

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

WORKSHOP ON EU LEGISLATION

## ENVIRONMENTAL IMPACT ASSESSMENT



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### Introduction to EIA and SEA Directives



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EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT

### Presentation outline

**Objective:** provide an introductory overview of the EIA and SEA Directives and on the interpretation of the provisions of these Directives by the ECJ

- EIA Directive
  - Definition and legislative framework
  - General scope of application
  - Key definitions
  - Key stages of EIA procedure
- Overview of SEA Directive



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EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT

### What is an EIA?

- The Council Directive 85/337/EEC of 27 June 1985, as amended, requires the "*assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment*" (Art.1)
- EIA entails the systematic collection and analysis of information about the environmental effects of a project by the developer in order to enable the competent authority to decide *if* and *how* the project should be carried out



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### The legislative framework

Directive 85/337/EEC or "EIA Directive" as amended in 1997, 2003 and 2009:

Directive 97/11/EC	+	Directive 2003/35/EC	+	Directive 2009/31/EC
<ul style="list-style-type: none"> <li>Aligned with the UNECE Espoo Convention on EIA</li> <li>Widened the scope by increasing the number of projects covered</li> </ul>		<ul style="list-style-type: none"> <li>Aligned with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters</li> </ul>		<ul style="list-style-type: none"> <li>Widened the scope by adding projects related to transport, capture and storage of CO<sub>2</sub></li> </ul>

Consolidated version of the EIA Directive (2009)



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### General scope of application: which effects on environment? (1)

- Art.2 (1) : "projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location"
- Art. 3 : The EIA shall identify, describe and assess the direct and indirect effects of a project on:
  - human beings, fauna and flora;
  - soil, water, air, climate and landscape;
  - material assets and cultural heritage;
  - Interaction between the above listed.



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EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT

### General scope of application: which effects on environment? (2)

#### Interpretation of the ECJ

- The approach to follow is one of overall environmental assessment:
  - Abraham and others case C-2/07 (paragraphs 43-44): It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works. Moreover, the list laid down in Article 3 shows, in itself, that the environmental impact is not only the impact of the works envisaged but also, and above all, the impact of the project to be carried out.



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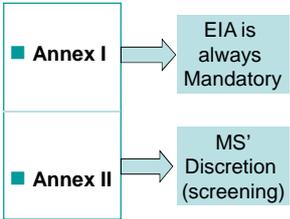
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### General scope of application: which projects?

Article 4 of EIA Directive



Interpretation of the ECJ

- In the Kraaijeveld case C-72/95, the ECJ ruled (paragraphs 31 & 39) that the Directive has a **“wide scope and a broad purpose”**. Exemptions are to be interpreted narrowly
- This principle is constantly quoted in subsequent cases *see also WWF case C-435/97, paragraph 40)*

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### Key definitions according to the Directive (1)

Article 1

- Developer:** the applicant for authorisation for a private project or the public authority which initiates a project
- Competent authority:** is designated by the MS as responsible for performing the duties arising from the EIA directive

**“Development consent”:**  
the decision of the competent authority which entitles the developer to proceed with the project (Art 1(2))




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### Key definitions according to the Directive (2)

Article 1

- Environmental authorities:** those which have specific environmental responsibilities – they are consulted by the competent authorities
- The public:** one or more natural or legal persons and their associations, organisations or groups
- The public concerned:** the public affected or likely to be affected by or having an interest in the environmental decision-making procedures (ex: NGOs for environmental protection)




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**Key definitions: interpretation of the ECJ (1)**

- Duties arising from the EIA directive:
  - Kraaijeveld case C-72/95 (paragraph 56): binding effect of the directive – direct effect– obligation for the national judge to apply the directive on its own motion
  - Linster case C-287/98: Individuals can rely on a Directive that has not been transposed in time
- Development consent (1):
  - Barker case C-290/03 (paragraphs 40-41): while the term development consent is modelled on certain elements of national law it remains a Community concept. Therefore, the classification of a decision as "development consent" within the meaning of Art. 1(2) must be carried out pursuant to national law but in a manner consistent with Community law.




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**Key definitions: interpretation of the ECJ (2)**

- Development consent (2): MS have an obligation to remedy the failure to carry out an EIA
  - Delena Wells case C-290/03 (paragraph 70): if a MS fails to carry out an EIA, they must take measures to remedy that failure. These measures might include the revocation or suspension of a development consent, or compensation if an individual suffered harm




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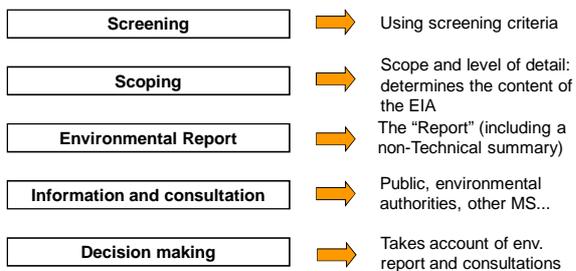
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**EIA procedure: the key stages**




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### Scoping (Art. 5(2))

- Scoping is the answer (opinion) by the CA to the developer's question: "What should be covered by the EIA?"
- Interaction between CA and developer
- Giving its opinion does not preclude the CA to subsequently require further information from the developer



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### The content of the EIA

- Art. 5(3) sets the minimum information to be included:
  - Project description (site, design, size)
  - Likely significant adverse effects on environment and measures envisaged to avoid/reduce them
  - Main alternatives studied by the developer and justification of choice
  - Non-technical summary



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### Information and consultation

- Consultation with environmental authorities and public concerned
- Taking into account other MS affected by the project: **transboundary consultation**
- After **final decision**, public is to be informed of:
  - Content of and reasons for the decision
  - Mitigation measures
  - Public participation process



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### What is an SEA?

- Directive 2001/42/EC of 27 June 2001 covers the assessment of a wide range of public plans and programmes which are likely to have significant effects on environment



- SEA Directive follows the general approach of the SEA Protocol to the UN ECE Convention on EIA



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### What are the objectives of the SEA?

- Art. 1 of the SEA Directive:
  - Provide for a high level of protection of the environment
  - Contribute to the integration of environmental considerations into the preparation of plans and programmes with a view to promoting sustainable development



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### General scope of application: mandatory SEA

- Are considered as plans and programmes those which:
  - Are subject to preparation and/or adoption by an authority (national, local, regional), AND
  - Are required by legislative, regulatory or administrative provisions.
- Are considered as plans and programmes **always** requiring an SEA those which (Art.3(2)):
  - Are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/water management, telecommunications, tourism, town & country planning or land use AND which set the framework for future development consent of projects listed in the EIA directive, OR
  - Have been determined to require an assessment under the Habitats Directive.



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### General scope of application: discretionary SEA and exemptions

- For plans and programmes not included under the Art.3(2) list, MS have to carry out a screening procedure based on criteria of Annex II of the SEA Directive
- Art. 3(9) exempts from SEA plans and programmes:
  - whose sole purpose is related to national defence or civil emergency:
  - which are financial or budget plans/programmes




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### SEA procedure: the key stages

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|-----------------------------------|---|--|
| Screening                         | ➔ | Using screening criteria                             |
| Scoping                           | ➔ | Determines the content of the SEA: mandatory         |
| Environmental Report              | ➔ | The "Report" (including a non-Technical summary)     |
| Information and consultation      | ➔ | Public, environmental authorities, other MS...       |
| Decision making                   | ➔ | Takes account of env. report and consultations       |
| Monitoring of significant effects | ➔ | Monitoring of implementation of plans and programmes |




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### EIA/SEA: Overview of main differences

	SEA	EIA
Scoping	Mandatory	Upon request by developer
Content of the report	Requires an assessment of reasonable alternatives	Developer chooses the alternatives to be studied
Monitoring	MS must monitor significant environmental effects	No such obligation




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