



# **The revised EIA Directive: Why and what has been changed?**

**Environmental Assessment Day  
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# Summary

## Introduction

### **Why the EIAD has been changed?**

*Problems* identified in the implementation of the EIAD and *objectives* of the revision in order to overcome these problems

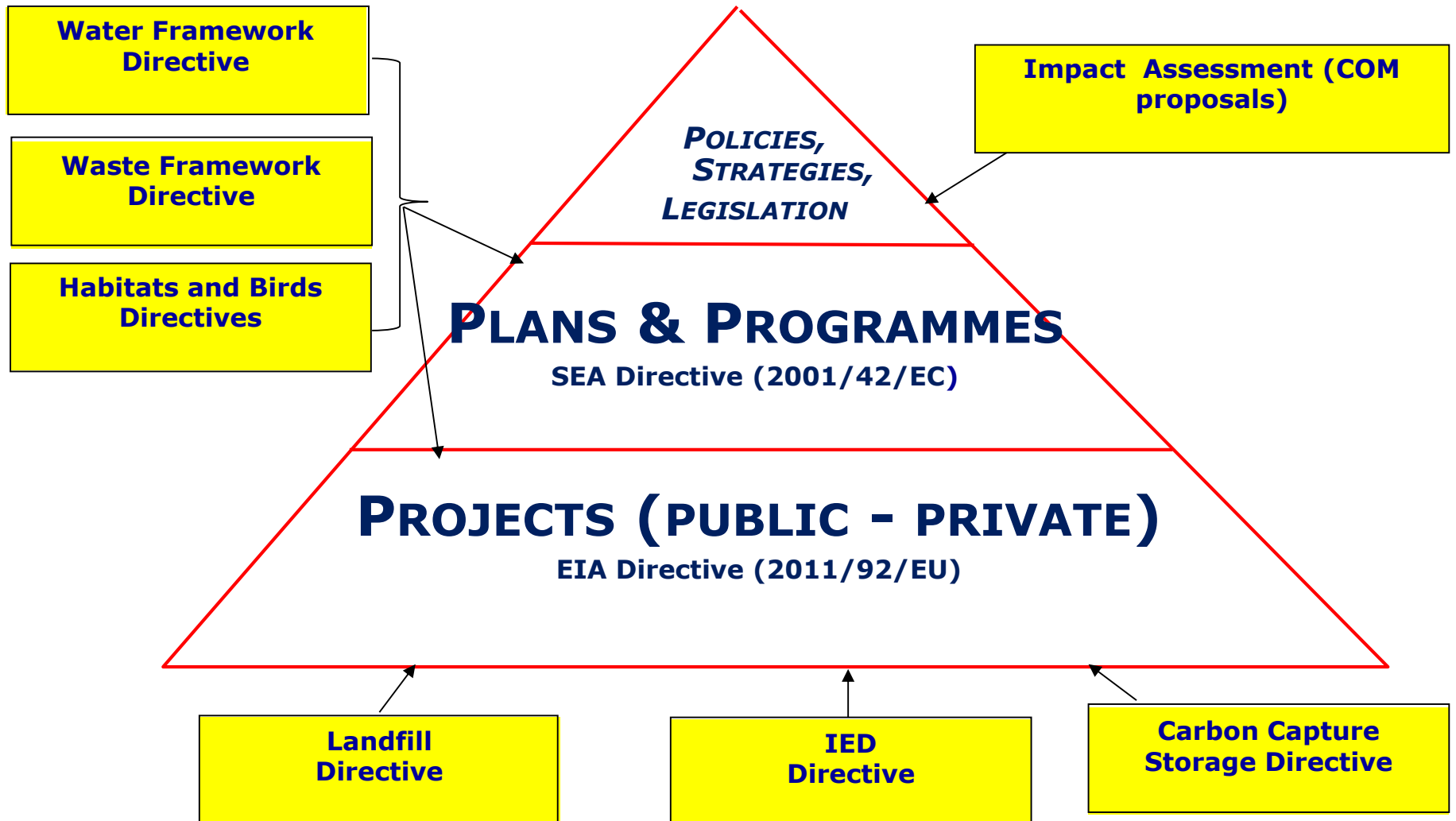
### **What has been changed?**

What has been retained in the final text from the Commission proposal and analysis of the *changes* phase by phase



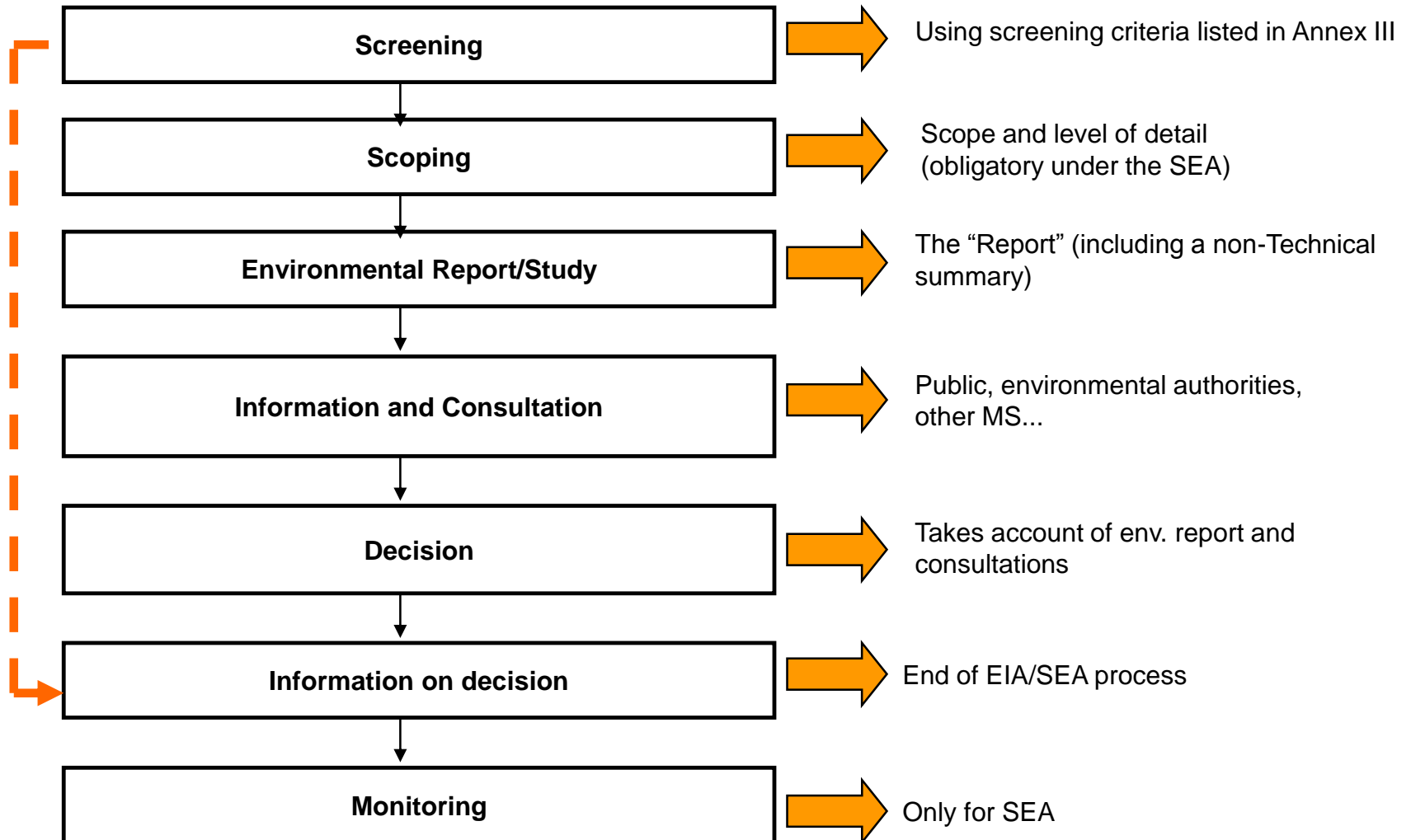
European  
Commission

# Environmental Assessments



## The Environmental Assessment Procedures

For projects screened out  
(shorter procedure)



## Important dates

- 25 April 2014 – published in OJ
- 15 May 2014 – entered into force
- Till 16 May 2017 – transposition/application in Member States

## Objectives of the revision

After 25 years of application, the EIA Directive has not significantly changed, while the policy, legal and technical context has evolved considerably.

**General objective:** Enhancing effectiveness and efficiency of the EIA and in particular:

- To correct identified and persisting shortcomings (*the implementation gaps of the EIAD - concerning screening process, insufficient quality of the EIA documentation and public participation - represent 12% of the infringements related to EU environmental law. Not correct transposition or application of screening process requirements: 69%*)
- reflect ongoing environmental and socio-economic priorities and challenges
- align with the principles of smart regulation (simple, clear, predictable)
- reflect the ECJ case-law on the EIAD

IA - <http://ec.europa.eu/environment/eia/pdf/IA%20SWD-2012-355.pdf>



	Key problems identified following implementation experience	Specific objectives	Operational objectives
SCREENING	Projects with significant environment impact escape an EIA	Introduce and/or strengthen the quality related elements of the Directive (enhancing effectiveness)	Specify the content and justification of the screening decision
	Projects without significant environmental impacts are subject to an EIA	Enhance policy coherence and synergies with other EU/international law and simplify procedures (enhancing efficiency)	
	No justified decisions on screenings	Introduce and/or strengthen the quality related elements of the Directive (enhancing effectiveness)	



Key problems identified following implementation experience		Specific objectives	Operational objectives
EIA QUALITY AND ANALYSIS	EIA reports not focusing on the most significant impacts	Introduce and/or strengthen the quality related elements of the Directive (enhancing effectiveness)	Specify the content of the EIA report and the final decision
	EIA reports with poor quality of environmental data and analysis		
	Insufficient consideration of impacts of project alternatives		
	No justified decisions on development consent		
	Potential gaps between predicted and actual impacts		Streamline environmental assessments
	Inconsistencies between requirements of EIA Directive and other EU legislation and international conventions		
	EIAs do not cover new environmental topics		





	<b>Key problems identified following implementation experience</b>	<b>Specific objectives</b>	<b>Operational objectives</b>
<b>RISKS OF INCONSISTENCIES</b>	<p>Overlaps/duplications with environmental assessments under other EU legislation</p> <p>Too short/too long public consultation (2 weeks/2 months)</p> <p>Excessive time for the processing of EIAs by public authorities (11.6 months average – from 5 to 27 months)</p>	<p>Enhance policy coherence and synergies with other EU/international law and simplify procedures (enhancing efficiency)</p>	<p>Streamline environmental assessments</p> <p>Specify time-frames for various stages of the EIA process</p>

## Final text - overview

Modification of Annex III criteria  
 Alternative procedure for Annex II projects  
 Justification of negative screening decisions

**Screening**

Article 4  
 Annex III  
 Annex II.A

Mandatory assessment of alternatives  
 Additional environmental issues  
**Mandatory** scoping  
**Quality control of the EIA information**  
 Justification of final decisions  
**Mandatory post-EIA monitoring**

**EIA quality  
 and  
 analysis**

Article 3  
 Article 5  
 Article 8  
 Article 9  
 Annex III  
 Annex IV

**Mandatory** coordinated/joint procedure  
 Specific **time-frames** for public consultation  
**Maximum** time-frames for decision-making

**Risk of  
 inconsistencies**

Article 2.3  
 Articles 6/7  
 Article 4.6  
 Article 8.3

**\* In red changes compared to the COM proposal**

## Overall assessment of the final text

- **Efficiency objective (coherence, synergies, simplification)** – not fully met:
  - ✓ Some important elements - mandatory scoping and specific time-frames for some steps of the decision-making – not retained.
  - ✓ One-stop shop with a much narrower scope - limited to EIA/Nature Directives.
- **Effectiveness objective (quality)** - covered in a satisfactory manner:
  - ✓ Quality control mechanism;
  - ✓ Assessment of reasonable alternatives;
  - ✓ Monitoring measures of significant adverse effects on the environment;
  - ✓ Broader scope of EIA covering new environmental issues;
  - ✓ Justification of screening/EIA decisions.

## Definition - Article 1

- New definition of EIA inserted in Art. 1(2)g, reflecting also the case-law (C-50/09, Commission v. Ireland).

### **C-50/09, Commission v. Ireland:**

- The assessment obligation is the core of the procedure (Article 3, EIA Directive).
- It is distinct from the rest of the obligations laid down in the EIA Directive (to collect and exchange information, consult, publicise and guarantee judicial appeal).

# Exemptions – Article 1

- Art. 1(3)
  - ✓ projects or part of projects, having **defence** as their sole purpose (see also recital 19);
  - ✓ projects having the response to **civil emergencies** as their sole purpose (recital 20).
- Art. 1(4) (projects approved in detail by law) deleted and moved to Art. 2(5) with stricter conditions.

## **NEW:** EIA one-stop shop - Article 2(3)

- Main obligation: **coordinated/joint procedures**, *where appropriate*, for assessments under EIA and/or Habitats/Birds Directives.
- For assessments under EIA and other Union legislation (e.g. SEA, Water Framework, IED, Waste Framework, Seveso – Chemical accidents, listed in recital 37) possibility to apply one-stop shop.
- How?
  - ✓ Coordinated procedure: one authority designated for coordination
  - ✓ Joint procedure: single environmental impact assessment
- COM to issue guidance on coordinated/joint procedures.

## Other amendments - Article 2

- Clarification change - "development" [consent] added in Art. 2(1) and 2(2).
- **Exemptions:**
  - Art. 2(4) further clarified – "Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive, where the application of those provisions would result in **adversely affecting the purpose of the project**, provided the objectives of this Directive are met";
  - Art. 2(5) projects adopted by national legislation – may be exempted only as regards public consultation requirements (provided the objectives of the Directive are met).

## Scope - Article 3

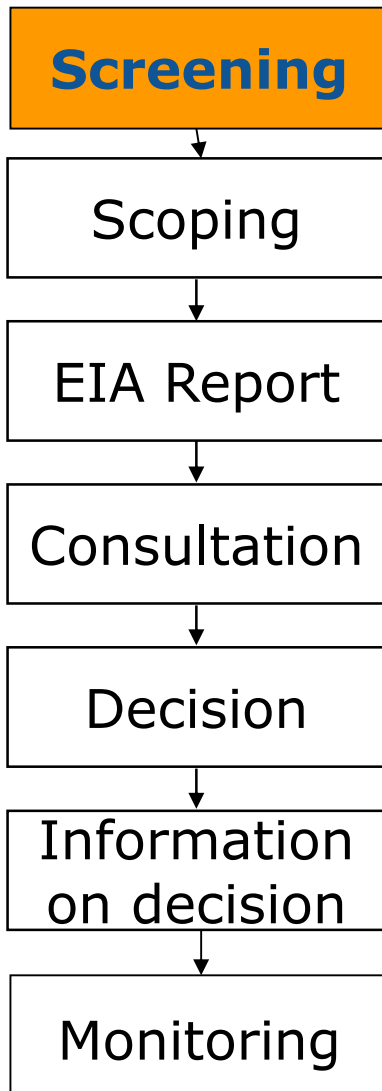
### **Adaptation to new environmental issues**

- Use of natural resources (biodiversity, land, soil, water, air).
- Biodiversity with focus on species/habitats protected under the two Nature directives.
- Risks of major accidents and or/ disasters.

### **Consistency with other provisions**

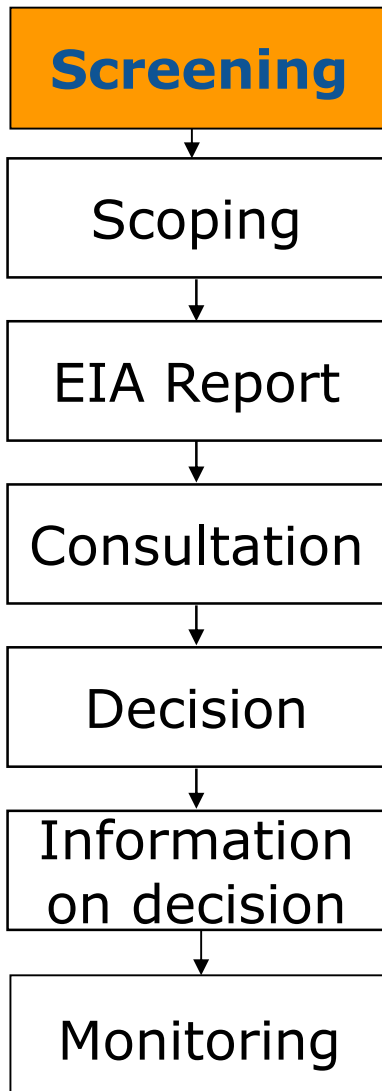
- Population and human health (instead of "human beings").
- Reference to "significant" effects.
- Annex IV.4 (Info for environmental assessment report – factors).





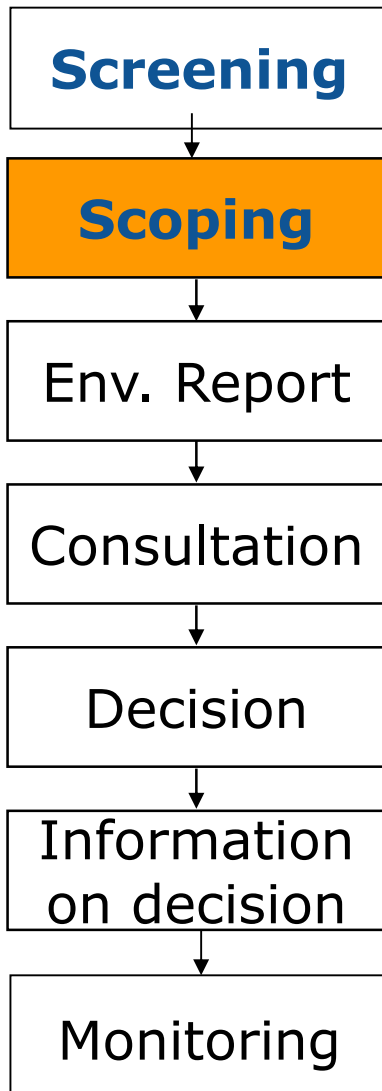
## Screening principles

- MSs may set **thresholds** to decide when projects have/have not to undergo screening or EIA, taking into account relevant screening criteria of Annex III (Art.4(3)).
- List of information to be provided **by the developer** (Art.4(4) and Annex II.A).
- **Content** of the screening decision (Art.4(5)):
  - ✓ on the basis of the information provided by the developer.
  - ✓ take into account, where relevant, the results of preliminary verifications/assessments [SEA, Habitats, Water Directives].
  - ✓ use of annex III criteria reasons for any screening decision (positive or negative).
  - ✓ if no EIA: state measures envisaged/project features to avoid or prevent possible significant adverse effects (where proposed by the developer).
- **Time-frame** for the screening decision (Art. 4(6)):
  - ✓ 90 days (from the date on which the developer has submitted all the requisite information).
  - ✓ Possibility for extension in exceptional cases (in writing, informing the developer of the reasons for the extension and the expected new date).



## Screening – Annexes II.A & III

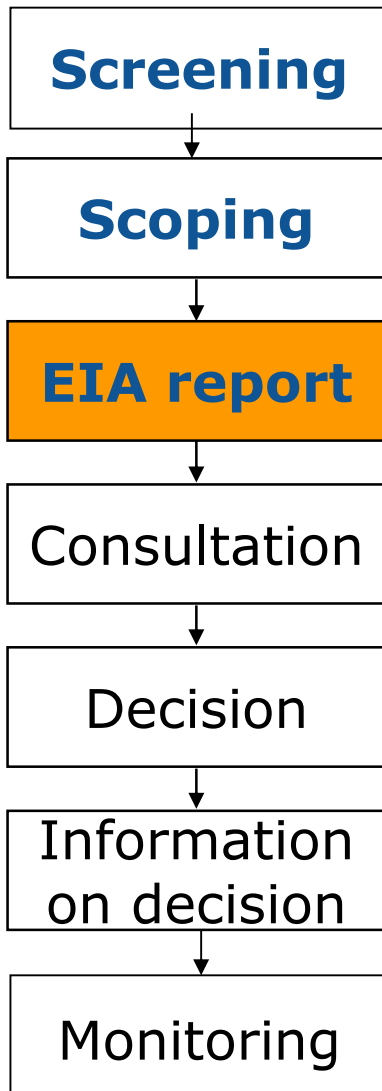
- **NEW: Annex II.A (info on the projects listed in Annex II)**
  - ✓ Description of the 'whole' project.
  - ✓ Description of the environmental factors aspects likely to be significantly affected.
  - ✓ Description of the likely significant impacts of the project.
- **ANNEX III: updated/new criteria**
  - ✓ Use of natural resources.
  - ✓ Risks to human health.
  - ✓ Risk of major accidents/disasters, including those caused by climate change.
  - ✓ 'Whole' project to be considered (incl. subsurface/underground) at ALL stages (construction, operation, demolition).
  - ✓ Cumulative impacts with existing/approved projects.
  - ✓ Landscapes and site of cultural heritage.
  - ✓ Type of the impact (magnitude, intensity/complexity, onset, cumulation, possibility to reduce impacts).



## Scoping – Art.5(2)

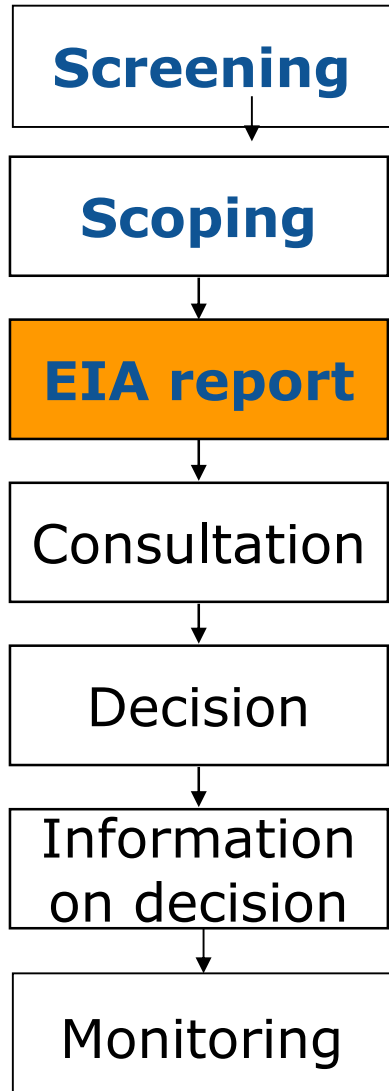
Very few changes:

- Voluntary character unchanged.
- Both Council and EP against COM proposal.
- Information provided by the developer to be taken into account (incl. location and technical capacity and likely impacts of the project).
- Opinion should refer to the scope and level of detail of the EIA report.
- Consultation of environmental and local/regional authorities needed.



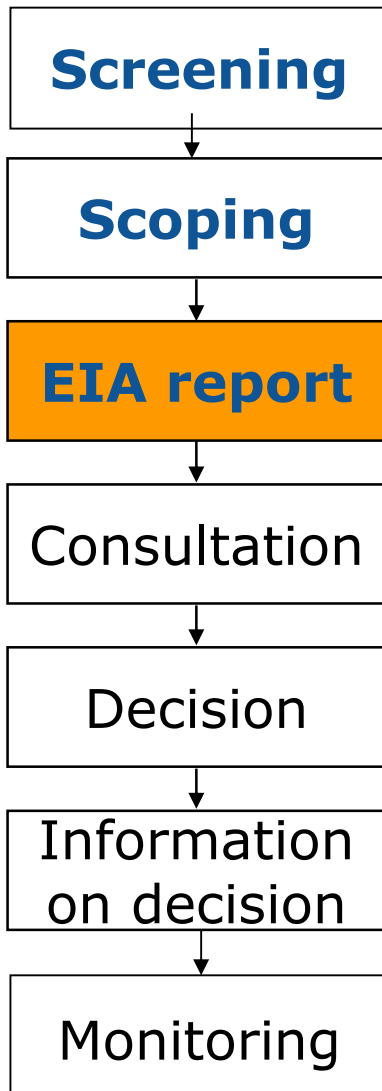
## Information of the EIA Report – Art.5(1)

- Mirroring the changes in Article 3 (scope of EIA).
- To avoid duplication, the developer has take into account the results of other relevant assessments [SEA, Habitats, Water Directives].
- Specific information to be provided by developer:
  - ✓ description of the project (site, design, size and other relevant features);
  - ✓ description of the likely significant effects;
  - ✓ description of the features and/or measures of the project envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects;
  - ✓ description of the **reasonable** alternatives studied by the developer relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen;
  - ✓ non-technical summary;
  - ✓ additional information specified in Annex IV (info for the EIA report).



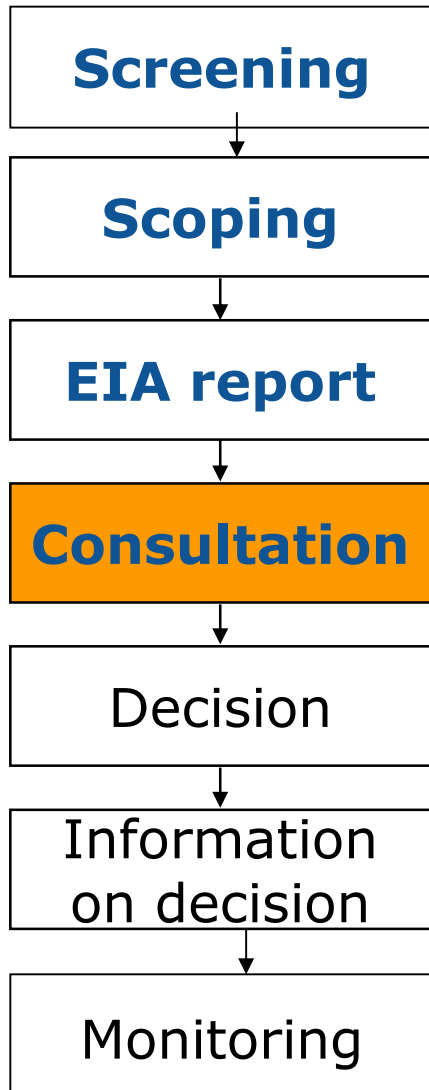
## **NEW:** elements in the information of the EIA Report – Annex IV

- Resource and energy efficiency elements (IV.1 and IV.5).
- Reasonable alternatives (example in terms of project design, location, size, etc.) include baseline scenario (current state of the environment) (IV.2 and IV.3).
- Consideration of new environmental issues, such as climate change and biodiversity (IV.4 and IV.5).
- Cumulative effects with other existing/approved projects (IV.5.e).
- Risk assessment related to accidents/disasters (IV.8).
- More detailed description of mitigation/compensation measures, as well as introduction of monitoring (IV.7).
- Methods/evidence to identify and assess environmental effects and list of sources used for descriptions and assessments included in the report (IV.6 and IV.10).



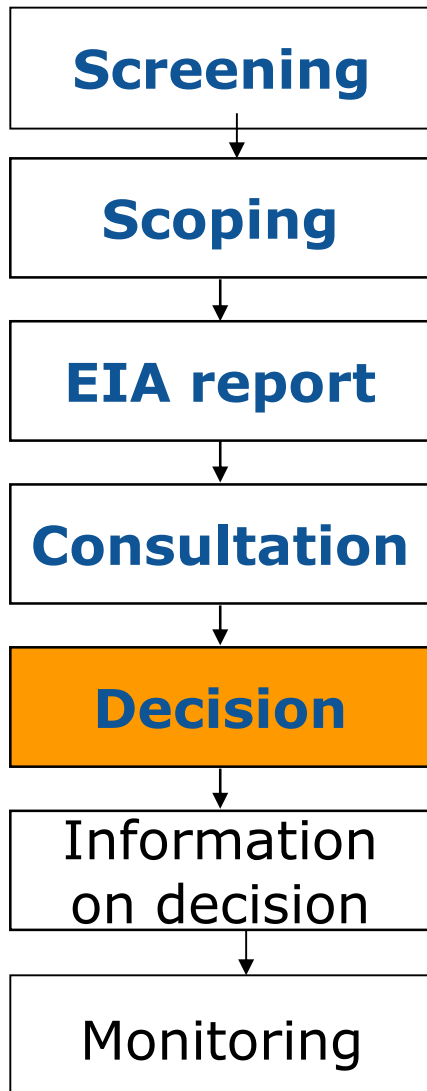
## **NEW:** Quality of the EIA Report – Article 5(3)

- Objective: guarantee the completeness and quality of the EIA report.
- How: shared responsibility of the developer and of the competent authority (CA).
- Concretely, two cumulative conditions:
  - Developer shall ensure that the EIA report is prepared by competent experts and
  - CA shall ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA report.
- Where necessary, CA shall seek from the developer supplementary information, directly relevant to reaching the reasoned conclusion on the significant effects of the project.



## Consultation – Articles 6 and 7

- Broadened scoped: local and regional authorities clearly spelled out as bodies to be consulted.
- Reinforced modalities:
  - ✓ Public to be informed electronically and by public notices (Art.6 (5)).
  - ✓ Relevant information electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level (Art. 6 (5)).
  - ✓ Reasonable time-frames for the different phases of the decision-making (Art. 6(6)).
  - ✓ **Time-frame for consulting the public concerned on the EIA report - at least 30 days (Art. 6(7)).**
- Transboundary consultations:
  - ✓ Consultations may be conducted through an appropriate joint body (Art.7(4)).
  - ✓ Time-frames for public consultation to be set by MS concerned (Art. 7(5)).



## Final decision – Articles 8 and 8a

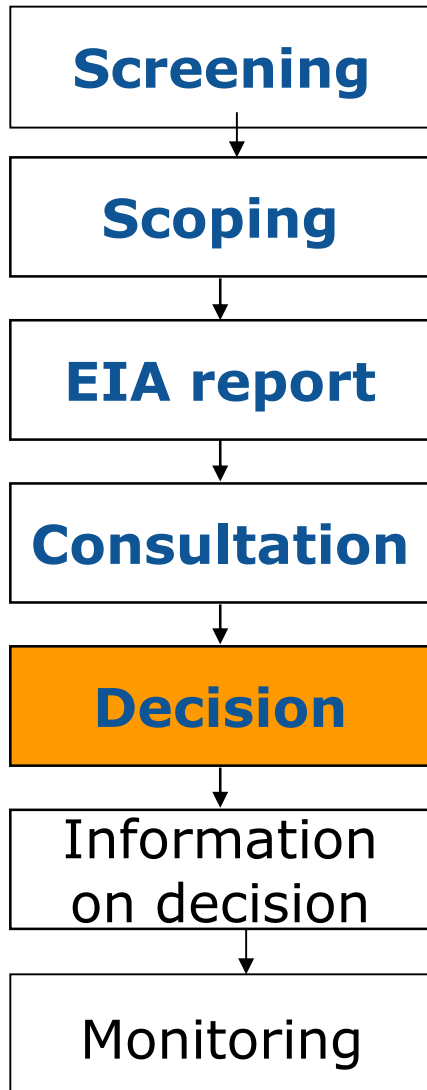
### Article 8

- Results of consultations and the information gathered for the CA (EIA report) and for the possible affected MS shall be duly taken into account in the development consent procedure.

### **NEW:** Article 8a

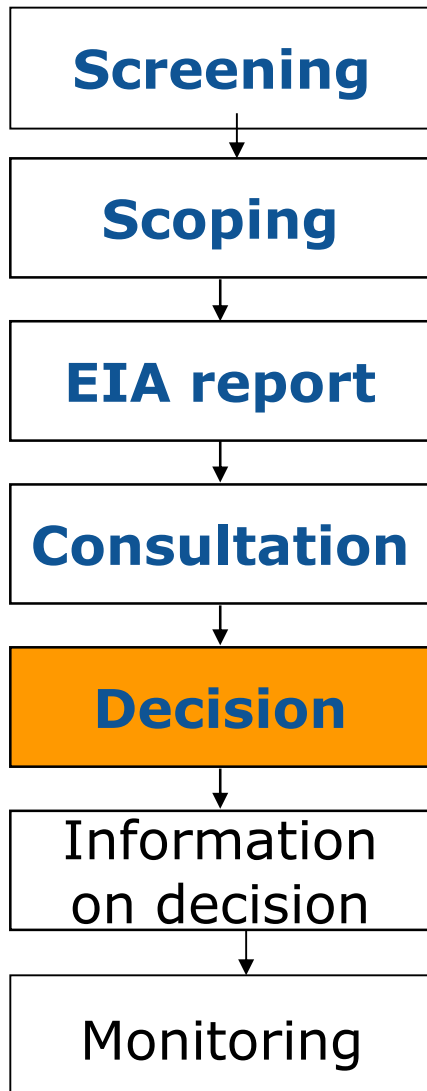
- Content of the decision to grant development consent:
  - ❖ **the reasoned conclusion of the CA** on the significant effects of the project (C-50/09);
  - ❖ any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures of such effects.





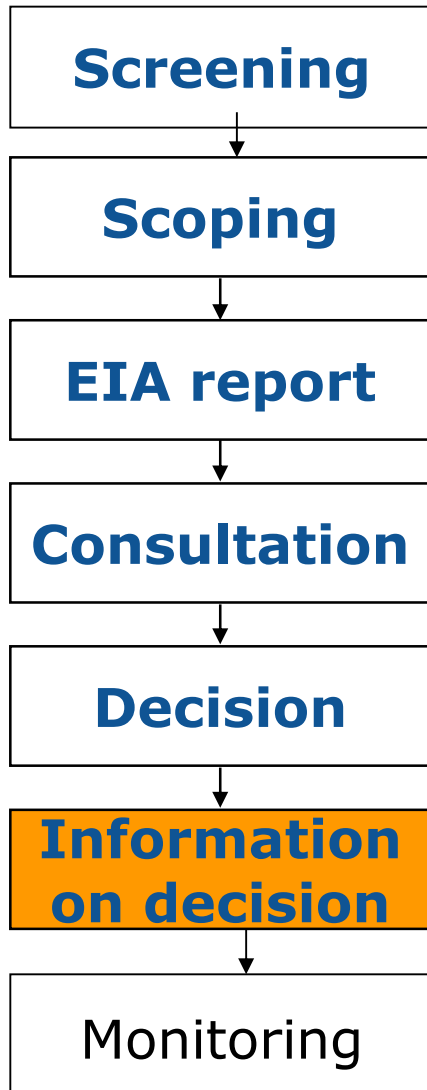
## Final decision - new Article 8a (cont.)

- Decision to refuse development consent should include main reasons for it.
- Decision – making reflects different EIA systems in the EU (Art. 8a(3) and recital 21): need for a binding EIA decision when MS makes use of procedures other than procedures for development consent or an EIA part of an integrated development consent procedure.
- Art. 8a(5) – CA shall take development consent decision or other decisions within a *"reasonable period of time"*.
- Art. 8a (6) – Member States may set time-frames for the validity of the reasoned conclusion for development consent or other decisions.



## **NEW:** Conflict of interest - Article 9a

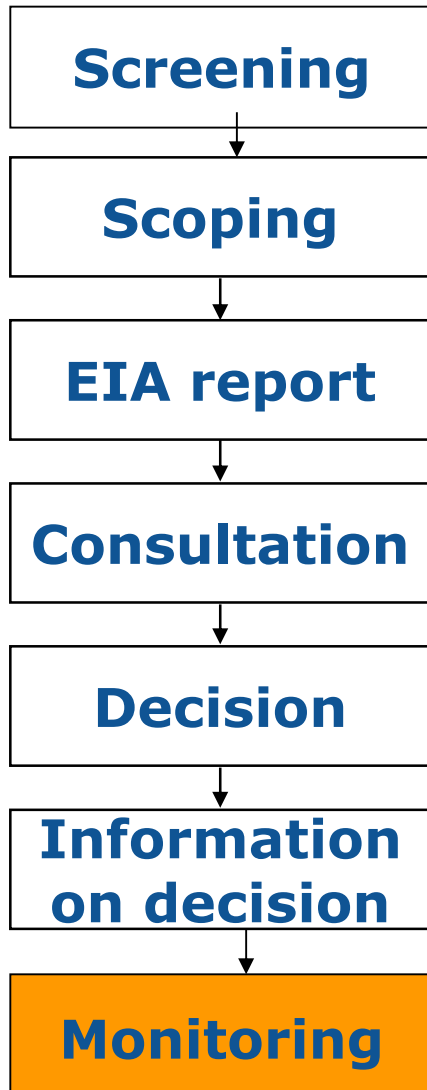
- Obligation for MS to avoid it.
- Ensure that CA perform the duties in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.
- Where the competent authority is also the developer:
  - Separation of the duties of the authorities.
  - Minimum obligation: MSs shall implement, within their organisation of administrative competences, an appropriate separation between conflicting functions.



## Information on the final decision – Article 9

No significant changes:

- Obligation to inform the public and relevant (environmental and local/regional) authorities promptly;
- Obligation to make available to the public and relevant (environmental and local/regional) authorities specific information:
  - ✓ Content of the final decision (no change).
  - ✓ Main reasons (no change).
  - ✓ **NEW:** Summary of the results of the consultations and the information gathered and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State(s).



## **NEW: Monitoring – Art.8a(4) and recital 35**

- Requirement **ONLY** for projects with significant + adverse environmental effects.
- Scope of the obligation:
  - Measures/features to avoid, prevent, reduce offset effects have to be implemented by the developer.
  - MS to determine appropriate procedures to monitor such effects:
    - type of parameters to be monitored / duration of the monitoring: proportionate to the nature, location and size of the project and the significance of its effects on the environment;
    - use of existing monitoring arrangements from EU/national legislation (to avoid duplication).

## Other changes

- Standard provision on **penalties** (new Article 10a): MSs shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.
- Updated **reporting** obligation to the Commission (Article 12(2))
  - ✓ As from May 2023.
  - ✓ Information to assess the effectiveness of the EIA (n° of EIAs/screenings, average duration of the EIA process; general estimates on the average direct costs of EIAs, including the impact to SMEs).

## Transitional provisions – Art. 3 of Directive 2014/52/EU

- Projects for which the screening was initiated before 16 May 2017 shall be subject to the provisions of Directive 2011/92/EU (i.e. current regime).
  
- Projects for which:
  - the scoping was initiated or
  - the EIA report was submitted by the developerbefore 16 May 2017 shall be subject to the provisions of Directive 2011/92/EU (i.e. current regime).

# Thank you for your attention

**Text of Directive 2014/52/EU:**

**<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L .2014.124.01.0001.01.ENG>**

**Unofficial consolidated text:**

**[http://ec.europa.eu/environment/eia/pdf/EIA\\_Directive\\_informa\\_l.pdf](http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informa_l.pdf)**

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