



IAIA 21

VIRTUAL EVENT

#iaia21



LET'S DIVE INTO THE SEA: LESSONS LEARNED 20 YEARS AFTER THE ADOPTION OF THE SEA DIRECTIVE

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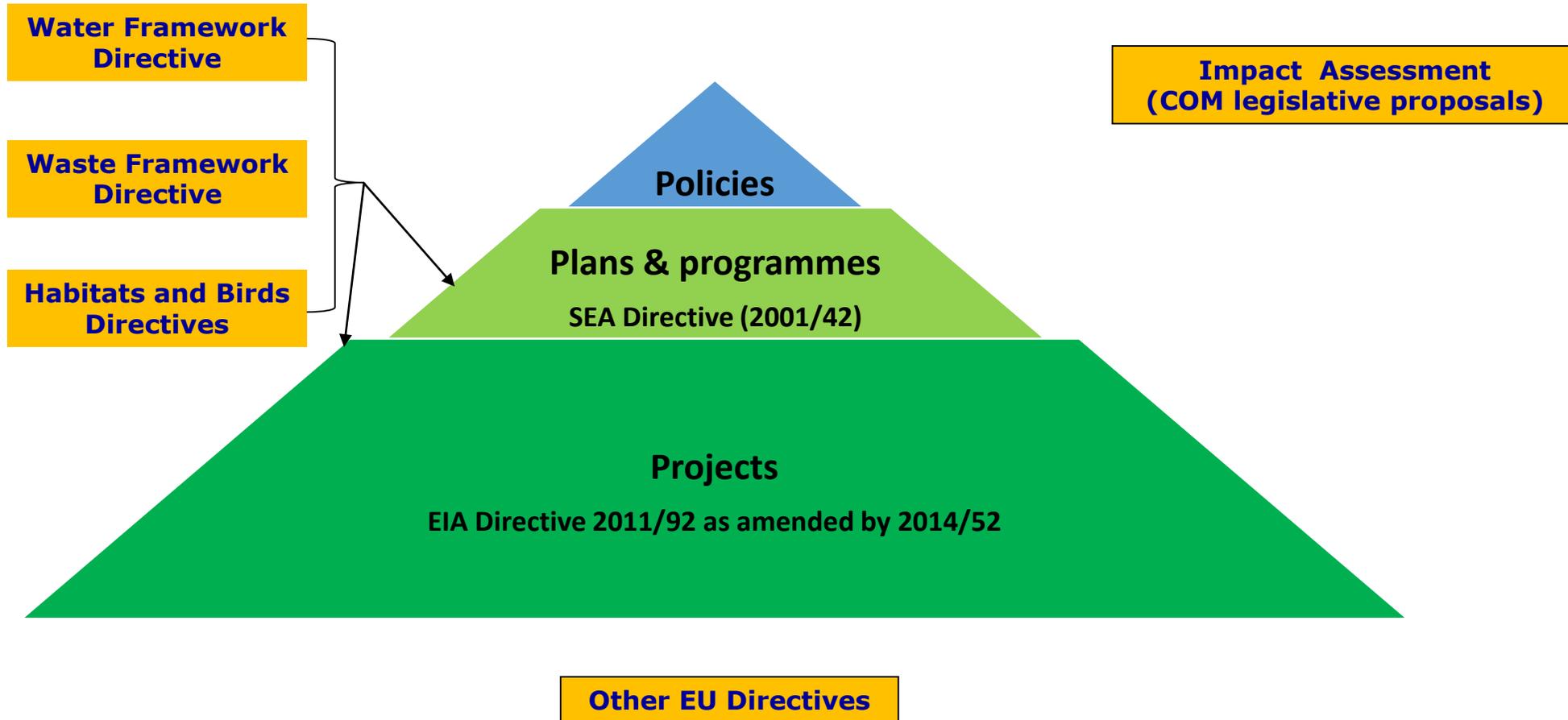


Historical & International Perspective

- US National Environmental Protection Act (1969)
- [EIA Directive \(1985\)](#)
- UNEP Guidelines Goals and Principles of EIA (1987)
- The Espoo Convention (adopted in 1991 – into force since 1997)
- [First Commission proposal for Directive on the environmental assessment of policies, plans and programmes \(1991\)](#)
- Rio Declaration on Environment and Development (1992)
- [Second Commission proposal for a Directive on the assessment of the effects of certain plans and programmes on the environment \(1996\)](#)
- 1st amendment to the EIA Directive (1997)
- Gabčíkovo-Nagymaros project (ICJ ruling in 1997)
- The Aarhus Convention (adopted in 1998 – into force since 2001)
- [Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment \('SEA Directive'\) \(2001\)](#)
- SEA Protocol to Espoo (adopted in 2003 – into force since 2010)
- Pulp Mills case (ICJ ruling in 2010): EIA attains customary international law
- 2nd and 3^d amendments to the EIA Directive (2003 and 2009)
- Codification of the EIA Directive (2011)
- Amendment of the EIA Directive (2014)
- [REFIT Evaluation of the SEA Directive \(2019\)](#)



Environmental Assessments



Why do we need environmental assessments?

Political and social accountability

- Provide, *inter alia*, for access to environmental information and public consultation and participation, thus ensures social acceptance.
- Contribute to attaining the sustainable development goals (SDGs).

Substantive Environmental Law

- Interpreted by the Court of the EU.
- Transboundary EIA has reached its status of customary international law (*Pulp Mills case*, International Court of Justice).



Added value of the strategic environmental assessment (SEA)

- Provides for a **high level of protection of the environment**.
- Contributes to the **integration of environmental considerations** into the preparation of plans and programmes with a view to promoting sustainable development.
- Plans, programmes and projects which are **likely to have significant effects** on the environment are subject to an assessment.



SEA: WHICH plans and programmes? (1/2)

Which plans or programmes?

- prepared and/or adopted by an **authority** at national, regional or local level AND
- **required** by legislative, regulatory or administrative provisions.

=> **Normative/regulatory acts** are covered (Court of Justice of the European Union, Case C-290/15)

Exemptions:

- Plans & programmes the **sole** purpose of which is to serve national defence or civil emergency;
- Financial or budget plans/programmes.



SEA: WHICH plans and programmes? (2/2)

Plans and programmes (P/Ps) that **always** undergo an SEA are those:

*prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use **AND** which set the framework for future development consent of projects listed in the EIA Directive; which have been determined to require an assessment under Articles 6 or 7 of the Habitats Directive.*

Including

P/Ps co-financed by the EU (e.g. OPs).

Modifications of P/Ps.

Plans and programmes that must be **screened**:

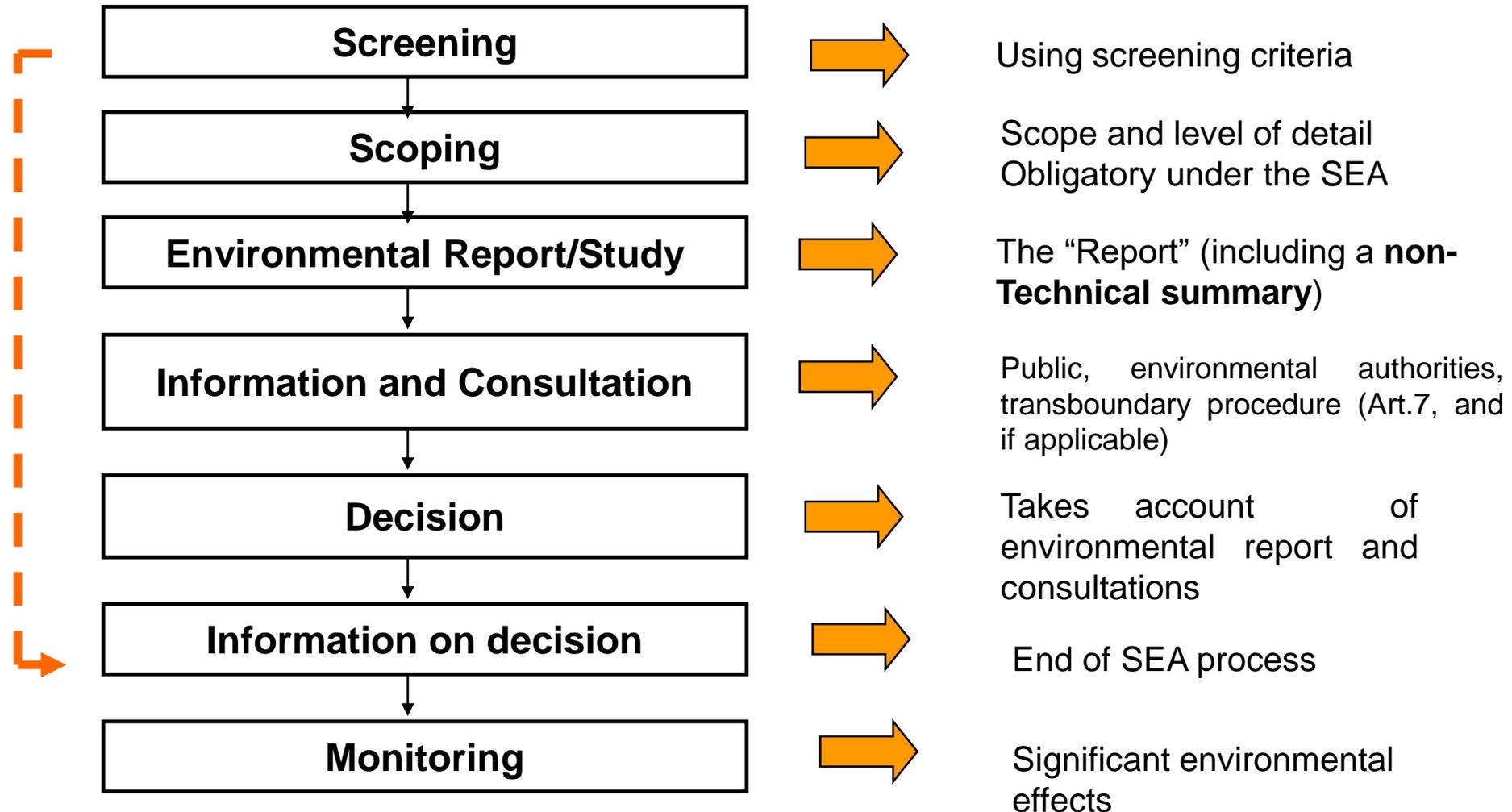
P/Ps using small areas at local level.

minor modifications to P/Ps.

P/Ps setting the framework for future “non-EIA projects” and “non-sector” P/Ps.



The SEA procedure



SEA Directive evaluation – steps

Better Regulation guidelines & toolbox

- Roadmap (11 July 2017 – 08 August 2017)
- Study contract:
Study to support the REFIT evaluation of the SEA Directive, Milieu Ltd., and Collingwood Environmental Planning Ltd.
- Inter-service steering group.
- Consultation activities: open public consultation; targeted consultation.
- Other means for evidence gathering – literature review, etc.

SEA REFIT webpage: <https://ec.europa.eu/environment/eia/sea-refit.htm>



SEA Directive evaluation - criteria

Better Regulation guidelines & toolbox

- Effectiveness.
- Efficiency.
- Relevance.
- Coherence.
- EU added value.



Effectiveness

Positive factors

- SEA Directive contributes to high level of environmental protection in the EU.
- Sets clear procedural steps and obligations allowing for administrative discretion.
- Influences the final content of plans and programmes, including projects development.
- Effective consultation of the environmental authorities and the public.

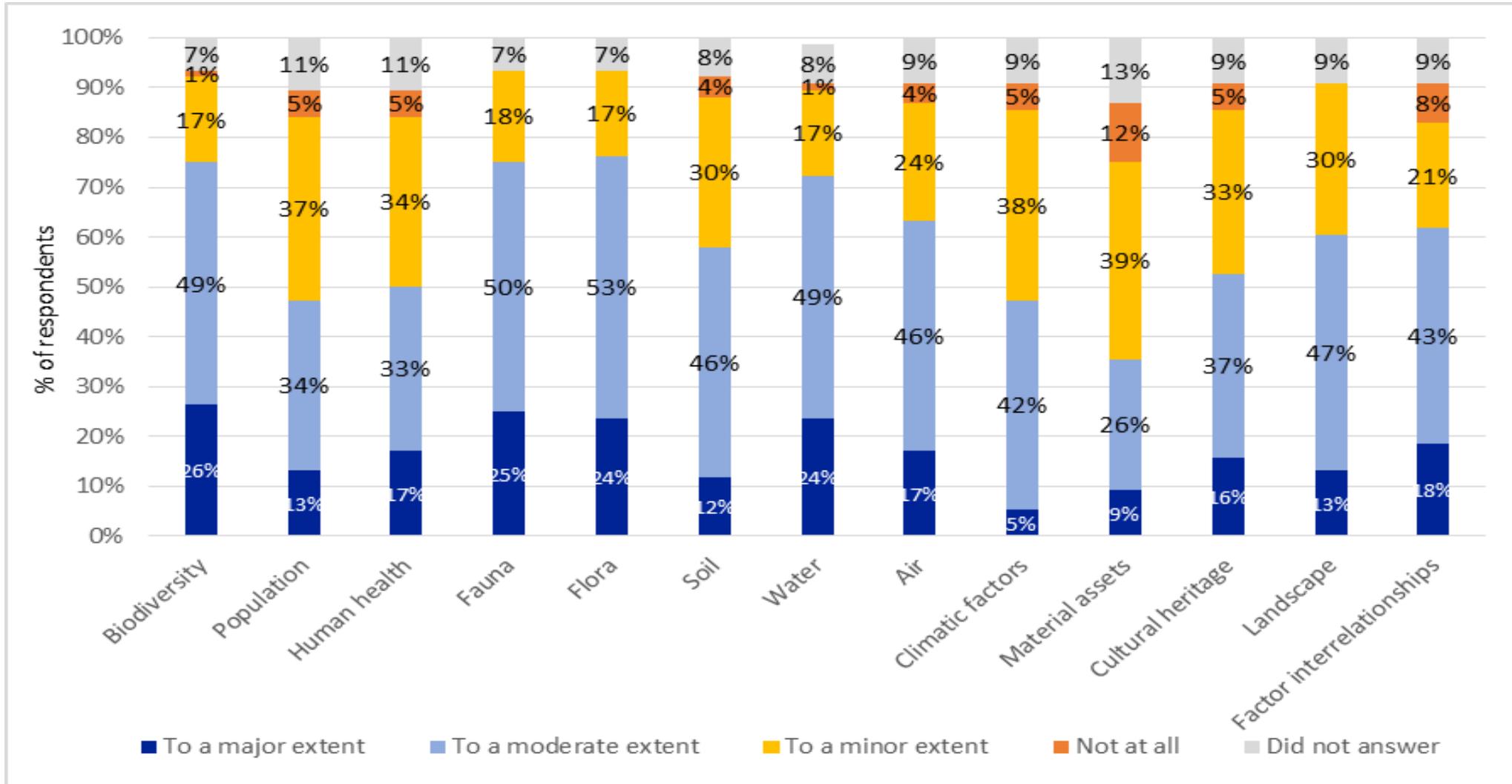


Effectiveness

Key challenges

- The scope of the SEA and definition of the terms ‘plans and programmes’.
- The quality of the environmental monitoring.
- “Closed” and pre-determined decision-making.
- The ability to address new raising environmental challenges, such as climate change.

To what extent has the SEA Directive contributed to a high-level protection of different environmental issues?



Efficiency

Positive factors

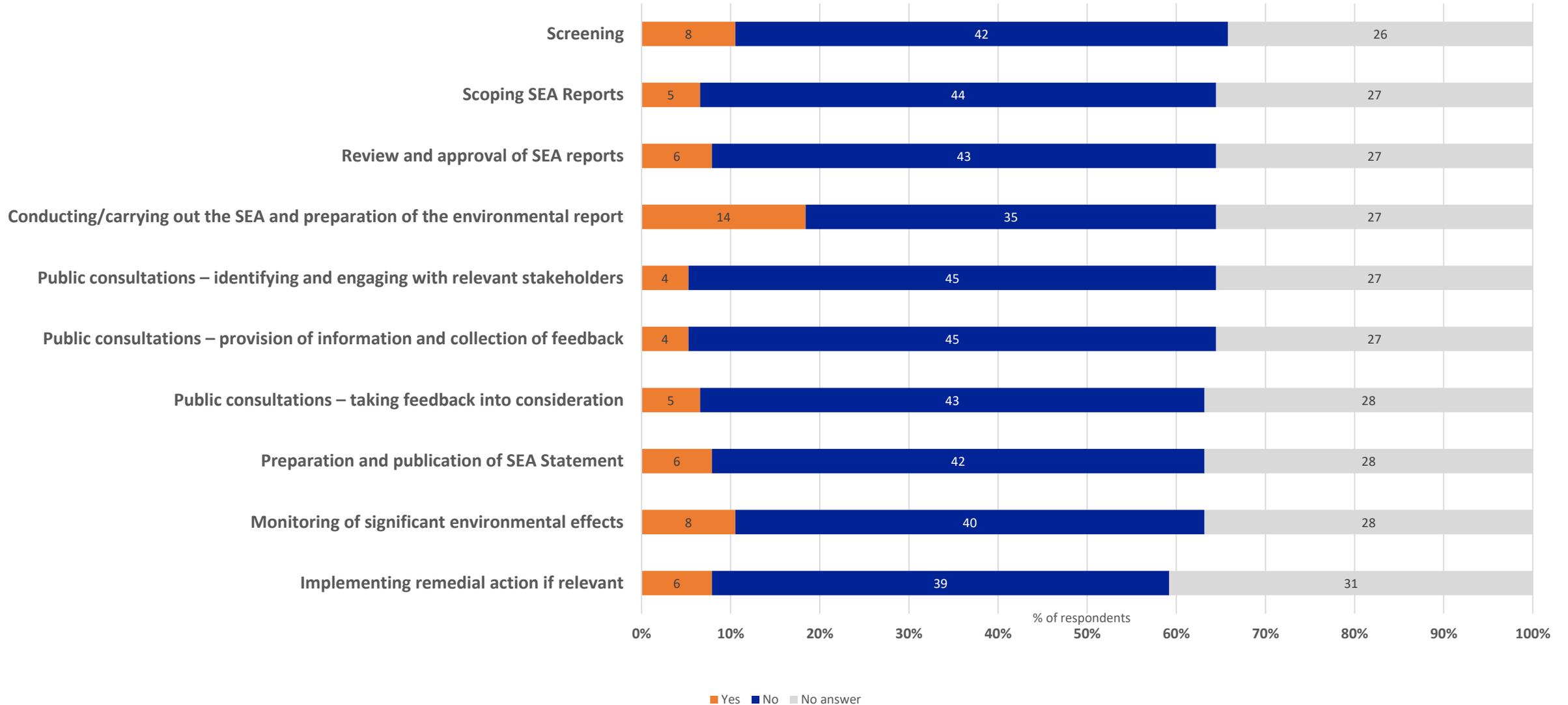
- Reasonable implementation costs (depending on the complexity and the level of the plan/programme).
- Procedural benefits that are outweighing the costs.
- Timing and synchronising SEA with the plan and programme, as well as the use of scoping can affect the costs.

Efficiency

Key challenges

- The available data does not allow an understanding of the costs of SEA at EU level or average estimates by type of plan/programme or even by a Member State.
- The CJEU interpretation (see 'Case C-290/15' and the follow up case law) of the terms plan/programme can affect the costs of the SEA procedure.

Do any costs represent an excessive burden, i.e. the benefits do not justify the cost or the cost could be easily reduced through simplification measures?



Relevance

Positive factors

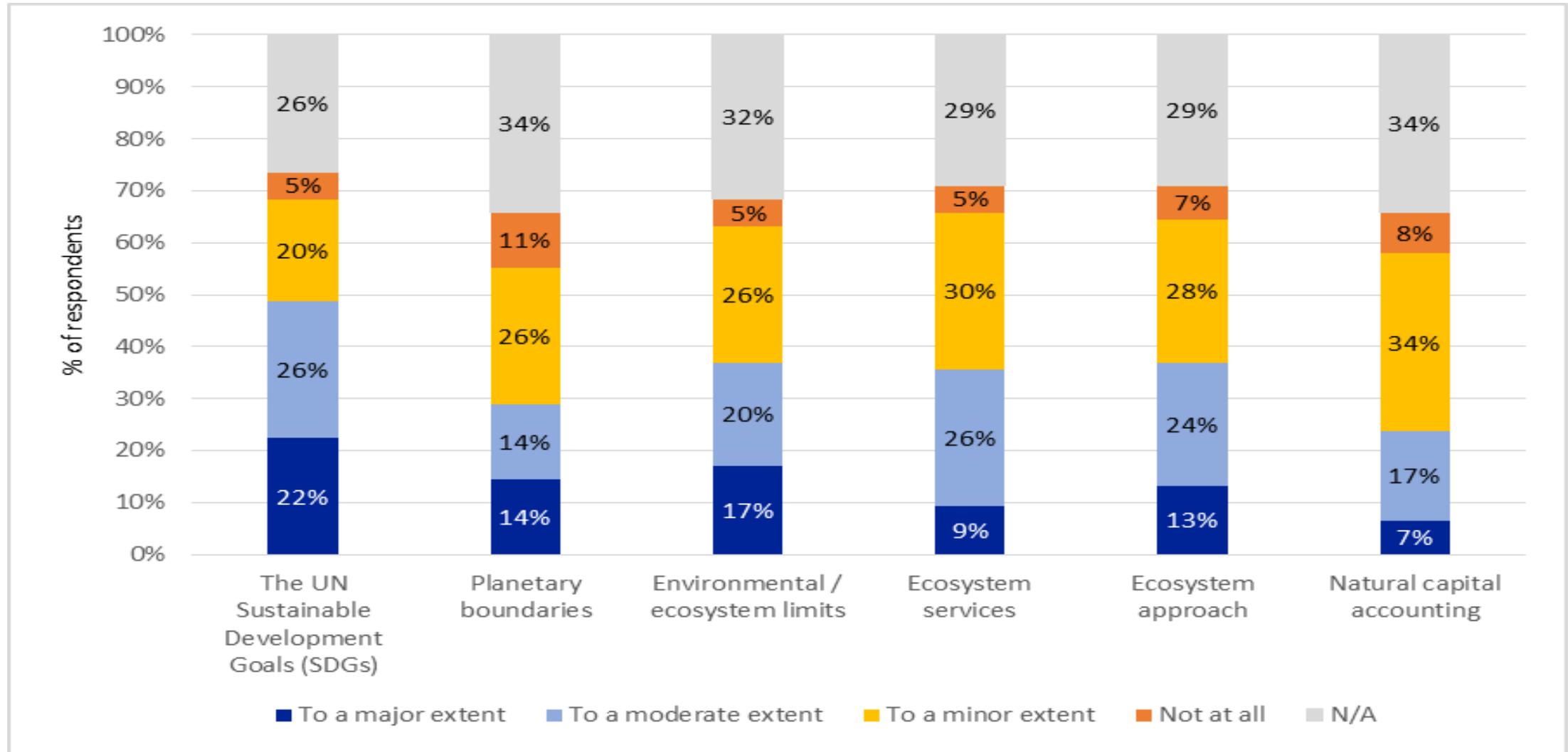
- The SEA Directive enabling citizens' participatory rights in particular at strategic level.
- Flexibility of the SEA procedure -> makes it highly adaptable in addressing issues of priority (SDGs, climate change, etc.).
- Promotes engagement of the authorities in the SEA procedure.

Relevance

Key challenges

- Need to enhance cooperation for a better attainment of the SDGs.
- Limited use of SEA in assessing the impact to ecosystem services; ecosystem approaches.
- Data sharing → making better use of digital tools.
- Margins to improve well-improved decisions → strengthening the administrative capacity of the competent national administrations.

Has the implementation of the SEA Directive kept pace with particular areas of emerging international policy, objectives, targets for sustainable development?



Coherence

Positive aspects

- Proven and confirmed coherence of the SEA Directive with the EIA Directive and the Habitats/Birds Directives.
 - Complementarity of the assessment procedures.
- SEA Directive is key for ensuring effective implementation of EU sectoral policies (e.g. climate change, transport, energy, cohesion, etc.) and achieving sectoral coherence.
- SEA Directive is broadly coherent with the SEA Protocol and the Aarhus Convention.

To improve

- Enhancing the synergies between SEA-EIA and SEA-AA (e.g. joint or coordinated procedures).
- Improve the effective consideration of alternatives in applying SEA procedure.

Limitations

- Policies are not explicitly mentioned.
- No access to justice concerning plans and programmes.

EU added value

Positive aspects

- SEA Directive facilitates a systematic approach in assessing environmental impacts of plans and programmes.
- Driver for transparent and participatory decision-making, including transboundary one.
- Contributed to attaining the objectives set in other EU and international instruments.

EU added value

Key challenges

- SEA Directive facilitates a systematic approach in assessing environmental impacts of plans and programmes.
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EU added value

Before & Without the SEA Directive

Before the adoption of the SEA Directive ...

- Fragmentation of the applied SEA (e.g. to transport).

Without the SEA Directive ...

- The assessment will not be carried systematically and there will be no common ground for its application.

The added value ...

- SEA Directive has helped to establish a systematic approach to assessing the environmental impacts of plans and programmes – unlikely to have been put in place without the Directive.

Relation: SEA-EIA

- The SEA is carried out as soon as possible so that it may still influence any decision-making (it is at that stage that alternatives may be analyzed and **strategic choices** may be made).
- An EIA report completed under the EIA Directive cannot be used to circumvent the obligation to carry out the environmental assessment required under the SEA Directive in order to address environmental aspects specific to that directive (CJEU, Case C-567/10).

The added value of the SEA

REFIT conclusions

- Early identification, description and evaluation of the likely significant environmental effects of implementing p/p, including its effects on biodiversity, water, air, climatic factors, soil; effects on population, human health, landscape, etc., as well as reasonable alternatives, taking into account the objectives and geographical scope of the p/p.
- Consultations and public participation, including transboundary consultations.
- The results of the SEA procedure shall be taken into account during the preparation of the p/p and before its adoption.
- Transparency of the decision when p/p is adopted and information provided by the authorities how the environmental considerations have been taken integrated into the p/p and how the opinions expressed and the results of the consultations have been taken into account, as well as the reasons for choosing the p/p as adopted in the light of the reasonable alternatives dealt.

REFIT Evaluation of the SEA Directive:

Outcomes

- Effective protection of environmental factors, alone or in combination with other sectoral legislation.
- SEA Directive has helped to establish a systematic approach to assessing the environmental impacts of plans and programmes.
- Flexibility of the SEA procedure.
- Promotes engagement of the environmental authorities in the decision-making.
- SEA Directive facilitates a systematic approach in assessing environmental impacts of plans and programmes.
- Driver for transparent and participatory decision-making, including transboundary one.
- Contributed to attaining the objectives set in other EU and international instruments (incl. SDGs).

European Commission support towards a better implementation

<https://ec.europa.eu/environment/eia/sea-legalcontext.htm>

- Commission's Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment;
- Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment (March 2013);
- Report from the Commission on the application and effectiveness of the SEA Directive, COM/2009/469.
- Report from the Commission on the application and effectiveness of the SEA Directive, COM/2017/234.
- Commission Staff Working Document on SEA REFIT evaluation (2019) 413, 22.11.2019



Let's continue the conversation!

Post questions and comments via chat in the IAIA21 platform.



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