



COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**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 implementing the EIA Directive

INTRODUCTION

The European Commission, has prepared the following 5 Years Report fulfilling the obligation found in Article 2 of Directive 97/11/EC and Article 11 paragraph 1 and 2 of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive), which requires that "five years after the notification of the Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on exchange of information on experience gained in applying this Directive".

The report contains two parts, i.e., a summary of findings and actions to be taken and annexed the 5 Years review with detailed information on issues regarding the application of the EIA Directive prepared on the basis of answers by information provided by the Member States.

SUMMARY OF FINDINGS

This report by the Commission reviews the operation of Directive 85/337/EEC as amended by Directive 97/11/EC (the EIA Directive). It is the third review of the EIA Directive and builds on those carried out in 1993 and 1997. This review comes five years after the entry into force of Directive 97/11/EC and examines the effectiveness of both the changes made by 97/11/EC and the EIA Directive as a whole. The bulk of the report is based on material collected following a questionnaire survey of Member States by DG Environment. The Impacts Assessment Unit of Oxford Brookes complemented missing elements and assembled the information. Special thanks are expressed to all the staff from the Member States who have co-operated and helped in providing information for this report.

Apart from the changes introduced as a consequence of the Commission's first report evaluating the effectiveness of Directive 85/337/EEC, the amendments made by 97/11/EC also reflect the considerable strengthening and clarification given to certain elements of the EIA Directive as advanced by the European Court of Justice (ECJ). The report highlights the changes made by 97/11/EC and the ECJ rulings that underpinned them, and reflects upon the related policy context. The report also addresses the issue of complaints on the EIA Directive received by the Commission. Directive 97/11/EC widened the scope of EIA by increasing the number of types of project covered, and the number of projects requiring mandatory EIA (Annex I). It also strengthened the procedural base of the EIA Directive by providing for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and providing minimum information requirements. The review of the implementation and application of Directive 97/11/EC has shown that the new measures introduced by the Directive have yet to be implemented in full in all Member States. The Commission's findings on the slow embrace of the amendments made by 97/11/EC by some Member States do not detract from the general importance that most of the Member States and the European Commission place on EIA as a tool for implementing wider environmental policies.

The Commission's report examines key areas of the operation of the EIA Directive including screening (the determination whether an EIA is required for a specific project), scoping (, *i.e.*, the identification of the issues to be covered by the environmental impact statement), review (the examination of environmental impact statements and other information submitted by developers to ensure it complies with the minimum information requirements of the Directive), and decision making. The report also examines the arrangements made by Member States for dealing with key EIA issues such as the consideration of alternatives,

public participation and quality control. Based on the information reviewed here there is no real evidence to suggest that further amendments to the EIA Directive are required at this stage.

- 1) The survey, on which this report is based, revealed few significant concerns among Member States regarding the current split between Annex I and Annex II projects; and Member States appear to have embraced the flexibility permitted by Article 4(2) to employ either a threshold or a case-by-case approach to screening Annex II projects. A variety of approaches to screening exists across the Member States. Many Member States appear to be making use of the ‘traffic light’ approach to screening and have developed inclusion thresholds (EIA always required – Red), exclusion thresholds (EIA never required - Green) and indicative or guidance thresholds (EIA may be required - Amber). However, in some cases Member States appear to be employing a variety of different approaches, using different screening procedures for different project types. In some cases only mandatory or inclusive thresholds are used and it is not always clear from the responses received that sub-mandatory threshold screening takes place in all cases. Very few Member States employ a case-by-case approach for all project types.
- 2) In the survey a wide variation was found in approach to the setting of thresholds exists across the European Union. While many Member States have set thresholds for the same project types, there are very large differences in the levels at which thresholds have been set. Some Member States have made EIA mandatory for some project types regardless of size. This means that a project will be subject to EIA on a mandatory basis in one Member State while the same project type, of the same size will require EIA only after case-by-case screening in another Member State. The report did not investigate the justification for the levels at which individual thresholds have been set. The information reviewed for this report is not based upon the operation of screening in practice by competent authorities and therefore it is not clear how the various thresholds and other screening criteria developed by Member States are applied by competent authorities. Few Member States involve the public in the screening process and many see it as a purely technical decision.
- 3) The annual number of EIAs that take place appears to vary considerably between the countries of the European Union. It was not an easy task to gather this information and in some cases a reporting system exists only at national level but not at regional one. While the report provides estimates of the number of EIAs that have taken place both before the transposition of 97/11/EC and since, it has not been possible to break these figures down into project types or even provide a split between Annex I and Annex II projects. In the Commission's view many Member States do not appear to keep accurate annual figures on EIA activity and where Member States do not in their national legislation distinguish between Annex I and Annex II projects it is difficult to disaggregate them for data collection purposes. The lack of national monitoring of EIA activity and the application of the EIA Directive in practice makes it difficult to speculate on the reasons why there are such wide variations between Member States on the number of EIAs that have been completed. The variation may be explained by the relative economic conditions within countries, or it may also relate to the levels at which thresholds have been set.
- 4) Scoping provisions are of a discretionary nature. The review revealed that there are a wide variety of approaches to the scoping stage of EIA. It would appear that some Member States appreciate the value of an early scoping stage more than others.

There appears to be little real commitment to scoping in those countries that have not made it mandatory and have not provided for public consultation within their voluntary scoping stage. However, some of the Member States show the opposite tendency and require the publication of draft scoping reports or even draft EISs. There is also a recognition in some Member States that public involvement at the scoping stage identifies the issues that are ‘significant’ to the people who will have to live with the project and not just the ‘experts’ who will not.

- 5) Directive 97/11/EC introduced new minimum requirements for the information to be supplied by the developer. Failure to provide adequate information constitutes grounds for refusal of development consent in the majority of countries, under a variety of arrangements. Some Member States have formalised a review procedure to ensure that the environmental information supplied to the competent authority is in compliance with the Directive. In some cases an independent specialist review commission or panel of experts carries out the review of the EIS. However, since there is no explicit obligation in the Directive to provide for such a review, there is no harmonised approach to the matter. The review of the information provided is, in all but a few Member States, left to the competent authority and in many Member States they are asked to do this without the aid of specific review check-lists or review criteria. Whilst the elements listed in Annex IV underlie requirements for adequate assessments, this rather basic information has been built upon (e.g. with checklists) in only some Member States. Some research has been conducted in about half of all Member States on the quality of information contained in environmental statements and on the overall quality of the assessments. Where such studies have taken place, it has shown that up to 50% of EIS do not fully meet the requirements of the Directive.
- 6) Without formal monitoring of the outcomes of the EIA process and more detailed research, it is difficult to assess how the process of environmental assessment has influenced applications for, and decisions on, development consent. One aim of the EIA Directive is to strengthen the consideration of likely significant effects in the decision-making, but many of the responses pointed out that other social or economic benefits also need to be considered when decisions are taken on applications for development. The responses to the questions relating to delays between the production of the required EIA information and the decision, and between the decision on development consent and the commencement of development have shown that these are tackled very differently in the Member States and constitute an area of potential concern. This is because when there are long delays, changes to the state of the environment can occur, or new mitigation measures might become available. There is no indication from the Member States as to the scale or frequency of delays occurring, there appears to be little recognition of the environmental implications of these problems, and there is little consistency of approach in dealing with them.
- 7) In some Member States the consideration of alternatives is a central focus of the EIA process, elsewhere the consideration of alternatives appears to be less complete than it might be. The majority of Member States require assessment of the zero alternative and other project alternatives, which may include options for location, process, design, etc. A variety of institutions and sometimes the public may contribute to the selection of alternatives for assessment and these may include the most “environmentally friendly” alternative. Many of the Member States see a link between the issues of ‘salami-slicing’, considering ‘changes and extensions’ to

projects and ‘cumulative impacts’. The issue of possible salami-slicing is recognised by the Member States and some States have established measures to reveal and prevent such practice, including setting low thresholds or calling for assessment of “the whole programme” where this is appropriate. Very few Member States have concrete evidence on how widespread the practice of salami-slicing may be¹. A variety of approaches to dealing with changes and extensions are used across the EU, in line with existing requirements for other permits, the nature of the project and the nature of the change or extension. Both specific thresholds (often set as a proportion of the original project’s size) and case-by case screening are applied in different Member States, or a combination of both. Some Member States ask for an EIA when a change of capacity is proposed which does not necessarily involve construction works. According to the responses provided to the Commission there seems to be growing awareness of the issues raised by the requirement to assess the cumulation of impacts, and measures have been put in place in many Member States to address this. Clear and comprehensive guidance for developers and others would appear to be lacking in most Member States, *e.g.* on boundaries for the assessment area, on the need for co-operation between developers or other arrangements for making information available.

- 8) Throughout the EU the public is given an opportunity to comment on the projects that are subject to EIA. The extent of public involvement varies considerably and the interpretation of “the public concerned” varies from quite narrow to wide. The responses provided to the Commission revealed that certain projects are more likely to generate high levels of participation. Given the large variety of project types covered by the Directive, the different consent systems used for different types of project and the different levels of interest they generate, it is not surprising that there is no standard practice of public participation across the EU. The transposition of the Aarhus Convention into EIA legislation may provide an opportunity for improvements in public participation in EIA. There is a need, in the Commission's view, for better formal and informal arrangements for consultation on transboundary impacts with neighbouring countries, and a need to ensure that those arrangements are practical. A need has also been identified for an improvement in the current intra-regional procedures of some countries. More precise auditing arrangements are needed, to provide reliable information on the number, type and outcome of transboundary projects.
- 9) The impacts of developments upon flora and fauna are assessed within EIA in the Member States and the information requirements of Directive 97/11/EC seem to be met in this respect. The questionnaire responses are less explicit concerning the extent to which the various levels of biodiversity are addressed in practice. Guidelines on incorporating biodiversity issues into impact assessments have recently been adopted under the Convention on Biological Diversity.
- 10) Risk is dealt with in a wide variety of ways and at very different levels across the EU, partly in response to the variety of geographical, geological, climate and other conditions. Risk is a screening criterion in Annex III and risk assessments appear in

¹ Salami slicing refers to the practice of splitting an initial project into a number of separate projects, which individually do not exceed the threshold set or do not have significant effects on a case by case examination and therefore do not require an impact assessment but may, taken together, have significant environmental effects.

many EIS, and yet for most Member States risk is seen as separate from the EIA process as it is often handled by control regimes to which the EIA Directive is not applied. Relationships between EIA and national environmental control regimes are complex and there appear to be little real co-ordination between the EIA Directive and other Directives such as IPPC and the Habitats Directive. Few Member States have taken the opportunity offered by Directive 97/11/EC to provide for the greater consistency and reductions in repetitious documentation and assessments, provided by closer co-ordination of EIA and IPPC. In some Member States a link is said to exist but this link may simply consist of a recommendation that EIA and other relevant procedure should be dealt with simultaneously.

- 11) The assessment of health impacts is not a particularly strong feature of current practice. There is considerable variation in coverage from a narrow to a broad interpretation of health effects. There is evidence to suggest that health impacts are considered to be less relevant to EIA, and/or to a certain extent covered by other legislation. There is some evidence to suggest that health impacts are considered under other headings such as pollution or risk.
- 12) Although the current EIA Directive does not contain provisions on access to justice, the majority of Member States provide for such in their national systems. Access to justice for EIA is largely confined to members of the public having legislative rights to challenge decisions through the courts. In most cases such challenges can only be made once project authorisation is granted, few Member State provided for challenges at the earlier stages of EIA.
- 13) There are few formal measures in place for the overall control of the quality of the EIA procedures. The Directive itself is rather weak on this point and focuses more on the EIA procedural aspects. Ensuring quality control in EIA is largely left to the competent authorities and the checks provided by judicial review processes. The lack of central monitoring of the key stages of EIA make it difficult for Member States to ensure that their EIA systems are consistently and correctly applied. There are some examples of innovative practice, with some Member States making use of post-decision monitoring of projects to ensure the quality of the outcome of the EIA process.

RECOMMENDATIONS - ACTION TO BE TAKEN

The information provided in this report has revealed several shortcomings and weaknesses. In the Commission's view in some Member States there are examples of very good practice, e.g. in relation to encouraging public participation or providing for clear quality control procedures. In others (and sometime in the very same Member States that have elements of good practice), there are still weaknesses. These findings need to be carefully assessed alongside other factors in order for the Commission to decide whether the EIA Directive should be further amended at this stage. It appears that the main problem lies with the application and implementation of the Directive and not, for the most part, with the transposition of the legal requirements of the Directive. It is clear, however, from the weaknesses identified that there is a need to improve and strengthen the application of the Directive in several aspects and the Commission will continue to promote this. The Directive provides the framework and the existing infringement mechanisms provide legal support for better transposition and application of the Directive. In order to improve the effectiveness of the Directive, The Commission believes that it is important that the Member States act

responsibly and use the information provided in this report positively to enhance their individual and collective performance.

Based upon the material gathered for this review and an assessment of the strengths and weaknesses and effectiveness of the EIA Directive, the Commission makes the following recommendations that will help in better implementing the EIA Directive:

- Member States should check their national and regional EIA legislation and subsequently remedy shortcomings (e.g. with regard to thresholds, quality control, salami-slicing, cumulation etc). The Commission urges Member States to use the coming amendment of the EIA Directive in the context of the Aarhus transposition to do so.
- A precise form of annual recording and monitoring is indispensable to provide reliable annual information on the number and type of EIA projects and the outcome of key decisions. Member States should introduce such systems where they do not already exist. This will assist them, in the Commission's view, in evaluating the number of EIAs carried out, and the types of projects involved, and in assessing the performance and quality of work done. In turn, this will help them to improve their systems.
- In relation to screening, 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. In this exercise, the Commission expects that they will particularly consider projects planned in or near sensitive areas, and the possible cumulation of projects.
- The Commission urges Member States to make more widespread use of its existing guidance on screening, scoping, review and cumulative impacts. There should also be more training at national levels in the use of these quality control documents. These documents are found in the web page of DG ENV: <http://europa.eu.int/comm/environment/eia/home.htm>.
- The quality of the EIA process, and especially the EIS, are the key for an effective EIA. The Commission urges those Member States that have yet to do so to introduce formal provisions for the review of the environmental information supplied by the developer to ensure strict compliance with the terms of the EIA Directive. Such measures could comprise the establishment of expert pools, guidelines on the co-ordination of experts, clear instructions about responsibilities, the use of independent external expert review etc. Another tool of quality control could be the introduction of an efficient post-decision monitoring system.
- The Commission believes that particular training needs to be introduced in certain Member States for authorities at local and regional level in order to improve their understanding of the EIA Directive and its application within the respective national system. Mechanisms for efficient administrative management should help to enhance capacity building.
- In the transboundary context Member States should make more use of guidance provided by the UNECE on bi- and multilateral agreements and the practicalities of transboundary EIA (see UNECE web page: <http://www.unece.org/env/eia>). The Commission considers that this will help ensure that adequate provisions are in place,

for instance for direct contact between the relevant competent authorities and other agencies for consultation on transboundary effects.

- The quality of the EIA has consequences in the decision making process and is of key importance for the effectiveness of the Directive. How the outcome of the EIA influences decision-making is central to the purpose of EIA and the Directive. The quality of the decision depends on the quality of the information provided in the EIA process and the strength of an effective EIA should be shown in a decision that has properly taken on board and reflects the environmental dimension highlighted in the EIA process. In some Member States, refusal of development consent is provided for in cases where serious environmental harm is forecast. In this respect the Commission believes that Member States should, where necessary, consider strengthening their national procedures by ensuring that the conditions attached to the (subsequent) decision(s) are adequate to prevent or mitigate any environmental harm that has been predicted.
- The Commission will consider the need for further research into the use of thresholds and the various systems applied in screening in order to get more clarity and comparable data which would enable robust conclusions to be drawn on how to achieve improvement and greater consistency of approach in the screening process. **(Initiative 1)**.
- These recommendations, if put into effect, would go some way to improving the effectiveness of the Directive and the Commission will consider, in conjunction with the Member States, ways of improving and extending the guidance which is already available. The Commission envisages preparing interpretative and practical oriented guidance with the involvement of experts from the Member States as well as other stakeholders like NGOs, local and regional authorities and industry. This could help to overcome some of the disparities reported in the definition of the projects which are subject to the Directive, the setting and application of thresholds and screening criteria, the way scoping is carried out, the relationship between the effects of different projects (cumulation, salami-slicing), the way that risk is dealt with in assessments, and the type of data which should be gathered in monitoring systems. It would also be designed to improve considerations of health effects which are often inconsistently or partly addressed in the EIA process in the Member States. There is clearly a need for a more systematic approach. The forth-coming Community Strategy on Health and the Environment will form a sound basis for such an approach by establishing a consensus regarding the scope of environmental health, as well as strategies to increase awareness about the linkages between human health and the environment. **(Initiative 2)**.
- The Commission will also consider with the Member States what might be done to improve the training of officials responsible for EIA in order to improve the situation. **(Initiative 3)**.
- Capacity building and voluntary action have their limitations, however, and the Commission will continue to take enforcement action in cases of incomplete or inadequate transposition, and/or poor application of the Directive. **(Initiative 4)**.
- In due time, more consistent application may require further amendments to the Directive. Based on the results of the actions outlined above, the Commission will consider what further amendments should be introduced. For example, this might be

the most efficient way of providing for proper quality control and consistent data collection and might also be necessary to improve the way thresholds and cumulative effects are handled. Other clarifications and improvements could be introduced at the same time (for instance to the procedure for exempting exceptional cases (Article 2(3)). All these actions, combined with the implementation of the SEA Directive, will produce a robust set of procedures to improve decision-making and help to achieve the objectives set out in the 6 EAP. **(Initiative 5)**.

ANNEX

5 Year Review on the Application and Effectiveness of the EIA Directive (Directive 85/337/EEC as amended by Directive 97/11/EC)

1. Introduction

1.1. Aims and Objectives

1.1.1. Council Directive 85/337/EEC (as amended by Directive 97/11/EC) on the assessment of the effects of certain public and private projects on the environment (hereafter the EIA Directive) is seen as one of the European Union's (EU) 'principal pieces of environmental legislation'². The prime purpose of EIA is to identify any significant environmental effects of a major development project, and where possible to design mitigation measures to reduce or remedy those effects, in advance of any decision to authorise the construction of the project. As a tool to aid decision making, EIA is widely seen as a proactive environmental safeguard that, together with public participation and consultation, can help to meet the EU's wider environmental concerns and policy principles. However, to achieve these objectives, the EIA Directive must be applied as consistently as possible across the EU as a whole. Evidence from the European Commission's (EC) 1993 and 1997 reviews of the operation of Directive 85/337/EEC³, and other evidence⁴, indicates that there was little consistency in the application of key EIA procedures such as screening and scoping. Furthermore, some important European Court of Justice (ECJ) cases⁵ found a number of Member States to be failing to fully implement the Directive. Due to the different project authorisation procedures in place within Member States there have been difficulties in achieving consistency in implementation across the Community as a whole. Indeed, a major objective of the amending Directive 97/11/EC was, in part, to minimise the differences of application between Member States and to harmonise implementation.

1.1.2 The challenge of ensuring that the EIA Directive is adopted and implemented in an effective and consistent manner across all Member States of the EU is considerable. To monitor the effectiveness of the EIA Directive, the EC carried out two reviews, which reported in 1993 and in 1997. There are three main objectives of this current review:

- Provide a detailed overview of the arrangements made by Member States for implementing the amendments made by 97/11/EC;

² See CEC (2001) Environmental Impact Assessment Guidance on Screening, Brussels, CEC.

³ CEC (1993) Report from the Commission of the Implementation of Directive 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment and Annexes for Member States. Com (93) 28 Final – Vol.12, Brussels, April

⁴ See Dresner, S. and N. Gilbert (1999) Decision-making Processes for Projects Requiring Environmental Impact Assessment: Case Studies in Six European Countries in Journal of Environmental Assessment Policy and Management, Vol. 1, No. 1, pp. 105-130., also Ladeur, K-H and Prella, R. (2001) Environmental Assessment and Judicial Approaches to Procedural Errors – A European and Comparative Law Analysis, Journal of Environmental Law, Vol. 3, no. 2, pp. 185-198.

⁵ See Cases C-392/96, C-150/97 and C-287/98

- Provide a detailed overview and evaluation of the application of the EIA Directive as a whole;
- Provide suggestions and recommendations for the further enhancement of the application and effectiveness of the EIA Directive as a whole.

In particular the review examines the implementation of the key stages and key elements of the EIA Directive. Namely:

- the increase in the number and type of projects subject to EIA and the movement of some project types (for example large intensive livestock units) into Annex I;
- the means by which Member States exempt specific projects from the provisions of the Directive (Article 2, para. 3);
- the range and type of projects exempted from the Directive by means of Article 1, para 5, the means by which they are authorised, and the way in which the environmental information is considered in the decision making process;
- the screening and scoping provisions in place in Member States and the way in which case by case screening criteria or thresholds are employed;
- information provided by the developer and the completeness of the information provided, as well as the means by which competent authorities check that it is complete;
- health aspects and their relationship to matters such as air quality etc;
- evidence of “salami-slicing” or the potential for project proponents to avoid completing an EIA by designing developments in such a way that they fall below thresholds or triggers for EIA;
- cumulation of projects, and how spatial and temporal boundaries are established;
- risk assessment and the methods employed to assess and communicate risk;
- relationship with other Directives, in particular the IPPC and Habitats Directives;
- the provisions in place for dealing with transboundary consultations;
- the means by which Member States deal with changes or extensions to projects once authorised;
- the way that alternatives are assessed and reported, including how alternatives are identified and defined; and

- the mechanisms in place for public participation in light of the adoption of draft Directive COM(2000)839 amending the EIA Directive to conform with the provisions of the Aarhus Convention.

1.2. Research Team

1.2.1 This review has been carried out by the Impacts Assessment Unit (IAU) of the School of Planning (SoP), Oxford Brookes University⁶ in conjunction with a steering committee of staff from DG Environment and a representative of the Member States.

1.3. Methodology

1.3.1 The primary source of information for this study was the responses of Member States to a questionnaire designed and issued by the EC's DG Environment (the questionnaire appears as Appendix 1 of this report). To ensure the clearest understanding of the responses from Member States, DG Environment sought further clarification from most Member States on key aspects of their implementation of the Directive. The initial review of the responses identified a number of additional issues that needed further responses from individual Member States and the IAU team sought this on an individual level. A further set of questions was also circulated to all the national EIA experts of the Member States a further set of questions to aid the IAU's understanding and interpretation of the operation of the amending Directive (these additional questions are provided as Appendix 1 to this report). The DG Environment steering group along with the Impacts Assessment Unit would like to thank all the staff from the Member States who have co-operated and helped in providing information for this report. The responses to the questionnaire and follow up questions for clarification and amplification were analysed by the project team on the basis of each member of the team having responsibility for a group of questions.

1.3.2 To further the understanding of the issues relating to the implementation of Directive 97/11/EC, a literature search of existing research on the operation of the amended EIA Directive, including relevant court cases, was completed. In addition, Web sites of European academic institutions and EIA related sites were examined for further evidence of the practice of EIA within the EU.

1.4. Structure of the Report

1.4.1 This report has been structured around the transposition and implementation of Directive 97/11/EC and the operation of the EIA Directive as a whole, rather than on the basis of the individual questions posed by DG Environment's questionnaire. This

⁶ The SoP is the largest School of its kind in the UK, and one of the largest in Europe. The School hosts over 700 students on a wide range of undergraduate, postgraduate and research degree programmes, with a complement of over 60 teaching, administrative, technical and research staff. The School recently received a high ranking in the 2001 Higher Education Funding Council for England Research Assessment Exercise. This puts the School at the top amongst the UK's new university planning schools and endorses other recent reviews of planning schools which placed Oxford Brookes as the top planning school in the UK. The IAU is a well established, and EU recognised, centre for research, training and education in Environmental Impact Assessment (EIA), Environmental Policy and Environmental Decision-Making. The IAU is led by Professor John Glasson, who is also the Head of the School of Planning.

facilitated a more comprehensive overview of progress on transposition and implementation and highlighted key issues that warrant further attention. Following this introduction, Section 2 of the report provides an overview of the background on the adoption of 97/11/EC and the factors that shaped the amendments that were introduced by the Directive and then examines the progress that has been made on transposing the Directive by the Member States and the issues raised by the implementation process. The main body of the report is contained within Sections 3 and 4 and focuses on the details of the Directive's implementation by examining the key changes introduced by the Directive in terms of screening, scoping and review, and the key issues that the amending Directive sought to address. Section 5 of the report provides an overview of the effectiveness of the EIA Directive as a whole and makes some recommendations for the future development of the EIA Directive.

1.5. Terminology

1.5.1 For purposes of clarity and understanding the following defines glossary key terms used in this report.

- EIA – Environmental Impact Assessment – the continuous assessment procedure that contains several individual stages such as screening, scoping and public participation.
- EIA Directive – the Directive as a whole - i.e. Directive 85/337/EEC as amended by 97/11/EC – where in the report reference is made to Directive 85/337/EEC or Directive 97/11/EC the discussion will only relate to the individual Directives referred to in the text;
- Environmental Information, including the Environmental Impact Statement (EIS) – the report, document or set of documents produced or paid for by the developer to provide the environmental information required by Article 5 of the EIA Directive and which forms the basis for public participation and the consultation of environmental authorities and is submitted to the competent authority for consideration.

2. BACKGROUND TO THE AMENDMENT OF THE EIA DIRECTIVE (85/337/EEC)

2.1 Reviews of EIA Directive 85/337/EEC

2.1.1 The 1993 and 1997 reviews of the implementation of the Directive⁷ found wide variation between the Member States on the application of some of the key stages required by the Directive. While the reviews concluded that the formal requirements of the Directive were, at the time, ‘mostly in place’ across the EU as a whole, there remained areas where it was unclear as to whether or not all Member States were strictly complying with key stages, such as screening. The 1993 review found that there was a danger that the discretion given by the Directive to Member States on establishing screening thresholds for Annex II projects could lead to a general devaluation of the provisions of Article 2 (1). It was largely for this reason that 97/11/EC introduced a new Annex III that established screening criteria to be used for the establishment of thresholds and for the case-by-case screening of Annex II projects. The 1993 review also identified concerns on the level and quality of the information provided to competent authorities within the EIA process. It was this concern that led to the introduction of the new minimum information requirements introduced by 97/11/EC (Article 3, paragraph 3) and the optional scoping procedures provided by Article 5(2).

2.1.2 The 1997 review highlighted the many different EIA systems that operate across the EU. On the basis of the principle of subsidiarity, Member States had transposed the Directive into domestic law, often within the framework of existing systems that had developed on the basis of Member States’ own historical legal traditions and culture. The report also identified a number of issues relating to the language of the Directive and complaints from Member States over the clarity of some terms used in the Directive and sought clearer definitions or interpretations of key terms such as ‘projects’.

2.1.3 The reviews also identified the wide variety of authorisation procedures used for different types of projects in different Member States. In some cases, Member States make use of a single licensing procedure for all project types, some make use of two or more (many more in some cases), while others have a two stage system whereby some aspects of a project are authorised under one set of legislation (e.g. land use planning), and other aspects are dealt with under another (e.g. environmental licensing). These differences make a straightforward comparison of the operation of the Directive between Member States and across the EU as a whole a very complex task. This remains the case in 2002.

2.1.4 The 1997 review found that all Member States had made provision for the EIA of the projects listed in Annex I; however, the position as regards Annex II projects was far less clear. There were differences in approach to dealing with Annex II

⁷ CEC (1993) Report from the Commission of the Implementation of Directive 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment and Annexes for Member States. Com (93) 28 Final – Vol.12, Brussels, April CEC. CEC (1997) Report from the Commission of the Implementation of Directive 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment, CEC

projects, both in terms of interpretation and perceived relevance to particular countries. Most Member States were found to make use of some form of screening criteria or thresholds for determining when an Annex II project should be subject to EIA. In some cases these were indicative, for use in a case-by-case screening procedure, while in others the thresholds were mandatory whereby a project that exceeded the thresholds would always automatically require an EIA. In some cases thresholds were set that had the practical effect of excluding whole project types from EIA. These cases formed the basis for legal challenges that established firm case law on the application of the EIA Directive within the EU. The 1997 review also found that there was a great deal of variation in the level at which thresholds (e.g. area, capacity) had been set for the same project types in the different Member States.

2.1.5 The key findings of the 1997 review of the Directive can be summarised as follows:

- EIA is a regular feature of project licensing/authorisation systems, yet wide variation exists in relation to those procedures (e.g. different procedural steps; relationships with other relevant procedures);
- different interpretations and procedures for Annex II projects;
- quality control over the EIA process is deficient;
- Member States did not give enough attention to the consideration of alternatives;
- improvements had been made over public participation and consultation; and
- Member States complained about the ambiguity and lack of definitions of key terms in the Directive.

2.2. Policy and Legal Context

2.2.1 The development of EIA within the European Union can be seen as an evolving process that is shaped by the development of policy and law. The five yearly reviews of the EIA Directive have been part of that evolution and the process of identifying the strengths, weaknesses, costs and benefits of the operation of the EIA procedures. This process identified areas where improvements could be made and/or where the general provisions of the Directive could be clarified or strengthened. These reviews have not been the only influence on the development of the EIA Directive. Since its adoption in 1985 and the passing of the deadline for transposition in 1988, there have been a number of cases brought before the European Court of Justice that have provided some clarification of key issues and helped to develop the interpretation and hence implementation of the Directive. There have also been some key policy decisions made by the EU since 1985 that have needed to be integrated into the EIA Directive.

2.2.2 The EIA Directive pre-dates very many important changes within the EU. The first of these is the Single European Act of 1986, which, together with the Maastricht Treaty of 1992, consolidated the main principles of European environmental policy and made them a central concern of all EU policy areas. These were followed by the

adoption of the 5th Environmental Action Programme with its emphasis on an integrated approach to environmental protection and management. There have also been a number of key Directives that have had implications for EIA. These include:

- Directive 79/409/EEC on the Conservation of Wild Birds and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, which establish their own assessment procedures affecting Natura 2000 sites;
- Directive 90/313/EEC on the freedom of access to information on the environment, which has implications for public participation and consultation within the EIA process;
- Directive 96/61/EC on integrated pollution, prevention and control, which introduced a new licensing authorisation scheme for many of the projects types lists in the Annexes to the EIA Directive and 97/11/EC introduced Article 2(a) to allow Member States to make use of a single procedure to fulfil the requirements of 85/337/EEC and 96/61/EC.

2.2.3 The Espoo Convention on EIA in a Transboundary Context was signed by 29 countries and the EU in 1991 and widened and strengthened the requirements for consultation on transboundary impacts provided for in 85/337/EEC. The requirements of the Convention meant that Articles 7 and 9 of 85/337/EEC had to be amended by 97/11/EC to provide for a greater level of information to be made available to affected Member States where a significant transboundary impact is identified. The Convention defines transboundary impacts as: *“any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party (to the Convention) caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party”*. This definition deals with both projects and impacts that cross boundaries and therefore does not limit in scope the effect of the Convention to a consideration of projects that are in close proximity to a boundary. Furthermore, in C-133/94 *Commission v Belgium* the ECJ ruled that the consultation obligations contained in Article 7 of 85/337/EEC were not confined to projects located in regions with frontiers with other countries. The Espoo Convention provides a list of project types to which the Convention applies and these included a number of projects not in the Annexes to 85/337/EEC:

- Nuclear fuel production and reprocessing installations;
- Groundwater abstraction (10 million cubic metres or more per year); and
- Large scale deforestation.

The amending Directive 97/11/EC added two of these project types to Annex I and one (deforestation) to Annex II; it also moved a further eight Espoo Convention project types from Annex II to Annex I to make the EIA Directive compatible with the Convention.

2.2.4 The EIA Directive has generated a considerable number of complaints to the Commission to which they have had to respond. The tables and figures on the following pages provide details of these complaints and other procedures. These

tables set out statistical information for the five-year period 1997-2001 on infringement procedures relating to the application of Community law on EIA. As an aid to their correct interpretation, Box 1 provides definitions of the key terms used.

Box 1

LETTER OF FORMAL NOTICE

The letter of formal notice is the first stage of an infringement procedure. When the Commission envisages that a Member State has failed to fulfil an obligation under the Treaty establishing the European Community, it delivers a letter of formal notice giving the State concerned the opportunity to comment.

REASONED OPINION

The reasoned opinion is issued when the Commission is confident it has identified an infringement. Article 226, paragraph 1 of the Treaty establishing the European Community: If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to comment.

SAISINE

Saisine is the stage of application to the European Court of Justice, when the infringement procedure becomes a judicial procedure. Under Article 226, paragraph 2 of the Treaty: If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

OWN INITIATIVE CASE

"Own initiative" cases are cases opened directly by the Commission. They are mainly commenced on the basis of Written Questions and Petitions of the European Parliament. Note that the reasons why there are more in one Member State than in another are the same as for complaints (see below). Thus, the fact that Commission opened many "own initiative cases" for certain Member States does not mean that it considers the situation in these States to be worse than in other Member States.

2.2.5 In order to check the correct implementation of Community law in the Member States the Commission acts at different stages: first it checks that Member States transpose the Directives in their legal systems within the deadlines set. Then it checks, on one hand, the conformity of the Member States' legislation with the Directives which this legislation is intended to transpose and then on the other hand, the correct application of this legislation on the ground, as well as the correctness of administrative practices in each Member States. To assess the correct application in Member States, the Commission bases its deliberations on reports from Member States on: the application of the Directives, any complaints revealing specific

situations of potential breach of EC Law; and facts raised through written questions and petitions brought to the Commission's attention by the European Parliament. Thus the Commission's actions in checking the correct application of the EIA Directive is mainly based on complaints, petitions and written questions. While this source of information is very useful to identify shortcomings within the different Member States, is not always able to produce objective data which compares the "performance" of the different Member States. Only those problems which are made the subject of a complaint, petition or written question are visible to the Commission and it can happen that serious problems never come to light. The number of complaints vary from State to State depending on factors such as environmental awareness, sense of participation in public decisions and the level of confidence in the European institutions.

Table 1. 2001 Non-Conformity with Directive 1985/337 & 1997/11 by Stage, 1997-2001

| | Austria | Belgium. | Denmark | Finland | France | Germany | Greece | Ireland | Italy | Luxembourg | Netherlands | Portugal | Spain | Sweden | UK | Sub-Total | Year Total |
|----------------------------------|---------|----------|---------|---------|--------|---------|--------|---------|-------|------------|-------------|----------|-------|--------|----|-----------|------------|
| 1997 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | | | | | | | | 1 | | | | | | | 1 | |
| Saisines | | | | | | | | | | | | 1 | | | | 1 | |
| Letter of formal notice art 228 | | 1 | | | | | | | | | | | | | | 1 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 3 |
| 1998 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | 1 | | | | 1 | | | 1 | | | | 1 | | 1 | 5 | |
| Saisines | | | | | | | | | | | | | | | | 0 | |
| Letter of formal notice art 228 | | | | | | | | | | | | | | | | 0 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 5 |
| 1999 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | | | | | | | | | | | | | | | 0 | |
| Saisines | | | | | | 1 | | | | | | | 1 | | | 2 | |
| Letter of formal notice art 228 | | | | | | 1 | | | | | | 1 | | | | 2 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 4 |
| 2000 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | 1 | | | | | 1 | | 1 | | | | | | | 3 | |
| Saisines | | 1 | | | | | | | | | | | | | | 1 | |
| Letter of formal notice art 228 | | | | | | | | 1 | | | | | | | | 1 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 5 |
| 2001 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | | | | | | | | | | 1 | | | | 1 | 2 | |
| Saisines | | | | | | | 1 | | | | | | | | | 1 | |
| Letter of formal notice art 228 | | | | | | | | | | | | | | | | 0 | |
| Reasoned opinions art 228 | | | | | | | | 1 | | | | | | | | 1 | |
| Saisines art 228 | | | | | | 1 | | | | | | | | | | 1 | 5 |
| Country Total (1997-2001) | 0 | 4 | 0 | 0 | 0 | 4 | 2 | 2 | 3 | 0 | 1 | 2 | 2 | 0 | 2 | | |
| EU TOTAL | | | | | | | | | | | | | | | | | 22 |

Table 2. Bad Application of Directive 1985/337 & 1997/11 by Stage, 1997-2001

| | Austria | Belgium | Denmark | Finland | France | Germany | Greece | Ireland | Italy | Luxembourg | Netherlands | Portugal | Spain | Sweden | UK | Sub-Total | Year Total |
|----------------------------------|---------|---------|---------|---------|--------|---------|--------|---------|-------|------------|-------------|----------|-------|--------|----|-----------|------------|
| 1997 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | | | | | | | | | | | | | | | 0 | |
| Saisines | | | | | | | | | | | | | | | | 0 | |
| Letter of formal notice art 228 | | | | | | | | | | | | | | | | 0 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 0 |
| 1998 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | | | | | | | 1 | | | | 1 | | | | 2 | |
| Saisines | | | | | | | | | | | | | | | | 0 | |
| Letter of formal notice art 228 | | | | | | | | | | | | | | | | 0 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 2 |
| 1999 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | 1 | | | | | | 1 | 1 | | | | | 1 | | | 4 | |
| Saisines | | | | | | | | | | | | | | | | 0 | |
| Letter of formal notice art 228 | | | | | | | | | | | | | | | | 0 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 4 |
| 2000 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | | | | | | | 3 | 1 | 1 | | 1 | 3 | | | 9 | |
| Saisines | | | | | | | | | | | | | | | | 0 | |
| Letter of formal notice art 228 | | | | | | | | | | | | | | | | 0 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 9 |
| 2001 | | | | | | | | | | | | | | | | | |
| Reasoned opinions | | | | | 2 | | | 4 | 3 | | 1 | 2 | 6 | | 1 | 19 | |
| Saisines | | | | | | | 1 | | | | | | 1 | | | 2 | |
| Letter of formal notice art 228 | | | | | | | | | | | | | | | | 0 | |
| Reasoned opinions art 228 | | | | | | | | | | | | | | | | 0 | |
| Saisines art 228 | | | | | | | | | | | | | | | | 0 | 21 |
| Country Total (1997-2001) | 1 | 0 | 0 | 0 | 2 | 0 | 2 | 9 | 4 | 1 | 1 | 4 | 11 | 0 | 1 | | |
| EU TOTAL | | | | | | | | | | | | | | | | | 36 |

Table 3. Impact Assessment New Own initiative Cases Opened by Year

| | 1997 | 1998 | 1999 | 2000 | 2001 | TOTAL |
|--------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Austria | 0 | 0 | 1 | 0 | 2 | 3 |
| Belgium | 3 | 0 | 1 | 2 | 0 | 6 |
| Denmark | 0 | 0 | 0 | 0 | 0 | 0 |
| Finland | 0 | 0 | 1 | 0 | 1 | 2 |
| France | 0 | 0 | 3 | 0 | 2 | 5 |
| Germany | 0 | 0 | 1 | 0 | 5 | 6 |
| Greece | 0 | 2 | 1 | 5 | 2 | 10 |
| Ireland | 0 | 0 | 1 | 0 | 0 | 1 |
| Italy | 1 | 2 | 10 | 14 | 11 | 38 |
| Luxembourg | 0 | 1 | 1 | 0 | 0 | 2 |
| Netherlands | 0 | 0 | 1 | 4 | 0 | 5 |
| Portugal | 0 | 0 | 1 | 0 | 0 | 1 |
| Spain | 1 | 9 | 8 | 12 | 13 | 43 |
| Sweden | 0 | 0 | 1 | 0 | 0 | 1 |
| UK | 0 | 0 | 1 | 1 | 0 | 2 |
| TOTAL | 5 | 14 | 32 | 38 | 36 | 125 |

Figure 1. Total New Own Initiative Cases (1997-2001)

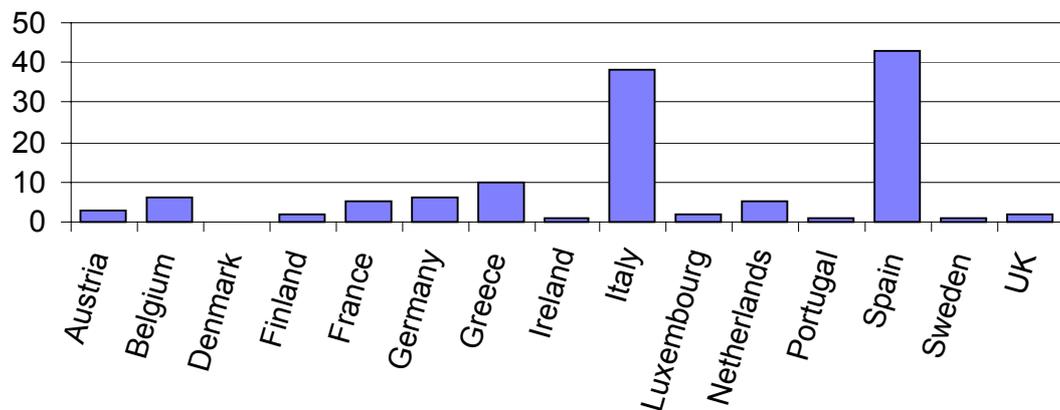


Table 4. Impact Assessment New Complaints Opened by Year

| | 1997 | 1998 | 1999 | 2000 | 2001 | TOTAL |
|--------------|-----------|------------|------------|------------|------------|------------|
| Austria | 5 | 1 | 1 | 4 | 4 | 15 |
| Belgium | 2 | 6 | 3 | 1 | 5 | 17 |
| Denmark | 1 | 4 | 7 | 2 | 3 | 17 |
| Finland | 1 | 0 | 1 | 1 | 2 | 5 |
| France | 13 | 8 | 4 | 10 | 13 | 48 |
| Germany | 5 | 18 | 17 | 31 | 39 | 110 |
| Greece | 5 | 15 | 10 | 20 | 16 | 66 |
| Ireland | 14 | 23 | 20 | 67 | 31 | 155 |
| Italy | 5 | 13 | 23 | 25 | 32 | 98 |
| Luxembourg | 1 | 0 | 0 | 0 | 1 | 2 |
| Netherlands | 0 | 2 | 0 | 2 | 0 | 4 |
| Portugal | 6 | 9 | 7 | 15 | 5 | 42 |
| Spain | 17 | 34 | 38 | 49 | 77 | 215 |
| Sweden | 3 | 4 | 3 | 5 | 3 | 18 |
| UK | 3 | 7 | 11 | 13 | 6 | 40 |
| TOTAL | 81 | 144 | 145 | 245 | 237 | 852 |

Figure 2. Total New Complaints Opened (1997-2001)

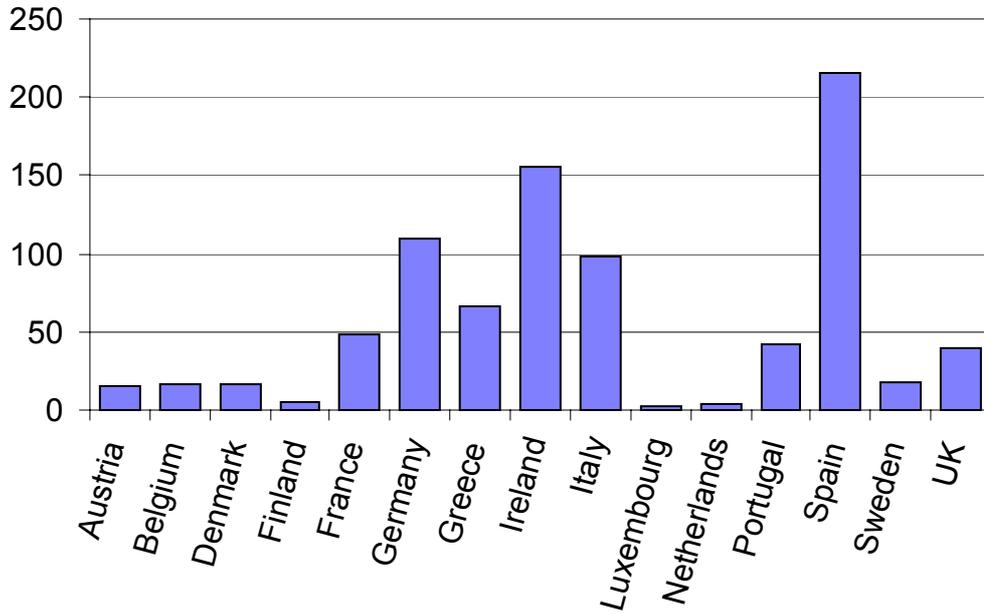
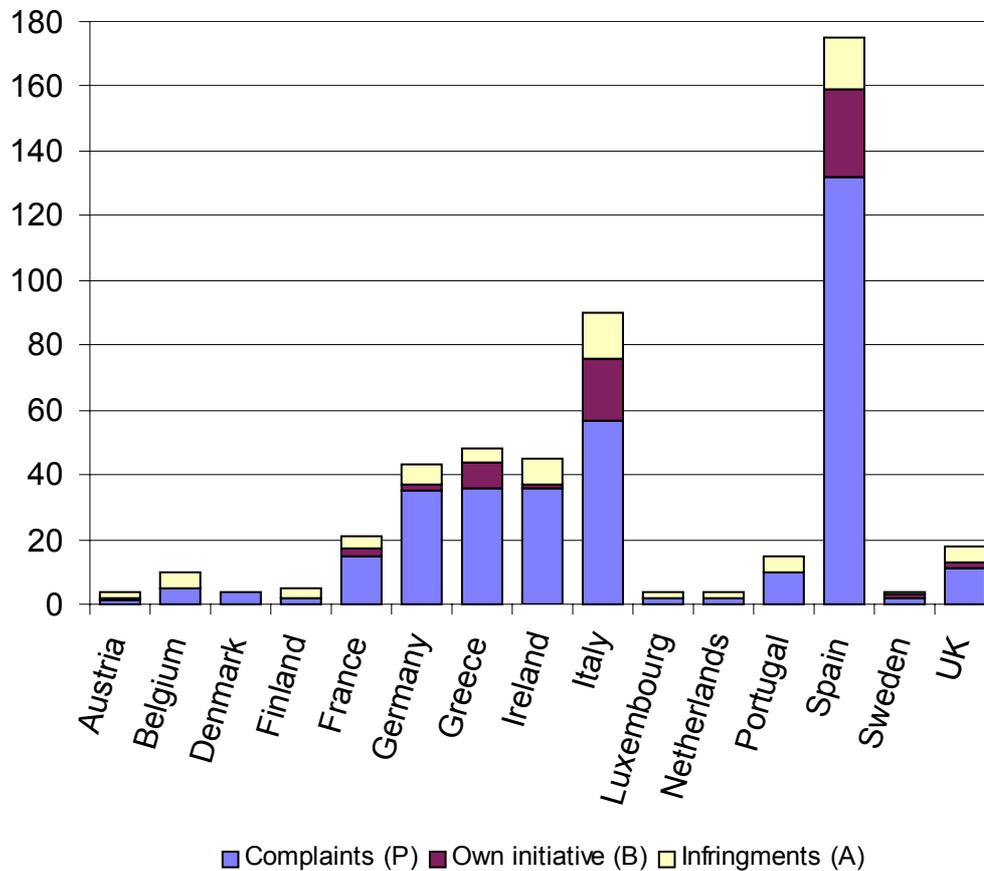


Figure 3. Impact Assessment Open Cases (Situation: 25/09/2002)



2.2.6 In addition, as can be deduced from these figures, only a very small proportion of complaints and “own initiative” cases develop into infringement procedures. Between 1997 and 2001 the Commission has opened 977 complaints (including “own initiative” cases) on conformity and the wrong application of the EIA directive. In the same years the Commission has sent only 36 reasoned opinions to Member States, 22 for non-conformity and 36 wrong application of the EIA directive. This can be explained by two main reasons:

a) Complaints may not be well-founded (however, the Commission is obliged to open complaint files, under its own rules, even when there is only a very weak possibility of breach)⁸. In many cases it is clear that the general public misunderstands the Directive and the role of the Commission: in some cases people comment a long time before any administrative procedure is started and claim that no EIA procedure has been carried out, when in fact in these cases no breach can be identified since the situation is at too early a stage and the Directive requires only that an EIA be carried out before consent is given. In some other cases it may be claimed that a project will have a significant impact but the Commission is not informed that a screening or an EIA procedure is in progress (and therefore that the competent authorities are applying the Directive). The Commission is not competent to assess the environmental impact of individual projects, it is only competent to assess whether and how the Directive is applied. In some further cases information on the basis of which the complaint was opened needs to be more specific in order to assess the relevance under the Directive (for instance: the nature of a project or the stages of the procedures) and the complainants are not able to clarify this. Many complainants are convinced that a negative assessment can prevent the authorities from granting development consents or that the lack of EIA on an Annex II project is in itself a breach of the directive. In addition, some cases reveal what are simply problems of application of internal law, in particular national or regional procedures.

b) The second reason is that in some cases where there is real breach of the Directive, raised by complaints, written questions or petitions, the Member States apply or comply with the Directive once a simple request for information has been sent by the Commission services or once a letter of formal notice is issued by the Commission. Consequently, situations of breach are often solved before the Commission is obliged to issue a reasoned opinion.

2.2.7 The provision which is more frequently concerned in infringement procedures on EIA Directive is Article 4(2) in particular as regards 1) the "screening" in itself, 2) the application of the thresholds, and 3) the listing of the projects of Annex II. Both under the old and the new version of the Directive, the assessment of the characteristics of Annex II projects (in order to determine, in individual cases, whether the project is to be made the subject of an EIA) is often not correctly carried out (this is a case of wrong application). It is also true that in some cases thresholds are set so high that decision-makers often reject the need for EIA for smaller projects which probably require it, e.g. because they are in sensitive areas (this is a case of wrong application). Finally some Member States are not in conformity with the EIA

⁸ In many cases a complaints are not progressed beyond a consideration by the Commission and Member States may not even be notified that a complaint has been received.

Directive because not all Annex II projects are covered by EIA domestic legislation (the non conformity case) (see e.g. Case C-474/99 *Commission v. Spain*).

2.2.8 Infringements procedures for non conformity and wrong application also concern Article 6 (public participation) in that a too short public consultation period is given) and Article 8 (Information gathered pursuant to Articles 5, 6 and 7 to be taken into consideration in the development consent procedure) of Directive 85/337/EEC. These procedures also concern Article 3(2) of Directive 97/11/EC (transitional provision).

2.2.9 The operation of the EIA Directive has been the focus of a great deal of attention in the European Court of Justice (ECJ). Many of the EIA cases considered by the Court have related to the implementation of Directive 85/337/EEC by individual Member States, while others have related to the operation of the EIA Directive in specific cases. It is not the purpose of this report to deal exhaustively with all the EIA cases that have been before the ECJ. However it is useful, in the context of the amending Directive 97/11/EC, to refer to some key court rulings and judgements that have helped to shape the changes introduced. The key cases that lay behind many of the amendments provided for in 97/11/EC are:

- **C-431/92 Commission of the European Communities v Federal Republic of Germany** (hereafter C-431/92 the Grosskrotzenburg case);
- **C-133/94 Commission of the European Communities v Kingdom of Belgium.** (hereafter C-133/94 *Commission v Belgium*);
- **C-72/95 Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland.** (hereafter C-72/95 the Dutch Dykes case);
- **C-392/96 Commission of the European Communities v Ireland.** (hereafter C-392/96 *Commission v Ireland*) (while the ECJ judgement in this case post-dates the adoption of 97/11/EEC, the Commission were mindful of the issues raised by the case when drafting the amendments to the Directive).

2.2.10 The ECJ has consistently ruled that the Directive should be interpreted as having a wide scope and very broad purpose (see for example C-72/95 the Dutch Dykes case) and that individual Member States or competent authorities should not seek to narrow that purpose in its operation. While much of the EIA Directive provides for discretion in the application of the procedures under the principle of subsidiary, the ECJ has limited the discretion available to Member States in a number of ways. The Dutch Dykes case made clear that the discretionary powers provided by the Directive should not be used to devalue the general requirements of the Directive provided by Article 2(1) that all projects in Annex II be the subject of EIA should they give rise to significant environmental effects. This means in practice that all Annex II projects must be passed through a screening procedure (i.e. Based upon the establishment of thresholds and/or the use of a case-by-case examination). In C-133/94 *Commission v Belgium* the ECJ ruled that Member States were at liberty to use either a case-by-case or a threshold approach to screening Annex II projects. The rulings in C-133/94 *Commission v Belgium*, C-72/95 the Dutch Dykes case and C-431/92 the Grosskrotzenburg cases also made clear that while Member States had the

discretion to define thresholds for screening Annex II projects, these thresholds could not be fixed at such a level as to exclude whole project types from assessment. Furthermore, in *Commission v Ireland* (C-392/96), the ECJ held that screening criteria or thresholds could not be limited to a consideration of the size of projects and that the nature and location of the project also needed to be taken into consideration. In C-392/96 *Commission v Ireland* the ECJ also ruled that the setting of thresholds or criteria for Annex II projects could not be set at such a high level that the objectives of the Directive would be circumvented by the splitting of projects into smaller units and that the cumulative effects of such an approach would need to be assessed. It was because of the issues raised on the screening of Annex II projects by these cases, together with the findings of the 1993 review of the operation of the EIA Directive, that Article 4(3), and Annex III was inserted into the Directive by 97/11/EC. This new Annex provides the criteria on which thresholds and other screening criteria must be based. In C-431/92 the Grosskrotzenburg and C-72/95 the Dutch Dykes case the ECJ also dealt with the issues of changes or extensions to projects and ruled that additions or extensions to existing projects should be subject to EIA should their size or scale or other factors meet the EIA requirements for a new project of that type. Aspects of these rulings were transferred into the EIA Directive by 97/11/EC through the addition to Annex II of point 13, dealing with changes or extensions to Annex I or Annex II projects

2.3 Transposition of Directive 97/11/EC

Main Features of Directive 97/11/EC

2.3.1 In response to the issues discussed in 2.2 above, the European Commission proposed an amending Directive (97/11/EC) that would strengthen the Directive 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 consolidate the changes and clarifications provided by the Espoo Convention and the rulings of the ECJ. The sources for the changes made by 97/11/EC are set out in Table 5. The amending Directive (97/11/EC) was adopted in 1997 and required Member States to transpose the changes into their domestic legislation by 14 March 1999.

Table 5.

| The Sources for the Amendments Made by 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 transboundary impacts | Articles 7 and 9 Amended |
| Directives 79/409/EEC and 90/313/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 ⁹ | Salami slicing | Accumulation with other projects included in Annex III screening criteria |

2.3.2 The main changes introduced by 97/11/EC include:

- Changes in Article 2
 - Member States have to ensure that all projects that are subject to EIA must also be the subject of a development consent;
- Changes to the Annexes
 - the number of Annex 1 projects was increased, with 14 new project types and the extension of 4 others;
 - the number of Annex II projects was increased by 8 and 8 others were extended, 1 project type was deleted (production of particle and fibre board);
 - changes or extensions to Annex I and II projects were added to Annex II;
 - Screening
 - Member States may either specify Annex II project criteria and thresholds, consider projects on a case by case basis or use a combination of both approaches;

⁹ While the ECJ judgement in this case post-dates the adoption of 97/11/EEC, the Commission were mindful of the issues raised by the case when drafting the amendments to the Directive

- there is a new Annex III which is devoted to screening criteria that must be taken into consideration by Member States (in drawing up their legislation) and by competent authorities when making screening decisions for Annex II projects and the development of screening thresholds and criteria. Annex III includes matters such as the characteristics of projects, the location of projects and the characteristics of the potential impact such as cumulation with other projects and risk.
- competent authorities must make public the reasons for their determination as to why an EIA is required in each case;
- Scoping
 - on a developer's request, the competent authorities must give their opinion about what should be contained in the environmental information to be supplied by the developer;
 - Member States may require authorities to provide scoping guidance irrespective of any such request;
- Environmental Report
 - the provision of an outline of the main alternatives studied was added as an element in the minimum requirements for the information that must be supplied by the developer in all cases;
- Alternatives
 - developers must include an outline of the main alternatives studied and an indication of the main reasons for the choice made, taking into account environmental effects; this also became an element of the minimum information to be supplied (see above);
- Consultation and public participation
 - consultations must be undertaken with the public and environmental authorities in other affected Member States likely to be affected by a project, in addition to the existing Member State consultation requirements;
 - the results of these consultations must be taken into account in the decision;
 - the reasons for the decision must be made public in all cases; and
 - the main mitigation measures adopted must be made public.

Member States' Arrangements for Transposition

2.3.3 Based upon the responses to the Commission's questionnaire for this review, follow up questions of clarification and further research, it can be stated that most

Member States have made arrangements for the transposition of the amending Directive (see Table 6). However it should be noted that the transposition of the Directive into the legal system of a Member State does not necessarily mean that the transposition is in complete compliance with the Directive. The federal/regional structure of some of the Member States, and the fact that the questionnaires for this review were largely only distributed at national level, makes it impossible to state, with any real confidence, whether the amending Directive has been fully transposed at sub-national level. Other research into the transposition of the EIA Directive in the federally organised Member States has highlighted the complexity of the different administrative arrangements and procedures as affecting the operation of the Directive at a local level in practice¹⁰. In some cases Member States report that their original arrangements already incorporated many of the amendments provided by 97/11/EC. Some of the Member States point out that, as their original arrangements were in the process of being amended, because they were either incomplete or required changes to be in accord with ECJ case law, they were in a position to include the requirements of some of the amending Directive when it was still in draft form.

Table 6

| Status of Transposition of Directive 97/11/EC by Member States as of 1st November 2002 | |
|--|--|
| Member State | Transposition Status |
| Austria | Deficits in transposition still exist as regards Annex II (1a) projects in 3 Länder (Burgenland, Carinthia, and Salzburg) |
| Belgium | The transposition is not complete for Walloon and Flanders regions |
| Denmark | Directive 97/11/EC transposed |
| Finland | Directive 97/11/EC transposed |
| France | Deficits in transposition still exist as regards the provisions concerning the scoping procedure under Article 1 (7) of Directive 97/11/EC with reference to certain projects. Case C-348/01 Commission v. Republic of France. |
| Germany | Directive 97/11/EC transposed |
| Greece | Directive 97/11/EC transposed |
| Ireland | Directive 97/11/EC transposed |
| Italy | Directive 97/11/EC transposed |
| Luxembourg | Lack of transposition. Judgement of the ECJ of 19/2/2002 (in case C2000/366) has declared the failure of Luxembourg to transpose Directive 97/11/EC. Luxembourg is preparing draft regulations to transpose the Directive. |
| Netherlands | Directive 97/11/EC transposed |
| Portugal | Directive 97/11/EC transposed |
| Spain | Directive 97/11/EC transposed |
| Sweden | Directive 97/11/EC transposed |
| UK | Directive 97/11/EC transposed |

2.3.4 Many Member States missed the deadline for transposition of all or part of the Directive. Germany, for example, only transposed Directive 97/11/EC into German law, in July 2001. In other cases the transposition appears to have been rather piecemeal, with parts of the Directive transposed and other parts not. With federal states, as stated earlier, the position is less clear. Only Belgium provided separate responses for each region and transposition here is also rather patchy. The Flanders region, for example, included many of the changes in the amending Directive in its original arrangements, but is still in the process of drafting new legislation to

¹⁰ see Prella, R. (2001) Environmental Assessment and Judicial Approaches to Procedural Errors – A European and Comparative Law Analysis, *Journal of Environmental Law*, Vol. 3, no. 2, pp. 185-198.

complete the transposition. Greece also included many of the requirements of the amending Directive in its original national legislation, but it has yet fully to comply with all of the requirements of the Directive. Luxembourg has yet to transpose the amending Directive and at the time of this research was the subject of investigation by the Commission. Action by the Commission was also pending on many other Member States for failure fully to comply with 97/11/EC.

2.3.5 There appears to be a fairly even split between those Member States that introduced wholly new legislation to transpose Directive 97/11/EC and those that simply amended existing arrangements. Many Member States took the opportunity offered by transposition to make other changes to their EIA systems. As with the original EIA Directive, in some countries EIA is dealt with by a single piece of legislation, while in others separate legislation exists for different project types. In some Member States separate EIA legislation was required to reflect the different authorisation procedures used for different types of project – e.g. land use planning consents and environmental licences. The amendment to Article 2(1) made by 97/11/EC requiring all projects defined by Article 4 to be the subject of development consent brought under control projects that had previously not been the subject of authorisation procedures. This required new consent procedures to be developed in some countries so that EIA could be applied. For example, the UK's regulations for the EIA of 'uncultivated land or semi-natural areas for intensive agricultural purposes' only came into force in January 2002.

Overview of 97/11/EC

In addition to the changes introduced as a consequence of the first report evaluating the effectiveness of Directive 85/337/EEC, the amendments made by 97/11/EC also reflect the considerable strengthening and clarification given to certain elements of the EIA Directive as advanced by the ECJ. The Directive also widened the procedural base by providing, at Annex III, screening criteria for Annex II projects as the basis on which screening thresholds and decisions must be based.

The review of the transposition of 97/11/EC has shown that the new measures introduced by the Directive have yet to be implemented in full in all Member States. The slow embrace of the amendments made by 97/11/EC by some Member States does not reflect the general importance that the Member States and the European Commission, places on EIA as a tool for implementing wider environmental policies.

3. ARRANGEMENTS FOR KEY STAGES

3.1 Introduction

3.1.1 This section of the report examines the operation of the amended Directive within the Member States, with particular focus on the amendments made by 97/11/EC. Member States, either originally or in subsequent amendments to their own EIA systems, included many of the new requirements of 97/11/EC. It has not, therefore always been possible here to disentangle the operation of an original system from any changes that have taken place subsequent to the adoption of 97/11/EC. The section reviews the key stages of the EIA process, and Section 4 will deal with specific topic areas that are central to the operation of the Directive as a whole. Both Section 3 and 4 are based upon an analysis of the questionnaire sent to the EIA experts in the government offices of each Member States. In some cases this analysis has been supported by further contact with the EIA experts for clarification and amplification of their responses. Nevertheless, the quality and detail of responses is very variable, ranging from full answers with references to legislation, regulations and cases, to much briefer responses where insufficient time was available to answer more fully. As a consequence the analysis cannot be as detailed as we might wish and direct comparison between Member States on all points has not been possible.

3.2 Screening

Introduction

3.2.1 The European Commission's guidance¹¹ defines screening as **“that part of the EIA process which determines whether an EIA is required for a particular project”** (<http://europa.eu.int/comm/environment/eia/eia-guidelines/g-screening-full-text.pdf>). In common with most EIA systems around the world, the EIA Directive requires an EIA to be carried out for projects “likely to have significant effects on the environment” (Article 2). The Directive provides two lists of projects covered by Article 2 and these are listed as Annex I and Annex II projects. Article 4 (1) requires that all projects listed in Annex I are made subject to EIA on a mandatory basis. Due to the amendments required by 97/11/EC and resulting from relevant ECJ rulings, all projects listed in Annex II must be made subject to screening. This means that for Annex II projects Member States must first determine whether there are ‘likely’ to be significant environmental effects. In the affirmative case the full EIA procedures of the Directive apply. The screening decision requires an examination of a project and its receiving environment to determine the likelihood of ‘significant environmental effects’. To facilitate this screening decision the Directive provides Member States with a certain amount of discretion to determine the basis on which significant environmental effects should be identified. However, in the Grosskrotzenburg case, *Commission v Belgium* and the Dutch Dykes cases the ECJ ruled that the discretion given to Member States was considerably limited by clarifying the margin within which the Member States may operate. Directive 97/11/EC inserted a new Article 4(2) that requires that Member States make the screening determination through:

¹¹ See CEC (2001) Environmental Impact Assessment Guidance on Screening, Brussels, CEC.

- (a) a case-by-case examination of projects; or
- (b) thresholds and criteria set by any of the Member States; or
- (c) a combination of (a) and (b) above.

3.2.2 Following the *Grosskrotzenburg*, *Commission v Belgium* and the Dutch Dykes cases, Member States could not use thresholds to exclude whole classes of projects, but thresholds could be used to exclude very small or minor projects. In C-392/96 *Commission v Ireland* the ECJ ruled that thresholds could not be based on the size or other physical characteristics of a project alone and that they had to be based upon locational and other environmental factors. Directive 97/11/EC implemented this principle by inserting Article 4(3), and states “When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant screening criteria set out in Annex III shall be taken into account”. That screening criteria is based upon:

- characteristics of the project - e.g. size, use of natural resources etc;
- project locational factors – e.g. in or near sensitive areas such as wetlands, protected wildlife sites and densely populated areas etc; and
- characteristics of potential impacts – e.g. extent and magnitude of impact, transfrontier nature of impact etc.

3.2.3 Following the adoption of 97/11/EC, and the application of the rulings in the above cases, Member States developed the following types of screening thresholds for Annex II projects:

- inclusion or mandatory thresholds or criteria – projects of a certain size or of particular locational or other characteristics which require mandatory EIA;
- indicative or guidance thresholds or criteria – thresholds are provided as a guide only -projects above a given size or other threshold/criteria levels are considered more likely to require EIA, while projects below these thresholds are considered less likely to require EIA, but will still need to be screened on a case-by-case basis for the likelihood of significant environmental effects; and
- exclusion thresholds or criteria – projects below a given size or of particular locational or other characteristics which do not require EIA.

All of the above thresholds and criteria must be based upon the screening criteria set out in Annex III. For those countries not adopting a wholly case-by-case assessment approach to screening Annex II projects, the combined use of thresholds and a case-by-case approach can be characterised as the ‘traffic light’ approach to screening (see Fig. 4 below). Where no exclusion thresholds exist a modified ‘traffic light’ approach is created (see Fig. 5 below).

Figure 4: ‘Traffic Light’ Approach to Screening

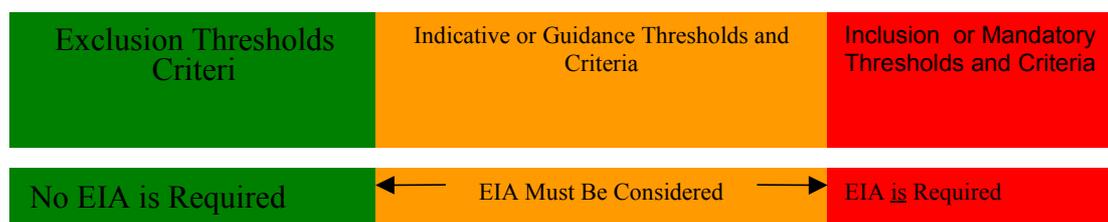
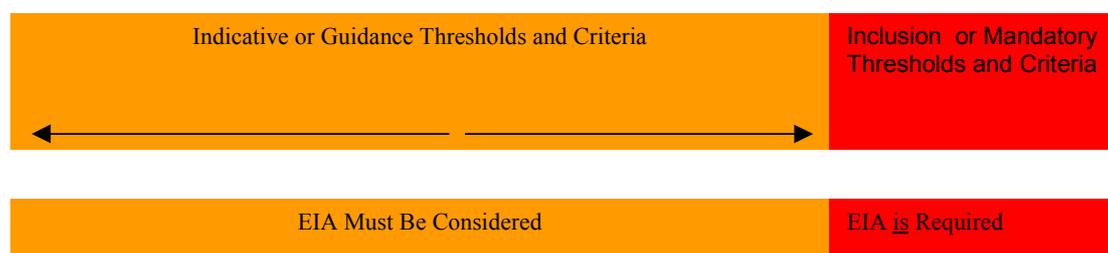


Figure 5: Modified ‘Traffic Light’ Approach to Screening



Changes made by 97/11/EC to Annex I and Annex II

3.2.4 Directive 97/11/EC amended the two project lists provided in Annexes I and II. The number of Annex I projects was increased, with 14 new project types and the extension of 4 others. In some cases, projects previously in Annex II were moved into Annex I if they exceed a given threshold – for example, installations for the intensive rearing of poultry and pigs were previously all Annex II projects now, under 97/11/EC, projects that exceed a threshold of 85,000 places for broilers, 60,000 places for hens, 3,000 places for the production of pigs over 30 kg and 900 places for sows are Annex I projects where EIA would be mandatory. The number of Annex II projects was increased by 8 with the extension of 8 others. The Commission’s survey of Member States sought opinions on the operation and effectiveness of the division of projects between the two Annexes. The survey also sought views on whether the Annex I thresholds were set at the right level or the criteria provided the right trigger for requiring a mandatory EIA.

3.2.5 The logic behind the movement of some projects – e.g. intensive pig rearing – to Annex I is questioned by some Member States on the basis of their size and likely impacts. Concern was expressed at the vagueness of some project descriptions – for example open cast mining (Annex I (19)) could include land reclamation schemes where it was felt the need for EIA may be better considered on a case-by-case basis. There was also some support for the view that there should be far more flexibility in the operation of Annex I, so that thresholds could be adapted to suit national circumstances and the socio-economic conditions of individual countries. Some Member States (Austria, Belgium-Brussels, France, Greece, Ireland, Netherlands, and Portugal) have set some thresholds at lower levels than those of Annex I. The point is made by some Member States that in small countries the Directive’s thresholds may be seen as high.

3.2.6 There was a degree of consensus among Member States at the usefulness of the threshold approach used in Annex I. However, some Member States queried the justification for the thresholds used and there was some concern that not all of the thresholds are clear – for example, for Annex I (16) (pipelines for the transport of gas, oil or chemicals), it is not clear whether the 800mm threshold refers to an outer or inner diameter. A number of Member States suggested that more appropriate thresholds should be used for certain projects. These include:

- production of organic nitrogen for intensive livestock units (Annex I (17));
- size of the development rather than weight of the vessel for trading ports (Annex I (8b));
- resource input or production outputs for projects such as integrated works for the initial smelting of cast-iron and steel, and integrated chemical installations (Annex I (4) and (6)).

3.2.7 The Member States were asked whether they believed that there was a case for moving some projects from Annex II to Annex I. Some Member States have already done this by placing some projects in their own version of Annex I or by having mandatory thresholds for certain Annex II projects. However, the largest single proportion of respondents felt that there is no case for moving projects from Annex II to Annex I (i.e. Austria, Denmark, Greece, Netherlands, Spain, Sweden, UK). There was some consensus on the view that it was far too early to judge whether the Annex I and II lists needed further revision and that there needs to be far more research on the relationship between the Annexes and how the system operates in practice across the EU as a whole. There was also a suggestion that there is a need for more reliable data on differences [between Member States] and to explore whether or not these differences result, perhaps from some geographical, socio-economic or other basis. However, some Member States (Belgium-Flanders, Belgium-Walloon and Italy), do see possibilities for further adjustment and one suggestion is that the two Annexes should be merged with the introduction of mandatory EIA thresholds for each project category. Austria, France and Greece already use this approach and do not currently differentiate between Annex I and II projects in their domestic EIA legislation.

3.2.8 Over half of the respondents indicated their domestic legislation required EIA for other project categories than those mentioned in Annexes I and II. The most frequently mentioned category was golf courses. Other suggested additions to the Annexes included the following (in some cases the Member States suggesting these additions already include them in their own domestic arrangements):

- installations for working with high risk biological substances;
- Genetically Modified Organism installations such as laboratories, test facilities and trial areas;
- shooting ranges;
- mobile phones masts;
- manufacture of fibreboard;

- particle accelerators (of 50 MeV and over);
- intensive rearing of cattle and calves;
- military practise grounds; and
- manufacture of lime.

However the respondents did not make clear whether their proposed changes should be in Annex I or II; it is assumed most would be Annex II.

3.2.9 The suggestion for the inclusion of intensive rearing of cattle and calves may be worth further examination as some evidence would suggests that this form of livestock farming is the cause of high levels of ammonia pollution in some countries and that control may be necessary to meet the requirements of the UN ECE Protocol on Combating Acidification, Eutrophication and Ground Level Ozone (the multi-component protocol). The suggestion for including the construction, or change or extension of a military practice ground (for actual development of 100 ha. or more) is interesting in that it covers defence/security issues which are often EIA exempt. The main reason for its suggested inclusion is that such training areas are often located in the vicinity of nature conservation areas. These suggestions should not be seen as an overall demand for a widening of the scope of Annex I and II. Several respondents to the questionnaire saw no case for adding new project types to Annexes I and II at this stage, seeing it as premature as the amendments are themselves only recent. Some Member States have already extended the list of Annex II projects to cover some of the above project types and recognise that the EIA Directive, and their national procedures, provides the necessary flexibility for them to add new projects to Annex II if deemed necessary. That others have not, and yet suggest that certain projects should be included in the Annexes, may mean that clarification is required on the discretion that Member States have on the widening of Annex II.

Summary of Main Findings: Changes made by 97/11/EC to Annex I and II

There do appear to be few significant concerns regarding the current split between Annex I and Annex II projects and the flexibility provided by the Directive that allows Member States to increase the projects covered by Annex I. There is a good deal of support among Member States for the threshold approach employed in Annex I.

Action: See recommendation 5.4.2.(i)

Screening Annex II Projects following 97/11/EC

3.2.10 Most of the Member States appear to make use of a combination of both thresholds and the case-by-case approach (See Table 7).

Table 7 Annex II Screening Mechanisms Across the Member States

| | |
|----------------|--|
| AUSTRIA | Screening is based on a combination of thresholds and case-by-case examination. Some thresholds trigger mandatory EIA. Indicative thresholds are used with case-by-case examination, and in sensitive areas the threshold values are usually halved. Exclusion thresholds are also used; new projects or modifications of existing projects that are less than 25% of the relevant threshold do not require EIA. |
| Belgium | <p>(Brussels)</p> <p>Thresholds for mandatory EIA are set for some project types (category A thresholds). Indicative thresholds (category B thresholds) with a case-by-case examination. The indicative thresholds (category B thresholds) also act as exclusion thresholds for smaller installations.</p> <p>(Flanders)</p> <p>In principle, under the intended legislation, a list of project types / activities (including some thresholds) for which EIA will be mandatory is proposed. A second list will identify activities for which case-by-case examination will be necessary.</p> <p>(Walloon)</p> <p>A system of mandatory, fixed thresholds is employed. Below these thresholds no EIA is required.</p> |
| Denmark | Annex II projects are screened primarily on a case-by-case basis, using criteria based on Annex III. A limited number of mandatory thresholds and/or locational criteria exist, and below these thresholds a case-by-case approach is taken. There are no exclusion thresholds. |
| Finland | Some Annex II projects have been included in the mandatory list with thresholds. For other Annex II projects screening is principally carried out using case-by-case examination based on Annex II, with no indicative or exclusion thresholds. |
| France | Exclusion thresholds and criteria (both technical, monetary and also in relation to the nature of the proposal) are used. In principle, all projects that are not excluded in this way will require EIA. A simplified EIA procedure is used in some cases where a full EIA is not considered necessary. |
| Germany | A system of mandatory thresholds is used. Below these levels, additional thresholds are set that distinguish between general and site related screening. For “general screening” criteria based on Annex III must be examined in full. For “site-related screening” the thresholds are lower and concentrate on the criteria that relate only to the proposed project site. |
| Greece | For Annex II projects a mandatory list is used which defines the thresholds and criteria above which EIA is always required. For projects that fall below these limits a “simplified EIA” procedure applies. |
| Ireland | Mandatory thresholds have been set for each of the project classes in Annex II. A statutory basis exists to enable a requirement for EIA in cases where a project falls below these thresholds and the Competent Authority considers that significant environmental effects are likely (through reference to Annex III criteria). Exclusion thresholds are not used. |

| | |
|--------------------|---|
| Italy | A list is used to identify Annex II projects for which EIA is mandatory. Other Annex II projects are screened using a combination of thresholds and case-by-case examination. Exclusion thresholds have been set for almost every Annex II project. |
| Luxemb'g | No information |
| Netherlands | For Annex II projects, thresholds are set above which a case-by-case examination takes place (using Annex III criteria). Below the thresholds no EIA is required. |
| Portugal | Mandatory thresholds are used for screening Annex II projects. Different thresholds apply in sensitive areas. There is no case-by-case screening. |
| Spain | Mandatory thresholds are used to identify projects for which EIA is obligatory. Other Annex II projects are screened using case-by-case examination combined with indicative thresholds. Exclusion thresholds are not used. |
| Sweden | Certain project types have a general requirement for EIA e.g. railways, roads, cement manufacture. For other projects, a combination of mandatory thresholds and case-by-case examination is used. There are no exclusion thresholds. |
| UK | Screening is conducted using a combination of indicative thresholds and case-by-case examination. Exclusive thresholds are set below which EIA is not required (except in exceptional circumstances when the Secretary of State can use reserve powers to require EIA). |

Thresholds are established to exclude projects that are below certain sizes or criteria from EIA in Austria, Belgium-Brussels, France, Germany, Italy, Netherlands, Portugal, Spain, and the UK. However, it is important to qualify this statement as different approaches are used for different project types within individual Member States. Exclusion thresholds are not necessarily in place for all project types in all of the above countries. In some cases mandatory or inclusion thresholds also act as exclusion thresholds so that if a project is above a given threshold EIA is always required and below the threshold, EIA is not required. Sub-threshold screening takes place in some of the Member States for some projects, but not all. In still other cases projects below mandatory thresholds are made subject to a simplified EIA procedure. Austria, France, Germany and Greece make no distinction between Annex I and II projects and base their screening decisions on inclusion or mandatory thresholds and a case-by-case examination of the project and its receiving environment for both groups of projects. In some cases only mandatory thresholds exist for Annex II projects and screening takes place on a case-by-case basis of projects below those thresholds. Where this practice occurs the respondents are generally of the view that there is limited need for sub-threshold screening as the mandatory thresholds have been set (in their view) at a very low level (Belgium–Flanders and Walloon regions, Ireland, Portugal and Spain). In some of these cases the competent authority may require the developer to carry out an EIA even if the project is below a threshold or, in some cases, a simplified EIA procedure is completed. A tiered system of EIA is in place in

a number of Member States. This approach is largely based upon the use of mandatory thresholds: above the threshold EIA is always required, below the threshold only a simplified EIA or report is required. In Greece this comprises responses to a questionnaire. In Belgium-Brussels the developer is required to produce an environmental report for most Annex II projects unless the Government deems a full EIA is necessary. The use of a tiered approach to EIA does have the benefit of ensuring that all Annex II projects are subject to some form of assessment and report, however the requirements of the Directive will only be met, in such cases, if under the simplified EIA no significant environmental effects are identified.

3.2.11 Some Member States have moved some Annex II project types into their own Annex I (for example, Denmark and Finland). In a number of Member States mandatory thresholds have been set for some Annex II projects and where that is the case it is essential that a case-by-case screening procedure is in place for projects that fall below the mandatory thresholds (the ‘modified traffic lights’ approach – see para. 3.2.3 above). Denmark, Sweden and Finland appear to make use of a case-by-case assessment for the majority of Annex II projects that have not been moved into their own mandatory (Annex I) list. It is not clear what approaches to screening are being used in some of the federal states where the EIA function has been devolved down to regional level and no evidence has been presented on the way the EIA systems are operated in practice. There is also no information of how competent authorities within the Member States apply the thresholds or the case-by-case screening procedures in practice.

3.2.12 Most Member States have established either their own screening criteria or indicative thresholds or make use of the screening criteria in Annex III. Where Member States have established their own criteria these are largely based upon the Annex III list but expand on the Annex III list to include specific nationally designated areas or other factors such as cultural and historic landscapes or archaeological features. The general view of the Member States is positive about the efficiency of the screening criteria of Annex III. On the advice of the Commission most countries (including Austria, Denmark, Finland, Ireland, Netherlands, Spain, Sweden and the UK) have now transposed Annex III directly into their own legislation. The Annex III criteria are seen by some respondents as making the screening process clearer and more transparent. On the other hand, some respondents found them unclear, quite technical, and subjective.

3.2.13 The screening process is complicated in a number of Member States by the fact that for some Annex II projects a land use planning or construction authorisation is required, for other projects only an environmental permit (similar to IPPC) is required, while in still others both consents are necessary. The screening decision is then often based upon the relevant thresholds and criteria for the particular consent regime and it is not at all clear from the responses that these are or can be applied consistently. For example, similar project types can be screened using different criteria, the use of project size in terms of land area for some projects and emission rates or energy output for similar projects in the same project category.

3.2.14 In some Member States domestic EIA legislation only requires an EIA of an Annex II project where there are likely to be significant adverse or negative environmental effects. However, Article 2 paragraph 1 of the Directive does not distinguish between positive or negative effects. It is important that where only

significant ‘adverse’ or ‘negative’ effects are used as the trigger for EIA, such effects are not first measured against any positive effects. In Austria any single significant adverse effect triggers the need for an EIA, regardless of there being significant positive effects. Where only significant adverse effects are used to trigger EIA, there need to be very careful checks in place to ensure that competent authorities do not misuse this approach to override environmental concerns with economic benefits.

Summary of Main Findings: Screening Annex II Projects

Member States have embraced the flexibility permitted by Article 4(2) and a range of approaches to screening exists across the European Union. Many Member States appear to be making use of the ‘traffic light’ approach to screening and have developed inclusion, exclusion and indicative or guidance thresholds. However, in some cases Member States appear to be employing a variety of different approaches, using different screening procedures for different project types and in some cases only mandatory or inclusive thresholds are used. Very few Member States employ a case-by-case approach for all project types. The following key issues arise from the review of screening procedures:

It is not clear from the evidence reviewed here that all Annex II projects are being subjected to a systematic screening procedure. In some cases there is little evidence that screening takes place below nationally established mandatory thresholds or criteria;

There is little evidence of how the screening systems put in place have been operating in practice at competent authority level;

There are few examples of how the screening process operates at regional level in the federal states;

Action: *See recommendation 5.4.2.(a), (c), (d), (i) and (j).*

Examples of thresholds/criteria for certain projects

3.2.16 Previous reviews and other research have identified particular screening problems, including inconsistency of approach and concerns over definition and or interpretation for certain types of project. The Commission's questionnaire sought from Member States information on the screening thresholds and criteria used for the following projects:

- Annex II, 1(d) Forestation and Deforestation
- Annex II, 1(e) Intensive Livestock Installations
- Annex II, 3(h) Hydroelectric Plant
- Annex II, 3(i) Wind farms
- Annex II, 4(c) Ferrous Metal Foundries
- Annex II, 5(b) Cement Manufacture
- Annex II, 10(b) Urban Development
- Annex II, 10(c) Railways and Intermodal Transshipment Facilities
- Annex II, 10(d) Airfields
- Annex II, 10 (e) Roads

3.2.17 The results show a wide variety of approaches. In most of the Member States some of the project types have been sub-divided, for example Annex II, 1(d) (Forestation and Deforestation) is split into two, as is Annex II 10(c) (Railways and Intermodal Transshipment Facilities). In the case of intensive livestock installations (Annex II 1(e)) a variety of different types of livestock are made subject to EIA. For example: in Austria, poultry unit thresholds are based on different types of production with thresholds of 48,000 places for laying hens or young hens or turkeys, and 65,000 places for broilers; in Belgium (Walloon) there are mandatory thresholds for ducks, geese and turkeys (over 25,000 animals); in Denmark there are mandatory thresholds of 2,400 places for pigs between 30-100 kg and 750 places for sows. Appendix 3 provides an overview of the thresholds used for the projects listed at 3.2.16 above. In some cases Member States are applying the 'traffic light' approach to screening, having exclusion (GREEN), indicative thresholds and criteria for case-by-case assessments (AMBER) and inclusion (mandatory) thresholds (RED) (See Figs. 6-11 below). However, it should be noted that in many cases the thresholds are used in combination with other screening criteria, such as those provided by Annex III, and therefore a strict comparison of thresholds between Member States may be misleading.

3.2.18 There is a great deal of variation in the levels at which some of the thresholds are set. For example, with afforestation projects the area of planting that triggers mandatory EIA is 30 ha in Denmark, 50 ha in Spain and Germany, 200 ha in Finland and 350 ha in Portugal. Little justification has been provided for the levels at which

thresholds have been set and it is not clear how Annex III has been used to establish project size mandatory thresholds. In some of the Member States many of the projects are deemed to always require EIA, regardless of size or other project or locational factors – deforestation and hydroelectric plant in Sweden, ferrous metal foundries in Denmark and Greece, cement manufacturing in Denmark, Finland, Greece, Ireland and Sweden, railways in Germany, Greece and Ireland, intermodal transshipment facilities, airfields and roads in Greece.

Fig. 6

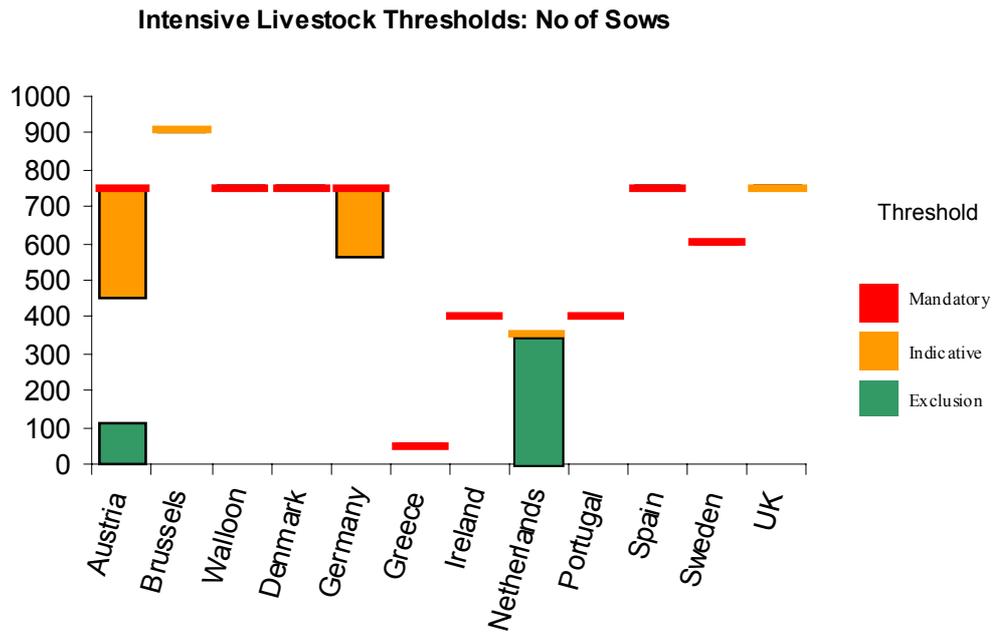


Fig. 7

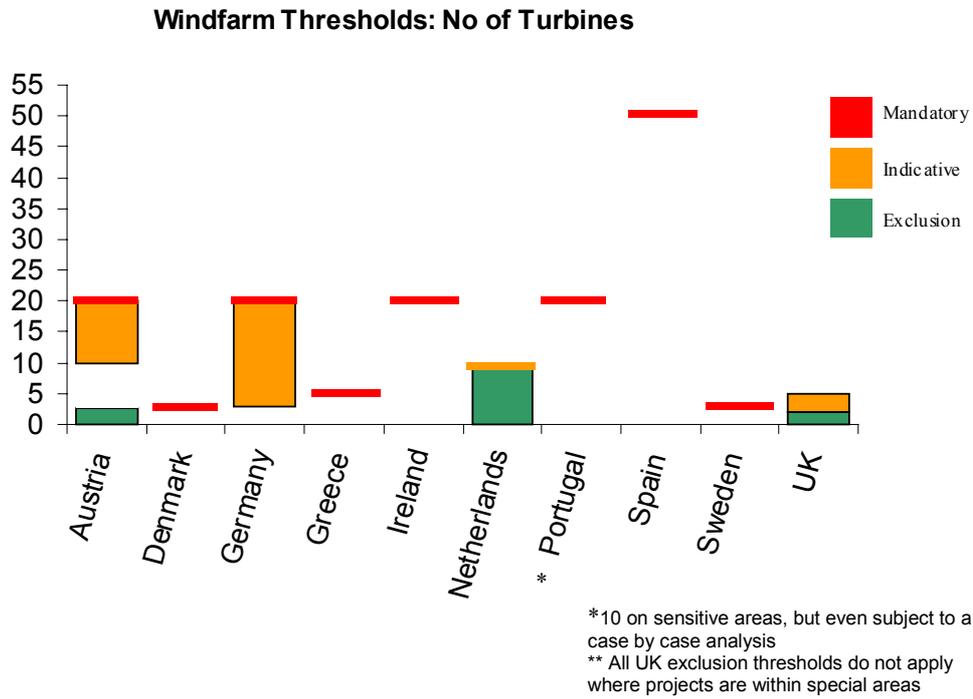


Fig 8

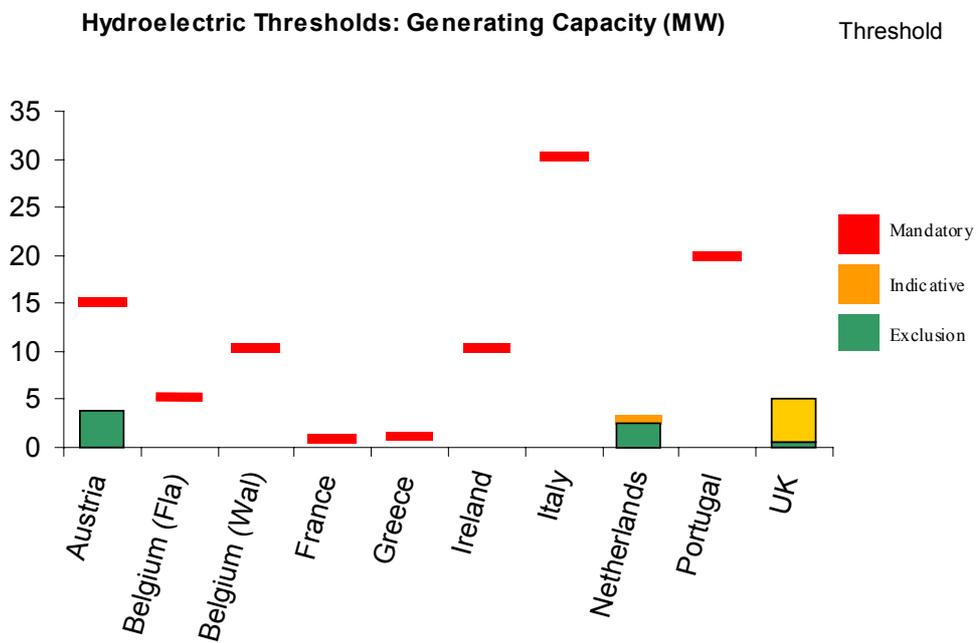
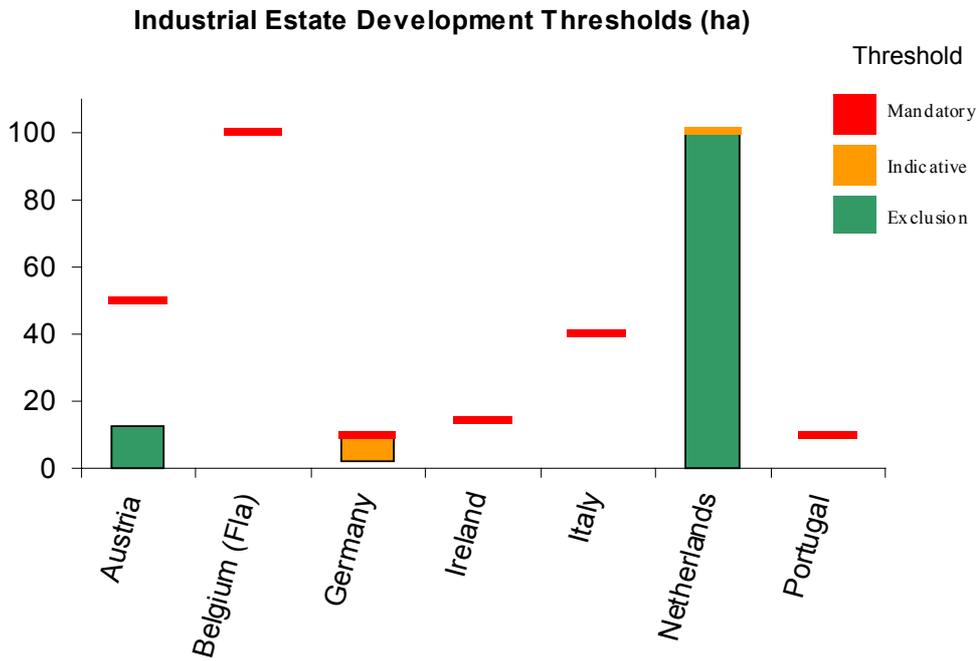


Fig. 9¹²



¹² The Member States have not identified explicit types of projects covered by the category Annex II 10 (a) “industrial estate development projects”. However, thresholds have been used to identify the requirement for EIA in this category. In France, a monetary threshold is used, and EIA is also mandatory where an urban development plan is in operation. For other Member States the threshold is based on the area of the proposed industrial estate development

Fig. 10

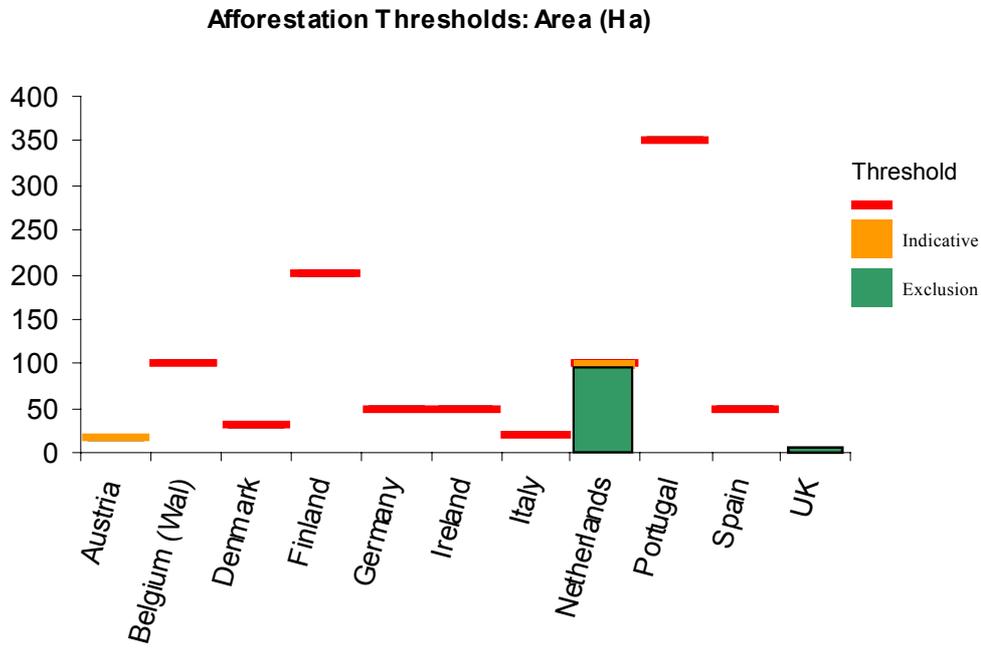
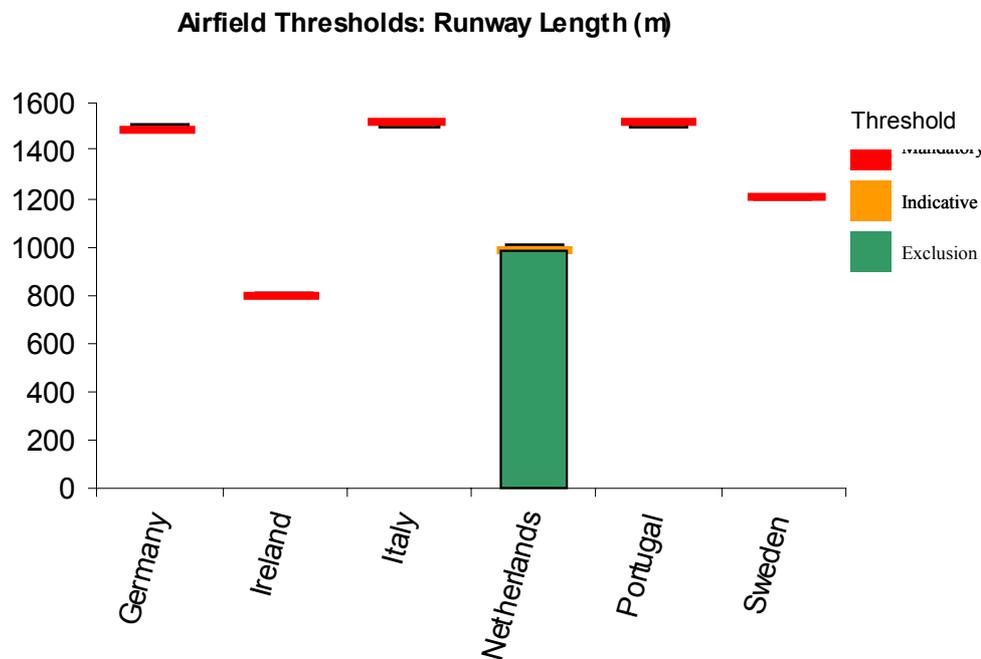


Fig. 11



3.2.19 Where Member States use a case-by-case approach to screening Annex II projects using Annex III and other screening criteria, these are usually supported by indicative or guidance thresholds. Here too there is considerable variation of approach across the EU. The screening criteria developed and used by some Member States

extremely complex and are often combined a number of factors. For example, the mandatory threshold for deforestation in Denmark is:

“if area affected is older than 20 years **and** over 30ha, in an afforestation area designated in a regional plan **and** where a comparable area of at least the same size is not afforested, **unless** the relevant state authority declares that the forest to be cleared is without significant forestry, biological, landscape or recreational value”.

Project Specification

3.2.20 The two earlier Commission's reviews into the operation of 85/337/EEC discovered a number of issues relating to the interpretation of the definitions of some project types. There were particular concerns over the definitions of industrial estate development projects (Annex II 10[a]) and urban development projects (Annex II 10[b]) The Commission's questionnaire for this current review specifically asked Member States for information on the operation of these two categories. The responses are varied but it would appear that those concerns over interpretation remain. For example, there appeared to be a degree of concern as to whether projects outside towns and villages can be categorised as “urban development projects”. Based upon the broad interpretation of the Directive required by the ECJ, an urban development project should be seen as a project that is urban in nature regardless of its location. While many Member States still have problems with the definition of these project categories, only three consider that any further specification is necessary. Most of the Member States prefer the discretion to produce their own definitions. One of the respondents who felt that further specification was necessary argued that it was needed in order to achieve greater harmonisation and consistency. One respondent argued that the components of an urban development – roads, car parks, buildings etc - are more suitably assessed at the SEA level of a development plan. Few of the Member States appear to have provided further clarification of the description of 10(a) industrial estates. Austria has defined industrial or business parks as

”areas that are developed by a builder and operator and are provided with the required infrastructure for the joint industrial or business utilisation by several companies, that are characterised by spatial proximity and form an operational or functional unit”

Table 8, below, provides examples of the type of projects that Member States include under 10(b).

Summary of Main Findings: Project Specification

While most Member States have experienced difficulties with the interpretation of Annex 10 (a) (industrial estate development projects) and Annex II 10 (b) (urban development projects), the approach taken by the Member States on how to tackle this issue varies. It seems that most prefer that such definition is left to the Member States in accordance with their own economic and social aspects to take into consideration when considering a project type as well as its threshold.

Action: *See recommendation 5.4.2.(j).*

Table 8. Annex II 10b Projects Identified by Selected Member States

| | Austria | Belgium | Denmark | Finland | France | Germany | Greece | Ireland | Netherlands | Portugal | Spain | UK |
|--------------------------------------|---------|---------|---------|---------|--------|---------|--------|---------|-------------|----------|-------|----|
| Shopping Centres | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Car Parks | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Housing Developments | | ✓ | ✓ | | | | ✓ | ✓ | ✓ | ✓ | ✓ | |
| Sports Stadia / Arenas | ✓ | | ✓ | ✓ | | | | | ✓ | | | ✓ |
| Business Parks/Offices | ✓ | ✓ | | | | | | | ✓ | | ✓ | |
| Industrial Estates | ✓ | | ✓ | | | | | | ✓ | ✓ | | |
| Universities | | | ✓ | | | | | | | | | |
| Hospitals | | | ✓ | | | | | | | | | |
| Theatres / Cinemas | | | ✓ | | | | | | | | | ✓ |
| Holiday Village / Leisure Centres | ✓ | | | | | | | | | ✓ | ✓ | ✓ |
| Greenhouses | | | | | | | | | ✓ | | | |

Sensitive Area

3.2.21 Annex III, as introduced by 97/11/EC, includes, as a mandatory screening criterion, ‘the environmental sensitivity of geographical areas likely to be affected by projects’ and goes on to list the matters that need to be considered in the screening process including special protection areas designated under the Birds and Habitats Directives. Several of the Member States (including Austria, Germany, Ireland, Netherlands, UK) have expanded on the concept of ‘sensitive area’ referred to in Annex III and incorporated it into their own legislation. The Netherlands has transposed the requirements of the Annex into an exhaustive list of sensitive areas laid down in ‘Structuurschema Groene Ruimte’, which is translated into policy papers at the provincial level (provincial ecological structure). In the UK, the implementing Regulations include a definition of sensitive areas which has nine headings (including Natura 2000 sites, other Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty etc.). The purpose is to require all proposed development in or partly in a sensitive area to be screened, even if it is below the exclusion threshold.

Summary of Main Findings: Sensitive Area

Most Member States have incorporated the ‘sensitive area’ concept into their own EIA legislation, and in many cases they have expanded on the concept to cover their own nationally designated environmentally sensitive areas. Where countries make use of exclusion (Green) thresholds, they provide a clause whereby projects that fall below the thresholds still have to be screened for EIA if they fall within or near a sensitive area.

Consultation

3.2.22 Directive 97/11/EC introduced a number of new areas where consultation can take place within the EIA process. While there is no mandatory requirement in the Directive for consultation at the screening stage, the fact that the competent authority may need to consider, on the basis of Annex III, areas outside of its own expertise, would suggest that some consultation with expert bodies may be necessary. Only three Member States (Italy, Spain and Sweden) consult the public before arriving at a screening decision on Annex II projects. One reason given for including public participation during screening is that the measure of what constitutes a significant effect is largely subjective and its determination should include those that will be affected by the project. Some of the Member States publicise the fact that a screening decision is to be made and the public have an opportunity to comment. In other Member States the screening decision is seen as a wholly technical process where the public are either ‘represented’ by public bodies or are given the opportunity to appeal against a decision through the courts. As noted above at 3.2.10, in some cases the domestic legislation makes EIA for most Annex II projects mandatory and so there is no screening decision on which the public can be consulted.

Summary of Main Findings: Consultation

Few member States involve the public concerned with the screening process and many see it as a purely technical decision.

Number of projects

3.2.23 Directive 97/11/EC extended both Annex I and Annex II project types and the Commission was interested to know whether or not the amended Directive has had any effect on the number of EIAs being carried out in Member States. There was considerable variation in the nature of the responses. Around half of the Member States either reported or anticipated a substantial increase in the number of EIAs following the implementation of the amended Directive. There has been a significant increase in some Member States (Austria, Denmark, Spain and the UK). Not all of the Member States could provide any evidence of either an increase or decrease in numbers as, in some cases, there are no nationally collected data on EIA activity. Several Member States found quantification difficult, for various reasons including:

- amended Directive not yet implemented;
- lack of adequate data-base;

- diversity and number of project consent procedures under which EIA takes place; and
- complications of regional dimension.

Several Member States indicated little/no change because they already included the new project types inserted by 97/11/EC in their original legislation. Many Member States had difficulty in differentiating between Annex I and Annex II projects in their numbers. The average number of EIAs each year post implementation varies greatly between Member States, from over 7000 to fewer than 10. There are very many reasons why such variation in EIA activity exists between the Member States including the relative economic conditions between Member States and the propensity for certain projects to be more active in some countries than others. Several Member States noted that comparisons over time could be distorted by trends in the economic cycle, which could vary between countries. However, the wide variation in the levels at which thresholds have been set has clear implications for the amount of EIA activity.

3.2.24 Some countries have good databases on EIA activity, which allows them to clearly list output both by Annex and by Project Type on an annual basis. This is very useful for monitoring implementation, trends and for EIA research activities. In other cases the collection of information in this field is less accurate and in many cases only estimates of EIA activity have been provided. Given the restrictions above and the lack of detail provided by respondents, the best estimate of the average annual numbers before and after the amendment, are provided in Table 9.

Summary of Main Findings: Number of Projects

The annual number of EIAs appears to vary considerably between the countries of the European Union. The lack of national monitoring of EIA activity and the application of the EIA Directive in practice makes it difficult to speculate on the reasons why there are such wide variations between Member States on the number of EIAs that have been completed. The variation may be explained by the relative economic conditions within countries, or it may also relate to the levels at which thresholds have been set.

Action: See recommendation 5.4.2. (b) and, (k).

Table 9: Change in the amount of EIA activity (Estimated Numbers Provided by Member States)*

| Country | Pre-1999 Per year | Post-1999 Per year |
|-------------------------|--------------------------|------------------------|
| Austria | 4 | 10-20 |
| Belgium-Brussels | 20 | 20 |
| Belgium-Flanders | no data | 20% increase |
| Belgium-Walloon | 63 | 20% Estimated increase |
| Denmark | 28 | 100 |
| Finland | 22 | 25 |
| France | 6-7000 | 6-7000+ |
| Germany | Estimated more than 1000 | Estimated increase |
| Greece | 1600 | 1600 |
| Ireland | 140 | 178 |
| Italy | 37 | No data |
| Luxembourg | 20 | 20 |
| Netherlands | 70 | 70 |
| Portugal | 87 | 92 |
| Spain ** | 120 | 290 |
| Sweden | 3000-4000 | 3000-4000 |
| UK | 300 | 500 |

*This table should be treated with caution. The figures provided show a lack of systematic reporting and transparency across the 15 MSs and in some cases are only estimates of activity or represent the national level and not the regional one.

**Spain: No precise information available. For Regional level could be 20-30.000

3.3 Scoping

Procedures

3.3.1 The EU's guidance document¹³ defines scoping as “the process of determining the content and extent of the matters which should be covered in the environmental information to be submitted to a competent authority for projects which are subject to EIA” (<http://www.europa.eu.int/comm/environment/eia/eia-guidelines/g-scoping-full-text.pdf>). The purpose of scoping is to focus the environmental assessment on the main or significant impacts. The scoping process, therefore, requires a detailed characterisation of a project and its receiving environment in order to identify all potential impacts and from that to ascertain which of those impacts are likely to be significant. Due to the complexity of impact identification and scoping it will often be necessary for the developer to consult with the competent authority and other agencies with environmental responsibilities on the scope of the assessment. Most of the literature on EIA good practice also advocates consultation with the public on the scope of the EIA¹⁴. Article 5 paragraph 2 of the EIA Directive was introduced by 97/11/EC and provides for a formalised scoping procedure. Directive 85/337/EEC did not have such a requirement although most Member States applied forms of scoping in their national systems. The main purpose of introducing a scoping requirement into the Directive was to establish an early contact and a certain co-operation between the developer and the competent authority on key issues of importance in relation to the information to be provided by the developer and examined by the authority. This should happen before the developer submits the application for development consent. This process is intended to avoid delays later on in the procedure and to ensure a certain quality and the completeness of the information to be provided. The EIA Directive provides for two cases. On the one hand it requires competent authorities to provide, if the developer so requests, an opinion on a list of the information to be submitted later on as an “environmental impact statement”. On the other hand, the Directive also allows Member States to make this a mandatory procedure, requiring competent authorities to provide a scoping opinion irrespective of whether the developer so requests. In the scoping process the Directive also requires that relevant public agencies with environmental responsibilities are consulted and that they may provide any information they have in their possession that may aid the EIA process.

3.3.2 Seven of the Member States have a mandatory scoping procedure in place. In France there is a mandatory scoping procedure for certain types of projects (industry, quarrying and certain agricultural projects). Some regions in Italy have mandatory scoping, though it is not a national requirement. It should, however, be noted that in many of the countries where mandatory scoping is in place, these provisions existed in the original EIA legislation and have not been affected by 97/11/EC. There are mixed opinions between Member States as to whether the introduction of the scoping procedures has brought improvements. Many respondents believe that it is far too early to judge the effectiveness of the process while others simply state that as they have always included a mandatory scoping stage in their EIA legislation they cannot

¹³ See CEC (2001) Environmental Impact Assessment Guidance on Scoping, Brussels, CEC.

¹⁴ See Glasson, J. R. Therivel and A. Chadwick (1999) Introduction to Environmental Impact Assessment 2nd Edition, London, UCL Press, p.91.

make a worthwhile comparison. Some of the respondents were of the view that the introduction of the scoping phase has improved the quality of the information provided to the competent authority; however, they accept that they do not have any hard evidence to support that view. The introduction of scoping procedures has the potential for increasing the length of time taken up by the EIA process, however, there is little evidence to suggest that in practice the introduction of the scoping stage has affected the length of the EIA process.

Consultation

3.3.3 Consultation with the public during the scoping process takes place in half of the Member States. In some cases this is a legally required part of the process (Belgium – Brussels and Walloon regions, Denmark, Finland, Netherlands, Spain, and Sweden). In Austria, Germany, Ireland and the UK relevant environmental authorities or agencies are consulted but it is up to the competent authority to decide whether or not the public should be consulted on the scope. In Finland consultation with the public is based upon the publication of a draft scoping document. The scoping document is a work programme of how the assessment will be carried out and what issues it will deal with. The public have an opportunity to comment on the scoping document and make suggestions on the inclusion or exclusion of the matters to be covered by the EIA.

Methods

3.3.4 A range of methods appear to be used in scoping exercises including checklists, matrices, impact chains and modelling, with expert judgement most frequently relied upon. In many cases, no specific methodology is prescribed, partly in recognition that various techniques may be appropriate in different circumstances (e.g. France, Denmark, UK, Belgium-Walloon). Approximately 50% of the Member States explicitly state that the guidelines of the Commission are used. Some Member States have produced guidelines of their own – either independently (e.g. Netherlands) or through adapting the Commission's guidelines (e.g. Austria). Greece has produced guidelines that set out the required information for different project categories, but for each individual case these guidelines are expanded to suit the specific requirements of the case. The challenges associated with addressing impact interactions in EIA are recognised by the Member States, including the issue of methodological uncertainties and the need for effective co-ordination and communication between the different impact assessors that are typically involved in an EIA (see Table 10) .

Table 10: Scoping Methodologies for Interaction of Impacts

| Country | Guidance | Methodologies | Comments |
|-------------------|----------|--|--|
| Austria | Yes | Checklists, matrices or lists of questions to the experts. | Most authorities as well as the applicants use the Austrian adaptation of the EC-guidelines. Some Länder have developed the guidelines further to include practical experience and specific local requirements. |
| Belgium | | Expert judgement | <p>Brussels</p> <p>In drawing up specifications for the EIA, the competent authority will require that impact interactions (both positive and negative) be analysed.</p> <p>Flanders</p> <p>Each EIA-team includes an EIA-coordinator who should pay particular attention to the interaction of the different impacts. Use EC-guidelines</p> <p>Walloon</p> <p>Methodology is the responsibility of the EIA author.</p> |
| Denmark | | Annex IV, public participation | No specific methodology is prescribed. The EIA authorities are free to use the Commission guidelines. The scope of the EIA is required to include the elements of Annex IV and the proposals from the public. |
| Finland | | Impact chains. Also tables / descriptions of secondary and cumulative impacts. | |
| France | | | No specific methodology is prescribed - the strengths of different approaches in differing circumstances are recognised. |
| Germany | Part | | Federal agency for water science has issued brief guidelines, specific to waterways. |
| Greece | | Expert judgement, matrices, and modelling | Generally, the Commission guidelines for the assessment of indirect and cumulative impacts as well as impact interactions are followed. |
| Ireland | Yes | | Guidance provided at national level in the form of general guidance on information to be included in EIS and Advice Notes on Current Practice |
| Italy | Yes | | Codified guidelines exist for specific developments. General guidelines are in preparation. |
| Luxembourg | | | No details available. |

| | | | |
|--------------------|-----|--|---|
| Netherlands | | | Competent authority provides guidance for each case on the advice of the independent EIA Commission |
| Portugal | | | Commission guidelines are used in general terms. |
| Spain | Yes | | No details available |
| Sweden | | | Use EC-guidelines |
| UK | Yes | Various, depending on consultants / developer. | Guidance suggests alternative editorial / authorship approaches to clarifying interrelationships between effects. |

Summary of Main Findings: Scoping

There is a wide variety of approaches to the scoping stage of EIA. It would appear that some Member States appreciate the value of an early scoping stage more than others. There appears to be little real commitment to scoping in those countries that have not made it mandatory and have not provided for public consultation within their voluntary scoping stage. However, some of the Member States show the opposite tendency and require the publication of draft scoping reports or even draft EISs. There is also a recognition in some Member States that public involvement at the scoping stage identifies the issues that are ‘significant’ to the people who will have to live with the project and not just the ‘experts’ who will not.

Action: See recommendation 5.4.2. (d), (f) and (j).

3.4 Review of Environmental Information

Introduction

3.4.1 There is no requirement under the EIA Directive for Member States to make provision for the formal review of the adequacy of the environmental information supplied to the competent authority by the developer. However, 97/11/EC introduced new mandatory minimum information requirements that establish an implicit need for review as a project may not be authorised if the information set out at Article 5(3) is not complete. Among these minimum information requirements is the introduction into the EIA Directive by 97/11/EC for a consideration of information on the alternatives that have been studied by the developer (discussed below at paragraph 5.1). The EU's guidance document¹⁵ defines environmental information review as:

“the process of establishing whether the environmental information submitted by a developer to a competent authority, as part of an EIA procedure, is adequate to inform the decision on development consent.

<http://www.europa.eu.int/comm/environment/eia/eia-guidelines/g-review-full-text.pdf>).

The EIA Directive does not prescribe the manner in which the environmental information is supplied by the developer but in common with international best practice, most Member States expect this information to be supplied in the form of a single report as an Environmental Impact Statement.

Arrangements for Review

3.4.2 In the majority of Member States the competent authority is ultimately responsible for considering the adequacy of the information provided, including legal compliance. The majority of Member States have no systematic EIA review procedure and there is great diversity of practice for ensuring compliance with the Directive. All the Member States referred to existing general provisions for compliance and quality assurance through consultation with relevant governmental authorities, Non Governmental Agencies (NGOs) and members of the public. Most had not implemented or were not planning to implement a systematic and mandatory EIA review procedure and several Member States stated that they had not implemented an obligatory EIA review, as it was not a requirement of the Directive.

3.4.3 The review system used by the Member States is provided at Table 11. Some Member States have strict control points within a formal review process incorporating an independent evaluation of the EIS. However a number of Member States leave the decision on the adequacy and completeness of the environmental information to the competent authority, with no other control points. Most Member States clearly indicate that where the information is not considered satisfactory the competent authority can request additional information, and should this subsequently prove to be inadequate, then the application can be refused. In many cases, EIA approval is a stage in the consent process, without which consent cannot be pursued.

¹⁵ See CEC(2001) Environmental Impact Assessment Guidance on Review, Brussels, CEC.

Table 11 Review of Environmental Information

| Member State | |
|--------------------|---|
| Austria | Annex IV has been transposed into national law (Art. 6 of the EIA Act) and every Environmental Impact Statement (EIS) is checked against these requirements by a team of internal and/or external experts of the EIA authority and co-operating authorities who have to produce a summary assessment of the likely significant environmental effects. |
| Belgium- | <p>Brussels A College of experts from the different regional and local Administrations concerned (constituted as a "Comité d'Accompagnement de l'étude EIA") writes a specifications brief for the EIA, and this is submitted to a public inquiry and for the official advice of the Administration(s) concerned. It is only when this College considers the EIA complete (i.e. with sufficient information and of sufficient quality) that it declares this part of the procedure complete. A second public inquiry takes place before the Administration delivers the licence.</p> <p>Flanders The current EIA-regulations contain the transposition of the EIS-content-requirements of the EIA-Directive. The drafting of an EIS is guided by an informal process which includes a refining of the legal scoping requirements and a check of the draft-EIS before it is submitted for formal approval by the EIA-Unit of the Environment Administration.</p> <p>Walloon The quality and sufficiency of information is checked by an independent body of experts in the different disciplines of the environment</p> |
| Denmark | The impact statement has to fulfil the content of Annex IV to the Danish Ministerial Order No. 428 of 2 June 1999, which is almost similar to Annex IV of the Directive. |
| Finland | The co-ordinating authority (Regional Environmental Centre) judges the adequacy of the environmental information, but ultimately it is for the competent authority to judge the adequacy of the information – often developers submit a draft EIS to the competent authority for comment. |
| France | Control on the quality of environmental information operates at different levels depending on which is the authorising authority. It will be their responsibility to ensure the adequacy of the information. |
| Germany | The licensing procedure will only begin when all legal requirements, including providing of all relevant information according to Annex IV of the Directive, have been fulfilled and the competent authority has stated that the proposal is complete. |
| Greece | <p>The competent authority reviews the adequacy and quality of each EIS in regards to:</p> <ul style="list-style-type: none"> ▪ the environmental information requirements set out in Annex IV of Dir. 97/11/EC, ▪ any existing guidelines for EIS for specific project types, ▪ all legal requirements, ▪ the sufficiency of scientific and technical information. |
| Ireland | Guidelines (and accompanying Advice Notes) are designed to assist consent authorities in considering the adequacy of EISs submitted to them. |
| Italy | No formal review but EIS must meet the requirements of the Regulations |
| Luxembourg | No information |
| Netherlands | Project specific guidelines are produced for the EIS as a requirement of the Dutch EIA legislation. The competent authority has to formally accept the EIS. This is done by checking the contents of the EIS with the specific guidelines and the review carried out by the independent EIA Commission. |

| | |
|-----------------|--|
| Portugal | The Ministry of the Environment has 20 days working days to declare if the EIA meets the requirements of the laws or if it needs further information. |
| Spain | The Impact Study is checked against the terms established in the Scoping stage, which includes public participation. |
| Sweden | The 'Environmental Examination Delegation' within the County Administrative Boards and the Environmental Courts decide whether an EIA fulfils the requirements of the EIA legislation. |
| UK | Ultimately it is for the competent authority to decide the best means of ensuring that the environmental information is adequate and fit for purpose |

In the UK, for example, determination of the development application is suspended pending that further information. In Italy, development consent is temporarily refused, pending the supply of adequate information; in Spain a project cannot be authorised until the information is complete. In the Netherlands the competent authority has to formally accept the EIA. The EIS is first checked against the project specific guidance. If the EIS is not satisfactory, the EIS is not accepted and must be supplemented. After acceptance, the competent authority has to ask the independent EIA Commission for advice on the quality and adequacy of the information. In recent years the independent EIA Commission has found that between 30% and 40% of EISs are inadequate and has advised the competent authority to seek further information. In France, conditions for permission refusal have developed from the work of administrative tribunals and these procedures have defined matters concerning presentation and content; more precise arrangements are available for classified installations. Note, however, that in Belgium-Brussels it is not the developer who supplies the information but an independent and appropriately qualified consultant, working to a brief drawn up by the College of Experts from relevant Administrations. The College evaluates the quality and adequacy of the information provided. In Finland development consent could not be refused on grounds of inadequate quality or sufficiency of information. The Spanish procedure for judging quality and sufficiency of information is to review the contents of the Impacts Study against the terms established in the scoping phase, plus the results of public participation and review.

3.4.4 Under half of the Member States have carried out any research into the quality and sufficiency of the environmental information or EISs submitted to date (see Table 12).

Table 12: Research on the Quality of Environmental Information

| Member State | Publicn. date | Status of research |
|--------------|-------------------------------|--|
| Austria | 2000 (for statements 1995-99) | <p>Quality assessed “positively”. Information supplied considered to be of higher quality than that for conventional licensing procedures</p> <p>Valuable co-operation/co-ordination, but very time consuming</p> <p>The design of EIA projects is considered to be more “environmentally aware” than those without EIA, and the documentation is better.</p> <p>A second triennial report was submitted to Parliament in September 2002</p> |
| Denmark | Oct. 2002 | Research currently on-going |
| Finland | 2001/ 2002 | Research had shown regional variation in quality, resulting from varying qualification at Regional Environment Centres. Staff training has led to an improvement in quality |
| Ireland | 1993 | Research commissioned by predecessor body of Environmental Protection Agency in early 1990s. There is a general view that the quality of environmental statements has improved substantially subsequent to this. |
| Italy | | No government-sponsored research, but some by professional associations, e.g. Association of Environmental Analysts |
| Netherlands | | Each EIA is reviewed by the independent EIA Commission. Where an environmental statement is inadequate, the corresponding “negative advice” is publicly available including on the Internet. Annual reports of the EIA Commission have reviewed overall adequacy of environmental statement: for 1999-2001, about 40% of environmental statement were judged to be inadequate. Independent committees have reviewed the effectiveness of the Dutch EIA process on two occasions. |
| UK | 1995 | Research commissioned by D of Environment had shown that at that time environmental information was sometimes inadequate for the purposes of the planning authorities – best practice guides were then published. |

Summary of Main Findings: Review of Environmental Information

Directive 97/11/EC introduced new minimum requirements for the information to be supplied by the developer. Failure to provide adequate information constitutes grounds for refusal of development consent in the majority of countries, under a variety of arrangements. Some Member States have formalised a review procedure to ensure that the environmental information supplied to the competent authority is in compliance with the Directive. However, since there is no explicit obligation in the Directive to provide for such a review, there is no harmonized approach to the matter. Whilst Annex IV guidance underlies requirements for adequate assessments, this rather basic information has been built upon (e.g. with checklists) in only some Member States. The review of the information provided is, in all but a few Member States, left to the competent authority and in many Member States they are asked to do this without the aid of specific review check lists or review criteria. Some research has been conducted in about half of all Member States on the quality of information contained in environmental statements and on the overall quality of the assessments. Where such studies have taken place, it has shown that up to 50% of EIS do not fully comply with the requirements of the Directive.

Action: *See recommendation 5.4.2. (e).*

3.5 Decision Making

3.5.1 The purpose of EIA is to provide information about the environmental consequences of an action to decision-makers in advance of the decision so that that information can influence the decision making process. Article 8 requires that the environmental information supplied by the developer (the Environmental Impact Statement) and the consultation procedure required by Articles 6 and 7 are taken into consideration in the consent procedures. Although the Directive focuses on environmental matters, it does not make the consideration of the environmental dimension more important than other considerations that a competent authority has to take account of when making a decision. Many of the respondents pointed out that in decision making over development projects, other societal or economic benefits also need to be considered. What makes the difference, however, is the fact that a separate Directive focuses on and highlights the consideration of likely environmental effects in decision-making. The vast majority of Member States do have legislation in place that provides for refusal of development consent in cases where serious environmental harm is unavoidable.

3.5.2 The Commission's survey invited Member States to explain how delays between environmental assessment and the consent for the project are dealt with and how delays between consent and construction or operation are handled. Such delays have important implications for the outcome of the EIA process and the authorisation of major projects. During long periods of delay the receiving environment may change and the environmental information on the baseline conditions may no longer be relevant. This will have implications for the accuracy of any predictions of environmental effects and on the relevance and effectiveness of mitigation measures.

On the basis of the questionnaire responses, there appear to be four broad approaches to dealing with delays between environmental assessment and development consent:

- (i) in some systems, theoretically, there should be no delay;
- (ii) a time limit is imposed upon the consent procedure ranging from 140 to 450 days;
- (iii) the competent authority reviews and assesses the information to determine whether it is up to date, requesting additional information where necessary. This is the most common approach adopted in the Member States and when there are significant changes to the proposal, then typically a new EIS is required;
- (iv) no special provisions are made for dealing with delays.

3.5.3 Once a consent is issued for a project the decision is normally binding and, unless specific measures are in place, any additional or different environmental impacts are therefore not capable of being assessed and considered (unless there are changes or extensions to the project during that time that are likely to give rise to significant environmental effects and thus a new EIA). In circumstances, where delays between development consent and the construction or operation of a project are very long, they may be more serious than delays before authorisation. There is a diversity of practice in dealing with such delays and the questionnaire responses reveal the following main approaches:

- (i) a common approach in the Member States is to attach a time limit on the validity of a consent. In some instances the time limit is discretionary, whilst in other systems it is fixed, and can vary between 2 and 5 years. In most cases, after a fixed time period additional environmental assessment work will be required;
- (ii) additional conditions can be made if circumstances change by the time of construction;
- (iii) no special provisions are made for delays and the EIA cannot be 'reopened' after consent is given;
- (iv) separate legislation exists for EIA and for permitting, and a significant delay between permitting and project construction is beyond the scope of the EIA legislation.

3.5.4 France has issued guidelines for road developments where there is likely to be a long time span between initial project conception and final construction / operation. The guidelines advise on how to ensure continuity in the EIA over this period, and to fill the gaps when the project passes between different teams involved in the project. The approach has been piloted in four known cases. Table 13 provides information on how each Member State deals with delays.

Table 13: Dealing With Delays

| Country | Comment |
|------------------|---|
| Austria | A maximum time limit of 6 months (for the simplified procedure) or 9 months exists in law covering the consent procedure. If environmental conditions change between the assessment and consent, new environmental information must be produced and considered before a consent decision is made. The competent authority can attach time limits to a consent (or parts of the consent) to prevent any unnecessary delay between development consent and construction / operation. |
| Belgium - | <p>Brussels Legally there is a maximum period of 450 days between the application (when the EIA is declared complete) and the development consent. This period includes the period for the reassessment of the EIA specifications, the two public inquiries and the EIA itself (about six to eight months for the EIA).</p> <p>EIA legislation indicates that there cannot be more than 2 years between the development consent and the commencement of construction. If significant changes are made to a proposal so that environmental impacts are different from the original project then a new EIA is required. The competent authority can modify conditions attached to a development if circumstances have changed by the time of construction (rarely used in practice)</p> <p>Flanders Where there is a delay between the final approved EIS and development consent, an updating note is added to the EIS. In cases where there are significant changes to the original project outline or design, stakeholders are consulted in order to decide whether a new EIS will be necessary. Once development consent is gained, the project must commence within three years.</p> <p>Walloon Following submission of the final EIS, the competent authority has a maximum of 140 days to make its decision. Where the development becomes operational more than 5 years after consent is given, or if it subsequently becomes apparent that a substantial impact has not been considered in the EIA, then an addendum to the original EIS report must be made.</p> |
| Denmark | An EIS remains valid until the first revision of the regional plan, unless the competent authority decides to keep it valid for another 4 years (the regional plan must be revised every 4 years). Development consent following an EIA is valid for 3 years, after which a new permission must be sought. |
| Finland | If there is a considerably delay between the EIA and development consent, the competent authority should check whether environmental conditions and the project itself have changed since the impacts were assessed. Where there is a major change to the project, a new EIA may be required. Separate legislation exists for EIA and for permitting, and a significant delay between permitting and project construction is beyond the scope of the EIA legislation. |
| France | There should be no delay between the EIA and development consent (the EIS is a part of the dossier presented by the developer for consideration for development consent, and the information provided must be accurate and up to date). Development consent remains valid for 3 years, after which additional environmental assessment work is required. For roads, guidelines have been published to advise on how to ensure continuity in EIA from draft design through to the operational stage. |
| Germany | Generally no delay between EIA and development consent. The competent authority should check whether environmental conditions and the project itself have changed, and any changes should be taken into consideration. After project consent, significant changes to the project or environmental conditions occur prior to construction / operation may necessitate a consent procedure that may include an EIA. A planning consent ceases to be valid after 5 |

| | |
|--------------------|---|
| | years. |
| Greece | <p>The competent authority reviews the EIS and consults with relevant authorities to assess whether the information is up-to-date. Where necessary, the competent authority may ask for the EIS to be updated. The EIA leads to an environmental permit with conditions attached imposing environmental terms which are given an expiry date, hence necessitating a review if there should be a considerable delay between the outcome of the EIA and the final development consent.</p> <p>Following development consent, if it is ascertained that due to changes in environmental conditions the environment is not sufficiently protected by the imposed provisions of the environmental permit, additional terms may be set to take into account the altered conditions. The expiration of the environmental permit may also lead to a new EIA process if substantial changes have occurred to the project or to the receiving environment.</p> |
| Ireland | The EIA is carried out during consideration of the development consent application and there is, in effect, no delay between the environmental assessment and the development consent. No more than 5 years between the development consent and the commencement of construction. |
| Italy | No provision is made in the EIA legislation for either delays between the environmental assessment and development consent, or for delays between consent and construction / operation of the project. |
| Luxembourg | No details available |
| Netherlands | If there is a considerable delay between the environmental assessment and the development consent, the competent authority may ask for additional information or an additional EIS. Where there is a significant change in the activity proposed a completely new procedure may be started. A delay between development consent and construction / operation cannot lead to changes in the EIS. |
| Portugal | The Minister of the Environment must issue an Environmental Impact Declaration to the developer, and this remains valid for 2 years. If the competent authority subsequently has not granted development consent within the 2 year period covered by the Declaration, then a new EIA is required in the case of private sector proposals. For public sector projects, the EIS is re-examined and if conditions have not changed the Environmental Impact Declaration remains valid (n.b. this has not yet occurred in practice as the law is only now around 2 years old). |
| Spain | Case by case consideration |
| Sweden | No special provisions are made for delays between the environmental assessment and development consent. competent authority can place conditions on the implementation of the project. |
| UK | <p>The competent authority can request further information at any point until such time as a consent decision is taken. The onus is therefore on the competent authority to ensure that prior to consent all likely significant effects are considered subject to current knowledge and methods of assessment.</p> <p>Once development consent has been granted the developer is able to go ahead with the construction phase. At that stage the EIA procedure could not be re-opened (the Directive requires assessment prior to the decision being taken on development consent). If the previously unknown effects were so significant, e.g. that they would have major and irreversible damage on a protected site or species, then arguably it would be open to the competent authority to consider whether the consent would have to be revoked, subject to the provisions of national legislation.</p> <p>The Regulations implementing the Directive for projects on uncultivated land set time limits for starting and completing work following development consent, and provide for a review of the consent if the site subsequently becomes a European Site (for nature conservation).</p> |

Summary of Main Findings: Decision Making

Without formal monitoring of the outcomes of the EIA process and more detailed research, it is difficult to assess the effectiveness of the EIA Directive on decision making. Nevertheless, it is apparent from the respondents that the environmental considerations raised by the EIA process are balanced against other societal and economic considerations in decision making. The responses to the questions relating to delays between the production of the required EIA information and the decision, and between the decision and the commencement of development have shown that these are tackled very differently in the Member States and constitute an area of potential concern. There is no indication from the Member States as to the scale or frequency of delays occurring, there appears to be little recognition of the environmental implications of these problems, and there is little consistency of approach in dealing with them.

Action: *See recommendation 5.4.2. (h).*

3.6 Summary of findings of arrangements for key stages

3.6.1 The evidence from this review is that there is very wide disparity in both the approach and the application of EIA in the Member States of the EU. The approach used for the screening of Annex II projects varies considerably in terms of both the use and level of thresholds. A variety of approaches also exist for scoping, with very few Member States requiring any public involvement in this important stage of EIA (the Directive does not require such participation at this stage). Very few Member States have any real mechanisms in place for national or centralised reviews of the operation of their EIA system. Few Member States could provide accurate figures on the number of EIAs that had been dealt with in their country over time or what type of projects have been subject to the procedures. The review of the adequacy of the environmental information submitted by the developer is operationalised in a formal way in very few Member States. The influence of EIA on decision making and the outcome of decisions requires far more monitoring and research by Member States into the operation of EIA in practice.

4.0 OPERATION OF THE DIRECTIVE AS A WHOLE

4.0.1 In this section of the report the arrangements made by Member States for dealing with key aspects of the EIA Directive are discussed. These issues relate broadly to the efficiency of the operation of the Directive as a whole, although some of the issues discussed here were introduced by 97/11/EC.

4.1.0 Alternatives

4.1.1 One of the main criticisms levelled at 85/337/EEC was that it did not require developers or competent authorities to examine alternatives, where they exist, from the outset of the development of EIA. In its original version, Article 5 paragraph 1 in relation with Annex III required the developer, “where appropriate”, to give an outline of the main alternatives studied and an indication of the main reasons for this choice, taking into account the environmental effects. The term “where appropriate” for studying alternatives was dropped by Directive 97/11/EC. In addition, the information relating to alternatives was included in Article 5 paragraph 3 of the amended Directive, which requires that the minimum environmental information to be supplied to the competent authority as part of the EIA process must also contain this outline of the main alternatives ‘studied by the developer’. Thus, Directive 97/11/EC has raised the importance of a consideration of alternatives within the EIA Directive as a whole. This is in line with the development of Community environmental legislation. For example Article 6(4) of the Habitats Directive requires there to be ‘an absence of alternative solutions’ before a project adversely affecting a Natura 2000 site can be considered for authorisation¹⁶. Under Directive 76/464/EEC on Dangerous Substances in Water, the ECJ has ruled in *C-232/97 Nederhoff v Dijkgraaf en Hoogheemrader va het Hooghemraadschap Rijnmland*¹⁷ that Member States may legitimately make the grant of authorisation of a discharge conditional on compliance with an obligation to investigate and choose the alternative solutions which are less harmful to the environment. A consideration of alternative solutions is therefore of growing importance within EU environmental policy and law. The requirement of the Directive 97/11/EC ‘to give an outline of the main alternatives studied’ implies that the developer has examined the possible alternatives in so far as such information can be regarded as relevant information subject to the criteria in Article 5(1). These criteria include *inter alia* specific characteristics of a particular project or type of project and of the environmental features likely to be affected. The requirement ‘to give an indication of the main reasons for the choice, taking into account the environmental effects’ indicates that the developer has to give reasons for why a certain alternative that exists has not been studied and why a certain alternative has been chosen in the particular situation. In any case the developer cannot choose freely whether or not he examines possible alternatives. The study of alternatives within EIA is very wide ranging and the literature suggests that the following range of alternatives should normally be studied:

- locations or alignments;

¹⁶ See CEC (200) Managing Natura 2000 sites: the provision of Article 6 of the "Habitats Directive", Brussels, CEC

¹⁷ Case C-232/97, ECR 1999, I-6385, paragraphs 55-56

- site lay out and project design;
- size and scale;
- working or management arrangements;
- timescale for construction and operation; and
- ‘do nothing’.

According to Wood (1997) the consideration of alternatives is the first phase of project design and management¹⁸ and if that is the case one can hardly envisage situations when developers could state that they have not ‘studied’ any alternatives at all.

4.1.2 Responses to the Commission’s questionnaire indicate that in most of the Member States there is now a legal obligation to consider alternatives, taking into account the envisaged objectives of the project, subject to the development consent. Moreover, where it is not obligatory but has been carried out (France, Germany, UK) the assessment must be documented. Which alternatives are assessed depends generally on the nature of the project – no location alternatives may exist for projects such as roads or pipelines, in such cases alignment and design alternatives are studied, including processing alternatives and layout alternatives. Alternatives considered in some countries, (e.g. France) will include not only variations in the project, but also different project types to achieve the same ends.

4.1.3 In countries where there is flexibility on timing (e.g. Finland), it is generally the case that where EIA is conducted earlier, more alternatives exist. In Spain and the Netherlands, the alternative which does least environmental harm is to be assessed. The competent authority, the public and (in the Netherlands - the independent Commission on EIA) may contribute to determining which alternatives are to be assessed. Also in the Netherlands, additional information may be required from developers if it is considered that the information supplied on alternatives is inadequate. This approach to the identification and assessment of alternatives – similar to the Best Practicable Environmental Option assessment – has also been adopted by some UK project developers.

4.1.4 Assessment of the zero alternative is not obligatory in all countries. In Italy, in order to ensure that it is considered, the zero alternative is assessed by the authority, if this has not been done by the developer. A “do minimum” alternative is assessed in Finland together with up to perhaps three other alternatives, thus helping to make explicit the developer’s feasibility criteria.

4.1.5 In Greece, where no alternative has been identified for assessment, the lack of feasible alternatives is explained – this accords with the position following the Nederhoff case (see above) that where a developer does not assess alternatives he shall report the reasons for not doing so, including why such solutions do not exist. German planning law requires alternatives to be considered and particularly so where

18 Wood C. (1997) Environmental Impact Assessment: A Comparative Review, London, Longman Scientific and Technical.

the decision is made under the planning approval procedure. In transport projects for instance, alternatives are assessed during preceding planning levels, based on the relevant law. In future, a strategic environmental assessment pursuant to Directive 2001/42/EC will be carried out for these preceding planning levels.

4.1.6 Several Member States (e.g. Sweden, France) see some potential for quality improvement in the assessment of alternatives. In other States (e.g. in Italy) the information is generally adequate, whereas elsewhere it has been observed that information submitted on alternatives tends to be better for larger projects and where government agencies act as the developer.

Summary of Main Findings: Assessment of alternatives

In some Member States the consideration of alternatives is a central focus of the EIA process, elsewhere the consideration of alternatives appears to be less complete than it might be. The majority of Member States require assessment of the zero alternative and other project alternatives, which may include options for location, process, design, etc. A variety of institutions and sometimes the public may contribute to the selection of alternatives for assessment and these may include the most “environmentally friendly” alternative.

4.2 Application of Article 1 para. 5 and exemptions according to Article 2 para. 3

4.2.1 Article 1 paragraph 5 of 97/11/EC provides exemptions for projects given specific authorisation by the legislative process of a Member State, as that legislative process should provide the environmental information sought by the Directive. Exemptions from the EIA Directive are also provided by Article 2 paragraph 3 for specific projects where the Member State has provided justification for exemption to the Commission prior to making a decision. In general there appear to have been very few cases in which projects have been excluded from EIA on the grounds that they have been approved by national legislation or exemptions from EIA made under Article 2 para. 3. Only Denmark, Luxemburg, the Netherlands, Spain and the UK have used Article 1 para. 5, but in a very limited number of cases. Spain has also used Article 2 para. 3 for an emergency situation regarding water supply. In *C-435/97 World Wildlife Fund and Others v Autonome Sektion Provinz Bozen and Others* (the Bozen Case) the issue at stake was whether an EIA has to be carried out in cases of a mixed airport (military and commercial) and the ECJ concluded that the exemption in Article 1 (4) only applies to projects, which serve mainly national defence purposes; as the issue of a mixed use was in question the ECJ ruled that the EIA Directive applied.

4.3 Changes and extensions, Cumulation with other projects and Salami-Slicing

Introduction

4.3.1 There are clear links between the issues of ‘cumulation with other projects’, ‘changes and extensions’ and ‘salami-slicing’ and the requirement under Article 3 to assess both the direct and indirect effects of a project. There is now some useful case law dealing with these issues – notably *C-72/95 the Dutch Dykes* case, *C-431/92 the*

Grosskrotzenburg case, C-392/96 *Commission v Ireland* and C-435/97 *World Wildlife Fund and Others v Autonome Sektion Provinz Bozen and Others* (the Bozen case). From these cases it is clear that any interpretation of ‘cumulation with other projects’, ‘changes and extensions’ and ‘direct and indirect effects’ should be made on the consideration of the broad and wide purpose of the EIA Directive as a whole. In the Bozen case it was ruled that the measures adopted by Member States 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..” (paragraph 45). In terms of the issues discussed here, the ‘meaning of the Directive’ would refer to the requirement that all Annex II projects that are likely to give rise to significant environmental effects, based on a consideration of the criteria set out in Annex III, should be made subject to the EIA procedures.

4.3.2 The ECJ rulings also suggest that in providing the EIA Directive with a wide and broad purpose, Member States should apply that wide and broad interpretation to what constitutes a ‘change or extension’, the ‘cumulation with other projects’ and ‘direct and indirect effects’. This will also be true when a large development is composed of many individual projects that, while individually falling below screening thresholds, when considered together will give rise to significant environmental effects. Following C-392/96 *Commission v Ireland*, this line should be followed to prevent the practice of salami-slicing (i.e. avoiding the measures required under the EIA Directive by considering individual elements of a project rather than a project as a whole or by introducing project thresholds slightly below those in the EIA Directive). Therefore, where an initial phase, or subsequent individual phases, of a project are beneath national screening thresholds, but where the project taken as a whole is above these thresholds, or, on the basis of the criteria in Annex III, is likely to give rise to significant environmental effects, an EIA should be required. The *Bozen case* also illustrated the point that a change of use of an existing project can also be considered a ‘change or extension’ when that change is likely to give rise to significant environmental effects – in that case a change from a primarily military airfield to one for commercial passenger and cargo use.

Changes and extensions

4.3.4 Following the *Grosskrotzenburg* case, Directive 97/11/EC introduced, under Annex II (13), a requirement to screen any changes or extensions of projects listed in Annex I and II that have already been authorised, executed or are in the process of being executed and which may have significant adverse effects on the environment, to consider whether or not an EIA is required for those changes or extensions. The change introduced clarified that in addition, changes and extensions to Annex II projects follow the same approach as those to Annex I projects. Annex II (13) provides a screening qualification that is not present in the remainder of the EIA Directive, in that only changes or extensions that may have significant ‘adverse’ environmental effects will be subject to EIA. The general approach is that all projects listed in Annex II require a screening by applying the Annex III selection criteria. The additional element points in the direction of creating a two stage screening process. In carrying out the screening one would first identify whether the change or extension is likely to have adverse environmental effects and, in the affirmative, continue with a determination as to whether those effects are likely to be significant. As with the

general screening provisions introduced under 97/11/EC, to determine the significance of any adverse environmental effects a competent authority must take into account the screening criteria set out in Annex III. The future Directive COM/2000/0839 on public participation in drawing up plans and programmes¹⁹, amends *inter alia* the EIA and IPPC Directives to conform with the provisions of the Aarhus Convention. This Directive will introduce a new paragraph 22 to Annex I which requires an EIA where a change or extension meets the appropriate criteria or thresholds set out in Annex I. For those changes and extensions not covered by Annex I, the previous Annex II point 13 would continue to apply. In this way the spirit of the Grosskrotzenburg case would be properly reflected in the EIA Directive.

4.3.5 Generally, Member States employ either a case-by-case or a threshold approach to considering whether to require EIA where there are changes or extensions. However a few Member States apply a combined approach, with both individual review of cases and threshold criteria for particular activities. It should be noted that there is little evidence to suggest that Member States have specific measures in place to deal with the identification of ‘adverse’ effects test rather than normal tests used for identifying significant effects. Where thresholds are used, this is set as a proportion (often 25%) of the threshold criterion. Ireland has introduced mandatory thresholds in respect of Annex II (13), but it also has a “catch-all” provision that EIA would be required in all those cases where the competent authority considers that a sub-threshold development would be likely to give rise to significant environmental effects. Where EIA is a regional responsibility (Belgium, Germany, Italy), approaches may vary between regions. In Germany, in the case of change or extension of a project subject to EIA, the change or extension must necessarily undergo an EIA, if the change or extension itself reaches the thresholds of, e.g. Annex 1 to the German EIA Act for an obligatory EIA. Any other change or extension of a project subject to EIA automatically triggers a general screening procedure concerning the question of whether the change or extension must undergo an EIA, using the criteria in Annex II of the EIA Act, which corresponds to Annex III of the EIA Directive.

4.3.6 In France, where is no consequent modification of capacity or characteristics, EIA is not required but it is required where modernisation work means enhanced capacity for an existing project (e.g. in terms of road traffic or industrial production). For specific installations a new development consent and a new impact statement are needed when there is an important change in production level or in the industrial process used - this decision is made on a case-by-case basis. In the UK, changes or amendments to Annex II projects, that may have significant effects, are screened to determine whether significant effects are likely and if so, EIA is required. Exclusive and indicative thresholds and criteria apply. Examples of thresholds for ‘changes and extensions’ are provided in Box 2.

¹⁹ Common Position (EC) no. 41/2002 of 25 April 2002 adopted by the Council [...] with a view to adopting a Directive of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC/* COM/2000/0839 final - COD 2000/0331 */ Official Journal C 170 E , 16/07/2002 P. 0022-0036.

Box 2: Examples of thresholds for changes and extensions of projects

Austria

A change or extension has to undergo an EIA, if it reaches 50% or more of the threshold laid down in the annex for new projects and the authority determines by way of a case-by-case examination that significant harmful, disturbing or adverse effects on the environment are to be expected

Belgium

(Brussels and Walloon)

When a change or extension increase entails of at least 25% the threshold taken in consideration for the EIA or if the change or extension mean that the project reaches the threshold, an new EIA is required. Note that when an EIA has been conducted after an change or extension of 25%, the new limit of the permit is the threshold for change or extension. That means that if for example a first threshold is a production of 100 T/day, a change or extension that leads to a production of 125 T/day (or more) requires an EIA. The threshold for a further EIA will be 125 (or more) using the rule of 25%.

Ireland

These thresholds are:

(a) Any change or extension of development which would:-

- (i) result in the development being of a class listed in Annex I or paragraphs 1 to 12 of Annex II, and
- (ii) result in an increase in size greater than 25 per cent, or
- (iii) an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.

(b) Projects in Annex I undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than 2 years.

(an increase in size is calculated in terms of the unit of measurement of the appropriate threshold.)

4.3.7 The Directive applies to “projects”, and these are defined in Article I as “construction works or of other installations or schemes”, or “other interventions in the natural surroundings [...]”. Although a change in capacity might not directly be the result of construction works, it may be that other complementary works are required to support the capacity change, e.g. additional roads and car parking where airport flight capacity is increased. Changes and extensions of projects usually imply some construction works. In some Member States changes to existing infrastructure projects such as airports, motorways, railways, waste-water treatment plants or industrial projects may considerably increase their capacity without any significant construction works (e.g. increase of air traffic, introduction of an additional shift). Whether or not this is considered a change or extension by Member States sometimes depends upon the nature of the consent/permit given for the original project. In some cases it is the capacity of the new project that is authorised, in others it is the construction works – and any individual country may apply both systems to different project types (e.g. France: roads are authorised in terms of number of lanes whereas industrial developments are authorised in terms of production capacity.) Where it is

capacity that has been authorised, an increase in output/use up to that capacity will not require an EIA, although increase beyond that capacity (perhaps involving new construction) will require an EIA. There may be a threshold set for increase in capacity demanding an EIA, for instance, in Austria an increase in 20,000 flights per year for airports. Case-by-case examination of extensions to projects will take into account whether the site is in or near a protected area. On the specific question as to whether an extension involving an increase in capacity that did not involve construction works would require an EIA, this would depend on the circumstances of the case in Italy, Spain and Denmark. Elsewhere if there is no link to another consent procedure, then an EIA would not be triggered (Netherlands, Belgium-Flanders, UK). Note that the Directive applies to “projects”, and these are defined in Article 1 as “construction works or of other installations or schemes”, or “other interventions in the natural surroundings [...]”. Although a change in capacity might not directly be the result of construction works, it may be that other complementary works are required to support the capacity change, e.g. additional roads and car parking where airport flight capacity is increased.

4.3.8 In Germany, changes to the operation of a project subject to an EIA, which do not entail any significant construction works, can themselves be subject to an EIA as a change to a technical facility. This applies for example to waste-water treatment plants and industrial plants. In Ireland, where use intensifies to such an extent as to constitute a material change of use, planning permission will be required and the mandatory threshold provisions in relation to Annex II (13) will apply. However, infrastructure projects such as motorways and waste-water treatment plants are designed within certain capacity constraints which assume some growth. Once additional capacity is needed, Irish EIA legislative provisions apply.

Cumulation with other projects

4.3.9 The screening criteria provided by Annex II of the EIA Directive must be taken into consideration when Member States set screening thresholds or base screening of Annex II projects on a case-by-case assessment. The Annex III criteria cover the characteristics of projects, the location of projects and the characteristics of the potential impacts. “The cumulation with other projects” is included under ‘characteristics of projects’ and under ‘location of projects’, “the existing land use” is included. The cumulation with other projects is, however, not only relevant when applying screening but is of general importance for any project subject to the EIA Directive (see for example Annex IV, which asks for a description of the physical characteristics of the whole project and the land-use requirements).

4.3.10 It would seem that different Member States are grappling with different aspects of cumulative effects, as they become apparent. In some cases the consideration of cumulation of effects only takes place where different projects are being proposed and considered at the same time, while in others they are considered when a new project is to be located near to an existing development. In some Member States, where adjacent projects are similar then cumulation of impacts is considered, but where adjacent projects are different, they are not assessed together. However in Portugal there has been assessment of cumulative effects of wind farms and quarries together. Elsewhere, “functional links “ between projects in a programme are a deciding issue and the SEA Directive may provide relevant guidance in the future.

4.3.11 In France and Portugal, a functional link between projects carried out at the same time will make necessary an assessment of the whole programme of projects – suggesting that projects not functionally linked but occurring simultaneously might not be treated in the same way. Greece considers the possible accumulation of effects from different types of project, but uses a boundary threshold for effect consideration, e.g. there is a boundary of 5 km for wind farm projects. Nevertheless, if a single developer proposes similar projects at a distance greater than 5 km, they may be assessed as a single project (unless the project is considered as an extension, when proposed by the existing developer). In Italy *environmental assimilation capacity* is used in connection with synergistic and cumulative effects. However, in Italy as in the Netherlands below-threshold EIA cannot be required. In the Netherlands competent authorities take the cumulation of projects and of environmental effects into account, especially in their case-by-case examination of whether an EIA should be carried out. Analysis of the mobility around the project may be helpful to evaluate the approximate number of people who will use new projects such as offices, shops and housing.

4.3.12 In Finland, where the effects of a series of simultaneous projects taken together would exceed the stipulated Annex I thresholds, there may be a need to apply EIA (even if the thresholds for one project would not exceed these thresholds). Alternative approaches may be needed when projects are carried out separately and at different times, particularly when the individual projects do not in themselves give rise to significant environmental effects. Germany distinguishes various cases of cumulation:

- cumulation with other projects at one location (which is a criterion for screening under no. 2 of Annex II to the German EIA Act). Cumulation with another project at one location requires joint consideration of projects for the respective thresholds. This cumulation must be described in the EIA documents to be supplied by the developer;
- where an existing and a cumulating (additional) project have the same developer – in which case this may be classified as a single project or a change or extension;
- a combined project (e.g. intensive livestock installations) which does not necessarily have a single developer. The project now under application usually represents a new independent project and cumulation must be taken into account in the EIA.

4.3.13 Austria has evolved an approach to cumulation of effects in which there is a requirement for the competent authority to carry out a case-by-case examination for cumulative effects where (despite non-fulfilment by an individual project of the criteria in Annex I of the national EIA legislation), projects are in the vicinity of other projects of the same type (e.g. two open-cast mines or several car parks), and when together these projects reach the relevant threshold value or fulfil the criteria of Annex I of the legislation. Such a case-by-case examination shall not be carried out, however, if the capacity of the project submitted is less than 25% of the threshold value in Annex I. Where a project is proposed adjacent to existing projects, then the EIA deals only with the additional project, not with the existing plant, however, taking into account the effects on the latter.

4.3.14 In Sweden and Denmark, the screening phase includes an assessment of potential for cumulative effects, whilst in Ireland sub-threshold screening provisions may have the effect of ensuring that the cumulative effects of projects can be addressed as appropriate. On the other hand, in Spain, minor (small) projects within a (short) distance to other projects which are either planned or already in existence, are treated as new projects for assessment. It is recognised in some Member States that there may be conflict arising between the need for efficient treatment of projects using a threshold-based system, and the need for case-by-case assessment where there is a number of small and unrelated projects. Moreover, the inability to require below-threshold EIA might lead to cumulative effects being overlooked.

‘Salami-slicing’

4.3.15 Salami-slicing includes the practice of dividing projects up into two or more separate entities so that each individual element does not require an EIA and therefore the project as a whole is not assessed. It also refers to the perceived practice of a developer obtaining permission for a project that is below a threshold, and therefore not subject to EIA, and at a later date extending that project or its capacity above the threshold limits. It would appear that there is general awareness of the possibility of “salami-slicing” and of a need to put measures in place to prevent it, though several countries are not confident that what has been done so far will be sufficient. Many of the Member States appear to treat salami-slicing within the context of either a ‘change or extension’ or as cumulative projects. In several countries the domestic EIA regulations call for “the whole programme” to be assessed where there is a phased or simultaneous series of projects which are inter-connected. In Germany, for example, where an infrastructure project is prepared in different stages, the individual project sections are only to be defined as independent partial projects if each of the partial projects ‘forms a meaningful unit in its own right’. This follows rulings in the German administrative court. In the Netherlands, when associated developments can be foreseen, they are considered to be, and assessed as, part of the project. In Sweden, the screening phase assesses the scope of the project and its cumulative nature. Where there are connections between projects (e.g. windpower) they may be treated as a single application. This has included treating different developers as a single developer. Similarly in the UK, legal precedent provides that, in determining the need for EIA, an application should not be considered in isolation if it is “an integral part of an inevitably more substantial development”.

4.3.16 In Portugal it is recognised that salami-slicing does happen, and that although EIA cannot normally be required below the thresholds, if any authority considers that a project is being split to avoid EIA, then a letter is sent to the Ministry for the Environment. The Ministers can, and do, ask to apply EIA below the thresholds. In Austria the occurrence of salami-slicing is addressed through a requirement to take into consideration any changes or extensions to projects that have taken place during the previous five years. In Denmark and Finland there is the view that case-by-case screening may be helpful in preventing salami slicing while in Ireland it is felt that setting low mandatory thresholds should prevent the practice. Whilst there is no specific provision against “salami-slicing” in Spain, as all parts of a construction programme are examined on a case-by-case basis to identify this problem, it is believed that salami-slicing can be prevented.

Summary of Main Findings:

Changes and extensions

A variety of approaches to dealing with changes and extensions are used across the EU, in line with existing requirements for other permits, the nature of the project and the nature of the change or extension. Both specific thresholds (often set as a proportion of the original project's size) and case-by-case screening are required in different Member States, or a combination of both. Some Member States ask for an EIA when a change of capacity is proposed which does not necessarily involve construction works. Where capacity changes without significant construction works, whether or not an EIA is required is sometimes determined by what was initially authorised, the production capacity (perhaps including an element of expected increase in uptake) or project size (e.g. number of motorway lanes) or footprint.

Cumulation with other projects

There seems to be growing awareness of the issues raised by the requirement to assess the cumulation of impacts, and measures have been put in place in many Member States to address this. Clear and comprehensive guidance for developers and others would appear to be lacking in most Member States, e.g. on boundaries for the assessment area, on the need for co-operation between developers or other arrangements for making information available.

Salami-slicing

The issue of possible salami-slicing is recognised by the Member States and some States have established measures to reveal and prevent such practice, including setting low thresholds or calling for assessment of "the whole programme" where this is appropriate. There may be a close relationship with the assessment of cumulative effects and changes or extensions. Nevertheless, very few States have concrete evidence on how widespread the practice of salami-slicing may be.

Action: *See recommendations 5.4.2. (a), (c), (d), (f), and (j).*

4.4 Public participation

4.4.1 As noted in Section 4 of this report, consultation with the public may take place at **various** stages of the EIA process, with some Member States holding public participation exercises during both the screening and scoping stages, while in others the public are consulted during scoping. In all cases Member States are required to ensure that the public are consulted on the information gathered pursuant to Article 5 (EIS) of the EIA Directive. Amendments in the EIA Directive relating to public participation are mainly designed to harmonise this Directive with the transboundary provisions of the Espoo Convention. Article 6 of the EIA Directive states that Member States shall ensure that any request for development consent and any information gathered in accordance with Article 5 shall be made available to the public within a "reasonable time" in order to give the public concerned the opportunity to express an opinion before the development consent is granted. The EIA

Directive does not provide a definition of either the ‘public’ or the ‘public concerned’. Under existing arrangements it is for the Member States to determine the detailed arrangements on: the nature of the “public concerned”; where the information can be consulted; methods for informing and consulting the public and time limits for stages of the procedure. Article 9 goes on to set out arrangements for informing the public of decisions to grant or refuse development consent. Currently the EIA Directive is being further amended by the proposed Directive²⁰ transposing the second pillar of the Aarhus convention concerning public participation in environmental decision-making into EU legislation (COM (2000) 839 final). The definitions provided in the Aarhus Convention are to be inserted into the EIA Directive. Those definitions areas follows:

“the public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

“the public concerned” means 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)²¹; 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.

4.4.2 In many Member States there is no geographical limit to the location of ‘the public concerned’ (e.g. Austria, Belgium-Walloon, Ireland, Italy, Spain); elsewhere it is restricted to affected communities, see Table 14. In those Member States where there is some geographical limitation upon consultation, there is sometimes flexibility for the views of people from outside the area to be taken into account.

4.4.3 The EIA Directive requires that “the public” shall be notified, and “the public concerned” shall be consulted (i.e. their comments will be actively sought), before development consent is granted. How widely information about a project consent application or an environmental statement is broadcast usually determines those who have access to it and may comment. The methods commonly used include bill-posting, notices around the site, postal notification of adjoining owners and notices in newspapers. The newspapers selected may be local, regional and national or a combination of these. For example, in Germany, depending on possible impacts, an announcement may be made in a cross-regional newspaper; in Ireland a newspaper is chosen which has a sufficiently large circulation in the functional area of the planning authority, whilst in Italy two newspapers will be chosen: one regional and one a national daily newspaper with wide circulation.

²⁰ COM (2000) 839 final – 2000/0331 (COD): Directive of the EP and the Council 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 and access to justice Directives 85/337/EEC and 96/61/EC

²¹ Text of the Common Position adopted by the Council on 25 April 2002, OJ C 170 of 16 July 2002, page 22

Table 14: The ‘public concerned’

| | GEOGRAPHICAL LIMIT |
|--------------------|---|
| Austria | Unlimited |
| Belgium - | Brussels Can be restricted to a single Commune but can be made much wider to include several Communes, depending on the project and its location. Public inquiry is initiated by a Commune/Municipality or communes together. Flanders Public Inquiry is organised by local municipal body Walloon Unlimited |
| Denmark | In the public hearing ‘the public concerned’ is everyone, without any limits. But in ‘the right of appeal’ it is limited to ‘everyone with a legal interest’, which includes NGOs. There is no geographical limitation. |
| Finland | The Finnish <u>EIA</u> Act refers to “those quarters whose circumstances or interests may be affected by the project or plan” The ‘public concerned’ is not defined directly by the Act but the right of appeal is restricted to the ‘public concerned’ under different development consent acts. |
| France | Public living in or having an interest in the communes affected; industrial projects 2-5 km. case by case definition where related to a river |
| Germany | Project type helps determine the public concerned. Geographical area is generally that of local area of responsibility of the competent authority. |
| Greece | Publication of EIS at prefecture level (2 nd level of local-government); but any interested party beyond that can be informed and express their opinions to the Prefectural Council or competent authority or in person at hearings |
| Ireland | Any member of public or interest group may make a submission on a planning application |
| Italy | No geographical limit: any person who [...] may present written petitions or comments within 30 days of ES report publication. |
| Luxembourg | No Information |
| Netherlands | No geographical limit. No need to meet property requirement. “The public concerned” is made up of those who demonstrate their interest. |
| Portugal | Yes – citizens living within neighbourhood of a project, as defined by administrative boundaries local and regional BUT comments from people outside this area are also taken into account. |
| Spain | No geographical limit – public is the general public |
| Sweden | Public concerned defined as those living nearby other others that in particular will be concerned , with early consultation to include private individuals who are likely to be affected. |
| UK | Public concerned not defined – notice is given locally |

4.4.4 Any lack of clear definition as to who constitute “the public concerned” may affect willingness to comment and make submissions. In France, there are regulations defining “the affected area” and this may be, for example, two to five km from an industrial project or, where a river is affected, a wider area defined on a case-by-case

basis. Willingness/opportunity to express written comments in a book available at specific sites (for example, in the town hall) also determines who comments.

4.4.5 The level of participation is influenced by a variety of factors, including the nature, size and location of a project, as well as by the level of controversy generated – often sparked by the media and NGOs. The types of projects most commonly found to induce high levels of public participation across the EC include: motorways, roads and pipelines, waste facilities, airports, power stations, high profile urban projects, quarries and big dams, as well as projects which affect specially protected sites, e.g. Natura 2000 sites. Certain project types are mentioned exclusively by single Member States (wind turbines – Sweden; office buildings – Belgium-Brussels) but projects with potential health impacts are widely considered likely to generate public debate. Research has been carried out in the Netherlands to ascertain which are the most controversial projects at both the scoping and the review stage. Those generating most letters/submissions were airports, motorways, military training areas, railways, waste disposal and minerals extraction, followed by industry parks, radioactive waste processing, recreational areas, etc.

4.4.6 Several Member States have provided details of the special provisions made available to deal with high levels of public participation, including: open hearings and public meetings, special exhibitions, provision of information to the media for dissemination, a change in requirements from personal contacts to public announcements. Measures used across the EU to facilitate and promote public participation where extensive controversy is considered likely include: early start to debate to promote public involvement, the extension of public inquiry period, the setting up of a local commission and the designation of more than one inquiry commissioner and the calling of more than a single public meeting.

Summary of Main Findings: Public participation

Throughout the EU the public is given an opportunity to comment on the projects that are subject to EIA. The extent of public involvement varies considerably and the interpretation of “the public concerned” varies from quite narrow to wide. The survey revealed that certain projects are more likely to generate high levels of participation. Given the large variety of project types covered by the Directive, the different consent systems used for different types of project and the different levels of interest they generate, it is not surprising that there is no standard practice of public participation across the EU.

Action: *See recommendations 5.4.2. (a)*

4.5 Transboundary impacts

4.5.1 The Espoo Convention on EIA in a Transboundary Context was signed in 1991. The Convention defines transboundary impacts as: **“any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party (to the Convention) caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party”**. This definition deals with both projects and impacts that cross boundaries and therefore does not limit the application of the Convention’s principles to the consideration of projects that are in close proximity to a boundary. Furthermore, in *Commission v Belgium (C-186/91)* the ECJ ruled that the consultation obligations contained in Article 7 of 85/337/EEC were not confined to projects located in regions with frontiers with other countries. As with the Directive as a whole, the interpretation of what constitutes a project with transboundary impacts should be given a wide and broad meaning. Directive 97/11/EC made substantial amendments to Article 7 to ensure compliance with the Espoo Convention. The key changes introduced include:

- Member States affected by transboundary impacts must be sent the required information no later than the public are informed in the Member State where the project is located;
- The Directive now requires much more detailed information to be sent to the affected Member State;
- where the affected Member State wishes to participate in the EIA process the Directive places duties on the Member State concerned to make the information on the project available to the relevant public authorities and the public.

Article 8 of the EIA Directive requires the competent authority to take into consideration the results of consultation with affected Member States in the decision making process and Article 9 requires the notifying Member State to inform the affected Member State of that decision.

Article 7 of Directive 97/11/EC introduced the main requirements of the Espoo Convention. It leaves the detailed arrangements for implementing the Article to the Member States. Given the broad variety of issues that may arise between the countries concerned by likely transboundary impact of a project most Member States started elaborating bi- or multilateral agreements. The guidance material elaborated under the Espoo Convention²² in relation to bi-and multilateral agreements and to the practical application of the Convention is a useful source of information in that respect.

4.5.2 A variety of issues have arisen in applying Article 7 across the EU. Procedural issues were mentioned by several Member States (Belgium-Flanders, Belgium-Walloon, France, Netherlands, Sweden); these include co-ordinating notification across two or more Member States, slow responses, and documents not accompanied by sufficient information to permit rapid transfer to the intended recipient. Issues in

²² UNECE EIA homepage: <http://www.unece.org> see under ‘documents prepared under the Convention’

establishing points of contact, and obtaining translation (including costs), were mentioned by the UK, Sweden and the Netherlands. Cultural and legal differences were also mentioned by the Netherlands. Some Member States have referred to specific issues in particular transboundary cases – see Box 7 below. Nevertheless Belgium–Brussels, Denmark, Finland, Germany, Greece, Italy and Portugal state there have been no difficulties.

4.5.3 In Belgium-Walloon, for instance, differences in legislation between Member States may delay the transmission of information (The information route is Minister of Environment – Minister of Foreign Affairs – Ambassador, rather than directly to or between the competent authorities). To overcome the delays required by the legal route for transmission of information, one respondent advocates informal agreements between the authorities of the different Member States. In Belgium-Walloon an unofficial procedure of direct communication is used between competent authorities in neighbouring states, which speeds reaction times. Belgium-Flanders also has experience of informal contacts (letters, e-mail, telephone calls) to overcome difficulties. Other Member States consider that procedural problems can be overcome by establishing good contacts and working relations with authorities in the affected Member States. In Denmark, every case is handled individually. There are meetings, approximately once or twice a year, between the EIA competent authorities. Portugal states that at present public participation is ensured by bilateral formal relationship through the Ministry of Foreign Affairs. In Sweden the EIA Ordinance refers to the articles and procedures of the Espoo Convention. The Swedish Environmental Protection Agency is designated by the Swedish Government as point of contact to the Espoo Convention.

4.5.4 Very few formal treaties or agreements on transboundary effects have been finalized by EU Member States amongst themselves or between EU Member States and neighbouring non-EU countries. Only one has been mentioned in the responses to the questionnaire (Finland-Estonia), although some are currently under negotiation (for instance, by Germany, and the UK). Non-binding agreements, “practical arrangements” and environmental protection “Recommendations” do exist, however, between a number of countries (such as Germany’s Tripartite Recommendations with various countries, and the non-formal links between the Netherlands and Belgium Walloon and the Netherlands and Belgium Flanders). Belgium Walloon sees a need for better, more “useable” formal arrangements with neighbouring countries. A need is also seen in Belgium for an improvement of the current procedures between the regions as well as between the regional level and the relevant federal authorities. Existing treaties and agreements are set out in Table 15.

Table 15: Treaties and Agreements

| Country | Treaties or Agreements |
|--------------------|---|
| Austria | Trilateral non binding agreement with Switzerland and Liechtenstein . Agreements with Slovakia and Czech Republic are in preparation. |
| Belgium – | Flanders Flanders-Netherlands - formal agreement on transboundary EIA, including procedural steps. Walloon Informal practical arrangements with Netherlands. |
| Finland | Bilateral agreement with Estonia, entered into force 6 th June 2002. Bilateral agreement with the Russian Federation is under negotiation. |
| France | Bilateral treaties on important public projects, including those with Italy, Spain, Switzerland, Baden-Württemberg (Germany). No general treaties or agreements. |
| Germany | Agreements on transboundary EIA currently under preparation: <ul style="list-style-type: none"> • Germany-Poland • Germany-the Netherlands • Germany-Czech Republic • Germany-Switzerland, Austria, Liechtenstein (planned) Agreements meeting in part provisions of Directive 97/11/EC and ESPOO Convention, but without reference to those documents: <ul style="list-style-type: none"> • Tripartite Recommendations of German-French-Swiss Governmental commission for Co-operation on Activities with Environmental Relevance along the Upper Rhine (1996); • Saar-Lor-Lux Recommendation (German-French-Luxembourg) governmental Commission on the Bilateral Notification of Newly Planned and amendments to Existing Activity Needing Development Consent (1986) Agreements referring to ESPOO Convention (not EIA Directive) but without detailed determinations on transboundary EIA: <ul style="list-style-type: none"> • Germany-Poland on Co-operation in Environmental Protection (1994, in force 1998) • Germany-Czech Republic on Co-operation in Environmental Protection (1996, in force 1999) |
| Ireland | Currently negotiating to formalize existing consultation procedures with Northern Ireland (with UK authorities). The text of a Memorandum of Understanding is largely agreed. |
| Netherlands | Belgium, Flanders: non-binding agreement (since 1995) Belgium, Walloon Region: practical arrangements Germany, North Rhine-Westphalia and Lower Saxony: non binding agreement (under negotiation) |
| UK | Long-standing non-formal agreement between the Department of the Environment (Northern Ireland) and the Republic of Ireland relating to transboundary co-operation. |

4.5.5 The range of projects subject to transboundary consultation reflects the range of projects covered in the EIA Directive. Member States have consulted on a significant number of transport infrastructure (motorways; railways; airports; container terminals or ports; tunnels and bridges) and energy schemes (power plants); wind farms; nuclear plants, nuclear storage or re-processing facilities; and gas and electricity pipelines. In southern Europe, water resources schemes feature more

prominently. Schemes where the proponent is a private body include marine dredging and other mineral extraction; agricultural intensification; and industrial plants and complexes. The level of detail provided by Member States on infrastructure projects appears more comprehensive than on private developments and, for example, on urban development and leisure projects. Table 16 provides further information on the types and numbers of projects reported by the Member States.

Table 16: Number and Types of Transboundary Projects

Note: The information in this Table has been taken from the questionnaire responses and from the Enimpas database on EIA in a transboundary context²³. However the numbers do not match the types of projects either reported by the respondents or on the database and the list of project types does not necessarily indicate that the project originates in that country.

| Member state | Country of origin projects (no.) | Affected country projects (no.) | Type of project |
|--------------------|----------------------------------|---------------------------------|--|
| Austria | | 3 | Waste-water treatment, harbour, nuclear storage |
| Belgium: | | 1 | Marine dredging, transport infrastructure, industrial; agricultural; waste |
| Denmark | 3 | 9 | Windfarms; gas pipelines; airport; marine dredging |
| Finland | 7 | 5 | Power plants, nuclear plants and storage; gas pipelines and power lines; flood prevention, industrial |
| France | | 1 | High-speed railways, bridge, tunnels; marine dredging, intensive livestock, mining, industrial, waste treatment |
| Germany | 4 | 3 | Nuclear plant and radioactive waste; gas pipelines; windfarms; airport; rail line; marine dredging |
| Greece | 0 | 0 | |
| Ireland | | | Windfarms; marina/ferry terminals; nuclear re-processing |
| Italy | 2 | | Gas pipeline; power station |
| Luxemb'rg | 0 | 0 | |
| Netherlands | c.25 | c.12 | Airport; container terminal, harbour developments; motorways; railway lines; wind farms; waste incinerator; uranium enrichment; industrial zone; agricultural intensification; land development; mineral extraction; marine dredging; flood control; groundwater abstraction |
| Portugal | 2 | | Dams; waste - water treatment plant |
| Spain | | 2 | Dams |
| Sweden | 2 | 12 | Wind farms, power plants, nuclear plants and nuclear waste; gas pipelines and power lines; reservoir; flood scheme; military shooting range; dredging; |
| UK | 12 | 7 | Airport; power plants; windfarms; harbour works; industrial; incinerator; MRF; intensive agriculture; hotel and leisure; nuclear re-processing, retail and leisure; marine dredging. |

²³

<https://www.mos.gov.pl/enimpas/>

4.5.6 There appear to be significant problems in auditing the number of transboundary EIA cases, with inconsistencies between adjacent Member States, and lack of information at the national government level, especially where there are federal systems in place. It is not possible to tell from the responses how many of the projects are Annex I or Annex II projects. As the thresholds for adjudging which schemes need an EIA vary significantly between Member States (see Section 4.2), it is likely that the application of Article 7 is inconsistent across the EU. Differing criteria of distance or spatial extent of possible effects appear to be applied. For instance, the Netherlands has taken a broad interpretation of the possible impacts of Schipol airport, notifying a number of potentially affected countries, including France.

4.5.7 Some countries in their responses distinguish between notification and consultation on transboundary impacts. Information is also provided by some Member States on transboundary consultation with non-EU states (such as Switzerland, Slovenia, the Czech Republic, Poland, Estonia, and Norway). Questionnaire responses do not often mention problems of disagreement over the final decision, although Ireland sees a need for a more formal arrangement to be developed in due course, particularly in the context of nuclear energy-related developments - informal contacts do occur from time to time.

4.5.8 A more accurate form of auditing is needed to provide reliable information on the number, type and outcome of Article 7 transboundary projects. Sweden does appear to have a comprehensive recording system in place, but such systems are rare. Other databases are not yet able to provide this information. The UNECE database on Transboundary EIA (www.mos.gov.pl/enimpas) is incomplete: there are entries listing national institutions (Points of Contact for Notification, and Focal Points for the Implementation of the UNECE Convention), but little detail on any projects subject to the Convention. The information should be provided by the focal points in the respective countries. It is hoped that this will improve in the future.

Summary of Main Findings: Transboundary Impacts

There is a need for better formal and informal arrangements for consultation on transboundary impacts with neighbouring countries and a need to ensure that those arrangements are practical. A need has also been identified for an improvement of the current intra-regional procedures of some countries. More precise auditing arrangements are needed, to provide reliable information on the number, type and outcome of Article 7 transboundary projects.

Action: *see recommendation 5.4.2. (g).*

4.6 Biodiversity, Risk and Human Health

Biodiversity

4.6.1 Whilst the EIA Directive states that the direct and indirect effects of a project upon fauna and flora should be identified, described and assessed in an EIA, it does not make explicit reference to the concept of biodiversity. However, Article 14 of the Convention on Biological Diversity (CBD) requires that EIA be applied to development projects that have the potential to result in adverse impacts upon biodiversity. The CBD defines biodiversity in Article 2 as “the variability among

living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems" (See <http://www.biodiv.org/convention/articles.asp>). The concept of biodiversity is clearly very broad, and under the CBD definition three levels can be identified:

- (i) Ecosystem level – diversity, variety and frequency of different ecosystems;
- (ii) Species level – the frequency and diversity of different species; and
- (iii) Genetic level – the frequency and diversity of different genes and/or genomes, i.e. genetic diversity *within* each species.

4.6.2 From the questionnaire responses it is clear that the EIA systems in the Member States give consideration to impacts upon flora and fauna, and hence meet this requirement of the Directive. Particular emphasis is given to ecological impacts where specially protected locations such as Natura 2000 sites may be threatened. However, from the questionnaire responses, there is less clear evidence that biodiversity is given explicit consideration as an assessment parameter (with a limited number of exceptions). The definition of environmental impact in Finnish legislation includes biological diversity and the Advice Notes produced by the Environmental Protection Agency in Ireland indicate the importance of investigating and predicting impacts upon species diversity. The Dutch are co-ordinating the implementation of the Action programme: Integration of Biodiversity in Impact Assessment (IAIA July 2001). The Netherlands Commission for Impact Assessment has produced a report (funded by the IAIA) "*Proposed conceptual and procedural framework for the integration of biological diversity considerations with national systems for impact assessment*", July 2000.

4.6.3 In the clear majority of cases the Member States have not envisaged further measures to enhance the consideration of biodiversity. However, some Member States do recognise that there is a potential issue that needs to be resolved and in Finland, the consideration of biodiversity is currently being studied through the review of 50 EIA documents. Furthermore, Finnish guidelines for biodiversity impact assessment in EIA and in land-use planning are currently being prepared. The Flanders region in Belgium is also considering draft EIA legislation, which includes an improved EIA approach for considering the issue of biodiversity. Spain uses a strategic plan for the preservation and sustainable use of biodiversity. The Netherlands appear to have made good progress in embracing biodiversity issues in EIA. Biodiversity is an integral part of the Dutch EIS review framework, which is conducted by the independent Netherlands Commission for EIA. Guidelines on addressing biodiversity issues at different stages of the EIA process have recently been adopted under the Convention on Biological Diversity: <http://www.biodiv.org/decisions/default.asp>. These may give guidance on how to address biodiversity within EIA and on how to further develop national supporting material on this issue.

Summary: Biodiversity

Impacts of developments upon flora and fauna are being assessed within EIA in the Member States and the minimum requirements of Directive 97/11/EC seem to be met in this respect. However, the questionnaire responses are less explicit concerning the extent to which the various levels of biodiversity are addressed in practice. The treatment of biodiversity in impact assessment has been the focus of ongoing research in Finland and the Netherlands.

Risk

4.6.4 Annex III to the Directive lists screening criteria, in accordance with the provisions of the screening Article 4 (3). These criteria cover the characteristics of projects, the location of projects and the characteristics of the potential impacts. Under these criteria “the risk of accidents, having regard in particular to substances or technologies used” is included under ‘characteristics of projects’. Risk of accidents is ever present and a situation of no risk can never be obtained. As an EIA screening criterion, therefore, it is not the ‘fact’ of risk that needs to be considered but whether there is a significant risk and whether the consequences of a risk event happening would be likely to cause significant environmental effects. The presence of an explicit obligation to consider the likely significant effects of an accident or exceptional circumstances appears to vary across the EU in line with perceptions of likely natural hazards and also with respect to the type of project involved: major projects, projects covered by the Seveso Directive of 24 June 1982 concerning risks of major accidents of certain industrial activities, and ‘other projects’. The range of incident types covered in Member States includes natural hazards such as avalanches, floods and earthquakes, and technological and human failure (e.g. poor installation management) and sabotage.

4.6.5 Risk and hazard are covered in a number of different ways in different Member States, and it is not in general the EIA Directive that is the controlling force in risk assessment (e.g. France, this is done via controlling legislation on classified installations; in Sweden, for example, via Acts concerning nuclear installations). There is thus a possibility of duplication of work. In Sweden, in line with the Environmental Code, where an activity is covered by the Act on Measures to Prevent and Limit the Consequences of Serious Chemical Accidents, the purpose of EIA is to identify and assess safety-related factors associated with the activity. In Italy the developer must provide a “system process malfunction analysis” linked to environmental effects resulting from emissions to air and water, plus explosion; fire etc. In some Member States the requirement for risk assessment is not obligatory but it is normally done. Risk assessment thus sometimes appears patchy – for example in Sweden, whilst impacts resulting from chemicals related activities are covered under the Environmental Code, but activities not related to chemicals are not. Similarly in the UK, the implementing regulations make no reference to assessment of risk of accident or effects under exceptional circumstances (such as heavy rain, earthquake, landslide or other unforeseen natural disaster) because these possibilities are not seen as “likely”. Nevertheless, flooding and landslide assessment would be part of early stage of project development. Installations sensitive to seismic activity (e.g. nuclear

installations) are covered under provisions controlled by the Health and Safety Executive.

4.6.6 Risk is covered in a number of ways in French practice. The French Ministry for the Environment includes a Department for the Prevention of Major Risks. Project reports always include a risk section. *Risk Exposure Plans* consider technological risks whilst *Risk Prevention Plans* consider natural risks – these are not always related to specific projects. Their purpose is to prevent unsuitable projects or to define precise requirements where some works are to be authorised. Classified installations (which include Seveso installations and amount to half of the projects for which an impact statement is prepared) require a hazard assessment study (“étude de danger”) which identifies sources of danger and foreseeable accident scenarios. This study must evaluate consequences and justify measures proposed for the prevention and mitigation of effects.

4.6.7 The German federal Administrative Order on EIA (UVP-Verwaltungsvorschrift) contains guidance on the application of the German EIA Act, and states that impacts on the environment include effects of failure of operation. Where an installation needs to be designed so as to prevent accident, the competent authority will have to require from the proponent a description of the likely significant effects in case of an accident or exceptional circumstances. Subject specific laws provide the overall framework in Germany; risk assessment work is evaluated by the decision-maker. In Belgium-Brussels the Fire Protection Services or the Civil Protection Services collaborate in decision-making by considering realistic risk/accident scenarios.

4.6.8 In several Member States Seveso and IPPC requirements are the minimum requirements for risk assessment, and these standards have been incorporated into national procedures (e.g. Belgium-Walloon, Denmark). In Portugal requirements under Seveso and the IPPC Directives are dealt with in specific legislation, whilst in Spain EIA procedures have been included in both the IPPC and the Seveso procedure. Generally questionnaire respondents did not quote specific risk assessment techniques used, saying that the method depended on the type of project. Some methods referred to are as follows:

- Austria: Check lists, fault-tree analysis
- Finland: Statistical analysis, calculations, evaluation of previous experience
- Italy: Case by case examination by means of mathematical models and/or by a statistical frequency analysis, as well as evaluation of previous incidents.
- Netherlands: Group risk standards for airports.

4.6.9 The intensity and detail of risk assessment may depend in some Member States on the type of project as well as on the location; in certain circumstances this could mean that standards vary and procedures vary both within similar sectors and across sectors. In Finland some fields have well-established techniques of assessment and others do not. In general, with regards to the linking of EIA with IPPC and Seveso requirements, the more detailed information on risk assessment is provided under the consent procedure in Finland, though for nuclear plants risk analysis is

discussed at an early stage. In Belgium-Flanders, while risk assessment is not well developed within EIA, a separate safety report is to be referred to in the EIS for Seveso-type installations; for non-Seveso installations, major aspects are dealt with in the EIA procedure.

4.6.10 The UK adopts a risk management approach rather than a strictly risk assessment procedure designing into the project risk management procedures to cope with inherent risk. Security, and the adoption of measures for accident prevention are provided for in the UK under the Health and Safety at Work Act, 1974, and its regulations that implement the Seveso II Directive, and other licensing regimes which apply to all businesses. These regulations demand strict compliance with on- and off-site health and safety regulations. On-site, the standard to be met is As Low As Reasonably Practicable (ALARP). The ALARP standard is used in Ireland with respect to risk in connection with railway projects.

Summary of Main Findings: Risk

Risk is dealt with in a wide variety of ways and at very different levels across the EU, partly in response to the variety of geographical, geological, climate and other conditions. Risk is a screening criteria in Annex III and risk assessments appear in many EIS and yet for most Member States risk is seen as separate from the EIA process as it is often handled by control regimes to which the EIA Directive is not applied. Relationships between EIA and national environmental control regimes are complex and there appears to be little real co-ordination between the EIA Directive and other Directives such as IPPC and the Habitats Directive.

Action: See recommendation 5.4.2. (j)

Human health

4.6.11 While the EIA Directive does not specifically require human health to be examined as part of the assessment process, at Article 3 it does say that the assessment should identify, describe and assess the direct and indirect effects on, amongst other matters, human beings. A number of respondents indicated that whilst health effects should in theory be given consideration in an EIA as part of the assessment of impacts upon human beings, in practice the level of detail is limited and often it is not as detailed as that provided for biophysical impacts.

4.6.12 Consultation with relevant public health authorities during scoping is identified by a number of respondents as a means of ensuring health effects are adequately considered. By far the most common health considerations relate to noise and air quality (including dust) where quantitative standards and thresholds are typically used to assess the significance of the impacts. Health impacts appear to be given particular consideration in relation to transport infrastructure projects (roads, rail, airports, parking lots), waste treatment, and power generation facilities. There is considerable variation in coverage from:

- narrow interpretation, e.g. health effects of environmental effects (especially noise, air pollution) of projects, with general reference to ‘human beings’ effects under Article 3; to
- wider interpretation, e.g. well being, socio-economic (but latter is often regarded as beyond the remit of EIA, and is covered by other legislation – eg. town and country planning).

Approximately one-third of the Member States adopt a wider approach while the rest adopt various forms of the narrow approach.

4.6.13 Few respondents could provide examples of good practice, although a number of countries refer to WHO specifications as guidance and others have issued their own guidance to assist in the consideration of health issues e.g. in Belgium-Flanders, guidelines have been developed in a partnership with the Health Administration and the EIA unit. The Irish guidelines indicate that a risk assessment approach should be taken, and the Netherlands also recognises the close link between risk assessment and health impact assessment. The Dutch categorisation of health impacts is interesting:

- health (physical) – normally quantitative (eg. what pollutants health-based standards are being exceeded);
- well being – annoyance (e.g. smell, vision, noise); mixture of qualitative and quantitative; and
- health related socio-economic – employment, and severance, but only discussed in general terms.

The Dutch practice also refers to impacts on groups rather than individuals.

Summary of Main Findings: Human Health

The assessment of health impacts is not a particularly strong feature of current practice. There is considerable variation in coverage from a narrow to a broad interpretation of health effects. There is evidence to suggest that health impacts are considered to be less relevant to EIA, and/or to a certain extent covered by other legislation. However, there is some evidence to suggest that health impacts are considered under other headings such as pollution and risk.

Action: *See recommendation 5.4.2. (j).*

4.7 Relationship with Other EU Directives

4.7.1 The EIA Directive is a key tool in the implementation of EU environmental policy and is one of a raft of Directives that have as their prime concern the management and protection of the environment. In many cases projects that are covered by the EIA Directive are also subject to the provisions of other environmental Directives. The IMPEL network has examined the relationship between EIA and other Directives in the past and has emphasised the importance for co-ordination in key stages such as public participation and the need to avoid, where possible, over duplication of documentation and assessment activity²⁴. For this current review Member States were asked about the relationship between EIA and some other key environmental Directives.

Directive 96/61/EC Integrated Pollution Prevention and Control

4.7.2 Article 2 (2a) of the EIA Directive (inserted by 97/11/EC) permits Member States to provide for a single procedure to fulfil the requirements of both the EIA and IPPC Directives. Only four of the respondents (Austria, Belgium-Brussels, Germany and Italy) have indicated that a single procedure exists for the authorisation of projects that fall under both the EIA and IPPC Directives. Austria has a single consolidated consent procedure whereby the relevant authority (federal or länder) will consider both EIA and IPPC while in Italy it only applies to changes and extensions to existing projects. In some Member States the application of the EIA Directive is divided between land use authorisations and environmental permits (for processes) and in such cases there will be an overlap between EIA and IPPC. In the Netherlands, where both land use and process authorisations are required, the land use consent is withheld until the IPPC or other environmental permit has been gained. In all other Member States the procedures are separate, although in France, the Netherlands, Sweden and the UK, proponents are either advised or required to submit applications simultaneously. In Ireland the general practice is that the land-use planning application is submitted prior to the IPPC application. Spain has not as yet (fully) transposed Directive 96/61/EC into national legislation.

²⁴ European Union Network for the Implementation and Enforcement of European law (1998) Interrelationship between IPPC, EIA, DEVESO Directives and EMAS Regulations: Final Report, Brussels, CEC.

4.7.3 In most Member States (Belgium-Brussels, France, Germany, Greece, Ireland, Portugal, Spain and Sweden) the IPPC Annex I thresholds and the thresholds developed for EIA Annex II are generally the same. Although in some countries the EIA mandatory Annex II thresholds are lower (France and Greece) and in France the Annex II thresholds are 2 to 10 times lower than those in the IPPC Directive. While having the same thresholds/criteria facilitates consistency and good integration of EIA requirements and the IPPC licensing regime, many respondents reported problems of such integration because of national legislative factors.

92/43/EEC Habitats Directive

4.7.4 Article 6 of the Habitats Directive requires an assessment procedure to be completed where a project or plan, not directly connected to the management of a Natura 2000 site, is likely to have a significant effect on such a site. That procedure, as with EIA, is a stage-by-stage assessment of the project or plan, its impacts on the Natura 2000 site, the alternatives to the project or plan that would avoid an adverse impact on the site and any mitigation or compensatory measures that would maintain the overall integrity of the natura 2000 network. The Commission Services document *Managing Natura 2000 sites: the Provisions of Article 6 of the Habitats Directive 92/43/EEC*²⁵ identifies the linkages between the EIA Directive and Article 6 of 92/43/EEC and indicates that a project that is likely to have a significant effect on a Natura 2000 site is likely to require an Article 6 assessment and an EIA in accordance with the EIA Directive. Furthermore, the EU's non-mandatory guidance on the Article 6 assessment process states that where a project is one to which the EIA Directive applies, the Article 6 assessments may form part of the EIA but should be clearly identified and distinguishable within the EIS²⁶. All Member States, save for Germany and the UK, claim to have co-ordinated the EIA assessment with those required by under the Habitats Directive. Portugal explained that in sensitive areas all projects require an EIA, regardless of size. In Finland the Habitats Directive assessment can be done as part of the EIA procedure or later in the development process after the EIA when a more detailed phase of design has been reached.

Summary of Main Findings: Relationship with Other EU Directives

There is little evidence of widespread co-ordination between the EIA Directive and other Directives such as IPPC and the Habitats Directive. Few Member States have taken the opportunity to provide for the greater consistency and reductions in repetitious documentation and assessments provided by closer co-ordination of EIA and IPPC. Where Member States claim that links do exist it is usually in the form of guidance that states little more than that the two procedures should be dealt with simultaneously.

4.8 Access to justice

4.8.1 Article 9 of the Aarhus Convention requires each party to ensure that members of the public have access to administrative or judicial procedures to challenge acts and admissions by private persons and public authorities which contravene provisions of

²⁵ See <http://europa.eu.int/comm/environment/nature/home.htm>

²⁶ See <http://europa.eu.int/comm/environment/nature/natura.htm>

its national law relating to the environment. The proposed Directive, which will amend, *inter alia*, the EIA Directive so as to transpose the Aarhus Convention into EU legislation, will require Member States to ensure that the public concerned (subject to certain conditions) has access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions that are subject to the public participation provisions of the EIA Directive (Article 10a). The new Article 10 (a) will also require Member States to ensure that such procedures shall be fair and not be prohibitively expensive. While the current EIA Directive does not require access to justice provisions and the amendments to the EIA Directive stemming from the Aarhus Convention are not yet in place, this review sought information on existing arrangements for access to justice with EIA.

4.8.2 From the evidence of the survey it would appear access to justice for EIA appears to be largely confined to reliance on the judicial systems of the individual Member States. The use of judicial review systems to provide access to justice is often costly and slow and often limited to those who are directly affected by a decision rather than the wider concept of the ‘the public concerned’ as provided for by the Aarhus Convention. Several countries have made EIA an integral part of pre-existing licensing procedures and access to justice is therefore part of the licensing procedure and not directly related to the process of EIA. In Germany, the result of the screening decision could be appealed, however, only after the final decision had been made. This is also the case in the UK. Denmark was one of the few Member States in which access to justice was granted at the intermediate stages of screening and scoping. Ireland’s legislation also provides for judicial review at all stages of the planning process into which EIA is integrated. It further allows for a third-party appeal system – where the planning decision to authorise a project can be re-examined at appeal by An Bord Pleanála, the national appeal planning board.

Summary of Main Findings: Access to Justice.

Although the current EIA Directive does not contain provisions on access to justice, the majority of Member States provide for such in their national systems. Access to justice for EIA is largely confined to members of the public having legislative rights to challenge decisions through the courts. In most cases such challenges can only be made once project authorisation is granted, few Member State provided for challenges at the earlier stages of EIA.

Action: An amendment to the EIA Directive has been adopted in order to be in line with the Aarhus Convention. It introduces access to justice obligations and rights.

4.9 Quality Control in EIA

4.9.1 Quality control in EIA can be assessed at all stages of the process. There can be quality control measures to ensure that screening decisions are made in accordance with the Directive, there can be measures to check that all significant impacts have been properly identified at the scoping stage, that the consent decision has properly considered the environmental information and, although not covered by the EIA Directive, there can be post-decision quality control through monitoring. Quality control can also comprise the quality of public participation at each stage of the process. However the Directive does not prescribe the manner in which competent

authorities carry out their screening duties, how the scoping process should operate, how the assessments should be completed, at what level of detail or how their outcome should be reported. Following Case 431/99 *Commission v Germany* (Grosskrotzenburg) the requirements of the Directive are met so long as the environmental information is provided or the competent authority has that information in its possession and the public are given an opportunity to examine and comment on that information in advance of any decision. The Directive establishes the procedural rules under which EIA takes place, it does not establish any basis on which the quality control of the stages within the EIA procedure can be tested, that is left for Member States. Box 3 provides details of some of the quality control measures in place (covering the scoping phase and the EIS) in some of the Member States.

Box 3: EIA Quality Control**Austria**

Generally there is considerable contact between the applicant and the competent authority during the EIA process, including informal / formal scoping procedures. The competent authority comments on the technical and legal aspects of the project, and can propose appropriate impact assessment experts. The competent authority assesses the quality of the information supplied by the applicant using either internal or external experts. Selected government environmental agencies receive copies of the completed EIS for commentary, and all application documentation is open to public inspection and comment for a period of six weeks.

Belgium - Brussels

Scoping is mandatory, with the competent authority drawing up specifications for the EIA. Developers must use an accredited consultant to undertake the EIA. Upon completion of the study, a steering committee (composed of representatives of the main Administrations concerned) reviews the EIA and can approve or rectify the work until it satisfactorily addresses the issues raised in the original EIA specifications.

Belgium - Flanders

Developers may only use certified experts to conduct the EIA and must submit a proposed team of EIA-experts and an outline of the EIS for approval to the EIA-unit of the Environmental Administration. Whilst scoping is not mandatory, it exists as an informal requirement and a scoping meeting including all relevant governmental services, the developer and the EIA-experts is part of standard EIA practice. A draft-EIS is considered at a second meeting of this group and the final EIS has to be approved by the EIA-unit of the Environment Administration. EIA guidelines (printed)

Belgium - Walloon

A body that has been accredited by the Minister of the Environment must undertake the EIA. The competent authority and an independent environmental council (comprised of representatives from industry, universities, government environmental bodies, unions, the general public, etc.) review EIA quality. If it is not considered satisfactory the competent authority can request additional information. If the subsequent additional information is unsatisfactory the application can be refused.

Denmark

It is an obligation of the competent authority to include public consultation as part of scoping. The competent authority is responsible for EIA quality. A national environmental authority also checks the EIS.

Finland. The developer prepares a scoping document that is assessed by the competent authority, and any necessary revisions to the proposed assessment programme are identified. The competent authority reviews the adequacy of final EIS report, although prior to this a draft EIS is often submitted to the competent authority for unofficial comment. The general public and government agencies can comment on the scoping document and the EIS, and the competent authority takes these comments into account when assessing quality. The Ministry of the Environment is preparing guidelines on reviewing scoping documents, EISs, and the administrative management of the EIA procedure.

France

The competent authority is responsible for quality. Some authorities have prepared guidance documents. Regional environmental authorities can also advise the competent authority. At the national level, the Environment Minister can call in the proposal and give an opinion on the EIS. For major projects (defined by their nature and cost) national and regional authorities are consulted to give advice on the EIA.

Germany

The competent authority considers the quality and completeness of the information. Licensing procedures can only begin once the competent authority is satisfied with the quality and completeness of the information provided. If necessary external experts can be appointed to assist the competent authority in assessing the information

Netherlands

The Netherlands has an independent EIA Commission that oversees much of the EIA process as part of its quality control procedures

Portugal

The competent authority verifies the quality and completeness of the information and additional information can be requested. If the information is not complete project authorisation is withheld and a new EIA must be undertaken.

4.9.2 As was noted under the discussion of screening in Section 3 of this report, there is very little monitoring by Member States of the operation of the screening process. Evidence from the UK suggests that there is a great deal of inconsistency of approach, with much depending upon the commitment of the competent authority to EIA and the resources available to it in dealing with complex EISs, with some competent authorities never requiring an EIA ‘if it can be avoided’²⁷. The only quality control measure in place for screening in most Member States appears to be the availability of a judicial challenge of a decision on an Annex II project where an EIA was not required and yet, based upon Annex II there were likely to be significant environmental effects. The reliance on the judicial route to ensure quality control is highly inefficient and without some form of centralised monitoring of screening decisions Member States cannot be in a position to check the quality of the screening decision making process. The position on scoping is different in that there are only a few countries in the EU that have mandatory scoping stages for EIA. Where scoping is a discretionary stage the only quality control measure available is the use of guidance. Three approaches to providing quality control during scoping can be identified:

- the competent authority draws up the specification for the EIA as part of a mandatory scoping process (e.g. Belgium-Brussels)
- the applicant produces a draft outline of the EIA which is subject to review by the relevant authority and amendment by the developer where necessary (e.g. Finland, Sweden)
- project specific EIS guidelines are produced as result of consultation, involving the public, advisors and an independent body (e.g. the Netherlands)

4.9.3 Some aspects of quality control over the submitted environmental information were discussed in Section 3 and as with screening and scoping it is noted that there is very little centralised quality control over the content, depth and adequacy of the environmental information submitted by developers. As was seen in Section 3, fewer than half of the Member States have carried out any research into the quality and sufficiency of the environmental information or EISs submitted to date and where research has been carried out it has found that EISs are of generally poor quality. Some Member States have produced guidance to enhance the quality of environmental information and environmental statements (see Table 17).

4.9.4 Member States were asked what factors are used as a basis for judging the quality and sufficiency of information supplied by the developer, and whether tools such as review checklists were used. Austria sees Annex IV listing the elements of information that need to be provided in the EIS, now transposed into national law, as a checklist. A team of experts at the EIA authority and co-operating authorities confirms compliance. Other official bodies (e.g. the environment ombudsman, host municipality, Federal Ministry of Agriculture, Forestry, Environment and Water Management) can comment on the quality of the environmental statement, as can the public. Belgium-Flanders, Denmark and Germany also quote the transposed

²⁷ See Weston, J. (2000) EIA, Decision Making Theory and Screening and Scoping in UK Practice, in *Journal of Environmental Planning and management*, Vol. 43, No. 2, pp. 185-203.

requirements of the EIA Directive Annex IV as fulfilling the role of checklist. Ireland points to the Guidelines on the information to be contained in Environmental Impact Statements, as indicating the information required. Similarly in the UK, the Guide to Procedures published by the Dept. for Transport, Local Government and the Regions contains a checklist, as does guidance published by the EC and other sources. An Italian decree (DPCM of 27.12.88) sets out “technical rules” indicating what the contents of an environmental statement should include. A general guide on the contents of environmental impact studies is available in France, together with technical guides for the main project types.

4.9.5 To promote quality in Finland, an “EIS of the year” award is made by the Finnish Association for Impact Assessment at its annual conference. In the Netherlands, project-specific guidelines are prepared for each individual project based on wide consultation (with the public, advisors and the EIA Commission). These project-specific guidelines are developed from the Dutch EIA legislation. At the stage of formal acceptance (not necessarily approval) of the environmental statement, the competent authority will check the contents of the environmental statement against the specific guidelines. Where the information is not satisfactory, supplementary information is required. Subsequently the EIA Commission reviews the information available in terms of: “the state of the art”, whether relevant alternatives are described and in particular, the most environmentally-friendly alternative, as well as the quality of information on environmental impacts. In almost all those cases where information was initially judged to be inadequate and further information was required, that information has subsequently been provided. Other participants in the Netherlands quality control process are: the public, the regional environmental authorities and nature conservation authorities.

4.9.6 To judge the quality of the outcome of the EIA process requires post-authorisation monitoring and the EIA Directive does not provide for this stage, even though it is a familiar part of the procedure in very many countries. Some Member States do have in place mechanisms for reviewing the outcome of the EIA. The Dutch EIA legislation includes an evaluation provision that requires the competent authority to draw up an evaluation programme. This programme reviews the outcome of the prediction in the Environmental Statement (ES) and compares it with existing conditions. If the evaluation shows that the environmental effect is worse than predicted, the competent authority may order extra environmental measures. The report of the evaluation programme is public and is usually conducted five years after the implementation of the project. Greek national legislation also provides for a review of the EIA outcome, as part of the renewal procedure for the environmental permit. The environment permit for a project is granted for a specific time period and has effect throughout the operation of the project. If by the end of this prescribed period no substantial changes occur in respect to the environmental impacts of the project, then the environmental permit is renewed.

Table 17 EIS Guidelines

| Member State | Guidelines on preparation of environmental statements |
|--------------------|---|
| Austria | General guidelines on environmental statements – Federal Environment Ministry Guidelines for environmental statement of waste incineration and thermal power plants www.ubavie.gv.at/umweltregister/uvp/intro/htm Fed Min for Agriculture, Forestry, Environment and Water Management:: Guidelines with regard to skiing areas, shopping centres, etc. www.lebensministerium.at/Umwelt/Umweltverträglichkeitsprüfung/Materialien zur UVP Some Lander also have own guidelines |
| Belgium- | Brussels There are no generic EIA guidelines, but the competent authority prepares specific guidelines for individual projects on the basis of the results of public participation and also advice from the College of Members from the different concerned Administrations. Flanders General procedural and methodological guidelines; also methodological guidelines and activity-related guidelines Walloon Guideline preparation is in progress and will be published on a web site in due course |
| Denmark | National guidelines on EIA: www.mim.dk/lpa |
| Finland | Developers and sectoral authorities (e.g. energy production, mining, transport sectors) have written guidelines. Guidelines on Arctic EIA at http://finnbarents.urova.fi/aria/index.asp (in English). |
| France | Some preliminary, non-mandatory general guidance, consisting of recommendations; proportionality is stressed. |
| Germany | A federal Administrative Order contains guidance on EIA; some Lander have also produced guidelines |
| Ireland | Guidelines on the information to be contained in Environmental Impact Statements published by EPA in 1995, updated in 2002. Accompanying Advice Notes are being reviewed in 2002. See www.epa.ie |
| Italy | Not yet available |
| Netherlands | There are no generic EIA guidelines, but the competent authority prepares specific guidelines for individual projects on the basis of the results of public participation and also advice from the Independent EIA Commission. |
| UK | Good practice guide on environmental statement preparation was published in 1995 |

Otherwise, a new EIA process will be initiated leading to the imposition of new environmental terms for the project or even the refusal to grant the environmental permit. The relocation of the installation may also be a possible condition in the revised environmental permit. The Brussels region of Belgium also has a time limit for the life of an environmental permit (15 years) after which it must be renewed, and after 30 years there must be a new EIA. In Austria, a post-project analysis has to be undertaken for specific project types (including waste treatment plants, airports, hydropower plants, processes for handling radioactive material and some road and railway projects) three to five years after the installation has come into operation. The

analysis has the aim of confirming compliance with the issued permit and verifies whether the predictions of the EIA correspond with the actual impacts of the project. Furthermore, monitoring obligations are determined for other projects through different administrative acts but may not specifically focus on the information relevant to the EIA. The Walloon region in Belgium is currently developing a methodology for review. Spain applies a ‘Vigilance Measure’ to ensure that mitigation measures (‘corrective measures’) have been applied.

Summary of Main Findings: Quality Control

There are few formal measures in place for the control of the quality of the EIA procedures. The Directive itself is rather weak on this point and focuses more on the EIA procedural aspects. Ensuring quality control in EIA is largely left to the competent authorities and the checks provided by judicial review processes. The lack of central monitoring of the key stages of EIA make it difficult for Member States to ensure that their EIA systems are being consistently and correctly applied. There are, however, some examples of innovative practice, with some Member States making use of post-decision monitoring of projects to ensure the quality of the outcome of the EIA process.

Action: *see recommendation 5.4.2. (a), (d), (e), and (k).*

5. THE EFFECTIVENESS OF THE EIA DIRECTIVE AS A WHOLE

5.1.0 Introduction

5.1.1 The preamble to the EIA Directive states that the "best environmental policy consists in preventing the creation of pollution at source, rather than subsequently trying to counteract their effects". In the Commission's view, the EIA is an important aid to decision making that seeks to ensure that the pro-active approach to environmental policy is implemented for major projects likely to have significant effects on the environment. The preamble goes on to say that the "principles of the assessment of environmental effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment." The degree to which the EIA Directive helps to achieve the preventative aspect of environmental policy and the degree to which harmonisation of assessment for projects, developer obligations and the content of assessment has been achieved, can both be seen as measures of the effectiveness of the Directive as a whole.

5.1.2 The amendments made by 97/11/EC provided a significant strengthening of the procedural base of EIA. Directive 97/11/EC also strengthened the harmonisation of the projects made subject to EIA by increasing the number of projects listed in Annex I. In providing the Annex III screening criteria for Annex II projects, 97/11/EC also provided a firm basis for ensuring that screening decisions are based on clear environmental considerations. Yet, as this review has revealed, there remains wide disparity in both the approach and the application of EIA in the Member States of the EU. So while there are clear strengths, there are also some important weaknesses that need to be addressed. This final section of the report will examine the strengths and weaknesses of the EIA Directive as a whole as an additional assessment of its effectiveness. From that analysis recommendations will be made for further strengthening of the application of the EIA Directive.

5.1.3 This review has produced a great deal of information on the operation of EIA in the Member States of the EU. It has reviewed 'best practice' and practice that is less good. A Member State may have arrangements in place that are at the 'cutting edge' of best practice in one respect and in others display only a weak commitment to the EIA process as a whole. From the review of the information assessed here it is very difficult to draw any firm conclusions on the role EIA plays in project decision-making. It is apparent from the respondents that the environmental considerations raised by the EIA process are balanced against other societal and economic considerations in the decision-making process. However, the wider literature on the impact of the EIA Directive suggests that one of its most significant effects has been at the design stage of projects where mitigation measures are built into projects at the start. The public nature of the decision making process and the public examination of the environmental information forces developers to put their projects in the best possible light at the start of the consent procedures. This should result in better, less environmentally damaging projects and yet without monitoring either the process or the outcome of EIA, Member States are not in a position to confirm that this is the case.

5.2 Strengths

5.2.1 This review has identified many strengths in the operation of the EIA Directive. These strengths reflect both the application of the procedures laid down by the Directive and the application of good practice by individual Member States that often go beyond the requirements of the Directive. Many countries have developed their own guidance on best practice that sits alongside the guidance prepared by the European Commission on screening, scoping, review and cumulative impact assessment. There is also project specific and issues specific guidance, such as on health impacts, available in some countries. Member States have embraced the subsidiarity principle in their transposition and operation of the EIA Directive with a range of approaches to screening, scoping and review operating across the European Union. Some countries do have good data bases on EIA activity, which allows them to clearly list output by Annex and by Project Type on an annual basis. This is very useful for monitoring implementation, trends and for EIA research activities.

5.2.2 There are very few calls for further amendments to the Directive and few concerns regarding issues such as the current split between Annex I and Annex II projects or for further clarification from the Commission on definitions of project types. Many Member States appear to be making use of the 'traffic light' approach to screening and have developed inclusion, exclusion and indicative or guidance thresholds based on the screening criteria set out in Annex III. Most Member States clearly welcome the introduction of Annex III as an aid to making more consistent screening decisions and have transposed it directly into their own EIA legislation. The Annex III screening criteria of sensitive geographical areas (sensitive area) has been incorporated into the domestic EIA legislation of Member States, and in many cases they have expanded on the concept to cover their own nationally designated environmentally sensitive areas. Many Member States clearly appreciate the value of an early scoping stage and in a few cases this has been made mandatory and includes public consultation. Some Member States have formalised a review procedure to ensure that the environmental information supplied to the competent authority is in compliance with the Directive. There is clear evidence that Member States are aware of the importance of tackling the problem of 'salami slicing' and the need to assess the impacts of changes and extensions to projects and some Member States ask for an EIA when a change of capacity is proposed, which does not necessarily involve construction works. Indeed, many Member States have in place clear procedures for dealing with these key issues such as reviewing the environmental information supplied by the developer, 'salami-slicing', cumulation with other projects, risk transboundary impacts, post decision monitoring and linking EIA and IPPC.

5.2.3 The consideration of alternatives is a central focus of the EIA process in some Member States and in the majority of Member States an assessment of the zero alternative is a mandatory requirement. There seems to be growing awareness of the issues raised by the requirement to assess the cumulation of impacts, and measures have been established in many Member States to address this. Many Member States have innovative systems in place for ensuring the public have an opportunity to participate in the very early stages of EIA and throughout the EU the public are given an opportunity to comment on the projects that are subject to EIA. Furthermore, public participation and access to justice will be considerably strengthened by the transposition of the Aarhus Convention into the EIA Directive. The draft Directive

COM(2000)839, *‘Providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC AND 96/61/EC’* widens the scope of public participation in EIA by specifying certain details and practicalities. In some Member States there is a requirement for post-decision monitoring of projects to ensure the quality of the outcome of the EIA process.

5.3 Weaknesses

5.3.1 On the other side of the coin, this review has identified many weaknesses where the operation of the EIA Directive could be strengthened. The review of the transposition of 97/11/EC has shown that the new measures introduced by the Directive have yet to be implemented in full in all Member States. The delay in implementing the amendments made by 97/11/EC by some Member States is at odds with the general importance that the EU, as a whole, places on EIA as a tool for implementing wider environmental policies. It is not clear from the evidence reviewed here that all Annex II projects are being subjected to a systematic screening procedure. There is wide variation in the levels at which Member States have set project thresholds with variations in scale from 10 to 1 for some project types. In some cases there is little evidence that screening takes place below nationally-established mandatory thresholds or criteria and there may still be incidences of whole project types being effectively excluded from EIA. Little evidence has been provided on how the screening systems put in place have been operating in practice at competent authority level. The level of EIA activity appears to vary considerably between the countries of the European Union and there are large gaps in the knowledge of EIA activity and in some cases there is little of any monitoring at national level. The part the public concerned can play in the screening stage is only recognised by a few Member States.

5.3.2 There appears to be little real commitment to scoping in those countries that have not made scoping a mandatory requirement or have not provided for voluntary public consultation within their scoping stage. In many Member States competent authorities review the adequacy and completeness of the environmental information without the aid of specific nationally-produced review check lists or review criteria. In around half of all Member States there has been no research on the quality of information contained in environmental statements, and many Member States appear to have little or no information on the quality or completeness of the EISs being produced.

5.3.3 The extent of public involvement varies considerably and the interpretation of "the public concerned" varies from quite narrow to wide. No standard practice exists across the EU and at present it is not possible to judge how effective public participation may be. Improved formal and informal arrangements for consultation on transboundary impacts with neighbouring countries are needed and there is a need to ensure that those arrangements are practical. There appears to be little co-ordination between the EIA Directive and other Directives such as IPPC and the Habitats Directive. Few formal measures are in place for the overall control of the quality of the EIA procedures and there appears to be very little monitoring of EIA in practice by the Member States. There were key information gaps on significant areas of EIA including: the number of EIAs that have taken place, screening decisions, quality of environmental information, public participation, salami-slicing, cumulative impacts,

health impacts, biodiversity, and decision making - including delays between the consideration of the environmental information and the decision and between the decision and implementation.

5.4 Recommendations

5.4.1 The information provided in the Commission's report has revealed several shortcomings and weaknesses. These need to be carefully assessed alongside other factors in order to decide whether the EIA Directive should be further amended at this stage. It appears that the main problem lies with the application and implementation of the Directive and not, for the most part, with the transposition of the legal requirements of the Directive. It is clear, however, from the weaknesses identified that there is a need to improve and strengthen the application of the Directive in several aspects. The Directive provides the framework and the existing infringement mechanisms provide legal support for better transposition or application of the Directive. In order to improve the effectiveness of the Directive, it is important that the Member States act responsibly and use the information provided in this report positively to enhance their individual and collective performance.

5.4.2 There are several ways to achieve this such as:

- (a) Member States should check their national and regional EIA legislation and subsequently remedy shortcomings (e.g. with regard to thresholds, quality control, salami-slicing, cumulation etc). The Commission urges Member States to use the coming amendment of the EIA Directive in the context of the Aarhus transposition to do so.
- (b) A precise form of annual recording and monitoring is indispensable to provide reliable annual information on the number and type of EIA projects and the outcome of key decisions. Member States should introduce such systems where they do not already exist. This will assist them, in the Commission's view, in evaluating the number of EIAs carried out, and the types of projects involved, and in assessing the performance and quality of work done. In turn, this will help them to improve their systems.
- (c) In relation to screening, 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. In this exercise, the Commission expects that they will particularly consider projects planned in or near sensitive areas, and the possible cumulation of projects.
- (d) The Commission urges Member States to make more widespread use of its existing guidance on screening, scoping, review and cumulative impacts. There should also be more training at national levels in the use of these quality control documents. These documents are found in the web page of DG ENV: <http://europa.eu.int/comm/environment/eia/home.htm>.
- (e) The quality of the EIA process, and especially the EIS, are the key for an effective EIA. The Commission urges those Member States that have yet to do so to introduce formal provisions for the review of the environmental

information supplied by the developer to ensure strict compliance with the terms of the EIA Directive. Such measures could comprise the establishment of expert pools, guidelines on the co-ordination of experts, clear instructions about responsibilities, the use of independent external expert review etc. Another tool of quality control could be the introduction of an efficient post-decision monitoring system.

- (f) The Commission believes that particular training needs to be introduced in certain Member States for authorities at local and regional level in order to improve their understanding of the EIA Directive and its application within the respective national system. Mechanisms for efficient administrative management should help to enhance capacity building.
- (g) In the transboundary context Member States should make more use of guidance provided by the UNECE on bi- and multilateral agreements and the practicalities of transboundary EIA (see UNECE web page: <http://www.unece.org/env/eia>). The Commission considers that this will help ensure that adequate provisions are in place, for instance for direct contact between the relevant competent authorities and other agencies for consultation on transboundary effects.
- (h) The quality of the EIA has consequences in the decision making process and is of key importance for the effectiveness of the Directive. How the outcome of the EIA influences decision-making is central to the purpose of EIA and the Directive. The quality of the decision depends on the quality of the information provided in the EIA process and the strength of an effective EIA should be shown in a decision that has properly taken on board and reflects the environmental dimension highlighted in the EIA process. In some Member States, refusal of development consent is provided for in cases where serious environmental harm is forecast. In this respect the Commission believes that Member States should, where necessary, consider strengthening their national procedures by ensuring that the conditions attached to the (subsequent) decision(s) are adequate to prevent or mitigate any environmental harm that has been predicted.
- (i) The Commission will consider the need for further research into the use of thresholds and the various systems applied in screening in order to get more clarity and comparable data which would enable robust conclusions to be drawn on how to achieve improvement and greater consistency of approach in the screening process. **(Initiative 1)**.
- (j) These recommendations, if put into effect, would go some way to improving the effectiveness of the Directive and the Commission will consider, in conjunction with the Member States, ways of improving and extending the guidance which is already available. The Commission envisages preparing interpretative and practical oriented guidance with the involvement of experts from the Member States as well as other stakeholders like NGOs, local and regional authorities and industry. This could help to overcome some of the disparities reported in the definition of the projects which are subject to the Directive, the setting and application of thresholds and screening criteria, the way scoping is carried out, the relationship

between the effects of different projects (cumulation, salami-slicing), the way that risk is dealt with in assessments, and the type of data which should be gathered in monitoring systems. It would also be designed to improve considerations of health effects which are often inconsistently or partly addressed in the EIA process in the Member States. There is clearly a need for a more systematic approach. The forth-coming Community Strategy on Health and the Environment will form a sound basis for such an approach by establishing a consensus regarding the scope of environmental health, as well as strategies to increase awareness about the linkages between human health and the environment. **(Initiative 2)**.

- (k) The Commission will also consider with the Member States what might be done to improve the training of officials responsible for EIA in order to improve the situation. **(Initiative 3)**.
- (l) Capacity building and voluntary action have their limitations, however, and the Commission will continue to take enforcement action in cases of incomplete or inadequate transposition, and/or poor application of the Directive. **(Initiative 4)**.
- (m) In due time, more consistent application may require further amendments to the Directive. Based on the results of the actions outlined above, the Commission will consider what further amendments should be introduced. For example, this might be the most efficient way of providing for proper quality control and consistent data collection and might also be necessary to improve the way thresholds and cumulative effects are handled. Other clarifications and improvements could be introduced at the same time (for instance to the procedure for exempting exceptional cases (Article 2(3))). All these actions, combined with the implementation of the SEA Directive, will produce a robust set of procedures to improve decision-making and help to achieve the objectives set out in the 6 EAP. **(Initiative 5)**.

Appendix One Questionnaires

QUESTIONNAIRE

This questionnaire is addressed to EIA experts in Member States with a view to producing a report on the application and effectiveness of the EIA Directive (85/337/EEC amended by Directive 97/11/EC) according to Art. 11 of the Directive (consolidated version). It will ask for specific information on the current state of legislation and current practice by referring to

- questions relating to the amendments of the Directive 97/11/EC,
- questions relating to the Directive as a whole and
- other questions with a view to enhance the application and effectiveness of the Directive.

The responses to this questionnaire do not require formal approval on behalf of the Member States provided the information submitted is reliable.

I. QUESTIONS IN RELATION TO THE AMENDMENTS OF DIRECTIVE 97/11/EC

Annex II/Screening

1. How has the treatment of Annex II projects improved due to the screening mechanisms introduced in Art. 4 para 2 and the relevant ECJ judgements in relation to Annex II? Please describe the main screening mechanisms.
2. Which thresholds/criteria (please specify which purpose they serve, eg. indicative or mandatory) for an obligatory EIA or for a case-by-case examination have been laid down in your Member State for the following project categories:
 - Initial afforestation and deforestation (Annex II, Nr. 1d)
 - Intensive livestock installations (Annex II, Nr. 1e)
 - Installations for hydroelectric energy production (Annex II, Nr. 3h)
 - Wind farms (Annex II, Nr. 3i)
 - Ferrous metal foundries (Annex II, Nr. 4c)
 - Installations for the manufacture of cement (Annex II, Nr. 5b)
 - Urban development projects (Annex II, Nr. 10b)
 - Construction of railways and intermodal transshipment facilities (Annex II, Nr. 10c)
 - Construction of airfields (Annex II, Nr. 10d)

- Construction of roads (Annex II, Nr. 10e)

The above project categories serve as examples allowing for a comparison of thresholds and criteria.

3. Does your national legislation provide for public participation during screening according to Art. 4 para 2? If yes, please summarise your experience and indicate the reasons for including or non-including public participation during screening.
4. How have the project categories “industrial estate development projects” and “urban development projects” (Annex II, 10 a and b) been transposed into your national legislation? Which types of projects are covered (e.g. shopping centres, housing developments, fair grounds, stadiums, business parks)? Is there a need for specifying further this project category?

Increase of EIAs

5. Has the amendment of Directive 85/337/EEC by Directive 97/11/EC led to an increase of EIAs in your Member State? Please indicate an approximate figure of EIAs carried out each year before and after the application of Directive 97/11/EC (starting with 1995) and specify according to Annex I and Annex II project categories.

Scoping and assessment/evaluation

6. Is “scoping” according to Art. 5 para 2 implemented in a mandatory way in your Member State?
7. Has the introduction of “scoping” led to an improvement of the quality of information provided by the developer (according to Art. 5 para 1) in your Member State? Has the introduction of “scoping” influenced the length of the procedure?
8. Does your national legislation provide that 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 indicate the reasons for including or non-including public participation during “scoping”) or is this done on a voluntary basis? Has such involvement improved the quality of the information given?

Transboundary consultations

9. In how many EIA cases according to Art. 7 has your Member State been involved since 1995 (either as Member State of origin or as affected Member State)? Please indicate name, type and timeframe of the project.
10. Which difficulties were encountered in applying Art. 7 and how has your Member State overcome these?
11. Does your Member State have any arrangements under Art. 7 para 5 and on which basis (treaty, non binding agreement etc.)?

II. QUESTIONS IN RELATION TO THE DIRECTIVE AS A WHOLE

Information provided by the developer and completeness of information

12. 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?
13. How are effects on biodiversity dealt with (on which components and on which project categories or locations is particular focus put on)? In the recitals to Directive 85/337/EEC it is explicitly stated that effects have to be assessed to inter alia ensure maintenance of the diversity of species. Art. 3 obliges to assess the direct and indirect effects on fauna and flora. In this assessment biodiversity can be regarded as one assessment parameter.
14. 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 own guidelines?
15. 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?

After carrying out the environmental assessment it may occur that – in particular due to lengthy procedures and delays - the conditions for the assessment may change (e.g. due to changes regarding the state of the environment or new scientific evidence or developments).

16. Does your national legislation provide for the possibility to refuse the granting of development consent 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

17. What is the existing practice in your Member State concerning the assessment of health impacts within EIA? In which types of projects particular focus is put on the assessments of health impacts? Which issues are addressed in these assessments (health, well-being, socio-economic impacts etc.) and to which extent? According to Art. 3 an EIA has - inter alia - to identify, describe and assess the direct and indirect effects of a project on human beings.

Change and extension of projects

18. How has your Member State implemented the provision of Annex II Nr. 13 (changes and extensions)? Please indicate whether case-by-case examination and/or criteria/thresholds are used and specify them.
19. Existing infrastructure projects such as airports, motorways, railways, wastewater treatment plants or industrial projects may considerably increase their

capacity without any significant construction works (e.g. increase of air traffic, introduction of an additional shift). Is this kind of change treated in your Member State as a change or extension of a project listed in Annex I or II according to Annex II Nr. 13? If yes, please give examples.

“Salami-slicing”

20. Which provisions are foreseen in your national legislation to prevent developers from circumventing an EIA and have they proven to be efficient in practice?

Cumulation of projects

21. How does your Member State take into account the cumulation of projects and of environmental effects: For example, how are (smaller) projects within a (short) distance to other projects (either planned or already realised) dealt with? Are they treated as changes according to Annex II Nr. 13 or as a new project? Do you have other examples?

Alternatives

22. Are alternatives being assessed on an obligatory basis in your Member State (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?
23. How is the current practice in your Member State with regard to the assessment of alternatives in relation to the different project categories in the annexes? (e.g. are alternatives always assessed in case of road or railway projects but to a lower degree or not at all with respect to other project types)?

Risk assessment

According to Art. 5 para 1 and Annex IV point 4 the developer has to submit a description of the likely significant effects (direct, indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative) of a project in an appropriate manner. This should include effects which occur due to accidents or other exceptional incidents (i.e. natural disasters like heavy rain, earthquakes, landslides) when relevant.

24. With regard to the information referred to in Art. 5 is there an explicit obligation in your Member State to assess and describe the likely significant effects in case of an accident or under exceptional conditions?
25. How is the current practice in EIA procedures (taking into account the application of the risk related national law)? Which project categories are subject to a risk assessment and which elements does this risk assessment comprise (risks for health, material assets, nature, water, air etc.) and to which extent? Please address in particular
 - Nuclear power stations and other nuclear installations

- Dikes and dams
- Pipelines
- Refineries, chemical industry
- Roads and railways (in particular tunnels), airports.

Which special locations for projects (e.g. earthquake zones) are subject to a risk assessment?

26. Which risk assessment techniques are used within EIA in your Member State and how is the relation to risk assessments in other contexts (e.g. Seveso, IPPC)? Which factors/potential sources of incidents (natural disasters, technological or human failure, sabotage etc.) are taken into account?

Public participation

27. How is the “public concerned” determined in your Member State (e.g. in terms of geographical limitation)?
28. Which projects entail a high amount of public participation and how is this dealt with?

Relationship to other directives

29. Has your Member State established a single procedure as mentioned in Art. 2 para 2a for projects falling under the EIA and IPPC Directive (Directive 96/61/EC)? If yes, please describe its main elements.
30. Industrial projects: Are the thresholds/criteria laid down for an obligatory EIA or for a case-by-case examination the same as in Annex I of the IPPC-Directive in your Member State? Please answer with: mainly, partly, rarely and give the main reasoning.
31. 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.

Application of Art. 1 para 5 and exemptions according to Art. 2 para 3

32. In which cases have Art. 1 para 5 and Art. 2 para 3 been applied? Please give a short reasoning.

III. OTHER QUESTIONS WITH A VIEW TO ENHANCING THE APPLICATION AND EFFECTIVENESS OF THE DIRECTIVE

33. Have the selection criteria of Annex III proved being efficient? Have the types of sensitive areas referred to in Annex III been further specified in your national legislation? If yes, please give examples. Should there be more or other screening criteria and if yes, which ones?

34. Is an EIA required in your Member State for other project categories than those mentioned in Annexes I and II? If yes, please give the reasoning.
35. 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 or others)? Are there types of projects that should be dropped from Annexes I and II? If yes, please justify.
36. Are the thresholds/criteria used in Annex I the right trigger for obligatory EIAs or would there be a need to adapt certain thresholds/criteria? If yes, please name the project types and the criteria/thresholds and give the reasoning.
37. Should projects of Annex II be moved to Annex I to ensure a sufficiently harmonised application of the Directive with respect to certain project categories? If yes, please give the reasoning.
38. In relation to biodiversity issues, are there any measures envisaged to enhance the proper consideration of biodiversity in an EIA?
39. Are there measures foreseen in your Member State to review the outcome of the EIA (after granting the development consent)?
40. Is access to justice in relation to EIA granted in your national legislation and in which way (e.g. in which stages of the procedure and to which members of the public including in transboundary cases)?

DG ENV B.3 (17 Dec 2001)

Additional questions asked by the Impacts Assessment Unit of Oxford Brookes University.

- 1) In practice, what factors are used as a basis for judging the quality and sufficiency of information supplied by the developer – for example are there recognised review checklists in operation or is each impact statement checked against the items listed in Annex IV of the Directive ?
- 2) Does your EIA legislation allow for a refusal of development consent on the grounds of insufficient / inadequate information as supplied by the developer? Please explain how cases of incomplete information are dealt with in your Member State.
- 3) Has your Member State prepared national or regional guidelines for
 - a) the preparation of Environmental Impact Statements by developers?
 and/or
 - b) the evaluation of environmental information by competent authorities?

If so, please indicate briefly the scope of these guidelines, who has produced them and in what format they are available (e.g. web page etc – please supply the relevant internet address)?

4) In your Member State has there been any research into the quality of the environmental information or the Environmental Impact Statement provided by the developer? If so could you please supply details of the main findings of the study and details of where the report can be viewed.

5) In practice in your Member State, what has been the largest beneficial change that Directive 97/11/EC (the Amending EIA Directive) has brought to the EIA process? Why is that change beneficial?

6) In your view, what is the single most significant omission/problem remaining [if any] with the Amending EIA Directive? Please explain why it is a problem and what remedy you would suggest.

7) Has your Member state set exclusion thresholds for any Annex II projects -that means thresholds below which an EIA is completely ruled out. For example, in the UK the regulations states that a new intensive livestock installation that is below 500 square meters of floor space and is not in a special area (e.g. Natura 2000 site) will never require an EIA?

8) If your MS sets mandatory thresholds for Annex II projects, or have transferred any of the Directive's Annex II projects into your own equivalent to Annex I, are there sub- mandatory thresholds – indicative guidance criteria for screening?

Appendix Two: Threshold Tables

| INCLUSION or MANDATORY THRESHOLDS | | | | |
|-----------------------------------|--|---|--|--|
| | Afforestation | Deforestation | Windfarms | Hydroelectric Plant |
| Austria | | 20 ha or more | 20MW or more capacity or 20+ turbines | >15MW or chains of power plants over 2MW; or where the new or additional water storage capacity is > 10 million m ³ |
| Belgium | (Brussels) Zero ha (Flanders) New afforestation which may cause ecological changes (Walloon) 100 ha or more | (Brussels) Zero ha (Flanders) > 3ha (Walloon) 100 ha or more | (Walloon) 7MW or more | (Flanders) >5MW (Walloon) 10 MW or more |
| Denmark | > 30ha in areas where afforestation is unwanted in the adopted regional plan | Forest > 20 years old and over 30ha in an afforestation area designated in a regional plan and where a comparable area of at least the same size is not afforested* | >80 m height or 3+ turbines | No provision for EIA |

| | | | | |
|--------------------|---|--|--|---|
| Finland | > 200ha with non-native species | > 200ha | | |
| France | N/A | 25ha or more | >1.9 million ECU | >500KW |
| Germany | 50ha or more | 10 ha or more | >35m height or > 10MW and with 20+ turbines | |
| Greece | | | >2MW or 5+ turbines or less with associated road construction | >1MW or less than 1MW but with associated road construction |
| Ireland | 50ha or more or replacement of broadleaf high forest by conifer species where the area involved is over 10ha | Over 10ha of natural woodlands or over 70ha of conifer forest | >5MW or 5+ turbines | >20MW or where the new or extended area of water impounded is 30ha or more, or where there would be a 30% change in the maximum, minimum & mean flows in the main river channel |
| Italy | > 20ha | > 5ha | | > 30MW capacity, or dam height > 10m, or storage > 100,000 m ³ |
| Luxembourg | | | | |
| Netherlands | | | | |
| Portugal | 350 ha or more | 50ha or more | 20+ turbines or located < 2Km from other similar installations. | > 20MW |

| | | | | |
|---------------|--|--------|--|--|
| Spain | > 50 ha, when there is a risk of negative ecological changes | > 20ha | 50+ turbines and at < 2Km from existing windfarms | storage capacity > 10 million m ³ |
| Sweden | | | 10MW or more and 3+ turbines | |
| UK | | | | |

* **unless** the relevant state authority declares that the forest to be cleared is without significant forestry, biological, landscape or recreational value

| INDICATIVE or GUIDANCE THRESHOLDS | | | | |
|-----------------------------------|---|--|---|--|
| | Afforestation | Deforestation | Windfarms | Hydroelectric Plant |
| Austria | 15ha or more of initial planting with species not ecologically suitable for the site in a Category A protected area, or expansion of afforestation with species not ecologically suitable for the site in a Category A protected area if the area was approved within the last 10 years and the expansion is 15ha or more and if the additional new area is 3.5ha or more | 15 ha or more in a Category A protected area. Extension of deforestation if the area was approved within the last 10 years and the total requested expansion is 20ha or more and if the additional new area is 5ha or more | 10MW or more capacity or 10+ turbines in a Category A protected area | Dams or other installations designed for the holding back or permanent storage of water in Category A protected areas, where the new or additional storage capacity is over 2 million m ³ |
| Belgium | | | No provision for EIA | No provision for EIA |
| Denmark | | | | |
| Finland | | | | |
| France | | | | |
| Germany | | Set by Laender | 35m height or 10 MW with 6-19 turbines (3-5 in sensitive areas) | Set by Laender |
| Greece | | | | |

| | | | | |
|--------------------|---|---|---|---|
| Ireland | | | | |
| Italy | | | | |
| Luxembourg | | | | |
| Netherlands | Where afforestation relates to land designated for agricultural use and is 100ha or more, or where the land is designated for non-agricultural use and is 10ha or more | Where deforestation relates to land designated for agricultural use and is 100ha or more, or where the land is designated for non-agricultural use and is 10ha or more | 10MW or more capacity or 10+ turbines | > 2.5MW capacity |
| Portugal | | | | |
| Spain | | | | |
| Sweden | | | | |
| UK | Exclusive threshold: 5ha (2ha in sensitive areas) | Exclusive threshold: 1ha (0.5 in sensitive areas) | Indicative threshold: 5 or more turbines or > 5MW capacity Exclusive threshold: 2 turbines; hub height or height of any other structure < 15m | Indicative threshold: > 5MW capacity Exclusive threshold: < 0.5MW capacity |

| INCLUSION or MANDATORY THRESHOLDS | | | | |
|-----------------------------------|--|---|---|---|
| | Ferrous Metal Foundries | Cement Manufacture | Urban Development | Railways |
| Austria | Annual production capacity > 100,000 tonnes | Annual production capacity > 300,000 tonnes | Shopping centres covering 10ha or more or with a car park for 1,000 or more vehicles; car parks for 1,500 or more vehicles | New railway lines of 10km or more in length |
| Belgium (Bru) | No provision for EIA | N/A – all projects assessed on case by case basis | Projects with > 200 parking places or > 20,000 sq.m. office floorspace | Long distance railway lines; or modification of existing railway lines to three or more tracks |
| Belgium (Fla) | Annual production capacity - 150,000 tonnes or more | Annual production capacity – 500,000 tonnes or more | 2,000 or more dwellings or area of 10ha or more; office floorspace of 100,000 sq.m. or more; recreational facilities which attract a daily average of 1,000 or more cars | No information |
| Belgium (Wal) | Annual production capacity of 100,000 tonnes or more | Production capacity of 500 tonnes or more per day | Housing estates of 2ha or more; commercial &/or office buildings with a floor area of 10,000sq.m. or more; construction or transformation of buildings of 6 or more storeys in urban areas (3 or more storeys outside urban areas); shopping centres with total area > 2,500 sq.m.; entertainment venues with a capacity of > 2,000 people; | Area > 2ha |

| | | | | |
|----------------|--|--|---|---|
| | | | parking places for > 250 vehicles | |
| Denmark | N/A – all projects assessed on case by case basis | N/A – EIA always required for this type of project | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis |
| Finland | N/A – all projects assessed on case by case basis | N/A – EIA always required for this type of project | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis |
| France | No information provided, other than that the thresholds are “very low” | Production capacity > 5 tonnes per day | No information | Project financial cost > 1.9 million euros |

| | INCLUSION or MANDATORY THRESHOLDS | | | |
|----------------|---|--|---|--|
| | Ferrous Metal Foundries | Cement Manufacture | Urban Development | Railways |
| Germany | Annual production capacity – 200,000 tonnes or more cast iron | Production capacity – 1,000 tonnes or more per day | Car parks covering 1ha or more; shopping centres with floorspace of 5,000 sq.m. or more; other urban development projects with surface area of 100,000 sq.m. or more | N/A – EIA always required for this type of project |
| Greece | N/A – EIA always required for this type of project | N/A – EIA always required for this type of project | N/A – no thresholds specified | N/A – EIA always required for this type of project |
| Ireland | Batch capacity of 5 tonnes or more or where the production area is > 500 sq.m. | N/A – EIA always required for this type of project | Housing development of > 500 dwelling units; car parks with > 400 spaces; shopping centres with gross floorspace > 10,000 sq.m.; other urban development projects covering > 2ha in a business district or > 10ha in other parts of a built-up area or > 20ha elsewhere | N/A – EIA always required for this type of project |

| | | | | |
|--------------------|---|---|---|---|
| Italy | Production capacity > 20 tonnes per day | Production capacity > 500 tonnes per day for cement (or > 50 tonnes per day for lime) | New urban development projects (or extensions) covering > 40ha, or > 10ha within existing urban areas | No information |
| Luxembourg | No data | No data | No data | No data |
| Netherlands | N/A – no mandatory thresholds | N/A – no mandatory thresholds | Housing development of 2,000 or more dwellings outside the built environment, or 4,000 or more dwellings in the built environment; industrial estates covering 100ha or more | Addition of 2 or more tracks, which for a length of 5km or more lies in a buffer zone or a sensitive area delineated in a land use plan or regional plan; or an entirely new rail track which for a length of 500m or more lies a distance of 25m or more from the boundary of land designated for railway purposes; or construction of railway structures & ancillary equipment on land not designated for railway purposes, where these are situated entirely within a buffer zone or sensitive area; or resumption of use of an existing railway line which for a length of 5km or more lies in a buffer zone or sensitive area |

| | INCLUSION or MANDATORY THRESHOLDS | | | |
|-----------------|--|--|---------------------------------------|---|
| | Ferrous Metal Foundries | Cement Manufacture | Urban Development | Railways |
| Portugal | Production capacity – 20 tonnes or more per day | N/A – all installations for cement manufacture are subject to EIA. (The threshold for lime manufacture is production capacity > 50 tonnes per day) | Area > 10ha or > 500 dwellings | 5km or more in length |
| Spain | Production capacity > 20 tonnes per day | Production capacity > 500 tonnes per day for cement (or > 50 tonnes per day for lime) | N/A – no thresholds specified | Construction of all long distance railway lines |
| Sweden | N/A – EIA always required for this type of project (except for casting, for which the threshold is annual production > 100 tonnes) | N/A – EIA always required for this type of project | N/A – no thresholds specified | Construction of all long distance railway lines, or 5km or more of new tracks for existing long distance railway lines |
| UK | N/A – no mandatory thresholds | N/A – no mandatory thresholds | N/A – no mandatory thresholds | N/A – no mandatory thresholds |

| INDICATIVE or GUIDANCE THRESHOLDS | | | | |
|-----------------------------------|---|--|--|---|
| | Ferrous Metal Foundries | Cement Manufacture | Urban Development | Railways |
| Austria | Annual production capacity > 50,000 tonnes in a Category D protected area (i.e. an area where the exposure limits specified by the Ambient Air Quality Act are exceeded repeatedly or for a prolonged period of time) | Annual production capacity > 150,000 tonnes in a Category D protected area | Car parks with between 750 & 1,500 vehicles in Category A protected areas | Modification of railway lines over a length of 10km or more, if the distance between the existing & modified route exceeds 100m; or construction of new railway lines of 5km or more if they lead through a Category A (protected areas) or B (alpine region) ; or modification of existing railway lines over a length of 5km or more, if the distance between the existing & modified route exceeds 100m and they lead through a Category A or B protected area |
| Belgium (Bru) | N/A – no provision for EIA | N/A – all projects assessed on case by case basis | Projects with > 25 covered parking places or > 50 open air parking places | N/A – all public works in relation to transport which entail a significant modification of the conditions of circulation are subject to case by case screening |
| Belgium (Fla) | N/A | N/A | N/A | No information |

| | | | | |
|----------------------|--|--|---|---|
| Belgium (Wal) | N/A – EIA not required below the mandatory thresholds | N/A – EIA not required below the mandatory thresholds | N/A – EIA not required below the mandatory thresholds | N/A – EIA not required below the mandatory thresholds |
| Denmark | N/A – all projects assessed on case by case basis | N/A – EIA always required for this type of project | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis |
| Finland | N/A – all projects assessed on case by case basis | N/A – EIA always required for this type of project | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis |
| France | No information | N/A | No information | N/A |
| Germany | General screening – 20 tonnes or more castings per day; Site-related screening – between 2 and 20 tonnes castings per day | General screening – production capacity < 1,000 tonnes per day | General screening – car parks covering 0.5-1.0ha; shopping centres with floorspace of 1,200-5,000 sq.m.; other urban development projects of 20,000-100,000 sq.m. | N/A – EIA always required for this type of project |

| | INDICATIVE or GUIDANCE THRESHOLDS | | | |
|--------------------|--|--|--|--|
| | Ferrous Metal Foundries | Cement Manufacture | Urban Development | Railways |
| Greece | N/A – EIA always required for this type of project | N/A – EIA always required for this type of project | N/A – no thresholds specified | N/A – EIA always required for this type of project |
| Ireland | N/A | N/A – EIA always required for this type of project | N/A | N/A – EIA always required for this type of project |
| Italy | N/A | N/A | N/A | <i>No Information</i> |
| Luxembourg | No data | No data | No data | No data |
| Netherlands | Annual smelting capacity of 15,000 tonnes or more | Annual production capacity of 100,000 tonnes or more | Housing development of 2,000-4,000 dwellings in the built environment; industrial estates covering 75-100ha; other urban development projects covering 100ha or more or with a commercial floorspace of 200,000 sq.m. or more | N/A |
| Portugal | N/A | N/A | N/A | N/A |

| | | | | |
|---------------|---|---|---|---|
| Spain | N/A – no provision for screening of projects below the mandatory threshold | N/A – no provision for screening of projects below the mandatory threshold | N/A – no thresholds specified | All other construction of railways (i.e. other than long distance railway lines), including tramways, elevated & underground railways and suspended lines |
| Sweden | N/A – EIA always required for this type of project (except for casting) | N/A – EIA always required for this type of project | N/A – no thresholds specified | N/A |
| UK | <p>Exclusive threshold – area of new floorspace > 1,000 sq.m.</p> <p>Indicative threshold – operational development area > 10ha, or smaller developments that are expected to give rise to significant waste discharges, emission of pollutants or operational noise</p> | <p>Exclusive threshold – area of new floorspace > 1,000 sq.m.</p> <p>Indicative threshold – operational development area > 10ha, or smaller developments that are expected to give rise to significant waste discharges, emission of pollutants or operational noise</p> | <p>Exclusive threshold – area of development of 0.5ha or more</p> <p>Indicative threshold -</p> | <p>Exclusive threshold – area of works > 1ha</p> <p>Indicative threshold - > 2km in length</p> |

| INCLUSION or MANDATORY THRESHOLDS | | | | |
|-----------------------------------|--|--|---|---|
| | Intermodal Transshipment Facilities | Airfields | Roads | Intensive Livestock Installations |
| Austria | Marshalling yards with an area of 75ha or more; or freight railway stations, terminals or distribution centres with an area of 50ha or more | Construction of new airports; construction of new runways with a length of 2,100m or more (except those for military, emergency or public security purposes) | 10km or more in length, or second carriageway 10km or more in length; or 5km or more in length if the new road is expected to reach an average daily traffic volume (ADTV) of 15,000 vehicles within 5 years; or additional interchanges if the existing federal road has an ADTV in this section of at least 35,000 vehicles (or is expected to reach 35,000 vehicles within 5 years) | > 48,000 places for laying hens, young hens or turkeys; > 65,000 places for broilers; > 2,500 places for production pigs; > 700 places for sows |
| Belgium (Bru) | <i>No information</i> | Runway length of 2,100m or more | EIA mandatory for type of roads listed in Annex I, but also for bridges, tunnels & modification of roads to 4 or more lanes | Annex I thresholds |
| Belgium (Fla) | No information | Runway length of 2,100m or more | No information | No data |
| Belgium | Area > 2ha | Runway length of 2,100m or | Construction of new public | Pigs over 30kg - > 2,000 |

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| (Wal) | | more | urban road systems of > 2 lanes | animals; pigs under 30kg - > 3,000 animals; sows - > 750 animals; fowls & chickens - > 40,000 animals; ducks, geese, turkeys - > 25,000 animals. EIA is also required if any of the above involve annual production of 20 tonnes or more of organic nitrogen |
| Denmark | N/A – all projects assessed on case by case basis | Airports with a runway length > 2,100m, or airfields which result in a significant noise nuisance in areas that are designated for residential purposes or other noise-sensitive uses | 4 or more lanes and 2km or more in length; or main roads through areas designated as nature reserves | > 2,500 places for pigs (30-100kg); > 750 places for sows; > 37,500 places for hens; > 80,000 places for broilers |

| | INCLUSION or MANDATORY THRESHOLDS | | | |
|----------------|--|--|---|---|
| | Intermodal Transshipment Facilities | Airfields | Roads | Intensive Livestock Installations |
| Finland | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis | N/A – all projects assessed on a case by case basis |
| France | Project financial cost > 1.9 million euros | Project financial cost > 1.9 million euros | Project financial cost > 1.9 million euros | No information |
| Germany | N/A – no mandatory thresholds | Runway length of 1,500m or more | New express roads; or new Federal roads of 4 or more lanes and 5km or more in length; or new Federal roads of 4 or more lanes through realignment &/or widening of an existing road, where the changed section is 10km or more in length | Hens & turkey hens – 42,000 or more places; pullets & fattening poultry – 84,000 or more places; pigs (30kg or more) – 2,000 or more places; sows – 750 or more places; piglets (up to 30kg) – 6,000 or more places |
| Greece | N/A – EIA always required for this type of project | N/A – EIA always required for this type of project | N/A – EIA always required for new roads (improvement of existing roads is subject to case by case screening) | Poultry - > 5,000 places; pigs - > 20 sows with all their offspring [check numbers here] |
| Ireland | > 15ha in area | Runway length > 800m | 4 or more lanes and 8km or more in length in a rural area, or 500m or more in length in an urban area; or construction of a new bridge or tunnel of | Poultry - > 40,000 places; pigs (over 30kg) - > 2,000 places in a finishing unit; > 400 places for sows in a breeding unit; or > 200 places |

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| | | | 100m or more in length | for sows in an integrated unit |
| Italy | N/A – no thresholds are specified | Runway length > 1,500m | Construction of freeways in urban areas; or improvement of existing roads to 4 or more lanes with a length, within an urban area, of > 1.5km; or secondary roads outside towns | Poultry - > 40,000 places; pigs - > 2,000 places; sows - > 750 places |
| Luxembourg | No data | No data | No data | No data |

| | INCLUSION or MANDATORY THRESHOLDS | | | |
|--------------------|--|---|---|---|
| | Intermodal Transshipment Facilities | Airfields | Roads | Intensive Livestock Installations |
| Netherlands | N/A – no mandatory thresholds | N/A – no mandatory thresholds | N/A – no mandatory thresholds | N/A – no mandatory thresholds |
| Portugal | 5ha or more in area | Runway length of 1,500m or more | All trunk roads & link roads; or national & regional roads 10km or more in length | Poultry – 40,000 or more places; pigs (over 45kg) – 3,000 or more places; sows – 400 or more places |
| Spain | N/A – no mandatory thresholds | Runway length of 2,100m or more | Construction of new motorways, highways, express roads & conventional roads, or modifications of the above with a length > 10km, or road widening which results in motorways, highways or roads of double lanes with a length of 10km or more | > 40,000 places for hens & other birds; > 55,000 places for broilers; > 2,000 places for production pigs; > 750 places for sows |
| Sweden | N/A – EIA always required for this type of project | Runway length of 1,200m or more (different arrangements for military airfields) | At least 4 lanes and 10km or more in length | > 200 animal units (= 20,000 places for poultry; 600 places for sows) |
| UK | N/A – no mandatory thresholds | N/A – no mandatory thresholds | N/A – no mandatory thresholds | N/A – no mandatory thresholds |

| INDICATIVE or GUIDANCE THRESHOLDS | | | | |
|-----------------------------------|---|--|---|---|
| | Intermodal Transshipment Facilities | Airfields | Roads | Intensive Livestock Installations |
| Austria | N/A | New or extended runways, if the total runway length increases by at least 25%; or airport modifications, if this is expected to increase the annual number of flight movements by 20,000 or more. (Projects designed exclusively to improve air traffic safety are exempt from EIA) | New federal roads or extension measures if they lead through Category A, B or D protected areas; or any other extension measures for express roads or construction of new roads if they lead through a Category A, B or D protected area and an ADTV of at least 2,000 vehicles is expected within 5 years | In a Category C protected area (water protection & conservation area) or in or near settlement areas, with > 40,000 places for laying hens, young hens or turkeys; > 42,500 places for broilers; > 1,400 places for production pigs; > 450 places for sows |
| Belgium (Bru) | No information | N/A | N/A – all public works in relation to transport which entail a significant modification of the conditions of circulation are subject to case by case screening | Installations with 300 small animals or 30 large animals, but < 3,000 production pigs and < 900 sows |
| Belgium (Fla) | No Information | N/A | No data | No data |
| Belgium (Wal) | N/A – EIA not required below the mandatory thresholds | N/A – EIA not required below the mandatory thresholds | N/A – EIA not required below the mandatory thresholds | N/A – EIA not required below the mandatory thresholds |
| Denmark | N/A – all projects assessed on | N/A – all schemes below the | N/A – all schemes below the | N/A – all schemes below the |

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| | case by case basis | mandatory thresholds are screened on a case by case basis | mandatory thresholds are screened on a case by case basis | mandatory thresholds are screened on a case by case basis |
| Finland | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis | N/A – all projects assessed on case by case basis |
| France | N/A | N/A | N/A | No data |
| Germany | General screening – all projects | General screening – runway length < 1,500m | General screening – all other Federal roads (below the mandatory thresholds) | Site-related screening applies to the following : Hens & turkey hens – 15,000-42,000 places; pullets & fattening poultry – 30,000-84,000 places; pigs (30kg or more) – 1,500-2,000 places; sows – 560-750 places; piglets (up to 30kg) – 4,500-6,000 places |

| | INDICATIVE or GUIDANCE THRESHOLDS | | | |
|--------------------|---|--|---|---|
| | Intermodal Transshipment Facilities | Airfields | Roads | Intensive Livestock Installations |
| Greece | N/A – EIA always required for this type of project | N/A – EIA always required for this type of project | N/A - improvement of existing roads is subject to case by case screening | N/A – all installations requiring a permit for their establishment & operation but below the mandatory thresholds are subject to simplified EIA |
| Ireland | N/A | N/A | N/A | N/A |
| Italy | N/A – no thresholds are specified | N/A | N/A | N/A |
| Luxembourg | No data | No data | No data | No data |
| Netherlands | Area of 25ha or more | Runway length of 1,000m or more | 4 or more lanes (not a trunk road, motorway or express road), where the road is 5km or more in length | > 60,000 places for broilers; > 45,000 places for hens; > 2,200 places for production pigs; > 350 places for sows |
| Portugal | N/A | N/A | N/A | N/A |
| Spain | N/A - all projects are screened on a case by case basis | N/A – all schemes below the mandatory threshold are screened on a case by case basis | No data | N/A |

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|---------------|--|---|--|---|
| Sweden | N/A – EIA always required for this type of project | N/A | N/A | N/A |
| UK | <p>Exclusive threshold – area of works > 0.5ha</p> <p>Indicative threshold – area of works > 5ha</p> | <p>Exclusive threshold – extension to a runway, or area of works > 1ha</p> <p>Indicative threshold – EIA is generally required for new airports; also major works at existing airports with a site area > 10ha</p> | <p>Exclusive threshold – area of works > 1ha</p> <p>Indicative threshold - > 2km in length</p> | <p>Exclusive threshold – area of new floorspace > 500 sq.m.</p> <p>Indicative threshold – > 750 sows; > 2,000 fattening pigs; > 60,000 broilers or > 50,000 layers, turkeys or other poultry</p> |