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# ***ENVIRONMENTAL ISSUES and TEN-T PROJECTS***

***TEN-T Info Days 2010***

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## ***Environmental requirements for TEN-T***

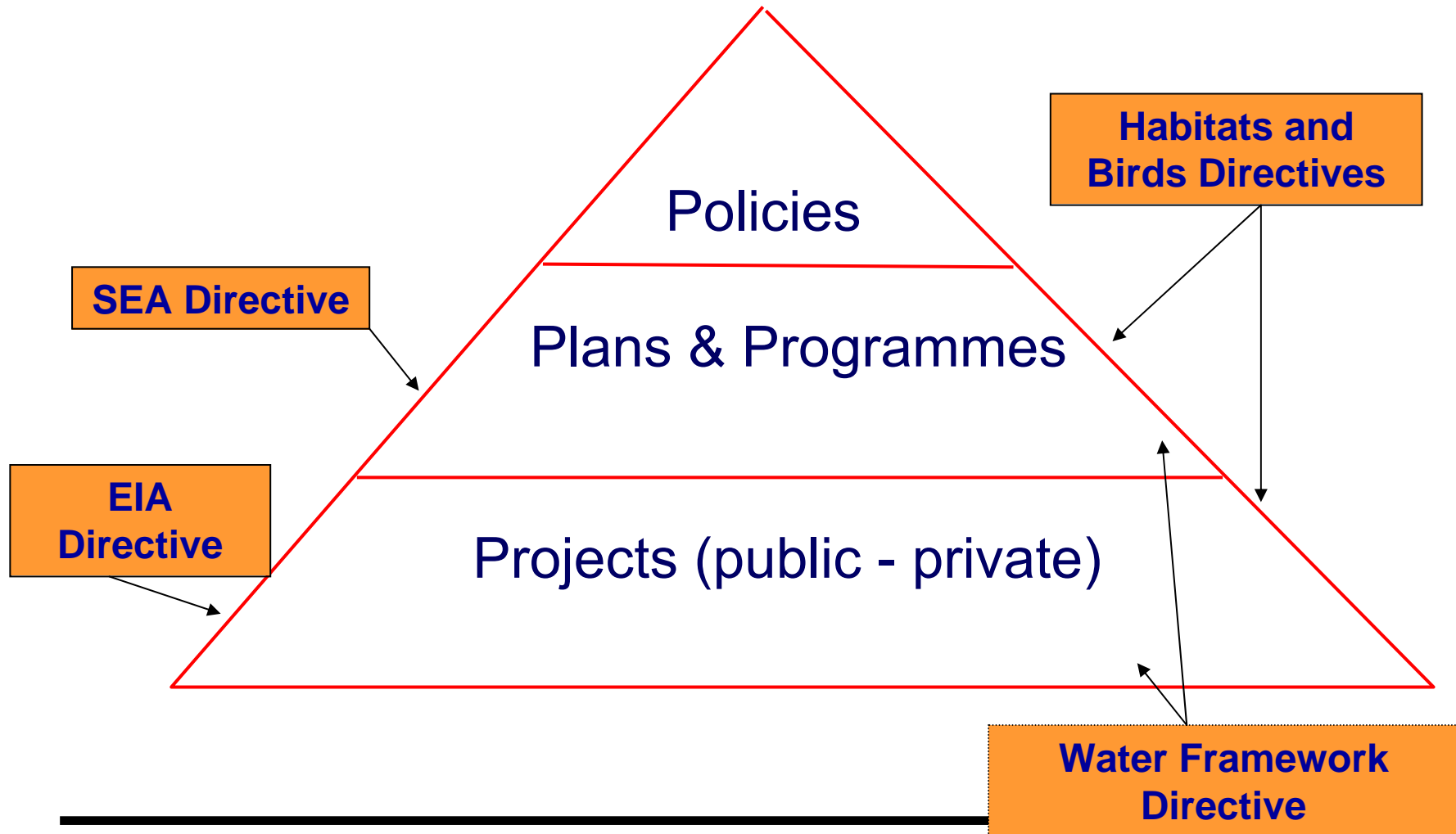
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### ***5 EU environmental directives relevant for the Trans European Networks (TENs)***

- ❑ Directive 85/337/EC on the assessment of the effects of certain public and private projects on the environment, as amended (EIA Directive)
  - ❑ Directive 2001/42/EC on the assessment of the effects of certain plan and programmes on the environment (SEA Directive)
  - ❑ Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)
  - ❑ Directive 79/409/EEC on the conservation of wild birds (Birds Directive)
  - ❑ Directive 2000/60/EC (Water Framework Directive)
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# *Environmental Assessment*





## *Application form (TEN-T Proposals)*

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- Part B1 concerns compliance with EU Policy on environmental protection:
    - ✓ Sustainability (European climate change policy, halting loss of biodiversity, other ...) + „polluter pays” principle
    - ✓ Consultation of environmental authorities
    - ✓ EIA (application of EIA Directive, development consent)
    - ✓ Application of SEA Directive
    - ✓ Impact of the action on Natura 2000 sites
    - ✓ Additional environmental integration measures (e.g. specific environmental monitoring)
    - ✓ Water Framework Directive
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## *EIA – general objective*

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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 - Important definitions***

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### **Project** means:

- ❑ the execution of construction works or of other installations or schemes;
- ❑ other interventions in the general surroundings and landscape, including those involving the extraction of mineral resources

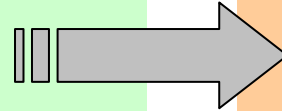
### **Development consent** means:

- ❑ the decision of the competent authority or authorities which entitles the developer to proceed with the project
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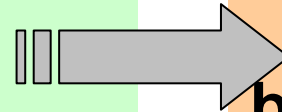
## *EIA what projects?*

- **Annex I projects**



**Mandatory  
EIA**

- **Annex II projects**



**Screening**  
by Competent authorities  
to decide if  
EIA needed or not



## ***Some examples of EIA projects relevant for TEN-T***

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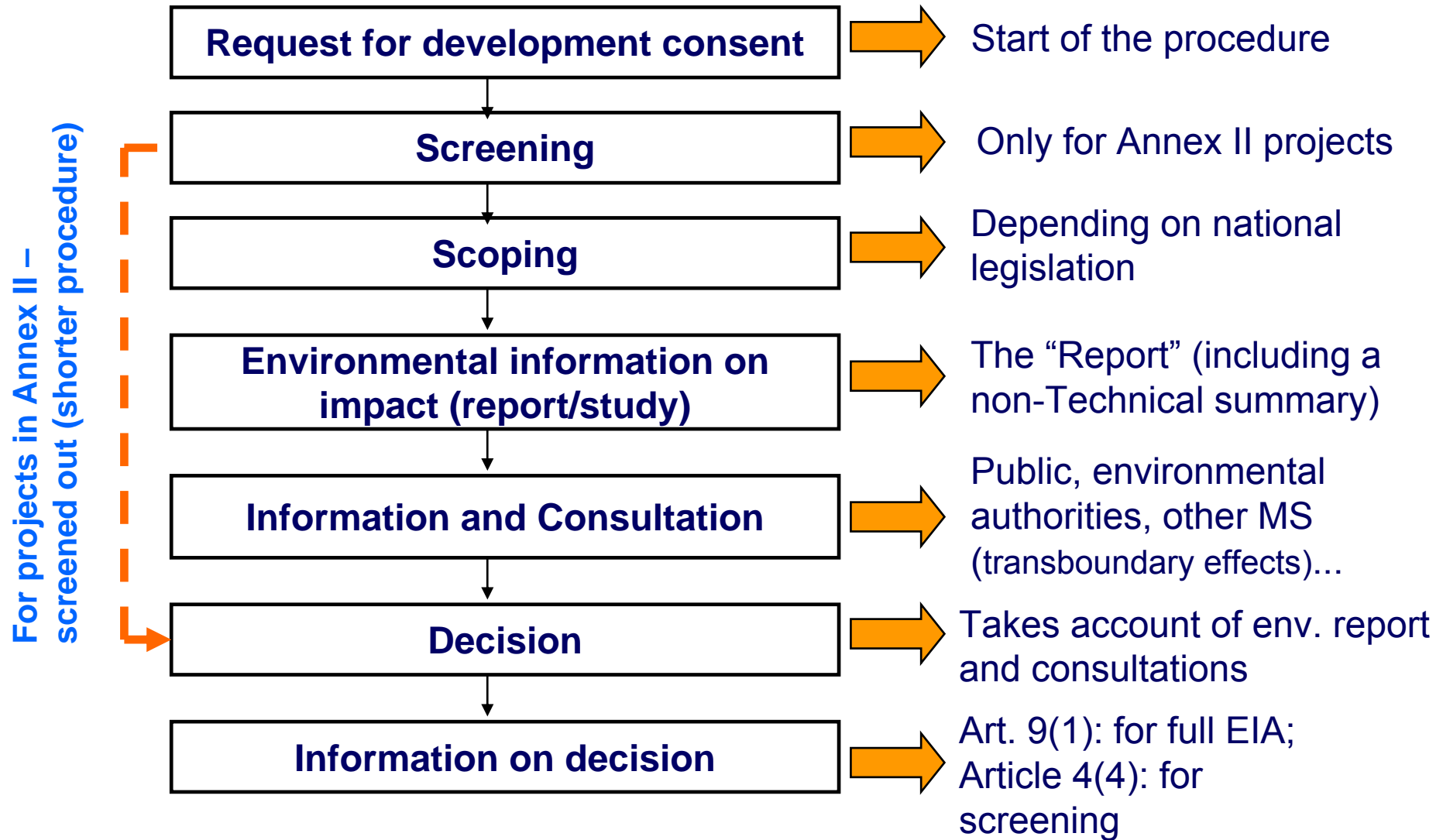
### **ANNEX I**

- 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.
- Any change or extension of projects listed in Annex where such change or extension in itself meets the thresholds, if any, set out in this Annex

### **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
  - Any change or extension of Annex I and II projects already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment
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# EIA Procedure





## ***SEA Directive – general objectives***

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- ❑ To provide for a high level of **protection of the environment** and
- ❑ To contribute to the **integration of environmental considerations into the preparation of plans and programmes** with a view to promoting sustainable development
- ❑ How? By ensuring that an environmental assessment is carried out for certain plans & programmes which are **likely to have significant environmental effects**.



## ***SEA - Important definitions***

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### **Plans and programmes means:**

- p&p, including those financed by the EC, as well as any modifications to them:
- ✓ which are subject to preparation and/or adoption by an authority at national, regional, local level or which are prepared by an authority for adoption , through a legislative procedure by Parliament or Government and
- ✓ which are required by legislative, regulatory or administrative provisions

### **Environmental assessment means:**

- preparation of environmental report, the carrying out consultations, the taking into account of the environmental report and the results of the consultations, the provision of information on the decision
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## SEA - Scope

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- An obligatory assessment has to be carried out for p&p:
    - ✓ which are prepared for agriculture, forestry, fisheries, energy, industry, **transport**, waste management, water management, telecommunications, tourism, **town and country planning or land use**, and **which set the framework for future development consent of projects listed in Annex I and II to EIA Directive**
    - ✓ which, in view of the likely effects on sites, have been determined to require an assessment pursuant to Habitats Directive
  - For other p&p (art. 3 (3) and 3(4)) MS have to determine whether an assessment is required
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## ***Nature Directives (Birds and Habitats)***

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- ❑ Directive 79/409/EEC on the conservation of wild birds ("Birds" Directive)
  - **Special Protection Areas (SPAs)**
  
- ❑ Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ("Habitats" Directive)
  - **Special Areas of Conservation (SACs)**
  
- ❑ SPAs and SACs constitute the **European network of Natura 2000**



## *Habitats Directive*

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- 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 Natura 2000 sites**



***Dealing with plans and projects  
(Art. 6.3/4 Habitats Directive, simplified)***

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**Possible negative impact on Natura 2000 site?** → yes

**Nature impact assessment** → If negative

**Alternatives?** → If no

**Overriding public interest?** → If yes

**Compensation measures - Commission opinion  
(if priority interest)**



## *Water Framework Directive*

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- ❑ 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 references slide)
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## ***River Information Systems (RIS) and environmental legislation***

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- RIS proposals only need to fill in the section "Compliance with Union policy on environmental protection" in the application form if the proposed action includes physical works (i.e. installation of antennas) in a Natura 2000 site.
  - Section 1.6 "Actions with a potential impact on water - Water Framework Directive 2000/60/EC" needs to be completed only if these physical works are located in the vicinity of a river.
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## *European Court of Justice – Case law*

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- ❑ The interpretation of the Directives is not static
  - ❑ Exceptions to be integrated narrowly
  - ❑ Infringements procedure initiated by the Commission (Art. 258 or 260 TFEU) or references by national courts (Art. 267 TFEU).
  - ❑ 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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## ***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 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
  - ❑ External Relations Council 24.09.98 – new investments in the candidate countries (Croatia, Fyrom, Turkey) should be in the line with the environmental *aquis*. This will apply in particular to co-financed investments
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## ***Cross Border Issues under EIA and SEA***

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- ❑ 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); **the Protocol will enter into force on 11 July 2010**
  - ❑ BEACON a source book which gives useful advice on carrying out SEAs of transport plans and programmes
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## ***Problematic issues – “salami slicing” and “project splitting”***

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- ❑ “Salami slicing” - dividing projects into sub-sections so that they fall below screening thresholds
  - ❑ “Project splitting” – carrying out separate EIA procedures, normally as different developers involved
  - ❑ Projects may not be divided, in order to avoid assessment, reduce the apparent seriousness of the effects, or limit the available alternatives (C-205/08, points 72-78 )
  - ❑ The environmental effects of proposals must be assessed as a whole, and must consider cumulative effects
  - ❑ Even if the construction of a project is to be split into sections for technical or logistical reasons, development consent must be considered in the light of all the effects of the whole project
  - ❑ SEA may be particularly useful here to assess projects upstream; alternatives and cumulative effects



## *EU Sustainable Development Strategy I* *(2001 – renewed 2006, to be reviewed in 2010)*

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### ***Sustainable Transport – Promoted actions***

- ❑ Tarification for all modes through satellites (new technology)
  - ❑ Reduce negative impacts of air and maritime transports
  - ❑ 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)*

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***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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## References

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

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Thank you

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