



## ***Access to justice in specific EU environmental law instruments***

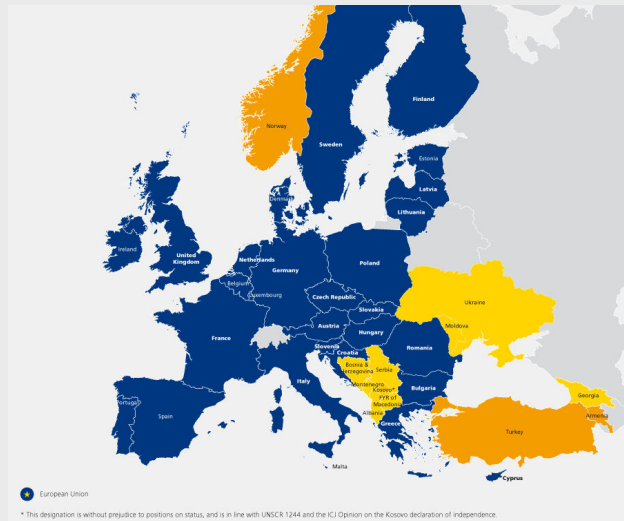
Peter VAJDA, Senior Environmental Expert,  
Energy Community Secretariat

## Agenda



1. *About the Energy Community, its environmental dimension*
2. *The Aarhus Convention and EU law*
3. *EIA and SEA*
4. *IED*
5. *Commission notice on access to justice in environmental matters*
6. *Q & A*

## Geographical Scope



Energy Community Secretariat

ERA workshop for national judges and prosecutors, 5 December 2024

An international Treaty between the EU and the 8 countries.  
Member States can sign up as participants, they are not only represented by the EU.  
4 countries are observers.

## ***Three pillars of the Energy Community***



- ***Creation of a regional energy market / enhance regional competition***
- ***Security of supply***
- ***Sustainability of energy systems***

Energy Community Secretariat

ERA workshop for national judges and prosecutors, 5 December 2024

Reflecting the 3 corners of the so-called energy trilemma.  
The sustainability pillar is the topic of this presentation.

## Legal framework



### Title II: "ACQUIS of the EnC" → NETWORK ENERGY

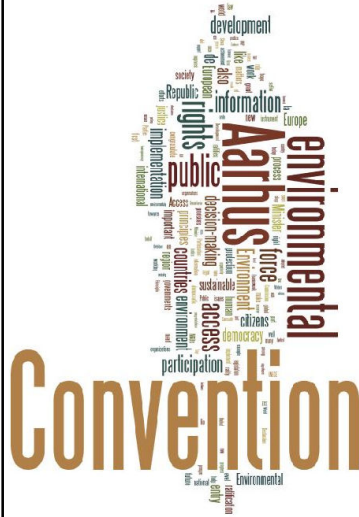
#### Environment

- **Directive 2011/92/EU (EIA)** – after entry into force (updated, including 2014 amendments)
- **Directive 2001/42/EC (SEA)** – adopted in 2016, in force since 2018
- **Directive (EU) 2016/802 (SiF)** – as of 1 January 2012 (updated)
- **Directive 2001/80/EC (LCP)** – as of 1 January 2018
- **Art. 4(2) Directive 79/409/EEC (Wild Birds)** – after entry into force
- **Construction and operation of new generating plants** – Chapter III and Annex V of Directive **2010/75/EU (IED)**, 1 Jan 2018
- **climate acquis** → separate and fast-growing since 2016

We are always operating on the basis of EU law.

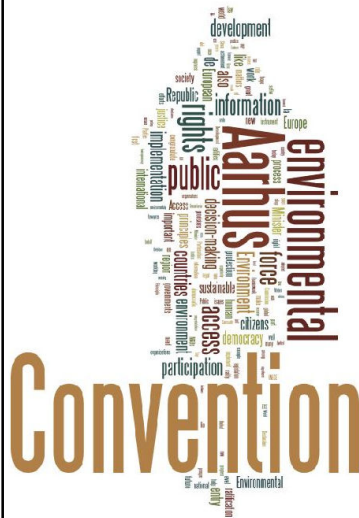
The Commission can suggest something to become part of the Energy Community and then it becomes part of the acquis of the EnC and the parties have to implement it.

The large combustion plants is still part of the acquis, even though it is not in force in the EU. The legislation does not automatically get transferred from the EU acquis to the EnC framework.



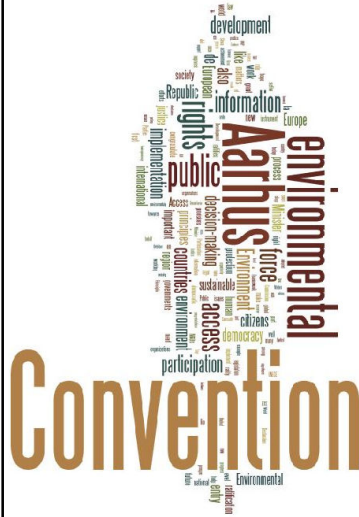
- <https://unece.org/environment-policy/public-participation/aarhus-convention/text>

## The Aarhus Convention – procedure



- Article 9 – A2J
- Article 9(2): „Each Party shall, within the framework of its national legislation, ensure that members of the public concerned
  - (a) Having a sufficient interest or, alternatively,
  - (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.”

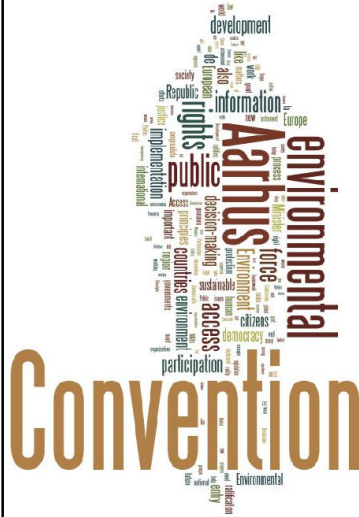
This is the core provision of access to justice.



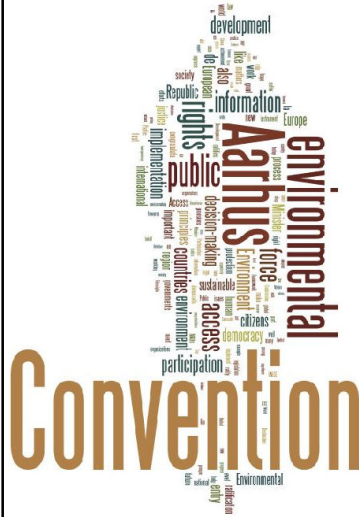
- Energy Community Secretariat

ERA workshop for national judges and prosecutors, 5 December 2024

## The Aarhus Convention – standing (cont.)



- Article 9(3)
- „In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.”



- Energy Community Secretariat

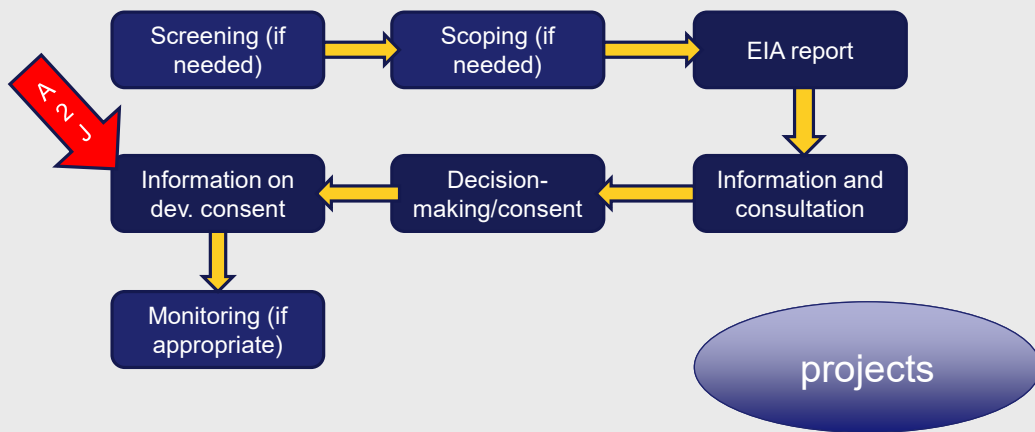
ERA workshop for national judges and prosecutors, 5 December 2024

## EIA and SEA



- Directive 2011/92/EU as amended by Directive 2014/52/EU
- *EIA is one of the oldest of EU env acquis (1985, still with EEC)*
- Directive 2001/42/EC
- *Plans and programmes*
- *Both processes*
- *Aarhus-related amendments – 2003/35/EC (also IPPC but not SEA)*

The 2003 Directive was the legislative text that brought amendments to the EIA Directive related to public participation.





**Art. 1(2) (c) EIAD: ‘development consent’ means the decision of the competent authority or authorities which entitles the developer to proceed with the project;**

**Art. 1(2) (g) (definition of EIA) → amended by 2014/52/EU based on case-law (C-50/09)**

**Art. 1(2) (g) EIAD, (iii) and (iv) (elements of an EIA): the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.**

#### Art. 8a

1. The decision to grant development consent shall incorporate at least the following information:
  - (a) the reasoned conclusion referred to in Article 1(2)(g)(iv);
  - (b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.
2. The decision to refuse development consent shall state the main reasons for the refusal.
3. In the event Member States make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfilment of the requirements of paragraph 6 of this Article.
4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the ▼B 2011L0092 — EN — 15.05.2014 — 001.001 — 13 developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.  
The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.
5. Member States shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.
6. The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, Member States may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.



**- Article 8a → specifies the content of the development consent decision**

**- Results of consultations and the information gathered shall be duly taken into account in the development consent procedure**

**- Content of the decision to grant development consent:**

*the reasoned conclusion of the CA on the significant effects of the project;*

*any environmental conditions attached to the decision, etc.*

**- Decision to refuse development consent should include main reasons for it**

**- Decision-making reflects the different EIA systems in the EU (Art. 8a(3) and recital 21): need for a binding EIA decision or an EIA integrated/part of the development consent**

#### Art. 8a

1. The decision to grant development consent shall incorporate at least the following information:
  - (a) the reasoned conclusion referred to in Article 1(2)(g)(iv);
  - (b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.
2. The decision to refuse development consent shall state the main reasons for the refusal.
3. In the event Member States make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfilment of the requirements of paragraph 6 of this Article.
4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the ▼B 2011L0092 — EN — 15.05.2014 — 001.001 — 13 developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.  
The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.
5. Member States shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.
6. The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, Member States may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.

## Information on decision



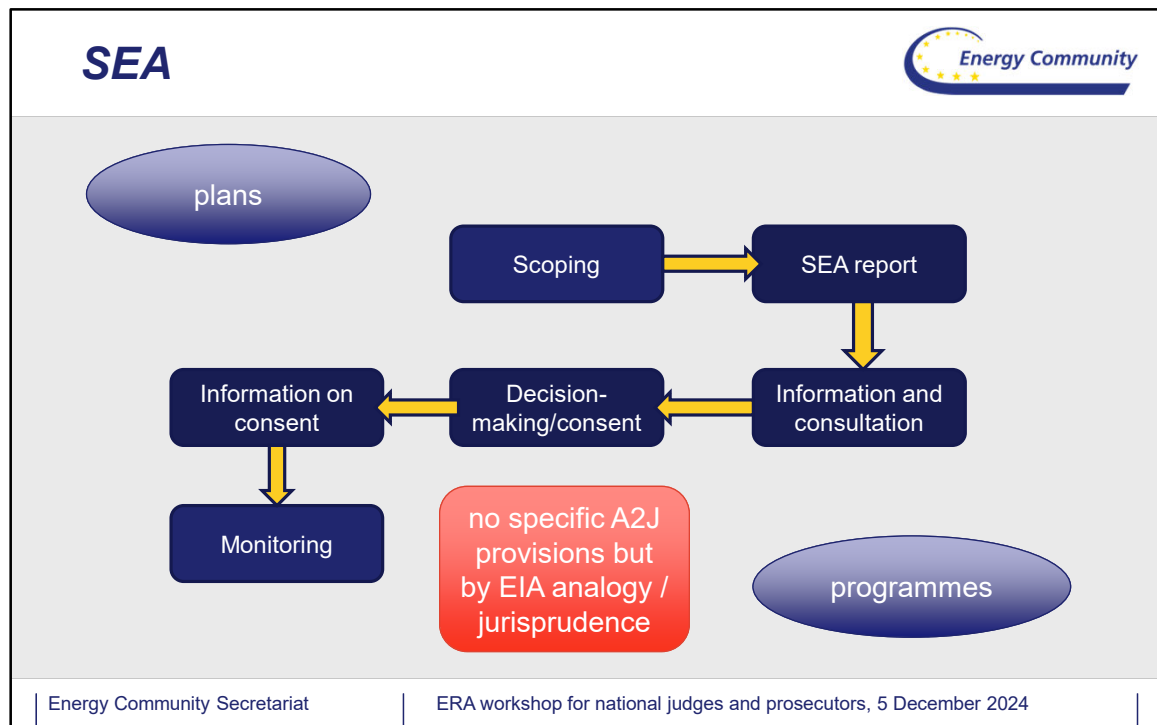
- Obligation to inform the public and relevant (environmental and local/regional) authorities promptly → **A2J relevance!**

- Obligation to make available to the public AND relevant (environmental and local/regional) authorities specific information:

**Content of the final decision**

**Main reasons**

**Summary of the results of the consultations and the information gathered and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State(s), shall be made available as well.**



If we are talking about, for example, the energy strategy of an MS, then SEA applies.

## **EIA and SEA**



- **Art. 11 EIAD → A2J (introduced by PPD)**
- **Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:**

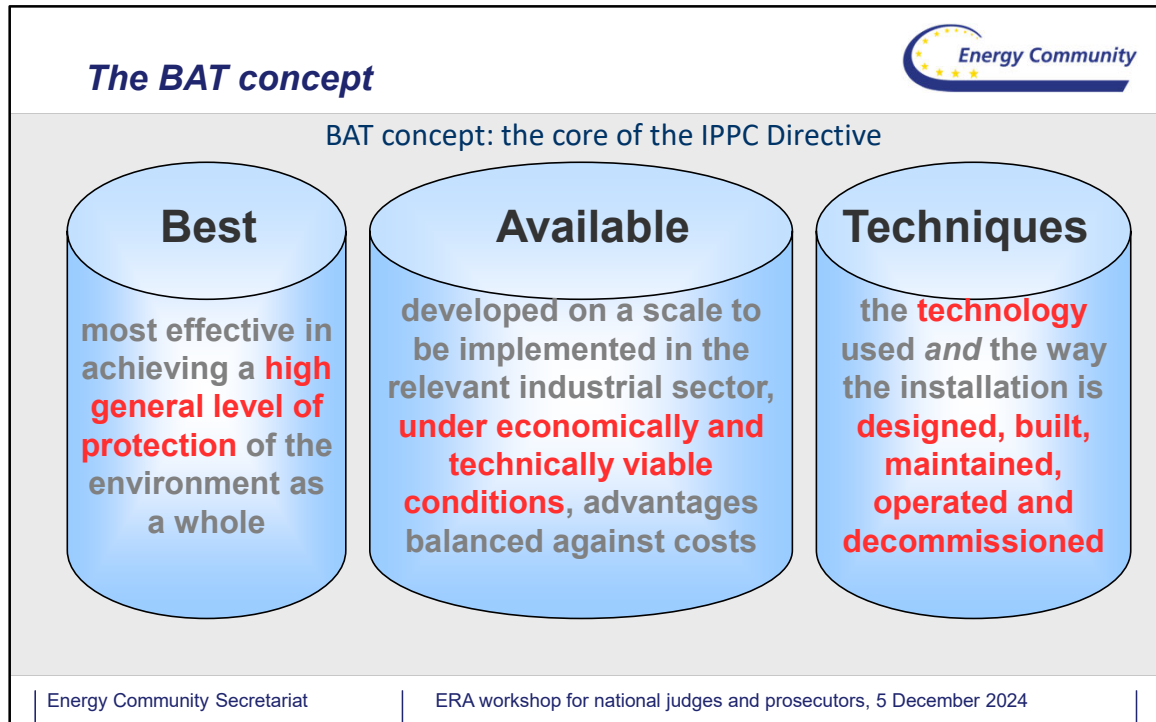
- (a) having a sufficient interest, or alternatively;**
- (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;**

**have 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 subject to the public participation provisions of this Directive.**

## The history of the IED – the roots



- Pioneer: the **IPPC Directive** (96/61/EC)
- Covers a **wide range of industrial activities** (energy sector, steel plants, chemical plants, cement kilns, intensive livestock, etc.)
- **50,000+ installations** covered EU-wide
- Use of the **best available techniques** (see later)
- Obligation to hold an **integrated permit** compliant to the Directive and covering the installation's emissions to air, (surface and ground-) water and to land
- **Installation** = stationary technical unit + directly associated activities
- Periodical **reconsideration** of the permits, substantial changes → new permit
- **Public participation, access to justice**
- Review concluded in 2024 → **IED 2.0**



This definition gives plenty of room to manoeuvre, especially via bringing in the economical perspective in the availability criterion. According to the experience of the European Commission, the wide interpretation and the softening up of the BAT concept through this criterion was one of the reasons of the improper implementation of the IPPC Directive in the Member States.

## Relation between the IPPC/IED



### IPPC Directive 2008/1/EC

Large Combustion Plants  
Directive 2001/80/EC

Waste Incineration Directive  
2000/76/EC

Directive on the limitation of VOC  
emissions from solvents  
1999/13/EC

Directives related to the  
titanium-dioxide industry  
78/186, 82/883, 92/112

European Pollutant Release  
and Transfer Register  
(E-PRTR)  
Regulation 166/2006



**Industrial Emissions Directive (IED)**  
**2010/75/EU**

Energy Community Secretariat

ERA workshop for national judges and prosecutors, 5 December 2024

The first version of the IPPC Directive was adopted in 1996, then later codified in 2008. It has been in place for over 10 years and the Commission has undertaken a 2-year review with all stakeholders to examine how it, and the related legislation on industrial emissions, can be improved to offer the highest level of protection for the environment and human health while simplifying the existing legislation and cutting unnecessary administrative costs.

The LCP Directive will only be replaced by the relevant provisions of the IED as of 1 January 2016.

The E-PRTR Regulation sets out reporting obligations for the Member States and the data collected is presented on the E-PRTR website: <http://prtr.ec.europa.eu/>

## Structure of the IED



BAT based  
permit  
conditions

**Ch. I: Common provisions**

**Ch. II: Provisions for all activities listed in Annex I**

**Ch. III: Special provisions for combustion plants [> 50 MW]**

**Ch. IV: Special provisions for waste (co-)incineration plants**

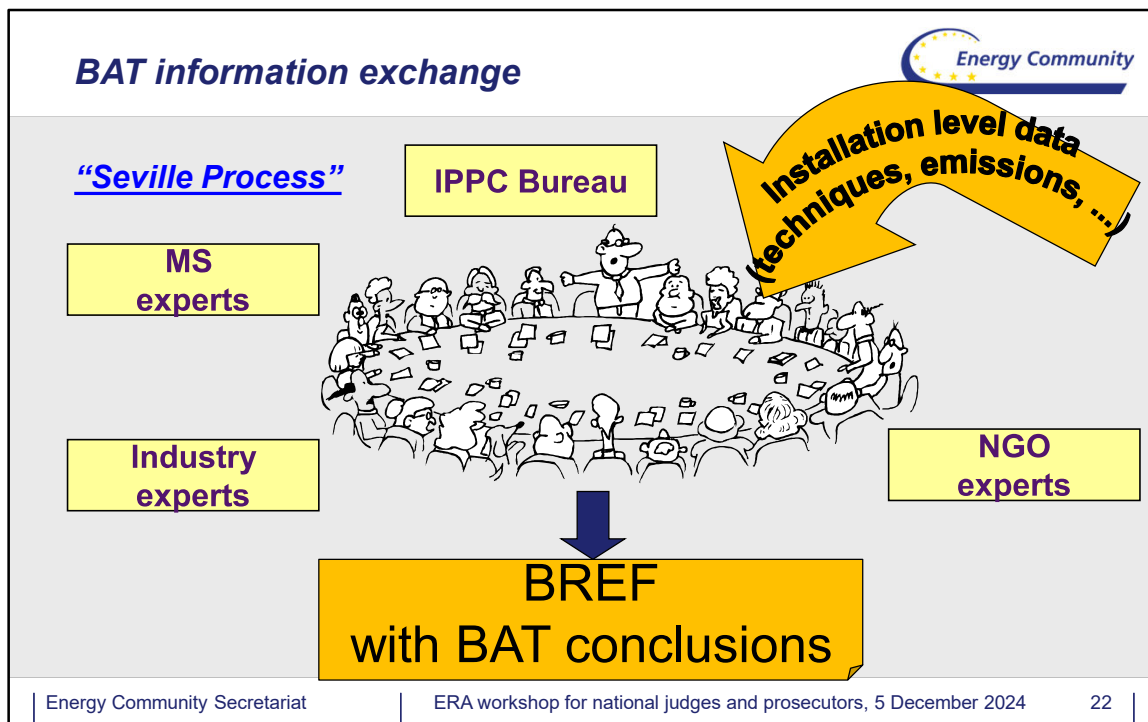
**Ch. V: Special provisions for installations and activities using organic solvents**

**Ch. VI: Special provisions for installations producing TiO<sub>2</sub>**

**Ch. VII: Committee, transitional and final provisions**

**Annexes**

Sectoral « minimum »  
requirements incl.  
emission limit values



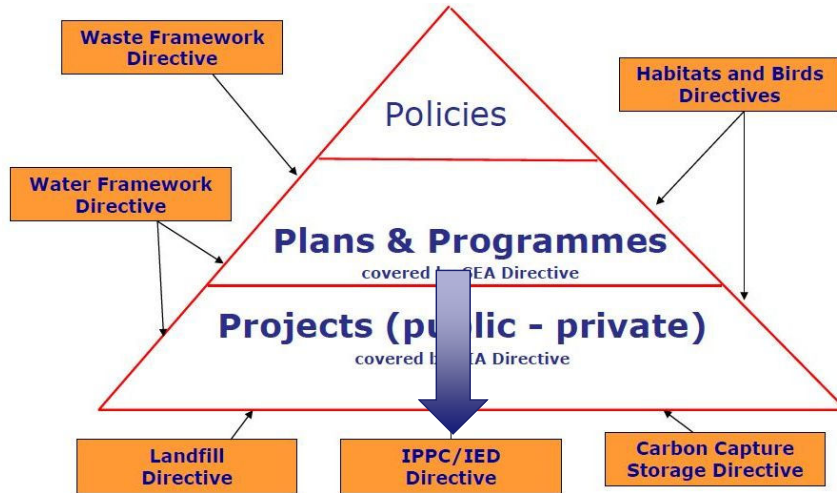
The BREFS are technical descriptions of different industrial sectors.

## ***Relation to environmental quality standards***



- ***Art. 18 IED***
- ***„Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit, without prejudice to other measures which may be taken to comply with environmental quality standards.”***
- ***Stichting Natuur en Milieu case (NEC vs IPPC)***

**Environmental Assessments**



## Procedural aspects



- 2 possibilities:

a) IED permit + mandatory EIA

b) IED permit + screening

- IED permit without EIA is not possible (all IED Annex I activities covered by Annex I or II of the EIAD)

- Member State discretion to decide on how to align the two procedures

- Art. 2(2) EIA: "The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive."

| <b>OVER</b>                                                                                                          | EIA                                                                                                                                                                                                          | IED                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                      | Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day | - Refining of mineral oil and gas<br>- Gasification or liquefaction of:<br>(a) coal;<br>(b) other fuels in installations with a total rated thermal input of 20 MW or more                                |
|                                                                                                                      | Thermal power stations and other combustion installations with a heat output of 300 megawatts or more                                                                                                        | Combustion of fuels in installations with a total rated thermal input of 50 MW or more                                                                                                                    |
|                                                                                                                      | Nuclear installations (power stations, installations for the reprocessing of irradiated nuclear fuel, etc.)                                                                                                  | N/A                                                                                                                                                                                                       |
|                                                                                                                      | Integrated works for the initial smelting of cast-iron and steel                                                                                                                                             | - Metal ore (including sulphide ore) roasting or sintering<br>- Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour |
| <div>Energy Community Secretariat</div> <div>ERA workshop for national judges and prosecutors, 5 December 2024</div> |                                                                                                                                                                                                              |                                                                                                                                                                                                           |

**OVER**

| EIA                                                                                                                                        | IED                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Chemical plants                                                                                                                            | Chemical plants                                                                                                                             |
| Traffic and infrastructure projects (railways, airports, major motorways, inland waterways, ports)                                         | N/A                                                                                                                                         |
| Waste incineration plants                                                                                                                  | Waste incineration plants                                                                                                                   |
| Installations for the <u>extraction</u> of asbestos and for the processing and transformation of asbestos and products containing asbestos | <u>Production</u> of asbestos or the manufacture of asbestos-based products                                                                 |
| Waste water treatment plants with a capacity exceeding 150 000 population equivalent                                                       | Independently operated treatment of waste water not covered by Directive 91/271/EEC and discharged by an installation covered by Chapter II |
| Extraction of petroleum and natural gas for commercial purposes                                                                            | N/A                                                                                                                                         |

**OVER**

| EIA                                                                                                                                                                                                                        | IED                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Oil, gas and chemicals pipelines                                                                                                                                                                                           | N/A                                                                                                                                                                                                                                                                                                                                                          |
| Installations for the intensive rearing of poultry or pigs with more than:<br>(a) 85 000 places for broilers, 60 000 places for hens;<br>(b) 3 000 places for production pigs (over 30 kg); or<br>(c) 900 places for sows. | Intensive rearing of poultry or pigs:<br>(a) with more than 40 000 places for poultry;<br>(b) with more than 2 000 places for production pigs (over 30 kg), or<br>(c) with more than 750 places for sows.                                                                                                                                                    |
| Industrial plants for the<br>(a) production of pulp from timber or similar fibrous materials;<br>(b) production of paper and board with a production capacity exceeding 200 tonnes per day.                                | Production in industrial installations of:<br>(a) pulp from timber or other fibrous materials;<br>(b) paper or card board with a production capacity exceeding 20 tonnes per day;<br>(c) one or more of the following wood-based panels: oriented strand board, particleboard or fibreboard with a production capacity exceeding 600 m <sup>3</sup> per day. |

## One stop-shop



| MS | Power plant | Landfill  | Shopping center | Road construction  |
|----|-------------|-----------|-----------------|--------------------|
| AT | yes         | yes       | yes             | yes (exc. federal) |
| BG | yes         | yes       | yes             | yes                |
| HR | no          | no answer | no              | no                 |
| CY | yes         | yes       | yes             | yes                |
| CZ | no          | no        | no              | no                 |
| DK | no          | no        | yes             | yes                |
| FR | no answer   | no answer | no answer       | no answer          |
| DE | no          | yes       | no              | yes                |
| HU | no          | no        | no              | no                 |
| IE | no          | no        | yes             | yes                |
| IT | no          | no        | no              | no                 |
| LT | no          | no        | no              | no                 |
| MT | no          | no        | no              | no                 |
| NL | yes         | yes       | no              | no                 |

Energy Community Secretariat

ERA workshop for national judges and prosecutors, 5 December 2024

## One stop-shop

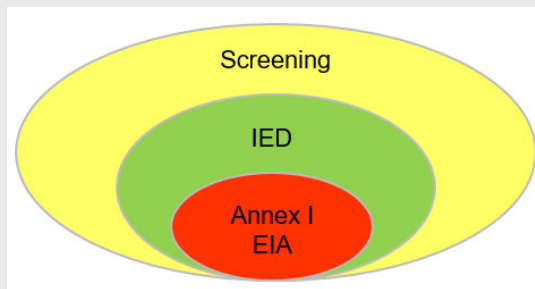


| MS | Power plant | Landfill | Shopping center | Road construction |
|----|-------------|----------|-----------------|-------------------|
| PL | no          | no       | no              | no                |
| RO | yes         | yes      | yes             | yes               |
| SK | no          | no       | no              | no                |
| SI | no          | no       | no              | no                |
| ES | no          | no       | no              | no                |
| UK | no          | no       | no              | no answer         |

## Example – large combustion plants



- **IED permit: rated thermal input of the plant is equal to or greater than 50 MW**
- **EIA: Thermal power stations and other combustion installations with a heat output of 300 megawatts or more (Annex I, mandatory EIA) – considerably narrower**
- **Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I) (Annex II, screening) – considerably broader (includes all plants)**



## IED 2.0 – the revision



- Concluded in April 2024, in force since **August 2024**
- New rules gradually entering into force up until 2030
- Focus on agro-industrial installations → „**Industrial and Livestock Rearing Emissions Directive**”
- Innovation Centre for Industrial Transformation and Emissions (**INCITE**)
- Particular novelty → the enhanced **penalties** regime
- Suspension of non-compliant installations

Energy Community Secretariat

ERA workshop for national judges and prosecutors, 5 December 2024

**A new Innovation Centre for Industrial Transformation and Emissions (INCITE) will gather information on innovative pollution control solutions and transformative technologies, helping to speed up their development.**

**penalties regime** is enhanced with strengthened financial fines for the worst infringements (at least 3% of the legal person's annual EU turnover).

*More powers are also granted to competent authorities suspend non-compliant installations*

## Commission notice on A2J in env matters



- *interpretative communication i.e.*
- *not part of the EU acquis but*
- *brings together all the substantial existing CJEU case-law and draws careful inferences from it (9)*
- *clarity and reference source for:*
  - *national administrations responsible for ensuring correct application of EU environmental law;*
  - *national courts, which guarantee respect for EU law and are competent to refer questions on the validity and interpretation of EU law to the CJEU;*
  - *the public, notably individuals and environmental NGOs and*
  - *economic operators, who share an interest in the predictable application of the law*
- *<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017XC0818%2802%29&qid=1733156871700>*
- *proposal for a Directive on A2J was withdrawn after a decade of no legislative success in Council (10)*

Energy Community Secretariat

ERA workshop for national judges and prosecutors, 5 December 2024

It is important to remember that it is not binding but it brings together substantial information and case law of the CJEU.

## Commission notice on A2J in env matters



- *National courts are ‘the ordinary courts’ for implementing EU law within the legal systems of the Member States. They have powers to review decisions that are incompatible with EU law and order financial compensation for the damage caused. (17)*
- *A2J – intrinsic to EU environmental law and directly linked to Art. 191 TFEU (18-19)*
- *CJEU case-law on A2J – mainly the result of preliminary references from national courts under Article 267 TFEU (29)*

## ***Areas addressed by the Notice***

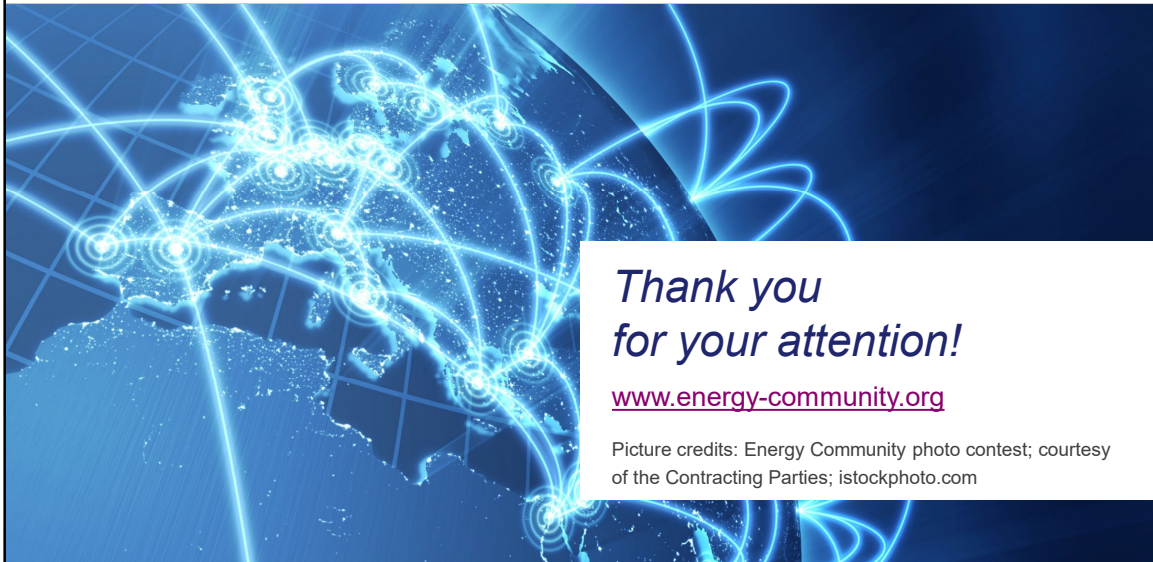


- ***Public interests, obligations and rights relevant to the exercise of judicial protection***
- ***Legal standing***
- ***Scope of judicial review***
- ***Effective remedies***
- ***Costs***
- ***Time limits, *timeliness* and the *efficiency* of procedures***

## Example – IED review



- *Art. 25 IED → A2J*
- *2 new subparas added in IED2.0 (review 2024)*
- *„Standing in the review procedure shall not be conditional on the role that the member of the public concerned played during a participatory phase of the decision-making procedures under this Directive.”*
- *„The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide for adequate and effective remedies, including injunctive relief as appropriate.”*



*Thank you  
for your attention!*

[www.energy-community.org](http://www.energy-community.org)

Picture credits: Energy Community photo contest; courtesy  
of the Contracting Parties; istockphoto.com