	A+B+C+D
Biodiversity	Orange	Green	Green	Green	Orange
Human health	Orange	Red	Orange	Red	Red
Air	Green	Green	Orange	Orange	Orange
...					
Comments/changes:					

### Cumulative and indirect impacts

	A	B	C	D	A+B+C+D
Biodiversity	Orange	Green	Green	Green	Green
Human health	Orange	Red	Orange	Red	Red
Air	Green	Green	Orange	Orange	Orange
...					
Comments/changes:					

### The Challenges

- Legislation
- Definitions
- Methodology
- Quality
- Skill shortages
- Training
- Timescale

### And finally, for listening we say....

- |                  |                  |
|------------------|------------------|
| ■ Vielen dank    | ■ Obrigado       |
| ■ Grazie         | ■ Muchas gracias |
| ■ Dank u vel     | ■ Tak            |
| ■ Merci beaucoup | ■ Many thanks    |
| ■ Mange tak      |                  |

# **Implementation of the EU-Directive on SEA in the Netherlands**

By Kees Justus Vogel

**Ministry of VROM,  
Spatial Planning Department**

Survey

- 1. Introductory remarks**
- 2. History of the process of  
Implementation**
- 3. Present and Future**
- 4. Results Support group/  
Thinking tank**
- 5. Results in the concept-law**
- 6. Consultation,  
Impression of interests**

Preliminary remarks

**not on behalf of the Dutch  
government**

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**2 reasons:**

**1. In the middle of  
the process**

**2. New cabinet**

# **History of the process of implementation**

**Responsible is the Environmental Division of VROM**

## **Actions:**

1. Thinking tank  
Brainstorm group

**2. Internal discussions  
within VROM  
all the time**



# **Present and Future**

At this moment external consultation

**The environmental law  
is the Headstream for im-  
plementation,**

a link

will be made to other laws

**Further procedure**

**We have to hurry to finish  
before July 2004**

# **Backinggroup/ Thinking-tank**

**Without mandate or instructions**

Dominant thoughts:

- 1. early participation of the public**
- 2. no exchange with EIA**
- 3. no delay for a promised broadening of the reach of the EIA**
- 4. also concerning green/white papers**

# **In the concept-law**

- 1. no regulation of green papers**
- 2. exchange with EIA**
- 3. early participation, but the modelling of the process is a free choice for the competent authority.**

## **Process:**

**Two alternatives**

# **Consultation:**

**1. Opposition from the  
National EIA-  
Committee**

**2. Local communities:  
heavy burden**

**3. Provinces: co-  
ordination.**

**One moment to change  
the regulation of EIA  
and to introduce SEA  
is the best for practice**

# Main resting discussion points:

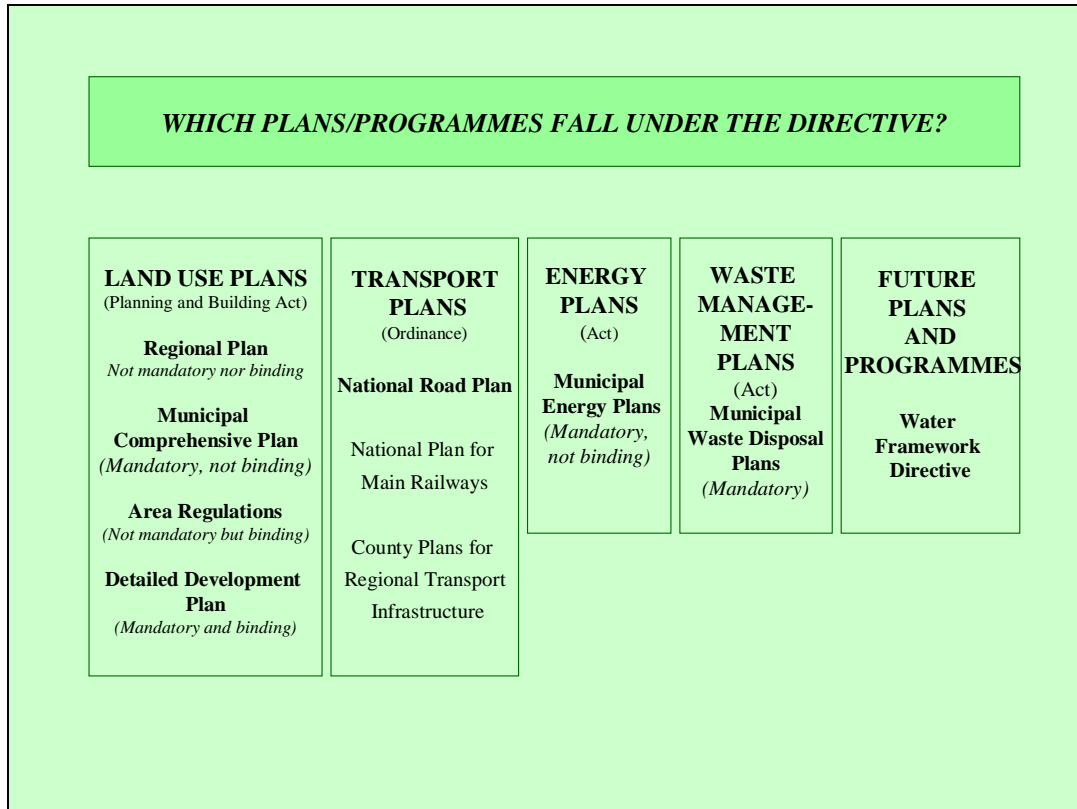
- **Early participation**

- **Relation between  
Article 3  
paragraphs 4 and 2**

**Par. 4 = Safety net,  
cutting the relation with  
former EU-directives:  
EIA and Habitat.**

Sten Jerdenius

## Implementation of the SEA Directive in Sweden



**IMPLEMENTATION SOLELY BY THE ENVIRONMENTAL CODE****ENVIRONMENTAL CODE**  
**Chapter 6 Environmental impact assessments and statements**

*Merged or separate EIA and SEA provision?*  
*+ Water Framework + Waste disposal plans*

**PLANNING AND  
BUILDING ACT**

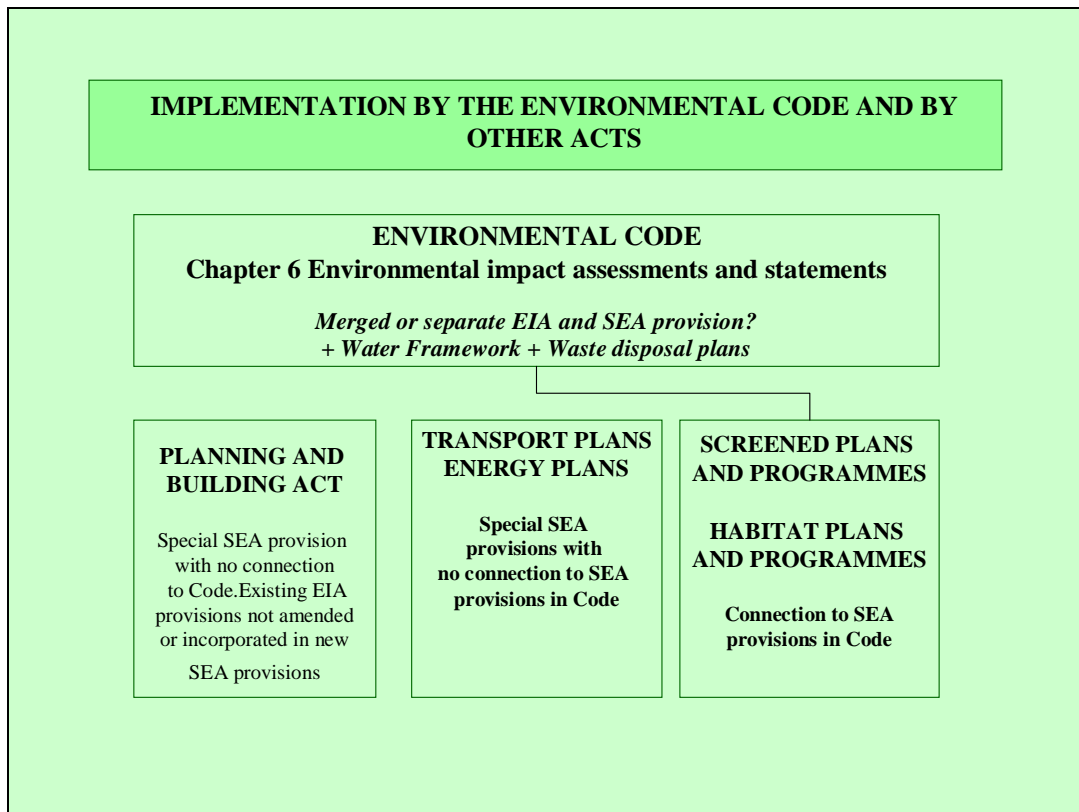
Connection to  
SEA provision in Code.  
Existing EIA provisions  
not amended or  
incorporated in SEA  
provisions

**TRANSPORT PLANS  
ENERGY PLANS**

Connection to SEA  
provisions in Code

**SCREENED PLANS  
AND PROGRAMMES****HABITAT PLANS  
AND PROGRAMMES**

Connection to SEA  
provisions in Code





## The restructuring of Odense Harbour

### Revitalizing Odense Harbour or how can the harbour again become a living and integrated part of the city of Odense.

*By Jørgen Boe and Poul Lorenzen.*

#### Background

Many large Danish towns have old harbour or industrial areas that are in a condition of age, neglect and wear. They are subject to deliberations for restructuring and modernizing, so that it is possible to utilize their central position, as well as their positive potential in the future development of the towns.

This is also the fact in Odense.

Odense has successfully managed restructuring of some of the centrally situated, older industrial areas such as Brandts Cloth Mill and the Glassworks district.

The largest district - Odense Harbour - lays and waits to be taken under "kindly" treatment.

Transport via waterways has no longer the same importance, wear and tear on the harbour, its buildings and facilities, together with businesses wishing to relocate in newer industrial areas, with better regional transport possibilities and access, combine to create an impression of the harbour as an area with little activity and wide open spaces. The hustle and bustle of the harbour with dynamic life that was so characteristic just a few decades ago is now gone.

In Odense, the debate about the decline of the harbour and possibilities for development have surged back and forth for the past decade, without any decision being made as to the future of the harbour.

Consideration towards the existing businesses in the district and the wish to preserve jobs has led to a cautious policy whereby no initiatives are taken that might change conditions for established businesses. The Danish planning system and environmental regulations regarding smell, noise and emissions have also had an effect towards stopping new and creative thinking for the district.

It became obvious that there was a need for clarification of circumstances for the Harbour district.

#### Strategy plan.

In 1999- 2000 Odense Municipality undertook an analysis of:

- 1) the future organisation of Odense Harbour and
- 2) a long term strategy plan for the usage of the harbour area. Odense's city council considered both proposals in spring and autumn of 2000 and decided that there should be established a municipally owned public limited company and approved the strategy plan with some minor additions.

Although the public limited company will not be formed, the strategy plan is the fundament on which planning for the harbour builds.

Odense harbour's role as a harbour with industrial use is cemented within the strategy plan. At the same time the plan opens up the possibility for new non- harbour activities in the inner part of the harbour. In this inner zone, office and service industry is permitted, but the establishment of dwellings is not permitted. There was a split decision in the City council with some parties wanting a larger office area and other parties supporting the idea of dwellings combined with office and service.

The general guidelines from the strategy plan are incorporated in the Municipal Plan.

Because of significant changes in the structure of industry the Ministry for Towns and Dwellings established in 1999 an Industry and Town Policy committee. The committee had, as its primary goal, the localization of industry in towns, in consideration of the creation of more service companies, and to set forth proposals that strengthen sustainable industrial development in towns.

The committee publicized a report in January 2001 that proposes revitalizing old industry and harbour districts, where a restructuring can not be realised within normal market economics.

### **Local Plan**

In August 2001 the municipality began work on a Local Plan proposal for the inner zone of the harbour, as described in the strategy plan. The Local Plan opens up for the establishment of office and service industry. Interested companies in Odense already wish to build on the proposed areas.

During the Local Plan process the idea of dwellings in conjunction with offices and service resurfaced. Also the idea of connecting the harbour, the city centre and the nearby district of Skibhus was brought into play. The Local Plan has to keep sightlines to Næsbyhoved Forrest and the harbour basin open.

The Local Plan gives an overview over possible environmental risks and there was an investigation into 12 nearby industries for noise, smell and airborne emissions. The conclusion was, that with small modifications it is possible to stay within the limits (60/60/60 d(B)A ) with regard to noise. An investigation of possible underground pollution shows that there is pollution by liquid hydrocarbons and heavy metals. When details of the final plan are known there are to be new investigations.

The Local Plan proposal was considered by the city council in the spring of 2002 without the possibility of dwellings in the area.

The proposal stated though that the long term aim was to allow dwellings.

The Local Plan was finally passed by the city council on the 19 June 2002. It was decided to kickstart development with the building projects in hand.

Because of the overwhelming interest in the Local Plan, the city council decided that there should be a proposal for more housing within the area and in conjunction with the sur-

rounding districts. Also the development of the area between the railway and the harbour is to be continued.

Planning has to be done in cooperation with citizens, industries in the district, as well as with consultants, in the form of workshops, seminars, public hearings etc.

### **Cooperation between State, County and City Council.**

The Minister for the Environment has also signalled, that seminars held in municipalities and counties throughout the land, that the government is now prepared to open up for a wider use of older harbour and industry areas, for example for housing.

The mayor of Odense declared at a meeting in the spring of 2002 with harbour companies, that the municipality's policy now is supporting the establishment of housing in the Harbour district.

Early in 2002 contact was established between the mayor of Odense, the Aldermand for the Environmental and Technical administration, the Minister for Industry and Economy and the Minister for the Environment. An agreement was reached, to create workgroups whose job was to investigate possibilities for dwellings in harbour and industry areas, and to make the necessary proposals to changes in existing laws and regulations, that act as barriers for such development.

After the initial contact and agreement was reached, a steering committee and working groups were formed. The working groups had a program that included the following:

- 1) An assessment of Odense Municipality's Local Plan
- 2) Preparing a traffic model
- 3) Environmental problems
- 4) Regulations for a transitional period
- 5) A viable organization.

The working groups and the steering committee worked until June 2002, and the project is temporarily halted.

It have mainly been questions of planning, as well as the transitional period, that have been discussed, and whether a higher level of noise can be accepted during the transitional period.

There is agreement on, that an attractive area with good environmental aspects shall be created as soon as possible. There is also agreement to take into consideration the plight of the existing industry, so they are granted suitable time to find solutions to the new demands that dwellings will pose.

According to the existing planning regulations it is not possible to plan noise sensitive dwellings, unless a Local Plan demands noise shielding. Therefore there is agreement in the steering committee, that the planning law must be changed. A possible timetable for the changes is early 2003.

The Ministry of Environment has started the process of changing the Planning Law etc. in August 2002.

### Areas for restructuring.

When an area is selected for restructuring, the municipality must decide on the future use. This use has to be described in the Municipal Plan. All nearby areas have to be checked for existing industry Local Plans. Where there is a conflict, there has to be a new Local Plan proposal.

A Local Plan for the restructuring area is then made. This can be a Local Plan for a larger area with specific areas for a staged development. A description of possible conflicts between industry and sensitive areas as well as possible solutions to these problems must also be included. All this is then formed into an **Action Plan** (or Noise Plan). The Action Plan is the basis for discussions with companies and the consequences of a changed usage are set out. In the Local Plan the ensuing agreements on reduction of noise and air-borne emissions are incorporated as guidelines.

In our opinion (Municipality of Odense) there is still much to be done before the municipalities can use this method as a tool for restructuring. Odense Municipality and Fyns County are aware that the groundbreaking work in the steering committee and the working groups can have a profound impact on planning for all of Denmark's municipalities and counties.

### Regulations.

As mentioned earlier, there is full agreement about the goals of restructuring. Changes to the Planning Law are also agreed upon, and the ensuing changes to the Municipal and Local Plan process are also deemed acceptable.

The Ministry for the Environment is of the opinion, that there must be a real conflict between noise and noise sensitive activities, before the Environmental Protection Act can be used. Planned activity cannot be accepted as grounds for intervention. This means that the intervention process can first take place when housing is established and taken into use. The Action Plan, mentioned earlier, is therefore to be used to speed up the intervention process.

Odense has pointed out that there is a need for sanctions to force industry to take part in the appraisal of for example the economic consequences of a proposal. The proposed act is, in our opinion, too "airy" and will not be taken seriously by industry. Municipalities will have to use unnecessary resources to make sure that an agreement can be reached.

Finally there is disagreement about the transitional period for the regulation on noise. This 25 year old Regulation of Noise for Companies (5/84) is to be the basis for noise reduction in the transitional period. The Ministry for the Environment means that in the transitional period of max. 5 years after dwellings are taken in use, there can there be noise 5 d(B)A in excess of the existing guidelines. Odense and Fyns County mean that, based on earlier experiences, the period will be in excess of 5 years and that noise levels will be in excess of 10 d(B)A.

**Conclusion.**

The differences between the Municipalities and the state government can be summed up in the following:

The Ministry for the Environment does not seem to have the will to open up for real changes in regulations and laws. Nor do they seem to understand that restructuring must take into consideration the existing industry and users in the area. The municipalities will be left standing with the problems that follow in the wake of restructuring.

But there is agreement on the primary goals. There is to be a basis for quality planning of these often neglected areas. It is important that these old, centrally situated harbour and industrial districts become the future development districts in the cities and towns, instead of the earlier practise of using virgin soil. Reconstruction must be carried out respectfully, in respect of existing industry that needs time to adjust to new demands and the new situation.

It is wishful thinking, that environmental conflicts can be avoided during the transitional period.