

## **1. Introduction**

### **1.1 Terms of reference**

This review of the implementation of Directive 85/337/EEC covers the time-period from 1990 to the end of 1996. It is mainly based on the answers to questionnaires sent out by DG XI to the Environmental Ministries of the Member States. This review is a concise updated review of the implementation of the Directive, undertaken on the Commission's own initiative. While covering the new Member States, i.e. Austria, Finland and Sweden, it does not intend to be as comprehensive as the first review, which was put forward in the EIA Directive itself.

The first review of the implementation of Directive 85/337/EEC covered the period up to the beginning of July 1991 (with some additional information from July 1991 to March 1992). The report was published in 1993.<sup>1</sup> It had been prepared with the help of the EIA Centre at the University of Manchester. The EIA Centre in turn employed one or more consultants in each Member State with specialist knowledge of the application of EIA in their country for the preparation of the Member State Annex. Further consultations were held with the Ministries of Environment and with representatives of other major organisations involved in the EIA process in the Member States. By using a questionnaire and discussing the results with the consultants and the agencies it had been possible to present the report in uniform structure and to clarify some uncertainties within the first draft Member States reports.

In order to update the 1993 report and to include information on the three new Member States the European Commission (DG XI) undertook a questionnaire survey addressed to the Environmental Ministries of the Member States in 1995. The questionnaire used in 1995 was similar in structure to the 1993 questionnaire. The new Member States received a questionnaire identical to the 1993 questionnaire and some additional questions (see appendices). Responses from the Member States were received from 6/95 to 11/96. Therefore, changes were likely to have occurred in the meantime. A draft report was prepared in December 1996 and the Member States were given the opportunity to review and update the draft report prior to publication. The comments and suggestions made have been included

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<sup>1</sup> Commission of the European Communities: Report from the Commission of the Implementation of Directive 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment and Annexes for the Member States. COM (93) 28 final - Vol. 12. Brussels, 2 April 1993.

into this report as far as possible. However, limitations to the present report, especially in comparison to the 1993 report, should be kept in mind. This report is primarily based on the responses to the questionnaire. The answers received varied in time and quality and it was not the task of the author to contact national environmental authorities to cross-check answers.

In some cases individual Member States and their answers are mentioned within the text. This is only for the purpose of highlighting some of the points made and of providing a better overview. However, it should not lead to the impression that only those Member States mentioned answered the questions or that their EIA systems are superior to the ones of the other Member States.

## **1.2 Structure of the report**

The information given in the questionnaires have been arranged in tables. In most cases, the tables correspondent to individual questions. Since this review is, to some extent, an update of the 1993 review, it has been tried to combine the 1993 and 1996 results wherever this was possible. Therefore, the questions from the 1993 report have been added to footnotes in various tables and references have been included to text and tables of the 1993 report. Consequently, it will be possible to go back to the 1993 report and draw some conclusions in addition to the conclusions drawn in this report.

Some questions have been supplemented by references to research studies on related topics commissioned or supported by DG XI.

**Box 1: Research studies commissioned by DG XI****Review checklist**

A checklist was developed as a method for reviewing the adequacy of the environmental information submitted by developers during the EIA process.

**Screening guide**

A screening guide was developed to provide non-mandatory guidance on the screening stage of the EIA process. It intends to assist developers and competent authorities in deciding whether a particular project of Annex II of the EIA Directive should be subject to EIA or not.

**Scoping guide**

A scoping guide was developed to provide non-mandatory guidance on the scoping stage of the EIA process. Its purpose is to assist developers and competent authorities when determining the scope of the relevant information to be submitted as part of the EIA process.

**EIA methodology for hazardous waste disposal installations**

The study identifies the common approaches and main differences in parameters, prediction methods and terminology used in the Member States when carrying out EIAs of installations for the disposal of toxic and dangerous waste (Annex I.9 of the EIA Directive), paying special attention to the assessment of transboundary impacts according to the Espoo Convention.

**Evaluation of the performance of the EIA process**

The Commission arranged for this study to be carried out in order to obtain assessments, more updated and reliable than those available, of the influence of the Directive on the improvements of the EIA process. It focused on such issues as the quality of the Environmental Impact Statements, the effectiveness of consultative arrangements and the integration of EIA and project authorisation procedures.

**Costs and benefits associated with the implementation of the EIA process**

This study was carried out in order to provide estimates, more reliable and updated than those available, of the range of both financial and time costs and benefits associated with the implementation of Directive 85/337/EEC, taking also into consideration the modifications proposed to the Directive and the application of SEA requirements.

**SEA - Existing Methodology**

The report describes the state of progress of SEA methodologies.

**SEA - Legislation and procedures in the European Community**

The study gives an overview of the current status of SEA legislation and procedures in the Member States. It also presents the results from three case studies in selected Member States showing how SEA principles could be transposed into existing decision-making procedures at a strategic level.

**SEA Case-Studies Series**

A number of case studies on SEA were carried out which, in conjunction with those already prepared, are intended to provide a useful source of practical experience with SEA in areas such as land-use planning, waste management, transport etc. The aim is to assist all those involved in the development of SEA practice in the Member States, both when carrying out SEAs under existing or future arrangements and when preparing SEA guidance material and training courses.

**SEA Trial Run in Erlangen**

An SEA was carried out for the land use plan of the city of Erlangen (Germany). The results of the trial run enable an identification of what environmental information is best suited to facilitate decision making at this level. Furthermore, a manual for local authorities on the use of SEA in land use planning was supplied.

**SEA Trial Run in Denmark**

The Danish Ministry of Environment undertook a study on policy SEA in order to evaluate the experience gained in the field of environmental assessment of bills and to test SEA for a bill in preparation.

1) Based on an article by Feldmann, L.; Papoulias, F.: Aktivitäten der Europäischen Kommission für die UVP. In: UVP-report 1/97. pp. 10.

Including the results of these studies, makes this report more comprehensive and provides complementary information to the answers of the Member States. It is acknowledged when the results of these studies have been quoted because they are within the responsibility of the individual consultants or authors and are not answers given by individual Member States themselves.

Additionally further sources of information (e.g. the EIA newsletter, published by the EIA Centre at the University of Manchester, and the library of the German EIA Centre (Hamm)) have been reviewed to supplement some of the questionnaire answers.

The responses to the questions differed in length and focus. In some instances the questions have even been slightly altered by the Member States. It has been agreed that the report would be compiled on the basis of the responses to the questionnaires provided by the Member States. The answers were taken as fact, there were no further enquiries e.g. from authorities, associations or EIA Centres. The answers were compiled in the tables and, for this purpose, were revised and shortened to some degree. At the same time, it was tried to keep as much to the original phrasing as possible. This also applies for the use of technical and legal terms (e.g. Decree, Order) since the author was not in the position to decide whether differences in terms are due to different translations or due to differences in the legal systems. The review is organised in four sections corresponding to the structure of the questionnaire:

- The extent of the formal compliance;
- the extent of the practical compliance;
- specific questions concerning the effectiveness of the implementation;
- supplementary questions relating to specific provisions.

Based on the experience gained from compiling the information for this report and participation in several EIA and SEA research projects the author would like to make some suggestions for future review and research projects. These are presented in a separate chapter.

The reports from the new Member States are much more comprehensive than the questionnaires sent to the old Member States<sup>2</sup> and are comparable to the annexes of the 1993 report. Therefore, they are added in full length as an annex to this report. For getting a comprehensive overview about the development of EIA within the Union, one should consult the 1993 report and this review together.

As in the 1993 report, the term “Environmental Impact Assessment” (EIA) is used for the environmental assessment process as a whole. “Environmental Impact Statement” (EIS) is used to describe the environmental assessment information that have to be supplied by the developer. The actual legal terminology used in the different Member States may be different.

### **1.3 Main recommendations**

The main recommendations from the Member States to facilitate a more satisfactory formal and practical compliance with the EIA Directive are the following:

- clearer definitions and more consistent text of the Directive,
- reduction of the number of projects subject to an EIA,
- “mini-EIA” for small scale projects,
- modification of the public participation procedure,
- harmonisation of standards and guidelines,
- introduction of screening,
- transformation of the results of research projects commissioned by Commission into practical training projects and better exchange of information on those research studies.

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<sup>2</sup> To distinguish between the old and the new Member States the questionnaire used the term “former” Member States. One of the Member States objected to this term, because they considered themselves still a member of the Union. For this reason the term “old” Member States is used.



## **2. Implementation of the EIA Directive**

### **2.1 Formal compliance**

#### **2.1.1 Principal acts of transposition**

It was already pointed out in the 1993 report that the broad scope of the EIA Directive made it possible to approve new laws or regulations or to amend existing legal instruments. The responsibility for the formal implementation of the Directive often rested not only with the national Governments but also with regional or local authorities. Therefore, the process of putting the formal implementation into place has been difficult and time-consuming. Formal compliance had not been completely achieved six years after the Directive had been approved at the time the 1993 report was completed. According to the answers of the Member States, the legal instruments now seem to be mostly in place (Table 1). Judging from the answers to the question about modifications to legal instruments since 1990 (Table 5), there have been major changes and improvements between the first reporting period (1993 report) and today. Additionally, three new Member States have joined the EU and had to adapt and pass their legislation in order to comply with the EIA Directive.

The 1995 report on monitoring the application of Community law points out that some Member States implemented the Directive by combining different types of legal instruments without specifying the relationship between them and the various obligations imposed by the Directive. In such cases, the Commission's scrutiny of national implementing measures is particularly difficult as most Member States do not supply concordance tables, indicating the provisions enacted to transpose each of the obligations imposed by different Directives.<sup>3</sup>

The informal IMPEL (Implementation and Enforcement of EU Environmental Law) network should be helpful to gain a deeper insight into the application of Community Environmental Law. Until now, this group has been particularly involved with the topics of inspection and monitoring.

Some Member States pointed out, that in their national legislation they went above that what was required by the Directive. Such information has not been included in the table, because it was not explicitly asked for in the questionnaire and, therefore, the information

could be incomplete. However, it is mentioned in the text. The Austrian EIA-Act goes beyond the basic requirements of the Directive, since it contains provisions for scoping, Environmental Impact Expertise (EIE) apart from the Environmental Impact Statement (EIS), public participation at several stages in the EIA process and post-project analysis. In Germany and Great Britain, modifications to Annex II-projects are subject to an EIA. Modifications to Annex II-projects are considered to be Annex II-projects requiring an EIA when they are likely to have significant environmental effects. In a recent case before the Court of Justice of the European Communities, the obligations of the Member States in respect to Article 4(2) were clarified:

“... Article 4(2) of Directive 85/337 and point 10(e) of Annex II must be interpreted as meaning that a Member State which establishes the criteria or thresholds necessary to classify projects relating to dykes at a level such that, in practice, all such projects are exempted in advance from the requirement of an impact assessment exceeds the limits of its discretion under Articles 2(1) and 4(2) of the directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment. ... Where that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.”<sup>4</sup>

Spain mentioned that its new draft for an EIA Act includes provisions for EIA for plans and programmes. The EIA legislation of the Netherlands provided for the set up of an independent review commission, a formal scoping process and post-project-analysis.

The new Member States have been asked to identify deficiencies in compliance (Table 2). The main deficiencies seem to be not much different from those encountered in the former Member States when integrating the requirements of the Directive into national law. Finland stated that there are no principal deficiencies in formal compliance, while Austria and Sweden pointed out some difficulties. In Austria the EIA Act had been discussed and negotiated for more than a decade. Traditionally, the Austrian licensing had been sectorally fragmented. The EIA Act had made an important change to the system by establishing one comprehensive licensing procedure.

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<sup>3</sup> Thirteenth annual report on monitoring the application of Community law - 1995. Official Journal of the European Communities - Information and Notices. Vol. 39. 14. October 1996. Notice number 96/C303/01 COM (96) 600 final. p. 49.

The new Member States were asked whether it is guaranteed that the assessment covers the entire project. Both Austria and Finland comply with this requirement. The Swedish EIA Act should be interpreted in such a way that it relates to the project as a whole. However, this has still to be implemented in practice (Table 3).

### **2.1.2 Integration into consent procedures**

Since there is a considerable overlap between questions 1b and 1l, the answers to both questions have been combined in Table 4. In all Member States, EIA has been integrated into existing consent procedures. This fact makes it very difficult to compare those different procedures because they have grown historically and vary widely in nature. The mere translation of a legal term or the name of a sectoral act does not suffice to properly assess the legal meaning or consequences of a planning procedure. There are different systems in operation. Some rely on a single comprehensive licensing procedure (e.g. Austria), others rely on a two-stage-system (e.g. Greece).

### **2.1.3 Main modifications**

Most Member States have modified their existing EIA legislation during the last years. In many cases the aim was to include additional projects, to streamline procedures and to improve public participation (Table 5). In the performance study<sup>5</sup>, consultants from the Member States mentioned measures introduced to modify EIA procedures and pointed out their effects.

### **2.1.4 Annex I projects**

The Member States were asked, whether there are legal provisions to ensure that projects in all classes listed in Annex I are subject to an assessment. It has not been necessary to prepare a separate table for this question because all Member States confirmed, that all Annex I projects are subject to an assessment within their legislation. The only exception is

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<sup>4</sup> Judgement of the Court. 24 October 1996 Case C-72/95.

<sup>5</sup> European Commission: Evaluation of the Performance of the EIA Process. Final Report. Vol. 1: Main Report, Vol. 2: Member States Report. Manchester, October 1996. Wood, Ch. et. al.

Sweden, where - at the time of the submission of the Swedish report (11/95) - railways were not part of the EIA legislation (However, there were requirements comparable to an EIA for main railway lines).

### **2.1.5 Annex II projects**

The Member States were asked whether there are legal provisions that projects in all classes listed in Annex II are subject to an assessment in accordance with Article 2.1 and 4.2 of the Directive.

The answers of the Member States are ambiguous and in some cases difficult to interpret. Furthermore, this topic is controversial, because the interpretation of the requirements of Annex II differs between the Member States. Some Member States excluded Annex II projects that are of no relevance within their country. Germany holds the opinion that not all Annex II projects have to be covered but only at least one project out of each class. The Netherlands use thresholds and screening with criteria.

Two additional questions were concerned with criteria and/or thresholds and their principal characteristics or legal status (see Table 7). All those Member States in which not all projects of Annex II are subject to an assessment have established some criteria or thresholds. Denmark and the Netherlands, which made all Annex II categories subject to an EIA, use criteria and thresholds, too. The answer regarding the characteristics and legal status of the criteria and thresholds are not complete but there are certainly different approaches between the Member States. Germany uses legally binding thresholds, the United Kingdom applies indicative criteria/thresholds to support their case-by-case system.

The 1993 report pointed out that most Member States had adopted some thresholds and/or criteria. It can be assumed that this is still the case. However, these thresholds vary widely, so even with thresholds the same project may be subject to an EIA in one Member State and not in the other one. This could merit further investigation: differences between thresholds are only justifiable as far as they are based on the environmental criteria of the Directive. Great Britain points out that the question of thresholds has been addressed in the negotiations about amendments to the Directive. Consequently, it is for the Member States to set indicative threshold levels.

Most Member States use additional assessment procedures at the screening stage, so called “mini assessments” (see Table 8). These screening procedures could gain in importance with the transposition of the amended EIA Directive. The Commission has provided support for this approach by publishing guidance on screening.<sup>6</sup>

### **2.1.6 Monitoring**

The EIA Directive contains no formal requirements as regards monitoring. With respect to monitoring, consideration must be given to the statutory or regulatory monitoring which is already in place for certain project categories in some countries. The level of detail of such monitoring varies between the Member States. These monitoring requirements have been in existence before the EIA Directive came into force.

Most Member States have formal provisions for monitoring (Table 9). As has been noted in the 1993 report, in most Member States monitoring is not part of the EIA legislation but is required by sectoral laws. However, it is not clear whether the answers fully cover the meaning of the question. The question referred to “monitoring the effects on the environment due to the implementation of the project”. The answers focus on the aspect of post-project auditing, checking the implementation of requirements as part of the project approval. Monitoring in a wider sense would also include keeping track of the ongoing environmental impacts, associated with project operation and the implementation of the mitigation measures.

### **2.1.7 Scoping**

Most Member States either have a formal scoping procedure or provide for an informal way to determine the scope of the EIS (Table 10). In most cases this is considered to be helpful and the Commission supported the application of scoping by publishing a guidance document.<sup>7</sup> There are differences on the extent of scoping and the participation of other agencies or the public. In the case of Austria the EIA concept is reviewed by the competent

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<sup>6</sup> European Commission, Directorate General for Environment, Nuclear Safety and Civil Protection: Environmental Impact Assessment - Guidance on Screening. Brussels, January 1996.

<sup>7</sup> European Commission, Directorate General for Environment, Nuclear Safety and Civil Protection: Guidance on Scoping. Brussels, May 1996.

authority, by the co-operating authorities and the communities. The public is given an opportunity to comment on the scope. In the Netherlands the result of the scoping process is compiled in guidelines setting out the content requirements for the EIA report. In Spain an independent environmental committee has been established. In France there are no formal provisions for scoping and the competent authority does not have to specify the information to be supplied for each project by the developer. A number of technical circulars drawn up from 1978-1990 set out the type of information to be supplied by the developer for certain projects.

### **2.1.8 Formal review of adequacy and quality**

The adequacy and quality of the EIS is obviously one of the major components within the whole EIA procedure. The whole process would be more or less meaningless if there would be not some kind of review. The 1993 report already pointed out some measures like an official approval of the consultants employed in the preparation of the EIS, an independent EIA unit or the involvement of the competent authority or the environmental authority which may ask for additional information or improvement of the EIS. There seem to be not many systematic reviews or reports about the quality of the EIS prepared in the Member States (Table 11).

Some countries reported that they have established independent review bodies and in some cases their functions were described in detail. In the Netherlands an independent EIA commission plays a role in both scoping and reviewing. Spain established an independent environmental committee and Wallonia (Belgium) mentioned the Wallone Environmental Council for sustainable development that has to submit an opinion on the quality of the impact study. Sweden points out that the responsibility for review lies with the decision-making body and that these agencies do not in all cases possess sufficient competence. They are supported in their review by the county council. The quality of impact statements can be improved by providing good quality guidance. In the United Kingdom guidance has been issued on the preparation of environmental impact statements and on their evaluation. Further EIA guidance on specific topics is available.

If there was a lack of quality or adequacy of EIAs, this could be a major concern. According to the report on monitoring the application of community law, this issue is increasingly a reason for complaint. Complaints and petitions refer mainly to the inadequate quality of the

EIS and the underestimation of negative environmental effects. This is difficult for the Commission to investigate, because the Directive establishes only the procedure to be followed and less concerned with substance. Therefore, the Commission has no real powers to monitor the results of the assessment.<sup>8</sup> The number of complaints alone probably cannot be a sufficient indicator for the quality of environmental impact studies because it is not known how many of these complaints subsequently proved to be unfounded. Great Britain points out that “quality” is to some degree a perception. An independent study of quality of EIS in the UK suggests that in the view of the researchers and consultees the quality of many EIS is “unsatisfactory”; yet the competent authorities responsible for giving development consent in respect of these projects found that the quality of information was sufficient for the purpose of reaching a decision.

The Joint Research Centre at Ispra was commissioned by the Directorate General for Environment, Nuclear Safety and Civil Protection (DG XI) to undertake a study to identify the common approaches and the main differences in the indicators, impact prediction methods, evaluation criteria, uncertainty analysis methods, risk assessment methods and terminology used in EU Member States when undertaking an Environmental Impact Study (EIS).<sup>9</sup> The main results have been summarised in Box 2.

The type of projects considered are installations for the treatment and disposal of toxic and dangerous waste listed under Annex I.9 of the EC Directive 85/337/EEC on Environmental Impact Assessment. 28 EISs were considered in the study.

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<sup>8</sup> Thirteenth annual report on monitoring the application of Community law - 1995. Official Journal of the European Communities - Information and Notices. Vol. 39. 14. October 1996. Notice number 96/C303/01 COM (96) 600 final. p. 50.

<sup>9</sup> European Commission: An Analysis of Environmental Impact Studies of Installations for the Treatment and Disposal of Toxic and Dangerous Waste in the EU (Ispra Study on Projects under Directive 85/337/EEC, Annex I.9). Brussels, Luxembourg, August 1996. Colombo, A. G. et. al. Institute for Systems, Informatics and Safety.

**Box 2: Methodological differences in EISs**

- The factors material assets, cultural heritage and ecosystems (inter-actions between the different factors) are considered in very few EISs. This may be due to the absence of elements representative of these factors in the wider area of the development.
- Both quantitative and qualitative indicators are used within the EISs. For most of the factors, with the exception of air, water, soil, noise, land use and traffic, indicators are not usually specified or clearly defined. The relationship between the environmental indicators used in the baseline survey and in the prediction of impacts is often unclear.
- The volume of information within the baseline survey is not always relevant to the prediction of impacts.
- The future development of the wider area without the plant is not considered in any of the EISs.
- The phase "impact identification and selection" is usually not discussed in the EISs examined.<sup>10</sup>

**2.1.9 Project modifications**

Modifications of projects are in most Member States subject to an EIA. However, in the case of project modifications, the "triggering" of an EIA procedure differs between the Member States (Table 12). In some countries, these conditions are part of the EIA legislation and there are definitions of the meaning of "major modifications". Many Member States do not distinguish between Annex I and Annex II projects and many Annex II projects seem to be subject to an EIA in case of major modifications.

**2.2 Practical compliance****2.2.1 Number of EIAs**

Judging from the answers to the questionnaire only a few Member States have made arrangements to record the number and types of EIAs carried out consistently. Therefore, in most countries the numbers of EIAs carried out are only estimates (Table 13). By now the number of EIAs carried out in each Member State annually should have reached its regular level. Judging from the answers, about 8 000 to 9 000 EIAs are carried out each year within the Union (Box 3).

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<sup>10</sup> European Commission: An Analysis of Environmental Impact Studies of Installations for the Treatment and Disposal of Toxic and Dangerous Waste in the EU (Ispra Study on Projects under Directive 85/337/EEC, Annex I.9). Colombo, A. G. et. al. Institute for Systems, Informatics and Safety. Brussels, Luxembourg, August 1996. p. XIV.

**Box 3: Number of EIAs per year**

Austria	50 to 70
Belgium Brussels	45
Belgium Flanders	50 to 60
Denmark	100
Finland	20 to 40
France	6000
Germany	200 to 500
Greece	1200
Ireland	80
Italy	200
Luxembourg	10 to 20
Netherlands	100 to 120
Portugal	100
Spain*	30 to 40
United Kingdom	300 to 350
Total	<u>8000 to 9000</u>

\* For large infrastructure projects a total of 400 to 600.

The 1993 report tried a forecast for the post-1992-period. Juxtaposed to this forecast, the number of studies in France has increased and the number of studies in Germany has significantly decreased.

Compared to the estimated annual average 1988-1990 in the 1993 report, there seems to be a slight increase in the number of EIAs. Obviously the total is heavily influenced by the large amount of EIAs carried out in France, that accounts for about 70 % of the studies carried out in the Union. As the 1993 report already pointed out, the major reasons for the differences, both in absolute and relative terms between the Member States are the variation in coverage of the lists of projects and the different thresholds. Additionally differences in economic developments, government expenditures and investments have to be considered. For this reason, the number of EIAs carried out is not only a function of the legal requirements but also one of economic development.

### **2.2.2 Start of EIA procedure**

Article 9 of the EIA Directive requires that information, gathered from the developer, authorities concerned and other Member States is taken into consideration in the development consent procedure. To comply with this requirement it is necessary to prepare the EIS before the consent decision is reached. When looking at the results of the questionnaire (Table 14), in all Member States an EIS or similar documents are prepared before the decision is taken. On the other hand, it is not completely clear from the answers, at what stage within the development consent procedure the EIA starts. It would be helpful to have flow charts of the EIA and authorisation procedures within the Member States depending on the types of projects. In some Member States EIA already starts at a preliminary stage. In this cases an EIA is carried out at the planning stage and later on for the project itself.

Judging from the upcoming report on monitoring the application of Community law (for 1996) it still seems to be a problem, that projects are implemented before the end of the EIA procedure. At least this is the subject of several complaints and petitions presented to the European Parliament.

### **2.2.3 Information provided by the developer and the authorities**

The quality of the EIS (or similar environmental assessment documents) is determined by the work of the developers and the support by the authorities that may have environmental information in their possession. Therefore, these two questions are treated together. All Member States answered that they provide sufficient information to the developer. In some case, they referred to the Directive on the freedom of access to information on environment. At least from the viewpoint of the authorities, the requirements of Article 5(3) of the EIA Directive are being met in practice.

Concerning the information from the developers (Table 15), almost all Member States regard the information provided to be of satisfactory quality. It is pointed out that in the case of incomplete studies the authorities have the right to require additional information. Some Member States remark that the quality of information depends on the size of the projects. For small scale projects there are sometimes deficiencies.

It would be interesting to know what sources have been used to arrive at these statements in the questionnaire. Since in most Member States there seem to be no systematic documentation of EISs and there seem to be only a few studies on the quality of the studies, a more systematic approach would be desirable. The term "satisfactory information" may have a different meaning in different Member States.<sup>11</sup>

#### **2.2.4 Alternatives**

The development of alternatives is not a binding requirement of the EIA Directive. Annex III states that the information according to Article 5 should include an outline of the main alternative studied by the developer only "where appropriate". It is important to know whether there are requirements within the Member States that the developer has to study alternatives and to present the results of his investigation to the authorities. Normally, once alternatives have been considered, these would be taken into account by the authorities.

According to the answers in all Member States, the development of alternatives is not a obligatory requirement (Table 16). In most countries, alternatives have only to be considered "where appropriate". An exception is Denmark where the consideration of the "no project" alternative is mandatory.

#### **2.2.5 Consultation and public participation**

In all Member States there are provisions for consultation and public participation (Table 17). At a minimum, this includes an opportunity to submit written comments, in some cases there are public meetings or hearings and the opportunity to make oral comments. The procedures for consultations and public participation are, in most cases, part of the general provisions for public comment within project authorisation procedures. In some countries the public has the opportunity to make comments very early in the process, e.g. at the scoping stage (e.g. in Denmark, The Netherlands, Finland). In other countries public involvement only takes place after the preparation of the EIS (e.g. in Flanders). Since some Member States failed to comment whether the procedures work satisfactorily or not, a re-

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<sup>11</sup> European Commission: Evaluation of the Performance of the EIA Process. Final Report Volume 1: Main Report. Manchester, October 1996. Wood, Ch. et al.

presentative general overview cannot be given. Only Greece mentioned, that in practice, participation is not really achieved to a satisfactory degree and in Spain mechanisms for interactive participation are missing. Most Member States answered only in respect to public participation, maybe because they do not distinguish between consultation of the authorities (likely to be concerned) and the public. Consequently, the information about consultation of other authorities is incomplete.

Public participation is carried out for two reasons: Firstly, public participation might broaden the information base about the potential environmental effects of the project. Secondly, the public might propose modifications to the project. Therefore, the question, to what extent, if any, is it possible for the public to propose modifications to the project, is discussed at this point (Table 19). In all Member States (the question was not asked in the new Member States) the public has the right to propose modifications to the project. In Belgium (Wallonia) this seems to be possible only for public projects. In Spain the situation is expected to improve with the adoption of the new act. The documents will be made public not only during consultation but also after authorisation of the project.

According to articles in the EIA Newsletter, public participation in the Netherlands, Finland and Portugal has improved during the last years.<sup>12</sup> In the Netherlands, for major projects “new, often more tailor-made, kinds of materials are being developed to inform the public and often PP now starts before the official procedures require. More intensive consultative methods, and more opportunities for communication than the legal minimum, are used.” In Finland, more detailed information on the practice under the statutory procedures is available since the end of 1996, when an analysis of several EIA case studies, undertaken by the Ministry of the Environment, was completed.

### **2.2.6 Modifications to project resulting from EIA**

The separate question (2g) in the questionnaire: “To what extent have development consent decisions been influenced by the EIA?” has been in many cases answered by referring to the question about modifications to projects since it is almost impossible to distinguish between these two questions. Most Member States state that decisions have been modified

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<sup>12</sup> EIA Centre University of Manchester: EIA Newsletter No. 12. Summer 1996, pp. 5.

by EIA, because the decision-making authorities have to assess the results of the EIA and take them into consideration. France points out that the influence depends, to some extent, on the time the agency can spend on the preparation of the decision and the examination of the EIS and the material collected.

It is very difficult for somebody not involved in a particular EIA process to judge whether project modifications are the result of EIA or took place in the more informal pre-submission procedure. The performance study undertook a detailed analysis of modifications to six United Kingdom projects, six German projects and six Spanish projects. According to this study, several modifications to the sample of projects have occurred as a result of the EIA process.

It therefore appears that the EIA process is having a notable effect on the number of project modifications taking place in these three Member States. There was no apparent trend over time in the number of modifications nor in the significance of the modifications. It appears that consultation and public participation influence modifications at both the pre-submission (where relevant) and the post-submission phases of the EIA process.<sup>13</sup>

In the Netherlands an evaluation of the EIA application was completed in 1996.<sup>14</sup> The research focused on the effects of EIA (including the EIS) on the decision-making and an analysis of these effects. The research was based on a sample of 105 EISs in order to allow a statistical analysis. The researchers found that 79 % of the EIAs affected (from minor to major) the decision made on the project. The effects on the decision ranged from minor to major ones. These findings were based on the answers of all actors in the EIA process.

Developers stated that carrying out an EIA had effects on time and costs in about 69 % of the cases. There are two main explanations for this finding: an early start of the EIA process with an early publication of the starting note and a general formulated initiative favour a large effect of EIA on the decision making. The statistical analysis of those EIAs which have not influenced the decision showed that in these cases the roles of developer and competent authority were separated, EIA started late and concerned a detailed initiative.

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<sup>13</sup> European Commission: Evaluation of the Performance of the EIA Process. Manchester EIA Centre, October 1996. Wood, Christopher et. al.

A study on EIA for wastewater treatment plans in Britain and Germany pointed out major differences in the opinions about the effectiveness of EIA on project modifications and the influence of EIA on the environmental quality of decisions. In Britain, key actors in EIA processes agree that EIA leads to the modification of projects and that it improves the decision from an environmental point of view. In Germany, the majority of respondents state that the decision is not improved by carrying out an EIA.<sup>15</sup>

The Member States were asked whether the public is given the opportunity to propose modifications to the project (Table 19). This opportunity exists in all Member States. Flanders (Belgium) points out that due to the late stage in project planning at which the public is consulted, proposals by the public are limited. In Greece, the public does not make much use of their right to propose modifications to projects in practice.

### **2.2.7 Costs and time-scale**

Only the new Member States were asked about the influence EIA had on the costs and time-scale of projects. EIA could lead to an increase or a decrease in costs and time (Table 20). The three Member States agreed that it is too early to judge the effect of EIA on time and cost because they are not enough cases available yet. It is possible that there is some delay and some increase in costs, but these could be teething troubles. A possible benefit of EIA could be that environmental considerations are taken into account, that previously would have been neglected in decision-making. The answers given by the new Member States are similar to those in the 1993 report. A well structured and managed EIA process can lead to savings in cost and time. DG XI commissioned a research study on "Costs and Benefits associated with the Implementation of the EIA Process".<sup>16</sup> The main results for EIA and SEA are summarised in Box 4.

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<sup>14</sup> (M)erkenning: Onderzoek naar de doorwerking van m.e.r., Ten Heuvelhof, Nauta, ECW achtergrondstudie nr. 28. Den Haag, April 1996.

<sup>15</sup> Marr, K., Wood, Ch.: A Comparative Analysis of EIA for Wastewater Treatment Plants in Great Britain and Germany. *International Planning Studies*, Vol. 1, No. 2, 1996, p. 234.

<sup>16</sup> European Commission: Environmental Impact Assessment in Europe. A Study on Costs and Benefits. December 1996. Land Use Consultants in association with Eureco, Luxembourg, and Enviplan, Athens.

**Box 4: Costs and benefits of EIA and SEA****Findings relating to project EIA**

A number of Member States already required EIS-like environmental studies before a formal obligation to carry out an EIA was introduced. Therefore, the increase in cost and time largely arises due to the formalisation of the stages of assessment.

Delays can occur for many reasons unrelated to the EIA process itself, such as modifications proposed by the promoter of the project or technical or economic reasons.

Main reasons for delay are usually a lack of proper scoping and a failure on the part of the developer or the consultants to undertake a systematic study and resulting from this the need for supplementary information.

The principal benefits are:

- the identification of key environmental issues.
- improvement of project design.
- higher standards of mitigation.
- better decision making.

It is difficult to distinguish between the costs of undertaken environmental studies which are required in the normal course of developing a project and the costs of preparing the environmental information in the form of an EIS. Every EIA requires a number of steps, so the minimum level of costs is likely to be in the region of 10 000 to 20 000 ECU. In the 18 examples reviewed costs range from 0,01 % to 2,56 % of the total development costs with the average being 0,5 %. The relative costs of preparing EIAs decreases progressively with rising project costs. The largest element of costs relates to the conduct of the environmental studies and the preparation of the EIS (60 to 95 % of the total).

**Findings related to SEA**

The main costs arise from the use of internal staff time, payments for expert advice and consultancy time and publicity and publications. Of these the staff and consultancy costs account for over 90 %. Evidence suggests that introduction of SEA to regional and local land-use planning may increase the costs by 5 to 10 %. The overall costs are strongly influenced by:

- the extent to which the policy, plan or programme in question pursues sustainable environmental goals.
- the existence of supporting research/baseline information, which can significantly reduce production costs.

The principal benefits are:

- providing a systematic review, improving and refining the basic strategic concepts, providing a clearer understanding of potential environmental effects,
- better balance between environmental, social and economic factors,
- simplifying the process of environmental investigations at the level of individual projects.

Source: European Commission: Environmental Impact Assessment in Europe. A Study on Costs and Benefits. December 1996. Land Use Consultants in association with Eureco, Luxembourg, and Enviplan, Athens. pp. i-iv.

**2.2.8 Need for training**

As in the 1993 report, the new Member States have been asked, whether there are satisfactory arrangements made by governmental and non-governmental organisations in order to provide assistance to EIA practitioners (e.g. guides, manuals, training programmes) (Table 21). In the three new Member States extensive groundwork has been carried out before

the implementation of the Directive. The situation is similar to that described by the former Member States in the 1993 report. In Austria, the Federal Environmental Agency has prepared some guidance. The Ministry of the Environment is currently preparing legal guidelines on the provisions of the EIA Act. A working group of members of the competent authorities of the provinces, the Ministry of the Environment and the Federal Environmental Agency meet twice a year to discuss current problems in relation to EIA.

In Finland, a report was drafted in a working group established by the Ministry of the Environment with detailed interpretation of the legislation and guidance for various situations. This report was primarily addressed to the co-ordination authorities but widely disseminated to other parties. For the general public a booklet "EIA - Towards better planning" has been prepared. A videotape has been produced, especially for the use during public hearings. Special courses for the environmental authorities have been arranged by the Ministry of the Environment and the Finnish Environment Agency.

In Sweden seminars have been held for all decision-making authorities. In addition, information sheets and newsletters have been published and networks and contact meetings have been used for the dissemination of information on EIA.

### **2.2.9 Taking the EIS into account in decision-making and informing the public of the outcome of the decision**

Most Member States expressively stated that the results of the EIS and the consultations have to be considered in decision-making.<sup>17</sup> In most cases, the results are to be published or are available to the public (Table 22). Sometimes, these procedures have been in existence prior to the EIA legislation.

In Austria the main content of the decision including the main findings have to be published and the entire decision has to be displayed for public inspection. France points out that the degree of effectiveness in respect to taking account of the EIS depends on the type of development consent. For certain categories of projects there are very strict rules for decision making. Overall, the system is improving following a series of legislative reforms. However, it is not yet satisfactory in all respects. In the Netherlands, the authority has to indicate what

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<sup>17</sup> Article 8 of the Directive: "Taking into consideration in the development consent procedure."

role the EIS has played in the decision making. Both the decision adopted and the reasoning of it are public and subject to appeal.

## **2.3 Specific questions concerning the effectiveness of the implementation of the Directive and difficulties in the implementation in the Member State**

### **2.3.1 Compliance and practical application**

Most Member States are of the opinion that their legal provisions are in full compliance with the Directive and are being implemented in practice. There seem to be only minor problems.

**Belgium (Flanders):** There is no transposition of Article 7 (transboundary impact) and some categories and sub-categories of Annex II.

**France:** For small projects due to the lack of resources, the impact studies may be inadequate.

**Germany:** Implementation errors are dealt with and settled through National Court procedures. The national implementing provision - Article 22 of the EIA Act, which requires no EIA for procedures initiated after the entry into force of the Directive on 3 July 1988 but before the entry into force of the EIA Act - was declared incompatible with the EIA Directive by the Court of Justice's judgement of 9 August 1994 in Case C/386/92. Also, a complaint lodged by the European Commission concerning insufficient implementation of the EIA Directive in German law (Case C/301/95-1) is now pending before the Court of Justice.

**Ireland:** Minor technical amendments are still necessary. The quality of EISs for small-scale projects is sometimes unsatisfactory.

**Italy:** Annex II is not completely transposed.

**Sweden:** There are some deficiencies in the practical application.

### **2.3.2 Principal problems of application**

The imprecise definitions and wordings of the Directive are a major problem, particularly in the case of Annex II projects (for specific problems of various Member States see Table 23). Some Member States (France, Greece, United Kingdom) pointed out that there could be a case of overregulation. The answers from the new Member states have been included in the table. However, due to slightly different phrasing of the questions in the 1993 and the 1995 questionnaires, the responses may not be fully comparable.

In this context, the European Court ruling on the “Dutch dykes” is note-worthy. By judgement of 8 March 1995 the Nederlandse Raad van State decided to refer to the Court of Justice for a preliminary ruling four questions on Annex II, inter alia, the two following questions:

“Must Article 2(1) and Article 4(2) of the directive be interpreted as meaning that where a Member State in its national implementing legislation has laid down specifications, criteria or thresholds for a particular project covered by Annex II in accordance with Article 4(2) of the directive, but those specifications, criteria or thresholds are incorrect, Article 2(1) requires that an environmental impact assessment be made if the project is likely to have “significant effects on the environment by virtue inter alia of its nature, size or location” within the meaning of that provision?

If Question 3 is answered in the affirmative, does that obligation have direct effect, that is to say, may it be relied upon by an individual before a national court and must it be applied by the national court even if it was not in fact invoked in the matter pending before that court?”

The Court ruled that

“Where under national law a court must or may raise of its own motion pleas in law based on a binding national rule which have not been put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the legislative or administrative authorities of the Member State have remained within the limits of their discretion under Articles 2(1) and 4(2) of the directive, and take account thereof when examining the action for annulment.

Where that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.”<sup>18</sup>

### **2.3.3 Ambiguous provisions resulting in difficulties in transposition**

The Directive still contains numerous provisions which the Member States consider to be ambiguous (Table 24). Member States still complain about unclear definitions. The Member States regard, inter alia, the following provisions as being ambiguous and difficult:

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<sup>18</sup> Judgement of the Court. 24 October 1996 Case C-72/95.

- the interpretation of the term “inter-action”,
- the meaning of the term “taken into consideration”,
- decision-making standards should be introduced,
- the content requirements of Annex III should be obligatory,
- interpretation of Article 1(5), Article 2(3),
- interpretation of Article 10, para. 1,
- definition of e.g. “integrated chemical plant”,
- different meanings of the term "project" in French and English,
- consideration of alternatives at the project level,
- interpretation of the term “material assets”,
- no thresholds for Annex I, category 9,
- interpretation of Annex II 10(b): Does it covers urbanisation of non urban areas as well as development projects within urban areas?

Additionally to the difficulties and problems listed above and in the table one might refer to the German report for the IMPEL group (Network for the Implementation and Enforcement of Environmental Law). This report has pointed the following problems in relation to the EIA procedure:

- definition of integrated chemical installation;
- major modifications;
- inter-action.<sup>19</sup>

#### **2.3.4 Criteria or thresholds for Annex II projects**

This question has been only addressed to the old Member States. Eleven Member States have answered the question. Six were in favour of criteria without any reservations and only Luxembourg stated a clear preference for a case-by-case analysis (Table 25) (counting the opinions of the three Belgium regions separately). Four Member States preferred criteria

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<sup>19</sup> Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit (ed): Problems in the Implementation and Enforcement of Directives of the European Union in the Field of the Permitting of Industrial Installations. Relationship between Eco-Audit and Regulatory Controls. Reports of the Federal Republic of Germany to the 5th Plenary Session of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). München, 28./29. November 1994. pp. 4.

and legal thresholds but had some reservations. France made its preference dependent on its legal system (France) or other countries distinguished between thresholds for categories and case-by-case analysis for projects in categories.

**Box 5: Preference for criteria or case-by-case analysis**

Country	Criteria/thresholds	Case-by-case analysis	Combination of both
Belgium Brussels region	X		
Belgium Flanders	(X)	(X)	X
Belgium Wallonia	X		
Denmark	X		
France	(X)	(X)	
Germany	X		
Greece	(X)	(X)	X
Ireland	X		
Luxembourg		X	
Netherlands	(X)	(X)	X
Spain	X		(X)
United Kingdom			X

(X) = preference with some reservations.

### 2.3.5 Recommendation of measures

The answers to this questions reflect the deficiencies mentioned in previous chapters. Each Member State has to be considered separately (Table 26). There is no general agreement on a few measures. Most often, the clarification of definitions was demanded. The main recommendations put forward by Member States are:

- clearer definitions and more consistent text of the Directive,
- reduction of the number of projects subject to EIA,
- “mini-EIA” for small scale projects,
- modification of the public participation procedure,
- harmonisation of standards and guidelines,
- introduction of screening,
- transformation of the results of research projects from the Commission into practical training projects and better exchange of information.

### 2.3.6 Policy, plan or programme level

The question of the introduction of an environmental assessment at the plan or programme level is highly controversial. Accordingly, care has been taken to summarise the answers without bias. The question did not ask for a general judgement about the feasibility of an EIA at the plan and programme level but referred only to the option, whether any project types could be better handled at a level other than the project level. Most Member States agreed that there would be some advantages, especially in respect to:

- the consideration of alternatives,
- road, rail or other infrastructure projects, land-use or zoning, waste management, major communication,
- the treatment of cumulative effects of smaller projects.

Some Member States mentioned that they were already moving into the direction of such a higher level assessment (Table 27).

The Commission has adopted a proposal on the "Strategic Environmental Assessment" on the 4th of December 1996.<sup>20</sup>

During the preparation of this proposal, several research projects have been carried out.<sup>21</sup>

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<sup>20</sup> Proposal for a Council Directive on the Assessment of the Effects of Certain Plans and Programmes on the Environment (presented by the Commission). COM (96) 511 final.

<sup>21</sup> European Commission: Strategic Environmental Assessment - Legislations and Procedures in the Community. Vol. 1 + Vol. 2. Manchester, March 1995. Lee, N.; Hughes, J./European Commission: Strategic Environmental Assessment - Existing Strategic Environmental Assessment Methodology. 27 June 1994. DHV Environmental and Infrastructure BV./European Commission: Case Studies on Strategic Environmental Assessment. February 1997. mens en ruimte./Institut für Stadtforschung und Strukturpolitik GmbH: Umweltverträglichkeitsprüfung in der Bauleitplanung - Praxis, Probleme und Lösungsvorschläge (Environmental Impact Assessment in Urban Land Use Planning). Berlin 1995./Umweltbundesamt (Hrsg.): Umweltverträglichkeitsprüfung in der Bauleitplanung. Band 1: Leitfaden zur UVP in der Bauleitplanung mit dem Schwerpunkt auf der Ebene der Flächennutzungsplanung. Berichte 6/95. Berlin 1995. Band 2: Auswertung kommunaler Beispiele zur UVP in der vorbereitenden Bauleitplanung. Texte 69/95. Berlin 1995. IFS Institut für Stadtforschung und Strukturpolitik GmbH./Elling, B.; Nielsen, J.: Environmental Assessment of Builds. Roskilde 1996.

Furthermore, some international studies commissioned or conducted by other agencies can be utilised for the discussion of this topic.<sup>22</sup>

The study on the existing methodology for SEA concludes from the studies reviewed that most likely SEA methodology would be available for the performance of SEA for any strategic action. SEA is an iterative process. There are several iteration cycles to insure a sound communication between environmental experts and sectoral experts.

The study on SEA legislation and procedures in the Member States concludes that the overall coverage of the relevant sectors is quite extensive. Therefore, planning procedures, which might serve as a "host" procedure already exist on a wide, if not comprehensive, basis. However, their heterogeneity means that any environmental assessment of plans and programmes, which is to be applied at the level of the European Union, will need to be highly flexible. The review shows that some elements of environmental assessment are to be found within the appraisal for plans and programmes and decision making in, probably, all countries surveyed.

The major conclusions drawn from the case studies on SEA are summarised in Box 6.

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<sup>22</sup> Österreichisches Bundesministerium für Umwelt, Jugend und Familie (Hrsg.): Umweltprüfung für Politiken, Pläne und Programme - Untersuchung der Umsetzungsmöglichkeiten in Österreich, Teil 1: Erhebung in- und ausländischer Erfahrungen und Ansätze. Teil A: Internationaler Teil. Wien 1996. Aschemann, R./Ministry of Housing, Spatial Planning and the Environment (ed.): Strategic Environmental Assessment. Status, Challenges and Future Directions. Zoetermeer 1996. Sadler, B.; Verheem, R.

**Box 6: Major conclusions from case studies on SEA**

- SEA is becoming well established in sectors such as land-use planning, energy, waste management and transport. SEA application in the sectors of water management, industry, agriculture and tourism is still very rare and there should be some pilot studies.
- The link of SEA to the planning process requires an in-depth analysis of the decision making process. For specific countries and sectors case studies should be undertaken.
- SEA is more effective and efficient in cases where an environmental policy or sustainability strategy exists.
- Scoping should insure that the SEA focuses on key issues. It requires early consultation and public participation. It should be externally reviewed and documented.
- Even though the assessment of alternatives is often quoted as one of the basic requirements, in practice this is not always proving. For land-use plan it is recommended that alternative option should be identified and assessed at certain stages.
- Uncertainties in impact predictions and evaluations should be acknowledged, analysed and reported.
- Certain prediction and evaluation methods can be applied internationally (waste management plans, transport corridor assessment, land-use planning). For these specific categories, the development of EU "best practice" guidelines is worth consideration.
- In respect to public participation specific methods should be developed to increase participation. Involvement of environmental action organisation (NGOs) should be encouraged.
- Effectiveness indicators should be established for the process.
- Time and costs of SEA will be gradually reduced by increased experience.
- Where the proponent and the competent authority were closely involved in the process, this contributed to an increased awareness in motivation.

Source: European Commission: Case Studies on Strategic Environmental Assessment. February 1997. pp. 5-8.

## **2.4 Supplementary questions relating to specific provisions of Directive 85/337/EEC**

### **2.4.1 Approval by specific act of national legislation**

Only three Member States stated that they have approved projects with specific acts of national legislation (Denmark, Germany, Netherlands). Germany pointed out that environmental impacts have been considered in the law-making process (Table 28).

### **2.4.2 Exemption of specific projects**

Exceptions have been granted mainly in cases of emergency (Greece, Portugal) (Table 29). The Commission is required to circulate details of such exemptions under Article 2.3 of the Directive to the Member States. Until now, the Commission has circulated only one such report.

### 2.4.3 Transboundary impacts

Most Member States have implemented the provisions regarding transboundary impacts. Only Flanders stated that there has been no transposition (1/96). In the case of the European Court of Justice vs. Belgium (C 133/94), the Court ruled that the transboundary provisions of the Directive in Article 7 must be transposed into the law of the Member States (Table 30).

The Member States were asked, whether they had signed the Espoo Convention. Since the answers could have been partly outdated, an update has been requested from the ECE Commission of the UN.

#### Box 7: Convention on Environmental Impact Assessment in a Transboundary Context

Country	Signature	Ratification
Austria	26.02.1991	27.07.1994
Belgium	26.02.1991	
Denmark	26.02.1991	14.03.1997
Finland	26.02.1991	10.08.1995
France	26.02.1991	
Germany	26.02.1991	
Greece	26.02.1991	
Ireland	27.02.1991	
Italy	26.02.1991	19.01.1995
Luxembourg	26.02.1991	29.08.1995
Netherlands	25.02.1991	28.02.1995
Portugal	26.02.1991	
Spain	26.02.1991	10.09.1992
Sweden	26.02.1991	24.01.1992
United Kingdom	26.02.1991	
European Community	26.02.1991	24.06.1997

(As of 24 June 1997)

Ratification = Ratification, accession, approval, acceptance.

16 countries (additionally the European Community) have ratified the Convention and it will enter into force 10 September 1997.

### **3. Conclusions**

#### **3.1 General remarks**

Conclusions can only be drawn on the basis of the answers to the questionnaires given by the Member States. It has already been mentioned that the responses are of very different quality, length and detail. In some cases, the answers are ambiguous and difficult to analyse. Some countries used the chance for the review of the draft of this report and suggested corrections and recommendations for the final text. The Commission's staff additionally forwarded recommendations of its own and forwarded comments provided informally by representatives of the Member States. The conclusions drawn by the author of this study are intended to be as objective as possible. However, some interpretation of the answers is necessary and according to the limitations of this study mentioned above the coverage of the conclusions may be incomplete.

The answers from some Member States seem to be influenced not only by the transposition and implementation of the EIA Directive (1985) but also by the discussions on the amendments to the Directive and the proposal for a Directive for environmental assessment for certain plans and programme. Judging from other sources, some Member States are critical of Directives that are mainly concerned with procedural matters. They would rather prefer the setting of common environmental objectives or standards and leave the procedures to achieve these environmental standards up to the Member States. Some answers may be influenced by pending (at the time the answers has been given) court cases. Therefore, the answers reflect possibly not only the plain facts, but to some degree have a "political" nature.

#### **3.2 Overview**

To draw a general picture of the transposition and implementation of the Directive, one should go back to the main objectives spelled out in the various recitals in the preamble.

#### **Competition**

"Whereas the disparities between the laws in force in the various Member States with regard to the assessment of the environmental effects of public and private projects may create unfavourable competitive conditions and thereby directly

affect the functioning of the common market; whereas, therefore, it is necessary to approximate national laws in this field pursuant to Article 100 of the Treaty.”<sup>23</sup> According to the answers to the questionnaires there are still wide differences in the application of the Directive. This may lead to variances in procedural costs. Considering the present priorities of streamlining consent procedures and speeding up investments these variances in actual implementation are a critical item and may lead to even more resistance to further procedural directives.

### **Consent procedures**

“Whereas general principles for the assessment of environmental effects should be introduced with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.”<sup>24</sup>

The Directive seems to have had a beneficial effect on the co-ordination of development consent procedures. This improvement in quality should be viewed as an important achievement.

### **Project types**

“Whereas projects belonging to certain types have significant effects on the environment and these projects must as a rule be subject to systematic assessment. Whereas projects of other types may not have significant effects on the environment in every case and whereas these projects should be assessed where the Member States consider that their characteristics so require.”<sup>25</sup>

In respect to the treatment of Annex I and Annex II projects there are still differences between the Member States. There are still - after more than ten years - different opinions about the interpretation of Annex II. This difference in treatment of projects within the various Member States is unsatisfactory and might affect competitive conditions.

### **Assessment**

“Whereas the effects of a project on the environment must be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity

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<sup>23</sup> Official Journal of the European Communities. No L 175/40, 05.07.1985.

<sup>24</sup> Official Journal of the European Communities. No L 175/40, 05.07.1985.

<sup>25</sup> Official Journal. see above.

of species and to maintain to reproductive capacity of the ecosystem as a basic resource of life.”<sup>26</sup>

Whether this basic objective of the Directive has been implemented satisfactorily within the Member States can only be answered indirectly. Most experts and practitioners agree that the main effect of the Directive and the subsequent national legislation cannot be judged by the formal procedures and the content of the environmental impact statements alone but rather by their influence on the pre-application phase. Because the requirements of the Directive are known to the developer and the consultant, planning is improved and proposals are already modified before the formal application is prepared. The Directive seems also to be effective in that respect. However, the effects cannot be quantified relying on the answers to the questionnaire.

### 3.3 General development

The 1993 report came to the following conclusions with regard to deficiencies:

- “the (EIA) process is, in many cases, not starting early enough;
- adequate quality control of the EIA and of the EIA process as a whole is not always present;
- mitigating measures of a wider nature are infrequently and inadequately integrated into the planning and design of projects;
- EIS availability and consultative practice in certain cases is weak;
- the contribution of the EIA process to the eventual decision-making and the role of monitoring project implementation are not as clear or as effective as they could be.”<sup>27</sup>

It is certainly not possible to quantify the changes since the first report on the transposition of the Directive. The overall picture of the answers to questionnaires indicate that

- the legal systems have been adapted to the requirements of the Directive,
- EIA has become more or less a regular procedure integrated into the licensing procedures,

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<sup>26</sup> Official Journal of the European Communities. No L 175/40, 05.07.1985.

<sup>27</sup> Commission of the European Communities: Report from the Commission of the Implementation of Directive 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment and Annexes for the Member States. COM (93) 28 final - Vol. 12. Brussels, 2 April 1993, p. 63.

- the quality control of the EIS and in some cases of the EIA process is still not sufficient,
- public participation and consultation practice have been improved.
- monitoring in its widest sense is now an established procedure in most Member States.

### **3.4 Extent of formal compliance**

All Member States have transposed the Directive. In many cases there is already a “second generation” of EIA legislation. Some Member States used the chance of transposing the Directive to unify and improve their systems for granting development consents. In most cases, the EIA requirements have been integrated into existing procedures. There are still differences in the coverage of Annex II projects. Even though it is not a requirement of the Directive, some Member States provide for monitoring. In most cases these requirements already existed before the EIA system was introduced.

### **3.5 Practical compliance**

The numbers of EIAs varies considerably between the Member States. The reasons are the different sizes of the Member States, differences in legislation and also differences in the economic development. The numbers are rough estimates because only a few Member States are in the position to report an exact number of studies prepared.

The quality of the environmental impact statements varies according to the size and the controversy of the projects. Guidelines have been prepared in some Member States to improve the quality. However, only in a few Member States there are independent review bodies. Most Member States confirmed that the authorities take into account the EIS and the consultations based on it when authorising a project. Even though “taking into consideration of the information gathered in the development consent procedure” has been mentioned as one of the ambiguous aspects of the Directive, the conclusion seems to be justified that this very important step within the EIA procedure and needs additional scrutiny.

### **3.6 Effectiveness**

Principal problems of the application mainly relate to unclear definitions in the Directive; the Member States pointed out several ambiguous and difficult provisions. Otherwise the problems seem to be similar to the ones encountered when introducing new development consent procedures: i.e., a high number of projects subject to the procedure, the lack of re-

sources and power and the danger of new procedures becoming a mere formality. There is no common agreement whether thresholds or a case-by-case-analysis is more effective. In some cases a combination is proposed.

### **3.7 Specific provisions**

In a few cases, Member States have approved a project with a specific act of national legislation or have exempted specific projects from the provisions of the Directive. Member States point out that environmental concerns have been considered in these cases. Most Member States have transposed the provisions relating to the assessment of transboundary impacts or are on their way to do so.



#### 4. Recommendations

The analysis of the questionnaires and the design of this study lead to some recommendations that are solely the opinion of the author and do not necessarily reflect the opinion of the Member States or the Commission. They are meant to improve future updates and reviews.

To gain a comprehensive picture on the state of implementation, there should be some additional information on formal and informal advisory notes or guidelines. Commissioned by the DG XI, the Irish EIA Centre (Dublin) has prepared a Pan-European Sourcebook of EIA Guidelines<sup>28</sup>. This study distinguishes between statutory, formal guidelines and informal advisory notes at the national and regional level.

The answers to the questions in the questionnaire are sometimes very general in nature and do not allow an exact comparison. It would help to provide for each project type (at least for Annex I) for each Member State a flow chart pointing out the procedure from the start (informal application, screening, scoping) and to the final construction phase and potential monitoring requirements. This would lead to a better understanding of the role of EIA in the decision making and authorisation process. It would also facilitate a better understanding of the differences between the EIA systems e.g. in Germany (two-tiered system: EIA for certain land use plans, followed by EIA for the individual project (e.g. industrial installation)) or the UK (EIA as part of the planning permission).

A reliable analysis of the EIA process in the Member States and in the whole Union would need at least a statistical base of the numbers and types of EIAs carried out. It would be helpful, if the Commission could support such measures to ensure that they are carried out in a co-ordinated way in the Member States. This has been one of the recommendations of a meeting of EIA centres within the European Union, organised by DG XI in February 1996. There is definitely a need for the support of a network database system for EIS produced in each of the Member States.

It will certainly be helpful, to have a regular review of the transposition and the experience gained in practice. A standardised questionnaire seems to be a practical tool. Some questi-

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<sup>28</sup> EIA Centre at CAAS Ltd.: Pan European Sourcebook on EIA Guidelines. Dublin, October 1996.

ons should be treated in more detail (procedure according to projects types, quality of environmental studies). This research cannot be commissioned by DG XI alone, but it would be useful, if the Member States could to some degree co-ordinate their national research. One step in this direction could be the "Study to Develop and Implement an Overall Strategy for EIA Research in the European Union" with recommendations for research projects.<sup>29</sup>

The most urgent need for the exchange of information between the Member States will be in neighbouring countries for projects with transboundary impacts. Experience gained from such transboundary EIA procedures show the importance of the development of EU-wide environmental quality standards and a comparison of national regulations on environmental assessment.

This study on the performance of the EIA process was concerned with the issues of the quality of the environmental impact statements, modifications of projects as a result of EIA and the influence of changes to EIA procedures. Based on case studies in several Member States, the study recommends the introduction of scoping, the adoption of a formal EIA report quality control mechanism, the accreditation of EIA consultants, the preparation of EIA guidelines, the strengthening of institutions and EIA training.<sup>30</sup>

Taken together these recommendations should help to strengthen the role of EIA as an effective instrument of environmental protection and at the same time improve the quality of the development consent procedures.

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<sup>29</sup> European Commission: A Study to Develop and Implement an Overall Strategy for EIA/SEA Research in the EU. April 1997. Colombo, G.; Haq, G.; Melaki, I. European Commission - Joint Research Centre Institute for Systems, Informatics and Safety.

<sup>30</sup> European Commission: Evaluation of the Performance of EIA process. Final Report. Volume 1: Main Report. Manchester October 1996, p. 20. Wood, Ch.

**Table 1: Principal Acts of Legislation<sup>31</sup>**

Member State	Legislation
Austria	Federal Act on Environmental Impact Assessment and Public Participation (Environmental Impact Assessment Act - EIA Act, Fed. Law Gazette No. 697/1993), entered into force 1 July 1994.
Belgium	In Belgium, the Laws of Institutional Reform transferred EIA responsibility to the regions (i.e. Flanders, Wallonia and Brussels). The responsibility to implement EIA for nuclear installations and the storage of radioactive materials remains with the national government. Formal implementation of the EIA obligation is realised by the provisions of the Royal Decree of 23 December 1993, amending the Royal Decree of 28 February 1963, which constitutes the radiation protection regulations. All nuclear installations and radioactive waste disposal or treatment facilities referred to in the EIA Directive are included.
Belgium Brussels region	Order of 30 July 1992 on the prior assessment of the impact of certain projects in the Brussels Metropolitan Region, as amended by the Order of 23 November 1993.
Belgium Flanders	Administrative Orders from 23 March 1989. For industrial installations environmental license decree of 28 June 1985, for implementation of this degree administrative orders (Vlarem I and Vlarem II), effective respectively 01 September 1991 and 1 January 1993. For non-industrial developments, supplement to the town and country planning act of 1992.
Belgium Wallonia	Decree of 11 September 1985 concerning environmental impact assessments for the Wallonia Region. The application of the decree is determined under the executory decision of the Walloon Regional Executive of 31 October 1991.
Denmark	Danish Planning Act No. 746 of 16 August 1994, Order No. 847 of 30 September 1994 on supplementary provisions in pursuance of the Planning Act (combined Order), Order No. 848 of 30 September 1994 amending the Order on the approval of the listed enterprises, Order No. 849 of 30 September 1994 on the licensing, etc. of installations subject to environmental impact assessments in accordance with the Planning Act (EIA), Order No. 379 of 1 July 1988 on the environmental assessment of installations at sea, Guideline No. 182 of 17 October 1994 for evaluating whether an installation or project is subject to the provisions of the Plan Act on environmental impact assessments (EIA).
Finland	Act (468/94) and Decree (792/94) on Environmental Impact Assessment Procedure 1 September 1994. In addition amendment of 12 acts and 2 decrees.
France	Decree No 93-245 of 25 February 1993 to amend and supplement the General Implementation Decree No. 77-1141 of 12 October 1977. Additionally explanatory circular 27 September 1993.

<sup>31</sup> Question 1a: Which is the principal legal act of transposition of directive 85/337/EEC in the Member State? Report 1993: Question 1a, Table 3.1 p. 13-14.

Member State	Legislation
Germany	Environmental Impact Assessment Act (EIA Act, 12 February 1990) , in specific fields Federal Mining Act and Land-Use Planning Act (Act on the Implementation of the Council Directive of 27 June 1985 on the Assessment of the Effects of Certain Public and Private Projects on the Environment (85/337/EEC) of 12 February 1990, Amendment to the Federal Mining Act of 13 August 1980 and the Statutory Ordinance for Environmental Impact Assessment for Mining Projects of 13 July 1990, Amendment to the Federal Land-Use Planning Act of 28 April 1993 and an amendment to the Statutory Ordinance to the Federal Land-Use Planning Act of 15 August 1994, Amendment to the Second Statutory Ordinance to the Federal Immission Control Act of 20 April 1993, Amendment to the Statutory Ordinance on permitting procedures for nuclear projects of 11 November 1994).
Greece	Joint Ministerial Decision 69269/5387/90 (Joint Decision of Ministry of the Environment, Physical Planning and Public Works and other Ministries involved), Joint Ministerial Decision 75308/56512/91 (Joint Decision of Ministry of the Environment, Physical Planning and Public Works and Ministry of Justice).
Ireland	European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989), amended by European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1994 (S.I. No. 84 of 1994). Local Government (Planning and Development) Regulations, 1994 (S.I. No. 86 of 1994).
Italy	Art. 6 of law n. 349 of 8 July 1986, decrees of the President of the Council of Ministers n. 377 of 10 August 1988 and of 27 December 1988.
Luxembourg	Act of 9 May 1990 on dangerous, insanitary and nuisance-causing establishments, Act of 31 July 1995 amending and supplementing the amended Act of 16 August 1967 designed to set up a major road communications network and a road fund, Grand-Ducal Regulation of 4 march 1994 on the assessment of the environmental impact of certain public and private projects, Grand-Ducal Regulation of 31 October 1995 determining the content of the studies for the assessment of the impact on the natural and human environment and the public consultation procedure pursuant to Article 14a of the Act of 31 July 1995 amending and supplementing the amended Act of 16 August 1967 designed to set up a major road network.
Netherlands	Environmental Management Act, in particular Chapter 7 (Bulletin of Acts, Orders and Decrees 99, 1994). Environmental Impact Assessment Decree 1994 (Bulletin of Acts, Orders and Decrees 540, 1994). Notification of Intent Regulations 1993 (Netherlands Government Gazette, 29 November 1993).
Portugal	Law No. 11/87: Portuguese Environmental Act. Decree-Law No. 186/90: EIA Process, Decree-Regulation No. 38/90: EIA Process, Decree-Law No. 109/91: Licensing procedures for industrial activity, Decree-Law No. 258/92: EIA of large commercial developments.

Member State	Legislation
Spain	<p>Legislative royal decree ('Real Decreto') 1302 of 28 June 1986 on Environmental Impact Assessment (BOE of 30 June 1986) and Real Decreto 1131 of 30 September 1986 by which the enforcement regulation is approved (BOE of 5 October 1986).</p> <p>Law 7/1994 of 18 May on Environmental Protection for Andalucia; Law 1/87 of 30 March on Territorial Co-ordination for Asturias; Law 11/90 of 13 June on EIA for Canarias; Law 8/94 of 24 June on EIA and Law 6/96 of 23 October for Castilla Leon; Law 1/95 of 2 January on Environmental Protection for Galicia; Law 10/91 of 4 April on Environmental Protection for Madrid; Law 1/95 of 8 March on Environmental Protection for Murcia; Law 2/84 of 3 March on Environmental Protection for Valencia; Decree 45/1994 on EIA for Aragon; Decree 4/86 of 23 January on EIA for Baleares; Decree 50/91 of 29 April on EIA for Cantabria; Decree 39/90 of 27 March on EIA for Castilla-la-Mancha; Decree 114/88 of 7 April on EIA for Cataluna; Decree 45/91 of 16 April on Ecosystems Protection for Extremadura; Decree 245/88 of 6 October on EIA for Navarra; Decree 27/88 of 14 February on EIA for Pais Vasco.</p>
Sweden	<p>Chapter 5 of the Act (1987:12) on the management of natural resources, § 13 of the Environmental Protection Act (1969:387), § 25 of the Nature Conservation Ordinance (1976:484); Chapter 13, § 19 of the Water Act (1983:291), Chapter 4, § 2 of the Minerals Act (1991:45), Chapter 5, § 18 of the Planning and Building Act (1987:10, PBL), § 15 of the Highways Act (1971:948) and Regulations VVS 1993:14 of the Swedish Highways Administration, § 3 of the Act (1977:439 on local authority energy planning, § 12a of the Act (1970:244) on public water and sewerage pipes (VA-lagen), § 5b of the Nuclear Technology Act (1984:3), § 3a of the Nuclear Technology Ordinance (1984:14), § 22a of the Radiation protection Act (1988:220) and § 14a of the Radiation Protection Ordinance (1988:293), § 3 of the Ordinance (1989:67) on railway main lines.</p> <p>Provisions in the EIA Ordinance: Act on certain peat deposits (1985:620, torvlagen), Act (1902:71 p. 1) containing certain regulations in respect to electrical installations (ellagen), Act (1978:160) on certain pipelines (rörledningslagen), Air Navigation Act (1986:166), Act (1966:314) on the continental shelf (kontinentalsokkelnagen), Act (1983:293) on the creation, expansion and monitoring of public navigable channels (farledslagen).</p>
United Kingdom	<p>England and Wales: Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, Scotland: Environmental Assessment (Scotland) Regulations 1988, Northern Ireland: Planning (Assessment of Environmental Effects) Regulations (Northern Ireland) 1989. In addition, regulations implement the Directive for projects outside the planning system. Gibraltar: Town Planning (Applications) (Amendment) Regulations 1993.</p>

**Table 2: Deficiencies in compliance (new Member States)<sup>32</sup>**

Member State	Deficiencies and measures
Austria	<p>The EIA-Act entered into force on 1 July 1994. For some projects of Annex I of the EIA-Act, however, a transitional period was established till January 1995. Before the entry into force of the EIA-Act the minimum requirements for the projects of Annex I of the Directive, however, were covered by the existing administrative laws in the different sectors. For projects for which the EIA-Act does not apply because of the late entry into force and the transitional provisions, the respective competent authority has to investigate whether the existing administrative laws fulfil the requirements of the Directive or whether those stipulations have to be interpreted in the light of the Directive. Where the administrative provisions do not include the requirements of the Directive the provisions of the Directive which are susceptible to a direct application have to be applied directly in the respective licensing procedures.</p> <p>There are several reasons for delay. The EIA-Act was discussed and negotiated for more than a decade because of the constitutional split competencies between the Federal State and the Provinces in environmental issues and because of a traditionally sectoral approach in this field. The new EIA procedure established by the EIA-Act is part of a comprehensive licensing procedure which goes beyond the minimum requirements of the EIA directive. The EIA-Act made an important change to the existing licensing system. Previously, to get a permit for an installation several applications had to be filed at different competent authorities according to the respective administrative laws. With the EIA-Act a single licensing procedure has been established. Just one application for the whole licensing procedure has to be filed and just one final consent is given by one competent authority (the Provincial Government) responsible for the entire procedure.</p>
Finland	No principal deficiencies in formal compliance with the directive have been discovered so far.
Sweden	Sweden has not until now had sufficient requirements in respect of EIA for railways (Annex I (7), Annex II (10g)). But according to the Ordinance (1989:67) on main line railways, requirements in respect of EIA for plans for main line railways apply. The Government has also set requirements for EIA before reaching the decision on a new railway line between Stockholm and Arlanda. In relation to Annex II (1a-1d) there is forecoming legislation. But there are already provisions within the existing legislation to consider environmental aspects.

<sup>32</sup> Additional Question 1b (new Member States only): What, if any, are the principal deficiencies in formal compliance with Directive 85/337/EEC in your country?

Additional Question 1c (new Member States only): Which are the principal reasons for any deficiencies in formal compliance and for delays in achieving full compliance?

Additional Question 1d (new Member States only): What measures are in the process of being implemented, or are envisaged to remedy any remaining deficiencies in the implementation of Directive 85/337/EEC in the Member State?

<b>Member State</b>	<b>Deficiencies and measures</b>
Sweden (cont.)	<p>Reasons for deficiencies are, that legislation work has been continuing for some time in respect of both railways and agriculture and forestry. It has not been considered reasonable to force this process. The comprehensive work involved in an Environmental Code has been under way for many years. In this case, too, it was considered inappropriate to anticipate the results for this investigation.</p> <p>There are investigations to examine, whether legislative measures or regulations are necessary for forestry and agricultural projects.</p>

**Table 3: Coverage of entire project (new Member States)<sup>33</sup>**

Member State	
Austria	<p>The EIA-Act establishes a single comprehensive licensing procedure, which covers the entire project and its environmental impacts. The EIS has to contain a description of the project including the infrastructure and land use requirements during construction and operation, and the interaction with other plants or plant sections. The additional Environmental Impact Expertise based on the Environmental Impact Statement shall review the impacts of the entire project in a comprehensive and overall manner. Finally, the outcome of the whole EIA procedure has to be reflected in the decision.</p>
Finland	<p>The assessment procedure starts when the developer submits the assessment schedule to the coordination authority. According to the section 8 in the EIA Act the developer shall submit the assessment schedule to the coordination authority at the earliest possible stage of planning, taking account of other project preparations.</p> <p>According to the EIA Decree the assessment schedule shall contain i.a. information on the project, its purpose, site, land-use needs and connections with other projects. In the statement given by the coordination authority (based on views and opinions of various parties) to the developer the authority also expresses its opinion on which subprojects of the project or which projects should be jointly assessed in the procedure.</p> <p>The Regional Environment Centres shall control and supervise enforcement of this Act in their regions. According to the EIA Act they are entitled to appeal or in certain cases to order implementation of the project to be halted. Firstly, the right to appeal concerns rulings on a permission or other authority decision on a project if EIA has not been carried out. Secondly, if implementation of a project does not require a permit or other authority decision and it is initiated before the EIA has been carried out, the Regional Environment Centre can under penalty of fine order implementation of the project to be halted until the assessment procedure has been carried out.</p>
Sweden	<p>According to Chapter 5 § 3 of the Act on the management of natural resources, an EIA must provide the basis for a joint assessment of the effect of a planned installation, activity or remedy. This provision can, and should, be interpreted in such a way that it relates to the project as a whole, even if only a part is examined on the occasion in question. This has still to be implemented in practice.</p>

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<sup>33</sup> Additional Question 1f (new Member States only): Which provisions have been made to guarantee that the assessment covers the entire project?

**Table 4: Integration into existing consent procedures and types of consent<sup>34</sup>**

Member State	
Austria	Yes. The new EIA procedure is part of a comprehensive licensing procedure. With the EIA-Act a single licensing procedure has been established. Just one application for the whole licensing procedure has to be filed and just one final consent is given by one competent authority (the Provincial Government) responsible for the entire procedure. For federal roads and railroad highspeed lines that are determined by ordinance of the competent Ministers the EIA taking into account all environmental aspects is done in the procedure preceding the ordinance to decide on the route; licenses of other authorities for those projects (like water, nature protection) may not be issued before the EIAs is completed and have to take the results of the EIA into account.
Belgium Brussels region	Yes. The EIA is integrated in the procedure for issuing town planning permits (building permits) and environmental permits (permits to operate industrial plants).
Belgium Flanders	Yes.
Belgium Wallonia	A request for a permit must be submitted within each authorization.
Denmark	For a project being subject to the EIA provisions of the Plan Act, licenses and permits according to Orders No. 848 and 849 and licences according to the Plan Act may not be granted before the EIA procedure has been implemented, and approved regional plan guidelines exist for the installation or project in question.
Finland	Yes. The consent of comparable decisions to which the assessment procedure is linked are defined in the following acts: Building Act (370/58), Water Act (254/61), Environmental Permit Procedures Act (735/91), Air Pollution Control Act (67/82), Waste Act (1072/93), Health Protection Act (763/94), Adjoining Properties Act (26/20), Chemicals Act (744/89), Land Extraction Act (555/81), Mining Act (503/65), Electricity Market Act (386/95), Public Roads Act (243/54), Aviation Act (595/64), Act on the Redemption of Immoveable Property and Special Rights (603/77), Private Forest Act (412/67), Forest Improvement Act (140/87) and Nuclear Energy Act (990/87).

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<sup>34</sup> Question 1b: Does this act integrate EIA in the existing procedures for consent?

Question 1l: Which type of consent is covered by the national provisions on EIA? Report 1993:

Question 1e (the question is only partly comparable): Which are the competent authority or authorities that have been designated for performing duties arising from the directive and what are their usual functions and responsibilities? Are authorities designated in general terms or are they designated for each request for consent?

Additional questions for new Member States: No. 2: Which types of consents are covered by the national EIA legislation?

Member State	
Finland (cont.)	<p>Monitoring of the enforcement of the Act and general development of assessment rests with the Ministry of the Environment. Other ministries are responsible for the monitoring of enforcement and development of assessment in their particular spheres of competence. The Ministry of the Environment also decides on the application of the assessment procedure in an individual case. The Regional Environment Centres control and supervise enforcement of the legislation in their regions. These centres also act as co-ordination authorities in the assessment procedure. In addition, the centres are the competent authorities in the environmental licensing procedure. The Finnish Environment Agency performs expert functions connected with EIA procedure and is in charge of training, information and research. It also deposits and keeps available assessment reports. Other authorities' tasks are based on other legislation, especially on the duties set to them according to the 12 acts which were amended when the EIA Act and Decree were enacted.</p>
France	<p>Yes. The principal incorporating EIA into the existing procedure was already set out in the initial decree of 12 October 1977 on impact assessments. Furthermore, the Act of 12 July 1983 on the democratization of public enquiries and environmental protection established a principal for the systematic conduct of public inquiries for all projects likely to affect the environment. Therefore EIA has been integrated into existing consent procedures.</p> <p>There is no single development consent system but a multiplicity of such systems. French legislation requires the impact study to be carried out under existing procedures. Each category of facilities or structures must be the subject, prior to completion or use, of a series of approval or development consent decisions provided for either in texts specifically applicable to a category of activities (mines, quarries, electric power lines, installations classified as industrial or agricultural, land re-allocations, land clearances etc.) or in texts of a more general nature common to numerous activities (declarations of public interest, building permits, authorizations under the police regulations governing waterways etc.).</p>
Germany	<p>Yes. The EIA is an integral part of the development consent procedure by the authorities (cf. Article 2(1) of the EIA Act).</p> <p>There are different types of consent, primarily the official procedure for approval of the finalized plan and various development consent procedures under the specific legislation. The principal procedures, namely the approval procedure and the development consent procedure under the immission control legislation are covered by the EIA. Article 4 of the EIA Act ensures that even in the specific legislation imposing requirements not corresponding to the EIA Act, the environmental impact assessments provided for in the development consent procedures are likewise up to the high standards of the EIA Act.</p>
Greece	<p>Yes. The two Joint Ministerial Decisions that are mentioned above integrate EIA in the existing procedures for consent.</p> <p>Two types of consents are covered: First the approval of the Installation Site of the project. This consent comprises screening and first degree scoping. The second one is the Approval of Environmental Terms for the construction of the project.</p>

Member State	
Ireland	<p>Yes. In association with various statutes and regulations applying to different types of development.</p> <p>In the case of most EIAs (72 of a total of 82 in 1994) the consent involved is the planning permission under the Local Government (Planning &amp; Development) Acts. In most of the remaining cases the development is by or on behalf of a local authority and the consent involved is certification by the Minister for the Environment. Other consents relate to grants of leases of licenses but are very rare.</p>
Italy	Yes.
Luxembourg	<p>Yes. The EIA is integrated into the public inquiry procedure, procedure authorising the budget for a road project and development consent procedures applicable to green areas (pursuant to the Act of 11 August 1982 on nature conservancy and the protection of natural resources).</p>
Netherlands	<p>The Environmental Management Act describes an EIA procedure with formal linkages to the decision-making procedures (for instance a decision-making procedure for a consent). The Act determines that the competent authority shall not take a decision, in the preparation of which an environmental impact statement must be drawn up, until after the sections on the preparation of an environmental impact statement have been applied. Neither shall the competent authority take such a decision if the information included in the environmental impact statement can no longer reasonably be used as a basis for the decision due to significant change in the circumstances on which the environmental impact statement was based.</p> <p>There are various types of licenses and other decisions like spatial and sectoral decisions.</p>
Portugal	<p>Yes. The licensing authorities will not give consent for a project until the enquiry by the Ministry for the Environment concludes with a favourable opinion, subject to compliance with the conditions specified in the consent. No consent will be given, if the enquiry concludes with an unfavourable opinion or the requirement for revision of the EIA.</p>
Spain	<p>Yes. The new law integrates EIA in all phases of the preparation of an EIS. The national EIA provisions cover the authorization of specific projects by public administrations.</p>
Sweden	<p>Yes. The requirements of EIA for a project are contained in a provision in the statutes regulating the authorization assessment of projects. There is a total of 22 statutes. The competent authorities are the authorities which deal with applications for authorization in accordance with the various Acts. Precisely which authorities are permitted to comment in accordance with Article 6.1 also varies depending on the applicable legislation.</p>
United Kingdom	<p>Yes. The EIA directive is implemented primarily through consideration, as part of the land use planning system, of applications for planning permission. This is the primary consent which must be obtained before any development project can commence. In those projects where the Directive is implemented outside the land use planning system, EIA also applies at the point of the primary development consent.</p>



**Table 5: Principal modifications since 1990<sup>35</sup>**

<b>Member State<sup>36</sup></b>	<b>Modification</b>
Belgium Brussels region	<p>Various amendments to the Order are envisaged:</p> <p>More rapid constitution of the steering committee responsible for monitoring the preparation of the impact studies. Reduction of the public inquiry into the specifications from 30 to 15 days. Introduction of the public hearing to present the project and record the observations of the public on the specifications.</p>
Belgium Flanders	<p>An Administrative Order of 25 January 1995 modified the requirement of „Belgian nationality“ into „the nationality of a Member State of the European Union“, in order to be applicable as an individual to obtain the official recognition to make an EIS. An Administrative Order of 24 May 1995 modified the wording of the category of waste disposal installations for dangerous waste for which an EIA is required.</p> <p>The Inter-University Commission for the Revision of Environmental Law has prepared a draft proposal for more comprehensive EIA legislation. Until now (1/96) only a few parts of these proposals have been adopted by means of separate decrees. At the end of 1994 a draft EIA decree including EIA for certain plans and programmes had been prepared.</p>
Belgium Wallonia	The Decree has not been modified in any way. The executory decision has undergone only minor modifications.
Denmark	<p>Virtually all the implementations of Annex II to the Directive has taken place after 1990. Additional amendments are mainly concerned with the role of the public: Ideas and proposals from the public must be collected in advance of regional plan supplements including regional plan supplements with EIA statements. They shall be given proper consideration in the EIA statement. The need for the Minister of the Environment to approve the regional plan supplement has been replaced by an opportunity for the Minister for the Environment to oppose the adoption of the regional plan supplement during the period of public notice - the so-called veto provision. An opportunity for the public to appeal has been introduced in connection with the regional plan provisions, including the EIA provisions on legal questions. This opportunity to appeal also covers the question of whether a particular installation is subject to the EIA provisions of the Plan Act, and the question of conformity with the actual procedure and the stipulated contents of the EIA statement. The provisions on appeals state that the public must be given guidance in how to appeal. The deadline for appeals is four weeks.</p>
France	Decree No 93-245 of 25 February 1993 to amend and supplement the General Implementation Decree No. 77-1141 of 12 October 1977. Explanatory circular of 27 September 1993.
Germany	Article 2(3) subparagraphs 3 and 4, and Article 17 of the EIA Act have been amended so that EIAs are required only for development plans concerning projects for which an EIA is compulsory. By contrast, EIAs are no longer required for land-use plans.

<sup>35</sup> Question 1c: Which are the principal modifications operated or envisaged to it since 1990?

<sup>36</sup> This question was not included in the questionnaire for the new Member States.

Member State <sup>36</sup>	Modification
Greece	No principal modifications operated or envisaged.
Ireland	<p>Roads Act, 1993: EIAs for motorways were originally dealt with under separate motorways EC Regulations with other roads being dealt with under (a) above. All road EIAs are now dealt with under the Roads Act, 1993 (S. I. No. 14 of 1993). The coming into operation of the integrated pollution control licensing function of the Environmental Protection Agency (EPA) resulted in EPA becoming a competent authority in relation to some classes of development. This is dealt with in the European Communities (EIA) (Amendment), Regs., 1994. (S. I No. 84 of 1994).</p>
Italy	<p>The principal modifications are included in the subsequent legislative acts which extend the scope of application of the EIA procedure:</p> <p>Law of 4 August 1990 n. 240 (art. 4 paragraph 1 legislative decree 475/94) concerning the intermodal transport nodes.</p> <p>Law of 29 November 1990, n. 380 concerning the „padano-veneto waterways system“.</p> <p>Legislative decree of 27 January 1992, n. 100 concerning the „installations for the production of titanium dioxide“.</p> <p>Law of 28 February 1992, n. 220 concerning „terminals for loading and unloading hydrocarbons and dangerous substances“, „installations for washing ballast waters of ships“, „submarine pipelines for transportation of hydrocarbons“ and „mineral exploitation - continental shelf“.</p> <p>Decree of the President of the Republic 27 April 1992 concerning the „high-voltage electric transmission lines“.</p> <p>Law of 5 January 1994, n. 36 - Provisions regarding water resources (art. 17 paragraph 6) concerning „projects for transfer of water“.</p> <p>Decree of the President of the Republic 18 April 1994, n. 526 concerning the „prospection, exploration and extraction of hydrocarbons“.</p> <p>Law of 31 May 1995, n. 206 (art. 2a) concerning the „exploitation of hydrocarbon deposits in Upper Adriatic Sea“.</p>
Luxembourg	No modifications.

Member State <sup>36</sup>	Modification
Netherlands	<p>Environmental Management Act (1994):</p> <p>Introduction of a screening procedure for a new group of activities, decision on a case by case basis.</p> <p>Implementation of the Espoo Convention.</p> <p>New wording of the environmentally most sound alternative and the possibility of describing compensation measures for negative impacts which cannot be mitigated.</p> <p>EIA Decree:</p> <p>First revision (1992), general revision (1994): Introduction of some new categories of projects, implementation of Espoo convention, clarification of some texts.</p> <p>Environmental assessment of policies, plans and programmes: Since 1993 an environmental paragraph for policies and of the ministries is obligatory.</p>
Portugal	No changes.
Spain	No changes, but draft under preparation.
United Kingdom	<p>The Town and Country Planning (Assessment of Environmental Effects), Regulations (1988) have been amended in 1990, 1992 and 1994. 1990: A redefinition of power stations. 1992: changes to the publicity requirements for developers and duty for local planning authorities to submit a planning application for their own developments with an environmental statement if necessary. 1994: Technical changes, addition of a number of categories to the regulation (wind generators, motorway service areas and coast protection works). Requirement for same publicity arrangements for any additional information submitted.</p> <p>Scotland: Equivalent amendments were made to the Environmental Assessment (Scotland) Regulations (1988) in 1994.</p> <p>Northern Ireland: Similar amendments will come into force as soon as the legislative timetable allows.</p> <p>Similar amendments have been made to the Regulations which give effect to the EIA Directive for projects falling outside the UK planning system. Some of these are now completed, others are in the final stages of completion.</p>

**Table 6: Legal provisions for Annex II projects<sup>37</sup>**

Member State	Legal provisions
Austria	Austria has listed in its EIA Act those projects of Annex II that are relevant for Austria and where it considers that their characteristics so require. Austria mainly uses thresholds to identify the relevant projects.
Belgium Brussels region	All the projects listed in Annex II of Directive 85/337/EEC are subject to an environmental impact assessment.
Belgium Flanders	No. The wording of article 4.2 is not clear enough in order to conclude that all classes in Annex II should be subject to an EIA. Some projects/activities are irrelevant for Flanders.
Belgium Wallonia	Annex II projects are covered (thresholds).
Denmark	All Annex II projects are subject to the EIA provisions. Some projects are of no relevance in Denmark.
Finland	Case-by-case examination; no Annex II list. Any type of project, which will probably have significant adverse environmental impacts, may fall under the same EIA procedure, which is applied to Annex I projects.
France	Virtually all projects in Annex II are subject to an EIA, based on thresholds or criteria. Two categories under the heading „agriculture“ are not included.
Germany	Germany considers that the EIA directive requires only one project from the corresponding classes listed in Annex II to be made subject to an EIA. Consequently the projects covered by the EIA Act are subject to a full EIA like Annex I projects. Going beyond Annex II, this includes modifications to Annex II projects.
Greece	Yes. All projects are subject to an assessment.
Ireland	Yes. Except for projects for the restructuring of rural land holdings (not state intervention in land restructuring).
Italy	Annex II projects are not covered in all regions. The decree of the President of the Republic of 12 April 1996 concerning the act of guidance and co-ordination for the implementation of art. 40, para 1, of law of 22 February 1994, n. 146 on EIA provisions provides guidance to the regions for full implementation.
Luxembourg	Projects contained in the list in the amended Grand-Ducal Regulation of 18 May 1990 may be submitted to an environmental impact assessment depending on their type, their characteristics or their location.
Netherlands	Yes.
Portugal	No. Only the classes likely to have significant effects on the environment, considering the real situation in Portugal, have been included.

<sup>37</sup> Question 1e: Has the member state made legal provisions, that projects in all the classes listed in Annex II are subject to an assessment in accordance with article 2.1 and 4.2 of the directive? What, if any, are the main remaining deficiencies in formal compliance with directive 85/337/EEC in the member state concerned?

Additional question for new Member States: no. 5.

<b>Member State</b>	<b>Legal provisions</b>
Spain	The new draft for an EIA Act states that all Annex II projects without exemption are subject to screening for an EIA.
Sweden	Yes. With the exception in respect to railways (see Table „Deficiencies in compliance“).
United Kingdom	<p>Yes. With the exception of Annex II, 1 (a): Projects for the restructuring of rural land holdings (no public sponsored schemes to promote the restructuring of rural land holdings. Should any such scheme be introduced, provision will be made for environmental assessment).</p> <p>Annex II, 1 (b): Projects for the use of uncultivated land or semi-natural areas for intensive agricultural use (will be implemented).</p> <p>Modifications to Annex II projects are regarded as Annex II projects.</p>

**Table 7: Annex II Projects: Criteria and Thresholds<sup>38</sup>**

<b>Member State</b>	<b>Criteria, thresholds and their legal status</b>
Austria	Austria mainly uses thresholds to identify the relevant projects.
Belgium Brussels region	Insufficient evidence.
Belgium Flanders	No criteria and/or thresholds established.
Belgium Wallonia	Thresholds established, no modification.
Denmark	<p>Criteria and thresholds have recently - 15 October 1994 - been introduced for most categories of Annex II installations, see also Annex I, Nos 10-34 of Order No. 847 of 30 September 1994, and Article 3(2) of the same Order with Annex II.</p> <p>The criteria and thresholds are based on 1) the extent of the installation capacity and physical dimensions, 2) the location of the installation in relation to environmental protection interests and 3) the environmental pollution caused by the installation (noise, air).</p>
Finland	Screening criteria are being developed. A framework for the criteria has been drafted for the use of the co-ordination authorities and is now being used in order to gather experience. Also project specific screening criteria are being developed by various sectoral authorities and developers. A tentative list of criteria for significance (of environmental impacts) have been used. Fulfilment of any of these criteria would always lead to application of an EIA procedure.
France	Virtually all projects are subject to an assessment based on the thresholds or criteria set out in the Decree of 12 October 1977, as amended on 25 February 1993. The 1993 Decree filled in some of the gaps in the field of application, notably as regards urban planning projects and tourism or leisure projects.
Germany	<p>Thresholds have been set, primarily for industrial plants (see Annex for Article 3 of the EIA Act and Appendix to point 1 in the Annex). Criteria are important, particularly for approval of the finalized plan for infrastructure (e.g. road) projects, for the development of waterways and landfills.</p> <p>These thresholds are legally binding since they are laid down by law. The criteria for approval procedures include the nature, size or location of the project, in accordance with Article 2(1) of the Directive.</p>
Greece	No criteria and/or thresholds for the selection of projects, all Annex II projects are subject to an assessment. Criteria and thresholds are used to define, whether the EIS has to be evaluated by the central or the prefectural authorities. The content of the EIS may vary according to the size, the type and the natural environment, in which a project takes place.
Ireland	Thresholds established within the regulations of 1989, no modification.

<sup>38</sup> Question 1f: Have criteria and/or thresholds been recently established or modified by the member state for the selection of Annex II projects to be subject to an assessment?

Question 1g: If so, what are their principal characteristics and their legal status?

Report 1993: Question 2a, Table 3.6. p. 19-20.

Additional question for new member states: no. 5.

Member State	Criteria, thresholds and their legal status
Italy	<p>Criteria and thresholds established with the Decree of the President of the Republic of 12 April 1996 (guidance to regions for laying down EIA regulations for Annex II projects).</p> <p>The decree provides, for projects of regional competence, for a distinction between projects of Annex A for which an EIA is always necessary and projects of Annex B for which the competent authority can decide on a case-by-case basis. The typology of projects listed in the annexes is completed by „thresholds“ which take into account the size or the production capacity of the projects. The case-by-case examination has to take into account the elements listed in Annex B.</p>
Luxembourg	No criteria or thresholds, decision on a case-by-case basis.
Netherlands	<p>Criteria and thresholds established. Modification in 1987, 1992 and 1994. The principal characteristics of criteria and thresholds are size (tons, km<sup>2</sup> and m<sup>3</sup>) and quality (location in or near sensitive areas). Their legal status is the EIA Decree, based on the Environmental Management Act.</p>
Portugal	Yes. Thresholds have been adopted.
Spain	No criteria or thresholds established.
Sweden	<p>No criteria or thresholds. The general requirement applies to EIA for all projects within a category covered by compulsory inspection. The criteria for compulsory inspection thus determine the need for an EIA.</p>
United Kingdom	<p>Indicative criteria and thresholds for Annex II projects were given in advice to local planning authorities and developers in the 1989 regulations. Further criteria and thresholds were included in guidance accompanying the 1994 amendments in respect of the additional categories added (wind generators, coast protection works and motorway service areas), and in guidance issued with the 1995 amendment to the Town and Country Planning General Development Order. Equivalent guidance has been given to planning authorities and developers in Scotland. In Northern Ireland, the Department of the Environment has issued guidance for developers. Guidance has also been issued by relevant Government Departments in respect of projects which are considered under consent procedures other than the Town and Country Planning procedures.</p> <p>Criteria and thresholds are indicative only, the decision is made solely on a case by case basis.</p>

**Table 8: Additional assessment procedures<sup>39</sup>**

<b>Member State<sup>40</sup></b>	<b>Additional procedures</b>
Belgium Brussels region	Impact reports are carried out on a whole series of projects. If need be the regional political authorities may order a full environmental impact assessment to be carried out for one or other of Annex II projects.
Belgium Flanders	No. „Mini-assessment“ has been carried out in cases, where an EIA could not be enforced, but this kind of assessment has been considered useful.
Belgium Wallonia	Any request for authorisation requires a „prior assessment notice“ to enable the competent authority, in the light of this notice, to impose an impact study even in cases where the project covered by the permit is not included in Annex II.
Denmark	The criteria for all the installations listed in Annex II in Order No. 847 have been expressed in such a way that, in practice, a screening is carried out in the form of a „mini assessment“.
France	The Decree of 12 October 1977 provided for a simplified impact assessment, known as an impact notice, for certain less important projects, a list of which is set out in Annex IV of this Decree and which has been updated and supplemented under the Decree of 1993.
Germany	Environmental aspects are also considered in the consent procedure for all Annex II projects, including projects for which no EIA is carried out. Virtually all projects are subject to development consent procedures which include an assessment of the environmental aspects. This can range from a mini-assessment to a complete assessment comprising almost the same aspects as an EIA, for example in the plan approval procedure or the development consent procedure under the Federal Immission Control Act (European Court of Justice ruling of 11 August 1995 concerning the development consent procedure under the Federal Immission Control Act). Case-by-case assessments have to be carried out in case of modifications to decide, whether an EIA is required.
Greece	Yes. The Ministry of Environment, Physical Planning and Public Works has adopted a kind of mini-assessment. For the approval of the construction site of a project, developers have to submit to the Physical Planning Section a kind of mini-EIA for evaluation. A kind of mini-assessment is submitted for small-scale projects, that are not included in Annex II.
Ireland	For most projects of Annex II there is a provision for the competent authority to require an environmental impact assessment. This will be the case, whenever the development will likely have significant effects on the environment, even where it falls below the threshold.
Italy	Yes. It is used for the case-by-case examination.

<sup>39</sup> Question 1h: Has the member state adopted methods other than criteria and/or thresholds (e.g. mini-assessment)?

<sup>40</sup> This question was not included in the questionnaire for the new member states.

<b>Member State<sup>40</sup></b>	<b>Additional procedures</b>
Luxembourg	Yes. In the case of projects which have lesser impact on the environment, the administration may request a simplified EIA (impact notice).
Netherlands	Yes. A screening procedure for activities which are not always subject to an EIA has been adopted. The competent authority must decide on a case-by-case basis, whether an EIS has to be prepared. Criteria are formulated in a section of the Environmental Management Act (Chapter 7.3, section 7.8b).
Portugal	Thresholds have been adopted.
Spain	Yes. Case-by-case examination until the new law is adopted.
United Kingdom	No. The UK Regulations allow the developer to seek the competent authority's opinion on whether EIA is required in advance of submitting a planning application.

**Table 9: Formal provisions for monitoring<sup>41</sup>**

<b>Member State</b>	<b>Provisions</b>
Austria	Yes. Three to five years after the completion of the plant the authority has to do a post-project analysis to examine the compliance with the provisions of the permit and check whether the assumptions and forecasts of the EIA correspond to the actual effects of the plant on the environment. The results of the post-project analysis have to be sent to the Ministry of the Environment and to be filed in the EIA Documentation Centre at the Federal Environmental Agency. There are no special monitoring provisions in the EIA-Act but monitoring will, <i>inter alia</i> , be imposed in the permit to ensure the compliance with all licensing requirements.
Belgium Brussels region	No. There is no systematic approach, except some spot checks carried out by the administrative authorities responsible for the environment.
Belgium Flanders	No.
Belgium Wallonia	Yes. The issuing of a permit is linked to the imposition of conditions which take account of the environmental impact of the project. The competent administration may take steps at any time to monitor compliance with these operating conditions.
Denmark	No. However the licensing provisions require ongoing checks of conformity with the licensing and the associated terms. This also applies to the environmental approval - the Danish IPC approval.
Finland	Yes. Sectoral monitoring is intensive in Finland. The provision on monitoring is included in section 11 in the Decree. The assessment report shall contain, on a sufficient scale a proposal for a monitoring programme. Several of the acts which take EIS into account have explicit monitoring requirements.
France	Yes, but monitoring is not covered by any provision in the general texts on impact assessments. On the other hand, certain specific legislation - notably the Act of 19 July 1976 on scheduled establishments for the protection of the environment - does contain specific provisions on the monitoring of installations including, of course, the monitoring of operational effects. Such monitoring is assured by a specialized department responsible for the inspection of scheduled establishments.
Germany	Yes. Article 17(1) of the Immission Control Act expressly provides for post-auditing of industrial plants. As a rule, post-auditing of the environmental impact is often one of the conditions imposed on the developer when consent is given.
Greece	Yes. No formal provision, but special provisions are adopted in the respective Approval of the Environmental Terms.
Ireland	Yes. Most developments are subject to monitoring conditions.
Italy	Yes.

<sup>41</sup> Question 1i: Has the member state adopted formal provisions on monitoring the effects on the environment due to the implementation of the project? Report 1993: Question 4e, Table 4.10 p. 55.

Member State	Provisions
Luxembourg	Yes. Under the development consent procedures pursuant to the Acts of 11 August 1982 and of 9 May 1980, the Administration does carry out periodic checks as stipulated under the development consent procedures.
Netherlands	Yes. In the Environmental Management Act a formal provision on monitoring the effects is enclosed (chapter 7.9, sections 7.39-7.43). The competent authority that has taken a decision, in the preparation of which an environmental impact statement was drawn up, shall investigate the effects of the activity concerned on the environment, either during or after its completion. A report is compiled. If it appears from the investigation that the effects of the activity are considerably more damaging to the environment than was anticipated when the decision was taken, the competent authority shall take measures to limit the effects or to remedy them.
Portugal	Yes. The EIA opinions from the Ministry of the Environment impose monitoring measures whenever dictated by the nature of the projects.
Spain	Yes.
Sweden	Yes. Possibilities for monitoring already existed, however, before the EIA system was introduced. The Environmental Protection Act and the Water Act stipulate that a decision may, amongst other things, require the impact of projects to be measured and reported continuously. Decisions can be made subject to a time limit and made subject to further surveys, in addition to which an interim decision can be taken in order to clarify any crucial factors before granting full authorization.
United Kingdom	<p>Yes. Projects subject to planning permission can have planning conditions attached as part of that permission. Such conditions can be used to secure mitigation measures in EIA and planning authorities employ enforcement officers to ensure that planning permissions are complied with. The planning permissions and any attached conditions are legally enforceable.</p> <p>Other licensing controls on the operation of a project, such as discharge of pollutants, are regularly monitored to gauge the effect projects have on the environment and to ensure they remain within authorised limits.</p>

**Table 10: Provisions for scoping<sup>42</sup>**

<b>Member State</b>	<b>Provisions</b>
Austria	Section 4 of the EIA-Act provides for scoping. Six months before the application is filed, the developer has to notify to the competent authority an outline of the project and the EIS concept which are then reviewed by the competent authority, the co-operating authorities and the communities. The public is given the opportunity for inspection and for making comments to the competent authority.
Belgium Brussels region	There is a procedure for drawing up impact study specifications. These specifications are then subjected to a public inquiry. Subsequently they are adopted definitively by an impact study steering committee.
Belgium Flanders	No.
Belgium Wallonia	Under Article 9,2 of the decision of the Executive, the competent authority is responsible for defining the content of the impact study.
Denmark	No formal scoping procedure, but the scoping is included as a part of the minimum requirements for the contents of the EIA statement according to Annex III of the Directive.
Finland	Scoping is dealt in the sections 7-9 in the Act and sections 10 and 12-15 in the Decree. An assessment schedule is drafted and commented upon.
France	No formal provision for scoping. However, a number of technical circulars drawn up in the years 1978-1980 by the ministries concerned and by the Ministry of the Environment include details of the type of information to be supplied by the developer for certain categories of facilities.
Germany	Optional scoping exists already in Germany (Article 5 of the EIA Act and also point 0.4 of the administrative provisions of EIA).
Greece	Scoping takes place during the approval of the construction site of a project or activity. For road construction and tourist facilities, there are circulars that describe in detail the information to be provided.
Ireland	No formal provisions. The Draft Guidelines on the Information to be Contained in Environmental Impact Statements issued by the EPA emphasises the importance of pre-application consultation.
Italy	The act of guidance and co-ordination to the regions provides for „scoping“.
Luxembourg	No formal provisions for scoping. In practice, however, the Minister of the Environment does make available to interested parties detailed specifications sheets setting out the content and methods of conducting an EIA. These standard specifications are adapted in each instance to meet the needs of the specific project in consultation with the developer, the consultancy firm and the administration concerned

<sup>42</sup> Question 1j: Has the member state adopted formal provisions for „scoping“ the information to be provided in the statement? Report 1993: Question 4b, Table 4.5 p. 45.

<b>Member State</b>	<b>Provisions</b>
Netherlands	In the Environmental Management Act formal provisions for scoping are enclosed (par. 7.4, sections 7.12-7.16). As a result of the scoping process, guidelines for the content of the EIA report are formulated.
Portugal	No formal scoping procedure.
Spain	An independent environmental committee „Organo Ambiental“ gives its opinion on scoping.
Sweden	No formal scoping procedure.
United Kingdom	No formal scoping required, but guidance encourages scoping on a voluntary basis. Under the Regulations, competent authorities have the power to require applicants to provide further information on any matter listed in Annex III to the Directive or to verify any information in an Environmental Statement.

**Table 11: Adequacy and quality of EISs<sup>43</sup>**

Member State	
Austria	The EIS concept and the completed EIS are publicly displayed and any person may comment on them. The EIS is also sent to the co-operating authorities, the Ministry of the Environment and the Ombudsman for the environment for their comments and reviewed by the competent authority. An additional instrument is the Environmental Impact Expertise. Experts nominated by the competent authority have to develop this EIE on the basis of the EIS (done by the developer), submitted comments and expert advice. The EIE is a comprehensive expertise consisting of a complete explanation and assessment of the environmental impacts, proposals for mitigation measures and a non-technical summary.
Belgium Brussels region	The impact studies are continuously assessed by steering committees made up of public administration representatives. The fact that these steering committees are beginning to acquire a high degree of experience in this area means that there are bound to be considerable improvements in subsequent impact studies.
Belgium Flanders	The EIS is reviewed by the EIA unit. This unit has only 30 days to disapprove an EIS. If a negative decision is not taken in that period the EIS is automatically approved. If an EIS is rejected, the developer can submit a modified EIS. The review is legally limited to check whether it is drafted in accordance with the legal requirements and whether it contains the legally required information.
Belgium Wallonia	The completed EIS is transmitted for opinion to the Walloon Environmental Council for Sustainable Development and under certain conditions to the competent advisory committee on regional planning (building or subdivision permit, extraction permit, tip conversion project). The Council and the advisory committee on regional planning are each required to submit a reasoned opinion on the quality of the impact study and on the desirability of the project.
Denmark	Legislation requires the Minister of the Environment and Energy to ensure that the general and national interests are taken into account, and that the quality and content of the EIA statement makes it possible to take these interests into account. Additionally in the event of a complaint, the complaints commission Naturklagenævnet will monitor conformity with the legislation, including conformity with the minimum requirements for content.
Finland	Sections 10 and 11 in the Act and chapter 4 in the decree deal with the review of the EIS's. According to the provisions it is the task of the co-ordination authority to collect the opinions and comments from various interested parties, specialists and the public. Guidance for evaluating the quality of the assessment schedules and reports have been drafted in the Finnish Environment Agency and has been sent to Regional Environment Centres for comments. This work is part of the project on Quality control in order to create a framework for analyzing the quality of EIA documentation.

<sup>43</sup> Question 1k: Has the member state adopted legal provisions for the formal review of the adequacy and quality of EIS (e.g. establishing review bodies and review criteria)? And if not, how does the member state improve the quality of EIS? Report 1993: Question 4d, p. 46.

Member State	
France	The impact studies are reviewed by the department directly responsible for conducting the main part of the investigation and for drawing up the decision. Depending on the project other departments, including departments within the Ministry of the Environment have to be involved. Depending on the nature of the project or on its location the procedures call for involvement of specialists. In addition, the regional environmental directorates are very often consulted informally by the departments responsible for examining the files with a request for an opinion on the impact study.
Germany	The States (Laender) are responsible for implementing the EIA Act. In most States, informal reviews of the environmental impact statements are conducted by the State authorities. This in turn is reflected in improvements to the administrative instructions for implementation of EISs. Usually the State environmental protection departments are responsible.
Greece	No formal review of the adequacy and quality of EIS. The review is done according to the individual criteria of the authorized personnel. The Ministry of Environment, Physical Planning and Public Works intends to adopt specifications for the contents of EISs.
Ireland	<p>The Environmental Protection Agency has prepared draft guidelines on the information to be contained in EISs and advice notes on current practice. The guidelines will be reviewed after two years and formally issued under the Environmental Protection Agency Act. Once the guidelines are formally adopted, they are binding for the competent authorities and developers.</p> <p>The quality of EISs has improved with increased experience of consultants and competent authorities. Courses in EIA have been organized by the Institute of Public Administration and others.</p>
Italy	A Commission of EIA has been set up at national level.
Luxembourg	The development of the EIS is monitored by working parties representing the administrations concerned, the consultancy firms and the developer.
Netherlands	The EIA Commission in The Netherlands consists of independent experts on the various activities subject to EIA. The Commission plays a role in both the scoping and reviewing process. The EIS is reviewed by (among others) the EIA Commission with a view to the guidelines for the content of the EIS, formulated by the competent authority on basis of the advice of the EIA commission.
Portugal	EISs are reviewed by teams of specialists with long experience in each of the various aspects of the environment from the various bodies of the Ministry of the Environment, commonly known as „Assessment Committees“. EISs are not accepted until the Assessment Committee is satisfied that they contain sufficient information to assess the environmental impact of the specific project in question.
Spain	An independent environmental committee „Organo Ambiental“ has been institutionalized for major projects to give its opinion on the quality of the EIS.

<b>Member State</b>	
Sweden	<p>Review is carried out by including the EIS as a part of the decision base. Responsibility for the review lies with the decision-taking body. Not all of these decision-taking-bodies possess sufficient competence. The County Council has been appointed informally (and formally in two Acts) as the public reviewer of quality of EISs. This supports the quality review by the decision-taking bodies.</p>
United Kingdom	<p>There is no separate Government body set up to review the adequacy of EISs. Competent authorities are responsible for assessing whether the EIS provides all the information they need in order to make an informed decision. In doing so they can draw upon the expertise available within the authority, and through statutory and non-statutory consultees. Many authorities are also members of the Institute of Environmental Assessment which provides an independent review service.</p> <p>The Government issues guidance and undertakes research on the quality of EISs with a view to improving current practice. Guidance has been issued on the preparation of Environmental Impact Statements and on the evaluation of information contained in EISs. Guidance is also available for EIA on specific topics (roads and bridges, major pipeline schemes, afforestation projects).</p>

**Table 12: EIA for project modifications<sup>44</sup>**

Member State <sup>45</sup>	
Belgium Brussels region	Modifications to a project for which an impact study is required are not by themselves automatically subjected to a further separate impact assessment procedure. However, as soon as the permit is due for renewal, a new impact study must be carried out and any modifications that may have occurred since the issuing of the original permit will need to be incorporated therein.
Belgium Flanders	For some projects listed in Annex I (e.g. construction of motorways or inland waterways) or in Annex II (e.g. urban development projects), the Flemish EIA-legislation contains provisions on the modification through the wording „construction and/or significant modification“. Furthermore when for an extension or modification of a project a consent procedure has to be initiated and the proposed modification involves the fact that thresholds are surpassed, an EIA is or may be obligatory.
Belgium Wallonia	Article 9, 1, c lays down the conditions under which an EIA must be carried out every time a project is modified. An EIA is automatically required for any project referred to in Annex II and requiring an increase in the capacity of an existing installation of more than a fifth of the initial capacity, whereby the capacity indicated as a threshold in the above mentioned Annex is exceeded.
Denmark	All the installations and projects listed in Annex I to Order No. 847 are also subject to the EIA provisions in the event of major amendments. „Major amendments“ are amendments of an extent which makes the installations comparable to new installations (see also guideline No. 182 of 17 October 1994).
France	Legislation specific to certain categories of activity requiring impact studies, notably the Act of 19 July 1976 on scheduled establishments (Article 4), does make it obligatory to obtain a new authorization based on a new application file involving an impact study in the event of the extension or transformation of the installations or of changes in the manufacturing processes. Even where no formal provisions exist, the consistent case law of the Council of State stipulates that any substantial modification of a project covered by a development consent or approval procedure must be the subject of a new request drawn up in the same form as the initial request and accompanied by an impact study, if such a study was required for the initial project.
Germany	Like consent for new projects, an EIA is also compulsory, in principle, for any changes to projects listed in Annexes I and II to the EIA Act. This is stated in the EIA Act itself (Annex for Article 3 of the EIA Act).
Greece	No.

<sup>44</sup> Question 1m: Has the member state adopted provisions on the modification of the projects listed in the directive, and if so, how?

<sup>45</sup> This question was not included in the questionnaire for the new Member States.

<b>Member State<sup>45</sup></b>	
Ireland	The 1989 Regulations require EIA in the case of modification of all Annex I projects. In some cases all modifications require EIA while in others a capacity increase threshold is used. (See paragraph 12, Part II of the First Schedule to the Regulations). No formal provisions exist in relation to Annex II projects, but practice is to require an EIA for modifications, where such modifications would breach the threshold limits laid down.
Italy	There are provisions for a case-by-case screening procedure to decide, whether modifications are subject to an EIA.
Luxembourg	There are no formal provisions on the assessment of modifications. But a new authorization would be required under the existing acts, so the administration would take a decision on the necessity of conducting an EIA.
Netherlands	There are formal provisions in the EIA Decree.
Portugal	No.
Spain	Insufficient evidence.
United Kingdom	Modifications to Annex I projects are subject to EIA in accordance with the requirements of the Directive, where necessary. As reported in the 1993 review, the UK considers that modifications to Annex II projects are also subject to EIA under the Directive and may require EIA when the proposed modification is likely to have a significant effect on the environment.

**Table 13: Number of EIAs<sup>46</sup>**

Member State	Number of EIAs
Austria	Estimate: 50 to 70 EIA projects per year, mainly in the waste, power plant, road and rail sectors (the estimation is made difficult by the fact, that the EIA Act entered into force on 1 July 1994. The act provides for an EIA documentation centre at the Federal Environmental Agency, which will i.a. collect the EIS).
Belgium Brussels region	Since 1 January 1994, 45 EISs. Mainly for motor vehicle parking infrastructure, office buildings.
Belgium Flanders	50 to 60 EISs/year (1994: 51/1995: 62). Intensive agriculture (rearing of poultry, pigs); pipelines (gas, water, wastewater); extractive industry; waste disposal installations; chemical installations; land use projects.
Belgium Wallonia	Insufficient evidence.
Denmark	Estimate: 100 EISs/year, mostly for pig farms (the EIA Act came into force on 15 October 1994, so there is no statistical basis as yet).
Finland	Estimate: 20 to 40 EISs/year (eight months after the EIA Act came into force, about 20 projects have been subject to the EIA procedure. Most for motorways, others for power plants, peat production, harbours, high voltage power lines and dumping sites).
France	Estimate: 6000 EISs/year. About a third for industrial and agriculture installations, covered by the Act of 19 July 1976. The number will increase, because quarrying operations will be included after June 1994. EISs mainly for: road construction, land re-allocation, land clearances, water control, electric power lines, tourist facilities, activity centres, major construction developments, sewage treatment plants (estimate is difficult, because with the exception of the scheduled establishment sector the impact studies are handled by different agencies).
Germany	Estimate: 200 to 500 EISs/year, mainly for road construction, industrial schemes (mainly for modification of existing plants). (Estimate difficult, since implementation of EIA procedure is the task of the States and there are no official statistics on the number of EISs).
Greece	Estimate: 1200 EISs/year (additionally to this number EIAs for small industrial projects are submitted to the prefectural sections of the Ministry of Environment, Physical Planning and Public Works and not to the central environmental authorities).
Ireland	Over 80 EISs/year. From mid 1988 to the end of 1994 12 Annex I EIAs, six of them for road construction. The most frequently submitted Annex II projects were for pig-rearing projects, urban development projects, extraction of stone and gravel, pharmaceutical plants, waste water treatment plants, holiday village.
Italy	Estimate: 200 EISs in seven years. Main categories: waste disposal installations (30 %), dams (15 %), transport infrastructure (20 %).

<sup>46</sup> Question 2a: Approximately how many environmental assessments are being carried out in the Member State each year and what are the principal project categories, for which most of these assessments take place? Report 1993: Question 3a, Table 4.1, p. 38.

Member State	Number of EIAs
Luxembourg	Estimate: 10 to 20 EISs/year. Mainly road projects, industrial installations, extension of industrial zones, leisure projects. Additionally some 100 impact notices (summary assessment reports) based on a simplified assessment procedure are produced each year.
Netherlands	1994: 123 EIA projects in the draft phase (1993: 133 projects). Main categories: waste treatment facilities (24 %), infrastructure (18 %).
Portugal	1995: 105 EISs (1994: 96, 1993:86, 1990/92: 57). Main categories: Road construction, dams, urban development. About 40 % for Annex I projects.
Spain	1996: 26 EISs (1995: 30, 1994: 46, 1993: 45, 1992: 68, 1991:9, 1990: 13, 1989: 7). Main categories: Road construction, quarries, hydraulic works, ports).
Sweden	No reliable estimate possible, because more than 350 decision taking authorities are involved and no such records are kept.
United Kingdom	1994: 358 EISs (1993: 362, 1992: 316, 1991: 308). Main categories (1988-1994): Road construction (18 %), waste (22 %), industrial installations (18 %), extraction (14 %), energy (13 %).

**Table 14: Start of EIA procedure<sup>47</sup>**

<b>Member State<sup>48</sup></b>	
Belgium Brussels region	The EIA is carried out as early as possible within the authorization issuing procedure. It constitutes an integral part of the decision procedure on the desirability of the project. Only when the impact study has been completed the developer is authorized to submit a request for a permit. EIS is always carried out at the same stage of the procedure.
Belgium Flanders	The developer can only submit an application for development consent when he has prepared an EIS for which a conformity certificate has been issued by the Environmental, Nature, Land and Water Administration.  This does not change from project to project.
Belgium Wallonia	The EIS must always immediately precede the decision of the competent authority.
Denmark	Attempts will be made to implement the EIA procedure as early as possible in the project design stage, and no later than the date on which the authorities receive the first application in accordance with the provisions of Order No. 848 and 849 and the Plan Act.
France	The EIA is always carried out before the issuing of the authorization, since the developer is obliged to submit the impact study along with its project authorization application. In the unlikely event that the project is not subject to an authorization or approval decision (which may be the case with road works investment where compulsory acquisition is unnecessary, e.g., road widening within existing boundaries), the impact study is carried out and submitted to the public inquiry before commencement of the work.
Germany	The EIA is an integral part of the development consent procedure (Article 2(1) of the EIA Act). In the case of road construction, the EIA starts at the route-selection stage as a preliminary procedure (Article 15 of the EIA Act). For other projects, such as industrial schemes, the EIA starts either as part of the development plan (if a project for which an EIA is compulsory is to be realized in the area covered by the plan) or an submission of the application for consent (if scoping is carried out, this defines the extent of the EIA).
Greece	The EIA starts before the establishment of the project. The approval of the environmental terms takes place simultaneously with the preparation of the pre-study for the project. Usually, the approval of the construction site takes place simultaneously with the preliminary study of the project.

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<sup>47</sup> Question 2b: At which stage of the development consent procedure does the EIA start in the member state? Does this stage change from project to project and, if so, how?

<sup>48</sup> This question was not included in the questionnaire for the new Member States.

<b>Member State<sup>48</sup></b>	
Ireland	In the case of most projects the formal procedure starts with the submission of an application for planning permission accompanied by an EIS. In many cases there would have been informal consultation prior to this stage. In some cases an application might not be accompanied by an EIS and the process would only start on the request by the competent authority for the submission of an EIS. In most public projects there would be consideration of alternatives and public consultation prior to submission of the EIS for certification.
Italy	EIA starts at the stage of the preliminary project. It does not change from project to project.
Luxembourg	An EIA must be carried out before issuing an authorization. Mitigation measures are an integral part of the authorization.
Netherlands	The stage of the development consent procedure at which the EIA starts in The Netherlands depends on the activity. It is formulated in the EIA Decree. Sometimes the start of EIA is in the stage of plans (e.g. the construction of houses), sometimes in the phase of licenses (e.g. the construction of an establishment for the production of crude iron or steel).
Portugal	The EIA and the corresponding inquiry are generally carried out at the implementation phase, except in the case of network (e.g. road) projects, in which case they are carried out in the preliminary study phase (to choose the route causing the least environmental damage). In either case, the inquiry process is completed before consent is given for the project.
Spain	EIA is integrated from the start of the planning procedure.
United Kingdom	EIA formally begins, when the developer submits his EIS to the planning authority along with the planning application. In its published guidance the Government recommends to developers, that EIA should, ideally, start at the site selection stage and, where relevant, process selection so that the environmental merits of practicable alternatives may properly be considered. The guidance further recommends scoping and early consultation with others likely to have an interest in the development proposal, e.g. statutory consultees (environmental authorities) and other interested groups, including the public.

**Table 15: Information from developers<sup>49</sup>**

Member State	
Austria	According to Section 6 of the Austrian EIA Act all information contained in Art. 5(2) and in Annex III has to be submitted in the EIS to the authority. There is as yet not enough experience with the quality of the documents. Article 6 of the Austrian EIA-Act contains all of the requirements of Article 5 and Annex III of the EIA Directive. In some respects Article 6 goes beyond the requirements of the Directive. Before the application containing the EIS is filed to the competent authority the applicant has to draft an outline of the EIS, called EIS concept, in the scoping procedure. This concept shall already contain all expertise questions relevant for the elaboration of the EIS, in particular a technically and methodologically clear definition of the scope requirements and the proposed investigation methods. The EIS concept is reviewed by authorities and open for comments of the public.
Belgium Brussels region	The information provided is relatively satisfactorily.
Belgium Flanders	The information provided is relatively satisfactorily. In order to improve the contents of an EIS, the EIA unit of the Flemish environmental administration has developed a structure for the content of an EIS.
Belgium Wallonia	The information supplied by the developer is satisfactorily. The minimum content of the EIS is determined by the decision of the executive or the supplementary information, that may be requested by the competent authority.
Denmark	The information is satisfactorily, because it is a prerequisite for obtaining the approval.
Finland	<p>The content of the assessment schedule and the assessment report are defined in the EIA decree. If the information is not satisfactorily the developer may supplement it after the comments and public hearings and on the basis of the statement given by the co-ordination authority. The content of the EIS very often follows the content defined in the EIA decree. Problem areas discussed by the co-ordination authority and developers:</p> <ul style="list-style-type: none"> <li>• The tradition to consider emissions instead of the impacts comprehensively,</li> <li>• creating and studying the possible alternatives,</li> <li>• planning a project gradually, so that the thresholds according to the project list in the EIA decree are not reached.</li> </ul>

<sup>49</sup> Question 2c: Are developers satisfactorily providing, in their environmental assessment documents, the information specified in article 5 and Annex III of the directive? Report 1993: Question 3b, Table 3.7, p. 24.

Additional question new Member States A6: Has legal provision been made by the Member State to ensure that the developer supplies the information specified in Annex III of the Directive (subject to the qualifications in the remainder of Article 5). If not, what are the main deficiencies? Has legal provision been made to ensure that the „minimum requirements“ specified in Article 5(2) are supplied in all cases?

Member State	
France	<p>The obligation to supply this information is laid down in Article 2 of the Decree of 12 October 1977, as supplemented by the Decree of 25 February 1993. The absence or inadequacy of all or part of this information may lead to the cancellation of the authorization or approval decision, in the event of proceedings in the administrative courts.</p> <p>In practice, the quality and adequacy of the impact studies can vary enormously from one category of activities to another. The studies are generally much less satisfactory, and at times even poor in the case of certain private projects of relatively minor importance.</p>
Germany	<p>As a general rule implementation of the EIA procedure is left to the States (Laender). It can be assumed that developers are providing satisfactory documentation. Moreover, the authorities are empowered to demand further documents should those submitted prove insufficient. The specific documentation to be submitted is explicitly stated, for example in the case of industrial plants in the 9th Order Implementing the Federal Immission Control Act.. Generally, however, Article 6 of the EIA Act lays down the documents to be submitted.</p>
Greece	<p>In general, information is satisfactorily provided. There are sometimes deficiencies in EIS for small scale projects.</p>
Ireland	<p>EISs for public projects are generally satisfactory. In some other cases the initial EIS submitted might not be satisfactory and further information have to be requested.</p>
Italy	<p>The quality of EIS has improved considerably over time.</p>
Luxembourg	<p>Legislation does not include any formal provisions on the type of information to be supplied, save for some very generalized provisions set out in Article 7 of the Regulation of 4 March 1994 and Article 3 of the Grand-Ducal Regulation of 31 October 1995. In practice, however, the Minister of the Environment does make available to interested parties detailed specifications sheets setting out the content and methods of conducting an EIA. These standard specifications are adapted in each instance to meet the needs of the specific project in consultation with the developer, the consultancy firm and the administration concerned.</p>
Netherlands	<p>The developers are satisfactorily providing the information. The EIS offers in general but not always fully adequate information on the environment.</p>
Portugal	<p>Generally the developers are providing information satisfactorily.</p>
Spain	<p>Insufficient evidence.</p>
Sweden	<p>As yet no empirical investigations have been carried out to establish what information is provided within the individual studies. It is in principal the developer, who determines what information is to be included in the EIS. If the information is not sufficient, the developer shall be required to submit additional information. If he fails to do so, the authority shall reject the application for authorization.</p>

<b>Member State</b>	
United Kingdom	A research study into changes in the quality of environmental statements („Changes in the Quality of Environmental Statements: DOE 1996“) has demonstrated that the quality of environmental statements has improved significantly. It is the responsibility of the competent authority to ensure that an environmental statement contains all of the information specified in Article 5 and Annex III to the Directive. Where a planning authority considers the developer has failed to provide sufficient information, the EIA Regulations allow for further information to be requested.

**Table 16: Consideration of alternatives<sup>50</sup>**

Member State	
Austria	Alternatives have to be explained in the EIS in so far as they have been examined by the applicant. In any case the advantages and disadvantages of the no-action alternative have to be included in the EIS.
Belgium Brussels region	In the impact studies carried out to date, alternative projects solutions have been analysed at a very superficial level only.
Belgium Flanders	The framework for the content of an EIS developed by the EIA-Unit of the Flemish Environmental Administration calls for description of alternatives whenever this is appropriate. Due to the wording „where appropriate“ the consideration of alternatives cannot be enforced in Flanders.
Belgium Wallonia	According to the authors of the impact studies, the principal alternative solutions are considered to a greater or lesser degree.
Denmark	Alternatives proposed by the client, the authorities and the public will be part of the EIA statement.
Finland	The assessment schedule and the assessment report shall contain on a sufficient scale alternatives for implementing the project, one of which shall be the no action alternatives unless for specific reasons, it is unnecessary.
France	The examination of alternatives is not obligatory. Only in cases, where the developer has actually examined alternatives it is required to submit them with the documents and explain the reasons for the selected alternatives.
Germany	In the case of roads, alternative routes have to be examined when selecting the route and also, in some cases, in the approval procedure for the finalized plan. In the case of industrial project, the principal alternative technical processes examined by the developer must be considered (Article 4(3) of the 9th Order Implementing the Federal Immission Control Act). The alternatives submitted and examined by the developer must also be considered (Article 6(2) in conjunction with Article 6(4)(3) of the EIA Act).
Greece	For several projects or activities, alternatives are examined and taken into account. However, for the majority of the small-scale projects or activities (such as hotels, other touristic facilities, fisheries, piggeries, etc.) no alternatives are examined.
Ireland	Alternatives are considered only to the extent required by the directive.
Italy	Alternatives are taken into account, whenever they are presented by the developer.
Luxembourg	Provisions covering the analysis of alternative solutions are included in the Grand-Ducal Regulations of 4 March 1994 and 31 October 1995. In the majority of cases, however, these provisions are disregarded in practice.

<sup>50</sup> Question 2d: Do alternatives to the submitted project have to be taken into account? Report 1993: Question 3b.

<b>Member State</b>	
Netherlands	Alternatives are taken into account (Chapter 7.4 section 7.10 of the Environmental Management Act).
Portugal	Generally alternatives are taken into account.
Spain	In certain cases alternatives have to be taken into account.
Sweden	According to the EIA Ordinance (which applies to Acts within the systems of laws on the management of natural resources), the developer must also provide a justified statement of the alternative routes and layouts, as well as details of the consequences of failing to adopt the remedy being sought. There is no need to indicate alternative routes, if appropriate, having regard for the purpose of the EIA and the nature of the development.
United Kingdom	UK guidance recommends that environmental statements may - and as a matter of practice normally should - include an outline discussion of the main alternatives studied by the developer and an indication of the reasons for choosing the development proposed, taking account of environmental effects.

**Table 17: Consultation and public participation<sup>51</sup>**

<b>Member State</b>	
Austria	Under the Austrian EIA Act the public and authorities can after each stage of the EIA procedure inspect the relevant documents and comment on them (e.g. after the elaboration of the outline of the project and the EIA-concept, after the application has been filed along with the completed EIS). EIA documents are displayed and copies can be obtained. Within a given time period written comments can be submitted. Citizens groups (at least 200 signatures) have the right to participate in the procedure. The co-operating authorities and the ombudsman for the environment are consulted. After the completion of the EIE and before the decision is taken a public hearing on the project and the EIS takes place.
Belgium Brussels region	Public involvement takes place at two stages: Initially, when the impact study specifications are first drawn up and secondly, when they are completed.
Belgium Flanders	<p>The public and the interest groups are not consulted during the preparation of the EIS. After the EIS receives the conformity certificate, it becomes a public document and can be obtained by the public on written request. Additionally the EIS is part of the consent application documentation that can be consulted and commented upon by the public (public inquiry stage). The local (municipal) authorities have to organize a public meeting.</p> <p>The starting document (outline of the proposed EIS) and the draft EIS are discussed during informal meetings between the involved administrations, the initiator and the team of experts.</p>
Belgium Wallonia	There are different procedures for public participation, depending on the projects. Projects proposed according to private law: Right for the public to comment on the EIS and to obtain the non-technical summary. Public meeting, whenever the number of objectors exceeds 25. Projects according to public law: The EIS is preceded by a public consultation phase, the municipal administration shall organize a public meeting, any person shall be entitled to propose an alternative.
Denmark	The first public consultation takes place before work starts on the EIA statement with a call for ideas and proposals. The second public consultation takes place, when the EIA statement has been completed, the statement and its recommendations are presented for a public debate. The public shall also be informed of the authorities decision, the approvals and licenses granted, the conditions and opportunities to appeal against the provisions.
Finland	Public consultations and hearings are carried out both in the assessment schedule and the assessment report phase.

<sup>51</sup> Question 2f: How satisfactorily are arrangements working in practice regarding consultation and public participation? When and how do they take place? Report 1993: Question 3e, Table 3.8, p. 25; Table 3.9, p. 27.

Member State	
France	The public is consulted on the file in the course of a public inquiry which is organized before the issuing of the authorization. The public inquiry file, which includes the impact study, is placed at the disposal of the public for a minimum period of one month in several locations. Anybody is entitled to consult it and to make observations, either in writing in the inquiry register or in person before the investigating commissioner. A report on the inquiry proceedings is then drawn up by the investigating commissioner(s) together with an opinion on the project. If he sees fit, the investigating commissioner may also convene a public meeting on the project.
Germany	The arrangements on consultation and public participation are working satisfactorily. Public participation follows participation by the authorities (Article 9 of the EIA Act). In some cases (industry and the nuclear sector) it goes far beyond the public participation required by the EIA directive. For example, public participation sometimes takes the form of public hearings at which anyone may speak. Moreover, a discussion of the disputed points is included. Consequently, it is not simply a case of airing the various views but of a debate between the parties concerned (Article 73 of the Administrative Procedures Act for the „minimum standard“ on public participation in procedure for approval of the finalized plan).
Greece	The legal provisions adopted (Joint Ministerial Decision 75308/5512/90) give the opportunity to the public to participate in the EIA procedure. In practice, this participation is rarely achieved to a satisfactory degree.
Ireland	EISs are available to the public following submission and copies can be purchased. Arrangements in respect to public projects are in general satisfactorily.
Italy	The public is involved after the presentation of the EIS within the EIA process. Arrangements have been made for making the EIS public and informing the public which within 30 days from the publication can send written remarks to the Ministry of Environment. For energy projects, a public inquiry is also provided for, always following the submission of the EIS.
Luxembourg	Provisions covering the provision of information to the public and public consultation procedures are set out in the Grand-Ducal Regulations of 4 March 1994 and 31 October 1995. Consultations are held after the drawing up of the EIS - which, together with a non-technical summary forms part of the file submitted for consultation - and prior to the issuing of the authorization itself. In practice, observations made in the course of such consultations result only rarely in modifications to the project.
Netherlands	Consultation and public participation offer important information for EIA. They take place in the scoping phase and in the phase of reviewing the EIA report.
Portugal	Arrangements regarding consultation and public participation are working satisfactorily.
Spain	The EIA document are made public not only during consultations but also after the authorisation.

<b>Member State</b>	
Sweden	<p>Public participation often takes the form of the public also being permitted to express their views to the competent authority within a given period. It is also possible for the competent authority to hold public meetings at which the public can express views. However, the principal objective of these meetings is more often than not to provide an opportunity for a public discussion of the project, and not simply to deal with the EIA.</p> <p>The consultation procedure for ordinary decision-taking processes functions no differently for EIAs than it does for other cases. This means that the authorities concerned are provided with an opportunity to comment on the documents within a given period.</p>
United Kingdom	<p>The EIA directive is implemented primarily through the land use planning system. Under this system, all applications for planning permission have to be given publicity and any member of the public has the right to comment on them. All comments relevant to the planning issue must be taken into account in determining the application. Planning applications accompanied by an Environmental Statement must be notified in the local press and posted on site. Any relevant comments made on the EIS, by the public or any other group, must be taken into consideration before any decision on the proposal can be made. Where an EIS is required in support of a planning application made without one, notices must also be published and posted before the EIS is submitted. Broadly similar arrangements apply for projects considered under Regulations which apply to consent procedures other than the land use planning system. Where additional information is requested to supplement the environmental statement, it will be made available to all persons to whom the EIS was made available.</p>

**Table 18: Modification as a result of EIA<sup>52</sup>**

<b>Member State</b>	<b>Modifications</b>
Austria	No answer possible as yet because no projects are in such an advanced stage. To get the permit for a project, modifications as a result of the EIA procedure can be imposed. No permit can be given if the outcome of the assessment is negative and cannot be mitigated.
Belgium Brussels region	There are no projects in this advanced state to properly answer the question.
Belgium Flanders	The possibility exists, but there are no reliable data.
Belgium Wallonia	No major modifications.
Denmark	No reliable data, but modifications especially for large projects.
Finland	No practical experience as yet.
France	Certain linear projects (e.g. motorways, electric power lines) may undergo some outline modifications. As regards projects whose spatial location is dictated by land management considerations, the modifications requested by the investigative departments may relate to the technical characteristics of the project or the implementation of accompanying measures to ensure that the project is more environmentally compatible.
Germany	Modifications are possible. As a rule, in the light of the EIA subclauses and conditions are added to the consent to bring the original proposal into line with the findings of the EIA.
Greece	Projects are sometimes modified. In some cases projects are given up, when the mitigation measures are too expensive. Usually a project is being modified, when the proposed environmental measures are considered unsatisfactory by the authorities.
Ireland	No data about modifications of private projects. For public projects it is likely that modifications are significant.
Italy	Modifications are possible. Conditions are added to the consent to modify a project according to the EIS.
Luxembourg	Projects are modified in the sense that the provisions of the EIA relating to impact reduction measures and compensatory measures form part of the conditions governing the issuing of authorizations, and therefore have to be carried out compulsorily.
Netherlands	In 70 to 80 % of the EIAs there have been modifications, of this 15 to 25 % major modifications.
Portugal	Changes or additional measures to minimize the impact not provided for in the EIA are frequently ordered in response to the technical inspections/assessments by the Assessment Committees. They are included in the Committees' opinions and taken into consideration in the consent procedure by the competent licensing authority. In many cases, such revisions/technical assessments result in non-authorization of projects or revision of the EIA and/or project.

<sup>52</sup> Question 2g: To what extent, if any, are projects being modified as a result of undertaking an EIA? Report 1993: Question 3h, Table 4.9.

<b>Member State</b>	<b>Modifications</b>
Spain	Projects are always modified by mitigation measures.
Sweden	Especially for roads the design of projects has been modified. The major influence of EIA lies essentially in the consideration for the environment in the course of developing the project.
United Kingdom	Modifications are possible, they are more likely to occur in the period during the preparation of the EIS rather than following its submission (see also paragraph 2.2.6 of this report).

**Table 19: Public proposals for modification<sup>53</sup>**

<b>Member State<sup>54</sup></b>	
Belgium Brussels region	The public has ample opportunity to propose modifications to the project. The authority responsible for granting development consent in principal is free to take full account of such proposals when issuing the final authorization.
Belgium Flanders	The public has this possibility in theory, but due to the stage for the whole project-planning at which the public is consulted, the eventually proposed modifications are mainly focused on „mitigating measures“.
Belgium Wallonia	Almost exclusively in the case of projects planned by persons governed by public law.
Denmark	In the event of proposals for alternatives arising during the call for ideas and proposals, the provisions require these alternatives to be incorporated in the EIA statement. Proposals for amendments must also be included in the statement and, to the extent that the proposals are made during the debate on the actual statement, be included in the basis for decision.
France	Under Article 4 of the Act of 12 July 1983 relating to the democratization of public inquiry procedures and to environmental protection, „the investigating commissioner shall conduct the inquiry in such a way as to enable the public to take full cognizance of the project and to present its appraisals, suggestions and counter-proposals“. Furthermore, „...the investigating commissioner's report shall take note of the counter-proposals put forward during the inquiry...“. In practice, the investigating commissioner is empowered to adopt proposals made during the inquiry and to make the issuing of a favourable report by him conditional on their acceptance.
Germany	The public may raise oral or written objections to the project.
Greece	According to the legal provisions adopted, there is possibility for the public to propose modification of the project. These proposals are taken into account when this is possible and they are realistic and not techno-economically unfavourable. Unfortunately, this possibility is utilised by the public only in a few cases.
Ireland	The public is free to suggest modifications.
Italy	It is always possible for the public to suggest modifications in the framework of the consultation procedure.
Luxembourg	The public has the opportunity to make suggestions for changes in the course of the consultation procedures provided for under the Act of 9 May 1990 and the Grand-Ducal Regulation of 31 October 1995.
Netherlands	It is possible for the public to propose modification of the project. In the scoping phase, for instance, written reactions of the public are welcome of the competent authority.

<sup>53</sup> Question 2h: To what extent, if any, is it possible for the public to propose modifications to the project?

<sup>54</sup> This question was not included in the questionnaire for the new Member States.

<b>Member State<sup>54</sup></b>	
Portugal	The results of the public consultations are always analysed by the Assessment Committees and the relevant suggestions are taken into consideration. This often results in proposals for changes or additional measures to minimize the impact which will then be included in the final opinions of the Assessment Committee and will be taken into consideration in the consent procedure.
Spain	It used to be very limited but has improved with the new law.
United Kingdom	Planning applications are decided by a local planning authority. The application and any accompanying EIS must be advertised and made available to the public. This provides the interested public with the opportunity to draw to the attention of the authority matters which they feel should be taken into account in reaching the decision. The Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (and equivalent Regulations in Scotland and Northern Ireland) stipulate that planning authorities shall not grant planning permission unless they have first taken into account the environmental information. Environmental information includes representations made by any person about the likely environmental effects of the proposed development. Points made by objectors and participants at a public inquiry may give rise to modifications to the project or may lead to the imposition of conditions. The position is similar in cases considered under Regulations which apply to consent procedures other than the land use planning system.

**Table 20: Costs and timescale (new Member States)<sup>55</sup>**

Member State	
Austria	<p>At present no concrete indications with respect to time and costs of projects which have to undergo the EIA procedure under the new EIA Act can be given. Generally there is fear amongst developers that the costs and time requirements for a project will increase because of the new procedure. According to the opinion of some authorities, however, costs and time could be reduced in some cases because of the fact that technical problems and conflicts will be acknowledged and solved at an earlier stage.</p> <p>Under the Austrian EIA-Act the competent authority has to take its decision on the permit without undue delay and at the latest 18 months after the application for development consent has been filed. This period is extended by six months if the developer has not notified an outline of the project and submitted an EIS concept to the authority before the official application.</p>
Finland	<p>Information on the costs and timescale is scarce. In one case there is indication that the timescale of the project would be increased due to the EIA procedure. As the EIA legislation was fairly new, the developer had not taken into account the time needed to carry out the EIA procedure. This was also partly due to the fact that the project plans and thus the information supplied to the authorities changed during the planning and so the decision whether EIA should be applied could not be made. In practice some delay may occur because of the climate conditions in Finland as nature inventories or other studies based on field work can mainly be carried out only in summertime.</p> <p>As a whole, it is difficult to assess the effects of EIA on the timescale and costs of the project. It may be that the environmental issues which might prolong the planning of the project have not been dealt with in such detail before. The benefits for getting more sustainable solutions with the help of EIA can be seen in the long run.</p>
Sweden	<p>No studies have been made into the EIA area as a whole. Views differ depending on the party. Some Country Councils, for example, maintain that the major savings in time achieved from early involvement in informal phases provide for simpler processing of the cases concerned in the more formal phases. Others find it impossible to devote resources to these informal phases, since the formal processing of the cases takes up all their time.</p>

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<sup>55</sup> Question 4g (new Member States only): Is there any indication that the costs or timescale of projects are being affected (whether increased or decreased) as a result of undertaking and EIA? Report 1993: Question 4g, Table 4.12, p. 60.

**Table 21: Assistance to practitioners (new Member States)<sup>56</sup>**

Member State	
Austria	<p>To assist the authorities which have to perform the EIA procedure and developers, a lot of seminars and tailor made training activities have been undertaken by the Ministry of the Environment and some other bodies or firms.</p> <p>Guidance has been prepared by the Federal Environmental Agency together with a group of experts of the Provinces and the Ministry of the Environment on the preparation of an EIS which also contains a summary on the EIA procedure and should help developers and the public. The Ministry of the Environment is currently preparing legal guidelines on the provisions of the EIA-Act for the authorities involved in the EIA process. A working group of members of the competent authorities of the Provinces, the Ministry of the Environment and the Federal Environmental Agency has been set up, which discusses twice a year current problems related to the implementation of the EIA Act and general EIA related issues.</p>
Finland	<p>Before the Act came into force a report „The implementation of the EIA Act“ was drafted in a working group set up by the Ministry of the Environment. The report includes more detailed interpretation of the legislation and gives guidance for various situations when implementing the Act. The report was mainly drafted for the co-ordination authorities but was also widely disseminated to other parties as well.</p> <p>The Ministry also prepared a brochure „EIA - towards better planning“ for general public. In addition a citizens guide on EIA was prepared together with the Finnish Nature Conservation Association. Also a video tape has been produced especially for the purpose of public hearings in the EIA process but it can be used on training occasions as well.</p> <p>Environmental authorities have been trained on EIA since 1991 in special EIA courses arranged by the Ministry of the Environment and the Finnish Environment Agency. Environmental authorities have also been involved in the planning of training courses, seminars etc. arranged by private sector, training organizations and nongovernmental organizations. Other authorities, especially highway authorities have arranged training. Also training occasions for various spheres of administration have been arranged.</p> <p>EIA guidance is also prepared by developers and authorities not in the field of environmental protection. This guidance is usually focused on project-specific questions.</p>

<sup>56</sup> Question 4f (new Member States only): To what extent, in your judgement, has the Member State concerned (both through governmental and non-governmental organisations) provided satisfactory assistance in implementing EIA to practitioners (e.g. through circulars, guides, manuals, etc.) and through training programmes? Brief details of the types of provisions that have been made would be helpful as well as an indication of the main deficiencies. Report 1993: Question 4f, Table 4.11, p. 58.

Member State	
Sweden	<p>The National Board of Building, Housing and Planning (Boverket), the Swedish Nature Conservation Board (SNV) and the Swedish Office of National Antiquities (RAÄ) have been entrusted since 1991 with the task of introducing EIA. 2 million kronor have been allocated for this task.</p> <p>Seminars have been held for all the decision-taking authorities apart from local authorities. Information sheets, newsletters, networks and contact meetings have been used to spread awareness of EIA. Boverket as the central review board made the following observations:</p> <ul style="list-style-type: none"> <li>• A large number of decision-taking authorities and practitioners called the EIA procedure into question. In their opinion the decision procedures already met the requirements.</li> <li>• Criticism has been levelled at the absence of a procedure and clear rules for the content of EIA.</li> <li>• The demand for aid in the form of check-lists and fixed standards/thresholds has been high, at the same time as there has been considerable opposition to participation in a voluntary EIA procedure as a means of finding support for the assessments.</li> <li>• The inability to produce general support in a system which embraces both large and small cases.</li> </ul>

**Table 22: Taking account of the EIS and informing the public<sup>57</sup>**

Member State	
Austria	The outcome of the EIA (including the EIS, the EIE, submitted comments, the outcome of the consultations and the comments in the transboundary case and the outcome of the public hearing) has to be taken into account in the decision and all relevant administrative laws have to be applied by the competent authority. The main content of the decision including the main findings, have to be published by the competent authority in an appropriate manner. The entire decision has to be displayed for public inspection in the municipality of the project site and sent to the affected country in a transboundary case. All parties to the procedure get a copy of the decision.
Belgium Brussels region	The issuing authority must take the impact study into account when issuing the authorization. Failure to do so entails the risk of the decision being annulled as unsound under the administrative appeal procedure. Furthermore, an efficient system has been put in place for publicizing the authorizations issued, insomuch as each authorization is brought to the attention of the public who may then appeal against these decisions, where the latter are felt not to be justified.
Belgium Flanders	No data available.
Belgium Wallonia	The public seems to be well informed, judging by the number of appeals lodged following the decisions taken by the competent authority.
Denmark	The provisions undoubtedly give the public great influence over the subjective and qualitative content of the EIA statements, and thereby the basis for decisions.
Finland	Insufficient evidence.
France	<p>The degree of effectiveness varies depending on the type of development consent applicable to the project. For certain categories of projects the rules provide for a very strict decision-making framework in the form of technical requirements designed to limit the impact of the project on the environment. However, not all the categories of project subject to an impact study benefit from such comprehensive arrangements. While it is true that the system is improving following a series of legislative reforms, it is not yet satisfactory in all areas.</p> <p>As regards the provision of information to the public on the decision taken, French law applies the principal that all decisions must be published in a record or administrative bulletin and/or displayed in the municipal offices of the local authority affected by the project. Anyone who wishes to consult the file and receive details of the decision is entitled to do so on request.</p>

<sup>57</sup> Question 2j: How well are the arrangements being implemented in practice to take account of the EIS and consultations based on it within project authorization procedures and to inform the public about the resulting decision? Report 1993: Question 3g.

Member State	
Germany	In the course of the environmental impact assessment, the competent authorities compile a comprehensive overview of the environmental impact from the information at their disposal (Article 11 of the EIA Act). Another aid for compiling this overview are the administrative provisions on EIA (Annex 6, point 0.5.2). It is compulsory to take account of the results of the EIA or of the overview when granting consent (Article 12 of the EIA Act). All concerned and everyone who raised objections on which decisions have been taken must be informed of the outcome (Article 9(2) of the EIA Act). No problems have been encountered with this procedure, since the EIA is an integral part of the development consent procedure, i.e. it builds on tried and tested existing procedures.
Greece	The legal provisions adopted are satisfactory both in taking into account the results of the EIS and in informing the public about the resulting decision. Nevertheless, there are some deficiencies in the legal provisions as well as their implementation that have to be improved.
Ireland	The arrangements seem to be operating satisfactorily.
Italy	The decision of the Minister of Environment must be made public.
Luxembourg	Provisions of the EIA relating to impact-reduction measures and compensatory measures form part of the conditions governing the issuing of authorizations.
Netherlands	The authority is legally obliged to indicate what role the EIS has played in the decision-making. Both the decision adopted and the reasoning of it are public and subject to appeal. The sections are well implemented.
Portugal	<p>In the vast majority of cases, the authorization decision by the competent authorities takes into consideration the results and conditions emerging from the EIA process.</p> <p>The Institute for the Promotion of the Environment always informs the public taking part in the consultations for each project about the content and conclusions of the decision taken. The same applies to any other citizen or organization requesting such information, even if they were not actively involved in the consultation.</p>
Spain	The arrangements work relatively well. In the new law public participation is considered as fundamental. The decision has to be published.
Sweden	<p>The authority has to take into account all relevant information. It has to state the reasons which led to the decision. There are certain exceptions from this rule, for example the authority may omit the reasons if the decision does not go against any party. In certain Acts, e.g. the Planning and Building Act, there is a specific requirement for, amongst other things, stating any objections.</p> <p>The decision is public, although the publication of the decision is only subject to a small number of laws. The decision is nevertheless communicated to the parties concerned and to other persons who have expressed a view in the case.</p>

<b>Member State</b>	
United Kingdom	<p>There is a long standing tradition requiring environmental issues to be considered in the planning process, where relevant. Under the Town and Country Planning procedures, decisions on approved projects have to be placed on the planning register which is available for public inspection. Decisions on projects authorised by consent procedures other than the Town and Country Planning system are notified to all those who made comments about the project by means of a reasoned decision letter, and may also be published in the press. This applies to projects to which the EIA Directive applies.</p>

**Table 23: Principal problems of application<sup>58</sup>**

Member State	
Austria	The EIA-Act made an important change to the existing licensing system. Previously, to get a permit for an installation several applications had to be filed at different competent authorities according to the respective administrative laws. Accordingly a number of consents were needed before the final permit was given. With the EIA-Act a single licensing procedure has been established. Just one application for the whole licensing procedure has to be filed and just one final Consent is given by one competent authority (the Provincial Government) responsible for the entire procedure. As all these changes required preparatory measures by the competent authorities (Provincial Governments) as well as by the developers.
Belgium Brussels region	There are not any particular difficulties. There is a need for better targeting of the impact studies, depending on the type of project, and for projects to be exempted from the impact study procedure as soon as it becomes clear that they form a full and integral part of a development plan which has itself been the subject of an impact study.
Belgium Flanders	The unclear wording of articles 4, 5 (in combination with Annex III) and 6 and the fact that two lists of projects have been introduced.
Belgium Wallonia	Insufficient evidence.
Denmark	The greatest problem has been to generate understanding for the objectives of the Directive with the authorities concerned. This problem is not limited to particular sectors/projects or project categories.
Finland	Insufficient evidence.
France	Problems are similar to the ones with implementing internal regulations, namely a problem of efficiency: High number of projects subject to this procedure, the lack of resources and powers in the environmental sector (insufficient dialogue between services responsible for the environment and the developer, insufficient monitoring of the environmental evaluation process). For small projects the EIA procedure is largely a mere formality.

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<sup>58</sup> Question 3b: What do you think are the principal problems the member state has met in the application of directive 85/337/EEC? And for which types of project? Report 1993: Question 1c: What are the principal reasons for any deficiencies in formal compliance and for delays in achieving full compliance?

Member State	
Germany	<p>The unclarity:</p> <ul style="list-style-type: none"> <li>• of the term „modification“ to development projects,</li> <li>• concerning the assessment for Annex II projects,</li> <li>• concerning the content of the multi-factor assessment (Article 3),</li> <li>• definition of „project“ (Article 1),</li> <li>• whether the EIA is only a formal procedure or also a substantive assessment in which case it must be made clear what this means in detail,</li> <li>• the legal force of the term „taken into consideration“ in Article 8 and about the timing thereof.</li> </ul>
Greece	<p>Problems with public participation procedure and the definition of Annex II projects. Projects with significant environmental problems are missing from Annex II (distilleries, alcoholic drinks production, wood impregnation etc.). Projects without significant environmental problems are included (e.g. pastry-making). The EIA procedure delays investments: 20 to 30 % of the initial investment plans are given up because of bureaucratic delays (Ministry of Industry, Research and Technology). Within EIA especially consultation and public participation causes delays.</p>
Ireland	<p>The setting of relatively low thresholds for Annex II projects has resulted in relatively smaller projects requiring EIA and some of the EISs submitted have not been satisfactory. This situation is improving over time, however. In the case of forestry projects a difficulty has been encountered in dealing with the cumulative effects of numerous small areas of afforestation.</p>
Italy	Insufficient evidence.
Luxembourg	Insufficient evidence.
Netherlands	<p>Unclear definition, interpretation of section 4.2 by juridical services. Additionally: Scoping and reviewing are missing, projects with relatively small environmental impacts are presented (no thresholds for Annex I, category 9), status of Annex II, transboundary aspects are included, but not fully, the annexes don't include the decision making level of plan/program.</p>
Portugal	Unclear definition of Annex II projects (Article 4(2)).
Spain	Insufficient evidence.
Sweden	<p>Legislation work has been continuing for some time in respect of both railways and agriculture and forestry. It has not been considered reasonable to force this process. The comprehensive work involved in an Environmental Code has also been under way for many years. In this case, too, it was considered inappropriate to anticipate the results of this investigation.</p>

<b>Member State</b>	
United Kingdom	Overregulation, e.g. requiring the introduction of new, bureaucratic, regulations for classes of projects which are most unlikely ever to arise in the UK (projects in Annex II, class 1(b)). Possibly additional project costs by including suggestion from statutory consultees of competent authorities. Issue of confidentiality: The Directive does not allow the withholding from the ES sensitive information discovered during the course of the environmental assessment (e.g. location of sites of protected species) which it might be counterproductive to make publicly available.

**Table 24: Ambiguous or difficult provisions<sup>59</sup>**

Member State	
Austria	Status of Annex II projects in relation to implementation. The meaning of the term „inter-action“. The meaning of the term „taken into consideration“. Decision making standards should be introduced (e.g. best available technologies). Content of Annex III should be obligatory.
Belgium Brussels region	Article 1.5, Article 2.3 (concept of exceptional cases), Article 3: the scope should be extended to include the generation of waste and the problems associated with noise. Annex I poses serious difficulties as regards its real scope, given the generic nature of the names of the various projects. Article 5, paragraph 1: the reservations entered under points (a) and (b) serve no useful purpose. Indent 1 of Article 10 is difficult to interpret.
Belgium Flanders	The unclear wording of articles 4, 5 (in combination with Annex III) and 6 and the fact that two lists of projects have been introduced.
Belgium Wallonia	Unclear definition of e.g. „integrated chemical plant“ or „project“ (not the same meaning in French as in English).
Denmark	Implementation of Annex II with regard to specifying criteria and limit values in conformity with Article 2(1).
Finland	None of the provisions of the Directive have been found to be to ambiguous or caused major difficulties.
France	Because of limited manpower: Implementation of Article 6 which stipulates that the authorities with specific environmental responsibilities should express their opinion on the request for development consent. Effectiveness of applying Article 8.
Germany	Articles 1, 2, 3, 4 and 8 need clarification.
Greece	Definition of Annex II projects.
Ireland	The extent to which alternatives can be considered at project level, the interpretation of „material assets“, unclear definitions in Annex II, such as „projects for the use of uncultivated land“ and „urban development“.
Italy	Insufficient evidence.
Luxembourg	Insufficient evidence.
Netherlands	Unclear definition, interpretation of section 4.2 by juridical services. Additionally: Scoping and reviewing are missing, projects with relatively small environmental impacts are presented (no thresholds for Annex I, category 9), status of Annex II, transboundary aspects are included, but not fully, the annexes don't include the decision making level of plan/program.
Portugal	None, any ambiguities have been clarified by the proposal for the amendment of the directive.

<sup>59</sup> Question 3c: Which provisions of the directive does the member state still being ambiguous or having caused difficulties in transposition or implementation? Report 1993: Question 5b.

<b>Member State</b>	
Spain	None, any ambiguities have been clarified by the proposal for the amendment of the directive.
Sweden	Insufficient evidence.
United Kingdom	Annex II 10 (b): UK is of the opinion it covers urbanisation of non-urban areas as well as development projects within an urban area. Article 1.5 would be more clear if the words „since the objectives of this Directive, including that of supplying information, are achieved through the legislative process“ were omitted. Article 3, the meaning of the term „material assets“.

**Table 25: Annex II projects: Thresholds or case-by-case analysis<sup>60</sup>**

<b>Member State<sup>61</sup></b>	
Belgium Brussels region	A prior definition of criteria and thresholds is more objective than a case-by-case analysis, even though in some cases they may appear arbitrary in nature.
Belgium Flanders	Both approaches have their advantages, so it is advisable to offer the Member States the freedom to choose.
Belgium Wallonia	In the absence of screening, the concept of thresholds would be the least subjective method.
Denmark	The use of criteria and thresholds can be preferable to a screening procedure, since the screening procedure for certain types of projects can develop into an „EIA procedure“ in itself. The screening procedure for projects (Order No. 847, Annex II) was selected because the content of the screening could be chosen to make it relatively simple and accurate means of identifying the projects likely to have a major impact on the environment. A simple screening procedure could not be applied to Annex II projects (Order No. 847, Annex I). For this reason criteria and thresholds were chosen.
France	To avoid unnecessary environmental assessments it would be more appropriate to conduct a case-by-case analysis. This procedure could be difficult to handle and has a potential of conflicts. Especially in countries with a Latin-type legal system criteria and thresholds could be more useful.
Germany	Criteria or thresholds are more efficient for Annex II projects than a case-by-case analysis (EC-wide and nation-wide harmonization, avoiding bureaucratic procedures).
Greece	Adoption of general criteria or thresholds to classify projects in categories and analysis of projects in each category on a case-by-case basis. Special or more simplified evaluation procedures for Annex II projects with low risk or low impacts.
Ireland	Good experience with thresholds, better than a case-by-case analysis.
Italy	Insufficient evidence.
Luxembourg	Preference of a case-by-case analysis.
Netherlands	Combination of criteria or thresholds and case-by-case analysis. Choice of method depends on type of project and sensitivity of project location.
Portugal	Preference for the options within the amendment of the Directive.
Spain	Criteria or thresholds are preferred.

<sup>60</sup> Question 3d: In your judgement and to the best of your knowledge in order to establish whether for a project of Annex II an assessment is required under Article 4.2 of Directive 85/337/EEC is it more suitable to have adopted criteria or thresholds rather than analyzing the project on a case-by-case basis?

<sup>61</sup> This question was not included in the questionnaire for the new Member States.

<b>Member State<sup>61</sup></b>	
United Kingdom	Combination of criteria and thresholds and a case-by-case assessment. Guidance in the form of criteria and thresholds is issued to help competent authorities determine whether a project is likely to have significant environmental effects. However, the guidance is indicative only; the test of „significant environmental effects“ can only be properly applied on a case-by-case basis.

**Table 26: Measures for formal or practical compliance<sup>62</sup>**

<b>Member State</b>	<b>Measures</b>
Austria	Clear definitions and more consistent text of Directive.
Belgium Brussels region	Insufficient evidence.
Belgium Flanders	Clear definitions and more consistent text of Directive.
Belgium Wallonia	Clear definitions and more consistent text of Directive.
Denmark	None.
Finland	Screening, scoping, public participation, development and consideration of alternatives, monitoring.
France	Reduction of the number of projects which are subject to an EIA, extending the simplified impact notice procedure to other projects. Such a move could only be envisaged in the context of extending environmental assessments to plans and programmes.
Germany	The Directive must be made clearer to lay the foundation for greater harmonization within the EU and to make it easier to implement. Particular mention should be made of the complete failure to clarify the relationship between the EIA and the multi-factor assessment required by the Directive.
Greece	Adoption of criteria or thresholds for Annex II projects. „Mini-EIA“ for small scale projects or with low impact, modification of the public participation procedure.
Ireland	Amendment of the present thresholds for afforestation projects and peat extraction.
Italy	Insufficient evidence.
Luxembourg	Studies on the cumulative impact of projects on the environment to take these into account. Perhaps better handled at the strategic level.
Netherlands	Clear definitions. Results of research projects of the EC should be transformed into practical training projects as to promote exchange of information on the level of the EC.
Portugal	Harmonization of standards and guidelines.
Spain	Problems have been solved by a new act.
Sweden	Reduction of the number of projects which are subject to an EIA (in other words the introduction of screening) to fulfil the requirements in procedure and content.
United Kingdom	None.

<sup>62</sup> Question 3e: What measures would you recommend to facilitate the more satisfactory formal or practical compliance with the directive in the member state? Report 1993: Question 5c: What measures would you recommend be considered to facilitate more satisfactory formal or practical compliance in the member state concerned by cost-effective means?

**Table 27: Project or plan/programme level<sup>63</sup>**

Member State	
Austria	Especially the issue of alternatives (e.g. in the fields of waste treatment, tourism and traffic infrastructure projects including inland waterways) could be better handled at an earlier stage than the project level. The outcome of the previous assessment (environmental assessment of plans and programmes) could then be taken into consideration in the project EIA. Concerning road projects (e.g. highways) it is sometimes difficult to handle the EIA on a project level since the period for planning, building and running the project is a very long one, so that the starting conditions may change a lot in the meantime and cannot be considered in the right way.
Belgium Brussels region	All road, rail or other infrastructure projects.
Belgium Flanders	All kinds of land use or zoning (urban development, industrial estates), projects, waste management, major communication, transportation and distribution infrastructure works.
Belgium Wallonia	Town and country planning projects (residential areas, residential extension areas, leisure areas, industrial zones, protected areas), waste-disposal programmes, sewage-treatment programmes.
Denmark	Cumulative effects of smaller projects, which are currently not subject to an EIA could be assessed. Larger infrastructural installations should also be subject to an EIA at plan/programme level.
Finland	Highway projects for main road networks (alternative transport connections, different modes, better co-ordination between highway planning and land use planning).  In the EIA-Act there is a general provision on strategic EIA (section 24). The building act amendment calls for the investigation of environmental impacts, when a land use plan is being drawn up.  There are several research projects and case studies and a project has been started in the Nordic Triangle
France	Necessary for prediction of cumulative impacts of a large number of projects, realized within an area, that are not subject to impact assessment. This also applies to projects that will be realized over a longer period of time, e.g. infrastructure projects.  The Decree of 25 February 1993 introduced the notion of assessing the impact of a general programme of work.
Germany	The need for an EIA at plan level can only be defined, once it has been established what decision making information EIAs at project level can offer in terms of procedure, scope and, above all, content.
Greece	Plans and programmes for regional development (touristic, residential, industrial, agricultural), infrastructures, power projects, water management and waste management.

<sup>63</sup> Question 3g: Are there any project types, which may be better handled at a level other than the project level (e.g. policy, plan or programme level)?  
Questionnaire new member states, Question 5d.

<b>Member State</b>	
Ireland	Many plans, programmes and policies already require environmental consideration, e.g. transport and energy networks. The term „handle“ has to be defined.
Italy	Strategic assessment could support the subsequent assessment of individual projects.
Luxembourg	At the moment the cumulative effects on the environment are not adequately taken into account in the context of the EIAs relating to individual projects. EIAs at a strategic level could provide this information.
Netherlands	For many projects of the annexes of the Directive the decision-making at higher levels sets the framework for the development consent. There should be an EIA on the plan/programme level and the project level.
Portugal	It is possible, that some project types could be better handled at the plan or programme level.
Spain	All projects could be better handled at the plan or programme level. The new law already covers plans and programmes with likely significant effects.
Sweden	Developments are moving in the direction of supplementary environmental assessments at different decision levels (mainly location of infrastructure projects). As yet no experience, whether EIA at planning or programme level could fully replace project EIAs.
United Kingdom	The inter-relationship between project and plan level EIA is a complex one.

**Table 28: Approval by legislation<sup>64</sup>**

Member State	
Austria	No.
Belgium Brussels region	No.
Belgium Flanders	No.
Belgium Wallonia	No.
Denmark	The Danish Parliament will implement the projects in detail by law in accordance with Article 1(5) of the Directive.
Finland	Insufficient evidence.
France	No.
Germany	In the road sector, decisions (approving the final plans) have been taken on various projects in the new states (Laender) by means of laws. Material assessments of the environmental impact were conducted in the process.
Greece	The project for the water supply of Athens has been exempted from the provision of the Directive. The project had to be started immediately because of a water shortage.
Ireland	No.
Italy	No.
Luxembourg	No.
Netherlands	Yes, the Delta Act Great Rivers (emergency procedure for the river dykes).
Portugal	No.
Spain	No.
Sweden	No.
United Kingdom	The provisions of the Directive do not apply to projects the details of which are adopted by a specific act of national legislation. However, an amendment to Parliamentary Standing Orders introduced in 1992 requires an environmental statement to be completed for such projects and for the ES to be deposited and made available for inspection, and also for sale, in Parliament. Parliamentary procedures ensure there is adequate opportunity for representations on the ES to be taken into account before any decision is made about the project. If the project requires EA, the Secretary of State must confirm he has considered the ES and taken it into account in reaching his decision before the Order is approved. Major projects such as the Channel Tunnel Rail Link will continue to be approved through act of national legislation and as such there will no need for them to be subject to the EIA Directive. Nonetheless, Environmental Statements will be prepared.

<sup>64</sup> Question 4a: Has the Member State ever approved a project with a specific act of national legislation and in doing so, not applied to the project the provisions of Directive 85/337/EEC?  
For new Member States question A1: Has the Member State indicated those projects to which this directive does not apply, because they are approved by specific acts of national legislation?

**Table 29: Exemption of projects<sup>65</sup>**

Member State	
Austria	No. Section 3 para. 8 of the Austrian EIA Act only clarifies that for measures that are the object of an adaption or rehabilitation procedure to reduce negative effects on the environment no EIA is required.
Belgium Brussels region	No.
Belgium Flanders	No.
Belgium Wallonia	No.
Denmark	No projects exempted, no provisions implemented granting exemptions within the meaning of Article 2(3) of the directive. Exemptions according to Articles 1(4) and 1(5) of the Directive are included in the EIA Act.
Finland	No.
France	No.
Germany	Yes. For some road projects, provision is made for planning consent, instead of approval for the final plan. At the moment the Commission and Germany are discussing, in connection with an infringement procedure, to what extent this affects Annex I projects, if there is any difference between EIA and planning consent and, consequently, how far the exemption clause in Article 2(3) applies. There is no explicit exemption clause in the Act.
Greece	Yes. One project have been exempted. This has been the project for water supply for Athens. The project had to be started immediately because of water shortage.
Ireland	No. There is a provision for exemption in the Act.
Italy	No.
Luxembourg	No.
Netherlands	In the early years of implementation exemption of specific projects. There is in the national law an exemption law in cases, where there are no new information after the initial EIA.
Portugal	Yes. Reasons have been the national interest for timely completion of urgent projects. Environmental aspects have been duly safeguarded by conditions imposed in the licenses. There is no clause within the national law.
Spain	No.
Sweden	No.

<sup>65</sup> Question 4b: Has the Member State ever exempted any specific projects from the provisions of Directive 85/337/EEC and if so, what reasons have been given for justifying the exemption? Does the Member State have adopted a national law concerning exemption or a clause having similar effects?

New Member States: Question A3: Has the Member State exempted any specific projects from the provisions of the Directive according to Article 2(3)? What reasons have the Member State given for exemption of such projects? Has the Member State made any national law(s) concerning exemption?

<b>Member State</b>	
United Kingdom	No projects have been exempted. Regulations mirror the provisions of article 2.3 of the Directive.

**Table 30: Transboundary impacts<sup>66</sup>**

Member State	Transboundary impacts
Austria	<p>Article 7 of the EIA Directive and the Espoo-Convention on EIA in a transboundary context are implemented in section 10, 17 and 19 of the Austrian EIA-Act. Neighbours (persons who are threatened or annoyed by the project) from other states can be a party to the EIA procedure with the right to remedies. These transborder provisions do not only apply to members of the European Economic Area but also apply on the basis of the principle of reciprocity to all possibly affected states.</p> <p>Austria is party to some agreements on the protection and use of transboundary waters, which include provisions similar to EIA and which were in operation before the EIA Directive was implemented.</p>
Belgium	<p>The three regional governments (Flanders, Brussels and Wallonia) signed a co-operation agreement concerning the exchange of information on projects with regional transboundary environmental effects. This agreement came into force on 4 September 1994. Furthermore, as a signatory of the Espoo convention, an approval procedure has been initiated which means that before Belgium can ratify, the three regions also have to approve.</p>
Belgium Brussels region	<p>Yes, Article 45 (Order 30 July 1992). The necessary enforcement measures on part of the Regional Government have not been employed.</p>
Belgium Flanders	<p>No transposition of the provision of the directive.</p> <p>No ratification of the Espoo convention. Before the formal agreement between the Flemish region and the Netherlands there have been informal contacts and exchange of information. For major projects ad hoc-approaches have been agreed between the authorities. On 12 December 1994 an agreement was signed between Flanders and the Netherlands regarding EIA in a transboundary context. This agreement is in force since 1 September 1995 and will be applied for one year after which it will be evaluated and - if necessary - modified.</p>
Belgium Wallonia	<p>The provisions of the Directive have been transposed into internal law of the Wallonia region under Article 39 of the decision of the Walloon Regional Executive.</p>
Denmark	<p>The provisions have been transposed by Article 6 (Order No. 847, Article 3 of the Planning Act).</p>
Finland	<p>There have been no projects with transboundary impacts.</p>
France	<p>The provisions have been transposed into national law under Decree of 25 February 1993.</p>
Germany	<p>Article 8 of EIA-Act deals with how to treat transborder impacts (including vis-à-vis non-Union countries).</p>

<sup>66</sup> Question 4c: Has the Member State transposed the provisions of the Directive relating to the assessment of transboundary impacts? Has the Member State ratified the ESPOO convention on transboundary impacts? Are the formal provisions related to the above mentioned acts different and, if so, in which way? Report 1993: Question 3f: How satisfactorily are the directive provisions relating to assessment of transborder impacts being implemented in practice? Table 3.11. p. 30.

Member State	Transboundary impacts
Greece	Since Greece is surrounded by countries, that are not Member States of the EU, problems of transboundary impacts are not handled under the directive. All European Community's directives or international conventions on transborder impacts are applied (water, air pollution, transportation of hazardous waste).
Ireland	The provisions have been transposed.
Italy	The provisions have been transposed by regulatory and administrative instruments.
Luxembourg	The provisions have been transposed into the national legislation. The text of the Act of 29 July 1993 approving the Espoo convention will incorporate the text of that convention.
Netherlands	The provisions have been transposed by the Environmental Management Act (par. 7.8).
Portugal	No transposition of the requirements of the Directive.
Spain	The provisions have been transposed.
Sweden	The Nordic Environmental Protection Convention already contains provisions in respect to notification and consultation for projects with potential transboundary effects. The Espoo convention is transposed in a national ordinance to some extent (MKB-förordningen § 9-11).
United Kingdom	The UK fully applies the requirements of Article 7 of the Directive through administrative means. However, following the judgement of the ECJ in case C133/94 (Commission v Belgium, May 1996), the UK will transpose the transboundary provisions of the Directive into national legislation as soon as it is practicable to do so.

## **Annex**

Questionnaire old Member States

Questionnaire new Member States

Country report Austria

Country report Finland

Country report Sweden

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