



Introduction to the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives

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Outline of the presentation

1. Setting the framework

2. EIA Directive

3. SEA Directive

Historical/international perspective

- US National Environmental Protection Act (1969)
- EIA Directive (1985)
- UNEP Guidelines Goals and Principles of EIA (1987)
- Espoo Convention on EIA in a transboundary context (adopted in 1991 – into force in 1997)
- Rio Declaration on Environment and Development (1992)
- 1st amendment to the EIA Directive (1997)
- Gabčíkovo -Nagymaros Project (ICJ ruling in 1997)
- Aarhus Convention (adopted in 1998 – into force in 2001)
- SEA Directive (2001)
- SEA Protocol to Espoo (adopted in 2003 – into force in 2010)
- Pulp Mills case (ICJ ruling in 2010): EIA attains customary international law
- 2nd and 3^d amendments to the EIA Directive (2003 and 2009)
- EIA codified (Directive 2011/92/EU)
- EIA revised (Directive (2014/52/EU)

Objectives of SEA/EIA Directives

SEA Directive

To provide for a **high level of protection of the environment**.
To contribute to the **integration of environmental considerations** into the preparation of plans and programmes with a view to promoting sustainable development.

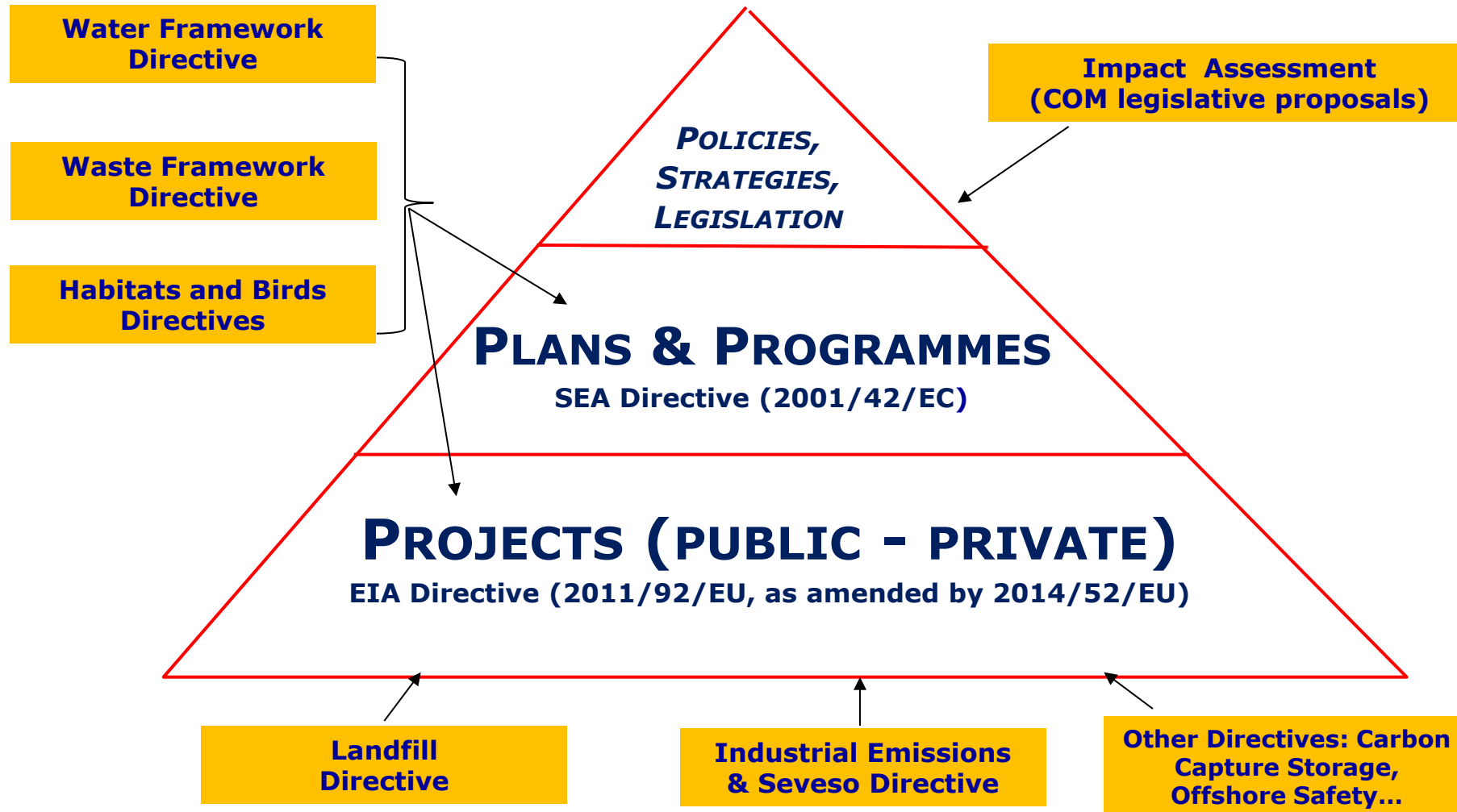
EIA Directive

To protect the **environment and the quality of life/human health**.

Guiding principle for both EIA/SEA:

Plans, programmes and projects which are **likely to have significant effects** on the environment are subject to an assessment.

Environmental Assessments at EU level



Case law as a result of:

- Art 258 TFEU (Commission v MS) actions
- Art 259 TFEU (MS v MS) C-121/21 Turów mine
- Art 267 TFEU preliminary references

EIA Directive

- rich case law, both Art 258 and Art 267 TFEU cases
- on objectives and basic principles, definitions (e.g. 'project', 'development consent'), screening (criteria/thresholds, cumulative effects), public participation and A2J, project categories of Annexes I and II)

SEA Directive

- Ever increasing number of decisions, almost exclusively Art 267 TFEU
- mostly on the scope of the Directive

Outline of the presentation

1. Setting the framework

2. EIA Directive

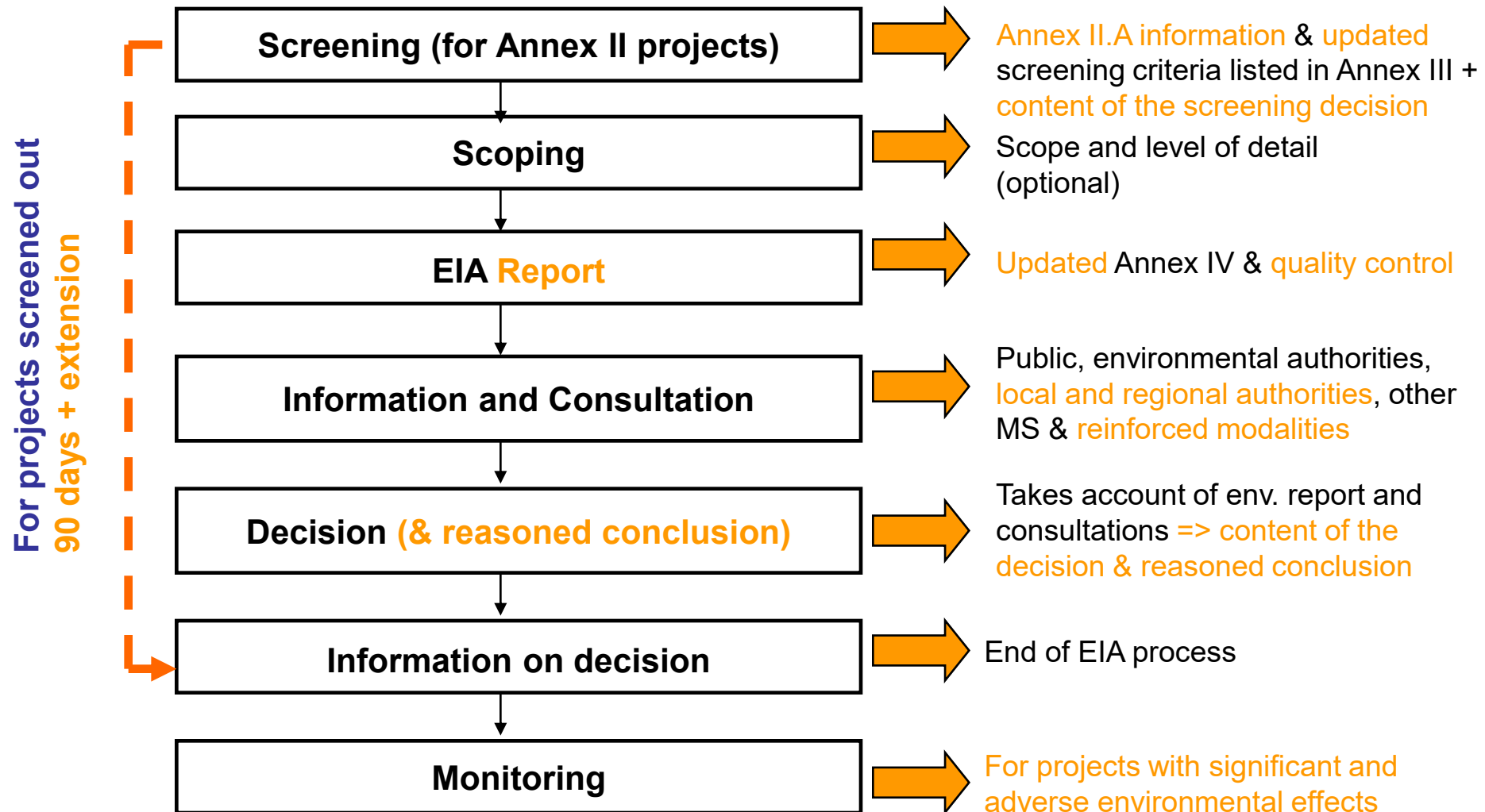
3. SEA Directive

Environmental Impact Assessment (EIA)

Directive 2011/92/EU codified:

- ❖ Initial EIA Directive 85/337/EEC
- ❖ Directive 97/11/EC
 - ✓ alignment to the Espoo Convention;
 - ✓ selection criteria for screening.
- ❖ Directive 2003/35/EC - alignment to the Aarhus Convention (public participation)
- ❖ Directive 2009/31/EC – amendment of the annexes to include projects of storage and transfer of CO₂
- **Directive 2014/52/EU amending 2011/92/EU with a view to improving the effectiveness and efficiency of the EIA procedure**
- New tendency: EU law provides for specific derogations, see: Directive 2023/2413 (RED III)...

The EIA Procedure **after** the 2014 amendment



Scope of the Directive

- The Directive has an extended scope and a very broad objective (C-72/95 Kraaijeveld, para 30-31; C-2/07, Abraham and Others, para 32).
- Art. 1(3) allows on a case-by-case basis to exclude projects have **defence** or response to **civil emergency** as their **sole** purpose.
- Art. 2(4) allows for exemptions in exceptional cases, where the purpose of the project would be adversely affected; specific procedure involving prior information of the Commission and consideration of an alternative assessment; very few cases mostly related to the (urgent) supply of energy. Art 2(5) allows for the exemption from public consultation if projects are approved by legislative acts. However, A2J must be ensured.
- Exemptions have to be restrictively interpreted. Projects of mixed character remain within the scope of the Directive. Only the response to civil emergencies is covered by the exemption, not measures designed to prevent such emergencies. See, C-435/97, Bolzano, para 64-67)

Activities subject to EIA

- Unlike the IED (industrial emissions directive) the EIA Directive does not refer to the term „activity“ but to the term „project“
- Art. 1(2) (a): ‘project’ means:
- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

Projects (1/2)

- The term 'project' is broadly interpreted. It refers to works and **physical interventions but is not limited to physical construction**. Anything which alters “the physical aspect of a site”, may be a project (C-142/07 Ecologistas en Acción-CODA).
- Demolition works (Commission v Ireland, C-50/09, para 97-101).
- Works liable permanently to affect the composition of the soil, flora and fauna or the landscape (could even include significant intensification of agriculture, see C-72/95 Kraaijeveld, para 32)

Projects (2/2)

- The term does not cover the **renewal of an existing permit**, e.g. to operate an airport (C-275/09, Brussels Hoofdstedelijk Gewest and Others, para 27-30).
- However, if the renewal of the permit entails works altering the physical aspect of the sites in question, it is a project (C-411/17, “Doel nuclear power station”, para 64-72).
- The renewal of consent can be equivalent to an “extension of the project”, e.g. prolonging the duration of the development consent for an open cast mine (Opinion of AG Pikamäe, C-121/21, CZ/PL “Mine de Turów”, para 65-68).
- **Flight routes** as such are no (EIA) projects. However, an EIA for an airport has to assess the entire area potentially affected by air traffic (and not only those flight routes, likely to be determined in the future, VwGh 6 March 2019, Ro 2018/03/0031-38)
- The definition and case law on the term ‘project’ under the EIA Directive is relevant for interpreting this term under **Art. 6(3) of the Habitats Directive**, but not completely similar. A ‘project’ under the HD is wider, see case law on sonar surveys, agriculture (use of fertilizer and pesticides) traffic, hunting, fishing, flight route..)

Projects subject to an EIA

- Article 2(1): Projects likely to have significant effects on the environment by virtue, inter alia, of their **nature, size or location** are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.
- Article 4(1): Projects listed in Annex I shall be made subject to an EIA.
- Article 4(2): For projects listed in Annex II Member States shall determine whether these projects shall be made subject to an assessment.

Projects listed in Annex I

- Art. 4(1): These projects are subject to an EIA, as they are always considered to be likely to have significant effects on the environment, e.g.:
- Nuclear power stations,
- Integrated steel works and chemical installations,
- Airports with a basic runway length of 2 100 m or more,
- Long distance railways,
- Motorways, express roads, roads of four lanes or more (of at least 10 km),
- Waste disposal installations for hazardous waste, etc.
- Annex I is – largely – similar to annex I to the Aarhus Convention

Projects listed in Annex II - screening

- Art. 4(2): Member States shall determine whether the project shall be made subject to an assessment. They may make this determination through
 - a case-by-case examination or
 - thresholds or criteria set by Member States, or
 - a combination of these elements
- Art. 4(3): The relevant selection criteria in Annex III shall be taken into account

Annex III – Selection Criteria

- Characteristics of projects
 - size and design, **cumulation with other existing/approved projects**, use of resources, waste, pollution, risks;
- Location of projects
 - land use, resources, absorption capacity of the environment paying particular attention to wetlands, riparian areas, river mouths, forest and mountain regions, protected areas, areas which failed to meet environmental standards, densely populated areas and landscapes of high historical, cultural or archeological value.
- Type and characteristics for the potential impact
 - magnitude, intensity, probability, etc.

Screening of Projects in Annex II

- Member States have a twofold measure of discretion
 - In transposing a Directive, in particular if specific terms (projects) are not defined.
 - In determining whether a project listed in Annex II has to be assessed.
- Some Member States consider this discretion to be (very) wide. **Thresholds/criteria** for the assessment of similar projects may **differ considerably** in different Member States.
- This leads to different standards of environmental protection and interferes with the level economic playing field in the EU.

Limits to MS discretion (1/3)

- The general obligation to ensure that provisions of EU law take full effect (**effet utile**)
- Article 2(1): Projects likely to have significant effect on the environment by virtue, inter alia, of their **nature**, **size** or **location** are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.

C-332/04, Com/Spain, para 77-79: The Court found that by restricting the EIA of urban development projects to projects outside urban areas Spain restricted itself to apply the criterion of location, which is only one of the three criteria referred to in Article 2(1) of the Directive. In addition, insofar as Spanish law provided for an EIA only in respect of urban development projects outside urban areas, it failed to completely apply the criterion of location. The relevant rules were therefore incompatible with the Directive.

Limits to MS discretion (2/3)

- **Thresholds/criteria should facilitate the screening exercise, not exempt classes of projects**, unless, when viewed as a whole, these projects are unlikely to have significant environmental effects – e.g. C-244/12, Salzburger Flughafen, para 43 – A threshold for airport extension projects which amounts to an increase of 20000 aircraft movements per year was considered so high that changes to the infrastructure of small or **medium-sized airports**, in practice, never gave rise to an EIA. (In 2012, the airports of Salzburg, Graz and Linz had a total of 17000, 15000 and 11000 aircraft movements per year).
- Member States are obliged to take account of **all the relevant selection criteria** listed in Annex III when establishing criteria or thresholds for Annex II projects (C-531/13 Marktgemeinde Straßwalchen, para 42-47).

Limits to MS discretion (3/3) – cumulative effects

- It is necessary to consider projects jointly in particular where they are connected, follow on from one another, or their environmental effects overlap (C-147/07, Ecologistas en Acción-CODA; C-205/08, Alpe Adria).
- Cumulative effects may arise from dissimilar projects. The obligation to examine cumulative effects **may not be restricted to projects of the same kind**. Marktgemeinde Straßwalchen and Others, C-531/13, para 43-45, see also Commission v Bulgaria (Kaliakra SPA), C-141/14, para 95-96)
- Even small-scale projects can have significant effects, see C-392/96, Commission v Ireland, para 66 (peat extraction).
- It may be necessary to take account of the cumulative effect of projects in order to avoid circumvention of the objective pursued by EU legislation by **splitting up projects** which, when taken together, are likely to have significant effects on the environment, see C-2/07, Abraham para 27; C-244/12, Salzburger Flughafen, para 37.

Multi-stage development consent procedures

- Art. 2(2): The EIA may be integrated into the existing national procedures for development consent to projects
- Various decisions may be regarded part as forming part of one complex decision-making process carried out in several stages
- (Partial) preliminary decisions must not prejudice the overall assessment. EIA authority must retain competence to assess the environmental impact more strictly than preliminary decisions.

See: C-275/09, Brussels Hoofdstedelijk Gewest, para. 32; C-463/20, Namur-Est Environnement, para. 52-66.

Quiz and Discussion

Compatible with the EIA Directive or not ?

Assess the following situations

Annex I – Overhead electrical power lines

- The Directive requires an EIA for the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km (Point 20 of Annex I to the Directive)
- Authorities approved a project for an overhead electrical power line with a voltage of 220 kV and a length of 48 km. 41 km of the line are situated in Member State A and 7 km are situated in Member State B. The authorities of Member State B consider that an EIA is not necessary because the relevant threshold of 15 km will not be exceeded in its territory.

Annex II – Deforestation

- The Directive requires Member States to determine through a case-by-case examination and/or thresholds or criteria whether **deforestation for the purposes of conversion to another type of land use** shall be made subject to an assessment (Art. 4(2) in combination with Annex II, point 1 (d)).
- A Member State authority considers that the clearance of a path in a forest (for the construction of an overhead electrical power line) does not constitute a deforestation for the purposes of conversion to another type of land use (because it remains “forest” under national law). There is therefore no need for any assessment under the EIA Directive.

Annex II – Urban development projects

- The Directive requires Member States to determine through a case-by-case examination and/or thresholds or criteria whether **urban development projects** shall be made subject to an assessment (Art. 4(2) in combination with Annex II, point 10 (b))
- A Member State transposed this provision in such a way, that an EIA was required if two (cumulative) conditions were fulfilled:
 - 1. The project exceeds a land take of at least 15 ha and a gross floor area of more than 150 000 m²
 - 2. The project is for multifunctional development, including at least residential and commercial buildings, access roads and utilities.

Annex II – Long-distance aqueducts

- The Directive requires Member States to determine through a case-by-case examination and/or thresholds or criteria whether the installations of long-distance aqueducts shall be made subject to an assessment (Art. 4(2) in combination with Annex II, point 10 (j))
- Member State **A** transposed this provision by providing for a case-by-case assessment for all projects exceeding a length of 10 km; projects exceeding a length of 2 km have to be examined in sensitive locations.
- Member State **B** transposed this provision by providing for a case-by-case assessment for projects exceeding a length of 100 km and which are situated in sensitive locations.

Cumulative effects

- Cumulation with other existing and/or approved projects is one of the selection criteria to determine whether projects listed in Annex II should be subject to an assessment.
- Member State A provides for the consideration of cumulative effects in the following way: If EIA thresholds are reached together with other existing or approved projects, a case-by-case examination is necessary. All **projects of the same kind** and with a spatial link to each other have to be considered. If the planned project does not exceed **25%** of the threshold, such an examination is not required.
- In addition, the Member State A provides for specific rules on cumulation for specific projects, e.g. for “**ski runs**” (Annex II, point 12(a) of the EIA Directive) the following applies: The obligation to take into account the cumulative impact of other projects – when examining the necessity of an EIA – is **restricted to projects approved within the last 5 years.**

Change or extension of projects in Annex I/II

- The Directive requires Member States to determine through a case-by-case examination and/or thresholds or criteria whether the extension of projects (listed in Annex I or II) shall be made subject to an assessment (Art. 4(2) in combination with Annex II, point 13 (a))
- Member State A provides the following for the assessment of such extensions:
 - An EIA is required if the extension reaches 100 % of the threshold or if a specific threshold for extensions is reached;
 - A case-by-case examination (to determine the necessity of an EIA) is required if 50 % of the thresholds are reached;
 - When calculating the extension of capacity, the extensions approved in the last five years are added; the planned extension has to exceed at least 25% of the threshold.

Extension of projects – practical example

- The Directive requires an EIA for **waste incinerators** with a capacity exceeding 100 tons by day. (Annex I, point 10). Member State A transposed this provision by providing for an EIA above an annual capacity of 35,000 tons. Following an EIA, the construction of a waste incinerator with an annual capacity of 130,000 tons was approved. In March 2010, the EIA authority found that the project had been executed in conformity with the development consent.
- In December 2010, the capacity was extended from 130,000 to 146,000 tons per year. A case-by-case examination was not necessary because the extension of 16,000 tons amounted only to 45,7% of the threshold.
- In 2012 the capacity was extended from 146,000 to 154,275 tons per year. An examination was not necessary because the extension of 8,275 tons did not reach 25% of the threshold.
- In 2014 the capacity was extended from 154,275 to 162,500 tons per year. An examination was not necessary because the extension of 8,225 tons did not reach 25% of the threshold.
- In total, the capacity of the installation was increased by 92,9 % of the threshold without any examination under the EIA law. Instead, extensions were approved under the waste law which does not provide for public participation and access to justice for the public concerned.

Annex III – Mountain areas

- The location of projects in particularly sensitive locations is one of the selection criteria to determine whether projects listed in Annex II should be subject to an assessment. Annex III lists „**mountain areas**“ among these sensitive locations. The term is not defined in the Directive.
- A Member State transposes the criterion ‘mountain area’ by reference to the “Alpine region” defined as the area above the timber line. According to the geographical location and the exposition (south/north), this refers to the area at an altitude of 1800 to 2200 m above the sea level.
- The same Member State further provides that this criterion is relevant for six project categories (roads, railroads, high-voltage lines, hotel complexes, parking places and hydro power plants); if these projects are located in the “Alpine region” lower thresholds apply.

End of the first part....

Thank you !

Outline of the presentation

1. Setting the framework

2. EIA Directive

3. SEA Directive

SEA: WHICH plans and programmes? (1/3)

Art 2(a) “plans and programmes”

- ✓ prepared and/or adopted by an **authority** at national, regional or local level **AND**
- ✓ **required** by legislative, regulatory or administrative provisions.

=> **Normative acts** adopted by law or regulation are covered (C-290/15)!

SEA: WHICH plans and programmes? (2/3)

Non-exhaustive examples of p/p required under the EU legislation

- Nitrates Action Programmes (Directive 91/676/EEC)
- River Basin Management Plans (Water Framework Directive 2000/60/EC)
- Flood Risk Management Plans (Directive 2007/60/EC)
- Programmes of measures (Marine Strategy Framework Directive 2008/56/EC)
- Waste management plans (Waste Framework Directive (2008/98/EC)
- Transitional National Plans (Industrial Emissions Directive (2010/75/EU)

„subject to preparation and/or adoption by an authority“

- Includes public/private partnerships: plans and programmes which were prepared by an authority in collaboration with a developer of the project concerned fall within the scope of the Directive (C-9/22, An Bord Pleanála, para 29).
- The fact that that plan was prepared jointly by the private project developer and Dublin City Council is irrelevant.

'Required'

- Plans and programmes whose adoption is **regulated by national legislative or regulatory provisions**, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as '**required**' within the meaning, and for the application, of the SEA Directive (Inter-Environnement Bruxelles, case C-567/10).
- **A requirement to adopt the measure in question is not necessary.** Excluding from the scope of the SEA Directive those plans and programmes whose adoption is not compulsory would compromise the practical effect of that directive (Inter-Environnement Bruxelles, case C-671/16, para 38).

SEA: WHICH plans and programmes? (3/3)

Art. 3(2): Plans and programmes (P/Ps) that **always** undergo an SEA are:

- ***prepared for** agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use **AND** which **set the framework** for future development consent of projects listed in the EIA Directive;*
- *which have been determined to require an assessment under Articles 6 or 7 of the Habitats Directive.*

Art. 3(3)(4): P/Ps that must be **screened**:

- *P/Ps using small areas at local level.*
- *minor modifications to P/Ps.*
- *P/Ps setting the framework for future "non-EIA projects" and "non-sector" P/Ps.*

Art. 3(8): P/Ps the sole purpose of which is to serve **national defence** or **civil emergency, financial or budget** plans are outside the scope of the SEA.

What are 'plans and programmes' ?

- The notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, "**a significant body of criteria and detailed rules** for the grant and implementation of one or more projects likely to have significant effects on the environment" (C-290/15, D'Oultremont, para 49).
- That interpretation of the concept of 'plans and programmes' is "intended to ensure that provisions which are **likely to have significant effects on the environment** are subject to an environmental assessment" (C-671/16, Inter-Environnement Bruxelles, para 54).
- The concept of 'a significant body of criteria and detailed rules' must be construed **qualitatively** and not quantitatively. It is necessary to avoid strategies which may be designed to circumvent the obligations laid down in the SEA Directive by splitting measures (C-671/16, Inter-Environnement Bruxelles, para 55).

Setting the framework for an EIA

“ and which set the framework for future development consent of projects listed in the EIA Directive”;

“**Only acts of a mandatory nature** are capable of limiting the discretion enjoyed by those authorities and thus of excluding certain modalities of implementation of projects which might prove to be more favourable to the environment, which is why such acts must be subject to an environmental assessment within the meaning of Directive 2001/42” (C-9/22, An Bord Pleanála, para 50)

Relation SEA-EIA

- The SEA is carried out **as soon as possible** so that it may still influence any decision-making (it is at that stage that many options are still open, and **strategic choices** may be made (e.g. addressing climate change and biodiversity)).
- A combined procedure of SEA and EIA is not excluded, provided the requirements of both Directives are met (C-295/10, Valciuckiene, para 60-62). An assessment under the EIA Directive cannot lead to an exemption from the obligation to carry out the assessment under the SEA Directive (C-160/17, Tyhbaut, para 60-64).
- A plan or programme adopted without an SEA, in breach of the SEA Directive, must be **suspended, annulled or disapplied** by the national court. Consents for projects based on such a plan or programme must be treated in the same way (C-24/19, A, Wind turbines at Aalter and Nevele, para 116-117).

SEA: WHICH plans and programmes?

Example: Sectoral plans in the field of energy in Austria (1/4)

- Austrian legislation did not provide for an SEA for plans for gas pipelines and power grids. The network development plan (§ 37 ElWOG), the long-term plan (§ 22 GWG) and the coordinated network development plan (§ 63 GWG) were not subject to an SEA.
- A project for a 380 kV overhead power line (Annex I point 10 EIA Directive) “Salzburgleitung”, included in the ‘network development plan’, was approved although this underlying plan had not been subject to an SEA.
- The Commission received numerous complaints from citizens and environmental organisations.

SEA: WHICH plans and programmes?

Example: Sectoral plans in the field of energy in Austria (2/4)

Network development plan (§§ 37 EIWOG)

- Is this plan subject to preparation and/or adoption by an authority?
- Is this plan required by legislative regulatory or administrative provisions ?
- Is this plan prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use ?
- Does this plan set the framework for future development consent of EIA projects ?

SEA: WHICH plans and programmes?

Example: Sectoral plans in the field of energy in Austria (3/4)

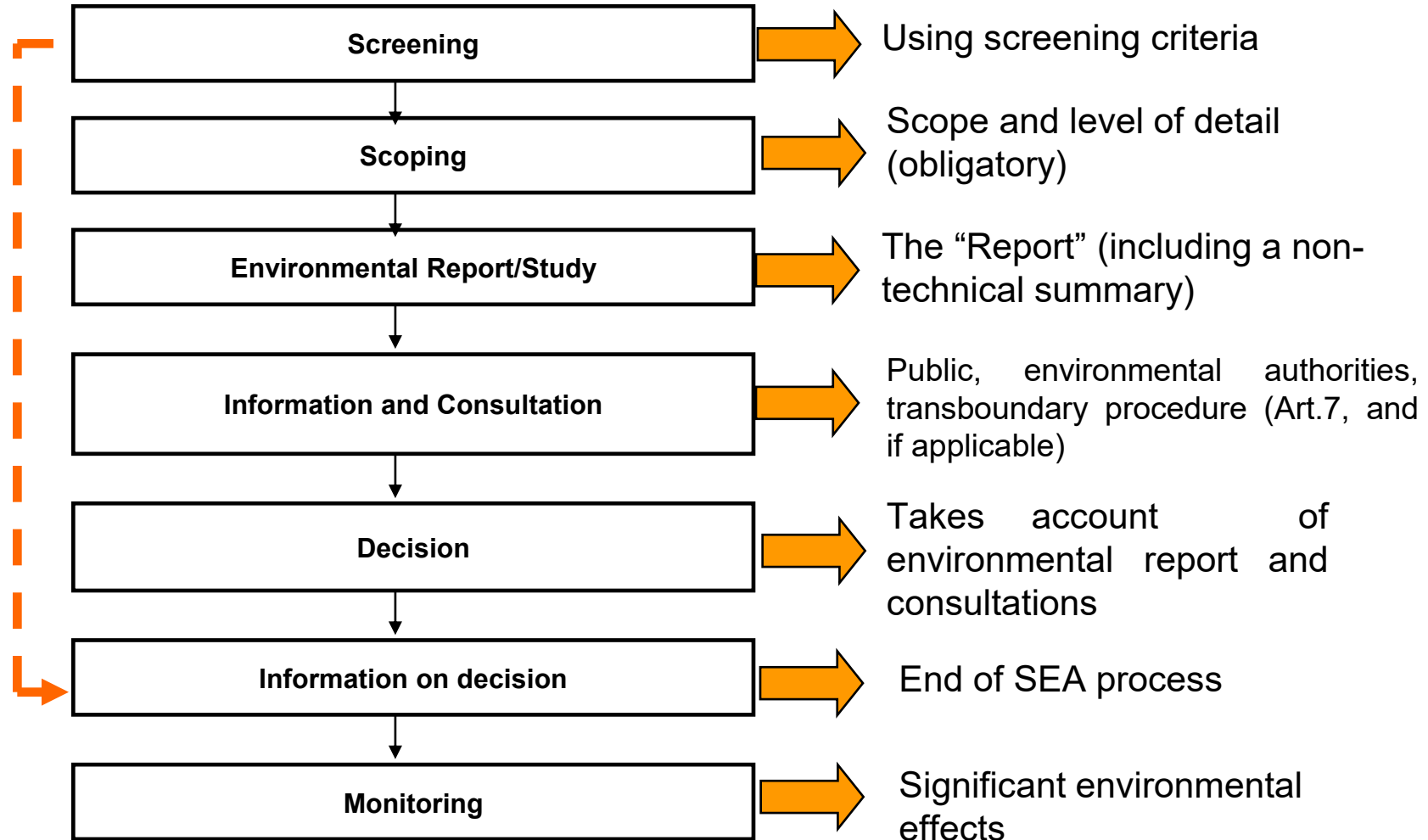
- In the view of the Commission these plans set a framework for future development consent. It was – in practice - impossible to carry out projects not included in these plans. Only projects included in these plans were in the public interest thus enabling expropriation of private property. In addition, network operators were legally obliged to realise them. As the execution of these plans was likely to have significant environmental effects, a broad interpretation of the SEA Directive was necessary (see C-567-10 para. 37, C-473/14 para. 50, C-290/15 para. 39 and the Commission's SEA guidelines)
- The Commission started infringement proceedings against Austria [INFR(2017)4072] and sent a LFN in 2019.

SEA: WHICH plans and programmes?

Example: Sectoral plans in the field of energy in Austria (4/4)

- Austria considered that its legislation was in conformity with EU law. These plans did not set a framework for future development consent of projects since they were not formally required for granting future EIA permits. It was not excluded that projects not included in these plans obtained development consent.
- Nevertheless, Austria agreed to modify its legislation and to provide for an integrated network plan subject to an SEA (Law on renewable energy, EAG - BGBl. I 150/2021).
- This law did not provide for an ex-post SEA of approved projects, such as the 380 kV power line. (VwGH: 15 October 2020, Ro 2019/04/0021-0024 – the VwGH examined the legality of the EIA consent as if the underlying plan (NEP) did not exist (it 'disapplied' the plan) and found that public interest did not only result from the national plan but also from the inclusion of the project in the TEN-E regulation).
- In 2022 the Commission closed INFR(2017)4072 on grounds of opportunity.

The SEA procedure



What is "screening"?

Determination whether a plan or programme is likely to have significant environmental impacts.

Why carry out a "screening"?

- To determine whether SEA is required.

For which plans/programmes carry out a "screening"?

- P&P local level + minor modifications of P&P;
- P&P setting the framework for future development consent of projects; not covered by Art 3.2.

How to carry out "screening"? (Art. 3(5) and Annex II)

- **Case-by-case** decision or specifying **types** of plans and programmes or a **combination** of both;
- Annex II criteria: characteristics of p/p; characteristics of effects and areas likely to be affected.

Integration of the SEA procedure in the planning process

Art. 4 and 11 of the SEA Directive

- **SEA should be carried out:**
 - ✓ *During the preparation of plans/programmes;*
 - ✓ *Before their adoption.*
- **SEA may be integrated** in existing planning procedures for the adoption of plan and programmes or in new ones for the requirements of the Directive.
- **SEA ≠ EIA:** an environmental assessment carried out under the SEA is to be without prejudice to any requirements under the EIA Directive.

SEA can address a wide range of issues

Climate change mitigation	Climate change adaptation	Biodiversity
• energy demand (industry) • energy demand (housing & construction) • GHG emissions in agriculture • GHG emissions (waste management) • travel patterns and GHG emissions (transport) • GHG emissions from energy production • land use, land-use change, forestry and biodiversity • ...	• heat waves • droughts • flood management and extreme rainfall events • storms and high wind • landslides • sea level rise, extreme storms, coastal erosion and saline intrusion • cold spells • freeze-thaw damage • ...	• degradation of ecosystem services • loss of habitats, fragmentation • loss of species diversity • loss of genetic diversity • ...

Key elements of SEA - the Environmental Report (1/3)

Must identify, describe and evaluate:

- the likely significant **environmental effects of implementing the plan/programme**, including
 - effects on biodiversity, soil, water, air, climatic factors
 - effects on population, human health, architectural and archaeological heritage, landscape.
- reasonable **alternatives** taking into account the objectives and the geographical scope of the plan/ programme
 - ! **alternatives must include the « zero » alternative**, i.e. the current state of the environment and the likely evolution of environment without implementation of the plan or programme.

Key elements of SEA - the Environmental Report (2/3)

- Outline of the plan/programme and **relationship with other plans/programmes**
- Environmental characteristics of the area.
- **Environmental protection objectives**, how they were taken into account.
- Mitigation measures (envisaged to prevent, reduce and as fully as possible compensate any significant adverse effects on the environment of implementing the plan or programme).
- **Monitoring measures.**
- **Non-technical summary (important).**

Key elements of SEA - Consultation (3/3)

- Environmental authorities
 - in screening
 - in scoping
 - on the **draft** plan/programme and the environmental report
- The public
 - on the **draft** plan/programme and the environmental report
- Transboundary consultations
 - on the **draft** plan/programme and the environmental report

Key elements of SEA - Monitoring

- Member States have to monitor the significant environmental effects of the implementation of the plan/programme in order to:
 - identify at an early stage unforeseen adverse effects;
 - be able to undertake remedial action.
- Existing monitoring arrangements may be used.
- Monitoring measures must be covered in the SEA Report.

Key elements of SEA - Decision making

Art. 8 of the SEA Directive

The competent authorities have to take account of the:

- Environmental report.
- Opinions expressed pursuant to the consultation (public, environmental authorities).
- Results of any transboundary consultation.

Key elements of SEA - Information on the decision

Art. 9 of the SEA Directive

Information about final decision has to be provided to the public, environmental authorities, other countries (if consulted):

- Adopted plan/programme;
- Statement summarising how environmental report and results of consultations have been taken into account, and reasons for choosing between alternatives;
- Monitoring measures.

Access to Justice

The SEA Directive does not provide for specific rules on the access to justice. In the Commission's view, it results from Art. 9(3) of the Aarhus Convention, in conjunction with Article 19(1) TEU and Article 47 of the Charter on Fundamental Rights, that **members of the public**, in particular NGOs, **have the possibility of legal action in case an authority failed to carry out an SEA or did not carry out the assessment as required by the Directive**, including the procedural requirement of public participation. This applies independently of the legal nature of the act adopting the plan and **includes also regulatory acts** (Verordnungen).

SEA Guidance

- Commission's Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment;
- Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment (March 2013);
- Report from the Commission on the application and effectiveness of the SEA Directive, COM/2009/469;
- GRDP Handbook on SEA for Cohesion Policy 2007-2013 (Interreg IIIC, GRDP greening regional development programmes).



EIA/SEA Europa website

http://ec.europa.eu/environment/eia/index_en.htm

Thank you