

European Commission, DG ENV

**Study concerning the
report on the application
and effectiveness of the
EIA Directive**

Final report

June 2009

COWI

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The study presents the views of the Consultant and does not necessarily coincide with those of the European Commission or the 27 Member States

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List of abbreviations

APA	Portuguese Environment Agency
BAT	Best Available Techniques
CA	Competent Authority
CODA	Ecologistas en Acción
EA	Environmental Assessment
ECJ	European Courts of Justice
EIA	Environmental Impact Assessment
EIAL	Law on Environmental Impact Assessment
EIS	Environmental Impact Statement
EMAS	Eco Management and Audit Scheme
EPA	Environmental Protection Agency
EPLA	Environmental Protection Law Act
ETS	Emissions Trading System
EU	European Union
IAIA	The International Association for Impact Assessment
IAPA	Journal of Impact assessment and project appraisal
IPPC	Integrated Pollution Prevention and Control
JMD	Joint Ministerial Decision
LCP	Large Combustion Plants
MEPA	Malta Environment and Planning Authority
NGO	Non Governmental Organisation
OPP	Outline Planning Permission
SAC	Special Areas of Conservation
SEA	Strategic Environmental Assessment
SPA	Special Protected Area
TEC	Treaty of the European Community
VROM	Dutch Ministry for environmental policy and regulation
WebTAG	The Transport Analysis Guidance Website

Executive summary

Objective of the study

The purpose of this study is to provide the Commission with a clear, accurate, and complete overview of the application and effectiveness of the Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC (hereafter, the EIA Directive) in the 27 EU Member States and to provide recommendations, where relevant, for improvements of the functioning of the EIA Directive. This also includes possible amendments to the EIA Directive, in order for the Directive to be applied in an effective and coordinated manner across the 27 Member States.

This study reviews the application of Directive 85/337/EEC as amended by Directive 97/11/EC and Directive 2003/35/EC. It is the fourth review of the EIA Directive and builds on reviews carried out in 2003, 1997 and 1993. This review comes five years after the entry into force of Directive 2003/35/EC and examines the effectiveness of both the changes introduced in 2003/35/EC as well as the application of the EIA Directive as a whole.

Scope of the study

The study examines the organisational and legal arrangements in place and their effectiveness as well as the level of experience with carrying out EIA in the old and new EU Member States¹.

More specifically the study provides an analysis of the changes in the legal systems and the current situation in the Member States following the amendments introduced by Directive 2003/35/EC. Furthermore, the study provides an analysis of new developments in the EIA systems in the old Member States as well as an analysis of the handling of the key stages of EIA by the new Member States. Finally, the study explores the relationship of the EIA Directive with other Community policies and legislation, in particular the 'SEA Directive', the 'Habitats' and the 'Birds Directives', the EU Action Plan 'Halting the loss of biodiversity by 2010 - and beyond', 'the Integrated Pollution Prevention and Control Directive', 'the Large Combustion Plants Directive', and the European Union's Climate Initiative.

¹ The old EU Member States comprise the following 15 countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The new EU Member States comprise the following 12 countries: Bulgaria, Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Slovakia.

Methodology	<p>The study has been conducted through five main tasks: 1) Review of responses to the EU Commission's questionnaires on the application and effectiveness of the EIA Directive²; 2) A desktop literature search study of existing relevant EIA studies, reports and analyses completed in the period 2002-2007; 3) Review of specific country data collected by local consultants; 4) Cross-country analysis and 5) Final reporting.</p> <p>The draft final report of this study has been subject to Member State consultation and was discussed at the meeting of the EIA/SEA working group set up under the EU Commission, DG Environment in Paris, October 2008.</p>
Information sources	<p>The report is primarily based on Member State responses to the EU Commission questionnaires. Country information collected by the Consultant's own network of local consultants in Member States by way of interviews with relevant stakeholders and document review constitutes an important supplementary source of information. Finally, the study has been informed by a comprehensive literature search study identifying issues addressed in EIA literature and European Court of Justice practice on EIA.</p>
Organisation of the study	<p>The study has been carried out by COWI A/S in association with Milieu Ltd. The study was carried out between December 2007 and November 2008.</p>
Disclaimer	<p>The study presents the views of the Consultant and does not necessarily coincide with those of the EU Commission or the 27 EU Member States subject to the Study.</p>

1.1 Findings of the study

The report has resulted in findings, by identifying common features, strengths and weaknesses of the application of the EIA Directive in the old and new Member States. Furthermore, the study contains recommendations for the improvement of the EIA Directive suggested by the Consultant as well as proposed by Member States.

The findings of the Study are based on analyses of responses to the EU Commission's questionnaire submitted by Member States. Where relevant the responses have been supplemented by further investigations/surveys/interviews carried out by local consultants in each Member State. Where possible the Consultant has drawn conclusions from the material collected; in such cases it is clearly pointed out that statements are either provided by the local consultants and/or by COWI.

The findings of the study are based on the fact that all Member States have established comprehensive EIA regimes.

² Two questionnaires were distributed among Member States: One for the old Member States and one for the new Member States. The questionnaires are included in Annex III.

This summary presents in brief terms the main findings and related recommendations. All issues mentioned in the summary are discussed in detail in the following chapters of the Study:

Two benefits related to the EIA procedure have univocally been identified by the majority of the old Member States:

- The EIA procedure ensures that environmental considerations are taken into account in the decision-making processes;
- The EIA procedure ensures transparency in the environmental decision making.

For the old Member States it is characteristic that the majority of them already had some kind of regulatory framework in place before being required to adapt national legislation to the requirements of the EIA Directive. This means that some of the problems encountered by old Member States are of a nature where it is the insertion of the EIA procedures into existing procedures that cause the majority of problems. The problems encountered are thus mostly related to when the assessment must take place and also when a decision is made as development consent within the meaning of Article 1(2) of the EIA Directive. The strength of old Member States is thus the fact that they to a large extent were used to deal with formal consent procedures.

It is a common feature that the new Member States already prior to the EU membership had established EIA schemes based upon legal frameworks. It should be noted that with regard to the new Member States, the EIA Directive has been transposed as part of the accession requirements to ensure harmonisation of the national legislation with the EU *Acquis*.

The new Member States are familiar with the EIA procedures applied as an integrated regulatory tool, which to some degree is based upon the general development in International environmental law. Accordingly, most new Member States have before entering the EU already prepared for the incorporation of the Espoo Convention on EIA in a transboundary context and to some degree also the Aarhus Convention facilitating the implementation of the public participation requirement of the EIA Directive.

This finding is useful for the current study for two reasons:

First, based upon an already existing EIA legal and institutional framework the implementation of the EU *Acquis* is merely a matter of amending already existing EIA regulatory schemes. The implementation of the EIA Directive has brought about a further positive development primarily in facilitating effective EIA procedures, promoting the fundamental rights of public participation in decision-making and hence, adding to the consolidation of the democratic development in several of the new Member States.

Second, this finding is also beneficial for the on-going implementation of the EIA Directive itself. In general, the reports from new Member States clearly indicate a familiarity with and an acceptance of the fundamental principles be-

hind the EIA procedures among public authorities and civil and professional societies. Thus, the EIA regimes already have the legitimacy needed for securing sound implementation over time.

Directive 2003/35/EC

The Member States welcome the beneficial changes introduced by Directive 2003/35/EC. In particular, the strengthening of public participation has led to transparency in decision-making procedures and a more successful EIA procedure as a whole. The fact that almost half of the Member States allow for public consultation already in the scoping phase, points to the importance attached to public involvement in the EIA procedure. The general impression is, however, that experience in the application of the new provisions introduced by Directive 2003/35/EC is still limited. This is also reported by some Member States.

Regarding the link with the Habitats and the Birds Directives, the Member States have established both informal and formal links between these Directives and no major problems are reported. As for the Biodiversity Action Plan, many Member States consider that the provisions of the EIA Directive already sufficiently take into account the considerations behind the Action Plan, notwithstanding two problems identified regarding cumulative effects and the coverage of agricultural biodiversity.

Detailed findings

The detailed findings reported in this study relate to individual stages of the EIA-procedure:

Screening

The screening mechanisms of the Directive give rise to some concerns among the Member States, such as the lack of capacity in ensuring sound screening and the variations in applying thresholds and case-by-case screening. Both new and old Member States have reported some difficulties in identifying an appropriate level of application through the adopted screening mechanisms.

Whereas the 2003 five year report found that unsystematic screening was one of the major problems in the application of the EIA Directive, this is not the case for the period 2002-2006 as reported. It seems that the old Member States have largely been able to define reasonable thresholds of application. This has been achieved through the application of a variety of means. The interesting development in national EIA regulation is that it, at least in some Member States, is the combined application of several approaches that has led to a refined screening function. These combined approaches may include the application of:

- Simplified procedures for 'small scale' development applications (some Member States);
- Elaboration of screening criteria by the adoption of thresholds taking into account size, nature and location of proposed developments (some Member States);
- Regulatory initiatives against splitting of projects into several sub-projects;
- Improved guidance on the application of screening procedures;
- Publication of practices explaining 'hard-cases' and their decision.

As for the new Member States they seem to undergo the development steps that the old Member States have undergone earlier. A majority of the new Member States employs adopted thresholds for the screening of specific Annex II developments. A majority of the new Member States also reports that they employ a combination of ad-hoc screening and adopted thresholds. The combination of these two approaches is often employed in a manner where applications falling below adopted thresholds are subjected to an ad- hoc screening decision.

The new Member States have not reported any trends related to employing simplified procedures for screening 'small-scale development' applications as part of a combined screening approach.

Some of the new Member States have proposed to add specific project types to the Annexes of the EIA Directive as well as a few of the old Member States.

In general for all Member States, the number of EIAs in Member States per annum suggests that screening mechanisms have gradually become more effective and thus leading to an increased number of EIAs carried out. However, the increasing number of EIAs carried out may be the result of many different trends in Member States, ranging from a more effective and systematic screening to the consequences of an increased economic activity in Member States.

Since the 2003 five year report new provisions requiring Member States to make screening decisions available to the public have been enacted in Directive 2003/35/EC. For the majority of Member States it is the competent authority making the decision which is required to publish such decisions. The media employed for these decisions vary from paper versions placed on the bulletin boards of the local authority, via printed mass-media, to internet based publication.

Public consultation requirements

Public consultation requirements have been strengthened by the adoption of Directive 2003/35/EC. The introduction of two categories defining 'the public' - namely 'the public' and 'the public concerned' - has given rise to some differences between Member States in their way of setting and applying these definitions. Whereas the definition of 'the public' seems to be quite uniform across all Member States there is variation in the way the definition of 'the public concerned' is defined and applied in national legislation. The majority of Member States have adopted a definition in national legislation similar to the definition in the Directive. A handful of Member States has not adopted any definition of 'the public concerned'; instead these Member States rely on convening the same rights to both categories. The definition of 'the public' does include both natural and legal persons in all Member States.

The general requirement of 'early and effective opportunities to participate' are interpreted by half of the Member States as allowing participation to take place in the scoping procedure. Some Member States that have not set the scoping phase as the relevant phase for introducing participation have chosen to allow participation already in the screening phase. Others have simply decided to allow participation when making the EIA report available to the public.

The Directive leaves discretion to Member States to set 'reasonable time frames' for participation. Most Member States have chosen to set forth defined time limits (often by way of minimum requirements) for participation. Other Member States have employed similar qualitatively defined criteria in legislation and thus leave it to the competent authority to decide what the 'reasonable time limit' is in individual cases. The Member States that have set a defined time limit in their legislation have chosen to set this time limit to vary from two weeks up to more than one month. In some Member States, the definition of the fixed time limit is related to the nature and size of the development application in question.

Access to review procedures

The introduction of requirements for a review procedure has led a majority of the Member States to introduce formal legislation granting access to review of decisions made by authorities. However, certain elements of access to review, such as access to review before a court of law, are in a number of Member States vested in court practices which has developed over time. The main differences between Member States in this respect are related to the extension of access to a review procedure as well as the grounds on which a decision may be challenged.

Access to challenge administrative decisions is in many Member States a right conferred to the individual and often ensured in a general act or may even be ensured in national Constitutions. The extension of access to review may differ between Member States. Most Member States allow for access to administrative review as well as judicial review (in courts). A handful of Member States only allows for judicial review, whereas other Member States also allow for an administrative review.

There are also quite substantial differences with regard to on what grounds access to review may be granted. In a few Member States access to review is granted in a broad and unrestricted sense (often called *actio popularis*), in other Member States it is based on the concept of impairment of a right accorded in law or practice and last but not least, in many Member States based on procedural rights.

The most common cases subjected to a review procedure reported by Member States seem to be related, at least to some extent, to the application of the EIA Directive. However, it must be emphasized that this picture is probably influenced by the fact that very large projects are often controversial projects/developments. The controversies maybe related to the development itself, but are often related to the fact that the application of an EIA procedure to the development did not take place or only took place in limited manner or without the required transparency in procedures.

Scoping

Explicit scoping procedures including public involvement are required in ten of twelve new Member States. The normal scoping procedure involves a draft scoping document drawn up by the developer, verified or validated by an independent and certified consultant and finally approved by the competent authority.

	<p>It is acknowledged in the majority of the new Member States that the involvement of both designated expertise within EIA and the public at large, in some Member States represented by a board of NGOs, provides an input that may be crucial in obtaining the proper quality of the resulting EIA report.</p>
Assessment of human health	<p>All new Member States have reported that assessment of effects on human health is an obligatory part of assessing the impacts on the environment of a proposed project. A few of the new Member States have even chosen to include representatives from National Health Authorities among the authorities that must be consulted as part of screening as well as scoping decisions.</p> <p>Whereas most of the new Member States rely on the inclusion of human health aspects through the procedural requirements, a few of the new Member States have issued more detailed requirements on the particular matters involved in assessing the impacts on human health. Only one of the new Member States has issued formal guidance documents providing methodologies and examples on how human health aspects are included in environmental assessment.</p>
Cumulative effects	<p>Most of the new Member States have experienced one or more EIA procedures in which cumulative effects of the proposed projects/developments were or became a problem that needed to be addressed. All new Member States report that prevailing legislation requires that cumulative effects are assessed when necessitated by the proposed development.</p> <p>Some new Member States suggest that the assessment of cumulative effects may be in need of more guidance, notwithstanding the fact that as late as in 1999 the EU Commission made a formal guidance document available on cumulative effects assessment. Other new Member States raise the question of lack of exchange of experiences - especially between the new Member States - on how to address cumulative effects in the assessment of development projects.</p>
Transboundary consultations	<p>Transboundary consultation is mentioned as a problematic area by many new Member States. The new Member States report that a substantial number of transboundary consultations take place, however, they also report that there are difficulties and obstacles in carrying out these consultations. The barriers relate to the differences between EIA procedures in Member States:</p> <ul style="list-style-type: none"> • Differences in when it is required that EIA is carried out; • Different time frames employed by either side in different EIA stages; • Language barriers, including the bearing of costs for translation. <p>Interestingly, none of the old Member States have raised significant issues with regard to transboundary consultations. A few remarks and recommendations have been made by old Member States indicating that experience with transboundary consultations eventually seems to overcome problems previously experienced.</p>

Quality control	<p>Several new Member States have reported that quality control of EIA reports may be a cause for concern. The new Member States generally report that quality assurance is an obligation of the competent authority. Only one Member State reports that they have drawn up formal guidelines for the purpose of ensuring a sufficient and available funding for the review of the quality of EIA reports. In some of the new Member States the accreditation of environmental expertise is employed as a means to ensure proper quality in assessments carried out.</p> <p>It is also clear from the input from Member States that some of them face challenges in assuring that quality in data employed in EIA reports is a cause for concern.</p>
Monitoring	<p>Member States have also commented on the lack of provisions in the EIA Directive supporting monitoring the predicted impacts of proposed developments. It seems logical to introduce a requirement to monitor impacts along the requirement set forth in Article 10 of the SEA Directive. This should ideally also provide authorities in Member States a sound basis for knowledge of the development of real-world impacts. This basis for knowledge should ideally be available as a yardstick for making more in-depth and experience-based assessments in later EIA procedures, and thereby influence the decisions of scoping in EIA-procedures in the future.</p>
Relationship between the EIA Directive and other EC Directives and policies	<p>Many Member States consider that they do not have sufficient experience to properly identify and assess any overlapping issues or the coordination of both processes. Where Member States do, they mainly use joint procedures or informal coordination in order to address practical issues of duplication and overlap. Recommendations made by Member States relate mainly to the consolidation of the EU legislation and the development of guidance documents, though reference is also made to further guidance and capacity building.</p> <p>The key provision relating to the relationship of EIA with the SEA Directive is Article 11(1) and (2) of SEA, which stipulates that Member States may provide for coordination and joint procedures in situations where an obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other Community legislation. One Member State expressly recommend consolidating the SEA and EIA Directive to clarify their relationship, ensure more consistency between both directives and harmonise key stages and elements of EIA and SEA. The Member States also ask for further guidance of the link between SEA and EIA in relation to certain project categories included in Annex II of the EIA Directive should also be specified (points 1(a), (b) and (g) and 10). One Member State recommends introducing a more precise definition of the term "setting the framework for future development consent of projects listed in Annex I and II to Directive 85/337/EEC".</p> <p>Regarding IPPC, very few Member States have established a single procedure as per Article 2(2) (a) for projects falling under both the EIA and IPPC Directive. Where there is no single procedure, Member States have often established a strong formal link as the EIA (including the results of public consultation) is part of the documentation submitted with the IPPC permit application, and</p>

must be taken into account when deciding whether to grant the permit. Some Member States ask to consider the harmonisation of the thresholds and criteria used to define projects subject to EIA and IPPC.

Last but not least, while the majority of the Member States recognise that climate change issues are assessed within the framework of EIA-procedures; this is mainly limited to consideration of green-house gas emissions, compliance with air quality standards and sometimes energy efficiency. Impacts on climate change are rarely subject to specific requirements. The consideration of guidance and/or assessment tools on the integration of climate change issues, focusing inter alia on projects for which these issues are particularly relevant is recommended by some Member States.

Desk search study

The findings of the desk research are primarily that EIA in the EU 27 seems to have come of age. Where literature and court practices in early years seem to have concentrated on childhood diseases related to the more simple matters of the Directive, such as, when a project proposal was to be made subject to an environmental assessment if the application was handed in the day before the EIA Directive entered into force, literature in particular seem to be more deeply investigating specific issues and angles of EIA in the EU.

Especially, the issue of public participation appears to be frequently debated in the international literature as are the benefits of participation and best practices for its execution. This trend in literature may be due to the fact that planners and environmental scientists seem to have found a ground in which common debate may be productive, and, furthermore, due to the fact that beyond mere adherence to "EIA technicalities" there is a challenge of making democracy work in regular and daily procedures.

The argumentative turn in environmental planning makes the EIA procedures the perfect ground for open dialogue and common concern - and suddenly, legitimacy in public decision-making is linked to the explicit assessment of *pros* and *cons* of a given development.

Literature is also focused on how EIA procedures may be geared towards the afterlife of projects, when emphasising monitoring and follow up of predictions. Monitoring and follow up not only seen as individual technical disciplines but also as necessary elements in bringing about more consensus and certainty in communities about what to expect from a development subjected to an EIA procedure.

Finally, systematic follow up of predictions and project monitoring may be the element that brings more robust and qualitatively improved decisions by simply leading to the employment of more experience based assessment methods.

The practice of the European Court of Justice (ECJ) in the period between 2003 and 2008 provides further understanding of the EIA Directive in specific directions. Some of the later decisions of the Court that shed light on one of the difficult aspects of the European Environmental Assessment system in general are the decisions in the Wells-case and the Abraham-case. How is the term 'devel-

opment consent' to be dealt with in the late-modern world, where boundaries between public and private are becoming more and more unclear, and where the original concept of development consent seems to be founded on an understanding stemming from a different regulatory situation. The deliberations of the Advocate General in the Abraham case seem to be the outset of a new understanding of what may be taken as development consent in the meaning of the EIA Directive. However, it is noted that the Court did not base its decision in the case on the specific deliberation of the Advocate General.

1.2 Recommendations

In the following sections, the recommendations of the study are presented. It should be emphasised that the recommendations are those of the Consultant and do not necessarily coincide with those of the EU Commission and the Member States. However, recommendations are based on a close reading of the Member States' answers to the Commission's questionnaire on the application and effectiveness of the EIA Directive.

There are a number of issues, where the Consultant has found that the implementation of the EIA Directive gives rise to problems. Furthermore, there are examples of good practices which are considered relevant to bring up for discussion at EU level.

It is important to note that the problems discussed and recommendations given in this chapter are related to the EIA Directive as such and not to problems in the national application of the EIA-Directive.

There are a number of "problematic areas" in the application of the EIA Directive, namely:

- Screening - inter alias, the use of thresholds
- Transboundary consultations - different procedures applied in the various Member States
- Quality control
- Monitoring

- Screening

Screening is still considered a problematic area in the EIA procedure. The problems are primarily focused on establishing an easily applicable mechanism for screening out very small developments. There are two directions for a recommendation for further considerations. These are

1. It seems relevant to investigate whether there is room for the introduction and application of a lower cut-off threshold below which the requirements of the EIA Directive are not relevant in individual cases.
2. A further investigation of applying thresholds in particular to Annex II activities should be given priority under some kind of qualification when viewed in the light of the provisions of the SEA Directive. Such qualifications may be:

- to allow for Annex II activities to be given consent without a prior project level assessment in development areas that have been subject to a prior SEA where:
 - the Annex II activity in question does not extend beyond the framework for environmental impacts assessed and accepted in the plan and in the prior undertaken SEA of that plan, and
 - where no supplementary environmental impacts are envisaged from allowing this activity or
- To allow for Annex II activities to be given consent on the basis of a simplified prior assessment procedure assessing possible residual impacts transcending the impacts envisaged in the SEA of that particular plan.

The latter could be restricted to only be allowed if it is the cumulative effects of allowing the development to take place that is needed.

Furthermore, it should be investigated whether more automatic screening procedures could be employed for certain types of installations. This could be relevant for activities for which significant environmental impacts are already known or are related primarily to one of the categories size, nature, and location.

Such activities could be made subject to an electronic application procedure in which the developer is urged to alter his choice of location, and/or size of installation, and/or choice of technology making it possible for the developer to choose the most environmentally friendly option and thereby avoid an EIA procedure. A path dependent electronic model is already developed for this purpose in some Member States that allows developers to make prudent choices on the basis of the guidance that is an inherent part of the electronic application scheme.

In Denmark, an electronic model has been developed for intensive animal farming projects in which the developer simply, by inserting required data in a calculation sheet, may get a clear picture of whether the proposed project will result in an EIA-procedure or not. The model even encourages developers to alter their entries for the purpose of trying out what particular elements in their projects that may be altered with the effect that an EIA procedure is no longer relevant.

It is noted that the Danish example has previously been reviewed by the European Commission and Member States and was found to be of limited applicability to the circumstances in other Member States. However, it could be argued that the idea of the model and its principles could be subject to further development in other Member States for the purpose of assessing the sustainability of idea and principles.

- Transboundary procedures

As for transboundary consultations it seems obvious that the problems related to these procedures are stemming from the fact that the EIA Directive leaves too much discretion to Member States in deciding when and how other Member States are involved in such procedures.

For this purpose, consideration may be given to alter the contents of requirements in Article 7 that to a large extent pre-empts Member State discretion and consider setting forth minimum requirements for when and how such consultations must take place. Furthermore, the text of the EIA Directive should set minimum time frames for such consultation and set the responsibility of providing information in the relevant language of the public to be consulted.

Besides the recommendation to strengthen the provision on transboundary consultation it could be considered, as a second option, to develop more practical guidance on the issues related to transboundary procedures. This guidance could be developed on the basis of limited 'trial runs' of model procedures in which the problems so far encountered are identified, discussed, and solved by the parties involved in such trial runs.

- Quality control

The lack of a requirement to undertake quality control of EIA reports makes the quality of reports uneven and may lead to the granting of development consent on the basis of inadequate information available to decision makers. It seems obvious that some kind of quality control is needed in order to provide for a consistent and qualitative body of information.

Many Member States point to the fact that lack of sufficient quality in data employed in EIA reports is a problem. In most cases the quality of EIA reports rests on the assumption that the legal requirements to decision-making in granting development consent is indirectly the assurance that the EIA report is of a sufficient quality. Given that both the EU and international experts within EIA/SEA have developed packages for the review of quality in EIAs, it seems only logical to consider introducing a requirement to undertake continuous quality control as part of drawing up the EIA report.

There may be several ways of ensuring proper control of quality of EIA reports. One could be to require the accreditation of authorities or consultants that undertake this work; another could be to require a formal review of the quality of the environmental report. This quality review could then be submitted to a requirement of being published simultaneously with the publication of the environmental report itself. This could be combined with the requirement of having an independent reviewer carrying out the review.

- Monitoring

Monitoring of impacts predicted in EIA reports seem to be relevant not only to ensure that the impacts from projects that are given development consent are continuously monitored as part of the permit, but also relevant to a further qualification and the basis for gaining experience in which methods are sufficiently robust to predict actual impacts from future projects.

Given, that the basic idea of carrying out EIA procedures is to prevent environmental impacts from arising in the first instance, it would only seem logical that some kind of verification of whether the predictions of these impacts were true is established.

Monitoring requirements may be set forth in several ways; one simple way could be to introduce a requirement to monitor the predicted impacts in the same manner as required in Article 10 of the SEA Directive. Another and more advanced way of setting forth this requirement would be to coordinate the requirement with other directives such as the IPPC Directive. However, this would then require that monitoring obligations were separately required for those projects that are not covered by the requirements of the IPPC Directive.

It is therefore recommended that further consideration should be given to whether such requirements should be made part of the EIA Directive or whether it should be set forth as a more detailed co-ordination requirement with e.g. the IPPC Directive. Given that the IPPC Directive does not cover all the project activities of the EIA Directive it is likely that a co-ordination mechanism would not sufficiently cover the needs for a comprehensive monitoring requirement.

- Other possible amendments to the Directive

It is recommended that the European Commission investigates possible amendments of the EIA Directive in regard to Article 6 (6) of the EIA Directive - reasonable time-frames for public consultations.

This is, at the end of the day, a national issue. However, it may be relevant to consider whether, in addition to the general phrasing in Article 6(6) of the Directive "reasonable time-frames", to make provisions related to a minimum time-frame.

Regulatory simplification

One way of achieving regulatory simplification would be to consider consolidating the EIA and SEA Directives for the purpose of clarifying their interrelationship, to ensure more consistency between both pieces of legislation and to harmonise the key stages and elements of EIA and SEA. Key stages and elements would include the examination of reasonable alternatives as mandatory; establishing of monitoring measures as part of the environmental information; and efficient integration of quality management elements and reviews of the environmental information. The consolidation of the Directives should also take into consideration the specificities of each process, as these are related but complementary processes that should not be directly linked. Therefore, the harmonisation of both procedures should not lead to a full harmonisation of their requirements. In particular, the scale and level of details should be adapted to the "object" of the assessment.

It should be mentioned that the majority of Member States do not consider a simple consolidation of the two Directives necessary or wanted. This view was elaborated at the meeting of national EIA and SEA experts in Paris, France, 16 - 17 October 2008.

Furthermore, following in this line of thinking, the Commission could on one hand, consider whether in the future there at all is a need to have a two-directives based environmental assessment system within the EU. By merging the two Directives into one some of the co-ordination issues may be avoided,

however, one should not be blind to the fact that other co-ordination issues may still prevail and new ones will probably arise. This should, however, not be an obstacle to proceed in investigating whether the benefits of merging the two Directives into one will outweigh the drawbacks. However, on the other hand, Member States' experiences in applying the SEA Directive are limited and it should be recognised that the consideration of merging the two directives at this point may be premature.

The latest practice from the European Court of Justice in relation to the EIA Directive seems to suggest that gaps and overlaps between the legal boundaries of the EIA Directive and the SEA Directive calls for an investigation of the boundaries between the two Directives.

In the light of the close relationship between the SEA and the EIA Directive it should be considered whether there is a need to bind the application of the SEA Directive so closely to the development consent of projects listed in the annexes in the EIA Directive. And if this is still considered to be the best way to define the application of the SEA Directive why not seek to harmonise the common application of the two directives in a more detailed manner, as e.g. proposed under the screening section, and thereby harvest a considerable benefit from drawing this relationship up in a more co-ordinated manner.

Scoping

Member States that provide for public consultation in the scoping stage, stress the benefit of such a system in the considerable improvement of the quality of the documentation to be produced by the developer. It is interesting to note that these Member States mean that, by allowing public consultation already in the scoping stage, they also fulfill the requirement of the Directive for "early and effective public consultation". Consideration may therefore be given to legislating for this requirement in the EIA Directive instead of simply relying on the Member States to put this into effect.

- Other means of ensuring effectiveness in application

Further guidance

There is evidence that there is a need for further guidance in some Member States. However, Member States disagree as to the extent to which and in what areas this is needed. It is therefore recommended that Member States in cooperation with the Commission discuss the possibilities that would allow for different needs in Member States to be fulfilled.

Further guidance could materialise through development of new guidance documents or by update / extension of the existing EIA Guidance. Member States should discuss among themselves on which issues further guidance is needed and on what level these should be developed - whether at EU or at national level.

Further need for EIA guidance has been suggested by Member States on the following issues:

- Guidance on the assessment of the impacts on human health.
- Guidance on how to address the issue of "salami-slicing".
- Guidance on how to address the issue of cumulative effects of projects.
- Guidance and/or assessment tools on the integration of climate change issues, focusing *inter alia* on projects for which these issues are particularly relevant.
- Guidance on the link between SEA and EIA in relation to certain project categories included in Annex II of the EIA Directive (points 1(a), (b) and (g) and 10)). The introduction of a more precise definition of the term "setting the framework for future development consent of projects listed in Annex I and II to Directive 85/337/EEC" should also be considered.

Dissemination of best practices

Member States underline the need for continuous updating and for sharing best practice between Member State representatives. Specifically, new Member States addressed the usefulness of further exchange of information on experiences and best practice among the Member States.

It is further recommended to establish forums for knowledge sharing between Member States on national application of the EIA Directive requirements. This could be by way of seminars, workshops, etc.

2 Introduction

2.1 Objectives

Objective of the study

The purpose of this study is to provide the Commission with a clear, accurate, and complete overview of the application and effectiveness of the Council Directive 85/337/EEC³ on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC⁴ and Directive 2003/35/EC⁵ (hereinafter, the EIA Directive) in the 27 EU Member States and to provide recommendations, where relevant, for improvements of the functioning of the EIA Directive. This also includes possible amendments to the EIA Directive, in order for the Directive to be applied in an effective and coordinated manner across the 27 EU Member States.

It is emphasized that this review is a report on the application and effectiveness of the EIA Directive rather than a conformity study. Thus, this study does not present an analysis on the transposition of the EIA Directive. Rather, this study concerns the effectiveness and the actual implementation of the EIA Directive and possible strengths and drawbacks reported from the application of the requirements in Member States.

Context and previous studies

The review is carried out under the requirements in Article 11(1) and (4) of the EIA Directive. According to Article 11(1), the Member States and the Commission shall exchange information of the experience gained in applying the EIA Directive. Article 11(4) of the EIA Directive provides that the Commission shall submit to the Council additional proposals, should this be necessary, with a view to the Directive being applied in a sufficient coordinated manner. The first review of the EIA Directive, 85/337/EEC, was published in 1993, followed by updates and revisions of this report in 1997 and 2003. Parts of the current review are based directly upon the findings of the 2003 five year report, addressing main problems in the application and implementation of the EIA Directive. This study will serve as a basis for the Commission's work on the future possible amendments and/or revisions introduced to the EIA Directive.

The factual situation that specifically has been dealt with in this context is that 12 new Member States have entered the European Union, since the last five

³ OJ L 175, 5.7. 1985, p. 40.

⁴ OJ L 73, 14.3. 1997, p. 5.

⁵ OJ L 156, 25.6.2003, p.17.

year report (2003). Against this background, this study is to a large extent directed towards reporting on the formal implementation of the EIA Directive in all Member States as well as on the existence of basic elements in national EIA systems in the new Member States.

More specifically, the study has been designed to:

1) Provide relevant details of national EIA systems focusing on the extent to which national systems apply specific amendments of the Directive 2003/35/EC:

- Definition of 'the public' and 'the public concerned';
- Provisions for national defence;
- Strengthened public consultation provisions;
- New provisions on public access to a review procedure;
- Information on the public participation process within the information provided to the public in the final decision;
- Changes or extensions of Annex I projects and other modifications of Annex I projects and modifications of Annex II projects.

2) Address developments in national EIA systems in the old Member States since the last review report (2003)), including:

- New amendments and the reasons for their introduction;
- Exemptions, if any, and their justification, provided for by Article 2(3);
- The performance of a Member State with regard to the EIA problem areas identified in the last Five year report (2003);
- Cases of Article 7 related to transboundary EIAs;
- Major EIA complaints and law cases brought before national institutions and courts;
- Benefits of the EIA system;
- The use of the EC EIA guidance and further recommendations;
- New national/regional EIA guidance.

3) In particular for the new Member States, provide an overview of a number of key issues in the new Member States (issues that have been dealt with for the old Member States in previous five year review reports):

- Screening, scoping, cumulative effects from projects, transboundary impacts and consultations, quality control systems for the EIA, alternatives;
- Changes and extension of projects and 'salami slicing';
- The impact of EIA on the development decisions;
- Application of Art. 2(3) and cases of Article 7 related to transboundary EIAs;
- Major EIA complaints and law cases brought before national institutions and courts;
- Benefits of the EIA system;
- The use of EC EIA guidance and further recommendations, new national/regional EIA guidance.

4) Explore the relationship of the EIA Directive with other Community policies and legislation, in particular:

- The SEA Directive (Council Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment);
- The EU Action Plan "Halting the loss of biodiversity by 2010 - and beyond" and its specific actions and targets concerning EIA;
- The Habitats Directive (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora);
- The Integrated Pollution Prevention and Control Directive (Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control), as amended;
- Large Combustion Plants Directive (Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants).

The study reports recommendations proposed by Member States - where available - and also provides the recommendations of the Consultant.

Organisation of the study

The study has been carried out by COWI A/S in association with Milieu Ltd. The study was carried out between December 2007 and November 2008.

Disclaimer

The study presents the views of the Consultant and does not necessarily coincide with those of the EU Commission or the 27 EU Member States subject to the Study.

2.2 Methodology

Methodology

The study implementation has been made up of five main tasks, and supplemented by specific reporting activities:

Task 1: Review of responses to the EU Commission's questionnaires on the application and effectiveness of the EIA Directive;

Task 2: A desktop literature search study of existing relevant EIA studies, reports and analyses, including internal EC documents, addressing issues related to the implementation and effectiveness of the EIA Directive and completed in the period 2002 - 2007 and of the European Court of Justice (ECJ) practice on EIA;

Task 3: Review of specific country data collected by local consultants - including relevant legislation and information on the institutional arrangements related to EIA in the Member States as well as the actual application and implementation of the EIA Directive in the Member States (content, processes, pro-

cedures, effectiveness, and the relationship with other European Union legislation)⁶;

Task 4: Cross-country analysis; based on an approach containing:

- comparison of answers from Member States and information gathered by local consultants,
- identification of characteristic trends, and
- general synthesis of strengths and drawbacks reported

Task 5: Final reporting.

The draft final report of this study has been subject to consultation in Member States and was discussed at the meeting of the EIA/SEA working group set up under the EU Commission, DG Environment in Paris, October 2008.

Information sources consulted

The report is based on a variety of sources of information.

The primary source of information is Member States' responses to the questionnaires⁷ prepared and distributed by the EU Commission on the application and effectiveness of the EIA Directive end 2007. The questionnaires were addressed to national EIA focal points in all 27 EU Member States.

Questionnaire responses for all 27 EU Member States have been received.

Another important source of information is country specific information collected by the Consultant's own network of local consultants in Member States - in the report referred to as *local consultants*. The purpose of this information was to provide a more detailed picture of the functioning of the national EIA system and to evaluate and consolidate answers provided in responses from Member States to the Commission's questionnaires. The task was primarily a task of reviewing information in the questionnaire responses and of adding details, as necessary, in order to nuance and complete the description where relevant.

⁶ In the case of Poland, the introduction of new legislation (Act of 3 October 2008 on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment) which entered into force on 15th of November 2008 and changed the national EIA system, are not reflected in the current report, as these changes were introduced after the termination of the collection of information on the national EIA systems.

⁷ Two different questionnaires were distributed by the EU Commission - one for the old Member States and one for the new Member States. The one for the new Member States was more comprehensive as the Commission already has detailed information on many aspects of the EIA systems in the old Member States. The questionnaire for the old Member States, as stated in the introduction to the questionnaire, serves to complement the questions included in the questionnaire developed for the 2003 Five Year Report, thus reflecting the main findings and shortcoming of the EIA as concluded in the Report.

It should be noted that the issues listed in the TOR to be addressed in this study and the questions posed in the Commission's questionnaires do not always correspond. The Consultant has taken a point of departure in Member States' answers to the Commission's questionnaires to the extent possible. Where the study reports on issues which Member States have not been asked to consider in the questionnaires, the Consultant has had to take a point of departure in the information provided by the local consultants. The source of information is explicitly highlighted in the text.

In addition, the study has been informed by a comprehensive literature search study identifying the issues addressed in EIA literature. This information has been gathered for the purpose of further qualifying findings and views of the Consultant and substantiating findings and conclusion of the study. Key sources consulted are:

- Journal of Environmental Law (2005 -), Oxford University Press;
- International Environmental Law Reports (2005);
- Working documents of the EIA Reflection Group in 2005.⁸

A list of literature reviewed for the desk search study is enclosed in Annex III.

Another important information source is the Study on access to justice⁹.

Finally, national legal documents and guidelines have been explored for the purpose of further exploring how the EIA Directive is applied in Member States and for the purpose of identifying good practice employed in some Member States that may provide an inspiration to other Member States.

Where necessary, sources of information are clearly identified and distinguished in the report.

Organisation of the study

The study has been carried out by COWI A/S in association with Milieu Ltd. The study was carried out between December 2007 and December 2008.

The study presents the views of the Consultant and does not necessarily coincide with the views of the EU Commission or the 27 EU Member States subject to the study.

Structure of the report

After this introductory chapter, a short history of the EIA Directive is presented in Chapter 2.

Findings of the EIA desk search study on literature and jurisdiction of the European Court of Justice are presented in Chapter 3.

⁸ The results of the work of this group have not been published.

⁹ "Inventory of EU Member States' measures on access to justice in environmental matters", 2007, p. 4. The Study includes 25 country reports and a summary report. http://ec.europa.eu/environment/aarhus/study_access.htm.

Chapter 4 describes changes in the national EIA systems following amendments of Directive 2003/35/EC. The following issues are analysed: Definition of 'the public' and 'the public concerned'; provisions for national defence; strengthened public consultation provisions; new provisions on public access to a review procedure; information on the public participation process within the information provided to the public on the final decision; changes or extensions of annex I projects and other modifications of annex I projects and modifications of annex II projects; and other important considerations.

Chapter 5 illustrates new developments in the EIA systems in the old Member States. The discussion takes place around the following issues: new amendments and the reasons for their introduction; exemptions (if any) and their justification provided for by Article 2(3); the performance of Member States with regard to the EIA problem areas identified in the 2003 Review; cases of Article 7 related to transboundary EIAs; major EIA complaints and law cases brought before national institutions and courts; benefits of the EIA system; the use of the EC EIA guidance and further recommendations; new national/regional EIA guidance.

An overview of the EIA system in the new Member States is presented in Chapter 6. The chapter includes the following elements: Screening; scoping; cumulative effects from projects/effects; transboundary impacts and consultations; quality control systems for the EIA; alternatives; change and extension of projects; provisions in the national legislation to prevent developers from splitting projects into smaller ones to avoid an EIA ("salami-slicing"); the impact of EIA on development decisions; application of Art 2(3); cases of article 7 related to transboundary EIAs; major EIA complaints and law cases brought before national institutions and courts; benefits of the EIA system; the use of the EC EIA guidance and further recommendations; new national/regional EIA guidance.

The relationship of the EIA Directive with relevant Community policies and other Directives (the SEA Directive, the EU Action Plan "Halting the loss of biodiversity by 2010 - and beyond and its specific actions and targets concerning EIA", the Habitats Directive¹⁰, the IPPC Directive¹¹ and the LCP Directive¹²) is presented in Chapter 7.

Chapter 8 presents the findings and recommendations of the study.

The report contains five appendices. Appendix I contains the list of literature studied for the purpose of this study. Appendix II contains a list of stakeholders consulted for the purpose of this study. Appendix III contains an overview of literature consulted for the desk search study presented in chapter 3 and Appendix IV presents an overview of ECJ cases related to the EIA Directive. Fi-

¹⁰ Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora

¹¹ Council Directive 96/61/EC concerning integrated pollution prevention and control,

¹² Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants

nally, Appendix V contains the EU Commission's questionnaires on the application and effectiveness of the EIA Directive distributed to 'old' and 'new' Member States.

3 Short history of the EIA Directive

3.1 Introduction

The purpose of an environmental impact assessment (EIA) is to introduce the consideration for environmental matters and management of natural resources in decision-making through a formal process of consultation.

The EIA-procedure provides decision-makers with information on the environmental impacts of a proposed project and, where necessary, the relevant alternatives. The EIA-procedure is intended to influence decision making by requiring that the information set forth in EIA reports are taken into consideration. The EIA-procedure also provides a mechanism for ensuring the participation of potentially affected persons in the decision-making procedure.

Council Directive 85/337/EEC was the first European Community wide instrument to provide details on the nature and scope of environmental assessment, its use and participation rights in the process. The origins of the 1985 Directive lay in the EEC's 1973 First Environmental Action Programme, which identified the need to implement procedures to evaluate the environmental effects of certain activities at the earliest possible stage.

3.2 Amendments to Directive 85/337/EEC

Directive 85/337/EEC was subsequently amended by Directive 97/11/EC and Directive 2003/35/EC.

Directive 97/11/EC

Directive 97/11/EC introduced changes to Directive 1985/337/EEC in line with the wider development of the environmental policies of the European Community and the results of the five year reviews of the operation of the Directive and consolidated the changes and clarifications provided by the Espoo Convention and the rulings of the ECJ.

The table below provides an overview of the changes introduced by Directive 97/11/EC.

Table 3.1: Overview of changes introduced by Directive 97/11/EC¹³

The sources for the amendments made by Directive 97/11/EC		
Source	Issue	Amendment in 97/11/EC
1993 Review	Project authorisation	Article 2 amended requiring all projects subject to EIA to require development consent
1993 Review	Screening	Article 4(2), Annex III
1993 Review	Information	Article 3, Article 5(2)
Espoo Convention	Project Types	Additional projects added to Annex I and other projects moved from Annex II to Annex I
Espoo Convention	Consultation on trans-boundary impacts	Articles 7 and 9 amended
Directives 79/409/EEC and 92/43/EEC	Special protection areas	Impact on areas designated under the Directives included in Annex III
Directive 96/61/EC	Overlap of Directive project types	Article 2(a), Annex II
C-431/92 Grosskrotzenburg case, C-133/94, C-133/94 Commission v Belgium & C-72/95 Dutch Dykes case	Limitation on Member State discretion to set thresholds	Article 4(3), Annex III
C-431/92 Grosskrotzenburg case & C-72/95 Dutch Dykes case	Changes and Extensions	Changes and extensions to Annex I and Annex II projects inserted into Annex II
C-392/96 Commission v Ireland	Salami slicing	Accumulation with other projects included in Annex III screening criteria

Directive 2003/35/EC

The main changes introduced by Directive 2003/35/EC relate to the legal commitments arising from the UNECE Aarhus Convention¹⁴ combined with a general strengthening of some of the detailed requirements in the Directive.

The main changes introduced by Directive 2003/35/EC are:

- Definition of 'the public' and 'the public concerned' (new Article 1(2));

¹³ "On the Application and Effectiveness of the EIA Directive (Directive 85/337/EEC as amended by Directive 97/11/EC) - How successful are the Member States in the implementation of the EI Directive, Report from the Commission to the European Parliament and the Council, 2003, p. 27-28

¹⁴ The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

- Option to include provisions in national law exempting national defence projects from EIA now only allowed on a case-by-case basis (new Article 1(4));
- Strengthened public consultation provision: Early in the decision-making procedure, detailed list of information to be provided, reasonable time frames (new Articles 6(2) and (3));
- New provisions on public access to a review procedure (Article 10(a));
- Information on the public participation process within the information provided on the final decision (Article 9(1));
- Changes or extensions of Annex I projects and other modifications of Annex I projects and modifications of Annex II projects.

Commission Guidelines

The wording of the EIA Directive leaves a margin of interpretation to the Member States as regards a number of provisions of the Directive. No general guidance document on the implementation of the EIA Directive has been prepared. The Commission has, however, published a number of guidance documents on the interpretation of specific elements of the EIA Directive. The following guidance documents are available at the Commission's homepage:

- Clarification of the application of Article 2(3) of the EIA Directive;
- EIA - Guidance on Screening - 2001 (incl. Screening checklist);
- EIA - Guidance on Scoping - 2001;
- EIA Review Check List - 2001;
- Guidelines on the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions.

Furthermore, the interpretation of the EIA Directive has been subject to review by the European Court of Justice in a number of instances. The most recent case-law is presented in Chapter 3.4.

3.3 Key findings of the 2003 'Five Years Report'

As mentioned, the first review of the EIA Directive was published in 1993, followed by updates of this report in 1997 and 2003.

The 2003 Five Year Report concluded that, for the most part, the main problem concerned the application and implementation of the EIA Directive and not the transposition of the legal requirements of the Directive.

The 2003 Five Year Report examined key areas of the operation of the EIA Directive including screening, scoping, review and decision-making. The Report, furthermore, examined the arrangements made by the 15 Member States for dealing with key EIA issues such as the consideration of alternatives, public participation and quality control.

Shortcomings

The 2003 review identified a number of shortcomings, including:

- The unsystematic "screening" of Annex II projects (i.e. the process of determining whether a project is likely to have a significant impact on the environment);
- Wide variation between Member States in the criteria for "screening". This means that a certain project would be subject to an EIA in one Member State but not in another Member State;
- Poor "scoping": "Scoping" is the process of identifying the content of environmental report;
- Lack of regard for cumulative effects with other projects. Clear and comprehensive guidance for developers and others appears to be lacking in most Member States;
- Processing of transboundary EIAs: Need for more formal and informal arrangements for consultation;
- Poor quality control systems for the EIA processes. Setting quality control systems is not an obligation deriving from the Directive itself but it is left to the Member States. However, it is a good practice, especially where a project is co-financed by the European Community;
- Variations between Member States in the number of EIAs carried out;
- Results of EIA are poorly reflected in development decisions.

The main finding of the review was that further amendments to the EIA Directive were not directly required, since a large number of the findings were related to poor implementation rather than related to an incomplete or unclear legal framework.

The present study follows up specifically on the above-mentioned issues and the implementation hereof in the old Member States as well as provides an overview of the situation in the new Member States.

4 Findings of the desk search study

4.1 Introduction

The desk search study addresses relevant literature such as EIA studies, reports and analyses completed in the period 2003-2007. Furthermore, the desk search study also covers the latest jurisprudence of the ECJ related to the interpretation of the transposition, implementation, and application of the EIA Directive in Member States. Please, refer to appendix III for a list of literature screened for the desk search study and appendix IV for a list of ECJ cases considered.

The purpose of conducting the literature search is to bring about an informed basis for the analyses of the application and effectiveness of the EIA Directive in Member States. The survey of literature will analyse the documentation and identify:

- Characteristic trends in reports;
- Shortcomings in the transposition of the legal requirements of the Directive outlined in previous studies - how and whether these have been solved, to the extent such information is available;
- Any other issues emerging as a result of the implementation process.

The analyses of the latest jurisprudence of the ECJ is aimed at extracting interpretations of the EIA Directive that sheds light on how requirements of the EIA Directive may be interpreted. The Court practices that are researched stem from 2003 and onwards.

4.2 Methodology

The method used for conducting the literature search of existing relevant EIA studies, reports and analyses consists of desk research in Commission Reports, IAIA¹⁵ international periodicals, such as the Journal of the IAIA Impact Assessment and Project Appraisal, the Journal of Environmental Assessment Policy and Management as well as of EC's internal documents, provided by the Commission. Furthermore, the following sources have been screened:

- Journal of Environmental Law (2005-2007), Oxford University Press;

¹⁵ International Association of Impact Assessment

- International Environmental Law Reports (2005-2007);
- The work of the EIA Reflection Group in 2005¹⁶.

These sources have been searched for relevant material on the implementation, effectiveness and application of the EIA Directive in the European Member States in order to establish the characteristic trends of the effectiveness and application of the Directive.

4.3 Trends and characteristics

The overall trends in the literature search of existing relevant EIA studies, reports and analyses completed in the period 2002 - 2007 reveal that a few items may be highlighted as common themes. These are:

- EIA follow up and the impact of EIA procedures on the subsequent consent procedures and conditions adhered to consent;
- The impact/benefit of public participation in EIA procedures.

A more general theme is touched upon in several articles, namely:

- The effectiveness of EIA procedures.

4.3.1 The function of EIA

A Danish study¹⁷ published during the last five years reveals that on one hand, the screening mechanism of the EIA procedure in itself seems to have a positive effect on projects that are screened out of the EIA procedure. On the other hand, the study reveals that the approach to the concept of 'environment' still lacks a sufficient broad anchoring in the approach to the definition of environmental impacts.

The study examined a vast number of screening decisions searching for data on whether the applicant did in fact change his/her project in the light of *screening requirements*. The study found that a majority of the projects were in fact changed already prior to the screening procedure for the purpose of avoiding the project being subjected to the EIA procedure as a result of a screening decision. Thereby documentation is produced that even the screening procedure in itself may have environmental protection as a built-in feature regardless of whether screening results in a negative declaration or not.

The study, furthermore, examined whether the broad concept of environment was employed in procedures. The study found that this is still an unsolved issue in the sense that the concept of environment too often is taken to mean air, water and soil.

¹⁶ This group was established by Member States' representatives in 2004.

¹⁷ Holm Nielsen, et al. in Journal of Environmental Policy, Assessment, and Management, vol. 7 no. 1 March 2005.

4.3.2 Follow up and monitoring

The focus on follow up and monitoring in EIA procedures is not a new one but perhaps an issue that has not received so much attention, because it focuses on matters related to the lifecycle of projects, that are assessed in EIA procedures, which is in the "afterlife" of the EIA procedure.

The trend in follow-up and monitoring literature takes up several issues related to follow-up and monitoring ranging from the benefit from applying stricter follow-up practices as a mean of supporting participation by increasing the legitimacy to analyses of the themes included and excluded in follow-up practices.

One of the issues highlighted in several articles is the inclusion of monitoring requirements in EIA procedures, especially focusing on whether monitoring is in fact a part of EIA or whether monitoring is a "stranger" within EIA in the European context. A Finnish study¹⁸ designed to investigate the role of monitoring in a road EIA procedure finds that monitoring is not perceived as important in EIA. Furthermore, the author finds that monitoring as a tool for controlling the quality of the predictions in EIA, is not even found useful in that aspect, although it is probably one of the few ways of providing evidence that predictions were correct and robust in individual EIA procedures. Monitoring is thus taken to be one of the best ways of ensuring the future quality of EIAs when used as the basis for systematic collection and processing of data over time.

In a joint Dutch/Australian editorial foreword to a thematic issue on EIA follow-up¹⁹, it is found that follow-up is first and foremost focused on biophysical impacts of developments assessed in EIAs. This may be due to the fact that indicators for these impacts are often well-known and documented. In contrast to this finding, the study finds that follow-up of socio-economic impacts is superficial and the attention given to this type of impact is even not given much attention in the pre-decision stage of procedures. Furthermore, where socio-economic impacts are assessed, it is most often only first order impacts. It is the conclusion of the study that more emphasis given to socio-economic impacts in decision-making and follow-up might be the way to broader acceptance and support of development projects.

In a final article on EIA follow-up in the IAPA thematic issue follow-up is linked to control, compliance, and enforcement and is theoretically and practically taken to be one element in ensuring that uncertainty about the future development is reduced, predictions verified and decision-making improved. These findings are of course logical consequences of a system where prior assessment of potential future impacts are being coupled to concrete evaluation of the impacts in fact - rather than as a potential future.

¹⁸ Petäjäjärvi, Reima, IAPA vol. 23, no. 3, Sept. 2005, pp 234-240.

¹⁹ IAPA vol. 23, no. 3, Sept. 2005, pp 170-174

The relevance of monitoring to the European EIA situation may seem limited in the sense that the EIA Directive is quite silent on requirements of monitoring. Instead the approach has been to allocate monitoring requirements in other environmental directives such as the Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC). However, it must be mentioned that the IPPC Directive only covers a partial amount of the project types covered by the EIA Directive.

4.3.3 Public participation in EIA

Studies of public participation in environmental assessment (EA) have been published during the last eight to ten years covering both theoretical and practical aspects²⁰. Public participation studies within EIA do to a certain extent represent a different approach to EIA than the technically-oriented studies. In most public participation studies the outset is to investigate issues such as legitimacy, channels of influence, transparency, etc.

One reason why EIA is accessible to this more democracy-oriented thematic is related to what may be characterised as the "argumentative turn" in public authorities' decision-making. The fact that EIA and its employment of the concept of significance as a central issue makes it open to interpretation by virtually anybody.

Among researchers and theoreticians EIA is viewed as a specific and detailed regulated framework allowing the public to influence decisions taken by public authorities.

4.3.4 Costs of EIA

The EU Commission's DG Enterprise commissioned a study evaluating the EIA Directive in 2006²¹. The study was set to identify and quantify - where possible - the potential burden on enterprises and taxpayers of the EIA Directive and amendments.

The key findings of the study are that:

- The number of EIAs are increasing in all Member States;
- As a share of project costs, EIAs tend to range from an upper range of 1% for smaller projects down to 0.1% for larger projects.

It is important to note that the study by DG Enterprise is based on the analysis of the application of the EIA regime only in the Member States with the most

²⁰ Palerm in Journal of Environmental Policy, Assessment, and Management, Vol. 1, no. 2 Kjellerup in EIA Review, vol. 19. Robinson and Bond in Journal of Environmental Policy, Assessment, and Management.

²¹ DG Enterprise and Industry: Evaluation of EU legislation - Directive 85/337/EEC (Environmental Impact Assessment, EIA) and associated amendments - carried out by GHK-Technopolis

developed EIA system (typically, it is the old Member States). Therefore, the findings of the study only reflect the picture in old Member States and no general conclusions may be drawn.

In this analysis of the transposition of the EIA Directive²² it is observed that Member States seem to be "gold plating" the EIA system in national rules by adding more projects to their list in annexes than required in the EIA Directive. This is done by either moving Annex II projects in the Directive into Annex I list in national legislation or by lowering the thresholds for mandatory EIA projects in Annex I compared to the threshold of the corresponding project type in the EIA Directive.

4.4 The European Court of Justice practice on EIA

Interpretation of the legal requirements in the EIA Directive is a privilege vested in the European Court of Justice (ECJ), according to Article 220 of the EU Treaty. The ECJ has taken a number of decisions interpreting the EIA Directive in the period 2003-2008. The decisions taken are to a certain extent echoes of a previously established practice, however, in some cases the new setting of a case may shed new light on an otherwise previously adopted interpretation by the Court.

In its rulings, the Court has consistently emphasized and interpreted the following issues:

- The EIA Directive has a wide scope and a broad purpose;
- Member States' discretion is limited;
- The likely environmental effects of proposed projects;
- Exemptions to be interpreted narrowly;
- Exclusion of 'salami-slicing' of projects;
- Inconsistencies in the different languages.

The ECJ cases selected in this section are cases that add further detail to the already established jurisprudence of the court. A case may add further detail to the established jurisprudence by either contribute to interpretation of an article in the Directive that was not subjected to a case at the ECJ before, or it may add new details to the interpretation of an article already subjected to interpretation by the ECJ. Each case is not commented in its totality of issues raised before the ECJ, but is instead commented on issues that have the most significant contribution to the collected EIA Directive related jurisprudence of the ECJ.

Many court cases interpreting the EIA Directive are focused on interpreting the mechanism of screening in Article 4(2) of the amended Directive. There are also quite an extensive number of cases addressing the interpretation of the An-

²² DG Enterprise and Industry: Evaluation of EU legislation - Directive 85/337/EEC (Environmental Impact Assessment, EIA) and associated amendments - carried out by GHK-Technopolis.

nex I and II project categories as well as the concept of 'the development consent'.

These issues raised in the cases are described in the following.

The problem of interpreting the margin of discretion accorded to Member States under Article 4(2) of the Directive was frequently challenged in court proceedings in the aftermath of the entry into force of Directive 97/11/EC - because this Directive contained more detailed rules of how this discretion may be interpreted as compared to Directive 85/337/EEC. However, it must be emphasized that the basic nature of the obligation under Article 4(2) was not altered from Directive 85/337/EEC by the adoption of Directive 97/11/EC.

Projects listed in Annex II of the Directive must be made subject to an assessment in accordance with Article 4(2) of the Directive, and cannot be exempted - as a rule - from the obligation of a case-by-case examination of whether an assessment is required - as set forth in Article 4(2) of the Directive - in national legislation. The discretion accorded to Member States in Article 4(2) of the Directive is thus the discretion to decide how and under what circumstances/criteria such a screening assessment may be carried out.

Case C-87/02 -
Commission v. Italy

In case C-87/02 - Commission v. Italy (decision of the Court in 2004), the Court stated that:

"...the fact that the Member State has discretion is not in itself sufficient to exclude a given project from the assessment procedure under the directive. If that were not the case, the discretion accorded to the Member States by Article 4(2) of the directive could be used by them to take a particular project outside the assessment obligation when, by virtue of its nature, size or location, it could have significant environmental effects.

Consequently, whatever the method adopted by a Member State to determine whether or not a specific project needs to be assessed, be it by legislative designation or following an individual examination of the project, the method adopted must not undermine the objective of the directive, which is that no project likely to have significant effects on the environment, within the meaning of the directive, should be exempt from assessment, unless the specific project excluded could, on the basis of a comprehensive screening, be regarded as not likely to have such effects.

In that regard, a decision by which the national competent authority takes the view that a project's characteristics do not require it to be subjected to an assessment of its effects on the environment must contain or be accompanied by all the information that makes it possible to check that it is based on adequate screening, carried out in accordance with the requirements of Directive 85/337".

Case 121/03 - Commission v. Spain

In case 121/03 - Commission v. Spain, the court held:

"Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, provides that the Member States are to determine through a case by case examination or thresholds or criteria which they set, whether the projects listed in Annex II to that directive should be made subject to an impact assessment. That provision has, in essence, the same scope as that of Article 4(2) of Directive 85/337, in its original version. It does not alter the general rule, set out in Article 2(1) of that directive that projects likely to have significant effects on the environment, by virtue, inter alia, of their nature, size or location, are to be made subject to an assessment of their effects on the environment".

The issue of interpretation of Annex I and II categories of projects has been raised in the cases described below.

Case C-142/07 *Eco-logistas en Acción-CODA*

The question of application of the EIA Directive to the M-30 ring-road and urban project was raised in a preliminary ruling from the Court of Madrid (Spain). The ECJ underlined that Directive 85/337/EEC (as amended) "...must be interpreted as meaning that it provides for environmental impact assessment of refurbishment and improvement projects for urban roads, either where they are projects covered by point 7(b) or (c) of Annex I to the directive, or where they are projects covered by point 10(e) of Annex II or the first indent of point 13 thereof, which are likely, by virtue of their nature, size or location and, if appropriate, having regard to their interaction with other projects, to have significant effects on the environment".

Case C-156/07 *Salvatore Aiello and Others*

In case C-156/07 *Salvatore Aiello and others*, the ECJ confirms the mandatory relevance of the criteria of Annex III of the EIA Directive for the application of the screening mechanism of Article 4(2) in relation to Annex II projects. Further, the Court confirms the need to take into account the accumulation with other projects in screening. With respect to the scope of the Directive, the ECJ also confirms that it covers only projects listed in Annex I and II.

Another principal decision of the European Court relates to the interpretation of development consent and the functions derived from that definition.

Case C-2/07 *Paul Abraham and others*

In the decision in the case C-02/07 *Abraham a.o.*, the Court was asked to interpret the EIA Directive, especially the definition of development consent, in a situation where an authority had entered an agreement with an airport operator to increase the capacity of the airport as a whole by way of a number of individual projects. The ECJ stated that while an agreement [between public authorities and a private undertaking] is not a project within the meaning of Directive 85/337/EEC, it is for the national court to determine, on the basis of the applicable national legislation, whether such an agreement constitutes a development consent within the meaning of Article 1(2) of the EIA Directive.

The Court stated further:

"It is necessary, in that context, to consider whether that consent forms part of a procedure carried out in several stages involving a principal decision and implementing decisions and whether account is to be taken of the cumulative

effect of several projects whose impact on the environment must be assessed globally."

Furthermore, the Advocate General in the case had deliberations related to whether the authority, that enters such an agreement with a developer, is limiting its discretions in a manner where the decision to grant development consent is virtually taken at the stage of entering the agreement rather than when formal development consent is given at a later stage. However, the Court took the outset that such an agreement may be taken as development consent in the meaning of the EIA Directive when it under national law is considered a permit that allows the developer to proceed with his/her project, as set forth in the EIA Directive's definition of development consent. The Court, thus, remains open to an interpretation of the EIA Directive, where such an agreement could be taken as a development consent in the meaning of Article 1(2) of the EIA Directive.

Case C-201/02
Delena Wells v Secretary of State for Transport, Local Government and the Regions

The Court's deliberations, reported above, as to whether such an agreement between developer and authority may be taken as a development consent in the meaning of Article 1(2) of the EIA Directive or not, took its outset in the Court's decision in the Wells-case. In this case, the Court laid down the interpretation that development consent granted in a procedure involving several stages should be made subject to an environmental assessment as early as possible in the procedural framework. The Wells-case involved a principal decision to grant development consent and later decision making as a so called 'reserved matters'-decision, where the details of the project are set.

The Court decided that the project must be assessed at the principal decision stage, when the later decision cannot extend the framework set in the principal decision. Only when it is not possible to assess the likely significant impacts in the principal stage, because the details of the project are not available, then assessment at the later stage may be considered to fulfill the obligations of the EIA Directive.

The Court held:

"Article 2(1) of Council Directive 85/337/EEC ... read in conjunction with Article 4(2) thereof, is to be interpreted as meaning that, in the context of applying provisions such as section 22 of the Planning and Compensation Act 1991 and Schedule 2 to that Act, the decisions adopted by the competent authorities, whose effect is to permit the resumption of mining operations, comprise, as a whole, a 'development consent' within the meaning of Article 1(2) of that directive, so that the competent authorities are obliged, where appropriate, to carry out an assessment of the environmental effects of such operations".

Case C-290/03 Diane Barker v London Borough of Bromley

In a preliminary ruling submitted to the Court by the House of Lords (United Kingdom), the ECJ has stated that the classification of a decision as a 'development consent' within the meaning of Article 1(2) of Directive 85/337 must be carried out pursuant to national law in a manner consistent with Community law. According to Article 2(1) of the EIA Directive 85/337 projects likely to have significant effects on the environment must be made subject to an assessment with regard to their effects before development consent is given. It fol-

lows that Articles 2(1) and 4(2) of Directive 85/337, which impose the obligation on the Member States to carry out environmental impact assessments, are to be interpreted as requiring such an assessment to be carried out when, in the case of grant of consent comprising more than one stage, it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

Case C-508/03 -
Commission v. U.K

The question of when development consent in the meaning of Article 1(2) of the Directive is granted by the designated authority is crucial to the functioning of the Directive. The definition of when such consent is granted is directly relevant to whether the main obligation of the Directive in Article 2(1) - assessment carried out prior to consent - is fulfilled. In a matter of when an assessment must be carried out of a proposed development project the Court stated in C-508/03 - Commission v. U.K:

"Where national law provides for a consent procedure comprising more than one stage, one involving a principal decision and the other involving an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which a project may have on the environment must, as a rule, be identified and assessed at the time of the procedure relating to the principal decision. If those effects are not, however, identifiable until the time of the procedure relating to the implementing decision, the assessment is to be carried out in the course of that procedure.

National rules providing that an environmental impact assessment in respect of a project may be carried out only at the initial outline planning permission stage, and not at the later reserved matters stage, are therefore contrary to Articles 2(1) and 4(2) of Directive 85/337, as amended".

Case C-215/06
Commission v. Ireland

In its Judgment of 3 July 2008, in Case C-215/06, Commission v. Ireland, the European Court of Justice has declared that Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of the Directive by failing to adopt all measures necessary to ensure that:

- Projects which are within the scope of Directive 85/337 either before or after amendment by Directive 97/11 are, before they are executed in whole or in part, first, considered with regard to the need for an environmental impact assessment and, secondly, where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of the Directive, and
- The development consents given for, and the execution of, wind farm developments and associated works at Derrybrien, County Galway, were preceded by an assessment with regard to their environmental effects, in accordance with Articles 5 to 10 of Directive 85/337 either before or after amendment by Directive 97/11.

Furthermore, the Court held that legalisation of 'illegal development' may in principle follow two paths; one leading to the physical removal of that devel-

opment and another leading to a formal legalisation of the 'illegal development'. In case C-215/06 (Commission v. Ireland) the ECJ dealt with a.o. general rules in Irish Planning Legislation that gave relevant authorities the possibility of issuing a so-called retention permission.

The ECJ in particular emphasised in its decision that the Irish legislation did not take into account when issuing retention permissions whether the illegal development that already was executed was likely to have significant impact on the environment prior to the issuing of the retention permission. As a consequence, the ECJ found that the nature and content of enforcement legislation did not either ensure that the EIA Directive was effectively set into force in Ireland.

4.4.1 Thematic discussion of European Court of Justice practices

Development consent.

The Court's practice related to the interpretation of Article 1(2) on the understanding of development consent is interesting for several reasons. First of all, because the basic logic followed by the Court is to emphasise that the assessment of environmental impacts from projects must be carried out at the earliest possible instance in the decision-making procedure, even in cascaded decision-making procedures. Especially, the Court stands firmly on the fact that the purpose of the Directive is to support the systematic inclusion of environmental considerations in development consent procedures. In order for such considerations to be included in decision-making the relevant information to be taken into account must be produced and set forth at the earliest possible instance in decision-making procedures in order to allow decision-making being influenced by this information.

One further interesting aspect of the Court's practice related to the interpretation of development consent is the decision in the Abraham's case. In this case the problem of whether an agreement between a developer and the competent authority to develop an existing airport-infrastructure is a project within the meaning of the EIA Directive's Article 1(2). The court refers to the obvious fact that an agreement in itself cannot be a project within the meaning of the Directive, regardless of whether the agreement in question contains a more or less exact description of the works to be carried out. However, the court refers to the fact that there may be at least two elements that national courts must take into consideration before determining whether an agreement is relevant under the requirements of the EIA Directive. First of all, the court points out that it is for national courts to decide on the basis of national legislation whether an agreement is in fact development consent in the meaning of the Directive. In that context it is necessary to consider whether that consent forms part of a procedure carried out in several stages - where one decision could be a principal decision and a number of subsequent implementing decisions.

Although, one may question whether the Court is right in its assertion that it is obvious that an agreement cannot be regarded as a project, it seems relevant to discuss in more detail whether the problem of whether an agreement may be

taken as a project in the meaning of the Directive's Article 1(2) is a relevant question in this context, and where such considerations may lead to further deliberations - what are the nature of such deliberations. It is obvious from the wording of the Directive, as mentioned by the Court, that an agreement is not a project in the meaning of the Directive.

However, there may be a need for further qualification to this argument in order to assess whether this is true for all cases. One might look at whether the agreement, as such, is an agreement that sets details of a future project and, furthermore, locks the discretion of the competent authority in a manner so that development consent is effectively granted by the conclusion of that agreement. Especially, it seems relevant to point to the fact that several Member States now have adopted provisions (e.g. Denmark and the United Kingdom) for so-called planning agreements between the competent planning authority and developers. Such agreements include a mutual duty on both sides to actively support the implementation of the development subjected to the agreement²³. The Abrahams case (C-02/07) does not specify under which legal frameworks and/or precedence the agreement between the airport developer and the planning authority is entered.

In relation to planning agreements and also in other instances it seems just as relevant to look at the legal implications of an agreement rather than only to look at the characteristics of the subject matter. An agreement may very well constitute the necessary framework for any developer to proceed with the project as set forth in the definition of development consent in the EIA Directive's Article 1(2). As decided by the Court in the Delena Wells case (C-201/02) and the case (C-508/03) it seems only logical that the Court sets forth the rule that if a development consent procedure involves several stages, where one is a principal stage and the subsequent stages cannot extend the framework of the principal decision, then the assessment must be carried out in the principal stage. When combining these two decisions, it is not difficult to imagine that a prior planning agreement entered between developer and competent/planning authority may constitute a principal decision (reached by way of an agreement) that sets the frames for subsequent development consent decisions.

Duty to withdraw development consent

Another interesting legal development is displayed in the case C-215/06 Commission v. Ireland. The case raises several interesting points in relation to the application of the EIA Directive in Member States - in particular the wrongful application of the EIA Directive in Member States. First of all, it raises the problem of whether Member States are required to, when dealing with illegal developments, have in place procedures that are aimed at assessing whether the illegal development under scrutiny, in relation to a legalisation procedure, is likely to have significant environmental impacts on the environment. Furthermore, the case makes it relevant to review the individual procedures undertaken when Member States' authorities consider the question of legalisation of illegal development.

²³ Planning agreements in Denmark, cf. Section 21 b of the Danish Planning Act. A corresponding rule exist in Section 106 of the UK Town and Country Planning Act.

Finally, the decision of the Court may have as a consequence that the permission that was granted in the first instance - but wrongfully excluded EIA with or without explicit consideration thereof - must be redrawn. This is in no way a formality, since it opens up a Pandora's Box for all sorts of liabilities. It also opens the question of whether Member States' authorities are required to redraw such "illegal" permits. The Court seems to back the viewpoint that the permit already issued in such a case or the retention permit considered cannot be granted without a prior consideration of whether the development in question should have been subject to an EIA procedure or a screening procedure. If this is the case, then Member States will be required to, as a minimum, have in place specific procedures for assessing the necessity to carry out an EIA procedure for a given development as a part of any formal procedure to allow legalisation of an otherwise illegal development.

5 Status of the national systems following amendments of Directive 2003/35/EC

5.1 Introduction

Implementation of the Aarhus Convention

Following the signature of the Aarhus Convention by the Community on 25 June 1998, the Community adopted in May 2003 Directive 2003/35/EC amending amongst others the EIA Directive. This Directive intends to align the provisions on public participation in accordance with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

In the following subchapters, key issues of the new amendments introduced by Directive 2003/35/EC are discussed. Most of the Member States do not distinguish between legislation which was in force before Directive 2003/35/EC and the changes made pursuant to Directive 2003/35/EC. Therefore, it is in many cases not possible to tell, whether the current legal system in each Member State is based on Directive 2003/35/EC, an earlier transposition of the Aarhus Convention or previously existing national rules.

The Guideline to the Aarhus Convention Implementation Guide²⁴ (hereinafter called the Aarhus Convention Guide) has been consulted to provide guidance on the interpretation of the new provisions of the EIA Directive following the adoption of Directive 2003/35/EC²⁵.

5.2 Definition of 'the public' and 'the public concerned'

EIA Directive

Directive 2003/35/EC requires that the Member States ensure that the public and the public concerned have the right to participate in e.g. the EIA procedures.

The definitions in Article 2(4) of the Aarhus Convention of 'the public' and 'the public concerned' are also employed in the EIA Directive.

²⁴ The Aarhus Convention - An implementation Guide, Regional Environmental Centre for Central and Eastern Europe, 2000.

²⁵ It should be noted that the Guide does not represent the EC's points of view, nor has the Guide been considered as an official document.

Article 1(2) of the EIA Directive defines 'the public' as *"one or more natural or legal person and, in accordance with national legislation or practice, their associations, organisations or groups"*.

The public concerned is defined as "the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest" (Article 1(2)).

The definition of 'the public' is relevant in the application of Article 6 of the Directive, in particular paragraph 2 (concerning the information aspect of participation) which provides that the public shall be notified of the listed information so that individuals and organisations have the opportunity to identify themselves as being affected or having an interest in the development consent procedure in question. The provision ensures that the public in general is told what is happening and thereby given the opportunity to consider how a proposal will affect them [i.e. 'the public'] personally or the environment in general. They [i.e. 'the public'] may want more detailed information or to take no further action.

The definition of 'the public concerned' is relevant in the application of Article 6(4) of the Directive which provides that 'the public concerned' shall be given early and effective opportunities to participate in the environmental decision-making procedures and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken. The notion of 'the public concerned' is also the group for which there is granted access to justice under Article 10a of the Directive.

Member States' experience

The questionnaire does not include a question concerning the definition of 'the public' and 'the public concerned'. Instead, the findings are based on the supplementary review conducted by the Consultant's own network of local consultants in the Member States.

All Member States appear to apply a broad definition of 'the public' allowing all natural and legal persons to take part in decision-making procedures. Almost half of the Member States have included a definition of 'the public' in their national legislation (Austria, Bulgaria, Cyprus, Germany, Greece, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, and Spain).²⁶

The picture relating to implementation of the definition of 'the public concerned' is more varied. The majority of the Member States have included a definition of 'the public concerned' in their national legislation (Austria, Belgium, Bulgaria, Germany, Greece, Hungary, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovakia and Spain). Denmark, Finland, and Ireland do not distinguish between 'the public' and 'the public concerned' in their EIA legislation.

²⁶ No information has been provided for Ireland, Italy, and the Netherlands.

Table 5.1: Definition of public and public concerned

Definition of 'the public' and 'the public concerned'	'The public'		'The public concerned'	
	Old MS	New MS	Old MS	New MS
Defined as in Dir. 2000/35/EC	Austria, Belgium, (Brussels region, Flanders region), Germany, Spain, Luxembourg, the Netherlands, Portugal.	Belgium, Cyprus, Lithuania, Latvia, Malta, Romania, Slovakia.	Germany, Spain, the Netherlands, Portugal.	Bulgaria, Cyprus, Hungary, Lithuania, Malta, Romania, Slovakia.
Other definition either in law or by legal practice	Belgium (Federal level, Walloon region), Finland, France, Sweden, the United Kingdom	Czech Republic, Estonia, Hungary, Slovenia.	Belgium, Finland, France, Luxembourg, Sweden, the United Kingdom.	Czech Republic, Estonia, Latvia, Slovenia.

It is reported by local consultants, that Finland, France, Ireland, Poland²⁷ and Sweden have incorporated the broadest possible approach of the definition of 'the public' - that of "*everyone is entitled to participate*". This definition is also applicable in Germany for the following project categories: industrial installations and nuclear projects. The French local consultant reports that as a consequence of this broad definition, there is no obligation for the competent authority to actively identify 'the public concerned'. There are also some cases where persons affected by the matter in a consultation process are identified more explicitly: This is the case for example of article L. 300-2 of the French Urbanism Code that requires, in specific situations and before public inquiry, to lead a 'concertation' (a specific mode of consultation) with 'inhabitants, local associations and other persons concerned including representatives of farmers'. 'The public concerned' in France include *de facto* the members of the public who show interest in participating in the procedure.

The EIA Directive allows Member States to adopt specific requirement for acceptance of NGOs. Some national requirements relate to e.g. the number of years of existence of the NGO (Spain, Slovenia), regional coverage (Hungary, Slovenia), existence of environmental protection as an objective of the NGO (Hungary, Portugal, Cyprus, Lithuania, Slovenia, Spain, Greece and Portugal), legal entity (Bulgaria), number of members (Austria and Slovenia).

The Slovenian local consultant, on the contrary, is of the opinion that the criteria in national legislation that need to be fulfilled by the NGOs in order to be given the status of an 'environmental NGO acting in public interest' are almost impossible to fulfill, namely:

²⁷ This is reported by the EU Commission.

- "1. has a sufficient number of members in case of a society, or employees in case of an institute, or assets in case of an institution,*
- 2. has been established with the purpose of undertaking environmental protection activities,*
- 3. is independent of public authorities and political parties,*
- 4. has been active in the field of environmental protection for at least five years,*
- 5. keeps its own account records audited in accordance with the law, and*
- 6. is active in the whole territory of the State, and in the territory of at least another five Member States in case of an NGO having a registered office outside the Republic of Slovenia.*

At present, there has only been one NGO granted such status in Slovenia.

Although it may be concluded that the definitions of the 'public' and the 'public concerned' in themselves do not constitute a major problem in Member States it seems that there are great variations between Member States in setting national criteria for the right of NGOs to participate. The requirements set forth in national legislation for allowing NGOs' participatory rights are most often found limiting in individual Member States by way of very strict and in some cases, impossible-to-fulfill-like requirements.

Although, there is no doubt that this is a sensitive issue in many Member States, it does also pose an EU wide problem, that there are such wide disparities between Member States. In some cases involving transboundary environmental impacts, national NGOs may find that they of a neighboring country may have rights to participate, whereas NGOs in the Member State where the project is supposed to be implemented do not have the right to participate or initiate a review.

5.3 Provisions for national defence

EIA Directive

Directive 2003/35/EC introduced a new Article 1(4) which gives the Member States the option to include provisions in national law that, on a case-by-case basis, exempt projects related to national defence.

Member States' experience

It appears that Member States no longer allow a general exemption for defence purposes.²⁸ Around half of the Member States have adopted specific provisions

²⁸ According to the French response to the EU Commission's questionnaire, certain projects (listed in Article R.421-8 of the Urbanism Code) are automatically excluded from EIA. The answer points out that article R. 421-8 of the Urbanism Code deals only with specific procedures provided by this code but not with EIA itself; in fact, projects for defence purposes can be submitted to other procedures (for instance, classified installations). Greece responds

for projects serving defence purposes (Bulgaria, Czech Republic, Cyprus, Germany, Denmark, Finland, Hungary, Ireland, Italy, Lithuania, Latvia, Portugal, Romania, Slovakia, Slovenia, Spain and United Kingdom). All of these Member States apply a case-by-case approach in accordance with the Directive. In the remaining Member States, projects serving national defence purposes fall under the same provisions for screening as any other projects.

Fourteen of the Member States that have incorporated into their legal regime special provisions for national defence projects inform that there are no cases which fall under special provisions for defence. Until now, Germany has had three cases in the last 18 years; Hungary, Slovenia and United Kingdom have had one case each.

Table 5.2: Provisions for national defence projects

	No specific provisions for defence (i.e. defence projects subject to EIA)		Specific provision for defence (all based upon case-by-case)	
	Old Member States	New Member States	Old Member States	New Member States
Countries	Austria, Belgium, the Netherlands, Sweden	Estonia, Malta, Poland, Romania, Slovakia, Slovenia	Germany, Denmark, Spain, Finland, Luxembourg, Portugal, the United Kingdom, Ireland, Italy	Bulgaria, Czech Republic, Cyprus, Hungary, Lithuania, Latvia.

The countries allowing for an exemption for the national defence purpose apply different approaches in determining the exemption. Some examples are:

- In Germany, Finland and Luxemburg, it is up to the Ministry of Defence to decide if a project should be exempted. For instance, Finland has adopted a special provision on national defence stipulating that the Ministry of Environment can decide that the EIA procedure would not apply to those projects of the national defence that are being carried out during a state of national emergency, if the implementation of the EIA procedure would aggravate the defence. Decisions to grant an exemption under these rules may not be appealed. So far, there have not been any cases falling under the specific exemption provisions for defence projects in Finland. In Germany, the exemption of the provisions of the EIA Directive may be granted in total or only partly. Usually, an EIA is necessary, but there may be a need for restriction of access to information.

that the Joint Ministerial Decision 11014/2003 specifically states that EIA is not applied to projects and activities serving national defence purposes. It is not possible to draw any conclusions from the response provided by Luxembourg.

- In Spain, projects related to the objectives of national defence are excluded from the EIA process, when this process might affect the objectives of national defence. The relevant authority provides its opinion on the adverse effects on national defence purposes on a case-by-case basis.
- In Bulgaria, such an exemption is adopted by the Council of Ministers by a proposal from the Minister of National Defence and the Minister of Environment and Water.
- In Hungary, the exemption only covers the public participation phase, not the EIA as such, and only in the case the project itself is qualified as confidential.
- In Cyprus, the Ministerial Council, after receiving the opinion of the Director of Environmental Service, may decide to exempt a certain project from the provisions of the EIA legislation. In addition, the project is also reviewed by a special committee comprised by representatives from the Ministry of Defence, the National Guard and the Environmental Service.

It may generally be concluded that projects serving the purposes of national defence are no longer taken outside national EIA procedures by way of a general exemption. There are differences between Member States in the way they have dealt with projects serving national defence purposes, but the strengthening of the requirement to do this on an ad-hoc basis instead of a general exemption seems to have been implemented in Member States' legislation in general.

5.4 Strengthened public consultation provisions

The provisions on public participation in the EIA Directive were strengthened by the introduction of Directive 2003/35/EC which provisions derived from Article 6 of the Aarhus Convention. The Directive sets out minimum requirements for the public participation procedure, leaving the adoption of more detailed wide-ranging and innovative national measures to the Member States. Some guidance as to how this may be done is set out in examples, such as giving information by bill posting or publication in local newspaper, ensuring consultation by receipt of written submissions or by the holding of public enquiry. However, the Directive requires that reasonable time-frames must be provided allowing sufficient time for each of the different stages of participation provided in the Directive.

5.4.1 Early in the decision-making procedure

According to Article 6(2) of the EIA Directive, the public shall be informed 'early' in the decision-making procedure and, at the latest, *"as soon as information can reasonable be provided"*. Article 6(4) of the Directive provides that Member States should be required to take the necessary measures to ensure that 'the public concerned' are given *"early and effective opportunities"* to participate in the development consent procedure.

EIA Directive

While paragraph 2 and 3 require publication of information for the benefit of the public, paragraph 4 requires public insight in its narrow sense (the access to see and comment on the information). It is not clear from the Member States' answers to the EU Commission's questionnaires, on the application and effectiveness of the EIA Directive, whether all these elements have been addressed in replies. It appears that replies are based on differing understandings of the question. The answers could furthermore be misleading since there is no common understanding of the stages in an EIA procedure to which the requirements apply. Some Member States have several phases where public consultation is stipulated whereas other Member States only have one phase, i.e. the consultation phase as required by Article 6(4) of the EIA Directive.

Member States' experience

Around half of the Member States have chosen the scoping phase as the first instance to involve the public in consultation (Belgium (Brussels, Flanders, and Walloon region), Denmark, Estonia, Finland, Germany, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden and United Kingdom). Seven Member States have made provision for public consultation in the screening phase (Bulgaria, Czech Republic, Hungary, Italy, Latvia, Lithuania, Romania, Slovenia and Spain). It is not always clear from the information provided by the Member States whether this right is given to the wider public or to identified members of the public as defined on a case-by-case basis by the competent authority²⁹. The data has therefore been supplemented by information provided by the local consultants.

In Germany, members of the public may be involved in the scoping phase by the competent authority on a case-by-case-basis. Furthermore, the public has to be informed of the result of any screening that took place.

In some Member States (Denmark, Sweden, Finland) the detailed arrangements for public participation and consultation procedures are left to the discretion of the competent authority. The practical arrangements depend on the nature and complexity of the project in question and are targeted in individual cases. Finland specifies that besides the official public consultation taking place twice during the EIA procedure (at the scoping stage and when the EIA report is finalised) more extensive public participation (meetings, workshops, group interview, etc.) is possible and is quite common. Possible extensive public participation is arranged by the developer on a voluntary basis.

Examples of public consultation in the screening phase

In Bulgaria, legislation requires the developer to inform and consult the public during the entire EIA process starting from the notification phase. The public may react by sending written opinions, request for information, or attending the public hearings. In cases of transboundary consultations, this may result in consultations in the screening phase in Member States where public consultation at this stage is not normally required.

According to Hungarian EIA laws, public participation starts in the screening/scoping phase. The public is invited to comment on several topics including

²⁹ Responses to Q3, Q5 and Q13. See Table 4.1.

the location of the planned project, the necessity of the EIA and suggestions on the content of the EIA documentation.

Examples of public consultation in the scoping phase

According to the Bulgarian Environmental Protection Act, the developer shall consult 'the public concerned' in the scoping phase on the following:

- The specific characteristics of the envisaged construction, activities and technologies, degree of development of the design solution and its relation with existing or other planned construction, activities and technologies;
- The characteristics of the existing environment and all its components;
- The significance of the expected impacts;
- The terms of reference for scope and contents of EIA;
- The limits of the investigation in connection with EIA;
- The alternatives for investment proposals;
- The public concerned— interests and opinions;
- The sources of information;
- The methods for prognoses and environmental impact assessment;
- Measures for reduction of the expected negative impacts on the environment.

In Malta, when it is determined by the competent authority (the Malta Environment and Planning Authority) that a project qualifies for an EIA, the public is invited to submit any comments they would like to see included in the EIA-report. Advertisements are displayed in the local newspaper/s, the Government Gazette and on the competent authority's website. The Local Council, in which the project is being proposed, as well as other Local Councils likely to be affected by the proposed development, is consulted. For Annex I projects, scoping meetings are also held with stakeholders including NGOs and the Local Councils. The information made available to the public includes the Project Description Statement, site plan, photographs and other relevant material. The duration of this public consultation phase is 21 days.

"Early and effective public consultation"

The Member States' interpretation of what is meant by the phrase 'early and effective public consultation' varies. Common for all Member States is the importance of ensuring that public consultation is carried out at a stage where the outcome has a realistic possibility to influence the design of the project and thereby indirectly influence the final decision by the competent authority. The methods for involving the public are also important, publicity arrangements (by internet, press, targeted to certain parties) and consultation arrangements (public hearings etc). Hungary stresses the benefits of being inventive in regard to the ways and means of public consultations. Hungarian legislation provides methodological elements which both ensure the effectiveness of the one way information flow (notification, ensuring substantial information to the members of public, etc.) as well as bilateral exchange of views or capacity building ef-

forts from the authorities (including public hearings and "Green Point" offices³⁰).

An important factor in effectiveness is, furthermore, the contribution of professional NGOs in the consultation procedure. They can draw the attention of the public to the other and sometimes more wide-ranging issues and assist in the interpretation of the applicable legal set-up as well as provide expertise and relevant scientific facts of a case.

Member States that allow for public consultation already in the scoping phase define this as 'early and effective public consultation' and emphasise that public involvement already at this stage help to improve the quality of the environmental report. The organisation of public hearings also reinforces effective consultation. Luxembourg interprets 'early and effective public consultation' as providing for consultation at the moment where potential impacts on the environment of the project are known and potential alternatives have been identified. Romania mentions that 'early and effective public consultation' must be interpreted so that the consultation shall be carried out at a time where 'the public concerned' can influence the environmental assessment of the project. Similarly, the United Kingdom's interpretation is to provide the public an opportunity to comment on the proposed development when all options are open to the competent authority and before any decision is taken.

Table 5.3 below provides an overview of the stages at which Member States provide for public consultation. By public consultation is meant those stages where the members of the public can actively comment and provide input to the decision-making procedure. These stages are mainly:

- The screening phase;
- The scoping phase (influence the content and structure of the environmental report before submission);

³⁰ The so called "Green Point" offices at the inspectorates are open for the members and organisations of the public providing them with data, literature, brochures, leaflets and, what is the most important, with officials that are ready to answer the questions of the public. At several inspectorates in their practice those who are interested in an EIA procedure can call the inspectorates and can discuss the matter with the official in charge.

- The consultation phase (the consultation phase as required by Article 6(4) of the EIA Directive, upon the publication of the environmental report submitted by the developer).

Table 5.3: Overview of stages of public consultations and time-frames³¹

Public consultation	Stage(s) of consultation	Time-frames for consultation
AT	Consultation phase	Minimum six weeks
BE (Federal, Brussels, Flanders, Walloon)	Federal: Covers only nuclear activities and activities in the North Sea. Nuclear activities: Consultation phase North Sea activities: n/a Brussels: Scoping phase and consultation phase Walloon: Scoping phase and consultation phase Flanders: Scoping phase and consultation phase	Federal: n/a Brussels: 15 days for the scoping phase, 30 days for the consultation phase Walloon: 15 days for the scoping phase, different time-frames for the consultation phase dep. on project category (30 days for projects of category B and 15 days for projects of category C) Flanders: Scoping phase: n/a, 30 days for the consultation phase
BG	1) Screening phase 2) Scoping phase 3) Consultation phase	1) 14 - 30 days 2) 30 days depending on the character of the project 3) Minimum 30 days
CY	Consultation phase	30 days
CZ	1) Screening phase 2) Scoping phase 3) Consultation phase	1) 20 days 2) 30 days 3) 30 days ³²
DE	Consultation phase	Depends upon relevant provision of the sector law applicable to the specific approval procedure, however a minimum period of six weeks and maximum period of two months
DK	1) Scoping phase (for projects on land falling under the scope of the Danish Planning Act) 2) Consultation phase	1) Minimum 2 weeks (typically 4 weeks) 2) Minimum 8 weeks
EE	1) Scoping phase 2) Consultation phase	Minimum 14 days
EL	Consultation phase	Minimum 30 days
ES	1) Screening phase 2) Scoping phase (public concerned)	1) n/a 2) Minimum 30 days 3) Minimum 30 days

³¹ Based on Member States responses to the Commission's questionnaire, Q3 and Q5 and supplemented with information provided by local consultants.

³² Information provided by local consultant.

Public consultation	Stage(s) of consultation	Time-frames for consultation
	3) Consultation phase	
FI	1) Scoping phase 2) Consultation phase	1) 30-60 days 2) 30-60 days
FR	Consultation phase (level of consultation varies depending of project size/significance)	Minimum 30 days (the "public inquiry" lasts between one and two months, the "simplified procedure" lasts one month and the maximum length of the "public debate" procedure is four months (plus two additional months in certain cases))
HU	1) Screening / scoping phase 2) Consultation phase	1) 21 days 2) Minimum 30 days
IE	Consultation phase	period of five weeks
IT	1) Screening phase 2) Consultation phase	1) 45 days 3) 60 days (30 days for national strategic projects)
LT	1) Screening (public concerned) 2) Scoping phase 3) Consultation phase	1) Within 10 working days from the date of publication of the screening conclusion 2) Minimum 10 working days 3) Minimum 10 working days before public hearing of the EIA report, 10 working days after the public hearing, 3 days for minutes of the public hearing.
LU	1) Scoping phase (projects governed by the Law of 13 March 2007 transport infrastructure projects) 2) Consultation phase	1) 30 days 2) n/a
LV	1) Screening phase (upon the decision by the CA) 2) Scoping phase 3) Consultation phase	20 days for all phases (possible extension to 40 days)
MT	1) Scoping phase 2) Consultation phase	1) 21 days 2) 21 days
NL	1) Scoping phase 2) Consultation phase	1) 6 weeks 2) 6 weeks
PL	Consultation phase	21 days
PT	1) Scoping phase (non-mandatory, on the suggestion by the developer) 2) Consultation phase	1) Minimum 20 days 2) 30 days (Annex I projects) 20 days (Annex II projects), no stipulated time-frames (projects falling under the Law Decree n. 69/2000 of 3 June, as amended, however in

Public consultation	Stage(s) of consultation	Time-frames for consultation
		practice not less than 10 days)
RO	1) Screening phase 2) Scoping phase 3) Consultation phase	1) 15 days 2) 20 days 3) 30 days
SI	Consultation phase	30 days
SK	1) Screening phase 2) Scoping phase 3) Consultation phase	1) 21 days 2) 10 days 3) 30 days
SE	1) Scoping phase 2) Consultation phase	No fixed frames, depends on the nature of the project. Fixed on a case-by-case basis by the CA.
UK	1) Scoping (non-mandatory, encouraged by good practice guidance published by UK authorities) 2) Consultation phase	2) Minimum 21 days

5.4.2 Reasonable time-frames

EIA Directive

Article 6(6) of the EIA Directive provides that reasonable time-frames for the different phases of participation shall be provided, allowing sufficient time for informing 'the public' and for 'the public concerned' to prepare and participate effectively in the environmental decision-making. The EIA Directive does not define 'reasonable time-frames'.

Member States' experience

The EIA Directive leaves a margin of discretion for Member States to determine 'reasonable time frames' within their jurisdiction.

Table 5.3 above (see Section 5.4.1) provides an overview of the time-frames applied in the Member States at the different stages of public consultation.

The majority of the Member States have laid down specific time-frames in their legislation. Other Member States use the unspecified phrasing of the Directive (or a phrasing with a corresponding meaning) such as 'reasonable time-frames', 'sufficient time' or 'in good time and to an appropriate extent'. A third group of Member States uses a combination of both. The stipulated time-frames set a minimum time-frame for public consultation. The time-frames applied in the Member States in the consultation phase range from 14 days as the shortest time frame (Bulgaria, Estonia) to 60 days as the longest time frame (Italy). Most Member States apply a time-frame of 30 days.

Differences in time frames between Member States may not constitute a problem as long as the consultation is only related to national projects ; however, differences in time frames - and other EIA procedures related to consultation - may constitute a problem when more Member States are involved, e.g. in trans-boundary consultations.

Table 5.4: Overview of time frames

Time-frames	Screening phase	Scoping phase	Consultation phase
Not fixed in legislation		Sweden	Sweden
Two weeks or less	Lithuania	Lithuania, Slovakia	Lithuania
Between two weeks and four weeks	Bulgaria ³³ , Czech Republic, Latvia, Romania, Slovakia	Belgium (Brussels and Walloon regions), Denmark, Estonia, Hungary, Latvia, Malta, Portugal, Romania, United Kingdom	Belgium (Walloon region), Estonia, Latvia, Malta, Poland, Portugal, United Kingdom
Four weeks or up to a month		Bulgaria, Czech Republic, Luxembourg	Belgium (Brussels and Walloon regions), Cyprus, Czech Republic, Greece, Romania, Slovenia, Slovakia
One month or more than one month	Italy	Spain, Finland, the Netherlands	Austria, Bulgaria, Germany, Denmark, Spain, Finland, France, Hungary, Ireland, Italy, the Netherlands, Portugal

5.5 New provisions on public access to a review procedure

EIA Directive

Directive 2003/35/EC introduced a new Article 10a in the EIA Directive which reflects Article 9(2) and (4) of the Aarhus Convention. Article 10a requires Member States to ensure that, in accordance with the relevant national legal system, the public concerned has access to a review procedure before a court of law or other body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of the EIA Directive. Such procedures shall be expeditious and not prohibitively expensive. The Member States may decide at what stages the decisions, acts or omissions may be challenged. It is left to the Member States to determine what constitutes 'having a sufficient interest' or 'maintaining the impairment of a right'. However, any such interpretation must be consistent with the wider objective of giving 'the public concerned' wide access to justice. As the definition of 'the public concerned' includes NGOs promoting environmental protection, Member States shall adopt measures to ensure that their national legal systems enable these organisations to have access to justice. To this end, the interest of any NGO meeting the requirements referred to in Article 1(2) of the Directive, shall be deemed sufficient for the purpose of subparagraph (a) of Article 10a. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of the same Article.

³³ For Bulgaria, the time-frame is between 14-30 days.

Member States' experience

The provisions of the new Article 10a shall not exclude the possibility of a preliminary review before an administrative authority.

The main sources of information for this section are the responses to the EU Commission's questionnaires and the Study on access to justice³⁴, published on DG ENV homepage. Information on Bulgaria and Romania has been added as the Study on access to justice did not include these Member States.

In the majority of Member States, both administrative and judicial remedies are available. Six Member States (Belgium, Ireland, Malta, Portugal, Sweden and United Kingdom)³⁵ only provide for judicial procedures to challenge acts or omissions by public authorities. In some Member States administrative remedies must be exhausted before contesting the decision in court (Austria, Czech Republic, Germany, Hungary, Latvia, Poland, Romania and Slovakia).

It appears that the majority of Member States regulates access to justice in environmental matters in general law. The rules on access to justice are found in general legislation on administrative and judicial review and environmental legislation. For example in Denmark, administrative recourse is regulated in environmental legislation and judicial review in general legislation on court procedures as well as through court practices.

Table 5.5: General law/Specific Law or practice

	Member States
General legislation	Spain, Poland, Portugal, Sweden, the United Kingdom, Malta, Italy, Hungary, (Germany) ³⁶ , (France), Estonia, Belgium, the Netherlands Denmark, Bulgaria, Austria
Specific legislation	Poland, Finland, Lithuania, Latvia, Ireland, Cyprus, the Netherlands, Denmark, Luxembourg, (Czech Republic)

The majority of Member States allows access to administrative appeals as well as access to the courts.

Table 5.6: Access to judicial and/or administrative review

	Member States
Administrative review solely	Belgium (Federal level, Walloon region, Flanders region and Brussels region), Latvia
Judicial review	The United Kingdom, Sweden, Portugal

³⁴ "Inventory of EU Member States' measures on access to justice in environmental matters", 2007, p. 4. The Study includes 25 country reports and a summary report. http://ec.europa.eu/environment/aarhus/study_access.htm.

³⁵ Ireland has a minor administrative procedure under its planning and development legislation. In the United Kingdom administrative remedies exists but only available for the addresses of the administrative decision.

³⁶ When a Member State is put in brackets it signals that the information is based on the Study on Access to justice.

solely	
Administrative and judicial review	Austria, Bulgaria, Czech Republic, (Luxembourg) ³⁷ Denmark, the Netherlands, (Cyprus) , Estonia, France, (Germany), Hungary, Ireland, (Italy), Latvia, (Slovenia) (Spain ³⁸), Finland, Poland, Romania, Malta, (Slovakia), Estonia

Article 10a provides Member States discretion to choose at which stage in procedures access to justice may be granted.

Standing

The criteria for standing differ to a large extent between the Member States³⁹. In general, individuals need to show an impairment of a right (Property, health, procedural rights) or that they have a sufficient interest (e.g. geographical vicinity) to be granted standing. In some cases, NGOs meeting certain criteria are considered 'privileged applicants' and do not have to show an interest to challenge acts and omissions before administrative boards and courts. In other cases, associations and organisations (including NGOs) have to show the impairment of a right or an interest, as any other individual, the interpretations given by courts to the concept of 'interest' differing from one Member State to another.

Luxembourg, France, Greece, Italy and Spain are countries with a system granting privileged status to environmental NGOs. In Sweden, the right of appeal by non-profit organisations against judgement and decisions shall be subject to the requirement that the association has operated in Sweden for at least three years and has not less than 2,000 members. At present, it seems that only a limited number of organisations are able to live up to this requirement.

The Danish local consultant reports that, in Denmark, legal interest of NGOs is assessed by courts on a case-by-case basis. Although until 1994, courts were reluctant to give NGOs access to file a suit, it seems that courts are much more benign to address the issue of standing in a manner where it is for the defendant to provide the reasons for not granting standing in a case matter.

The overall picture of the legislation in Member States reveals large disparities, especially related to the criteria for granting NGOs' standing. Although, all Member States seem to favour standing of NGOs some Member States have effectively barred such a possibility by setting the thresholds for access at a very high level e.g. at the brink of impossible-to-meet criteria. It is, however, not surprising that this is the case since especially the issue of granting wider groupings, such as NGOs, formal standing in courts is in many jurisdictions a matter settled in Constitution.

³⁷ Where the Member State is put in brackets it signals that the information is based on the Study on Access to Justice.

³⁸ The answer to the questionnaire mentions that there is access to a review procedure before the same body that approved the project and after that access to courts. The first procedure is not a proper impartial review procedure.

³⁹ 'Standing' refers to conditions for access to review bodies/courts.

Table 5.7: *Overview of standing*⁴⁰

	Member State
Actio Popularis ⁴¹	Portugal, United Kingdom, Latvia, Ireland, Spain, Estonia ⁴² , Slovenia ⁴³
Impairment of a right and sufficient interest. Strict interpretation ⁴⁴	Austria, Belgium, Germany, Malta, Sweden, Slovenia ⁴⁵
Impairment of a right and sufficient interest. Broad interpretation ⁴⁶	The Netherlands, Lithuania, Italy, Spain, Cyprus, France, Hungary, Denmark
Standing based on procedural rights	Austria ⁴⁷ , Czech Republic ⁴⁸ , Germany ⁴⁹ , the Netherlands, Poland ⁵⁰ , Slovakia

Costs connected with review procedures

The Study on Access to Justice contains an overview of the importance of costs connected with review procedures: According to the Study, the costs of the procedures were considered to constitute an obstacle to access to justice in 12 countries (Cyprus, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal (for individuals), Slovakia (for individuals), and the United Kingdom).

It should be noted that the information that the cost of procedures constitutes an obstacle for access to justice in Germany is incorrect in the view of the German Government. The German national expert reports that the costs are not too high and individuals in need may receive support by the state for paying these costs. In Spain and the United Kingdom the reported additional obstacles to obtain effective remedies were also due to costs of obtaining an interim relief. In some cases, the problem of costs as an obstacle to access to justice is linked to the inadequacy of current legal aid schemes, either because associations do not have access to legal aid or because the criteria for individuals to benefit from legal aid are too strict. This is the case in Cyprus, France, Hungary, the Netherlands and the United Kingdom. The threat of being the subject to the 'loser

⁴⁰ The table does not include information on Bulgaria and Romania.

⁴¹ 'Actio Popularis' refers to a legal system where access to review bodies/courts are without limitations.

⁴² For land use planning.

⁴³ For judicial review.

⁴⁴ Those challenging an action or omission of the administration in breach of environmental legislation have to show an interest.

⁴⁵ In administrative cases the parties to the procedure are only those individuals or legal entities whose rights or direct legal interests may be affected by the administrative decision.

⁴⁶ The concept of "interest" is broadened to cover diffuse and collective interests, this granting legal standing to organisations or groups representing and defending those interests.

⁴⁷ Waste management and IPPC.

⁴⁸ Nature protection, EIA and IPPC.

⁴⁹ Nature protection.

⁵⁰ Mostly EIA and IPPC.

pays' principle is also an important deterrent to challenging actions or omissions by public administrations in court (e.g., in Portugal for individuals and in Greece, Italy, Ireland or the United Kingdom in general). The local consultant reports that, in the United Kingdom there is always discretion as to any award of costs. In a court case from 1999⁵¹, the Court of Appeal made it clear that the fact that an application for judicial review has been brought by a group of residents (acting as an action group) who are concerned with protection of the environment is not always good enough reasons in itself not to award costs against them if they are unsuccessful in the application. It is possible that the court will not award costs against an unsuccessful applicant - but this is exceptional and usually only where the court considers that the application was in the public interest.

Most common cases subject to review procedure

It is not possible to extract any tendencies from the data provided in Member States' responses to the questionnaire in this regard.⁵² The understanding of the question varies to a large extent from response to response. More than half of the Member States have not provided any information. The responses submitted may be divided into two main groups: Responses reporting on types of projects/sector of environment that have been subject to an appeal and responses reporting on types of issues subject to appeal.

In the first category, Austria reports that most appeal cases are within the environmental sectors: Air pollution, noise, nature protection and human health. Examples of types of projects are nowadays mostly shopping centers, electric power lines, power stations, skiing areas and installations for rearing animals. In Bulgaria, most common cases subject to review procedures are linked to the establishment of wind farms, holiday villages at the Black Sea coast and hydro power plants. In the Czech Republic, most cases concern industrial enterprises, infrastructure projects including road construction projects, biogas plants and wind power plants. In Hungary, the majority of cases concern highway constructions, mining activities, waste management activities (incinerations and hazardous waste operations) and large housing areas. France reports that most appeal cases are within the environmental sectors: Biodiversity and landscape (land farms, infrastructure projects). In Ireland, in the recent past, judicial review procedures have been instituted in a number of major infrastructure projects, including road construction projects, waste infrastructure projects (incineration) and a major redevelopment of a large sports stadium in Dublin (Lansdowne Road). Slovenia reports on a case concerned construction of the wind power plant in Volovja reber. The procedure was initiated in 2004 and is still pending.

In the second category, Denmark reports that most complaint cases deal with the screening decision providing that an EIA is not necessary. Belgium, Brussels region, reports that the most complaint cases deal with irregularities in the EIA procedure such as lack of motivation and absence of decision within designated time limits. In France, development consent may be challenged on the basis of the absence of, or badly argued conclusions made by the 'Commissaire

⁵¹ Case R v Bedfordshire County Council ex parte O'Dell & Sons Ltd, 29 October 1999.

⁵² Question 7.

enqueteur'⁵³ at the end of the procedure. Review procedures contesting the quality of the EIA procedure are frequent. For large projects the conclusions of the EIA may be contested. For example, the public may contest the fact that alternatives have not been studied. In Poland, it is most common to challenge the lack of assessment of alternatives and the quality of the environmental report.

In general, the trends in reviews carried out in Member States do not show a clear picture of what are the reasons for submitting a case for review, or for that matter, of which part of the EIA procedure that is contested. It is likely that any trend in review procedures will gradually emerge during the coming years, when case law in Member States becomes more developed - topic by topic.

5.6 Information on the public participation process within the information provided to the public on the final decision

EIA Directive

Article 9 of the Directive deals with information about the decision to grant or refuse development consent when finally made. Paragraph 1 provides that when a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- The content of the decision and any conditions attached thereto;
- Having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation procedure;
- A description, where necessary, of the main measures to avoid, reduce, and if possible, to offset the major adverse effects.

Paragraph 2 of Article 9 requires that the listed information is to be provided to the Member States consulted under the transboundary consultation process. The Member States shall also ensure that the information is actively disseminated to the public concerned in their own territory.

Member States' experience

It is not possible to draw any conclusions as to the effective implementation of Article 9 of the EIA Directive on the basis of the data provided. The questionnaires did not cover this issue.

5.7 Changes or extensions of Annex I projects and other modifications of Annex I projects and modifications of Annex II projects

EIA Directive

Annexes I and II of the EIA Directive were amended to align them with paragraph 22 of Annex I of the Aarhus Convention. The consequence is that any change to or extension of any of the projects listed in Annex I to the EIA Directive will require an environmental impact assessment where the change or

⁵³ 'Commissaire enqueteur' is the person in charge of the organisation of the public inquiry.

Member States' experience	<p>extension in itself meets the thresholds set out in the preceding paragraphs of that Annex (Annex I paragraph 22). This is, furthermore, backed up by the decision of the European Court of Justice in the Grosskrotzenburg-case⁵⁴</p> <p>All Member States report that they have adopted national measures in order to comply with the changes introduced by Directive 2003/35/EC. It is however, not possible to draw any conclusions as to the correct transposition and application of these adopted measures.</p>
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5.8 Beneficial changes introduced by Directive 2003/35/EC

The majority of the Member States report that the largest beneficial change that Directive 2003/35/EC has brought to the EIA process is the strengthening of public participation in the decision-making procedure. The changes introduced have made the EIA procedure more clear and precise and helped in the interpretation and application of the Member States' legislation.

Some Member States report that no major changes have been introduced in national legislation following the adoption of Directive 2003/35/EC (Malta) and that the public already had the possibilities provided for in the Directive before the adoption of the Directive (Sweden).

Germany and the United Kingdom state that it is too early to conclude on any individual benefits following from the introduction of the Directive, as no comprehensive experience is yet available.

Belgium (Federal level), Denmark, Ireland, Luxembourg, the Netherlands and Poland have not responded to this question.

Strengthening of public participation	<p>Romania stresses that the largest beneficial change is the increased involvement of the public in the EIA procedure which has led to the strengthening of the public influence on the decision-making process, an increased awareness of the public and more confidence in the environmental protection authority.</p>
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Public participation during the EIA procedure ensures:

- The public awareness of the proposed investments and related environmental decisions;
- A better understanding of the environmental protection matters;
- Identification of new environmental problems that need to be addressed in the decision-making process;
- Better knowledge of the local circumstances.

Portugal reports that the Directive has provided for a greater citizen involvement in the decision-making process, ensuring a more effective public participation, a wider dissemination and availability of the information. Creating con-

⁵⁴ Case C-431/92 Grosskrotzenburg (pre-judicial decision).

ditions for a more effective public consultation has revealed itself as a critical aspect for a more successful EIA procedure.

Cyprus stresses that the changes introduced by Directive 2003/35/EC are very important for the enhancement of public participation. The amendments have also further enforced the already existing national provisions on the participation of the public and NGOs in the decision-making procedure.

The Czech Republic stresses that the changes introduced by Directive 2003/35/EC improve the transparency of the entire EIA procedure by, in particular, reinforcing the rights of the public. Within the process of assessment emphasis is placed on public participation and the possibility to submit viewpoints related to the individual project and eventually to the overall concept.

France states that the national transboundary procedure has been strengthened which has brought more transparency to the procedure.

According to Latvia, the main beneficial change is that the members of the public have recognised their rights and possibilities of interaction as well as recognised the relevance of such interaction. The public has become more active and its participation in the EIA process has increased. In conclusion, the EIA process has become more democratic. Until now, the participation of individuals in the EIA process was mainly exercised through active NGOs, however today it has become more common for individual members of the public to take active part in the EIA process from the beginning of the process.

Lithuania stresses that the changes introduced by the Directive already were in place before the adoption of the Directive, and therefore it is not possible to point out the most beneficial change as such. However, it is underlined that the Directive has introduced more detailed regulation of public participation in the EIA process and that the Directive has increased the openness of the EIA, leading to an increased acceptability and credibility of the EIA decision-making procedure.

Definition of 'the public' and 'the public concerned'

Bulgaria reports that the definitions of 'the public' and 'the public concerned' have provided a more clear interpretation of the rights of the stakeholders in the EIA process.

Slovakia also reports on the benefits gained by the introduction of the two definitions.

Access to review procedure

Austria stresses the importance of the introduction of legal standing for environmental NGOs who contribute with valuable expertise in regard to the correct application of environmental provisions. The fact that NGOs have been given the right to appeal for example, in the area of nature protection, has increased the focus and importance of this environmental sector.

Greece also mentions that the introduction of additional administrative and judicial review procedures provides important alternatives to the recent past available review procedures which were costly and time-consuming.

Changes and extension of Annex I projects and modifications

Portugal and Slovakia report on the benefits gained by the introduction of Article 10a.

Finland stresses that the changes made to the provision referring to the 'changes or extensions of projects' of Annex I projects have made the interpretation clearer. Portugal points out that the inclusion of point 22 in Annex I and the addition made on point 13 of Annex II have given a valuable contribution for clarifying the applicability of the EIA procedure to some projects.

5.9 Conclusions

The general impression is that experience in the application of the new provisions introduced by Directive 2003/35/EC is still limited. This is also expressed by some Member States.

It is important to note that the responses provided by the Member States to the questionnaire often do not provide sufficient data to draw any conclusions as to the application of these issues at national level. Furthermore, some issues to be addressed in the Study - according to TOR - are not addressed in the questionnaire (e.g. the definition of 'the public' and 'the public concerned', detailed list of information to be provided to the public, information on the public participation process in the final decision). Data on the factual situation in the Member States on these matters are therefore solely based on data provided by local consultants, including any observation on the effective application of these provisions.

All Member States appear to apply a broad definition of 'the public' allowing all natural and legal persons to take part in the decision-making procedure. The picture relating to the implementation of the definition of 'the public concerned' is more varied. The majority of the Member States have included a definition in their national legislation. Some Member States do not distinguish between 'the public' and 'the public concerned' in its EIA legislation.

In terms of 'the public concerned', the question of whether it causes a problem that the term is not defined as such in national legislation, depends on whether the term is used in a more narrow sense in national legislation than what is required under the Directive.

One might argue that it is important to provide for a clear definition of the term in national legislation, as any lack of an adequate definition may result in the problem of identifying to whom the right of participation applies. The objective of the Directive is to ensure that negotiations are conducted with those that have specific interests in the matter, who are affected or likely to be affected. In this respect, it shall be noted that it is quite common among Member States that the definition of 'the public concerned' is not a part of national legislation - and as a consequence there is no identification of these groups/individuals. Such an approach may be justified on the basis that the definition of 'the public concerned' is used in a broader sense than that of the Directive, and that the specific rights accorded to the public concerned in the meaning of the EIA Direc-

tive, is accorded to the public at large. However, on the other hand, it may be discussed whether such an approach, in practice, in any way entails a selection procedure carried out by the competent authority. This appears most realistic if public consultations shall be carried out to a satisfactory level. Finally, there might be a risk that access to justice for these groups/individuals will not be ensured to the extent afforded in the EIA Directive.

In regard to the issue of access to a review procedure, it is evident from the data provided by both Member States and local consultants that this issue is complex and complicated, by nature, which to some extent explains the lack of information provided or inconsistent or wrongful use of terminology. The review may therefore merely report on the factual situation in the Member States, by concluding that:

- The majority of the Member States provides for both judicial and administrative review to challenge the legality of decisions, acts and omission subject to the public participation provisions of the EIA Directive;
- The Member States apply different criteria for standing.

The concerns raised are related to the issue of standing. In particular, it is stressed by the local consultants that the criteria set for NGOs often are difficult to fulfill. The situation that the 'public concerned' cannot challenge negative screening decisions is also criticised. Furthermore, the costs connected to the review procedure are considered an obstacle for access to justice in nearly half of the Member States as reported in the Study of access to justice.

Regarding public consultations, it is concluded that in general the members of the public have access to the decision-making procedure in an acceptable manner. It is interesting to note that half of the Member States provide for public consultation already in the scoping stage. It is stressed that this improves the quality of the EIA documentation considerably. This may be seen as a fulfillment of the requirements in the Directive for 'early and effective public consultation'. Furthermore, many Member States provide for public consultation even in the screening stage.

Concerns have been raised about the interpretation of reasonable time-frames in some Member States. Reasonable time-frames must be provided in order to allow the public adequate time to be informed, to prepare for its participation in the decision-making and to actively participate in procedures. Some local consultants have raised concerns that this is not always the case. They specifically point to the fact that time-frames are too short and do not sufficiently protect the rights of the members of the public under the Directive.

6 New developments in the EIA systems in the old Member States

This chapter provides an overview of new developments in EIA systems in the old Member States.

6.1 Amendments and the reasons for their introduction

A number of Member States have recently introduced amendments to the national EIA legislation (Austria, Germany, Ireland, Italy, Spain, Sweden and the United Kingdom). It is not always clear from the data reviewed whether these amendments have been introduced solely on the basis of the recommendations of the 2003 Five Year Report or whether they are the result of nationally driven solutions for improving the EIA system.

In the case of Austria, the local consultant, however, informs that as a consequence of the Commission's recommendation that *“those Member States that employ a system with fixed mandatory thresholds should make certain it ensures that all projects that might have significant effects are subject to an appropriate screening process”*⁵⁵, amendments to the Austrian EIA Act were introduced. Moreover, certain amendments of Annex I were inaugurated in order to consider the possible cumulative effects from projects.

Ireland has introduced a number of new provisions on EIA in the Planning and Development Act regulating decision-making for infrastructure projects.

Italian Legislative Decree no. 4 of 16 January 2008 introduced new elements into Italy's EIA system, in particular a link to sustainable development goals. It is in the decree emphasized that these sustainable development strategies should provide the framework for EIA and SEA.

Since 1986, the Spanish EIA Act has been amended several times to take into account new EU legislation. These amendments were dispersed through different acts (e.g. the SEA Act (2006), the Act on Access to Information, and Access to Justice in Environmental Matters (2006), etc.) The Spanish EIA Act

⁵⁵ cf. 5.4.2 (c) p. 99

adopted in January 2008 clarifies and consolidates effectively the formal aspects of the EIA procedure.

Sweden has recently introduced amendments to the national EIA Ordinance (SFS 1998:905): SFS 2008:691 which entered into force 1 August 2008 and SFS 2008:725 that entered into force 1 September 2008. SFS 2008:691 introduces amendments to Section 3 (projects or activities that always have a significant environmental impact), as well as repealed Annex I of the EIA Ordinance (activities subject to mandatory EIA). SFS 2008:725 introduces amendments to Section 10 (the responsibilities of the competent authority in the case of transboundary EIA). The amendments included revision of the list of projects that are subject to mandatory EIA, which was shortened, as some of the projects will in the future be subjected to screening as a first stage.

In Germany, important amendments were introduced in the Federal EIA Act in 2005 and 2006, for instance, to strengthen the screening procedure.⁵⁶ Furthermore, the Federal Emission Control Act 4th Statutory Order was amended in 2007. The thresholds for intensive animal farming projects were raised massively to the limits set by the EIA Directive.

In the case of the United Kingdom, no amendments have been made to the legislation; however, a new Circular is expected late autumn 2008. The indicative thresholds for Annex II projects envisaged in the present Circular will be removed as there has been some concern that these lead to confusion with the thresholds set out in the transposing legislation. The draft Circular will, furthermore, stress the need to consider the screening criteria set out in legislation.

6.2 Exemptions, if any, and their justification, provided for by Article 2(3)

EIA Directive

The EIA Directive provides for, in certain situations, that Member States - after having submitted a communication on the justification for applying the exemption in Article 2(3) to the Commission, and the Commission having consulted other Member States - may exempt a project from the requirements of the EIA Directive. Member States are required to assess whether other forms of assessment may be relevant in the given situation.

Article 2(3) provides:

"Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive".

The text of the Directive does not further define 'exceptional cases'.

Commission's guidance

The Commission guidance document, 'Clarification of the application of Article 2(3) of the EIA Directive' emphasises that if this option is used, it is desirable

⁵⁶ See questionnaire Germany 15.1.07, answer to question 22

for reasons of legal certainty that the wording of the transposing legislation follows that of the Directive as closely as possible. Guidance reports that very few cases have been reported by Member States in which Article 2(3) has been invoked, and none of them provides sufficiently firm precedents on which to base further guidance.

The guidance recommends that the term 'exceptional cases' is interpreted narrowly, which concords to practice set forth by the European Court of Justice, meeting the following criteria:

- An urgent and substantial need for the project;
- Inability to undertake the project earlier;
- Inability to meet the full requirements of the Directive.

The exemption may normally be invoked in a civil emergency, though not all civil emergencies qualify for the exemption. Finally, it is required that Member States shall act quickly (before consent is granted) to provide the Commission with reasons justifying the exemption.

Member States' experience

Member States have been asked, whether they have made use of exemptions as stipulated in Article 2(3) of the EIA Directive.

The majority of the consulted old Member States (Austria, Belgium, Germany, Denmark, Finland, France, Ireland, the Netherlands and Sweden) have reported that national legislation does not envisage exemptions as provided for by Article 2(3) of the EIA Directive.

In Greece, there have not been any such cases from 1995 and onwards. Nevertheless, the Commission's Guidance on the 'Clarification of the application of Article 2(3)' is considered particularly useful in the correlation between "exceptional cases" and civil emergencies.

Luxembourg reports that one exemption has occurred so far concerning the construction of 14 km new motorway (Luxembourg-Ettelbrück) in 1997.

The Portuguese EIA legislation only allows for exemptions in case of "force majeure", i.e. natural catastrophes and situations where public safety is at stake.

The Spanish Council of Ministers and the equivalent competent authority at regional level, may exclude a project of the EIA procedure. The agreement on whether to grant an exemption and the reasons for justifying it, are published in the Official Journal (National or Regional) and notified to the European Commission.

Only Italy has used Article 2(3) of the EIA Directive 12 times during the period covered by this Study.

In summing up, it seems that experience in Member States is scarce and, furthermore, that a majority of old Member States does not even have legal provisions allowing for an application of an Article 2(3)-like procedure. This does

not guarantee however, that emergency situations do not occur but rather points to the fact that in the event such situations do emerge only few Member States among the old Member States have the relevant legislation in place.

6.3 Follow up on the findings of the previous five year report (2003)

According to the 2003 Five Year Report, the main problems in the application of the EIA Directive is related to the application and implementation level of the requirements of the Directive, and not related to a lack of transposition of the legal requirements into the national legal order. The Report outlines the following shortcomings:

- Wide variation between Member States in applying criteria for screening;
- Poor scoping;
- Lack of regard for cumulative effects of projects with other projects;
- Processing of transboundary EIAs: need for more formal and informal arrangements for consultation;
- Poor quality control systems for EIA processes. Setting quality control systems is not an obligation deriving from the Directive itself but it is left to the Member States. However, it is a good practice, especially where the projects are co-financed by the EC;
- Variations in the degree to which the EIA procedures are employed between Member States, i.e. different number of EIAs carried out in the Member States;
- Results of EIA are poorly reflected in development decisions;
- Incomplete transposition of Directive 97/11/EC.

In the following sections, an overview of the performance of the old Member States with regard to each of the above mentioned shortcomings are analysed to the extent the identified shortcomings have been made subject to questions from the Commission in the questionnaire submitted in 2007.

6.3.1 Screening

Screening is the part of the EIA-procedure where proposed projects are assessed with regard to whether they may have significant impacts on the environment or not. In case this preliminary assessment leads to a decision where no significant impacts are expected from a proposed project, the developer may proceed without submitting the application for consent to the EIA procedure as such.

Screening procedures may be based on an ad-hoc model, where each of the project types defined in Annex II of the Directive are assessed in accordance with pre-defined criteria as set forth in Annex III of the Directive. Screening may also be based on thresholds or criteria set by Member States. Such nationally adopted thresholds and criteria must take the criteria set forth in Annex III into account.

Ireland is one of the Member States that have set mandatory national thresholds for each of the project classes in Annex II. These thresholds were set with due account of the particular Irish circumstances, including the general nature, size and location of projects as well as the conditions of the environment. Thresholds are reported to be set at a quite low level leaving the relevance of carrying out EIAs for projects below the thresholds set virtually not relevant. A National Guidance document was designed to assist authorities in deciding screening procedures for sub-level development projects. In terms of Annex III criteria, the guidelines emphasise that all criteria should be taken into consideration in the specific context of each case, but that much depends on the exercise of best professional judgment.

In Sweden, no individual screening is being performed for the majority of Annex II projects, as EIA is mandatory even to these project types.

Sweden has reported that amendments into national EIA legislation have been introduced which inter alia are aimed to improve the screening procedure. Thus, the Swedish EIA Ordinance has recently been amended by SFS 2008:691 that entered into force 1. August 2008 and SFS 2008:725 that entered into force 1. September 2008. SFS 2008:691 repeals Annex I, as well as it introduces amendments to Section 3 (a project or an activity that always has a significant environmental impact). As a result, the list of activities that are subject to mandatory EIA is shortened, as some of the projects will only be subject to notification. With this amendment, Sweden is gradually approaching the basic concept of only applying EIA to projects that may have significant environmental impacts rather than to all project applications.

Although Austria has not specifically identified unsystematic screening as an issue, Austria has amended the national legislation following the recommendations of the 2003 Five Year Report to ensure that all projects that may have significant impacts on the environment are subject to an appropriate screening process. Austria employs a system with fixed mandatory thresholds.

6.3.2 Statistics on EIA activities

It follows from the information provided by Member States that the number of EIAs carried out in Member States varies significantly from state to state. As for the overall number of EIAs carried out between years 2002-2006, the figure is comparatively low for Austria (25-30 EIAs are carried out annually), and very high for France (around 5,000 EIAs), Germany (more than 1,000 EIAs) and Sweden (1,600 EIAs) - see also comment above on the recent amendment to the Swedish EIA Ordinance.

Only few consulted Member States do separate the statistics in relation to the Annex I and Annex II EIAs. These are Finland, Spain, Portugal, to some extent Denmark and the Netherlands.

Although no data is available for Belgium at the Federal level, a comprehensive overview over the EIA activities has been provided by the national local consultant for the levels of EIA activity at the regional levels.

Thus, in Brussels, there were 185 simplified procedures and 31 complete EIAs (11 started in 2005 and finished in 2006 – 2 started in 2006 and finished in 2006 – 20 started in 2006 and finished in 2007) carried out in 2006. No EIAs have been performed in relation to the projects of Annex I of the EIA Directive. As regards the Annex II projects, the following data have been provided:

- 100 simplified procedures in relation to item 10b–Urban development projects with parking lots; 25 complete EIAs also in relation with item 10b;
- 5 complete EIAs in relation with item 10c (railways), 10e (roads) or 10h (trams).

The number of EIAs between 2001 and 2006 overall shows a steady increase in the Walloon region:

Table 6.1: The number of EIAs in 2001 and 2006 in the Walloon region

2001	2002	2003	2004	2005	2006
54	38	51	79	78	86

In Flanders, since 1995 the number of EIAs carried out on a yearly basis has stayed within a range of 50-85 per year.

In 2006 (the first complete year) 56 motivated requests for exemption of a full EIA were sent to the authorities. 48 of the applicants obtained the exemption, 8 did not and were required to conduct a full EIA. In total, 79 EIA procedures were initiated (of which 3 out of 4 were for Annex II projects). Slightly more EIAs have been carried out since the application of the Directive in Flanders.

Greece has reported that as projects and activities for Annex I and Annex II undergo a mandatory EIA separate figures do not exist. At the central government level, approximately 1,100 cases of EIA for new projects and activities as well as for the extension, change or modernisation of existing projects and activities occur per year. At regional level, the number of EIAs dealt with is estimated to be in the region of 2,000 per year. There has been a noted increase in EIA activity over the last five years.

The local consultant from Ireland expressed the view of Professor Yvonne Scannell who claims that far more EIAs are carried out (proportionately) in Ireland than in other Member States, in particular when compared to the United Kingdom. No figures to support this view have been provided by the national local consultant, however. If Professor Scannell is correct in her views that developers tend to prepare EISs because they cannot get an early definitive ruling as to whether EIA is required, it would seem likely that more EIAs are being carried out in practice.

The table below illustrates the EIA activity as per 2002-2006:

Table 6.2: EIA activity between Member States 2002-2006

Member State	Overall number of EIAs during 2002-2006	Annex I and Annex II EIAs for 2002	Annex I and Annex II EIAs for 2003	Annex I and Annex II EIAs for 2004	Annex I and Annex II EIAs for 2005	Annex I and Annex II EIAs for 2006
AT	25-30	26 applications on licensing procedures made 47 case by case examinations initiated	7 applications on licensing procedures made 56 case by case examinations initiated	29 applications on licensing procedures made 46 case by case examinations initiated	30 applications on licensing procedures made 95 case by case examinations initiated	28 applications on licensing procedures made 103 case by case examinations initiated
DE	Over 1000					
DK	Increase from 70 to 128					100 Annex I, 128 Annex II
EL	Around 1100 cases on the central government level. Around 2000 per year on the regional level					
ES ⁵⁷	73 annex I 158 Annex II	108 annex I 157 annex II	56 annex I 117 annex II	87 annex I 126 annex II	164 annex I 155 annex II	170 annex I: 150 annex II
FI	164	Annex I: 24 Annex II: 0	Annex I: 38 Annex II: 4	Annex I: 33 Annex II: 4	Annex I: 23 Annex II: 1	Annex I: 31, Annex II: 6
FR	Around 5000. Among them, around 1000 for "classified installa-					

⁵⁷ Figures of projects approved by the Central State Administration. No data available on regional projects.

Member State	Overall number of EIAs during 2002-2006	Annex I and Annex II EIAs for 2002	Annex I and Annex II EIAs for 2003	Annex I and Annex II EIAs for 2004	Annex I and Annex II EIAs for 2005	Annex I and Annex II EIAs for 2006
	tions" (in 2006, 1000 to 1200 ICPE in relation with the projects of the directive were carried on).					
LU	None so far under the transport infrastructure EIA act					
NL	2001: +/- 145 EIAs 2006: +/- 263 EIAs		67 Not possible to separate	77 Not possible to separate	74 Not possible to separate	102 Not possible to separate
PT	767	Annex I: 32 Annex II: 70 (only concerning EIAs in which APA has been the CA)	Annex I: 35 Annex II: 130	Annex I: 34 Annex II: 130	Annex I: 31 Annex II: 140	Annex I: 34 Annex II: 118
SE	1600 EIAs were made in 2006.					
UK	Varies in number from a low of 597 to a maximum of 700.					

Although the level of EIA activity among Member States varies significantly, it is characteristic for nearly all the consulted Member States that the number of EIAs tends to increase steadily over the time-period reported.

Denmark states that the number of initiated EIAs has slightly increased over the last 5 years from about 70 to 128. Likewise, Portugal reports that in 2007 an increasing tendency has been noticed for Annex I projects (52 EIA procedures).

Finland reports that it is not possible to conclude that the amendment has led to an increase of EIAs; the main reason being the open case-by-case examination in screening. The number of EIAs can be interpreted more as a reflection of economic activity and expectations in that field.

The Netherlands reports that there was a significant increase in the number of EIAs since 2004. One explanation for this increase is the number of EIAs for pig and poultry farms. Also several EIAs were performed as a result of judicial appeal procedures.

6.3.3 How are screening decisions made available?

Member States have been asked to indicate how they have implemented the requirement of making screening decisions available to the public. The answers provided by Member State representatives are reflected in the table below.

Table 6.3: Overview of how Member States make screening decisions available.

MS	Questionnaire responses	Is procedure laid down in legislation?
AT	The decision is sent by post to all parties of the procedure and usually is posted on the notice-board of the authority and published on the internet .	No information
BE - Walloon	For projects which by law are not mandatory submitted to an EIA, the authority in charge to examine the admissibility of the request may impose an EIA. In that case, the rules of the EIA procedure apply: advices in newspaper, public notice, information meeting, public participation to the scoping phase, public inquiry for 30 days.	Yes
BE - Federal level	No information provided	No information
BE - Brussels	The criteria are fixed in the Ordinance and so they can be known by everyone.	Yes
BE - Flanders	No information provided	No information
DE	A clarifying provision was already integrated in § 3a sentence 2 of the German EIA Act when the Act was amended by the Act for the Transposition of the Amended EIA Directive, IPPC Directive and additional European Community Directives on Environmental Protection of 27 July 2001 (BGBl. I page 1950). This provision reads as follows: “§ 3a Determination of EIA obligation Upon application by a project developer or in response to a request pursuant to Article 5, or otherwise after commencement of the procedure to decide on the project's admissibility, the competent authority shall decide without delay whether an obligation exists under Articles 3b to 3f to carry out an environmental impact assessment for the project using suitable details about the project and information of its own. Where a preliminary	Yes

	<p>examination of the individual case has been undertaken pursuant to Article 3c, such determination shall be made accessible to the public in accordance with the federal and Länder provisions on access to environmental information; if no environmental impact assessment is to be undertaken, this shall be made known. ..."</p> <p>See on this also the response to question 3 of the questionnaire for the 2003 Report.</p>	
DK	<p>If the screening decision is - "<u>no need for an EIA</u>" - this is announced by public announcement – mostly in local papers - and with information on the right to appeal to the Nature Appeal Board.</p> <p>If the screening decision is – "<u>an EIA is needed</u>" - the screening decision is sent by letter to the developer and the public get access to the information in connection with the public involvement in the scoping phase.</p>	Yes
EL	<p>The outcome of the Preliminary EIA (screening & scoping phase) is forwarded by the competent authority to the respective Prefectural Council(s) which within five (5) days from receiving the relative information makes it available to the public by publishing an announcement in the local press and posting this announcement on the bulletin board of the Prefectural Administration. Additionally the competent authority may also publish the aforementioned announcement in the regional or national press and electronically if possible.</p>	No information
ES	<p>Screening decision by the environmental body is made available to the public, regularly by the publication in an official diary.</p>	No information
FI	<p>The screening decision is put on display on the official notice board of the local municipality and it will also be published on internet.</p>	Yes
FR	<p>In France, the "screening" process is an approach defining once for all the projects which are subject to an EIA. Like all the regulations, those mentioning the <u>projects subject to an EIA</u> are publicised in a national official paper ("Journaux officiels").</p>	No information
IE	<p>The local planning authority's screening decision in relation to sub-threshold applications must be recorded and made available for public inspection.</p>	No information
IT	<p>A screening decision is made available by publication on the official web site of the Ministry for Environment www.minambiente.it. Up to now, the decision has been in the form of a Directorial Decree</p>	No information
LU	<p>A decision on a necessity of an EIA is published by the Minister of Transport / Minister of Public works during a period of 1 month in the municipality affected by the project</p>	No information
NL	<p>This is determined in section 7.8d of the Environmental Management Act.</p> <p>The competent authority shall communicate its decision by:</p>	Yes

	<p>a. depositing it for inspection;</p> <p>b. publishing a notice in a publication in another country if the activity is likely to have serious adverse effects on the environment in that other country;</p> <p>c. publishing a notice in the Government Gazette if it has been decided that <u>no environmental impact statement is required</u>.</p> <p>In the notification and publication of its decision, the competent authority shall state at least:</p> <p>a. the date on which a copy of the decision is to be deposited for inspection, and the hours during which and place at which it will be available for inspection;</p> <p>b. the importance of the decision.</p>	
PT	Under the Portuguese EIA legal regime, subjection to EIA procedure is compulsory to all the projects listed both in Annex I and Annex II. However the Portuguese legislation foresees the possibility for a screening decision on project types listed under Annex II but not meeting the thresholds established (Article 4 (a) of Law Decree 197/2005). In these cases, the licensing authority, based on the criteria established in Annex III of the Directive (transposed into Annex V of Law Decree 197/2005 of 8 November) may subject the project to EIA procedure if considers it to have significant environmental impacts.	No information
SE	It is the county administrative board that decide whether the activity or measure can be assumed to involve a significant impact on the environment. The decision shall contain a motivation and the person who is the subject of the decision shall be notified. The decision is also available for anyone who is interested.	No information
UK	<p>Screening decisions are placed on a register maintained by a competent authority which is available for inspection by the general public. Where <u>EIA is required</u> a copy of the screening opinion (decision) is sent to the proponent. Where on appeal such a decision is taken by the Secretary of State, a copy of the screening decision is sent to both the proponent and the competent authority whose decision on the requirement of EIA was appealed.</p> <p>The publicity and availability of screening decisions made under other consent systems in the UK do not necessarily follow the above format. For example, in a number of consent regimes screening decisions are publicised by advertisement in local and national newspapers. Such adverts will provide the location of where information on the screening decisions can be obtained by the public, and later adverts will provide the location and availability of environmental statements and final decisions taken. The location of the screening decisions is required to be within the locality of where the development is proposed.</p>	No information

6.3.4 Simplified procedures

Member States have been asked to indicate if there is any Annex I or II project types for which a simplified procedure is adopted. And if this is the case, to explain on whose initiative and on what grounds, it was decided. The answers provided by Member State representatives are reflected in the table below.

Table 6.4: Member State application of simplified procedures for some Annex I or II project types

Country findings

MS	Remarks	Are any Annex I and II projects subject to simplified procedures
AT	In Austria, all types of projects are implemented in one Annex. There is a simplified procedure (which meets all criteria of the EIA-Directive) for some types of projects that usually might cause impacts on just a few environmental media; the system was proposed by the Chamber of Commerce.	Yes
BE - Brussels	<p>Yes, certain projects of Annex II are only submitted so as explained in the preliminary note to an "EIS report" (a sometimes simplified document not obligatorily carried out by an independent consultant with the supervision of a Steering Committee) as it is the case in the Brussels Region. Nevertheless, even when it is a shorter analysis than in an EIA, the developer has to submit a document where the potential impacts in all the environmental issues mentioned in the Directive are analysed by the developer or its architect. The completeness of this document is examined by the Administration. This document together with the request itself is submitted to a public inquiry and an advice of the Consultation Commission. The project is thus checked for whether it is likely to have significant effects on the environment, and it is written in the Ordinance that in exceptional circumstances the Commission may recommend to the Government to impose an EIA for these projects. Even if in most of the cases, it doesn't lead to a full EIA, this procedure is to consider as a case-by-case examination and meet the full requirements of the Directive (so as defined for projects in Annex II of the Directive)</p> <p>Most of the projects mentioned in Annex II of the Directive are classified 1B in our legislation for environment or in Annex B of our legislation about urbanism (with a simplified procedure), but some Annex II projects are in the facts transposed in the Brussels legislation in the list of projects with obligatory EIA (they are classified 1A or Annex A as urbanistic criteria):</p> <ul style="list-style-type: none"> - projects with more than 200 parking places in the air or covered and/or with more than 20.000 m² offices; - public works so as bridges, tunnels, ... (No thresholds : it is spoken in the Ordinance about "ouvrages d'art souterrains ou aériens") - storage dangerous waste >500T/day; - burial centers for dangerous or non-dangerous waste 	Yes

	(other than inert material), - chemical treatment for eliminating non-dangerous wastes; - container parks >1000m ³ ; - sorting and recycling centers >100.000T/year; - water treatment plants >30.000 Equivalent Inhabitants - manufacture of coke >500 ton/day; - asbestos production >200T/year; - storage liquefied or compressed gas >1Million liter.	
DE	<p>On the implementation of Annex II of the EIA Directive see, in particular, the answer to question 1 of the questionnaire for the 2003 Report. There is only scope for a simplified EIA procedure where the EIA Directive leaves the Member States corresponding leeway in implementation. Where Member States apply national EIA rules which are stricter than those of the EIA Directive, they have the option of exempting certain projects from these stricter national requirements, and subjecting them instead to the minimum requirements established by the EIA Directive.</p> <p>An example of this in German EIA law is provided by § 9 of the EIA Act. Under this provision, in every approval procedure involving an EIA a public hearing is to be held as a matter of principle. At this hearing, the objections raised against the project are discussed in public with the objectors. However, under the Act for Expedition of Planning Procedures for Infrastructure Projects of 9 December 2006 (BGBl. I page 2833) this does not apply to certain transport and energy infrastructure projects; for these, there is no hearing, but only a participation procedure involving written submissions. As Article 6 of the EIA Directive does not make such a hearing mandatory, it was possible to establish this provision in line with the requirements of European law.</p>	Yes
DK	<p>Since 1 January 2007 Livestock farming (Annex II (1e)) has its own legislation implementing the EIA-Directive combined with the implementation of the IPPC-Directive. This is due to the high numbers of projects and their mostly unified impacts, and the wishes to create a more expedient procedure.</p>	Yes
EL	<p>According to our national legislation Annex I & Annex II projects and activities require a mandatory EIA. Projects or activities falling within a set range below the statutory thresholds and criteria for Annex II undergo screening. However there are small scale projects and activities (well below the thresholds and criteria for Annex II) that for the protection of the environment, even though they do not cause significant effects, must be submitted to general provisions, terms and limitations as foreseen by regulative provisions. These undergo a simplified environmental permitting procedure (illustrated in Diagram 5 attached).</p>	Yes
ES	<p>There are not simplified procedures contemplated in the National Law on EIA</p>	No
FI	<p>Every project type has the same EIA- procedure.</p> <p>- Information need not be provided about the assessment</p>	

	programme if it is clearly unnecessary because information about the project has already been provided as laid down in this Act, and those quarters whose circumstances or interests may be affected by the project have been heard. Section 8 in EIA Act). This has not been applied in practice.	
FR	There is no EIA simplified procedure adopted for any Annex I or II project. As regards public participation, when a project is not submitted to a public inquiry, which is rather rare, it is submitted to a simplified public consultation (see article R. 122-12 of the environmental code) which implements also the requirements of the directive.	No
IE	There is no provision for a simplified EIA procedure. All projects are subject to the same procedures. See response to questions 21 and 22.	No
PT	The EIA procedure is applicable to all the project types listed under Annex I and Annex II of Law Decree 1975/2005 of 8 November	No
UK	It is not clear what the questionnaire means by "simplified procedure". In its regulations, the UK has de minimis thresholds for Annex II type projects which are designed to screen out small scale projects that are considered unlikely ever to have likely significant effects. We have a catch-all regulation that enables us to require EIA for these projects if necessary. Projects that exceed the appropriate de minimis thresholds have to be screened on a case by case basis by the competent authority. It could be argued that the UK has simplified the EIA procedure by its use of de minimis thresholds. However, the procedure the UK has in place is one allowed under Article 4.2., so have we really simplified the procedure? The UK will be happy to provide further comments if we have misunderstood the question or when a more detailed explanation of what is meant by the term, "simplified procedure" is given.	

Countries not represented in the table have not provided answers to this question.

Five Member States report that they have adopted simplified procedures. Eight Member States report that they have not adopted simplified procedures. Two Member States (Spain and the United Kingdom) doubt whether they have in fact adopted simplified procedures since the simplified procedure that they have adopted is allowed under Article 4.2 of the Directive.

The simplified procedures adopted relate to:

- Small scale projects and activities (well below the thresholds and criteria for Annex II) that for the protection of the environment, even though they do not cause significant effects, must be submitted to general provisions, terms and limitations as foreseen by regulative provisions. These undergo a simplified environmental permitting procedure;

- In the United Kingdom, due to a 'catch all' approach, *de minimis* thresholds for Annex II type projects have been designed to screen out small scale projects that are considered unlikely ever to have likely significant effects.

6.3.5 Splitting of projects into sub-projects (salami slicing)

Member States have been asked to indicate whether they have adopted specific legislation or other measures to avoid developers splitting projects into sub-projects for the purpose of avoiding the EIA requirement.

The answers provided by Member State representatives are reflected in the table below.

Table 6.5: Member State provisions to avoid "salami slicing"

MS	Questionnaire answer	Has positive law or guidance been enacted?
AT	<p>See Art. 3a (5) EIA-Act: In order to avoid circumventions of EIA by cutting modifications in several pieces there is an obligation, that the applicability of an EIA to modifications shall be assessed on the basis of the total sum of the capacity-expanding modifications approved in the past five years, including the capacity increase applied for, provided that the modification applied for results in a capacity increase amounting to at least 25% of the threshold value or, if no threshold value is specified, of the previously approved capacity.</p> <p>If a new project is split between several applicants with the intention to avoid an EIA there is a clear jurisdiction that these projects have to be dealt and assessed as one single project according to the requirements of the EIA Act.</p> <p>Both, the provision in Art 3a (5) and the jurisdiction are quite effective in practice. They require, that even smaller projects (up from 25% of the thresholds set in Annex 1) are examined with regard to possible impacts on the environment on a case-by-case basis.</p>	Yes
BE - Walloon	<p>According to the decree relating to the environmental permit, an establishment is a technical and geographical unit where one or several installations and/or classified activities likewise any installation and/or activity dealing with and which are likely to have environmental impacts. So, even if an establishment is split between different owners, the permit is granted for the establishment and therefore an EIA can be needed.</p> <p>In addition, in the case of extension, an EIA is needed if the EIA threshold is reached or if it is already reached, the increase is equal or more than 25% of the capacity studied in the previous EIA and not the one of the last permit.</p>	Yes
BE - Federal	No information provided	-
BE -	In the legislation about environmental permits, it is spoken	Yes - as

Brussels	about technical and geographical units wherein it is forbidden to split projects, but the same concept is not used in the legislation about urbanism, where the demands are different if they come from different developers. As written in the preliminary notice, if the Consultation Commission suspects that the developers search for splitting, it may recommend to the Government to impose an EIA for projects which are normally submitted to a simplified procedure (classification 1B or annex A urbanism). If the projects are of lower classes, it is not possible to do such a recommendation.	concerns environmental permits No - as concerns urbanism
BE-Flanders	No information provided	-
DE	<p>See on this the response to question 20 of the questionnaire for the 2003 Report, which contains, among other things, the provision established by § 3b of the German EIA Act. Experience has shown this provision to be expedient, whereby simplifying and formulating it in more precise terms in the event of a future amendment is being considered.</p> <p>From 2003 Q 20: Relevant regulations in § 3b paragraph 2 and 3 of the new German EIA Act are aimed at preventing circumvention using the so-called "salami-slicing" of the EIA obligation.</p> <p>The degree of success these regulations have in enforcement cannot be assessed in view of the short period of validity of the new German EIA Act.</p> <p>The ban on the "salami tactic" already exists however several times over in Germany's relevant laws on project authorisation. If for example, an infrastructure project is prepared in different stages, the individual project sections are, under administrative court rulings, only to be defined as independent partial projects if each of the partial projects forms a meaningful unit in its own right.</p>	Yes
DK	As the legislation always requires a case by case screening and the screening process includes the cumulative effects to be taken into consideration it would not be possible to do Salami-slicing.	Yes
EL	There are some general and specific to project type provisions to avoid the splitting of projects that have resulted from practical experience and are therefore highly effective.	Yes
ES	The National Law on EIA prevents avoiding the application of EIA by the salami slicing of projects. Thresholds have to be taken into account by adding the magnitudes of the considered projects.	Yes
FI	<p>Case-by-case examination can prevent circumventing in those cases where the project can cause significant adverse environmental impact. Also, a strict permitting policy can be another means of prevention.</p> <p>- When considering applying the EIA-procedure on case-by-case basis the competent authority shall also take into account the cumulative impacts of different projects as stipulated by the Finnish EIA Act.</p> <p>- The weak links are such cases where the activity is small-scale at the beginning and then later on grows bigger little by little. In such situations it may be ambiguous to determine</p>	Yes

	when to apply EIA.	
FR	<p>Article R.122-3 of the environmental code sets forth:</p> <p>1/ when all the works scheduled in a program of works is implemented at the same time, the EIA must deal with the whole program of works.</p> <p>The different works must present a “functional unity”. The EIA, which must deal with the whole program of works, must take into account the cumulative impacts of the whole project or program of works.</p> <p>2/ when the implementation of works is not made at the same time, the EIA of each phase of the operation must deal with the whole program of works.</p> <p>For each phase of the project or program of works, the EIA concerns the phase carried out AND the whole project or program of works.</p> <p>Moreover, article R.122-8 of the environmental code, which sets that all projects above 1 900 000 euros must be submitted to an EIA, makes it precise that, when the implementation is split between two or more projects, the total price to be retained is the price of the whole program of works. The split may concern works of same nature, carried out in different phases (roads, for example) or works of different nature which are parts of a complex operation (for example, construction of roads, infrastructures etc. to built hotel complexes). An instruction note released in 1993 recommends providing interpretation of this notion, when the different phases of a project, made by the same petitioner or not, have a functional unity.</p> <p>The notion of EIA dealing with « the whole program of works » can be <i>difficult to apply</i> for several reasons:</p> <ul style="list-style-type: none"> - The notion of “program of works” is not always very clear when a project is designed. It is difficult, in these conditions, to make an EIA on the whole project or program of works. <i>In practice, the definition of a program is too narrow.</i> - for a same project or program of works, it is <i>difficult for a petitioner, responsible for a part of the works, to take into account the impacts of works made by other petitioners, especially when the works are not carried on at the same time.</i> <p>For “classified installations” (ICPE – see question 1), if several installations are envisaged by the same petitioner, only one development consent request must be submitted.</p>	Yes
IE	<p>No. The legislation requires that cumulative impacts be assessed. If a developer wishes to split a project into individual pieces he will still be assessed in the context of the cumulative impact of all the individual projects. This will also be the case where the developer phases the project over a period of years.</p> <p>A good example of this was a recent initial proposal by a developer to build a new development adjacent to a mid-sized rural town (Longford). His initial proposal was for a relatively modest development but it was clear to the planning authority that the waste infrastructure being proposed went beyond what would have been required for the pro-</p>	No

	posed development. On foot of this, the planning authority requested details of future development intentions be included in the EIS process. Our current understanding is that the developer has not made further efforts to pursue the project.	
IT	There are no explicit provisions to prevent developers from splitting projects into smaller ones to avoid an EIA, apart from general indications as in the Directive. However, in general, the competent authority takes care of the monitoring of such behaviour.	No
LU	No information provided	-
NL	There are no (planned) provisions in our national legislation.	No
PT	<p>The Portuguese EIA legislation tries to prevent “salami slicing” by establishing the possibility for a screening decision on project types listed under Annex II but not meeting the thresholds established (Article 4 (a) of Law Decree 197/2005). In these cases, the licensing authority, based on the criteria established in Annex III of the Directive (transposed into Annex V of Law Decree 197/2005 of 8 November) may subject the project to EIA procedure if considers it to have significant environmental impacts.</p> <p>The Portuguese legislation also foresees the possibility for a joint decision from the Minister of the Environment and the Minister competent in the field of the project subjecting to EIA procedure any project which, given its nature, location and characteristics, may have significant environmental impacts.</p>	Yes
SE	15 - 17. In connection with the consideration of cases and matters pursuant to the Environmental Code attention shall be paid to other activities or special structures that are likely to be necessary for efficient operations (Chapter 16 section 7 in the Code). Roads, transport and power transmission lines are examples of such activities or structures. To avoid several permit decisions being in force for one operation the permitting authority always shall evaluate if an alteration of existing activities require that an overall assessment should be made of the entire operation. During the consultation the public and the authorities can give their view on how the applicant has defined the application for a permit and the environmental impact statement. If the country administrative board or the Environmental court finds that important issues have been excluded from the application or the environmental impact statement, it may reject the application.	Yes
UK	<p>UK Regulations do not cover “salami slicing”.</p> <p>However, legal precedence has been set by the court judgment in the case of R v Swale BC ex parte RSPB [1991] 1PLR 6, which said that for the purpose of determining whether EIA is required, a particular planning application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development. DETR Circular 2/99 refers to and gives advice on this judgment.</p>	Included in national guidance on EIA

As seen from the table above there are Member States that have not adopted legislation or enacted guidance on how to prevent developers splitting projects into sub-projects for the purpose of avoiding the EIA requirements.

In the below table, experience from Member States that have established a practice (not provisions) on how to handle complex development schemes have been asked to report the way in which this is handled and by what means.

Table 6.6: *Member State practice on how to avoid 'salami-slicing'*

MS	Questionnaire response	Best practice established?
BE - Brussels	For the "complete EIAs" (not for the simplified procedures) there is a procedure providing the possibility via the Steering Committee to do take into account by the author of the EIA the projects which were eventually "extracted" from the request	
DE	<p>§ 3b of the German EIA Act. Experience has shown this provision to be expedient, whereby simplifying and formulating it in more precise terms in the event of a future amendment is being considered.</p> <p>Relevant regulations in § 3b paragraphs 2 and 3 of the new German EIA Act are aimed at preventing circumvention using the so-called "salami-slicing" of the EIA obligation.</p> <p>The degree of success these regulations may have cannot be assessed in view of the short period of validity of the new German EIA Act.</p> <p>The ban on the "salami tactic" already exists. If, for example, an infrastructure project is prepared in different stages, the individual project sections are, under administrative court rulings, only to be defined as independent partial projects if each of the partial projects forms a meaningful unit in its own right.</p>	
EL	It is the practice of expert reviewers to review the EIS of proposed projects for completeness not only in regard to content but also to ensure for example that all ancillary facilities, associated works etc. are included, cumulative effects have been taken into account, etc.	Yes
FI	Case-by-case examination may prevent attempts of circumventing in those cases where the project can cause significant adverse environmental impact. Also, a strict permitting policy can be another mean of prevention. The guiding and advisory role of the competent authority can be quite an effective tool in practice when the need for an EIA is determined in projects.	Yes
IE	See previous responses regarding need to carefully assess each application to ensure that each element of the application fits with each other in the context of the development proposed, i.e. a consistency within the application.	
IT	There are no explicit provisions to avoid 'salami slicing', nor any good practise. The only thing the competent authority has done several times has been to ask for a more comprehensive description on the framework of the entire project.	No

NL	<p>The legislator has been very clear about how to deal with the specific criteria for every category. When associated developments can be foreseen, they are part of the project, and salami slicing is not allowed.</p> <p>It is the judge who looks after this practice and who is very critical when an initiator tries to circumvent an EIA. The judge in the Netherlands is the best prevention for this practice in court cases following appeals against decisions. This Dutch practice is very effective.</p>	Yes
PT	<p>The Portuguese EIA legislation is set to prevent “salami slicing” by establishing the possibility for a screening decision on project types listed under Annex II but not meeting the thresholds established (Article 4 (a) of Law Decree 197/2005). In these cases, the licensing authority, based on the criteria established in Annex III of the Directive (transposed into Annex V of Law Decree 197/2005 of 8 November) may subject the project to EIA procedure if considers it to have significant environmental impacts.</p> <p>The Portuguese legislation also foresees the possibility for a joint decision from the Minister of the Environment and the Minister competent in the field of the project subjecting to EIA procedure any project which, given its nature, location and characteristics, may have significant environmental impacts.</p>	
UK	<p>Circular 02/99 on Environmental Impact Assessment makes clear to competent authorities that they should always have regard to possible cumulative with existing or approved development. It also reminds them that applications should not be considered in isolation if they are in reality part of a larger project. Provided they heed, and act upon, this advice they should be able to prevent attempts to circumvent the requirements of the Directive by this means.</p>	Yes

Most Member States do not report on best practises *per se*. However, the few examples provided mainly concern the approach of screening while taking into consideration if the project is part of a larger 'scheme'/development hence requiring the screening authority to take the entire scheme into account and - following the same line of thinking - assessing the cumulative effect of existing and already approved developments.

6.3.6 Major cases on splitting of projects

Member States have been asked to indicate whether they have adopted specific legislation or other measures to avoid developers splitting projects into sub-projects for the purpose of avoiding the EIA requirement.

The answers provided by Member State representatives are reflected in the below table.

Table 6.7: Cases where the problem of 'salami-slicing' is relevant by Member State

MS	Case
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AT	There was a case of a big shopping centre close to Graz (Land Styria) which permanently tried to enlarge in small steps without doing an EIA; the jurisdiction clearly stopped this attempt by deciding that in this case the splitting must be seen as a circumvention of the EIA Act and all modifications must be assessed together as one project. One of the grounds for the decision was the ECJ ruling C-392/96, Commission/Ireland.	Yes: big shopping centre
BE - Brussels	Yes, we have a case where the developer has separately introduced two office buildings for permits for renovation and modification in the same site (even if these building don't have common parking lots or common technical installations).	yes - office buildings
DE	See on this the responses to questions 15 and 16. The Federal Environment Ministry is not aware of any such cases.	No
EL	In general there have not been any major cases of salami-slicing	No
ES	There have been cases in transport infrastructure projects, mainly in annex II projects. One problem arising is when parts (e.g. pipelines) of one big project (e.g. refineries) are separated because they have to be approved by a different competent authority.	Yes - transport infrastructure
IT	Usually they apply to roads or railways for which EIA is presented in relation to the single project under development. It is difficult to avoid that because usually a project is developed when funds are available and therefore it is quite difficult to have a comprehensive detailed project. However, in most case these projects are part of a comprehensive plan. In the future SEA will help.	Yes - road and railways
NL	Yes, several housing developments (Teteringen f.i.) and pig- and poultry farming .	yes - Housing developments (Teteringen f.i.) and pig- and poultry farming.
UK	However, legal precedent has been set by the court judgment in the case of R v Swale Borough Council ex parte RSPB [1991] 1PLR 6, which said that for the purpose of determining whether EIA is required, a particular planning application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development. DETR Circular 2/99 refers to and gives advice on this judgment.	No

There are very few examples of high profile cases reported. The cases that do exist are mainly within infrastructure and larger construction projects.

Most countries have in place legal provisions with the purpose of avoiding salami slicing. The most reported provisions relate to:

- Modifications shall be assessed on the basis of the total sum of the capacity for a given installation - expanding modifications approved in the past five

years, including the capacity increase applied for, provided that the modification applied for results in a capacity increase amounting to at least 25% of the threshold value or, if no threshold value is specified, of the previously approved capacity;

- Technical and geographical units wherein it is forbidden to split projects;
- Thresholds have to be taken into account by adding the magnitude of the considered projects;
- Cumulative effects;
- Case-by-case examination can prevent circumventing in those cases where the project can cause significant adverse environmental impact. Also, a strict permitting policy can be another means of prevention.

In conclusion, it may be emphasised that most of the old Member States have faced attempts to slice development projects into smaller sub-projects for the purpose of avoiding a full EIA of the total development scheme. It may also be concluded that most of the old Member States have dealt with this challenge either in formal way, by adopting legislation that prevents the possibility of slicing projects into sub-projects, or by highlighting this problem in dedicated guidance (or in sections in general guidance).

From this it may furthermore, be concluded that this particular childhood-disease seen in many EIA systems, has to a large extent been overcome in the old Member States. There are however, still a few old Member States that have not dealt with this problem in legislation or guidance at all.

6.4 Scoping

The previous five year report concluded that one of the major problems in the application of the EIA Directive in the old Member States was poor scoping of the Environmental Report.

The old member States have not been asked through the Commission's questionnaire to communicate anything related to scoping. The following general statements constitute an extract from information collected through local consultants employed by the Consultant for the purpose of this study.

From several Member States it is reported that competent authorities may in some cases be reluctant to provide clear decisions on the content, extent and methods of the environmental assessment. This may result in the development of EIA procedures without any distinction between significant impacts and trivial impacts.

6.4.1 Results of EIA reflected in development decisions

This issue has only been addressed by Ireland and Italy.

As the results of the EIA and the development decision are one and the same thing in Ireland (because the EIA is fully integrated into the authorization process and the decision taken is the result of the EIA), the issue that the results of

EIAs are not reflected in the development decisions is not an issue for Ireland. It may be the case that consent authorities are not carrying out EIAs properly, thereby leading them to grant consents that ought not to be granted. However, that is a separate issue which has not been supported by any information by Member States for the purpose of this Study.

Italy's 1996 legislation governing EIA procedures (in force until 2006) specified that the final decision has to conform or adapt to the outcome of the EIA decision (Art. 7 of DPR 12 April 1996). Similarly, Decree 4/2008, now in effect, states that the EIA decision is a requirement and integral part of the authorization and approval procedure for projects and actions that must undergo an EIA (Art. 29(1)).

6.5 Cases of Article 7 related to transboundary EIAs

Directive text

Article 7 of the EIA Directive lays down an obligation for a Member State as soon as possible and no later than when informing its own public to send the affected Member State the information listed in the Directive in a case where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests. The information to be send to the affected Member State is:

- (a) A description of the project, together with any available information on its possible transboundary impact;
- (b) Information on the nature of the decision which may be taken.

Further, Article 7 stipulates that the Member State shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2).

It follows from paragraph 2 of Article 7 that if a Member State when receiving information pursuant to paragraph 1, indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State, in whose territory the project is intended to be implemented, shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to Article 6(3)(a) and (b).

The requirement of the arrangement of a public participation procedure in the Member State concerned is stipulated in Article 7(3).

The obligation to enter into consultations regarding inter alia the potential transboundary effects follows from Article 7(4).

Article 7(5) accords a margin of discretion to Member States to determine the detailed arrangements for implementing Article 7. The arrangements shall be such as to enable the public concerned in the territory of the affected Member

State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.

Country experience

Member States have been asked in how many EIA cases according to Art. 7 they have been involved since 1995 (either as Member State of origin or as affected Member State). They have also been asked to specify the types of projects involved in those cases.

Typically, the number of transboundary EIAs varies significantly from country to country. Member States report that transboundary consultations typically take place in relation to projects such as construction of wind farms, pipelines, nuclear power plants as well as various types of installations/plants.

A comprehensive overview over the number of transboundary EIAs as well as the examples of types of cases and the countries involved is suggested in the table below:

Table 6.8: Transboundary EIAs

Member State	Number of transboundary cases	Countries involved	Types of transboundary cases
AT	24 completed and ongoing EIAs since the publication of the 2003 Five year report	Czech Republic, Finland, Germany, Italy, Romania, Slovak Republic and Switzerland	No information provided
DE	No information provided	Bilateral agreement with Poland, the Netherlands, the Czech Republic, Austria, France, Denmark, other Baltic Sea Countries. Ongoing activities are agreements on transboundary EIA between Germany and Czech Republic, Switzerland, Austria and Liechtenstein.	Industrial installations, wind farms, gas pipelines, railways, roads, etc.
DK	9	Poland, Germany, Sweden, the Netherlands, the UK	E.g. gas pipeline, wind farms, new airport
EL	Limited experience	Between Bulgaria and Greece	No information provided
FI	24	Sweden, Norway, Denmark, Lithuania, Estonia, Russia, Latvia, Germany, Poland, Austria	Gas pipeline, power plant, nuclear power plant, waste incineration plant, offshore wind farm, etc.
FR	No information	Belgium, Luxembourg,	Wind farms, transport (roads,

Member State	Number of transboundary cases	Countries involved	Types of transboundary cases
	provided	Germany, Switzerland, Italy, Spain, Anglo-Normand Islands	railways, airport), electric lines
IE	around 43	Between Northern Ireland and Ireland, UK	Such examples as Deep Water Quay, wind farms, Open Cast Lignite and Power Plant, Marina Extension
IT	10 (as per year 2003)	Bilateral agreement with Croatia, France and Austria, Slovenia, notifications for potential projects were submitted by both Croatia and Italy in 2008.	No information provided
NL	No information provided	Belgium, Flanders, Germany	No information provided
PT	10 (since 1995) Portugal as state of origin and 8 with Spain as state of origin	Spain	No information provided
SE	17	Finland, Denmark, Norway, Germany	E.g., Waste incineration plant, gas pipeline, wind farm
UK	12	Northern Ireland, Ireland, Spain	No information provided

No data has been provided by Spain, Luxembourg and Belgium at Federal level. However, Belgium (Flanders region) has reported that between 1995 and 2001, more than 30 transboundary consultations took place, particularly with the Netherlands. The projects discussed were infrastructure projects, but also industrial and agricultural projects. Flanders region has concluded a formal agreement on transboundary EIA with the Netherlands.

Italy has reported that since 1995 two EIA procedures in a transboundary context have been carried out. These procedures concerned the project of a sea-route to transport gas and involved Italy and Croatia. Furthermore the Italian Ministry of Environment notified Slovenia about a project concerning a power station. Slovenia renounced to participate in the procedure. France indicated some transboundary consultations with Italy with regard to the following projects: high speed railway line Lyon-Turin and the tunnels Fr jus, Mont Blanc and Tende and with Spain: high speed railway line between Perpignan and Figueras. These consultations have however, concerned State Administrations only, and no EIA procedures have ever been carried out.

The Netherlands has a non-binding agreement with Belgium (Flanders region); practical arrangements with Belgium (Walloon Region); and non-binding with Germany, North Rhine-Westphalia and Lower Saxony.

The United Kingdom has stated that for projects affecting Northern Ireland (all of which related to projects in the Republic of Ireland) few difficulties were experienced and there is a long-standing *ad hoc* agreement between the Department of the Environment (Northern Ireland) and the Republic of Ireland relating to transboundary co-operation.

6.5.1 Procedures for Transboundary EIA

None of the respondents have raised significant issues with regard to the transboundary EIAs. A few remarks and recommendations have been made, however.

Germany has reported that as concerns the performance of transboundary consultations pursuant to Article 7(4) of the EIA Directive, it does not appear possible to prescribe a certain timeframe by statute. It is rather essential that the consultation process can be defined in a flexible manner for each specific case taking into account the special features of the project. As a consequence, § 8 paragraph 2 of the German EIA Act provides that the state of origin and the affected state must agree a reasonable timeframe on case-by-case basis. § 8 paragraph 2 of the EIA Act reads as follows:

§ 8 Transboundary participation of authorities

(2) Insofar as is necessary or the other state so requests, the competent highest Federal and Länder authorities shall, within an agreed reasonable period of time, hold consultations with the other state, in particular about the transboundary environmental impacts of the project and the measures to avoid or reduce them.

Ireland has reported that new provisions have been enacted to account for transboundary EIAs. The Department of the Environment appears to be satisfied with the formal and informal arrangements with the Northern Ireland authorities. However, there does not appear to have been much consideration given (at least in the questionnaire responses) to informal arrangements with the United Kingdom authorities outside Northern Ireland. Given the proximity of the East coast of Ireland to Wales and the west of England, this could perhaps receive more attention.

The Netherlands has stated that issues such as establishing points of contact, transition and cultural and legal differences, no longer appear to represent a big challenge and that this can largely be attributed to the fact that lessons learned from previous projects have been applied to more recent projects. Current perceptions are therefore that transboundary EIA practices have not resulted in any problems or issues that could not be addressed within the scope of the project.

Experience has shown that taking the initiative and maintaining contact are fundamental to the process of transboundary EIAs.

6.6 Major EIA complaints and law cases brought before national institutions and courts

The Member States have been asked about how many major complaints and law cases have been brought before national institutions and courts.

It appears to be difficult for the Member States to provide for an exact number of the EIA complaints and cases.

In Austria, within the last five years some EIA-procedures have been brought before the Environmental Senate that is the second appeal instance in the Austrian system. Approximately 15 of those cases may be judged as important concerning the jurisdiction and interpretation of the Austrian EIA Act. As all of those are specific for the Austrian administrative and legislative context, they do not provide a significant contribution to the interpretation of the EIA Directive besides the decisions taken by the European Court of Justice.

France has explicitly stated that there is no information available as to how many major EIA complaints and law cases have been brought before national institutions and courts. The review cases resulting from the bad quality of the EIA-reports are frequent - more precisely, biodiversity (fauna, flora) and landscape (e.g.: Land farms and infrastructure projects). Disputes on water (except in some areas like Brittany) or noise are scarcer. In practice, in any larger projects, the conclusions of the EIA may be contested, e.g. the public may contest the conclusions on the impact on the landscape of a wind farm, or may argue that an alternative has not been studied.

The Netherlands reports that some of the main challenges currently associated with the EIA procedure are:

- Difficulties in defining activities according to Annex I and II of the EIA Directive. A good example of this is the *Kraaijeveld* case, in which the key question was whether smaller river dike-improvement projects should be brought under an EIA procedure.
- Consequences of changes or extensions in Annex 1 categorised projects. A good example of this is the Amsterdam's Africa Port extension or '*Ruigoord*', during which the question was raised as to whether a local spatial plan should be considered 'development consent' according to the EIA Directive.
- Activities for which permits are issued instead of EIAs. An example of this, Amsterdam's Africa Port extension or '*Ruigoord*', is discussed in detail in section 5 (EIA and European Court of Justice (ECJ) Judgments).

- More recent examples that demonstrate difficulties sometimes experienced in defining exactly what information should be included in the EIA-report that were brought before the Dutch Council of State advisory body and administrative court (*Afdeling Bestuursrechtspraak van de Raad van State* or *ABRvS*) include:
 - a. Two *Leeuwarden-Zuid* cases (9 February 2005, no. 200401688/1 and 21 September 2008, no. 200501095/1) involving residential housing development. According to the ruling by the *ABRvS*, information provided should be as concrete and detailed as possible regardless of the level of uncertainty regarding the details of the proposed project and its actual implementation.
 - b. In Annex II, reference is made to city (development) projects (10b). In the Netherlands, the term 'city projects' has been incorporated into Annex D (11.2), although this term appears to be open to broad interpretation. This became evident during a case that was brought to court concerning the proposed development of area known as the '*Wijnhavenkwartier*' in The Hague (20 July 2005, no. 200407071/1). The *ABRvS* ultimately ruled that an EIA was necessary for the inner city project.
 - c. Defining measures that have to be directly implemented as part of the EIA-report led to a court ruling concerning the approval of a spatial plan for an office park '*Linderveld*' located near Deventer (22 March 2006, no. 200502510/1).

Italy's regional administrative tribunals have reviewed *numerous* cases regarding EIA procedures. Two recent judgments showing how Italian courts have interpreted EIA requirements in two key areas reviewed in the report⁵⁸ are presented here below.

An April 2008 judgement by the Regional Administrative Tribunal of Apulia overturned a positive EIA decision at regional level for a coastal defence construction project on the basis that comments received had not been properly considered. Notably, the EIA decision did not consider negative comments from the Administration of the Gargano National Park, from a specialised company and from the civil engineering association.⁵⁹ This judgement thus refers to the need to consider comments in the EIA decision.

A sentence of the Council of State accepted the Lazio Region's decision to not undertake an EIA procedure for a landfill of 'fluff' (un-recoverable waste from automobile tyres), due to a 'state of emergency'. The Council considered it suf-

⁵⁸ The information provided on recent cases was gathered mainly from the following web site: <http://www.ambientediritto.it/Giurisprudenza/VIA.htm>

⁵⁹ T.A.R. PUGLIA, Bari, Sez. I - 10 Aprile 2008, n. 894. Further information on the case was found on the web site of an Italian NGO, Italia Nostra: http://www.italianostra.org/come_lavoriamo/difesa_patrimonio.html (accessed August 2008)

ficient that the region's offices had ascertained the compatibility of the project.⁶⁰ This judgement addresses exemptions to EIA procedures – a current issue in Italy in view of the urban waste management emergency in Naples.

Being common law countries, Ireland and the United Kingdom have throughout referred to numerous cases in the country reports. However, no quantitative data have been provided on cases.

For the purpose of exemplification, the Irish courts' current understanding of the EIA process is well set out in the recent judgment of McMahon J in *Klohn v An Bord Pleanála* [2008] IEHC 111. Unquestionably, the most serious issue about EIA to have come before the Irish courts is the split in jurisdiction between different consent authorities that have responsibility for EIA (*Martin v An Bord Pleanála* [2007] IESC 23).

In the United Kingdom, the case of *Goodman and others v Lewisham London Borough Council* [TLR 21/2/03] concerned a planning application to construct a storage and distribution facility. The issue of 'salami slicing' was addressed in the case of *R v Swale BC ex parte RSPB* [1991 1PLR 6]. *Ex parte Diane Barker* concerned an outline planning permission (OPP) to develop a leisure complex in Crystal Palace Park granted by the London Borough of Bromley ("Bromley").

6.7 Benefits of the EIA system

Member States have been asked to identify the main benefits of the EIA system.

Two benefits have univocally been identified by the majority of the old Member States (for instance, Austria, Denmark, Germany, and Ireland):

- The EIA procedure ensures that environmental considerations are taken into account in decision-making processes;
- Transparency in the environmental decision-making.

Denmark has reported that according to an evaluation (2003) of the work related to EIA in the Danish counties for the Ministry of Environment, it is found that more than 90% of projects subjected to an EIA are altered in favor of the environment. The evaluation also concludes that the EIA screening mechanism is flexible, that many project changes are introduced prior to the application of or during the screening process - and that the counties applies a broad understanding of the concept of the environment, when relevant impacts on the environment are described and analyzed in the EIAs.

In addition, Austria has identified such benefits as:

⁶⁰ CONSIGLIO DI STATO Sez. V, 10 ottobre 2006 (Ud. 11/07/2006), Sentenza n. 6029

- EIA leads to a significantly better quality of the proposed projects (in other words: EIA prevents “bad” projects) and strengthens the position of environmental protection issues; in particular, nature protection got a stronger consideration.
- As a comprehensive process, EIA tackles issues like transport and soil protection, which are not fully covered by other legal procedures that focus on one subject only. Through the introduction of EIA the developer delivers better projects proposals in terms of environmental issues. As the EIA results are publicly available, the whole procedure is transparent and traceable.

Sweden has stated that they still lack sufficient experience to specify the major benefits of the EIA system. Finland note that there is an average satisfaction with the application of the EIA procedure in Finland, as the EIA legislation has not merely introduced a new EIA system, but a new way of thinking that encompasses a broader approach - apparently more transparent and more environmentally friendly. It is also reported a benefit that projects are submitted to public scrutiny much earlier than without an EIA which results in better possibilities to influence design and planning of projects.

6.8 The application of the EC EIA guidance

Member States have been asked, to what extent the EC EIA guidance helps in the national application of the EIA procedure.

The general trend in the old Member States is that the EC EIA guidance is used to a quite limited extent. Normally, national guidelines enacted by the national authorities to support the EIA procedure are preferred, and they are regularly consulted by the stakeholders.

In particular, only Denmark, the Netherlands and the United Kingdom have explicitly stated that the Commission’s Guidance on the “Clarification of the application of Article 2(3) is helpful in the application of the EIA procedure. On the other hand, few countries (e.g. Austria, Spain and France) have explicitly stated the opposite.

Austria has reported that the EC EIA guidance and recommendations have been used as one source amongst others, such as studies and guidelines, Austrian documents (e.g. the regular national evaluation reports on EIA), etc. In particular, the EC EIA guidance and recommendations have been used when revising the Austrian EIA Act and conducting national tailor-made EIA guidelines.

According to the Greek national expert, EC guidance has been useful over some years but now there may be a need to bring them up to date. The document, 'Guide for environmental permitting' (1999) providing an indispensable tool for developers, consultants, permittees, etc., is now out of date following the changes to the Greek legislation. Currently flow charts illustrating amended EIA national procedures are available.

Ireland reports that in circular letters and Irish guidance documents, reference is made to EC EIA guidance. For instance, in considering indirect, cumulative and synergistic impacts, the 2002 EPA guidelines state that the importance of considering these types of impacts as an integral part of the EIA process is recognized in the recently published paper by the European Commission, EC XI 1999, 'Guidelines for the Assessment of Indirect and Cumulative Impact as well as Impact Interactions'.

Luxembourg considers that EU Guidelines or guidance on how to take into account issues relating to Climate change and Biodiversity in a practical way during the EIA procedure would be very useful for national administrations.

In the Netherlands, information contained in the European Commission's Guidance on EIA (June 2001) document was used extensively during the establishment of a national guide (revised guide on EIA). According to the NCEA and Dutch Ministry of Housing, Spatial Planning and the Environment (VROM)⁶¹, the EC Guidance document is reportedly mainly used by consultants when drafting Environmental Impact Statements (EIS).

In the United Kingdom, a variety of guidelines are used in practice, including EC guidelines (particularly, on screening and scoping).

6.9 New national/regional EIA guidance

Member States have been asked, whether new national EIA guidelines have been enacted.

It is characteristic that the national authorities have issued national EIA guidelines (Austria, Belgium, Denmark, Finland, France, Ireland, the Netherlands, Portugal, Spain, Sweden, the United Kingdom). They are typically based on or take stock from the EC EIA Guidelines.

Austria has reported that since the publication of the Five Year Report, the Federal Ministry of Agriculture, Forestry, Environment and Water Management has issued updates of several EIA guidance documents, namely:

- Guidance on EIA for skiing regions (2006);
- Guidance on EIA for shopping centers, leisure, industrial and business parks (2006);
- Guidance on EIA for intensive livestock husbandries (2006);
- Guidance on EIA for mining projects (2006).

⁶¹ VROM is the national governmental institution responsible for environmental policy and regulation (including EIAs) in the Netherlands. Regional (provincial bodies) and local (municipal) competent authorities are responsible for granting permits and rural planning (land-use), within the framework provided at the national level.

Besides, the Austrian Federal Environment Agency has updated the Guidance on EIA and Air Pollution - Handling the accident of air quality standards (2007).

France has reported that several new guidance documents have been issued by the Ministry of Ecology:

- The Guide on environmental impact assessment of wind farms, 2005, updated in 2006
- Guide: Preliminary scoping of the impact assessment, 2005
- Methodological guide for assessing impacts of mining activities (open cast mining) on Natura 2000 sites, 2007
- Methodological guide for assessing impacts of infrastructures and planning projects and programmes on Natura 2000 sites, 2004

In Spain, there is a lot of information on tools and methodologies for the analysis of environmental impacts but there is no clear guidance on the nature and content required by the Act to implement the EIA procedure. The Ministry is working on methodological guides and technical instructions for the preparation of environmental impact studies.

The Netherlands has reported the following guidelines:

- Revised guide on EIA, June 2001.
- Brochure: Practical questions in EIA (digital, updated regularly).
- Regulation starting note (November 1993).
- Manual on the procedure for screening (1999).

Although, as mentioned above, the national EIA Guidelines have been enacted partly on the basis of the EC Guidelines, the NCEA makes use of their own, more detailed, guidelines while preparing their advice on the scope of an EIA for a project. These guidelines contain the important issues most likely to be encountered with regards to certain activities.

In Ireland, the Department of the Environment issued guidance on screening decisions in 2003 and the EPA issued advice notes on current practice in preparing EIS in 2003 as well as Guidelines on the Information to be contained in Environmental Impact States in 2002.

In Finland, the Internet-based tool kit has been enacted as a general EIA Guideline.

The Swedish EPA is working on new EIA guidelines containing information on, inter alia, public consultation (including transboundary consultations) and assessment of the significant environmental impact. The new guidelines are expected to be less comprehensive than those of 2001, as they will not include general guidelines on the practical implementation of the EIA procedure.

In the United Kingdom, the draft Guidance refers to a number of EIA Guidance documents that may be of use to the developer and relevant authorities. These include:

- EC Guidance on EIA: Screening
- Surrey County Council: advice on screening and screening tables can be downloaded from <http://www.surreycc.gov.uk>
- EC Guidance on EIA: Scoping
- The Transport Analysis Guidance Website (WebTAG) can be accessed at www.webtag.org.uk. This website was initiated by the Department for Transport to provide detailed guidance on the appraisal of transport projects and wider advice on scoping and carrying out transport studies.

Reference is also made to a number of review checklists, including:

- EC Guidance on EIA: EIS Review
- From Surrey County Council's website, a review checklist is available from: <http://www.surreycc.gov.uk>
- Lee, N., R. Colley, J. Bonde and J. Simpson (1999) Reviewing the quality of Environmental Statements and Environmental Appraisals. Occasional Paper 55 (EIA Centre, University of Manchester)
- Institute of Environmental Management and Assessment Review Criteria: <http://www.iema.net/download.php/reviewcrit.pdf>
- Scottish Executive document 'Planning Advice Note (PAN) 58'; the checklist is contained within Annex 5. This annex is available from <http://www.scotland.gov.uk>
- Impact Assessment Unit (Oxford Brookes University) Package – available in Glasson, J., R. Therivel and A. Chadwick (2005), Introduction to Environmental Impact Assessment. Principles and procedures, process, practice and prospects. 3rd Edition. UCL Press, London.

The EC guidance can be accessed from the DCLG's website in its EIA section. It is referred to in seminars, correspondence and during telephone conversations with EIA stakeholders. The screening advice has been used to draft a section on screening in the new Circular which will replace Circular 02/99.

In Portugal, the following national guidance was approved or is being developed:

- Guide on good practices for EIA of infrastructure for transmission of electrical energy (Recently approved (<http://www.apai.org.pt/index.php?idmenu=94>))
- Guide on good practices for EIA of motorways and express roads (Under development)
- Guide on good practices for EIA of water dams (Under development)
- Guide on good practices for EIA of waste water treatment plants (Under development)
- Guide on good practices for EIA of installations for the intensive rearing of pigs (Under development)

The local consultant did not make any comment on whether there is a need for new guidance, update of existing ones or whether the Screening guidance on EIA has been used in Portugal and to what extent.

6.10 Recommendations for improvement of the EIA Directive

Member States have been asked, whether they have any recommendations for improvement of the EIA Directive. In the below table the answers from Member States are summarized in categories that was used in the questionnaires submitted by the Commission to Member States.

Table 6.9: Overview of Member State recommendations for improvement of the EIA Directive

Stages of EIA	Member State responses
Screening	Denmark: A common lower limit on the projects covered by Annex II could be helpful to reduce the high numbers of screening decisions to be taken by the authorities and publicly announced.
Scoping	No comments
Public participation and consultation	No comments
The process of transboundary consultations	Austria: Clear provisions might lead to better quality of the data and to better harmonisation within the EU. Belgium (Brussels region): A clarification of the mandate of consulted partners (are they speaking on their behalf, on behalf of their ministry or on behalf of their country)
The quality and completeness of the information provided by the developer	Spain: Member States practices on the quality and completeness of the information provided by the developer Italy, Spain: To be improved. This is not a matter of specific EIA Directive provisions but guidelines may help. In case of EIA Directive revision, an explicit link to data coming from SEA may be introduced.
The consideration of human health protection	Greece: The consideration of human health protection within an EIA is exceedingly difficult to apply in practice to the degree it is based on epidemiological studies. Human health considerations should be incorporated only in regards to meeting recommend limits set by WHO or other internationally recognised bodies Portugal: Need to identify specific project types that must require a strict human health protection analysis (e.g. projects concerning magnetic fields and radiation)
The issue of 'salamislicing'	Portugal: Need for specific mechanisms to avoid such phenomenon
The issue of cumulative effects from projects/environmental effects	Austria: Clear provisions might lead to better harmonisation within the EU. France: Exchange of good practices could be interesting Italy: To be improved. Member State practices may help to make developers aware of other projects under development/EIA in the

Stages of EIA	Member State responses
	<p>same period. SEA (of appropriate planning) could also help in that sense, giving a clearer framework in which a single project is moving.</p> <p>Portugal: Need for specific mechanisms to fully assess cumulative impacts</p>
The issue of consideration of alternatives (including also environmentally friendly ones)	<p>Austria: A mandatory assessment of alternatives and their impacts on the environment seems useful; it should be in combination with a provision to reject the application in case the chosen project differs significantly from the most environmentally friendly alternative.</p> <p>France: The Directive should be better written on this point: "an outline of the main alternatives studied by the developer" (annex IV, item 2), because it gives the impression that the developer is not compelled to study alternatives.</p> <p>Portugal: Clarification on the decisive role of the EIA procedure in the decision-making process</p>

No comments have been provided to 'scoping' and 'public participation and consultation'. Several Member States have commented on 'consideration of human health protection', 'cumulative effects from project/ environmental effects' and 'the consideration of alternatives'.

The United Kingdom reports that they are not in favour of any changes to the Directive. However, if change is proposed, this should fully reflect the European Council commitment to reduce administrative burdens from EU legislation by 25% by the year 2012.

In addition, the United Kingdom states that any review of the EIA Directive should also consider the relationships with other directives and community policies with a view to remove duplication; a review may also want to look at possible overlaps with requirements in the IPPC and access to environmental information Directives. It is also mentioned by the United Kingdom that more concern should be attached to outcome – i.e. that the environmental effects have been taken into account and the public have had an opportunity to comment before a decision is taken – rather than with process.

6.11 Significant problems remaining with the EIA Directive

Member States have been asked to point out the single most significant problem remaining in the existing EIA Directive.

Table 6.10: Member State opinions about the most significant problems remaining in the existing EIA Directive

Member State	Member State responses	Concrete suggestion
AT	<p>In practice, the hardest challenge is the interpretation of 'significant impacts to the environment'.</p> <p>On one hand, the EIA Directive leaves a lot of discre-</p>	<p>- The interpretation of "significant impacts to the environment -</p>

	<p>tion to the Member States, ECJ rulings are often related very much to the individual cases that they do not allow to draw general guidelines and the Commission – when opening an infringement procedure - does not give a concrete opinion how a correct transposition should look like from their point of view. On the other hand, authorities working on the front line as well as applicants ask for very concrete provisions in order to gain legal security. The crucial point is: what does 'significant' mean?</p> <p>It might be helpful to learn from other Member States what 'significance' means in their legislation and how their provisions are applied in practice.</p>	what does significant mean?
BE - Walloon	In the annex I (6), the Directive says 'Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes'. The Commission's guidance on interpretation of project categories in the EIA Directive is unclear and the link to the IPPC guidance manual is not working,	<p>What does 'industrial scale' mean?</p> <p>What does 'basic' mean?</p>
BE - Brussels	(namely the item ' Any change or extension of projects.... ')	'Any change or extension of projects....'
DE	At present the Federal Environment Ministry does not consider the EIA Directive to present any serious problems. This view is in line with the outcomes of the work of the "reflection group", which involved the European Commission and numerous experts from the Member States, including Germany, from 2004 to 2006.	No
EL	The consideration of alternatives is an important issue in EIA especially in cases with a limited availability of reasonable alternatives, such as extensions, changes or modernizations of existing projects and activities where alternatives are usually confined to a choice between technological options. Only alternatives that are viable and can be examined should be considered.	consideration of alternatives
ES	<p>The quality of the Environmental Impact Reports (the information to be provided by the developer) continues to be the main problem in the EIA process. The Ministry of the Environment is working on given guidance on the minimum information (quantitative, if possible) to be provided by developers. The methodological guidelines are one of the means for this.</p> <p>Scoping is crucial in EIA because it allows the environmental impact report to focus on the significant issues, and to avoid the non significant ones. The current practice is not fully using these possibilities, but having reports with loads of non significant information.</p>	<p>quality of the Environmental Impact Reports (the information to be provided by the developer)</p> <p>Making the scoping report / exercise relevant and useful</p>
FI	Some flexibility for Member States to consider the application of activity 22 in appendix I . Not necessarily all changes or extensions of projects exceeding the threshold of the Directive cause significant impact, especially this is the case in some industrial projects. There are cases where new tech-	Flexibility for Member States to consider the application of activity 22 in the appendix I.

	<p>nology is taken into use or where the installation already is so big that the enlargement itself is only minor in the whole context. Also the surrounding area may be such that a change or enlargement does not cause significant impact.</p> <p>-The Directive is written to facilitate better an integrated EIA and decision-making procedures and does not seem to fit quite as well to the case where the EIA is a separate procedure and prior to permitting procedures. If at some point and for other reasons a bigger revision of the Directive is done, this should be taken into account.</p>	
FR	<p>The most significant problem remaining is the absence of monitoring in the directive. It prevents from identifying unforeseen effects and, then, to undertake appropriate remedial action.</p> <p>The absence of conformity between Directive 85/337 and the IPPC and SEVESO Directives (different field of application, different duties) is also a problem.</p>	<p>Absence of monitoring in the Directive.</p> <p>No conformity btw. Directive 85/337 and the IPPC and SEVESO Directives</p>
IT	<p>Two most significant problems have been identified. The first is the quality of projects and EIA. EIA has been mostly interpreted as an add-on to projects and not as something integrated in the project itself. Till the last revision of the Italian law (Decreto Legislativo 4/2008) that has innovated the EIA process, scoping has been practically absent in Italian EIAs; it is possible that the introduction of this provision will improve the quality of EIA and, in particular, the integration of environment in the design.</p> <p>The second is a problem of quality of data at the basis of EIAs. For this problem, the Italian Ministry for Environment is carrying out a project in order to share environmental information and to deliver to those preparing projects and EIAs environmental reference frameworks that will be used as starting points for their evaluation. In that sense, the Directive 2/2007/CE may be useful to improve knowledge, sharing and standardisation of environmental related spatial information.</p>	<p>The quality of projects and EIA.</p> <p>Quality of data at the basis of EIAs.</p>
LU	<p>The switch to more environmentally friendly alternatives to a project that has been presented for approval.</p> <p>Taking in account environmental concerns at an earlier stage of development (i.e. at strategic level -SEA) might prevent development plans and projects that are significantly affecting the environment.</p>	<p>switch to more environmentally friendly alternatives to a project that has been presented for approval</p>
PT	<p>The consideration of human health protection.</p> <p>The issue of 'salami slicing'.</p> <p>The issue of cumulative effects from projects/environmental effects.</p> <p>The issue of consideration of alternatives (including also environmentally friendly ones)</p>	<p>Human health protection</p> <p>'Salami slicing'</p> <p>Cumulative effects from projects/ environmental effects</p> <p>Alternatives</p>

SE	<p>An environmental impact statement shall be submitted together with a permit application to establish, operate or change activities referred to in chapters 9, 11 and 12 or in rules issued pursuant to provisions in these chapters (EIS according to Environmental Impact Assessment Directive 85/337/EEC). Such a statement shall also be submitted for the purposes of permissibility assessments pursuant to chapter 17 and also in an application for a permit pursuant to chapter 7, Section 28 a (Habitat directive 92/43/EEC and Bird Directive 79/409/EEC).</p> <p>Authorities and municipalities shall aim at co-ordinating the work with the assessments and statement made according to the provisions of chapter 6 in the Environmental Code.</p> <p>An environmental assessment is required, inter alia, if the realization of the plan, programmed or change is likely to include an activity or a measure for which a permit is required pursuant to chapter 7 section 28 a in the Environmental Code (Habitat directive 92/43/EEC and Bird Directive 79/409/EEC.). The environmental assessment shall contain, inter alia, a description of the relevant existing environmental problems that have connection with such an area of unspoiled nature referred to in chapter 7 (Habitat Directive 92/43/EEC and Bird Directive 79/409/EEC) or another area of particular importance for the environment.</p>	<p>Lack of co-ordination with other directives</p> <p>Coordinating the work with the assessments and statement</p> <p>Description of the relevant existing environmental problems</p>
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Member States not mentioned have not provided any information (Belgium (Flanders region, Federal level), Denmark, the Netherlands, Ireland, and the United Kingdom).

The overall impression from the table is that there is not one single subject to which Member States agree that amendments should be introduced. There are a few categories where a limited number of Member States point to the same fact. These categories are:

- The quality of EIAs; hereunder,
- The quality of the scoping exercise, and
- The quality of the information provided by the developer;
- Alternatives.

There are less outspoken statements from Italy and the United Kingdom that have made the point that the screening provisions of the Directive are too complex and hardly understandable. They recommend that they should be simplified and open to the interested public. Clear provisions might lead to better quality of data and better harmonisation within EU.

Finland also mentions that some flexibility for Member States to consider the application of activity 22 in the appendix I is needed. Not necessarily all changes or extensions of projects exceeding the threshold of the Directive cause

significant impact, especially this is the case in some industrial projects. There are cases where new technology is taken into use or the installation already is so big that the enlargement itself is only minor in the whole context. It is, furthermore, mentioned that the surrounding area may be such that a change or enlargement does not cause significant impact.

Greece has reported that the consideration of human health protection within an EIA is exceedingly difficult to apply in practice to the degree it is based on epidemiological studies. Human health considerations should be incorporated only in regard to meeting recommended limit values set by WHO or other internationally recognised bodies.

6.12 Proposals for introducing new project categories into the Annexes of the EIA Directive

Member States have been asked to provide proposals for the introduction of new project categories into the Annexes of the EIA Directive. In the below table the input from Member States are summarised:

Table 6.11: Member States proposals for introducing new project categories into the Annexes of the EIA Directive

Country findings

Member States	Member State responses	Types of projects that should be included in Annexes I and II
AT	As installations for the manufacture of fiber board were covered by Directive 85/337 EEC, their impacts on the environment are absolutely comparable to other types of projects and there is no substantive reason known why they are not in the list any longer. The manufacture of fiber board should again be integrated in Annex I or II of the Directive. Furthermore it seems illogical, that overhead electric power lines are covered and underhead cables are not. As underhead cables can cause severe impacts on the environment they should undergo an EIA as well.	Yes
BE - Brussels	No opinion (we are in an urban region where we are not very concerned by industrial installations, but in our implemented legislation, there are specific urban projects which are included in the list of projects submitted to an impact assessment study).	No opinion
DE	In the light of the policy debate currently under way at European level and in many Member States on deregulation, the removal of red tape and the simplification of administrative procedures, it appears fundamentally inadvisable to commence debate on the inclusion of new project types in Annexes I and II of the EIA Directive. For reasons of harmonization with the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 (the Espoo Convention) and	Yes

	the second amendment to that convention of 4 June 2004 it may be worth considering shifting “deforestation of large areas” and “major installations for the harnessing of wind power for energy production (wind farms)” from Annex II to Annex I of the EIA Directive . With a view to Directive 2001/42/EC it could be expedient to delete “industrial estate development projects” and “urban development projects” from Annex II No. 10 of the EIA Directive (while retaining the construction of shopping centres and car parks in the Annex), as in the context of planning procedures these project types are generally already subject to a Strategic Environmental Assessment.	
DK	Denmark has already included some of the Annex II project types in the Danish mandatory list - Annex 1- for example installations for the manufacture of cement .	Yes
EL	Most examples mentioned above already require by our national legislation some form of environmental permitting.	Yes
ES	Some projects like masts for mobile phones and radio or telecommunication stations, golf courses, installations working with GMOs or pathogenic microorganisms, desalination plants, carbon capture installations, installations to liquefy gas or under head cables could be included . Some of them could be considered to be already included in other categories, but a clarification could be necessary.	Yes
FI	As Finland uses the case-by-case examination where all possible projects with likely significant adverse environmental impact can be considered EIA projects, the list does not have to be exhaustive from our point of view. According to the Espoo Convention wind farms are subject to EIA procedure and Finland has the intention to include wind farms to the list of projects that always are subject to EIA.	Yes
FR	<p>The following projects are already submitted to an EIA in France:</p> <ul style="list-style-type: none"> - Installations for the manufacture of particle or fibre board: the power of the machine must be more than 200 kilowatts. - Installations working with GMOs or pathogenic microorganisms: GMOs are divided in two classes, one of which doesn't have thresholds (section 2680 ICPE). Moreover, all natural pathogenic microorganisms in industrial process are submitted to an EIA (section 2681 ICPE) - manufacture of lime if the production exceeds 5 tons per day (section 2520 ICPE) - installations to liquefy gas: Installations to compress gas treating more than 300 kilowatts are submitted to an EIA (section 2920 ICPE) - Carbon captures installations. A law is currently prepared on this topic. - golf courses which cost more than 1 900 000 euros or for which a 1000 square meters construction is built are submitted to an EIA (on this point, the regulation may change) <p>All projects mentioned in question 12 could be included in annexes I and II, with appropriate thresholds.</p>	Yes

IE	Ireland has not identified a need to include new or exclude existing project types from Annexes I and II.	No
IT	From a technical point of view, there may be some new types of projects that should be included, in particular those types of projects that were not present in the 90's and that may seem to be excluded if the present definitions are taken by word. An example is given by " rigasificators "	Yes
PT	New types of projects have been increasing during the latest years in Portugal as a direct consequence of the development of new technologies . Some of these projects may entail significant environmental impacts and its inclusion in Annex I or II should be further analyzed. Projects concerning new renewable energies (e.g. large photovoltaic parks, tidal energy systems, wave energy systems and off-shore wind farms) are good example to be considered for future inclusion.	Yes
UK	The UK does not generally favour expansion of the list of projects that are presently included within Annexes 1 or 2 to the Directive.	No

Member States not mentioned have not provided any information (Belgium (Federal level, Flanders region, Walloon region), the Netherlands, Ireland, and Sweden).

Most Member States find that more types of projects could be included in annex I and II of the EIA Directive.

The United Kingdom Questionnaire for 2003 indicated that the United Kingdom considers that the thresholds set in Annex I of the Directive are generally set at reasonable levels. However, the United Kingdom believes that the criterion for trading ports in Annex I.8 (b) should be the size of the development rather than the weight of the vessel. If vessel size is to be used, the Directive should specify whether the 1350 tons refer to gross tonnage or dead weight tonnage.

United Kingdom also encountered a problem with Annex I.19 (quarries and open-cast mining etc) when the open-cast mining forms part of a land reclamation scheme. In one case, for example, the open-cast mining was needed to extinguish a burning tip. In such cases, the United Kingdom believes a mandatory EIA is excessive. In a recent case referred to the ECJ (Case C-75/08) the issue concerned the failure of the United Kingdom to require planning authorities to give reasons for negative screening opinions in cases where it decides that EIA is not required⁶². The position of the United Kingdom is that, although, there is a requirement to make the decision publicly available there is no obligation to make the reasons publicly available. The case was only referred to the ECJ on 27 June 2007 and a decision is still awaited. Clearly if the decision of the ECJ goes against the United Kingdom then the EIA legislation will have to be amended.

⁶² This issue has been effectively addressed by the Court in C-75/08 Mellor

The United Kingdom had previously been of the opinion that the wording of Annex I.9 excluded recovery operations from the scope of the EIA Directive; however the ECJ has ruled to the contrary. The United Kingdom takes the view that the wording of the Directive be amended to properly reflect the judgments of the ECJ. In addition there is a need to consider new technologies (such as production of bio-fuels).

6.13 Conclusions

The collection of information from Member States suggest that there are still some remaining issues stemming from the previous five year review in 2003 that need further attention. These areas are:

- Screening;
- Transboundary consultation and procedures;
- Alternatives;
- Quality control and quality of EIA reports; and
- Lack of monitoring requirements.

Screening is one of the issues that were targeted in the 2003 five year report. Screening may be a problem for several reasons. One is the lack of a lower threshold in the EIA Directive upon which it may be decided that the activity below this threshold is not relevant under the Directive. Such a threshold may be quite difficult to define; however, it does seem that there is a pressing need to define such a lower threshold below which the requirements of the EIA Directive do not apply.

Transboundary consultation and procedures is another issue that has been highlighted by Member States as giving rise to difficulties. The problems encountered are related to:

- Setting relevant and accepted deadlines for consultation in another Member State;
- The responsibility for providing information in a proper language during consultation;
- Difficulties in addressing queries and comments from non-nationals to information provided.

The difficulties may point to the fact that a more firm regulatory setting in the EIA Directive may, at least, provide some clarity to some of these difficulties.

Another problem may be that all procedures are developed between government representatives of Member States rather than local/regional authorities that are affected by proposed projects.

Alternatives in EIA procedures are also highlighted in responses from Member States. Alternatives in EIA procedures are in many cases a difficult problem to handle, because the developer may be upright against implementing the alternatives proposed by the public and/or the authorities. Especially, when a propo-

ment is a private developer it is often difficult to compel a developer to engage in an alternative design or location just for the sake of alleged environmental impacts being avoided. The developer will most often try to avoid being compelled to follow certain proposals unless there is a clear economic or other benefit from doing so.

One theoretical school in Environmental Assessment seems to prefer/emphasize that alternatives should be dealt with at the strategic level (in SEAs) rather than being dealt with at project level. Another theoretical school seems to support the idea that alternatives are relevant at project level, but in so far as only being relevant to the choice of technology. The first opinion seems to rely on a strong tiering of SEAs and subsequent EIAs which may be a highly relevant observation in this context.

Lack of quality of data and EIA reports and lack of formal quality control is another issue that is emphasised by several Member States. There is no doubt that there are major differences in the quality of reports not only between reports issued in different Member States but also within Member States themselves. One major problem being that most Member States have coupled the quality of reports to the development consent issued by the competent authority based on the underlying assumption that the authority is legally bound by national administrative law to base its decision on a formally legal documentation. It is therefore an underlying assumption that when authorities do issue a development consent the adjoining EIA report is of course living up to whatever quality standard may be relevant. Besides decisions made in the screening phase, the issue of lack of proper quality of the EIA report is the most litigated problem in EIA.

The problem of quality is not only linked to the fact that quality is indirectly a part of any legal review, but specifically linked to the fact that there is no requirement of quality control in the EIA Directive. Formal quality control mechanisms may be of a diverse nature spanning from a simple requirement of undertaking a formal review of the quality and make it available to the public to accreditation requirements to EIA consultants drawing up EIA reports.

The issue of quality control is also linked to the problem of lack of monitoring requirements in the EIA Directive. The lack of monitoring requirements does suggest that any link between the ex-ante assessments undertaken in EIA procedures may only be monitored by way of requirements in other legal frameworks related to ex-post assessment such as the IPPC Directive (96/61/EC). One could suggest that a stronger co-ordination between the IPPC Directive and the EIA Directive would be the best way to ensure the missing link between ex-ante and ex-post assessment. This may be the case in situations where the two directives cover the same activities.

However, the EIA Directive is much broader in its outset than the IPPC Directive covering an extended concept of the environment than the IPPC Directive. Furthermore, one may ask why the knowledge collected and produced for the purpose of individual EIA procedures are not made subject to a general quality control on their own in the sense that, since this information is produced for the

purpose of taking the central decision of granting consent to a development or not. Furthermore, the lack of monitoring requirements makes it difficult to provide a more solid base of evidence for the assessment of whether certain methods for predicting impacts are sufficiently robust and suitable to the individual contexts in which they are employed.

7 Overview of the EIA system in the new Member States

This chapter provides an overview of the EIA systems in the new Member States, focusing on key elements of the EIA procedure.

7.1 Screening

7.1.1 General observations on screening

As a general observation, all new Member States have established screening procedures as an early and initial step in the EIA process following the regulatory scope as set out in the EIA Directive and based upon the project types in Annex I and Annex II and the criteria set out in Annex III.

In general, the total number of conducted EIAs - i.e. projects screened and subject to subsequent EIA - is rising in the new Member States. The following examples indicate this development:

Slovakia reports a wide experience with the application of the EIA process. From 1994 until now approximately 3,500 activities have been assessed, mainly concerning projects related to municipality development, transport, purpose-design facilities for recreation and tourism and drillings for supplying drinking water as well as for wastewater. Among these 135 projects (Annex I) and 363 projects (Annex II) have been subject to EIA procedures in 2006 of which approximately 10 – 15 projects received a negative EIA decision.

In Lithuania, the number of screening decisions regarding the environmental impact assessment of planned economic activities increases each year. The number of performed screenings has increased annually since 2001. 150 screenings were performed in 2001, 209 screenings in 2002, 224 screenings in 2003, and 422 screenings in 2004. The year 2005 saw a significant growth in the number of screenings amounting to 713 screenings. 624 screenings were performed in 2006. Finally, 666 screenings were performed in 2007.

Lithuania also reports that the number of major activities subject to mandatory EIA (Annex I) has increased significantly. 23 decisions on the admissibility of the activity were made in 2001, 26 decisions in 2002, 34 decisions in 2003, 33

decisions in 2004, 38 decisions in 2005, 45 decisions in 2006 and 54 decisions in 2007.

Cyprus also inform on an increase in cases over the years since 2001: in 2006 there were in total 75 cases out of which 30 were for Annex I projects and 45 for Annex II projects.

Malta has a two tier system for EIAs for Environmental Impact Statements (Annex I) and Environmental Planning Statements (Annex II). The Schedule IA of the Regulation that lists the projects requiring an EIA divides types of development projects into two categories, depending on their relative impact on the environment:

- 1 Category I projects require a full and thorough Environmental Impact Statement.
- 2 Category II projects require a simpler form of assessment covering fewer topics but otherwise prepared in exactly the same way. The Maltese Environment and Planning Authority (MEPA) decides whether a development proposal requires an EIA and which category of statement is needed. This decision is largely based on the information provided by the developer and research by MEPA, such as site inspections.

The number of EIAs carried out in the Czech Republic has increased recently due to the amendment of the Czech EIA legislation, Act 100/2001 Coll. by 163/2006 Coll. meaning that in 2006 112 Annex I projects were notified resulting in 72 EIAs carried out. Also for 2006, 1,719 Annex II projects were notified and 125 were carried out.

Table 6.1 below provides an overview of the increasing tendency in EIAs carried out:

Table 7.1: Number of EIAs carried out in the new Member States⁶³

Member State	Annex I		Annex II		Tendencies in EIAs carried out
	2005	2006	2005	2006	
BG	77	88	2212	2457 (incl. screening decisions)	Increase
CY		30		45	Increase
CZ		72		125	Increase
EE		57		20	Decrease
HU		70-90		370-400 (incl. screening procedures)	Static

⁶³ Responses by Member States to questionnaire, Q17.

Member State	Annex I		Annex II		Tendencies in EIAs carried out
	2005	2006	2005	2006	
LT		40		5 (the number indicates finished EIAs.)	Increase
LV		12		838	Static
MT		4		6	Increase
PL	n/a	n/a	n/a	n/a	n/a
RO		179		643	Increase
SK	90	135	429	363	Static
SI	n/a	n/a	n/a	n/a	n/a

The increase in the number of projects screened and in the number of projects subject for further EIA procedure indicate a positive development in terms of evaluating the application of the Directive.

7.1.2 Thresholds and case-by-case evaluation

According to Article 4(2) of the EIA Directive, for projects listed in Annex II, the Member States shall determine through either a case-by-case examination, or by thresholds or criteria set by the Member State or a combination of both, whether the project shall be made subject to an EIA.

The new Member States are divided as to whether they apply thresholds (Hungary, Lithuania, Latvia, Malta, Poland, Slovakia, Slovenia and Czech Republic) or a case-by-case evaluation (Hungary, Lithuania, Latvia, Malta, Cyprus, Romania, Czech Republic, Poland, Bulgaria and Estonia) or a combination of both in order to determine whether a project shall be made subject to an EIA.⁶⁴

The use of thresholds Seven new Member States use exclusive thresholds⁶⁵ for certain project categories⁶⁶ (Cyprus, Estonia, Latvia, Malta, Poland, Slovakia and Slovenia), three use indicative thresholds⁶⁷ (Czech Republic, Malta, Slovakia) and three Mem-

⁶⁴ Poland is registered in both categories since Poland applies a screening mechanism that sorts out projects below certain thresholds. Above the established thresholds a case-by-case assessment is employed.

⁶⁵ Exclusive thresholds: are those below which a development is deemed to not require an EIA without the need for case-by-case assessment (except where the project may impact on specific/protected areas as set out in the State legislation).

⁶⁶ Questionnaire, Q12: Member States was asked to specify which thresholds/criteria (indicative or mandatory) they have been laid down in their national systems for the selected Annex II project categories.

⁶⁷ Indicative thresholds: are only for guidance.

ber States use a combination of both approaches to determine whether a project shall be made subject to an EIA (Latvia⁶⁸, Malta⁶⁹ and Slovakia).

Lithuania reports that there are several project categories for which mandatory thresholds are set. For example: Extraction of mineral resources or stone crushing (areas exceeding 0,5 ha), thermal power stations and other combustion installations, including industrial installations for the generation of electricity or steam or the heating of water (output exceeding 20 MW), etc. Below the mandatory thresholds a case-by-case assessment is carried out.

The Czech Republic reports that the set indicative thresholds are taken into account by the competent authority as one of many aspects of the project, and that projects that do not reach the set indicative thresholds are also subject to screening.

Case-by-case evaluation

There is a general acceptance that screening must include a case-by-case assessment in addition to applied thresholds. The Latvian local consultant states specifically that a combination is desirable because thresholds may be an insufficient screening mechanism if projects for instance are planned in environmentally sensitive territories. Furthermore, in order to ensure compliance with Article 2(1), a case-by-case assessment will in most cases be required.

This approach is also in line with the case-law of the European Court of Justice (ECJ). The Court emphasises that the discretion exercised by the Member States based upon Article 4(2) of the EIA Directive must not undermine the objective of the Directive itself. This means that the Member States are required to ensure that no project likely to have significant impacts on the environment fails an effective EIA.⁷⁰

Accordingly, the Czech Republic reflected the judgment in case C-392/96 (Commission vs. Ireland) by amending the EIA Act so that projects not reaching set thresholds now are subject to a case-by-case screening. Before this amendment was introduced such projects were automatically excluded from the scope of the EIA-regulations.

Having established the need for sound case-by-case assessment, the question generally raised is how to ensure that Annex II projects are screened and made subject to EIAs on a consistent level?

In this context, it should be noted that it appears that the new Member States have not yet evaluated the usefulness of the latest EC EIA guidance document on *Interpretation of definitions of certain project categories of Annex I. and II of the EIA Directive*, 2008. The guidance document was finalised after the ToR for the present study on the Application and effectiveness of the EIA Directive. Thus, this 2008 guidance document is not part of this review.

⁶⁸ Only for Project Category 10. Infrastructure projects.

⁶⁹ Only for Project Category 1(e). Intensive livestock installations.

⁷⁰ See Case C-435/97 Bolzano (WWF and others); see also cases C-72/95 Kraaijeveld C-329/96 Commission v Ireland, C-87/02 Commission v Italy.

Local consultants in some of the new Member States have also raised the issue that case-by-case screening may be cumbersome and slow down any project considerably as well as providing a certain amount of legal uncertainty for developers. Further, it is generally stated that the required screening procedure captures too many projects, which risk jeopardizing the legitimacy of the EIA regime as it questions the quality of the individual screening and/or gives concern as to whether compliance with and implementation of the EIA Directive and the national EIA regimes is being reached.

EIA/IPPC

Finally, a practical matter related to the effective application raises the issue of applying the thresholds and criteria of the EIA Directive with those of the IPPC Directive. This issue is analysed in detailed in Chapter 7. However, it should be mentioned that some Member States apply an integrated approach combining the two regimes. For instance, the Romanian EIA legislation ensures that projects meeting the thresholds provided for by the IPPC Directive are automatically subject to the EIA procedure. Consequently, those having thresholds below the ones provided for by that Directive are subject to the screening stage. Projects with thresholds below those laid down in Annex 1 of the EIA Directive are subject to the screening stage.

With reference to thresholds that should take into account national characteristics, the recent Judgment in Case C-66/06 Commission v. Ireland contains relevant jurisprudence.

7.1.3 Suggestions for revision of Annex I and II projects

The new Member States have presented specific suggestions for revision of both Annex I and Annex II of the EIA Directive. They have furthermore suggested that some projects are removed from Annex I and II.

The new Member States suggest that the following projects are included:

Table 7.2: Overview of Member State suggestions for Annex I and II additions

New projects to be included	Suggested by Member States
Masts for tele- and radio communication	Cyprus, Hungary and Lithuania.
Golf courses	Cyprus, Czech republic, Hungary and Malta.
Installations working with GMO or pathogenic microorganisms	Cyprus
Shooting ranges	Cyprus and Hungary.
Desalination plants	Cyprus and Malta
Biogas plants	Czech Republic
Composting plants	Czech Republic
Lime manufacturing	Czech Republic and

New projects to be included	Suggested by Member States
	Latvia.
Underhead cables	Hungary
Hydropower plants	Hungary
Crematorium and cemetery installations	Lithuania
Damping of excavated soil	Lithuania
Manufacture of galvanic cells	Lithuania
Cleaning of lakes or adjusting of water levels	Lithuania
Extraction of sediments from the bottom of waterways and seabeds.	Lithuania
Radar installations	Lithuania
Ammunitions manufacture	Lithuania
Bread production	Lithuania
Starch manufacture	Lithuania
Production of yeast	Lithuania
Production of paper and cardboard	Lithuania
Fibre board	Latvia
Bio-fuel manufacturing (Annex II)	Latvia, Romania
Hotel/homes development	Malta

The table below presents an overview of projects that the new Member States suggest are removed from Annex I and II.⁷¹ It is noted that only four new Member States have put forward such suggestions.

Table 7.3: Overview of Member State suggestions for projects that could be removed from annex I and II⁷²

Projects to be exempted from EIA	Suggested by Member States	Reason for exemption
Annex II 1(a) restructuring of rural land holdings.	Hungary and Lithuania	Projects regarding this are changes in land use, and therefore suit environmental assessment of land use plans. Definition unclear. The scope of the project could be defined more clearly to avoid confusion with SEA
Annex II 1(b) use of uncultivated land or semi-natural areas for in-	Hungary	Projects regarding this are changes in land use, and therefore suit envi-

⁷¹ Responses by Member States to questionnaire, Q16.

⁷² Responses by Member States to questionnaire, Q16..

Projects to be exempted from EIA	Suggested by Member States	Reason for exemption
tensive agricultural purpose.		ronmental assessment of land use plans.
Annex II 10(a) industrial-estate development projects.	Hungary, Lithuania	Projects regarding this are changes in land use, and therefore suit environmental assessment of land use plans. Definition unclear. The scope of the project could be defined more clearly to avoid confusion with SEA
Annex II 10(b) urban development projects.	Hungary, Lithuania	The term "urban development projects" is unclear thus a source of legal uncertainty.
Afforestation of land with no forestry vegetation.	Romania	There is no adverse effect on the environment.
Annex I 5 Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tons of finished products, for friction material, with an annual production of more than 50 tons of finished products, and for other uses of asbestos, utilization of more than 200 tons per year.	Malta, Romania, Hungary	To be removed because use of asbestos is to be eliminated in the EU.

Concerning the interface with the IPPC Directive, Bulgaria suggests that the types of projects included in Annex I and II should correspond closely to those included in Annex I of the IPPC Directive as well as the definitions used in the waste directives. The Hungarian expert suggests that it should be further analysed whether it would be satisfactory to apply only the IPPC Directive in cases where a project falls into the scope of both Directives.

7.1.4 Simplified procedure applied for Annex I and II projects

The overall majority of the new Member States report that they do not apply simplified procedures to Annex I and II projects (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia and Slovenia).

Malta informs that a public meeting is required as part of the public participation procedure for Annex I projects but not for Annex II projects.

7.2 Scoping

Scoping is mandatory in all new Member States with the exception of Cyprus and Slovenia. In Poland, scoping is obligatory for all Annex II projects. In case of Annex I projects scoping is obligatory in case of projects which are likely to have significant transboundary effects.

Scoping is typically based upon an environmental dossier prepared by the developer assisted by a licensed independent EIA local consultant. The competent EIA authority verifies the dossier.

The overall majority of the Member States allow for public consultation during scoping (with the exception of Slovenia and Poland).

In the Czech Republic, Estonia, Latvia and Lithuania, this right is given to anyone. Slovakia reports that, in case the public submits important comments to the preliminary environmental study, the competent authority invites members of the public to the consultations on the scoping proposal.

In Cyprus, a Committee consisting of public authorities, the Federation of NGOs, the Technical Chamber of Cyprus and two independent members with knowledge in environmental issues is consulted. Depending on the project in question, other bodies concerned can be included in the Committee.

Hungary reports that the legislation provides for consultation with 'the public concerned', however the definition of 'the public concerned' is so wide, that in practice almost everyone can participate in the scoping if he/she so requires. Hungary, furthermore, states that the public consultation is important and provides for specific public health viewpoints or data on local knowledge. It improves the transparency and augments the professional level of the environmental impact statement.

Poland reports that the reason for not including public consultation in the scoping phase is basically that the involvement of relevant authorities in defining the scope of the information to be provided by the developer is deemed to be sufficient.

Benefits of the scoping

The overall majority of the new Member States considers scoping as an important feature of an adequate EIA regime and that the scoping is beneficial in improving the quality of the EIA. Slovenia states that it cannot provide any answer to the question, as very few developers use the option to request preliminary information about the content and scope of the environmental impact report.

Bulgaria stresses that better quality is achieved by enabling board consultations, sufficient time for expressing opinions by concerned parties, including preparation of new alternatives or identification of additional possible mitigation measures.

Lithuania finds that scoping helps to determine the content of the environmental impact assessment report, its scope and the topics that shall be investigated. It ensures that significant environmental impacts are extensively investigated, that the report includes all necessary information required to make a justified decision of the proposed activity on the basis of its nature and environmental impacts. Scoping also provides incentives for considering negative environmental impact prevention, mitigation measures and alternatives at the early stage of the planning of the project activity.

Malta reports that as a result of the scoping procedure, tailor-made terms of reference for the environmental information to be submitted by the developer are issued.

Romania states that the reason for the better quality of the information provided in the EIA report, is that the scoping report emphasises those aspects that need special attention (a thorough analysis, additional studies, etc.), taking into account that one project may have an impact only on some environmental elements and not on all of them.

Observations of local consultants

Several local consultants express concern about the quality of scoping and the outcome hereof. The Estonian local consultant notes that EIA reports of a better quality are needed; often the reports do not provide sufficient argumentation for the scoping of the EIA.

The Slovene local consultant adds that the quality of the information included in environmental reports can be rather low, which is often the consequence of a lack of interpretation of guidelines and the related lack of expertise even among qualified environmental auditors. Furthermore, the Slovene experience suggests that alternatives are not always sufficiently presented or evaluated. This issue is further considered in section 7.6.

7.3 Assessment of effects on human health

All new Member States report that human health aspects are assessed as part of the EIA-reports. However, the procedures for assessing human health impacts vary between the Members States.

Common elements for the new Member States are:

- Human health impacts are identified in the scoping stage;
- Consultations with health authorities or experts within the field on human health;
- Assessment of impacts on human health is part of the environmental documentation submitted by the developer.

Most of the new Member States have not produced any guidance documents on this issue.

Procedures for the assessment of human health impacts

In the following, a summary of the Member State responses are provided:

In Bulgaria the assessment of health/sanitary aspects is an integral part of the EIA report. The requirements for the the scope and details of the information required are identified during the consultations in the scoping phase with the relevant health authorities.

Cyprus reports that the Ministry of Health is a permanent member of the EIA Committee.

The Czech Republic reports that for certain projects (Annex I Category II of the EIA Act), or if identified in the fact-finding procedure prior to an assessment of impacts on public health, studies on impacts on population, including socio-economical aspect shall be carried out. For other projects, if so laid down in the conclusion of the prior fact-finding procedure, the part of the documentation concerning the assessment of impacts on public health has to be prepared by a person, who holds a certificate of professional qualification for the field of assessment of impacts on public health. The certificate of professional qualification for the field of assessment of impacts on public health is issued by the Ministry of Health.

In Estonia, the EIA must include an assessment of the potential impacts on human health and well-being and on the overall socio-economic situation associated with the proposed activity and its alternatives. This is e.g. impacts on noise levels, water quality, and air pollution. Usually, quantitative standards and thresholds are used to assess the significance of impacts, but also people's attitude to the activity, impact on the stress level of the public, etc. Extraction of mineral resources, manufacturing or transport projects are the most important ones in that field. A guideline on assessing the socio-economic impacts is available. The IAIA's guideline: "International Principles for Social Impact Assessment" (IAIA, May 2003) is also available on the website of the Ministry of the Environment.

The Hungarian EIA Decree contains detailed rules on both health aspects and socio-economic impacts which arise as a consequence of changes in the state of the environment due to a planned activity:

- if the change in the status of the environment can result in an unfavourable change of the health status of the population, the description of the environmental-health effects shall contain especially:
 - the number of the dwellers on the territory effected with the planned activity, their age structure, an evaluation of mortality and morbidity data and the population groups sensitive to the environmental effects;
 - a description of the short and long term effects on the health status of the concerned population, based on the estimates of the environmental burdening that might reach the population;
 - the level of health risk, as far as it can be given in numerical values;

- The possibilities of avoiding, mitigating the damages in health and of decreasing the health risk to an acceptable level.
- as far as possible an estimation of the direct economic and social consequences owing to the changes in the status of the environment, especially:
 - the damages and expenses emerging;
 - Changes in the use and usefulness of the territory of the effects and the consequential changes in life quality and way of life.”

In practice, human health issues are examined in details in the EIA procedures of transport projects (focusing on noise), transmission lines (focusing on non-ionising radiation), hazardous waste management facilities (complex effects on environmental health), strip mines and cement factories (focusing on air pollution). The human health effects are evaluated by the State Public Health and Sanitary Services acting as consultative authorities in the EIA cases. The experts of the developers try to acquire and use medical statistics (they are however difficult to get access to, because of legal and technical problems) and individual health status researches.

Concerning the socio-economic effects, practice shows that only the EIA-reports of the largest investments deal with this issue in proper details and generally the experts of the developers strive to interpret this task as a possibility to speak about the favourable socio-economic effects of the planned investment, such as a raise in the employment level.

The National Institute of Human Health worked out guidance on preparing human health impact assessment that was widely distributed in 2001 and has been used for training the human health staff of the Institute.

In Latvia, these aspects are assessed by the competent authority in the scoping phase, by taking into account views expressed and suggestions submitted by the public and other designated authorities and on the basis of these consultations, sets the requirements on a case-to-case basis, depending on the scope of the project.

Lithuania reports that the EIA program shall include information on health and socio-economic issues and how these will be assessed. The EIA report shall include a description and evaluation of any potential direct and indirect impact of the proposed economic activity upon public health, socio-economic matters and description of measures provided to avoid, reduce, and compensate the negative impact upon these components or to eradicate consequences.

According to the Regulations on Preparation of the Environmental Impact Assessment Program and Report, approved by Order of the Minister of the Environment in Lithuania, issues such as the potential impact on local economic conditions, labour markets, investments, land and housing prices in the territory under investigation, demography, industry (agriculture, silviculture, aquaculture, recreation, tourism, industry (heavy, light, manufacturing, etc.), transport,

mining, construction of dwelling houses (single and multi-storey), trade (wholesale and retail), local living conditions and possible public discontent with the proposed activity should be addressed in the assessment of socio-economic impacts. Measures envisaged to mitigate impacts of the proposed economic activity on the social and economic environment should also be identified.

The section on public health should include a description of methods used to assess impacts on public health and motives for their selection; the assessment of chemical, biological (microorganisms, viruses, etc.), physical (noise, ionising and non-ionizing radiation) pollution which may affect public health; possible impacts on public health considering the odours emitted by the proposed activity; information about sanitary protection zone; normative and suggested according to the results of EIA assessment; conclusions and recommendations.

No guideline has been produced on this issue; however, some guidance is provided in the guidance, 'Methodological Instructions on the Assessment of the Impact on Public Health', approved by the Minister of Health of the Republic of Lithuania.

In Malta health impacts in EIA are assessed on a case-by-case basis, on the basis of the nature and type of the project in question. Health impacts are usually requested for projects related to waste management installations. Such studies are to make reference to published epidemiological and other studies, where relevant. In such assessments health and well-being are studied with reference to socio-economic impacts, where relevant. Other secondary impacts related to health issues include air quality, noise and vibration.

In Poland, the sanitary inspectorates (Authorities responsible for public health) are involved in EIA procedures (i.e. the screening and scoping stages and in providing their opinions prior to the issuing of the environmental permit). According to Polish law, the environmental impact assessment procedure should identify, analyse and assess the direct and indirect effects of a given project also on human health. Moreover, the environmental report of a project should contain the reasons for the alternative chosen by the applicant, indicating its impact on the environment, in particular on human beings.

Romania reports that the public health authority is a member of the Technical Review Committee (TRC) and is always consulted in the EIA procedure. The developer is asked to analyse the risk of the investment on human health (pollutants are identified, the cause-effect relationship is established, assessment of exposure is conducted and a risk characterization carried out). The assessment of impacts on human health is described in the EIA report within the chapter 'Social and economic environment'.

The focus on health assessment is applied in those projects with significant impact on human health.

Types of projects for which a special attention is given to health assessment:

- Projects on use, disposal, transport, handling or manufacturing of dangerous chemical substances and preparations within the technological process;
- Emissions, discharges and spills/leakages of priority substances and priority hazardous substances into waters;
- Atmospheric emissions of toxic, mutagen and carcinogenic substances;
- Waste disposal installations for incineration, chemical treatment, or landfill of hazardous waste;
- Projects which may cause discharges in waters;
- Nuclear projects.

Issues that are addressed in these assessments:

- Pendant on the pollutant, the changes on the incidence of the diseases, how the sickness vectors are affected;
- How the project will affect the wellbeing of the population, how certain segments of the population will be affected.

The competent environmental authority may impose supplementary measures for mitigation of the effects on human health if the public health authority, based on health studies, indicates that human health may be affected.

The Ministry of Public Health and its territorial bodies are in charge of issuing the sanitary authorization. Ministerial Order 536/1997 approves the hygienic norms and recommendations on the human life environment.

Every EIA assessment in Slovakia requires the views of the Regional public health office. Every final record from the mandatory assessment is reviewed by the Regional public health office. This office assesses inter alia noise, light techniques, healthy water sources, and healthy work conditions.

Slovenia reports, that prior to adopting the decision on the environmental consent, the ministry sends the request for issuing the environmental protection consent and the draft decision on granting environmental consent to the ministries and organizations competent for individual sectors of the environment. This includes the domain of human health. Most often certain ministries and organisations become involved when the activities are also SEVESO activities (facilities) and activities involving large quantities of hazardous chemicals.

In conclusion, new Member States seem to have gone a long way in taking human health issues into consideration when impacts are assessed. A wide variety of means are applied in achieving this, where the procedural requirement and extensive guidance seem to be the most predominant measures applied.

7.4 Cumulative effects

Member States have been asked to provide examples of projects where the issue of cumulative effects from projects was addressed effectively or procedures enacted failed to do so. Member States have not communicated whether or to

what extent the observation or non-observation of the Directive's requirements is a result of the administrative handling of EIA procedures.

The following examples of projects where the issue of cumulative effects of the projects were addressed effectively are reported by the new Member States:

- Bulgaria: Investment proposals for hydropower plants in a cascade, hotel complexes and associated developments like sport arenas and the related infrastructure.
- Estonia: The case of extension of the port of Muuga. The EIA report indicated how the proposed activity may lead to increases in noise level, air pollution, risks, impact on nature etc.
- Hungary: Thermal power plants where several investors developed similar projects, the wind mill parks, the pebble mines in one region when their cumulative effects on the level and quality of underground waters were examined in all of the concerned EIA procedures and the flood protection works at the Tisza River.
- Lithuania: Cumulative environmental effects (especially radiological) have been successfully assessed for Ignalina Nuclear Power Plant decommissioning activities. Although EIA is separate for every decommissioning activity and is not carried out at the same time, each EIA assesses (will assess) effects caused by the activity under examination and other decommissioning activities.
- Romania: Construction of wind farms; extension of the ski-runs; extension of installations for the manufacture of glass located on the same site; installation for obtaining lime and installations for obtaining cement; pigs and poultry rearing farms located on neighboring sites; industrial parks.

Examples of projects where the issue of cumulative effects of the projects was not addressed effectively:

- Cyprus: The establishment of a big shopping mall and a big furniture store next to a hospital. This had lead to considerable traffic problems.
- Estonia: The cumulative effects from projects are not always well analysed in cases of mineral extraction. Although several quarries situate in the same area the initial EIA reports have failed to analyze the cumulative effects. The EIA supervisor had to ask for further information.

Observations

The Member States do not provide an overview of how the national legal systems endorse the Directives requirements with regard to cumulative effects of projects and how they are put in practise. In their comments they typically mention problems relating to the administration of the EIA process. However, the administrative procedure applied by the individual Member State is based upon

different approaches and thus, the sharing of experiences and information may be difficult.

There is little or no guidance on the issue in the new Member States. Problems encountered are more of a methodological nature as the cumulative effects are often difficult to address. The Hungarian local consultant suggests more guidance on this issue⁷³.

7.5 Transboundary consultations

The new Member States have prior to their EU membership already addressed the assessment of environmental impact of transboundary projects. This is due to the commitments arising from signing the Espoo Convention on transboundary EIA and later also the participation in the Aarhus Convention on public participation in the decision-making.

Naturally, the new Member States are still in the process of implementing these international commitments along the related requirements based upon the requirements in the EIA Directive Article 7 and the changes introduced by Directive 2003/35/EC.

Cases of Article 7 related to transboundary EIAs

The new Member States have already some experiences with transboundary impacts and consultations since 2004.

Bulgaria reports on eight cases, Hungary on eleven cases, Latvia on seven cases, Poland on eighteen cases and Slovenia on four cases. So far, Cyprus and Malta have not been involved in any transboundary EIAs.

Estonia informs that it has received eight notifications on initiation of EIA proceedings (from Latvia, Finland, Lithuania, and Sweden) and Estonia has itself launched two notifications (to Finland, Russia and Sweden) since 2004. EIA in a transboundary context is currently being carried out for six projects. In two projects Estonia is the party of origin and in four projects an affected party.

Estonia has had the most transboundary cases with Finland and Latvia. The practical questions are discussed and solved in the meetings of the Estonian-Finnish and the Estonian-Latvian joint commissions on EIA established on bilateral agreements.

The Czech Republic has been involved in approximately ten cases.

Lithuania reports that since 2004 they have one completed and four ongoing transboundary EIA in which Lithuania is the Party of origin (decommissioning projects of Ignalina Nuclear Power Plant (NPP), construction of a new NPP, reconstruction of a sea port). In addition, Lithuania is involved in three ongoing

⁷³ Taking into account that the current *EC Guidelines for the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions* is of May 1999 and should be updated, as suggested below in Section 6.14.

EIAs as an affected Party (regarding NPP (Finland), final repository for used nuclear fuel (Sweden), Nord Stream gas pipeline (Germany-Russia)).

Since 2004 Slovakia has been involved in two transboundary EIA procedures originating in neighbouring countries and seven transboundary EIAs located in Slovakia. According to the Slovak local consultant, Slovakia has been a party of origin in the following cases: The bridge over Morava River, Moravsky Svaty Jan – Hohenau (Slovakia-Austria), Gold Extraction in Kremnica town (Slovakia– neighbouring countries), Thermal Power Station in Trebisov (Slovakia– Hungary). Slovakia has been party of affected party in the following cases: Treatment project of Donau River in the Austrian part (Austria-Slovakia), Cement works Holcim in Nyergesujfalu (Hungary–Slovakia), Power Station with Combined Cycle AlmásFuzito (Hungary–Slovakia).

Romania has been involved in eight transboundary cases (Calafat Vidin Bridge, Silistra Refinery, Belene NPP, Cernavoda NPP Units 3 and 4, Rosia Montana Project, Paks NPP, Bastroe Canal, Giurgiulesti Harbour).

Table 7.4: Transboundary consultation and impacts

Member State	Number of transboundary cases since 2004	Difficulties, if any	Arrangements under Art. 7 (5), if any	Time frames for transboundary consultation
BG	7 (Mainly relating to cases with Bulgaria and Romania)	Yes, due to the differences in the national EIA procedures	Yes, with Bulgaria. The affected parties have to be informed about the steps and time frame of the national EIA procedure. In case the affected party requires longer time or more information consensus is reached case by case.	When Bulgaria is the affected party necessary time-frame for the different phases of the EIA procedure is first discussed with the party of origin.
CY	None	N/a	No	Not provided
CZ	Approximately 10	No	Party to the ESPOO convention - no bilateral agreements ratified.	Not provided
EE	10	Yes, due to cost issues of the publication procedure in the other country. It is dealt with by consultation between the states and agreements on the necessary	Party to the ESPOO convention and bilateral agreements with Latvia(1997) and Finland (2002)	30 days

Member State	Number of transboundary cases since 2004	Difficulties, if any	Arrangements under Art. 7 (5), if any	Time frames for transboundary consultation
		procedure and the actual schedule. As regards difficulties with transboundary cases with Finland and Latvia these have been solved in the meeting of the Estonian-Finnish and Estonian-Latvian joint commissions on EIA established on the basis of the bilateral agreements.		
HU	11	Difficulties due to translation of the EIA material; definition of the reasonable deadline as well as different kind of interpretation of term "likely" has occurred. In consequence the interpretation of the decision on the need to inform another MS has been different. For the sake of the good neighbour relations and with view of Article 7(2) of the EIA Directive the other MS has been involved both into the preliminary examination procedure and into the EIA procedure	Party to the ESPOO convention - no bilateral agreements ratified.	In most cases there was no problem to agree on the time-frames, it usually required exchange of electronic mails or phone calls when it was possible to clarify quite smoothly the mutually acceptable dates. In few cases there was difference in the timing due to the fact that the transboundary procedure started at a later phase of the national EIA procedure. The party of origin had to consider its internal procedural deadlines while the affected party needs sufficient time to review the documents and to form its standpoint
LT	8	There are some difficulties regarding time frame for commenting on EIA documents, and the question	Yes. Agreement between the Government of the Republic of Poland, and the Government of	When Lithuania is the Party of origin the time frame for consultations for each stage of EIA (scoping and re-

Member State	Number of transboundary cases since 2004	Difficulties, if any	Arrangements under Art. 7 (5), if any	Time frames for transboundary consultation
		of translation of EIA documents. Lithuania has decided that these issues can be solved by agreements with MS or on case-by-case basis. For most of the projects all EIA documents or at least summary and the chapter on transboundary EIA are available in three languages: English, Russian and Lithuanian.	the Republic of Lithuania on the Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context. Party to the ESPOO convention.	port) is indicated, in the correspondence with MS. On the motivated request of the MS time period can be extended. The evaluation of the comments to the EIA program is provided with EIA report. And the comments to the EIA report are answered during consultation meetings.
LV	10	Difficulties due to language barrier or differences in the national legislation	Latvia has signed a treaty with Estonia on the subject of transboundary EIA, including consultation aspects	There haven't been significant problems related to timeframes for consultation. The most common and reasonable solution (if needed) has always been proven to be agreement or convention through negotiation.
MT	No	n/a	Yes	n/a
PL	15 times as an affected party: 3 times as a party of origin	The biggest difficulties concerned consultations regarding the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects. The approval of arguments of each side in order to strike a balance was the biggest problems during consultation.	In Poland we have two formal bilateral agreements: - The agreement between the Government of Poland and the German Federal Republic. - The agreement between the Government of Poland and Lithuania. There are 2 drafts of bilateral agreements: - The agreement between the Government of Poland	Public participation in affected party is organized by AP according to AP's legislation, but with the time frame appointed in accordance with the legislation of the PO to ensure the public of the AP the equivalent opportunity to participate in relevant EIA procedure.

Member State	Number of transboundary cases since 2004	Difficulties, if any	Arrangements under Art. 7 (5), if any	Time frames for transboundary consultation
			<p>and the Czech Republic</p> <p>- The agreement between the Government of Poland and Slovak Republic</p> <p>All bilateral agreements contains some general principles on applying EIA in a transboundary context and they regulate:</p> <p>translation of EIA documentation</p> <p>time frame for preparing and sending statement of affected party</p> <p>format for notification</p> <p>principles of public participation</p> <p>distribution and content of EIA documentation</p> <p>These agreements take into account differences between Parties and deal with the practical institutional aspects of EIA transboundary procedure. Other agreements are more general with references and appendixes of the Convention.</p>	
RO	8	Difficulties due to language barrier	No	Agreed upon by exchanging letters
SK	9	Nothing of importance	Bilateral agreement with Austria on the use of the ESPOO convention	Individual handling of time frames for transboundary consultation if they differ with neighboring

Member State	Number of transboundary cases since 2004	Difficulties, if any	Arrangements under Art. 7 (5), if any	Time frames for transboundary consultation
				state
SI	4	None	No	Case by case written communication

Arrangements under Article 7(5)

The new Member States report that they have adopted arrangements in accordance with Article 7(5) of the EIA Directive^{74 75}. These arrangements are based upon national requirements following the Espoo Convention (the Czech Republic and Hungary), a mix of national requirements following the Espoo Convention and bilateral agreements (Bulgaria, Estonia, Lithuania, Latvia, the Slovak Republic) or based upon a direct exchange of letters between states for the specific project (Romania⁷⁶).

Nine of the new Member States report that detailed procedures, such as the timeframes for transboundary consultation, are agreed upon through dialogue or consultation between the involved Member States (Bulgaria, Estonia, Hungary, Lithuania, Latvia, Malta, Romania, the Slovak Republic and Slovenia).

Difficulties encountered

It may be concluded that all of the new Member States have operational regulatory schemes in place for the management of transboundary impact procedures. However, it is clear from the data reviewed that the Member States face many difficulties and obstacles in carrying out transboundary consultations⁷⁷.

The barriers relate to the differences in Member States' EIA procedures:

- EIA is carried out in different stages of the project proposal process (raised by Bulgaria and Estonia);
- Different time frames at the different EIA stages, (raised by Bulgaria, Estonia, Hungary and Lithuania);
- Language barriers, including bearing of costs for translation) (raised by Bulgaria, Estonia, Hungary, Latvia, Lithuania and Romania).

Several of the Member States state that in order to overcome the mentioned problems, the States have to consult and agree on the necessary procedure and the actual time schedule of EIA procedure; however, it may be time consuming.

⁷⁴ Article 7(5) of the EIA Directive: "The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the effected Member States to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project."

⁷⁵ Positive responses include Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, and the Slovak Republic.

⁷⁶ Information provided by local consultant.

⁷⁷ Only Czech Republic, Slovakia and Slovenia reports that no difficulties have been encountered.

It is necessary to take into account the characteristics of the projects and the affected parties' needs.

Hungary reports that when transboundary impacts of a project may occur only with a very low probability, different kinds of interpretation of the term “likely” have occurred and as a consequence, the interpretation of the decision on the need to inform another Member State has also been different. For the sake of good neighbourly relations and also with a view of Article 7(2) of the EIA Directive Hungary has involved the other Member State both in the preliminary examination procedure of the project and in the subsequent EIA procedure.

Poland finds it a big challenge to agree on the potential transboundary effects of a project and the measures envisaged to reduce or eliminate these effects during consultations.

A positive approach to the problem of language barrier has been applied by Lithuania that provides at least the summary of the EIA document in Lithuanian, Russian and English.

7.6 Quality control system for the EIA reports

In all of the new Member States it is a legal requirement that the competent authority, or in some Member States, an expert committee, that is responsible for evaluating the quality of the EIA documentation.

The 2001 Commission guidance on scoping⁷⁸ includes several check lists which are supposed to serve the function as quality insurance tools. The guidance is being applied although it is a common viewpoint among Member States that it needs updating.

The table below presents an overview of the new Member States' different methods of ensuring sufficient quality of the environmental information pursuant to Article 5 and Annex IV to the EIA Directive.

Table 7.5: *Quality control in the EIA process*⁷⁹

	Methods of ensuring sufficient quality of environmental information pursuant to Article 5 and Annex IV
BG	The competent environmental authority is obliged to evaluate the quality of the EIA report submitted by the developer before the public access to information and public hearings. If the information is not sufficient – e.g. if it has a lot of omissions and weaknesses (including not relevant information) - the competent environmental authority sends back the EIA report for revision by the developers.
CY	The Environmental Authority and the EIA Committee review the assessment submitted by the developer and if it is concluded that it does not meet the requirements

⁷⁸ See the EC *Guidance for EIA - Scoping*. June 2001.

⁷⁹ Responses by Member States to questionnaire, Q25.

	Methods of ensuring sufficient quality of environmental information pursuant to Article 5 and Annex IV
	additional information is requested and the project is re-assessed at a later date.
CZ	A synopsis is provided for the developer in order to cover all issues
EE	The supervisor of EIA (the Ministry of the Environment or a County Environmental Department) shall verify whether the EIA report complies with the EIA programme and § 20 of the Environmental Impact Assessment and Environmental Management System Act. The Minister of the Environment has established the procedure for inspection of the quality of the EIA report and the proceedings regarding EIA (based on the guideline of the European Commission "Guidance on EIA. EIA Review"). The supervisor of EIA can also order an expert opinion on the report.
HU	<p>The Hungarian law and practice have developed a series of formal/informal, general/specific tools in order to ensure that sufficient and relevant information is submitted by the developer:</p> <ul style="list-style-type: none"> • Detailed description of the content of the documentations; • The mandatory scoping and mandatory scoping decision; • Consultations between the developer and the inspectorate before and after the submission of the documentations; • Negotiating trial with the participation of the inspectorate, the developer, the experts of the developer, the consultative authorities and possibly other participants in the case; • On site examinations; • Suggestions from the consultative authorities (as much as 20 if all the possible consultative authorities are included into the procedure); • Public participation, both in the scoping phase and in the EIA procedure; • Intermediate decision on requesting further information and clarifications; • A letter of warning and a procedural fine; • A letter of warning and a refusal of the request (the request can be issued again with the proper content); • Training for the officials in order to make them prepared to evaluate the proper content of the EIA documentations.
LT	<p>The EIA report shall be prepared in accordance with the Regulations on Preparation of the Environmental Impact Assessment Program and Report.</p> <p>Additionally, the Ministry of the Environment has prepared recommendation Guidelines on the Quality Control of the Environmental Impact Assessment of the Proposed Economic Activity. The Guidelines include checklists that help to determine if sufficient information has been provided to the decision makers.</p> <p>Relevant parties of the EIA (at least governmental institutions responsible for health protection, fire-prevention, protection of cultural assets, municipal administration and county administration) check if the EIA report includes sufficient information on the topics within their competence and provide their conclusions regarding the EIA report and the possibilities to carry out the proposed economic activity.</p>
LV	External experts can be involved in the assessment process and information can be sent to other enforcement authorities (environmental boards, local municipal governance) for additional opinion. As a result an opinion is elaborated by the EIA competent authority, requiring supplementary information and amendments of the statement, if needed.
MT	The Environmental Statement is reviewed by a team of persons with different backgrounds from the Competent Authority. The Statement is also distributed to the Local Councils, NGOs, relevant government departments and agencies. All these enti-

	Methods of ensuring sufficient quality of environmental information pursuant to Article 5 and Annex IV
	ties forward their comments to the Competent Authority within a stipulated time frame. The quality of the environmental statement is also checked against the Terms of Reference issued during the scoping stage.
PL	Authorities responsible for granting environmental decision check if data information on the proposed project or environmental report provided by the developer is sufficient. The quality of the environmental report for complicated and publicly controversial projects may be checked and commented by the Environmental Impact Assessment Commissions (There is one at central level and 16 in the regions). The main duties of the Commissions include: i) Advising on the matters that relate both to the investment process and EIA system (advising on complicated projects, expressing opinion on the documentation prepared during the EIA procedure; environmental reports, information on proposed projects submitted by the developer); ii) Monitoring the functioning of the EIA system and presenting opinions and suggestions including those relating to the development of methodology and training programmes in relation to EIAs.
RO	<p>The competent environmental authority ensures that the information submitted by the developer is of sufficient quality by analyzing the submitted documentation against the EC review check list adopted by MO 863/2002. In the same time, the competent environmental authority visits the site of the proposed project. The information provided by the developer are considered to be sufficient and relevant when it indicates the existence of a potential/significant impact and if the impact is quantified; alternatively, it must indicate that the project has no impact based on technical data, cause - effect action and mitigation measures. The competent environmental authority together with other relevant authorities can decide that the EIA report should be completed/ amended. If it is necessary, experts are consulted, additional checks are performed or additional documents are required. If the proposed project is an IPPC installation, the competent authority checks if the BREF documents were observed.</p> <p>Checklists and guidelines have been issued on the basis of the Commissions guidelines.</p>
SK	In the annex of the Slovak act there is given content of documentation on trans-boundary environmental impact assessment of proposed activities.
SI	<p>Article 54 of ZVO-1 sets the mandatory content which each environmental impact report must contain. In addition, there is also an Instruction on the methodology of preparing reports on environmental impact, which defines the methodology for preparing environmental impact reports.</p> <p>In addition, the auditing allows for independent expert supervision over the quality and appropriateness of the environmental impact report.</p> <p>A high degree of transparency enhances the quality since all information is available for the public on a website</p>

Observations

Local consultants employed in the study have found reason to raise a number of issues in this context. These are:

- Lack of sufficient quality in the assessment of alternatives;
- Lack of sufficient co-ordination between authorities when granting development consent;
- Lack of sufficient resources influences the quality of information.

Methodologies for evaluation

The majority of the new Member States does not report on any specific methodologies used for evaluating the interaction between environmental factors mentioned in Article 3 of the Directive⁸⁰.

In Hungary, methodological guidance has been prepared, covering among others, the well-known methods of identification of possible interactions, such as impact matrices, flowcharts, and checklists.

In Malta, a table of impacts that assesses the likely effects is prepared for each environmental parameter and assessed against a set of criteria. The impact assessment table is to include the following:

- Description of impact;
- Magnitude and significance;
- Duration (temporary or permanent);
- Extent (in relation to site coverage and surroundings and associated features);
- Direct or indirect;
- Reversible or irreversible effects of the impact and extent of irreversibility as well as a description of any associated conditions/assumptions for irreversibility;
- Sensitivity of recipient to impacts;
- Probability of impacts occurring;
- Confidence levels/limits to impact prediction;
- Scope of mitigation/enhancement; and
- Residual impacts.

Romania reports that for evaluating the interaction between the factors mentioned in Article 3 of the Directive some studies are requested, as appropriate: Regarding the exposition of the objective to sun light, studies regarding soil, chemical and agricultural studies or geotechnical and hydro geological studies and studies regarding the impact on human health.

Methods used are:

- Descriptive methods/techniques;
- Indicators;
- Checklists;
- Matrixes;
- Analytical methods/techniques;
- Prognosis;
- Risk assessment;
- Maps, mathematical methods including GIS, economical and statistical analysis.

⁸⁰ The factors to be reviewed under Article 3 are: i) human beings, fauna and flora, ii) soil, water air, climate and the landscape, iii) material assets and the cultural heritage, iv) the interactions between the factors mentioned in the first, seconds and third indents.

7.7 Alternatives

Bulgaria, Cyprus, the Czech Republic, Hungary, Poland, Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia report that alternatives are being assessed on an obligatory basis. However, when reviewing the responses by Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia this does not appear to be the case. What is compulsory is for the developer to report on alternatives, if studied. However, it does not seem to be obligatory for the developer to assess alternatives on a mandatory basis.

In the Czech Republic, assessment of alternatives is obligatory if it is not possible to exclude the likely adverse impact of the project on the Site of Community Importance (SCI) or the Special Protection Area (SPA). In these cases, the notifier shall elaborate alternatives, the aim of which is to avoid the adverse impacts or in cases where the avoidance is not possible, at least mitigate the adverse impact.

How are alternatives assessed?

Bulgaria reports that the alternatives could be related to the location and/or to the technologies, the reasons for the choice taking into account the environmental effects. The 'zero'-alternative should be assessed, too. If the investment proposal is a subject to an IPPC permit, a comparison of the proposed technologies and installations and compliance to BAT should be included in the EIA report.

The practice in Estonia is that usually the 'zero'-alternative, technological and technical (e.g. the substitution of applied material/technologies, etc.) alternatives are considered. Analysing location alternatives is not relevant if the detail plan is already established and the location for the project is already set.

In Lithuania it is obligatory to assess the following alternatives (when available): the 'zero'-alternative, location alternatives, technological alternatives, capacity alternatives. The information regarding the alternatives should be equal in order to decide which alternative should be approved.

In Romania the 'zero'- alternative is always presented in the EIA report and it is related to the baseline conditions of the environment in the absence of the project. Other alternatives which are studied and presented refer to: Alternative sites/routes, technical and technological solutions, management of natural resources, alternatives of natural resources used (termic power station on gas instead on fossil fuel).

Observations

Some Member States have raised concern about the quality of the assessment made by the developer. Hungary mentions, that, in practice, it has occurred in a number of cases that when the developer submits a request, the planning process of the project is often developed in a manner that excludes studies of alternatives. Thus, the developers are quite reluctant to develop further substantial alternatives and if they do they only develop the 'zero'-alternative and the spatial alternatives (usually only on localities they already have acquired by the time of the EIA procedure) but not the technological alternatives. Lithuania reports that the developer does not always provide satisfactory information (lack

of location alternatives and alternatives are differently addressed). However, the competent authority may always request additional information or further investigation of alternatives, if deemed necessary. Slovenia states that the assessment of alternatives in the environmental report is grossly neglected and often limited to one or two sentences, or even entirely omitted. In these cases, supplementing data is often requested. Malta reports the same concern as to the quality of the information provided, however stresses that an important improvement has been noted in the past years.

For discussion on the link between the EIA Report and Article 6(3) of the Habitats Directive, please see Chapter 7.2.

7.8 Changes and extensions of projects⁸¹

This section is linked to the discussion above in section 6.4 on cumulative effects and section 6.9 below on the splitting of projects.

All new Member States have introduced Annex II (13) of the EIA Directive by the application of a case-by-case assessment. A few new Member States also apply thresholds (Hungary, Malta, Romania, Slovakia and Slovenia).

The case-by-case assessment is typically carried out as part of the screening procedure.

Table 7.6: *Change and extension of projects*⁸²

	Implementation of Annex II (13) by the new Member States
BG	Through the Environmental Protection Act. The definition of “change” is determined by the EPA. It includes additional construction activity, technology or construction of an installation or scheme on the territory of the object in the exploitation, in the process of construction or project adoption, which may have significant adverse effect on the environment.
CY	In Annex II it is stated that any changes or expansions to projects of either Annex, that have been approved or are being carried out and are expected to have important impacts on the environment are subject to a review.
CZ	According to Sec. 4 (1) (b) of the national Act: The subject of the assessment pursuant to this Act shall be changes in any project set forth in Annex No. 1, Category I, if its capacity or extent is to be significantly increased or if there is a significant change in its technology, management of operation or manner of use, if not concerned in (a); these changes subject to assessment if so laid down in a fact-finding procedure. Sec. 4 (1) (c): projects set forth in Annex No. 1, Category II and changes to these projects, if its capacity or extent is to be significantly increased or if there is a significant change in its technology, management of operation or manner of use, if not concerned in (a); these projects and project changes subject to assessment if so laid down in a fact-finding procedure.
EE	Pursuant to the Estonian Environmental Impact Assessment and Environmental Management System Act EIA shall be carried out in case of the projects listed in

⁸¹ See EIA Directive Annex II, item 13.

⁸² Responses by Member States to questionnaire, Q30.

	Implementation of Annex II (13) by the new Member States
	<p>§ 6.1 of the Act. The issuer of the development consent (the decision-maker) has to consider whether EIA should be initiated in case of the project listed in Article 6.2 of the Act – taking into account criteria nominated in Article 6.3 of the Act. The regulation No 224 of the Government of the Estonian Republic specifies Article 6.2 of the Act. According to Article 1.2 of that Regulation the decision-maker has to also consider the need of initiation of the EIA if the developer would like to change or extend its activity.</p>
HU	<p>According to Article 1(1) of the EIA Decree the scope of the Decree encompasses the significant modifications of the activities subject to mandatory EIA or to screening decision. The term 'significant modification' covers changes and extensions of possible significant environmental impact.</p> <p>Article 2(2) contains a very detailed, descriptive definition of significant modifications.</p> <ul style="list-style-type: none"> • In case of the most project categories any change which results in <ul style="list-style-type: none"> i) a new or increased discharge into the environment (from a certain threshold and/or with certain criteria) ii) new or increased use of natural resources (from a certain threshold and/or with certain criteria) iii) increasing capacity (from a certain threshold, independently from the meeting of the previous conditions) count to be significant modification (Article 2(2 ab) of the EIA Decree). • In case of linear projects when the application of the previous approach is difficult in addition to the changes in volume with at least 25 %, an establishment of a new traffic lane or any change of the route of a wire on protected natural lands count to be significant modification (Article 2(2 ac) of the EIA Decree). • Any change in a project which qualifies as a project under Annex 1 to the EIA Decree count to be significant modification (Article 2(2 ad) of the EIA Decree). In such a case the EIA is mandatory.
LT	<p>According to the Law on EIA, screening procedure is applied for changes or extensions of the proposed economic activity included in the List of the Types of Proposed Economic Activities that shall be subject to the screening for the EIA (Annex 2 of the Law) or that shall be subject to the EIA (Annex 1 of the Law) except for cases referred in Annex 1. These changes and extensions include reconstruction of existing construction works, change or modernisation of production process or technologies, change of the mode or production, production type or capacities, implementation of new technologies, etc., which may have adverse effects on the environment. In order to determine the necessity for screening procedure the case-by-case examination is applied.</p>
LV	<p>Any changes in activities which are already authorized, are in the process of being executed or are executed and which are related to the objects referred to in Annex I and Annex II of the EIAL and may have significant adverse effects on the environment are made subject to initial assessment. It implies that any referred change should be made subject to initial assessment of the competent authority and could be subject to EIA procedure.</p>
MT	<p>Section 10 of Schedule 1A of LN 114/2007 deals with changes or extensions to approved projects. Any change or extension of development which would result in the development listed in Category I or II, already authorized, executed or in the process of being executed which may have significant adverse effects on the environment including: (a) an increase in size greater than 25%; or (b) an amount equivalent to 50% of the appropriate threshold is required to undertake an EIA, taking into consideration the criteria in Schedule IB.</p> <p>In addition to these thresholds, projects falling into this category are also screened under Annex II criteria of the Directive. Under national legislation, there are Cate-</p>

	Implementation of Annex II (13) by the new Member States
	gory I (EIA mandatory) and Category II projects (EIA requested only if significant environmental effects are likely). All Annex I, as well as a substantial number of Annex II projects are included in Category I.
PL	<p>The provisions referring to 'changes or extensions of projects' are incorporated into Regulation of the Council of Ministers on the types of projects which may have a significant impact on the environment for which the environmental impact report for a project shall be required and the types of projects for which the report may be require. In this Regulation in §2 section 1 are listed projects from Annex I of Directive and in §3 section 1 are listed projects from Annex II.</p> <p>In § 2 which covers projects from Annex I there is section 2 which states:</p> <p>The environmental impact report must be prepared by enterprises which:</p> <p>1) are being implemented on the premises of the facilities included in par. 1, which are:</p> <p>a) listed in § 3 par. 1 or</p> <p>b) not listed in par. 1 or § 3 par. 1 if their implementation causes:</p> <ul style="list-style-type: none"> - increase in emissions by no less than 20% or - increase in the usage of raw materials (water included), materials, fuel, energy by no less than 20% <p>2) are being implemented on the premises of facilities, and are enterprises, whose implementation will cause the facility to be included among those listed in par. 1.</p> <p>In §3 which covers projects from Annex I, section 2 states:</p> <p>The following undertakings may require preparing a report concerning an undertaking's impact on the environment:</p> <p>carried out in a facility included in the list of undertakings in section 1, not mentioned in section 1 or §2 (1), if their accomplishment causes:</p> <ul style="list-style-type: none"> - increase in emission by at least 20% or - increase in the consumption of resources (including water), materials, fuels, energy by at least 20% - undertakings carried out in a facility, and which accomplishment causes that the facility is included in the list of undertakings in section 1. <p>Moreover, there is general rule that reconstruction of projects listed in both paragraphs of Regulation of the Council of Ministers on the types of projects which may have a significant impact on the environment for which the environmental impact report for a project shall be required and the types of projects for which the report may be required, require or may require EIA procedure. Generally, renovation of projects doesn't require EIA procedure.</p>
RO	Transposed by Annex 2 (13a) of GD 1213/2006. Thus, the necessity of carrying out the EIA must be established if the change or extension of a certain project listed in Annex 1 or Annex 2 (change or extension not included in Annex 1), already authorized, executed or during execution phase, may have a significant impact on environment. The competent environment authority applies the selection criteria provided for by Annex 3 of GD 1213/2006 (transposing the same annex of the EIA Directive as amended) in order to establish the environment impact significance.
SK	There are thresholds imposed through the national legislation with respect to which types of changes should be subject to EIA or to screening (i.e. if the proposed activities already exceeds the threshold and the total change means more than 25 % increase or 50 % increase in five years; or, if there is no threshold set in

	Implementation of Annex II (13) by the new Member States
	<p>the national legislation and the total changes exceeds in five years 50 % of the original project which was assessed - provision for changes of projects in Annex I).</p> <p>If the proposed activity is to be performed on a territory protected according to specific regulations or on a considerably ecologically burdened territory, the ministry can in a proceeding define by decision that a proposed activity, or its change is subject to the assessment.</p> <p>A legal person or natural person intending to operate an activity according to specific regulations, which is not stated in annex of the Slovak act, is obliged to ask the competent authority) for decision whether this activity is considered as an interference into a territory, which might cause substantial changes in biological diversity, structure and in the function of ecosystems. If the state authority of protection of nature and land decides that this activity is regarded as interference into a territory, which might cause substantial changes in biological diversity, structure and in the function of ecosystems, then such activity is subject to assessment</p>
SI	The cumulative impacts and results of activities affecting the environment should be considered, especially with activities involving protected areas, regardless of the type of activity.

7.9 Splitting of projects into sub-projects (salami slicing)

Member States have been asked to indicate whether they have adopted specific legislation or other measures to avoid developers splitting projects into sub-projects for the purpose of avoiding the EIA requirement.

The answers provided by Member State representatives are reflected in the below table.

Table 7.7: Member State provisions and practice to avoid 'salami slicing' and cases on splitting of projects

'Salami-slicing'	National provisions preventing salami-slicing?	Practices preventing salami-slicing	National cases of salami-slicing	What type of development case did the occurrence of salami-slicing refer to?
BG	Yes	Yes, supports the legislation.	Yes	Investments proposals, holiday villages, installations in industrial plants, ski-runs and ski-lifts.
CY	No	Practise, yes. Effectiveness uncertain.	Yes	Road constructions, highways and divisions of plots
CZ	No	We identified one case in which the Min-	Yes	Salami slicing happens especially with high-

'Salami-slicing'	National provisions preventing salami-slicing?	Practices preventing salami-slicing	National cases of salami-slicing	What type of development case did the occurrence of salami-slicing refer to?
		istry of Environment ordered to join the screening procedures for 4 parts of one express road, namely R 49. This can be considered as a good practice example.		way and express road projects. This problem was reported in case of R 55, D 8, R 43 and D 3
EE	No. Legal initiative on its way in a couple of years	No	Yes	Petroleum product terminal. No EIA was carried out.
HU	No specific regulation.	No practise, but considered sufficient addressed by assessment	Yes	Poultry farms, commercial or housing estates, heat production and waste management.
LT	Yes	No, as "salami slicing" is not yet considered a problem in LT	No	n/a
LV	Yes. There are provisions in the national legislation to prevent developers to cut their projects into smaller ones to avoid EIA. Article 4, part (1), point 3) of the Law on Environmental impact assessment indicates - that EIA is necessary not only to the Annex I projects or projects that must be assessed through EIA as a result of screening, but also in cases several intended activities have an	Yes	Yes	Highways

'Salami-slicing'	National provisions preventing salami-slicing?	Practices preventing salami-slicing	National cases of salami-slicing	What type of development case did the occurrence of salami-slicing refer to?
	impact on one and the same territory, taking into account the joint and reciprocal impact if the intended activities.			
MT	No	Screening procedures	No	n/a
PL ⁸³	Yes	Not provided	Not provided	Not provided
RO	No	There are no good practices publicly available as a reference document, but nevertheless the environmental authorities are getting more used to resolve this matter.	Yes	Construction of wind farms, pigs/poultry farms, infrastructure projects.
SK	Yes	Not provided	Not provided	n/a
SI	No direct provisions	Yes	Not provided	Waste disposal /management.

The new Member States are primarily divided into two groups on the issue of having or not having legislation preventing the splitting of projects. The following Member States report on the existence of such legislation in their Member State: Bulgaria, Lithuania, Latvia, Poland, and the Slovak Republic.

Most new Member States also have experiences/practice in preventing or managing the splitting of projects. However, it is a common view among the local consultants that the practice and the experiences are not sufficiently adhered to.

The magnitude of the problem is difficult to assess for the EIA competent authorities. Not only can the inter-linkage over time and project type be difficult to identify. The Hungarian local consultant also addresses the difficulties in understanding the various ways splitting may occur, not always clear for the EIA competent authorities. There are four ways of splitting the projects into smaller ones in order to avoid an EIA procedure:

⁸³ Note that this information is from the questionnaire. The CS has not been received yet.

a) Slicing the territory: If the same developer initiates the same activity on two neighbouring pieces of land.

b) Slicing according to the developers/operators: This is a slicing operation that further develops point a). In the case of dividing the projects into two parts and formally running them in two separate locations, usually on pieces of lands with different (divided) land register numbers belonging to two owners closely related to each others (e.g. different companies of the same owner group), the formal conditions for requiring one EIA procedure is missing.

c) Slicing in time: When one facility starts an activity just below the EIA threshold and later extends the activity and as a consequence reaches or extends the EIA threshold. If the extension reaches the threshold of significant change there is a provision to apply the EIA Decree. In other cases, the environmental supervision procedure may take place.

d) Slicing of modifications: This kind of salami slicing tactics is to avoid a new EIA for the significant modification of the project by several rounds of smaller modifications. If the small changes altogether are above the threshold determined as a significant change, the environmental supervision is applied.

In the cases mentioned under points a) and b) the following measures apply - when it becomes clear from other procedures that the developments are not 'independent', the inspectorates usually treat them as a single project. However, in certain cases, the court does not accept this practice. In cases mentioned in point c) there is a provision to apply the EIA Decree if the extent reaches the threshold of significant change. In the case mentioned in point d), if the small changes altogether are above the threshold determined as a significant change, the environmental supervision is applied.

Examples of development cases, where 'salami-slicing' occurs⁸⁴:

- Road constructions, high-ways, infra-structure projects and division of related plots (Cyprus, the Czech Republic, Latvia, Poland and Romania).
- Waste management (Hungary and Slovenia).
- Investments proposals, holiday villages, installations in industrial plants, ski-runs and ski-lifts (Bulgaria)
- Petroleum product terminal (No EIA was carried out) (Estonia).
- Poultry farms (Hungary and Romania)
- Pig farms (Romania),
- Construction of Wind farms (Romania)
- Commercial or housing estates, heat production (Hungary).

According to the Bulgarian local consultant, the Bulgarian legislation does not provide for special provisions for 'salami slicing'. However, the case of supporting or maintaining activities related to the main investment proposal, the pro-

⁸⁴ Responses by Member States to questionnaire, Q33. Data provided for Czech Republic, Poland, Slovenia, and Estonia is provided by local consultants.

ject is regarded in its entirety and interrelation of the activities as required by Art. 82(3) EPA. Regarding the projects that are completed in lots (e.g. roads), in practice, the competent authority always requires the review of the investment proposal in its entirety. The investors are requested to sign a declaration for the actual scale of their project. The competent EIA authorities are aware of possible 'salami slicing' due to territorial development legislation. They provide consultation and guidance to the municipal authorities on case-by-case basis.

The Czech local consultant states that the investors often 'cut' the projects into pieces for the purposes of avoiding an EIA procedure and the attached development consent procedures. This applies especially to transport infrastructure projects. The Ministry of Environment considers salami-slicing as a very serious problem and endeavors to minimize it.

Slovakian local consultant reports that no good practices are publicly available but nevertheless the environmental authorities are getting more used to resolving the matter. For example, when there is only one developer, even if the project is divided in smaller parts, the cumulative effect on the same site is always considered. Where a project is divided between more developers the competent environmental authorities check the EIA data base, the site checking reports and the documentations on file related to the issuing of the prior decision.

In conclusion it is worth mentioning that the new Member States are aware of the problem of splitting projects into sub-projects for the purpose of avoiding the EIA procedure. The difficulties envisaged in the new Member States do to a certain extent equal difficulties reported by the old Member States in previous five-year reviews.

When viewing the information provided by the old Member States on the same issue, see section 6.3.5 and 6.3.6, it seems relevant to emphasise that the medicine applied in these Member States is the development of administrative and court practices on the issue and increased guidance at national level.

7.10 Application of Article 2 (3)

Article 2(3) of the EIA Directive provides an exemption to the EIA requirements in the Directive.

Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia and Slovenia report that they have not made use of this option in their national legislation. Bulgaria and Czech Republic have not used exemptions, following the Article 2(3). The Czech Republic implemented the Article 2 (3) into the Czech EIA Act in § 4 (2), which states that *“The subject of the assessment pursuant to this Act shall further not be a project or a part thereof about which the Government makes a decision in cases of emergency, state of danger and state of war3), for urgent reasons of defence or to comply with international agreements binding the Czech Republic and in case, that the project serves for the immediate prevention of consequences or the mitigation of unpredictable events that could seri-*

ously endanger the health, safety or property of the population or the environment."

Bulgaria, Cyprus, Hungary, Malta, Romania, and Slovenia find the Commission's Guidance on the "Clarification of the application of Article 2(3)" useful.

7.11 Major EIA complaints and law cases brought before national institutions and courts

This chapter is based on data provided by the Consultant's network of local consultants.

Little data is available on this issue. However, the reporting indicates a rising tendency of challenging the EIA process and the information available to the public. This appears to be directly influenced from the amended public participation procedure, legal standing and access to justice based upon the legal development as set out in the EIA Directive, notably the amendments following Directive 2003/35/EC (see above in Chapter 4) and also the commitments following the Aarhus Convention.

Thus, it may be concluded that the public involvement perhaps not yet has led to a severe increase in judicial and/or administrative review actions taken against EIA decisions. The Hungarian local consultant reports that the cases that end up in courts are typically large infrastructure and manufacturing projects with controversial environmental impacts, such as highways, dams, airports, waste incinerators, production plants, and projects planned to be located at protected areas, especially Natura 2000 sites

The report from local consultants, furthermore, shows a clear indication of the fact that the public in new Member States increasingly are becoming familiar and confident with participation and active involvement in the EIA processes. For instance, the Latvian local consultant expresses an already established tendency to challenge the procedures applied in public hearings as well as challenging the adequacy of the information made available to the public.

7.12 Benefits of changes that Directive 2003/35/EC has brought to the EIA process

In general, responses from the new Member States present a positive approach to the changes that Directive 2003/35/EC has brought to the EIA process. This is to a large degree sustained by the norms, requirements and processes provided by the Directive 85/337/EEC and later amendments.

Strengthened public participation

The latest amendment of Directive 2003/35 constitutes a significant factor among the new Member States, especially the element of public participation.

It is widely reported by the new Member States that the EIA Directive contributes directly to consolidating the democratic development, by securing funda-

mental rights based upon the improvement of public participation rights and adding transparency in decision-making.

Latvia reports experiences that the public is becoming more active as it increasingly recognizes its rights and possibilities of interaction as well as the relevance of such interaction.

Cyprus states that the changes made in national practices due to the Directive 2003/35/EC, are very important for the enhancement of public participation. Although the system in place since 2001 through the enforcement of the EIA Law, foresees the participation of the public and NGOs during the decision making, the provisions in the Directive have made this system more binding and more official.

According to the Romanian expert, the largest beneficial change is the increased involvement of the public in the EIA procedure. This has strengthened public influence on the decision making process, increased the awareness of the public as well as the confidence in the environmental protection authorities. In addition, the legal provisions regarding this issue have become clearer.

The Slovak local consultant reports that, "The benefits of the EIA system could be seen in the light that EIA is really applied in the Slovak Republic and it works as a real preventive tool for environmental protection. It works, also, as a result of public negotiation – the public is informed and the public has the right to write, submit in writing or say its opinion/comments".

While most of the Member States appreciate the systems in place for public participation in their Member State prior to the amendment of the EIA Directive, they find that the amendment strengthens; fine tunes and enhance participation of the public.

Definitions of 'the public' and 'the public concerned'

Bulgaria and Slovakia emphasise the definition of 'the public' and 'the public concerned' as beneficial amendments to the EIA system induced by Directive 2003/35/EC.

According to the Bulgarian SEA expert, *"the definitions of 'the public' and 'the public concerned' set a clear understanding for the rights of the stakeholders in the EIA process"*.

Access to administrative and judicial review procedures

Slovakia also points to article 10a of EIA Directive because Member States by transposing article 10a allow for public access to administrative and judicial review procedures.

7.13 The use of the EC EIA guidance

In general, the new Member States all apply the EC guidance documents⁸⁵ developed both directly and as being a mean for inspiration in producing national guidelines.

Malta reports that the EC guidance on EIA Screening and Review has been in particular useful.

Estonia states that the EC guidelines have been translated and published on the website of the Ministry of Environment (MoE). The guidelines have also been introduced to environmental authorities and decision-makers and it has been recommended to use them in decision-making (initiation of EIA, scoping etc). MoE has also established the procedure for inspection of the quality of the EIA reports based on the guideline of the EC: 'Guidance on EIA. EIA Review'. Estonia stresses that there is no need for new guidelines. It is recommended that the guidelines should be updated on the basis of practice considering that the guidelines were composed in 2001. Especially the annexes need an update, as they are considered too general. An update would ensure that the relevant information is provided in the report (which alternatives should be analysed, etc.) and EIA is carried out for all projects which may have significant effects.

Latvia is equally making good use of the EC EIA guidance documents.

7.14 New national /regional EIA guidance

See also above in section 7.13 for the related analysis of the EC EIA Guidance documents.

Table 6.6 presents the current EIA guidance documents for the new Member States as stated in the questionnaire responses⁸⁶ and supplemented by data provided by local consultants:

Table 7.8: National EIA guidance documents

	National EIA Guidance issued
BG	Guidance on EIA for Investments proposals Guidance for the coordination of the EIA and IPPC procedures Instruction on the coordination between EIA and Habitat Directive (yet to be completed)
CY	Elaborated detailed guides used by experts and consultants: http://www.moa.gov.cy/moa/agriculture.nsf/environment_gr/environment_gr?OpenDocument
CZ	Guidance is issued regularly on the interpretation of the EIA act.
EE	Environmental impact and environmental risk assessment, 2005 (This guideline gives an overview about EIA and risk assessment – their purposes, history, legislation and

⁸⁵ See <http://ec.europa.eu/environment/eia/eia-support.htm>.

⁸⁶ Responses by Member States to questionnaire, Q43.

	National EIA Guidance issued
	<p>how EIA and risk assessment (including the publication) should be carried out.)</p> <p>'Environmental impact assessment', 2007 (This guideline is for all projects. Users can recommendations and practical examples how to decide whether EIA should be initiated or not, how the publication should be effectively carried out, the description of the overall EIA scheme, how the impact should be assessed etc.)</p>
HU	<p>The following guidelines are available on the website of the MoE:</p> <ul style="list-style-type: none"> - The EIA Procedure (January 2006) - The Screening Procedure (January 2006) - Procedures Affected by the Change of the EIA Law (January 2006) - Types of Procedures (January 2006) - Decision on the Significance of the Impact (January 2006) - Changes in the Annexes on Projects (January 2006) - Correspondence of Annex I and Annex II Projects with the List of Activities of the EIA Decree (March 2006) - Questions and Answers regarding the EIA and IPPC Decree (April 2006) - Cumulative Impact Matrix (April 2006) - Guidance to the Implementation of the Espoo Convention (February 2007) - Public Notices (January 2008) <p>Apart from that, there was a new volume of a series of environmental books published by Complex Wolters Kluwer in 2007 under the title "Screening - Impact Assessment – IPPC".</p>
LT	<p>A comprehensive checklist has been elaborated in order to guide the Competent Authorities and other stakeholders.</p> <p>The Ministry of Environment is planning to issue a new upgraded Manual for EIA in Lithuania by the end of 2008. The new manual will be based on the previous very successful Manual for EIA in Lithuania published in 2001.</p> <p>In addition, the following guidance has been prepared:</p> <p>Guidance on Environmental Impact Assessment Procedures and Philosophy for Road planning.</p> <p>Guidance on Environmental Impact Assessment of Lake Purification</p> <p>Guidance on Environmental Impact Assessment of Landfills</p> <p>Guidance on Environmental Impact Assessment of Hydropower Plants</p> <p>Guidance on Environmental Impact Assessment of Wind Power Plants</p> <p>Guidance on Risk Assessment of Proposed Economic Activity</p>
LV	<p>Environment, impacts and assessment (Principles of EIA, analysis of practice, examples.)</p> <p>Environmental Impact Assessment (Main steps of EIA, Assessment programme, Requirements for documentation, control-sheets, criteria).</p> <p>Eco - toxicology (Pollution, chemical substance accumulation, effects on human health and environment. Effective tool addressing specific issues of EIA programme).</p> <p>Environmental management in farms (Impact mitigation measures, techniques and their effectiveness).</p> <p>Waste management (Management systems, techniques, impacts, problems, solutions, examples. General guidance for a specific sector.).</p>

	National EIA Guidance issued
	<p>Landscape planning, management and protection (Practical guidance of landscape management, good practices and examples).</p> <p>Landscape and people (Landscape protection issues. General guidance, general information).</p>
MT	Circular 3/07; Guidance on EIA (draft of 29.08.07 seen by Commission)
RO	<p>Ministerial Order no.863/2002 for approval of the methodological guidelines applicable to the stages of the environmental impact assessment framework procedure (is a compulsory guidance used in the EIA procedure, it was approved by the Ministerial Order 863/2002. The competent environmental authorities appreciated it as a very useful tool.). The following guidance documents were distributed to the competent environmental authorities; they are not compulsory:</p> <p>EIA Guidance related to energy</p> <p>EIA Guidance related to incinerations</p> <p>EIA Guidance related to waste</p> <p>EIA Guidance related to waste waters</p> <p>EIA Guidance related to biodiversity</p> <p>EIA Guidance related to mining</p> <p>Environmental Impact Assessment – Implementation Guidelines issued in 2003 under the European financed project EUROPEAID/112525/D/SV/RO (the competent environmental authorities appreciated it as a very useful tool)</p> <p>Public Participation in the EIA procedure- guidelines issued in 2003 under the European financed project EUROPEAID/112525/D/SV/RO (The competent environmental authorities appreciated it as a very useful tool)</p>
SI	Instruction on the methodology of preparing reports on environmental impact (Official Gazette of the Republic of Slovenia, No. 70/96) (The Instruction is still used, despite it being 11 years old. It should be updated to reflect new findings, best practices and the situation in the field of environmental impact assessment)
SK	Many international, national and local workshops, conferences, training held for different aim groups in Slovakia and many guidelines on EIA issues elaborated to implement the EIA Law. Most of them are out of date regarding the content and new development in this field. New guidelines for a new act are not created.

As is obvious from the table, most Member States have developed a substantial amount of guidance documents. However, some Member States also claim that the guidance documents are not always up-to-date reflecting the latest developments in the field of EIA.

7.15 Shortcomings and recommendations

This section presents Member States' view of the most significant problems remaining with the EIA Directive as well as Member States' recommendations for improving/strengthening the effective application of the EIA Directive or the need to address certain issues

7.15.1 Most significant problems remaining with the EIA Directive

Cyprus reports on the sometimes poor quality of the assessment made by the developer. That fact that the consultant hired by the developer to carry out the assessment is paid by the developer, may influence the objectivity of the assessment.

The Czech Republic stresses that, in order to comply with the Directive, the Czech Republic has had to make changes to the national system to ensure that assessments were carried out for projects that do not reach the set thresholds. This has led to an increase in screenings. The Czech expert suggests that Member States should be allowed to fix their own thresholds for screening on the basis of national experience.

According to Estonia, the most significant problem remaining with the EIA Directive is that the EIA Directive to some extent is too general and the discretionary power left to Member States leaves too much room to establish different and sometimes non-compliant EIA systems. Consequently, it becomes difficult, e.g. to carry out EIA in a transboundary context. The Directive provides wide frames for carrying out EIA, sometimes resulting in insufficient and inadequate documentation. According to the EIA Directive the authorities have to analyse the necessity of carrying out an EIA procedure. The practice has shown that there is a wide variation in the level at which Member States have set project thresholds and that is why EIA is mandatory for certain projects in some Member States and not in others.

Hungary finds that the meaning of the key concept 'likely to have significant effects on the environment' - mainly due to the ECJ judgements on interpretation of 'significance' - has become so broad that the meaningful application of the concept may be questioned and may force Member States to exaggerate the scope of application just to be on the safe side. Furthermore, due to technical progress and to increasingly strict environmental requirements, many projects listed in Annex I and II of the EIA Directive cannot cause significant effects if the technical requirements are met. In such cases, the focus of the EIA procedure shifts from the impact assessment to the assessment of the technical details or to the safety analysis. The developers also tend to provide very detailed documentation already in the screening phase which sometimes makes it pointless to require further assessment. In the light of the above mentioned, Hungary suggests that it may be useful to review the necessity of Annex II and the possibility of merging all projects which, according to recent knowledge, require impact assessment into one single annex.

Latvia finds that it is not always clear when an EIA shall be carried out for certain Annex II projects such as projects for the restructuring of rural land holdings; urban development projects; and industrial estate development projects.

Lithuania reports that there are some problems related to the interpretation of Annex II projects: *"It is not always clear when SEA and when EIA procedures should be applied for projects related to the restructuring of rural land holdings and projects related to urban development"*.

Romania points out, as a problem, the uncoordinated thresholds used in the IPPC Directive and Annex I of the EIA Directive. Romania finds that same thresholds should be applied for both Directives.

Latvia and Slovakia have not encountered any problems with the application of EIA Directive. No data has been provided by Bulgaria and Malta.

7.15.2 Recommended improvements by the Member States

In the following Member States' recommendations for improving/strengthening the effective application of the EIA Directive or the need to address certain issues are presented.

Overall, Member States seem satisfied with the functioning of the EIA Directive and only a few recommendations have been provided. These recommendations mainly pertain to the need for more and updated guidance on certain issues.

Estonia has provided a general comment that the EIA Directive and the guidelines should be updated on the basis of current practice, at least as regards the annexes to the Directive.

Bulgaria and Slovakia have not provided any information.

Screening	Hungary requests more detailed selection criteria either in Annex III or in the form of a revision of the EC Guidance document on screening.
	Lithuania asks for a clarification of Annex II of the Directive in order to avoid confusions with the SEA Directive. Secondly, Lithuania proposes that the system of thresholds should be clearer, especially the co-relation between thresholds and screening criteria.
Scoping	Malta recommends that public consultation at the scoping stage becomes mandatory. Hungary expresses the same opinion and asks for a review and analysis of such an amendment being introduced in the EIA Directive.
Public participation and consultation	Hungary raises the concern that the transposition of the definition of 'the public concerned' in the various Member States raises legal uncertainty in regard to implementation. A guidance document addressing the interpretation of this term and with practical examples would be useful.
	Lithuania requires a clarification of Article 6(2)(d) of the EIA Directive: 'The public shall be informed, ... , of the following matters...: (d) the nature of possible decisions or, where there is one, the draft decision'
	As mentioned above, Malta recommends that public consultation at the scoping stage becomes mandatory.

The process of transboundary consultations	<p>Hungary inquires about a review and analysis at EU level on the need for introducing a mandatory chapter on transboundary impact as part of the environmental impact report. Furthermore, the obligation to provide for translation of this chapter should also be analysed.</p> <p>Lithuania stresses that time-frames and language issues should be addressed more clearly in the Directive. Furthermore, there is a need for clarification of Article 7(1)(b) 'information on the nature of the decision which may be taken'.</p> <p>Romania asks for thresholds for projects likely to have transboundary impacts (e.g. the distance to/from the border for different types of projects).</p> <p>Slovenia generally expresses that more attention should be made to the issue of transboundary consultations.</p>
Quality and completeness of the information provided by the developer	<p>Hungary points out that it would be useful to analyse, in more detail the responsibilities of the developer in providing the information listed in Annex IV of the Directive. For example, the developer should be directly responsible for providing information on the project (such as point 1,2 and partly 5 of Annex IV), however, in regard to, for example point 3-7, the responsibility of the developer should be to collect necessary data from environmental experts and ensure its proper quality and completeness.</p> <p>Malta suggests that environmental statements are prepared by independent consultants and Slovenia recommends that quality assurance of the information provided by the developer be improved.</p>
<p>The consideration of human health protection</p> <p>The issue of "salami slicing"</p>	<p>Lithuania, Malta, Romania and Slovenia inquire about more guidance on the assessment of the impacts on human health and as to the level of detail needed.</p> <p>Hungary mentions the possibility to introduce sanctions for manoeuvres related to 'salami-slicing'. It is however, recognised that to prove the ill-intent may become difficult.</p> <p>Lithuania, Malta and Romania stress that guidance on how to effectively eliminate the phenomenon of 'salami-slicing', including best practices, would be useful.</p>
The issue of cumulative effects from projects/environmental effects	<p>Hungary stresses that the issue of cumulative effects of projects can be treated much better in the land-use plans.</p> <p>Malta asks for guidance on this issue.</p>
The issue of alternatives (incl. also environmental friendly ones)	<p>Hungary reports that, in contrast to the original idea of EIA timing (as early as possible), the EIA procedure has recently taken place when the project planning is already well in progress, making the discussion of alternatives less meaningful. However, addressing the comparison with environmentally friendly alternatives can help the evaluation of impacts. However, an introduction of such comparison would require detailed interpretation of what is meant by 'environmentally friendly'. Malta also asks for guidance on this issue.</p>

7.16 Conclusions

All new Member States have established comprehensive legal EIA regimes. The new Member States are familiar with EIA procedures applied as an integrated regulatory tool, which to some degree is based upon the general development in International environmental law. Accordingly, most new Member States have, before entering the EU, already prepared for the incorporation of the Espoo Convention on EIA in a transboundary context and to some degree the Aarhus Convention facilitating the implementation of the public participation.

Despite this overall positive picture, there are issues related to the effective application of the EIA Directive that raise concern among the new Member States. These are:

- Screening
- Transboundary consultation and procedures

The new Member States express concern as to whether variations among the Member States in screening procedures jeopardise the efforts for establishing common references and experiences. Furthermore, there is a problem related to the interpretation of some Annex II projects; it is not always clear when SEA procedures or EIA procedures should be applied for such projects and/or the plans allowing their implementation.

The need for improved coordination between EIA and IPPC thresholds is also mentioned.

Furthermore, the new Member States point to several barriers to the carrying out effective transboundary consultations under Article 7 of the Directive. The barriers mainly relate to the differences in the Member States' EIA procedures:

- Stages of the project proposal process where EIA is carried out;
- Time-frames for the different EIA stages; and
- Language barriers, including the bearing of costs for translation.

The issue of transboundary consultation needs to be further addressed in order to remove or deal with these obstacles.

Other issues raised by some of the new Member States are:

- The need for update of existing EIA Guidance on the basis of current practice;
- The need for further guidance on the following issues:
 - Assessment of the impacts on human health;
 - How to address the issue of "salami-slicing";
 - How to address the issue of cumulative effects of projects;
- The need for further exchange of information on experiences and best practice among the Member States.

8 Relationship with community policies and other directives

The relationship of the EIA Directive with other directives raises the key question as to how Member States ensure that requirements of all legislation are complied with, in case of potential overlaps between different procedures applicable to a project, while avoiding duplication.

This section provides a general description of the EU requirements to the relationship of the EIA Directive to other Community legislation and the way Member States are implementing these in practice, focusing on specific directives, namely the relationship with the SEA Directive, the Habitat Directive, the IPPC and the LPC Directives.

Finally, the relationships of the EIA Directive with two key policies, the protection of biodiversity - more precisely the EU Action Plan – Halting the loss of biodiversity by 2010 – and beyond, and the EU Climate Change initiatives are also examined.

The analysis also takes into account the main differences between these directives. In particular, the requirements of the SEA Directive are "up-stream" whereas the requirements of the EIA Directive are "down-stream". The Habitat, the IPPC and the LCP Directives and the EU Action Plan are predominately based upon performance requirements whereas the EIA and the SEA Directives are based upon process requirements.

8.1 The SEA Directive

The relationship between the EIA Directive and the SEA Directive is reflected in the provisions of the latter. The key provision relating to the relationship of the SEA Directive with other Community legislation is Article 11 (1) and (2).

Article 11(1) requires that an environmental assessment carried out under the SEA Directive "*...shall be without prejudice to any requirement under Directive 85/337/EEC and to any other Community law requirements*".

Article 11(2) stipulates that Member States may provide for coordination and joint procedures in situations where obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other Community legislation.

As underlined in the Community guidance⁸⁷, Article 11(1) means that other Community law requirements relating to an environmental assessment of plans and programmes apply cumulatively with the SEA Directive. When such cases occur, under Article 11(2), Member States are invited to provide for a coordi-

⁸⁷ Implementation of Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment

nated or joint environmental assessment procedure. In other words, they can choose:

- To coordinate SEA and other assessments, e.g. an EIA assessment, carried out in parallel, or,
- To introduce a form of joint procedure with one single assessment fulfilling the requirements of both Directives.

According to the guidelines, Member States should consider if the SEA Directive requires further elements for assessment than are required by other Community law. Where further elements are required, the Guidance envisages several ways in which Member States may implement the Directive requirements:

- Introduce a single legislative instrument applying all the requirements of the Directive to all the plans and programmes covered;
- Amend each legal regime requiring the preparation of such a plan or programme; or
- Combine the two approaches, with the main principles being set out in a general requirement, and amendments to the details of existing regimes made where necessary.

In addition, Member States are recommended to explain the method by which they have implemented such complementary provisions, when, they notify the measures they have adopted under Article 13(1) of the SEA Directive.

Other provisions of the SEA Directive are also directly related to the relationship of the Directive with the EIA Directive. With regard to the scope itself of the Directive, Article 3(2)(a) refers to the EIA Directive. It subjects to compulsory SEA, all plans and programmes "*which are prepared for specific sectors, namely 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 listed in Annexes I and II of Directive 85/337/EC*".

It should be underlined that these two conditions on the sector concerned and setting the framework for future development consent are cumulative. In addition, the projects concerned include also Annex II project categories whether or not the actual projects require an EIA. This would typically include not only land use plans which can set conditions for granting future building permits, but also those defining the location of future development in the area concerned.

Under Article 3(4), environmental assessment is required for any plans and programmes which set the framework for development consent of projects (not limited to those listed in the EIA Directive) and which are determined by screening to be likely to have significant environmental effects. Article 3(5) allows decisions on whether assessments are needed in these cases to be made either on a case-by-case basis or by categories of plan or programme.

Finally, Article 5 which sets up requirements to the content of the environmental report to be prepared for the SEA provides in paragraph 3 that the information obtained through other Community legislation, including the EIA Directive, may be used for the environmental report.

In theory, the SEA and EIA Directives will not normally overlap as the SEA Directive applies to plans and programmes and relates to broader proposals and alternatives while the EIA Directive applies to projects and focuses on the effects of a particular proposal. In other words, SEA is 'up-stream' whereas the EIA is 'down-stream'. In many ways, both SEA and EIA even complement each other and, in particular, the results of an SEA may be useful for the environmental assessment of associated projects.

However, different areas of potential overlaps in the application of the two Directives have been identified. In particular, the boundaries between the definition of a plan, a programme or a project are not always clear, and therefore there may be some doubts whether the 'object' of the assessment meets the criteria for requiring the application of either or both of the EIA and SEA Directives.

To be legally compliant Member States will need to ensure they meet the requirements of both Directives when these apply. This issue is particularly important with regard to the differences between the SEA and the EIA requirements. In such cases, EIA and SEA procedures should be applied in parallel or joint procedures can be specially elaborated to meet the requirements of both Directives simultaneously.

EU study on the relationship between the EIA and the SEA Directives

According to an EU Commission study: 'The Relationship between the EIA and SEA Directives', (2005)⁸⁸ which aims at clarifying the legal relationship between the two Directives and identifying and exploring the potential areas of overlap between the EIA and the SEA Directives among the then EU 15 Member States, key areas identified as likely to give rise to potential overlaps between the Directives were:

- Where large projects are made up of sub-projects, or are of such a scale as to have more than local significance;
- Project proposals that require the amendments of land use plans (which will require SEA) before a developer can apply for development consent and undertake EIA;
- Plans and programmes (PPs) which when adopted or modified, set binding criteria for the subsequent consent for projects, i.e. if a developer subsequently makes an application which complies with the criteria then the consent has to be given;
- Hierarchical linking between SEA and EIA ('tiering').

⁸⁸ Sheate, William, Helen Byron, Suzan Dagg, Lourdes Cooper: The Relationship between the EIA and SEA Directives, Final report to the European Commission, August 2005.

As mentioned above, the key question is how the Member States will ensure they meet the requirements of both Directives with regard to the differences between the SEA and EIA requirements. The EU Study has identified several key differences between both processes which would need to be considered and addressed if joint or coordinated procedures were adopted. These relate in particular to:

- Consultation requirements: SEA requires consultation of authorities at the screening stage;
- Environmental information/report: Notably, the SEA Directive requires explicitly an assessment of reasonable alternatives and has an explicit general provision about the use of information from other sources;
- Monitoring and quality control: Only the SEA Directive includes such requirements.

Member States' experience

SEA legislation has usually developed independently from previous EIA legislation. In the large majority of Member States, two distinct sets of legislation regulate each procedure.

Even when these are regulated under the same legislation as it is the case in Italy where both procedures are governed by Legislative Decree No.4 of 16 January 2008, SEA and EIA procedures are distinct. Similarly, in Belgium (Flanders region), EIA and SEA are regulated in two distinct titles containing similar but not identical requirements with regard to the assessment of environmental effects and public consultation. This is also the case in Sweden where both procedures are regulated in Chapter 6 in the Environmental Code with two different sets of provisions where the SEA provisions follow directly after the EIA provision. However, the Swedish expert noted that this fact could have a potential of creating some confusion in the application of the application of SEA rules.

In addition, provisions governing SEA are often established through amendments to various legislation and regulations relating to planning. This can be done through amendments to a number of specific legislation concerning various plans and programmes, e.g. in the waste management legislation, transport legislation, etc. As a further example, in France, SEA legislation has been transposed by amendments to different codes - the Environmental Code, the Land Use Code, the Code of territorial and Local Authorities, and the Forest Code.

While some Member States do not establish any formal links between the two procedures, in other Member States, the relationship between EIA and SEA assessments is specifically regulated (see below some examples).

Complementarities between SEA & EIA

It should be noted that in many Member States, EIA and SEA are seen as complementary; many answers to the questionnaire underline that carrying out of an SEA does not remove the need for EIA.

Many Member States ⁸⁹ answering to the Commission's questionnaire (Belgium (Brussels region, Flanders region), Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Lithuania, Luxembourg, Latvia, the Netherlands, Romania, Slovenia and Slovakia) have noted that SEA helps in undertaking EIA. In particular, the results of the SEA assessment could prove useful when assessing the possible impacts of a project under the corresponding plan or programme. Such complementarities are particularly clear when the plan or programme subject to SEA sets the framework for future development consent of projects listed in Annexes I and II of the EIA Directive:

- The SEA can improve the content of EIAs by providing a broader analysis than the one carried out at the project level. In particular, the SEA helps to identify and select alternatives at the strategic level. The outcomes of this assessment should be considered by the EIA which would focus on technical issues. Besides, SEA is useful in excluding or significantly reducing the number of possible alternatives at an earlier stage. The SEA is also instrumental in considering cumulative effects at a larger scale.
- The early identification of environmental issues helps to strengthen and streamline individual project EIAs, thus reducing time and efforts for assessments.
- SEA results can be used during different stages of the EIA procedure. In particular, EIA screening decisions for projects can be taken within the context of SEA procedures. SEA results can also influence the definition of the scope of the EIA of a project that is planned in sufficient detail in the corresponding plan or programme.
- The information contained in the SEA environmental report can be used in the EIA.

Different Member States have recognised and specified this interrelationship in the legislation.

In general, the national legislation requires that information from the SEA process shall be used in the EIA, sometimes specifying that any divergence with the results of the SEA should be justified (Bulgaria, Italy, Portugal). For example, the 2008 Italian Legislative Decree notes that environmental impact studies for EIA procedures can use information and analysis contained in a

⁸⁹ It should be noted that many responses are formulated as assumptions illustrating that Member States have still limited experience. No Member State has answered that SEA is not helpful in undertaking EIA. 8 Member States have not answered the question (Belgium (Federal level, Walloon region), Ireland, Italy, Malta, Poland, Portugal, Sweden, the United Kingdom) and 3 Member States provided dubious answers (Bulgaria, Denmark, Greece). The United Kingdom holds that experience is still too limited to form a clear view. Regarding the French experience, both SEA and EIA have their own specific interest and, in general, there is no really redundancy between the two procedures. Some SEAs give some indications in order to set the framework for the future EIAs (for example, SEAs of river basin management plans).

prior SEA environmental report⁹⁰. The decree also specifies that SEA documentation and conclusions should be considered in the preparation of projects and in their assessment. In Portugal, Law Decree 232/2007 requires the competent authority to take into account the results of the SEA in the EIA for projects that fall under the plans and programmes subject to the SEA⁹¹. In Bulgaria, the Environmental Protection Act (EPA) states that collected information and the analyses made during the preparation of the environmental assessment of plans and programmes and the statement of the competent authorities shall be used in the elaboration of the reports and the issuance of EIA decisions for investment proposals for projects listed in appendices No 1 and 2 of the EPA (these correspond to the Annexes I and II of the EIA Directive)⁹².

In some instances, the national legislation goes further than simply requiring to 'take into account' the information gathered during the SEA process, as it allows to limit the EIA to the components which have not been covered by the SEA. For example, in Belgium (Brussels Region), when a permit application relates to a project located in the perimeter of a plan for which a SEA has been carried out, the EIA can be limited to the specific aspects of the project - in other words, to aspects which have not been covered by the environmental assessment carried out for the relevant plan⁹³. In Germany, when a spatial plan has been subject to SEA, the EIA at the licensing level should be limited to additional environmental effects. For the spatial plan in question already a common environmental assessment fulfilling the SEA and as well the EIA Directive has to be carried out.

Finally, in certain cases, the national legislation will give an alternative between carrying out a SEA or an EIA. In Bulgaria, the Environmental Protection Act provides that when a detailed urban development is required for a given project, the developer may request - or the competent authority can prescribe - that only one of the assessments (EIA or SEA) has to be carried out in order to avoid overlapping in both assessments.

While the fact that SEA can be useful for EIA is generally recognised, it has been noted that, as a consequence of the information from SEA being used in the related EIA procedure, there is a risk that the environmental reports developed under the SEA and the associated EIA may have the same scope and level of details, especially in the case of infrastructure projects, thus duplicating each other (Slovenia).

Overlaps between EIA and SEA

As a general remark, in many Member States, experience in the application of SEA requirements is still limited. Therefore, although a need for coordination of both procedures is often perceived, mechanisms and tools are still not properly developed and experimented.

⁹⁰ Italian country information collected by the local consultant

⁹¹ Portuguese country information collected by the local consultant

⁹² Bulgarian country information collected by the local consultant

⁹³ Brussels region answer to the EU Commission's questionnaire.

Fifteen Member States (Slovakia, Portugal, Romania, Belgium (Brussels region, Flanders region) Bulgaria, Denmark, Germany, Greece, Sweden, Hungary, Latvia, France, Lithuania, the Netherlands and Slovenia) have addressed coordination issues between the SEA and the EIA Directives. Eleven Member States (Belgium (Federal level), Cyprus, Czech Republic, Estonia, Spain, Finland, Ireland, Italy, Malta, Poland and United Kingdom) have not identified (or provided answer on) the need for coordination mechanisms or they claim that they have insufficient experience in order to assess the need for coordination.

The need for a clear coordination mechanism between EIA and SEA is more critical in situations where there are potential overlaps.

Eleven Member State (Belgium (Brussels and Flanders regions), Bulgaria, Denmark, Germany, Greece, Estonia, Hungary, the Netherlands, Romania, Spain, and Sweden) consider that certain 'objects' can be subject to both SEA and EIA, while five Member States (Belgium (Czech Republic, France, Luxembourg, Latvia and Slovenia) consider that there is no case of overlaps.

The main areas of potential overlaps identified by local consultants are:

- Land-use planning, in particular detailed urban plans;
- Large infrastructure projects, in particular transport but also electricity.

Some projects listed in Annex II of the EIA Directive are considered as potentially falling also under the definition of plans and programmes, raising the question whether they should be subject to SEA or EIA procedure. This is in particular the case of:

- Point 1(a): projects for the restructuring of rural land holdings;
- Point 1 (b): projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
- Point 1 (g): reclamation of land from the sea;
- Point 10: infrastructure projects, and in particular, point 10 (a) and (b): industrial estate developments projects and urban development projects, including the construction of shopping centres and car parks⁹⁴.

This issue of potential overlaps may lead to contradictory decisions within one Member State as to whether or not similar plans/projects would be subject to EIA or SEA. In Federal States especially, the decision may vary greatly from one region to another. Spain quoted as a way of example Director Plans for Sea Ports and Airports which may be subject to SEA when an EIA would be more appropriate.

⁹⁴ See 'Commission Guidance on the interpretation of definitions of certain project categories of annex I and II of the EIA Directive', 2008 where the Commission notes that these two categories constitute areas where potential overlaps between the EIA and SEA Directives can occur more frequently than in other areas.

Another issue is linked to potential overlaps and the 'hierarchical relation' between EIA and SEA (tiering). Although the coordination of the procedures should be resolved by hierarchical considerations i.e. the projects must be compatible with related plans or programmes, in practice, EIAs can be undertaken simultaneously or even before the associated SEAs. For example, in the Netherlands, zoning plans can be subject to SEA and EIA at the same time.

In some Member States, programmes that could be considered as falling under the SEA Directive were subject to EIA. In such cases, while some Member States have chosen to replace the EIA procedure by a SEA procedure, others have opted for adapting the EIA procedure to fulfil the requirements of the SEA procedure.

This is, for example, the case in France where programmes of works are subject to EIA. The Decree of 25 February 1993 has already introduced the notion of programme. It can occur that several projects form part of a programme where they are developed simultaneously. In that particular case, the EIA had to deal with the entire programme. The route was open to decide a comprehensive assessment of plans and programmes. This is needed when several projects have between them an obvious functional link. The EIA which must deal with the entire programme of works must take into account the cumulative impacts of the whole project or programme of works. When the realisation of the works is spread in time, the EIA of each phase of the operation must deal with the whole programme of works. For each phase of the project or programme of works, the EIA concerns the phase realised and the whole project or programme of works. The most current illustrations are transport infrastructures, urban developments, and realisation of leisure resorts. But the question remains as to the contents of the EIAs undertaken for the different projects of a programme. At each stage of the programme, an EIA must be prepared for the phase in which an authorisation is required, including information available at the same time for the whole programme. However, the expert notes that this can be difficult to implement when different developers are involved in the programme since the EIA for specific projects will be carried out under the responsibility of individual developers. Besides, the notion of 'programme of works' is not always very clear when a project is designed. Under these conditions, it is difficult to conduct an EIA on the whole project or programme of works. In practice, the definition of a programme is considered too narrow⁹⁵.

A similar example is illustrated by the Czech local consultant stating that 'The problem is that EIA is a relatively old tool which is used in the Czech Republic since 1992. On the other hand, SEA started to be used more frequently only since 2004. This was due to the big amendment to the Czech EIA/SEA Act which transposed the requirements of the SEA Directive. As a result, there are old EIA projects which are transposed into newly prepared SEA plans/programmes. This applies especially to road infrastructure projects which often wait many years to be implemented after they were submitted to EIA⁹⁶.

⁹⁵ French answer to the Commission's questionnaire.

⁹⁶ Czech country information collected by the local consultant.

This problem of applying EIA on plans and programmes was also highlighted in the EEB report (2005) which states that: 'In seven countries (such as the Netherlands and Finland), there have been SEAs carried out that were not based on the SEA Directive, but still on the EIA Directive'⁹⁷.

As also emphasised in the EEB report, 'Where EIA is undertaken alone this will not be legally compliant if the object of the assessment meets the screening criteria of the SEA Directive. The EIA process then would have to be enhanced to cover the additional requirements of the SEA Directive to address satisfactorily issues of alternatives, cumulative effects, monitoring and adequate consultation, effectively creating a joint procedure'.

Finally, under Point 1 of Annex 3 of the Czech EIA Decree ("activities subject to EIA based on the decision of the environmental inspectorate") one item, the "redistribution plan of land properties," which is practically a strategic decision, is subject to an individual EIA procedure because of the close interrelationship with certain individual activities also subject to EIA.

8.1.1 Joint procedures

Establishment of joint procedures between SEA and EIA is a solution that has rarely been favoured by Member States. In addition to the differences in the nature and requirements of SEA and EIA procedures, in particular as to the content and the level of assessments, the authorities involved are generally not the same.

However, there are some instances where Member States have merged the two procedures. This is mainly the case for local plans and programmes which determine the use of small areas, e.g. land-use plans. Such joint procedures are seen as a way of saving resources in terms of time and money.

One example is Denmark where the EIA Directive is implemented in the Danish Planning Act at municipal level – except for offshore activities and projects decided by act. By conducting an EIA according to the Planning Act the municipal authority has to make an amendment to the municipal plan. This means that EIAs are also planning documents. For that reason, every EIA has to undergo a screening process according to the SEA Act at the very minimum. If the EIA planning document also has to undergo a SEA, it is possible to combine the procedures into one common procedure and the Impact Statements into one paper fulfilling both the EIA and the SEA Directives.

In Germany, overlaps may occur in case of local development plans which are prepared or modified for projects listed in Annex II of the EIA Directive. The Federal Building Code therefore contains provisions for an environmental assessment for local development plans, which meet both the requirements of the SEA Directive and the EIA Directive.

⁹⁷ EEB; Biodiversity in Strategic Environmental Assessment, 2005, p. 26-17.

8.1.2 Coordinated procedures

In addition to facilitating the use of information from SEA to EIA, some Member States have set up coordinated procedures between both processes. For example, in Austria, two provinces have used a coordinated procedure regarding skiing and golf courses. They reported various advantages in terms of the procedures and their management and coordination, mutual information and multiple uses of data, avoiding duplication of assessments. However, very few Member States have actually described formal mechanisms and it seems that, in most cases, these are informal.

An exception is the 2008 Italian Legislative Decree, which states that EIA screening decisions for projects can be taken within the context of SEA procedures. In such cases, the public should be clearly informed.

In Germany, it is possible to combine the SEA with other assessments for the determination or evaluation of environmental effects to avoid duplication of assessment in specific cases (Article 14n UVPG), for example if the preparation or modification of a plan and the procedure for approval of a project described in the plan take place simultaneously.

Some Member States have also made use of coordinating mechanisms at the institutional level, aiming at coordinating the activities of competent authorities for SEA and also those for EIA. This is particularly important in Member States where several authorities at different territory levels are involved in both procedures.

For example, in France, the general SEA Guidance invites all administrative authorities to coordinate their efforts in case several SEAs and/or EIAs have to be conducted at the same time. This is in order to give priority to SEA, and furthermore in order to ensure that the SEA (for the plans and programmes that set the framework for projects) is undertaken before the EIA for these projects. This also means that the results of the SEA are properly reflected in the EIA for the associated projects. In particular, the Regional Directorates for the environment (DIREN) are called upon to coordinate any action to be taken by competent services to support the Préfet (the Region or the Department) in providing advice upon request from the public authority for the scoping phase as well as for the environmental report.

Finally, it should be noted that in many Member States, the same department, at least within the Ministry of Environment, is in charge of EIA and SEA. This will obviously facilitate solving any coordination issues. This is especially true in smaller sized Member States, such as Luxembourg or Malta. For example, the Luxembourg expert noted that no major problem is foreseen mainly due to the small size of the country and easy coordination between the responsible authorities.

8.1.3 Conclusions and Recommendations

There are considerable differences in terms of experience in implementing SEA, and consequently, coordinating both processes. Many Member States consider that they do not have sufficient experience to properly identify and assess overlapping issues. Different approaches have been chosen in the Member States to solve potential ineffectiveness in terms of overlapping procedures/requirements between SEA and EIA, ranging from joint procedures in specific cases to informal coordination between competent authorities.

Recommendations made by Member States relate mainly to consolidation of the EU legislation and the development of guidance documents.

Consolidation of EU legislation

Some local consultants (Spain⁹⁸ and Lithuania)⁹⁹ and the Swedish national SEA expert¹⁰⁰ recommend considering consolidation of the SEA and EIA Directives with a view to clarify their interrelationship. This would, in their view, ensure more consistency between both pieces of legislation and would harmonise the key stages and elements of EIA and SEA. Key stages and elements would include the examination of reasonable alternatives as a mandatory duty; establishing of monitoring measures as part of the environmental information; and efficient integration of quality management elements and reviews of the environmental information. Lithuania proposes to amend the SEA Directive to provide clear interconnection between SEA and EIA, or to develop a single Directive on EIA/SEA to facilitate practical implementation of both Directives.

On the other hand, several Member States underlined that the specificities of each process should be well preserved and distinguished as these are related and complementary processes and should not be directly linked. Therefore, the harmonisation of both procedures should not lead to a full harmonisation of the requirements. In particular, the scale and level of details should be adapted to the 'object' of the assessment. Slovenia notes that there is already a tendency in applying the same methodology to SEA and to EIA procedure and to falsely perceive them as the same type of instrument, applied at different documents. Therefore, the merging of both Directives into a single SEA/EIA Directive would not be recommended as it could magnify this false perception.

Guidance

The vast majority of Member States¹⁰¹ expressing themselves on this issue underlined that the specificities of the SEA process and the EIA process should be well preserved and distinguished as these are related but complementary processes that should not be directly linked. Therefore, the harmonisation of both procedures should not lead to a full harmonisation of the requirements. In particular, the scale and level of details should be adapted to the "object" of the

⁹⁸ It should be emphasised that this is not the official opinion of Spain. Nevertheless, the Spanish EIA expert comments that: "...we share the opinion that the link between SEA and EIA should be clarified, either through the consolidation of the two Directives or through a specific guidance".

⁹⁹ Spanish and Lithuanian country information collected by the local consultants

¹⁰⁰ Swedish response to the Commission's questionnaire.

¹⁰¹ Member State responses to the Commission's questionnaire.

assessment. One Member State (Slovenia) notes that there is already a tendency to apply the same methodology in the SEA and EIA procedures, and to falsely perceive them as the same type of instrument, just applied to different documents. A merging of both Directives into a single SEA EIA Directive would not be recommended as it could magnify this false perception.

Capacity Building

One Member State (Slovakia) notes that more support would be needed for SEA implementation at national level through capacity building projects in order to overcome the lack of understanding of the differences between EIA and SEA, resulting in a poor quality of SEA.

8.2 The Habitats Directive (Article 3(b) - Art. 6 of the Directive)

8.2.1 Introduction

Europe's primary nature conservation policy is found in both the Habitats and Birds Directives (92/43/EEC and 79/409/EEC). These Directives provide for the protection of plants, species and the habitats in which they live. The sites protected –Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) – are grouped together in the Natura 2000 network, which in turn contributes to the 'Emerald network' of Areas of Special Conservation Interest (ASCIs) established by the 1979 Bern Convention on the conservation of European wildlife and natural habitats.

8.2.2 The Habitats Directive

Article 6(3) of the Habitats Directive¹⁰² is the key provision in terms of linkage with the EIA Directive. This provision contains procedural and substantive safeguards for any plan or project likely to have a significant effect on a Natura 2000 site.

In terms of scope, the first link between the two Directives is that they both refer to 'project' as a category that in principle is the target for regulation (the Habitat Directive also targets "plans" as well). Furthermore, in ECJ case law¹⁰³ involving the Habitats Directive and in another case involving the EIA Direc-

¹⁰² Article 6(3) states: "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, 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 and if appropriate, after having obtained the opinion of the general public".

¹⁰³ Case C-127/02

tive¹⁰⁴ the court held that the term project is used in the broadest sense to ensure maximum coverage of the associated provisions.

The EIA Directive defines which projects are subject to EIA (compulsory EIA or upon conclusion of a screening procedure). No definition of projects is included in the Habitats Directive. Therefore, while the EIA Directive applies to specific albeit comprehensive categories of projects, the Habitats Directive requirements relate to any type of project, as long as it is likely to have a significant effect on a Natura 2000 site, either individually or in combination with other plans or projects. In other words, there are cases where a project may fall outside the EIAs scope but may still be subject to the Habitats Directive.

A second link to the EIA in Article 6(3) of the Habitats Directive is the use of the concept of ‘likelihood of significant effects’ (in terms of the environment or site). The EIA Directive includes an almost identical provision, Article 2(1): *“Member States shall adopt all measures necessary to ensure that, before consent is given, projects **likely to have significant effects** on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects.”* (Emphasis added).

The EIA Directive, however, is different to the Habitats Directive in that it sets out factors which may contribute to a likelihood of significant effects in Article 2(1): Nature, size or location. Naturally, any assessment under Article 6 of the Habitats Directive can draw upon these factors for guidance, and this is emphasised in the Commission’s guidance document, ‘Managing Natura 2000 sites: The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC’.¹⁰⁵ The similarity between the two Directives in terms of ‘likelihood of significant effects’ means that if a proposal is deemed to have a significant affect on a Natura 2000 site pursuant to the EIA Directive, it is likely that Article 6(3) of the Habitats Directive also will apply. However, there may be situations where this is not the case as described by the Advocate General in his opinion launched to the Court in the case C-209/04.

A third link comes from using the concept of ‘alternative solutions’. Under the EIA Directive, Annex IV(2) states that: *“An outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects”* shall be provided by the developer.

A review of alternatives is required in the Habitats Directive for certain cases, whereas the EIA Directive does not require the investigation of alternative solutions directly. However, the Commission states in the guidance document that assessment under its procedure could *“usefully draw on the methodology envisaged by the EIA Directive. In particular, an examination of possible mitigation measures and alternative solutions may make it possible to ascertain that, in the light of such solutions or mitigation measures, the plan or project will not*

¹⁰⁴ Case C-392/96 Commission v. Ireland

¹⁰⁵ Guidance document 2000 page 34 paragraph 4.4.2.

adversely affect the site.”¹⁰⁶ At least in theory, Article 6(3) assessment can draw on the EIA methodology for assessing the site’s conservation objectives.

Notably, Article 6(3) does not require public consultation per se; however when the EIA process is triggered in terms of a required assessment under Article 6(3), public consultation becomes necessary. Moreover, pursuant to the Aarhus Convention, public consultation should be carried out anyway. It may thus be concluded that the combination of the requirements in the EIA Directive and the Aarhus Convention will in most cases lead to a requirement for public participation in such cases.

It should also be noted that the related procedures also embrace the Birds Directive. The scheme of both the Habitats and Birds Directives are broadly comparable.¹⁰⁷ Moreover, the special protection areas (SPAs) are now classified under the Natura 2000 network and Articles 6(2) to (4) apply to these SPAs. As the Commission notes comments that are made in relation to the Habitats Directive will apply *mutatis mutandis* to sites classified under the Birds Directive.

8.2.3 Member States' experience

It is worth noting that all Member States have commented on issues regarding the Birds and the Habitats Directives together. Two main situations should be distinguished depending on whether the Member States have established or not a formal legal link between the EIA Directive and the Habitats / Birds Directive assessments.

No formal Legal Link

In some Member States (Austria, the Netherlands, Portugal and United Kingdom), there is no formal link between the EIA and the Habitats or Birds Directives. In other words, the procedures set out in the national laws do not link the two. In such case, coordination between both should still be ensured, usually at the competent authority's discretion. The competent authority takes into account all potentially relevant environmental directives (i.e. the Habitats Directive, the Birds Directive, the IPPC Directive, etc.). Therefore, whichever assessment process is initiated first - be it through the EIA or the Habitats Directive - other processes will potentially apply to the project. Mostly, the Member States who rely on the competent authority's comment that duplication is kept to a minimum as there is only one competent authority involved, and they can easily co-ordinate similar documents such as the assessments required. (The issue of duplication is discussed further below).

Although Member States report that the lack of a formal legal link does not create an unfavourable position, for developers it may be difficult to conceptualise and assess mere nascent ideas for projects.

Lastly, co-ordination issues are also a problem where more than one competent authority is involved. This problem is likely in Member States where there is

¹⁰⁶ Guidance document 2000 page 38 paragraph 4.5.2.

¹⁰⁷ Guidance document 2000 pages 9-10 paragraph 1.1.

no, or very unclear links between the Directives and their associated procedures. For example, in Austria there is an issue with federal roads and high-speed railway lines because there is often an unsatisfactory level of co-ordination between the relevant authorities; in this case, the Federal Ministry of Transport, Innovation and Technology, and the Nature Protection Authority.

Formal Legal Link

In most Members States there is legal recognition of the link between the EIA and the Habitats and the Birds Directives.

For Belgium, Bulgaria, Czech Republic, Cyprus, Estonia, France, Greece, Hungary, Lithuania, Luxembourg, Spain and Romania the process can be summarised as a joint procedure under the EIA. Specifically, this means that the EIA is the main procedure, but where there is a likely significant impact, the Habitats assessment is incorporated into the process. In practical terms, this means that there is some co-ordination to minimise duplication of reporting as the two procedures are processed under EIA, as opposed to two separate reporting requirements, for example. Usually, in such situations there is one competent authority, which facilitates the co-ordination between the Directives. In Member States where this is not the case, the competent authority in charge of EIA will bring the other institution into the procedure.

From the above-mentioned group of Member States - Czech Republic, Estonia, Hungary, Lithuania, Luxembourg, Spain and Romania - it is mentioned that if the project submitted to an EIA procedure also include a Habitats/Birds assessment this will trigger a full EIA procedure which will then include the appropriate level of assessment under the Habitats directive's art. 6(3). For example, if an EIA process is started that will significantly affect a Natura 2000 site, the full assessment is required in order to obtain the necessary authorisation under the EIA Directive as well as in accordance with art. 6(3) of the Habitats Directive. It is likely that this situation arises in the Member States where the EIA screening option is implemented.

Notably, in the case of the Czech Republic and Estonia this leads to a higher level of assessment because the full EIA assessment is more far-reaching in its scope than that of the Habitats /Birds assessment. Whereas, the corresponding authorisation under Article 6(3) in the Habitats Directive requires a more in-depth assessment of the conformity of the performance of the project to the protection measures required for the area protected under the Habitats Directive.

France falls into another sub-category as they still apply a joint procedure under the EIA framework, however when the provisions of the Habitats/Birds Directives are applied, they are only applied with a more specific scope i.e. characterised as to an 'appropriate extent'.

In Germany, the EIA and the Habitats assessment in principle are taking place independently from each other. But both assessments are integrated in the permit or development consent procedure. And both can - as far as overlaps are taking place and as far as appropriate - use for the relevant environmental factors the same data.

Malta simply applies a straightforward joint procedure where both processes run in parallel. In this situation, the issue of duplication could be problematic, though the reports seem to indicate that the competent authorities manage this by allowing similar assessment documents to be used in both processes.

In Latvia provisions of the Habitats and the Birds assessment are incorporated into the process in case of regular EIA of a project, but in the case where the potential of negative impacts of a project is identified to be linked only to Natura 2000 sites, a specified NATURA 2000 EIA is applied in order to avoid duplication.

Finland reports that the habitat assessment can be conducted as part of an EIA procedure if it is appropriate considering the phase of design. The Habitats assessment can also be done after the EIA, attached to a more detailed phase of design. The duplication of assessment is avoided since they are different in scope and level of detail.

8.2.4 'Projects' falling outside EIA

As noted in the introductory comments, EIA defines the term, 'project' whereas in the Habitats Directive, 'project' is undefined and consequently the scope can be much wider as confirmed by the Court in its ruling in case C-127/02. Many Member States do not specify how they handle the issue of 'projects' that impact on Natura 2000 sites while not being subject to EIA.

Poland reports that national legislation establishes a third category of projects which may have a significant impact on Natura 2000 sites and are not directly related to the protection of this site, while not being included in Annexes I and II of the EIA Directive. These projects are subject to an assessment procedure which includes screening and scoping phases but is limited to assessment of impacts on natural habitat types and the habitats of species for protection of which the Natura 2000 site has been set up. Consultation and public participation are also required before a decision is granted. There is no information in the Polish report as to how effective their procedure is for such situations.

8.2.5 Institutional co-ordination

In some Member States, co-ordination is certainly an issue, especially where multiple institutions are involved. In those countries where there is a lack of communication or other co-ordination, this complicates the Habitats and EIA processes and likely leads to duplication of reports or assessments.

This is however, not the case for all Member States. The Lithuanian expert describes how proposed projects that might have an impact on a Natura 2000 site are also subject to EIA. In such cases the significance of the impact is assessed in the EIA process and the separate institution responsible for the organisation and management of Natura 2000 sites is invited as an additional party to the EIA process. This is seen as an effective co-ordination between institutions, eliminating the requirement to have two separate processes with two separate

institutions being responsible for the same issue. A similar organisation of the EIA process is seen in other Member States, e.g. in Cyprus and Greece.

8.2.6 Conclusion and recommendations

Based on the above analysis, no major issues have been identified concerning the relationship between the EIA and Habitats/Birds Directives.

It is observable that non-formal and formal legal interlinking between the Directives is an important distinction despite the fact that the Member States do not report major problems with either (in terms of this distinction). Where the links are not formal, the competent authority technically has a lot of discretion. This discretion is not an issue in Member States with formal legal links. On the whole, Member States are mainly concerned with the issue of duplication. Their worry is that prolonged or overly burdensome procedures may stifle development or simply create unnecessary extra work.

The only issue that could be assisted by some action is for projects that fall outside the EIA Directive but not the Habitats Directive. In such cases, the procedure described in the Guidance document on the Assessment of Plans and Projects significantly affecting Natura 2000 sites (2001) applies equally and provides guidance on the procedure to be followed.

8.3 The EU Action Plan "Halting the Loss of Biodiversity by 2010 - and beyond" and its specific actions and targets concerning EIA,

The EU Biodiversity Action Plan ("the Action Plan") sets out the ultimate European goal of halting the biodiversity loss by 2010. It is set out in a communication from the Commission (COM (2006) 216) which includes Annex 1 with more specific goals. The essential premise is that the Action Plan sets 10 priority objectives to achieve this, including safeguarding the EU's most important habitats and species and integrating biodiversity into land-use planning and development.¹⁰⁸ These goals are supported by various measures such as finance, governance, partnerships and awareness-raising.¹⁰⁹

The EIA is inherently linked to the objective 'integrating biodiversity into land-use planning and development', given that both cover projects. The Action Plan requires that all relevant territorial plans and projects within the EU are subjected to both EIA and SEA in order to take full account of potential biodiversity problems or issues.¹¹⁰

¹⁰⁸ Commission's brochure 2008 pages 8-24.

¹⁰⁹ See Annexes to the Communication from the Commission SEC(2006)621, Annex 1, page 11, paragraph B4.1.

¹¹⁰ See Annexes to the Communication from the Commission SEC(2006)621, Annex 1, pages 5-6. Note also that other Action Points such as 3.6.4 also apply to environmental as-

It should be underlined that, in order to achieve Target 4.6 (*All Strategic Environmental Assessments and Environmental Impact Assessments have taken full account of biodiversity concerns*), the Commission refers to Actions A1.1.3, which calls for a full transposition and effective implementation of Article 6 of the Habitats Directive. Therefore, the Commission clearly identifies an efficient application of Article 6 of the Habitats Directive as being the best tool for the effectiveness of EIAs with respect to preventing the loss of biodiversity. It also encourages promotion of best practice through the development of guidelines, and recognition of good performance – ensuring that full account is taken of the findings of the assessment (in terms of biodiversity impacts) in the final programme or plans.¹¹¹

It should also be noted that, although it does not refer specifically to biodiversity, the EIA Directive in its Article 3 requires that the environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project on, amongst others, fauna and flora.

With this in mind, the Commission has asked the Member States to share their views as to how effective is the EIA with respect to preventing biodiversity loss in their country.

8.3.1 Member States' experience

From the Member States reports, the overwhelming view is that there is only an informal link between the Action Plan and the EIA as discussed in the introduction. Despite the lack of formal (legal) links, most Member States consider that EIA is effective with respect to preventing biodiversity loss in their country: it is achieved by simply applying the requirements of the Directive, often mentioning also the importance of an effective transposition and implementation of the Habitats Directive.

For example, Austria comments that *'The effectiveness of the EIA-systems mainly depends – in terms of quality – on the Habitats Directive and its implementation in national law. Concerning procedural aspects, the EIA Act offers a possibility for wide participation and legal standing even for aspects of nature conservation e.g. for environmental NGOs. That means best conditions for an effective protection of biodiversity. Experience shows that in EIA procedures more attention is given to the aspect of nature protection than outside of the EIA-system'*.

It has also been commented that the EIA was an effective tool to highlight and make public awareness of possible impact on the biodiversity (Denmark). In addition, the EIAs provide numerous inventories of biodiversity, which consti-

assessment in areas not related to land-use planning. For example, Action point 3.6.4 in relation to fish and aquaculture.

¹¹¹ See Annexes to the Communication from the Commission SEC(2006)621, Annex 1, page 6, paragraphs A4.1.5, A4.6.2, A4.6.3 and A4.6.4.

tute the first step to protect biodiversity, for example, by identifying species which were considered as lost (France).

France has adopted in 2004 a national strategy for the biodiversity, with the same objective to halt the loss of biodiversity in 2010; this strategy is declined in several action plans (for instance urbanism) and has to be taken into account in EIAs.

Two Member States have a more pessimistic view. The Luxembourg report, somewhat alarmingly, states that although loss of biodiversity is taken into consideration when carrying out an EIA, so far no effect on halting of the loss of biodiversity can be scientifically proved. The expert added that the cumulative effects on biodiversity of an additional project in a given situation are not sufficiently considered within the EIA, and that, in the future, when defining the scope of the EIAs, particular attention should be given to this aspect. The Finnish report considers that, taking into account the fact that no precise information is available it seems that the EIA is not very effective, at least in Finland, as biodiversity loss in this country is mostly based on activities within agriculture and forestry and those are not widely covered by the EIA.

Some co-ordination issues have been mentioned. Member States usually account for the Action Plan within the EIA process, therefore such co-ordination issues arise in the same manner as in the relationship between the Habitats/Birds and the EIA Directives. For example, the Austrian report states that adding biodiversity issues into the assessment where Habitats/Birds and EIA considerations already exist means that yet another authority will have to be involved, and therefore co-ordination becomes more difficult. This difficulty in co-ordinating between the various authorities also means that the methodology for assessment is complicated as to which order should be used to streamline the process as much as possible, avoiding such issues as duplication. Other Member States also touch upon this issue, however they provide little detail or analysis.

It is also worth mentioning that in some Member States where the link between the Action Plan and the EIA is informal, the competent authority is the one who decides whether to take into consideration the provisions of the Action Plan.

8.3.2 Conclusion

Many Member States consider that the provisions of the EIA already sufficiently take into account the substance of the Action Plan. Therefore despite the fact that neither biodiversity, nor the Action Plan itself, are specifically mentioned, biodiversity is still covered to a similar degree as envisaged by the Action Plan, mainly through an effective transposition and implementation of the EIA Directive requirements related to consideration of fauna and flora protection and of the Habitats Directive Article 6 assessment. There may nevertheless be an issue in the fact that the protection of biodiversity under the Habitats Directive Article 6 is only covering projects that directly have a negative impact on the Natura 2000 sites, whereas biodiversity in general may not be efficiently

covered by the application of the requirements under the EIA Directive outside Natura 2000 sites. The lack of quality standards in such situations may render the application of EIA procedures insufficient in protecting biodiversity.

However, a number of downfalls were identified:

- Limited consideration of cumulative effects on biodiversity of an additional project in a given situation within the EIA, and,
- Limited coverage of biodiversity issues linked to agriculture and forestry
- Limited or no coverage of quality standards for biodiversity outside Natura 2000 sites in EIA procedures.

8.4 The Integrated Pollution Prevention Control Directive and the Large Combustion Plants Directive

8.4.1 Introduction

The Directive on Integrated Pollution Prevention and Control (IPPC Directive)¹¹², adopted in 1996, has been codified as Directive 2008/1/EC on 15 January 2008. The IPPC Directive subjects to authorisation large industrial installations listed in Annex I. It is aimed at highly polluting installations, and production capacity thresholds have been set up for most sectors in order to cover only the most polluting installations, excluding the smallest ones. The Directive sets up a number of compulsory environmental conditions to the granting of the integrated permit, based on best available technologies. Besides, it includes requirements with regard to public information and participation in the permitting process. Finally, the Directive also regulates monitoring and updating of the permit.

Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (LCP Directive) applies to plants with a rated thermal capacity of at least 50 MW, and sets emission standards for both new and existing plants. It should be noted that the scope of the LCP Directive and the EIA Directive differs. On one hand, the exemption of certain types of combustion plants from the scope of the LCP Directive (Article 2(7)) does not apply for the EIA Directive. On the other hand, the EIA Directive requires a compulsory EIA only for combustion installations with a *heat output of 300 MW or more* (Annex I (2)). Installations falling under the LCP Directive are also covered by the IPPC Directive, under which more stringent emission limit values or additional conditions could be set for the same plant. Consequently, the issues at stake regarding the relationship between the EIA Directive and the LCP Directive are very similar to those raised by the relationship between this Directive and the IPPC Directive. Besides, the Commission has proposed to combine the IPPC Directive and the LCP Directive, along with five other directives into one single Directive on industrial

¹¹² Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version)

emissions¹¹³. Therefore, it has been decided to consider the links between the EIA Directive and both IPPC and LCP Directives in the same section.

8.4.2 Relationship between EIA and IPPC and LCP Directives

In terms of scope, it should be noted that even if the IPPC Directive, unlike the EIA Directive, does not cover infrastructure projects and the thresholds it sets sometimes differ from those used in the EIA Directive, most projects would fall under both the IPPC and EIA Directives. As concluded in the IMPEL report on the interrelationship between the IPPC, the EIA, the SEVESO Directives and EMAS Regulation (later the IMPEL report)¹¹⁴, the EIA Directive generally covers, in Annexes I and II, all the Annex I IPPC categories of project, except for categories 3.1 (lime links), 6.7 (installations for the surface treatment of substances, objects or products using organic solvents, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year) and 6.8 (installations for the production of carbon or electrographite by means of incineration or graphitisation).

The IPPC Directive clearly states that it should apply *without prejudice to Directive 85/337/EC* (Recital 11, Article 1). It also stipulates that where information supplied pursuant to the EIA Directive fulfils any of the requirements applicable to the permit application, that information may be included in, or attached to, the application (Article 6(2)). Similarly, when a new installation or a substantial change falls under the scope of the EIA Directive, paragraph 2 of Article 9 on conditions of permits requires taking into account for the purposes of granting the permit, "...any relevant information obtained or conclusions arrived at" during the development of the EIA, including the consultation phases.

The EIA Directive goes further as, pursuant to its Article 2 (2a), introduced by the Council Directive 97/11/EC of 3 March 1997; it opens to Member States the option of setting up a single procedure in order to fulfil the requirements of both the EIA and the IPPC Directives. This means that the Member States have the possibility to provide for a single procedure for projects subject to both EIA and IPPC. However, they can also apply the EIA and IPPC provisions separately. When both procedures apply, the EIA procedure should take place first and the EIA results have to be taken into account in the processing of the permit application. It is also possible to provide for a single phase of consultation for both procedures while the remaining aspects remain separate.

As noted by the IMPEL report, if the environmental reports or documentation of the EIA and IPPC procedures are both focused on environmental effects and measures for prevention and reduction of these effects, the IPPC Directive gives more emphasis to the Best Available Techniques and technical processes,

¹¹³ Proposal for a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast), COM(2007) 843 final

¹¹⁴ IMPEL report on the interrelationship between IPPC, EIA, SEVESO Directives and EMAS Regulation, Final report, 1998

(i.e. it refers to the effects of the emissions on the environment to be protected as a whole). Therefore, the EIA documentation should be supplemented by information on these aspects.

8.4.3 Member States' experience

Only four Member States (Austria, Germany, Italy, and Poland) report that they have set up a single procedure. In many cases, the thresholds of both processes are quite similar and both procedures apply. It is not always clear how these Member States handle situations where only one procedure would apply. In such cases, Austria has set up a tiered hierarchic system concerning those thresholds depending on the project's size. For example, power plants with a thermal input equal to or more than 200 MW require an EIA with integrated IPPC; between 100 and 200 MW thermal input a case-by-case examination is required for power plants located in regions with affected air quality (one of the areas defined by Annex 2 of the Austrian EIA Act) in order to decide, whether an EIA is necessary, in any case an IPPC is required; between 50 and 100 MW only an IPPC is compulsory. This example also illustrates the relationship with the LCP Directive which would cover the same installations than those covered by IPPC. Germany reports that they have made use of Article 2, paragraph 2a of the EIA Directive as amended by Directive 97/11/EC. Especially, the Act of July 2001 that has implemented the IPPC Directive and the Directive 97/11/EC has modified the German legal system in a way that the EIA is integrated in the permit procedure for IPPC installations.

Both Finland and the United Kingdom mention that they have did not introduced a single procedure for projects falling under both Directives because of the differences in thresholds and criteria used by the EIA Directive and the IPPC Directive. The two Member States comment that the thresholds at IPPC levels are too high for the purposes of EIA thresholds. Of particular relevance, the Romanian authorities also propose to introduce the same threshold on both IPPC Directive and Annex I of the EIA Directive 'because uncoordinated thresholds are used in the two directives'. However, it should be noted that it is not clear why the differences in thresholds and criteria would conflict with the establishment of a single procedure. The single procedure would only apply when a project is subject to both EIA and IPPC (and LCP if relevant), but this would not prevent an EIA being carried out when a development project would not fall under IPPC.

In two Member States (Slovenia and Hungary), a single EIA/IPPC procedure may be followed at the developer's request. For example, in Slovenia, the legislation provides for the possibility to follow an integrated EIA – IPPC procedure at the request of the developer or the operator. In such cases, the issued IPPC permit also counts as an environmental consent in the EIA procedure. In Hungary, such a decision lays with the competent authority. During the preliminary assessment procedure and/or scoping phase, the environmental inspectorate shall decide if the EIA and the IPPC procedures shall take place jointly or consecutively. The preliminary assessment procedure is a merged phase for each project subject to both EIA and IPPC, while the detailed EIA and IPPC proce-

dures can be handled together only if the environmental inspectorate decides so, having considered the project developer's request and the availability of the information regarding the best available techniques.

It is worth mentioning the case of Italy, which had established a similar setting as previous legislation allowed an optional procedure, on request of the developer, to grant EIA and IPPC permitting decisions at the same time.¹¹⁵ However, under the new 2008 Decree, EIA procedures substitute or coordinate all authorisations, concessions and other approvals, *including* integrated permits. The Decree requires that impact studies for State EIA procedures and related project descriptions should contain specific information required for such permits, where they are granted at State level.¹¹⁶ The Decree calls on the state Technical Commission for environmental evaluation to coordinate with the Commission for integrated permitting in this area. It also calls on the regions to ensure that their permitting under the IPPC Directive is coordinated with EIA procedures. These provisions are quite ambitious, and apparently represent an important development for environmental management in Italy. However, given that these rules have recently been enacted, it remains to be seen how this system will work in practice.

When there is no single procedure in place, Member States have generally provided for some forms of coordination:

- The EIA report is part of the documentation for the IPPC application and one of the elements to take into account in the permitting decision: This is a common feature among several Member States (France, Ireland, the Netherlands, Spain and Sweden). In Sweden, it should be noted that although the EIA and permitting procedures are two separate processes, they are very closely connected. An environmental impact statement is required for granting IPPC activities permit. An application for a permit regarding an IPPC activity should include an environmental impact statement and a summary of the consultations held. The environmental impact statement shall be approved by the permitting authority, either by a separate decision or in connection with the decision in the case.
- The granting of the permit is conditioned by a positive decision on the EIA (Belgium (Flanders), Spain, Estonia and Portugal): As an illustration, in Estonia, an application for an integrated environmental permit is treated like any other application for consent: The competent authority for granting the permit has to decide whether to initiate the EIA and, if so, the proceedings for issuing the integrated permit are suspended. Once the EIA report has been approved, the proceedings are resumed, which means, *inter alia*, another round of public display and hearing.

¹¹⁵ Art. 34(1) of the 2006 Decree

¹¹⁶ Legislative Decree n. 4 of 16 January 2008 refers to Italy's Legislative Decree n. 59 of 2005, which governs integrated permitting.

- Use of information (Bulgaria, Lithuania, Latvia and Romania): Data collected during the EIA process and relevant documents are used during the permitting process. In Lithuania, this information must be presented to the Regional Environmental Protection Departments together with the corresponding application for an IPPC permit. In Romania, the results of the consultations and information are taken into consideration within the procedure for issuing or refusing to grant the development consent. The CA competent authority for environmental protection, with the consultation of the technical analysis committee, takes the decision to issue or refuse to issue the development consent on the basis of the analysis of the EIA report, the comments and opinions expressed by the public concerned and other relevant information. Bulgaria specified that not only the results of the EIA should be taken into account when the application for the IPPC permit is prepared, but the EIA decision should include the necessary conditions for the first stages of the IPPC permitting procedure.
- Common public participation procedure, especially for hearings: interestingly, only two Member States, Malta and Spain, report such occurrence. It seems it is also the case in France under the public inquiry procedure.
- Specific requirements to EIA content: When the EIA concerns an IPPC installation, information on technological aspects and, more precisely, BAT should be included (Poland, Romania and Spain). In Slovakia where there is not such a requirement, developers would favour such inclusion in order to save time and money.
- Coordination between responsible authorities (Slovakia and Spain): Slovakia mentioned that IPPC authorities are involved in the EIA procedure when relevant. Although not specifically reported by other Member States than Slovakia and Spain, this seems to be a feature common to many countries.

Finally, the case of the United Kingdom should be singled out as coordination between both procedures (and generally between EIA and all relevant legislation) is left under the developer's responsibility. The Circular 02/99¹¹⁷ states that *"Developers should consider at an early stage whether an assessment of environmental effects may also be required under another European Community Directive, such as [...] the IPPC Directive. Although the requirements of these and of the EIA Directive are all independent of each other, there are clearly links between them. Where more than one regime applies, developers could save unnecessary time and effort if they identify and co-ordinate the different assessments required"*. Thus, the authorities would encourage developers to identify the different assessments required under different directives at an

¹¹⁷ Circular 02/99: Environmental Impact Assessment (relevant to England).

early stage and to co-ordinate them to minimise duplication where more than one regime applies.

None of the Member States have reported specific problems with regard to co-ordination between EIA and IPPC.

Finally, none of the Member States has made specific comments on the link between the EIA and LCP Directives apart from referring to the comments made about the IPPC Directive. Therefore, the comments above should also apply to the LCP Directive.

8.4.4 Conclusions and recommendations

In conclusion, very few Member States have established a single procedure as mentioned in Art. 2(2) (a) for projects falling under the EIA and IPPC Directives, *stricto sensu*. In certain cases, there is an option to use a single procedure at the request of the developer. However, when there is no single procedure as such, Member States have often established a strong formal link as the EIA, including the results of public consultation, is part of the documentation submitted for the IPPC permit application and must be taken into account when taking the decision to grant or not the permit. In some Member States, a positive decision on the EIA is required for the granting of the permit. Finally, the opportunity to harmonise the thresholds and criteria used to define projects subject to EIA and IPPC should be considered.

8.5 The Combating Climate Change Initiatives

8.5.1 Introduction

Climate change is recognised as one of the key challenges now being faced by Europe and the world in general. In order to combat climate change, the EU has taken a number of initiatives since the early nineties:

- The European Climate Change Programme launched in 2000 has led to the adoption of the EU Emissions Trading System (ETS) Directive and legislation aiming at reducing emissions of fluorinated gases, the ratification of the Kyoto Protocol in 2002.
- In March 2007, the Member States committed the EU to cutting its GHG emissions by at least 20% of 1990 levels by 2020, and 30% provided other developed countries commit to comparable reductions, while setting a target of 20% reduction in energy consumption compared with projected trends by 2020;
- Finally, in December 2008, the Commission adopted the so-called 'Climate action and renewable energy package' which, in order to achieve these commitments, provides for a set of measures, including an improved ETS and emission reduction targets for industries not falling under the ETS.

8.5.2 Relationship between EIA and Climate Change Initiatives

EIA should be seen as one of the instruments that could contribute to combating climate change, by providing a means to reduce the impact of the development on climate change. The EIA Directive specifically requires consideration of climate change issues. Article 3 stipulates that the environmental impact assessment shall identify, describe and assess in an appropriate manner the direct and indirect effects of a project on various factors, including climate. Besides, the Directive (Article 5 and Annex IV) requires a developer to provide a description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular climatic factors.

Integrating climate change considerations in EIA also means that, when looking at alternatives or mitigation measures, energy savings, reduction of greenhouse gases emissions should also be favoured. Besides, EIA provides a tool to assess the impacts of climate change on the project, e.g. the effects of more frequent floods or droughts.

The Commission has asked the Member States to what extent are climate change issues addressed within EIAs in their country and if there were any specific project categories where climate change considerations are particularly reflected within EIA.

8.5.3 Member States' experience

Most Member States recognised that climate change issues are not specifically addressed within EIA above and beyond what is required by the Directive. Only three countries Member States did not answer the question or recognised their lack of experience (Czech Republic, Sweden and Slovakia). Two countries Member States have noted that the attention paid to climate issues in EIA is increasing (Finland and Portugal), while others are just starting to consider these issues (Bulgaria). Only Germany reports that generally, the attention paid to climate change issues is quite high in Germany and it is still increasing.

The review of the impacts on climate change is generally limited to CO₂ and other greenhouse gas emissions from industry but also from increase in transport, as part of air quality studies or as indirect impacts. It seems that the EIA assessment will often not go beyond evaluating existing emissions and ensuring that ambient air quality standards will be met. Interestingly, several Member States have underlined the importance of considering energy efficiency issues (Belgium, Hungary and the Netherlands).

It seems that the effects on global climate are rarely considered. Hungary underlines that at the individual project-level, assessment of the effects on climate change, which is an issue of global nature, is very difficult to handle. Such an opinion has also been supported by Austria. The expert underlined that individual projects would not cause considerable impacts on the global climate. There are good arguments that for the protection of the global climate the project level is not the best option, because usually causality between the emissions of a single project and climate change cannot be established due to the small amount of

the contribution. The protection of the global climate should be established at a more strategic level.

It has also been observed that the cumulative effects on climate change of an additional project are not sufficiently considered with the EIA and that particular attention should be given to this aspect at the scoping stage (Luxembourg).

Member States have identified various specific project categories where climate change considerations are (or should be) particularly reflected within EIA. These relate mainly to projects with potential significant CO₂ emissions (in particular, energy and transportation projects), but also projects for which energy efficiency is a key issue. This is particularly true in the case of building projects. The project categories mentioned are the following:

- Mining projects and industry projects (Estonia);
- Minimisation of gaseous emissions that pollute the atmosphere from projects such as power stations or the minimisation of energy consumption or the use of renewable energy sources in projects such as factories, farms, buildings (Cyprus);
- Large cow farms or highways (Hungary);
- Energy related projects (Lithuania, Estonia);
- Proposals likely to generate traffic and emissions from industrial activities and installations (Malta);
- Power plants, facilities for calcinating or baking metal ores, installations for secondary smelting of nonferrous metals or their alloys, installations for production of cement clinker, coke plants, installations for the production of paper or cardboard, petroleum refineries (Poland);
- Projects that fall under the scope of Directive 2003/87/CE (Romania);
- Industrial machines for electricity, steam and hot water production, including heating devices for production of steam or hot water for remote heating (Slovenia);
- Thermal power plants and infrastructure projects (such as shopping centers, parking areas, sports sites and roads) (Austria);
- Marine offshore projects (Belgium, Federal level);
- Office buildings projects, in relation to energy efficiency issues (Bulgaria)
- Energy production, traffic and waste management (Finland but limited to CO₂ calculations);
- Transportation projects, IPPC installations (France);
- Energy production, farming and house-building (taking into account the environment and sustainability in building houses) (the Netherlands);
- Large combustion plants (Portugal).

8.5.4 Conclusions and recommendations

While the majority of the Member States recognise that climate change issues are assessed within the framework of EIAs, this is mainly limited to consideration of greenhouse gas emissions, compliance with air quality standards and sometimes energy efficiency. Impacts on climate change are rarely subject to specific requirements. One of the reasons could be the lack of proper tools and methodologies to carry out such assessments. Only one Member State (France)

has mentioned the development of a specific tool, the carbon balance developed by the French Agency for Environment and Energy Control, along with studies concerning carbon dioxide produced by wastes.

Consequently, the development of guidance and/or assessment tools on the integration of climate change issues in EIAs should be considered. Such guidance could focus on projects for which these issues are particularly relevant, as identified by the Member States in their responses to the questionnaires (see above).

8.6 Conclusions

Many Member States consider that they do not have sufficient experience to properly identify and assess any overlapping issues or the coordination of both processes. Where Member States do, they mainly use joint procedures or informal coordination in order to address practical issues of duplication and overlap. Recommendations made by Member States relate mainly to consolidation of the EU legislation and the development of guidance documents, though reference is also made to further guidance and capacity- building.

The key provision relating to the relationship of EIA with the SEA Directive is Article 11(1) and (2) of SEA, which stipulates that Member States may provide for coordination and joint procedures in situations where an obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other Community legislation.

Regarding the link with the Habitats and Birds Directives, no major issues were identified. Member States reported both informal and formal links between these Directives but have not reported any major problems with either – despite the fact that informal links leave competent authorities a large amount of discretion. The Member States' main concern is duplication.

As for the Biodiversity Action Plan, many Member States consider that the provisions of the EIA already sufficiently take into account the substance of the Action Plan, notwithstanding two problems identified regarding cumulative effects and also coverage of agricultural biodiversity.

Regarding IPPC, very few Member States have established a single procedure as per Article 2(2) (a) for projects falling under both the EIA and the IPPC Directive. Where there is no single procedure, Member States have often established a strong formal link as the EIA (including the results of public consultation) is part of the documentation submitted with the IPPC permit application, and must be taken into account when deciding whether to grant the permit.

Lastly, while the majority of the Member States recognises that climate change issues are assessed within the framework of EIAs this is mainly limited to consideration of green-house gas emissions, compliance with air quality standards and sometimes energy efficiency. Impacts on climate change are rarely subject to specific requirements.

9 Findings and recommendations

This Chapter presents the findings of the study, by identifying common features, strengths and weaknesses of the application of the EIA Directive in the old and new Members States.

Furthermore, it presents the Consultant's recommendations for the improvement of the EIA Directive.

9.1 Findings

This section reports the findings of the study in general as they, when aggregated upon the basis of previous sections of the report, are reported by Member States and the Consultant.

Most findings are trends drawn from the vast bulk of information provided for by Member States either in written form or orally through the Paris meeting held in October 2008.

9.1.1 Overall trends

All Member States have established comprehensive EIA regimes.

Two benefits related to the EIA procedure have univocally been identified by most of the old Member States:

- The EIA procedure ensures that environmental considerations are taken into account in the decision making processes;
- Increased transparency in the environmental decision making.

For the old Member States it is characteristic that most of them already had some kind of regulatory frameworks in place before being required to adapt national legislation to the requirements of the EIA Directive. This means that some of the problems encountered by old Member States are of a nature where it is the fitting in of EIA procedures into existing regulatory procedures that do cause many of the problems encountered. The problems encountered are thus more related to when the assessment must take place vis-à-vis decision making and also when a decision made is considered a development consent within the meaning of Article 1(2) of the EIA Directive.

The above must be considered in the light that some of the Member States being a part of the EU15 (the so-called old member states) were required to set into force national rules covering the requirements of the EIA Directive because they accessed to European Union at a time when the EIA Directive was already in force.

It is a common feature that the new Member States already prior to the EU membership had established EIA schemes based upon legal frameworks. It should be noted that with regard to the new Member States, the EIA Directive has been transposed as part of the accession requirements to ensure harmonization of the national legislation with the EU *Acquis*.

The new Member States are familiar with the EIA procedures applied as an integrated regulatory tool, which to some degree is based upon the general development in international environmental law. Accordingly, most new Member States have before entering the EU already prepared for the incorporation of the Espoo Convention on EIA in a transboundary context and to some degree also the Aarhus Convention facilitating the implementation of the public participation.

This finding is beneficial for the on-going development in applying the EIA Directive itself. In general, the reporting from new Member States clearly indicates a familiarity and acceptance among the Member States' authorities and the Member States' civil and professional societies of the fundamental principles behind and the rationale underlying the EIA Directive. Thus, in general, the EIA regime is backed up by a strong legitimacy which may become useful in ensuring sound implementation over time.

Directive
2003/35/EC

The Member States welcome the beneficial changes introduced by Directive 2003/35/EC; in particular, the strengthening of public participation in decision-making procedures and a more successful EIA procedure as a whole. The fact that almost half of the Member States allow for public consultation already in the scoping phase, points to the importance attached to public involvement in EIA procedures. The general impression is, however, that experience in the application of the new provisions introduced by Directive 2003/35/EC is still limited. This is also expressed by some Member States.

Regarding the link with the Habitats and Birds Directives, the Member States have established both informal and formal links between the EIA Directive and these Directives and no major problems are reported. As for the Biodiversity Action Plan, many Member States consider that the provisions of the EIA Directive already sufficiently take into account the considerations behind the Action Plan, notwithstanding some problems identified regarding cumulative effects, coverage of agricultural biodiversity and the efficiency of the EIA Directive in providing sufficient protection of biodiversity outside Natura 2000 sites.

9.1.2 Detailed trends

The detailed findings reported in this study relate to individual stages of the EIA-procedure.

Screening

The screening mechanisms of the Directive give rise to some concerns among the Member States, such as the lack of capacity in ensuring sound screening and the variations in applying thresholds and case-by-case screening. Both new and old Member States have reported some difficulties in identifying an appropriate level of application through the adopted screening mechanisms.

Whereas the 2003 five year report found that unsystematic screening was one of the major problems in the application of the EIA Directive, this is not the case for the period 2002-2006 as reported. It seems that the old Member States have largely been able to define reasonable thresholds for application. This has been achieved through the application of a variety of means. The interesting development in national EIA regulation is that it, at least in some Member States, is the combined application of several approaches that has lead to a re-fined screening function. These combined approaches may include the application of:

- Simplified procedures for 'small scale' development applications (some Member States);
- Elaboration of screening criteria by the adoption of thresholds taking into account size, nature and location of proposed developments (some Member States);
- Regulatory initiatives against splitting of projects into several sub-projects;
- Improved guidance on the application of screening procedures;
- Publication of practices explaining 'hard-cases' and their decision.

As for the new Member States, they seem to undergo the development steps that the old Member States have undergone earlier. A majority of the new Member States employs adopted thresholds for the screening of specific Annex II developments. A majority of the new Member States also reports that they employ a combination of ad-hoc screening and adopted thresholds. The combination of these two approaches is often employed in a manner where applications falling below adopted thresholds are subjected to an ad- hoc screening decision.

The new Member States have not reported any trends related to employing simplified procedures for screening 'small-scale development' applications as part of a combined screening approach. Some of the new Member States have proposed to add specific project types to the Annexes of the EIA Directive as well as a few of the old Member States.

In general for all Member States the number of EIAs in Member States per annum suggests that screening mechanisms have gradually become more effective and thus leading to an increased number of EIAs carried out. However, the increasing number of EIAs carried out may be the result of many different trends in Member States, ranging from a more effective and systematic screening to be the result of an increased economic activity in Member States.

Since the 2003 five year report new provisions requiring Member States to make screening decisions available to the public have been enacted in Directive

2003/35/EC. For the majority of Member States it is the competent authority making the decision which is required to publish such decisions. The media employed for these decisions vary from paper versions placed on the bulletin boards of the local authority, via printed mass-media to internet based publication.

Public consultation requirements

Public consultation requirements have been strengthened by the adoption of Directive 2003/35/EC. The introduction of two categories defining 'the public' and 'the public concerned' has given rise to some differences between Member States in their way of setting and applying these definitions. Whereas the definition of 'the public' seems to be quite uniform across all Member States there are varieties in the way the definition of 'the public concerned' is defined and applied in national legislation. The majority of Member States have adopted a definition in national legislation similar to the definition in the Directive. A few Member States have not adopted any definition of 'the public concerned'; instead these Member States rely on convening the same rights to both categories. The definition of 'the public' does include both natural and legal persons in all Member States.

The general requirement of 'early and effective opportunities to participate' is interpreted by half of the Member States as allowing participation to take place in the scoping procedure. Some Member States that have not chosen the scoping phase as the relevant phase for introducing participation have instead chosen to allow participation already in the screening phase. Others have merely decided to allow participation when making the EIA report available to the public.

The Directive leaves discretion to Member States to set 'reasonable time frames' for participation. Most Member States have chosen to set forth defined time limits (often by way of minimum requirements) for participation. Other Member States have employed similar qualitatively defined criteria in legislation and thus leave it to the competent authority to decide what the 'reasonable time limit' is in individual cases. The Member States that have set a defined time limit in their legislation have chosen time limits that vary from two weeks up to more than one month. In some Member States, the definition of the fixed time limit is related to the nature and size of the development application in question.

Access to review procedures

The introduction of requirements for a review procedure has led a majority of the Member States to introduce formal legislation granting access to review of decisions made by authorities. However, certain elements of access to review, such as access to review before a court of law, are in a number of Member States vested in court practices which have developed over time. The main differences between Member States in this respect are related to the extension of access to a review procedure as well as the grounds on which a decision may be challenged.

Access to challenge administrative decisions is in many Member States a right conferred to the individual and often ensured in a general act or even may be ensured in national Constitutions. The extension of access to review may differ

between Member States. Most Member States allow for access to administrative review as well as judicial review (in courts). A handful of Member States only allows for judicial review, whereas other Member States only allow for an administrative review.

There are also quite substantial differences with regard to on what grounds access to review may be granted. In a few Member States access to review is granted in a broad and unrestricted sense (often called *actio popularis*), in other Member States it is based on the concept of impairment of a right accorded in law or practice and last but not least, in many Member States based on procedural rights.

The most common cases subjected to a review procedure reported by Member States seem to be related, at least to some extent, to the application of the EIA Directive. However, it must be emphasised that this picture is probably influenced by the fact that very large are often controversial projects/developments. The controversies maybe related to the development itself, but are often related to the fact that the application of an EIA procedure to the development did not take place or only took place in a limited manner or without the required transparency in procedures.

Scoping

Explicit scoping procedures including public involvement is required in ten of twelve new Member States. The normal scoping procedure involves a draft scoping document drawn up by the developer, verified or validated by an independent and certified consultant and finally approved by the competent authority.

It is acknowledged in the majority of the new Member States that the involvement of both designated expertise within EIA and the public at large, in some Member States represented by a board of NGOs, provides an input that may be crucial in obtaining proper quality of the resulting EIA report.

Assessment of human health

All new Member States have reported that assessment of effects on human health is an obligatory part of assessing the impacts on the environment of a proposed project. A few of the new Member States have even chosen to include representatives from National Health Authorities among the authorities that must be consulted as part of screening as well as scoping decisions.

Whereas most of the new Member States rely on the inclusion of human health aspects through the procedural requirements, a few of the new Member States have issued more detailed requirements on the particular matters involved in assessing the impacts on human health factors. Only one of the new Member States has issued formal guidance documents providing methodologies and examples on how human health aspects are included in environmental assessment.

Cumulative effects

A majority of the new Member States have experienced one or more EIA procedures in which cumulative effects of the proposed projects/developments were or became a problem that needed to be addressed. All new Member States report that prevailing legislation requires that cumulative effects must be assessed when necessitated by the proposed development.

Some of the new Member States suggest that the assessment of cumulative effects may be in need of more guidance, notwithstanding the fact that as late as in 1999 the EU Commission made a formal guidance document available on cumulative effects assessment. Other new Member States raise the question of lack of exchange of experiences - especially between the new Member States - on how to address cumulative effects in the assessment of development context.

Transboundary consultations

Transboundary consultation is mentioned as a problematic area by many new Member States. The new Member States report that a substantial number of transboundary consultations take place, however, they also report that there are difficulties and obstacles in carrying out these consultations. The barriers relate to the differences between EIA procedures in Member States:

- Differences in when it is required that EIA is carried out;
- Different time frames employed by either side in different EIA stages;
- Language barriers, including the bearing of costs for translation.

Interestingly, none of the old Member States have raised significant issues with regard to transboundary consultations. A few remarks and recommendations have been made by old Member States indicating that experience with transboundary consultations eventually seems to overcome problems previously experienced.

Quality control

Several new Member States have reported that quality control of EIA reports may be a cause for concern. The new Member States generally report that quality assurance is an obligation of the competent authority. Only one Member State reports that they have drawn up formal guidelines for the purpose of ensuring a sufficient and available fundament for the review of quality of EIA reports. In some of the new Member States the accreditation of environmental expertise is employed as a means to ensure proper quality in assessments carried out.

It is also clear from the input from Member States that some of them face challenges in assuring that quality in data employed in EIA reports.

Monitoring

Member States have commented on the lack of provisions in the EIA Directive supporting monitoring the predicted impacts of proposed developments. It seems logic to introduce a requirement to monitor impacts along the requirement set forth in Article 10 of the SEA Directive. This should ideally also provide authorities in Member States a sound basis for knowledge of the development of real-world impacts. This basis for knowledge should ideally be available as a yardstick for making more in-depth and experience-based assessments in later EIA procedures, and thereby influence the decisions of scoping in EIA procedures in the future.

Relationship between the EIA Directive and other EC Directives and policies

Many Member States consider that they do not have sufficient experience to properly identify and assess any overlapping issues or the coordination of both processes. Where Member States do, they mainly use joint procedures or informal coordination in order to address practical issues of duplication and overlap. Recommendations made by Member States relate mainly to the consolidation of the EU legislation and the development of guidance documents, though reference is also made to further guidance and capacity building.

The key provision relating to the relationship of EIA with the SEA Directive is Article 11(1) and (2) of SEA, which stipulates that Member States may provide for coordination and joint procedures in situations where an obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other Community legislation. Three Member States expressly recommend consolidating the SEA and EIA Directive to clarify their relationship, ensure more consistency between both directives and harmonise key stages and elements of EIA and SEA. The Member States also ask for further guidance of the link between SEA and EIA in relation to certain project categories included in Annex II of the EIA Directive should also be specified (points 1(a), (b) and (g) and 10).

Regarding IPPC, very few Member States have established a single procedure as per Article 2(2) (a) for projects falling under both the EIA and IPPC Directive. Where there is no single procedure, Member States have often established a strong formal link as the EIA (including the results of public consultation) is part of the documentation submitted with the IPPC permit application, and must be taken into account when deciding whether to grant the permit. Some Member States ask to consider the harmonisation of the thresholds and criteria used to define projects subject to EIA and IPPC.

Last but not least, while the majority of the Member States recognises that climate change issues are assessed within the framework of EIA procedures; this is mainly limited to consideration of green-house gas emissions, compliance with air quality standards and sometimes energy efficiency. Impacts on climate change are rarely subject to specific requirements. The consideration of guidance and/or assessment tools on the integration of climate changes issues, focusing inter alia on projects for which these issues are particularly relevant is recommended by some Member States.

9.1.3 Desk research study

The findings of the desk research are primarily that EIA in the EU 27 seem to have come of age. Where literature and court practices in early years seem to have concentrated on childhood diseases, such as, when a project proposal was to be made subject to an environmental assessment if the application was handed in the day before the EIA Directive entered into force, literature in particular seem to be more deeply investigating specific issues and angles of EIA in the EU.

Especially, the issue of public participation seems to be a much debated subject in the international literature and widely debated are the benefits of participation and best practices for its execution. This trend in literature may be due to the fact that planners and environmental scientists seem to have found a ground in which common debate may be fruitful, and, furthermore, due to the fact that beyond mere adherence to "EIA technicalities" there is a challenge of making democracy work in regular and daily procedures.

The argumentative turn in environmental planning makes the EIA procedures the perfect ground for open dialogue and common concern - and through this legitimacy in public decision-making may be linked to the explicit assessment of pros and cons of a proposed development.

Literature is also focused on how EIA procedures may be geared towards the afterlife of project, when emphasizing monitoring and follow up of predictions. Monitoring and follow up not only seen as individual technical disciplines but also as necessary elements in bringing about more consensus and certainty in communities about what to expect from a development subjected to an EIA procedure.

Finally, systematic follow up of predictions and project monitoring may be the element that brings more robust and qualitatively improved decisions.

The practice of the ECJ in the period between 2003 and 2008 provides further understanding of the EIA Directive in new directions. One of the later decisions of the Court that shed light on one of the difficult aspects of the European Environmental Assessment system in general are the decisions in the Wells-case and the Abraham-case. How is the term development consent to be dealt with in the late-modern world, where boundaries between public and private is becoming more and more unclear, and where the original concept of development consent seem to be founded on an understanding stemming from the 1970'es. The deliberations of the Advocate General in the Abraham case seem to be the outset of a new understanding of what may be taken as development consent in the meaning of the EIA Directive.

9.2 Recommendations

In the following sections, the recommendations of the study are presented. It should be emphasized that the recommendations are those of the Consultant and do not necessarily coincide with those of the EU Commission and the Member States. However, recommendations are based on a close reading of the Member States' answers to the Commission's questionnaire on the application and effectiveness of the EIA Directive.

There are a number of issues, where the Consultant has found that the implementation of the EIA Directive gives rise to problems. Furthermore, there are examples of good practices which are considered relevant to bring up for discussion at EU level.

It is important to note that the problems discussed and recommendations given in this chapter are related to the EIA Directive as such and not to problems in the national application of the EIA Directive.

There are a number of "problematic areas" in regard to the application of the EIA Directive, namely:

- Screening - inter alia the use of thresholds
- Transboundary consultations - different procedure applied in the Member States
- Quality control
- Monitoring

9.2.1 Screening

Screening is still considered a problematic area in the EIA procedure. The problems are primarily focused on establishing an easily applicable mechanism for screening out very small developments. There are two directions for a recommendation for further considerations. These are:

1. It seems relevant to investigate whether there is room for the introduction and application of a lower cut-off threshold for certain project types below which the requirements of the EIA Directive are not relevant in individual cases.
2. A further investigation of applying thresholds in particular to Annex II activities should be given priority under some kind of qualification when viewed in the light of the provisions of the SEA Directive. Such qualifications may be:
 - To allow for Annex II activities to be given consent without a prior project level assessment in development areas that have been subject to a prior SEA, and where:
 - The Annex II activity in question does not extend beyond the framework for environmental impacts assessed and accepted in the plan and in the prior undertaken SEA of that plan, and
 - Where no supplementary environmental impacts are envisaged from allowing this activity or
 - To allow for Annex II activities to be given consent on the basis of a simplified prior assessment procedure assessing possible residual impacts.

The latter could be restricted to only be allowed if it is the cumulative effects of allowing the development to take place that is needed.

Furthermore, it should be investigated whether a more automatised screening procedure could be employed for certain types of installations. This could be

relevant for activities for which significant environmental impacts are already known or are related primarily to one of the categories size, nature, and location.

Such activities could be made subject to an electronic application procedure in which the developer is urged to alter his choice of location, and/or size of installation, and or choice of technology making it possible for the developer to choose the most environmentally friendly option and thereby avoid an EIA procedure. A path dependent electronic model is already developed for this purpose in some Member States that allows developers to make prudent choices on the basis of the guidance that is an inherent part of the electronic application scheme. In Denmark, an electronic model has been developed for intensive animal farming projects in which the developer simply, by inserting required data in a calculation sheet, may get a clear picture of whether the proposed project will result in an EIA procedure or not. The model even encourages developers to alter their entries for the purpose of trying out what particular elements in their projects that may be altered with the effect that an EIA procedure is no longer relevant.

9.2.2 Transboundary procedures

As for transboundary consultations it seems obvious that the problems related to these procedures are stemming from the fact that the EIA Directive leaves too much discretion to Member States in deciding when and how other Member States are involved in such procedures.

Based on the fact that the Directive in general is intended to harmonise the environmental approval procedures in the Member States it only seems logic to consider to redraft the text in Article 7 that to a larger extent pre-empts Member State discretion and sets forth minimum requirements for when and how such consultations must take place. Furthermore, it may be considered to alter the text of the EIA Directive and set minimum time frames for such consultation as well as setting the responsibility of providing information in the relevant language of the public to be consulted.

Besides the recommendation to strengthen the provision on transboundary consultation it could be considered, as a second option, to develop more practical guidance on the issues related to transboundary procedures. This guidance could be developed on the basis of limited 'trial runs' of model procedures in which the problems so far encountered are identified, discussed, and solved by the parties involved in such trial runs.

9.2.3 Quality control

The lack of legal requirement to undertake quality control of EIA reports makes the quality of reports uneven and may lead to decisions to grant development consent on the basis of inadequate information available to decision makers. It seems obvious that some kind of quality control is needed in order to provide for a consistent and qualitative body of information.

Many Member States point to the fact that lack of sufficient quality in data employed in EIA reports is a problem. In most cases the quality of EIA reports rests on the assumption that the legal requirements to decision-making in granting development consent is indirectly the assurance that the EIA report is of a sufficient quality. Given that both the EU and international readers within EIA/SEA have developed packages for the review of quality in EIAs it seems only logical to consider introducing a requirement to undertake continuous quality control as part of drawing up the EIA report.

There may be several ways of ensuring proper control of quality of EIA reports, where one could be to require the accreditation of consultants that undertake this work or to require a formal review of the quality of the individual report being published simultaneously with the publication of the report itself. This could be combined with the requirement of having an independent reviewer carrying out the review.

9.2.4 Monitoring

Monitoring of impacts predicted in EIA reports seem to be relevant not only to ensure that the impacts from projects that are given development consent are continuously monitored as part of the permit but also relevant to a further qualification and experience in which methods are sufficiently robust to predict actual impacts from projects.

Given that the basic idea of carrying out EIA procedures is to prevent environmental impacts from arising in the first instance, it would only seem logical that some kind of verification of the predictions of these impacts were robust and true.

Monitoring requirements may be set forth in several ways, where one simple way could be to introduce a requirement to monitor the predicted impacts in the same manner as required in Article 10 of the SEA Directive. Another and more advanced way of setting forth this requirement would be to co-ordinate the requirement with other directives such as the IPPC Directive. However, this would then require that monitoring obligations were separately required for those projects that are not covered by the requirements of the IPPC Directive.

Therefore, it is recommended that further consideration should be given to whether such requirements should be made part of the EIA Directive or whether it should be set forth as a more detailed co-ordination requirement with e.g. the IPPC Directive. Given that the IPPC Directive does not cover all the project activities of the EIA Directive it is likely that a co-ordination mechanism is not sufficiently covering the needs for a comprehensive monitoring requirement.

9.2.5 Other possible amendments to the Directive

It is recommended that the European Commission investigates possible amendment of the EIA Directive in regard to the following matters:

- Article 6 of the EIA Directive - minimum time-frames for public consultations

This is at the end of the day a national issue. However, it may be relevant to consider whether, in addition to the general phrasing in Article 6(4) of the Directive on "reasonable time-frames", to set forth provisions related to a minimum time-frame.

Regulatory simplification

In line with and complying with the ongoing 'Better Regulation Initiative' under the European Commission - and set forth by the Swedish Expert during the meeting of national EIA and SEA experts in Paris, France, 16 - 17 October, 2008, it is recommended that the Commission consider furthering a move towards consolidating the EIA and SEA Directives for the purpose of clarifying their interrelationship, to ensure more consistency between both pieces of legislation and to harmonise the key stages and elements of EIA and SEA¹¹⁸. Key stages and elements would include the examination of reasonable alternatives as mandatory; establishing of monitoring measures as part of the environmental information; and efficient integration of quality management elements and reviews of the environmental information. The consolidation of the Directives should also take into consideration the specificities of each process, as these are related but complementary processes that should not be directly linked. Therefore, the harmonisation of both procedures should not lead to a full harmonisation of their requirements. In particular, the scale and level of details should be adapted to the "object" of the assessment.

It should be mentioned that the majority of Member States do not consider a simple consolidation of the two Directives necessary or wanted.

Furthermore, within this line of thinking consider whether there, at all, is a need to have a two-directives-based environmental assessment system within the EU. By merging the two directives into one some of the co-ordination issues may be void, however, one should not be blind to the fact that other co-ordination issues may still prevail and new will probably arise from such a consolidation. This should, however, not be an obstacle to proceed investigating whether the benefits of merging the two directives into one will outweigh the drawbacks. However, on the other hand, Member States' experience in applying the SEA Directive is limited and it should be recognised that the consideration of merging the two directives at this point may be premature.

The latest practice from the European Court of Justice in relation to the EIA Directive seem to suggest that emerging black spots between the legal boundaries of the EIA Directive and the SEA Directive calls for an investigation of the boundaries between the two directives.

In the light of the close relationship between the SEA and the EIA Directives, it should be considered whether there is a need to adhere the application of the SEA Directive so closely to the development consent of projects listed in the

¹¹⁸ This recommendation was set forth by the Swedish Expert during the Paris Meeting. It is, furthermore, in line with/complies with the ongoing Better Regulation Initiative under the European Commission.

annexes in the EIA Directive. And if this is still considered to be the best way to define the application of the SEA Directive why not seek to harmonise the common application of the two directives in a more detailed manner, as e.g. proposed under the screening section, and thereby harvest a considerable benefit from drawing this relationship up in a more tight manner.

Scoping

Member States that provide for public consultation in the scoping stage, stress the benefit of such a requirement in the considerable improvement of the quality of the documentation produced by the developer. Interesting to note is that these Member States mean that, by allowing public consultation already at the scoping stage, they also fulfill the requirement of the Directive for "early and effective public consultation". It may be considered to legislate for this requirement in the EIA Directive instead of just relying on Member States setting effect to this.

9.2.6 Other means of ensuring effectiveness in application

Further guidance

There is evidence that there is a need for further guidance in some Member States. However, Member States disagree as to the extent to which and in what areas this is needed. It is therefore recommended that Member States in cooperation with the Commission discuss possibilities that allow for different needs in Member States to be fulfilled.

Further guidance could materialise in development of new guidance documents or update / extension of the existing EIA Guidance. Member States should discuss among themselves on which issues further guidance is needed and on what level these should be developed - whether at EU and/or at national level.

Further need for EIA guidance has been suggested by Member States on the following issues:

- Guidance on the assessment of the impacts on human health.
- Guidance on how address the issue of "salami-slicing"
- Guidance on how to address the issue of cumulative effects of projects
- Guidance and/or assessment tools on the integration of climate change issues, focusing inter alia on projects for which these issue are particularly relevant
- Guidance on the link between SEA and EIA in relation to certain project categories included in Annex II of the EIA Directive (points 1(a), (b) and (g) and 10)). The introduction of a more precise definition of the term "setting framework for future development consent of projects listed in Annex I and II to Directive 85/337/EEC" should also be considered.

Dissemination of best practices

Member States emphasize the need for continuous updating of and for addressing best practice between Member State representatives. In specific, new Member States addressed the usefulness of further exchange of information on experiences and best practice among the Member States.

It is further recommended to establish forums for knowledge sharing between Member States on national application of the EIA Directive requirements. This could be by way of seminars, workshops, etc.

Appendix I List of literature

ECJ: C-313/93, Commission v. Luxembourg [1994] ECR I-1279 (non-implementation)

ECJ: C-435/97 Bolzano (WWF and others)

ECJ: C-72/95 Kraaijeveld C-329/96 Commission v Ireland

ECJ: C-87/02 Commission v Italy

European Commission: Directive 96/61/EC concerning integrated pollution prevention and control OJ L 257, 10.10.1996.

European Commission: Council Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001.

European Commission: Council Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation

European Commission: Council Directives 85/337/EEC: Access to justice

European Commission: Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora.

European Commission: Circular 02/99: Environmental Impact Assessment

European Commission: Council Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants

European Commission: Council Directive 82/501/EEC on the major-accident hazards of certain industrial activities

European Commission: Regulation No 761/2001: Allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), OJ L 114, 24.4.2001,

European Commission: Council Directive 2003/105/EC (2003) amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances

European Commission: Report from the Commission to the European Parliament and the Council: On the Application and Effectiveness of the EIA Directive - How successful are the Member States in the implementation of the EIA Directive, European Commission, 2003. (The 2003 Five Year Report).

European Commission: Communication from the Commission SEC(2006)621

GHK, Technopolis for DG ENTR: Evaluation on EU legislation - Directive 85/337/EC (Environmental Impact Assessment, EIA) and Associated Amendments, UK, 2007.

Imperial College London Consultants: The Relationship between the EIA and the SEA Directives. Final report to the European Commission, August 2005

<http://ec.europa.eu/environment/eia/eia-support.htm>.

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Glasson, J., R. Therivel and A. Chadwick: Impact Assessment Unit (Oxford Brookes University) Package. Introduction to Environmental Impact Assessment. Principles and procedures, process, practice and prospects. 3rd Edition. UCL Press, London, (2005).

Holm Nielsen, et al. in Journal of Environmental Policy, Assessment, and Management, vol. 7 no. 1 March 2005.

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IMPEL Network: Interrelationship between IPPC, EIA, SEVESO Directives and EMAS Regulation, Final report, IMPEL, 1998.

Institute of Environmental Management and Assessment Review Criteria: <http://www.iema.net/download.php/reviewcrit.pdf>.

International Environmental Law Reports (2005).

"Inventory of EU Member States' measures on access to justice in environmental matters", 2007, http://ec.europa.eu/environment/aarhus/study_access.htm.

Journal of Environmental Law, Oxford University Press, (2005 -).

Kjellerup, Ulf: in EIA Review, vol. 19.

Lee, N., R. Colley, J. Bonde and J. Simpson: Reviewing the quality of Environmental Statements and Environmental Appraisals. Occasional Paper 55, EIA Centre, University of Manchester, 1999.

Palermo in Journal of Environmental Policy, Assessment, and Management, Vol. 1, no. 2.

Petäjäjärvi, Reima, in IAPA vol. 23, no. 3, Sept. 2005.

Robinson and Bond in Journal of Environmental Policy, Assessment, and Management.

Sands, P.: Principles of International Environmental Law, Second edition, Cambridge, 2003.

Scottish Executive document 'Planning Advice Note (PAN) 58'; the checklist is contained within Annex 5. This annex is available from <http://www.scotland.gov.uk>

Surrey County Council's website, a review checklist is available from: <http://www.surreycc.gov.uk>

T.A.R. PUGLIA, Bari, Sez. I - 10 Aprile 2008, n. 894. Further information on the case was found on the web site of an Italian NGO, Italia Nostra: http://www.italianostra.org/come_lavoriamo/difesa_patrimonio.html

The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. <http://www.unece.org/env/eia/eia.htm>

Appendix II List of stakeholders interviewed by local consultants by country

Austria

Local consultant:

Dr Ralf Aschemann, Austrian Inst. for the Development of Env. Assessment
(An !dea)

Stakeholders:

Mr. Christian **Baumgartner**, Federal Ministry of Agriculture, Forestry, Environment and Water Management, EIA/SEA section
Mrs. Eva **Margelik**, Federal Environmental Agency, EIA/SEA department
Mrs. Cornelia **Mittendorfer**, Federal Chamber of Labour, environment department
Mrs. Liliane **Pistotnig**, Office of the provincial government of Styria, spatial planning department
Mrs. Ute **Pöllinger**, Environmental Ombudsman of Styria

Belgium

Local consultant:

Ms Claire Dupont, Senior Policy and Legal Advisor, Milieu Ltd.

Stakeholders:

Walloon Region

Monsieur Alain Bozet, DGRNE
Monsieur Benoît Gervasoni, Urbanism and Land use administration

Federal State

Madame Sabine Wallens, for the Federal State;

Bulgaria

Local consultant:

Vesselina Petrova,, Environmental attorney

Stakeholders:

Ms Vanya Grigorova – Director of Preventive Activities Directorate, Ministry of Environment and Water
Ms Jacqueline Metodieva – Head of EIA – SEA Department, Preventive Activities Directorate, Ministry of Environment and Water

Cyprus

Local consultant

Ms Melina Pyrgou, Head of the Litigation department. Developed the European Law Department with special interest in the field of Environmental Law

Stakeholders:

Ms Christina Pantazi – Representative of the Environment Service, Ministry of Agriculture, Natural Resources and Environment
Mr Christos Theodoulou – Representative of the Federation of Environmental and Ecological Associations.

Czech Republic

Local consultant:

Radek Motzke, Lawyer, Ekologicky Právni Servis
Pavel Černý, Lawyer, Ekologicky Právni Servis,

Stakeholders:

Ing. arch. Jiří Löw, Löw spol. s r.o.

Ing. Jana Hrnčířová, Integra Consulting Services s.r.o.

Denmark

Local consultant:

Ms Caroline Hartoft-Nielsen, Assistant Project Manager, COWI A/S

Stakeholders:

Mr Gert Johansen, Ministry of the Environment, Danish Agency for Spatial and Environmental Planning.

Finland

Local consultant:

Ms Tatsiana Turgot, Laywer, COWI A/S

Stakeholders:

Seija Rantakallio, Neuvotteleva virkamies, Counsellor, Environmental Impact Assessment
Jorma Jantunen, Finnish Environment Institute

France

Local consultant

Ms Claire Dupont, Senior Policy and Legal Advisor, Milieu Ltd.

Germany

Local consultant:

Dr Joachim Hartlik, Doctoral degree (Dr.-Ing.)

Stakeholders:

Dr. Frank Scholles, Leibniz Universität Hannover, Institut für Umweltplanung.
Chairman of the EIA Society in Germany

Greece

Local consultant

Mr Vassiliki Romeliotou, Environmental Law Expert, Society for the Protection of Prespa, Associate Consultant to EXERGIA

Stakeholders:

Angeliki Psaila, EIA/SEA Expert, Special Environmental Service, Ministry of Environment, Physical Planning and Public Works
Thalia Statha, EIA/SEA Expert, Special Environmental Service, Ministry of Environment, Physical Planning and Public Works

Hungary

Local consultant:

Dr Csaba Kiss, Environmental Attorney

Stakeholders:

Prof. Gyula Bándi head of Department of Environmental Law at Pázmány Péter Catholic University-PKKE and president of EMLA

Dr. Péter Vágó, public interest environmental lawyer at Miskolc Sustainable Development Institute

Ireland

Local consultant

Mr Norman Sheridan, Barrister, Sheridan Chambers

Stakeholders:

Professor Yvonne Scannell, Trinity College, Dublin

Dr Michael Ewing, Social Partnership Coordinator for the Irish Environmental Network

Italy

Local consultant

Ms Michela Latini, Legal Expert and Business Development Manager

Latvia

Local consultant:

Mr Aigars Gozitis, Associate, Attorneys at Law “Lejiņš, Torgāns & Partneri

Stakeholders:

Deputy Director of the Environment State Bureau - Arnolds Lukšēvics;

Senior Official of the Ministry of the Environment, Department of Environmental Protection, Environmental Quality Unit - Sandija Sniķere

Lithuania

Local consultant

Mr Domas Balandis, Attorney-at-law, Law Office Domas Balandis

Stakeholders:

Vitalijus Auglys, Head of Environmental Impact Assessment Division of the Ministry of Environment

Mindaugas Raulinaitis, JSC ‘Strateginiai Transporto Sprendimai’, Zalgirio 90-402, Vilnius (leading SEA specialist).

Malta

Local consultant

Ms Emma Psaila, Legal expert, University of Cambridge, Research Services Division

The Netherlands**Local consultant**

Ms Sophie Vancauwenbergh, Legal Adviser, Milieu Ltd.

Stakeholders:

Ms. Pascale van Duijse (Dutch Ministry of Housing, Spatial Planning and the Environment, VROM)

Mr. Steven Pieters (Netherlands Commission for Environmental Assessment, NCEA)

Poland**Local consultant:**

Ms Magdalena Bar, Partner, Legal Expert, Jendroska Jerzmanski Bar i Wspolnicy

Mr Jerzy Jendroska, Doctor of Laws (LLD - PhD), Jendroska Jerzmanski Bar i Wspolnicy

Stakeholders:

Katarzyna Kot, Environment Ministry, SEA/EIA specialist

Sergiusz Urban, EIA/SEA specialist in the Regional Environmental Fund in Poznan

Pawel Karpinski, official at the Marshall Office in Wroclaw

Magdalena Bar, lawyer advising on EIA

Monika Bednawska, Environmental Consultancy Ekokonsult, Gdańsk

Portugal**Local consultant**

Ms Teresa Amador, Director, Ecosphere – consultants in environment and development

Mr José Bettencourt, Project director, Ecosphere – Consultants in environment and development

Stakeholders:

Interviews were conducted to some senior officers from the Cabinet for EIA (*GALA – Gabinete de Avaliação de Impacte Ambiental*), a unit from the Environmental Licensing and Evaluation Department (*Departamento de Avaliação e Licenciamento Ambiental – DALA*) the department of the Portuguese Environmental Agency (*Agência Portuguesa do Ambiente*) responsible for the EIA procedures

Romania**Local consultant**

Ms Luminita Elena Dima, Scientific Secretary of the Council of the Law Faculty of the Bucharest University

Slovakia**Local consultant:**

Assoc. Prof. Vladimir Ira, Ph.D., Institute of Geography, Slovak Academy of Sciences

Slovenia

Local consultant

Mr Borut Santej, Director, IPO

Stakeholders:

Jernej Per (head of EIA Unit at ARSO)

Vesna Kolar Planinšič (head of SEA Unit at the MEPP)

Mojca Hrabar, OIKOS d.o.o. Domžale

Urša Šolc, OIKOS d.o.o. Domžale-

Tomaž Jančar, Društvo za opazovanje in proučevanje ptic Slovenije (The Slovenian association for watching and studying birds - DOPPS)

Spain

Local consultant

Ms Lola Manteiga, TERRA Ecogest

Stakeholders:

Antonio Laguna. INYPSA. Expert.

Enrique Segovia. WWF-ADENA.

David Howell. SEO-Birdlife.

Juan Carlos Atienza. SEO-Birdlife.

José Ramón Molina. TECNOMA. Expert.

Raúl Bueno. INYPSA. Expert.

Ignacio Gamarra. Ministry of the environment. Administration.

Sweden

Local consultant:

Tatsiana Turgot, Laywer, COWI A/S

Stakeholders:

Ms Malin Larsson, Ministry of Environment

Ms Åsa Marklund Andersson, Ministry of Environment

Mr Sten Jerdenius, Ministry of Environment, Division for sustainable development

Mr Anders Hedlund, the Swedish EIA/SEA centre

The UK

Local consultant

Mr Norman Sheridan, Barrister, Sheridan Chambers

Stakeholders:

Environmental Assessment Team, Department of Communities and Local Government

Zone 1/G10, Eland House, Bressenden Place, London SW1E 5DU.

Appendix III Literature screened for the desk search study

Literature identified and screened for the desk search study presented in chapter 3 is listed in the table below.

Author/Title	Reference	Key issues of article	Year	Country	Type
<i>What is the alternative? Impact assessment tools and sustainable development</i> , John F. Benson	Impact Assessment and Project Appraisal, Vol. 21 no. 4, Dec 2003, pp. 261-280, Beech Tree Publishing	<p>Evaluation of the strengths and weaknesses in the EIA in UK in terms of sustainable spatial planning</p> <ul style="list-style-type: none"> examines the idea that EIA could become important tool for sustainable development Note! Responses to Benson's ideas by other authors in the end of the article arguing Benson's ideas. 	2003	United Kingdom	<p>Current application of EIA.</p> <p>Assessment of the current EIA methods.</p>
<i>Mission impossible: does environmental impact assessment in Denmark secure a holistic approach to the environment?</i> , Lone Kørnøv, Per Christensen and Eskild Holm Nielsen	Impact Assessment and Project Appraisal, Vol. 23 no. 4, Dec. 2005, pp. 303-314, Beech Tree Publishing	<p>States that the environmental concept in Danish law is being narrowed down from the broad initial stages in the process of EIA:</p> <ul style="list-style-type: none"> Does EIA live up to the ambitions of analysing and assessing the environment in a more holistic way - Yes in general, is the conclusion in the article, but not for infrastructure projects or industry projects. The socio-economic impacts are not assessed in these types of cases! How broad the concept of environment is? Conclusion of the article: Public participation secures the wide interpretation of the notion of environment 	2005	Denmark	<p>Definition of the scope of 'Environment' in connection to EIA.</p> <p>Current application of EIA</p>
<i>Evolution of environmental impact assessment in Poland: Problems and pros-</i>	Impact Assessment and Project Appraisal, Vol. 22 no. 2, June 2004, pp. 109-	Incentives for regulatory evolution was to achieve harmonisation with the EU legislation and international conven-	2004	Poland	Evolution of the notion of EIA

<i>pects, Witold Woloszyn</i>	119, Beech Tree Publishing	<p>tions:</p> <ul style="list-style-type: none"> • Enormous development since the 1990's • According to the author the Polish legislation largely conforms to the EU and international EIA legislation. 			Evolution of the legal framework for the EIA process and the influence of this on the EIA practice.
<i>Learning from experience: emerging trends in environmental impact assessment follow-up, Angus Morrison-Saunders and Jos Arts</i>	Impact Assessment and Project Appraisal, Vol. 23 no. 3, Sep. 2005, pp. 170-174, Beech Tree Publishing	<p>Editorial: The practice of EIA follow-up has predominantly focused on the bio-physical impacts of individual developments at the project level.</p> <ul style="list-style-type: none"> • More focus in the socio-economic issues in both pre-decision and follow-up stages • The range of socio-economic considerations should include broader concerns beyond the obvious and direct project-level impacts such as pollution and nuisance (e.g. cumulative effects are left out). • Socio-economic effects monitoring should be less superficial and more rigorous than currently • Socio-economic follow-up may enhance public tolerance and support of projects. 	2005	International	Emerging trends in the world
<i>Environmental impact assessment follow-up and its benefits for industry, Ross Marshall</i>	Impact Assessment and Project Appraisal, Vol. 23 no. 3, Sep. 2005, pp. 191-196, Beech Tree Publishing	<p>The motivation for regulatory follow-up is bound up on the desire to control compliance, reduce uncertainty, verify predictions and ultimately improve decision management in future EIA processes</p> <ul style="list-style-type: none"> • Follow-up frameworks applied through self-regulated mechanisms can 	2005	United Kingdom	Effectiveness of EIA follow-up

		significantly improve stakeholder acceptance of development proposals and reduce opposition			
<i>Follow-up of socio-economic aspects in a road project in Finland</i> , Reima Petäjäjärvi	Impact Assessment and Project Appraisal, Vol. 23 no. 3, Sep. 2005, pp. 234-240, Beech Tree Publishing	Follow-up is not perceived as an essential part of EIA. Neither is it recognised as a tool for controlling the quality of EIA or improving future assessments. EIA is not even required at project-level in Finnish legislation: • It is concluded by the author that follow-up is an important part of the EIA process, but has not yet reached the status warranted by EIA practice in Finland	2005	Finland	Effectiveness of EIA follow-up
<i>Investigation of different stakeholder views of local resident involvement during environmental impact assessment in the UK</i> , Michael Robinson and Alan Bond	Journal of Environmental Assessment Policy and Management Vol. 5 no. 1, March 2003, pp. 45-82, Imperial College Press	The article surveys the different views and aspirations the public in suburban and rural areas respectively in UK have for the EIA process especially in the public participation process.	2003	United Kingdom	Effectiveness of EIA procedure in respect of public participation procedures
<i>Barriers to deliberative participation in EIA: Learning from waste policies, plans and projects</i> , Judith Petts	Journal of Environmental Assessment Policy and Management Vol. 5 no. 3, Sep. 2003, pp. 269-293, Imperial College Press	Institutional, technical and cultural barriers exist in the decision making in Britain to effective integration of analysis and deliberation in the EIA process. These barriers limit the effective participation in the process and hence limit the public impact on assessments and achievement of consensus on waste strategies.	2003	United Kingdom	Effective participation in the EIA
<i>EIA screening for changes and extensions to existing projects: applying an EU perspective</i> , Joe Weston	Journal of Environmental Assessment Policy and Management Vol. 6 no. 2, June. 2004, pp. 177-188, Imperial College Press	Applying legal and policy principles established in the EU the scope of what constitutes relevant changes and extensions is very wide. Therefore it would be reasonable to expect that the number of EIA cases would increase after the 97/11/EC change to the EIA	2004	United Kingdom/EU	Application of current EIA Legislation

		directive 85/337/EC, but the fact is quite contrary, which suggest that local planning authorities are not aware of the full implications of the changes of the EIA directive.			
<i>Dealing with continuous reform: towards adaptive EA policy systems in countries in transition</i> , Aleg Cherp and Alexios Antypas	Journal of Environmental Assessment Policy and Management Vol. 5 no. 4, Dec. 2003, pp. 455-476, Imperial College Press	The evolution of the legislation on EIA in the Eastern Europe countries. Considerable research efforts have focused on the degree to which EA conforms best to international practice. The article proposed the expansion of such research that would take more accurately account of the complexity of the EA systems.	2003	Eastern Europe	Application of current EIA Legislation
<i>EIA screening in Denmark: a new regulatory instrument?</i> Eskild Holm Nielsen, Per Christensen og Lone Kørnøv.	Journal of Environmental Assessment Policy and Management Vol. 7 no. 1, March 2005, pp. 35-49, Imperial College Press	Holistic approach in the EIA process. Analyses the number of modification to projects made due to the screening process of the EIA as well as how radical or significant the changes were. Conclusions are that there is still a far way to go in making the approach holistic in the EIA procedure.	2005	Denmark	Application of current EIA Legislation
<i>Report from the Commission to the European Parliament and the Council on the Application and Effectiveness of the EIA Directive - How successful are the Member States in implementing the EIA Directive</i>		<p>The main findings in the 2003 Five year report, which concludes the status on the implementation of the EIA Directives in the Member states:</p> <ul style="list-style-type: none"> • The review of the implementation and application of the 97/11/EC directive has shown that the new measures introduced by the Directive have yet to be implemented in full in all Member states. • It appears that the main problem lies with the application and implementation of the directive, and not with the transposition of the legal require- 	2003	All EU Member States	Assessment of the implementation of the EIA Directive in the Member States

		ments.			
<i>The relationship between the EIA and SEA Directive - Final report to the Commission, Imperial College London Consultants</i>		<p>Identification and exploration of the potential areas of overlap between the EIA and SEA Directives in the Member states</p> <ul style="list-style-type: none"> Limited areas of overlap between EIA and SEA - where overlaps do exist, these overlaps can be problematic. 	2005	All EU Member States	EIA/SEA relationship
<i>Evaluation on EU legislation - Directive 85/337/EC (Environmental Impact Assessment, EIA) And Associated Amendments, GHK, Technopolis</i>		<p>The scope of the reports is to identify and analyse the potential burdens on enterprises and taxpayers created by the EIA and SEA directives. Key findings</p> <ul style="list-style-type: none"> The number of EIAs are increasing in all Member states The cost of an EIA is approx. 1 % for small projects and 0,1% for larger projects, indicating a disadvantage for small projects. <p>Transposition of the EIA Directive: the Member states have a tendency to 'gold-plating', which means that the MS add more projects under the project categories in Annex I of the Directive, as well as set the threshold for the projects subject to a mandatory EIA lower in comparison to those specified on EU-level</p>	2008	All EU Member States	Costs of EIA
<i>Clarification of the application of Article 2(3) of the EIA Directive, European Commission</i>		The article defines the wording 'exceptional cases' so that the MS authorities can apply article 2(3) in a proper manner	2006	All EU Member States	Defining the scope of application of Article 2(3) of the EIA Directive.
<i>The Outcome of EIA, by Per</i>		The effects of the EIA rules have been	2003	Denmark	Effects of the EIA

<i>Christensen, Lone Kørnøv and Eskild Holm Nielsen</i>		evaluated and analysed in order to examine the direct and indirect effects of EIA. Also the article concerns the key conclusions drawn from the evaluation of Danish EIA rules to a broader European audience.			rules in Denmark.
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Appendix IV ECJ Jurisprudence

Case	Parties	Date of judgement	Outcome
C-117/02	Commission vs. Portugal	2004-04 -29	The Commission has not proved an infringement where an EIA was not carried out for a holiday park in a nature park.
C-87/02	Commission vs. Italy	2004-06-10	<p>Directive 97/11 was not applicable in the present case at the material time</p> <p>However, the fact that the Member State has a discretion is not in itself sufficient to exclude a given project from the assessment procedure under the directive. If that were not the case, the discretion accorded to the Member States by Article 4(2) of the directive could be used by them to take a particular project outside the assessment obligation when, by virtue of its nature, size or location, it could have significant environmental effects.</p> <p>Consequently, whatever the method adopted by a Member State to determine whether or not a specific project needs to be assessed, be it by legislative designation or following an individual examination of the project, the method adopted must not undermine the objective of the directive, which is that no project likely to have significant effects on the environment, within the meaning of the directive, should be exempt from assessment, unless the specific project excluded could, on the basis of a comprehensive screening, be regarded as not being likely to have such effects.</p> <p>In that regard, a decision by which the national competent authority takes the view that a project's characteristics do not require it to be subjected to an assessment of its effects on the environment must contain or be accompanied by all the information that makes it possible to check that it is based on adequate screening, carried out in accordance with the requirements of Directive 85/337.</p>
C- 227/01	Commission vs. Spain	2004-09-16	The relevant criterion for the implementation of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment is based on the significant effect that a particular project is 'likely' to have on the environment. Under those conditions, it is not for the Commission to establish the concrete negative effects that a project in fact has on the environment
C-280/02	Commission vs. France	2004-09-23	The relevant criterion for the implementation of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment is based on the significant effect that a particular project is 'likely' to have on the environment. Under those conditions, it is not for the Commission to establish the concrete negative effects that a project in fact has on the environment
C 121/03	Commission vs. Spain	2005-09-08	Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, provides that the Member States are to determine through a case by case examination or thresholds or criteria which they set whether the projects listed in Annex II to that directive should be made subject to an impact assessment. That provision has, in essence, the same scope as that of Article 4(2) of Directive 85/337, in its original version. It does not alter the general rule, set out in Article 2(1) of that directive that projects likely to have significant effects on the envi-

Case	Parties	Date of judgement	Outcome
			ronment, by virtue, inter alia, of their nature, size or location, are to be made subject to an assessment of their effects on the environment.
C-98/04	Commission vs. UK	2007-05-04	An action for failure to fulfil obligations which puts before the Court only one aspect of a legal mechanism composed of two inseparable parts and does not satisfy the requirements of coherence and precision must be dismissed as inadmissible.
C-508/03	Commission vs. UK	2007-05-04	<p>Where national law provides for a consent procedure comprising more than one stage, one involving a principal decision and the other involving an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which a project may have on the environment must, as a rule, be identified and assessed at the time of the procedure relating to the principal decision. If those effects are not, however, identifiable until the time of the procedure relating to the implementing decision, the assessment is to be carried out in the course of that procedure.</p> <p>National rules providing that an environmental impact assessment in respect of a project may be carried out only at the initial outline planning permission stage, and not at the later reserved matters stage, are therefore contrary to Articles 2(1) and 4(2) of Directive 85/337, as amended</p>
C- 216/05	Commission vs. Ireland	2006-11-09	<p>The levying of an administrative fee is not in itself incompatible with the purpose of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment. It is apparent from that recital, as it is from Article 6(2) of that directive that one of the directive's objectives is to afford the members of the public concerned the opportunity to express their opinion in the course of development consent procedures for projects likely to have significant effects on the environment. In that regard, Article 6(3) allows Member States to place certain conditions on participation by members of the public concerned by the project. Thus, under that provision, the Member States may determine the detailed arrangements for public information and consultation and, in particular, determine the public concerned and specify how that public may be informed and consulted.</p> <p>A fee cannot, however, be fixed at a level which would be such as to prevent the directive from being fully effective, in accordance with the objective pursued by it. This would be the case if, due to its amount, a fee were liable to constitute an obstacle to the exercise of the rights of participation conferred by Article 6 of Directive 85/337.</p>
C-486/04	Commission vs. Italy	2006-11-23	The concept of waste disposal for the purpose of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, is an independent concept which must be given a meaning which fully satisfies the objective pursued by that measure, which, as is clear from Article 2(1), is that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to an assessment with regard to their effects. Accordingly, that concept, which is not equivalent to that of waste disposal for the purpose of Directive 75/442 on waste, as amended by Directive 91/156 and by Decision 96/350, must be construed in the wider sense as covering all operations leading

Case	Parties	Date of judgement	Outcome
			<p>either to waste disposal, in the strict sense of the term, or to waste recovery.</p> <p>As a result, an installation for energy production through the incineration of combustible materials derived from waste and biomass which has a capacity exceeding 100 tonnes per day, comes into the category of disposal installations for the incineration or chemical treatment of non-hazardous waste in point 10 of Annex I to Directive 85/337. As such, before being authorised, it does not have to undergo the environmental impact assessment procedure, since the projects which fall within Annex I must undergo a systematic assessment under Articles 2(1) and 4(1) of that directive.</p>
C-199/04	Commission vs. UK	2007-02-01	<p>The concept of waste disposal for the purpose of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, is an independent concept which must be given a meaning which fully satisfies the objective pursued by that measure, which, as is clear from Article 2(1), is that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to an assessment with regard to their effects. Accordingly, that concept, which is not equivalent to that of waste disposal for the purpose of Directive 75/442 on waste, as amended by Directive 91/156 and by Decision 96/350, must be construed in the wider sense as covering all operations leading either to waste disposal, in the strict sense of the term, or to waste recovery.</p> <p>As a result, an installation for energy production through the incineration of combustible materials derived from waste and biomass which has a capacity exceeding 100 tonnes per day, comes into the category of disposal installations for the incineration or chemical treatment of non-hazardous waste in point 10 of Annex I to Directive 85/337. As such, before being authorised, it does not have to undergo the environmental impact assessment procedure, since the projects which fall within Annex I must undergo a systematic assessment under Articles 2(1) and 4(1) of that directive.</p>
C-255/05	Commission vs. Italy	2007-07-05	<p>A Member State which, pursuant to national legislation allowing projects for the recovery of hazardous waste and of non-hazardous waste with a capacity exceeding 100 tonnes per day which are covered by Annex I to Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, and are subject to a simplified procedure for the purposes of Article 11 of Directive 75/442, to avoid the environmental impact assessment procedure laid down by Articles 2(1) and 4(1) of Directive 85/337, fails, before granting building authorisation, to apply to a project for an installation for the incineration of waste falling within the category of installations for the incineration or chemical treatment of non-hazardous waste with a capacity exceeding 100 tonnes per day as referred to in point 10 of Annex I to Directive 85/337, the environmental impact assessment procedure laid down by Articles 5 to 10 of Directive 85/337, fails to fulfil its obligations under Articles 2(1) and 4(1) of Directive 85/337.</p>

Appendix V Questionnaires on the application and effectiveness of the EIA Directive

Questionnaire

Five Years Report to the European Parliament and the Council on the Application and Effectiveness of the EIA Directive

(Art. 2 of Directive 97/11/EC, Art. 11 of consolidated version)

This questionnaire is addressed to EIA experts in **old Member States (MSs)** with a view to producing a **report on the application and effectiveness of the EIA Directive (85/337/EEC amended by the Directives 97/11/EC and 2003/35/EC)**¹¹⁹ according to **Art. 11 of the Directive** (consolidated version).

The responses to this questionnaire do not require formal approval on behalf of the MSs provided the information submitted is reliable. Most of the sections of the questionnaire include factual questions (sections I – IV). They complement the questions included in the questionnaire developed for the 2003 Five Year Report on the application and effectiveness of the EIA Directive. MSs' responses to the questionnaire for the 2003 Report will be treated as still valid unless MSs inform otherwise.

The last section (section V) of the questionnaire ("Feel Free Questions") will seek your opinions to determine the future direction of the Directive and provide recommendations for good practices.

Please return the completed questionnaire by 15 November 2007 to:

Anastasios.Nychas@ec.europa.eu

I. QUESTIONS IN RELATION TO THE AMENDMENTS OF THE DIRECTIVE 2003/35/EC

1. What are your provisions for screening projects serving national defence purposes?
2. Please explain how it is applied in practice and whether there have been any defence projects subject to EIA or they are deemed to be automatically excluded from an EIA?
3. At what stage of the EIA procedure do you allow for public consultation?
4. How do you interpret an 'early and effective' public consultation in your legislation and practice?
5. How many days (minimum) do you allow for public consultation? Please explain if you have more than one consultation period.
6. Please explain how you have incorporated the provisions on public access to a review procedure before a court or another independent and impartial body - Art. 10(a)?
7. Do you have the information about the most common cases subject to a review procedure in your MS? If yes, please provide details.

¹¹⁹ <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1985/L/01985L0337-20030625-en.pdf>

8. How have you incorporated into your legislation the provision referring to the 'changes or extensions of projects' of Annex I projects, meeting Annex I thresholds (if any) - Annex I(22).
9. How do you make a screening decision available – Art. 4(4)?
10. In practice in your MS, what has been the largest beneficial change that Directive 2003/35/EC (the Amending EIA Directive) has brought to the EIA process? Why is that change beneficial?

II. SELECTED ELEMENTS OF THE EIA PROCESS

Screening

11. Are there any Annex I or II project types for which a simplified procedure is adopted? If yes, explain on whose initiative and on what grounds, it was decided.
12. Are there new types of projects that should be included in the Annexes I and II (e.g. installations for the manufacture of particle or fibre board, masts for mobile phones and radio or telecommunication stations, golf courses, installations working with GMOs or pathogenic microorganisms, manufacture of lime, shooting ranges, desalination plants, carbon capture installations, installations to liquefy gas, underhead cables or others)? Are there types of projects that should be dropped from Annexes I and II? If yes, please justify.
13. Please estimate an approximate figure of EIAs carried out in 2006 (or 2005 if no latest data) and specify according to Annex I and Annex II project categories. Please comment whether there is a tendency for more EIAs to be carried out or not over the period of the last five years.

	Annex I	Annex II
2006		

Transboundary consultations

14. How do you agree on the timeframes for the transboundary consultations if they differ among MSs?

“Salami-slicing”

15. Do you have any provisions (or plan to introduce) in your national legislation to prevent developers from splitting projects into smaller ones to avoid an EIA? Have they proven to be effective in practice?
16. If you have not introduced any provisions in your national legislation to avoid 'salami slicing', do you have any good EIA practices to eliminate this phenomenon?
17. Have there been any high profile cases related to salami slicing in your country? Please refer to what type of development they applied to.

Exemptions according to Article 2(3)

18. Have you ever used exemptions, following the Article 2(3)? Please provide the information for what types of projects and give a short justification.

19. Have you found the Commission's Guidance on the "Clarification of the application of Article 2(3) useful?

III. RELATIONSHIP WITH COMMUNITY POLICIES, OTHER DIRECTIVES AND COURT JUDGMENTS

EU Action Plan "Halting the loss of biodiversity by 2010 – and beyond"

20. How effective is EIA with respect to preventing biodiversity loss in your MS?

Climate change

21. To what extent are climate change issues addressed within EIA in your MS? Are there any specific project categories where climate change considerations are particularly reflected within EIA?

European Court of Justice (ECJ) Judgments

22. Have you reflected ECJ judgments on EIA in your legislation and guidance? If so, how?

IV. GUIDANCE

23. Please provide the information on the existence of national EIA guidance in the table below (add additional rows if necessary).

Title (in English)	Comments on its effectiveness

24. Please comment whether the EC guidance (e.g. screening guidance) on EIA have been used in your country and to what extent. Is there a need for new guidance or update of the existing ones?

V. FEEL FREE QUESTIONS

25. What is the single most significant problem remaining, if any, with EIA Directive? Please explain why it is a problem and what remedy you would suggest.
26. What would you recommend (specific Directive's provisions, MSs practices, etc) to improve / strengthen or address:

screening	
scoping	
public participation and consultation	

the process of transboundary consultations	
the quality and completeness of the information provided by the developer	
the consideration of human health protection	
the issue of 'salami slicing'	
the issue of cumulation of projects/environmental effects	
the issue of consideration of alternatives (including also environmentally friendly ones)	

Questionnaire

Five Years Report to the European Parliament and the Council on the Application and Effectiveness of the EIA Directive

(Art. 2 of Directive 97/11/EC, Art. 11 of consolidated version)

This questionnaire is addressed to EIA experts in **new Member States (MSs)** with a view to producing a **report on the application and effectiveness of the EIA Directive (85/337/EEC amended by the Directives 97/11/EC and 2003/35/EC)**¹²⁰ according to Art. 11 of the Directive (consolidated version).

The responses to this questionnaire do not require formal approval on behalf of the MSs provided the information submitted is reliable. Most of the sections of the questionnaire include factual questions (sections I – IV). The last section (section V) of the questionnaire ("Feel Free Questions") will seek your opinions to determine the future direction of the Directive and provide recommendations for good practices.

Please return the completed questionnaire by 15 November 2007 to:

Anastasios.Nychas@ec.europa.eu

I. QUESTIONS IN RELATION TO THE AMENDMENTS OF THE DIRECTIVE 2003/35/EC

1. What are your provisions for screening projects serving national defence purposes?
2. Please explain how it is applied in practice and whether there have been any defence projects subject to EIA or they are deemed to be automatically excluded from an EIA?
3. At what stage of the EIA procedure do you allow for public consultation?
4. How do you interpret an 'early and effective' public consultation in your legislation and practice?
5. How many days (minimum) do you allow for public consultation? Please explain if you have more than one consultation period.
6. Please explain how you have incorporated the provisions on public access to a review procedure before a court or another independent and impartial body - Art. 10(a)?
7. Do you have the information about the most common cases subject to a review procedure in your MS? If yes, please provide details.
8. How have you incorporated into your legislation the provision referring to the 'changes or extensions of projects' of Annex I projects, meeting Annex I thresholds (if any) - Annex I(22).
9. How do you make a screening decision available – Art. 4(4)?

¹²⁰ <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1985/L/01985L0337-20030625-en.pdf>

10. In practice in your MS, what has been the largest beneficial change that Directive 2003/35/EC (the Amending EIA Directive) has brought to the EIA process? Why is that change beneficial?

II. SELECTED ELEMENTS OF THE EIA PROCESS

Screening

11. Please describe the main screening mechanisms for Annex II projects (thresholds, case-by case examination, other)?
12. Which thresholds/criteria (please specify which purpose they serve, e.g. indicative or mandatory) have been laid down in your MS for the selected Annex II project categories.

Annex II: Project category	Exclusive threshold ¹²¹	Indicative threshold ¹²²
1. Agriculture, silviculture and aquaculture		
(d) Initial afforestation and deforestation for the purposes of conversion to another type of land use		
(e) Intensive livestock installations (projects not included in Annex I)		
3. Energy industry		
(h) Installations for hydroelectric energy production		
(i) Installations for the harnessing of wind power for energy production (wind farms)		
4. Production and processing of metals		
(c) Ferrous metal foundries		
5. Mineral industry		
(b) Installations for the manufacture of cement		
10. Infrastructure projects		
(b) Urban development projects including the construction of shopping centres and car parks		
(c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I)		
(d) Construction of airfields (projects not included in Annex I); harbours (projects not included in		

¹²¹ Exclusive thresholds: are those below which a development is deemed to not require an EIA without the need for case-by-case assessment (except where the project may impact on specific sensitive/protected areas as set out in the State legislation).

¹²² Indicative thresholds: are only for guidance.

Annex II: Project category	Exclusive threshold¹²¹	Indicative threshold¹²²
Annex I)		
e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I)		

13. Does your national legislation provide for public participation during screening? If so, please summarise your experience and indicate the reasons for including or non-including public participation during screening.
14. Has your MS set indicative thresholds for any Annex II projects??
15. Are there any Annex I or II project types for which a simplified procedure is adopted? If yes, explain on whose initiative and on what grounds, it was decided.
16. Are there new types of projects that should be included in the Annexes I and II (e.g. installations for the manufacture of particle or fibre board, masts for mobile phones and radio or telecommunication stations, golf courses, installations working with GMOs or pathogenic microorganisms, manufacture of lime, shooting ranges, desalination plants, carbon capture installations, installations to liquefy gas, underhead cables or others)? Are there types of projects that should be dropped from Annexes I and II? If yes, please justify.
17. Please estimate an approximate figure of EIAs carried out in 2006 (or 2005 if no latest data) and specify according to Annex I and Annex II project categories. Please comment whether there is a tendency for more EIAs to be carried out or not over the period of the last five years.

	Annex I	Annex II
2006		

Scoping

18. Is “scoping” according to Art. 5(2)¹²³ implemented in a mandatory way in your Member State?
19. Does “scoping” lead to an improvement of the quality of information provided by the developer, according to Art. 5(1), in your Member State?
20. Does your national legislation provide that the members of the public (which ones) are consulted before the competent authority gives its opinion on the information to be supplied by the developer (please indi-

¹²³ "Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6(1) before it gives its opinion ..."

cate the reasons for including or non-including public participation during scoping) or is it done on a voluntary basis? Has such involvement improved the quality of the information given?

Transboundary consultations

21. Have you been involved in any transboundary EIAs since 2004? If yes, please give/estimate the number.
22. Which difficulties were encountered in applying Art. 7 and how has your Member State overcome these?
23. Does your Member State have any arrangements under Art. 7(5) and on which basis (treaty, non-binding agreement, etc.)?
24. How do you agree on the timeframes for the transboundary consultations if they differ among MSs?

Information provided by the developer and completeness of information

25. How does your Member State ensure that the quality of the environmental information provided in accordance with Art. 5 and Annex IV is sufficient and the relevant information is submitted by the developer?
26. What methodology (ies) is (are) used for evaluating the interaction between the factors mentioned in Art. 3? Are the guidelines of the Commission used in your Member State or has your Member State established its own guidelines?
27. How is it dealt with if there is a considerable delay
 - between the environmental assessment and the development consent,
 - between the development consent and the construction or operational phase?
28. Does your national legislation require development consent to be refused if the EIA shows that serious environmental effects are to be expected and cannot be mitigated to a tolerable level?

Assessment of effects on human health

29. What is the existing practice in your Member State concerning the assessment of health impacts within EIA? In which types of projects is particular focus put on the assessments of health impacts? Which issues are addressed in these assessments (health, well-being, socio-economic impacts etc.) and to what extent? Have you produced guidance on this issue?

Change and extension of projects

30. How has your Member State implemented the provision of Annex II(13) (changes and extensions)? Please indicate whether case-by-case examination and/or criteria/thresholds are used and specify them.

“Salami-slicing”

31. Do you have any provisions (or plan to introduce) in your national legislation to prevent developers from splitting projects into smaller ones to avoid an EIA? Have they proven to be effective in practice?
32. If you have not introduced any provisions in your national legislation to avoid 'salami slicing', do you have any good EIA practices to eliminate this phenomenon?
33. Have there been any high profile cases related to salami slicing in your country? Please refer to what type of development they applied to.

Cumulation of projects/environmental effects

34. Please provide any examples of projects where the issue of cumulation of projects/environmental effects was addressed effectively or failed to do so?

Alternatives

35. Are alternatives being assessed on an obligatory basis in your MS (which ones)? With respect to the current practice, which kinds of alternatives are assessed? Is the related information on alternatives submitted from the developer considered satisfactory?

Exemptions according to Article 2(3)

36. Have you ever used exemptions, following the Article 2(3)? Please provide the information for what types of projects and give a short justification.
37. Have you found the Commission's Guidance on the "Clarification of the application of Article 2(3) useful?

III. RELATIONSHIP WITH COMMUNITY POLICIES, OTHER DIRECTIVES AND COURT JUDGMENTS**EU Action Plan "Halting the loss of biodiversity by 2010 – and beyond"**

38. How effective is EIA with respect to preventing biodiversity loss in your MS?

Climate change

39. To what extent are climate change issues addressed within EIA in your MS? Are there any specific project categories where climate change considerations are particularly reflected within EIA?

Habitats Directive

40. Is there a coordination of the assessment under Art. 6 or 7 of the Habitats Directive 92/43/EEC with the EIA procedure? If yes, please explain how it is carried out.

Integrated Pollution Prevention and Control Directive

41. Has your Member State established a single procedure as mentioned in Art. 2(2)(a) for projects falling under the EIA and IPPC Directive (Directive 96/61/EC)? If yes, please describe its main elements.

European Court of Justice (ECJ) Judgments

42. Have you reflected ECJ judgments on EIA in your legislation and guidance? If so, how?

IV. GUIDANCE

43. Please provide the information on the existence of national EIA guidance in the table below (add additional rows if necessary).

Title (in English)	Comments on its effectiveness

Title (in English)	Comments on its effectiveness

44. Please comment whether the EC guidance (e.g. screening guidance) on EIA have been used in your country and to what extent. Is there a need for new guidance or update of the existing ones?

V. FEEL FREE QUESTIONS

45. What is the single most significant problem remaining, if any, with EIA Directive? Please explain why it is a problem and what remedy you would suggest.
46. What would you recommend (specific Directive's provisions, MSs practices, etc) to improve / strengthen or address:

Screening	
Scoping	
public participation and consultation	
the process of transboundary consultations	
the quality and completeness of the information provided by the developer	
the consideration of human health protection	
the issue of 'salami slicing'	
the issue of cumulation of projects/environmental effects	
the issue of consideration of alternatives (including also environmentally friendly ones)	