

# EIA Directive and assessment requirements based on EU substantive law



**JUDr. Vojtěch Vomáčka, Ph.D., LL.M.**



**INTRODUCTION TO EU ENVIRONMENTAL LAW**  
Focus on the role of national judges and prosecutors  
(11 May 2021 - online workshop)

## Content

- The need to coordinate/mainstream the different types of environmental assessment under the EU law, given that they cover different elements.
- Understanding and (effectively) implementing particular EU directives.
- **EIA Directive** (2011/92/EU as amended by 2014/52/EU) and **SEA Directive** (2001/42/EC) and their synergies with the following directives:
  - ➡ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (**Habitats Directive**)
  - ➡ Directive 2000/60/EC establishing a framework for Community action in the field of water policy (**Water Framework Directive or WFD**)
  - ➡ Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (**Industrial Emissions Directive or IED**)

### Ratio behind multiple requirements on assessment

1986 **EIA Directive** – assessment of the **large projects (listed in the Annexes)**

1992 **Habitats Directive** – assessment of **any plans** and **any projects** which may affect Natura 2000 sites

2000 **SEA Directive** - assessment of **plans which create framework for the EIA projects** and **plans which may affect Natura 2000 sites**

**Water Framework Directive** – derogatory regimes and managements plans

**IED Directive** – complex permits for the largest industrial operations



## Possible synergy

- Different objectives for EIA Directive, SEA Directive, Habitats Directive, WFD and IED but overlaps between some projects subject to them
- Co-ordinated or joint procedures within the regimes and between the regimes are proposed and provide a more holistic approach (in particular for sharing information and more effective public participation)
- Public participation increased in some cases when using the co-ordinated, joint, or hybrid, procedures
- BUT assessments based on each Directive must be clearly distinguishable to fulfil different objectives!

## C-295/10 - Valčiukienė and Others

Direktīvas 2001/42 11. panta 1. un 2. punkts ir jāinterpretē tādējādi, ka vides novērtējums, kas veikts saskaņā ar Padomes 1985. gada 27. jūnija Direktīvu 85/337/EEK par dažu sabiedrisku un privātu projektu ietekmes uz vidi novērtējumu, kas grozīta ar Padomes 1997. gada 3. marta Direktīvu 97/11/EK, **neatbrīvo no pienākuma veikt šādu novērtējumu atbilstoši** Direktīvai 2001/42. Tomēr iesniedzējtiesai ir jāpārbauda, vai novērtējums, kas veikts saskaņā ar Direktīvu 85/337, ir atzīstams par koordinētu vai kopīgu procedūru un vai tajā ir ievērotas visas Direktīvā 2001/42 noteiktās prasības. Ja tas tā izrādītos, tad vairs nebūtu jāveic jauns novērtējums atbilstoši Direktīvai 2001/42;

Direktīvas 2001/42 11. panta 2. punkts ir jāinterpretē tādējādi, **ka tajā nav noteikts pienākums dalībvalstīm savā tiesiskajā regulējumā paredzēt koordinētas vai kopīgas novērtējuma procedūras**, kas atbilstu Direktīvā 2001/42 un grozītajā Direktīvā 85/337 noteiktajām prasībām.







LAND PLANNING (REGION)



LAND PLANNING (LOCAL)



LAND PLANNING (REGION)



LAND PLANNING (LOCAL)

LAND USE + CONSTRUCTION



OPERATION

(OTHER PERMITS)



LAND PLANNING (REGION)



LAND PLANNING (LOCAL)

LAND USE + CONSTRUCTION



OPERATION

(OTHER PERMITS)



LAND PLANNING (REGION)



LAND PLANNING (LOCAL)

EIA



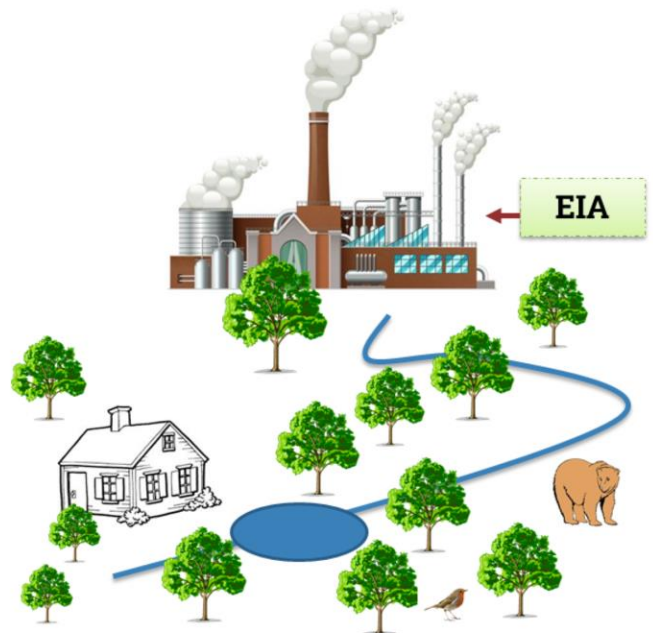
LAND USE + CONSTRUCTION

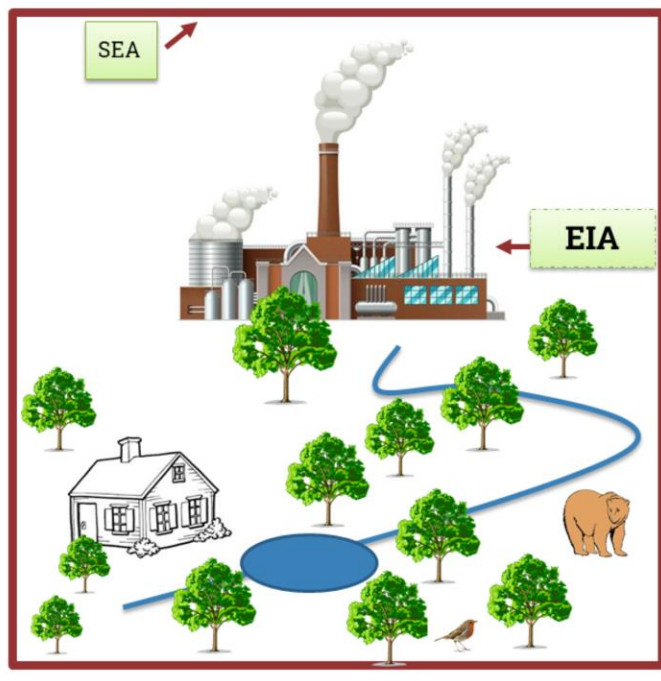
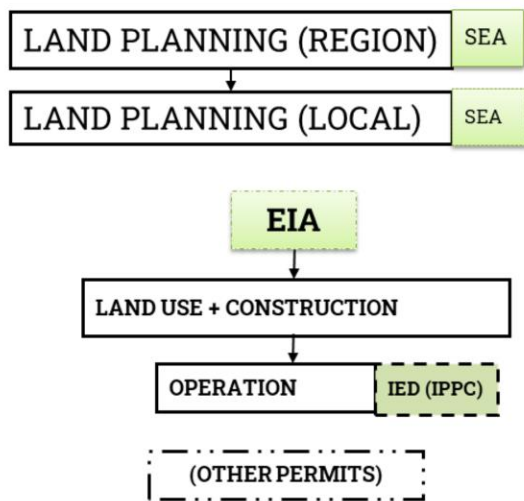


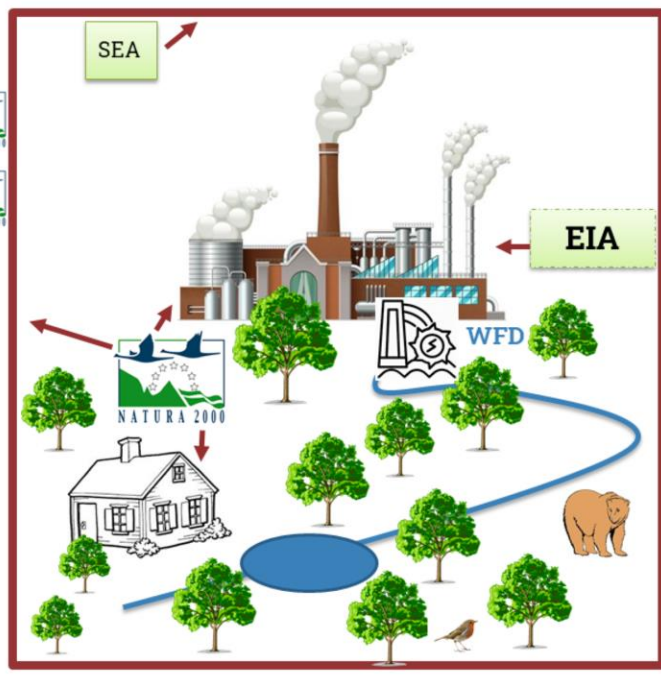
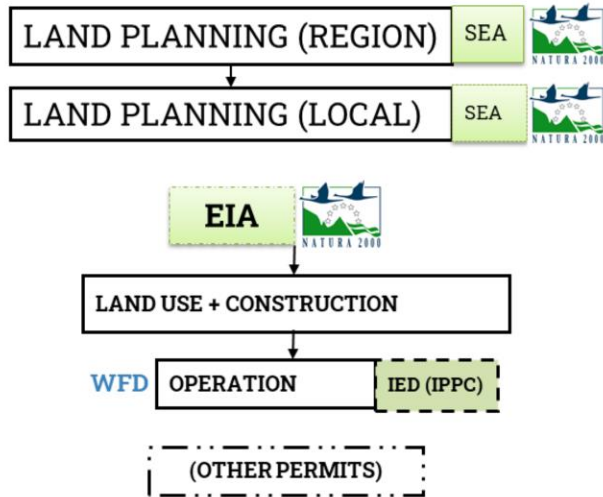
OPERATION

IED (IPPC)

(OTHER PERMITS)







LAND PLANNING (REGION)



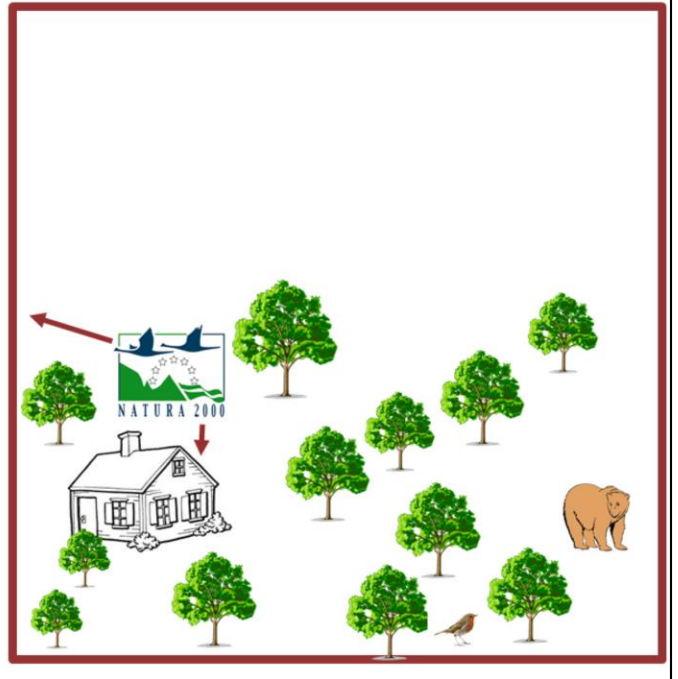
LAND PLANNING (LOCAL)



LAND USE + CONSTRUCTION

OPERATION

(OTHER PERMITS)



## EIA: environmental impact assessment (of projects)

What does the EIA Directive apply to?

**projects likely to have significant effects on the environment** (by virtue, *inter alia*, of their characteristics, size and location)

What are these projects subject to?

a **requirement for development consent**  
an **assessment of their effects**

When?

**before consent** is given

Scope?

The EIA must identify, describe, **assess likely direct** and **indirect** environmental effects of activities on human beings, fauna, flora, soil, water, air, climate, landscape, material assets, cultural heritage the **interaction** between those factors



## EIA: environmental impact assessment (of projects)

- **Annex I projects**

(very large industrial installations, infrastructure, extractive and agricultural projects)

- **Annex II projects**

(large industrial installations, infrastructure, extractive and agricultural projects)

### **Mandatory EIA**

#### **Screening**

by Competent authorities to decide if EIA needed or not

(Decided on a case-by-case basis or according to thresholds or criteria that include

- Size
- Location such as sensitive ecological areas
- Potential impact such as the area affected and duration



## PROJEKTI, KAS MINĒTI 4. PANTA 1. PUNKTĀ

1. Naftas pārstrādes rūpnīcas (izņemot uzņēmumus, kas no naftas ražo vienīgi smērvielas) un iekārtas 500 un vairāk tonnu ogļu vai degakmens gazifikācijai vai šķidrīnāšanai dienā.
2. a) Termoelektrostacijas un citas iekārtas ar 300 megavatu vai lielāku siltuma jaudu;
- b) atomelektrostacijas un citi kodolreaktori, ietverot šādu atomelektrostaciju vai kodolreaktoru izjaukšanu vai to ekspluatācijas pārtraukšanu<sup>(1)</sup> (izņemot pētījumu iekārtas šķelšanās un bagātināšanās materiālu ražošanai un konversijai, kuru maksimālā jauda nepārsniedz 1 kilovatu nepārtraukta siltuma daudzuma).
3. a) Iekārtas kodoldegvielas ar samazinātu radioaktivitāti pārstrādei;
- b) iekārtas, kas konstruētas:

i) kodoldegvielas ražošanai vai bagātināšanai;

**EIA is not required for any projects  
that are not listed in annexes I or II**



iv) vienīgi radioaktīvo atkritumu galējai noglabāšanai;

## PROJEKTI, KAS MINĒTI 4. PANTA 2. PUNKTĀ

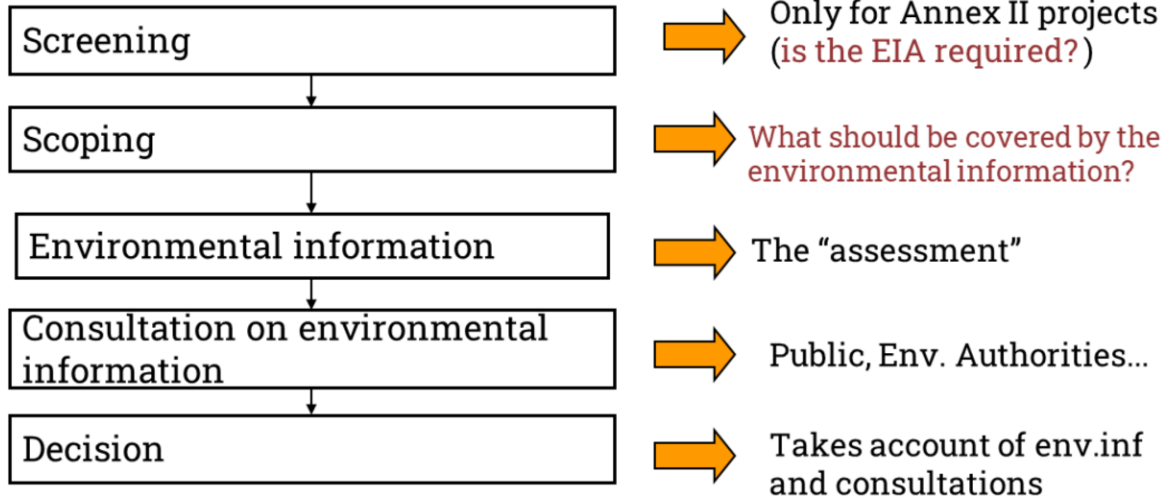
## 1. ZEMKOPĪBA, MEŽKOPĪBA UN AKVAKULTŪRA

- a) Projekti lauku zemes īpašumu pārstrukturēšanai;
- b) projekti neapstrādātās zemes vai daļēji neskarto platību izmantošanai zemkopībā;
- c) ūdens apsaimniekošanas projekti zemkopībā, ietverot apūdeņošanas un zemes drenēšanas projektus;
- d) sākotnējā apmežošana un atmežošana, lai pārietu uz citu zemes izmantošanas veidu;
- e) intensīvās lopkopības kompleksi (projekti, kas nav ietverti I pielikumā);
- f) intensīvā zivju audzēšana;
- g) jūras teritoriju apguve.

## 2. IEGUVES RŪPNIECĪBA

- a) Akmeņlauztuves, derīgo izrakteņu ieguve atklātos karjeros un kūdras ieguve (projekti, kas nav ietverti I pielikumā);
- b) pazemes raktuves;
- c) derīgo izrakteņu ieguve, veicot jūras vai upju bagarēšanu;
- d) dziļurbumi, jo īpaši:
  - i) ģeotermālais urbums;
  - ii) urbums radioaktīvo atkritumu glabāšanai;

# EIA - procedure



## EIA directive: public participation

Extensive and detailed provisions include

- **Informing** the 'public' of the application of EIA, and decisions to grant or refuse development consent
- Ensuring the effective **participation of the 'public concerned' in decision-making procedures** by electronic and other public notices including the request for development consent, application of EIA, possible draft and final decisions, location of available information, and time frames for consultation and comments
- **Access to justice** of the 'public concerned'
- 'Public concerned' is defined as 'the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures .... 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'

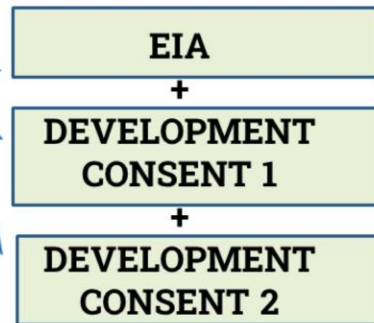


## The EIA Directive (2011/92/EU)

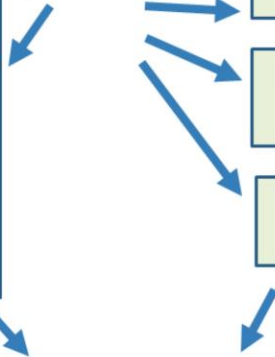
### A ONE-STOP-SHOP PROCEDURE



### MULTIPLE PERMITTING PROCEDURES



public concerned



**SEA: strategic environmental impact assessment (of plans and programmes)**

What does the EIA Directive apply to?

**plans and programmes**

**1) which set the framework for future development consent of projects listed in the EIA Directive.**

**or 2) which require an assessment under the Habitats Directive.  
(or both)**

- prepared and/or adopted by an **authority** at national, regional or local level AND required by legislative, regulatory or administrative provisions (also co-financed by the EC, modifications).
- typically urban plans, waste management plans, plans for prepared for agriculture, forestry, fisheries, energy...



# The SEA Directive (2001/42/EC): Public participation

## Preamble - principles

**Art. 3(7):** Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made **available to the public**.

## Article 6 Consultations

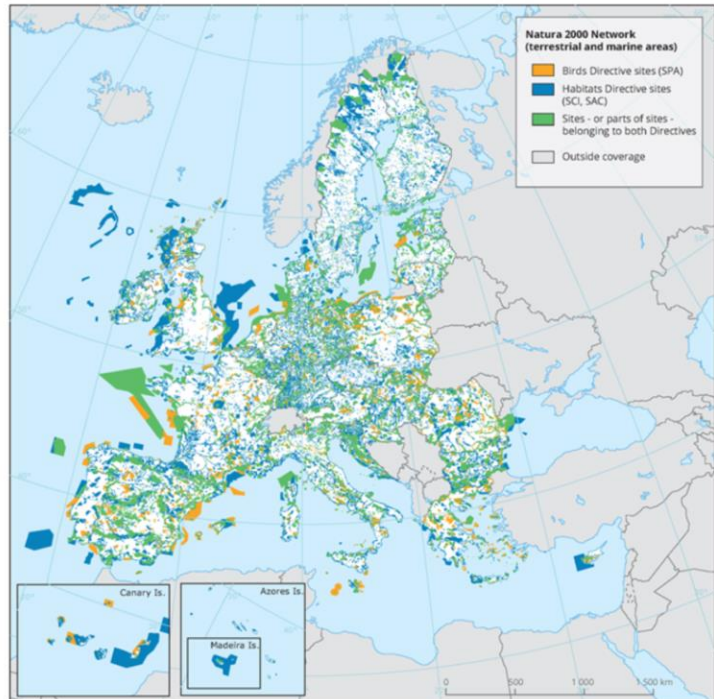
1. The **draft plan or programme** and the **environmental report** prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article **and the public**.
2. The authorities referred to in paragraph 3 **and the public** referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.
4. **Member States shall identify the public** for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.
5. **The detailed arrangements** for the information and consultation of the authorities and the public shall be determined by the Member States.

**Art. 7 – Transboundary consultations**

**Art. 9 – Information on the decision**



## The Habitats Directive



## The Habitats Directive Art. 6 (3)

*Visos **plānos** vai **projektos**, kas nav tieši saistīti ar konkrēto teritoriju vai nav vajadzīgi tās apsaimniekošanai, bet kas atsevišķi vai kopā ar citiem plāniem vai projektiem varētu būtiski ietekmēt minēto teritoriju, attiecīgi izvērtē ietekmi uz šo teritoriju, ievērojot tās aizsardzības mērķus. Ņemot vērā novērtējuma atzinumus par ietekmi uz minēto teritoriju, un saskaņā ar 4. punkta noteikumiem, kompetentā valsts iestāde piekrīt plāna vai projekta īstenošanai tikai tad, ja tā ir pārliecinājusies, ka netiks izjaukta attiecīgās teritorijas viengabalainība, **un vajadzības gadījumā noskaidrojusi plašas sabiedrības viedokli.***

Scope of the assessment is limited to the conservation objectives and integrity of Natura 2000 sites!



## The Habitats Directive (92/43/EEC): public participation

**C-243/15 (Lesoochránárske zoskupenie II, para. 45 - 48):** *the project of constructing an enclosure on a protected site, at issue in the main proceedings, is not among the activities listed in Annex I to the Aarhus Convention, the fact that the competent national authorities decided to initiate an authorisation procedure for that project pursuant to Article 6(3) of Directive 92/43 permits, however, the inference that those authorities considered it necessary to assess the significance of the project's effect on the environment, within the meaning of Article 6(1)(b) of the Aarhus Convention. It is true that the latter provision states that the application of Article 6 of the Aarhus Convention is governed by the domestic law of the contracting party concerned. However, that statement must be understood as relating solely to the manner in which the public participation specified by Article 6 is carried out, and does not call into question the right to participate which an environmental organisation such as LZ derives from that article.*



## EIA/SEA and the Habitats Directive

- **EIA Directive** provides that the **EIA may be integrated into other procedures for consent to projects** (article 2(2))
- If there is a simultaneous obligation to carry out EIA and other assessments, Member States should ensure that **co-ordinated and/or joint procedures that fulfil the requirements of all Directives should be followed 'where appropriate'**
- (there is an obligation to carry out co-ordinated, joint procedures, or a hybrid but some discretion is allowed by the term 'where appropriate')
- **Co-ordinated procedure** means carrying out the individual assessments for a project under supervision of a single authority
- **Joint procedure** means a single assessment of the environmental impact of a project
- **SEA Directive** states that Member States may provide for co-ordinated or joint procedures when the SEA Directive and the Birds and Habitats Directives simultaneously apply to a plan or programme so as, among other things, to avoid duplication of assessment (2/3 of the Member States)



## Water Framework Directive

**Environmental assessment:** Article 4(7) derogations (+ other derogations in Art. 4)

New modifications to the physical characteristics of a surface water body

Alterations to the level of bodies of groundwater

New sustainable human development activities

*Member States will not be in breach of this Directive when:*

*failure to achieve... and all the following conditions are met:*

- *all practicable steps are taken to mitigate the adverse impact on the status of the body of water;*
- *the reasons for those modifications or alterations are specifically set out and explained in the [RBMP] and the objectives are reviewed every six years*
- *the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and*
- *the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option'*



## Water Framework Directive

### Environmental assessment:

#### ***River Basin Management Plans must include***

- *Analysis of characteristics*
- *Review of impacts of human activity on the status of surface and ground waters*
- *Economic analysis of water use*
- *WFD directed Member States to publish RBMPs by 22 December 2009 and to update them every six years*
- *Many Member States have published second RBMPs, using information and experience from the first RBMPs*

*RBMPs and programmes of measures (POMs are subject to screening under the SEA Directive*

*POMs require assessments to identify water bodies in which individual, cumulative or synergistic impacts cause them to risk failing to meet the environmental objectives of the WFD by 2015*



## Water Framework Directive: Public participation

- Member States to 'encourage the active involvement of all interested parties in the implementation' of the WFD
- Production of RBMPs and their review and updating, is subject to public comment periods of at least six months each, including
- Timetable and work programme for their production, a statement of consultation measures to be taken – to be made public at least three years before the beginning of the period for the RBMP
- Interim overview of significant water management issues identified in the river basin – at least two years before the beginning of the period for the RBMP
- Publication of draft copies of the RBMP – at least one year before the beginning of the period for the RBMP
- Access to background documents and information used to develop the draft RBMP on request
- No definitions of 'public' or 'public concerned'; references to 'public' and 'interested parties'



## WFD and EIA/SEA

- **Member States may, but are not obliged to, provide for co-ordinated or joint procedures in carrying out EIA and assessments under the WFD**
- **EIA and WFD may apply to the same type of project**
- Member States 'may' provide for co-ordinated or joint procedures when the SEA Directive and the WFD simultaneously apply to a plan or programme so as, among other things, to avoid duplication of assessment
- SEA may need to be prepared for RBMPs depending on the likelihood of significant environmental effects

## IED Directive

- Aims to prevent, reduce and as far as possible eliminate **pollution from industrial emissions**, especially through better application of Best Available Techniques (BAT)
- **Integrated approach**: permits must take into account the entire environmental operations of the facility

### **Assessments: application for a permit must examine and describe**

- Future measures to operate the installation in accordance with the following principles
- Take all appropriate preventive measures against pollution
- Apply BAT
- Not cause any significant pollution
- Prevent the generation and handling of waste in accordance with the Waste Framework Directive ((EU) 2018/851 amending Directive 2008/98/EC on waste)
- Use energy efficiently
- Take the necessary measures to prevent accidents and limit their consequences
- Avoid the risk of pollution and return the site to a satisfactory state on closure



## IED Directive: Public participation

- Extensive provisions for the public to have access to, and comment on, the following
  - Granting a permit for a new installation
  - Granting a permit for any substantial change in an installation
  - Granting or updating a permit for an installation subject to a derogation
  - Updating a permit or permit conditions for an installation
- Provisions include making the contents of a decision to grant or update a permit available to the public as well as a copy of the permit, any subsequent updates, and the reasons for the decision
- Detailed provisions on access to justice

## IED – EIA

### Permits under the IED must include conditions concerning the entire environmental operations of the installation

- Competent authority must, in granting a permit for a new installation, or updating a permit for a substantial change in an installation, **examine and use any relevant information obtained in an EIA and conclusions from the EIA**
- Member States may, but are not obliged to, provide for co-ordinated or joint procedures, or a combination of both, in carrying out EIA and assessments under the IED
- Some similar requirements in both Directives
- For example, Member States must take the necessary measures to ensure that an application for a permit includes a description of 'the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment'

Member States may use a co-ordinated, a joint, or a hybrid, procedure for projects including a common public participation procedure

Monitoring requirements in the IED are more specific than in the EIA Directive



**THANK YOU FOR YOUR ATTENTION!**

**I hope you have caught all the information...**

**[vomacka@mail.muni.cz](mailto:vomacka@mail.muni.cz)**

