Strasbourg, 23 September 2025 **T-PVS/PA(2025)2**

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Group of Experts on Protected Areas and Ecological Networks

Emerald Network: screening, prior assessment and authorisation of potentially harmful projects

A digest of relevant international legal instruments, recommendations and guidelines

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➢ Background and purpose of this paper

1. The Standing Committee of the Bern Convention, at its 44th meeting in December 2024, adopted Recommendation No. 225 (2024) "on the further clarification of the obligations of Contracting Parties regarding the conservation of Emerald Network sites". Based on the outcomes of several rounds of consultations of Contracting Parties and the Group of Experts on Protected Areas and Ecological Networks on how to follow up the conclusions of an earlier legal analysis, the Recommendation summarises the binding and non-binding obligations of Contracting Parties concerning the conservation of Emerald Network sites, and identifies issues that may require development of further guidance.

2. Article 4 of the Convention requires each Contracting Party to "take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II, and the conservation of endangered natural habitats". Recommendation No. 225 (2024) lists a number of measures that can particularly support compliance with Article 4 in the context of specific sites, among which are included the following:

   "Anticipating and responding to specific threats":

   - screening: actively identifying potentially harmful projects or activities;
   - timely and comprehensive impact assessment: obtaining sufficient clarity regarding the potential consequences of any such project or activity for the habitat(s) involved, before taking a decision regarding its approval;
   - authorising only activities compatible with conservation objectives: refusing authorisation of projects and activities that are incompatible with conservation objectives.

3. The Committee went on to recommend the development of additional guidance in order to further clarify and/or concretise several listed aspects of the legal framework concerning Emerald Network sites, one of which concerns "the screening, prior assessment and authorisation of potentially harmful projects".

4. A number of international initiatives and organisations, including other biodiversity-related Multilateral Environmental Agreements (MEAs), have elaborated legal norms and good practice principles on this same issue, for application in analogous situations. Rather than investing in the origination of entirely new guidance under Bern Convention auspices, therefore, it has been considered more appropriate to develop a selective digest of these other available sources, summarised in a way that shows their applicability for supporting the measures listed in Recommendation No. 225 (2024) (and hence in turn, Article 4 of the Convention).

5. The present paper presents the resulting digest of the most relevant sources. Various other sources are also available, with more localised or sector-specific scope, and/or without the same level of intergovernmental endorsement. What is presented here is necessarily a sample selection rather than a comprehensive survey; but it provides a "guide to the most relevant guidance" for the stated purpose. It also takes due account of Standing Committee Recommendation No. 208 (2019) on detecting, reporting, assessing and responding to changes in the ecological character of Emerald Network sites.

➢ European Union – EIA Directive

6. The first European Union EIA Directive (85/337/EEC, "on the assessment of the effects of certain public and private projects on the environment") was adopted in 1985. It has been updated several times subsequently, to keep it aligned with the EU's international commitments and other legal developments. In 2011 the Directive and its amendments were consolidated into a single new act (Directive 2011/92/EU - *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0092*), which was then itself amended in 2014 by Directive 2014/52/EU - *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0052* .

7. The Directive addresses projects "which are likely to have significant effects on the environment", and requires Environmental Impact Assessments (EIAs) to be undertaken for developments such as nuclear power stations, long-distance railways, motorways, express roads, waste disposal installations for hazardous waste, and dams of a certain capacity. For other projects, it is up to individual EU Member States to decide whether an EIA should be undertaken, on a case-by-case basis or by setting specific criteria. Detailed lists of relevant projects in both categories are given in annexes.

8. Annex III gives a list of eighteen criteria for "screening" projects to determine whether they should be made subject to an EIA. **Of particular relevance for the Emerald Network** is the reference in this Annex to the environmental sensitivity of geographical areas likely to be affected by projects, including the absorption capacity of the natural environment, paying particular attention *inter alia* to sites designated as Special Protection Areas or Special Areas of Conservation (i.e. the Natura 2000 network, which defines the Emerald Network for EU countries).

9. Stipulations regarding the assessment process itself include, in Article 3(1), "The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:" (which then include "biodiversity"). In this, particular attention is to be given to species and habitats protected under Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Birds Directive, as amended).

10. Article 8 requires that the results of an EIA, including the consultations that are provided for as part of the process, be taken into account in the development consent procedure. Where it is decided to grant consent, the decision to do so must include reasoned conclusions relating to the EIA, and any environmental conditions, mitigation measures and monitoring measures defined as a result. Where consent is refused, the decision to do so must give reasons.

11. The European Commission has published sixteen accompanying guidance documents to support implementation of the Directive. **Those of most relevance for the Emerald Network** are summarised below.

Interpretation of definitions of project categories of Annex I and II of the EIA Directive

https://op.europa.eu/en/publication-detail/-/publication/e7f9c73c-86ba-11ef-a67d-01aa75ed71a1/language-en . (2024; 74pp).

12. As well as the interpretations of project categories, this publication includes some more general guidance on the Directive as a whole, drawing on recent caselaw.

Environmental Impact Assessment of projects - guidance on screening

https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/a9f8a19a-fba5-440f-abf2-29d3f9ed7a63/details . (2017; 84pp).

13. In the context of the EU Directive, the determination as to whether a project requires an EIA (i.e. the process of screening) is made through a case-by-case examination (of whether the project's effects on the environment are expected to be significant), or on the basis of thresholds or criteria set by the Member State, or by a combination of the two approaches. The guidance provides a flowchart of the steps involved.

14. Where a case-by-case examination is carried out, the competent authorities are required to consider relevant criteria in Annex III of the Directive, for determining whether significant environmental effects are likely to result from a project. Additional guidance on how to carry out case-by-case examinations may be provided by the Member States.

15. Inclusion and exclusion thresholds and/or criteria, mentioned in the amended Article 4(3) of the Directive, are designed to simplify the process by defining projects that are always or are never considered likely to have significant effects upon the environment. They facilitate the examination of the actual characteristics of any given project, in order to determine whether it is subject to the requirement to carry out an EIA.

16. The likelihood of significant impacts on a Natura 2000 site may be central to screening under the EIA Directive. In many instances, where an "Appropriate Assessment" (AA) of a proposed project is required under the Habitats Directive's Article 6(3) (see separate section of the present paper below), then the determination of the likely significant impacts in the screening procedure for an Annex II project under the EIA Directive is pre-empted by the obligation to carry out an AA under the Habitats Directive.

Environmental Impact Assessment of projects - guidance on scoping

https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/38742302-d9d2-41e1-85de-aa88653ebe7c/details . (2017; 81pp).

17. "Scoping" is the process of identifying the content and extent of the information to be included in an EIA, i.e. the terms of reference of the assessment and the eventual resulting report. It addresses the extent of the information and analysis that authorities will need to make an informed decision about a proposed project and its effects. Both developers and the relevant decision-making authorities (the "competent authorities") aim to determine the environmental impacts and issues of concern that are likely to be of most importance to decision making on the project proposal. This then defines the content of the EIA report.

18. The guidance includes sections covering the characteristics of the project; the location of the project; the characteristics of the potential impacts, issues, concerns, possible alternatives, and mitigation measures. It provides seven pages of scoping checklists to help the user to identify important issues to be addressed in the EIA Report. The first checklist presents a series of questions regarding the project's characteristics, and the second checklist focuses on the characteristics of the environment.

19. **Of relevance to the Emerald Network**, the section on "location of the project" includes information on any kinds of protected areas or sensitive areas potentially affected by the project.

20. The section on characteristics of the potential impact includes questions of whether impacts are likely to be direct, indirect, secondary, cumulative, short, medium, long-term, permanent or temporary; and it addresses both the magnitude of the impact and the probability of the impact.

21. The EIA Directive sets minimum requirements for consultation on scoping, requiring that environmental authorities as well as local and regional authorities are given an opportunity to comment on the EIA report's scope. In some Member States, EIA legislation extends consultation on scoping to all interested parties, including the general public; and while this is not required by law in others, it is regarded as good practice.

Environmental Impact Assessment of projects - guidance on the preparation of the Environmental Impact Assessment report

https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/b7451988-d869-4fee-80de-0935695f67f2/details . (2017; 130pp).

22. This guidance goes through the preparation of an EIA report in the context of the EU Directive. It includes chapters covering:
    - project description;
    - baseline scenario;
    - environmental factors (impacts, direct and indirect);
    - assessing effects on the environment (significance, including cumulative effects);
    - assessment of alternatives;
    - mitigation and compensation measures;
    - monitoring.

23. There are also sections dealing with consultation processes and the quality of the report, including the requirement for a non-technical summary. The guide includes a 20-page checklist to assist report preparation. **Of particular relevance to the Emerald Network** is a section in the chapter on environmental factors which gives more detail concerning impacts on biodiversity.

24. The Competent Authority making the development decision must not simply rely on the developer's assessment, but must also carry out its own separate evaluation of the EIA report and the results of consultations, and come to a "reasoned conclusion" about the environmental impact of the proposed project. Article 8a(1) of the EIA Directive deals with the decision to grant development consent, and stipulates that this decision should incorporate several elements, including the reasoned conclusion and

measures for monitoring. The authority must ensure that the reasoned conclusion is still up to date when making its decision.

Guidance on integrating climate change and biodiversity into Environmental Impact Assessment

https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/d5fb5675-e7c1-4a5f-b4aa-06ab02ac0b5e/details . (2013; 60pp).

25. This publication provides flowcharts of steps and key considerations for integrating climate change and biodiversity in EIA, with lists of references, sources of data and tools. It includes sections on managing conflicts and potential synergies between climate change, biodiversity and other environmental issues; and on particular challenges of addressing climate change and biodiversity in EIA. These challenges include the often long term and cumulative nature of effects; the complexity of the issues and of the relationships between cause and effect; and levels of uncertainty.

26. Emphasis is given to considering long term trends, with and without the proposed project, and paying attention to the evolving baseline when assessing the cumulative effects of climate change and biodiversity impacts (the current state of the environment will not necessarily be the future state of the environment).

27. In these circumstances it is particularly important to base recommendations on a precautionary approach. EIA should focus on ensuring “no net loss” and avoiding effects from the start, before considering mitigation, and with compensation being used as a last resort.

28. The guidance notes that a large magnitude impact may not be significant if an affected species affected is common, widely distributed and readily able to recover, but a small magnitude impact may be very significant for a highly sensitive or rare species or habitat. Significance criteria for these judgements can be developed from information in site designation citations, biodiversity action plans and similar sources.

➢ European Union – Habitats Directive

29. Under the Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora), when any plan or project, either individually or in combination with other plans and projects, is likely to have a significant effect on a Natura 2000 site (SAC or SPA, i.e. **corresponding to the Emerald Network** in EU countries), Article 6(3) of the Directive requires an “appropriate assessment” (AA) of the implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.

30. Article 6(3) AAs can in some cases be combined with Environmental Impact Assessments under the EIA Directive (see the previous section of the present paper above), and/or data and information from one can be used in the other. Member States are advised to provide for coordinated or joint procedures in relation to both Directives in this context. The European Court has also repeatedly asserted that the definition of a project under the Habitats Directive is broader than under the EIA Directive - hence any project qualifying as such for an assessment under the EIA Directive will require an AA under the Habitats Directive, but the reverse may not always be true.

31. The Habitats Directive refers to “any plan or project”, and there are clear links and analogies between Appropriate Assessment of *plans* and the practice of Strategic Environmental Assessment (SEA). Coordination of Appropriate Assessments with SEA under the EU’s separate Directive on SEA (see the later section on this below) is therefore recommended.

32. Article 6(4) of the Habitats Directive provides that if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest (these are described further in the Article), the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. There will of course be cases where achieving such compensation is (ecologically) not possible.

33. Several guidance documents and studies have been published in relation to the provisions of Article 6. The two most relevant here are summarised below.

Managing Natura 2000 sites - the provisions of Article 6 of the Habitats Directive 92/43/EEC

https://op.europa.eu/en/publication-detail/-/publication/11e4ee91-2a8a-11e9-8d04-01aa75ed71a1 . (2019, 83pp).

34. Given the linkage with the Natura 2000 network, the whole of this document is in principle **relevant to the Emerald Network**. It notes that the Habitats Directive does not circumscribe the scope of either a “plan” or a “project” by reference to particular categories of either - instead, the key limiting factor is whether or not they are likely to have a significant effect on a site. The European Court has issued a number of rulings regarding the type of interventions which require the application of Article 6(3).

35. The provisions of Article 6(3) are not restricted to plans and projects that exclusively occur in or cover a protected site; they also target plans and projects situated outside the site but likely to have a significant effect on it, regardless of their distance from the site. In addition, the safeguards set out in Article 6(3) are triggered not by a certainty but by a likelihood of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an assessment on the basis that significant effects are not certain. Annex III of the EIA Directive (see the separate section of the present paper on that Directive above) is also of assistance in setting out a range of factors which may contribute to a likelihood of a significant effect.

36. There are a number of important distinctions between the EU procedures for EIA/SEA (under those two respective Directives) and the Appropriate Assessment procedures under the Habitats Directive, which means that an EIA or SEA cannot replace or be a substitute for an Appropriate Assessment, as neither procedure overrides the other.

37. Regarding decisions on consents, where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation.

Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC

https://circabc.europa.eu/ui/group/3f466d71-92a7-49eb-9c63-6cb0fadf29dc/library/22ba2bc1-3d35-4dba-b19e-6ed8a0bec2f0/details . (2021; 114pp).

And a summary, at: *https://op.europa.eu/en/publication-detail/-/publication/a3a639e3-b943-11ec-b6f4-01aa75ed71a1/language-en* . (2022, 14pp).

38. Given the linkage with the Natura 2000 network, the whole of this document is in principle **relevant to the Emerald Network**. It is an update of a previous document published in 2002, and it reiterates same principles as in the 2019 "provisions of Article 6" document described above.

39. The methodological guidance has a step-wise structure comprising three "stages" and eleven "steps". Each stage contains methods and tools, examples and suggestions on how to complete an "Appropriate Assessment" under Article 6 of the Habitats Directive. This is supported by the use of checklists, matrices and step-by-step instructions for each stage of the assessment.

40. The document also includes a chapter on strategic planning and the assessment procedure for plans in particular. This section also explores the links with other environmental assessments required under EU legislation, for example the Water Framework Directive.

41. The information provided in the Natura 2000 Standard Data Form is the starting point for identifying the habitat types and species that are significantly present on a site and that could be affected by the plan or project, as well as any existing pressures and impacts on the site.

42. A separate annex document: *https://circabc.europa.eu/ui/group/3f466d71-92a7-49eb-9c63-6cb0fadf29dc/library/afa87c31-ec91-4a05-90ac-b2d2796e4e67/details* (37pp) provides examples of methods and further guidance and tools (e.g. checklists and formats) that can be used to implement the Article 6(3) and 6(4) procedures.

➢ European Union – SEA Directive

43. Directive 2001/42/EC "on the assessment of the effects of certain plans and programmes on the environment" was adopted in 2001. "Plans and programmes" are defined as any which are required by legislative, regulatory or administrative provisions and are subject to preparation and/or adoption by an authority at national, regional or local level.

44. The Directive requires assessment of plans and programmes that are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent of projects subject to assessment under the EIA Directive, if they are considered likely to have significant environmental effects.

45. **Of particular relevance to the Emerald Network**, a plan or programme also has to undergo a Strategic Environmental Assessment (SEA) under the SEA Directive if it is

deemed to require an Appropriate Assessment under the Habitats Directive (i.e. if the plan or programme may have a significant effect on a Natura 2000 site – see the present paper's separate section on the Habitats Directive above for details of this).

46. The Directive includes provisions for the preparation of a report, for consultation and for monitoring. Annex I lists categories of information to be included in the assessment report; and **of relevance to the Emerald Network** is its inclusion of specific reference to information on potentially affected Natura 2000 sites. Annex II lists criteria for determining the likely significance of effects. These provisions address considerations that are similar to the regime for EIA – see the section above on the EIA Directive.

Guidance on integrating climate change and biodiversity into Strategic Environmental Assessment

https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/57066e0a-4631-46f1-ad17-9740c4aea6c3/details?download=true . (2013; 70pp).

47. This guidance is similar in structure and content to the equivalent guidance on EIA (see earlier section above), including the approach to coordination with Appropriate Assessments under the Habitats Directive. It highlights strategic considerations such as the spatial context of biodiversity, and alignment with/implications for wider strategies and policy objectives for biodiversity conservation. The guidance emphasises that Strategic Environmental Assessment (SEA) allows planners to consider the environment at an early stage of development, when alternatives are still open. SEA reports can also provide recommendations for the project level.

SEA and integration of the environment into strategic decision-making

https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/abf0962a-2731-41b7-9db4-8d06aaae26a1/details . (2001; 130pp).

48. This research report, compiled for the European Commission, evaluates the role of Strategic Environmental Assessment (SEA) in integrating the environment into strategic decision-making. It draws on case studies (in a separate volume, 190pp) and country reports (in a further separate volume, 164pp).

➢ Convention on Biological Diversity (CBD)

Voluntary guidelines on biodiversity-inclusive impact assessment

https://www.cbd.int/doc/decisions/cop-08/cop-08-dec-28-en.pdf . (2006; Annex to COP Decision VIII.28; 19pp).

49. These guidelines are an elaboration and refinement of guidelines previously endorsed by the CBD Parties in 2002. They draw on a range of case studies and expert inputs, including from the International Association for Impact Assessment (IAIA- see further below). CBD COP Decision VIII.28 endorsed the voluntary guidelines contained in its annex. **Of note in relation to the Bern Convention**, the COP Decision also (paragraph 7) "Invites other multilateral environmental agreements to take note of and if appropriate apply the voluntary guidelines on biodiversity-inclusive environmental impact assessment".

50. The guidelines do not provide a technical manual on how to conduct a biodiversity-inclusive assessment study: they focus instead on how to promote and facilitate a biodiversity-inclusive environmental impact assessment process. They are structured in accordance with the internationally accepted sequence of procedural steps that characterise good practice in EIA.

51. Sections of the text cover topics including:
    - Screening;
    - Scoping;
    - Assessment and evaluation of impacts, and development of alternatives;
    - Reporting: the Environmental Impact Statement (EIS);
    - Review of the Environmental Impact Statement;
    - Decision-making;
    - Monitoring, compliance, enforcement and environmental auditing.

52. These are followed by Appendices covering:
    - An indicative set of screening criteria to be further elaborated at national level;
    - An indicative list of ecosystem services;
    - Aspects of biodiversity: composition, structure and key processes.

53. The section on screening includes biodiversity-specific questions such as “Would the intended activity surpass the maximum sustainable yield, the carrying capacity of a habitat/ecosystem or the maximum allowable disturbance level of a resource, population, or ecosystem, taking into account the full spectrum of values of that resource, population or ecosystem?”. Screening mechanisms can include lists identifying projects requiring EIA; lists identifying projects that would not require EIA; lists identifying geographical areas where important biodiversity is found, in which projects would require EIA; and case-by-case expert judgement.

54. A screening decision defines the appropriate level of assessment. A suggested approach is (i) to design a biodiversity screening map indicating areas in which EIA is required; (ii) to define activities for which EIA is required; (iii) to define threshold values to distinguish between full, limited/undecided or no EIA. **In the Bern Convention context**, identification of areas could include Emerald Network sites and other areas containing habitats listed in Resolution No. 4 (1996) and/or species listed in Resolution No. 6 (1998).

55. The list of steps suggested for scoping represents an iterative process. Scoping and impact study are two formal rounds of iteration; and during the study, further iterative rounds may be needed, for example when alternatives to the proposed project design have to be defined and assessed.

56. The guidelines point to the need to consider issues such as ecosystem level diversity, and ecological processes and their spatial scale. Surveys and data collection need to be planned on appropriate timescales to take account of seasonal or other time-based factors. As well as assessing impacts on various biophysical aspects of the environment, assessments might also address potential implications for delivery of ecosystem services. Available biodiversity information is usually limited and descriptive, hence it is important to make use of methods such as risk assessment techniques, precautionary approaches and adaptive management.

57. Reference is made to the idea of developing national guidance for determining levels of acceptable change to biodiversity. Consideration of alternatives and compensation

can be guided by approaches for “no net biodiversity loss” and/or priorities for biodiversity restoration.

58. If the proposed project is approved, the EIA report (i.e. the Environmental Impact Statement) should be used to inform management systems and monitoring, to ensure for example that mitigation is effectively implemented, that unforeseen negative effects or trends are detected and addressed (perhaps by using indicator organisms that are most sensitive to the predicted impacts), and that any expected biodiversity-related benefits are achieved as the project proceeds.

Draft guidance on biodiversity-inclusive Strategic Environmental Assessment

https://www.cbd.int/doc/meetings/cop/cop-08/official/cop-08-27-add2-en.doc . (2006; Annex II to COP document UNEP/CBD/ COP/8/27/Add.2; 18pp).

59. This guidance on Strategic Environmental Assessment (SEA) was endorsed by the CBD Parties in paragraph 9 of COP Decision VIII.28. (Although labelled “draft”, it is the COP-endorsed text that continues in use). **Of note in relation to the Emerald Network**, the COP Decision also (paragraph 11) “Invites other multilateral environmental agreements to take note of the draft guidance on biodiversity-inclusive strategic environmental assessment and to consider its application within their respective mandates”.

60. The guidance includes sections on steps in the SEA process; particular biodiversity issues relevant to SEA; the assessment framework; identifying potential biodiversity impacts through "biodiversity triggers"; and aspects of stakeholder participation.

61. SEA, by its nature, covers a wider range of activities or a wider area and often over a longer time span than the environmental impact assessment (EIA) of projects. SEA might be applied to an entire sector (such as a national policy on energy) or to a geographical area (for example in the context of a regional development scheme). SEA does not replace or reduce the need for project-level EIA (although in some cases it can), but it can help to streamline and focus the incorporation of environmental concerns (including biodiversity) into the decision-making process, often making project-level EIA a more effective process.

62. SEA is commonly understood as being proactive and sustainability-driven, whilst EIA is often described as being largely reactive. SEA is thus more than the preparation of a report; it is a tool to enhance good governance. SEA is not a mere expansion of an EIA and it does not usually follow the same stages as an EIA. This guidance is not structured according to a given procedure, because SEA should ideally be fully integrated into a planning (or policy development) process, and these differ widely.

63. The guidance includes reference to the idea of “consistency analysis” to assess whether the objectives of a new policy or plan are in line with those in existing policies, including environmental objectives. The described approach based on “opportunities and constraints”, where the environment effectively shapes the policy, programme or plan, contrasts with the largely reactive approach adopted in project EIA, where the key question being asked is what will be the effect of a proposed project on the environment. SEA can however also take a simpler “cause & effect” approach, more similar to EIA, in cases where the interventions concerned and their effects are more knowable.

64. SEA is particularly important in relation to cumulative effects on biodiversity, which are best anticipated at a strategic (e.g. ecosystem or catchment) level. There is also a

need to consider greater timescales and spatial scales than usual for biophysical processes such as soil formation, forest (re)growth, genetic erosion, evolutionary processes, flows of energy, water and nutrients, effects of climatic changes and sea level rise, linkage of ecosystems by migratory species, hydrological processes and similar factors.

Biodiversity in Impact Assessment - background document to CBD Decision VIII/28: Voluntary guidelines on biodiversity-inclusive impact assessment

https://www.cbd.int/doc/publications/cbd-ts-26-en.pdf .
(2006; CBD Technical Series No. 26; 73pp).

65. This document was published jointly by the Secretariat of the Convention on Biological Diversity and the Netherlands Commission for Environmental Assessment, in collaboration with the Secretariat of the Ramsar Convention on Wetlands, the Secretariat of the Convention on Migratory Species and the International Association for Impact Assessment (IAIA).

66. It contains the CBD Decision and EIA guidelines, including the associated Strategic Environmental Assessment (SEA) guidance (both of these covered separately above); and adds background on biodiversity concepts, a list of case studies, and additional material on SEA, with lessons from a collection of SEA case studies.

Voluntary guidelines for the consideration of biodiversity in Environmental Impact Assessments and Strategic Environmental Assessments in marine and coastal areas

https://www.cbd.int/doc/meetings/cop/cop-11/official/cop-11-23-en.pdf .
(2012; COP document UNEP/CBD/COP/11/23; 43pp).

67. This document consists of a version of the 2006 guidelines on biodiversity-inclusive impact assessment and the associated SEA guidance (see separate accounts of those above), annotated with specific additional advice on their application in marine & coastal contexts.

68. CBD COP Decision XI/18 (2012) Part B takes note of these guidelines and encourages Parties and others to use them. The Decision does not “adopt” the added annotations, but the original 2006 guidelines were themselves endorsed by the COP. The decision further recognises “that these annotated voluntary guidelines will be most useful for activities that are currently unregulated, with no procedures for assessing impacts, […] including [in] areas beyond national jurisdiction”.

69. The guidelines note that the detailed categories of defined geographic areas of importance/sensitivity (such as protected areas) used for screening for EIAs in terrestrial contexts cannot be applied in the same way in the marine environment. An approach based on recognised ecologically or biologically significant marine areas (EBSAs) may be the best approach in the meantime for defining such areas.

70. The guidelines also note that for areas beyond national jurisdiction, relevant stakeholders may encompass global and regional organisations as well as national authorities and communities. The scoping process for EIAs/SEAs is likely to draw on a wider pool of expertise, and this may imply greater costs.

71. The three-dimensionality of potential causes and effects in marine and coastal waters (including for example between different layers in the water column, and between the surface and the sea bed) is highlighted.

72. In marine areas in particular there may often be incomplete data and knowledge for assessment: predictions of impacts may be more uncertain, and there is likely to be less knowledge and experience available to apply to the development of alternatives. The application of a precautionary approach will be a particularly important consideration in decision-making in this context. There will in consequence also necessarily be greater dependence on incremental and iterative "test-based" approaches to permitting activities.

73. In areas beyond national jurisdiction, the question of whether a particular Environmental Impact Statement (EIS) meets acceptable standards may be an issue for joint determination by the flag States concerned, as well as by relevant international organisations.

74. Included in the guidelines is an appendix on "Direct and indirect drivers of biophysical changes and non-biophysical changes for the purpose of applying SEA in marine and coastal areas".

➢ Convention on Wetlands (Ramsar Convention)

Impact assessment - Guidelines on biodiversity-inclusive environmental impact assessment and strategic environmental assessment

https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-16.pdf .
(2010; Ramsar handbooks for the wise use of wetlands, 4th edition, Volume 16; 70pp).

75. The Ramsar Convention Parties in 2002, in Ramsar COP Resolution VIII.9, adopted the Biodiversity Convention's original 2002 draft guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessment (CBD Decision VI/7-A), in a version that added annotations describing their relevance to the Ramsar Convention.

76. When the CBD COP endorsed updated voluntary guidelines on biodiversity-inclusive environmental impact assessment and draft guidance on biodiversity-inclusive strategic environmental assessment in 2006, the relevant CBD Decision (VIII/28) included paragraph 6 which "Encourages those multilateral environmental agreements that have endorsed the guidelines contained in decision VI/7 A, in particular the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat and the Convention on the Conservation of Migratory Species of Wild Animals, to take note of, and if appropriate endorse the voluntary guidelines on biodiversity-inclusive environmental impact assessment contained in annex I to the present decision".

77. The Ramsar Parties responded with an update of their previous adaptation of the earlier CBD guidance, with COP10 in 2008 adopting Resolution X.17 on "Environmental Impact Assessment and Strategic Environmental Assessment: updated scientific and technical guidance", which features an annex containing the updated CBD texts, with further annotations on specific aspects relating to wetlands and the Ramsar Convention.

78. Ramsar Handbook 16 (2010) reproduces the annex to Resolution X.17. The annotations provide interpretations specifically relating to the application of biodiversity-related considerations in the context of the hydrological and wetland ecosystems context of the Ramsar Convention, and give cross-references to relevant strategic policy objectives and other guidance materials adopted in the Ramsar context. The role of key Ramsar concepts such as wetland ecological character and wise use is also indicated in relation to EIA and SEA processes.

79. The Handbook also contains a section giving further information on Strategic Environmental Assessment, excerpted from a technical paper that was presented at Ramsar COP7 in 1999.

80. Annexes then reproduce the texts of the relevant Ramsar COP Resolutions and Recommendations, including:

- Recommendation 6.2 (1996): Environmental impact assessment;
- Resolution VII.16 (1999): The Ramsar Convention and impact assessment: strategic, environmental and social; and
- Resolution X.17 (2008): Environmental Impact Assessment and Strategic Environmental Assessment: updated scientific and technical guidance.

(Resolution VIII.9 (2002) on "'Guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessment' adopted by the Convention on Biological Diversity (CBD), and their relevance to the Ramsar Convention" is not appended, since it was superseded by Resolution X.17).

➢ Convention on Migratory Species (CMS)

Impact Assessment and Migratory Species

https://www.cms.int/sites/default/files/document/cms_cop14_res.7.2_rev.cop14_impact-assessment-and-migratory-species_e.pdf .
(2024; COP Resolution 7.2 (Rev.COP14).

81. The Convention on Migratory Species (CMS) Resolution on Impact Assessment and Migratory Species was originally adopted at COP7 in 2002, then revised at COP12 in 2017 and again at COP14 in 2024. The original COP7 version included an operative paragraph which "urge[d] Parties to make use, as appropriate, of the 'Guidelines for incorporating biodiversity-related Issues into Environmental Impact Assessment legislation and/or processes and in Strategic Environmental Assessment' endorsed by Decision VI/7 of CBD COP6". (See the account of the CBD guidelines in the separate section of the present paper above, on the Convention on Biological Diversity).

82. The revised version of the CMS Resolution adopted at COP12 in 2017 updated this to refer instead to the voluntary guidelines on biodiversity-inclusive impact assessment endorsed by Decision VIII/28 of CBD COP8 in 2006 (erroneously referenced in the CMS text as VIII/8), and this remains in the 2024 CMS version.

83. The CBD guidelines were not excerpted or adapted for use in the CMS context (in the way that they had been for the Ramsar Convention – see above), so they are not appended to the CMS Resolutions but simply left as a cross-reference to the original CBD source document.

84. The current CMS Resolution emphasises the importance of good quality EIA and SEA for implementing particular cited provisions of the Convention. Various key elements

of application in relation to migratory species are also cited, including impediments to migration, transboundary effects, impacts on migratory patterns and migratory ranges, and planning and policies relating to linear infrastructure developments.

85. When the CBD COP endorsed the updated voluntary guidelines on biodiversity-inclusive environmental impact assessment and draft guidance on biodiversity-inclusive strategic environmental assessment in 2006, the relevant CBD Decision (VIII/28) included paragraph 6 which "Encourages those multilateral environmental agreements that have endorsed the guidelines contained in decision VI/7 A, in particular the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat and the Convention on the Conservation of Migratory Species of Wild Animals, to take note of, and if appropriate endorse the voluntary guidelines on biodiversity-inclusive environmental impact assessment contained in annex I to the present decision".

➢ Espoo Convention

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)

https://unece.org/sites/default/files/2021-03/Espoo%20Convention.pdf .
(1991, in force from 1997, and amended in 2001 and 2004; UN Economic Commission for Europe).

86. The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) aims to ensure that its Parties assess the environmental impact of certain activities at an early stage of planning, and notify and consult each other on the activities listed in the Convention that are likely to have a significant adverse transboundary (cross-border) impact.

87. The Convention applies to the activities listed in its Appendix I. It requires the State in which the activity is planned ("party of origin") to examine its environmental impacts on other States ("affected parties"). The party of origin must prepare Environmental Impact Assessment documentation and submit this for comments to the authorities and the public of the affected party/parties. The parties concerned should consult each other, for example, on alternatives and mitigation measures. The final decision should be provided to the affected party with the reasons and considerations on which it is based.

88. In the European Union EIA regime (covered earlier in the present paper above), Directive 97/11/EC brought the EU EIA Directive in line with the Espoo Convention. It widened the scope of the earlier Directive by increasing the types of projects covered, and the number of projects requiring mandatory Environmental Impact Assessment (Annex I). It also provided for new screening arrangements, including new screening criteria (Annex III) for Annex II projects, and it established minimum information requirements.

89. In 2013, the EU also produced "Guidance on the application of the Environmental Impact Assessment procedure for large-scale transboundary projects" – available at *https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/1aab8e20-1e37-4e5f-9f61-58b00925f607/* (18pp).

Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Kyiv Protocol)

https://unece.org/sites/default/files/2021-03/ECE_MP.EIA_SEA_8_T.pdf .
(2003; UN Economic Commission for Europe).

90. The Kyiv Protocol requires that a Strategic Environmental Assessment be carried out for certain plans and/or programmes that are likely to have significant environmental effects. It also provides for a non-mandatory assessment of policies and legislation.

➢ International Association for Impact Assessment (IAIA)

91. The International Association for Impact Assessment (*https://iaia.org/*), and its members, has assisted with the development of most of the other materials described in the present paper above. The Association has produced a range of best practice guidance publications, including the two key ones **of relevance to the Bern Convention** that are summarised below.

Biodiversity and ecosystem services in impact assessment

https://iaia.org/uploads/pdf/SP3%20Biodiversity%20Ecosystem%20Services_2.pdf .
(First issued 2005; revised 2018; IAIA Special Publications series, No.3; 12pp).

92. This document is described as promoting biodiversity-inclusive impact assessment, at both project and strategic levels, that is compatible with the aims and objectives of the Convention on Biological Diversity, the Ramsar Convention and the Convention on Migratory Species. It is also designed to align with the performance standards and requirements of international finance institutions that promote the integration of conservation needs with development priorities. It includes reference to a rigorous application of the “mitigation hierarchy” as part of impact assessment, including an emphasis on preventive measures.

93. The document is organised according to nine key principles, including reference to precautionary approaches; robust adaptive management systems; aims of no net loss (of biodiversity); and an aspiration for net gain. It emphasises that ecological impacts may extend well beyond development footprints, and that cumulative effects are often significant drivers of decline in biodiversity and ecosystems.

94. The impact assessment timeframe should allow for effective consideration of seasonal differences; the dynamic nature and connectedness or interplay of ecosystems; uncertainty; and the often unpredictable nature of ecosystem functions, behaviour and responses. Reference is made also to the implications of time lags for restoration of degraded or transformed ecosystems.

95. **Of particular relevance to the Emerald Network** is the section which stresses that “impact assessment for development affecting key biodiversity areas, biodiversity hotspots, ecological corridors, intact natural areas, habitat continuums, and priority conservation or protected areas needs to consider implications of planned development for the integrity of such areas and the viability of the species populations they support, taking into account existing threats and pressures affecting them”.

Best practice guidance for biodiversity inclusive impact assessment - A manual for practitioners and reviewers in South Asia

https://iaia.org/uploads/pdf/CBBIA-IAIA%20Biodiversity%20Guidance%20Manual.pdf (2007; 218pp).

96. Despite emerging from a capacity-building project relating to South Asia, and with chapters that address biodiversity values and development sectors in the relevant countries, this extensive resource contains much that is applicable more generally.

97. It includes a generic framework for biodiversity-inclusive EIA; a conceptual framework for integrating biodiversity, economics and livelihoods into impact assessments; and a practitioners' guide for biodiversity inclusive EIA, covering screening, scoping, impact assessment, impact evaluation, impact mitigation, reporting, review, decision-making and monitoring.

98. A final section gives good practice guidance for the process of reviewing biodiversity inclusive EIAs. ("Review" is the process that determines whether the EIA report is an adequate assessment of the project related impacts, and is of sufficient relevance for the required quality of decision-making).

[END]