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| ***ANNEX 5*** | |
| **Strategic Environmental Assessment (SEA) process  - Joint Operational Programme Black Sea Basin 2014-2020 -** |
| Final draft 30 June 2015 – revised September 2015 |

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# **Strategic Environmental Assessment (SEA) process - Joint Operational Programme Black Sea Basin 2014-2020 -**

# Introduction

According to article 4.5h of the CBC Implementing Regulation (897/2014), ENI CBC JOP should include “(h) information on fulfilment of regulatory requirements laid down in Directive 2001/42/EC of the European Parliament and of the Council”, i.e. the directive on the assessment of the effects of plans and programmes on the environment, the so called Strategic Environmental Assessment (SEA) Directive.

This report provides information on how the requirements of the directive were fulfilled for the Black Sea Basin (BSB) ENI CBC programme 2014-2020 including consultations with participating countries and the results of the process. It also outlines the requirements of the SEA Directive and also the EC guidance on the conduct of SEA for ENI CBC programmes issued by INTERACT ENPI.

A draft of this report was consulted with the countries participating in the programme and was updated following this consultation.

# SEA Directive and requirements

The purpose of the SEA Directive (Article 1) is to “provide for a higher 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”.

Article 3 of the SEA Directive (especially 3.2 and 3.4 in this context) sets the scope when a SEA should be carried out for a particular programme, namely:

1. A full environmental assessment is automatically required when programmes in the sectors mentioned in article 3.2 and meet the provisions of article 3. This refers to programmes that set the framework for consent for projects with work components listed in annex l or ll of the EIA Directive (87/337/EEC), or which in view of the likely effect on sites, have been determined to require an assessment pursuant to art. 6/7 of the Habitat Directive (92/43/EEC).

**OR**

1. The need for a full environmental assessment is determined following a ‘screening’ process for all programmes not falling under (1) above to determine whether the programme sets the framework for future development consent of projects likely to have a significant effect on the environment.

# EC guidance on the conduct of SEA for ENI CBC programmes

The SEA Directive does not specifically address cross-border cooperation programmes with Partner (third) Countries. In order to guide the responsible authorities, the EC (DG for Development and Cooperation – EuropeAid, Unit F3) issued a *Guidance Note on Strategic Environmental Assessment (SEA) in the context of ENI CBC[[1]](#footnote-1)* (hereafter, the EC guidance) to the Joint Programming Committee (JPC) Members of the ENI CBC Programmes on 6 June 2014.

The aim of the EC guidance is to provide Managing Authorities (MAs) with an interpretation of the SEA Directive in the context of ENI CBC, including the necessary legal steps for the conduct of the SEA process and the different actors to be involved in these steps. It does not substitute for the SEA Directive, and should be read in conjunction with the directive. The guidance illustrates the theory with examples from ENPI CBC programmes for the period 2007-2013. Finally, it provides the minimum information required by DG Environment during inter-service consultations following the submission of the programmes to the European Commission (EC) for adoption.

According to the guidance, the following steps should be taken:

* Identification of the relevant environmental authorities in all participating countries,
* Decision on whether a full SEA is required or not.

And, if a SEA is required:

* Determination of SEA scope and preparation of an environmental report
* Consultations of the environmental authorities and the public
* Inclusion of environmental report conclusions and consultations results in the JOP
* Adequate monitoring of recommendations
* Informing the consulted authorities and the public about programme approval

According to the EC guidance, it is the responsibility of the Member State (MS) hosting the Managing Authority (MA) for the programme to determine, according to its national legislation, how to conduct the SEA process.

When a screening procedure is required to determine whether the programmes will have significant environmental effects, the MA should conduct this according to its national legislation and, whenever possible, in consultation with the nominated environmental authorities in all countries participating in the programme. The screening procedure should be adapted to the needs of the particular programme and countries and should be is based on criteria set out in Annex II of the SEA Directive.

If the screening concludes that a full SEA is not necessary based on the criteria of Annex II of the SEA Directive, a statement confirming that the SEA is not applicable, and a note on the screening conclusions explaining the reasons for not requiring a SEA, need to be published and included in the JOP.

# Legal requirements in the MS hosting the MA – Romania

The MA for the Black Sea Basin is the Romanian Ministry of Regional Development and Public Administration (MDRAP), Directorate for MA European Territorial Cooperation Programmes. The responsible environmental authority in Romania is the Ministry of Environment, Water and Forests (formerly Ministry of Environment and Climate Change).

According to current practice in Romania, the assessment of such programmes is conducted in line with the requirements of the SEA Directive. The procedure for such assessment is adapted by the Ministry of Environment, Water and Forests (MoE), on a case by case basis, according to the SEA Directive and the Government Decision establishing the procedure for the environmental assessment of plans and programmes (Hotărârea Guvernului nr. 1076/2004, Government Decision).

# SEA process for the Black Sea Basin ENI CBC programme 2014-2020

A meeting between the MA and the MoE, along with experts from the EU project, ENI CBC Support to the preparation of Programmes (SPP), was held in Bucharest on 21 October 2014 to discuss the procedure to be followed for the BSB programme in order to fulfil the requirements of the SEA Directive. In the case of the BSB programme, it was decided to conduct a screening process on whether there are likely to be significant environmental effects in the eligible regions in Romania and to consult the environmental authorities in the participating countries.

The National Authorities (NA) in each country nominated representatives of the relevant environmental authorities in their countries and the MA asked SPP to consult these representatives on their behalf (see Attachment 1 for the list of nominated representatives and national environmental authorities).

In addition to consulting participating countries, together with the MA and the Romanian MoE, support by the SPP project included:

* A review of programme strategy and indicative activities against relevant Romanian legislation to determine if a SEA is compulsory
* The conduct of a screening process (according to Annex ll of the SEA Directive) to determine whether future projects are likely to have a significant environmental effects
* Preparation of this report on the screening process, conclusions of the screening process and reasons for these conclusions.

See Attachment 2 for the outline of the SEA process.

### BSB SEA process in Romania

The process followed in Romania was as follows:

* A committee was established for the assessment of the potential environmental effects of the BSB programme in the eligible regions in Romania (hereafter, the Screening Committee), including representatives of the following relevant organisations as proposed by the MoE: Ministry of Health, National Administration for Waters, Ministry of Internal Affairs (General Inspectorate for Emergency Situations), Ministry of European Funds, Ministry of Agriculture and Rural Development, Ministry of Transport, Department for SMEs, Business Environment and Tourism and public authorities from the eligible regions.
* The main tasks of the Screening Committee comprised (i) screening of the BSB programme, taking into account relevant criteria set out in Annex Nr. 1 of the Government Decision (Annex II of the SEA Directive); (ii) making a conclusion on the need for a full environmental assessment.
* The start of the screening procedure was announced on the MDRAP and programme websites (11&12 December 2014) and also via a notice in the *România Liberă* national newspaper (on 16&19 December 2014). In these announcements, the public was invited to comment on whether the programme was likely to have a significant impact on the environment in the eligible regions[[2]](#footnote-2). The draft programme strategy was made available on the MoE, MDRAP and programme websites.
* A meeting of the Screening Committee was held and chaired by MoE on 15 December 2014. Participants included most of the institutions mentioned above, the MoE, the MA and SPP experts. Documents given to the Screening Committee members included:
* Latest draft of the programme strategy as approved at the BSB Joint Programming Committee meeting held in November 2014
* EC - INTERACT ENPI Guidance Note on SEA in the context of ENI CBC, accompanying annex on actors and actions and EC letter to JPC members, June 2014
* Minutes of the meeting between the MA and MoE held in October 2014
* The preliminary assessment by the SPP SEA expert on whether the programme is likely to have a significant environmental effect (conducted according to the criteria in Annex II of the SEA Directive see Attachment 2).
* At the meeting, the MA presented the BSB programme strategy, the SPP SEA expert presented his initial assessment of the likely environmental effects of the programme and other meeting participants gave their opinion on whether it was likely the programme would have significant environmental effects in the eligible regions in Romania.
* The draft decision was published on the MoE and MDRAP websites on 6 January 2015 and the public were invited to send comments until 15 January 2015. The draft decision concluded: “*As a consequence, according with the provisions of art. 3 par.(7) of the SEA Directive, the Ministry of Environment, Water and Forests decides that environmental assessment is not required pursuant to art.5 of the SEA Directive for the ENI CBC Black Sea Basin Programme 2014-2020.”* There were no comments received from the public on the draft decision.
* The final decision was issued by the MoE on 27 January 2015. See Attachment 3 for the final decision in Romanian and English. The document is published on the MoE and MDRAP websites together with the *Note on the screening conclusions in the participating countries and the reasons for not requiring an environmental assessment for the Black Sea Basin ENI CBC programme 2014-2020*.

### Consultations with environmental authorities in the countries participating in the programme

Consultations with the environmental authorities took place from November 2014 – May 2015 with the following authorities as nominated by the NA in the participating countries (see Attachment 1 for the list of contacts and environmental bodies):

* Armenia Ministry of Nature Protection
* Bulgaria Ministry of Environment and Water
* Georgia Ministry of Environment and Natural Resources
* Greece Ministry of Environment, Energy & Climate Change
* Moldova Ministry of Environment
* Turkey Ministry of Environment and Urbanisation
* Ukraine Ministry of Ecology and Natural Resources

An official email communication was sent to the nominated representatives in November 2014 together with the following documents:

* EC - INTERACT ENPI Guidance Note on SEA in the context of ENI CBC, accompanying annex on actors and actions and EC letter to JPC members, June 2014
* Draft of the BSB ENI CBC programme strategy as approved at BSB JPC meetings
* Background information on ENI CBC and the BSB programme, 31/10/2014
* Note for BSB participating countries on SEA process, 31/10/2014

The authorities were also provided with an initial assessment of the programme performed by the SPP SEA expert on behalf of the Managing Authority (referred to above and provided in Attachment 2).

The nominated environmental authorities were asked for their expert opinion on whether the programme is likely to have a significant effect on the environment in the eligible regions in their countries and whether there are national requirements to be followed in this particular instance.

Initially a consultation meeting in Bucharest was envisaged involving all environmental authorities. The aim of the meeting was to have a round table discussion on the possible environmental impacts in the eligible regions in each participating country as well as the procedure to be followed in each country. Due to the time of the year, and busy schedules, the meeting did not take place. Active electronic communication was ensured instead, providing clarifications and answering the questions received from the environmental authorities during the consultation process.

Opinions have been received from all the environmental authorities of the participating countries.

# Conclusion of the environmental authorities of the participating countries

Based on the internal consultations and own assessments according to their national procedures, the environmental authorities of **Armenia, Georgia, Republic of Moldova, and Romania** have concluded that the Black Sea CBC programme 2014-2020 is not likely to have a significant effect on the environment, consequently, no further action is required at national level. The environmental authorities have largely supported the initial assessment prepared by the MA and the conclusions derived from it (see Attachment 4 for the summary of input from the participating countries).

The environmental authorities in **Turkey and Ukraine** have reviewed the documents supplied. An SEA assessment was not performed as according to current legislation in these countries, SEA is not required. Draft SEA legislation has been developed but is not yet in force.

The environmental authorities in **Bulgaria** carried out a screening procedure on whether there is likely to be significant environmental effects in the programme eligible regions in Bulgaria (in accordance with art. 85, pt. 4 and pt. 5 of the *Law on Environmental Protection*, Art. 4, pt. 1 and Art. 14, pt. 2 of the *Ordinance on the conditions and procedures for environmental assessment of plans and programs*, Art. 37, pt. 4 of the *Ordinance on the conditions and procedures for assessing the compatibility of plans, programs, projects and investment proposals with the object and purpose of conserving protected areas*). Following the screening procedures, the Ministry of Environment and Water decided that environmental assessment is not required for the Bulgarian NUTS II regions included in the eligible area of the Black Sea Basin ENI CBC Programme 2014-2020, the implementation of which is unlikely to have a significant negative impact on the environment and human health. The decision was made based on two conditions related to environmental impact assessment where necessary and good water status and management of flood risk. These conditions have been included in the Attachment 4 and reflected in the relevant part of the programme strategy.

The environmental authorities in **Greece** reviewed the programme in light of the Joint Ministerial Decree. No. 107017/5-9-06 for the assessment of environmental impact of programmes, in accordance with Directive 2001/42/EC (B’ 1225) and concluded that a SEA or an ex-ante environmental assessment is not required. It was concluded that the Black sea Basin Programme does not fall under the provisions of the relevant sections of the Joint Ministerial Decree, the Programme is not expected to influence any areas of the Natura 2000 European Ecological Network and that in the context of the specific Programme no projects or actions requiring environmental studies permissions (according to L.4014/2011 (A’ 209) and ministerial decree 1958/2012 (B21) are included.

# Overall conclusions

Based on the assessment of the BSB programme using criteria for determining the likely significance of environmental effects (according to the Annex II of the SEA Directive), and taking into account the opinions received from the environmental authorities of the participating countries, it is concluded that the programme is not likely to have significant environmental effects in the regions eligible for the programme, and a full SEA is not required, for the following reasons:

* The programme allocates financing and sets the framework for the projects and their operating conditions (’soft’ type of projects with limited investments in equipment)
* The programme has no influence on the other plans or programmes
* Integration of environmental considerations is stipulated in the JOP; relevant project selection criteria will be applied
* No environmental problems relevant to the programme have been identified;
* The programme is not relevant for the implementation of Community legislation on the environment
* No direct or cumulative effects on environment are expected, while some indirect positive impact estimated in the whole programme area affecting the entire population
* ENI CBC is promoting cooperation across the borders, however, no direct trans-boundary environmental effects are expected
* No risks to human health or the environment have been identified
* Indirect positive impact estimated in whole programme area affecting the entire population
* No vulnerable areas will be directly affected. Intensification of the tourism related activities might potentially lead to an increased pressure on the vulnerable nature areas and cultural heritage objects. To eliminate this potential risk the project applicants will have to carry out the vulnerability assessment of their projects prior applying for financing
* No direct effects on the landscape are expected

Therefore it can be concluded that the regulatory requirements of the SEA directive have been fulfilled in the case of the Black Sea Basin ENI CBC programme, in accordance with national legislation and the guidance on the subject provided by the EC. The nominated environmental authorities in the participating countries have been consulted and it is **agreed that a full SEA is not required**.

# **Attachments**

### Attachment 1 – Nominated environmental experts at national level

### Attachment 2 – Note on the preparation of BSB SEA process and initial assessment

### Attachment 3 – Decision on Romanian eligible area

### Attachment 4 – Results of the consultation with environmental authorities in participating countries

1. Prepared by INTERACT ENPI [↑](#footnote-ref-1)
2. Although public consultation is not required under the EU SEA Directive for the screening process, this was done in Romania as it is required under Romanian law. The public in the programme area had been consulted previously during the development of the strategy. [↑](#footnote-ref-2)