



European
Commission



Environmental Impact Assessment of Projects

Guidance on Screening

(Directive 2011/92/EU as amended by 2014/52/EU)

Printed in Luxembourg

A great deal of additional information on the European Union is available on the Internet. It can be accessed through the Europa server (<http://ec.europa.eu>).

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Guidance on Screening
(Directive 2011/92/EU as amended by 2014/52/EU)

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GLOSSARY OF TERMS

Key terms used in the guidance documents are explained in the Glossary below.

| Term | Explanation |
|---|---|
| 2012 IA Study | Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private Projects on the environment, SWD/2012/0355 final |
| Alternatives | Different ways of carrying out the Project in order to meet the agreed objective. Alternatives can take diverse forms and may range from minor adjustments to the Project, to a complete reimagining of the Project. |
| Baseline scenario | Description of the current status of the environment in and around the area in which the Project will be located. It forms the foundation upon which the assessment will rest. |
| Candidate Countries | Countries which are seeking to become Members States of the European Union. |
| Competent Authority (CA) | The authority which the Member States designate as responsible for performing the duties arising from the Directive. |
| Cumulative effects | Changes to the environment that are caused by an activity/project in combination with other activities/projects. |
| Developer | The applicant for a Development Consent on a private Project or the public authority which initiates a Project. |
| Development Consent | The decision of the Competent Authority or Authorities which entitles the Developer to proceed with the Project. |
| Effect/Impact | Any change in the physical, natural or cultural environment brought about by a development Project. |
| EIA Directive | European Union Directive 2011/92/EU, as amended by Directive 2014/52/EU on assessment of the effects of certain public and private Projects on the environment |
| EIA process (or EIA) | The process of carrying out an Environmental Impact Assessment as required by Directive 2011/92/EU, as amended by Directive 2014/52/EU on assessment of the effects of certain public and private Projects on the environment. The EIA process is composed of different steps: preparation of the EIA Report, publicity and consultation and decision-making. |
| EIA Report | The Environmental Impact Assessment Report is the document prepared by the Developer that presents the output of the assessment. It contains information regarding the Project, the likely significant effect of the Project, the Baseline scenario, the proposed alternatives, the features and Measures to mitigate adverse significant effects as well as a Non-Technical Summary and any additional information specified in Annex IV of the EIA Directive. |
| Measures to mitigate (Mitigation Measures) | Measures envisaged to avoid, prevent or reduce any identified significant adverse effects on the environment |
| Measures to monitor (Monitoring Measures) | Procedures to keep under systematic review the significant adverse effects on the environment resulting from the construction and operation of a Project, and to identify unforeseen significant adverse effects, in order to be able to undertake appropriate remedial action. |
| Member States (MS) | Countries which are members of the European Union |
| Measures to compensate / offset (Compensatory Measures) | Measures envisaged to offset any identified significant adverse effects on the environment. |
| Non-Technical Summary | An easy-to-follow and understandable summary of the information included in the EIA Report addressed to a non-technical audience. |
| Project | The execution of construction works or of other installations or schemes, and/or other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources. |

| | |
|---------------------|---|
| Reasoned Conclusion | The explanatory statement made by the Competent Authority on the significant effects of the Project on the environment, based on the examination of the EIA Report and, where appropriate, on the results of its own supplementary examination. |
| Screening | The process of determining whether a Project listed in Annex II of the EIA Directive is likely to have significant environmental effects. |
| Screening Decision | Decision taken by the Competent Authority on whether a Project listed in Annex II will be made subject to the EIA procedure. |
| Scoping | The process of identifying the content and extent of the information to be submitted to the Competent Authority under the EIA process. |
| Scoping Opinion | The Competent Authority's decision on the Scoping process. |

LIST OF ABBREVIATIONS

Key abbreviations used in the guidance documents are detailed in the list below.

| Abbreviation | Full name |
|-------------------|---|
| AA | Appropriate Assessment |
| Aarhus Convention | Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters |
| CJEU | Court of Justice of the European Union |
| ESPOO Convention | Convention on environmental impact assessment in a transboundary context |
| IED | Industrial Emissions Directive |
| PCI | Project of common interest |
| RBMP | River Basin Management Plans |
| SEA | Strategic Environmental Assessment |
| TEN-E | Trans-European Networks for Energy |
| TEN-T | Trans-European Networks - Transport |
| TEN-TEC | Trans-European Networks - Telecommunications |
| WFD | Water Framework Directive |
| WasteFD | Waste Framework Directive |

PREFACE

In 2001, the European Commission published three EIA Guidance Documents concerning specific stages in the EIA process: Screening, Scoping, and Environmental Impact Statement Review. These documents have been updated and revised to reflect both the legislative changes brought about since the publication of the original guidance documents and the current state of good practice.

These three updated documents concern the following three specific stages of the EIA process:

- EIA Guidance Document on Screening;
- EIA Guidance Document on Scoping;
- EIA Guidance Document on the preparation of the EIA Report.

What is the aim of the Guidance Documents?

The aim of the Guidance Documents is to provide practical insight to those who are involved during these stages in the EIA process, drawing upon experiences in Europe and worldwide.

The Screening and Scoping EIA guidance documents aim to improve the decisions taken on the need for an EIA and the terms of reference on which the assessment is made. These two documents focus on getting the EIA process started well.

The preparation of the EIA Report guidance aims to help Developers and consultants alike prepare good quality Environmental Impact Assessment Reports and to guide competent authorities and other interested parties as they review the Reports. It focuses on ensuring that the best possible information is made available during decision-making.

Who can use the Guidance Documents?

The three EIA Guidance Documents are designed for use by Competent Authorities, Developers, and EIA practitioners in the European Union Member States and, where applicable, by Candidate Countries. It is hoped that they will also be of interest to academics and other organisations who participate in EIA training and education, to practitioners from around the world, as well as to members of the public.

Who prepared the Guidance Documents?

The original 2001 EIA Guidance Documents were prepared by Environmental Resources Management under a research contract with the Directorate General for Environment of the European Commission. The revised 2017 EIA Guidance Documents have been prepared by Milieu Ltd and COWI A/S under a service contract specific contract number 070201/2016/729522/SER/ENV.D.1. to framework contract ENV.F.1/FRA/2014/0063 with the Directorate General for Environment of the European Commission.

How can I get a copy of the Guidance Documents?

Copies of the Guidance Documents can be downloaded from the website of the Directorate General Environment of the European Commission at <http://ec.europa.eu/environment/eia/eia-support.htm>.

EIA: CONCEPT AND STAGES

The Environmental Impact Assessment (EIA) of Projects is a key instrument of European Union environmental policy. It is currently governed by the terms of European Union Directive 2011/92/EU, as amended by Directive 2014/52/EU on the assessment of the effects of certain public and private Projects on the environment (EIA Directive).

Since the adoption of the first EIA Directive in 1985 (Directive 85/337/EEC), both the law and EIA practices have evolved. The EIA Directive was amended by Directives 97/11/EC, 2003/35/EC, and 2009/31/EC. The Directive and its three amendments were codified in 2011 by Directive 2011/92/EU. The codified Directive was subsequently amended by Directive 2014/52/EU. This guidance document focuses on the modifications made to the EIA Directive since 2001, with a particular emphasis on the key changes brought about by the most recent 2014 amendment to the Directive, which Member States have to transpose into their national legal systems by 16 May 2017.

The EIA Directive requires that public and private Projects that are likely to have significant effects on the environment be made subject to an assessment prior to Development Consent being given. Development Consent means the decision by the Competent Authority or authorities that entitles the Developer to proceed with the Project. Before Development Consent can be granted, an EIA is required if a Project is likely to impact significantly upon the environment. Article 2(1) of the EIA Directive (see box below) sets out the Directive's overarching requirement.

Box 1: Directive 2011/92/EU as amended by Directive 2014/52/EU

Article 2(1)

Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.

The guidance documents in this series cover three stages involved in EIA: Screening, Scoping, and the Preparation of the EIA Report.

The 'Screening stage' ascertains whether the Project's effects on the environment are expected to be significant, i.e. the Project is 'Screened' to determine whether an EIA is necessary. Projects listed in Annex I to the Directive are automatically subjected to an EIA because their environmental effects are presumed to be significant. Projects listed in Annex II to the Directive require a determination to be made about their likely significant environmental effects. The Member State's Competent Authority make that determination through either a (i) case-by-case examination or (ii) set thresholds or criteria.

The 'Scoping stage' provides the opportunity for Developers to ask competent authorities about the extent of the information required to make an informed decision about the Project and its effects. This step involves the assessment and determination, or 'Scoping', of the amount of information and analysis that authorities will need.

The information relating to a Project's significant effects on the environment is gathered during the third stage: the preparation of the EIA Report.

These three stages are complemented by specific steps in the EIA process. This is defined in Article 1(2)(g) (see box below) which provides a definition of the Environmental Impact Assessment by describing the EIA process.

Box 2: Directive 2011/92/EU as amended by Directive 2014/52/EU

Article 1(2)(g)

For the purposes of this Directive, the following definitions shall apply:

[...]

(g) 'environmental impact assessment' means a process consisting of:

(i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);

(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;

(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;

(iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and

(v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.

The figure below sets out an overview of the stages and steps usually taken when completing an EIA. As mentioned above, implementation arrangements for these stages may vary slightly between Member States, so care should be taken in this regard. The steps defined under Article 1(2)(g) are mandatory when undertaking an EIA. By comparison, undertaking the Screening and Scoping stages may not be required, depending on the nature of a Project or other circumstances: e.g. Screening is not necessary for Projects listed under Annex I to the Directive, and the Directive only foresees Scoping to be mandatory when it is requested by the Developer to the Competent Authority.



GUIDANCE ON SCREENING

HOW TO USE THIS GUIDANCE DOCUMENT

This Guidance Document is one in a series of three Guidance Documents on EIA that has been published by the European Commission. This Guidance Document is about Screening. The other two guidance documents are concerned with Scoping and with the preparation of the EIA Report.

This Guidance Document has been designed to be used throughout the European Union (EU) and cannot, therefore, reflect all of the specific legal requirements and practices of EIA in the different EU Member States. As such, any existing national, regional or local guidance on EIAs should always be taken into consideration alongside this document. Furthermore, the Guidance Documents should always be read in conjunction with the Directive and with national or local EIA legislation. Interpretation of the Directive remains the prerogative of the Court of Justice of the European Union (CJEU) solely and, therefore, case-law from the CJEU should also be considered.

The guidance is designed for use by various participants in the EIA process.

- **Competent Authorities:** Competent Authorities are ultimately responsible for issuing a Screening Decision on whether or not the Project should be subject to an EIA. They must keep a record of the Screening Decision and the reasons for it, and must make it available to the public. The Screening may be done by reference to legal requirements (thresholds) or on a case-by-case basis depending on the procedures in place in a particular Member State. The Competent Authorities are concerned with all of the steps of the Screening procedure that are presented in Part B of the guidance document. In addition, two checklists are available in Part C to help the Competent Authority determine whether or not the Project is likely to have significant effects on the environment.
- **Project Developers and EIA practitioners:** when the Developers, or the practitioners on their behalf, are uncertain about the need for an EIA, they will have to provide the Competent Authority with sufficient information about the Project to allow them to make a Screening Decision. It is helpful to seek the views of competent authorities early on so that the environmental assessment, if required, can be carried out as an integral part of the Project development process. In this way, environmental considerations can be factored into the Project design from the beginning, thereby minimising both environmental impact and cost. Part B of this guidance document reviews the requirements for carrying out Screening in detail and provides practical tips. In particular, Step 3B explains in detail Annex IIA's requirements regarding the type of information that the Developer must submit to the Competent Authority to enable a Screening Decision.
- **Consultees:** the Screening Decision has to be made available to the public. In addition, competent authorities and Developers also often seek advice from environmental and statutory authorities, non-governmental organisations, and from the public on the need for an EIA at the Screening stage (though this is not mandatory under the Directive). The value of wide participation in the Screening process, in avoiding later dispute and delay in the decision-making process, is increasingly being recognised by competent authorities, other governmental organisations, and by Developers within Member States.

The guidance document is comprised of three main sections:

- **Part A –The concept of Screening.** This section introduces the concept of Screening and the relevant provisions of the EIA Directive that govern its execution. It serves as a reference point for guidance document users to check which sections of the legislation they need to refer to, and for understanding the main changes to the legislation made in 2014.

- **Part B – Practical guidance on Screening.** The practical guidance is more hands-on and detailed, aimed at providing an in-depth understanding of the specific, current legislative requirements regarding Screening. It follows a step approach and provides information and practical tips on how to carry out the required steps, based on practice from around the EU.
- **Part C – Screening checklists: case-by-case Screening tools.** The Screening tools have been designed to help EIA participants apply Annex III criteria in case-by-case Screening and, ultimately, to support and help the process of deciding whether or not a Project is likely to have significant effects on the environment. The first checklist provides a list of questions to help to identify the environmental effects of the Project. The second checklist is designed to evaluate the environmental effects' significance.

PART A – THE CONCEPT OF SCREENING

This part of the Guidance document will present the concept and legal framework for Screening and the approaches to Screening that can be adopted. Unlike Part B, this section does not seek to provide practical advice; instead, it will mostly introduce the legal requirements for Screening and the approaches adopted to Screening.

1 THE PURPOSE OF SCREENING IN THE CONTEXT OF EIA

The purpose of Screening is to determine whether or not an EIA is required for a particular Project listed in Annex II of the EIA Directive. Projects listed in Annex II will hereafter be referred to as ‘Annex II Projects’.

Screening has to implement the Directive’s overall aim, i.e. to determine if a Project listed in Annex II is likely to have significant effects on the environment and, therefore, be made subject to a requirement for Development Consent and an assessment, with regards to its effects on the environment. At the same time, Screening should ensure that an EIA is carried out only for those Projects for which it is thought that a significant impact on the environment is possible, thereby ensuring a more efficient use of both public and private resources. Hence, Screening has to strike the right balance between the above two objectives.

2 LEGAL FRAMEWORK FOR SCREENING AND PRESENTATION OF THE MAIN AMENDMENTS TO THE EIA DIRECTIVE RELATED TO SCREENING

2.1 LEGAL FRAMEWORK

The requirements for Screening are contained in Article 4 of the EIA Directive, Annex IIA, and Annex III to the Directive. The relevant provisions of Article 4 are cited in the box below.

Box 3: Directive 2011/92/EU as amended by Directive 2014/52/EU

Article 4(2)

[...] for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

- (a) a case-by-case examination;
or
- (b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

Article 4(3)

Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

Article 4(4)

Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Article 4(5)

The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

- (a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or
- (b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Article 4(6)

Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

While Article 4(2) defines a common Screening approach, to be adopted by Member States, Article 4(3) requires that the competent authorities consider relevant criteria when deciding whether EIA is

needed, i.e. the type/characteristics and size of Projects, the sensitivity of Project locations, as well as the potential impacts the Project may trigger. These criteria are listed in Annex III to the Directive.

Where Member States require that a case-by case examination be conducted for Annex II Projects in their national legislation, then the Developer must submit the information required about the Project in accordance with the detailed requirements in Annex IIA to the Directive (see Article 4(4)). The Developer shall, when submitting the information, take the available results or data from other relevant assessments of effects on the environment, carried out pursuant to other EU legislation than the EIA Directive (e.g. SEA, see the Annex to this Guidance Document on Links with Other EU Instruments), into account. Furthermore, the Developer may enclose information about the Project's features and the measures envisaged to avoid or prevent potential significant adverse effects on the environment.

The Competent Authority in Member States must issue its decision, on whether a proposed Annex II Project is to be subjected to the EIA procedure or not, based on the information provided by the Developer in accordance with the detailed requirements in Annex IIA (see Article 4(5)). The authority is also required to take any other relevant assessments, carried out on the effects on the environment pursuant to other EU legislation than the EIA Directive, into account.

Finally, the Competent Authority must make its decision on whether EIA is required or not within the time period specified in Article 4(6).

2.2 AMENDMENTS TO THE EIA DIRECTIVE RELATED TO SCREENING

The 2014 revisions to the EIA Directive introduced several amendments (e.g. to Annex III, which lays down the criteria to determine whether the Projects listed in Annex II should be subject to an EIA) and added a number of new provisions to the Screening process, including a timeframe within which the Member State's Competent Authority must reach a decision on whether an EIA is required or not.

These amendments are summarised in the box below.

Box 4: In practice – 2014 amendments to the Screening mechanism

- Amendment to Article 4(3) to clarify the possibility for the Member States to set thresholds/criteria to determine when Projects do not need to undergo Screening or an EIA, and/or thresholds/criteria to determine when Projects shall in any case be made subject to an EIA;
- **New** Article 4(4)
 - introducing new Annex IIA regulating the information that the Developer must provide for the sake of Screening of Annex II Projects,
 - requiring the Developer to take into account the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than the EIA Directive,
 - and expressly providing for the possibility for the Developer to provide a description of any features of the Project, and/or measures envisaged, to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- Introduction of **new** Article 4(5) requiring the Competent Authority to make its determination, on the basis of the information provided by the Developer and in accordance with requirements in Annex IIA, taking the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to other Union legislation into account.
- Introduction of **new** Article 4(6) requiring the Competent Authority to make its determination within 90 days from the date when the Developer has submitted all of the information required in Annex IIA;
- Amendment of Annex III.

The Court of Justice of the EU (hereafter 'CJEU') plays an important role in implementation and interpretation of the EIA Directive. Indeed, a number of the amendments brought about by the Directive 2014/52/EU are a direct reflection of the clarifications provided in the CJEU's jurisprudence.

Box 5: Interpretation by the CJEU

Where Member States have decided to have recourse to the establishment of thresholds and/or criteria, they are required to take **all the relevant selection criteria** listed in Annex III to the Directive (see e.g. C-66/06, *Commission v Ireland*; C-255/08, *Commission v Netherlands*; C-435/09, *Commission v Belgium*) into account. Accordingly, a Member State that has established thresholds and/or criteria taking only the size of Projects into account, without taking all criteria listed in Annex III into consideration, exceeds the limits of discretion granted under the EIA Directive (C-66/06, *Commission v Ireland*, paragraph 64).

The determination, by which the Competent Authority takes a view that a Project's characteristics do not require it to be subjected to an EIA, must contain or be accompanied by all of the **information that makes it possible to check that it is based on adequate Screening**, carried out in accordance with the requirements of the EIA Directive (C-87/02, *Commission v Italy*, paragraph 49). The determination must be such that it can enable interested parties to decide whether or not to appeal against the determination in question, taking any factors which might subsequently be brought to their attention (C-75/08, *Mellor*, paragraph 64) into account.

2.3 THE CONCEPT OF 'PROJECT' AND EXEMPTIONS FROM THE EIA DIRECTIVE

The EIA Directive applies to the assessment of the environmental impacts of those public and private Projects that are likely to have significant effects on the environment. Article 1(2) of the Directive defines 'Project' as: 'the execution of construction works or of other installations or schemes, other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.' The jurisprudence of the CJEU provides a broad interpretation of the concept of 'Project' (see Case C-72/95, *Kraaijeveld and others* and the box below).

Box 6: The concept of a 'Project'

For example, the Court has held that the renewal of an existing permit (to operate an airport) cannot, in the absence of any works or interventions involving alterations to the site's physical aspects, be classified as a 'Project' (Case C-275/09, *Brussels Hoofdstedelijk Gewest and others*, paragraph 24; Case C-121/11, *Pro-Braine and Others*, paragraph 31).

The term 'installation' is not defined in the EIA Directive. The EIA Directive provides for a relatively broad scope: mobile installations — even though not mentioned explicitly in the Directive — are considered to be covered by its provisions, as are temporary installations. Accordingly, when mobile or temporary installations have the characteristics (and associated impacts) of Project categories, included in Annex I and II to the EIA Directive, they must be subject to its requirements.

Moreover, the CJEU has concluded that 'demolition works come within the scope of Directive 85/337 and, in that respect, may constitute a 'Project' within the meaning of Article 1(2) thereof' (Case C-50/09, *Commission v Ireland*, paragraphs 86-107).

Finally, there are also types of activity that display the characteristics of more than one Project category listed in the EIA Directive. These activities can be seen from different angles, depending on their technical characteristics, design or output, and can include biogas or biofuel Projects for example.

European Commission, Interpretation of definitions of Project categories of annex I and II to the EIA Directive, 2015.

The Directive provides for exemptions from the Directive in Article 1(3) of Projects listed in Annex I and II and for exemptions from specific provisions in the Directive under certain circumstances (Articles 2(4) and 2(5)) – see the box below.

Box 7: Exemptions from the EIA Directive

The Directive may not be applied for the following types of Projects:

Member States may, on a case-by-case basis, decide not to apply the Directive to Projects, or their parts, that have defence as their sole purpose or for Projects that have responding to civil emergencies as their sole purpose, in the event that the application of the Directive would have an adverse effect on those purposes. It is a pre-condition that the exemption is warranted in national legislation (Article 1(3)).

The following types of Projects may be exempted from one or more provisions laid down in the Directive:

Member States may, in exceptional cases, exempt a specific Project from one or more provisions laid down in the Directive, where the application of those provisions would adversely affect the purpose of the Project and provided that the Directive's objectives are met (Article 2(4)).

In cases where a Project is adopted by a specific act of national legislation, Member States may exempt that Project from the provisions related to public consultation laid down in the Directive, provided that the objectives of the Directive have been met (Article 2(5)).

3 APPROACHES TO SCREENING

As introduced above, the EIA Directive defines a common Screening approach to be adopted by Member States. This approach was not affected by the 2014 amendments of the Directive. Member States are given considerable discretion in determining how and on what grounds an Annex II Project may be subject to EIA. Accordingly, it is important to refer to Member State legislation in order to find out what requirements must be met. Ultimately, the Screening approach applied – be it a case-by-case examination or determination through thresholds or criteria set by the Member State or a combination of the two approaches – must ensure that every Project that is likely to have significant effects on the environment is made subject to an EIA.

3.1 CASE-BY-CASE EXAMINATION AND THRESHOLDS AND/OR CRITERIA

The determination of whether a Project should be made subject to an EIA must be made through *a case-by-case examination* or *thresholds or criteria set by the Member State* or a combination of the two approaches (see Article 4(2) reproduced in a box above).

- The need for an EIA is based on specific measures and/or limits, according to predefined criteria, when applying *thresholds and/or criteria*. In other words, according to the Project's characteristics, location and/or certain other Project features, such as the Project's potential impact, Projects may quickly be categorized as to the necessity for undertaking an EIA or not.

In this context, threshold and criteria refer to a mechanism by which quantitative or qualitative triggers are used to include or exclude the Project from the EIA's requirements. In EIA Screening, 'thresholds' are typically related to the quantitative characteristics of the Project (e.g. a development of a function of more than 20,000 m²), whereas 'criteria' often relate to qualitative characteristics of the Project or its impacts (e.g. a development that is deemed to have significant visual impacts on the surrounding environment, due to its architectural characteristics).

- Through *case-by-case examination* the need for EIA is assessed through a unique procedure for each Project. A case-by-case examination method is by nature discretionary, compared to thresholds and/or criteria. Some Member States use case-by-case Screening for all Annex II Projects. In other Member States case-by-case examination complements thresholds and/or criteria.

Accordingly, there is considerable variation among EU Member States in how they have organised Screening of Annex II Projects (see the box below).

Box 8: Screening approaches adopted in the EU Member States

Different approaches to Screening have been adopted in the EU Member States:

The EU-15 Member States¹ have largely been able to define reasonable thresholds of application through a combination of several approaches. These include the application of:

- simplified procedures for 'small scale' development application. These simplified procedures are predominantly used with a specific category of Annex II Projects that may have a limited number of impacts which are well known from Project to Project;
- elaboration of Screening criteria by the adoption of thresholds taking the size, nature, and location of the

¹ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and United Kingdom.

developments proposed into account;

- regulatory initiatives against the splitting of Projects into several sub-Projects²;
- improved guidance on the application of Screening procedures;
- the publication of practice examples explaining the decisions made.

The majority of the EU-13 Member States³ have taken a simpler approach and have adopted thresholds for the Screening of specific Annex II developments. These Member States are divided concerning whether they apply thresholds or a combination of thresholds and case-by-case evaluation to determine whether a Project should be subject to EIA. The combination of the two approaches is often employed in a manner where Projects that fall below the thresholds adopted are subject to an ad-hoc Screening Decision.

DG ENV Study concerning the report on the application and effectiveness of the EIA Directive, Final report, 2009.

Each of the approaches to Screening has its advantages and disadvantages. The Screening method based on thresholds and/or criteria is relatively straightforward, but has one obvious disadvantage: a Project that comes below an inclusion threshold or criterion, and is thus not subject to an EIA, may have significant effects on the environment nevertheless. For example, such Projects may have an impact on sensitive areas (e.g. areas identified as being valuable and important to nature conservation and/or areas of particular archaeological or geomorphological interest) or the applicable legislation may fail to take account of the cumulative effect of a number of Projects which, when taken together, may have significant environmental effects.

Accordingly, although Member States are allowed a measure of discretion in establishing the criteria and/or thresholds that are applicable, this discretion does have limits. These limits are to be found in the obligation set out in Article 2(1) of the EIA Directive that states that Projects likely, by virtue, inter alia, of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment (C-72/95, *Kraaijeveld and Others*, paragraph 50; C-2/07, *Abraham and Others*, paragraph 37; C-75/08 *Mellor*, paragraph 50; C-427/07, *Commission v. Ireland*, paragraph 41). For further guidance regarding thresholds and criteria, see Part B of this document (Step 2).

In contrast, case-by-case examinations allow for a better consideration of local ecological conditions or environmentally relevant socio-economic contexts. However, it is generally a more resource- and time-consuming Screening method.

3.2 THRESHOLDS AND/OR CRITERIA

As discussed in greater detail under section 3.1, two overall types of thresholds and/or criteria can be identified (for examples see box below):

- Exclusion (negative) thresholds and/or criteria define the Projects as being exempted from an EIA or a screening.
- Inclusion (positive) thresholds and/or criteria identify Project types for those threshold values above which a Project must undergo an EIA or a screening.

As such, inclusion and exclusion thresholds and/or criteria, mentioned in the amended Article 4(3) of the Directive, are designed to simplify the process by defining Projects that are always or are never considered likely to have significant effects upon the environment. They facilitate the examination of the actual characteristics of any given Project, in order to determine whether it is subject to the requirement to carry out an EIA.

² Since 2009, similar initiatives have also been introduced in Member States which have more recently acceded to the EU.

³ Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

In addition, some Member States have set indicative (guidance) thresholds/criteria that do not establish a legal requirement, but which can be used to help case-by-case assessments of whether an EIA is required or not. In other words, it cannot be presumed that Projects above the indicative threshold should always be subject to an EIA or that those falling below these thresholds could never give rise to significant effects.

Box 9: Combining thresholds – thermal power stations

For example, in April 2011 the Dutch EIA act and EIA decree were amended to reflect the CJEU's rulings. The underlying reason for the amendments was essentially that the margins of discretion applied in screening did not cover all three main criteria in Annex III of the EIA Directive. For example, even if a Project falls outside the threshold, and an EIA is not obligatory, then other criteria (such as Project location) with possible negative environmental impacts should still be taken into account.

Accordingly, while Projects requiring an EIA are often listed (e.g. thermal power stations of 300 MW, 500 tons of coal per day and/or 100 tons of non-hazardous waste per day), the legislation also provides for indicative thresholds where a Screening Decision is obligatory (e.g. thermal power stations of 20 MW and/or capacity increase of 20% or more, 250 tons of coal per day, and/or 50 tons of non-hazardous waste per day). Finally, there is also the possibility of performing a voluntary EIA.

[http://www.eia.nl/en/environmental-assessment/eia-per-country/netherlands+\(the\)](http://www.eia.nl/en/environmental-assessment/eia-per-country/netherlands+(the)) and IMPEL, *The implementation of the Environmental Impact Assessment on the basis of precise examples, Final Report, 2012.*

The box below provides a number of examples of exclusion and indicative thresholds.

Box 10: Examples of exclusion and (indicative) inclusive thresholds

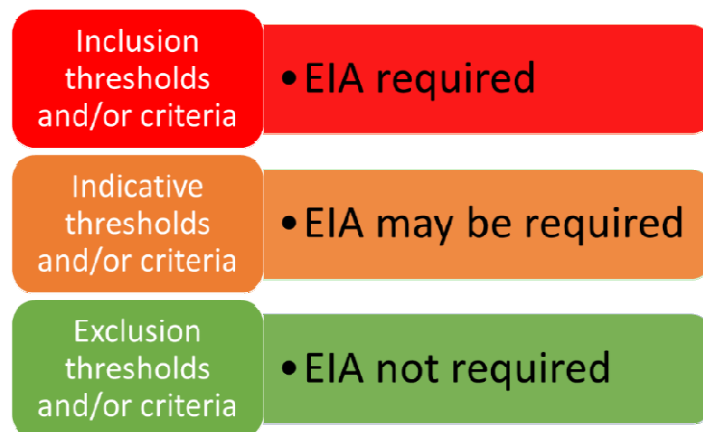
| Project | Exclusion threshold | Indicative threshold |
|-----------------------------|--|--|
| Wind farms | Fewer than 2 turbines, hub height less than 75 m | Visual and noise impacts are likely with 5 or more turbines and more than 5 MW of generating capacity |
| Industrial estate project | Area of development does not exceed 0.5 ha | Increase in traffic, noise and emissions more likely with development of more than 20 ha |
| Waste water treatment plant | Area of development does not exceed 1,000 m ² | Site area more than 10 ha, discharges from more than 100,000 people, requires compliance with the Directive 91/271/EEC concerning urban waste-water treatment. |

Schmidt, M., Glasson, J., Emmelin, L. and Helbron, H., Standards and Thresholds for Impact Assessment, 2008.

3.3 COMBINING DIFFERENT TYPES OF THRESHOLDS AND/OR CRITERIA

Approaches that combine different types of thresholds (see also Step 1) are often referred to as the 'traffic light' approach, i.e. an EIA is required for Projects above inclusion thresholds (red), not required for Projects under exclusion thresholds (green), and may be required for Projects within indicative thresholds (orange) – this is summarised below.

Traffic light approach



There are different ways to use the traffic light approach. For example, where no exclusion thresholds have been established, an EIA must be considered for all Projects falling within the indicative thresholds and/or criteria (modified traffic light approach). A number of Member States have a traffic light model that only has a red and a green light. For the 'green light Projects', a case-by-case examination is also applied as a supplement in order to avoid that any Projects, with potentially significant effects on the environment, 'slip through' the needle's eye.

For example, in most Member States that do not use case-by-case examination generally, this examination may have been extended to also include Project types that are beyond the Project types listed in Annex II whenever significant effects on the environment are likely to occur (see e.g. the example provided in the box below).

Box 11: Combining thresholds/criteria and case-by case examination

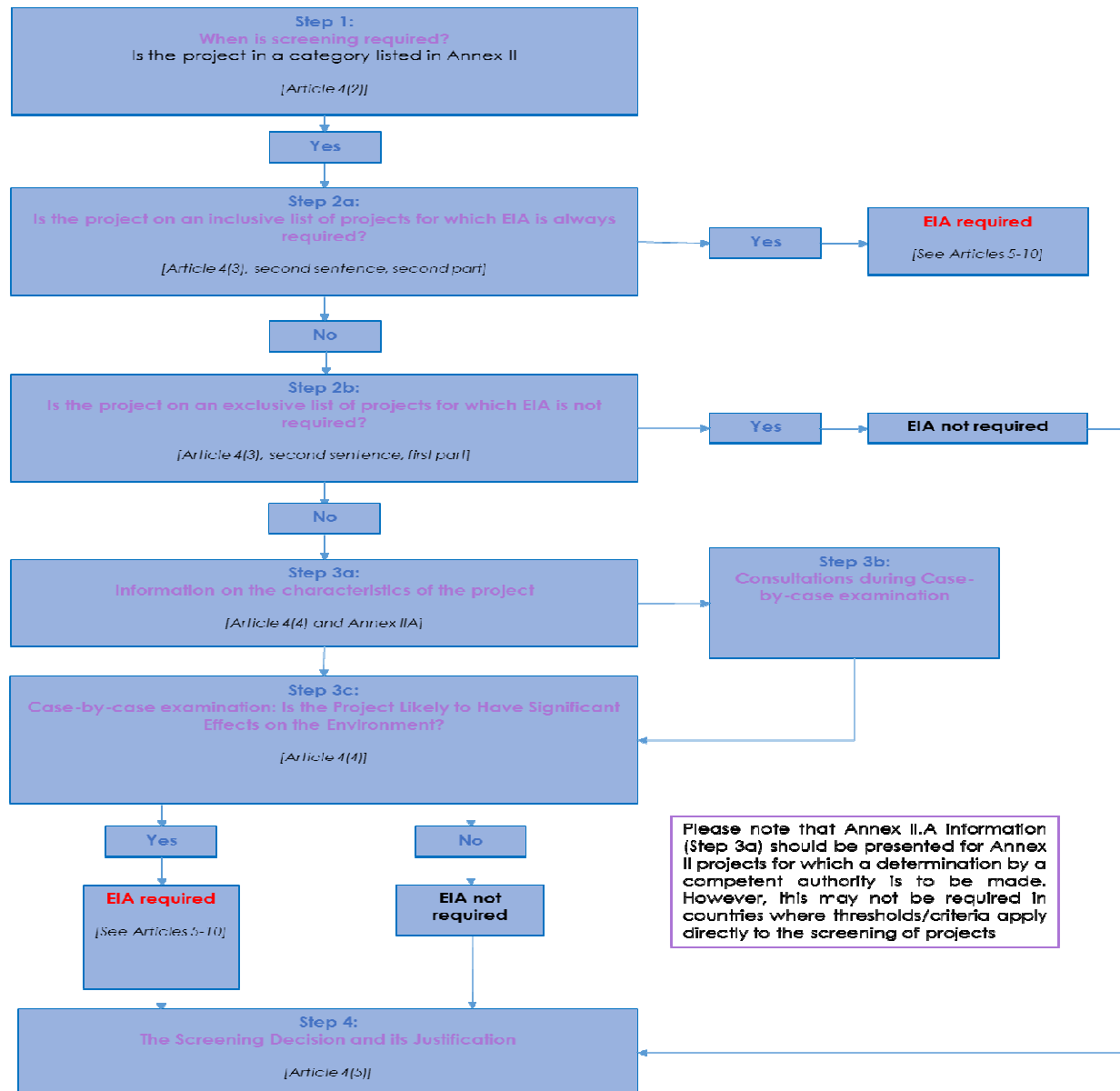
For example, in Portugal a 'Black or White' system applies, with mandatory thresholds for Annex II Projects, and which are divided into general and special cases. However, the legislation provides the possibility to request the completion of an EIA procedure even in cases not covered by the Annex II thresholds, where a Project may nonetheless have significant impacts in the environment. This occurs in practice only very rarely.

Barroso, J.M., 'Processes and Practice in Environmental Impact Assessment: A Comparison Between Portugal and the United Kingdom, 2009.

PART B – PRACTICAL GUIDANCE ON SCREENING

INTRODUCTION: THE STEPS IN SCREENING

A number of steps are involved in deciding whether an EIA is required for a Project. These are illustrated in the figure below. The Screening process proceeds through these steps until a Screening Decision on whether an EIA is required or not has been made and has been published.



1 STEP 1 – WHEN IS SCREENING REQUIRED?

The EIA Directive requires that Projects that are likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment of their environmental effects. These Projects are defined in Article 4 and are listed in Annex I and Annex II to the Directive.

The first step in Screening is to determine whether the Project is listed either in Annex II to the EIA Directive or in any equivalent Member State lists.

As introduced above, an EIA is always required for Projects included in Annex I, whereas Projects of the categories listed in Annex II shall be made subject to an assessment in the event that Member States determine that they are likely to have significant effects on the environment. As explained further below, this determination can be carried out either through a case-by-case examination or by setting thresholds or criteria or by a combination of the two methods.

As a rule, if a Project is not listed in Annex I or II or in any equivalent Member State lists, an EIA is not relevant to the development in question. For a definition of 'Project', see section 2.3 of Part A.

1.1 PROJECTS LISTED IN ANNEX I AND ANNEX II

With very few exceptions, the EIA Directive does not generally provide definitions or other descriptions of the Project categories listed in Annex I and Annex II to the Directive

Detailed guidance on the meaning of certain Project definitions in the Directive is provided in the 2015 Commission's Guidance Document on the 'Interpretation of definitions of certain Project categories of Annex I and II to the EIA Directive' (see the Annex to this Guidance Document on Other Relevant Guidance and Tools).

In this connection, it should also be noted that:

- Some Member States have extended the requirements for an EIA in national legislation to Project types that have not been included in the Annex I or II lists.
- Some Member States have decided to move Projects from Annex II to Annex I in their national legislation. Others have decided to lower the thresholds for Annex I Projects, thereby effectively moving certain categories of Projects from Annex II to Annex I.

1.2 STEP 1: IN A NUTSHELL

In order to determine whether the proposed Project should undergo Screening or not, it is necessary to refer to the applicable national legislation. It should be checked, in particular if the Project is included in a list in national legislation that corresponds to the EIA Directive's Annex II.

2 STEP 2 – THRESHOLDS AND CRITERIA

2.1 SETTING UP THRESHOLDS AND/OR CRITERIA

As explained in the section on approaches to Screening of PART A, the determination of whether or not an EIA is required for a particular Project may be carried out through a case-by-case examination or by setting *thresholds* and/or *criteria*. The latter is now specifically addressed by Article 4(3) of the Directive, as amended by Directive 2014/52/EU.

Box 12: Directive 2011/92/EU as amended by Directive 2014/52/EU

Article 4(3):

[...] Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

The thresholds and/or criteria set must, thus, provide a guarantee that no Projects that, by virtue of inter alia nature, size or location, are likely to have significant effects on the environment, avoid an assessment with regards to their effects on the environment. In other words, thresholds and/or criteria must be set so that they ensure that every Project that is likely to have significant effects on the environment is subject to an EIA, and that those that are not likely to have significant effects on the environment are not subject to an EIA. One way of avoiding that Projects that may have significant effects on the environment ‘slip through’ established criteria/thresholds, is to introduce a ‘catch-all provision’ in legislation, one which allows the Competent Authority to decide that an EIA-procedure is required for an Annex II Project, regardless of whether criteria/thresholds have been met or not.

When establishing thresholds and/or criteria for Annex II Projects, Member States are under an obligation to take the relevant selection criteria as set out in Annex III of the Directive, and as amended by Directive 2014/52 (see the box below), into account.

Box 13: In practice – 2014 amendments to Annex III to the EIA Directive

It is important to note that Annex III selection criteria, to determine whether the Projects listed in Annex II should be subject to an EIA, were amended substantially in 2014. In essence, the selection criteria laid down in Annex III continue to relate to 1) the characteristics of Projects, 2) location of Projects, and 3) the type and characteristics of the potential impact. However,

- the scope of several of the individual sub-criteria has been widened or additional sub-criteria have been added (mainly those relating to new environmental issues); and
- additional amendments have been made to clarify the existing criteria (e.g. cumulative impacts or links with other EU legislation).

Accordingly, the current Annex III criteria include (main changes highlighted in bold):

- the characteristics of Projects, which must be considered having regard, in particular, to the size **and design** of the **whole** Project, the **cumulation** with other existing and/or approved Projects, the use of natural resources, the production of waste, pollution and nuisances, and the risk of major accidents and/or disasters and the risks posed to human health.
- the location of the Projects, so that the environmental sensitivity of geographic areas likely to be affected by Projects must be considered, having regards to the existing and approved land use, the relative abundance, availability, quality and regenerative capacity of natural resources and the absorption capacity of the natural environment in particular.
- type and characteristics of the potential impact with regards to the impact of the Project on the environmental factors specified in Article 3(1).

A Project's characteristics must be assessed, *inter alia*, in relation to its cumulative effects with existing and/or approved Projects. Failure to take account of a Project's cumulative effects with other Projects may mean, in practice, that it escapes the assessment obligation when, taken together with the other Projects, it may have significant effects on the environment (see e.g. Case C-531/13, *Marktgemeinde Straßwalchen and Others*; Case C-141-14, *European Commission v Republic of Bulgaria* and the box below).

Box 14: Cumulative effects

For example, in *Salzburger Flughafen GmbH v Umweltsenat* (Case C-244/12, paragraphs 36-37) the CJEU held that, with a view to deciding whether an EIA must be carried out or not, it is necessary to take account of the impacts on the environment of both the earlier Project, concerning the construction of the additional terminal, and the later Project, concerning the expansion of the airport area. Accordingly, the CJEU confirmed that 'it can be necessary to take account of the cumulative effect of Projects in order to avoid a circumvention of the objective of the European Union legislation by the splitting of Projects which, taken together, are likely to have significant effects on the environment'.

It follows that a national authority, in ascertaining whether or not a Project must be made subject to an environmental impact assessment, must examine its potential impact alongside other Projects. Moreover, where nothing is specified, that obligation is not just restricted to Projects of the same kind (Case C-531/13, *Marktgemeinde Straßwalchen and Others v Bundesminister für Wirtschaft, Familie und Jugend*, paragraph 45).

The CJEU has, on several occasions, interpreted the requirements of Article 4(2) and 4(3) of the EIA Directive in connection with the establishment of relevant national thresholds/criteria. The Court's findings are summarised in the box below.

Box 15: CJEU case law on Article 4(2) and 4(3)

On a number of occasions, the CJEU has held that:

- a Member State that has established thresholds and/or criteria that take only *the size of Projects* into account, without taking all relevant selection criteria listed in Annex III into consideration, exceeds the limits of discretion under Articles 2(1) and 4(2) of the EIA Directive (e.g. Case C-66/06, *Commission v. Ireland*);
- a Member State that has established thresholds and/or criteria at a level such that, in practice, *all Projects of a certain type* would be exempted from the requirement of an impact assessment would likewise exceed the limits of that discretion, unless all of the Projects excluded could, when viewed as a whole, be regarded as not likely to have significant effects on the environment (e.g. Case C-392/96, *Commission v Ireland*).

The national authorities must ensure that the thresholds and/or criteria adopted for Annex II Projects takes the general obligation laid out in the Directive's Article 2(1) into account. The Court of Justice (CJEU) has, on several occasions, held that this implies that a Member State ascertains that any Annex II Project, which falls under the national thresholds and/or criteria adopted, is not likely to have significant effects on the environment. In that regard the obligation in Article 2(1) may be characterised as a *de facto* performance obligation imposed on Member States (Case C-244/12, *Salzburger Flughafen*).

Currently, a vast number of Member States use the threshold/criteria approach to Screening and have developed inclusion (i.e. EIA is always required), exclusion (i.e. EIA is never required) and, in some cases, indicative or guidance thresholds (i.e. EIA may be required). While many Member States have set thresholds/criteria for the same Project types, there are substantial differences in the levels at which these thresholds have been set.

In general, three types of thresholds can be identified, based on:

- Project characteristics (e.g. size - 20 ha and over);
- anticipated Project capacity (e.g. 50,000 tonnes of waste generated per annum); and
- Project location (e.g. a designated planning zone).

Threshold values adopted in the Member States are mostly technical and based on attributes of length (meters, kilometres), weight (tons), square meters and performance capacity (kilowatts), but monetary thresholds (based e.g. on investment size) also exist. Overall, as emphasised above, relevant national thresholds must consider *all relevant selection criteria* listed in Annex III.

In some Member States, criteria also include whether the Project is located in an ecologically sensitive area (see the box below).

Box 16: Application of thresholds and/or criteria

In transposing the list of Projects that can be subject to an EIA the United Kingdom chose to apply a set of minimum thresholds above which a case-by-case examination is required to determine whether an EIA is required.

The UK's minimum Screening thresholds generally mean that a proposed development below such a threshold cannot be subjected to an EIA. However, there is a number of exceptions to this rule: e.g. certain locations (i.e. ecologically sensitive areas) require that any development, regardless of its size, whose proposed boundary is within or encroaches upon the sensitive area, undergo a case-by-case Screening Decision.

Special Report – The State of Environmental Impact Assessment Practice in the UK, IEMA, 2011.

In Austria, threshold values for Projects located in protected areas (e.g. special protection areas, alpine zones, water protection and conservation areas, areas subject to air pollution, etc.) are set at a lower level (mostly half) for certain Project types, compared to thresholds for an obligatory EIA. For example, while installations for the utilisation of wind energy with a total electricity output of at least 20 MW, or with at least 20 converters providing a nominal capacity of at least 0.5 MW each should be subject to a mandatory EIA, Projects with 10 MW, or with at least 10 converters located in a special protection area should always be assessed on a case-by-case basis. Furthermore, a specific cumulation clause provides for the screening of wind farms with a total electricity output of at least 5 MW, or with at least 5 turbines (at least 0,5 MW each), in vicinity to other windfarms and reaching, together with them, 20 MW or 20 turbines (resp. half of these thresholds in special protection areas).

IMPEL, The implementation of the Environmental Impact Assessment on the basis of precise examples, Final Report, 2012 and Presentation of the Federal Ministry of Agriculture, Forestry, Environment and Water Management in Austria, EIA in Austria, Screening procedures, available at http://www.mop.gov.si/fileadmin/mop.gov.si/pageuploads/podrocja/cpvo/izobrazevanje/eia_screening_austria_5jun15.pdf

The development of thresholds in national legislation must take a number of considerations and basic requirements into account. Considerations may involve:

- whether the thresholds to be adopted are inclusion (EIA will be required) or exclusion (EIA not required) and, subsequently,
- how to deal with Projects involving uncertainty concerning the significance of potential environmental impacts, in particular whether this should be captured by:
 - a catch-all clause *or*
 - a requirement to carry out a case-by-case examination.

It has been emphasised that all relevant selection criteria listed in Annex III have to be taken into account when setting national thresholds/criteria. In cases where thresholds/criteria are set by taking into account only some of the relevant selection criteria (e.g. size-based thresholds), then the national legislation should provide for a case-by-case examination of those selection criteria which are relevant for a project category but which were not taken into account.

A number of Member States have adapted their thresholds/criteria approaches in determining national Screening criteria (see the box below) in order to align legislation with the CJEU case law.

Box 17: Adapting thresholds

Initially, the Czech EIA Act (Act No. 244/1992 Coll., on environmental impact assessment) contained a number of thresholds for Annex II Projects. These thresholds were based on Project size exclusively. The 2002 amendment of the EIA Act retained thresholds, but these thresholds no longer have the character of inclusion thresholds. A Screening notification must be submitted for Projects both under and above the thresholds. The main difference between the below- and above-threshold Projects is the level of information required to be submitted by the Developer.

§6(3) of the Act No. 100/2001 Coll.

While most Member States operate with thresholds for Annex II Projects, other Member States employ alternative approaches to thresholds, i.e. in the form of differentiated case-by-case examinations (for an example, see the box below).

Box 18: Alternatives to thresholds

The principle of significance is the guiding principle in Germany; there are no predefined thresholds. Instead, Projects are ranked according to magnitude or capacity and different types of Screening applies, depending on the rank. For example, Projects concerning power plants are – depending on the power plant's capacity in MW – subject to a mandatory EIA, a general case-by-case examination or a specific case-by-case examination. Specific case-by-case examinations are restricted to investigations of Projects that are planned to be located either in or close to environmentally sensitive areas.

2.1.1 Step 2a – Is the Project on an inclusion (POSITIVE) list requiring EIA?

Accordingly, the second task is to determine whether there is a mandatory requirement for an EIA for the Project under Member State legislation. An EIA will be required if the proposed Project meets or exceeds any relevant thresholds or criteria set out in Member State legislation. These will be set out in inclusive (positive) lists of Project types and might relate to, for example, Project size, type or location.

Box 19: Example of inclusion thresholds

Inclusive threshold: Linear infrastructure above a minimum threshold (e.g. 5 km)

As mentioned above, some Member States have included some Annex II Projects in their inclusion lists, setting thresholds or criteria for these Annex II Projects above which an EIA is always required.

2.1.2 Step 2b – Is the Project on an exclusion (NEGATIVE) list exempting it from EIA?

As mentioned above, some Member States have introduced exclusive thresholds or criteria below which an EIA is not required. Accordingly, the next task will be to check whether the proposed Project falls within such thresholds/criteria. If that is the case, then an EIA will not be required.

Box 20: Example of exclusive thresholds

Exclusive threshold: Linear infrastructure below the threshold (e.g. 5 km)

Member States' legislation may provide for exceptions to exclusion lists if the Project is in a specified environmentally sensitive location (see also the box on the application of thresholds and/or criteria). Such an exception would apply if the Project is likely to have significant impacts on a Natura 2000 site. Member State legislation must also be checked, in order to determine any other locations defined as sensitive and for which an exclusion list would not apply.

2.2 STEP 2: IN A NUTSHELL

The basic requirements that should be kept in mind during the design of thresholds are:

- no matter what the approach is, national legislation must ensure that those Projects that are likely to have significant environmental impacts are subjected to an assessment of these impacts prior to decision-making;
- thresholds must take the character of the Project, location of the Project and the type/characteristics of the potential impact of the Project (the main categories of selection criteria listed in Annex III to the Directive) into account.

3 STEP 3 – CASE-BY-CASE EXAMINATION

In principle, a case-by-case examination to determine whether a Project needs to undergo an EIA will be carried out if a Project is not on either an inclusion or an exclusion list [or when a project is above a screening threshold] or where such thresholds and/or criteria have not yet been set.

Where the Competent Authority decides to require a determination for Projects listed in Annex II, then the Developer is required to deliver information on the proposed Project, based on the detailed requirements in Annex IIA. The Competent Authority is then required to carry out its determination on whether an EIA is required or not based on the information supplied by the Developer. When the Developer has delivered the information detailed in Annex IIA, then the Competent Authority must, as a rule, take its decision within 90 days (see Article 4(6) and Step 4).

3.1 STEP 3A – PROJECT INFORMATION REQUIRED FOR CASE-BY-CASE EXAMINATION

National authorities responsible for Screening use information about the specific Project to develop their Screening opinion, i.e. to reach a conclusion about whether the Project should be subject to an EIA.

Article 4(4) provides that, where Member States decide to require a determination for Projects listed in Annex II, the Developer shall provide information on the characteristics of the Project and its likely significant effects on the environment. The information to be provided by the Developer is specified in Annex IIA, which is new to the Directive as of 2014.

Box 21: Directive 2011/92/EU as amended by Directive 2014/52/EU

Annex IIA was introduced as part of the 2014 amendments to the EIA Directive. Annex IIA specifies the information to be provided by the developer to enable the Competent Authority to make an informed Screening Decision about the need for an EIA.

The information to be provided includes:

- a description of the project, including in particular:
 - a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - a description of the location of the project, with particular regard to the environmental sensitivity and of the geographical areas that are likely to be affected;
- a description of the aspects of the environment likely to be significantly affected by the project;
- a description of any likely significant effects, to the extent of the information available on such impacts, of the project on the environment resulting from;
- the expected residues and emissions and the production of waste, where relevant;
- the use of natural resources, soil, land, water, and biodiversity in particular.

It is important to note that the information to be submitted by the Developer contains data on the proposed Project, its proposed location, and an account of potential effects on the environment if available. It is also important to stress that the information may, in many instances, be only of a preliminary and/or a very rough nature and does not in any way constitute a full account of any potential significant impacts. In certain cases, the Competent Authority may need to request additional data/information from the Developer in order to be satisfied with regard to the potential effects of the project on the environment.

The box below provides an example of information that may be required from the Developer in the Screening stage.

Box 22: Example of information to be provided by Developer (industrial development)

The Developer is required to deliver basic information about the proposed Project such as the nature of the Project and the construction works envisaged.

Nature and function of the proposed Project:

- description of the purpose, nature, and function of the Project, including:
 - operational characteristics of the Project (i.e. Project involves the production of cement on the basis of the raw material limestone, which is processed under high temperature in a kiln adding acids to the combustion process);
 - resources involved in the operation of the Project (i.e. primary raw material is limestone);
 - operational logistics of the Project; (limestone arrives in powder form by lorries and is unloaded in silos from where it is transported to the kiln via belts. The cement product is bagged and transported from the facility by lorries)
 - wastes generated during operation and the envisaged management of these wastes;
 - etc.

Construction works envisaged:

- amount and extent of construction works undertaken to establish the proposed Project;
- drawings and placement of buildings within the location chosen;
- the resources employed to carry out construction works as well as the disposal of any wastes in the construction phase;
- the duration of construction works, including information on expected noise, dust, odors, and/or light emissions during the construction phase.
- etc.

Some Member States have introduced legislative requirements that are more detailed, compared to Annex IIA (see box below).

Box 23: Example of existing national legislation governing information to be provided by the Developer

For example, Appendix 2 of the German Environmental Assessment Act (UVPG) governs the information to be provided by the Developer and applies where the documentation requirements have not been defined in detail by statutory provisions.

Pursuant to § Appendix 2 the information to be provided by the Developer shall contain at least the following information:

1. A description of the project, in particular
 - a) the physical characteristics of the whole project and, where relevant, the demolition work,
 - b) the location of the project and the ecological sensitivity of the areas which may be affected by the project.

A description of the substances which can be significantly affected by the project.

A description of the possible significant impact of the project on the protection products concerned

- a) the expected residues and emissions and, where appropriate, the generation of waste,
- b) the use of natural resources, in particular land, soil, water, animals, plants and biodiversity.

2 When compiling the data for the screening test, the criteria set out in Annex 3, which are relevant to the project, shall be taken into account. To the extent that the developer has the results of previous environmental audits or other legally required investigations into the environmental impact of the project, they must also be included.

3 In addition to the information referred to in point (a) of the first subparagraph, the developer may also provide a description of all the characteristics of the project and the site and any arrangements to exclude significant negative environmental impacts.

4 If a site-specific pre-examination is carried out, the data in the first stage may be limited to those data which relate to the presence of specific local conditions in accordance with the protection criteria listed in Annex 3, point 2.3.

Gesetz über die Umweltverträglichkeitsprüfung, Appendix 2.

Moreover, in some Member States a differentiated approach is applied depending on the type of the Project at hand (e.g. for small scale Projects less information is required).

Ultimately, the information submitted by the Developer should allow the Competent Authority to assess the Project in the light of the selection criteria laid down in Annex III to the Directive. To this effect, Annex IIA specifies that the criteria of Annex III shall be taken into account, where relevant, when compiling this information.

When providing information on the characteristics and the likely significant effects of the Project on the environment, the Developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive (see box below and also the Annex (see the Annex to this Guidance Document on Other Relevant Guidance and Tools).

Box 24: Directive 2011/92/EU, as amended by Directive 2014/52/EU

Article 4(4):

Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. [...] The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

This provision aims at addressing existing overlaps between environmental assessments resulting from other EU legislation and leading to duplication of efforts and costs for Developers and public authorities (see Commission Staff Working Paper SWD/2012/0355 final). Such assessments could be an assessment of a land use plan for area in which the Developer intends to locate the proposed Project (see the box below).

Box 25: Assessments pursuant to other EU legislation

Taking into account the available results of other relevant assessments of the effects on the environment typically involves looking into assessments carried out pursuant to:

- a) the Water Framework Directive (2000/60/EC): look whether there would be any limitations on the discharge of waste water into the water body in question;
- b) the Habitats Directive (92/43/EEC): look whether there are specific features of a Natura 2000 site that may be impacted by the proposed Project;
- c) the SEA Directive (2001/42/EC): look whether the assessment of e.g. the land use plan contains specific reservations against the proposed Project.

Pursuant to the last sentence of Article 4(4), the Developer may also provide a description of any features of the Project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. It should be emphasised that this provision refers to features and/or measures to 'avoid or prevent' significant adverse effects and does not include the verbs 'offset'/'compensate', which are linked to compensation measures. It should be expected that, by adding the possibility that the Developer provides information on the extent to which the Project will be executed in a certain manner in order to avoid or prevent significant impacts, this may influence the outcome of Screening. When the Developer follows a specified path in executing the Project, a path which is intended to avoid certain impacts, this may lead to greater certainty of what might otherwise have been uncertain – thereby affecting the Screening Decision.

This practice is referred to as a 'tailored' Project approach for Annex II Projects in some Member States. The aim of these 'tailored' approaches is to avoid unnecessary EIAs for Projects that have no significant environmental impacts. Essentially, 'tailored' Project approaches entail a modification of the Project prior to or during the Screening process, so as to reduce any significant effects on the environment. Modifications made and/or solutions sought to avoid or mitigate significant environmental impacts may subsequently lead to the conclusion that an EIA is not needed. One example of such a 'tailored' approach is provided in the box below.

Box 26: Tailored Project approach

For example, an electronic model has been developed for intensive animal farming Projects in Denmark. The Developer inserts the data into a calculation sheet in order to get a clear view of whether or not the Project proposed will require an EIA. The model even encourages Developers to alter their entries for the purposes of testing whether or not particular elements in their Projects may be so that an EIA procedure would no longer be required.

Another example of a 'tailored' Project approach is through a dialogue between the Developer and the Competent Authority, as applied in the Flemish region of Belgium. In the Flemish region, there is a list of Projects with thresholds and criteria that, in principle, are subject to an EIA, except when the Developer can demonstrate, to the satisfaction of the EIA Service, that no significant environmental effects will occur in a given case.

3.2 STEP 3B – CONSULTATIONS DURING CASE-BY-CASE EXAMINATION

Dialogue between the Developer and the Competent Authority will also always be helpful for the Competent Authority when they are making a Screening Decision. Competent authorities may also find it useful to consult with, and to take advice from, a number of other organisations including:

- authorities with a statutory responsibility for environmental matters (e.g. pollution control, nature protection, cultural heritage, water, waste, etc.);
- other interested parties, including the public, to help identify any local concerns about the Project;
- experts such as EIA practitioners or members of academic or research institutions;
- other competent authorities who have made decisions on similar Projects in the Member State previously.

It should be borne in mind that the Competent Authority must, as a rule, take its decision within 90 days from the date on which the Developer has submitted all of the relevant information, in accordance with the detailed list in Annex IIA.

3.3 STEP 3C – IS THE PROJECT LIKELY TO HAVE SIGNIFICANT IMPACTS ON THE ENVIRONMENT?

The decision to be made for Screening is essentially whether the proposed Project is or is not likely to have significant effects on the environment. These environmental effects can, in principle, be either positive or negative.

Where a case-by-case examination is carried out, the competent authorities are required to consider relevant Annex III criteria (see the section on legal framework in PART A above). As such, Annex III of the Directive includes information concerning the issues that should be considered when determining whether significant environmental effects are likely to result from a Project (see also Case C-87/02, *Commission v Italy*). Some of these requirements stem from the 2014 amendments to the EIA Directive (see box in Step 2).

Additional guidance on how to carry out case-by-case examinations may be provided by the Member States. As mentioned above, this guidance may refer to indicative thresholds and criteria that identify the Projects for which an EIA must be considered.

In principle, the approach adopted to case-by-case examinations should be sufficiently robust to generate high quality case-by-case decisions on the need for an EIA. For example, the mere use of indicative benchmarks to identify those Projects that are more likely to require an EIA as the sole Screening method are unlikely to fulfil this requirement. Such generic approaches may result in an EIA not being applied for Projects that have significant effects on the environment.

In this regard, it should also be noted that some case-by-case examination approaches may demand considerable amounts of information about the environment (e.g. to assess the environmental sustainability of the Project). This information is unlikely to be readily available at a relatively early stage in Project development. For more detail on the information to be submitted by the Developer, please see Step 3a above.

To assist in applying the Annex III criteria to case-by-case examinations, some useful tools are presented in Part C of this document. These are intended to be of assistance where there is no Member State guidance or where the need for an EIA is still not clear. They are designed to help answer the question: *'Is this Project likely to have significant impacts on the environment?'*

It is important to emphasize that the use of these tools is not intended to require special studies. The tools are intended to be used quickly by people with the qualifications and experience typically found in competent authorities, and through using information about the Project and its environment that is readily available.

3.4 STEP 3: IN A NUTSHELL

When applying Step 3, it is important to:

- ensure that the information requirements laid down in Annex IIA have been met by the Developer;
- ensure that any other relevant assessments pursuant to EU legislation have been taken into account;
- both the Developer and the Competent Authority within the legal boundaries of administrative law governing the activities of the Competent Authority consider how to tailor the Project (i.e. consider any features of the Project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment);
- ensure that the time limit for rendering a Screening Decision (see below, under Step 4) is observed.

4 STEP 4 – THE SCREENING DECISION AND ITS JUSTIFICATION

Where a formal Screening Decision has been made by a Competent Authority, the Screening Decision must state the reasons for either requiring or not requiring an EIA and this should be made available to the public.

Article 4(5) describes the basis that determines whether or not an EIA is required.

Box 27: Directive 2011/92/EU as amended by Directive 2014/52/EU

Article 4(5):

The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the impacts on the environment carried out pursuant to Union legislation other than this Directive.

Note that Screening is carried out at a very early stage of the Project development and that preliminary verifications and assessments pursuant to other legislation may not be available at this stage. In case such assessments exist at the time of the information's submission, the Developer must include the results of these assessments when relevant to the proposed Project. Accordingly, the Developer and also, pursuant to Article 4(5), the Competent Authority will have to assess whether or not any existing assessments contain information that is relevant to the proposed Project. In addition, the Competent Authority will have to take into account, if available, the results of preliminary verifications (e.g. analysis or studies carried out relevant for the Project).

Transparency in decision-making is important in ensuring an effective EIA. Transparency is essential not only in the way decisions are reached, but also in the manner they are communicated to the public.

The 2014 amendments to the EIA Directive introduced the requirement to provide a justification for both positive (i.e. EIA is required) and negative (i.e. EIA is not required) Screening Decisions. In other words, the justification has to state the main reasons for either requiring or not requiring an EIA and do so with reference to the selection criteria provided in Annex III (see the box under Step II).

Box 28: Directive 2011/92/EU as amended by Directive 2014/52/EU

Article 4(5):

[...] The determination shall be made available to the public and:

- (a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or
- (b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse impacts on the environment.

The requirement to provide a justification for (negative) Screening Decisions in the decision itself is new in the Directive. Previously, the CJEU held that Article 4 of the previous EIA Directive⁴ must be interpreted as not requiring that a negative Screening Decision contains the reasons for the Competent Authority's decision; however, if an interested party so requests it, then the competent administrative authority is obliged to communicate to him the reasons for the determination or the relevant information and documents in response to the request made (Case C-75/08, *Mellor*). This should, on the one hand, enable third parties, as well as the administrative authorities concerned, to be satisfied that the Competent Authority has actually determined, in accordance with the rules laid down by

⁴ Directive 85/337 as amended by Directive 97/11, 2003/35, 2009/31.

national law, that an EIA was or was not necessary, and, on the other hand, allow the interested parties, as well as other national authorities concerned, to ensure (through legal action if necessary) compliance with the Competent Authority's Screening obligation.

Two principles laid down by the CJEU nevertheless continue to provide guidance following the 2014 amendments to the EIA Directive, which introduced the requirement that the Competent Authority must provide its main reasons for requiring/not requiring an EIA. The information contained in the decision must:

- make it possible to check that it has been based on an adequate Screening, carried out in accordance with the requirements of the EIA Directive (See case C-87/02, *Commission v Italy*);
- enable interested parties to decide whether to appeal against the determination in question, taking any factors which might subsequently be brought to their attention into account (see Case C-75/08, *Mellor*).

In this regard, it should be noted that prior to the 2014 amendments to the EIA Directive, some Member States introduced a requirement for justification of negative Screening Decisions in their national legislation. Accordingly, additional guidance on how to provide justification for Screening Decisions may exist at the national level (see the box below for an example).

Box 29: Justification of Screening Decisions

For example, Section 4(7) of the English Town and County Planning (Environmental Impact Assessment) provides that Screening Decisions (both positive and negative) must be 'accompanied by a written statement giving clearly and precisely the full reasons for that conclusion'. The provision was introduced in order to provide for a balanced and transparent requirement for all interested parties and to satisfy requirements to make such information available in an accessible way.

The Town and Country Planning (Environmental Impact Assessment) Regulations 2010, Consultation on draft regulations.

Where proposed by the Developer, a decision that an EIA is not required must state any features of the Project and/or measures envisaged to avoid or to prevent what might otherwise have been significant adverse impacts on the environment (see also Step 3b)

In addition to the requirement to state the main reasons for Screening Decisions, the EIA Directive calls for such decisions to be made available to the public. This is a necessary precondition to ensure transparency in the EIA and access to justice.

Furthermore, the 2014 amendments introduced a new requirement as regards the time period within which the determination of whether an EIA is required is to be made. Pursuant to Article 4(6), the Competent Authority shall make its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the Developer has submitted all the information required pursuant to Article 4(4).

The deadline may be extended by the Competent Authority in exceptional cases, in instances relating to the nature, complexity, location or size of the Project for example. In such cases, the Competent Authority must inform the Developer about the reasons justifying the extension in writing. Additionally, it must provide the date on which the determination is to be expected.

In most regimes, there will be provisions within national legislation for the Developer to appeal against Screening Decisions. This opportunity should, in principle, also exist for NGOs (see box below)

Box 30: Opportunity to challenge Screening Decisions

In Hungary, for example, the Competent Authority issues a formal resolution at the end of the Screening process which can then be appealed at the superior national environmental authority by those having standing, including environmental NGOs working in the impacted area. The final administrative resolution can then be taken to court for a judicial review process by the same group of parties.

In Estonia, procedural decisions (like a Screening Decision in EIA proceedings) are, as a rule, not disputable separately from the final administrative act. However, the Supreme Court has stated in earlier practice that legal review is possible, in the case where the procedural rules may have been violated to the extent that makes it clear that the violation would inevitably bring illegality to the final act. In case no 3-3-1-86-06 (*Maidla municipality vs Ministry of Environment -MoE*), the Estonian Supreme Court established that legal standing for procedural issues must be broader than usual in environmental matters. Specifically, the Court held that the environmental field is so specific that a person who has standing should have larger opportunities to dispute the procedural acts separately from the final administrative act. When deciding about the possibility of legal review, the court must take the significance of the procedural act, and also the significance of the alleged violation in fulfilment of the principal procedural requirements, into account. Therefore, on the basis of this judgment it can be said that EIA Screening Decisions definitely are those decisions that would be subject to the judicial review and any person having connection to the decision has standing in these cases.

Justice and Environment, Good Examples of EIA and SEA Regulation and Practice in five European Union Countries, 2008.

In any case, if an appeal against the Screening Decision as such is not possible, the opportunity to contest would normally be granted in the later stages of the authorisation process, i.e. through an appeal against the Development Consent (see box below).

Box 31: Contesting the Competent Authority's determination

In Case C-570/13, *Gruber*, the CJEU held that 'an administrative decision not to carry out an EIA taken on the basis of such national legislation cannot prevent an individual, who is part of the 'public concerned' within the meaning of that directive and satisfies the criteria laid down in national law regarding 'sufficient interest' or, as the case may be, 'impairment of a right', from contesting that administrative decision in an action brought against either that decision, or against a subsequent Development Consent decision.'

Reference should be made to Member State legislation for guidance on appeal procedures.

4.1 STEP 4: IN A NUTSHELL

Where a formal Screening Decision has been made by a Competent Authority, the Screening Decision must state the reasons for either requiring or not requiring EIA and this should be made available to the public.

PART C – SCREENING CHECKLIST: CASE-BY-CASE SCREENING TOOLS

THE CHECKLISTS: INTRODUCTION

Annex III to the Directive sets out the criteria that must be considered in Screening. Two checklists have been prepared to support and help the process of deciding whether or not a Project is likely to have significant effects on the environment to help EIA participants to apply these criteria in case-by-case Screening. The checklists may also be helpful when setting thresholds/criteria in national legislation.

The first Screening Checklist provides a list of questions about the Project and its environment that users can use to help answer the question: *'Is this Project likely to have a significant effect on the environment?'* Instructions on how to use the checklist are given at the beginning, together with some examples of how to complete the checklist.

The second is a Checklist of Criteria for Evaluating the Significance of Environmental Impacts. This is designed to be used alongside the Screening Checklist as described in the introduction.

Again, it is important to emphasise that use of the checklists is not intended to require special studies to have been undertaken. They are intended to be used quickly, by people with the qualifications and experience typically found in competent authorities, and by using information that is readily available about the Project and its environment. The user should run quickly through the questions and if the answer is 'don't know', record this and take it into account as an uncertainty that might indicate a decision that an EIA is required.

INTERPRETING THE RESULTS

There is no specific rule that can be used to decide whether or not the results of using the Screening Checklist should lead to a positive or negative Screening Decision (i.e. that EIA is or is not required). In theory, if there is one 'Yes' answer to the question 'is it likely to result in a significant effect?', EIA may be required, however, as a general principle, the greater the number of 'Yes' answers and the greater the significance of the impacts identified, the more likely it is that EIA is required. '?' answers, indicating uncertainty about the occurrence or significance of impacts, should also point towards a positive Screening Decision (i.e. that EIA is required) because the EIA process will help to clarify the uncertainty.

USING THE CHECKLISTS AS A RECORD AND PREPARING PROJECT-SPECIFIC CHECKLISTS

The Screening Checklist is designed to be applicable to all types of Projects. It will be of particular use to competent authorities who must record and make available to public the reasons for their Screening Decisions, as the completed forms will provide a written record of the factors that have been considered.

Developers and competent authorities who deal with only certain types of Projects may find it helpful to prepare shortened versions of the checklists focusing on only relevant questions.

SCREENING CHECKLIST

INSTRUCTIONS

This checklist is designed to help users to determine the likely significant impacts of Projects and, in so doing, to decide whether an EIA is required.

Start by providing a brief description of the Project.

Then, using the information available about the Project, answer each question in Column 2:

- Yes - if the answer is yes
- No - if the answer is no
- ? - if the answer is don't know

If you are not sure what might be important, use the more detailed lists of questions in the Scoping Guidance to help to answer your question.

Briefly describe the relevant characteristics of the Project or its environment and then consider whether any effect that is likely to result therefrom is likely to be significant; enter the response in Column 3 with a note of the reasons why. Use the next Checklist on Criteria for Evaluating Significance to help answer the question: 'Is this likely to result in a significant impact?'.

EXAMPLES

Some examples illustrating how to use the checklist are given below.

| Questions to be Considered For further guidance on factors to be considered see the more detailed questions listed in the Scoping Guidance | Yes / No /? Briefly describe | Is this likely to result in a significant impact? Yes/No/? - Why? |
|--|---|---|
| Brief Project Description: Development of 500 houses adjacent to an existing rural settlement at ABCville. | | |
| 1. Will construction, operation or decommissioning of the Project involve actions which will cause physical changes in the locality (topography, land use, changes in waterbodies, etc.)? | Yes. The Project will involve development of a large site currently in agricultural use and crossed by a small river. | Yes. Loss of agricultural land and the diversion of rivers |
| 3. Will the Project involve the use, storage, transport, handling or production of substances or materials which could be harmful to human health or the environment or raise concerns about actual or perceived risks to human health? | No, except in the small amounts typically used by householders | No |
| 4. Will the Project produce solid wastes during construction or operation or decommissioning? | Yes. Construction will require excavation of a small hill and transport and disposal or re-use of a large quantity of soil. | Yes. Transport could have significant impact on neighbouring village |
| 9. Will the Project result in environmentally related social changes, for example, in demography, traditional lifestyles, employment? | No. The existing village was mainly built in the 1950s. | No |

| | | |
|---|--|--|
| 10. Are there any other factors which should be considered such as consequential development that could lead to environmental impacts or the potential for cumulative impacts with other existing or planned activities in the locality? | Yes. The Project will require the extension of the village sewage works which is already overloaded. | Yes. There is not much space to extend the works and it already causes odour problems in the village |
| 11. Are there any areas or features of historic or cultural importance on or around the location that could be affected by the Project? | ? No information available about the area | ? requires further investigation |

THE SCREENING CHECKLIST

| Questions to be Considered For further guidance on factors to be considered see the more detailed questions listed in the <u>Scoping Guidance</u> | Yes / No /? Briefly describe | Is this likely to result in a significant impact? Yes/No/? – Why? |
|--|------------------------------|---|
| Brief Project Description: | | |
| 1. Will construction, operation, decommissioning or demolition works of the Project involve actions that will cause physical changes in the locality (topography, land use, changes in waterbodies, etc.)? | | |
| 2. Will construction or the operation of the Project use natural resources such as land, water, materials or energy, especially any resources which are non-renewable or are in short supply? | | |
| 3. Will the Project involve the use, storage, transport, handling or production of substances or materials which could be harmful to human health, to the environment or raise concerns about actual or perceived risks to human health? | | |
| 4. Will the Project produce solid wastes during construction or operation or decommissioning? | | |
| 5. Will the Project release pollutants or any hazardous, toxic or noxious substances to air or lead to exceeding Ambient Air Quality standards in Directives 2008/50/EC and 2004/107/EC)? | | |
| 6. Will the Project cause noise and vibration or the releasing of light, heat energy or electromagnetic radiation? | | |
| 7. Will the Project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea? | | |
| 8. Will there be any risk of accidents during construction or operation of the Project that could affect human health or the environment? | | |
| 9. Will the Project result in environmentally related social changes, for example, in demography, traditional lifestyles, employment? | | |
| 10. Are there any other factors that should be considered such as consequential development which could lead to environmental impacts or the potential for cumulative impacts with other existing or planned activities in the locality? | | |

| Questions to be Considered For further guidance on factors to be considered see the more detailed questions listed in the Scoping Guidance | Yes / No /? Briefly describe | Is this likely to result in a significant impact? Yes/No/? – Why? |
|--|-------------------------------------|--|
| 11. Is the project located within or close to any areas which are protected under international, EU, or national or local legislation for their ecological, landscape, cultural or other value, which could be affected by the Project? | | |
| 12. Are there any other areas on or around the location that are important or sensitive for reasons of their ecology e.g. wetlands, watercourses or other waterbodies, the coastal zone, mountains, forests or woodlands, that could be affected by the Project? | | |
| 13. Are there any areas on or around the location that are used by protected, important or sensitive species of fauna or flora e.g. for breeding, nesting, foraging, resting, overwintering, migration, which could be affected by the Project? | | |
| 14. Are there any inland, coastal, marine or underground waters (or features of the marine environment) on or around the location that could be affected by the Project? | | |
| 15. Are there any areas or features of high landscape or scenic value on or around the location which could be affected by the Project? | | |
| 16. Are there any routes or facilities on or around the location which are used by the public for access to recreation or other facilities, which could be affected by the Project? | | |
| 17. Are there any transport routes on or around the location that are susceptible to congestion or which cause environmental problems, which could be affected by the Project? | | |
| 18. Is the Project in a location in which it is likely to be highly visible to many people? | | |
| 19. Are there any areas or features of historic or cultural importance on or around the location that could be affected by the Project? | | |
| 20. Is the Project located in a previously undeveloped area where there will be loss of greenfield land? | | |
| 21. Are there existing land uses within or around the location e.g. homes, gardens, other private property, industry, commerce, recreation, public open space, community facilities, agriculture, forestry, tourism, mining or quarrying that could be affected by the Project? | | |

| Questions to be Considered For further guidance on factors to be considered see the more detailed questions listed in the Scoping Guidance | Yes / No /? Briefly describe | Is this likely to result in a significant impact? Yes/No/? – Why? |
|--|-------------------------------------|--|
| 22. Are there any plans for future land uses within or around the location that could be affected by the Project? | | |
| 23. Are there areas within or around the location which are densely populated or built-up, that could be affected by the Project? | | |
| 24. Are there any areas within or around the location which are occupied by sensitive land uses e.g. hospitals, schools, places of worship, community facilities, that could be affected by the Project? | | |
| 25. Are there any areas within or around the location which contain important, high quality or scarce resources e.g. groundwater, surface waters, forestry, agriculture, fisheries, tourism, minerals, that could be affected by the Project? | | |
| 26. Are there any areas within or around the location which are already subject to pollution or environmental damage e.g. where existing legal environmental standards are exceeded, that could be affected by the Project? | | |
| 27. Is the Project location susceptible to earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions e.g. temperature inversions, fogs, severe winds, which could cause the Project to present environmental problems? | | |

Summary of features of Project and of its location indicating the need for EIA:

CHECKLIST OF CRITERIA FOR EVALUATING THE SIGNIFICANCE OF ENVIRONMENTAL IMPACTS

INSTRUCTIONS

This checklist is designed to help users decide whether an EIA is required based on the characteristics of the likely impacts of the Project. It is to be used in case-by-case Screening in conjunction with the Screening Checklist.

The Screening Checklist provides a list of questions to help identify where there is the potential for interactions between a Project and its environment. This checklist is designed to help decide whether those interactions – its impacts - are likely to be significant.

Those responsible for making Screening Decisions often find difficulties in defining what is 'significant'. More detailed descriptions of this concept and methodological considerations to approach it are presented as part of the Scoping guidance document.

At the Screening stage, a useful simple check is to ask whether the impact is one that ought to be considered prior to consent and, thus, is deemed to have an influence on the Development Consent decision. At the beginning of Screening, there is likely to be little information upon which to base this decision, but the following list of questions may be helpful.

These questions can be asked for each 'Yes' answer in the Screening Checklist and the conclusion and the reasons for it noted in the checklist. The questions are designed so that a 'Yes' answer will generally point towards the need for an EIA process and a 'No' answer points to an EIA process not being required. The answer that the impact is uncertain would, most likely, point to the need for an EIA Process.

THE CHECKLIST OF CRITERIA FOR EVALUATING THE SIGNIFICANCE OF ENVIRONMENTAL IMPACTS

Questions to be Considered

1. Will there be a large change in environmental conditions?
 2. Will new features be out-of-scale with the existing environment?
 3. Will the impact be unusual in the area or particularly complex?
 4. Will the impact extend over a large area?
 5. Will there be any potential for transboundary impact?
 6. Will many people be affected?
 7. Will many receptors of other types (fauna and flora, businesses, facilities) be affected?
 8. Will valuable or scarce features or resources be affected?
 9. Is there a risk that environmental standards will be breached?
 10. Is there a risk that protected sites, areas, features will be affected?
 11. Is there a high probability of the effect occurring?
 12. Will the impact continue for a long time?
 13. Will the effect be permanent rather than temporary?
 14. Will the impact be continuous rather than intermittent?
 15. If it is intermittent will it be frequent rather than rare?
 16. Will the impact be irreversible?
 17. Will it be difficult to avoid, or reduce or repair or compensate for the effect?
-

ANNEXES

ANNEX I – LINKS WITH OTHER EU INSTRUMENTS

The EIA Directive is just one of many pieces of EU legislation in place that affect environmental and Project planning. This poses the risk of duplication of assessments and procedures, and offers various possibilities for synergy. Under the principle of Better Regulation, whereby EU policies and laws should be designed and implemented so that they achieve their objectives at minimum cost⁵, efforts are underway to ‘streamline’ these different assessments and procedures where possible. It is important to bear in mind that ‘streamlining’ in this context means improving and better coordinating environmental assessment procedures with a view to reducing unnecessary administrative burdens, create synergies and hence speed up the environmental assessment process, whilst at the same time ensuring a maximum level of environmental protection through comprehensive environmental assessments.

Streamlining measures can, therefore, be found in the EIA Directive:

■ **Joint or coordinated procedures (Article 2(3) of the EIA Directive)**

Article 2(3) of the EIA Directive requires Member States to set up coordinated or joint procedures when an assessment is required, both under the EIA Directive and the Habitats Directive (see below). Moreover, Member States have the possibility to apply these joint or coordinated procedures to other environmental assessments stemming from EU legislation, in particular under the Water Framework Directive and the Industrial Emissions Directive. See below for more specific information on interactions with these pieces of legislation. Practitioners are advised to check their national legislation to see when and how coordination is required.

■ **Consideration of other assessments (Article 4(4), Article 5(1) of the EIA Directive)**

Article 4(4) of the EIA Directive relating to the Screening stage of the EIA process, as well as Article 5(1) of the EIA Directive on the preparation of the EIA Report, requires practitioners to take the available results of other relevant assessments under other EU and national legislation into account.

■ **Other relevant information held by authorities (Article 5(4) of the EIA Directive)**

In order to strengthen the availability of data, Article 5(4) of the EIA Directive requires any authorities holding relevant information to make it available to the Developers of Projects subject to EIA.

This section introduces the main pieces of EU legislation relevant for streamlining with EIA. Practitioners should always check whether their Project falls under other EU legislation, and their respective national transposing measures, and be aware that there are various other guidance documents issued at EU and national level to help practitioners untangle legislative complexities. Some of these EU guidance documents are referred to in the relevant sections under Part B of the EIA guidance documents and are also listed below as well as in another Annex to this Guidance Document on Other Relevant Guidance Documents.

The legislation covered in this section is by no means an exhaustive list, but the legislation with the most significance include the following (formal names are introduced below):

- SEA Directive;
- Birds and Habitats Directives;
- Water Framework Directive;
- Marine Strategy Framework Directive;
- Ambient Air Quality Directive and Heavy Metals in the Ambient Air Directive;
- Waste Framework Directive;

⁵ European Commission Staff Working Document, *Better Regulation Guidelines*, SWD (2015) 111 final

- Industrial Emissions Directive;
- Seveso Directive
- Trans-European networks: TEN-E, TEN-T and TEN-TEC Regulations;
- Aarhus and ESPOO conventions (including Directive 2003/4/EC and 2003/35/EC).

SEA DIRECTIVE

| Name used | Formal name |
|--|---|
| Strategic Environmental Assessment (SEA) Directive | <ul style="list-style-type: none"> ■ Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment |
| Relevant EU guidance: | <ul style="list-style-type: none"> ■ Commission guidance document on Streamlining environmental assessments conducted under Article 2(3) of the EIA Directive; ■ Commission guidance document on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment; ■ Commission guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs). |

The SEA Directive concerns the Strategic Environmental Assessment, which is carried out on certain plans and programmes. In many cases, an SEA of a relevant plan or programme underpinning a proposed Project will have been carried out prior to the EIA. Article 3(2) of the SEA Directive requires an SEA to be undertaken if the plan or programme ‘sets the framework’ for a Project listed in Annexes I and II to the EIA Directive.

Opportunities for synergy

The SEA and EIA are similar procedures, despite the former being carried out on plans and programmes and the latter involving Projects. Both assessments can be summarized as follows: an environmental report is prepared in which the likely significant effects (of plans, programmes or Projects) on the environment and the reasonable alternatives are identified; the environmental authorities and the public (and affected Member States) must be informed and consulted; the Competent Authority decides, taking the results of consultations into consideration. The public is informed of the decision afterwards. While the scope of the two assessments usually differs, very often much of the work carried out under the SEA can be built upon for the EIA. Alternatives identified during the SEA may be relevant for the EIA, some of the data gathered under the SEA may be used to form the baseline of the EIA. Practitioners carrying out the EIA should consult the SEA report done for any relevant plans or programmes with a view of avoiding the duplication of work.

The Guidance document on Streamlining environmental assessments for energy infrastructure Projects of Common Interest (PCIs) (see the Annex to this Guidance Document on Other Relevant Guidance and Tools) provides guidance on how to take advantage of synergies between the SEA and EIA procedures. In addition, various guidance documents exist at national level.

During the Screening procedure of EIA Projects, assessments carried out under the SEA Directive may be directly relevant to the determination of whether or not the Project may have significant impacts on the environment. This may be the case if the assessment under the SEA Directive contains information on specific sensitivities of the local area to certain developments in which the Project is proposed.

Joint/coordinated procedures

Joint or coordinated procedures are not directly provided for by the provisions of the EIA and SEA Directives, given that one relates to projects (Article 2(3) of the EIA Directive) and the other to plans/programmes (Article 11(2) of the SEA Directive); moreover, each procedure must be carried out

on its own merits (Article 11(1) of the SEA Directive). The CJEU has indeed held that an assessment undertaken within the framework of the EIA Directive does not dispense with the requirement to carry out an assessment under the SEA Directive (cf. C-295/10, *Valčiukienė and Others*, para 55-63). However, in some cases a plan/programme, and the subsequent project development, can be subjected to an integrated assessment procedure: Member States are free to set up such mechanisms, as long as all of the requirements of both Directives are fulfilled. In this perspective, the CJEU also held, in the same decision, that a joint procedure may take place in which the requirements under both Directives are covered by a single environmental assessment procedure (cf. C-295/10, *Valčiukienė and Others*, para 55-63).

BIRDS AND HABITATS DIRECTIVES

| Name used | Formal name |
|-----------------------|--|
| Habitats Directive | <ul style="list-style-type: none"> ■ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna |
| Birds Directive | <ul style="list-style-type: none"> ■ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds |
| Relevant EU guidance: | <ul style="list-style-type: none"> ■ Commission guidance document on Streamlining environmental assessments conducted under Article 2(3) of the EIA Directive; ■ Commission guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs) ■ Commission guidance on Managing Natura 2000 sites: the provisions of Article 6 of Directive 92/43/EEC ■ Manual of European Union Habitats - EUR28. |

The Habitats Directive, along with the Birds Directives (Directive 2009/147/EC), aim to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the EU Members States. Together, these Directives set up a coherent network of sites (the Natura 2000 Network) hosting habitats and/or species that should be maintained or restored at favourable conservation status according to the terms of the Directives. Any plan or Project likely to have a significant effect on a Natura 2000 site is subject to an Appropriate Assessment (AA) of the implications for the site in view of the site's conservation objectives (Habitats Directive, Article 6(3)). The AA decision is binding and determines whether a plan or Project may proceed, subject to specific provisions set out in Article 6(4).

Opportunities for synergy

The scope of the AA and the EIA is different – the EIA should consider all significant environmental effects, while the AA focuses on the conservation objectives and the integrity of the Natura 2000 site in question; however, as with the SEA detailed above, some of the information collected for one assessment can be used for the other.

The likelihood of significant impacts on a Natura 2000 site in accordance with Article 6(3) of the Habitats Directive may be central to Screening under the EIA Directive. In many instances, where an AA is required for a proposed Project under the Habitats Directive, then the determination of the likely significant impacts in the Screening procedure, of an Annex II Project under the EIA Directive, is pre-empted by the obligation to carry out an AA under the Habitats Directive, since:

- the impact on a Natura 2000 site is a part of the concept of ‘environment’ covered under the EIA Directive, and
- the obligation to carry out an AA presupposes that a significant impact cannot be excluded at the stage of EIA Screening.

Joint/coordinated procedures

Article 2(3) of the EIA Directive stipulates that when Projects have to be assessed under both the EIA and the Birds or Habitats Directives, Member States *shall, where appropriate*, ensure that coordinated and/or joint procedures are provided for. This differs from instances in which Projects also have to be assessed under other EU legislation, where Member States *may* provide for coordinated and/or joint procedures. The EIA Directive makes several references to the Habitats Directive, for example, when identifying significant impacts of a Project, particular attention must be paid to species and habitats protected by the Birds and the Habitats Directives. The EU has issued a guidance document to assist practitioners in the extent to which the results from an AA assessment is taken into account in an EIA Procedure (see the Guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA Directive, full references in the Annex to this Guidance Document on Other Relevant Guidance and Tools).

Given that Article 2(3) of the EIA Directive calls for a joint or coordinated procedure between EIA and the Habitats Directive, Screening under the EIA Directive should go hand in hand with the Screening requirement under Article 6(3) of the Habitats Directive. The last sentence of Article 4(4) of the EIA Directive calls for other relevant assessments to be taken into consideration. Where possible, and to the extent practicable, the two requirements should be coordinated thereby allowing for the transfer of knowledge/results from the Screening under the Habitats Directive to inform Screening under the EIA Directive.

WATER FRAMEWORK DIRECTIVE

| Name used | Formal name |
|--------------------|--|
| WFD | <ul style="list-style-type: none"> Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy |
| Relevant guidance: | EU <ul style="list-style-type: none"> Commission guidance document on Streamlining environmental assessments conducted under Article 2(3) of the EIA Directive Commission guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs) Common Implementation Strategy for the WFD: Guidance document no 7 Monitoring under the Water Framework Directive Common Implementation Strategy for the WFD: Guidance document no 20 Exemptions to the Environmental Objectives |

The WFD establishes a framework for the protection of inland surface waters, transitional waters, coastal waters, and groundwater. Under this Directive, River Basin Management Plans (RBMP) are established and updated every 6 years to coordinate and implement water status-related measures within each river basin. RBMPs must address the objectives set out by the WFD, and must include an analysis of the river basin's key characteristics, a pressures assessment, review of the impact of human activity on the status of water and measures to meet the Directive's objective of 'good status' for all waters.

Projects that may lead to failure of achieving good status of water bodies or lead to deterioration of quality elements need to be assessed and if possible, a more environmentally friendly alternative should be found. If no alternative can be found, then the Project can only go ahead when it can demonstrate that first all practicable Mitigation Measures are taken to reduce the impact. Secondly, it must also be demonstrated that the reasons for deterioration are of overriding public interest or that the Project's benefits otherwise outweigh failure to achieve the relevant environmental objectives (cf. conditions set out in Article 4(7) of the WFD). The process of identifying and assessing such impacts may be carried out jointly with the EIA procedure. However, the requirement of Article 4(7) of the WFD goes beyond the requirements of the EIA Directive in the sense that it covers activities that may not be listed in Annex I or II to the EIA Directive.

Opportunities for synergy

The WFD ensures that detailed environmental data are collected for water as part of the planning process of the RBMP. Hence, synergies can be gained for part of an EIA through data collection and the required assessments of effects on water bodies according to Article 4(7) of the WFD. As discussed above, if a Project listed in Annex I or II to the EIA Directive is found to impact the status of a water body as set out in the relevant RBMP, further assessment will be required to develop and review alternatives and possibly justify reasons of overriding public interest in line with the requirements of the Water Framework Directive.

Joint/coordinated procedure

Article 2(3) of the EIA Directive provides the option for joint or coordinated procedures where projects also have to be assessed under other EU legislation, but it is not a requirement.

MARINE STRATEGY FRAMEWORK DIRECTIVE

| Name used | Formal name |
|--------------------|--|
| MSFD | ■ Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) |
| Relevant guidance: | EU ■ Commission Final report on MSFD and licencing and permitting |

The Marine Strategy Framework Directive (MSFD) establishes a framework to assess and implement good environmental status of the EU's marine waters by 2020. In doing so, the MSFD takes an ecosystem and integrated approach whereby environmental protection and sustainable use go hand in hand to prevent depletion of natural resources upon which marine-related economic and social activities are based.

Opportunities for synergy

The MSFD ensures that an environmental baseline for the marine waters are established. On the basis of this assessment and baseline, measures must be adopted and gradually implemented to ensure that good environmental status is achieved within a specified number of years. With regard to Screening, Projects listed in Annex I or II to the EIA Directive are required to, when found to impact the good status of a marine water body as set out in the national marine strategy, incorporate considerations of how and the extent to which the project is likely to significantly affect the marine environment.

Unlike the WFD, there is no independent requirement in the MSFD to assess activities. However, the objectives and measures adopted in Member States may influence the scope and nature of an EIA Report in the sense that it must incorporate an assessment of the likely impacts of the Project on the objectives adopted for the marine water body in question.

Joint/coordinated procedure

Article 2(3) of the EIA Directive provides the option for joint or coordinated procedures where Projects also have to be assessed under other EU legislation, but it is not a requirement.

AMBIENT AIR QUALITY DIRECTIVE AND HEAVY METALS IN THE AMBIENT AIR DIRECTIVE

| Name used | Formal name |
|-----------|---|
| AQD | ■ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe |
| HMAQD | ■ Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air |

| | | |
|--------------------|----|-----|
| Relevant guidance: | EU | N/A |
|--------------------|----|-----|

The AQD establishes a framework for the active monitoring of ambient air and the removing of pollutants. The Directive establishes different air quality objectives (limit values, target values, critical levels and alert threshold) in relation to a wide range of pollutants (sulphur dioxide, nitrogen, dioxide, particulate matter, lead, benzene, carbon monoxide). It requires air quality plans when limit or target values are not complied with as well as short-term action plan when alert thresholds are exceeded. In addition, the Directive obliges Member States to keep the public informed and sets out requirements for the assessment of air quality (e.g., the monitoring network). In addition, the HMAQD sets limit values for the air pollutants arsenic, cadmium, nickel and benzo(a)pyrene.

Opportunities for synergy

During the Screening stage, competent authorities should use the different air quality objectives (limit values, target values, critical levels and alert threshold) to assess the likely impacts of the Project on the environment.

WASTE FRAMEWORK DIRECTIVE

| Name used | Formal name |
|--------------------|--|
| WasteFD | <ul style="list-style-type: none"> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives |
| Relevant guidance: | <ul style="list-style-type: none"> EU Application of EIA Directive to the rehabilitation of landfills. |

The WasteFD establishes a legal framework for the management and treatment of most waste types. The Directive sets out a waste hierarchy that ranges from prevention to disposal. Waste management under the Directive must be implemented without endangering human health and without harming the environment (e.g. without risk to water, air, biodiversity, and without causing nuisance). It also sets out rules for extended producer responsibility, effectively adding to the burdens of manufacturers to manage products returned after use.

Opportunities for synergy

The WasteFD requires the adoption and implementation of Waste Management Plans and Waste Prevention Programmes at the national and local levels. These plans and programmes should analyse the current situation with regards to waste treatment, as well as identify the measures needed to carry out waste management in the context of the WasteFD’s objectives. This includes existing and planned waste management installations, which are likely to constitute Projects subject to the EIA Directive. As waste installatons should be provided for under Waste Management Plans, they are also subject to the requirements of the SEA Directive (see above).

The EIA Directive may also bear relevance for any Project with regard to the waste produced not only during the construction and operation of the Project, but also, in particular, with regard to the decommissioning and/or rehabilitation of the site.

During the Screening stage, the requirements of the WasteFD with regards to risk to mediums can assist the competent authorities in determining significant effects on the environment of a given Project.

INDUSTRIAL EMISSIONS DIRECTIVE

| Name used | Formal name |
|--------------------|---|
| IED | <ul style="list-style-type: none"> Directive 2010/75/EU of the European Parliament and the Council on industrial emissions |
| Relevant guidance: | EU <ul style="list-style-type: none"> Guidance under Article 13(3)(c) and (d) of the IED; Commission Communication on the elaboration of baseline reports under Article 22(2) of the IED. |

The IED is the main EU instrument regulating pollutant emissions from industrial installations. Around 50,000 Projects undertaking the industrial activities listed in Annex I to the IED are required to operate in accordance with a permit, which should contain conditions set in accordance with the principles and provisions of the IED. As indicated in the Commission Guidance document on ‘Interpretation of definitions of Project categories of Annex I and II to the EIA Directive’ (see the Annex to this Guidance Document on Other Relevant Guidance and Tools): the EIA Directive and the Industrial Emissions Directive (IED) sometimes relate to the same type of activities. However, it is important to be aware of the differences that exist between the objective, the scope, classification systems, and thresholds of these two directives.

Opportunities for synergy

IED permits must take the whole environmental performance of the industrial plant into account, including emissions to air, water, and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, and the restoration of the site upon closure. Such an exercise aligns closely with the EIA Directive and ‘Member States have discretion to use the thresholds set by Annex I to the IED in the context of the EIA Directive’ (Commission Guidance Document, Interpretation of definitions of Project categories of Annex I and II to the EIA Directive, see the Annex to this Guidance Document on Other Relevant Guidance and Tools).

In addition, permits issued under the IED are to be reconsidered periodically to ensure compliance. While monitoring carried out under the IED will likely not cover all environmental aspects to be considered, the IED does require specific monitoring, part of which can be used for the EIA. The approach to monitoring for the IED can also be adopted and broadened to cover other aspects outlined in EIA monitoring proposals.

Joint/coordinated procedure

Article 2(3) of the EIA Directive provides the option for joint or coordinated procedures where Projects also have to be assessed under other EU legislation, but it is not a requirement.

SEVESO DIRECTIVE

| Name used | Formal name |
|--------------------|--|
| Seveso Directive | Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances |
| Relevant guidance: | EU <p>Commission guidance document on Streamlining environmental assessments conducted under Article 2(3) of the EIA Directive</p> <p>Guidance tools are collected on the Minerva portal at: https://minerva.jrc.ec.europa.eu/en/minerva</p> |

The Seveso Directive was adopted in response to the industrial accident releasing hazardous chemicals in the Italian city of Seveso in 1976. The Directive has since been revised several times. The aim of the Seveso Directive is to prevent and, in case they occur, limit major accidents involving dangerous substances. It applies to establishments where dangerous substances may be present in quantities

above a certain threshold. Certain industrial activities covered by other EU legislation are excluded from the Seveso Directive (e.g. nuclear establishments or the transport of dangerous substances).

The Seveso Directive takes a tiered approach to requiring safety measures at facilities based on the volumes of dangerous substances present at facilities. Seveso sites are categorised as lower-tier Seveso establishments or upper-tier Seveso establishments. Operators of lower-tier Seveso establishments have to notify the competent authority, design a major-accident prevention policy (MAPP), draw up accident reports and take into account land-use planning. In addition to these requirements, operators of upper-tier Seveso establishment must establish a safety report, implement a safety management system, define an internal emergency plan and provide the competent authorities with all necessary information. Furthermore, authorities are required inter alia to produce external emergency plans for upper tier establishments, deploy land-use planning for the siting of establishments, make relevant information publically available, ensure that any necessary action is taken after an accident including emergency measures, and conduct inspections.

Opportunities for synergy

The Seveso Directive is highly relevant to a number of assessments under the EIA Directive such as for instance impacts related to risks of major accidents and disasters, Mitigation, and climate change adaptation. In addition, in light of the risk presented by establishments covered by the Seveso Directive, rules on permitting as well as regarding governance come into play, and as such the Seveso Directive is often directly linked to other legislation listed in this Annex, such as the IED and Aarhus convention. The Seveso Directive in this regard ensures that detailed information on installations are collected and employed in both land-use planning as well as in contingency planning. Synergies with EIA can be gained for a part of the EIA report containing the design of installations and the assessment of risk hazards that relates to the chosen design. The Seveso Directive can also be of use for the Screening, Scoping and Preparation of the EIA Report stages in relation to: quantitative thresholds for the assessment of significance, rules of public information in relation to governance, and finally the rules on Monitoring.

Joint/coordinated procedure

Article 2(3) of the EIA Directive provides the option for joint or coordinated procedures where Projects also have to be assessed under other EU legislation, but it is not a requirement.

TRANS-EUROPEAN NETWORKS IN TRANSPORT, ENERGY AND TELECOMMUNICATION

| Name used | Formal name |
|---|--|
| TEN-T Regulation: Trans-European Transport Network | <ul style="list-style-type: none"> ■ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network |
| TEN-TEC Regulation: Trans-European Telecommunication Network | <ul style="list-style-type: none"> ■ Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure. |
| TEN-E Regulation Trans-European Energy Network (PCI regulation) | <ul style="list-style-type: none"> ■ Regulation (EU) No 347/2013 Of The European Parliament and of The Council ■ of 17 April 2013 on guidelines for trans-European energy infrastructure. |
| Connecting Europe Facility: financing for TENs | <ul style="list-style-type: none"> ■ Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility. |
| Relevant EU guidance: | <ul style="list-style-type: none"> ■ Commission guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs). |

The Trans-European Networks consists of lists of key transport, energy and telecommunications infrastructure Projects, known as Projects of common interest (PCIs). These Projects are designed to complete the European internal market and by interconnecting national infrastructure networks and ensuring their interoperability, thereby fulfilling e.g. the EU's energy policy objectives of affordable, secure and sustainable energy.

Under the TEN-E regulation for the energy sector, PCIs can benefit from accelerated planning and permit granting, due to streamlined environmental assessment processes.

AARHUS AND ESPOO CONVENTIONS

| Name used | Formal name |
|--------------------|---|
| Aarhus Convention | <ul style="list-style-type: none"> United National Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. |
| Espoo Convention | <ul style="list-style-type: none"> United National Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary context. |
| | <ul style="list-style-type: none"> Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC. |
| | <ul style="list-style-type: none"> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regards to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission. |
| Relevant guidance: | <ul style="list-style-type: none"> EU Guidance on the Application of the Environmental Impact Assessment Procedure for Large-scale Transboundary Projects; Guidance document for member States' reporting under Article 9 of Directive 2003/4. |

The Aarhus Convention establishes a number of rights of the public, both individuals and their associations, with regard to the environment. These rights are commonly depicted under the three pillars of access to environmental information, public participation in decision-making, and access to justice in environmental affairs. Parties to the Convention are required to make the necessary provisions so that public authorities will contribute to these rights to become effective. All EU Member States, as well as the EU itself, are parties to the Convention. The first two pillars are also part of EU law via Directives 2003/4/EC and 2003/35/EC, in addition a number of provisions in different EU instruments seek to implement these rights, such as the public participation and access to justice requirements under the EIA Directive, or the Access to Justice provisions under the IED Directive.

The Espoo Convention lays down the general obligation of States to notify and consult each other on all major Projects under consideration that are likely to have a significant adverse environmental impact across boundaries. Article 7 of the EIA Directive provides the legal basis for regulating Member States' rights and obligations in case of an EIA Procedure for a Project with transboundary impacts. Article 7(1) provides rights for the potentially affected Member States to be informed about e.g. a Screening procedure in another Member State. The affected Member State is to be informed at the latest by the time at which the public is informed in the Member State in which the Project is proposed for implementation.

Opportunities for synergy

The Aarhus Convention is the most comprehensive legal instrument relating to public involvement. By establishing rules on information and participation of the public, the Aarhus Convention has led to decisions setting precedents (e.g. on timeframes for informing the public), which can assist in the implementation of the EIA procedure. The main text indicates that public participation should be effective, adequate, formal, and provide for information, notification, dialogue, consideration, and

response. Furthermore, just as the EIA Directive requires ‘reasonable timeframes’, so too does the Aarhus Convention. These may have an impact on the different stages discussed in the EIA Guidance Document series.

Screening procedures under the EIA Directive are influenced by the participatory rights established by the Aarhus Convention in the sense that the affected public and the public now have a legal right to know the reasoning behind the decision on whether a Project will be subject to an EIA procedure or not. This requirement can become the basis of a legal initiative, in case the decision is challenged by the affected public and/or the public at large. This will most likely be relevant in cases where the Competent Authority has decided to screen the Project out of the detailed requirements in Articles 5-10 of the EIA Directive.

ANNEX II – OTHER RELEVANT GUIDANCE AND TOOLS

- A. Andrusevych, T. Alge, C. Konrad (eds), Case Law of the Aarhus Convention Compliance Committee 2004-2011, 2nd edition
<https://www.eufje.org/images/DocAarhus/Aarhus%20CC%20case-law.pdf>
- Chartered Institute of Ecology and Environmental Management, Guidelines for ecological impact assessment in the UK and Ireland, Terrestrial, Freshwater, and Coastal, January 2016
http://www.cieem.net/data/files/Publications/EcIA_Guidelines_Terrestrial_Freshwater_and_Coastal_Jan_2016.pdf
- Commission, Assessment of plans and projects significantly affecting Natura 2000 sites, Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC
http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf
- Commission, Assessment of resource efficiency indicators and targets
http://ec.europa.eu/environment/enveco/resource_efficiency/pdf/report.pdf
- Commission Communication on the elaboration of baseline reports under Article 22(2) of the IED (European Commission Guidance concerning baseline reports under Article 22(2) of Directive 2010/75/EU on industrial emissions)
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.136.01.0003.01.ENG
- Commission, DG Climate Action, Non-paper, Guidelines for Project Managers: Making vulnerable investments climate resilient
<http://climate-adapt.eea.europa.eu/metadata/guidances/non-paper-guidelines-for-project-managers-making-vulnerable-investments-climate-resilient>
- Commission Final report on MSFD and licencing and permitting
https://circabc.europa.eu/sd/a/ca90e911-6585-4de0-983f-dd07a5c2a519/MSCG_19-2016-04_Study%20on%20licencing%20and%20permitting%20and%20MSFD_Final%20Report%20Arcadis.pdf
- Commission guidance document on Non-energy mineral extraction and Natura 2000
http://ec.europa.eu/environment/nature/natura2000/management/docs/nee_i_n2000_guidance.pdf
- Commission guidance document for Member States' reporting under Article 9 of Directive 2003/4 (Guidance document on reporting about the experience gained in the application of directive 2003/4/ec concerning on public access to environmental information)
http://ec.europa.eu/environment/aarhus/pdf/guidance_en.pdf
- Commission guidance document no 7. Monitoring under the Water Framework Directive
[https://circabc.europa.eu/sd/a/63f7715f-0f45-4955-b7cb-58ca305e42a8/Guidance%20No%207%20-%20Monitoring%20\(WG%207\).pdf](https://circabc.europa.eu/sd/a/63f7715f-0f45-4955-b7cb-58ca305e42a8/Guidance%20No%207%20-%20Monitoring%20(WG%207).pdf)
- Commission guidance document no 20. Exemptions to the Environmental Objectives
https://circabc.europa.eu/sd/a/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance_documentN%C2%B020_Mars09.pdf
- Commission guidance document on Inland waterway transport and Natura 2000, Sustainable inland waterway development and management in the context of the EU Birds and Habitats Directives
http://ec.europa.eu/environment/nature/natura2000/management/docs/iwt_en.pdf
- Commission guidance on Aquaculture and Natura 2000, Sustainable aquaculture activities in the context of the Natura 2000 Network
<http://ec.europa.eu/environment/nature/natura2000/management/docs/Aqua-N2000%20guide.pdf>
- Commission guidance on Managing Natura 2000 sites: the provisions of Article 6 of Directive

| | |
|-----------|---|
| 92/43/EEC | http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm |
| ■ | Commission guidance document on Streamlining environmental assessments conducted under Article 2(3) of the EIA Directive http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016XC0727(01) |
| ■ | Commission guidance on the application of the Environmental Impact Assessment Procedure for Large-scale Transboundary Projects http://ec.europa.eu/environment/eia/pdf/Transboundry%20EIA%20Guide.pdf |
| ■ | Commission guidance on wind energy development in accordance with the Natura 2000 http://ec.europa.eu/environment/nature/natura2000/management/docs/Wind_farms.pdf |
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