

ENVIRONMENTAL ASSESSMENT (SEA & EIA)

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Basics of EU Environmental Law
1 November 2023

EIA/SEA

EIA is “*the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant **effects of development proposals or projects prior to major decisions being taken and commitments made.***”

(www.unesco.org)

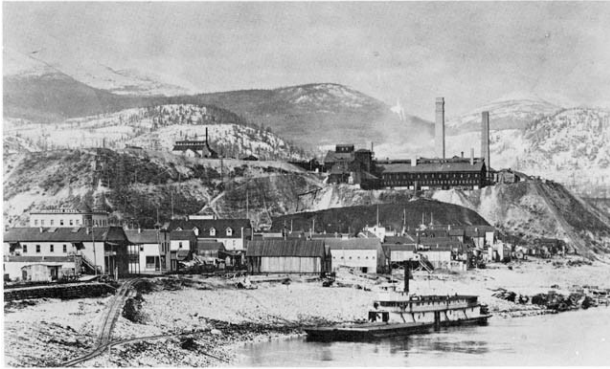
SEA is a systematic process for evaluating the environmental consequences of proposed policy, plan or programme initiative in order to ensure they are fully included and appropriately addressed **at the earliest appropriate stage of decision making on par with economic and social consideration**”

(Sadler, Verheem 1996)

Historical/international perspective

- US National Environmental Protection Act (1969)
- EIA Directive (1985)
- UNEP Guidelines Goals and Principles of EIA (1987)
- Espoo Convention (adopted in 1991 – into force in 1997)
- Rio Declaration on Environment and Development (1992)
- 1st amendment to the EIA Directive (1997)
- Gabčíkovo -Nagymaros Project (ICJ ruling in 1997)
- Aarhus Convention (adopted in 1998 – into force in 2001)
- SEA Directive (2001)
- SEA Protocol to Espoo (adopted in 2003 – into force in 2010)
- Pulp Mills case (ICJ ruling in 2010): EIA attains customary international law
- 2nd and 3^d amendments to the EIA Directive (2003 and 2009)
- EIA codified (2011)
- Revised EIA Directive (2014)
- Evaluation of the SEA Directive (ongoing)

Impact assessment?



- International law – Customary law, Espoo convention (transboundary assessment)...
- EU law – EIA Directive (2001/92/EU), SEA Directive (2001/42/EC), the Habitats Directive
- National law



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January 4, 2010

Ing. Karel B l a h a, CSc.
Deputy Minister -
Director General of the Directorate of Technical Protection of Environment
Ministry of the Environment of the Czech Republic
Vřkovicř 65
110 00 Praha 10
Czech Republic

SUBJECT: Viewpoint of the Federated States of Micronesia on the complex renovation of Prunerov II power plant 3s250 MWe plan

Dear Karel:

We want to thank you for responding to our request for a Transboundary Environmental

September 24, 2021
7:47 PM CEST
Last Updated a month ago

Europe

Czechs, Poles make progress towards solving Turow mine dispute -Czech minister

2 minute read

Reuters



Where big plans
are made.

Washington, DC

GET INSPIRED >

NOTHING COMPARES.



Read Next

Europe

Russia regrets U.S.
absence from Moscow
talks on Afghanistan,
Lavrov says



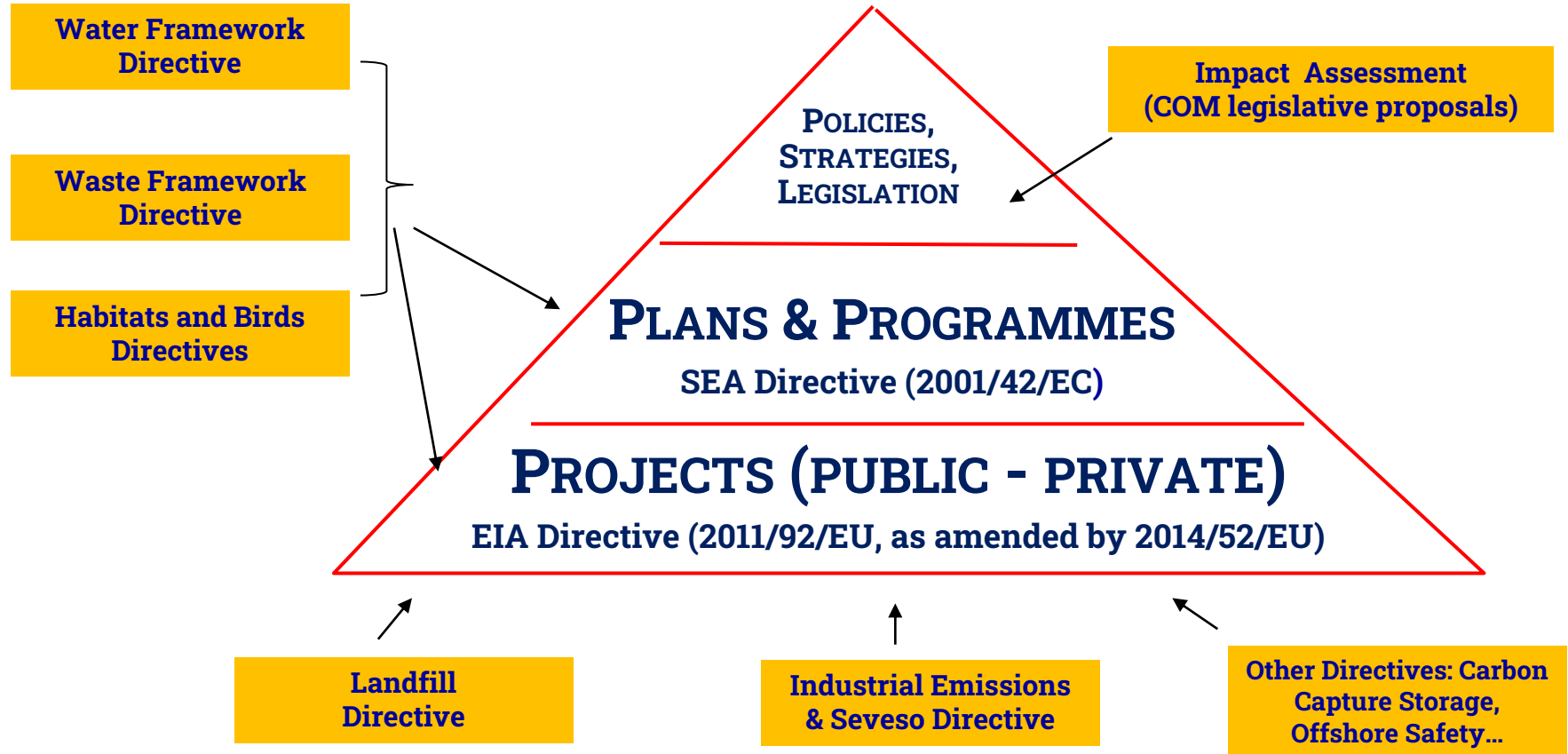


Impact assessment?



<https://www.youtube.com/watch?v=RCg800TYf4k>

Environmental Assessments at EU level



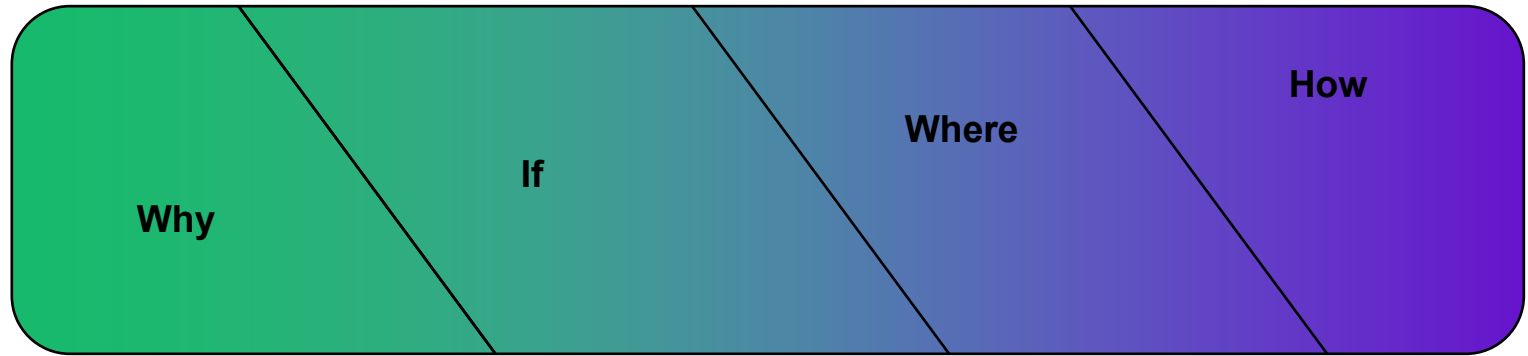
EIA/SEA



Plans - Programmes



Projects



SEA



EIA

EIA - General objective

What does the EIA Directive apply to?

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

What are these projects subject to?

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

When?

- **before consent** is given

EIA must identify, describe, assess

likely direct and indirect environmental effects of activities on

- human beings,
- fauna, flora, soil, water, air, climate, landscape,
- material assets, cultural heritage
- the interaction between those factors

EIA - General objective

Cumulative effects & "whole" project – case law

- It is necessary to consider projects jointly in particular where they are connected, follow on from one another, or their environmental effects overlap (Case C-147/07, *Ecologistas en Acción-CODA*; Case C-205/08, *Alpe Adria*).
- It is necessary to take into account the cumulative effect of such projects which have an objective and chronological link between them (Case C-244/12, *Salzburger Flughafen*).
- Works to modify an airport with a runway length of 2 100 metres or more thus comprise not only works to extend the runway, but all works relating to the buildings, installations or equipment of that airport where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at significantly increasing the activity of the airport and air traffic. (Case C-2/07, *Abraham and Others*).



Salami slicing seminare



Spain C-227/01 - **Valencia-Tarragona railway line, Las Palmas-Oropesa section**

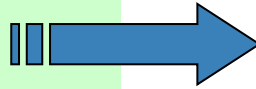


Spain C-227/01 - **Valencia-Tarragona railway line, Las Palmas-Oropesa section**

- *Annex I point 7 must be understood to include the doubling of an existing track, and not a mere modification.*
- *That the case concerned a short section of a long distance route is not relevant: If the argument of the Spanish Government were upheld, the effectiveness of Directive 85/337 could be seriously compromised, since the national authorities concerned would need only to split up a long-distance project into successive shorter sections in order to exclude from the requirements of the Directive both the project as a whole and the sections resulting from that division.*
- *The new track would obviously create significant new nuisances, so no need to prove the existence of concrete negative effects – likelihood is sufficient.*
- *Note: this case pre-dates amendments by Directive 97/11.*

EIA - Which projects?

- Annex I projects



**Mandatory
EIA**

- Annex II projects



Screening
by Competent authorities to
decide if
EIA needed or not

EIA - examples

ANNEX I

- Long-distance **railway** lines
- **Motorways**, express roads, **roads** of four lanes or more (of at least 10Km)
- **Waste** disposal installations
 - for hazardous waste
 - for non hazardous waste (above 100 tonnes/day)
- **Waste water** treatment plants (above 150000 p.e.)
- [+ changes or extensions of Annex I projects meeting Annex I thresholds]
-

ANNEX II

- Construction of **railways** and **roads** not included in Annex I
- **Waste** disposal installations and **waste water** treatment plants not included in Annex I
- **Urban development projects**
- **Changes or extensions** of Annex I and II projects that may have adverse environmental effects
- [+ modifications not included in Annex I]
-

PROJECTS REFERRED TO IN ARTICLE 4(2)

1. AGRICULTURE, SILVICULTURE AND AQUACULTURE

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

2. EXTRACTIVE INDUSTRY

- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
- (b) Underground mining;
- (c) Extraction of minerals by marine or fluvial dredging;
- (d) Deep drillings, in particular:

Level of thresholds - case law

- Member States have a level of discretion to establish thresholds or criteria, BUT limited by the obligation (Art 2(1)) to make projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment subject to an impact assessment (C-244/12, *Salzburger Flughafen*, C-531/13, *Kornhuber and Others*, paragraph 40-41);
- Thresholds/criteria are to help in screening, not exempt classes of projects, UNLESS, when viewed as a whole, they would not be likely to have significant environmental effects – (e.g. C-392/96, *Commission v. Ireland*, C-66/06, *Commission v. Ireland*)
- Member States are obliged to take account of all the relevant selection criteria listed in Annex III when establishing criteria or thresholds for Annex II projects (C-66/06, *Commission v. Ireland*, C-255/08, *Commission v. Netherlands*, C-435/09 *Commission v. Belgium*, C-531/13, *Kornhuber and Others*).



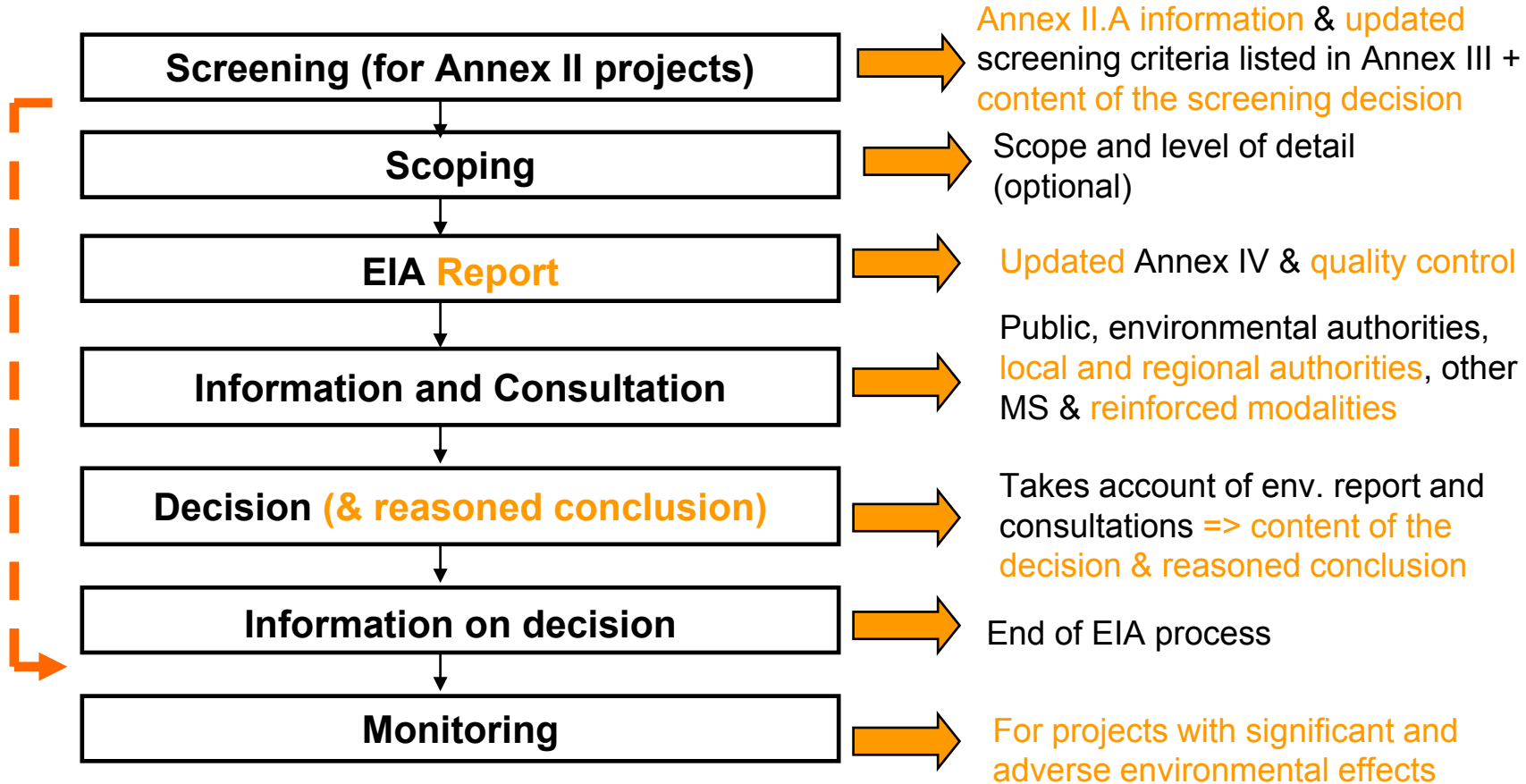
Impact assessment?



<https://www.youtube.com/watch?v=0uReVJYe0qw>

The EIA Procedure after the 2014 amendment

For projects screened out
90 days + extension





New elements in the information of the EIA Report – Annex IV

Resource and energy efficiency elements (IV.1 and IV.5).

Reasonable alternatives include baseline scenario (IV.2 and IV.3).

Consideration of new environmental issues, such as climate change and biodiversity (IV.4 and IV.5).

Cumulative impacts (IV.5.e).

Risk assessment related to accidents/disasters (IV.8).

More thorough description of mitigation/compensation measures, as well as introduction of monitoring (IV.7).

Methods/evidence and list of sources used (IV.6 and IV.10).



NEW elements in Articles 6 and 7

Broadened scope: 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 (Art. 7(5)).

Case law as a result of:

Art 258 TFEU (Commission v MS) actions

Art 267 TFEU preliminary references

EIA Directive

rich case law, both Art 258 and Art 267 TFEU cases

on objectives and basic principles, definitions (e.g. 'project', 'development consent'), screening (criteria/thresholds, cumulative effects), public participation and A2J, project categories of Annexes I and II)

- The meaning of the EIA Directive is not static
- Affected by technical development
- The EIA Directive has “a wide scope and a broad purpose” (Kraaijeveld).
- Member States’ discretion is limited.
- Consistent emphasis on the likely environmental effects of proposed projects.
- Exemptions to be interpreted narrowly.

SEA Directive

~ 20 rulings so far, almost exclusively Art 267 TFEU

mostly on the scope of the Directive

Commission support towards a better implementation

- Guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA (Commission Notice 2016/4701, OJ C 273, 27.7.2016, p.1)
- Compilation of the CJEU case-law
- Interpretation of definitions of project categories of annex I and II of the EIA Directive
- Guidance on the three key steps of the EIA:
 - Screening
 - Scoping
 - EIA report
- Guidance on the Application of the EIA Procedure for Large-scale Transboundary Projects
- Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment

SEA: WHICH plans and programmes?

- ✓ prepared and/or adopted by an **authority** at national, regional or local level AND
- ✓ **required** by legislative, regulatory or administrative provisions.
=> **Normative acts** adopted by law or regulation are covered (C-290/15)!

Exemptions:

- ✗ Plans & programmes the **sole** purpose of which is to serve national defence or civil emergency;
- ✗ Financial or budget plans/programmes.

SEA: WHICH plans and programmes?

1. Plans and programmes (P/Ps) that **always** undergo an SEA are those:

*prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use AND which **set the framework** for future development consent of projects listed in the EIA Directive; which have been determined to require an assessment under Articles 6 or 7 of the Habitats Directive.*

Including

P/Ps co-financed by the EU (e.g. OPs).

Modifications of P/Ps.

2. Plans and programmes that must be **screened**:
 - *P/Ps using small areas at local level.*
 - *minor modifications to P/Ps.*
 - *P/Ps setting the framework for future “non-EIA projects” and “non-sector” P/Ps.*

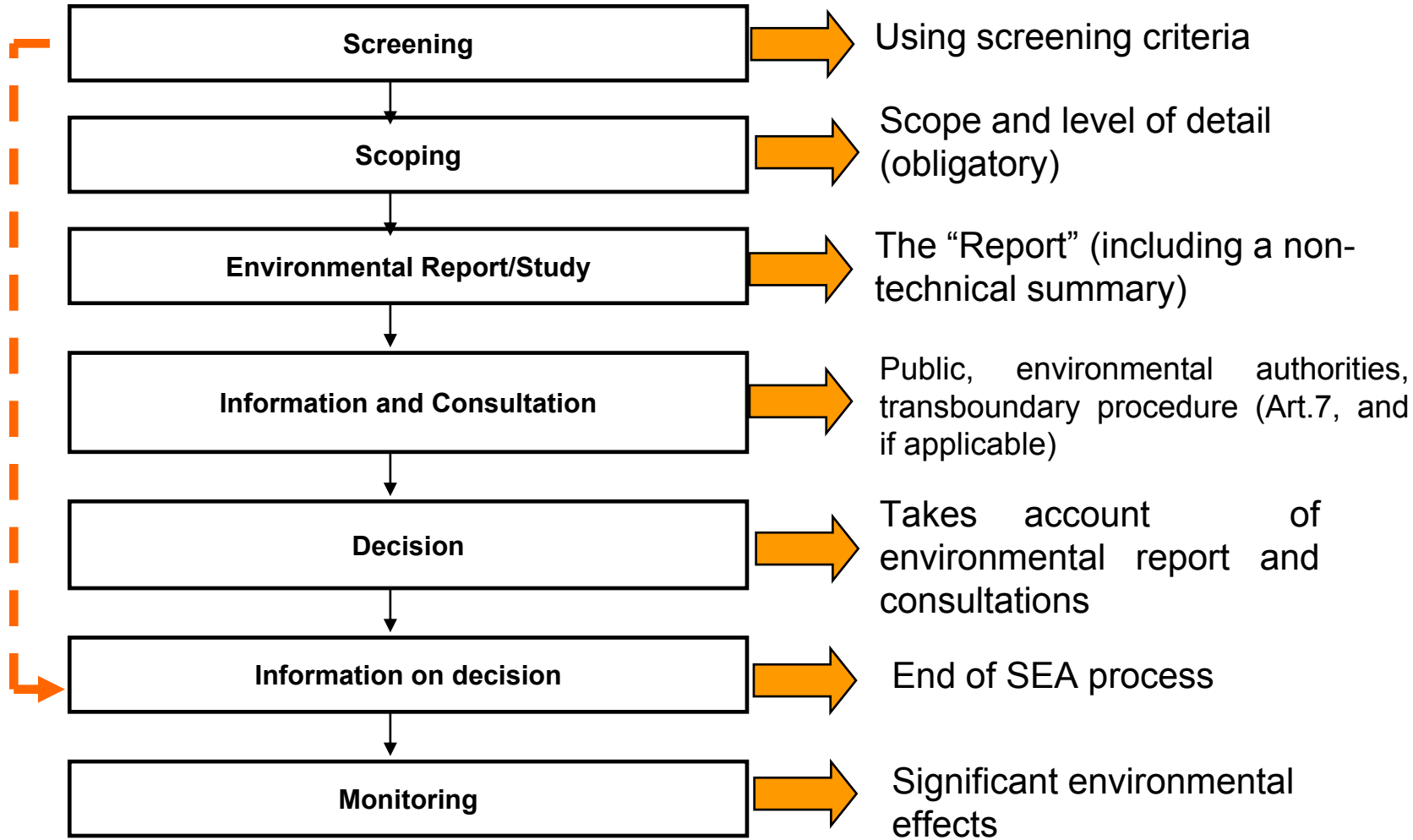
Scope of Article 3(1)-(2) – case-law

D'Oultremont, case C-290/15, Inter-Environnement Bruxelles, case C-671/16, Thybaut C-160/17

The notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, **a significant body of criteria and detailed rules** for the grant and implementation of one or more projects likely to have significant effects on the environment.

That interpretation of the concept of 'plans and programmes' is intended to ensure that provisions which are **likely to have significant effects on the environment** are subject to an environmental assessment.

The concept of 'a significant body of criteria and detailed rules' must be construed **qualitatively** and not quantitatively. It is necessary to avoid strategies which may be designed to circumvent the obligations laid down in the SEA Directive by splitting measures.



SEA can address a wide range of issues

Climate change mitigation	Climate change adaptation	Biodiversity
<ul style="list-style-type: none">● energy demand (industry)● energy demand (housing & construction)● GHG emissions in agriculture● GHG emissions (waste management)● travel patterns and GHG emissions (transport)● GHG emissions from energy production● land use, land-use change, forestry and biodiversity● ...	<ul style="list-style-type: none">● heat waves● droughts● flood management and extreme rainfall events● storms and high wind● landslides● sea level rise, extreme storms, coastal erosion and saline intrusion● cold spells● freeze-thaw damage● ...	<ul style="list-style-type: none">● degradation of ecosystem services● loss of habitats, fragmentation● loss of species diversity● loss of genetic diversity● ...

Key elements of SEA

The Environmental Report

- Outline of the plan/programme and **relationship with other plans/programmes**
- Environmental characteristics of the area.
- **Environmental protection objectives**, how they were taken into account.
- Mitigation measures (envisaged to prevent, reduce and as fully as possible compensate any significant adverse effects on the environment of implementing the plan or programme).
- **Monitoring measures.**
- **Non-technical summary (important).**

Consultation

Environmental authorities

- in screening
- in scoping
- on the **draft** plan/programme and the environmental report

The public

- on the **draft** plan/programme and the environmental report

Transboundary consultations

- on the **draft** plan/programme and the environmental report

SEA Guidance

Commission's Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment;
Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment (March 2013);
Report from the Commission on the application and effectiveness of the SEA Directive, COM/2009/469;
GRDP Handbook on SEA for Cohesion Policy 2007-2013 (Interreg IIC, GRDP greening regional development programmes).

* * *

THANK YOU FOR YOUR ATTENTION!

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