



ENVIRONMENTAL ISSUES
and
TEN-T PROJECTS
***Key elements for a sustainable
network development***

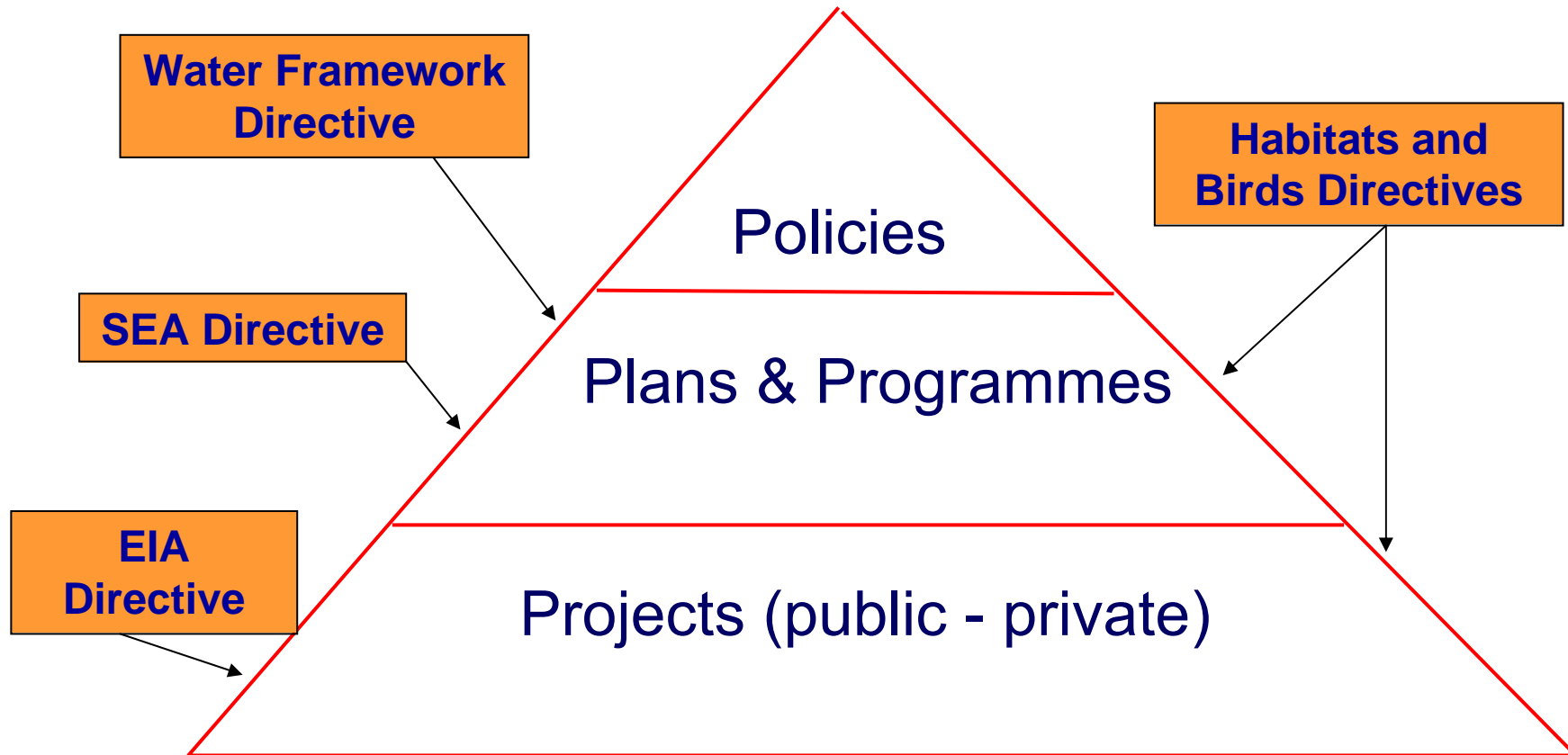
TEN-T Project Management Workshop 2010

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Environmental Assessment





Environmental requirements for TEN-T

5 EU environmental directives relevant for the Trans European Networks (TENs)

- ❑ **Environmental Impact Assessment of projects (EIA Directive)**
 - ❑ **Strategic Environmental Assessment of plans and programmes (SEA Directive)**
 - ❑ **Conservation of natural habitats and of wild fauna and flora (Habitats Directive)**
 - ❑ **Conservation of wild birds (Birds Directive)**
 - ❑ **Water Framework Directive**
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EIA/SEA Directives

***Council Directive 85/337/EEC as amended
Council Directive 2001/42/EC***

- Intended to improve decision-making
 - Requires the description and assessment of likely significant environmental effects of specified projects and certain plans/programmes respectively (including alternatives, consultation of the public)
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Similar Objectives of the SEA and EIA Directives

SEA Directive

- To provide for a **high level of protection of the environment**.
- To contribute to the **integration of environmental considerations** into the preparation of plans and programmes with a view to promoting sustainable development.

EIA Directive

- To protect the **environment and the quality of life**.
- Ensure **approximation of national laws** with regard to the assessment of the environmental effects of public and private projects.
- Significant body of ECJ Case law

Guiding principle for both EIA/SEA: plans, programmes and projects which are **likely to have significant effects** on the environment are subject to an assessment.



EIA - General

- ❑ Entry into application 03.07.88
 - ❑ Three amendments (1997, 2003, 2009)
 - ❑ ECJ Case Law established principle of “legal certainty” – first administrative act determines whether the EIA Directive applies, not the date of the development consent
 - ❑ External Relations Council 24.09.98 – co-financed investments in Candidate Countries must be in line with *acquis*
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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 nature, size and location)**

What are these projects subject to?

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

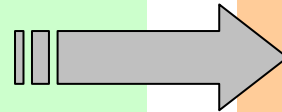
When?

- **before development consent is given**
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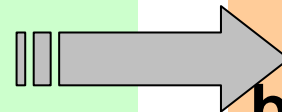
EIA – what projects?

- **Annex I projects**



**Mandatory
EIA**

- **Annex II projects**



Screening
by Competent authorities
to decide if
EIA needed or not





Some examples of EIA projects

ANNEX I

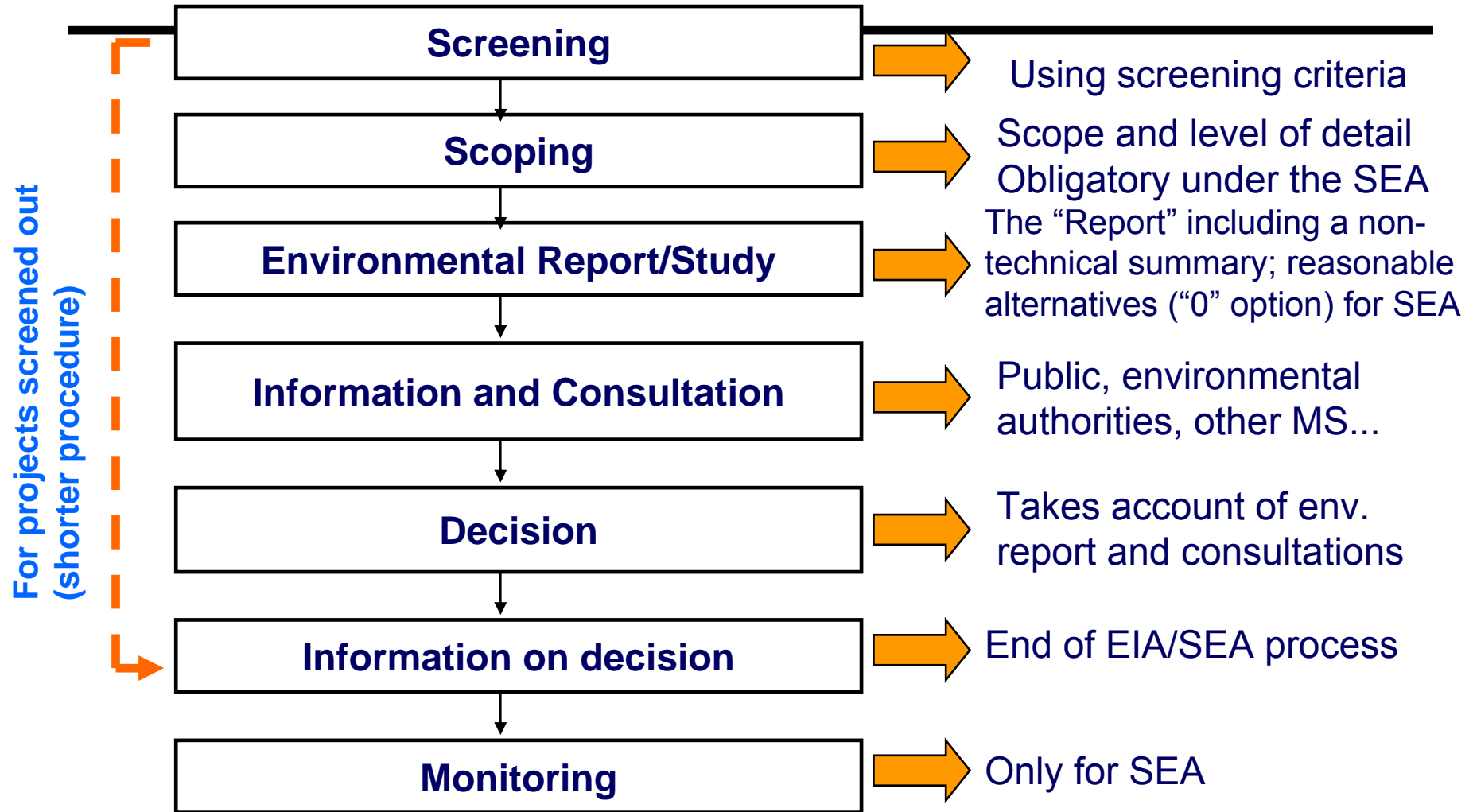
- Long-distance railway lines
- Airports with a basic runway length \geq 2100 m
- Motorways, express roads, roads of four lanes or more (of at least 10 Km)
- Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes
- Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

ANNEX II

- Construction of railways, roads, and intermodal transshipment facilities, and of intermodal terminals not included in Annex I
 - Construction of airfields (projects not included in Annex I);
 - Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
 - Inland waterways (not included in Annex I), flood-relief works and canalization
 - Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport
 - Changes or extensions of Annex I and II projects that may have adverse environmental effects
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The Environmental Assessment Procedures





European Court of Justice – Case law

- ❑ The interpretation of Directives is not static.
 - ❑ Infringements procedure initiated by the Commission (Art. 226 or 228 EC Treaty) or references by national courts (Art. 234 EC Treaty).
 - ❑ Considerable body of ECJ case law, but need to apply judgments carefully.
 - ❑ ECJ rulings mainly concern the EIA but are also relevant for the SEA.
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Transport projects

- ❑ “Salami slicing” (splitting projects into subsections so that they fall below screening thresholds).
 - ❑ Project splitting: dividing projects up to reduce alternatives.
 - ❑ Modifications of existing projects (roads, railways, ports...).
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Spain – C-227/01 (doubling of tracks)

- ❑ Annex I.7 must be understood to include the doubling of an existing track – this is not a mere modification under Annex II.
 - ❑ That the case concerned a short section of a long distance route is not relevant.
 - ❑ The new track would obviously create significant new nuisances, so no need to prove the existence of concrete negative effects – likelihood is sufficient.
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Abraham – C-2/07 (Liège airport)

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- An agreement between public authorities and a private undertaking is not itself a “*project*”. The national authorities must determine whether such an agreement constitutes a development consent. Two issues should be considered in that context:
 - whether that consent forms part of a procedure carried out in several stages involving a principal decision and implementing decisions, and
 - whether account is to be taken of the cumulative effects of several projects whose impact on the environment must be assessed globally; projects may not be split in order to avoid EIA
 - Modifications to the infrastructure of an airport are a modification of the airport itself and are subject to a screening.
 - Projected increases in airport activity must be examined among the effects of modifications to its infrastructure.
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*Umweltanwalt von Kärnten – C-205/08 –
Preliminary Ruling (power line)*

- ❑ Power line mainly situated in the territory of a neighbouring Member State – length of national section below the threshold
 - ❑ The EIA Directive adopts an overall assessment of the effects of projects on the environment irrespective of whether the project might be transboundary in nature. Therefore projects which extend to the territory of a number of Member States cannot be exempted from examining the transboundary impacts, taking into account cumulative effects.
 - ❑ When deciding whether a project must be the subject of an EIA or when assessing the impacts of a project, the Member States should take into consideration the parts of the project which are located in another Member State.
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EIA - situation for EU12

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- ❑ Old EIAs [“Appropriate Habitats Assessments”, or “Article 4.7 Water Framework Directive Assessments”]
 - ❑ If EIA done according to old national EIA law (not compliant with EIA Directive), need to do it again
 - ❑ If EIA done according to new national EIA law (compliant to EIA Directive), respect prescriptions of External Relations Council 24.09.98
 - ❑ If EIA done after 01.05.04 or 01.01.07 (BG and RO) then EIA Directive applies
 - ❑ If problems with EIA Directive transposition (conformity problems), the EIA Directive provisions should apply directly
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Cross Border Issues under EIA and SEA

- ❑ To ensure environmental procedures are compliant in cross-border sections
 - ❑ Article 7 of the EIA Directive outlines the steps to be taken for cross-border projects
 - ❑ The 1991 ESPOO Convention on EIA in a Transboundary Context sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning
 - ❑ The Convention is important in the case of projects in which Parties are not EU Member States
 - ❑ The 2003 ESPOO Protocol on Strategic Environmental Assessment requires its Parties to evaluate the environmental consequences of their official draft plans and programmes (the European Community has signed and ratified the Protocol)
 - ❑ BEACON a source book which gives useful advice on carrying out SEAs of transport plans and programmes
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Nature Directives - I

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- Article 4 of the "Birds" Directive (79/409/EEC) requires Member States to designate "all their most suitable territories as Special Protection Areas (SPAs)"
 - Article 3 of the "Habitats" Directive (92/43/EEC) likewise aims at the establishment and conservation of a coherent network of Special Areas of Conservation (SACs).
 - All SPAs and SACs form part of a European network that is called 'Natura 2000'.
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Nature Directives - II

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- Article 6 of the Habitats Directive provides for the protection and conservation of N2000 sites. It foresees proactive measures (positive conservation action that may include management plans), preventative measures (requiring steps to avoid loss of value of sites) and procedural safeguards (to deal with plans and projects that may affect the overall integrity of the sites).
 - Article 6(3) and 6(4) of the Habitats Directive, which applies to all Natura 2000 sites, provides for the appropriate assessment of development proposals which are likely to have a significant impact on designated sites
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Water Framework Directive

- ❑ Article 4.7 describes the conditions under which "new activities", such as infrastructures or works (e.g. roads, canals, deepening of navigation channels) downgrading the status of water bodies can be accepted.
 - ❑ Article 4.7 requires mitigation measures (to minimise adverse effects)
 - ❑ If action causes deterioration to water status, steps taken to mitigate adverse effects and existence of other means to achieve objectives of the project are to be explained
 - ❑ An interpretation paper of the provisions of this Article is available (see last slide)
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*Further analysis of the Environmental Impact
Additional environmental integration measures
required in the Standard Application Forms*

- Does the project envisage, apart from EIA, any additional environmental integration measures (e.g. environmental audit, environmental management, specific environmental monitoring)?
 - Does the project contribute to the objective of environmental sustainability (European climate change policy, halting loss of biodiversity, other ...)?
 - Does it respect the "polluter pays" principle?
 - Have the environmental authorities likely to be concerned by the project been consulted by reason of their specific responsibilities?
 - What is the cost of measures taken for correcting negative environmental impacts?
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EU Sustainable Development Strategy I

(2001 – renewed 2006, to be reviewed in 2010)

Sustainable Transport – Promoted actions

- ❑ Tarification for all modes through satellites (new technology)
 - ❑ Reduce negative impacts of air and maritime transport
 - ❑ Increase road safety (improve infrastructures, ...)
 - ❑ Set up sustainable urban transport plans
 - ❑ Long term coherent strategy for fuel
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*EU Sustainable Development Strategy II
(2001 – renewed 2006, to be reviewed in 2010)*

Sustainable Transport – Promoted actions

- ❑ Improve all modes' environmental performance
 - ❑ Gear towards rail, navigation and public transport
 - ❑ Reduce transport intensity (production & logistics)
 - ❑ Ensure a better connection for all modes
 - ❑ Improve energy efficiency
 - ❑ Find solutions to replace road transport
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Key conclusions

- Environmental Directives must be complied with
 - The Directives are not an obstacle but an opportunity
 - Transport network development must be embedded into overall sustainable development perspective
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References

EIA Guidance: <http://ec.europa.eu/environment/eia/eia-support.htm>

SEA Guidance: <http://ec.europa.eu/environment/eia/sea-support.htm>

Espoo Convention: <http://www.unece.org/env/eia/eia.htm>

Nature: http://ec.europa.eu/environment/nature/natura2000/index_en.htm

WFD Article 4.7 guidance:

http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/thematic_documents/environmental_objectives/article_circapdf/EN_1.0&a=d

Guide to environmental legislation and TENs:

http://eur-lex.europa.eu/Result.do?T1=V7&T2=2007&T3=374&RechType=RECH_naturel&Submit=Search



Thank you

