

COOPERATION WITH NATIONAL JUDGES AND PROSECUTORS  
IN THE FIELD OF EU ENVIRONMENTAL LAW

WORKSHOP ON EU LEGISLATION

## ENVIRONMENTAL IMPACT ASSESSMENT



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### Strengths and weaknesses of the EIA and SEA Directives



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EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT

### Presentation outline

- Commission's Reports on the application and effectiveness of the SEA and EIA Directives
  - SEA Directive: Report of 14.9.2009, COM(2009)469
  - EIA Directive: Report of 23.7.2009, COM(2009)378
- Review of the EIA Directive
  - Policy objectives
  - Tentative timetable



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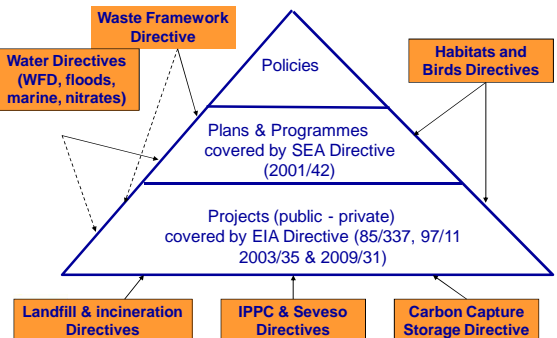
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EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT

### Background: environmental assessments



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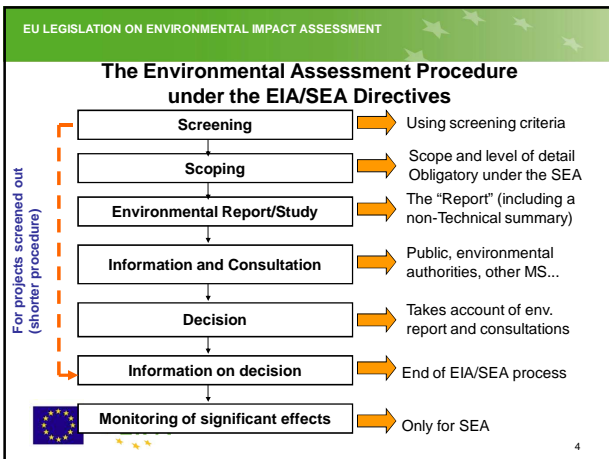
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EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT

### SEA Directive: the first Commission's implementation report

- Transposition of the Directive in the Member States
  - By 2009, all MS have transposed the Directive.
  - Conformity of the national legislation ongoing.
- Description of the key issues of the procedure (scope of application, scoping, environmental report, consultations..)
- Relationship with other legislation and policies (EIA, Habitats Directive, Biodiversity Policy, SEA Protocol, Cohesion Policy P&P)
- Effectiveness of the Directive, opportunities for improvement, recommendations & conclusions

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### SEA Directive – Overall benefits

- Improved organisation and structure of the whole planning procedure.
- Consultation requirements (with the environmental authorities and the public) have led to:
  - increased transparency in the planning procedures.
  - strengthened cooperation between different authorities.
- Environmental considerations integrated into the decision making, which leads to the "greening" of plans & programmes.
- In many cases, SEA changed the content of the P&P.
- Overall positive effect of the first application of the SEA Directive to EU co-funded programmes.
- Improved compliance with the requirements of the specific environmental policy concerned (e.g. nature).

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### SEA Directive – Opportunities for improvement

- Limits of the scope of the SEA:
  - Application to policies and legislative proposals (link to SEA Protocol).
  - P&P not required pursuant to legislative, regulatory or administrative provisions.
- Many aspects remain to be interpreted:
  - P&P which “set the framework” for future authorisation of projects.
  - Minor modifications to P&P, and P&P for small areas at local level.
  - “Reasonable” alternatives.
- EU guidance on consideration of specific issues:
  - Link between SEA and EIA.
  - Integration of climate change and biodiversity issues in SEA.



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### Conclusions on the future of the SEA

- No need for amending the SEA Directive in the short term.
  - The SEA Directive is still in its infancy.
  - Opportunities for improvement identified, but too early to propose amendments.
  - Further experience is needed to understand thoroughly its functioning.
- Reluctance of the Member States for amendment at this stage.
  - No merging: each process (EIA/SEA) should be preserved, as these are complementary procedures addressing different stages and processes.
- Amendments will be considered in the longer term.
  - Next implementation report expected in 2013.



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### EIA Directive: the fourth Commission’s implementation report

- The strengths of the EIA Directive
- Policy and legal context
- Indicative areas of the EIA Directive where improvements are needed
- Conclusion



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### EIA Directive – Strengths and benefits (1)

- Establishment of comprehensive EIA regimes in all MS.
- Increased public participation in the decision-making process (mainly due to Directive 2003/35/EC).
- Clarifications of the EIA Directive's provisions from the ECJ.



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### EIA Directive – Strengths and benefits (2)

- **Overall benefits of the EIA Directive:**
  - Environmental considerations taken into account in decision-making processes earlier.
  - Transparency and social acceptance.
  - EIAs have improved the project design and the decision-making process (on the basis of experience from EC co-funding).
- **Specific national dynamics – in several cases, MS go beyond the Directive's minimum requirements:**
  - Screening and scoping
  - Project categories
  - Guidance documents



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### EIA Directive – Policy and legal context

- After 25 years of application, policy, legal and technical contexts have changed:
  - Climate change, energy and biodiversity: new challenges.
  - Project categories (Annexes I & II) not modified since 1997 (only CCS in 2009).
  - New types of projects (e.g. "transboundary" projects like Nordstream).
  - Synergy with the Espoo and the Aarhus Conventions.
  - Lessons from implementation experience (i.e. ECJ case law and assessments for EU co-financed Major Projects).
  - EIA identified as a potential instrument for a future simplification.
- Need for a review of the EIA Directive



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### EIA Directive – Areas where improvements are needed (1)

- Concerns regarding the "screening" procedure:
  - Wide variation in the types and levels of thresholds or criteria.
  - Number of EIAs carried out in the various MS vary considerably.
  - Cumulative effects and salami-slicing still a problem.
- Concerns on the quality of the EIA process
  - Quality of the information used in the EIA documentation.
  - Quality of the EIA process (alternatives, validity, monitoring).



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### EIA Directive – Areas where improvements are needed (2)

- Lack of harmonised practices for public participation.
- Difficulties regarding the transboundary EIA procedures.
- Better coordination between the EIA and some EC directives (SEA, IPPC, climate change, biodiversity...) – one stop shop procedure.



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### Review of the EIA Directive – Policy objectives (1)

- Improve the functioning of the EIA Directive:
  - Increase the degree of harmonisation of national laws.
  - Simplify existing EIA procedures (i.e. screening).
  - Reinforce the quality components of the EIA process (e.g. content of the report, alternatives, review of EIA information, monitoring, validity EIA).
  - Clarify legal and technical issues (i.e. ECJ case-law, quality of the EIA report).



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### Review of the EIA Directive – Policy objectives (2)

- Improve the synergies between the EIA Directive and other EU environmental legislation:
  - Better coordination with sectoral assessments required by other Directives (SEA, Habitats and Birds Directives, IPPC, Water Framework...).
  - Consistency with the international obligations (Espoo & Aarhus Conventions).



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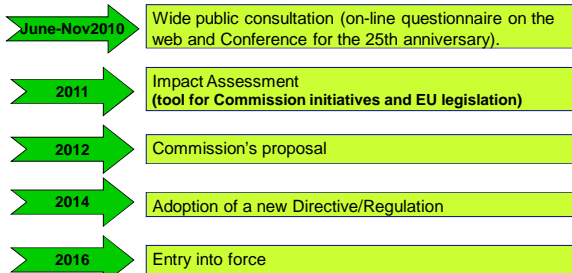
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### Tentative timetable



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- Thank you for your attention
- More information on EIA/SEA:
  - <http://ec.europa.eu/environment/eia/home.htm>



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