

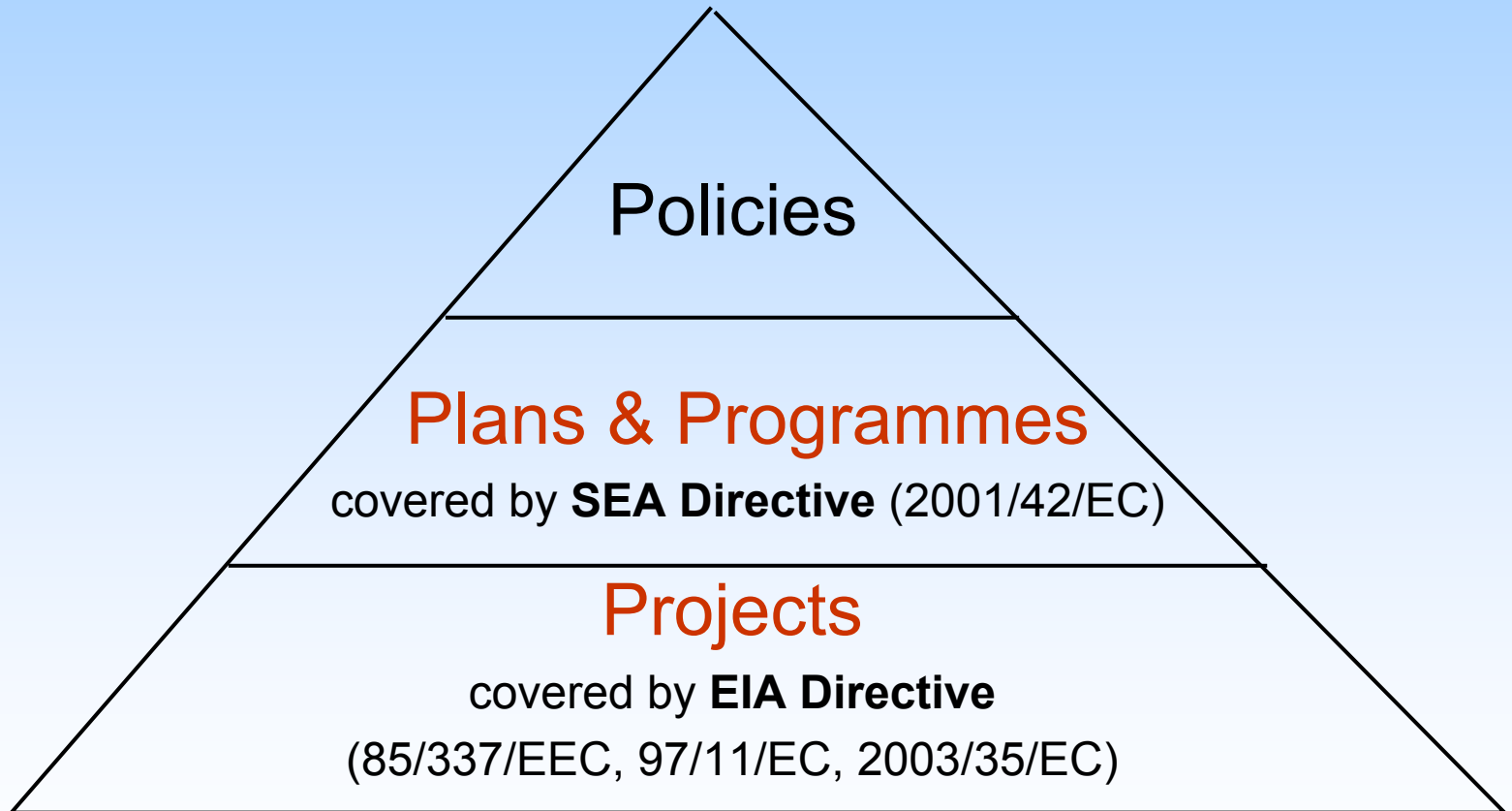


Environmental Impact Assessment (“EIA”) & Strategic Environmental Assessment (“SEA”)

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Environmental Assessment





Environmental Impact Assessment of public and private projects

**EIA Directive 85/337/EEC
as amended by 97/11/EC
and 2003/35/EC**



Relevant Directives

- **Directive 85/337/EEC** of 27 June 1985
- **Directive 97/11/EC** of 3 March 1997
alignment to ESPOO Convention
- **Directive 2003/35/EC** of 26 May 2003
alignment to Aarhus Convention



General objective

What does the EIA Directive apply to?

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

What are these projects subject to?

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

When?

- **before consent** is given



What assessment?

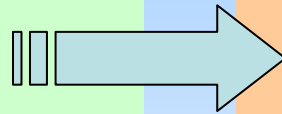
EIA must identify, describe, **assess likely direct** and **indirect** environmental effects of activities on

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

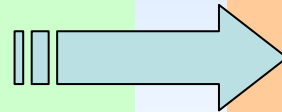


What projects?

- Annex I projects
- Annex II projects



**Mandatory
EIA**



Screening
by Competent authorities
to decide if
EIA needed or not



Some examples of projects

ANNEX I

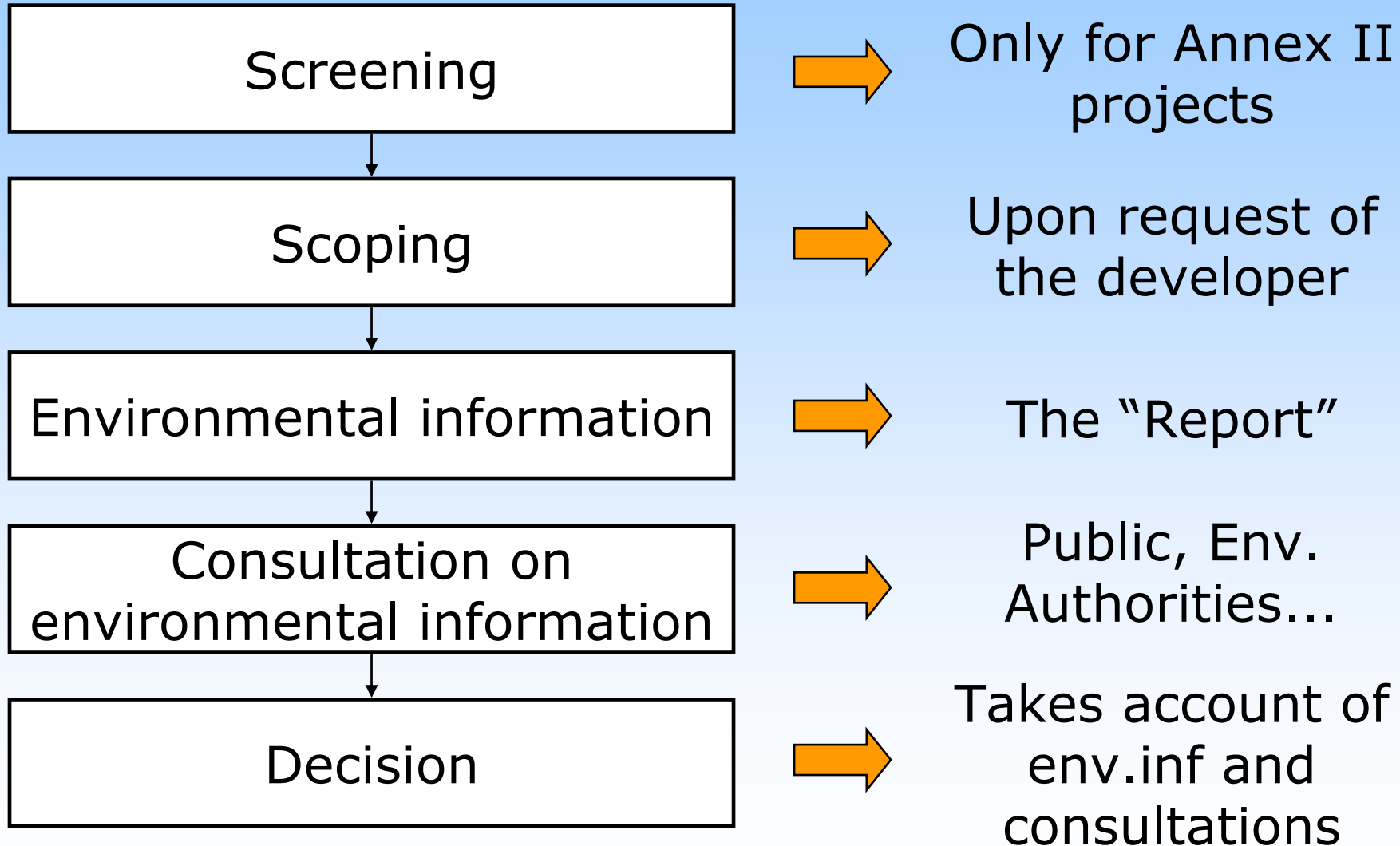
- Long-distance **railway** lines
- **Motorways**, express roads, **roads** of four lanes or more (of at least 10Km)
- **Waste** disposal installations
 - for hazardous waste
 - for non hazardous waste (above 100 tonnes/day)
- **Waste water** treatment plants (above 150000 p.e.)
- **Changes or extensions** 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 (not included in Annex I)
-

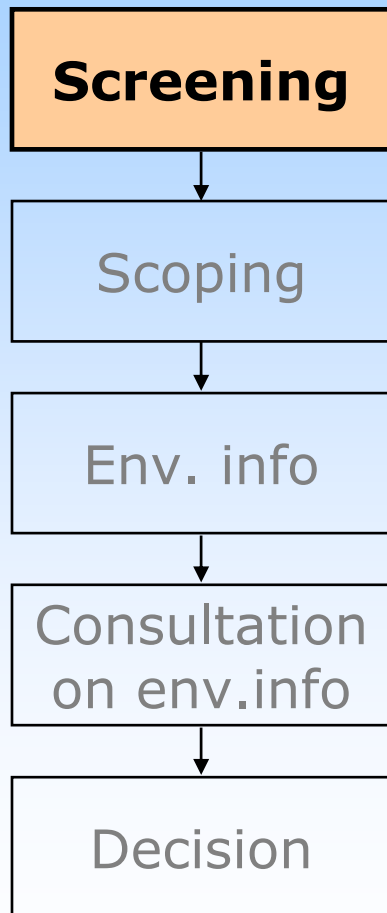


EIA procedure





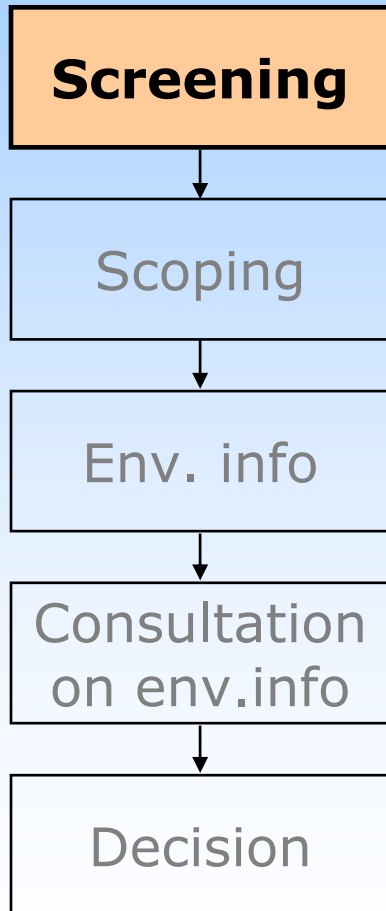
Screening



- Answers the question: ***is EIA required?***
(Annex II projects)
- The guiding principle: ***are significant environmental effects likely?***
If **yes** ⇒ **EIA** needed
If **no** ⇒ **no EIA** needed
- Determination through:
 - case by case examination and / or
 - thresholds or criteria
- **Annex III criteria** must always be taken into account
- Screening determination made **available to the public**



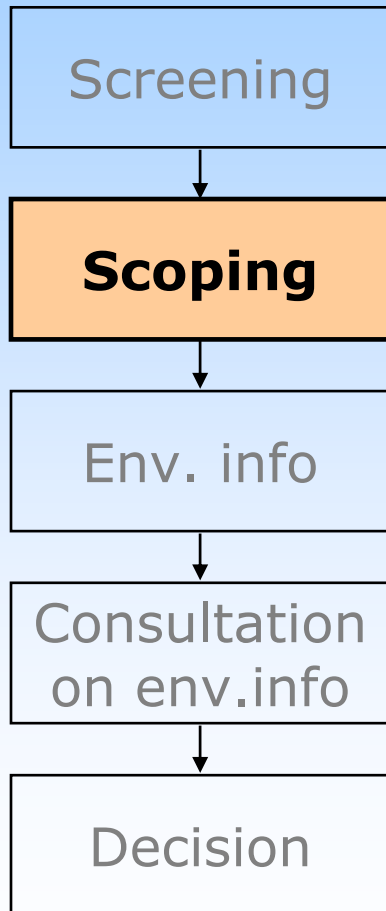
Annex III criteria



- ***Project characteristics***
 - size, **cumulation** with other projects, natural resources use, waste production, pollution, risk of accidents ...
- ***Project location*** - environmental sensitivity of area likely to be affected
 - land use, natural resources, **Natura 2000** sites, **exceeded environmental standards**...
- ***Potential impact***
 - extent, **transboundary nature**, probability, magnitude, duration, frequency, reversibility...



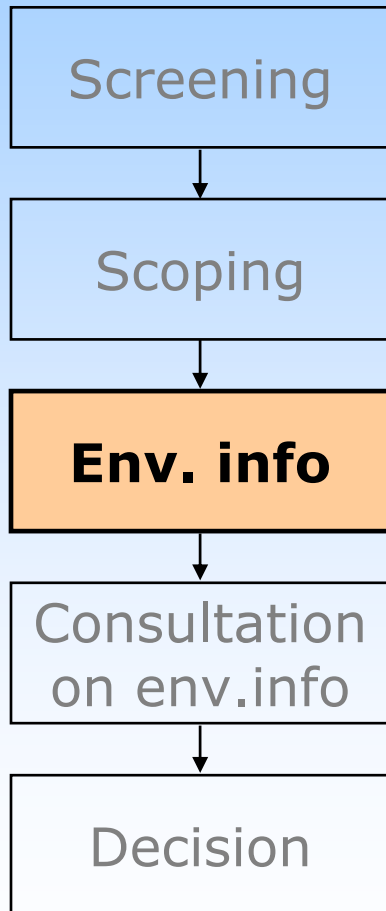
Scoping



- Answers the question “***what should be covered by the environmental information?***”
- Opinion by the competent authority (who may subsequently ask for further information)
- By request of developer
- Before development consent application is submitted
- Early interaction between competent authority, developer, environmental authorities



Environmental information “the report” (Art. 5) (Annex IV)



- Project description
- Use of resources, emissions and residues
- Description of the environment likely to be significantly affected
- **Likely significant environmental effects including: short term, temporary and cumulative effects**
- Forecasting methods & difficulties
- Mitigation measures
- **Main alternatives and reasons for choice taking account of environmental effects**
- **Non-technical summary**



Informing and consulting

1. Environmental authorities (Art. 5,6,9)

- consulted during scoping
- can express opinion on env. information
- informed of final decision

2. Public concerned (Art. 4,6,9)

3. Other Member States (Art. 7,9)



Informing and consulting the public concerned

- **Screening determination** to be made available
- Public can express an opinion :
 - on **environmental information**
 - on the development consent request
- When **final decision** is taken, public must be informed of:
 - its contents and reasons,
 - attached conditions and mitigation measures
 - information about public participation process



Transboundary consultations

- For projects likely to have **significant effects on the environment** of other Member States
- **Can be requested by the MS** likely to be significantly **affected**
- Provision of **information on development consent request and environmental information** (« report »)
- Environmental authorities and public concerned in the affected MS can express opinions
- Reasonable time-frame
- **Information on the final decision**



Main provisions introduced by Directive 2003/35/EC

- Definition of **public** and **public concerned**:
“*public affected, or likely to be affected by, or having an interest in, the decision making procedure*” , including NGOs. Art. 1(2)
- **National defence projects** not automatically excluded from EIA Art. 1(4)
- Strengthened **public consultation** provisions:
early in the decision-making procedure, detailed list of information to be provided, reasonable time-frames Art. 6



Main provisions introduced by Directive 2003/35/EC

- New provisions on public access to a **review procedure** Art. 10(a)
- Information provided to the public on the final decision needs to include **information on the public participation process** Art. 9(1)
- **New Annex I(22) project category:**
changes or extensions of Annex I projects, where the change or extension in itself meets Annex I thresholds, if any ⇒ in Annex I (22)



EIA Guidance

- **EIA / SEA Homepage:**

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

- **Commission's guidance documents and checklists:**

- Screening
- Scoping
- Review
- Indirect and Cumulative Impacts
- Clarification of application of Art. 2(3)

- **ESPOO Convention homepage:**

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



SELECTED ECJ CASE-LAW on EIA

<http://curia.eu.int/en/content/juris/index.htm>

http://europa.eu.int/comm/environment/law/cases_judgements.htm



The Court's approach

- The EIA Directive has “a wide scope and a broad purpose” (Kraaijeveld C-72/95)
- Member States' discretion is limited
- Consistent emphasis on the fundamental purpose of the Directive: projects likely to have significant environmental effects must undergo an EIA
- Exemptions to be interpreted narrowly (WWF & others C-435/97; Linster C-287/98)



Key rulings on screening

- Ireland C-392/96
 - Small-scale projects can have significant effects on the environment
 - Cumulative effects must be taken into account
- Lotto zero C-87/02
 - A “negative” screening decision must contain or be accompanied by the information that makes it possible to check that it was based on adequate screening
- Spain C-332/04
 - National screening systems must take full account of nature, size and location of Annex II projects, with reference to Annex III criteria



Strategic Environmental Assessment

(“SEA” Directive 2001/42/EC)



Objective

(Art. 1)

- High level of protection of the environment
- **Integration of environmental considerations** into the preparation of plans and programmes
- Promotion of **sustainable development**
by
an environmental assessment of certain plans and programmes likely to have significant effects on the environment

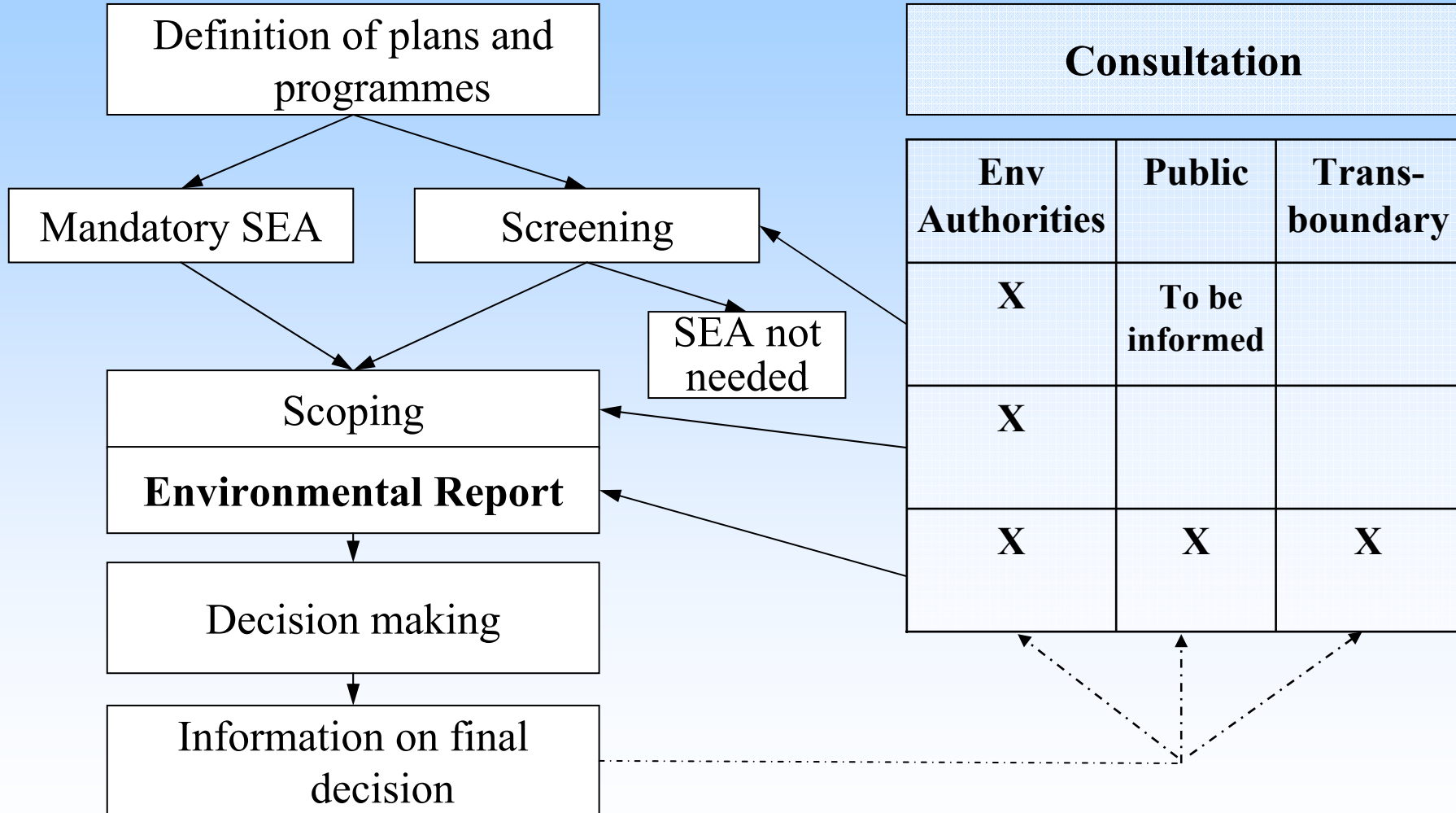


SEA Directive (Art. 4) and the planning process

- The environmental assessment must be carried out:
 - **during preparation** of the plan or programme
 - **before adoption** of the plan or programme
- SEA can be incorporated into existing (planning) procedures, or in new ones



The SEA process





What is a

Art. 2

“plan or programme”?

To be covered by the SEA Directive, a plan or a programme must:

- be prepared and/or adopted by an **authority** at national, regional or local level **AND**
- be **required** by legislative, regulatory or administrative provisions.

The definition includes:

- modifications of plans and programmes
- those **co-financed by the EC**



When is SEA mandatory?

Art. 3

For plans and programmes:

- a) 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

OR

- b) that require an assessment under Article 6 or 7 of the Habitats Directive



When is “screening” required?

Art. 3

Who “screens”, and for what purpose?

- Member States, to decide if SEA is needed

Which plans and programmes (p/ps) to screen ?

- p/ps setting the framework for future “non-EIA projects” and “non-sector” p/ps
- certain p/ps at local level and minor modifications to p/ps

How to screen?

- case by case, by specifying types of p/ps, or by a combination of the two approaches
- always using Annex II criteria
(criteria include characteristics of plans, of their effects, and of affected areas)



1. Characteristics of plans and programmes

- Influence on other plans/programmes
- Relevance for sustainable development
- Relevance for implementation of Community law ...

2. Characteristics of effects and areas likely to be affected

- Probability, duration, frequency, reversibility, magnitude, spatial extent, cumulative, transboundary nature of effects ...
- Value and vulnerability (e.g. exceeded environmental limit values), National, Community or international protection status of areas ...



Exemptions

- National defence, civil emergency, financial or budget plans/programmes
- Plans and programmes co-financed under the current programming periods (2000-2006/7) for Structural Funds Regulations (1260/1999) and European Agricultural Guidance and Guarantee Fund (1257/1999)



Environmental Report (1)

Must identify, describe and evaluate:

- the likely significant **environmental effects of implementing the plan / programme**, including
 - effects on biodiversity, soil, water, air, climatic factors
 - effects on population, human health, architectural and archaeological heritage, landscape
- reasonable **alternatives** taking into account the objectives and the geographical scope of the plan / programme
 - ! alternatives must include the « zero » alternative



Environmental Report (2)

- Outline of the plan/programme and **relationship with other p/ps**
- Current state of the environment and **evolution without the plan/programme**
- Environmental characteristics of the area
- **Environmental protection objectives**, how they were taken into account
- Mitigation measures
- **Monitoring measures**
- Non-technical summary



Monitoring

- Member States have to monitor the significant environmental effects of the implementation of the plan/programme in order to:
 - identify at an early stage unforeseen adverse effects
 - be able to undertake remedial action
- Existing monitoring arrangements may be used
- Monitoring measures must be covered in the SEA Report



Consultations

- Environmental authorities
 - in screening
 - in scoping
 - on the draft plan/programme and the env. report
- The public
 - on the draft plan/programme and the env. report
- Transboundary consultations
 - on the draft plan/programme and the env. report



Guidance on SEA

"Implementation of Directive 2001/42/EC on the assessment of certain plans and programmes on the environment"

European Commission, 2003

(<http://europa.eu.int/comm/environment/eia/sea-support.htm>)



**Thank you
for your attention!**