



Preparation and appraisal of major projects

➤ *Application of the SEA and EIA Directives*

**Yvette IZABEL - European Commission - DG Environment
D1 Unit Enforcement, Cohesion Policy & European Semester**

Environmental requirements for major projects (Application Form)

Section F. An analysis of the environmental impact, taking into account climate change adaptation and mitigation needs, and disaster resilience

F.1. Consistency of the project with environmental policy

F.2. Application of the SEA Directive (2001/42/EC)

F.3. Application of the EIA Directive (2011/92/EU)

F.4. Application of the Habitats Directive (92/43/EEC)

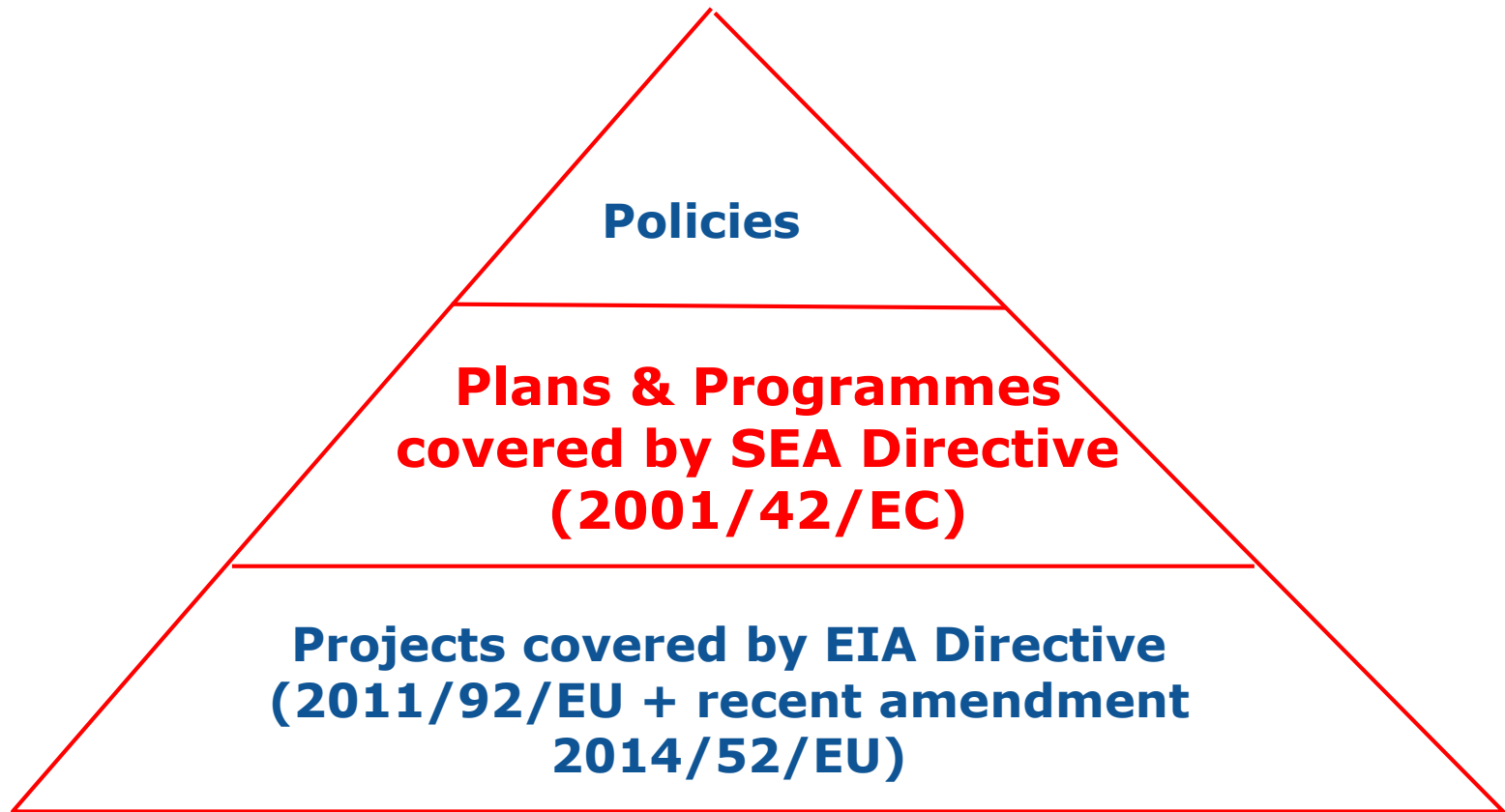
F.5. Application of the Water Framework Directive (2000/60/EC)

F.6. Compliance with other environmental directives (where applicable)

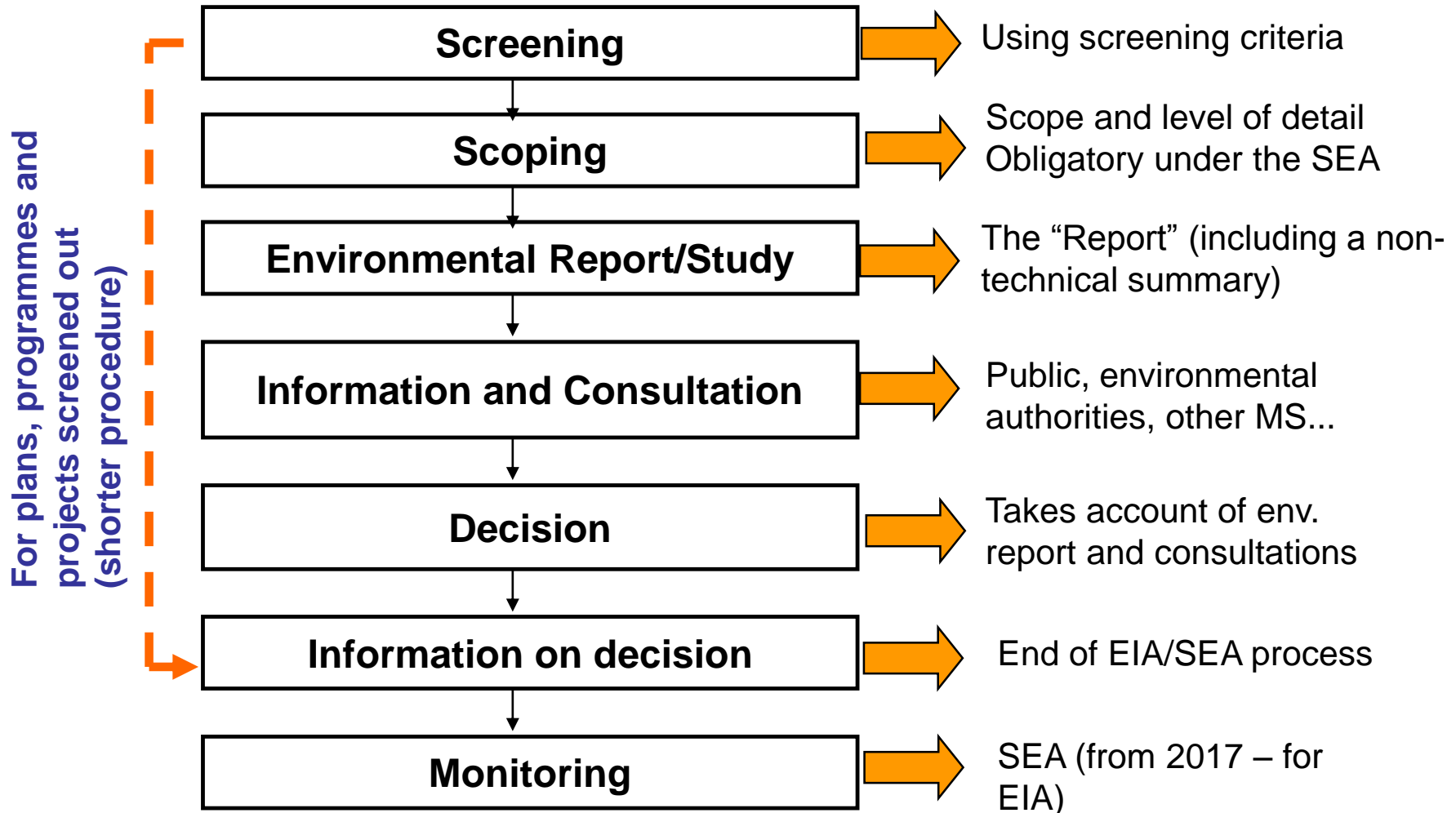
F.7. Cost of measures to mitigate and/or compensate negative env. impacts

F.8. Climate change adaptation and mitigation, and disaster resilience

Environmental assessments



The Environmental Assessment Procedures



F.2. Application of Directive 2001/42/EC (SEA Directive)

F.2. Application of Directive 2001/42/EC of the European Parliament and of the Council (*) (the 'SEA Directive')

F.2.1 Is the project implemented as a result of a plan or programme, other than Operational Programme? <type='C' input='M'>

Yes

No

F.2.2 If the reply to question F.2.1 is 'Yes', please specify if the plan or programme was made subject to a strategic environmental assessment in accordance with the SEA Directive <type='C' input='M'>

Yes

No

— If the reply is 'No', please provide a short explanation:

< type='S' maxlength='1750' input='M'>

— If the reply is 'Yes', please provide the non-technical summary (*) of the Environmental Report and the information required by Article 9(1)(b) of that Directive (either an internet link or an electronic copy).

< type='S' maxlength='1750' input='M'>



F.2. Application of Directive 2001/42/EC of the European Parliament and of the Council ⁽¹⁾ (the 'SEA Directive')

- Info if the project results from P/P (other than an OP) that has undergone SEA
- If 'NO' (e.g. to simplify the reply without worrying about actual situation) and the project results from P/P – incorrect answer
- Cases with 'NO': pre-SEA project, purchase of rolling stock, etc.
- If "Yes", it would be good practice for beneficiary, especially for env. sensitive projects if it is written whether it is:
 - ✓ it is consistent with P/P (in the second box)
 - ✓ strategic considerations about the project (or a particular type of project) have been taken into account at the programme level
- Required documents or links (Attached? Do they open? Are these direct links?)
 - ✓ non-technical summary
 - ✓ statement in accordance art. 9(1)(b)

F.3.1 Link with the ex-ante conditionality on EIA-SEA

F.3.1 *In case of non-fulfilment of the ex-ante conditionality on environmental legislation (Directive 2011/92/EU and Directive 2001/42/EC), as per Article 19 of Regulation (EU) No 1303/2013 demonstrate link to the agreed action plan*

< type='S' maxlength='1750' input='M'>

Concerns limited nb of cases (7 MSs with non/partially fulfilled criteria).

Relevant for MS who changed recently their EIA legislation following comprehensive EIA infringements

For them, need to perform or extra scrutiny of (major) projects (even if EAC fulfilled at OP adoption or as result of fulfilled action plan). Generally, part of the Action Plan.



F.3.2 Application of Directive 2011/92/EU of the European Parliament and of the Council (the 'EIA Directive')

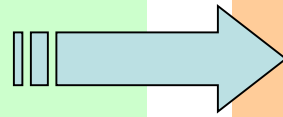
F.3.2 *Is the project listed in EIA Directive annexes ⁽⁴⁾:*

- Annex I to the EIA Directive (go to question F.3.3)
- Annex II to the EIA Directive (go to question F.3.4)
- Neither of the two Annexes (go to question F.4) — please explain below

`< type='S' maxlength='1750' input='M'>`

- Determine in which annex the project is listed
- Depending on the annex, different procedure to be followed

- Annex I projects



**Mandatory
EIA**

(report, consultations, information on decision)

- Annex II projects



Screening

- by Competent authorities
- Determine if an EIA is needed or not
- Information on the decision

Interpretation of definitions of project categories of annex I and II of the EIA Directive



- ✓ Use the Commission guidance on the projects listed in the Annexes of the EIA Directive, when it is not clear at which category the project belongs to.

http://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf

F.3.2 Application of the 'EIA Directive' - annexes

Most common errors and problems

- ❖ A project is wrongly considered to be outside the scope of EIA
 - ✓ Modifications of Annex II are often wrongly considered as not falling within the scope of the Directive!
 - ✓ Situation needs to be remedied. Apply correct procedure
- ❖ A project is wrongly considered as belonging to Annex II instead of Annex I
 - ✓ Situation needs to be remedied
 - ✓ 'Full' EIA has to be carried out.

F.3.3 Application of the 'EIA Directive' – annexe I projects

F.3.3 *When covered by Annex I to the EIA Directive, include the following documents (as Appendix 6) and use a text box below for additional information and explanations ⁽¹⁾:*

- (a) The non-technical summary of the EIA Report ⁽²⁾.
- (b) Information on consultations with environmental authorities, the public and if applicable, consultations with other Member States, carried out in accordance with Articles 6 and 7 of the EIA Directive.
- (c) The decision of the competent authority issued in accordance with Articles 8 and 9 of the EIA Directive ⁽³⁾, including information on how it was made available to the public.

`< type='S' maxlength='1750' input='M'>`

F.3.4 *When covered by Annex II to that Directive, has an EIA been carried out? <type='C' input='M'>*

Yes

No

F.3.3 Application of the 'EIA Directive' – annexe I projects

Most common errors and problems

- ❑ **Incomplete / missing / not attached information**
 - ✓ *All the information listed under F.3.3 has to be made available!*
- ❑ **Insufficient quality of the information**
 - ✓ *Non-technical summary obviously too short*
 - ✓ *Incomplete non-technical summary*
- ❑ **NTS should not be a document specially prepared for the Application**, summarizing environmental procedures
 - ✓ *NTS is the document made available to the public to facilitate the understanding of complex & technical information!*

F.3.3 Application of the 'EIA Directive' – annexe I projects

Most common errors and problems

- ❑ **Information on the consultations is not sufficiently detailed**
 - ✓ *Info should describe: type of public announcement, availability of announcement, deadline for comments, public hearings dates, opinion of the EA, contributions made and participation..*
- ❑ **Information on the decision making process is missing (e.g. how consultations & report have been taken into consideration)**
 - ✓ *This is a critical issue! Possible breach of the Directive.*
 - ✓ *Consider performing / completing the EIA procedure ex-post!!*

F.3.3 Application of the 'EIA Directive' – annexe I projects

Most common errors and problems

- ❑ **In some (limited) critical cases, breach(es) of the Directive are identified:**
 - ✓ *Performing a new EIA / a screening will be requested/*
 - ✓ *In extreme cases, request to perform procedure ex-post!!*

- ❑ When the content of the NTS does not comply with the requirements of the EIA Directive, the entire EIA report should be attached
- ❑ The use of generic text (e.g. according to the national legislation consultations are obligatory... or ...the decisions are made available to the public) should be avoided
- ❑ The information provided should be also about the development consent and not just the EIA

TIPS!

F.3.4 Application of the 'EIA Directive' – annexe II projects

F.3.4 When covered by Annex II to that Directive, has an EIA been carried out? <type='C' input='M'>

Yes

No



— If the reply is 'Yes', please include the necessary documents listed under point F.3.3

— If the reply is 'No', please include the following information:

- (a) The determination required in Article 4(4) of the EIA Directive (known as 'screening decision').
- (b) The thresholds, criteria or case by case examination carried out to reach the conclusion that an EIA was not required (this information is not needed, if it is already included in the decision mentioned under point (a) above).
- (c) An explanation of the reasons why the project has no significant environmental effects, taking into account the relevant selection criteria listed in Annex III to the EIA Directive (this information is not needed, if it is already included in the decision mentioned under point (a) above).

< type='S' maxlength='1750' input='M'>

F.3.4 Application of the 'EIA Directive' – annexe II projects

- ❑ Evidence that screening decision was made available to the public;
- ❑ The thresholds, criteria or case by case examination used to reach the conclusion that an EIA was not required;
 - *not needed, if already included in the determination;*
- ❑ An explanation of the reasons why the project has no significant environmental effects, taking into account the Annex III selection criteria:
 - *Characteristics of the project*
 - *Location of the project*
 - *Characteristics of potential impact*

- ❑ Generic statements such as “Annex III criteria were considered” should be avoided
- ❑ Information about how the screening decision was made available to the public should be provided
- ❑ When dealing with several project components that had a negative screening determination - an explanation of how cumulative impacts were assessed should be included

TIPS!

F.3.5 Application of the 'EIA Directive' – development consent

F.3.5 *Development consent/construction permit (as applicable)*

F.3.5.1. Is the project already in the construction phase (at least one works contract)? <type='C' input='M'>

Yes* No

F.3.5.2. Has the development consent/construction permit already been given to this project (for at least one works contract)? <type='C' input='M'>

Yes No (*)

(*) Projects in construction phase ('Yes' answer to question F.3.5.1.) and without development consent/construction permit for at least one works contract at the time of their submission to the European Commission are not admissible by the Commission

Information on the maturity of the project and on the authorisation.

The revised Environmental Impact Assessment (EIA) Directive (2014/52/EU)

Transposition and implementation

- Important dates:
 - 25 April 2014 – publication in OJ
 - 16 May 2014 – entry into force of Directive 2014/52/EU
 - until **16 May 2017** – transposition/application in MS
- Transitional provisions for projects:

the screening
was initiated

the scoping
was initiated

EIA report was submitted
by the developer

before 16 May 2017

subject to the provisions of Directive 2011/92/EU (i.e. current regime)

Revised EIA Directive: relevant changes (1)

Review addressed: shortcomings, new issues, smart regulation, CJEU case-law.

Screening

- Justification of the screening decision:
 - ✓ on the basis of the information provided by the developer.
 - ✓ take into account, where relevant, the results of other assessments [SEA, Habitats Directives].
 - ✓ use of annex III criteria for justifying screening decisions.
 - ✓ if no EIA: measures/features to avoid or prevent significant adverse effects.

Time-frames introduced for key steps of the process

- screening: 90 days
- public consultation on the EIA report: 30 days
- final decision: reasonable time-frame

Revised EIA Directive: relevant changes (2)

Several new elements in the EIA Report

- Resource and energy efficiency elements.
- Adaptation to new environmental issues, such as climate change and biodiversity.
- Reasonable alternatives (relevant to the project and its specific characteristics), including baseline scenario.
- Cumulative impacts (with other existing or approved projects).
- Risk assessment related to (man-made and natural) accidents/disasters.
- Thorougher description of mitigation and compensation measures, as well as introduction of monitoring.
- Methods/evidence and list of sources used.



Revised EIA Directive: relevant changes (3)

- Quality control mechanism of the report:
 - ✓ shared responsibility of the developer and of the competent authority.
- Enhanced public participation:
 - ✓ information available on a central portal.
- Monitoring measures (for projects with significant & adverse env. effects)
- Content of the final decision to grant development consent:
 - ✓ the reasoned conclusion of the competent authority on the significant effects of the project;
 - ✓ any environmental conditions/measures attached to the decision.
 - ✓ 'up to date' decisions (i.e. validity of EIA reports).
- Rules on conflict of interests
- EIA 'one-stop shop' (i.e. coordinated/integrated assessment procedure):
 - ✓ Mandatory: for assessments under EIA and/or Habitats/Birds Directives
 - ✓ Optional: for assessments under EIA and other Union legislation (e.g. SEA, Water Framework, IED, Waste Framework, Seveso).

Sources of information on EIA-SEA

- EIA/SEA Homepage (DG ENV)

<http://ec.europa.eu/environment/eia/home.htm>

- Case-law
- Guidance documents