WORKSHOP IMPLEMENTATION GUIDE
ON ENVIRONMENTAL LAW

TRAINING MODULE ON EU LAW ON
ENVIRONMENTAL IMPACT ASSESSMENT (EIA)
1 Introduction into the Workshop Implementation Guide

The Training programme for Judges consists of thematic “modules” designed for support of training workshops in EU environmental law.

A “module” is made up of a set of training materials, legislation and supportive documents dedicated to a specific field of European environmental law targeting an audience of judges and prosecutors from EU Member States. Each module is split into interrelated but self-standing 10-15 “sessions” so that a training programme for a workshop later can be set up individually based on this set of sessions and related materials, depending on the specific training approach and time available. An event implementing all sessions proposed would probably consume between 2.5 – 3 full working days.

This workshop implementation guide will describe for each session the in detail the most relevant aspects such as the objectives, learning points, methodology and materials to be used. Insofar it shall serve as an instruction manual on a thematic module for both the organisers of training events and for trainers / speakers in charge of single sessions – it will help for preparing largely participatory learning workshops.

Training materials have been developed, tested and revised by competent experts in English language on a range of thematic modules. They will complement this instruction manual and annexed to the respective module. The same goes for other materials useful for the achievement of a successful training event for judges and prosecutors.

Most training materials will be accompanied by specific speakers’ notes. These notes will enable other experts then the original authors to make use of the materials and adapt them to individual needs. The overall goals of the training events to be organised with the help of this manual are basically threefold, namely:

a) to develop and raise the understanding on the key legal aspects of EU legislation in a given field of environment law and their practical relevance for domestic jurisdiction and

b) to exchange views of judges / prosecutors from one or various EU Member States on a given topic, i.e. to foster the dialogue between judges / prosecutors of different nationalities / from different institutions and

c) to develop and promote contacts between EU Commission services and national judges / prosecutors.

The participatory approach is a key assumption of the workshops implemented. This implies that no workshop should be organised for more than 25-30 participants including expert speakers. It is proposed that each session shall be implemented or guided by an expert who will make use of the training materials provided for in this implementation guide.
The guide will not address logistic aspects like travel, accommodation, event locations, translation or interpretation. As for the latter, if required, simultaneous interpretation is the preferred option, at least for plenary sessions.

At the end of each session-chapter of this guide, there are additional notes. These notes provide for a range of useful complementary suggestions and aspects to be taken into account for the conduction of the respective sessions.

All thematic workshop modules addressed in workshop implementation guides have been tested by EIPA on several occasions. Programmes for 2.5 day workshops for judges and prosecutors from several EU Member States have been designed and constantly improved in accordance with the test results and feed-back given by the participants as well as amended EU legislation and new jurisprudence.

A few aspects need to be stressed:

1. **Duration of sessions:**
   
   We propose durations of all sessions based on the materials developed and tested. However, we made the experience that virtually all sessions have its own dynamics. It depends largely on the participants to which extent discussions are wanted and how many questions, comments and remarks are given at the end of a session. This may consume more or less time than planned. As stated above, the exchange of opinions is considered to be a primary goal of the training modules. This should be explained to all participants at the beginning of a workshop and also that the schedule of the programme will be applied in a flexible manner, so that all attendees are aware of this. Nevertheless, it is important that the moderator of a session strictly reminds that contributions shall be short.

2. **Arrangement of sessions:**
   
   Six thematic modules developed so far have been tested in different arrangement of sessions. It turned out that the main criteria for the set-up of a programme is the alternation of sessions with front-teaching and interactive methodology. Day 1 should not be overloaded with teaching sessions at the expense of work in working groups on cases. Of course, the arrangement of sessions also depends on fixed dates such as lunch or coffee breaks or end dates as well as the availability of speakers.

3. **Materials / workshop reader:**
   
   Workshop readers have been assembled for all six modules containing of the materials produced by experts under the respective module, main legislation in that area and other useful information. It is recommended that such readers are being used in order to reach a sustainable effect which goes beyond the training event; a reader can be used well as reference book for daily practice.
2 EU Environmental Impact Assessment Legislation module

The module on EU Environmental Impact Assessment (EIA) Legislation was the third of a range of modules developed. Its sessions and materials prepared by competent experts have been tested during three 2.5 days workshops by EIPA.

In the course of the training event, we propose that the participating judges and prosecutors shall receive in the form of hand-outs teaching materials and those legislative texts which are relevant for the sessions (see below, Workshop Reader content). Other supportive documents such as

- the brochure “Environmental Impact Assessment of Projects, Rulings of the Court of Justice” (published in 210, see: http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf) and

may be provided additionally in electronic format.

The overall objectives of the implementation of this module are

- to enhance knowledge on EU policy and legislation related to environmental impact assessment of projects and strategic environmental assessment of plans and programmes (EIA and SEA Directives) and in particular its main features such as screening and public participation and proposals for improvement of the Directives (→ see in particular sessions 4, 6, 7 and 11);
- to understand the role of national courts and the EU Commission as concerns the implementation of European environmental legislation and the respective legal procedures after the Lisbon treaty entered into force as well as the concept of direct effect (→ see in particular sessions 2 and 3);
- to understand the importance of access to justice in EIA matters (→ see in particular session 8);
- to understand the implications of ECJ cases on EIA legislation and on national jurisprudence (→ see in particular sessions 6 and 7);
- to practice the application of EIA rules at home courts (→ see in particular sessions 3, 5, 9 and 13);
- to exchange views on national practice in EIA legislation matters in national courts (→ see in particular session 10)
- to be informed on easy access to relevant EU documents on the internet (→ see session 12)

As stated above, the training module on “EU Legislation on EIA” is divided into a number of sessions. The sessions proposed and prepared for this module are as follows:
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In principle all sessions stand for themselves as they are described below. However, they are closely interrelated and some of the sessions build on a preceding session. A basic case study, though, such as EIA Case Study I (session 3) can be addressed either prior or after the introductory session to the EIA Directive (session 4). The same goes in principle for the EIA Case Study II (session 5) and the teaching session on screening (session 6). It turned out being advisable to start with the case which is then supported by additional ECJ decisions in session 6.

The proposed sequence of the case study topics should not be changed, though.

It turned out to be more effective with regard to the attention of participants if front teaching sessions and interactive sessions are alternated.

Attached to this module you find the potential agenda for a 2.5 day workshop based upon the learning objectives and the pedagogic content of this manual as well as the experience gained during the four test workshops conducted by EIPA.

This agenda gives an example for similar training events, but can, of course, be varied according to the experience of the workshop participants and the exact objectives that have been set by training organisers. However, it is suggested that workshop trainers do not stray too far from the outline agenda that we have proposed.
Workshop Reader content

We suggest that the material prepared for the module on EU Environmental Impact Assessment Legislation should be put together for a reader given to the participants at the beginning of the workshop. This reader should be composed of the following documents:

1. Workshop agenda and information on logistics useful during the workshop as well as names and contact data of speakers and participants (see Session 1)
2. Hand-outs of presentations of sessions 2, 4, 6, 7, 8 and 11.
3. Facts of the cases used in the case study sessions 3, 5, 9 and 13
4. Overview on useful internet sources addressed in session 12
5. Relevant legislation such as:
   a) EIA Directive 2011/92/EU with its Annexes
   b) SEA Directive 2001/42/EC with its Annexes
   c) Texts of Article 258 – 260 TFEU (Treaty on the Functioning of the European Union) and Article 9 Aarhus Convention
6. Optional: The following legislation and documents:
   a) Espoo Convention (EIA) extract: Preamble – Article 15
   b) Kiev Protocol (SEA) to the Espoo Convention: Preamble – Article 13
7. Optional: Workshop evaluation questionnaire

It is advisable not to send the facts of the case studies prior to the workshop to participants since they are based partly on ECJ case law. Otherwise they could be examined prior to the workshop which would contravene the purpose of the case sessions which is the exchange of views on application / interpretation of EU legislation.

Case solutions should be distributed only at the beginning of the debriefing part of the respective case session!

The authors
2.1 Session 1: Opening of workshop (introductory session)

b) **Short description of content**

The starting point of each training event should be a short introductory session on the entire programme through the chair of the event.

c) **General objectives**

The objectives of the opening session are to welcome the participants, to introduce the trainers / facilitators of the single sessions and to explain the main objectives (learning and exchange of information and experiences, promotion of contacts) of the training event as well as the methodology applied. A short overview on the content of the reader should be given. Besides, the opening session should give a platform for a short introduction of all participants (e.g.: where do I come from, which position do I hold, what is my experience on the themes addressed, what is my motivation for attendance, what are my expectations of the workshop).

This session also serves as a “warming up” exercise in order to encourage participants to contribute actively to the workshop.

d) **Specific learning points**

The participants shall become familiar with the content of the workshop programme and its sessions as well as the timing and location of sessions (at least those of day 1) and logistic issues such as programme breaks and meals (where, when) etc.

The introduction of all attendees serves as an “ice-breaking” part of the session, i.e. participants get to know each other and the respective professional background and the atmosphere usually becomes more relaxed so that people feel more comfortable to join discussions.

e) **Methodology to be applied (organisation)**

The introduction of the programme and the objectives should be presented to the participants in a plenary session (front presentation). Whether the programme is presented on the screen or just by reference to the hand-outs (reader) that each participant has in front of him is up to the chair.

f) **Duration**

The introductory session should last no longer than 45 minutes of which at least 1 minute should be calculated for the introduction of each participant. In our experience, often workshops start with a short delay of up to 15 minutes. Such delay should also be taken into account in order to avoid time pressure from the very beginning.
g) **Training aides / materials**

The Workshop Reader should contain especially the hand-out of the programme (agenda) and PowerPoint presentations, as well as word documents containing the facts of the cases (for the case studies) to be solved by the participants. The answers to the case studies should be given separately at the end of each case.

h) **Supportive documents**

A draft agenda of a training event should be set up by the event organisers in due time prior to an event and sent to the invited participants together with the invitation. It might be useful for the proper planning of the workshop that the invited persons confirm their presence and/or if needed prepare in advance on the topic at hand (for example, by bringing relevant pieces of legislation or being prepared to share their own experience of practical cases with other participants).

Assuming that this has been done, any updates on the programme or any relevant information on logistics are to be given in the first session. It is recommended that the workshop reader which is composed of various documents is also distributed at this stage (or even when participants enter the room).

i) **Additional Notes**

The introduction should be given jointly by the Chair and / or the host of the event. The Chair could be any competent person who takes the overall responsibility for the smooth coordination of the event. It should be stressed during the opening session that the time schedule will not be applied very strict. Interesting discussions shall not be cut off unless there is time pressure. Always bear in mind that the exchange of views may be one key purpose of the event.
2.2 Session 2: The role of national courts and the EU Commission as concerns the implementation of European environmental legislation

a) Short description of content

This session is not exclusively related to nature protection legislation; rather, it deals with horizontal aspects and is insofar of particular relevance for all environmental fields.

In this session an introduction to the relevance of EU environmental legislation for national legislation and national court decisions in general (direct effect of EU law) shall be given.

Furthermore both, the infringement procedure of the EU Commission as well as the preliminary references mechanism of national courts to the ECJ shall be explained in detail and what it means in practice for the Member States and national courts.

b) General Objectives

The participants from the national judiciary/-ies shall increase their knowledge on:
- the relevance of European environmental law for the European Member States and the national courts in particular through a short introduction into the concept of direct effect,
- infringements in EU environmental law by topic and by country,
- the “curing” system of the infringement procedure,
- the meaning and procedure of preliminary references of national courts to the ECJ.

Participants shall also be encouraged to promote or make use of the preliminary reference mechanism themselves when appropriate.

c) Specific learning points

More specifically, participants shall improve their understanding of European environmental law application in the Member States and how infringements may be cured with the help of national courts, the EU Commission and the ECJ. (Insofar reference is made to Commission Communication COM (2008)773 on implementing European Community Environmental Law where the role of judges is stressed.)

Participants will learn the details and effects of the infringement procedure on the implementation of environmental law provisions, i.e. how the interpretative ECJ case-law is achieved as a result from EU Commission intervention under Articles 258 TFEU ff. and under the preliminary references mechanism under Article 267 TFEU. (Insofar reference is made to the Commission Communication COM (2007) 502, A Europe of results – applying Community law)

Participants will be informed in more detail about the preliminary reference mechanism and the concept of “direct effect” of a Directive. Especially this part of the
session will be of particular practical relevance for a national judge, who shall ensure compliance of his/her decisions with EU law requirements. (The practical impact of the “direct effect” as regards EIA Directive aspects will be trained subsequently in Case Study I.)

d) **Methodology to be applied**

The proposed methodology for this session is front-teaching with the use of power point presentation tools. Examples may be given by the trainer, to demonstrate the cycle and duration of the infringement procedure / preliminary reference mechanism in practice. Reference to key ECJ decisions should be made in order to explain the concept of “direct effect”. The subsequent discussion should be moderated by either the trainer or the chair of the event.

e) **Duration**

The entire session shall last no less than 60 minutes including plenary discussion.

f) **Training aides / materials**

Materials that should be handed out to the participants are preferably (selected) power point slides of the trainer and printed copies of the text of Articles 258 – 260 and 267 TFEU.

g) **Supportive documents**

Additionally the above mentioned Commission Communications COM (2007)502 and COM (2008)773 or extracts thereof could be copied and distributed (they are 12 respectively 14 pages long).

h) **Additional notes**

The trainer / facilitator in this session should be highly familiar with the infringement and the preliminary rulings procedure and the concept of “direct effect” and related cases.

It is important that there is some room left for discussion (up to 1/4 of the length of this session) in order to consolidate the understanding of information presented by the trainer and to offer participants the chance to clarify any issues that they have not fully understood.
2.3 Session 3: Case Study I – Direct effect of the EIA Directive

i) **Short description of content**

The case sessions are considered to be important parts of the workshop not only to make it more interesting for participants through their active participation but also to “train” the application of EU law on cases. The case sessions will consume considerable time of a workshop, especially case sessions II – IV. Within these sessions real or fictional cases shall be solved by the judges mainly on the basis of EU legislation, i.e. here the provisions of the EIA Directive. The first case focuses on Article 4(2) and the direct effect of Article 2(1).

j) **General Objectives**

The general objective of this session is to become familiar with the practical meaning and preconditions of the “direct effect” concept and its interpretation in relation to the EIA Directive. Besides, judges from different EU Member States / courts shall exchange opinions on the case presented and discuss potential solutions based on their interpretation of the EU directive requirements.

k) **Specific learning points**

The main learning points are to understand and interpret parts two Articles of the EIA Directive correctly (here: Articles 2(1) and 4(2) as regards the direct effect concept and to exchange opinions on case solutions.

l) **Methodology to be applied**

As for this first – rather short – case we propose to discuss it entirely in the plenary (different form cases II – IV). This does not only save time. We also made the experience that workshop attendees prefer to solve no more than 3 cases in working groups during one workshop. Case I as the shortest and most easy case of all 4 cases proposed can be well prepared and discussed in the plenary only. In this case:

- The facts of the case should be presented briefly by the trainer (expert). The case is also available to the participants as hand-out.
- The case will then be discussed directly in the plenary. It is recommended to give the attendees some 15-20 minutes to think about answers to the questions individually or together with their neighbours before the discussion starts. Additionally, attendees may be asked to focus on specific questions only (there are just 3 guiding questions).
- Once a question has been addressed and discussed in the plenary it is followed by a debriefing of the question by the trainer (expert), who presents the answer of the ECJ, before the next question will be addressed, and so on.
- Finally, the answers to the case will be handed out.
m) **Duration**

The case presentation should take no more than 5 – 10 minutes, followed by about 20 minutes for the preparation of potential answers in the plenary and the discussion and de-briefing that will need another 30 – 35 minutes.

n) **Training aides / materials**

The case prepared for this session is based on an extract of the Kraaijeveld ruling of the ECJ (C-72/95). The hand-outs for the participants consist of precise descriptions of the facts of the case and hints on the relevant EU legislation provisions necessary to solve the case as well as three guiding questions to be addressed during the discussion and de-briefing.

Detailed “Answers to the Questions”, based on the ECJ decision will be handed out to the participants at the end of the debriefing meeting, not before!

o) **Supportive documents**

It is assumed that the EIA Directive (2011/92/EU) has been distributed to the participants.

p) **Additional notes**

The trainer / expert making the presentation of the case must be familiar with the “direct effect” concept and the Kraaijeveld case. However s/he must not be the author of the case, as this will be fully self-explanatory.

The case should be handed out to the participants at the beginning of the workshop or the case session itself and not before, so that participants cannot identify the related ECJ decision and thus potentially hamper any discussion.

It is recommended to conduct this session prior to the introductory session on the EIA Directive.
2.4 Session 4: Introduction into the EIA and SEA Directives

a) **Short description of content**

Session 4 aims to introduce participants to the main features of the EIA and SEA Directives and provide an overview on the interpretation of key provisions by the ECJ. Infringements of the provisions of the EIA directive led to numerous judgements of the ECJ which is why it is important to improve the understanding of judges on the essence of the directive.

b) **General Objectives**

The objectives are to inform participants primarily about the Directive 2011/92/EU, i.e. the objectives and structure of the directive and the EIA procedure as well as on the scope and procedure of the SEA pursuant to Directive 2001/42/EC.

c) **Specific learning points**

The session will focus primarily on the scope of application of an EIA / SEA, their objectives, main definitions in the EIA Directive and the EIA / SEA procedures (except screening and participation which will be specifically addressed in two other sessions) including their differences.

d) **Methodology to be applied**

The proposed methodology for this session is front-teaching in the plenary with the use of power point presentation tools. A number of ECJ rulings integrated into the presentation help to explain the interpretation and practical meaning of a provision. At the end of the session there should be given some room for discussion of open questions.

e) **Duration**

Based on our experience we propose that this session should last approximately 60 minutes including about 10 minutes time for questions for clarification.

f) **Training aides / materials**

The participants should receive print outs of the power point slides designed by the trainer as hand-outs for that session prior to the session start.

g) **Supportive documents**

The texts of the EIA and the SEA Directives including their Annexes in the most suitable language should be copied and distributed to the participants as hard copy.

h) **Additional notes**

This session should be conducted before Case Study II in order for participants to have sufficient knowledge to handle that case. The trainer should be very familiar with the concept and provisions of the EIA and SEA Directives.
2.5  Session 5:  Case study II – Screening

a)  **Short description of content**

Session 5 is the second case session, but the first one which should be addressed in parallel working groups. Within case sessions real or fictional cases shall be solved by the judges mainly on the basis of EU legislation, i.e. here the provisions of the EIA Directive. The second case focuses on the aspect of “screening”, i.e. Articles 1, 2 and 4 and the Annexes of the EIA Directive.

b)  **General Objectives**

The general objective of this session is to become familiar with key provisions of the EIA Directive and its effect on national jurisdiction. Besides, judges from different EU Member States shall exchange opinions on the case presented and discuss potential solutions based on both, their national legislation and their interpretation of the EU directive requirements.

c)  **Specific learning points**

The main learning points are to understand and interpret parts of the EIA Directive correctly (here: Articles 1, 2 and 4 and Annexes I – III EIA Directive), to discuss potential solutions of the case based on these provisions and additional (national) clauses as well as exchanging opinions on case solutions based on the participants’ national legislation (“How would this case be solved at my court”). Another aspect to be discussed in this context is the question of the scope of legal control by the court and access to justice.

d)  **Methodology to be applied**

We propose the following methodology:

The case to be solved here consists of two small cases which are presented by the trainer (expert) to the plenary with some power point slides. The cases are also available to the participants as hand-out.

After the presentation of the case the plenary will be divided into 2-4 smaller working groups with no more than 6-7 persons/group. Each group shall appoint a moderator and a rapporteur (these persons may be identical). Within the working groups questions to the cases shall be discussed based on the legislation provided for in order to find joint solutions to the case.

Small working group discussions have several advantages:

- They create variety, including a change of physical position, which will help to stimulate concentration.
- They allow greater participation and more time for each participant to speak.
• They encourage reluctant participants who may be nervous about speaking to the plenary.

After the discussions in the working groups all participants shall meet again in the plenary. There the rapporteur of each working group shall present the findings of their discussion in short statements. We suggest that each working group gives its answers and opinions on a question followed by the next working group on the same question.

Once a question has been addressed by all working groups this is followed by a debriefing of the question by the trainer (expert), who presents the answer of the ECJ, before the next question will be addressed by the working groups again, and so on. This has the advantage that each question can be discussed one by one.

e) **Duration**

The case presentation should take about 10 minutes, followed by the discussion of the cases in the parallel working groups for about 60 minutes. In the plenary the presentation of working group findings and the final debriefing (and discussion) could take another 45 – 50 minutes.

f) **Training aides / materials**

The case prepared for this session is based on the ECJ ruling in C-435/97, *WWF and others*. The hand-outs for the participants consist of precise descriptions of the facts of the case and hints on the relevant EU legislation provisions necessary to solve the case as well as guiding questions and complementary considerations to be addressed during the working group meeting and the subsequent de-briefing.

Detailed “Answers to the Questions”, based on ECJ decisions in this field will be handed out to the participants at the end of the debriefing meeting, not before!

g) **Supportive documents**

The EIA Directive text should have been distributed to the participants.

h) **Additional notes**

The trainer / expert making the presentation of the case must be an expert on the EIA Directive and especially on the “screening” aspect. However he/she must not be the author of the case, as this will be fully self-explanatory.

The case should be handed out to the participants at the beginning of the workshop or the case session itself and not before, so that participants cannot identify the related ECJ decisions and thus potentially hamper the working group discussions.

Working groups should be picked up randomly and represent a mix of countries / regions / courts. Make sure that each group has a rapporteur – someone who will report its conclusions to the plenary. Other criteria for the mixing of the working groups may be the professional experience or knowledge, gender, language skills, in a way that all working groups will function well.
As concerns the determination of the moderator and rapporteur for each working group – these persons should be quickly selected internally by each working group.

The moderator should promote a full group discussion so that no one is disadvantaged by not having taken part (ask questions to everybody on his/her opinion). It is highly advisable to make use of the guiding questions which have been prepared for each case but participants should feel free to bring up questions from their own experience for discussion.

None of the working groups should be required to address all questions and alterations on the case – for the learning effect it is rather advisable that they manage to find suitable answers to at least some of the questions!

The moderator should also be responsible for controlling and managing the time available for the working group meeting and be available for assistance to the groups if required by them.

It is recommended to conduct this case session before session 6 (Screening Stage under the EIA Directive) in order to discuss this aspect without yet knowing many related decisions of the ECJ, as this promotes more controversial discussions.
2.6 Session 6: Screening Stage under the EIA Directive

a) **Short description of content**

Session 6 aims to inform participants to the legal requirements of the Screening Stage in accordance with selected important ECJ judgements. Infringements of the screening provisions of the directive led to numerous judgements of the ECJ which is why it is important to improve the understanding of judges insofar.

b) **General Objectives**

The overall objective of this session is to provide an overview of selected ECJ cases dealing with screening decisions in order to improve the participants’ knowledge on how the ECJ interpreted some sensitive phrases and terms of the Directive. This is of particular relevance for the judges as their national jurisdiction should be in compliance with the decisions of the ECJ. The session will deal with judgements based on the infringement procedure (Article 258 TFEU ff.) explained in session 2 as well as preliminary rulings based on Article 267 TFEU.

The Commission emphasized that the EC Treaty “has been significantly supplemented by case-law resulting from the use by national judges of Article 234 of the Treaty” (page 5 of COM (2008) 773).

c) **Specific learning points**

More specifically, ECJ jurisdiction focusing on the proper transposition and application of Article 4(2) and Annex II projects, cumulative effect of projects, Annex III criteria and limits of discretion and the meaning of “project” will be highlighted in this session.

d) **Methodology to be applied**

The proposed methodology for this session is front-teaching in the plenary with the use of power point presentation tools. Several case examples will be given by the trainer, to explain how the ECJ interpreted a Directive’s provision and Annex in a particular case. At the end of the session there should be given some room for discussion of open questions.

e) **Duration**

The session on ECJ jurisdiction related to the “Screening stage” should last about 60 minutes including approximately 10 minutes for questions / discussions.

f) **Training aides / materials**

The participants should receive print outs of the power point slides designed by the trainer as hand-outs for that session prior to the session start.

g) **Supportive documents**
As stated in the introduction to the module, the brochures “Environmental Impact Assessment of Projects, Rulings of the Court of Justice” (see: http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf) and “Interpretation of definitions of certain project categories of annex I and II of the EIA Directive” (see: http://ec.europa.eu/environment/eia/pdf/interpretation_eia.pdf)

may be provided additionally in electronic format.

h) **Additional notes**

Session 6 may be done prior to session 5. The trainer should get familiar with the facts of the ECJ cases presented so that she/he can briefly summarize the essentials of the case or answer questions related to the cases / decisions. This will take time (see the rather long speaker’s notes) but is essential.

Be aware that it is not easy to summarize both, facts of a case and an ECJ decision visually with just a few lines on a power point slide; the trainer has to have more details of the case in mind telling the audience.
2.7 Session 7: Public Participation in EIA and SEA

a) **Short description of content**

Session 7 aims to inform participants on the objectives and legal requirements of the public participation in both, EIA and SEA procedures in accordance with the legal provisions of both directives and with selected important ECJ judgements. Infringements of the provisions of public participation requirements led to some judgements of the ECJ which is why it is important to improve the understanding of judges insofar.

b) **General Objectives**

The objectives are to inform participants about the reason for requiring public participation at various stages of the EIA procedure and the main legal requirements set in the Directive and to improve the participants’ knowledge on how the ECJ interpreted some sensitive phrases and terms of the Directive. This is of particular relevance for the judges as their national jurisdiction should be in compliance with the decisions of the ECJ. The session will deal with judgements based on the infringement procedure (Article 258 TFEU ff.) explained in session 2 and gives examples of French court decisions.

The Commission emphasized that the EC Treaty “has been significantly supplemented by case-law resulting from the use by national judges of Article 234 of the Treaty” (page 5 of COM (2008) 773).

c) **Specific learning points**

The session will focus primarily the stages of public participation in an EIA and SEA, definitions set by the EIA Directive, different forms of participatory approaches used by EU Member States and conditions allowed to be imposed by Member States. Selected ECJ jurisdiction focusing on the proper transposition and application of the public participation rules in Articles 1, 6 and 9 will be highlighted in this session.

d) **Methodology to be applied**

The proposed methodology for this session is front-teaching in the plenary with the use of power point presentation tools. Several case examples will be given by the trainer, to explain how the ECJ interpreted a Directive’s provision in a particular case. At the end of the session there should be given some room for discussion of open questions.

e) **Duration**

The session on public participation in EIA and SEA should last about 60 minutes including approximately 10 minutes for questions / discussions. However, if the case examples from France (5 slides) are taken out, the length of the session may be reduced to 50 minutes.
f) **Training aides / materials**

The participants should receive print outs of the power point slides designed by the trainer as hand-outs for that session prior to the session start.

g) **Supportive documents**

As stated in the introduction to the module, the brochure “Environmental Impact Assessment of Projects, Rulings of the Court of Justice” (see: [http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf](http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf)) may be provided additionally in electronic format.

h) **Additional notes**

The trainer should get familiar with the facts of the ECJ cases presented so that she/he can briefly summarize the essentials of the case or answer questions related to the cases / decisions. This will take time (see the rather long speaker’s notes) but is essential. Be aware that it is not easy to summarize both, facts of a case and an ECJ decision visually with just a few lines on a power point slide; the trainer has to have more details of the case in mind telling the audience.

As for the cases from France the speaker would have to familiarize him/herself with those decisions and the public participation system of an EIA in France. However, these slides could also be left out or replaced through slides with examples from other EU Member States.
2.8 Session 8: Access to Justice - Aarhus Convention and EIA Directive requirements

a) Short description of content

Session 8 addresses the issue of Access to Justice in accordance with the provisions of the Aarhus Convention and the requirements set in Article 11 EIA Directive. Access to Justice in environmental matters is a condition to bring cases to the knowledge of courts.

In our experience this issue is subject of controversy discussions especially if judges from several Member States are attending the workshop as the access is regulated and applied quite differently in the Member States and even individual courts.

b) General Objectives

The EU itself, and all EU Member States have ratified the “Aarhus Convention on access to information, public participation in decision making and access to justice in environmental matters”. Within the EIA Directive, access to justice requirements were incorporated in 2003 though Article 11. This Article stipulates the minimum conditions of access to administrative or judicial proceedings in EIA procedures.

The main objective of this session is to understand the Aarhus Convention (Article 9(3)) and EIA Directive (Article 11) requirements based on recent judgements of the ECJ, as to how access to justice should be regulated / interpreted nationally. Besides, participants shall exchange views on how access to justice is regulated in their country (and interpreted in the respective courts) and which obstacles exist.

c) Specific learning points

Specifically, participants shall be informed about the content of the Aarhus Convention as concerns its so called third pillar (access to justice) and shall understand Article 11 of the EIA Directive. The focus of the session, insofar, is on the question of direct effect of Article 9(3) Aarhus Convention which has been addressed by ECJ Case C-240/09 and to summarize several other cases of the ECJ on the proper application of Article 11 EIA Directive.

d) Methodology to be applied

The proposed methodology for this session is front-teaching in the plenary with the use of power point presentation tools. Several case examples will be given by the trainer, to explain how the ECJ interpreted the Aarhus Convention and Article 11 EIA Directive in a particular case. At the end of the session there should be given some room for discussion of open questions as well as for discussion on how access to justice is regulated and applied in the EU Member States.

e) Duration
The duration of this session should be about 50 – 60 minutes. At least 1/4 should be dedicated to the discussion part.

f) **Training aids / materials**

The participants should receive print outs of the power point slides prior to the session.

g) **Supportive documents**

Article 9 of the Aarhus Convention should be reprinted and become part of the workshop reader.

h) **Additional notes**

The trainer should be an expert on Aarhus Convention and EIA Directive requirements in particular as concerns public participation and access to justice matters. S/he should get familiar with the facts of the ECJ cases presented so that she/he can briefly summarize the essentials of the case or answer questions related to the cases / decisions. This will take time (see the rather long speaker’s notes) but is essential. Be aware that it is not easy to summarize both, facts of a case and an ECJ decision visually with just a few lines on a power point slide; the trainer has to have more details of the case in mind telling the audience.

As for the exchange of views on access to justice it is important that the moderator of this session strictly reminds that contributions shall be short.
2.9 **Session 9: Case Study III – Public participation and EIA quality review**

a) **Short description of content**

Session 9 follows the model of session 5 with a different legislative focus and case presented and to be discussed and answered. As stated above, the case sessions will consume considerable time of a workshop.

In this session a case shall be solved by the judges dealing with questions related to public participation and the quality control of an EIA on the basis of the EIA Directive. The third case will focus on provisions of the Directive related to public participation and the Annexes of the Directive.

b) **General Objectives**

The general objective of this session is to become familiar with key provisions related to public participation in the EIA Directive and their effect on national jurisdiction. Besides, judges from different EU Member States shall exchange opinions on the case presented and discuss potential solutions based on both, their national legislation and their interpretation of the EU directive requirements.

c) **Specific learning points**

The main learning points are to understand and interpret parts of the EIA Directive as amended correctly (here: in particular Article 11 EIA Directive and other provisions of the Directive related to public participation and decision making, to discuss potential solutions of the case based on the Directive as well as exchanging opinions on case solutions based on the participants’ national legislation (“How would this case be solved at my court”). A key aspect to be discussed in this context is the question of the scope of legal control by the court and access to justice of an environmental NGO.

d) **Methodology to be applied**

As for the proposed methodology we recall the approach proposed for session 5:

The case to be solved is presented by the trainer (expert) to the plenary as hand-out and optionally with some additional power point slides.

After the presentation of the case the plenary will be divided into 2-4 smaller working groups with no more than 6-7 persons per group. Each group shall appoint a moderator and a rapporteur (these persons may be identical). Within the working groups questions to the case shall be discussed based on the legislation provided for in order to find joint solutions to the case.

After the discussions in the working groups all participants shall meet again in the plenary. There the rapporteur of each working group shall present the findings of their discussion in short statements. We suggest that each working group gives its answers and opinions on a question followed by the next working group on the same question.
Once a question has been addressed by all working groups this is followed by a
debriefing of the question by the trainer (expert), who presents the answer of the ECJ,
before the next question will be addressed by the working groups again, and so on.
This has the advantage that each question can be discussed one by one.

e) **Duration**
The case presentation should take about 10 minutes, followed by the discussion of the
cases in the parallel working groups for about 60 minutes. In the plenary the
presentation of working group findings and the final debriefing (and discussion) could
take another 50 minutes.

f) **Training aides / materials**
The case prepared for this session is based on the ECJ ruling in C-215/06, Ireland v.
Commission. The hand-outs for the participants consist of precise descriptions of the
facts of the case and hints on the relevant EU legislation provisions necessary to solve
the case as well as guiding questions and complementary considerations to be
addressed during the working group meeting and the subsequent de-briefing.

Detailed “Answers to the Questions”, based on ECJ decisions in this field will be
handed out to the participants at the end of the debriefing meeting, not before!

g) **Supportive documents**
The EIA Directive text should have been distributed to the participants.

h) **Additional notes**
The trainer / expert making the presentation of the case must be an expert on the EIA
Directive and especially on all aspects related to public participation and access to
justice. However he/she must not be the author of the case, as this will be fully self-
explanatory.

The case should be handed out to the participants at the beginning of the workshop or
the case session itself and not before, so that participants cannot identify the related
ECJ decisions and thus potentially hamper the working group discussions.

Working groups should be picked up randomly and represent a mix of countries /
regions / courts. Make sure that each group has a rapporteur – someone who will
report its conclusions to the plenary. Other criteria for the mixing of the working
groups may be the professional experience or knowledge, gender, language skills, in a
way that all working groups will function well.

As concerns the determination of the moderator and rapporteur for each working
group – these persons should be quickly selected internally by each working group.

The moderator should promote a full group discussion so that no one is disadvantaged
by not having taken part (ask questions to everybody on his/her opinion). It is highly
advisable to make use of the guiding questions which have been prepared for each
case but participants should feel free to bring up questions from their own experience for discussion.

None of the working groups should be required to address all questions and alterations on the case – for the learning effect it is rather advisable that they manage to find suitable answers to at least some of the questions!

The moderator should also be responsible for controlling and managing the time available for the working group meeting and be available for assistance to the groups if required by them.

It is recommended to conduct this session after sessions 7 and 8 which provide an initial overview on how to apply relevant provisions of the EIA Directive.
2.10 Session 10: Exchange of views and national experience on EIA

a) **Short description of content**

The exchange of views and experience on Member States’ EIA and SEA legislation and national court’s jurisdiction is another main purpose of the workshop to be designed. This is based on the assumption that both, transposition of the EIA and SEA Directives as well as jurisdiction in this field are quite different in the Member States.

b) **General Objectives**

In this session judges / prosecutors will be given the opportunity to exchange with colleagues from other jurisdictions their experience related to implementation practice of EIA and SEA legislation in order to contribute to a better and timely implementation of the Directive’s requirements.

c) **Specific learning points**

Which aspects of the two Directives shall be discussed is foremost up to the participants who have the opportunity to present their own cases or ask questions related to specific provisions. If there is little input from the participants – which may be the case at the beginning of this session – the moderator, who should be an expert, may initiate the discussion through additional case law from ECJ or a Member State on selected issues which are of particular relevance based on his/her experience or on the discussions in earlier sessions of this workshop.

Besides, as horizontal issues such as the judicial review of EIA / SEA decisions and access to justice (density of control, legal standing of parties, dispute solving mechanisms on national / regional level, interim relief measures etc.) could be discussed during this session.

d) **Methodology to be applied**

The proposed methodology for this session is an open plenary discussion moderated by the workshop Chair or – even better - an experienced expert.

e) **Duration**

The duration of this session could be between 30 - 90 minutes, depending on the time available and the discussion atmosphere in previous sessions. The more attendees seemed to have enjoyed discussions and gave input in other sessions the more time should be left for this “open” session.

f) **Training aides / materials**

None

g) **Supportive documents**

None

h) **Additional notes**

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This session shall only be included in the programme if there is a need for “exchange” – which may be not / less the case if participants come from only 1 or 2 Member States.

Regardless of the fact that the main actors in this session should be the attendees the session should be well structured by the moderator in order to ensure effectiveness. We recommend that the moderator asks at the beginning who would like to present a case to be discussed and then decides which case comes first. Alternatively or additionally s/he may make notes during the entire event to collect questions/remarks which were posed in previous sessions but could not be discussed in detail. S/he may also initiate the discussion though outlining other ECJ or national cases to be discussed.

It is important that the moderator is able to guide and steer the discussion in order to have learning benefit. If attendees are eager to present and discuss examples from their national or court experience, this session can be very fruitful for everybody.
2.11 Session 11: Strengths and weaknesses of the EIA and SEA Directives from the EU Commissions’ point of view

a) **Short description of content**

In Session 11 an expert will explain from experiences made with the EIA and SEA Directives and needs and initiatives for their revision from the EU Commissions’ point of view.

b) **General Objectives**

The overall objective of this session is to provide an insight into the views of the EU Commission on EIA and SEA transposition and implementation in the Member States and its initiatives for an improvement of the existing legislation.

c) **Specific learning points**

More specifically the attending judges shall be informed on the main findings within the EIA and SEA implementation reports, the strengths and benefits of both directives, the areas identified for legislative improvements and the policy objectives and corresponding timetable from the Commissions’ point of view.

d) **Methodology to be applied**

The proposed methodology for this session is front-teaching in the plenary with the use of power point presentation tools. At the end of the session there should be given some room for discussion of open questions.

e) **Duration**

The session on EIA and SEA strengths and weaknesses should last about 45 minutes including approximately 10 minutes for questions / discussions.

f) **Training aides / materials**

The participants should receive print outs of the power point slides designed by the trainer as hand-outs for that session prior to the session start.

g) **Supportive documents**

As stated in the introduction to the module, Commission Communications COM(2009) 378 and COM(2009) 469 on the application and effectiveness of the EIA and SEA Directives could be compiled in the workshop reader.

h) **Additional notes**

Session 11 should be the final front-teaching session on EIA / SEA. The trainer should – in best case – be a competent person from within DG Environment or alternatively an expert who is highly familiar with EU policy and legislation on EIA and SEA and plans for their revision.
2.12 Session 12: How to access relevant EU documents in internet

a) **Short description of content**

Session 12 is a short session advising participants how to track down relevant EU documents in internet.

b) **General Objectives**

This session has been incorporated into this module on particular request of EIPA’s testing workshop participants. Given the diversity of EU legislation and policy documents on EIA and SEA as well as ECJ case law, during this session the participants are advised how to use EUR-LEX <curia-europe.eu> as concerns ECJ decisions and other useful sources of information.

c) **Specific learning points**

The participants are instructed on the search tools and options of the several websites and what can be found there in order to make use of these sources in their daily practice.

d) **Methodology to be applied**

This session will only work out if there is online access of the trainer to internet. She/he will then access the relevant websites, such as the EUR-LEX, the DG Environment and the ECJ websites and explain in short its features and gives examples how to find cases, policy papers and legislative texts. During the session there should be given some room for questions and additional practical advices given by participants who have used certain websites for their work.

e) **Duration**

Session 12 should last no longer than 30 minutes in total.

f) **Training aides / materials**

An overview on relevant websites and links could be provided for the participants – online access of the trainer to internet must be ensured.

g) **Supportive documents**

None

h) **Additional notes**

Session 12 can take place any time. The trainer should have some practical experience working with EUR-LEX, DG Environment and <curia-europe.eu> websites.
2.13 Session 13: Case Study IV – Transboundary EIA

a) Short description of content

Session 13 is another case study which should, in principle, follow the model of session 9. In this session a case shall be solved by the judges dealing with questions related to the EIA Directive in a transboundary context.

b) General Objectives

The general objective of this session is to become familiar with the interpretation of provisions of the EIA Directive for a project that concerns more than just one EU Member State.

c) Specific learning points

The main learning points are to understand and interpret parts of the EIA Directive as amended correctly (here: in particular Articles 2(1), 4 and 7 and Annexes I – III) and to discuss potential solutions of the case based on the Directive. Besides, introductory information on the UN/ECE Espoo Convention shall be given during the debriefing part.

d) Methodology to be applied

As for the proposed methodology we recall the approach proposed for session 9, above. The case to be solved is presented by the trainer (expert) to the plenary as hand-out and optionally with some additional power point slides.

After the presentation of the case the plenary will be divided into 2-4 smaller working groups with no more than 6-7 persons per group. Each group shall appoint a moderator and a rapporteur (these persons may be identical). Within the working groups questions to the case shall be discussed based on the legislation provided for in order to find joint solutions to the case.

After the discussions in the working groups all participants shall meet again in the plenary. There the rapporteur of each working group shall present the findings of their discussion in short statements. We suggest that each working group gives its answers and opinions on a question followed by the next working group on the same question. Once a question has been addressed by all working groups this is followed by a debriefing of the question by the trainer (expert), who presents the answers of the ECJ, before the next question will be addressed by the working groups again, and so on. This has the advantage that each question can be discussed one by one.

e) Duration

The case presentation should take about 10 minutes, followed by the discussion of the cases in the parallel working groups for about 60 minutes. In the plenary the presentation of working group findings and the final debriefing (and discussion) could take another 50 minutes.
f) **Training aides / materials**

The case prepared for this session is based on the ECJ ruling in C-205/08, Umweltanwalt von Kärten (Austria) vs Kärtner Landesregierung. The hand-outs for the participants consist of precise descriptions of the facts of the case and hints on the relevant EU legislation provisions necessary to solve the case as well as guiding questions and complementary considerations to be addressed during the working group meeting and the subsequent de-briefing.

Detailed “Answers to the Questions”, based on ECJ decisions in this field will be handed out to the participants at the end of the debriefing meeting, not before!

g) **Supportive documents**

The EIA Directive text should have been distributed to the participants. The text of the Espoo Convention may be reprinted.

h) **Additional notes**

The trainer / expert making the presentation of the case must be an expert on the EIA Directive and especially on decisions of the ECJ relevant in the context of this case. However s/he must not be the author of the case, as it will be fully self-explanatory.

The case should be handed out to the participants at the beginning of the workshop or the case session itself and not before, so that participants cannot identify the related ECJ decisions and thus potentially hamper the working group discussions.

Working groups should be picked up randomly and represent a mix of countries / regions / courts. Make sure that each group has a rapporteur – someone who will report its conclusions to the plenary. Other criteria for the mixing of the working groups may be the professional experience or knowledge, gender, language skills, in a way that all working groups will function well.

As concerns the determination of the moderator and rapporteur for each working group – these persons should be quickly selected internally by each working group.

The moderator should promote a full group discussion so that no one is disadvantaged by not having taken part (ask questions to everybody on his/her opinion). It is highly advisable to make use of the guiding questions which have been prepared for each case but participants should feel free to bring up questions from their own experience for discussion.

None of the working groups should be required to address all questions and alterations on the case – for the learning effect it is rather advisable that they manage to find suitable answers to at least some of the questions!

The moderator should also be responsible for controlling and managing the time available for the working group meeting and be available for assistance to the groups if required by them.

It is recommended to conduct this session as final case study of the programme.
2.14 Session 14: Workshop evaluation – closing of the event

a) **Short description of content**
   The final session of the workshop should draw conclusions from lessons learnt and include an evaluation of the thematic sessions of this module.

b) **General Objectives**
   Apart from thanking all trainers and participants for their contributions, the focus of the closing event should be the collection of feedbacks on the sessions and the materials by the participants.

   This evaluation is very important for the improvement of the content of the module and the corresponding training and information materials but also to improve and redesign the programme of future training events.

c) **Specific learning points**
   For the organiser: to improve the training module and the design of the training event.

d) **Methodology to be applied**
   The proposed methodology for this session is an open plenary discussion moderated by the Chair of the event. Besides oral comments, however, evaluation sheets on the entire workshop (its programme, content, shortcomings, speakers etc.) could be filled out by the participants.

e) **Duration**
   The closing session may last no more than about 30 minutes, depending on the number of participants.

f) **Training aides / materials**
   An evaluation form could be handed out to the participants at the beginning of the workshop – it may be part of the workshop reader. A proposed text and design of this evaluation form is attached to this module. This evaluation form should be filled out by everybody anonymously at the latest during this final evaluation session and collected by the Chair of this session. The form shall encompass an evaluation of all sessions conducted during the workshop. It will help to improve the session’s design and especially the training material.

g) **Supportive documents**
   None

h) **Additional notes**
   Participants should be encouraged by the Chair to give critical feedback and highlight the pros and cons of the training event. We propose that the Chair asks all attendees for their feedback one-by-one without pressure. Those who do not like to say anything, of course, should have the right to keep silent.