



EVALUATION ON EU LEGISLATION – DIRECTIVE 85/337/EEC (ENVIRONMENTAL IMPACT ASSESSMENT, EIA) AND ASSOCIATED AMENDMENTS

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KEY FINDINGS

This Final Report presents the results of the study to **identify and analyse potential burdens on enterprises and taxpayers created by the regime of directives on environmental impact assessment (EIA)**.

The evaluation has examined the direct and indirect costs and best practice of the EIA regime based on a detailed review of available information in six selected MS (France, Germany, Netherlands, Poland, Spain, UK).

Key findings are:

- The number of EIA per capita is similar in Germany, Netherlands and UK but higher in the other MS, largely because of lower project thresholds;
- The number of EIAs is increasing in all MS, although the reasons are not clearcut;
- The costs of an EIA as a share of project costs typically range from 1% for smaller projects and 0.1% for larger projects, indicating a risk of dis-proportionate costs for smaller projects; and
- Securing project consent can add up to 6-8 weeks on a procedure of around 6-8 months, or approximately 20% - 25%, to the time otherwise taken, at least for the class of projects where the need for EIA is sometimes not required.

The main burdens that give rise to costs and delays identified, broadly in the order of significance suggested by industry stakeholders, are:

- Lack of timetables with various EIA stages (screening, scoping, consultation) leading to delays;
- Project size thresholds set too low (leading to unnecessary EIAs);
- Too onerous a level of consultation required, given other consultation requirements, especially for smaller projects;
- Lack of skills / resources in the Competent Authority (leading to e.g. delays, poor screening / scoping decisions);
- Overlaps in assessment requirements between the EIA and other environmental directives (e.g. IPPC, Habitats) leading to delays from double assessments;
- Lack of adequate screening of projects to determine the risk of significant impacts, especially for smaller projects; and
- Lack of project/site alternatives leading to reduced added value from EIA.

Recommendations are suggested in response to each of these problems.

EXECUTIVE SUMMARY

THE PURPOSE OF THE STUDY

This Final Report presents the results of the study to **identify and analyse potential burdens on enterprises and taxpayers created by the regime of directives on environmental impact assessment (EIA).**

The specific objectives of the study were to:

1. Identify, test and apply methodologies for evaluating the effectiveness, impacts and costs and benefits of the directives;
2. Quantify the financial costs incurred by EIA procedures, on enterprises and on the public administrations;
3. Identify the length of delays caused by the procedures;
4. Identify best practices to reduce the duration of the delays and streamline procedures;
5. Identify possible ways to reduce the costs imposed on enterprises and taxpayers, whilst at the same time, not compromising the objectives of the EIA;
6. If deemed necessary, provide recommendations to contribute to the re-examination of the directives.

The evaluation has therefore examined the direct and indirect costs and best practice of the EIA regime based on a detailed review of available information in six selected MS (France, Germany, Netherlands, Poland, Spain, UK). These were selected on the basis of MS where the EIA regime is fully developed (which suggested a focus on MS that comprised the original EU15). However, some scope to look at the transposition in new MS would also have potential to inform ideas for simplification. Moreover, since the costs and benefits at the EU scale relate to the operation of the regime in the larger MS the selection sought to include the larger MS. The selection was also informed by an interest in the operation of the regime in MS with and without a strong regional tier of legislation.

The evaluation has compiled, assessed and presented information on the strengths and weaknesses of the legislation in terms of its achievement of its stated goals and the feasible potential for improvement of its provisions. The study has identified best practices to reduce delays and to reduce the complexity of procedures.

The evaluation is intended to inform responses to the challenge of improving the efficiency of business regulation, as part of the European Commission's Better Regulation agenda.

THE NATURE OF THE PROBLEM

The Need for Simplification

In its March 2005 Communication on “Better Regulation for Growth and Jobs”, the Commission identified simplification as a priority action for the EU. The overall objective is to contribute to a European regulatory framework that fulfils the highest standards of law-making and delivers the policy objectives of the Community in the simplest and most cost-effective way.

The Commission would like to fully understand the burdens created for enterprises and public administrations of the Directive. It is also imperative that under the Better Regulation agenda it should be established whether the directives are suitable for a possible codification and possibly simplification.

The Relationship between EIA and the Planning Regime

The need to take environmental considerations into account when providing consent for development projects was formalised by the introduction of the European EIA Directive (85/337/EEC) in 1985, with subsequent amendments. The EIA Directive established a standard approach and sought to ensure a ‘level playing field’ in the treatment of environmental impacts across the EU. In most cases, EIA is given legal effect through the national planning regulations and is required for certain types of projects to gain development consent.

Transposition of the EIA Directive – The Problem of Gold-Plating

The Directive and its later amendments (in 1997 and 2003) meant a greater formalisation of certain elements such as consultation, public participation and consideration of trans-boundary issues. In most Member States (MS), the creation of environmental laws and regulations, as well as amendments to existing laws, has facilitated the transposition of most of the Directive.

The most significant difference between the EU Directive and transposition at the Member State level relates to the screening stage, and more specifically, the manner in which Annex I and II have been transposed into national regulations. The EIA Directive set out a specific list of development projects which require a mandatory EIA – Annex I - as well as a list of development projects which *may* require an EIA, subject to screening either through a system of thresholds or on a case-by-case basis – Annex II.

Several of the Member States appear to have implemented their own ‘rules’ with regards to the types of projects which require EIA. In Spain, national (and regional) legislation has included a series of project categories in its version of Annex I, which are not included in the Annex I of the original Directive. These relate largely to mining or drilling facilities. Other project categories in the Spanish Annex I are taken from Annex II of the EU Directive, and include categories mainly relating to energy, chemicals and infrastructure projects.

Over-implementation of the EIA Directive, also referred to as ‘gold-plating’, would appear to be fairly common across many of the Member States. As well as adding more project categories to Annexes than is stated in the European Directive, MS set

their thresholds for projects subject to a mandatory EIA lower in comparison with those specified at the EU level. This has for example been the case in the Netherlands, and there is growing concern that the increasing number of EIAs being undertaken may be attributed to this.

Overlaps with other Directives – Increasing Complexity

Overlaps have been identified between the EIA Directive and other Directives, leading to complexity.

Integrated Pollution Prevention & Control (IPPC)

The list of prescribed activities requiring IPPC permits does, to some degree, overlap with the lists of development types in the EIA Regulations. Where there is overlap, it has been recommended that the two procedures are undertaken in parallel as much as possible, to prevent duplication of effort. However, none of the MS in the study appeared to have a single procedure to comply with both Directives, due to the differences in the detail and order in which the regimes are to be complied with. The IPPC application is usually more detailed than the EIA in terms of describing the process, focusing mainly on emissions to air, water, land, noise, and it requires that the best available technology is used for a specific activity. Furthermore, the competent authorities for both regimes tend to be different bodies.

Strategic Environmental Assessment (SEA)

The areas of overlap most commonly identified between the two regimes tend to be within urban development projects, industrial estates, some tourism and leisure facilities and certain types of electricity and transport infrastructure. Although most MS do not appear to have designed a single procedure to comply with both Directives, Germany introduced an environmental law in 2004 (EAG Bau), which brought an integrated environmental assessment into land-use planning to fulfil the requirements of SEA, EIA and Seveso.

Habitats

Projects, plans or activities likely to have a negative impact on Natura 2000 sites (sites of significant nature conservation interest) are subject to an assessment procedure (Appropriate Assessment (AA)) under Article 6 of the Habitats Directive. The requirement of such an assessment does not preclude the need for an EIA, neither does an EIA preclude the AA. In practice, many developers who are subject to complying with both regimes do tend to incorporate the AA into the EIA (or more specifically, the Environmental Statement (ES)), as a separate and clearly distinguishable ‘chapter’ of the ES, as opposed to providing a stand-alone report.

Too Many EIAs – Inadequate Screening

The number of EIAs undertaken varies significantly between the MS, ranging from approximately 600 (UK) to as many as 6,000 (France) per year. However, the trend across all the MS studied was a continuous rise in the number of EIAs being undertaken. The strict use of thresholds, whether based on overall size of a project (Netherlands) or the financial cost of the project (France) has created the risk of requiring far too many EIAs for projects that quite clearly are unlikely to have potential negative impacts. This has led to a shift away from proving whether effects of a particular project are likely to be significant, and has removed the emphasis on local authorities to be robust in their reasoning behind their screening decisions.

Skills and Training – Poorly Specified and Managed Procedures

Training and competence to implement the regime and deal with EIA-related issues has emerged as an extremely important factor in shaping the effectiveness of the EIA regime. This is the case in all MS studied and although levels of competence differ between MS, there still remains a significant shortage of the necessary skills and competence at the local administrative level to deal with the EIA procedure, with the level of training provided inadequate in some of the MS.

Case Law and the Likelihood of a Legal Challenge

The increasing amount of case law, both at the domestic level and at European level (ECJ), has alerted MS to the wealth of potential legal challenges which can be raised, by a range of stakeholders (including local residents, environmentalists etc). It is possibly the principal reason for the over-precautionary approach taken by competent authorities (CA). Anti-development lobbies have regularly been able to take the developer to Court over a small procedural issue, e.g. not putting up an advert properly, rather than because of the nature or subject of the development. There is a realisation among some CA that the EIA is being used as a tool for 'frivolous challenge'.

Trans-boundary Issues

In 1997, the European Council adopted a Directive (97/11/EC) amending the original 1985 EIA Directive, recognising the Espoo Convention relating to projects which have potentially significant trans-boundary effects, making it mandatory for MS to take trans-boundary effects into consideration during EIA processes. Despite this, it would appear that there is no standardised approach to dealing with trans-boundary issues, and MS which have experience with such projects (e.g. operations in a border area with effects on water or infrastructure such as pipelines or roads) have observed several shortcomings.

The trans-boundary nature of projects adds a certain degree of complexity to the EIA procedure, creating a number of delays. Difficulties can arise from different levels of interests between MS in promoting a project, which can result in significant delays.

Trans-boundary projects often require longer timescales to achieve an agreement on the scope of the EIA. This is likely to be exacerbated if the respective CAs are at different levels (national, regional, local). A lack of experience in dealing with trans-boundary issues, as well as other complexities such as the language barriers and lack of familiarity with different planning systems can all contribute to delays as well.

CONCLUSIONS AND RECOMMENDATIONS

Environmental Effectiveness of the EIA Regime

The general objective of the EIA Directive is clearly stated as being to:

‘Ensure that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.’

This is fully reflected in each MS following transposition. The main emphasis remains the prevention of negative environmental impacts. EIA also emphasises the identification of appropriate measures to mitigate impacts through the design of the scheme, and a means of giving the environment a higher standing and clearer position in the decision-making process when determining development consent.

EIA is given legal effect through the national planning regulations and is required for certain types of projects to gain development consent. The EIA informs the planning permission or some other permitting system. The key issue is that although in some MS (e.g. Poland) the EIA itself results in the approval or denial of an environmental permit, the EIA (or permit) is but one contribution to the decision to provide development consent. Thus EIA is itself not a decision – it provides information to a wider decision-making process which also takes account of other regulatory, economic and social impacts.

There is a general view from the breadth of stakeholders consulted in the national evaluations that the EIA has been a valuable tool in preventing harmful environmental impacts. It has clearly helped to increase the understanding of the significance of potential environmental impacts, as well as improving the awareness of the need for sustainable development, which has emerged more recently as an objective.

Developers have now been charged with a greater responsibility for offsetting development with sustainable measures and the amendment to the European EIA Directive to improve public participation in the process is likely to have contributed to this – greater involvement of consultees has often resulted in a wider range of useful mitigation measures.

Costs and Delays of the EIA Regime

The number of EIAs obviously influences the overall level of costs. Estimates from five of the six MS (there is no data for Poland) suggest that in the five MS, some 9,000 EIA, mostly in France, are undertaken each year. On a per capita basis, there are approximately 12 EIAs per million in the UK, Germany and Netherlands, twice that number in Spain and seven times that number in France. Data on trends in the number of EIAs suggests that there has been a significant rise over the last five years compared with periods in the 1990s, across the different MS. Whilst this may reflect changes in development activity (e.g. many windfarm proposals instead of fewer larger power plants), it would seem to be driven in larger part by a level of defensiveness by CAs driven by a mix of political and legal risks, as well as an increase in concern with environmental risks.

The costs of undertaking EIAs vary significantly depending on the size and complexity of the project and the nature of the location. No systematic data is available from monitoring. Best estimates from consultees in the different MS suggest that EIAs can cost as little as €10,000 for small projects to over €100,000 for the larger projects. For very major projects EIA costs to the developer can be over €0.5m. As a share of project costs, EIAs tend to range from an upper range of 1% for smaller projects down to 0.1% for larger projects. Around half the cost of an EIA comprises the costs of studies and preparing the EIS. These costs are to some extent fixed and accounts for the relatively higher costs for smaller projects. These indicative estimates are supported by data on exemplar projects examined in the MS studies.

The study has also considered the costs to small and medium sized enterprises (SMEs) by reference to the share of SME activity in economic sectors that are subject to EIAs, as reflected in the Annexes to the Directive (reproduced in Annex I and II of the Report). This provides a *prima facie* case for suggesting that SMEs are relatively unaffected by EIA activity. Moreover, some of the activities that give rise to EIA are undertaken by the public sector (e.g. road transport) and large utility organisations. However, to the extent that there is a positive correlation between small projects and SMEs then there may be a disproportionate effect on small firms; in which case there would be a case for requiring less onerous procedures for smaller projects.

EIA procedures typically run from between 6 to 12 months, with additional time for pre-application and screening activity, and time for decision-making. The extent to which this time represents a delay is difficult to establish given the requirement to know how long the authorisation procedure would take under alternative national regulations for assessments with no EIA. Experience in the Netherlands of similar types of projects that are subject to EIA and non-EIA procedures suggests that the formality of the EIA procedure, and especially the associated consultation activity, can add up to 6-8 weeks on a procedure of around 6-8 months, or approximately 20% - 25%, to the time otherwise taken, at least for the class of projects where the need for EIA is sometimes not required. However, this is not always the case, and the experience in the Netherlands cautions against over-emphasising the extent of delays because many of the requirements to provide information are the same irrespective of the EIA procedure.

Barriers and Best Practice

As noted above there are a number of factors that have a general influence on the cost-effectiveness of the regime. These factors act as a barrier to the cost-effective operation of the EIA regime and would need to be addressed in the round alongside any particular measures for improved codification and simplification.

These barriers include:

- Poor levels of competence among CAs, statutory consultees and environmental consultants; leading to overly-defensive screening and scoping opinions, poorly informed and managed consultation processes, and poor quality EIS requiring revision and resubmission;
- Limited capacity of CA to provide adequate screening and scoping opinions leading to delays and over-reliance on thresholds, with limited use of exemptions or case by case review;

- ‘Gold-plating’ through transposition of Annexes and thresholds; leading to higher numbers of EIA than necessary;
- Risks of double assessment under IPPC and Habitats Directives; leading to increased costs and delays;
- Limited scope to add value to project design for smaller projects where there is limited opportunity for alternative project/site options to be considered.

The scope to improve the regulation would need to take these factors into account. Most of these can be addressed through changes to the procedures and operation of the regime. However, in the case of competence and capacity there is a more general requirement for improved training. Removal of ‘gold-plating’ might release resources for training programmes and release capacity.

The scope to improve the regulation also depends in part upon the identification of good practice, especially from those MS with a long history of operating the regime. The studies have identified a number of features of operation that, if replicated, would have the potential to improve the regulation. These practices are:

- Integration of EIA directly into decision-making, as one of a range of factors to consider; rather than separate decision-making on the EIA as a prelude to development consent;
- Integration of the ‘appropriate assessment’ required by the Habitats Directive through scoping decisions;
- Increased use of pre-application discussions between developer and the CA, and with other consultees to establish the broad parameters of an acceptable project;
- Introduction of scoping as a mandatory activity, so as to ensure a focus on the key issues and clarity for all consultees. Scoping opinions might be binding, reducing risks of continual changes and extensions to scope, although leaving some flexibility;
- Use of time limits on periods for screening and scoping and on consultation, precluding statements and objections after deadlines (but with some flexibility to deal with any major issues raised);
- Use of simplified procedures for smaller projects with less significant impacts;
- Improved availability and access to environmental data and maps;
- Use of independent quality control over EIA procedures and EIS; and
- Use of MS guidance materials

In addition programmes of training for CA staff, statutory consultees and environmental consultants, supported by appropriate qualifications, would have a beneficial effect on the efficiency of the regime.

Scope for Improvement and Simplification

The study has identified scope for improvement in the regulation. This builds on the analysis of barriers and best practice as identified in the six MS and especially those with a long experience of operating the EIA regime.

The scope for simplification depends in part on the nature of policy response by the EC, ranging from a ‘hard’ regulatory response, setting out required changes through a new Regulation; to a less directional response based on changes in the EIA Directive (including changes in the actual text, Annexes and/or Guidance); through to a ‘softer’ response based on advice to MS to consider possible suggestions.

Some ideas are mutually exclusive, others might complement one another. The ideas have resulted from the assessment, but it is beyond the scope of this study to formally evaluate them and their potential impacts on the cost-effectiveness of the EIA regime. We would however emphasise:

- The general importance of improved training and increased competence
- The need for improvements in screening and scoping
- The need to tighten procedures and to consider greater use of timetables and the introduction of simplified procedures for smaller projects with less significant impacts
- The possibility of refocusing on the EU added value of the Directive as a means of improving overall efficiency.

Recommendations

In summary, the principal problems, broadly in the order of significance as identified by industry stakeholders, with the EIA regime, identified from the six selected Member States are:

- Lack of timetables with various EIA stages (screening, scoping, consultation) leading to delays
- Project size thresholds set too low (leading to unnecessary EIAs)
- Too onerous a level of consultation required, given other consultation requirements, especially for smaller projects
- Lack of skills / resources in the Competent Authority (leading to e.g. delays, poor screening / scoping decisions)
- Overlaps in assessment requirements between the EIA and other environmental directives (e.g. IPPC, Habitats) leading to delays from double assessments
- Lack of adequate screening of projects to determine the risk of significant impacts, especially for smaller projects
- Lack of project/site alternatives leading to reduced added value from EIA

In response to these problems we suggest a number of recommendations. These are elaborated in more detail in Section 7.0 (Table 7.4), together with further ideas. The most important suggestions comprise the following:

Examine the Use of More Formal Timetables – The risk of delays can be managed by adopting more formal and transparent timetables for the various steps in the EIA procedure. The suggestion would have the benefit of encouraging MS to review the actual time taken and to formalise an accepted level of time, taking into account the capacity and resources of the competent authority. Specifying the timetable should reflect good practice in the use of informal pre-application discussion as a means of speeding up the time taken and improving application documentation (further speeding up the process). Timetables should be set by reference to good practice (rather than some average), with clear criteria for which a suspension of a timetable might be required. Different timetables might be adopted for different class or size of project, or could be determined on a case by case basis at the time of project application.

Raise Project Size Thresholds – As well as improving procedures for smaller projects there is a case, at least where development consent procedures are sufficiently robust, to reduce the risk of disproportionate costs by reducing the number of smaller projects that require an EIA. This can be done by raising the size thresholds above which an EIA is required (Annex I) or where screening for an EIA is required (Annex II). Under proposals in the Netherlands, this is expected to reduce the number of EIA by two thirds. However, it is worth emphasising that in the Netherlands, development consent procedures are considered sufficiently robust to ensure adequate review of the environmental impacts without recourse to a formal EIA. This suggestion would also have the effect of reducing the significance of screening (and associated procedural responses) as a means of avoiding unnecessary EIAs and increasing the focus and emphasis on those projects that have potentially significant environmental impacts and/or on projects that are not ‘standard’ and which would pose challenges for the development consent procedure. This suggestion is also probably the most significant response to ‘gold-plating’ due to changes introduced by MS during the transposition of Annexes I and II.

Introduce Simplified Procedures for Smaller Projects – Smaller projects face a higher risk that the costs and delays are disproportionate to the benefits of EIA. This risk may be exacerbated if there is a positive correlation between smaller projects and development projects proposed by SMEs. There is therefore a case for requiring less onerous procedures for smaller projects. Where smaller projects have potentially less significant impacts but which require assessment, simplified procedures should be considered, with particular reference to experience in Germany, that have sought to increase discretion of the CA over procedures and especially in relation to consultation, and France (e.g. ‘notice d’impacts’).

Expand and Improve Training for EIA with Increased Quality Control – The underlying efficiency of the regime relies heavily on the competence of the CA and of consultants. The lack of skills and sub-standard practices would undermine other attempts at improvement and is therefore a necessary, if not sufficient, condition for improved regulation. The practice in the Netherlands of a quality assurance review of all EIS by an independent group of experts is worth highlighting.

Review the Scope to Reduce the Risk of Delay from Overlaps and Double Assessment – The risk of delays due to double assessment because a project has to comply with environmental directives other than the EIA, has been found to be especially high in the case of the IPPC and the Habitats Directives. Solutions to this problem have been difficult to formulate, despite examination by MS. In the case of the need for appropriate assessments under the Habitats Directive, scoping agreements

provide a means to integrate this within the EIA. In the case of IPPC, no real solution has been identified. This is the area most in need of subsequent review because of the difficulties caused; we suggest that the problem is the subject of a particular review.

Improve Screening of Projects to Identify the Need for EIA – Some of the suggestions above (eg in relation to raising thresholds and simplifying processes) should help to reduce the risk of disproportionate costs for smaller projects. Another suggestion is to improve the quality of the screening, such that rather than tend to provide a positive screening determination where there is some doubt over the significance of potential impacts, that more robust processes are used to ensure that there is sufficient evidence on which to justify the positive determination (and the information contained with a positive determination). The FONSI test used in the USA and the exemption used in the UK with regards the oil and gas industry (PO15) provide possible ways to improve screening.

Other suggestions include the following:

Encourage National / Regional Plans for Key Infrastructure / Sectors – The costs of EIA as a share of project costs fall with the size of the project. However, overall consent times are long, and EIA adds to the complexity; although there is also added value from EIA as a means of identifying alternatives and managing the consent process. There appears, from German and UK experience (and early discussion of regional sector plans in Spain), value in ensuring national (and possibly regional) plans for key infrastructure that address the overall consenting process and timetable, and address issues that would otherwise be a matter for individual EIAs. This seems more likely to improve efficiency of EIA regulation for large projects than changes in the EIA Directive alone. This would seem to be supported by the feedback on DG Transport and Energy (DG TREN) proposals that have welcomed the emphasis on improved energy infrastructure planning.

Transfer of Best Practice in Other MS – The study has identified a number of features that might be considered to represent at least good practice, and are supported in the main from the feedback from consultees in the study.

1 INTRODUCTION

1.1 The Purpose of the Study

This Final Report presents the results of the study to **identify and analyse potential burdens on enterprises and taxpayers created by the regime of directives on environmental impact assessment (EIA)**.

The specific objectives of the study were to:

1. Identify, test and apply methodologies for evaluating the effectiveness, impacts and costs and benefits of the directives;
2. Quantify the financial costs incurred by EIA procedures, on enterprises and on the public administrations;
3. Identify the length of delays caused by the procedures;
4. Identify best practices to reduce the duration of the delays and streamline procedures;
5. Identify possible ways to reduce the costs imposed on enterprises and taxpayers, whilst at the same time, not compromising the objectives of the EIA;
6. If deemed necessary, provide recommendations to contribute to the re-examination of the directives.

The evaluation has therefore examined the direct and indirect costs and benefits of the EIA regime. The evaluation has compiled, assessed and presented information on the strengths and weaknesses of the legislation in terms of its achievement of its stated goals and the feasible potential for improvement of its provisions. The study has identified best practices to reduce delays and to reduce the complexity of procedures.

The evaluation is intended to inform responses to the challenge of improving the efficiency of business regulation, as part of the European Commission's Better Regulation agenda.

The evaluation will also inform the next five year report on the application of the EIA Directive due in 2008.

1.2 The Evaluation Questions

The specific evaluation questions addressed through the evaluation of the EIA Directives and related regulation are shown in Table 1.1, based on those provided in the Terms of Reference but elaborated further.

Table 1.1 – Specific Evaluation Questions for the Study

Evaluation Criteria	Evaluation Questions
Effectiveness	<ol style="list-style-type: none"> 1. How do other related directives (IPPC, Seveso, Habitats, SEA) affect the EIA regime? How do the procedures of other directives interact with the EIA procedures? 2. To what extent has the EIA regime (including related provisions of other Directives) prevented harmful environmental impacts and/or promoted steps to minimise harmful impacts? 3. Which elements of the regime have been the most significant / effective in securing environmental benefits? How are these elements influenced by links with other related directives? 4. What are the barriers to effective application of the directives, if any? How could any such barriers be overcome?
Costs and Impacts	<ol style="list-style-type: none"> 1. What are the delays and costs to developers / enterprise of complying with the EIA regime as transposed in the MS? What are the costs to the MS and taxpayers of implementing / enforcing the EIA regime as transposed? 2. How do SMEs cope with the burden of the EIA regime? And what are the negative and positive impacts for SMEs? 3. Which elements of the regime have the greatest influence on the level of costs incurred? Are these the elements most persuasive in securing environmental benefits? 4. Do stakeholders consider the environmental (and other) gains offset the burden of operating within the regime? Are the costs of the EIA regime proportionate to the benefits for SMEs?
Best Practice	<ol style="list-style-type: none"> 1. To what extent could measures be taken to improve the procedures of the EIA regime without compromising its effectiveness and what measures would these be? 2. Is it possible to find more efficient ways to achieve the current objectives of the Directive? 3. Is there good practice that supports the case for these changes?

1.3 Context of the Study

In its March 2005 Communication on “Better Regulation for Growth and Jobs”, the Commission identified simplification as a priority action for the EU.¹ The overall objective is to contribute to a European regulatory framework that fulfils the highest standards of law-making and delivers the policy objectives of the Community in the simplest and most cost-effective way. Actions to this end are embedded into the revised Lisbon strategy for achieving growth and jobs in Europe and focus on those elements of the *acquis* that concern the competitiveness of enterprises in the EU.² The Commission has identified an initial batch of legislation to be simplified and has set out a corresponding rolling programme, specifying those pieces of legislation that the Commission envisages reviewing in the next three years. It will be systematically reviewed and updated.³

¹ See COM(2005)97

² COM(2005) 24

³ Commission Communication “A Strategy for the simplification of the regulatory environment», COM (2005) 535 of 25.10.2005. An updated rolling programme will be presented in the context of CLWP 2007(24 October 2006).

During the extensive consultations launched for the identification of the rolling programme, stakeholders identified the Directive 85/337/EEC and its consequent amendments as impediments in terms of procedures and delays for investment projects in Europe. Although the Directive and its amendments have not been included in the initial rolling programme, the Commission would like to fully understand the burdens created for investments, enterprises and public administrations of the Directive. It is also imperative that under the Better Regulation agenda it should be established whether the directives are suitable for a possible codification and possibly simplification.

The Commission's Better Regulation agenda has been given increased importance and prominence following the review of progress of the Lisbon Strategy which identified that the EU and its Member States *"have clearly themselves contributed to slow progress by failing to act with sufficient urgency... the disappointing delivery is due to an overloaded agenda, poor co-ordination and conflicting priorities"*.⁴ In this context it is important that opportunities are found for improving the efficiency of business regulation.

Impact assessments, as a rule, are now applied to all legislative and policy-defining proposals plans in the Commission's annual Work Programme. However, this was not the case when the EIA Directive and Amendments were being adopted. It is therefore appropriate to evaluate the accumulated effect of the environmental impact assessment directives at this stage, several years after the adoption of the initial Directive, with a view to seeing whether there has been a proportionate response to the problem which the Directive was designed to address.

Furthermore, the principles of Better Regulation also dictate that interventions are regularly assessed to determine their 'real world impacts'. This has led to greater expectations in terms of "ex-post" evaluation of legislation. Although the Commission has traditionally focused evaluations on expenditure programmes, it has been recognised that legislation and other non-spending activities may have an even wider impact on the Community and therefore there has recently been a significant increase in the evaluation of these activities.

Finally, in the First Report of the High Level Group on Competitiveness, Energy and the Environment, it has been recommended that Member States should shorten the time needed to authorise investments in electricity generation capacity, gas import infrastructure and internal interconnections without compromising overall environmental requirements and public participation procedures. This has particular significance for the Priority Interconnection Plan (PIP). It is therefore important that the EIA procedures and practices are evaluated to identify opportunities to simplify the regime which may speed up the authorisation for development of appropriate infrastructures. The requirements of the EIA also have potential to have a significant impact on manufacturing industries when new plants are being planned and built.

1.4 Structure of the Report

This report is structured as follows:

⁴ 'Facing the Challenge, The Lisbon strategy for growth and employment' Report from the High Level group chaired by Wim Kok, November 2004.

- Section 2 summarises the overall research approach and methodology;
- Section 3 provides a synthesis of the purpose and features of the EIA regime;
- Section 4 considers the environmental effectiveness of the EIA regime;
- Section 5 presents available information on the costs and delays associated with EIA;
- Section 6 describes the barriers to improvement in the regime, and examples of best practice that could form the basis of improvements;
- Section 7 presents ideas for improvement in the regulation through codification and simplification;
- Section 8 provides a summary of the main conclusions and recommendations.

Annexes provide further background information and detail.

2 RESEARCH METHODOLOGY

2.1 Methodological Approach to the Impact Assessment

This section provides a detailed description of the research methodology used to achieve the objectives of the evaluation as described in the previous section. The approach combines quantitative and qualitative data produced from detailed MS studies in representative Member States (MS) who have historical and practical knowledge of the implementation of the EIA regime.

The method of approach was organised around the following main tasks:

- Task 1 - Development of the methodological approach to the evaluation.
- Task 2 - Detailed examination of selected MS using specific case studies.
- Task 3 - Analysis of MS cases.
- Task 4 – Lessons and Recommendations regarding the application of the EIA regime.

In outline, the approach was intended to establish a good understanding of how the EIA regime should work in principle, based on the provisions of the relevant directives – and describing the approach in the Netherlands as an indication of the ‘model’ regime. The work then examined how the regime operated in practice in selected MS following transposition. The effects of the practical operation of the regime in each MS were then studied through specific case studies of EIA implementation for particular exemplar development projects. The lessons from these case studies, and the wider MS experience, inform conclusions and recommendations.

The overall approach is summarised in Table 2.1. This picks up the evaluation questions as described in Section 1 (Table 1.1) and describes the proposed indicators and analysis.

Table 2.1: Overview of the Methodological Approach

Evaluation Criteria	Evaluation questions	Indicators and Analysis
Effectiveness	<p>1. How do other related directives (IPPC, Seveso, Habitats, SEA) affect the EIA regime? How do the procedures of other directives interact with the EIA procedures?</p> <p>2. To what extent has the EIA regime (including related provisions of other Directives) prevented harmful environmental impacts and/or promoted steps to minimise harmful impacts?</p> <p>3. Which elements of the regime have been the most significant / effective in securing environmental</p>	<p>Reviews of policies and guidance. Effects of MS transpositions. Details of provisions when projects need to comply with other directives. Numbers of projects subject to regulation under one or more of relevant Directives</p> <p>Review of practice / literature – review of the use of alternative options in assessment procedures. Numbers / types of projects subject to assessment. CA reflections</p> <p>Review of practice; and the specific contribution of particular provisions. CA</p>

	<p>benefits? How are these elements influenced by links with other related directives?</p> <p>4. What are the barriers to effective application of the directives, if any? How could any such barriers be overcome?</p>	<p>comment and advice</p> <p>MS transposition, Review of guidance. Review of practice. Illustrations and examples from project case studies</p>
Costs and Impacts	<p>1. What are the delays and costs to developers / enterprise of complying with the EIA regime as transposed in the MS? What are the costs to the MS and taxpayers of implementing / enforcing the EIA regime as transposed?</p> <p>2. How do SMEs cope with the burden of the EIA regime? And what are the negative and positive impacts for SMEs?</p> <p>3. Which elements of the regime have the greatest influence on the level of costs incurred? Are these the elements most persuasive in securing environmental benefits?</p> <p>4. Do stakeholders consider the environmental (and other) gains offset the burden of operating within the regime? Are the costs of the EIA regime proportionate to the benefits for SMEs?</p>	<p>Identify significance of SMEs involved in EIA from MS cases, as part of overall MS descriptions of the types of project and related developers / sectors</p> <p>Identify direct costs incurred (eg purchase of specialist advice) and attributable specifically to EIA or related, provisions</p> <p>Identify indirect costs (mainly through delay). Reduced rates of return? Also costs of investment foregone because of the anticipated delays</p> <p>Identify which provisions create costs. Care in distinguishing the costs and delays from gaining planning approval. Compare like for like developments with and without EIA?</p> <p>Identify scope for cost savings and implications for operation of EIA.</p> <p>Identify perceived proportionality of environmental benefits and business costs by type of stakeholder</p> <p>Examples of environmental benefits</p>
Best Practice	<p>1. To what extent could measures be taken to improve the procedures of the EIA regime without compromising its effectiveness, and what measures would these be?</p> <p>2. Is it possible to find more efficient ways to achieve the current objectives of the Directive?</p> <p>3. Is there good practice that supports the case for these changes?</p>	<p>Review of practice Issues of allowing for overlap with other Directives</p> <p>Distinguish between procedural changes (eg changes in annexes / thresholds) or substantive changes – eg leaving provisions to be met by other control regimes; use of ‘umbrella’ systems</p> <p>MS experience and suggestions</p>

2.2 Studies of Selected Member States

Because the influence of the EIA regime depends upon how MS choose to transpose the EIA directives and related directives, the work of the study was largely undertaken at MS level. In order to understand the implications of the EIA regime it was important to examine the impacts in MS where the EIA regime is fully developed. This suggested a focus on MS that comprised the original EU15. However, some scope to look at the transposition in new MS would also have potential to inform ideas for simplification.

Moreover, since the costs and benefits at the EU scale relate to the operation of the regime in the larger MS, the selection sought to include the larger MS. The selection was also informed by an interest in the operation of the regime in MS with and without a strong regional tier of legislation. The agreed selection of MS that best met these criteria were France, Germany, Netherlands, Poland, Spain and the UK.

In each selected MS, the work has involved discussions with the competent national (and, where relevant, regional and local) officials charged with the implementing the EIA regime as transposed. These discussions have also involved selected representatives from industry, in particular in the energy and manufacturing industries and other stakeholders (such as relevant NGOs or professional bodies) relevant to the discussion. The intention was to interview up to 10 stakeholders in total. However, to better understand the nature of problems and discuss possible suggestions for improvement, additional interviews and consultation were carried out with industry stakeholders.

2.2.1 MS Review Checklist

An interview checklist was prepared as the basis of the MS interviews. The checklist (Annex A) broadly considered:

- The national (and where relevant the regional) EIA regime, highlighting the results of the transposition in terms of those elements identified as important in determining subsequent impacts (eg Annex 1 definition, provisions for scoping) and identifying implications for the links between related directives;
- The MS experience of implementing the regime in the last 5 years, identifying major problems with the regime as identified through cases requiring national interventions, noting any significant changes in the regime and the reasons for these changes, and describing good practice examples of implementation as identified by MS officials and experts;
- The extent to which an element of 'gold plating' has been introduced, such that provisions significantly extend the specific provisions of the EIA directives (as amended);
- The management of trans-boundary projects and the degree of acceptability by one MS of another MS's EIS (using cases taken from the Priority Interconnection Plan (PIP) as relevant examples);
- The costs of supervising and monitoring the implementation of the regime, and any future plans for any further changes in the regime;
- The perceived costs to operators and developers of complying with the regime, and noting particular sectors or types of enterprise which had experienced particular difficulties or which had experienced few difficulties;
- The complexities associated with the regime as experienced by developers / operators, and the extent to which these are the result of the various amendments, case law and links to related directives;
- Up to 10 individual development projects that might form the basis of a more detailed assessment, from which 2-3 would be selected;
- Suggestions for the improvement of the regime, with particular reference to improving the cost-effectiveness of the system.

In addition, further consultation was undertaken with industry associations on the nature of problems identified from the work (Annex B).

2.3 The Use of Project Level Case Studies

The discussions with MS national authorities also sought to identify a sample of approximately 10 possible development projects as the basis of selecting 2-3 case studies of the specific application of the regime in which to examine the evaluation questions in more detail. Selection was based on the following criteria:

- Cases involved enterprises that were able and willing to participate in the study – and in particular to provide estimates of the costs and impacts of activities undertaken to comply with the EIA regime;
- Cases were typical of the scale and type of projects subject to the regime in the MS – and should include infrastructure (and where possible energy infrastructure) and development projects;
- Cases were likely to be able to demonstrate the consequences of the complexities / simplifications of the regime arising as a result of the amendments, case law and implementation of related directives. This should include one or two cases featuring trans-boundary projects;
- Cases were likely to provide lessons on how to simplify the regime without compromising environmental protection.

2.3.1 Project Checklist

To standardise the review of the selected projects a checklist of questions (Annex C) was prepared, to allow an analysis of:

- The effectiveness of the regime in terms of the environmental harm avoided as a result of compliance – supported by some description of the changes in project design as a result of the EIA;
- The costs incurred by the enterprise in terms of the direct costs of compliance (e.g. commissioning of EIA work) and indirect costs associated with any significant changes and/or delays in scheme / project design;
- The costs incurred by the planning / enforcement agencies in monitoring and confirming compliance and associated advice;
- The elements of the EIA which were most significant in shaping the nature of compliance and the related costs; and the extent to which the complexities as identified in activity 2.1 are responsible for the costs and delays;
- The scope to simplify the regulation and consequent compliance requirements, and the possible savings in costs and delays;
- Lessons identified which could feed into possible conclusions and recommendations for simplification.

2.4 EIA and Trans-boundary Projects – The Case of Energy Infrastructure and Priority Interconnection Plans

In the light of a growing need for security of energy supply, the European Union has formulated a series of policies aimed at supporting the development of an effective energy infrastructure that achieves objectives of both sustainability and competitiveness. As part of the Strategic European Energy Review (SEER), the

blueprint of a new European energy policy, the European Council of March 2006 called for the adoption of a Priority Interconnection Plan (PIP).

Interconnectors facilitate the inter-regional and cross-border transport of power and energy and are a pre-requisite for a functioning internal market. Although it was agreed as far back as 2002 in the Barcelona European Council to increase minimum interconnection levels between Member States to 10%, a significant number of Member States have still not achieved this target.

The PIP illustrates the current state of completion of the 42 high-priority “projects of European interest” (infrastructure projects)⁵ for gas and electricity, and accordingly proposes specific measures for the progressive completion of the critical projects which are currently experiencing delays. The plan also proposes measures to facilitate a stable investment framework.

A major concern is that such projects may be unduly delayed with deferment of internal market benefits because of applying EIA and related requirements to such trans-boundary projects. DG TREN has identified a number of proposals that might aid the speedier completion of such requirements and, through the Steering Group⁶, asked that such proposals be discussed as part of the consultations within the selected MS. We summarise conclusions as part of the overall assessment.

2.5 Synthesis and Review

To inform the development of conclusions and recommendations, initial findings and possible steps for simplification were drafted and discussed with the Steering Group. The analysis of the burdens on industry was also summarised, presented and discussed to industry stakeholders at an informal workshop of EU level industry associations held in October 2007.

⁵ Although not considered ‘projects of European interest’, Liquefied Natural Gas (LNG) terminals are also examined

⁶ The Steering Group consisted of individuals from DG Environment, DG Enterprise and DG Transport and Energy

3 THE EIA DIRECTIVES, AMENDMENTS AND RELATED REGULATION – A SYNTHESIS OF THE EIA REGIME

3.1 Introduction

This section summarises the results of a desk review of the EIA regime (briefly described in Annex D) to synthesise the essential provisions of the legislation and the nature of these provisions when taking into account possible linkages to related directives. It considers the transposition in one Member State (Netherlands) to illustrate the scope for a country to interpret the requirements on developers / operators.

The synthesis aims to highlight the main features of the EIA regime and links. In particular it indicates the:

- Intervention logic and objectives
- Main requirements of the EIA including amendments
- Important examples of case law influencing the EIA regime
- Nature and relevance of links with related directives
- Existing critique of the Directive
- Summary of the transposition of the Directive in the Netherlands, to provide a description of the ‘model operation’ of the regime.

The synthesis is based on an analysis of the Directive and its amendments, case law and existing data and documents, see Reference List, plus an initial review of the EIA system in the Netherlands.

3.2 Intervention Logic of the EIA Directive

The basic intervention logic of the EIA Directive is summarised below (Table 3.1):

Aspects of the intervention logic	Elaboration
<i>1. The problem that the Directive was designed to address</i>	
▪ Clarity	The problem was clear – development was being consented with unacceptable environmental impacts. National responses were unsystematic across MS.
▪ Nature	The Directive was introduced to address the need to take effects on the environment into account at the earliest possible stage in all technical planning and decision-making processes, based on an understanding that the best environmental policy lies in preventing the creation of pollution at source, rather than subsequently attempting to counteract effects.
▪ Magnitude	No quantitative assessment of the scale of the problem across MS prior to the Directive has been identified
▪ Trends	Rates of development were accelerating across MS, exacerbating the problem
<i>2. Treaty and the legal base to act in the area</i>	

Table 3.1: Intervention Logic for the EIA Directive

Aspects of the intervention logic	Elaboration
<ul style="list-style-type: none"> ▪ Treaties 	<p>Disparities between the laws in force in various Member States regarding the assessment of the environmental effects of public and private projects may create unfavourable competitive conditions, affecting the functioning of the Common Market. It is therefore necessary to approximate national laws in accordance with Article 100 of the Treaty establishing the European Community.</p>
<ul style="list-style-type: none"> ▪ Restrictions and limitations to EU level action 	<ul style="list-style-type: none"> ▪ Member States given considerable discretion on the transposition of the Directive into national legislation ▪ Member States are able to exempt specific projects from the assessment procedures, subject to appropriate information being supplied to the Commission. ▪ Member States are also able to require assessment of projects which appear to have no significant effects on the environment ▪ Directive provisions must not affect the obligation of competent authorities to respect the limitations imposed by national authorities and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest. In the case of trans-boundary effects (Article 7), the transmission of information to another Member State and reception of information by another Member State is subject to limitations in force in the Member State where the project is proposed.
<p><i>3. The objectives of the Directive</i></p>	
<ul style="list-style-type: none"> ▪ General objectives 	<p>The EIA procedure ensures that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards</p>
<ul style="list-style-type: none"> ▪ Specific objectives 	<p>These include:</p> <ul style="list-style-type: none"> ▪ development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; ▪ assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question; ▪ the principles of the assessment of environmental effects should be harmonized, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment; ▪ projects belonging to certain types that have significant effects on the environment must as a rule be subject to systematic assessment;
<ul style="list-style-type: none"> ▪ Targets, benchmarks or milestones 	<p>None given</p>
<p><i>4. Key aspects of the intervention process of the Directive</i></p>	
<ul style="list-style-type: none"> ▪ The main components of the Directive 	<p>A relatively wide-ranging piece of legislation with a broad definition of the environment based on a set of Annexes:</p> <ul style="list-style-type: none"> ▪ Annex I – a comprehensive list of projects which require a compulsory EIA to be undertaken ▪ Annex II – a list of projects which may require an EIA; the decision on whether an EIA is needed lies with the Member State, which bases decision on case-by-case examinations, or sets thresholds or criteria, taking into account relevant selection criteria as set out in Annex III ▪ Annex III – a list of selection criteria to be taken into account by the Member State when deciding which Annex II require an EIA ▪ Annex IV – a specific set of information required from developers for those Annex I and II projects which require an EIA
<ul style="list-style-type: none"> ▪ The main delivery mechanisms and responsibilities to 	<p>EU level:</p> <ul style="list-style-type: none"> ▪ Every 5 years, the Commission reports to the European Parliament and the Council on the application and effectiveness of Directive 85/337/EEC (as amended). The next report is due in 2008.

Table 3.1: Intervention Logic for the EIA Directive

Aspects of the intervention logic	Elaboration
implement the Directive	<p>National level:</p> <ul style="list-style-type: none"> ▪ EIA can be integrated into existing procedures for development consent to projects, or may be integrated into other procedures, or procedures may be established to comply with Directive aims ▪ Must ensure that developers supply appropriate information for projects requiring EIA ▪ Must ensure that authorities with relevant information make it available to developer
<ul style="list-style-type: none"> ▪ The involvement of stakeholders / third parties 	<p>Authorities concerned by the project in question must be given the opportunity to express their opinion on the information supplied by the developer and on the request for development consent. Member States designate which authorities are to be consulted, either in general terms or on a case-by-case basis.</p> <p>Any request for development consent and information gathered must be made available to the public within reasonable time to allow the public concerned to give the opportunity to express their opinion before development consent is granted.</p> <p>Such information and consultation includes defining who the public concerned are, places where information can be consulted, the way in which the public are consulted, the manner of consultation and defining the appropriate time limits for various stages of the procedure.</p>
<ul style="list-style-type: none"> ▪ The effects anticipated 	<p>More rigorous assessment of the environmental effects of developmental projects, to ensure that those with unacceptable environmental impacts are not undertaken.</p>
<ul style="list-style-type: none"> ▪ Mechanisms for measuring effects 	<p>Regular (5 year) monitoring report by the Commission, incorporating information supplied by MS</p>
<ul style="list-style-type: none"> ▪ Impacts anticipated 	<p>Avoidance of projects with unacceptable environmental costs, development consent for projects that have effectively reduced or removed potential adverse effects to acceptable levels</p>
<ul style="list-style-type: none"> ▪ Learning processes 	<p>The Directive has been amended twice:</p> <p>In 1997 (97/11/EC), the EIA Directive was amended to take greater consideration of trans-boundary effects, recognising the Espoo Convention relating to projects which have potentially significant trans-boundary effects; a much wider range of development was brought under the EIA regime. In 2003 (2003/35/EC), the EIA Directive was amended to introduce additional obligations with regard to public participation and access to justice, in line with the Aarhus Convention.</p>
<ul style="list-style-type: none"> ▪ Complementarity with other EU instruments 	<p>Wide ranging Directive, has potential links / overlaps with a range of other EU environmental directives.</p>

3.3 Objective and Purpose of the EIA Regime

The EIA Directive was introduced to address the need to take effects on the environment into account at the earliest possible stage in all technical planning and decision-making processes, based on an understanding that the best environmental policy lies in preventing the creation of pollution and other adverse environmental effects at source, rather than subsequently attempting to counteract effects.

The EIA Directive, as amended, provides for procedures to ensure that the environmental consequences of development projects are identified and assessed before authorisation for development is given. The public can give its opinion and the results are taken into account in the authorisation procedure of the project.

There are three main purposes of EIA:

- 1. To aid decision-making** - EIA was first established as a response to increasing concerns regarding the environmental effects of major development projects (IEMA 2004). The objective of EIA is to provide decision-makers with a focused evaluation of the likely environmental consequences of sanctioning a proposed development action, before a decision is taken and at a time where it can actually affect the outcome (Glasson et al 1999).
- 2. To aid the developer and developer process** - Although EIA is undoubtedly often seen as a time-consuming and expensive hurdle, EIA can be a great benefit to developers. If the process is fully integrated into the project design cycle, it can enable developers to identify environmental issues at an early stage, allowing them to redesign to minimise or eliminate the adverse impacts on the environment before substantial investment is made that might otherwise be lost if environmental costs are too high (Glasson et al 1999).
- 3. To support the internal market** – EIA procedures provide some measure of harmonisation of national procedures, thereby avoiding unfavourable competitive conditions. Annex I of the Directive provides for a degree of harmonisation by indicating the projects that should be subject to EIA across the EU

3.4 Amendments to the EIA Directive

There have been two amendments to the EIA Directive since its introduction in 1985:

- Council Directive 97/71/EC – as well as reinforcing many of the original Directive's details, this amendment was primarily intended to take greater consideration of trans-boundary effects, as well as bringing a much wider range of development under the EIA regime
- Directive 2003/35/EC of the European Parliament and of the Council – the principal objective of this amendment was to introduce additional obligations to the Directive, with regards to public participation and access to justice, in line with the Aarhus Convention

3.4.1 Amendment 1 - 97/71/EC

The notable change was to Article 7 of the Directive, regarding trans-boundary effects, recognising the Espoo Convention⁷ relating to projects which have potentially significant trans-boundary effects. Where Member States are aware that a project within its boundaries is likely to have significant effects on the environment in another Member State, the Member State in whose territory the intended project was to be undertaken, is required to forward information to the other Member States as soon as possible, and at a time no later than when it is informing its own public.

In the event that an affected Member State wishes to take part in the EIA procedure, the Member State in whose territory the project is to be carried out must send the affected Member State the relevant information regarding the procedure, including the

⁷ Convention on Environmental Impact Assessment in a Trans-boundary Context, held in Espoo, Finland in 1991 (also known as the Espoo Convention)

request for development consent, as well as ensuring that authorities and the public concerned are given the opportunity (before development consent is granted for the project), to forward their opinion within a reasonable time on the information supplied to the competent authority.

The same Member State must then enter into consultations regarding the potential trans-boundary effects of the project and the measures which are envisaged to reduce or eliminate such effects, agreeing on a reasonable time frame for the duration of the consultation period.

3.4.2 Amendment 2 – 2003/35/EC

This amendment relates mainly to removing Member State discretion on whether information about other forms of assessment can be made available to the public. The insertion of Article 10a is central to this amendment, stating that Member States must ensure that members of the public concerned have access to a review procedure before a court of law or other independent and impartial body to challenge the legality of decisions, acts or omissions subject to the public participation provisions of the Directive.

According to Article 10a, Member States must also ensure that practical information is made available to the public on access to administrative and judicial review procedures.

3.5 Important Case Law Influencing the EIA Regime

In recent years, there have been a growing number of cases in the European Court of Justice (ECJ) that have looked at questions surrounding environmental impact assessments. Several lessons have been drawn from the outcomes of the cases.

Firstly, the Directive is **not** open to narrow interpretation. Cases such as the Grosskrotzenburg thermal power station (C-431/92), where the ECJ ruled that projects should be assessed irrespective of whether they were separate constructions, were added to a pre-existing construction, or even had close functional links with a pre-existing construction, implied that Member States must interpret the Directive as having wide scope and broad purpose. Secondly, case law has also shown that it must not be assumed that a project is excluded simply because it is not expressly mentioned in either the Directive or the Regulations. For example, although the Directive does not refer specifically to "housing development", it would be a mistake to consider that housing development does not fall within the ambit of "urban development projects".

The Kraaijeveld case (C-72/95) highlighted the problems of leaving as much discretion as possible to national administration in respect of the decision on whether or not to undertake an EIA. The discretion left to Member States on fixing thresholds and criteria has, in practice, led to significant variations among Member States in terms of the number of projects being made subject to EIA, and illustrates the need for an amendment to clarify the circumstances in which Annex II projects should be made subject to an EIA.

Other case law has had implications for the way in which Member States are able to integrate environmental assessment requirements into current planning procedure. For example, in a case against the United Kingdom (C-508/03), the ECJ ruled that the UK had failed to fully meet the obligations of the EIA, by allowing outline planning

permission to be accepted as consent for the purposes of the EIA Directive. This has meant that, for projects deemed to be subject to an EIA, Member States such as the UK have had to change their planning permission systems.

Important case law which has influenced the EIA regime is further described in Annex E.

3.6 Linkages to Other Directives

The EIA Directive makes reference to other legislation where applicable. This includes the following eleven Directives:

1	79/409/EEC	EU Birds Directive
2	92/43/EEC	Habitats Directive
3	96/61/EC	IPPC Directive
4	2001/42/EC	SEA Directive
5	75/442/EEC and 2006/12/EC	Waste Directive
6	91/689/EEC and 94/31/EC	Hazardous Waste Directive
7	91/271/EEC	Urban waste water treatment Directive
8	91/157/EEC	Disposal of spent batteries and accumulators Directive
9	91/676/EEC	Nitrates Directive
10	94/62/EC	Packaging and Packaging Waste Directive
11	96/62/EC	Air quality framework Directive

An analysis of the implications of some of these linkages is provided in each of the MS studies and included in the analysis in the following sections.

3.7 Existing Critique of EIA

The synthesis undertaken provides the basis for an overview of the main strengths, weakness, opportunities and threats for the EIA, building on already existing critiques. We also present some summary information on expected timescales, costs of compliance and the most important factors that affect time scales and costs.

The available SWOT appraisal is summarised in Table 3.1.

Table 3.1 Strengths, Weakness, Opportunities and Threats analysis for EIA

<p>Strengths</p> <ul style="list-style-type: none"> ▪ underpinned by EU legislation ▪ has not become over-technical ▪ capacity building: guidance documents; training programmes ▪ general acceptance of utility of EIA from most of the 'actors' in the process ▪ some widening (e.g. environmental appraisal of development plans) ▪ i.e. a fast 'learning curve' 	<p>Opportunities</p> <ul style="list-style-type: none"> ▪ environmental politics/pressures (e.g. Local Agenda 21) ▪ pressures from environmental liability/insurers ▪ amended EU Directive; new Directives ▪ MSs have to account for potentially adjusting the setting of criteria and/or thresholds due to national/regional frameworks.
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<ul style="list-style-type: none"> ▪ helps decision making by providing a transparent process and a better balance between environmental, social and economic factors. ▪ encourages better project planning. ▪ Introduces a cyclical learning process into a linear planning process ▪ A tool for achieving environmental sustainability 	<ul style="list-style-type: none"> ▪ more projects subject to EIA; more stages of project life cycle (e.g. planning, decommissioning) ▪ the presence of different screening systems enables the consideration of national specificities. ▪ widening scope - SIA, etc. ▪ extends into SEA as an integrated part of decision making.
<p>Weaknesses</p> <ul style="list-style-type: none"> ▪ multiple and fragmented legislation and links (e.g. to IPPC) ▪ Diverging approach across Europe ▪ No adjustment to technical developments regarding adapting certain thresholds and/or introduction new project types ▪ Uncertainty in interpreting certain definitions. ▪ Differences in implementation among MS may cause problems in the Trans-boundary context. ▪ little monitoring and auditing ▪ To a great extent a commitment dependent tool ▪ Susceptible to bias and personal interests (developer as well as pressure groups) bio-physical perspective on environment ▪ little consideration of cumulative impacts ▪ 100s of 'competent' authorities; weak quality control ▪ perceived problem of developer/consultant management of the EIA process 	<p>Threats</p> <ul style="list-style-type: none"> ▪ deregulation/privatisation (more one-offs; less continuity) ▪ fast-tracking / routinisation / cost reduction (more with less) ▪ continuing perceived bias; inequity of process ▪ perceived threats to / from competitive procedures (e.g. IPPC) ▪ encourages 'salami slicing' ▪ ECJ and national court rulings are often needed having time and cost implications. ▪ Lack of harmonization between screening systems among MSs leads to problems in the case of projects causing trans-national impacts ▪ Double assessments through obligations from other Directives and/or regulations ▪ New project types with likely significant effects will not be covered

Source: (IMP)³ 2006, Glasson (1999) and GHK

In June 2003, the EC published a detailed report on the state of implementation of the Directive (as amended) in the Member States. It documented a range of (apparently widespread) practical problems with implementation of the directive on the ground at local level. These problems are briefly described in Box 3.1 below:

Box 3.1: Overview of MS Implementation Issues

The main issues identified included:

- variation in the levels at which thresholds were set for the Annex II projects;
- lack of monitoring of EIA activity, together with an absence of data on EIA activity;
- the variety of approaches adopted to 'scoping';
- lack of formal review procedures to confirm that the information provided by the developer in the Environmental Impact Statement (EIS) actually complies with the specific requirements set down in the directive;

- inadequate attention to the consideration of ‘alternatives’ in a number of Member States;
- ongoing difficulties with ‘salami-slicing’ of projects;
- wide variations in the level of public involvement in the EIA procedure;
- lack of clarity in the relationship between EIA and other control systems such as Integrated Pollution Prevention and Control (IPPC) and the Habitats directive at national level;
- current EIA practice does not appear to pay sufficient attention to ‘risk’ and ‘health impacts’;
- inadequate mechanisms for ensuring ‘access to justice’; and
- the dearth of formal measures for facilitating control of the quality of EIA procedures.

Source: EC (2003), On the Application and Effectiveness of the EIA Directive (Directive 85/337/EEC as amended by Directive 97/11/EC) ‘How successful are the Member States in implementing the EIA Directive’.

3.8 Overview of the Transposition of the EIA Regime in the Selected Member States

The operation of the EIA regime has been examined in each of the six selected Member States. Table 3.2 provides an overview of the basic features of the national regimes. In broad terms there is a strong level of consistency in the basic transposition. However, there are a number of nationally distinctive features which are summarised in the Table.

Table 3.2: Overview of the Transposition of the EIA Directive in the Selected Member States

	France	Germany	Netherlands	Poland	Spain	UK
Screening	Screening done by competent authority (CA) Criteria for exemption from EIA is financial - the cost of development (threshold is €1.9m). Effectively no distinction between 'Annex I' and 'Annex II' projects	Screening done by CA based on information from developer	Screening done by CA based on information from developer Strict use of threshold values currently under review following ECJ rulings against similar practice in other MS	Screening done by CA based on information from developer	Screening done by CA based on information from developer.	Screening done by CA based on information from developer. Project thresholds to be removed soon to force a greater case by case review
Scoping	No formal requirement for scoping. Often little resources for CA to help developer at this stage.	Scoping report is mandatory and usually prepared by developer. Consists mainly of preparation of scoping documents, meetings, notification by CA on scope	Scoping is mandatory and more extensive than in most MS. 'Start-memo' must be written, explaining developer's intentions. Open for public consultation	Scoping usually conducted by the CA at the same time as the screening Can be problematic and time-consuming due to CA requesting too much in scope (to protect itself against appeal)	Scoping usually conducted by environmental authority Information provided at screening stage is also used at scoping stage	Scoping report usually prepared by developer. Although not mandatory, takes place in the majority of cases
EIS	Generally undertaken by developer in-house (especially on small projects). 1/3 – 1/2 of all EIAs (medium-sized projects) usually undertaken by external consultants	Generally undertaken by external consultant.	Generally undertaken by external consultant. Commission on EIA (NCEA) acts as watchdog to improve quality of EIS. NCEA-checked EISs considered more	Generally undertaken by external consultant.	Generally undertaken by external consultant.	Generally undertaken by external consultant.

	France	Germany	Netherlands	Poland	Spain	UK
			credible			
Overlaps with other Directives	<p>No significant overlap noted</p> <p>Habitats less extensive in scope than EIA – in developer's interest to engage in EIA and Habitats Assessment simultaneously – Habitats Assessment can form part of the EIS.</p> <p>SEA/EIA – little overlap due to way in which French system is set up because it specifies 2 different fields of application</p>	<p>Most overlap is with Habitats Directive</p> <p>Habitats viewed as most problematic Directive. Delays/additional resources sometimes necessary because need for Habitats assessment established after scoping phase of EIA completed.</p> <p>No significant issues of overlap between IPPC/EIA and SEA/EIA.</p>	<p>No significant overlap noted</p> <p>EIA and Habitats not linked (different permits, different competent authorities and laws in application) but Habitats assessment often included as part of EIS (as clear, separate document)</p> <p>IPPC – no single procedure for the two – considered separate from one another with no real overlap</p> <p>SEA – difficult to determine overlap especially because SEA only recently transposed. SEA designed and implemented in NL to supplement EIA procedure</p>	<p>No significant overlap noted</p> <p>CAs for IPPC/EIA different. Entirely separate procedures.</p> <p>Habitats assessment has been included in the EIA system, and is only conducted within EIA.</p> <p>Problematic as some projects which have a possible impact on Natura 2000 sites but which are not required to do an EIA would not be assessed under the Habitats Directive.; i.e. the project is not required to undertake the Appropriate Assessment</p>	<p>No significant overlap noted</p> <p>Overlaps with other Directives not considered an important issue in the MS. Focus on integrating SEA and EIA in same law to avoid overlaps.</p>	<p>Most overlap is with Habitats Directive.</p> <p>Currently, Habitats Assessment often submitted as separate part of the ES</p> <p>Some overlaps e.g. between list of prescribed activities and lists of development types in the EIA Regulations. Developer responsible for both the EIA and IPPC application and advised to do both applications in parallel. However, no single procedure possible because too much difference.</p>
Different practices / MS issues	<p>Unusually large number of EIAs undertaken per year – due to use of</p>	<p>Regional approaches taken to implementation</p> <p>EIS also occasionally</p>	<p>Strict use of thresholds has raised concern at EU level that site-specific issues which could</p>	<p>EIA often commissioned from cheap, inexperienced consultants who make multiple</p>	<p>Regional legislation can have more requirements than the original Directive itself. Regional</p>	<p>Strong national framework, but with the majority of EIAs the responsibility of local authorities as</p>

	France	Germany	Netherlands	Poland	Spain	UK
	<p>financial threshold.</p> <p>Some regional influences on implementation</p>	<p>used by environmental NGOs/ local authorities as means of obtaining data that would otherwise be unavailable.</p> <p>'Star' procedure allows LPAs to speed up consultation procedure by circulating application documents to other organisations in parallel and to set time limit for response</p>	<p>have potential environmental impact might be overlooked</p> <p>'Platinum-plating' (i.e. over-implementation of the Directive) considered to lead to unnecessarily high numbers of mandatory EIAs</p>	<p>changes to EIS – this has most impacts on SMEs with small total project investment cost.</p>	<p>variations in EIA procedures</p> <p>Access to relevant environmental information is poor and often of inferior quality.</p> <p>Developers do not allocate sufficient budgets to conducting EIA – leads to poor-quality EIAs being undertaken.</p>	<p>the CA</p> <p>EIS also occasionally used by environmental NGOs/ local authorities as means of obtaining data that would otherwise be unavailable.</p> <p>Also tendency for local authorities to request EIA even when seemingly unnecessary, due to lack in expertise/skills in decision-making process.</p>
Proportionality / added value	<p>EIA helped improve environmental awareness of general public and raised standards amongst developers in providing more detailed dossiers</p> <p>In favour of the 'proportionality principle', where scale of EIA activity and content should differ according to the significance of potential impacts</p>	<p>Balance of environmental effects against other effects e.g. economic benefits, needed as well. If law foresees no balancing of environmental effects against other benefits, a negative evaluation leads to refusal of authorisation</p>	<p>Requirements of Environmental Act mean CA already obliged to take environment into account when granting permits. Added value of EIA suggested to have reduced in recent years due to extension of Environmental Act</p>	<p>Cases of EIA preventing investment going ahead are rare but have occurred in the past (e.g. windfarm construction)</p>	<p>Costs of 'non-EIA' seen as far higher than undertaking one (i.e. costs of repairing environmental damage are high). EIA costs considered acceptable in view of the protection of environment provided</p>	<p>Environmental considerations already taken into account prior to introduction of Directive, but Directive has helped to make mitigation measures obligatory and for developers to take more responsibility for offsetting development with sustainable measures</p>

4 ENVIRONMENTAL EFFECTIVENESS OF THE EIA REGIME

4.1 Objectives and Rationale

The general objective of the EIA Directive⁸ is clearly stated as being to:

- Ensure that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.

Specific objectives include the following:

- development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out;
- assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;
- the principles of the assessment of environmental effects should be harmonized, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment; and
- projects belonging to certain types that have significant effects on the environment must as a rule be subject to systematic assessment.

These objectives are generally the same objectives as those held by each Member State. The main emphasis remains the prevention of negative environmental impacts. EIA also emphasises the identification of appropriate measures to mitigate impacts through the design of the scheme and is a means of giving the environment a higher standing and clearer position in the decision-making process when determining development consent. Other objectives include: early, comprehensive and systematic analysis and integrated assessment; greater transparency within the approval process; better environmental design; assistance to authorities and decision-makers and the provision of information to the public about the intended project, ensuring their participation in the decision-making process. A more recent objective mentioned by several MS has been to meet the needs of sustainable development.

4.2 The Relationship between EIA and the Planning Regime

The need to take environmental considerations into account when providing consent for development projects may have been formalised by the introduction of the European EIA Directive (85/337/EEC) in 1985, but it has long been identified as a requirement by several Member States, particularly the 'older' ones. Member States such as France and the Netherlands had already designed systems of environmental

⁸ See the intervention logic in Section 3

impact assessment as far back as the 1970s, with the Netherlands basing their original EIA system on one used in the United States.

Planning and environmental control systems for physical development in the older Member States were therefore already well-established and fairly long-standing by the time the Directive was introduced. The EIA Directive formalised these environmental controls, developed in the existing framework of planning and environmental law of Member States, in order to establish a standard approach and to ensure a 'level playing field' in the treatment of environmental impacts across the EU.

In most cases, EIA is given legal effect through the national planning regulations, and is required for certain types of projects to gain development consent. The EIA informs the planning permission or some other permitting system, as in the case of Germany, where EIA is integrated into two main permitting procedures – licensing according to the Federal Emission Control Act and the plan approval procedure. However, a wide range of Regulations other than just planning regulations can trigger the need for an EIA. This is the case in the UK, where a set of over thirty different Regulations can require an EIA to be undertaken.

4.3 Transposition of the EIA Directive

As mentioned previously, several Member States had similar procedures in place to take account of the potential environmental impacts of a development project, prior to the introduction of the Directive. However, the Directive and its later amendments (in 1997 and 2003) meant a greater formalisation of certain elements, such as consultation, public participation and consideration of trans-boundary issues, as well as the introduction of some stages which were not previously a part of the environmental regulations in some Member States. For example, in Germany, transposition of the Directive led to the introduction of a scoping phase to the national regime, which although it existed before in principle, was not focused on environmental issues.

In most Member States, the creation of environmental laws and regulations, as well as amendments to existing laws, has facilitated the transposition of most of the Directive. However, there remain issues of compatibility in some Member States. In France, a system of environmental impact assessment had been in place since 1976 but, despite subsequent amendments to the system over the past few decades to move the regime more in line with the European Directive, there is still insufficient regard for the text of the Directive. The lack of alignment between the French EIA regime and the European Directive is reflected by the lack of a screening stage. These inconsistencies are likely to be rectified with the approval of new laws soon to be approved, aimed at modifying most stages of the French system, as well as introducing a screening stage to the process.

Further changes to the EIA Regime are also intended to take place across most of the other Member States examined in this study. In Germany, Parliament has proposed further changes scheduled to be passed this year; Poland is to make changes to its environmental law following consultation with the European Commission; the Netherlands is also scheduled to make changes to its EIA procedure, aimed primarily at reducing the number of EIAs undertaken per year; and the UK is proposing the removal of project thresholds as the basis of the screening.

The most significant difference between the EU Directive and transposition at the Member State level relates to the screening stage, and more specifically, the manner in which Annex I and II have been transposed into national regulations. The EIA Directive set out a specific list of development projects which require a mandatory EIA – Annex I - as well as a list of development projects which *may* require an EIA, subject to screening either through a system of thresholds or on a case-by-case basis – Annex II.

However, several of the Member States appear to have implemented their own ‘rules’ with regards to the types of projects which require EIA. In Spain, national legislation has included a series of project categories in its version of Annex I, which are not included in the Annex I of the original Directive. These relate largely to mining or drilling facilities. Other project categories in the Spanish Annex I are taken from Annex II of the EU Directive, and include categories mainly relating to energy, chemicals and infrastructure projects. Spain has also added categories to its Annex II which do not appear in the European Annex II. Such ‘over-implementation’ is attributed mainly to the environmental conditions specific to Spain, namely water scarcity issues. The situation is made even more complicated by the fact that the Directive is transposed at a regional level in Spain (which has 17 regions), as well as at national level, and that regional legislation tends to go beyond national legislation in terms of transposition, for example by adding stricter thresholds that reflect technological change or regional specificities.

Over-implementation of the EIA Directive, also referred to as ‘gold-plating’, would appear to be fairly common across many of the Member States. As well as adding more project categories to Annexes than is stated in the European Directive, which also occurs in Poland, MS such as Germany have also set their thresholds for projects subject to a mandatory EIA lower in comparison with those specified at the EU level. This has also been the case in the Netherlands, and there is growing concern that the increasing number of EIAs being undertaken may be attributed to this. Germany is to re-set the thresholds in line with the original Directive, and there are similar calls for the Dutch EIA regime to remove certain project types from its mandatory list to prevent resources being spent on small projects unlikely to have a significant impact on the environment. This suggests that the so-called ‘platinum-plating’ approach so far taken in the Netherlands is likely to be reversed.

Analysis across the MS in the study indicates that several forms of over-implementation are made, whether intentional or not. Even in the UK, where transposition of the EIA Directive was specifically aimed to achieve a ‘1:1’ (i.e. no gold-plating), increasing emphasis is being placed on the inclusion of socio-economic effects in the EIA, suggesting that the national regime is going beyond the strict requirements of the EU Directive.

4.4 General Effectiveness

There is a general view from the breadth of stakeholders consulted in the national evaluations that the EIA has been a valuable tool in preventing harmful environmental impacts. It has clearly helped to increase the understanding of the significance of potential environmental impacts, as well as improving the awareness of the need for sustainable development, which has emerged more recently as an objective.

Developers have now been charged with a greater responsibility for offsetting development with sustainable measures, and the amendment to the European EIA Directive to improve public participation in the process is likely to have contributed to this – greater involvement of consultees has often resulted in a wider range of useful mitigation measures.

Contributions to the EC Informal Workshop (Annex G) and subsequent follow-up indicated that the requirement for EIA, as well as generating significant problems was not without some benefits in addition to improved environmental outcomes. The use of EIA to organise and improve the quality of project planning, to organise stakeholder consultation and to co-ordinate the permitting process were mentioned.

The experience of added value in the Netherlands, as a good practice exemplar of the operation of EIA, (Box 4.1), highlights benefits in relation to the better description and appraisal of complex projects, and the stimulus to examine alternatives and associated economic and social benefits. This experience also emphasises the reduced scope to secure added value for smaller projects or those where alternative options are limited.

Box 4.1: Added Value of EIA – Experience from the Netherlands

The EIA provides added value to:

- Complex projects with significant (potential) environmental effects;
- Projects for which serious alternatives are available.

The latter mainly relates to projects that also have a spatial planning component like road, rails, cable, large infrastructure projects for which different comparable trajectories can be developed and assessed for their environmental effects.

The BritNed interconnector cable is an example of this. For this project several alternative trajectories were possible which were evaluated using economic, safety and environmental criteria. The EIA was very important in this project, because it revealed that the environmental effects of both the Northern and Southern alternative are limited and comparable. Because of this the safest and economically most feasible trajectory could be chosen.

The added value of the EIA is limited for:

- Small projects that are known to have limited environmental effects,
- Projects at current locations (i.e. extension or rebuilding of plant at the same location),
- Projects without any reasonable alternative locations (i.e. a location for an energy plant needs to have specific requirements that can not easily be found elsewhere).

This is confirmed in the case studies about the LNG-Terminal and the MCA Plant. For both projects no reasonable alternatives are available and only permits within the Environmental act are required, making the information submitted in the EIA redundant, because all this environmental information was also required for the permitting procedure. This does however not mean that the EIA process is useless for this type of projects. Developers state that the EIA helps to structure all environmental information, supports communication with the main stakeholders and the public, and helps to create understanding for the project. The “quality check” by the National Commission for EIA (NCEA) is also seen as added value by both developers and authorities.

The achievements of the EIA do not mean that there is not scope to improve the regulation and its cost-effectiveness. We consider below the opportunities for improvements as well as the associated costs and delays associated with the EIA regime.

4.5 Skills and Training

Training and competence to implement the regime and deal with EIA-related issues has emerged as an extremely important factor in shaping the effectiveness of the EIA regime. This is the case in all MS studied, and although levels of competence differ between MS, there still remain issues specific to each Member State.

In Poland and the UK, there is a significant shortage of the necessary skills and competence at the local administrative level to deal with the EIA procedure. In Poland, local administration officials find it difficult to cope with complicated and continuously changing EIA procedures and are fairly dependent on informal consultations with higher-level authorities. On occasion, this low level of competence is exploited by developers to bypass the law or to accelerate procedures, directly impacting the effectiveness of the EIA system. Similarly in the UK, some local authorities suffer from severe staff shortages and an inability to find adequately-qualified staff to deal with EIA-related applications. Cutbacks on local administrative budgets mean there are scarce resources to hire the appropriate staff and on many occasions, the ‘EIA Officer’ is unlikely to have any formal EIA qualification and may be further burdened by having to balance other workloads, e.g. general environmental issues, SEA applications etc.

The level of training provided is also sketchy in some of the Member States. In Spain, the national EIA association supports professional development through seminars and conferences, although these are dedicated mainly to promoting discussion on EIA. There have been attempts at the regional level to establish registers of qualified professionals, but on the whole, quality control mechanisms remain limited. Similarly in Poland, despite large drives to provide training both for entrepreneurs and public administration, participation in such training workshops is hindered by a lack of funds, particularly at the local level. The Polish study recommended greater funding to allow local representatives to attend such training events.

The lack of training and inadequate skills has a direct impact on many of the crucial stages of EIA. At the screening stage, lack of experience and qualifications feed into a low level of confidence to make bold screening decisions, revealing a tendency to always request an EIA in ambiguous cases, or where the project is likely to be unpopular and contentious. This ultimately results in developers incurring costs to assess a project which potentially will not have significant environmental impacts.

Local decision-makers also lack expertise to analyse the information and data provided by the EIS, affecting their ability to make an effective decision on whether the project should be granted development consent. This is reflected in the UK situation, where the Institute of Environmental Management and Assessment (IEMA), the largest professional body of its kind in the country, is currently being inundated by requests from local authorities and other competent authorities to review EISs they receive. IEMA itself is over-subscribed and does not have sufficient resources to deal with the influx of work from local authorities, and is currently in talks with the Royal Town Planning Institute (RTPI) to run joint courses to address the lack of expertise at the local level.

4.6 Case Law and the Likelihood of a Legal Challenge

The increasing amount of case law, both at the domestic level and at European level (ECJ), has had two significant effects. Firstly, it has alerted Member States to the wealth of potential legal challenges which can be raised, by a range of consultees

(including local residents, environmentalists etc). It is also possibly the principal reason for the over-precautionary approach taken by competent authorities when making decisions both at the screening and scoping stages and helps to explain why there are an increasing number of EIAs being undertaken in certain Member States.

In Poland, it is common practice for the competent authority to request that the scope of the EIA cover practically all aspects (i.e. a distinct lack of ‘scoping out’ of insignificant issues); this is mainly done in order to protect itself from appeals and legal challenges on the basis that the scope has been ‘too narrow’ in its specification.

Secondly, the burgeoning amount of case law has helped to shape the way in which the Directive has been transposed into national law. For example, in the UK, one local authority claimed that an EIA could not be requested at the reserved matters stage of a planning application (after outline planning permission had already been given). This was overruled by the European Court of Justice (ECJ) and as a consequence, the UK has had to amend its EIA Regulations to provide for the possibility of comprehensive EIA at the reserved matters stage. An ECJ ruling taken against Ireland for establishing criteria and/or thresholds taking into account only the size of projects (but not their nature and location)⁹, has had strong implications for Dutch legislation. Currently, the Netherlands operates a system of specific threshold values, below which a project does not require an EIA. However, the use of such clear threshold values without considering site-specific factors may well be under threat given the Ireland ruling, which has given rise to discussions between the Netherlands and the European Commission as to whether EIA Regulations have been correctly applied in the MS.

Legal challenge would appear to be more of an issue in certain Member States. In the UK, there is a clear sentiment amongst EIA practitioners (consultants, developers and government officials) that EIA has become a fertile ground for challenge from environmentalists and non-environmentalists alike, in part due to its highly procedural nature. Anti-development lobbies have regularly been able to take the developer to Court over a small procedural issue e.g. not putting up an advert properly, rather than because of the nature or subject of the development. Increased realisation that the EIA is being used as a tool for ‘frivolous challenge’ has now resulted in an increased awareness of such activity and a willingness to prevent such challenges.

4.7 Procedural Issues and Effectiveness

Many of the procedural issues which have emerged amongst the MS relate largely to the screening and scoping stages. Screening, although the least expensive and least time-consuming aspect of the EIA process, has been judged by some environmental consultants to be the most important stage, as it effectively decides whether a project has potentially significant environmental effects and therefore requires assessment. It is also the decision made on the least amount of information. Arguably, it is the screening stage that suffers most from inadequate skills and experience, and a slavish adherence to guidance and thresholds.

The strict use of thresholds, whether based on overall size of a project (Netherlands) or the financial cost of the project (France) has created the risk of requiring far too many EIAs for projects that quite clearly are unlikely to have potential negative impacts. This

⁹ Refer to Case C392/96 Commission of the European Communities v. Ireland, http://ec.europa.eu/environment/law/pdf/leading_cases_en.pdf

has led to a shift away from demonstrating whether effects of a particular project are likely to be significant, and has removed the emphasis on local authorities to be robust in their reasoning behind their decisions. This has already been addressed in the UK, where there are well developed plans by the Government to remove the indicative thresholds from guidance (called a Circular in the UK) to avoid local authorities from using them too prescriptively and to promote a more explicit case by case approach.

Potential ways to address such issues could include shifting some of the work undertaken under scoping to the screening phases, to better determine if effects are likely to be significant. In practice, the two stages are at times, difficult to separate from one another – one experienced UK consultee even suggested that scoping should come before screening in order to better determine the need for an EIA. Indeed, in Castilla-La-Mancha, a region in Spain, the exact set of information that the developer is required to submit at screening stage, is used for scoping.

The application of a more rigorous approach to screening is likely to also have positive 'rollover' effects for the scoping stage. At the moment, competent authorities are not obliged to give reasons for issuing negative screening decisions, possibly explaining why there is no incentive to justify why an impact is *not* significant¹⁰. The USA concept of 'Finding of No Significant Impact' (FONSI), which is a document issued when initial environmental analysis has found a project to have no significant impacts on the environment, would help to provide better justification for why a project does not require EIA, placing greater emphasis on the local decision-maker to demonstrate why certain effects might be significant. Ruling out what is not significant early on would allow for a more concise and streamlined scoping, which ultimately reduces the time and costs spent on unnecessary studies.

¹⁰ From the research there appears to be some ambiguity as to whether a negative screening decision (i.e. no EIA required) should contain information which makes it possible to verify that determination was compliant with the Directive. The ECJ case C-87/02 states that information should be provided in such cases. However, in the UK for example, adopted policy is that in the case of a negative screening no such information is provided:
<http://www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental/environmentalimpactassessment/noteenvironmental>

5 COSTS AND DELAYS OF THE EIA REGIME

5.1 Types of Costs and Possibilities of Attribution to EIA

The MS assessments have sought to identify the direct costs to developers / initiators / applicants of preparing, submitting and consulting on the EIA. This is based on any nationally available data, but mainly by reference to exemplars and illustrations by consultees. These costs, at project level, are reasonably well defined because the management and preparation of the EIA is largely undertaken by commissioning external consultants. Only in the case of very large operators such as national utilities would there be in-house teams dedicated to undertaking EIAs.

These costs are defined at project level. There are no formal estimates of the total cost to the economy of the EIA procedure in any of the MS. These project costs do however have the potential to over-state the additional cost due to the EIA procedure. This is because much of the cost of the environmental studies (accounting for a large share of total EIA costs) would have been incurred even in the absence of the actual EIA procedure, given the need to demonstrate an acceptable project as the basis of development consent.

The assessments have also considered the indirect costs to developers associated with delays to the overall development consent procedure attributable to the EIA procedure. Again there is no evidence of the actual cost, rather the projects are at best able to define the extension of time attributable to the EIA procedure. Again, there is considerable uncertainty in estimating these delays given the complexity of the interaction between the competent authority (CA) and developer during the overall consent procedure.

We have not sought to include mitigation costs for identified impacts in the estimate of costs. These mitigation measures and related costs are required by the CA in order for the project to be deemed an acceptable project in accordance with wider development consent regulations. To the extent that in the absence of the EIA particular impacts and hence mitigation might not have been identified, then mitigation might be claimed as a cost of the EIA. However, avoiding the need to address such impacts is not consistent with the objectives of the EIA Directive.

5.2 The Number and Type of EIAs Conducted

The number and type of EIA in each of the MS is summarised in Table 5.1 (there is no national or regional data for Poland). This indicates that the number of EIAs each year is broadly related to the size of the MS. The major exception is France which has a relatively very high number of EIAs, seven times the number in the UK and Germany, attributable to the absence of any screening procedure. In Spain, where the number of regional EIAs is uncertain there also appears to be a relatively high number of EIAs, double that compared with Germany, Netherlands and the UK.

Table 5.1: Number and Types of EIAs by Selected Member State

Member State	Population (m) 2006	Estimated No of EIAs per Year	No of EIAs per million population	Most Frequent EIA by Types of Project
France	63	5,000 – 6,000	87	Industrial installations, urban developments
Germany	82	c1,000 (2001) – to be updated in 2008	12	Industrial installations, water related development
Netherlands	16	139 (2006)	9	Industrial installations, rural areas (inc. intensive agriculture)
Spain	44	54 national projects. More than a 1,000 at regional level	23	Water related, infrastructure, transport, livestock
UK	60	700 (2005)	12	Urban development, industrial installations

Source: Member State Reports (Population data from Eurostat)

The trend in the number of EIAs, in those MS where data is available, is increasing (Table 5.2). This increase is quite substantial in all three MS. If the UK and NL experience is a guide it suggests that the updated German estimates will be higher than previous.

Table 5.2: Trends in the Number of EIAs in Selected MS

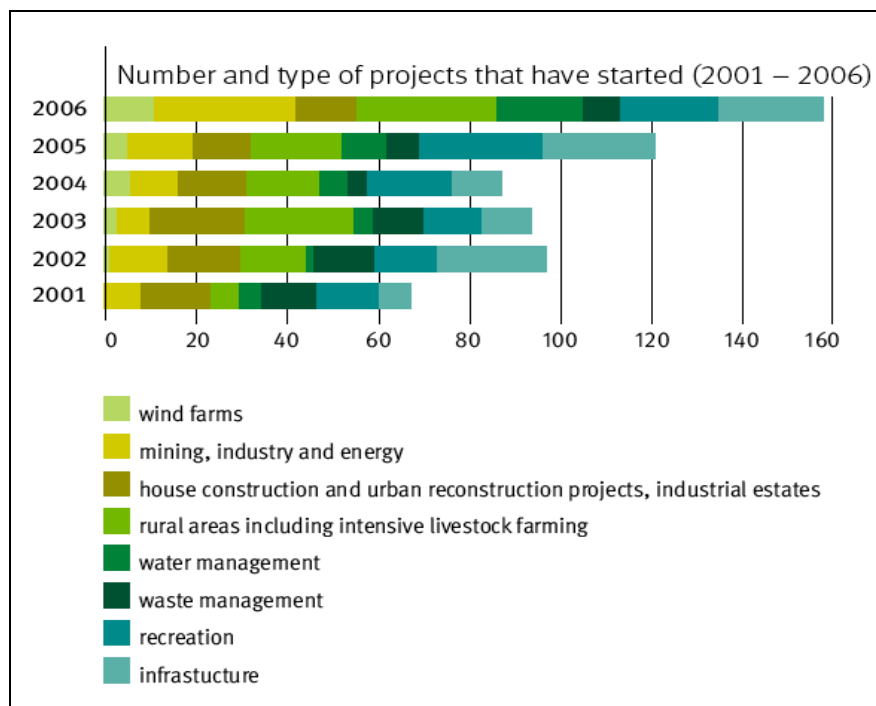
Member State	Trends in the Number of EIAs per Year
Germany	Average number c600 (1990-1998) compared to latest estimate for 2001 of 1,000
Netherlands	Average number of 80 (2002-2004) compared with 139 in 2006
UK	Average number of 328 (1990-1999) compared with average of 640 (2000-2005)

Source: Member State Reports

The increase is attributed to a generally increasing concern with the environmental impact of development and hence the operation of more rigorous development consent regimes, with changes in MS project annexes and thresholds to reflect these concerns; rather than with any significant expansion in development activity and hence an increase in development projects. The increase might also be influenced by a change in the type of projects, to those with a greater need for EIA, but the lack of national data on the numbers of EIA by type prevents any general conclusion.

In the Netherlands, which does have consistent time series data by type of project, part of the expansion is explained by an increase in the numbers of proposed wind farms and intensive livestock projects. However, there is an increase in the number of EIAs in a number of other categories, especially in mining, industry and energy (Figure 5.1).

Figure 5.1: Number and Types of EIA Projects, 2001-2006, Netherlands¹¹



Source: Netherlands Commission for Environmental Assessment. Annual Report 2006

5.3 Costs of EIA as Identified in Previous Research

The costs of the EIA Directive have previously been examined by the European Commission (EC). Findings from the EC study ten years ago¹² which considered the costs and benefits of EIA, suggested the following:

- EIA costs were typically around 0.01% to 2.5%, with an average of 0.5%, of total development cost.
- The relative cost of preparing EIAs decreases progressively with rising project costs; the costs fall disproportionately on smaller projects.
- In all MSs the largest element of cost relates to the conduct of the environmental studies and preparation of the EIS, which range from 60 – 95%.
- The largest component of overall cost of EIA is borne in all MSs studied by the developer, in contrast to SEA where such costs are borne by the public sector.

¹¹ Please note that data of a similar nature for the other case study Member States is not available

¹² EIA - A Study on Costs and Benefits, EC, December 1996, Land Use Consultants

These costs provide an initial perspective but obviously do not take into consideration subsequent amendments, new measuring, reporting and consultation techniques, specific issues raised through case law, or any attempts in the interim to streamline procedures.

Based on the MS assessments including specific project reviews, we consider the burden on enterprises as indicated by the number and types of EIA; the direct costs of undertaking an EIA and the associated time delays.

5.4 Direct Costs of Undertaking EIA as Identified in Selected Member States

National level monitoring data on the costs of EIAs is not available in the six MS examined. Based on information from industry and CA consultees, we summarise the available estimates in Table 5.2. It should be emphasised these estimates should only be treated as indicative. Moreover, these costs represent the total, not marginal, costs of undertaking the EIA. The marginal costs of the EIA require some estimation of costs of the impact assessment activities that would be required by national development consent regimes in the absence of the EIA.

Table 5.2: MS Overview of the Indicative Direct Cost of EIAs in Selected MS, 2007

Member State	Estimated Average Cost per EIA (€)	Estimated Share of Project Costs (%)
France	€5-10,000 for a small project, say <€10m €30,000 for an average-sized project, say €100m Over €100,000 for a large project, say €1,000m	c0.1% to 0.01% for road projects
Germany	€15,000 - €1m for impact studies / EIS – which accounts for around 50% of total costs Plus authorisation fees on successful application	Authorisation fees c 0.1% of total investment cost
Netherlands	€25,000 – €1m for project initiator Average cost of €200,000 per EIA of which €70,000 - €100,00 was due to impact studies / EIS	c0.1% - 0.25% for larger projects and up to 1% for smaller projects
Poland	c€2,000 - €100,000 Impact studies / EIS account for over 80% of EIA costs	c0.1% for projects with limited impact – to 1% for projects with significant impacts
Spain	€60,000 - €100,000 for electricity projects of over €10m	Less than 1% of project costs

	Average cost of €18,000	
UK	€15,000 for small water projects <€5m €40,000 for larger water projects around €50m 'Average' cost for urban development projects, €45,000	c0.3% c0.1%

Source: Member State Reports

Some care is required in extrapolating from this range of estimates, but they suggest that the broad order of magnitude of costs as measured relative to project costs has not changed significantly from that previously estimated; ranging from less than 0.1% of project development costs in larger, less complicated projects to as much as 1% in smaller or more complicated projects; with a typical cost in the order of 0.1% – 0.3% of development costs. Further consultation with industry stakeholders suggests broad agreement to this cost range as an approximate average, but that EIA costs as a share of project costs can be significantly higher than this, especially for smaller projects. It is also noted that developer estimates may underestimate costs because they may leave out the time for pre-application work and tend to exclude the costs of preparing the technical summary.

The significance of the direct costs of EIA as a share of the Gross Value Added (GVA) in those industries subject to EIA has been examined. Review of those sectors subject to EIA (see (Table 5.5) suggests that they account for approximately a third of EU GVA. This is only an approximation given the detailed nature of development projects and the industries responsible. Taking the annual number of EIAs identified and an approximate average cost per EIA of €50,000, then the total costs of EIA represent between less than 0.01% in the Netherlands, to 0.05% in France (Table 5.3). It should be emphasised that given the variability in the scale and type of EIA, this estimate should only be treated as being indicative.

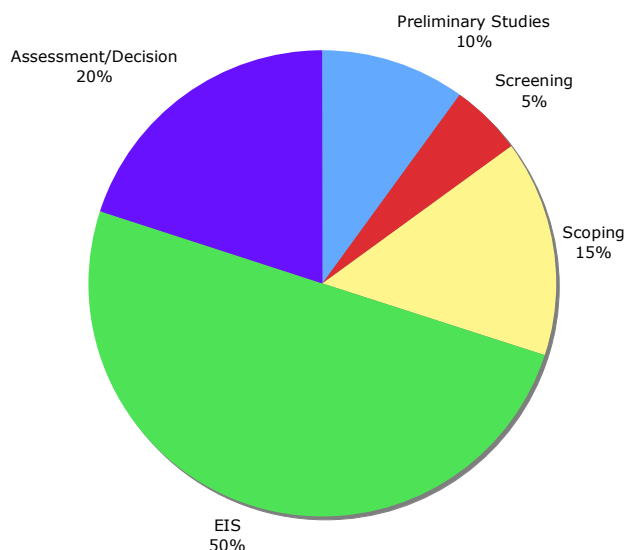
Table 5.3: Indicative Direct Costs of Undertaking EIAs in selected Member States, 2007

Member State	Approximate GVA of Sectors subject to EIA (€bn)	Approximate No of EIAs per Year	Approximate Expenditure on EIA per Year (@ €50,000 per EIA) (€m)	Annual Expenditure on EIAs as % of Relevant Sectoral GVA
France	589	5,500	275	0.05%
Germany	765	1,000	50	0.01%
Netherlands	175	139	7	0.00%
Spain	324	1,000	50	0.02%
UK	627	700	35	0.01%

Sources: Eurostat and Member State Reports

In terms of the composition of the costs, the evidence is clear, that the largest component of the direct costs is the undertaking of the required environmental studies and surveys and the subsequent preparation of the EIS. This has been estimated in the UK and NL cases to be around 35% - 50% of total EIA costs, with screening representing a smaller share of costs than the scoping phase. A similar pattern exists in Germany, where including preliminary studies and the costs associated with the decision process (Figure 5.2), the costs of preparing the EIS are estimated to be approximately 50% and the costs of screening are a third of the costs of scoping. In Poland the estimated cost of the EIS is 80-90%, reflecting the considerably less time spent on screening and scoping procedures.

Figure 5.2: Distribution of Costs Across Main Stages of EIA procedure - Developer Perspective, Germany



5.4.1 Identified Costs from the Exemplar Projects

Ten of the 14 selected projects reviewed across the six MS were able to identify the direct costs to the developer and total development costs. These costs are summarised in Table 5.4. They support the indicative range of costs identified above, with higher costs of EIA relative to project costs for smaller projects.

The sample of projects is too small to allow generalisations of how costs vary by class of project or to allow analysis by sector. There is no systematic cost data by project types available from secondary sources in any of the MS, against which to compare these project costs. Projects such as transport routes or electricity lines will almost certainly require more expensive EIA than projects such as quarries or factories, mainly because the inventory of impacts takes more time.

Table 5.4: Exemplar EIA Related Costs for Selected Projects

Project Title and Brief Description	Project Investment Cost (€m)	Direct EIA Cost to the Developer (€k)	EIA Cost as % Of Project Cost (%)
BritNed Interconnector – Land Components, UK	6	81	1.35%
Le Garoussal Zone D'Aménagement Concerte (ZAC), F	15	9	0.06%
Regeneration of mining areas/creation of new water infrastructure, D	30	250-500	0.83-1.67%
Maranchon Wind Farm, ES	40-45	21	0.05%
High-Pressure Gas Pipeline, D	100	300-500	0.3 – 0.5%
Chlorine and MCA Plant Delfzijl, NL	200	400-500	0.2% - 0.25%
BritNed Interconnector, NL	600	500	0.08%
Liquid Natural Gas Terminal Eemshaven, NL	800-900	800	0.09 -0.1%
Greater Gabbard Offshore Windfarm, UK	1,050-1,330		Estimated <1%
Bretagne-Pays de La Loire High Speed Line Extension, F	2,380	158	0.01%

Source: Member State Reports

Specific requirements for additional studies on factors such as noise, air or health can add substantially to costs. According to a 2006 study (Bio Intelligence, 2006) additional studies on factors such as hydraulic modelling can cost between €100,000-200,000; atmospheric pollution modelling can cost between €40,000-50,000; 3D river pollution modelling (e.g. due to the implementation of a cogeneration plant) can cost between €100,000-150,000 and anti-noise wall impact assessments can cost over €100,000. Finally it was also noted that projects relating to the marine environment can be relatively costly because the marine environment tends to be less well-known, requiring more detailed studies.

5.4.2 Costs to SMEs

The specific impact on SMEs needs to be distinguished from the impact on small projects. As noted above, there is a relatively higher cost of EIA procedures for smaller projects. To the extent that there is a correlation between SMEs and smaller projects then SMEs would be relatively more affected. In none of the selected Member States is there any data on the size of project or type of project developer.

However, the incidence of SMEs among those sectors responsible for development projects and related EIAs (with reference to Annexes I and II) and hence liable to the

costs and delays associated with EIA, is relatively small. In some areas, it is in fact the public sector that is responsible for projects (e.g. transport infrastructure) and in others (such as water and energy projects) large utility companies or (in the case of urban development) national developers.

In Table 5.5 we summarise the relative incidence of SMEs for a selection of the activities identified in the Annexes to the Directive. This indicates that for all Annex I activities the incidence of SMEs is lower than the economy as a whole. For Annex II activities, most of the activities have a lower incidence of SMEs with the exception of textiles, tanning and tourism (hotels and restaurants). Note that the construction sector is not included – impacts are likely to be indirect through the effect on the demand for construction from other sectors.

Table 5.5: SME Share of Sectoral Activity in Sectors Covered by the Annexes to the EIA Directive, EU

Industries and Services (NACE)	Annex I	Annex II	SME Share of Activity	
			T/O	Empl
c: Mining and quarrying	I 19	II 2	28%	35%
ca11: Extraction of crude petroleum and natural gas	I 14		18%	23%
da: Manufacture of food products; beverages and tobacco		II 7	46%	62%
db: Manufacture of textiles and textile products		II 8	74%	77%
dc19: Tanning, dressing of leather; manufacture of luggage		II 8c	78%	84%
de21: Manufacture of pulp, paper and paper products	I 18	II 8a	38%	52%
df: Manufacture of coke, refined petroleum products, nuclear fuel	I 3, I 1	II 5a	9%	14%
dg: Manufacture of chemicals, products and man-made fibres	I 6	II 6	27%	34%
dh: Manufacture of rubber and plastic products		II 9	57%	64%
di: Manufacture of other non-metallic mineral products	I 5	II 5e	56%	63%
dj: Manufacture of basic metals and fabricated metal products	I 4	II 4	57%	72%
dj27: Manufacture of basic metals	I 4	II 4	27%	35%
dm34: Manufacture of motor vehicles, trailers and semi-trailers		II 4f	8%	17%
dm35: Manufacture of other transport equipment		II 4i	29%	28%
e40: Electricity, gas, steam and hot water supply	I 2		31%	18%
e41: Collection, purification and distribution of water	I 11; I 12		35%	39%
f45: Construction			80%	89%
h55 Hotels and restaurants		II 12	78%	82%
i61 Water transport	I 8		53%	**
Share of All EU Activity Accounted for by SMEs			58%	67%

Notes: T/O = Turnover, Empl = Employment ** data not available.
SME data from Eurostat, NACE refers to the industrial classification

There is no systematic data in any of the Member States examined on the number, size or types of project submitted by size of business, from which to establish any overall assessment of the impact on SMEs.

There are certain issues that have been identified from consultations that might result in higher costs for SMEs, compared to other businesses including:

- A tendency to use cheaper environmental consultants, leading to higher costs associated with poor quality EIS and associated delays whilst assessments are improved and resubmitted;

- A greater likelihood of limited experience of the EIA procedures and hence higher costs of negotiation and iteration throughout the process and the risk of being exploited by less scrupulous environmental consultants;
- A greater likelihood that the costs, especially of direct staff time, are such as to cause projects not to be submitted with adverse consequences for business development; and
- A greater impact on costs from delay given limited investment resources.

Industry stakeholders consulted have all said that where SMEs are involved in EIAs the costs are likely to be relatively higher than for larger firms (for example because of a lack of knowledge of the EIA process and inexperience in the use of consultants and involvement in consultation processes) and potentially disproportionate given the likelihood that SMEs will be involved in smaller projects where the added value in terms of, for example, assisting with project design, is limited. Experience in Spain and Poland suggests that the direct and indirect costs are such that they are sufficient to deter SMEs from proceeding with projects.

5.5 Indirect Costs of the EIA Regime

The costs of EIA to project developers also accrue as a consequence of the delays in securing consents attributable to the EIA procedure. The quantification of time delays specifically attributable to EIA as opposed to other cases of delays in consent is difficult. Even then, ascribing a specific cost to the time delay has not been possible; hence the measure of indirect cost is the length of delay.

5.5.1 Time Requirements for EIA

The actual length of time of the EIA procedure varies depending on the size and complexity of the project and the environmental sensitivity of the project location. However, there is general agreement from the MS studies that the preparation of the EIA process up to submission of the EIS takes on average between 6 and 12 months. Smaller, simpler projects can take less time, with large complex projects taking up to two years. The decision time following EIS submissions can double this time and take anywhere from 3 months to 2 years. Analysis in the UK provides an indicative timetable for an EIA process up to EIS submission (Figure 5.3). An overview of time requirements by selected Member State is provided in Table 5.6.

The time taken to complete the EIA procedure excludes the time spent on pre-application / pre-screening discussions. This activity is not confined to EIA discussions, but will include environmental issues.

Analysis in Germany of the relative length of time of the different EIA steps (Figure 5.4) indicates, in particular, the importance of pre-application discussion prior to screening decisions.

Table 5.6: Overview of the time Taken for EIA Procedures for Selected Member States

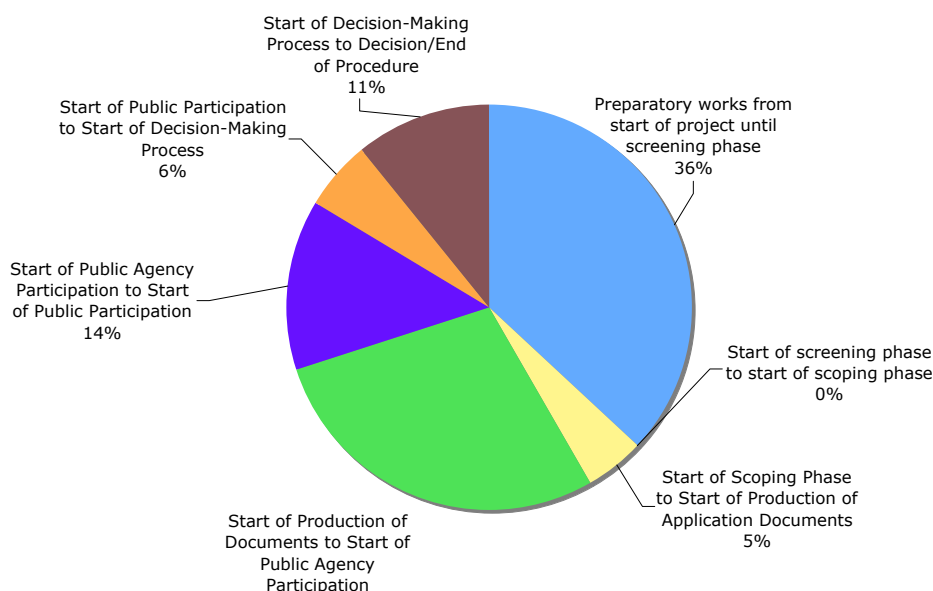
	France	Germany	Netherlands	Poland	Spain	UK
Screening	Automatically determined by financial threshold (EUR 1.9m)	Generally short, ranges from few hours – few days; not considered time-consuming	Generally short, ranges from few hours – few days; not considered time-consuming	Screening and scoping undertaken at the same time – can range from a few days to several months in rare cases	Generally short, ranges from few hours – few days; not considered time-consuming	Local planning authority has up to 3 weeks to respond to request for screening opinion. Actual screening takes no more than 1-2 weeks
Scoping	Can range between 3 days to 3 months (v. large infrastructure)	Usually 2-3 months in total. More complex for trans-boundary cases	Usually 2-3 months in total.	Screening and scoping undertaken at the same time – can range from a few days to several months in rare cases	Differing municipal, regional and local legislation means time taken differs across regions.	Usually 2-3 months in total
EIS	4-5 weeks (including meetings)	Can take up to 2 years for complex cases (e.g. ecological surveys of habitats/species, or where substantial amount of documentation submitted).	Can take up to three months for ES to be completed; sometimes a lot longer	Can range from 6 months to several years depending on complexity of project	Can range from 6 months to several years depending on complexity of project.	Can take up to three months for ES to be completed; sometimes a lot longer

Figure 5.3: Indicative Timings for the EIA Procedure, UK

Task	Project month											
	1	2	3	4	5	6	7	8	9	10	11	12
Appointment and team briefing	█											
Agree description of development to be assessed	█											
Baseline Studies		█	█	█	█	█	█	█				
Scoping Report		█	█									
Assessment of Impacts			█	█	█	█	█	█				
Review/refine description of development							█	█	█			
Further baseline studies if relevant plus further assessment									█	█		
Draft ES									█	█	█	
Final ES												█
Non Technical Summary												█

Source: Guidelines for Environmental Impact Assessment, IEMA (2004)

Figure 5.4: Relative Length of EIA Steps for Road Infrastructure, Germany



Source: Wende 2001, relates to road construction projects (n=42)

Generally, the following issues are identified in the selected MS as leading to a more prolonged EIA and authorisation process:

- the need for extensive surveying, environmental analysis and mapping,
- the scale of consultation processes,
- requests to provide additional information after the start of the formal authorisation procedures,
- poor quality of EIA necessitating further work,
- the complexity of matters or interests affected,
- the need for co-ordination with other authorisation procedures and authorities.

5.5.2 Attributed Delays

The interaction between the EIA procedure and the broader consenting procedure prevents clear definition of the delays attributable to the time to secure project consent. As with the direct costs, there is wide variation depending on the nature of the project and project location. It should also be noted that often much of the information provided by the EIA and public consultation would be required in any event by the broader regulations governing development consent.

However, delays do occur to the EIA procedure and according to the MS studies can be attributed to a range of factors:

- Uncertainty over the designation of the Competent Authority
- Poor levels of co-operation with the CA during the EIA procedure and/or political unwillingness to consider the project
- Inadequate staff resources of the CA leading to delays and poor advice / instructions
- Uncertainty over the applicability of thresholds and delays in screening decisions (compounded where the CA feels unqualified to determine and consults other agencies)
- Uncertainty and difficulties in defining relevant alternatives
- Ambiguity over the scope of the EIA with subsequent revisions and delays to agreed scope
- Scoping and associated studies unduly influenced by the concern of legal challenge
- The time taken to undertake studies (e.g. of wildlife and habitats surveys), generally regarded as not significant for the decision but which have to be undertaken prior to decision-making (partly driven by requests from statutory consultees)
- Uncertainty over the consultation procedure, and respective responsibilities between the CA and developer

- Delays in providing the non-technical summary
- Lack of clear timetables and/or failures to respect agreed timetables for different stages

Since there are no formally agreed timetables (except in some cases for the consultation period) for the EIA it is difficult to distinguish between the time that might be expected to be taken given the nature of the project and that which occurred in practice, as the basis of a defined period of delay. Reference to experience in the Netherlands suggests that for similar projects that are subject to EIA, compared to those subject to national regulations for environmental assessment but not formal EIA, the additional time taken could be between 6-8 weeks or around 20%-25% longer than the average non-EIA assessment of around 6-8 months. The additional time is required for the more formal public consultation, and for the independent review of the EIS. Note that this delay will affect only those projects where there is considerable uncertainty over the need for an EIA.

When consulted, industry stakeholders felt that this was not an unreasonable estimate, but that the variation between projects, and the incidence of a smaller number of projects suffering much longer delay was not adequately reflected in the use of the estimate.

It is also very difficult to estimate the share of EIAs that experience delays. Anecdotal comments by some consultees suggest that as a very crude and approximate estimate that perhaps in the order of a quarter of projects might be considered to be delayed by EIAs compared to a situation where no EIA was required.

DG TREN has separately examined, in the context of the Priority Interconnection Plan¹³ reasons for delays in investment in trans-boundary energy infrastructure. They indicate that complexities of national development consent procedures and associated public consultation requirements, including EIA requirements, contribute to the delays in realising investment projects, and make a number of suggestions (which we consider in Section 7.0).

Best practice steps to address the causes of delays are discussed in Section 6.0.

5.6 Too Many EIAs: The Costs of Inadequate Screening

The number of EIAs undertaken and the increasing trend are discussed above. One factor to have emerged from the study and which affects the number and aggregate costs of EIA is the approach to screening projects for EIAs. Whilst there is evidence from Germany and the UK that the share of projects considered to require undertaking an EIA is small (<10%) there are a number of problems that give rise to EIAs where the risk of environmental impact does not justify the costs of an EIA.

There are several possible reasons for inadequate screening:

- **Legal challenge:** There is pressure on the CA, where projects are subject to Annex II, to require an EIA because of a fear of legal challenge amongst local authorities for approving a project without first assessing its potential

¹³ Com(2006) 846 Final/2

environmental impacts, meaning that authorities are usually more inclined to request an EIA. Successful legal challenges can result in the local authority being fined or receiving a bad press.

- **Lack of competence:** Some competent authorities lack the appropriate skill-set or resources to deal with EIA-related issues, particularly in locations not used to high development pressures. This directly affects the decision-maker's ability to make strong decisions, as the decision-maker is likely to lack the confidence to support his decision with robust arguments for why (s)he did not request an EIA. The precautionary principle be used – it is 'safer' to ask for an EIA. However, it must be pointed out that this is unusually not the case in Germany, where less than 10% of screening decisions are positive.
- **Transposition and thresholds:** The manner in which the Member State transposes the Directive, particularly with reference to the Annexes, has a direct impact on the number of EIAs that are undertaken. In the Netherlands, thresholds relating to the list of projects requiring a mandatory EIA are set lower than those specified in the European Directive, resulting in a large number of projects being subject to EIA that might otherwise be exempt¹⁴. A revision of the Dutch Annexes could potentially reduce the number of EIAs conducted per year by two-thirds. In France, a financial threshold of EUR 1.9m applies to all projects, regardless of the nature of it (lack of distinction between Annex I and II), explaining why the number of EIAs undertaken per year is so high. In Poland and Spain the thresholds also exceed those suggested in the Annexes.
- **Local political reasons:** In some Member States, such as in the UK, local authorities are keen to appear loyal and responsible to their electorate. In situations where the local electorate is likely to be 'anti-development' or 'NIMBY' ('Not-In-My-Backyard'), the local authority will most likely err on the side of caution and request an EIA. This has particular implications for projects that exceed the Annex thresholds but which would generally be considered not to have significant impacts. Political pressures will prevent use of an exemption in these cases. The UK is proposing the removal of thresholds to promote a case by case by consideration and to ensure each case is screened on its merits.

Improvements in screening would therefore have significant effects on the number and hence aggregate costs of the EIA regime. There is of course the risk that the reduced levels of assessment will result in increased environmental costs, but environmental impacts will still be regulated under broader consent regimes (which also means that the cost reductions are not in direct proportion to any reduction on numbers – costs of assessing environmental impacts will still be required, but not as a formal EIA).

5.7 Specific Trans-boundary Issues and Related Costs

In 1997, the European Council adopted a Council Directive (97/11/EC) amending the original 1985 EIA Directive, making it mandatory for Member States to take trans-boundary effects into consideration during EIA processes. Despite this, it would appear

¹⁴ This is currently an issue of contention in the Netherlands, as many stakeholders believe that the Environmental Act alone offers enough safeguarding of the environment, and that too many 'small' projects likely to have limited environmental impacts are being made to undertake an EIA, tying up resources on 'unnecessary EIAs'. In these cases, EIA is unlikely to provide much value added and it has been recommended that such project categories be removed from the Annex (or thresholds be moved back in line with the EU Directive).

that there is no standardised approach to dealing with trans-boundary issues, and Member States which have experience with such projects (e.g. operations in a border area with effects on water or infrastructure such as pipelines or roads) have observed several shortcomings.

The trans-boundary nature of projects adds a certain degree of complexity to the EIA procedure, creating a number of delays. Difficulties can arise from different levels of interests between Member States in promoting a project, which can result in significant delays. Lengthy negotiations can take place, for example, between France and Spain with regards to the cross-border electricity line (Sentmenat-Baixas-Bescano).

Trans-boundary projects often require longer timescales to achieve an agreement on the scope of the EIA. This is likely to be exacerbated if the respective CAs are at different levels (national, regional, local). A lack of experience in dealing with trans-boundary issues, as well as other complexities such as the language barriers and lack of familiarity with different planning systems, can all contribute to delays as well.

Box 5.2 provides an example of the various issues.

Box 5.2: Trans-boundary Project Example: Regeneration of mining areas and creation of new water infrastructure in Eastern Germany

This case study involves infrastructure to support the flooding of residual mining pits and the creation of new water bodies, close to the German-Polish border. The planning process lasted five years. Even after the authorisation of the projects was granted, the Polish authorities continued to raise concerns about the project.

Unfamiliarity with the trans-boundary EIA process and the law and practice in each state was undoubtedly a major factor contributing to delays and uncertainties in the process:

- In Germany, the competent authority at the local/district level is responsible for dealing with all matters relating to the permitting procedure, with national or regional level involvement only in exceptional circumstances or for certain project types
- In Poland, objections from the public and local authority were not sent directly, but collated, passed on and then discussed within the EIA committee of the Ministry of the Environment. This took seven to eight months, in comparison with the one and a half month timeframe allocated to the German public in which to submit their objections and/or statements. It was acknowledged later on that some of the statements could have been produced a lot faster.

Delays in the process were also the result of potential complex and significant environmental impacts, and subsequent need for additional analysis to be undertaken. Translation and interpretation were specific issues in this particular case study, contributing to delays in the distribution of documentation, the length of meetings and the mounting cost of the process. However, it must be pointed out that good quality translation and interpretation is essential for a successful outcome, for example, in reducing misunderstandings.

5.7.1 *Interconnectors*

The lack of coordination on trans-boundary projects is well illustrated in the case of the BritNed electricity interconnector, proposed for construction between Great Britain and the Netherlands. Compliance of the project with the EIA regime was studied both from the GB perspective and the Dutch. In summary, the case reveals differences of principle as to whether it should be subject to EIA, little if any co-ordination or communication relating to the EIAs between the two MS (perhaps because impacts

were essentially domestic) and lengthy delays associated with project design, unrelated to the EIA process, but which still meant a lengthy EIA procedure.

Case study: BritNed interconnector

The EU is striving to achieve a greater liberalisation of the EU electricity market. One objective is for customers for electricity to be able to decide freely where they make their purchase. In order to transport the electricity to customers, high voltage links are needed. National transport grids have the largest capacity and are linked to one another by a limited number of international links (interconnectors). As yet, there is no such link between the Netherlands and Great Britain. Existing long and indirect transmission routes between the two countries are inefficient (running via Belgium (or Germany), France and then under the English Channel).

The BritNed interconnector, a proposed 260km 1,000 megawatt electricity interconnector, would provide a direct link, cutting congestion and reducing energy losses, thus providing a far more efficient means of transport. The link will be particularly valuable as it can be activated, or its flow can be reversed, very quickly. BritNed would also increase competition in the electricity markets by introducing new players into both GB and NL markets; it is hoped this would translate into lower prices for consumers.

EIA process - Netherlands

Electricity infrastructure is a matter of national interest in the Netherlands. All new electricity infrastructure projects are listed in the Dutch National Planning Decree (also known as SEV2), which has the status of a Key Planning Decision. BritNed therefore had to be added to SEV2 in order to obtain the necessary consent permits. The EIA process had to be completed before modification to the SEV2 could take place.

Subject to EIA?

The BritNed project coordinators decided to 'self-screen' (i.e. skip the screening stage) due to the size of the project. Some of the potential trajectories for the interconnector crossed areas protected by the European Habitats Directive. An appropriate assessment was therefore also conducted.

Key issues

The EIA process took four and a half years to complete, although this was not attributable to EIA itself. Different alternatives had to be developed and this required more research than expected – as a result, the writing of the ES also took longer than expected. Coordination between the four different Ministries was complex and required a lot of time. A dispensation from the national electricity act was needed and took a long time to obtain.

Environmental effects

The general view was that the environmental effects of the project were limited, and this view was supported by the National Commission on EIA. The ES also demonstrated that it was unlikely that the project would affect habitats and species protected by the Habitats Directive or by Dutch environmental legislation. Information provided in the ES was therefore 'unsurprising' to both the developer and the authorities.

Trans-boundary impacts

Cross-border effects were not likely to occur. The Belgian and UK Government were briefed about the plans, yet no feedback was received. There was also no contact between the Dutch government and the UK regarding the British side of the interconnector.

EIA process – Great Britain

Subject to EIA?

The key point made by environmental consultants acting for the British side of BritNed was that interconnectors are not explicitly listed in the Annexes of the EIA Directive. As none of the components – converter stations, submarine cables and interconnectors – were in either Schedule 1 or 2, the UK EIA Regulations, they could not technically be applied to the project. Previous case law precedence had been used to show that similar interconnectors in the past had also been ruled as not requiring an EIA by the Secretary of State. The EIA Regulations were seen as an additional burden to the Town & Country Regulations (main UK Regulations for most developments), and would have introduced a new level of risk and challenge for claims that procedures were not being followed properly.

Key issues

Technically, the BritNed interconnector was not subject to EIA, although the environmental consultants still conducted a procedure of environmental assessment practically identical to EIA, instead referring to the Environmental Statement as a 'Land Environmental Report'. The lack of a formal undertaking of EIA simply meant that there was less opportunity for legal challenges to be mounted (in the name of EIA).

A long time was taken over the design of the access road, although this must be regarded as more of a project cost than an 'EIA cost'. The cost of the road study was substantial and yet only a few paragraphs were written in the environmental report regarding the issue. The EIA process was also delayed while the study to design the road was completed.

Despite not asking for any revision to be made to the environmental report, the competent authority took 26 months to issue planning permission (the usual timeframe for a response to environmental statements is 13 weeks). This was unusually long given that there were no objections from non-statutory/statutory consultees, and that the period of time allowed for legal challenge had elapsed too.

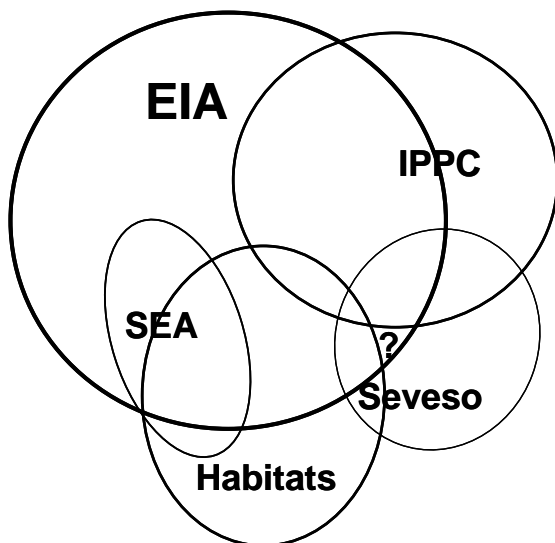
5.8 Analysis of the Linkages between the EIA Regime and Other Environmental Directives

The costs of the EIA Directive are also influenced by the linkages and overlaps with other environmental directives that require project level assessments of environmental impacts prior to consent. These linkages, informed by the analysis of the IMPEL group¹⁵, relate mainly to the IPPC, Seveso, Habitats and SEA Directives and are summarised in Figure 5.5, where the size of the overlap is indicative of the relative importance of the linkage between each of the Directives. Annex D provides more details on the overlap between each of the directives.

This suggests that the most significant overlaps relate to the IPPC, Habitats and SEA Directives. In the Member States examined, the most significant overlaps from the perspective of raising costs and delays were associated with the IPPC and the Habitats Directives, because of the 'double assessment' they require alongside the work required by the EIA.

¹⁵ AC-IMPEL review of the Interrelationship between EIA, IPPC and Seveso Directives and the EMAS regulation, technical report, March 2001. However, it must be noted this report was written before amendments were made to the EIA Directive in 2003 (2003/35/EC)

Figure 5.5: EIA Linkages with Other Environmental Directives



5.8.1 Requirements under the Directives for Selected Types of Activity

The nature of overlaps between Directives is illustrated by reference to different selected activities (Table 5.6).

Table 5.6: Coverage and Basic Requirements of the Directives by Project Type

	Municipal Waste Incinerator	Oil Refinery	Cement Producer	Power Station
Coverage of Directives	IPPC, Waste Incineration Directive (WID) & EIA and national permits or legislation	IPPC, EIA, Large Combustion Plant, Greenhouse Gas Emissions Trading (GHG-ET), Seveso II, Water Framework, Air Quality Directive and national permits or legislation	IPPC, EIA, Landfill, Waste Incineration Directive (WID), Greenhouse Gas Emissions Trading and national permits or legislation	IPC, IPPC, EIA, Large Combustion Plant (LCPD), Greenhouse Gas Emissions Trading and Landfill Directives and national permits or legislation
Compliance burden for developer	WID imposes additional monitoring requirements. Two consultation processes as EIA is done earlier than IPPC.	WID imposes additional monitoring requirements. Two consultation processes as EIA is done earlier than IPPC	Multiple permitting regimes (IPPC, GHG-ET, landfill) and additional requirements of the EIA as compared to IPPC. WID imposes additional monitoring requirements. Two consultation processes as EIA is done earlier than IPPC	Separate requirements can be laid down by the regulator for IPPC (CA) and that for EIA (local planning authority). Two consultation processes as EIA is done earlier than IPPC

We briefly review the implications of overlaps between the EIA Directive and each of the other four Directives.

5.8.2 *IPPC Directive*

The IPPC Directive has significant overlap with EIA in terms of scope and operative requirements (e.g. permit applications for IPPC). However, the EIA is broader in scope covering land-use planning and construction-phase issues for installations, whereas the IPPC is narrower, looking at the environmental impact of operations.

Issues identified that potentially lead to a duplication of impact assessment and hence increased costs include:

- The **thresholds for and definitions of projects** under the EIA Directive sometimes differ from those under the IPPC Directive. By way of example, both Directives cover industrial plant for the production of paper and board. Under the IPPC Directive, the threshold production capacity is 20 tonnes per day whereas under the EIA Directive (Annex I) it is 200 tonnes per day (although there is no threshold in Annex II). Similarly, they both cover installations for the intensive rearing of pigs with the IPPC Directive, covering those with more than 2,000 places for production pigs over 30kg and the EIA Directive covering those with more than 3,000 places. In the latter case, an installation with 1,900 places would not necessarily be subject to either Directive, one with 2,900 could be subject to the IPPC Directive alone and one with 3,100 would be subject to both. The reasons for such differences are unclear. This issue may mean that the level of regulation is not necessarily proportionate where an installation falls into or out of the scope of one Directive or the other.
- **Discrepancies in the case of changes or extensions of existing projects** - According to the IMPEL report, the question of the application of the EIA, IPPC and Seveso Directives in the case of changes or extensions of existing projects needs close scrutiny since a range of discretion is left to Member States. Annex III of the EIA Directive covers aspects to be taken into account in the determination of whether EIA is required for Annex II projects, which includes changes and extensions to existing projects. Neither the IPPC nor Seveso Directives have such an annex. However, both directives refer to the significance of the effects of the proposed change on the environment. The criteria in Annex III of the EIA Directive can be a useful tool to screen substantial changes under the IPPC Directive and to screen modifications under the Seveso Directive. Where cases fall within the scope of two or three Directives, a single screening phase will contribute to the efficiency of the decision making procedure.
- **Limits on submitting relevant information for both directives** - At the Member State level, there is the potential for applying a single procedure in order to fulfil the requirements of the two Directives (Article 2a of the amended EIA Directive) with information generated for EIA potentially also applicable under IPPC. Similarly, the IPPC Directive (Article 9(2)) indicates that any relevant information obtained or conclusion arrived at under the EIA Directive shall be taken into consideration when granting the permit. However, an issue of concern where the two Directives both apply include:

- The need to submit an EIA and then a separate need to submit an application for an IPPC permit. This involves burdens for the operator (preparing analyses and documents; discussions with regulatory authorities; public consultation) under both of the regimes, as well as consequent burdens for the regulators concerned, whether they are the same organisation for both or separate;
 - Provision of different types of information to the regulatory authorities for the two regimes. Whilst this may cause additional burdens to operators, this is considered to be a matter largely related to the manner in which the legislation is implemented in the Member States, rather than an issue related to the Community legislation itself, given that there is nothing to stop a more streamlined approach being adopted.
- **Limited co-ordination of consent under the two directives** - According to the MS studies, there is little evidence of widespread co-ordination between the EIA Directive and IPPC. The IMPEL analysis identified four Member States – Austria, Belgium-Brussels, Germany (see Box 5.1 below) and Italy – that had developed a single procedure for the authorisation of projects that fell under both the EIA and IPPC Directives. Even amongst these four Member States, there is a large variation in the approach taken. For example, Austria has a single consolidated consent procedure whereby the relevant authority will consider both EIA and IPPC, while in Italy it only applies to changes and extensions to existing projects. In all other Member States, the procedures are separate although in France, the Netherlands, Sweden and the UK, proponents are advised or required to submit application simultaneously. In general few Member States had taken the opportunity to co-ordinate the EIA and IPPC more closely, which would provide for greater consistency and a reduction in the duplication of reporting.

Box 5.1: The German Approach to Harmonisation of Procedure

In Germany the IPPC and EIA directives were transposed into the same group of regulations, the German Federal Immission Control Act. This Act applies to industrial installation and sets out a list of installation categories that require a license according to this law and distinguishes between installations for which a formal authorisation procedure is required (including public participation) and those that require a simplified procedure (without public participation). The varying thresholds in the two directives were harmonised through changes to the **catalogue of project types** for the formal procedure listed in the 'Fourth Ordinance for the Implementation of the Federal Immission Control Act: the Ordinance on Installations Requiring a Permit' (4. Bundesimmissionsschutzverordnung – 4. BImSchV).

5.8.3 SEA Directive

In theory there should be a clear distinction between, but also good integration of, SEA and EIA, the former relating to the programmes and plans that frame development; and EIA to projects that come forward within these plans or programmes. SEA is thus carried out earlier and at a more strategic scale than EIA, but sets the framework for the EIA.

In theory, at least, if an SEA is undertaken at the appropriate strategic level so that the most acceptable environmental options are selected, an EIA may not even be required

for subsequent projects if they are unlikely to have significant environmental effects beyond those already assessed and approved under the SEA. However, this theoretical position is likely to be different to the legal position when it comes to applying the EIA, for example, if the project is an Annex I project under the EIA, it will require EIA anyway, irrespective of its theoretical relationship with any preceding SEA.

The SEA Directive Article 3(2)(b) requires mandatory SEA for plans and programmes requiring assessment pursuant to the Habitats Directive, whereas mandatory EIA is linked to the type of project; not the area that will be affected.

In practice there are problems with the lack of coherence of the two procedures. This might arise when there are limited or out dated local development plans and no satisfactory SEA, requiring developers of projects to secure CA revisions and updates before the application can proceed. Another difficulty arises when large projects are proposed which potentially constitute new programmes; or where new programmes might be considered to be large projects. France has sought to avoid overlaps by explicitly defining those activities subject to SEA and to EIA. However, there is concern that the EIA is insufficiently compliant with the SEA. Spain has sought to ensure integration transposing EIA and SEA within the same laws, for example, in the region of Castilla-La Mancha, where legislation has recently been reformed, and a common text for EIA and SEA adopted.

5.8.4 Habitats Directive

The required assessment (the ‘appropriate assessment’ under Art. 6) of development proposals under the Habitats Directive, i.e. where development proposals have the potential for significant impact on designated Natura 2000 sites, has the potential to overlap with the assessment required under the EIA Directive. The EIA and Habitats Directives differ in the scope of the assessment, objectives of the assessment, procedural steps and legally binding consequences. In practice, a major difference is the generally more detailed and lengthier ecological assessment required by the Habitats Directive.

Another difference between the two directives is that there is no list of projects in the Habitats Directive stating a binding assessment procedure for certain types of projects. Accordingly the decision whether a project has to undergo an impact assessment is always a case-by-case decision taking into consideration the characteristics of the Natura 2000 site and the characteristics of the project. However, in most cases if the nature of the project is such as to trigger an appropriate assessment under the Habitats Directive, an EIA will be required. However, scoping and consultation are specified under two separate regulations.

Information gathering stages for these requirements can be combined – frequently this is the case in practice – where the developer collects information for the Appropriate Assessment (AA) and presents it in the EIS, although the competent authority has to actually undertake the AA. In the UK, there is still some confusion as to whether information for AA can be presented in the ecology chapter of the EIS, or as an appendix or as a separate report.

Whilst there is scope for practical arrangements to secure closer integration on a case by case basis the lack of integration can cause difficulties as described in the example below (Box 5.2).

Box 5.2: Example of a Lack of Integration between EIA and Habitats Directives

The integration of the “appropriate assessment” in the EIS for the LNG-Terminal in the Netherlands was less than successful. The EIS was finished and approved, the necessary environmental permits were granted, but the project could not start because the permit within the frame of the Habitat Directive was not granted. At the end of the EIA process it turned out that more information was required for the “appropriate assessment” and the CA took more time than expected to review. The lack of coordination resulted in delays of at least half a year.

5.8.5 Seveso Directive

The aim of the Seveso Directive is the prevention of major accidents and not, as in IPPC, the control of pollution. Its requirements and procedures are therefore significantly different and the extent of possible common actions consequently reduced. There are nevertheless common areas, where activities subject to IPPC may also be covered by Seveso. This is mainly for application of IPPC permits where the information supplied is in accordance with the requirements for an EIA Directive or a safety report prepared in accordance with the Seveso Directive.

5.8.6 Multiple Public Consultation

One area of potential cost attributable to the overlaps with other Directives is in the multiple consultation processes that are required. Public participation in assessment processes is required in all five Directives. In the EIA Directive, the term 'public' as well as the term 'public concerned' is used. The determination of the 'public concerned' is left to the MS. The 'public' has to be informed and the 'public concerned' consulted before development consent is granted. In contrast, the IPPC Directive only uses the term 'public' and the obligation is only to consider their comments before the decision is made. In this context, it is unclear whether this difference is intended to require a different group of the public participating in the procedures or not. The SEA Directive uses the term 'public' for consultation on the draft programme or plan and 'public affected' in the decision making for this Directive. The Seveso Directive also uses the term 'public'. The involvement of the public is related to the different measures to be taken, e.g. consultation is provided for external emergency plans but the only information provided is that concerning the safety report.

5.9 Summary of the Main Problems Identified from the Selected Member States

The research has identified a range of issues with the implementation of the EIA regime that creates undue costs and delay on both industry and competent authorities.

In summary these problems, in broad order of significance as perceived by industry stakeholders, are:

- Lack of timetables with various EIA stages (screening, scoping, consultation) leading to delays
- Project size thresholds set too low (leading to unnecessary EIAs)
- Too onerous a level of consultation required, given other consultation requirements, especially for smaller projects

- Lack of skills / resources in the Competent Authority (leading to e.g. delays, poor screening / scoping decisions)
- Overlaps in assessment requirements between the EIA and other environmental directives (e.g. IPPC, Habitats) leading to delays from double assessments
- Lack of adequate screening of projects to determine the risk of significant impacts, especially for smaller projects
- Lack of project/site alternatives leading to reduced added value from EIA

6 BARRIERS AND BEST PRACTICE

6.1 Common Barriers to a Cost-Effective Application of the EIA Regime

The six MS studies of EIA operation have identified a number of common issues that reduce the cost-effectiveness of the procedures. The effects vary between MS depending on the individual transpositions and subsequent national level policies, but the issues are likely to affect all other MS to varying degrees and could form a focus for at least part of simplification proposals. Some of these issues have been discussed with reference to costs and delays, but we summarise the key issues as the potential basis of subsequent policy responses.

6.1.1 *Levels of Competency*

The cost-effectiveness of the regime is significantly reduced by an inadequate capacity and level of skills to advise and negotiate the EIA, especially in Competent Authorities at the local level. This tends to be compounded by the lack of adequate quality assurance of EIA activity, leading to higher costs and delays. This issue was especially pronounced in Poland, but featured in all the national evaluations.

In Poland, the competences required for environment protection and EIA management are lacking, especially in smaller, more peripheral local communities. In these CAs, the EIA procedure is usually the responsibility of one person, who is responsible simultaneously for all other environmental issues. In Spain, there is a distinct lack of staff in relevant public authorities both at central and regional level (during procedures), and lack of staff in relevant public authorities at central and regional level for follow up on EIA decisions.

There are some cases where developers use this weakness of local administration to bypass the law or accelerate procedures, which cause a reduction in the effectiveness of the EIA. Lack of competence is often the reason why CAs perform screening as a kind of ‘automatically accepted procedure’ in order to prevent problems at later procedural stages, as well as requesting the EIS whenever the law makes it possible (and not just in the cases where it is actually needed). The situation is similar for scoping. Usually, the CA requests the inclusion of all impacts identified in regulations, irrespective of their likely significance. Consequently, there are too many EIAs performed, with too broad a scope. The situation may be improved by intensifying training and creating detailed, and simultaneously intelligible, guidelines for appropriate management of screening and scoping.

Quality assurance of EISs is also important for removing from the market authors of poor quality statements (and associated costs and delays associated with revisions), as well as providing confidence to the decision-making process. Creation of an accreditation scheme for competencies of consultants, companies and institutions and/or the use of a system of independent advice and appraisal, as applied in the Netherlands, provide a response. The expansion of recruitment and increased use of training by the CA would also have a longer-term benefit. Another response is to have a pool of competence from which different CAs can draw when relevant projects are being discussed, at least for those CA that have few projects requiring EIA procedures, and thus tend to lack experience in dealing with them.

6.1.2 Use of Annexes, Thresholds, Exemptions and ‘Gold Plating’

The cost-effectiveness of the EIA regime rests in large part upon the ability to identify those projects that potentially have a significant environmental impact and to ensure a reasonable level of consistency of approach across the MS. This is achieved by the use of Annexes to describe relevant categories of project and the use of thresholds to define the scale of project above which impacts should be considered. There is scope to exempt projects from an EIA where even though it is listed and above the threshold, impacts are not considered to be significant given the particular nature of the project.

The costs are clearly related to the operation of these parameters. However, the cost-effectiveness of the regime is also dependent on the level of environmental assessment that would otherwise occur in the absence of EIAs. There is a growing appreciation in the MS examined that there has been a degree of ‘gold-plating’, and that the assessment of projects could be left to an increasing extent to national provisions and regulations determining development consent without requiring formal EIA procedures. This ‘gold-plating’ represents a barrier to cost-effectiveness because it generates additional costs associated with highly formalised assessment procedures with potentially no additional environmental benefit, given alternative national systems.

The previous MS practice of expanding the range of projects covered, and reducing project thresholds during transposition, with very little use of exemptions, is now under review. This is partly because over the 20 years since the EIA Directive was introduced, MS systems of environmental management have improved extensively, as has the use of SEA to improve the planning frameworks for development projects. The continued use of EIA for Annex I projects is not contested, however, given that EIA costs fall disproportionately on smaller projects, there is an increasing argument for at least raising project thresholds and/or allowing much greater freedom in the use of exemptions

6.1.3 Overlaps between Impact Assessments and Directives

Overlaps between impact assessments required by different Directives do exist but have generally proven difficult to remove or to simplify. Depending on the nature of the project such overlaps require management and co-ordination with the EIA related activities. From the MS evaluations, the main EIA overlaps that require management are those caused by the IPPC and Habitats Directives.

The overlap with IPPC has proven especially difficult because of the need for two different consents (environmental operating regulation and development consent). Each of the two consent systems has a different timetable and differences in the detailed administrative procedures, despite provisions in both Directives to share information and results of impact studies. In the ideal case, there should be scope to undertake the two assessments in tandem, with shared consultation and common decision periods. However, in practice MS have found it difficult to tie the two processes together. In Germany at least, they have attempted to subsume both process under the same national regulation, and to secure harmonisation of project thresholds to determine permitting requirements.

The overlap with the Habitats Directive and the required assessment for projects which have a possible effect on Natura 2000 sites appears to offer a more tractable response. Projects that are subject to the assessment procedure according to Article 6 of the Habitat Directive and EIA often end-up undertaking two different assessments,

partly because of the differences in the level of detail required in the impact studies, as well as other procedural differences. However the Article 6 assessment can be integrated into the EIA at the scoping stage, although delays to the EIA can be caused by the time to complete the appropriate assessment.

Policy responses might consider streamlining these assessments at source (i.e. EC level), where applicable, reducing the need for responses at MS level within each permitting procedure.

6.2 Best Practice

The studies of MS systems of EIA operation provide a range of experience that might be judged to represent best or at least good practice; and which if replicated might contribute to an improved simplification of the EIA regime.

These suggestions are summarised in Table 6.1.

Table 6.1: Overview of Good Practice and Potential Application to Simplify the EIA Regime

Good Practice Suggestions	Member State Experience	Application to the EIA Regime	Potential Benefits
<p>Integration of EIA Directly into Development Consent Decision-making – rather than securing a separate environmental approval prior to consent decision</p>	<p>France, Germany, NL, UK (through transposition)</p>	<p>Broader development consent regulations</p>	<p>Avoidance of separate decisions on EIA and then development consent, reducing delay (eg in Poland) and improving quality of decision-making through consideration of trade-offs</p>
<p>Integration of Habitats ‘Art 6’ Appropriate Assessment into EIA</p>	<p>Germany (through transposition) and NL, UK , France (through de facto scoping decisions)</p>	<p>Scoping opinion – determine possibility for integration on case basis</p>	<p>Avoidance of duplication of assessment and of related delays</p>
<p>Pre-application (also called ‘pre-scoping) Discussions – broader than just EIA , but including EIA as part of early informal discussion with the CA and with other consultees</p>	<p>Germany (actual duty to advise developers through pre-application meetings), UK (long established practice of discussion between developers and CA)</p>	<p>Pre-scoping review in case of Annex I and pre-screening review in case of Annex II</p>	<p>Early advice on the acceptable character of the project including the need for EIA and its potential scope. Build engagement with consultees. Identify data sources Improve quality of application documentation</p>
<p>Mandatory Scoping – ensures a specified basis for the EIA.</p> <p>Separate issue of whether the scoping opinion is binding, and the scope for flexibility to allow changes in scope</p>	<p>Germany, Netherlands, through transposition</p>	<p>Ensures a formal scoping phase. This in turn ensures full and early discussion over the impacts to be assessed and provides a basis from which to conduct the impact assessment</p>	<p>Reduces the risk of iterations and ambiguities over the scope of the EIA. Less risk of extensions to the EIA scope, with time savings. Improves the impact assessment by focusing on agreed issues. Improves engagement with consultees and allows key issues to be formally raised.</p>

Good Practice Suggestions	Member State Experience	Application to the EIA Regime	Potential Benefits
Use of Time Limits – to restrict the time available to CA to provide screening and scoping opinions and to limit the time that consultees have to respond. Statements / objections submitted after the deadline precluded, although significant issues accepted	Germany – achieved swifter more effective decision-making	Various stages of the EIA, but especially for screening and scoping opinions and consultation periods	Reduce delays and improves decision-making by ensuring clarity in the timing of steps and decisions. Might require some form of sanction to gain full benefit
Use of Simplified Procedures – for smaller projects with less significant impacts, e.g. discretion over use of meetings and the scope and periods of consultation	Germany, introduced simplification measures	Throughout the EIA procedure, but especially use of studies and consultation	Reduced costs and time taken to complete.
Improved Availability / Access to Environmental Data and Maps	Germany, Spain (introduced improved IT systems to access data via Internet)	Supportive of early screening / scoping project discussions. Used during the assessment	Reduces the need for primary data collection and related costs and time. Improve independence of EIA
Use of Independent Quality Control	Netherlands (formally) and UK (informally)	Advises on all aspects of the procedure and reviews quality of EIS	Provides confidence in the procedure and demonstrates that the EIA is performed to established standards. Reduces risk of sub-standard EIS, and associated costs and delays for revisions
Use of MS Guidance Materials	Germany, UK, NL, France	Various stages of the EIA procedure.	Improves clarity of requirements, especially useful where applicants and CA are unfamiliar with EIA or where approaches are difficult (e.g cumulative impacts)

7 IDENTIFYING POSSIBLE MEASURES TO AID SIMPLIFICATION

7.1 Introduction

This section of the report presents ideas for simplification of the EIA regime. The section comprises three sections. In the next section we present the DG TREN proposals for trans-boundary projects and some informal feedback from consultees obtained during the study. We then report on feedback from consultees to early ideas for simplification emerging on the basis of early findings. We then conclude with a consolidated list of ideas that builds on both these earlier ideas and incorporates some additional ones that have emerged during the final part of the study.

7.2 Trans-boundary Issues

Trans-boundary aspects highlight the potential need for harmonisation. Currently, a trans-boundary EIA has to deal with different structures, planning systems and participation and decision-making processes. Trans-boundary projects are also faced with language barriers and a wider range of consultees. Lack of experience in cross-boundary working (authorities and developers) hinders cost-effective operation.

To respond to these problems DG TREN proposed a number of measures (Box 7.1).

Box 7.1: Summary of DG TREN Proposals

Action 1 – Identification of the most important infrastructure encountering significant difficulties

The Commission has identified a number of key projects which are vital to completing the internal market, integrating generation from renewable energy sources into the market and significantly improving security of supply. The main reasons for the delay in implementation of the infrastructure are also identified for each project.

Action 2 – Co-ordinated planning at regional levels

The Commission will propose in 2007 a strengthened framework for Transmission System Operators (TSOs) responsible for coordinated network planning. European project co-ordinators are proposed. The framework is aimed at providing a platform for undertaking monitoring and analyses on the existing and future developments of networks in each energy area that improves the transmission capacities between Member States on a regional basis.

Action 3 – Ensuring acceleration of authorization procedures

The main objective is to reduce planning and construction time for prioritised EU infrastructure, taking into account environmental, safety and health concerns. This is to be achieved firstly by declaring certain priority projects as being of 'European interest', in order to help accelerate them significantly. This declaration includes the setting-up of a timetable for completion of the project; including details of the envisaged submission of the project through the approval process. To ensure the declaration remains

effective, it is considered that the future identification of projects of European interest be subject to strict conditions, and that the declaration only be granted to projects with significant impact on power flows and on trading in the region concerned.

Action 4 – Streamlining of authorisation procedures

The Commission will in 2007 begin revising the TEN-E Guidelines with a view to requiring the Member States to set up national procedures under which planning and approval processes for projects of European interest should be completed in a maximum time span of five years.

Action 5 – EU funding

The Commission is to examine whether increased EU funding for TEN-E networks is necessary.

The opportunity was taken to use the six MS studies to seek informal feedback from consultees on these proposals and especially those with specific reference to the management of procedures (Actions 2-4). We summarise in Table 7.1 the nature of responses.

In summary the proposals were generally considered to be helpful, with co-ordinators capable of responding to regulatory problems as equally important as dealing with the co-ordination of consenting procedures. Improved regional planning of infrastructures was considered helpful but again as long as it also tackled issues of market protection. Attempts to streamline and accelerate procedures are helpful, but use of specific timeframes has the danger that they become the default requirement, and fail to provide adequate incentive for acceleration.

Albeit somewhat limited, the feedback does also tend to demonstrate the difficulties of defining measures that would have general benefit across different MS and different types of project.

7.3 Early Ideas for Simplification and Responses

Feedback received throughout the study with regards to the DG TREN proposals for trans-boundary infrastructure projects, and corresponding suggestions, have been summarised in Table 7.2 below.

Table 7.1: Summary of Consultee Responses to DG TREN Proposals for Trans-boundary Infrastructure Projects

Proposal	Summary of Responses
<p>Action 2: Appointment of European Coordinators</p>	<p>Additional complexities and lack of experience in dealing with trans-boundary projects can create delays in authorisation processes. For such projects, as well as those with no clear lead competent authority or where co-operation between Member States appears problematic, the action would be useful. However, stakeholders in the UK felt the role of the European co-ordinators was not clearly explained.</p> <p>Consultees also felt that the causes and issues which prevent certain projects from progressing tend to be complex and more likely related to the individual Member State, rather than an ‘absence of coordination’ between them; difficult to attribute delays to ‘stalemate’ situations in coordination between Member States.</p> <p>The co-ordinator proposal may be more helpful in dealing with regulatory issues – for example helping to mediate over conflicts regarding ownership, management and operation of infrastructure such as interconnectors.</p>
<p>Action 3: Co-ordinated planning at regional levels</p>	<p>Considered a good idea in theory – but there was some suggestion that omissions and delays may be due to political circumstances where Member States have interests in supporting energy companies who in turn have reasons to prefer not to have the network strengthened, and competition and diversity of supply enhanced. Producing increased intelligence and analysis of the potential for interconnection is positive, although a properly regulated market should generate commercially viable opportunities for investment.</p> <p>Consultees felt it would be positive to have clearly stated key objectives for strengthening European transmission networks and would be valuable if accompanied by (and clearly linked) to reform of authorization within Member States, with the result that projects identified as of European importance immediately qualified for consideration under a reformed system.</p>
<p>Action 4: Streamlining of authorisation procedures and timetable</p>	<p>Some Member States were already noted as moving towards such measures to accelerate authorisation procedures, e.g. Planning White Paper proposals for introduction of Independent Planning Commission (UK) and passing of the Act for the Acceleration of Infrastructure projects (Germany).</p> <p>There was some concern that the fixed period of 5 years would either be fairly ambitious and slightly unrealistic for larger more complex projects or insufficiently challenging for smaller projects, and might encourage a ‘working towards the maximum’ because people want to be seen ‘taking the correct amount of time’ to complete (unintended consequence of proposal). One UK view was that 5 years would be considered ‘long’ within the UK consents regime, and that given the UK Government proposals to aim for a consideration and determination period of approximately 9 months from application; the 5 year proposal seems ‘retrograde’.</p>

Consultees: National Grid (UK), TEP Consulting, German Federal Association for Wind Energy, German Energy Agency (dena), Frankfurter Allgemeine Zeitung

Table 7.2: Summary of Consultee Responses to Early Ideas for Simplification

Suggested Ideas	Summary of Responses
<p>Updating of Annexes</p> <p>Updating and clarification of Annexes I and II to take account of technological change leading to creation of new project categories, as well as to confirm whether omission of certain project types has been intentional or not.</p>	<p>General consensus is that recommendation is an important one. Proposal particularly useful to take account of technological advances (e.g. wave and tidal technology) and issues that have now become environmentally sensitive. Development of new technologies is taking place so quickly that regular (periodic) verification is needed. Periodic, formal review process should be established to review types of development contained in Annexes. Reference to similar procedure to that in Germany currently. One reservation was that regular revision of standards is resource intensive and may lead to more EIAs required.</p> <p>Some activities not included in the Annexes; leads to uncertainty for practitioners on whether EIA required.</p>
<p>Updating EU Guidance to Improve Standardisation</p> <p>Most of the EC's guidance on the EIA regime was produced in 2001. Revision of EC guidance in light of the extensive EU and MS case law and MS practices (some measure of 'retro-fitting' in pursuit of some standardisation and consistency across Member States in terms of compliance with the Directive) would potentially remove inconsistencies and clarify existing ambiguities.</p>	<p>Updating the guidelines concerning EIA considered important, especially from the point of view of changing priorities in global environmental threats e.g. the greenhouse effect. Rank of impacts in relation to influence on increasing the threats should be taken into account and stressed in any updated guidelines. Scope to include methodological issues such as the treatment of cumulative effects would also be valuable.</p>
<p>Use of Case Histories</p> <p>More emphasis on the use of case history to indicate what is considered to be a significant or non-significant impact to help the CA avoid positive screening for all - could augment or replace the use of project size thresholds.</p>	<p>Use of past experience seen as potentially good idea. Reference to case histories may make up for shortfall in experience amongst competent authorities which have inexperienced staff (who would be negatively affected by a removal of thresholds). However, this assumes officers have time and motivation to read and understand case histories and that they will sufficiently cover all eventualities (unlikely scenario). Also concern that weaker guidance (from removal of thresholds) would lead to more unnecessary EIAs.</p> <p>Also problematic if it means use of case law in the case of Germany, because German legal tradition uses thresholds and fixed rules</p>
<p>Increased Robustness in Screening Projects</p> <p>More robust screening procedures could be used to avoid unnecessary EIAs; with the possible use of a FONSI ('Finding Of No Significant Impacts') test to confirm the need for EIA. The test would</p>	<p>FONSI sounds like a potentially sensible concept and should be pursued further; could have positive impact on decreasing costs and shortening time of project realisation. Tighter screening procedures needed, especially because different competent authorities can have</p>

Suggested Ideas	Summary of Responses
<p>screen out issues that no-one is arguing about and concentrate only on significant issues. A UK example in the oil & gas sector (Petroleum Operations Notice - PON15) is a procedure that enables dispensation to be secured from preparing an EIS when it might otherwise be screened in</p>	<p>different thresholds (or even different officers within the same authority can operate different thresholds); this makes it difficult to predict when EIA will be required and can lead to inaccurate early budgeting and programming of projects on the part of the developer, as well as complicating land purchase</p>
<p>Mandatory Scoping</p> <p>Mandatory scoping between the CA and developer exists in Germany and the Netherlands. This helps to curb delays and extensions in cost due to expansion of scope. Some allowances for subsequent revisions to the agreed scope is made - but then extensions are by exception rather than the rule. Mandatory scoping also enables more rigorous timetables and deadlines to be agreed.</p>	<p>Strong case for this recommendation. Recent UK project studying scoping practice found 67% of local planning authorities thought scoping yielded beneficial effects on quality of ESs. Scoping viewed as essential part of EIA process, and should be focused on excluding issues ('scoping out') and considering them in less detail if they are genuinely minor in the context of the project.</p> <p>Potentially very useful for complex projects (e.g. airports); scoping that is binding will help to reduce the number of objectors popping up throughout application; however could have perverse effect on projects which are not actually complicated but have that image – could end up with 'unnecessary work'</p> <p>Creation of a 'scale' i.e. choice of systems – could be useful e.g. nuclear power stations have 'full version EIA; less complex infrastructure projects do a 'scaled down' version</p> <p>Only sufficiently experienced EIA practitioners would allow recommendation to work, however.</p>
<p>Prior Authorisation</p> <p>EU or MS could provide policy statements, subject to consultation, to set out the need for certain types of infrastructure (e.g. airport capacity, nuclear power stations), eliminating the discussion of the need for developments (which can create delays especially at public inquiry stage) or to confirm national responses to certain environmental impacts which do not depend specifically on the location of the development, e.g. air quality and noise adjacent to airports, or the management of radioactive wastes. Certain environmental impacts could then be excluded from the scope.</p>	<p>Already being undertaken in Germany, and similar policies being proposed in the UK (Planning White Paper). Likely to be useful for contentious projects such as new airports, railways etc.</p>
<p>Time Limits for Participation and the Processing of Applications</p>	

Suggested Ideas	Summary of Responses
<p>Time limits have been increasingly used to restrict the period in which authorities, the public and NGOs can raise objections or have to process applications (sometimes in combination with the exclusion of statements/objections submitted after the deadline in the decision-making process and for legal challenges. Significant issues that would affect the decision are however allowable. To some extent, this is seen as a restriction of rights, which could also impact on the quality of decisions being made, especially as the information that needs to be processed is often large. The signal sent by such time limits should be positive and lead to speedier processing of applications and more emphasis on the completeness of application documentation at the start of a procedure.</p>	<p>Already being pursued, by some consultees, and considered to positive idea,</p> <p>Time limits have already been put in place in the UK, e.g. the local authority has 8 weeks to make a decision. However, compliance with time limits by competent authorities can be quite lax, affected by resource constraints and incentive/targets systems, which can perversely encourage local authorities to address the ‘easier’ applications in order to reach targets.</p> <p>Strong support for the idea was also expressed through reference to new Scottish Planning Act, which has set minimum standards for consultation and promotes concept of Development Agreements to identify programme for determination.</p> <p>One concern with the idea is the need to ensure stricter compliance with time limits, possibly through greater regulation of methods by which extensions to consultation periods are secured, e.g. time-based penalties (to remove ability of bodies to extend consultation period unilaterally) or requirement of authorisation to exceed specified time limits from an executive body</p>
<p>Improvements in Environmental Data</p> <p>Better data would reduce the need for data collation for individual EIAs. Cost implications and capacity constraints in the public sector may limit the feasibility of this option.</p>	<p>Useful suggestion – EIS is time-consuming if ‘every beetle needs to be counted’. Lack of strategic environmental data complicates and undermines accuracy of EIA in the UK. Developer is often left in the position of having to try to collect data about other schemes throughout the area. If more information was provided at the local level (in advance) in terms of what must be protected in that area, better initial scheme planning would take place and unnecessary costs and time wasted in pursuing inappropriate options would be avoided.</p> <p>Another useful move would be to improve clarity over when contents/data/information could be transferred from one procedure to another</p>

Consultees: Federal Association of the Construction Material Industries (D); Federation of German Industries; Taylor Wimpey Ltd (UK); British Wind Energy Association; Confederation of British Industry (CBI); National Grid (UK); Polish Economic Chamber of Metals; Commission of Environment Protection (PL), Regional Economy Chamber, Katowice (PL); Royal Society for the Protection of Birds (UK); Mouvement des Entreprises de France (MEDEF), France

7.4 Consolidated Ideas for Simplification

This section summarises, in three tables, a series of ideas and suggestions for the simplification of the EIA regime aimed at reducing the costs and delays associated with the EIA procedures.

The scope for simplification depends in part on the nature of policy response by the EC, ranging from a 'hard' regulatory response, setting out required changes through a new Regulation; to a less directional response based on changes in the EIA Directive (including changes in the actual text, Annexes and/or Guidance); through to a 'softer' response based on advice to MS to consider possible suggestions.

We have divided the ideas broadly into these three categories of response:

- Table 7.3 introduces ideas for a new Regulation based on the introduction of clearly defined projects of EU interest and targeted changes in the EIA procedures to be adopted by MS
- Table 7.4 introduces ideas for simplification based on improvements in the existing system of EIA, through changes in the Directive
- Table 7.5 introduces ideas for the simplification of the EIA regime at MS level, based on advice relating to good practice

Some ideas are mutually exclusive, others might complement one another. The ideas have resulted from the assessment, but it is beyond the scope of this study to formally evaluate them and their potential impacts on the cost-effectiveness of the EIA regime.

Table 7.3: Simplification through a New Regulation – Based on Projects of EU Interest

Proposal	Rationale	Advantages	Disadvantages
<p>Introduce a single statutory EIA procedure for Projects of EU Interest – Revise the Directive into a Regulation. All other projects would be exempt from the Regulation. The Regulation would list projects of EU interest on the basis of a) their contribution to trans-European transport and energy infrastructure and b) their potential to influence the internal market (and would apply largely to industrial installations).</p> <p>The current Annexes I and II would be replaced by an Annex specifying Projects of EU Interest (and associated size thresholds). Since these projects would be of significance wherever they are in the EU, there would be no need for screening.</p>	<p>A single EU wide system of EIA with supporting Guidance, accreditation (obtaining formal qualification and certification) and training would simplify procedures and improve quality of EIAs. MS would still determine consent.</p> <p>Since there is little or no EU interest in many development projects, MS should, under subsidiarity, be able to determine their own approaches to EIA</p>	<p>Introducing an EU wide procedure would ensure a level playing field and reduce need for interpretation and legal rulings from ECJ. Clear timetables could be provided</p> <p>Overlaps with other environmental directives (especially IPPC & Habitats) could be dealt with more explicitly.</p> <p>Removing MS discretion would lessen the need for legal interpretation / responses to ECJ; it would also remove differences in EIA scoping / methods / consultation</p> <p>MS would be free to establish their own EIA approaches for all other projects – and free of reference to ECJ rulings and the need for any wider ‘standardisation’</p>	<p>The establishment of the procedure would need to recognise different MS planning & development consent procedures</p> <p>MS may end up with two approaches to EIA – one for projects of EU interest and one for the remainder. Of course MS could decide to adopt a single system.</p> <p>Funding would be required to support the establishment of an EU wide accreditation system</p>

Table 7.4: Possible Changes in the EIA Directive to Support Simplification – to be Developed by the EC in Consultation with MS

Proposal	Rationale	Advantages	Disadvantages
<p>Introduce idea of Projects of EU Interest (Trans-European Networks & Internal Market) as the basis of the Directive</p> <p>The use of Annex I (mandatory EIA) and Annex II (discretionary based on thresholds) would be retained but would define only projects of EU Interest</p>	<p>The Directive would be focused only on projects of EU added value i.e. on those projects that had the potential to influence the internal market and where different MS approaches might harm EU competition.</p> <p>Expansion of MS own systems of environmental assessment have developed since the Directive was first introduced and would allow satisfactory assessment of projects excluded from the Annexes and outside of the formal EIA procedure</p>	<p>The proposal would focus EU attention on investment projects in the context of the Lisbon Agenda</p> <p>Allows greater use of MS regulation for projects of non-EU interest. MS would be free to continue with EIA as currently operating, but as a national rather than EU system that requires ECJ supervision. Divergence between MS in approach to assessment would not matter. Any risk of increased environmental impact would be a matter for MS, but still subject to other EU environmental policy</p>	<p>EU policy statements in support of classes of project would be needed to define EU interest.</p> <p>Differences in MS transposition may lead to differences in the nature and conduct of an EIA such as to undermine a common approach to projects of EU interest</p>
<p>Regular update of Annex I and II to reflect technological change</p>	<p>A key aim of the Directive is to ensure a level playing field – major project types not included give rise to different approaches in MS.</p>	<p>Saves time and cost at MS level in screening effort</p> <p>Ensures level playing field</p>	<p>Cost and approach to reviewing and deciding on revisions</p>
<p>Screening of EIA – FONSI ('Finding Of No Significant Impacts') test to confirm the need for EIA. The test would both screen out issues of no significance and (if there are issues) scope out the significant issues. Essentially to condense the screening and scoping</p>	<p>Stronger screening procedures could be used to avoid unnecessary EIAs; The result of such procedures could be used as the basis of the scoping opinion or scoping report. UK example in oil & gas sector (Petroleum Operations Notice - PON15).</p>	<p>Places a more formal requirement to establish the need for an EIA and avoids tendency to 'screen in'.</p> <p>Removes the need for thresholds in Annex II – considered on a case by case basis</p>	<p>Initial screening decision takes more time (although time is saved in reduced scoping)</p> <p>Some projects that would have been screened out are subject to analysis</p>

Proposal	Rationale	Advantages	Disadvantages
<p>stages.</p> <p>The FONSI would have a set timescale</p>		<p>Test provides basis of scoping and condenses screening and scoping stages. Takes into account the nature of location and not just project type</p> <p>Some projects that might otherwise have been screened out are assessed and are found to have significant impacts</p>	
<p>Mandatory Scoping of the EIA – separate or as an extension to the FONSI</p>	<p>Mandatory scoping prevents the tendency to continuously revise and extend the scope of the EIA and enables a clear timetable to be set.</p>	<p>Cost and time saving from avoiding regular changes and expansion in the scope</p>	<p>Forces a requirement to define the basis of the EIA – may lack some flexibility in responding to unexpected issues (would need to be allowed as exceptions)</p>
<p>Revise the EIA and Habitats Guidance to advise that where an EIA of a development project is required that this should include the appropriate assessment of any Natura 2000 areas affected by the project – no separate assessment is required</p>	<p>In some cases the appropriate assessment (AA) required by the Habitats Directive is conducted separately – with additional costs and delays. However, in some cases scoping will include the AA. This change will formalise the opportunity to integrate the AA within the EIA. Scoping would ensure the requisite level of detail of the AA</p>	<p>The reduction in costs and delays from separate assessments. Where EIAs are peer reviewed this will include the quality of the AA.</p>	<p>Limited – scoping will ensure the necessary detail and quality of Habitats assessment</p>
<p>Revise EIA guidance to exclude socio-economic impacts</p>	<p>In certain countries EIAs have extended to include socio-economic effects – eg disruption to communities from construction or employment effects of</p>	<p>This would reduce the scope of EIA (at least in some MS) and maintain the focus on environmental impacts</p>	<p>Developers may be asked for these impacts to be considered in any event – overall savings in cost and time may be small</p>

Proposal	Rationale	Advantages	Disadvantages
	development. These impacts may be important in determining planning consent but are not environmental impacts		
Updating Guidance	Most of the Commission’s guidance on the EIA regime was produced in 2001. Revision of EC guidance in light of the extensive EU and MS case law and MS practices (some measure of ‘retro-fitting’ in pursuit of some standardisation) would potentially remove inconsistencies and clarify existing ambiguities.	Would consolidate developments in the procedures (including ECJ rulings). Lessons from MS could be reflected – e.g. on the use of thresholds, or approach to accreditation	Costs of preparation Limited value to those MS who have recently transposed the Directive
Ensure national systems of accreditation for the conduct of EIAs and appropriate training and continuous professional development (CPD)	Some MS have accreditation systems, but most struggle with the lack of skills to undertake EIAs and/or to ensure adequate screening and decision-making procedures. This adds costs and delays to developers	Improved decision-making. Fewer unnecessary EIAs and more cost-effective EIAs. Reduced delays	Costs of establishing and managing the accreditation system Training and CPD costs
Time limits for applications and consultation	Time limits have been increasingly used to restrict the period in which authorities, the public and NGOs can raise objections or have to process applications (sometimes in combination with the exclusion of statements/objections submitted after the deadline in the decision-making process and for legal challenges. Significant issues that would affect the decision are however allowable).	Speedier processing of applications and more emphasis on the completeness of application documentation at the start of a procedure.	To some extent, this is seen as a restriction of rights, which could also impact on the quality of decisions being made, especially as the information that needs to be processed is often large.

Table 7.5: Guidance to MS – Expanding the Use of Good Practice

Proposal	Rationale	Advantages	Disadvantages
Introduce simplified procedures for smaller projects with less significant impacts	Costs of EIA are relatively larger, compared to projects costs, for smaller projects.	Would improve the proportionality of costs and benefits from EIA in decision-making	Increased incentive for ‘salami-slicing’ to qualify for procedure. Some limitation on consultation
Informal collation of previous EIAs as the basis of case histories	Use of case histories of approaches and findings from previous EIAs to enable a better understanding; and would help to better appreciate what is considered to be a significant or non-significant impact	<p>Would alleviate the tendency to ‘screen-in’ on the basis of uncertainty</p> <p>Would allow removal of thresholds for Annex II</p> <p>Would also help to understand best practice</p>	Approaches and assessments are site specific – limiting transferability of lessons
Formal MS monitoring and collation of EIAs undertaken	A monitoring procedure to keep track of EIAs undertaken (including details of approach, costs and timing) and subsequent implementation of mitigation measures and compliance	Number and cost by types of projects would help inform focus of further improvements. Use and value of mitigation measures could be established, Best practice approaches could be defined	Costs could be considerable given the number of EIAs – although could be based on CA own project compliance monitoring
Assess non-site specific impacts separately and outside the EIA	EIAs do consider impacts that are non-site specific (e.g. off-site storage of wastes). These would be better assessed as part of the SEA (or some other higher level assessment) to avoid duplication (e.g. examining the same waste impacts)	Cost and time would be saved from avoiding the duplication of assessments of impacts affecting a range of projects. The scope would focus on those impacts where mitigation measures could be considered.	CAs have to integrate findings from the SEA (or other assessment procedures) into the decision-making

8 CONCLUSIONS

8.1 Better Regulation

As noted in the introduction, the purpose of the study has been to consider the EIA regime in the context of seeking to improve existing regulations. The Commission has identified simplification as a priority action for the EU. The overall objective is to contribute to a European regulatory framework that fulfils the highest standards of law-making and delivers the policy objectives of the Community in the simplest and most cost-effective way. Actions to this end are embedded into the revised Lisbon strategy for achieving growth and jobs in Europe and focus on those elements of the *acquis* that concern the competitiveness of enterprises in the EU. The Commission has set out a rolling programme, specifying those pieces of legislation that the Commission envisages reviewing in the next three years.

During the extensive consultations launched for the identification of the rolling programme, stakeholders identified the EIA Directive and its consequent amendments as impediments in terms of procedures and delays for investment projects in Europe. Although the Directive and its amendments have not been included in the initial rolling programme, the Commission would like to fully understand the burdens created for investments, enterprises and public administrations of the Directive. It is also imperative that under the Better Regulation agenda it should be established whether the directives are suitable for a possible codification and possibly simplification.

It is also worth emphasising that all of the six MS examined in this study (France, Germany, Netherlands, Poland, Spain, UK) have their own programmes targeted at improving business regulation. In the context of the EIA, again all the MS are in the process of examining and identifying possibilities for reducing the burden of the regulation.

8.2 Environmental Effectiveness of the EIA Regime

The general objective of the EIA Directive is clearly stated as being to:

‘Ensure that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.’

This is fully reflected in each Member State following transposition. The main emphasis remains the prevention of negative environmental impacts. EIA also emphasises the identification of appropriate measures to mitigate impacts through the design of the scheme, and a means of giving the environment a higher standing and clearer position in the decision-making process when determining development consent.

EIA is given legal effect through the national planning regulations and is required for certain types of projects to gain development consent. The EIA informs the planning permission or some other permitting system. The key issue is that although in some MS (eg Poland) the EIA itself results in the approval or denial of an environmental permit, the EIA (or permit) is but one contribution to the decision to provide development consent. Thus EIA is itself not a decision – it provides information to a

wider decision-making process which also takes account of other regulatory, economic and social impacts.

There is a general view from the breadth of stakeholders consulted in the national evaluations that the EIA has been a valuable tool in preventing harmful environmental impacts. It has clearly helped to increase the understanding of the significance of potential environmental impacts, as well as improving the awareness of the need for sustainable development, which has emerged more recently as an objective.

Developers have now been charged with a greater responsibility for offsetting development with sustainable measures, and the amendment to the European EIA Directive to improve public participation in the process is likely to have contributed to this – greater involvement of consultees has often resulted in a wider range of useful mitigation measures.

The effectiveness of the EIA regime is determined by a range of factors that have common expression across the six MS studied. These include:

- The levels of capacity and competence of CAs to advise and negotiate the EIA process, especially at lower administrative levels, and the quality of EIAs and resultant EIS
- The national approach to transposition, and especially procedures for screening and scoping, and the tendency to ‘gold-plate’ during transposition through definition of project annexes and thresholds
- The overlaps between the EIA and other environmental directives, especially SEA, IPPC and Habitats. Effective SEA has a direct influence on the nature of EIA required. IPPC and Habitats generate risks of double assessment
- The regular recourse to domestic and European law to resolve differences of interpretation of procedure
- The scope to manage consultation phases

8.3 Costs and Delays of the EIA Regime

The number of EIAs obviously influences the overall level of costs. Estimates from five of the six MS (there is no data for Poland) suggest that in the five MS, some 9,000 EIA, mostly in France, are undertaken each year. On a per capita basis, there are approximately 12 EIAs per million in the UK, Germany and Netherlands, twice that number in Spain and seven times that number in France. Data on trends in the number of EIAs suggests that there has been a significant rise over the last five years compared with periods in the 1990s, across the different MS. Whilst this may reflect changes in development activity (e.g. many windfarm proposals instead of fewer larger power plants), it would seem to be driven in larger part by a level of defensiveness by CAs driven by a mix of political and legal risks, as well as an increase in concern with environmental risks.

The costs of undertaking EIAs vary significantly depending on the size and complexity of the project and the nature of the location. No systematic data is available from monitoring. Best estimates from consultees in the different MS suggest that EIAs can cost as little as €10,000 for small projects to over €100,000 for the larger projects. For

very major projects EIA costs to the developer can be over € 0.5m. As a share of project costs EIAs tend to range from an upper range of 1% for smaller projects down to 0.1% for larger projects. Around half the cost of an EIA comprises the costs of studies and preparing the EIS. These costs are to some extent fixed and accounts for the relatively higher costs for smaller projects. These indicative estimates are supported by data on exemplar projects examined in the MS studies.

The study has also considered the costs to SMEs by reference to the share of SME activity in economic sectors that are subject to EIAs, as reflected in the Annexes to the Directive (reproduced in Annex H of the Report). This provides a *prima facie* case for suggesting that SMEs are relatively unaffected by EIA activity. Moreover, some of the activities that give rise to EIA are undertaken by the public sector (eg road transport) and large utility organisations. However, to the extent that there is a positive correlation between small projects and SMEs then there may be a disproportionate effect on small firms; in which case there would be a case for requiring less onerous procedures for smaller projects.

EIA procedures typically run from between 6 to 12 months, with additional time for pre-application and screening activity, and time for decision-making. The extent to which this time represents a delay is difficult to establish given the requirement to know what the same project would require under alternative national regulations for assessments in the absence of the EIA. Experience in the Netherlands of similar types of projects that are subject to EIA and non-EIA procedures suggests that the formality of the EIA procedure, and especially consultation, can add around 25% to the time otherwise taken, at least for the class of projects where the need for EIA is sometimes not required.

8.4 Barriers and Best Practice

As noted above there are a number of factors that have a general influence on the cost-effectiveness of the regime. These factors act as a barrier to the cost-effective operation of the EIA regime and would need to be addressed in the round alongside any particular measures for improved codification and simplification.

These barriers include:

- Poor levels of competence among CAs, statutory consultees and environmental consultants; leading to defensive screening and scoping opinions, poorly informed and managed consultation processes, and poor quality EIS requiring revision and resubmission
- Limited capacity of CA to provide adequate screening and scoping opinions leading to delays and over-reliance on thresholds, with limited use of exemptions or case by case review
- ‘Gold-plating’ through transposition of Annexes and thresholds; leading to higher numbers of EIA than necessary
- Risks of delay from double assessment because of the overlap between the EIA Directive and IPPC and Habitats Directives; leading to increased costs.

The scope to improve the regulation would need to take these factors into account. Most of these can be addressed through changes to the procedures and operation of

the regime. However, in the case of competence and capacity there is a general requirement for improved training. Removal of 'gold-plating' might release resources for training programmes and release capacity.

The scope to improve also depends in part upon the identification of good practice, especially from those MS with a long history of operating the regime. The studies have identified a number of features of operation that, if replicated, would have the potential to improve the regulation. These practices are:

- Integration of EIA directly into decision-making, as one of a range of factors to consider; rather than separate decision-making on the EIA as a prelude to development consent
- Integration of the 'appropriate assessment' required by the Habitats Directive with the EIA, through scoping decisions
- Increased use of pre-application discussions between developer and the CA, and with other consultees to establish the broad parameters of an acceptable project
- Introduce scoping as a mandatory activity, so as to ensure a focus on the key issues and clarity for all consultees. Scoping opinions might be binding, reducing risks of continual changes and extensions to scope, although leaving some flexibility
- Use of time limits on periods for screening and scoping, and on consultation, precluding statements and objections after deadlines (but with some flexibility to deal with any major issues raised)
- Use of simplified procedures for smaller projects with less significant impacts
- Improved availability and access to environmental data and maps
- Use of independent quality control over EIA procedures and EIS
- Use of MS guidance materials

In addition programmes of training for CA staff, statutory consultees and environmental consultants, supported by appropriate qualifications, would have a beneficial effect on the efficiency of the regime.

8.5 Scope for Improvement and Simplification

The study has identified scope for improvement in the regulation. This builds on the analysis of barriers and best practice as identified in the six MS and especially those with a long experience of operating the EIA regime.

The scope for simplification depends in part on the nature of policy response by the EC, ranging from a 'hard' regulatory response, setting out required changes through a new Regulation; to a less directional response based on changes in the EIA Directive (including changes in the actual text, Annexes and/or Guidance); through to a 'softer' response based on advice to MS to consider possible suggestions.

Some ideas are mutually exclusive, others might complement one another. The ideas have resulted from the assessment, but it is beyond the scope of this study to formally evaluate them and their potential impacts on the cost-effectiveness of the EIA regime. We would however emphasise:

- The general importance of improved training and increased competence
- The need for improvements in screening and scoping
- The need to tighten procedures and to consider greater use of timetables and the introduction of simplified procedures for smaller projects with less significant impacts
- The possibility of refocusing on the EU added value of the Directive as a means of improving overall efficiency.

8.6 Recommendations

In summary, the principal problems, broadly in the order of significance as identified by industry stakeholders, with the EIA regime, identified from the six selected Member States are:

- Lack of timetables with various EIA stages (screening, scoping, consultation) leading to delays
- Project size thresholds set too low (leading to unnecessary EIAs)
- Too onerous a level of consultation required, given other consultation requirements, especially for smaller projects
- Lack of skills / resources in the Competent Authority (leading to e.g. delays, poor screening / scoping decisions)
- Overlaps in assessment requirements between the EIA and other environmental directives (e.g. IPPC, Habitats) leading to delays from double assessments
- Lack of adequate screening of projects to determine the risk of significant impacts, especially for smaller projects
- Lack of project/site alternatives leading to reduced added value from EIA

In response to these problems we suggest a number of recommendations. These are elaborated in more detail in Section 7.0 (Table 7.4), together with further ideas. The most important suggestions comprise the following:

Examine the Use of More Formal Timetables – The risk of delays can be managed by adopting more formal and transparent timetables for the various steps in the EIA procedure. The suggestion would have the benefit of encouraging MS to review the actual time taken and to formalise an accepted level of time, taking into account the capacity and resources of the competent authority. Specifying the timetable should reflect good practice in the use of informal pre-application discussion as a means of speeding up the time taken and improving application documentation (further speeding

up the process). Timetables should be set by reference to good practice (rather than some average), with clear criteria for which a suspension of a timetable might be required. Different timetables might be adopted for different class or size of project, or could be determined on a case by case basis at the time of project application.

Raise Project Size Thresholds – As well as improving procedures for smaller projects there is a case, at least where development consent procedures are sufficiently robust, to reduce the risk of disproportionate costs by reducing the number of smaller projects that require an EIA. This can be done by raising the size thresholds above which an EIA is required (Annex I) or where screening for an EIA is required (Annex II). Under proposals in the Netherlands, this is expected to reduce the number of EIA by two thirds. However, it is worth emphasising that in the Netherlands, development consent procedures are considered sufficiently robust to ensure adequate review of the environmental impacts without recourse to a formal EIA. This suggestion would also have the effect of reducing the significance of screening (and associated procedural responses) as a means of avoiding unnecessary EIAs and increasing the focus and emphasis on those projects that have potentially significant environmental impacts and/or on projects that are not ‘standard’ and which would pose challenges for the development consent procedure. This suggestion is also probably the most significant response to ‘gold-plating’ due to changes introduced by MS during the transposition of Annexes I and II.

Introduce Simplified Procedures for Smaller Projects – Smaller projects face a higher risk that the costs and delays are disproportionate to the benefits of EIA. This risk may be exacerbated if there is a positive correlation between smaller projects and development projects proposed by SMEs. There is therefore a case for requiring less onerous procedures for smaller projects. Where smaller projects have potentially less significant impacts but which require assessment, simplified procedures should be considered, with particular reference to experience in Germany, that have sought to increase discretion of the CA over procedures and especially in relation to consultation, and France (e.g. ‘notice d’impacts’).

Expand and Improve Training for EIA with Increased Quality Control – The underlying efficiency of the regime relies heavily on the competence of the CA and of consultants. The lack of skills and sub-standard practices would undermine other attempts at improvement and is therefore a necessary, if not sufficient, condition for improved regulation. The practice in the Netherlands of a quality assurance review of all EIS by an independent group of experts is worth highlighting.

Review the Scope to Reduce the Risk of Delay from Overlaps and Double Assessment – The risk of delays due to double assessment because a project has to comply with environmental directives other than the EIA, has been found to be especially high in the case of the IPPC and the Habitats Directives. Solutions to this problem have been difficult to formulate, despite examination by MS. In the case of the need for appropriate assessments under the Habitats Directive, scoping agreements provide a means to integrate this within the EIA. In the case of IPPC, no real solution has been identified. This is the area most in need of subsequent review because of the difficulties caused; we suggest that the problem is the subject of a particular review.

Improve Screening of Projects to Identify the Need for EIA – Some of the suggestions above (eg in relation to raising thresholds and simplifying processes) should help to reduce the risk of disproportionate costs for smaller projects. Another

suggestion is to improve the quality of the screening, such that rather than tend to provide a positive screening determination where there is some doubt over the significance of potential impacts, that more robust processes are used to ensure that there is sufficient evidence on which to justify the positive determination (and the information contained with a positive determination). The FONSI test used in the USA and the exemption used in the UK with regards the oil and gas industry (PO15) provide possible ways to improve screening.

Other suggestions include the following:

Encourage National / Regional Plans for Key Infrastructure / Sectors – The costs of EIA as a share of project costs fall with the size of the project. However, overall consent times are long, and EIA adds to the complexity; although there is also added value from EIA as a means of identifying alternatives and managing the consent process. There appears, from German and UK experience (and early discussion of regional sector plans in Spain), value in ensuring national (and possibly regional) plans for key infrastructure that address the overall consenting process and timetable, and address issues that would otherwise be a matter for individual EIAs. This seems more likely to improve efficiency of EIA regulation for large projects than changes in the EIA Directive alone. This would seem to be supported by the feedback on DG TREN proposals that have welcomed the emphasis on improved energy infrastructure planning.

Transfer of Best Practice in Other MS – The study has identified a number of features that might be considered to represent at least good practice, and are supported in the main from the feedback from consultees in the study.

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Links to related sites

The homepage of the European Commission on EIA:

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

The homepage of the European Commission on the Implementation of Environmental Law: <http://europa.eu.int/comm/environment/law/index.htm>

European EIA/SEA centres:

<http://www.europa.eu.int/comm/environment/eia/contacts2.htm>

The homepage of the European Commission on European Environmental Communication Networks:

http://europa.eu.int/comm/environment/networks/index_en.htm

The homepage of UN ECE Convention on EIA in a trans-boundary context:

<http://www.unece.org/env/eia/>

The homepage of the European Court of Justice: <http://curia.eu.int/en/index.htm>

The homepage of the European Convention: <http://curia.eu.int/en/index.htm>

Manchester University EIA Centre (UK): <http://www.art.man.ac.uk/EIA/eiac.htm>

Netherlands Commission for EIA (Commissie MER): <http://www.eia.nl/> and its database (focusing on SEA): <http://www.commissiemer.nl/nceia/database/index.htm>

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ANNEXES

ANNEX A: SURVEY INSTRUMENTS – MS-SPECIFIC

EIA QUESTIONS FOR CONSULTEES

Checklist to be used as the basis of discussions with the Competent Authority and related agencies

DESK REVIEW of the Main Stages of EIA – prior to interviews, review how the four main stages (screening, scoping, assessment & reporting, consultation) is implemented, using in the MS using secondary data / guidance, MS monitoring / reporting, etc. Review material on overlaps with other directives.

TRANSPOSITION – review the main stages of the EIA process as required by the Directive as it has been transposed – describe the MS intervention logic. Examine areas where transposition has resulted in additional requirements by adding / expanding additional steps and review their contribution to achieving the aims of the Directive in the MS. Describe how transposition manages overlaps with other Directives

EVALUATION – the interviews should inform the evaluation questions as set down in the Inception Report. In brief these are: Effectiveness – how well does the EIA regime meet the objectives of the Directive (comment on any additional objectives introduced by MS); Costs & Impacts – what burdens does the EIA introduce for developers / tax payers and are they proportionate; Best Practice – how might the regime be improved / simplified to become more cost effective.

SECTION 1: INTRODUCTION

1. When was EIA transposed? When were amendments transposed? Were there already similar MS provisions prior to transposition? Has transposition added to the objectives as set out in the Directive?
2. Confirm that the EIA process is an adjunct to the development planning and control system – how does the EIA process operate within the wider planning system in your Member State? Briefly review the relationship between the EIA process and the planning system. Confirm that the Local Planning Authority is usually the competent authority (CA) for individual projects
3. How has the EIA operation in the MS been influenced by ECJ cases? And/or by MS (domestic) court cases? Explain.
4. Please provide a brief description of how the EIA regime operates between different spatial levels of government (national, regional, local) – eg what role does the regional level play (eg specific support for certain classes of project)
5. Approximately how many EIAs are conducted each year in the Member State? Summarise the type and scale of projects typically subject to EIA. What trends in EIA numbers and types exist? How often are SMEs subjected to EIAs? If national monitoring data is not available identify at what level such data might be possible (e.g. individual LPA?)
6. Are there any plans by Member States to review the EIA to improve cost-effectiveness/better regulation? If so, why? - describe plans

[NOTE: The MS review will require interviews with agencies at different spatial scales. At the national level, this will include the Department responsible for transposition. Also consider Planning Inspectorate, any advisory commission, any leading academics / consultants, NGOs. At the regional level, this may include any support or oversight responsibilities. At the local level, this will be the Local Planning Authority (LPA), but also any local offices of e.g. the environment ministry. At the local level, we suggest that you might select say two or three local areas for interview. This will allow some insight into how local case level interpretation varies – and any difference in interaction between the LPA and regional national support, oversight. These areas might also be used to generate the long list of (approx 10) projects.

We assume that around 10 stakeholders will be consulted.]

SECTION 2: EFFECTIVENESS

7. Describe the intervention logic as it applies in the MS following transposition. This looks a bit onerous – but the object is to check that the underlying rationales for EIA are understood and accepted in the MS. Perhaps best done by sending the table first to relevant persons at national level.

Table 2.1: Intervention Logic for the EIA Directive – to revise for MS transposition

Aspects of the intervention logic	Elaboration
<i>1. The problem that the Directive was designed to address</i>	
▪ Clarity	The problem was clear – development was being consented with unacceptable environmental impacts. National responses were unsystematic across MS.
▪ Nature	The Directive was introduced to address the need to take effects on the environment into account at the earliest possible stage in all technical planning and decision-making processes, based on an understanding that the best environmental policy lies in preventing the creation of pollution at source, rather than subsequently attempting to counteract effects.
▪ Magnitude	No quantitative assessment of the scale of the problem across MS prior to the Directive has been identified
▪ Trends	Rates of development were accelerating across MS, exacerbating the problem
<i>2. Treaty and the legal base to act in the area</i>	
▪ Treaties	Disparities between the laws in force in various Member States regarding the assessment of the environmental effects of public and private projects may create unfavourable competitive conditions, affecting the functioning of the Common Market. It is therefore necessary to approximate national laws in accordance with Article 100 of the Treaty establishing the European Community.
▪ Restrictions and limitations to EU level action	<ul style="list-style-type: none"> ▪ Member States given considerable discretion on the transposition of the Directive into national legislation ▪ Member States are able to exempt specific projects from the assessment procedures, subject to appropriate information being supplied to the Commission. ▪ Member States are also able to require assessment of projects which appear to have no significant effects on the environment ▪ Directive provisions must not affect the obligation of competent authorities to respect the limitations imposed by national authorities and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest. In the case of trans-boundary effects (Article 7), the transmission of information to another Member State and reception of information by another Member State is subject to limitations in force in the Member State where the project is proposed.

Table 2.1: Intervention Logic for the EIA Directive – to revise for MS transposition

Aspects of the intervention logic	Elaboration
<i>3. The objectives of the Directive</i>	
<ul style="list-style-type: none"> ▪ General objectives 	<p>The EIA procedure ensures that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards</p>
<ul style="list-style-type: none"> ▪ Specific objectives 	<p>These include:</p> <ul style="list-style-type: none"> ▪ development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; ▪ assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question; ▪ the principles of the assessment of environmental effects should be harmonized, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment; ▪ projects belonging to certain types that have significant effects on the environment must as a rule be subject to systematic assessment;
<ul style="list-style-type: none"> ▪ Targets, benchmarks or milestones 	<p>None given</p>
<i>4. Key aspects of the intervention process of the Directive</i>	
<ul style="list-style-type: none"> ▪ The main components of the Directive 	<p>A relatively wide-ranging piece of legislation with a broad definition of the environment based on a set of Annexes:</p> <ul style="list-style-type: none"> ▪ Annex I – a comprehensive list of projects which require a compulsory EIA to be undertaken ▪ Annex II – a list of projects which may require an EIA; the decision on whether an EIA is needed lies with the Member State, which bases decision on case-by-case examinations, or sets thresholds or criteria, taking into account relevant selection criteria as set out in Annex III ▪ Annex III – a list of selection criteria to be taken into account by the Member State when deciding which Annex II require an EIA ▪ Annex IV – a specific set of information required from developers for those Annex I and II projects which require an EIA
<ul style="list-style-type: none"> ▪ The main delivery mechanisms and responsibilities to implement the Directive 	<p>EU level:</p> <ul style="list-style-type: none"> ▪ Every 5 years, the Commission reports to the European Parliament and the Council on the application and effectiveness of Directive 85/337/EEC (as amended). The next report is due in 2008. <p>National level:</p> <ul style="list-style-type: none"> ▪ EIA can be integrated into existing procedures for development consent to projects, or may be integrated into other procedures, or procedures may be established to comply with Directive aims ▪ Must ensure that developers supply appropriate information for projects requiring EIA ▪ Must ensure that authorities with relevant information make it available to developer

Table 2.1: Intervention Logic for the EIA Directive – to revise for MS transposition

Aspects of the intervention logic	Elaboration
<ul style="list-style-type: none"> ▪ The involvement of stakeholders / third parties 	<p>Authorities concerned by the project in question must be given the opportunity to express their opinion on the information supplied by the developer and on the request for development consent. Member States designate which authorities are to be consulted, either in general terms or on a case-by-case basis.</p> <p>Any request for development consent and information gathered must be made available to the public within reasonable time to allow the public concerned to give the opportunity to express their opinion before development consent is granted.</p> <p>Such information and consultation includes defining who the public concerned are, places where information can be consulted, the way in which the public are consulted, the manner of consultation and defining the appropriate time limits for various stages of the procedure.</p>
<ul style="list-style-type: none"> ▪ The effects anticipated 	<p>More rigorous assessment of the environmental effects of developmental projects, to ensure that those with unacceptable environmental impacts are not undertaken.</p>
<ul style="list-style-type: none"> ▪ Mechanisms for measuring effects 	<p>Regular (5 year) monitoring report by the Commission, incorporating information supplied by MS</p>
<ul style="list-style-type: none"> ▪ Impacts anticipated 	<p>Avoidance of projects with unacceptable environmental costs, development consent for projects that have effectively reduced or removed potential adverse effects to acceptable levels</p>
<ul style="list-style-type: none"> ▪ Learning processes 	<p>The Directive has been amended twice:</p> <p>In 1997 (97/11/EC), the EIA Directive was amended to take greater consideration of trans-boundary effects; a much wider range of development was brought under the EIA regime. In 2003 (2003/35/EC), the EIA Directive was amended to introduce additional obligations with regard to public participation and access to justice, in line with the Aarhus Convention.</p>
<ul style="list-style-type: none"> ▪ Complementarity with other EU instruments 	<p>Wide ranging Directive, has potential links / overlaps with a range of other EU environmental directives.</p>

Screening

8. Annex I is the list of project which require a mandatory EIA.

Does the MS only use the Annex I as stated in the original Directive (rather than a modified Annex I)?

YES – Does the interpretation of projects as Annex I pose difficulties - explains

NO – Do you have more project categories added to Annex I by national legislation? Is this an attempt to reduce ambiguity in coverage? Is it an attempt to ensure desired breadth of application?

Are the additional projects from Annex II or are they unrelated to Annex I or II? Please state which projects have been added to Annex I and provide as Annex to final report.

9. Annex II projects are subject to screening to decide on whether they need an EIA. This is determined by thresholds/criteria set by each Member State, or by case-by-case examination.

9.1 Are most of the Annex II projects screened through case-by-case examination or are thresholds and/or criteria set for the project categories?

Thresholds/criteria – go to 9.2

Case-by-case – go to 9.3

9.2 Please state which projects are determined by thresholds/criteria (see Annex II project list – broad headings) and please can you state what the thresholds and/or criteria are for each of these?

9.3 Which types of Annex II projects tend to be subjected more to a case-by-case examination? (refer to project list)

10. For each of the projects subject to an exclusion list, what are the criteria for exclusion?
11. Is an EIA required in your Member State for any other project category other than those stated in Annex I and II?
12. Are annexes revised to take account of technological change (i.e. change in project type e.g. biofuel plants – modern developments that did not exist at the time the Annexes were devised)?
13. Have you come across cases where developers appear to have failed to carry out an EIA for the whole project, perhaps through separating out the project into separate parts so each falls below the threshold for an EIA to be necessary? How frequent is this?
14. Are there provisions in your national legislation to prevent such tactics for circumventing an EIA? If so, please comment.
15. Do you think that a tighter, more accurate definition of screening criteria (e.g. through use of uniform threshold values for each type of project category) would lead to a more streamlined screening procedure?

YES – go to 15.1

NO – go to 15.2

15.1 Please state the reasons why you think so and perceived benefits

15.2 Why not? Please state the perceived disadvantages/problems relating to such a change.

Scoping

16. Is the scoping procedure in your Member State mandatory?

YES – go to 16.1

NO – go to 16.2

16.1 Is it mainly undertaken by developers or by competent authorities?

Developers – go to 16.1a

Competent Authorities – go to 16.1b

16.1a What proportion of scoping procedures do you estimate to be undertaken by developers?

16.1b what proportion of scoping procedures do you estimate to be undertaken by the competent authorities?

- 16.2 Is there a procedure of scoping undertaken anyway? Please describe.
17. Has the Member State thought about introducing prior authorisation for classes of project? (distinguish between generic and site-specific issues, allowing for reduced scope in EIA later, (because non-site specific issues have already been addressed). Please provide details.
18. In cases where a Scoping Opinion is required from the competent authority, do developers tend to request a Screening Decision to be made at the same time to speed up the process? (e.g. in some cases in the UK, developers are able to request a formal ‘scoping opinion’ from the LPA at the same time as for the screening opinion)

NO – go to 19

YES – go to 18.1

18.1 Do you think this reduces administrative costs and/or time taken to complete an application?

YES – why?

NO – why?

19. To allow a competent authority (CA) to provide a Scoping Opinion, the developer must provide the CA with some information on the project. How much of this has been previously provided by the developer at the screening stage? To what extent does the application of EIA to extensions / modifications require additional information?
20. Is there a tendency for developers to scope in certain impacts in their scoping report which are often **not** significant? (e.g. developers of a windfarm may choose to scope in impacts on noise into their scoping report, even though they may judge such impacts to be insignificant, in order to avoid later appeal)

NO – go to 21

YES – go to 20.1

20.1 Is there joint scoping?

YES – 20.2

NO – 21

20.2 To what extent is there joint scoping? What are the perceived benefits of this procedure?

21. Do you think that strengthening the scoping phase, by formal written confirmation between the CA and developer as to the impacts to be assessed by developers, would help to simplify the EIA process / reduce ‘gold plating’ induced by uncertainty?

YES – go to 21.1

NO – go to 21.2

21.1 Please state the reasons why you think so.

21.2 Do you think this would reduce the costs of compliance for developers?

Assessment & Reporting

22. What is the assessment procedure with regards to baselines and alternatives? How well does this follow EC guidance?
23. Is there guidance on alternatives in your Member State or is the developer given discretion to decide if alternatives are relevant to their project (i.e. a developer could just consider the 'zero alternative')?
24. How robust is the baseline assessment as a basis for subsequent impact assessment?
25. Is the related information on alternatives submitted by the developer considered to be satisfactory?
YES
NO – why?
26. Are there national or regional guidelines for the preparation of EISs by developers and/or evaluation of environmental information by competent authorities? Are there guidelines in terms of assessing 'significant effects' or for assessing 'cumulative effects'? Please elaborate.
27. To what extent are developers familiar with the process of preparing an EIS? In your opinion, what proportion of EISs are prepared in-house (by developers) and what proportion are completed by consultants?
28. In the UK, there is an EIA practitioners register (launched in 2002 by the Institute of Environmental Management and Assessment (IEMA)) to encourage the adoption of professional standards in the EIA field. Is there a similar form of accreditation/qualification in your Member State? If so, does the competent authority only accept EISs from 'certified bodies'?
29. The Netherlands has established an independent expert committee body, the Commission for Environmental Impact Assessment, to advise decision makers on the environmental aspects of projects and plans. Has such a body been set up in your Member State to review environmental information and to advise competent authorities on the adequacy of information?
YES – go to 29.1
NO – go to 29.2
29.1 Please provide information on the name of the organisation(s). Do you think they have been helpful? If so, in what way?
29.2 Do you think there is a need for one? If so, why?
29.3 Who usually conducts 'quality control' of the EIS?
30. What proportion of EISs appear inadequate upon first review and require further information to be submitted by the developer? How does this contribute to burdens on CA/developer through delay / late requests for info? How could quality be improved, and what might the effects of quality improvement be in terms of cost-effectiveness?

Review and decision-making

31. How is the EIA used in the decision making – taken into account by CA – how is this demonstrated? How often is the planning decision involving EIA subject to legal challenge. How often is the EIA the source of the challenge?

32. Is it generally the case that EIA identifies project changes / mitigation that results in lower environmental impacts than initial project proposals?
33. Is it generally the case that the EIA is a routine exercise which generally does not lead to major issues / project changes?
34. Where a technically competent EIA reaches conclusions that are not shared by the CA – what processes are followed to reach agreement. How often does a CA recommend refusal on environmental grounds when EIS suggests an acceptable option?
35. Does the EIA lead to the cancellation of projects because acceptable options cannot be found? Please provide examples, if this has occurred in your Member State.
36. What mechanisms are in place to ensure that the EIA procedure is being correctly carried out and that any change to the regime are being applied?
37. Is the EIA deemed to be effective in reducing environmental harm from development? Which type/scale of developments benefit most from EIA (i.e. are approved with substantially lower environmental impacts? Which stages of the process contribute most/least to the resulting assessment?

Consultation

38. There are some stages of the EIA process where although consultation of the public is not a formal obligation, informal dialogue with interested parties is undertaken as good practice (e.g. preliminary consultations, during preparation of the EIS). At which stages of the regime do you undertake informal dialogue?
39. Formal public participation is necessary as the basis of opinion – with an established base and within established time scale. How is the process managed in terms of seeking to resolve issues raised in formal consultation? Are there difficulties in defining the ‘public concerned’? What status is accorded to the opinions provided (eg are they binding on the CA?)
40. Is there now greater informal dialogue with stakeholders than at the time of transposition?
41. Is there scope to streamline consultation given the current level of informal dialogue?
YES – go to 38.1
NO – go to 38.2
38.1 Do you think this would lead to cost savings and if so, please provide details on what savings you think would be made.
42. Do you think the MS goes beyond what is regarded as ‘access to justice’? If so, why do you think this is the case?
43. At what stages in the EIA are the public obliged to be consulted?
40.1 Is this considered to be sufficient?
YES
NO – Why?
44. Do you consider that transposition has added significant additional requirements to particular stages (e.g. health impacts being added to the required impacts to be assessed in the national EIA regime, even though it is not stated in the original Directive)?
YES – go to 41.1
NO – go to 42

41.1 Does this help provide certainty/clarity and guidelines on how to follow the regime or do you consider it to be 'extra work' over and above what is actually required? Please provide details.

Trans-boundary projects

45. What categories of projects often have trans-boundary impacts? (see project list below)
46. What procedure is in place in your Member State for exchange of information with other Member States (and non-Member States) on trans-boundary impacts?
47. How satisfactory is the environmental information received from the Member State (compared with own MS and non-MS) in whose territory the project is intended to be carried out?
48. The following questions relate to potential problems that may occur between the Member State in whose territory the project is intended to be carried out, and the Member State who is likely to be affected by the project, throughout the stages of the EIA regime:
 - 48.1 Screening: Have you experienced cases where one Member State views a project as requiring a mandatory EIA and the other Member State disagreeing? Please provide examples.
 - 48.2 Scoping: Have there been instances where one Member State has set different criteria in the scoping procedure to the other Member State? Please provide details.
 - 48.3 Impacts: Have there been cases where one Member State might interpret impacts of a trans-boundary project to be different to what another Member State thinks? Please elaborate.

SECTION 3: OVERLAPS WITH OTHER DIRECTIVES – IPPC, SEVESO, SEA, HABITATS

The following 4 'generic' questions are to be asked with regard to each of the related Directives:

49. Are there any overlaps between EIA and each of the Directives (IPPC / SEA / Seveso / /Habitats)?
If so, what is the nature and at which stages in the EIA process?
50. Are there any arrangements to manage/minimise overlap? (e.g. co-ordinating EIA and IPPC procedures to provide for a common phase of public participation)
51. Is there scope to streamline the regimes?
52. Is there a single project list for EIA, IPPC and Seveso?

53. **IPPC:** Have thresholds for Annexes in the IPPC Directive been integrated with thresholds for Annexes in the EIA Directive? If so, please describe which ones and please provide details on whether (and how) this has reduced the cost of complying with both Directives.

Is there an arrangement in terms of sharing information and/or for co-ordinating the timing of EIA and IPPC processes?
54. **Habitats:** In cases where a project/plan has required an assessment according to Article 6 of the Habitats Directive and an EIA, has the Article 6 assessment been coordinated with the EIA assessment? If so, how? (e.g. in Finland, the Habitats assessment is done as part of the EIA procedure or later in the development process, after EIA, when a more detailed design phase is reached).

55. **Seveso:** To what extent is the information from EIA used for the Seveso procedure?
56. **SEA:** Are there any aspects of SEA which have particularly influenced the EIA regime in your Member State? (e.g. SEA explicitly requires assessment of all reasonable alternatives; quality control and monitoring are mandatory; provisions for public and authorities is done together at consultation level (unlike EIA, where provisions are separate, etc.)
57. For projects which fall under the scope of the EIA, Seveso and IPPC Directives, is the documentation required for the EIA Directive considered as the ‘broad information base’ for other information required by the other Directives?

SECTION 3: COST-EFFECTIVENESS

The assessment of cost-effectiveness will require details from selected case studies – it is unlikely that national or regional agencies will have specific data – they may have a general appreciation of the time taken at each stage, how this relates to the general time requirements to secure planning consent – and where there is potential to reduce time.

Table to establish direct and indirect costs associated with steps in the EIA regime – please indicate the main steps / costs

	Time taken	Direct cost (person days) to both the CA and to the developer of time and/or costs of EIA studies / advice	Associated Indirect cost to developers of expected and unexpected delays	
<pre> graph TD A[Screening] --> B[Scoping] B --> C[Consideration of alternatives] C --> D[Description of baseline environment] D --> E[Evaluation & assessment of impact significance] E --> F[Identification of mitigating measures] F --> G[Presentation of findings in EIS] G --> H[Review of EIS] H --> I[Decision-making] </pre>				
Overall Total (person days), related expenditure and costs of delays.	Time taken from pre-application discussion to planning decision (calendar days) * Extent to which the time is extended due to EIA process	CA (person days) Devp (person days) Expenditure (euro)	Expected delay (calendar days) ** Unexpected delay (calendar days) – give key reasons Costs (euro) from unexpected delay – explain costs	

* the time will need to be described with reference to different classes of project

** roughly the usual time taken to secure planning consent where EIAs are generally required – will need to be described for different classes of project

58. What aspects of the EIA process do you consider to be most complex in terms of procedure? (can relate answer to the previous table)
59. Do you think there are possibilities for simplifying these processes?
YES – go to 59.1
NO – go to 60
59.1 Please provide details on what you think they could be.
60. Do you consider the time taken to be necessary? (i.e. could the EIA be done in less time?)
Please provide details of which stages are generally considered to have too much time spent on them
61. What are the typical costs of an EIA in Euro? How do costs vary by type and scale of project? Which steps contribute most to costs?
61.1 What are the main cost elements (e.g. use of EIA specialists/use of developer time)
61.2 What share of development costs does the EIA represent?
62. Are there benchmarks for what is an acceptable cost for a given type and size of project – what is the basis of these and what are they? How many projects vary, and by how much?
63. To what extent does the EIA process delay development approval that is deemed to be expected/reasonable – how many cases are subject to severe delays (say 100% more than the time usually expected) clearly due to the EIA? What is the cost of this delay to the developer?
64. Do you think that prior assessment of environmental impacts of development projects (i.e. requiring developers to provide particular information and public sector to provide relevant information in advance on impacts which are not site or locality-specific) would reduce the delays described above?
65. Does the EIA process lead to the cancellation of projects because of delays/costs?
66. What are the estimated costs of monitoring?
67. Do you think that creating a 'lighter' EIA procedure for projects with less significant impacts on the environment would reduce costs for competent authorities (e.g. lower administrative costs through a reduction in the amount of unnecessary information submitted)?
YES – go to 67.1
NO – go to 67.2
67.1 Please state the reasons for your answer, providing details on how a 'lighter' touch might be created and the types of costs that would be reduced by a lighter procedure.
67.2 Why not? Please state your reasons.
68. Do you think there is potential for an 'umbrella procedure' (i.e. a grouping of provisions under one new procedure) at Member State level for dealing with the various requirements of the related Directives (IPPC, Seveso etc.)?
69. YES – go to 68.1
NO – go to 68.2
68.1 Please state the reasons for why you think so.

68.2 Why not?

SECTION 4: BEST PRACTICE

70. Summarise from the national review and selected projects those aspects that would generally be regarded as :

69.1 – good practice

69.2 – poor practice

71. Are there any measures which you have either undertaken (or think could be undertaken) to improve the procedures of the EIA regime in terms of reducing the time and costs required, without affecting its effectiveness? If so, please provide details. Rank ideas in terms of potential importance.

ANNEX II PROJECTS – BROAD HEADINGS

1. Agriculture, silviculture and aquaculture
2. Extractive industry
3. Energy industry
4. Production and processing of metals
5. Mineral industry
6. Chemical industry
7. Food industry
8. Textile, leather, wood and paper industries
9. Rubber industry
10. Infrastructure projects
11. Other projects
12. Tourism and leisure
13. Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment

ANNEX B: INDUSTRY CONSULTATION

To supplement the interviews with stakeholders, including those from industry, a further consultation exercise with industry was undertaken to add to the information already received.

Table B1 summarises the industry associations contacted in each of the Member States. Table B2 presents the consultation form.

Table B1: Industry Associations Contacted in the Selected Member States

NAME	TITLE	ORGANISATION
Alders, E. C.		Employers' organisation and trade association for the technological-industrial sector FME-CWM
Aparicio Bravo, Elias	Director General	Spanish Confederation of Employers' Organizations
Arnes, Humberto	Director	National Association of Pharmaceutical Industry
Baak, J.		NS, Dutch railways
Babiuch, Marian	President	Lubuskie Association for Energetics Development (LTnRRE)
Baldry, Sarah	Environment and Waste Manager	Quarry Products Association (QPA)
Becouse, Dominique	Director, Environment	French union of petroleum industries Union Française des Industries Pétrolières (UFIP)
Brons , mr. drs. H		VEMW Association for Energy, Environment and Water
Clerx, P.J.M.W		Bouwend Nederland, construction association
Collot, Dr Anne-Gaelle	Environment Policy Advisor	Chemical Industries Association (CIA)
Connell, Nyree	Policy Advisor	Federation of Small Businesses (FSB)
Cosson, Dr. Rainer	Head of Division for Environmental Law	Federation of the German Waste Management Industry / Bundesverband der Deutschen Entsorgungswirtschaft e.V. (BDE)
de Crouette, Henry	Responsible for the Environment	Chemical Industries Union

NAME	TITLE	ORGANISATION
		Union des Industries Chimiques (UIC)
Drewniak, Agata		Polish Chamber of Chemical Industry (PIPC)
Favorel, Fanny	Legal Practitioner	General Alliance of Small and Medium Enterprises Confederation Generale des Petites et Moyennes Entreprises (CGPME)
Fit, Małgorzata	Environmental Specialist	Polish Chamber of Waste Management
Fritsch, Thorsten	Policy Advisor, Division for Law and Environment	Association of the German Energy and Water Industries / Bundesverband der Energie – und Wasserwirtschaft e.V. BDEW
Galbis, Fernando	Director General	Federation of Spanish Chemical Industry Employers
Grundmeier , Burkhard	Head of Exploration and Production	Trade Association of Oil and Gas Producers / Wirtschaftsverband Erdöl- und Erdgasgewinnung e.V.
Hüwels, Dr Hermann	Head of Co-ordination, EU Environmental Policy, Environmental Law, Environmental Management	Association of German Chambers of Industry and Commerce / DIHK
Janowski, Leszek	President	Foundation of Small and Medium-Sized Enterprises
Kirk, S		Oil and Gas UK
Lazcano Acedo, Juan Francisco	President	National Confederation of Construction
Le Blanc, Vincent	Official	National Federation for the protection of the environment and waste management Fédération Nationale des Activités de Dépollution et de l'Environnement (FNADE)
Line, Véronique	Technical affairs unit	French Construction Federation Fédération Française du Bâtiment (FFB)
Luis Vivar Rodríguez, Angel	Director, Environment	Spanish Association of Electrical Industry

NAME	TITLE	ORGANISATION
Maldonado Lopez, Juan Jesus	Director	Spanish Association of Paper and Carton Recycling Industry
Marder-Bungert, Julia	Policy Advisor	Association of Natural Resources and Mining / Vereinigung Rohstoffe und Bergbau
Mateo, Luis	Director General	National Association of Insulation Material Industries
Mazarrasa Alvear, Alvaro	General Director	Spanish Association of Oil/Gas Products
Mora, Pedro	Director, Environment Department	Grouping of Spanish Cement Producers
Ortner, Dorothee	Policy Advisor Environmental Law	Trade Association Metals / Wirtschaftsvereinigung Metalle
Osma, Angela	Director	Spanish Federation of Plastic Industries
Raoux, Alain	Secretary General	Professional Union of Private Gas Industries Union Professionnelle des Industries Privées de Gaz (Uprigaz)
Reinosam, Carlos	Director	Spanish Association of Paper and Carton Producers
Reuderink, Mr. ing.M.H.		KVGO, association of media and communication companies
Rodrigálvarez, Marival Díez	General Director	National Association of Perfume and Cosmetic Industry
Roosen, J. M. H.		Netherlands Chemical Industry Association VNCI
Rothert , Dr. Arno	Division of Technology and Environment	Association of the German Chemical Industry / Verband der Chemischen Industrie e.V.
Santa Cruz, Gonzalo Caro	General Director	Association of Spanish Electronic, Information Technology and Telecommunication Industries
Schäfer, Dr. Berthold	Head of Environmental Protection and Health & Safety	German Association of Cement and Concrete and Construction Technology / Deutscher Beton- und Bautechnik-Verein E. V.
Strauch, Dr. Gregor	Policy Advisor, Division for Environment and	Federation of German Industries / Bundesverband der Deutschen Industrie BDI

NAME	TITLE	ORGANISATION
	Technology	
Sureau, Sebastien		Minerals and Metals Federation Fédération des Minerais, Minéraux et Métaux (FEDEM)
van den Broek, Jan	Senior Advisor Environmental Law and International Environmental Affairs	Confederation of Netherlands Industry and Employers (VNO-NCW), (cover almost all sectors of the economy, including more than 80% of all medium-sized companies in the Netherlands and nearly all of the larger, corporate enterprises)
Verbunt, Evert-Jan		Vereniging afvalbedrijven, association of waste treatment companies
Vermeulen, André		Dutch SME organisations (MKB-Nederland)
Wolf Müller, RA	Managing Director Law and Environment	Federal Association of the Construction Material Industries / Bundesverband Baustoffe - Steine und Erden e.V.
Wróblewski, Jacek	General Director	Polish Organization of Polish Oil Industry and Trade
Zakłady Azotowe Tarnów- Mościce PKN ORLEN Basell Orlen Polyolefins		PIPC

Table B2: Industry Consultation Form



ANNEX C: SURVEY INSTRUMENTS – PROJECT-SPECIFIC

PROJECT CHECKLIST FOR DESCRIBING AND ASSESSING THE IMPACTS OF THE EIA REGIME ON INDIVIDUAL DEVELOPMENT PROJECTS

Note: All Projects should have completed the EIA process with submission of final EIS

Conduct a general review of the views of the CA and developer before reviewing the details of the specific project

Check and note experience of both the CA and Developer with EIA – approximate number of projects in last 5 years

GENERAL REVIEW OF EXPERIENCE WITH CA AND DEVELOPER

Effectiveness

1. What aspects of the EIA regime in your Member State have, in your opinion, been most successful in preventing negative environmental impacts or appear to minimise harmful impacts?

Please rank in order of importance (1 being most important):

Aspect of the EIA Regime	Rank
Screening	
Scoping	
Description of baseline environment	
Analysis and prediction of impacts	
Consideration of alternatives	
Public consultation and participation	
Preparation of the Environmental Impact Statement (EIS)	
Review of EIS	

For those aspects which you ranked 1-3, please provide reasons for why you chose these to be the most important.

Does this ranking change depending on the linkages with other Directives (eg SEA, IPPC, Habitats)?

Are any of these elements capable of being removed without reducing the effectiveness of the EIA process?

Which of these elements adds the most / least to the effectiveness of the EIA process?

2. Have any of the projects you have undertaken in the past ever had development consent refused to them, or had conditions imposed upon the development, as a result of the EIA regime in your Member State?
 - 2.1. If yes - Please provide details of such projects and of the changes made to the design of the project as a result of conditions imposed:

Costs and Burdens of the EIA Process

3. Do you consider that the costs / burdens of the EIA regime are roughly proportionate to the benefits that are provided by the EIA regime – in most cases, or only in a few cases?
 - 3.1. What factors generally lead to a less/more onerous process for the CA?
 - 3.2. What factors generally lead to a less/more onerous process for the Developer?
 - 3.3. Is there any change in this proportionality for small firms (less than 200 employees)?
4. Generally, which aspects of the EIA regime in your Member State are the most onerous in terms of time and cost?

Please rank in order of importance (1 being most important):

Aspect of the EIA Regime	Rank
Screening	
Scoping	
Description of baseline environment	
Analysis and prediction of impacts	
Consideration of alternatives	
Public consultation and participation	
Preparation of the Environmental Impact Statement (EIS)	
Review of EIS	

For those aspects which you ranked 1-3, please provide reasons for why you chose these to be the most important.

Does this ranking change depending on the linkages with other Directives (eg SEA, IPPC, Habitats)?

Which of these elements incurs the greatest burden for the CA / for the Developer?

Which of these elements if revised, would contribute the most to the cost effectiveness of the EIA process? - explain

5. In your experience what is a typical range of costs for the Developer for the EIA process?
6. In your experience how many person days does a CA have to allocate to an EIA process from start to finish?
7. What is the typical length of time for the EIA process (and max / min) from when screening opinions are requested (in months)?
8. How many additional months does the EIA add to the time taken to secure development consent, compared to if no EIA is required (for similar types of development but that because of thresholds etc do not require EIA)?
9. In which circumstance does the cost and time for a stand alone EIA (ie where no other consents are required) get extended the most:- please clarify
 - 9.1. where there has been no previous SEA
 - 9.2. where there is also a requirement to assess compliance with the Habitats Directive
 - 9.3. where the project also requires consent under IPPC
10. Are you aware of any single procedure at Member State level, that co-ordinates the different assessments?
 - 10.1. Yes – please provide details and the perceived cost savings from such a procedure
 - 10.2. Is there a procedure within your company which co-ordinates the different assessments required?
 - 10.3. IF Yes – please provide details and the perceived cost savings from such a procedure. If no – why is it not in place?
11. Are there elements of the regime which have significantly affected the way in which your company complies with the Directive? For example, some EISs attempt to capture all potential environmental effects, instead of only those which are significant.
 - 11.1. Does such practice improve chances of being granted planning permission, and if so, how? What is the associated benefit of doing this?
12. Do you undertake consultation of the general public and non-statutory bodies during the preparation of the EIS?
 - 12.1. What are the estimated costs of such consultation in Euros (e.g. consultees may make a reasonable charge to cover the cost of making information available to the developer)?
 - 12.2. Do the perceived benefits of such consultation outweigh the costs? (Please provide detail of what the perceived benefits are):
13. Do you consider that small firms (less than 200 employees) are disproportionately affected by the EIA regime compared to businesses as a whole?

Good Practice

14. To what extent could measures be taken to speed-up the procedures of the EIA regime without compromising its effectiveness, and what measures would these be?
15. Is it possible to find more efficient (less costly) ways to achieve the current objectives of the Directive through a general change in the Regime – if so, how?

16. Is there good practice that supports the case for these changes? – what is it? Provide examples
17. Which of the following ideas do you consider to offer the greatest area for improvement? For those which offer least scope for improvement (or seemingly not feasible), explain why.
- Improved training and competencies of the CA / of the Developer
 - Management of overlaps with other Directives (esp IPPC) – joint reporting? – ‘Umbrella’ Directive? – avoid double assessment / reporting
 - EU / MS harmonisation (trans-boundary projects) – definitions / thresholds
 - Updating of Annexes to reflect changes in project types – avoid delays
 - Use of ‘prior authorisation’ for classes of project – reduce EIA scope
 - Variations in levels of public involvement – reduced provisions with informal dialogue
 - Joint and mandatory scoping with formal agreement – provide certainty and avoid later changes in scoping and / or tendency to cover everything ‘in case’ of subsequent request / legal challenge
18. Which is the most important? Why?

PROJECT SPECIFIC REVIEW

Project Name:

Effectiveness

19. Brief description of project (Location (including any site relevant details), Type, Scale, Investment Cost (euro))
 - 19.1. Are consents required under any other legislation (other than planning controls eg Habitats, IPPC)
 - 19.2. Was project design (especially scale) considered to have been influenced by EIA related thresholds / criteria such as to reduce the EIA burden
20. Project implementation phase (planning permission received, work on site commenced, construction completed, project operational)
21. Brief description of the main environmental impacts, and their mitigation
22. What impacts were identified by the EIA that were not known prior (location, type, scale)
23. What mitigation measures were introduced as a result of the EIA (and would not otherwise have been introduced), and with what environmental benefit
24. Had the location and development of the type proposed been subject to SEA (eg through SEA of relevant development plans)
 - 24.1. If yes – was the project considered to be consistent with the development plan in principle (before and after EIA) – did the SEA assist in establishing the need and/or scope of the EIA
 - 24.2. If no – would prior SEA have reduced the need or scope for an EIA
25. Were alternative sites for the project investigated? Yes/no
 - 25.1. If no – why not
 - 25.2. If yes – was this because of the EIA or because of commercial interests
 - 25.3. If yes – was the site chosen to minimise environmental impacts or to maximise investment return
 - 25.4. Did the site chosen have the least environmental impact of those investigated
 - 25.5. Was site selection influenced by the SEA
 - 25.6. Was site selection directly influenced by the EIA (eg when screening / scoping undertaken)
26. Was the effectiveness influenced by the need to secure other (non-planning) consents – where relevant - explain

Costs and Burdens of the EIA Process

27. Did the EIA require a screening opinion
 - 27.1. If yes – was this because of ambiguity of type/scale vis-a-vis thresholds/criteria

28. Please fill in the following table, which relates to the costs of undertaking the EIA. – do it separately for the costs to the CA and developer

Total cost of undertaking an EIA for this project:			
EIA Component	Person-hours spent (if applicable)	Cost of undertaking	Cost as % of total cost of EIA
Preliminary studies (work undertaken prior to start of EIA)			
Screening (determining whether certain project must be subject to EIA)			
Scoping (determining what information is required in the EIS)			
Environmental Studies (conduct of environmental studies and preparation of EIS)			
Review and Decision Making (formal review of EIA by CA and advisors and process whereby CA decides whether or not to approve project, based on EIA findings)			
TOTAL COST OF THE EIA PROCESS			
Mitigation measures due to EIA (measures to address the potential adverse effects of a development e.g. measures to safeguard protected species)			

NOTE: COSTS WILL REQUIRE SOME ESTIMATE OF THE COSTS OF STAFF TIME (COSTS PER HOUR/DAY) INCLUDING OVERHEADS FOR THE CA AND DEVELOPER

29. How long has the project taken to secure development consent from request for screening opinion (or if no opinion from initial developer discussions) (months)
30. Has the EIA **added** to the length of time taken to secure development consent
- 30.1. If yes – by how much (months)
- 30.2. If yes – what steps / issues contributed most to the overall delays
31. Was there any scope – with hindsight - to have planned or undertaken activities differently that would have had led to a significant time saving – what changes would you have made – is this lessons something that you will apply in future
32. What do you estimate the cost to be of the delays due to the EIA [over and above the usual time for obtaining development consent e.g. the delay incurred by business when the competent authority requests additional information at a later stage in the EIA process that they did not request in the formal scoping opinion]. The cost may be in the form of additional set-up costs, borrowing costs, or deferred investment returns.
33. Was the delay in preparing / submitting the EIA in part attributable to the need to secure other consents (not planning) such as IPPC/Habitats. Explain how significant this was and why
34. Who usually undertakes an EIS?
- In-house
- Consultancy services
- Both (please give estimates of proportions used)
35. What factors influence who usually undertakes an EIS (e.g. lack of in-house expertise, time, cost-saving, risk of legal challenge?)
36. Do you undertake any informal review of the EIS prior to submitting it to the competent authority to check that the key environmental issues have been identified?
- 36.1. If yes - What are the perceived added benefits of doing this?
- 36.2. Do consultees undertake any review of the EIS after it has been submitted?
- 36.3. If Yes – why is it done after submission? What are the perceived added benefits of undertaking this non-mandatory procedure?
- 36.4. If no review - why do you not conduct any form of informal review?
37. Was the initial EIA considered acceptable by the CA?
- 37.1. If not why not - explain
38. Was the development application approved?
- 38.1. If not was this due to the environmental impact - explain
- 38.2. If not was it due to a legal challenge relating to the EIA process – explain
- 38.3. If not was the decision appealed - with what outcome

Good Practice

39. Would the cost-effectiveness of the EIA process have been improved for this project by one or more of the following:

- Improved training and competencies of the CA / of the Developer
- Management of overlaps with other Directives (esp IPPC) – joint reporting? – ‘Umbrella’ Directive? – avoid double assessment / reporting
- EU / MS harmonisation (trans-boundary projects) – definitions / thresholds
- Updating of Annexes to reflect changes in project types – avoid delays
- Use of ‘prior authorisation’ for classes of project – reduce EIA scope
- Variations in levels of public involvement – reduced provisions with informal dialogue
- Joint and mandatory scoping with formal agreement – provide certainty and avoid later changes in scoping and / or tendency to cover everything ‘in case’ of subsequent request / legal challenge

ANNEX D: THE EIA DIRECTIVES AND RELATED LEGISLATION

The totality of the EIA legislation is extensive with linkages to related legislation. Different approaches are used by Member States to transpose the different instruments, though in reality there is a significant overlap between installations which fall under the EIA and other Directives. There may be significant scope here for simplification.

The collective effect of the EIA Directive and amendments, the associated Directives which influence implementation of the EIA Directive, and precedent set by ECJ judgements is the creation of a significant legislative regime around environmental impact assessment. There is also the additional issue of “gold-plating” to be considered when EU legislation is supplemented by additional layers of national or regional-specific procedures.

The EIA Directive and Amendments

Environmental Impact Assessment involves the procedures and practices created in the first instance, by the following directives:

- Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment
- Amendment 1 - Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.
- Amendment 2 - Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

The EIA regime also includes the associated legislation and the impact of the relevant case law described below.

Amendment 1 – The ESPOO Convention and Other Matters

The original Directive was amended by Council Directive 97/11/EC of 3rd March to include among other things, the Espoo Convention relating to projects which have significant potential trans-boundary effects. Under this change, the public and the authorities in a second or more affected Member State are informed and then have the possibility to make comments which should then be integrated into the national decision-making process.

The 97/11/EC directive also included scoping provisions which requires Member States to implement a procedure whereby, at a minimum, developers can ask competent authorities for advice on the information to be submitted under the EIA

procedure. Different practices for scoping have been adopted in different Member States.

Also under Directive 97/11/EC, screening procedures have been introduced and since the adoption of the Directive different screening practices relating to Annex II projects have been applied in different ways across the Member States. (Screening is mandatory for Annex I projects).

Amendment 2 – The Aarhus Convention

Following the signature of the Aarhus Convention on public participation in decision-making and access to justice in environmental matters by the Community on 25th June 1998, the Community adopted Directive 2003/35/EC in May 2003. This directive was designed to amend the original EIA Directive and the Integrated Pollution Prevention and Control Directive in order to ensure the obligations proscribed by the Convention are incorporated into the EIA and IPPC directives.

This amendment was followed in by the Decision by the Council to adopt the Aarhus Convention on behalf of the European Community on 17th February 2005. This Decision is intended to align all relevant Community legislation with the provisions of the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

Relationship between EIA and other EU Directives

Linkages and possible overlaps between the EIA Directive and other Directives are listed below. The study will identify any other Directives with a link to the EIA Directive and its implementation.

Directive 96/61/EC Integrated Pollution, Prevention and Control (IPPC)

Article 2 (2a) of the EIA Directive permits Member States to provide for a single procedure to fulfil the requirements of both the EIA and IPPC Directives. According to the Commission evaluation¹⁶ only Austria, Belgium-Brussels, Germany and Italy have indicated that a single procedure exists for the authorisation of projects that fall under both the EIA and IPPC Directives. In some Member States the application of the EIA Directive is divided between land use authorisations and environmental permits (for processes) and in such cases there will be an overlap between EIA and IPPC. The categories of projects listed in the EIA and IPPC annexes overlap to a large degree.

92/43/EEC Habitats Directive

Article 6 of the Habitats Directive requires an assessment procedure to be completed where a project or plan, not directly connected to the management of a Natura 2000 site, is likely to have a significant effect on such a site. The Commission Guidance¹⁷ document on the provisions of Article 6 indicates that a project that is likely to have a significant effect on a Natura 2000 site requires an Article 6 assessment and an EIA

¹⁶ European Commission (2003), 'How successful are the Member States in implementing the EIA Directive', 5-year report to the European Parliament and the Council

¹⁷ European Communities (2000), 'Managing Natura 2000 Sites – The Provisions of Article 6 of the 'Habitats' Directive' 92/43/EEC

according to the Directive. The report states that the Article 6 assessment may form part of the EIA but should be clearly identified and distinguishable within the EIS.

96/82/EC Control of Major Accidents Hazards Directive (Seveso)

Where a new project is a Seveso activity and it also falls within the scope of the EIA Directive, the requirements of the EIA Directive also apply. In these cases, Member States may provide for a single or co-ordinated procedure which must fulfil the requirements of both Directives.

2001/42/EC Assessment of the Effects of Certain Plans and Programmes on the Environment (SEA Directive)

The relationship between the EIA and SEA Directive has been examined in great detail in a recent Commission report¹⁸. Based on an initial questionnaire, seven EU-countries and two non-EU countries were selected for a more detailed analysis. Within these seven Member States the scope for overlapping was most obvious within land use planning, where local level plans could be very similar to large projects. In these cases Member States tended to rely on a parallel procedure, where both EIA and SEA were undertaken, or a single form of assessment, meeting the requirements of both Directives. The hierarchy of plans, programmes and projects was another area where overlapping occurred, mostly within transport and other infrastructure sectors. The report states that this overlap was a consequence of the strategic decisions not falling into the typical geographical hierarchy of land use planning.

¹⁸ Imperial College London (2006), *The Relationship between the EIA and SEA Directives*, Contract number: ENV.G.4/ETU/2004/0020r, 2006

MAIN STAGES OF THE EIA DIRECTIVE AND RELATED LEGISLATION

	EIA (85/337/EEC)	IPPC (96/61/EC)	SEA (2001/42/EC)	SEVESO (96/82/EC)	Habitats (92/43/EEC)
Objectives	Assess public and private projects liable to have a significant effect upon the environment, identifying direct and indirect effects and their interaction – before consent is given, so that the decision about consent takes the result of the assessment into account.	To achieve integrated prevention and control of pollution from activities listed in its Annex I. Lays down measures to prevent or, where that is not practicable, reduce emissions in the air, water and land. Aim is to achieve a high level of protection of the environment taken as a whole (Article 1).	Given the goal of achieving sustainable development to apply an assessment of the environmental implications of all relevant policies, plans and programmes.	Prevent major accidents which involve dangerous substances and limit their consequences for man and the environment to ensure a high level of protection.	Ensuring bio-diversity through the maintenance, conservation or restoration of natural habitats and of wild fauna and flora in and to take account of economic, social and cultural requirements and regional and local characteristics.
Scope	Relevant 'projects' and thresholds outlined in Annex I and include: power stations, refineries, asbestos plants, various infrastructure construction projects, Annex II projects will be examined to determine whether they should be subject to assessment.	Large industrial installations (above the different thresholds set in Annex I), covering energy; production/processing of metals; minerals; chemicals; waste management; and others that could affect the environment.	'all plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC'	The Directive shall apply to establishments where dangerous substances are present in quantities equal to or in excess of the quantities listed in Annex I. Most establishments covered under the Seveso II Directive will also be regulated under the IPPC Directive, the majority of them in the chemicals sector.	Under the Natura 2000 network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II. The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC.

	EIA (85/337/EEC)	IPPC (96/61/EC)	SEA (2001/42/EC)	SEVESO (96/82/EC)	Habitats (92/43/EEC)
Operative requirements	<p>Assessments will be based on the information specified in Annex IV, for project types specified in the Directive's Annex 1, in sufficient detail and adequately analysed to enable understanding of the nature and likely effects of the project and the main alternatives to it.</p> <p>Provision of access to information on the assessment and resulting consenting decisions to be made publicly accessible.</p> <p>The competent authority will ensure relevant information is made available to the developer [to help in the assessment].</p>	<p>Emission controls based on BAT and associated guidance. Permit to operate required (with periodic review). Applications for permits must include a description of the installation and activities, its material and energy inputs, the nature and extent of likely emissions and wastes and the technologies to eliminate or minimise impacts.</p> <p>Certain requirements may be implemented through general binding rules.</p> <p>Measures to monitor emissions.</p> <p>Relevant information from EIA or Seveso procedures.</p>	<p>An environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I of the directive.</p>	<p>Member States are required to ensure that: the operator is obliged to take all measures necessary to prevent major accidents and to limit their consequences for man and the environment, and; the operator is required to prove to the competent authority at any time, in particular for the purposes of the inspections and controls referred to in Article 18, that he has taken all the measures necessary as specified in the Directive.</p> <p>Specific requirements for measures to prevent accidents and limit their consequences - include major-accident prevention policies, safety reports and emergency plans (as given in Annex III and IV).</p> <p>The IPPC Directive also requires that the necessary measures be taken to prevent accidents and limit their consequences</p>	<p>Following the criteria set out in Annex III (stage 1), each Member State must draw up a list of sites hosting natural habitats (in Annex I) and wild fauna and flora (in Annex II) native to its territory.</p> <p>The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site.</p>
	EIA (85/337/EEC)	IPPC (96/61/EC)	SEA (2001/42/EC)	SEVESO (96/82/EC)	Habitats (92/43/EEC)

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Determination of the application (Screening)</p>	<p>Projects are assessed where they are likely to have a significant effect on the environment by virtue of their nature, size or location.</p> <p>Where a decision needs to be made on whether to submit a project to assessment, screening based on Annex III is necessary.</p>	<p>Specified installations including those where a substantial change in operation could have [comparable] negative effects on the environment.</p> <p>Periodic review and update of permit conditions.</p> <p>Reconsideration of permits where the substantial change warrants it or where new legal provisions impose it.</p>	<p>Member States shall determine whether plans or programmes... are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II.</p>	<p>Specified establishments ;</p> <p>Notification of significant changes in the nature or form of dangerous substances and in cases of closure of establishment.</p> <p>Review of procedures and appropriate reports in advance of changes in storage or process involving specified substances.</p> <p>Land use planning policies will take the location and risks of specified establishment into account. Competent authorities and planning authorities must cooperate.</p>	<p>On the basis of the national lists and by agreement with the Member States, the Commission will then adopt a list of sites of Community importance</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Consultations</p>	<p>All authorities likely to be concerned must be able to give an opinion on the developer's project proposal and the assessment.</p> <p>Likewise the public concerned.</p>	<p>Permit applications must be made available for the public to comment.</p> <p>Decisions including the permit must also be made available.</p>	<p>Relevant authorities and public 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</p>	<p>- in consultation with employees and that the external public is consulted .</p> <p>The public is informed about external emergency plans and relevant safety measures with safety reports. Land use plans take emergency plans for existing or new establishments into account.</p>	<p>Re-introducing species in Annex IV that are native to their territory where this might contribute to their conservation, takes place only after proper consultation of the public concerned.</p>

	EIA (85/337/EEC)	IPPC (96/61/EC)	SEA (2001/42/EC)	SEVESO (96/82/EC)	Habitats (92/43/EEC)
Trans-boundary considerations	All member states likely to be concerned by trans-boundary impacts must be consulted on the developer's project proposal and the assessment. They must have time to respond.	Information is made available to a member state likely to be affected by a proposal at the same time as to nationals. They must have the opportunity to comment before a decision is made.	Member State shall enter into consultations concerning the likely trans-boundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.	Emergency plans and land use planning provisions are communicated so that relevant measures can be applied.	Community's natural heritage and the threats to them are often of a trans-boundary nature, it is necessary to take measures at Community level in order to conserve them. Scientific work necessary for the implementation of Articles 4 and 10, and trans-boundary cooperative research between Member States shall be encouraged.

	EIA (85/337/EEC)	IPPC (96/61/EC)	SEA (2001/42/EC)	SEVESO (96/82/EC)	Habitats (92/43/EEC)
Monitoring and reporting requirements	<p>Competent authorities (CAs) N.A</p> <p>Member states (MS) and Commission MS and Com. Exchange information on experience, especially on project selection criteria and thresholds. After 5 years, the Commission reports to the European Parliament and the Council on the application and effectiveness of Directive 85/337/EEC.</p>	<p>Competent authorities (CAs) CAs set emission monitoring requirements (with sufficient information) and frequency with which operators report to CAs. Permit conditions must be checked and information on self-monitoring provided. Member states (MS) and Commission Member states report representative limit values and on the implementation of the Directive to the Commission every 3 years. The Commission also organises an exchange of information between the member states and the sectors concerned, this occurs every 3 years.</p>	<p>Competent authorities (CAs) N.A</p> <p>Member states (MS) and Commission Member States shall monitor the significant environmental effects of the implementation of plans and programmes... to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action. Member States shall ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive.</p>	<p>Competent authorities (CAs) At least one systematic examination of systems to be undertaken by competent authorities annually. The operator must be able to prove to the competent authority that appropriate safety measures are in operation, including a major accident prevention policy. Member states (MS) and Commission MS and Com exchange information on prevention and limitation. The Com maintains a register of accidents etc and disseminates information rapidly. Register information is open to specified interested parties. MS supply Com with 3-yearly reports. Com publishes 3-yearly summaries.</p>	<p>Competent authorities (CAs) N.A</p> <p>Member states (MS) and Commission MS shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species. MS shall draw up a report on the implementation of the measures taken under this Directive every six years, in accordance with the format established by the committee, shall be forwarded to the Commission and made accessible to the public.</p>

Overlaps

Scope

	IPPC (96/61/EC)	SEVESO (96/82/EC)	SEA (2001/42/EC)	Habitats (92/43/EEC)
EIA (85/337/EEC)	Where a new project is a Seveso, IPPC or Habitat activity and it also falls within the scope of the EIA, then the requirements of the EIA Directive also apply. In these cases, member states may provide for a single or coordinated procedure (to) fulfil the requirements of both (or all) directives.			
	Member States may provide for a unique or co-ordinated procedure under the EIA, IPPC and Seveso Directives and also for a single list of projects.		All plans and programme under the EIA and Habitats Directive likely to have significant impact on the environment is subject to an SEA.	
	The categories of projects listed in the EIA and IPPC annexes overlap to a large degree. The EIA Directive generally covers, in Annexes I and II, all the Annex I IPPC categories of project, except for categories 3.1 (lime links), 6.7 and 6.8.	Likely that some Seveso projects are included in EIA Annexes		

Operative requirements

	IPPC (96/61/EC)	SEVESO (96/82/EC)	SEA (2001/42/EC)	Habitats (92/43/EEC)
EIA (85/337/EEC)	The environmental reports or documentation of the EIA and IPPC procedures are focused on environmental effects and measures for prevention and reduction of these effects, whilst the Seveso reports are focused on the risk analysis and safety conditions (this is also an EIA and IPPC objective if the project has such characteristics).		There is considerable overlap between the information required by EIA (Annex 4) and SEA (Annex 1). Annex 1 (f, g, h, and j are also required under EIA).	The selection criteria set out in Annex III of the EIA is taken into account, for a case-by case examination or when threshold and criteria are set. One of the selection criteria is the environmental sensitivity of areas classified or protected under the EU Habitats and Birds Directive.
	EIA, IPPC and Seveso reports are focused on aspects of the design, construction and operational phases.			
	As regards the EIA and IPPC Directives, Article 2a of Directive 97/11/EC states that Member States may provide for a single procedure to fulfil the requirements of both of them. In this context, Member States may provide for a single list of projects for mandatory EIA which consists of Annexes I to the EIA Directive and all or some of the projects in Annex I of the IPPC Directive. On the other hand, it is possible to apply the EIA and IPPC provisions separately and a project may, therefore, be subject to both procedures. In these cases, the procedures can happen one after another, but the results of the EIA procedure shall be taken into account for the purpose of granting the permit under the IPPC Directive.	Overlap not that straightforward but IMPEL report country studies show that EIA information (which tends to come earlier) is used for both IPPC and Seveso by the competent authorities and the public.		

Consultation: public, authorities and /trans-boundary/member states

	IPPC (96/61/EC)	SEVESO (96/82/EC)	SEA (2001/42/EC)	Habitats (92/43/EEC)
EIA (85/337/EEC)	Information exchange between the Member States for trans-boundary impacts is required in the EIA, IPPC, SEA, Habitats and Seveso Directives. Consultation is required under the EIA and IPPC procedures. In the EIA and IPPC Directives, the 'public' of the Member State likely to be affected also has to be involved			
	Trans-boundary obligations under the three instruments (EIA, IPPC and SEVESO) may be satisfied in a single procedure and appropriate internal procedures may be considered. The ECE-Convention on the Trans-boundary Effects of Industrial Accidents already provides for co-ordination in the case of EIA and Seveso projects.			

ANNEX E: IMPORTANT CASE LAW INFLUENCING THE EIA REGIME

C-508/03 - Commission v. United Kingdom

This case highlighted the failure of UK regulations, which require assessments only at outline planning permission stage, to reflect the EIA Directive's obligations. British planning law allows land developers to first seek outline planning permission, which in principle gives a project approval, but reserves matters such as design, siting and external appearance for a later decision. This is particularly important for securing finance for commercial developers, who are assured of project approval without needing to supply detail in the initial stages.

The EIA Directive requires any necessary environmental assessment to be undertaken before 'development consent' is given and in British law, outline planning permission is accepted as consent for the purposes of the Directive. However, information relevant to the environmental assessment may have been left to reserved matters, suggesting an incompatibility between the requirements of the Directive and the British outline planning permission system.

The ECJ held that rules providing that environmental assessment could not be carried out at reserved matter stage were incompatible with the Directive, also stating that outline planning permission and the decision approving reserved matters must therefore be considered to constitute, as a whole, a multi-stage 'development consent' within the meaning of Article 1(2) of the original Directive.

The decision has implications for the way in which the UK government is able to integrate environmental assessment requirements into current planning procedure, suggesting that future approaches may have to involve a full, rather than outline planning permission for those projects deemed to be subject to an EIA. This is likely to affect the way in which commercial developments are conceived and evolve, and may constrain authorities in their handling of reserved matters of significance, especially given the requirement under national law to pay compensation should an authority refuse permission in the light of a subsequent environmental assessment.

C-72/95 – Kraaijeveld BV and Others v. Gedeputeerde Staten van Zuid-Holland

Kraaijeveld, a Dutch winch manufacturer, brought proceedings against the Netherlands State Council, which approved a zoning plan in connection with dyke reinforcement, which would result in the removal of access to navigable waterways for Kraaijeveld, whose economic activity was related to waterways. Amongst four questions referred to the ECJ on the interpretation of the EIA Directive, the most significant ruling related to the clarification of certain provisions of the EIA Directive in relation to Annex II projects.

The ECJ ruled that although the second paragraph of Article 4(2) of the Directive confers on Member States a measure of discretion, the limits of that discretion are to be found in the obligation set out in Article 2(1), where projects which are likely to have significant effects on the environment are to be made subject to an impact assessment. In this particular case, a Member State which established criteria or

thresholds at a level such that, in practice, all projects relating to dykes would be exempted in advance from the requirements of an impact assessment, would exceed the limits of its discretion under Articles 2(1) and 4(2) of the directive, unless all projects could be regarded as not being likely to have significant effects on the environment. A national court must, in these cases, examine whether the legislative or administrative authorities of the Member States remained within the limits of their discretion under Articles 2(1) and 4(2). If Member States are found to have exceeded their discretion, the national authorities must see that all necessary measures are taken to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment, and if so, ensure they are made subject to an EIA.

The case highlights the problems associated with the EIA Directive in attempting to leave as much discretion as possible to national administration in respect of the decision on whether or not to undertake an EIA. The discretion left to Member States on fixing thresholds and criteria has led in practice to enormous variations among Member States in terms of the number of projects being made subject to EIA. The Court's decision on the interpretation of the Directive illustrates a need for an amendment to clarify the circumstances in which Annex II projects (where EIA is discretionary) should be made subject to an EIA.

C-431/92 Commission v. Federal Republic of Germany

This case concerned the Grosskrotzenburg thermal power station, and is related to the ruling above. The ECJ ruled that in order to establish whether the work envisaged should undergo an EIA, such projects should be assessed irrespective of whether they were separate constructions, were added to a pre-existing construction, or even had close functional links with pre-existing construction.

The ECJ ruling in this case underlines the wide scope and broad purpose of the EIA Directive, pointing out that its purpose would be undermined if modifications to development projects were so construed as to enable certain works to escape the requirements of an EIA even though, by their nature, size or location, such works are likely to have significant effects on the environment.

C-133/94 Commission v. Belgium

The ruling of this case also relates to C-72/95; here, the ECJ ruled that although the criteria and/or thresholds mentioned in Article 4(2) are designed to facilitate examination of any given project in order to determine whether an EIA is required, they are not intended to exempt from that obligation certain classes of projects listed in Annex II, confirming once again that setting thresholds and/or criteria which exempted entire classes of projects would exceed the limits of discretion granted to Member States under Articles 2(1) and 4(2).

C-117/02 – Commission v. Portugal

This case dealt with the screening thresholds for Annex II projects and sensitive areas. The Commission took action against the Portuguese authorities for allowing consent to be given to two planned tourism complexes without an EIA being undertaken, therefore failing to fulfil obligations under Article 2(1) of the EIA Directive. The Commission claimed that consent was given for tourism projects located in an area which appeared

in a national list of sites and which should have been proposed as a site of Community importance (under the Natura 2000 network), and considered that the projects would have produced significant environmental effects since the areas in question included habitat types referred to in Annex I (of Directive 92/43/EEC) and species mentioned in Annex II of the EIA Directive.

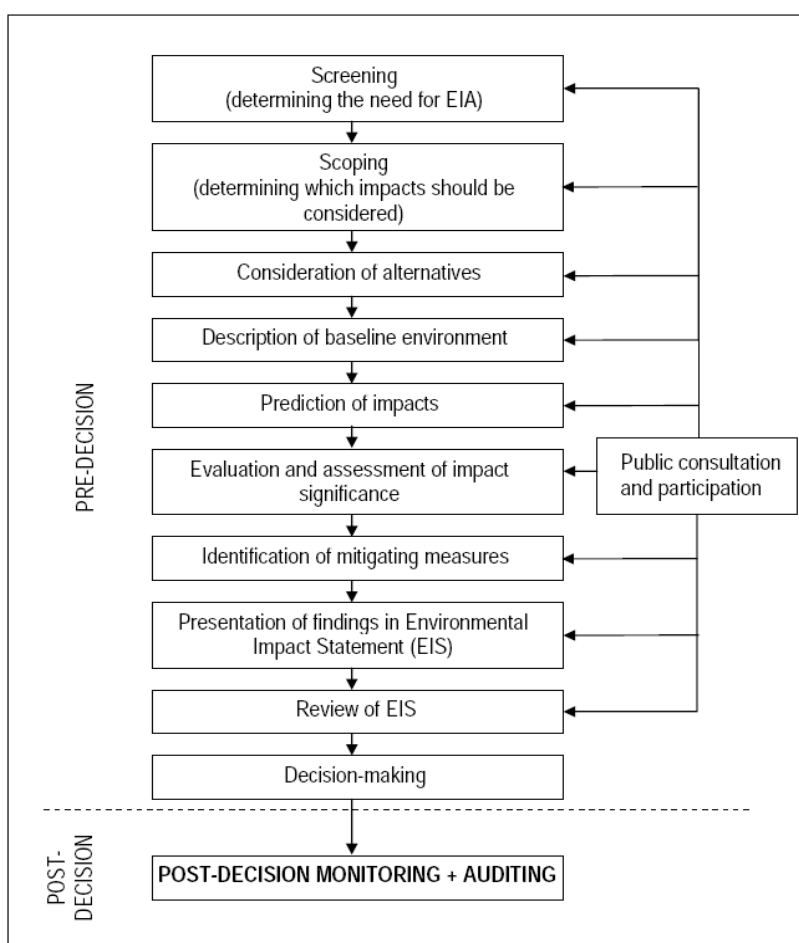
However, this action was dismissed by the ECJ, on the grounds that the Commission was making an assumption that a project located in a national park was likely to have significant effects on the environment, and that such an assumption was seen as insufficient for the purpose of establishing the existence of an infringement of Article 2(1) of the original EIA Directive.

ANNEX F: THE EIA REGIME: SUMMARY OF THE MAIN STAGES OF THE APPLICATION OF THE EIA DIRECTIVE

The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment. Figure 1 presents a summary flowchart¹⁹ of all the stages in the process.

Key steps are described in more detail below:

Figure 1: Overview of the EIA Process



Screening

The screening stage establishes if an EIA is required. The EIA Directive has divided projects into Annex I and Annex II projects. Projects in Annex I are subject to a

¹⁹ Note that the screening stage in the flowchart refers only to Annex II projects; Annex I require a mandatory EIA.

mandatory EIA. These include major projects with potentially large environmental impacts - such as roads, power plant, industrial plant etc. Projects listed in Annex II must be subject to screening in order to evaluate whether they are likely to have significant environmental effects, and hence require an EIA. The screening is made through:

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

The selection criteria for case-by-case examination, thresholds or criteria are set in Annex III.

Most of the Member States are using a combination of both thresholds and case by case combination. In addition many of the Member States have included additional project categories in their transposing legislation, and introducing lower thresholds in terms of project size

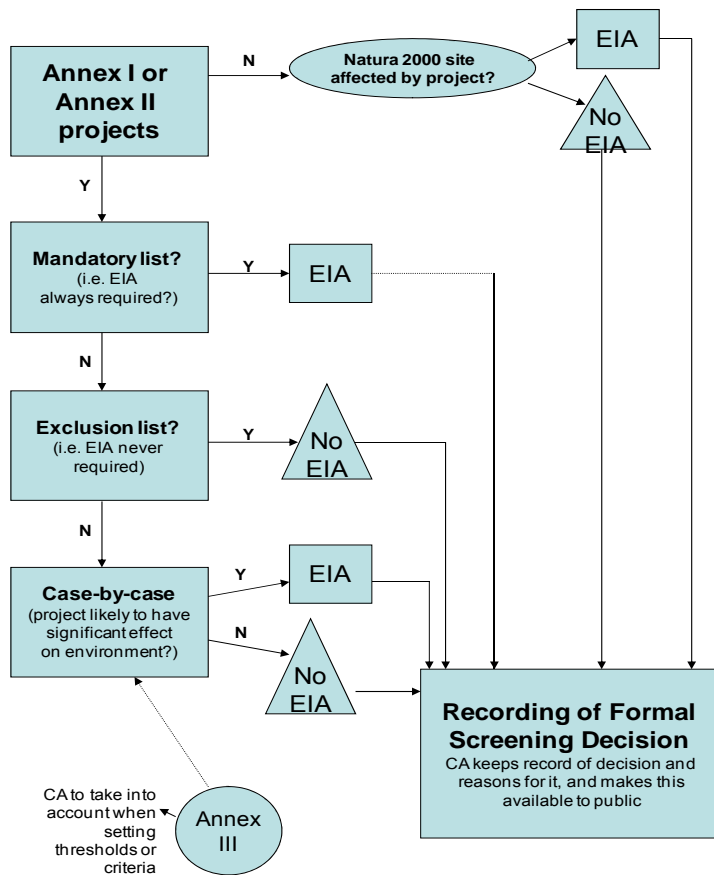
The Directive also requires the screening of any changes or extensions of projects listed in Annex I and II that have already been authorised, executed or are in the process of being executed and which may have significant adverse effects on the environment.

The screening process is by far the shortest 'step' (in terms of time taken) of the EIA procedure, and will range from a few hours to a few days at most. (However, it must be noted that one stakeholder did experience a screening procedure which lasted seven months). The competent authority may also have been given a 'screening report' by the consultants acting on behalf of the developer, which sets out the reasons either for why the development should or should not be subject to EIA. The report may be particularly useful in filling in 'information gaps' which the competent authority may have.

It is possible to avoid an EIA by "salami-slicing". Salami-slicing is an attempt to avoid an EIA by dividing a project, requiring an EIA, into several smaller separate entities which individually do not. It also covers the possibility to obtain permission for a project that is below a threshold, and therefore not subject to an EIA, and at a later date extending that project or its capacity above the threshold limits. Many Member States treat salami-slicing within the context of either a "change of extension" or as cumulative projects.

The screening stages are summarised in Figure 2:

Figure 2: Process of Screening for the Need for EIA



Scoping

Scoping is the assessment of which issues and what level of detail should be covered by the EIA process for a given project. According to Article 5(2) of Directive 97/11/EC, a Member State is required to implement a procedure whereby, at a minimum, developers can ask the competent authority for advice on the information to be submitted under the EIA procedure, a process known as scoping. The purpose of scoping is to identify matters which should be covered in the environmental information submitted by the developer to a competent authority and in particular, to identify the matters which are of most importance so that these can be addressed in most detail.

The Directive requires competent authorities to provide, if the developer so requests, an opinion on a list of the information to be submitted later in the process as an Environmental Impact Statement (EIS). However, Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests. Seven Member States have made this a mandatory requirement. This has led to a wide variation in implementation between Member States.

However, two main types of mandatory system appear to have been adopted:

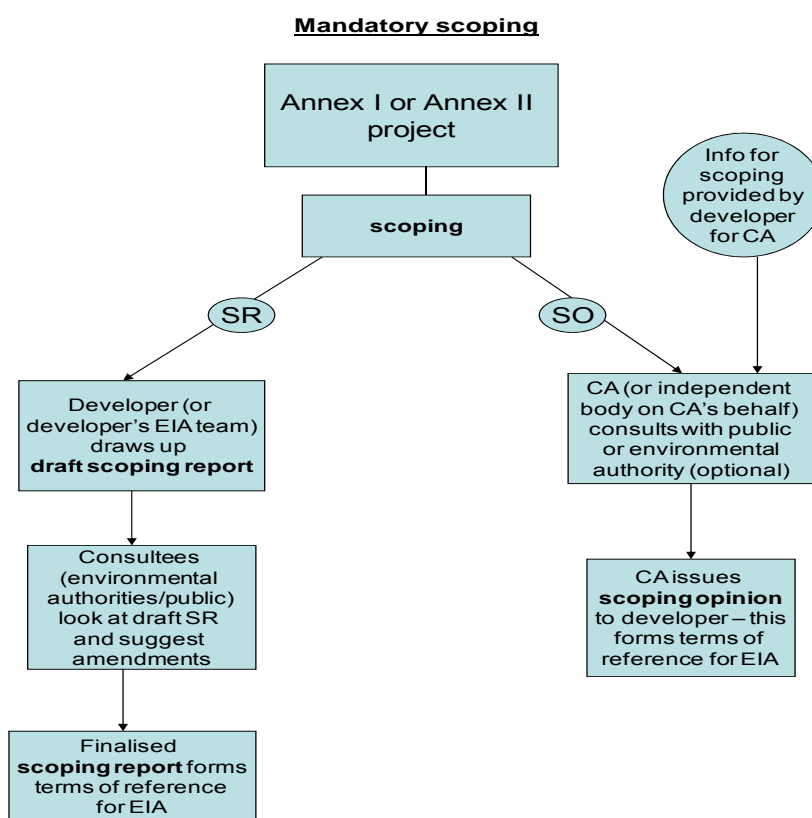
- **Scoping Report from the Developer:** Scoping is undertaken by the developer or the developer's EIA team. A draft Scoping Report is prepared and circulated amongst consultees such as environmental authorities, interested parties (e.g.

NGOs) and the general public, before it is finalised and issued as the agreed terms of reference for the EIA.

- **Scoping Opinion from the Competent Authority:** Scoping is undertaken by the competent authority or an independent body such as the EIA Commission or a panel of EIA experts on behalf of the competent authority. The competent authority then issues a Scoping Opinion to the developer, which forms the terms of reference for the EIA

This is summarised in Figure 3.

Figure 3: Mandatory Scoping Process



Source: EC (2001): Guidance on EIA: Screening

In Germany and the Netherlands, the scoping phase has been made mandatory, and tends to be a fairly rigorous and intensive process. Germany has a culture of pre-application meetings between the developers and competent authorities, which is not obligatory but tends to be the rule rather than the exception. In the Netherlands, the scoping phase consists of writing a 'start-memo' and possibilities for public participation. Early participation from stakeholders is generally viewed as useful for dealing with queries later on in the process, and for avoiding legal challenges. The length of time taken for the scoping phase is usually no more than two months, and varies according to the number of consultees (both statutory and non-statutory) approached, as well as the complexity of the application

Operative Requirements and Environmental Impact Statement (EIS)

Developers are required to provide under the EIA procedure, environmental information, as defined in Article 5(3) and Annex IV of Directive 97/11/EC. This environmental information is provided in most Member States as an Environmental Impact Statement (EIS), and must contain at least:

- A description of the project comprising information on the site, design and size of the project
- A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects
- The data required to identify and assess the main effects which the project is likely to have on the environment
- An outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects
- A non-technical summary of the information mentioned in the previous points

The Environmental Statement (ES) tends to be the lengthiest aspect of the EIA process. It involves the collection of different chapters from various technical specialists on information regarding issues such as noise, biodiversity, sunlight, socio-economic impacts. This 'collection' is undertaken by the 'lead coordinator', i.e. the main environmental consultants hired by the developer to coordinate the entire EIA process, as well as to compile the ES.

The quality of the Environmental Statement (ES) varies quite markedly between the MS. This can in part be attributed to whether there is an accreditation or quality control system based on review, and whether there is any monitoring of standards.

Decision-making

One of the purposes of EIA is to provide information about the environmental consequences of an action to decision-makers in advance of the decision so that this information can influence the decision-making process. The EIA Directive requires that the environmental information supplied by the developer and the consultation procedure is taken into consideration in decision-making. One aim of the EIA Directive is to strengthen the consideration of likely significant effects in decision-making.

Public Participation

Member States are required to ensure that the public are consulted on the EIS. Consultation with the public may take place at various stages of the EIA process, with some Member States holding public participation exercises during both the screening and scoping stages, while in others the public are consulted during scoping. The amendment 2003/35/EC improved the rights for public participation in environmental decision-making. It requires Member States to ensure that the public concerned has access to a review procedure before a court of law to challenge the substantive or procedural legality of decisions and acts or omissions. According to the definition in this Directive 2003/35/EC "the public concerned" would include also those that have an interest in the environmental decision-making procedures, such as NGOs.

Monitoring and reporting

MS and Commission exchange information on experience, especially on project selection criteria and thresholds. After 5 years, the Commission reports to the European Parliament and the Council on the application and effectiveness of Directive 85/337/EEC.

ANNEX G: INFORMAL WORKSHOP – PARTICIPATING ORGANISATIONS

Stakeholders' meeting on the regime of the Environmental Impact Assessment Directive

12th October 2007, Breydel, Avenue d'Auderghem 45, Brussels,
Room 12/A, 10:00 – 12:00

CEWEP

CIAA Environment Committee

EDISON

EPIA

EUnited

Eurelectric

Eurochambres

EUROFER

EUROMETAUX

FEAD

IMA-Europe

International Association of Oil & Gas Producers

RWE AG Büro Bruxelles

UEAPME

UEPG

Verbund

ANNEX H: ANNEX I AND II (CONSOLIDATED) OF THE EIA DIRECTIVE

ANNEX I: PROJECTS SUBJECT TO ARTICLE 4 (1)

1. 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.

2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. (a) Installations for the reprocessing of irradiated nuclear fuel.

(b) Installations designed:

- for the production or enrichment of nuclear fuel,
- for the processing of irradiated nuclear fuel or high-level radioactive waste,
- for the final disposal of irradiated nuclear fuel,
- solely for the final disposal of radioactive waste,
- solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4. Integrated works for the initial smelting of cast-iron and steel; Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.

6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:

- (i) for the production of basic organic chemicals;
- (ii) for the production of basic inorganic chemicals;
- (iii) for the production of phosphorous-,nitrogen-or potassium-based fertilizers (simple or compound fertilizers);
- (iv) for the production of basic plant health products and of biocides;
- (v) for the production of basic pharmaceutical products using a chemical or biological process;
- (vi) for the production of explosives.

7. (a) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 100m or more;

(b) Construction of motorways and express roads;

(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.

8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 350 tonnes;

(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC(4) under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC(5) applies).

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial ground water recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds million cubic metres.

12. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5% of this flow. In both cases transfers of piped drinking water are excluded.

13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC (6).

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 m³/day in the case of gas.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.

17. Installations for the intensive rearing of poultry or pigs with more than:

(a) 85 000 places for broilers, 60 000 places for hens;

(b) 3 000 places for production pigs (over 30 kg); or

(c) 900 places for sows;

18. Industrial plants for the

(a) production of pulp from timber or similar fibrous materials;

(b) production of paper and board with a production capacity exceeding 200 tonnes per day.

19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.

20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.

22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

ANNEX II: PROJECTS SUBJECT TO ARTICLE 4(2)

1. Agriculture, silviculture and aquaculture

- (a) Projects for the restructuring of rural land holdings;
- (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
- (c) Water management projects for agriculture, including irrigation and land drainage projects;
- (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
- (e) Intensive livestock installations (projects not included in Annex I);
- (f) Intensive fish farming;
- (g) Reclamation of land from the sea.

2. Extractive industry

- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
- (b) Underground mining;
- (c) Extraction of minerals by marine or fluvial dredging;
- (d) Deep drillings, in particular:
 - geothermal drilling,
 - drilling for the storage of nuclear waste material,
 - drilling for water supplies, with the exception of drillings for investigating the stability of the soil;
- (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. Energy industry

- (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);
- (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);
- (c) Surface storage of natural gas;
- (d) Underground storage of combustible gases;
- (e) Surface storage of fossil fuels;
- (f) Industrial briquetting of coal and lignite;
- (g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
- (h) Installations for hydroelectric energy production;
- (i) Installations for the harnessing of wind power for energy production (wind farms).

4. Production and processing of metals

- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
- (b) Installations for the processing of ferrous metals:
 - (i) hot-rolling mills;
 - (ii) smitheries with hammers;
 - (iii) application of protective fused metal coats;
- (c) Ferrous metal foundries;
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) Manufacture and assembly of motor vehicles and manufacture of motor vehicle engines;
- (g) Shipyards;
- (h) Installations for the construction and repair of aircraft;
- (i) Manufacture of railway equipment;
- (j) Swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

5. Mineral industry

- (a) Coke ovens (dry coal distillation);
- (b) Installations for the manufacture of cement;
- (c) Installations for the production of asbestos and the manufacture of asbestos products (projects not included in Annex I);
- (d) Installations for the manufacture of glass including glass fibre;
- (e) Installations for smelting mineral substances including the production of mineral fibres;
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

6. Chemical industry (Projects not included in Annex I)

- (a) Treatment of intermediate products and production of chemicals;
- (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;
- (c) Storage facilities for petroleum, petrochemical and chemical products.

7. Food industry

- (a) Manufacture of vegetable and animal oils and fats;
- (b) Packing and canning of animal and vegetable products;
- (c) Manufacture of dairy products;
- (d) Brewing and malting;
- (e) Confectionery and syrup manufacture;
- (f) Installations for the slaughter of animals;
- (g) Industrial starch manufacturing installations;
- (h) Fish-meal and fish-oil factories;
- (i) Sugar factories

8. Textile, leather, wood and paper industries

- (a) Industrial plants for the production of paper and board (projects not included in Annex I);
- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles;
- (c) Plants for the tanning of hides and skins;
- (d) Cellulose-processing and production installations.

9. Rubber industry

Manufacture and treatment of elastomer-based products.

10. Infrastructure projects

- (a) Industrial estate development projects;
- (b) Urban development projects, including the construction of shopping centres and car parks;
- (c) Construction of railways and intermodal trans-shipment facilities, and of intermodal terminals (projects not included in Annex I);
- (d) Construction of airfields (projects not included in Annex I);
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- (f) Inland-waterway construction not included in Annex I, canalization and floodrelief works;
- (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
- (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
- (i) Oil and gas pipeline installations (projects not included in Annex I);
- (j) Installations of long-distance aqueducts;
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
- (m) Works for the transfer of water resources between river basins not included in Annex I.

11. Other projects

- (a) Permanent racing and test tracks for motorized vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

12. Tourism and leisure

- (a) Ski-runs, ski-lifts and cable-cars and associated developments;
- (b) Marinas;
- (c) Holiday villages and hotel complexes outside urban areas and associated developments;
- (d) Permanent camp sites and caravan sites;
- (e) Theme parks.

13. Any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment **(change or extension not included in Annex I)**;

Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.