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

annexes for ALL MEMBER STATES
COMMISSION OF THE EUROPEAN COMMUNITIES

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Directorate-General for Environment, Nuclear Safety and Civil Protection

with the assistance of

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INTRODUCTION

This annex has been prepared using a variety of sources of information, and including consultations with a wide range of participants in the EIA process in Belgium. We wish to express our sincere gratitude for all helpful comments and suggestions. In addition, the following persons have kindly acted as a central contact point. They should be acknowledged for providing relevant information and for organising valuable meetings:

Mr. Chris Van den Bilcke, legal advisor with the national Secretary of State of Environment;

Mr. J.P. Hannequart, Director General and Mrs. F. Impens, legal advisor of the Brussels Instituut voor Milieubeheer - Institut Bruxellois pour la Gestion de l'Environnement;

Ir. A. Denteneer, Director General of the Administratie voor Milieu, Natuur, en Landinrichting, Ministerie van de Vlaamse Gemeenschap;

Mrs. T. Snoy, Advisor with the Minister of Environment for the Walloon region, and Mr. J. Stoquart, Secretary of the Conseil Wallon de l'Environnement.

However, we wish to emphasise that the contents of this annex are the responsibility of the author and that any views expressed are not necessarily shared by all of those consulted.

The annex is divided into two main sections containing, an analysis of the principal legal provisions to implement the EIA Directive in Belgium, and a review of the nature and extent of practical compliance with the Directive in the country. More detailed information is contained in four tables in the Appendix. The annex covers the same issues as those discussed in the other Member State annexes in this volume but, the detailed structure within its main sections is
different. Before the first of these sections, which is essential to an understanding of the EIA implementation process, there is a short description of the institutional reform process and the attempts to revise the licensing system, which is important to any understanding of EIA developments in Belgium.

**Institutional reform process**

The Laws of Institutional Reform of August 8 1980 and of August 8 1988 have created new legal entities such as the Communities and the Regions in Belgium. They have their own legislative assembly "the Council" and executive body "the Executive". The Communities and Regions are invested with legislative power equal to that of the national legislature. In the Flanders and Wallonia Region "Decrees" have the force of statute throughout the territory for which they are responsible. The Brussels-Capital Region has been given the power to issue "Ordinances". Unlike Decrees, Ordinances are subject to limited judicial review, as well as - in certain cases - limited administrative control by the national authorities.

As part of this reform process, important responsibilities with regard to the environment have been transferred to the regions:

- protection of the environment, including general and sectoral standards, respecting the standards prescribed by national authorities where no European standards exist;

- waste policy, excluding the import, transit and export of radioactive waste;

- inspection and supervision of industrial premises, with the exception of measures concerning the protection of labour. (Also excluding nuclear installations.)

As a result, agencies of the regional government have obtained a statutory role to evaluate licence applications (e.g. building permits, permits to operate etc.) and to enforce licence conditions and other regulatory provisions in the areas of environment and external safety. They also have the duty to continuously verify and inspect the adequacy of environmental controls and mitigation measures.
Related competences which have been vested in the regions include: area development planning, rural development and nature conservation, water policy, public works and public transport. The areas of competence which have not been explicitly allocated to the regions remain with the national government.

The allocation of competences is designed to be "exclusive", and there is no subordination of regional provisions with regard to national statutes. Equal standing is conferred on national laws and regional decrees. The principle that higher law prevails over lower law (e.g. "Bundesrecht bricht Landesrecht" in Germany) does therefore not apply to the Belgian Federal system. In theory, there should be no scope for disagreement or conflict as long as the regions stay within their own competences, and as long as the national government respects the competences vested in the regions. In practice, however, the picture is rather different. Ambiguities and limitations in the formulation of the laws of institutional reform leave substantial room for interpretation in certain areas (Boes, 1989a). The policy of one authority may conflict with that of another. Therefore, it is possible for parallel measures to be enacted at distinct levels of authority without any law being subordinate to any other. To overcome this kind of problem, a higher organ of judicial power, the Court of Arbitration, has been set up. It is entrusted with the settlement of jurisdictional conflicts between national statutes and regional decrees.

After the first and second law of institutional reform of respectively 1980 and 1988, there may be a forthcoming third phase in the institutional reform process. This may provide an opportunity to resolve remaining problems, including the external functions of the regions (e.g. the representation and interaction with the European Commission). Regional authorities have expressed their strong motivation and commitment towards a direct, active and constructive participation at the European level for those areas of competence which have been explicitly allocated to them.

Revision of the licensing system

During the 1980s, several initiatives have been developed to improve and update the existing authorization procedures. As an example, the original framework for the licence to
operate an industrial plant is provided by Title 1 of the A.R.A.B.-R.G.P.T. regulations, the so-called system of control for "dangerous, unhealthy and inconvenient plants". This regulation dates from 1946, but goes back in its original form to the Imperial Decree of October 15, 1810. Since the last decade, it has been generally recognized that this existing regulation needed to be improved in a number of important areas.

Some major drawbacks with regard to the A.R.A.B.-R.G.P.T. licensing system are:

- inconsistencies and lack of specificity in the classification of installations, positive list not suitable to the modern (process) industry;

- its emphasis on individual licence conditions, specified in terms of detailed technical means rather than setting clear and comprehensive goals which have to be specified; also a substantial degree of discretion is left to individual inspectors, leading to a lack of consistency in conditions imposed on similar industries, and hence lack of stability and legal security for the involved parties.

In addition, different new licensing procedures have originated as a result of sectoral environmental laws e.g. permits for discharge into surface waters, groundwater extraction, hazardous waste collection and disposal etc. As a consequence of the sectoral approach, the following adverse effects have become apparent:

- no coordination or linkage between individual licences; lack of streamlining or harmonization of administrative authorization procedures;

- no firm commitment on the time frame within which a decision will be reached by the authorities; practical problems of projects being affected by conflicting requirements, by substantial delays or by an appalling lack of a decision;

- the specification of ill-founded or fragmentary licence conditions, whereby significant aspects are overlooked and unduly severe requirements are imposed on elements of
The knowledge and insights which enter the current authorization processes have been judged to be incomplete and insufficient to allow a justified and well-balanced decision (e.g. Kreps-Heyndrikx and Van den Eede, 1989, on the authorization for dredging-related activities). Hence, the credibility, efficiency and effectiveness of the licensing system has been seriously challenged. Consequently, there have been pressures:

- to render the administrative procedures more uniform;
- to provide for a more integrated evaluation of environmental effects; and
- to strengthen the inspection and enforcement arrangements.

Within this broader framework, specific attempts have been made to accommodate and integrate the requirements of European Directives such as the EIA Directive 85/337 and the Seveso Directive 82/501. This characterises especially the approach followed in the Flanders region of Belgium.

1. EXTENT OF FORMAL COMPLIANCE BY BELGIUM WITH THE REQUIREMENTS OF THE DIRECTIVE

(a) Status and overview of existing legal provisions

The first initiative, at the national level, on EIA was taken in 1977-1978. The Minister of Public Health and Environment at that time elaborated a draft proposal for a framework law on EIA. This proposal was not followed up. Instead the national government adopted an attitude of waiting. A proposal for a European Directive on EIA was under discussion at that time, and it was felt preferable to await its final version. Also, the institutional reform process started to take effect in 1980, leading to a transfer of environmental responsibilities to the regions.

In the Flanders Region, a policy decision was taken in 1982 to fundamentally revise the licensing system for industrial installations. It was understood that the requirements of the European Directive 82/501 on major accident hazards and Directive 85/337 on environmental impact assessment would be simultaneously addressed. This led to the adoption of the Decree
on the Environmental Licence by the Flemish Council on June 28 1985, which was subsequently published in the National Monitor on September 17 1985. This Decree contains the basic provisions to introduce EIA for industrial developments. In order to become operational, however, this Decree needed to be supplemented by one or more administrative orders. A proposal for one comprehensive Administrative Order was developed and accepted by the Flanders Executive by July 1986. It was then submitted to the Council of State for a judicial review. This review process took more than four years, and the advice by the Council of State was only produced by summer 1990. In the meantime, separate initiatives had to be taken by the Flanders government because the requirements of the EIA Directive became mandatory as of July 3 1988. First, an instruction note was issued by the Regional Minister responsible for the Environment on June 22 1988. This instruction note dealt only with the application of EIA for selected industrial projects. It did not address infrastructure projects. In addition, the legal status of the instruction was questionable. On November 3 1988 the European Commission pointed out that Belgium did not comply with the EIA Directive. Consequently, the Flanders government took the initiative to develop dedicated administrative orders introducing EIA for all project types within the jurisdiction of the region. Six Administrative Orders were approved by the Flemish Government on March 23 1989 and published in the National Monitor on May 17 1989. They prescribe EIA both for industrial installations and infrastructure developments. The legal basis for the industrial projects is the Decree on the Environmental Licence. For non-industrial developments the applicable EIA Orders supplement the basic Act on Town Planning and Regional Land Use of March 29 1962. The contents of these Administrative Orders are broadly consistent with the earlier proposed Administrative Order of 1986, although the former are strictly limited in scope to EIA requirements. The practical experiences in the Flanders region which are reviewed in this annex are essentially based upon these six Administrative Orders, although it has to be acknowledged that significant EIA experience had been acquired in practice well in advance of these formal legal provisions.

In Wallonia, EIA has been introduced by the Decree on the Organisation of the Evaluation of Environmental Effects in the Walloon Region of 17 September 1985 (National Monitor 24 January 1986). This Decree represents a distinct text with specific and dedicated focus upon the EIA process. It provides for a mandatory EIA for projects listed under Annex
1 of the Decree. It also includes an initial environmental evaluation process for a very broad range of licence applications, on the basis of which the project may be subjected to a full EIA procedure. Therefore, the approach in Wallonia may be characterised as a two-stage EIA system. The Court of Arbitration has annulled elements of Annex 1 of the Decree. Subdivisions 2 and 3 of this Annex contain stipulations with regard to nuclear installations and the storage of radioactive materials which remain within the exclusive power of the national government. The Decree has been supplemented by an Administrative Order of December 10 1987 (National Monitor 11 May 1988). An important discrepancy can be observed between the Decree and the Administrative Order. The latter severely restricts the number of projects subjected to the initial environmental evaluation process, as opposed to the broad range which is indicated in the Decree. However, this Order was fully withdrawn by the Council of State on June 19 1990 after an appeal by the national government. The legal basis for this annulment is given by 1) the presence of provisions with regard to nuclear installations in the Administrative Order (these competences remain within the purview of the national government); and 2) the alleged improper use of the clause "Because of urgent necessity" in the Administrative Order (to avoid the delays caused by a formal judicial review). A new Administrative Order was issued by the Walloon Government on July 19 1990 and published in the National Monitor on October 2 1990. This Order resembles the first one, except that stipulations with regard to nuclear projects, and restrictions on the range of the initial environmental evaluation process, have been removed. Additional transition measures are also specified to overcome the "legal vacuum" caused by the annulment of the first Administrative Order.

Around 1987 the national government developed a discussion document and a proposal with regard to the setting of minimal EIA requirements through national legislation. According to the first law of institutional reform of 1980, the national government retained the authority to impose environmental "norms and standards". Through a liberal interpretation of this concept of "norms and standards", it was argued that a regulatory initiative on EIA at the national level was justified. However, this viewpoint has been superseded by the second law of institutional reform of 1988, which shifted further environmental responsibilities to the regions (i.e. standard setting, and the implementation of European Environmental Directives). The national initiative also became obsolete and even counter-productive, because the necessary developments were
already well under way at the regional level.

Nevertheless, the national government still has the responsibility to implement EIA requirements for nuclear installations and the storage of radioactive materials. The licensing system for these types of premises is governed through the Law of 29 March 1958 and the Royal Order of 28 February 1963 concerning the Protection of the Population against Ionizing Radiation. These regulations need to be modified to address the requirements of the EIA Directive 85/337. So far, this has not yet taken place. It is reported that a university group (F.U.L.) has been given the assignment to develop a proposal to integrate EIA provisions within the nuclear licensing system.

Concerning the Brussels-Capital Region, a discussion document is available containing a "Draft Ordinance on the Evaluation of Urban Environmental Effects". This proposed legislation focuses on the urban character of the region, and stresses the integration of environmental issues with urban development and land use policy. At this moment it does not yet have force of law.

To summarize this descriptive paragraph, Table 1, in the appendix to this annex, gives a listing of EIA-relevant legislation in Belgium which is effective and operational at the time of writing (June 1991). Further developments which may be anticipated in the near future are discussed in section 1(e) below.

(b) Basic elements and comparison of the administrative procedures in the regions

Detailed information on the administrative EIA procedures can be found in publications edited by both the Flanders (Ministerie van de Vlaamse Gemeenschap, 1989) and the Wallonia government (Lutgen, 1990). A full description of these procedural elements is beyond the scope of this annex. It is however worthwhile to compare the two distinct EIA approaches which have developed (separately) in the Flanders and Wallonia regions in Belgium.

First, a fundamental distinction in policy context and strategy is apparent. In Wallonia, the legislation establishes a dedicated and direct focus upon EIA as such. The resulting EIA
system is superimposed on the existing environmental authorization procedures. The links to the latter remain implicit rather than direct. In Flanders, the original intention was to develop a consolidated and updated system for environmental authorizations within which the EIA process would be fully integrated. Because of the long delays in the judicial review by the Council of State in Flanders, and of the practical procedural problems and confusion encountered in Wallonia, this basic distinction in policy intention has gradually diminished over the years. In Flanders, there has been a clear shift towards developing EIA specific legislation with the objective of assuring formal compliance with the European Directive. The fundamental revision of the licensing system (although well justified) has proven to be a too ambitious goal. In Wallonia, there have been pressures for a more explicit and a more systematic integration of EIA within the existing authorization procedures.

In general terms, it can be said that the legal provisions in Flanders are essentially procedural in character. The actual content requirements are essentially a direct and literal transposition of the corresponding provisions of the Directive. The regulations in Wallonia reflect a more thorough understanding of the EIA process. The conceptual basis for EIA is better developed in the Walloon system (emphasis on environmental goals and objectives, direct attention upon the screening and scoping activity). Both regulations are formulated as framework laws whereby the regional executive government is given the power to issue further rules in respective areas (e.g. the scope and content requirements for an EIA study, the system of environmental evaluation criteria etc.).

With regard to the underlying elements of the EIA practice, the following comparison can be made:

The screening of EIA relevant activities

In Flanders, a fixed positive list uniquely determines whether a given project is subject to the EIA requirement or not. In Wallonia, a very broad range of licence applications is also subjected to an initial environmental evaluation, on the basis of which the competent authority may decide that a full EIA is necessary.
Public involvement during scoping

No formal provisions on this matter appear in the Flanders regulations. In Wallonia, a public enquiry in the scoping phase is provided, but restricted to projects initiated by a public body.

The role of experts during the preparation of an EIA study

Both regions are concerned about the objectivity, completeness and quality of the EIA studies to be produced. An active role is specified for independent experts in both systems. In Wallonia, the independent expert bears the sole responsibility to prepare the EIA study. He has to assure the scientific rigour and objectivity of the study. The role of the developer is limited to the task of providing the necessary information. In Flanders, the preparation of the EIA is considered to be a joint effort by specialists from the developer and independent experts. A detailed procedure towards certification of these independent experts is set out in both regulations. According to the Flanders regulation, the applicants have to be Belgian citizens. This requirement does not exist in Wallonia. The current practice is that in Wallonia institutions have been certified for specific project types (e.g. process industry, energy sector, infrastructure developments etc.), whereas in Flanders individuals have been certified for specific environmental disciplines (e.g. water, soil, fauna and flora, noise etc).

The allocation of responsibilities with regard to the quality control of the EIA process

In Wallonia, an important role is given to the "Conseil Wallon de l'Environnement". This advisory body consists of representatives from universities, environmental groups, industry associations, other consultative bodies and the local authorities (Jadot, 1989a). A broad range of duties is allocated to this body. This not only includes providing advice on generic guidelines and legislative proposals for EIA-related matters. In addition, the "Conseil Wallon d'Environnement" intervenes directly within each individual EIA procedure, and is also directly involved in the certification of independent experts. This advisory body is called "the principal guardian" of the EIA system in Wallonia (Bartholomée, 1989). Next, the importance of public participation is stressed. The public is considered to be the "second guardian" of the system.

* EIA study = EIS as defined elsewhere in this report.
The practical duties and responsibilities of environmental officials and government inspectors are not explicitly addressed, despite the fact that the regional environmental agency plays an important role within the ("traditional") authorization processes (i.e. development of a technical advice on a licence application, including a comprehensive proposal for licence conditions to be enforced). In Flanders, the EIA instrument is more fully integrated within the underlying authorization processes. Consistently, the regional environmental administration government agency is explicitly entrusted with the follow-up and evaluation of all individual EIA reports. The observation is made that EIA is not a goal in itself, but rather a tool for the environment agency to fulfill its mandate more effectively.

(c) Analysis of formal compliance with the E.E.C. Directive

In order to investigate to what extent the requirements and objectives of the E.E.C. Directive have been formally met, it is necessary to evaluate first the legal status and validity of the present regulations. Indeed, a regulation should not only reflect a good understanding of the basic underlying elements of a good EIA practice, but in addition the legal formulation should be adequate to enable the objectives to be met.

A detailed legal analysis of the Flanders EIA regulations has been conducted by Boes (1989b). The following main deficiencies are reported in this study:

- The lack of clear definitions leads to room for interpretation, confusion and uncertainty. Vague expressions such as "probable important (effects)", "reasonable and relevant (alternatives)", "significant (impacts)" are frequently used in what is essentially a normative text. The difference in meaning between "magnitude" and "significance" of impacts is not appreciated. The concepts used are not sufficiently clear and require a further qualification. Environmental goals should be more clearly specified. It should be indicated whether the technological options should include the "best possible technical means" or the "best practicable and available means with proven economic feasibility". To some extent, these limitations can be related to the way the E.E.C. Directive itself has been formulated. Also, when transposing a Directive, the common approach is to stay as close as possible to the exact wording and phrasing of the original Directive.
- EIA for infrastructure developments is coupled to the building permit. However, it is not certain that some types of project will actually require a building permit (e.g. recreational facilities). Hence, there is no EIA requirement in these cases.

- The specification of infrastructural developments which are subject to EIA is often vague and leaves a wide margin for interpretation (e.g. "drastic" changes to motorways, a "complete" golf course). For infrastructure projects there are likely to be many limiting cases where it is not straightforward whether the project is subject to EIA or not.

- Specific waste-related projects are subject to both a permit to operate and a permit under the waste management regulations. The EIA Administrative Order insufficiently addresses the integration of the EIA with these two types of licensing procedures.

A corresponding legal analysis of the EIA regulations in Wallonia has been performed by Jadot (1989b). Severe drawbacks are reported such as the "manifestly incomplete" character of the dispositions, and the lack of coordination and integration between the EIA Decree and the different regulations which are implicitly modified by this Decree.

A basic remark is that the translation of EIA principles in legal obligations remains modest in certain areas. Practical examples can be found in both the Flanders and Wallonia legislation. When a developer in Flanders is not inclined to investigate alternative options, the legislation does not provide a clear stimulus or backing to force the treatment of alternatives. In Wallonia, the EIA Decree gives the Executive government the power to add plans and programmes to the EIA system. Although this appears attractive from a conceptual point of view, the legal statement does not necessarily lead to practical commitments or direct consequences. In addition, the EIA process in Wallonia is triggered by the licence application, whereas plans and programmes may not be preceded by such a formal application step.

In summary, the main deficiencies in formal compliance with the Directive are:

- no transposition for nuclear-related Annex I projects;
- no EIA legislation in the Brussels region;

- insufficient provisions and co-ordination for dealing with transboundary impacts;

- incomplete transposition for Annex II projects.

There are also some deficiencies in the 'spirit' if not necessarily in the 'letter' of the transposition of the Directive. These may, in certain cases, be regarded by some as formal deficiencies:

- limitations in the legal status and clarity of the licensing system (e.g. power to issue and enforce licence conditions for public works projects, projects not requiring a building permit);

- vague formulation of the EIA legislation, limitations with regard to the binding character of the provisions (e.g. treatment of alternatives);

- interpretation problems with the concept of 'integrated chemical installations';

- lack of public involvement during scoping, no public hearing for infrastructure projects, too passive character of public participation;

- staffing problems inhibiting the government administration in adequately fulfilling its mandate.

The overall conclusion is that deficiencies in the legal formulation impose a liability upon the efficient management of the EIA process, and have implications towards the formal compliance with the European Directive. The need for improvements is however acknowledged and initiatives are being undertaken to remedy the current situation. These new developments are discussed in section 1(e) below.

(d) **Analysis of criteria and thresholds**
This section deals with the specific types of projects submitted to EIA and with the criteria and thresholds adopted in Flanders and Wallonia. The objective is to provide a detailed comparison with Annex I and Annex II of the European Directive 85/337.

With regard to the situation in Flanders, the positive lists of industrial and infrastructure projects are contained in respectively the first and the second of the 6 EIA Administrative Orders of March 23 1989 (see Table 1). They are consistent with Annex 1 of the Directive except that the nuclear-related projects do not appear on the list. (These remain within the authority of the national government.) Also, qualifications have been added to the concept of the "integrated chemical installations" of Annex 1. The Flanders government wished to have a clear-cut operational definition which could lead to a uniform and consistent interpretation in practice. Table 2, in the appendix to this annex, indicates the chemical installations for which an EIA is mandatory in Flanders. The chosen approach is similar to the provisions of the Dutch legislation, except that the production capacities -which serve as threshold- are at least a factor of 2 lower in Flanders. A major disadvantage of the approach is that the inorganic chemical industry is not covered in the Flanders regulation (e.g. ammonia and chlorine production, fertilizer industry, bulk production of inorganic acids and bases).

Table 3, in the appendix to this annex, provides a detailed comparison between Annex II of the European Directive and the corresponding provisions in the Flanders Administrative Orders. Several of the criteria and thresholds which are adopted have been inspired by the EIA regulation in the Netherlands. However, two prominent differences occur. The agricultural sector is well accounted for in the Flanders regulations, whereas it remains beyond the scope of EIA in the Netherlands. In the Netherlands, specific initiatives at the plan and policy level are already subject to EIA, which is not the case in Flanders.

With regard to Wallonia, the EIA Decree of 11 September 1985 includes an Annex which duplicates Annex I of the European Directive. It is understood however that the nuclear-related projects no longer have legal validity. The Administrative Order of 19 July 1990 also stipulates additional project types for which an EIA is mandatory. Table 4, in the appendix to this annex, compares these with Annex II of the European Directive.
However, the basic characteristic of the approach in Wallonia is that each licence application (for e.g. a building permit or a permit to operate) is accompanied by an initial environmental evaluation notice. On the basis of this announcement, the competent authority (i.e. at city or provincial level) may then decide to require a full LIA. However, this original idea is in the process of being replaced by a more "traditional" approach, which also better resembles the project types indicated in the European Directive on EIA.

(e) Forthcoming developments

In this section, we review some ongoing developments which may lead to additions and/or modifications to EIA legislation in Belgium. Table 5, in the appendix to this annex, summarises these initiatives.

In Flanders, a new Administrative Order ("VLAREM") dealing with the environmental licence system is expected to become effective by 1 September 1991. Some of the provisions relating to the permitting procedure have an influence upon EIA: Article 18 of VLAREM stipulates that a public hearing needs to be organised for every project which has been subjected to EIA. The employer also has to send the EIA report to the safety committee of his own company (art. 6 § 2). In addition, the safety committees of neighbouring industrial establishments need to be notified if these are located within a 100m radius of the proposed development (art. 17 § 3 sect. 2). The VLAREM Administrative Order also sets out the substantive requirements for advice and decisions on the licence applications. It is surprising, however, that there is no explicit requirement for this decision to be based upon the EIA, although this condition can be considered as implicit under the general rule of "duty of care" of government actions.

The Flanders Environment Minister also proposed a Draft EIA Decree in the spring of 1989 (i.e. the same time as the Administrative Orders of March 23 1989 were worked out). This proposal contains little substantial improvements relative to the existing Administrative Orders, but it would provide a more solid legal basis for implementing the European Directive. Article 25 of this proposed legislation addresses the organisation of public consultation and article 26 deals explicitly with transboundary effects. It would require a public hearing for all EIA
projects; that is not only for industrial developments, but also for infrastructure works. Two advisory bodies have produced a comprehensive review of this Draft EIA Decree: Sociaal Economische Raad voor Vlaanderen ("SERV") and Vlaamse Raad voor het Leefmilieu ("VLARALE"). The SERV consists of representatives from employer federations and the unions. Their main remark (SERV, 1989) is that EIA should only be required for new projects, and not for the renewal of permits for existing installations. In the latter case, a more restricted "environmental report" should be sufficient. The VLARALE has a statutory role to advise the Minister on environmental policy matters. It consists of a wide representation from regional, provincial and local authorities, universities and research institutions, environmental groups, employers and unions. The main concern expressed here (VLARALE, 1990) is the quality control of the EIA process. The VLARALE argues that there should be more explicit provisions in the Decree relating to the content requirements of the EIA report (i.e. treatment of alternatives, description of the existing environment, etc.) and to the review and evaluation of the resulting EIAs. The VLARALE also advises the use of "Environmental Reports". Such a report would be more restrictive in scope and depth than an EIA, and would be selectively applied for:

- projects which may be overlooked in a positive list, such as relatively small activities with potential for serious environmental effects (e.g. within the micro-electronics industry);

- existing activities where the environmental impacts are such that a 'clean-up' effort is necessary. In practice, the priority-setting and design of mitigation measures is usually not straightforward. The Environmental Report would help to guide the development of a defensible concept of mitigating measures with realistic deadlines set for implementation.

In fact, this VLARALE proposal already corresponds to the practice which has been adopted in Flanders between 1986 and 1990. It would however provide a formal legal basis for this. The above advice was produced during 1989. Since then, there has not been a follow-up to this proposed Draft Decree.
Finally, it is worth mentioning that an inter-university commission with high-level legal experts has been set up in Flanders to develop proposals towards an updated and integrated environmental framework legislation (Bocken, 1991). The objective is to consolidate and streamline environmental provisions and procedures, and to improve the legal standing and enforcement of environmental legislation. Many people feel that this activity forms the best prospect towards a more defensible and effective regulatory system in the field of the environment. The proposals from this commission may lead to a better recognition of EIA as a basic prevention tool. There are expectations that EIA principles would be introduced at a higher level in this framework legislation, rather than as a mere add-on to the licensing procedures.

In Wallonia, a proposal for a new Administrative Order was agreed by the Walloon Government in June 1991. It was submitted to the Council of State for legal review, and is expected to become operational in the autumn of 1991. This new development is more comprehensive than the existing Administrative Order. In the annexes, a common reporting format is set out for the initial environmental evaluation. There is also an explicit list of projects for which EIA is mandatory. This resembles more closely the requirements of the European Directive. Article 40 of the proposed Order deals with transboundary effects. The development of this proposal has been described by Sancy (1990).

With regard to the Brussels-Capital Region, a draft Ordinance is available from the Brussels Instituut voor Milieubeheer - Institut Bruxellois pour la Gestion de l'Environnement ("B.I.M.-I.B.G.E."). Also, supporting discussion documents have been produced (B.I.M., 1989; Hannequart, 1991). This Draft Ordinance has been submitted to the Council of State for legal review. A central issue is the integration of urban development and environmental concerns. The need is also acknowledged to conduct environmental evaluations at the higher level of land use planning. The proposal includes mandatory EIA for a list of projects, which includes those in Annex I of the European Directive. In addition, a study of intermediate scope and depth is foreseen for a second list including those in Annex II of the Directive. A core role in the follow-up and evaluation of EIA is provided for the B.I.M.-I.B.G.E.
Finally, at the national level, a proposal is still expected to implement the EIA Directive for nuclear-related activities. The anticipated EIA law at the national level will not address non-nuclear impacts, because the responsibility for these matters lies essentially with the regions. The institutional reform makes the required implementation of Directive 85/337 for Annex I nuclear-related activities rather troublesome. A cooperation agreement between the national government and the regions is being suggested as a possible mechanism to overcome these problems.

Formal compliance with the requirements of the Directive has undoubtedly taken a considerable time in Belgium. In addition to the delaying factors observable in other Member States, it is undoubtedly the case that the process of institutional reform and attempts to rationalise and co-ordinate authorization procedures have been major contributory factors in this country.

2. NATURE AND EXTENT OF PRACTICAL COMPLIANCE WITH THE DIRECTIVE

(a) Overview of EIA reports produced

The 1989 and 1990 annual reports by the "Bestuur voor Leefmilieu" (Bestuur voor Leefmilieu, 1989; 1990) contain a full list of the EIAs completed in the Flanders region under the requirements of the Executive Orders of March 23 1989. For large industrial developments, EIAs were already conducted on an informal "goodwill" basis since 1986. The number of studies in this earlier trial period amounted to about 20 each year. The practical experiences during this informal phase have been reviewed by De Wel (1989). In the Walloon region, an inventory of EIAs produced under the Decree of 11 September 1985 has been prepared by Snoy.

In Flanders, 49 EIAs have been completed between March 23 1989 and the end of 1990. When these studies are compared against the annexes of the European Directive, the following observations can be made:

The number of Annex I project studies undertaken was 18 comprising: 7 studies for chemical installations, 5 for waste-treatment installations, 3 large infrastructure projects
(i.e. within category 7 of Annex I), 2 refinery extensions and 1 thermal power station;

Annex II projects accounted for 28 EIA studies. The dominant contributor here was agriculture (20 projects), consisting of 15 studies for poultry-rearing installations, 4 land restructuring projects and 1 water management project. Additionally, 6 EIAs have been prepared for the installation of pipelines and 2 for quarries;

Finally, 3 recreational and tourist development projects have been subjected to EIA, (this project type is not directly mentioned in the European Directive).

In Wallonia, 39 EIA's have been produced since May 11 1988 (Snuy).

23 EIAs have been produced for Annex I projects comprising: 9 for industrial chemical installations, 10 for disposal and treatment of waste, and 1 thermal power plant. Also, 2 motorway developments and 1 railway traffic project (i.e. T.G.V.) have been subjected to EIA;

Annex II projects account for 16 EIAs. There have been 13 studies for racing tracks for cars and motor cycles; 1 for a holiday village and 2 for other industrial projects.

(b) External experts involved in EIA preparation

In Flanders, 161 individual experts, out of 299 applications, have been certified by the end of 1990 for EIA preparation. This certification holds for one or more environmental disciplines. The number of experts in each of the 9 specified disciplines is as follows:

- man: 16; fauna and flora: 21; soil: 59; water: 79; air: 36; light, heat and radiation: 7; noise and vibrations: 17; climate: 12; monuments and landscape: 23.

Most experts are recognized for either one or two disciplines. All hold a basic degree in either sciences (50%) or engineering (50%).
In Wallonia, 21 consulting firms or research institutions are accredited to perform EIA studies for specified project types. Five basic areas of expertise are identified:

industry: 8; waste disposal: 11; urban development and land use: 17; agriculture: 8; mines and quarries: 11.

On average, a consulting firm covers between two and three project types. Universities are well represented, followed by architectural and engineering design companies.

(c) Involvement of government agencies

In Flanders, the legislation of March 23 1989 imposes specific duties upon the "Bestuur voor Leefmilieu", which is the environmental agency within the regional administration. This agency intervenes at several occasions within the EIA procedure. First, the study team who is going to prepare the EIA has to be accepted by this authority. Second, when the EIA study is drafted, it is submitted to the "Bestuur voor Leefmilieu" for review. This review is focused upon the completeness and quality of the report and upon its compliance with the EIA legislation. If the EIA report is considered acceptable, an "attestation of conformity" is issued by the "Bestuur voor Leefmilieu". This constitutes a necessary condition for the formal start of the licensing procedure and the public enquiry. For industrial projects, the "Bestuur voor Leefmilieu" also intervenes at the end of the licensing procedure in order to produce final advice to the (political) decision-making authority. This advice contains a judgement on the acceptability of the project together with a proposed concept of licence conditions to be enforced (e.g. mitigating measures, monitoring requirements). For infrastructure related projects, this final advice is produced by other agencies within the Flanders government. An organisational reform during 1991 will modify the name of the "Bestuur voor Leefmilieu" into "Administratie voor Milieu, Natuur en Landinrichting (AMINAL)".

In Wallonia, the EIA legislation does not specifically address the role of regional environmental authorities. On the one hand, the existing responsibilities relating to the licensing system remain unchanged. On the other hand, the majority of direct EIA-related tasks is assigned to a new advisory body: the "Conseil Wallon de l'Environnement (CWE)". The names and
affiliations of the current members can be found in Jadot (1989a). The "Conseil Wallon de l'Environnement" consists of two main sections. The first deals with the follow-up of specific EIAs. The second is concerned with the preparation of an annual report on the "State of the Environment in Wallonia". The C.W.E. also plays an important consultative role. It is involved in the accreditation process of consulting firms. Its advice is solicited when modifications or additions to the EIA legislation are proposed. Finally, it has a role to coordinate and promote the development of EIA guidance and recommendations.

With regard to the Brussels Capital Region, an important role in EIA is anticipated for the recently established "Institut Bruxellois pour la Gestion de l'Environnement (IBGE) - Brussels Instituut voor Milieubeheer (BIM)".

(d) Appraisal of EIA practice by participants in the process

When discussing practical experience, it is evident that widely varying opinions are obtained even from within a same group of participants to the EIA process.

The legal implementation of EIA has evolved along different roads in Wallonia and Flanders. Both approaches have rational, understandable and defensible attributes, but they are not consistent with each other, and so far there has been little if any "cross-fertilization" among the regions. Notwithstanding these differences in formal implementation, it is important to underline that the practical "field" experiences exhibit important similarities, and that the expressed concerns and difficulties are in fact common to the two regions. Therefore, a clear-cut distinction along the regions is not justified when discussing EIA practice.

The most profound concern centres on the quality assurance of the EIA process. How can we prevent EIA being based on self-serving, biased, inaccurate and inadequate analysis? In principle, such risks can be mitigated by:

- clear and explicit requirements for the content of an EIA, imposed by legislation or by guidelines and recommendations;
the professional expertise and commitment of the EIA practitioners; and provision for independent input during the preparation of an EIA;

- procedural safeguards, such as evaluation by the authorities and public participation. This evaluation effort should be rigorous and systematic, such that a failure to generate the best available information would be counterproductive to the credibility of the developer, and would seriously prejudice his application.

We will now review the practical situation in Belgium in the light of these three quality requirements.

**EIA content requirements**

With regard to content requirements for an EIA, there is broad agreement that the formulation in the legislation remains unduly vague. On the basis of this, developers might be inclined to believe that only a minimal analysis would be adequate. In Flanders, the legislation provides little backing to require the treatment of alternatives. It does not empower the administration to enforce the analysis of well-founded alternatives. In the 1990 annual report by the "Bestuur voor Leefmilieu" (Bestuur voor Leefmilieu, 1990), this problem is stated as one of the major drawbacks of the existing legislation. Also in Wallonia, it is argued that there exists a discrepancy between the original proposals for content requirements and the final provisions as adopted in the Decree (Bartholomée, 1989). The former had a stronger emphasis on the treatment of alternatives, and also a wider scope.

In practice, a creative search for alternatives may lead to serious bottlenecks and/or challenges. Especially for infrastructure works, the current environmental evaluation occurs too late in the planning process. Individual projects are not proposed in a vacuum, but fit into a broader planning context. This broader setting may determine the final outcome to such an extent that room for creativity in the project phase is strongly reduced. When environmental considerations would be ignored at the higher planning level, it may well be impractical to correct this at the project level, because of the limited degrees of freedom left at this stage. Therefore, there exists a distinct need for EIA at a higher and more strategic planning level. It
is justified to consider a two-stage approach, with a broader and more strategic study early on in the planning process, and a study of higher resolution and more selective focus to individual projects later on.

Some guidance has been issued to help in improving the situation. For example, in Flanders, the Department of Infrastructure has issued internal guidelines relating to the screening of EIA-relevant infrastructure projects (Hendrickx). This guidance is designed to result in a clear and consistent interpretation of the regulation. In addition, the same department is in the process of developing internal EIA manuals for specific activities (e.g. dredging operations). Also, the Flemish association of environmental groups B.B.L. has issued a report on EIA (B.B.L., 1989) in order to enhance the ability of individuals or groups to understand and participate in EIA activities.

In the spring of 1990, a comprehensive research project was jointly proposed by a group of 10 professors from four universities in Flanders (Hendrickx). This collaborative project is aimed at the development of a set of guidelines to encourage more sound and consistent EIA practice. Two main objectives are identified:

- to provide recommendations to practitioners on the scope and depth of EIA, the appropriate use of methodologies, and the access to available information resources;
- to guide the quality control activities and evaluation efforts by authorities, and to help them discern incomplete, misleading or inaccurate information.

The Environment Minister has not yet authorised the start of this research project. Several people find this surprising, because the environmental policy plan (Kelchtermans, 1990) of the same Minister emphasizes the importance of EIA as a basic prevention tool.

In practice, the "Bestuur voor Leefmilieu" makes extensive practical use of the project-specific EIA guidelines which are developed by the EIA Commission in the Netherlands. Also, EIA practitioners have been consulting the well-known EIA handbook series published by the
In summary, it is fair to conclude that there is a real need for the publication of guidance on generally accepted minimum requirements for EIA studies. It is also necessary to actively distribute such guidelines to ensure uniform and consistent implementation.

Professional quality, objectivity and independence of EIA practitioners

Both Flanders and Wallonia stress the importance of scientific soundness, independence and objectivity in the preparation of an EIA. As a means to accomplish this, an explicit role is provided for external, accredited experts or institutions. The basic question is whether the consultancy profession can meet these demanding goals and aspirations. Many people express their substantial doubt on this. They argue that the environmental consultancy sector in Belgium is still relatively young, immature and small-scale. In addition, increased environmental concern has triggered the development of many new sub-standard firms, whose lack of expertise threatens the reputation and credibility of the entire sector. Also, doubt is expressed over the alleged "independence" of experts. Some consulting firms are spin-off activities from larger industrial holdings and/or have distinct political affiliations. In any case, the consultant inevitably remains financially dependent upon the developer (Verboven, 1990). The ultimate consideration is the amount of resources and funding a developer is prepared to invest to produce an EIA. A consultant cannot go beyond these imposed limits. In practice, it is observed that many experts have to work under extreme time and resource constraints. The bottom line is that many people remain doubtful whether quality EIAs can be produced at all within these broader settings.

How have developers themselves reacted to the involvement of external EIA experts? Industry, especially, has argued that there is not necessarily a need to involve them in the first place. Their "official" reason is that better qualified and more experienced staff are already available within the organisation. "If a company does not have sufficient in-house expertise to deal with environmental hazards, they should not be in business!" However, other underlying considerations should be recognized. An EIA produced by a joint group of internal and external experts may be more difficult to manage. An external expert may raise questions about design practices or procedures which are obvious and trivial to in-house staff. Industry feels that they
are actually sponsoring the development of environmental expertise within consulting firms (Caestecker, 1989). In addition, the EIA is usually prepared several levels below the manager and must pass through a series of internal reviews. This review can filter out information or positions which might lead to a discussion, or which could contradict current policies or practices within that organisation. This filtering process may become more difficult when external experts are involved in the evaluation process and have to co-sign the final EIA report.

The EIA practitioners themselves acknowledge that they are in a difficult and unenviable position. It is not at all straightforward to balance the expectations from authorities and public to produce quality EIAs, and the requirements from developers to limit costs and delays. The EIA experts have to work in a competitive environment. Their basic concern is to convince the developer of the workload and investment needed to produce a good quality EIA. They are frightened by the potential for "quick and dirty" EIAs to be accepted by the authorities. This would create a dangerous precedent. It would lead to a situation where an expert with a more thorough approach would simply get out of business.

Experts suggest two solutions to remedy this threat. First, clear guidelines on the EIA content requirements should be issued. Second, the quality control by authorities should be strengthened. Most EIA practitioners acknowledge that the government officials involved in EIA are committed and motivated to fulfil their mandate. The administration has also repeatedly stressed the need for quality within the EIA process. And there may well be a great deal of consensus among authorities and experts with regard to the scope and extent of an EIA study. However, the practical effectiveness of this government support is questioned on two grounds: so far, EIA meetings have been on a case-by-case or informal basis. The mere existence of a consensus in a previous specific case - e.g. on the usefulness of a (foreign) guideline from the Dutch EIA Commission - may not be enough to convince another developer. Second, shortage of staff on the government side prevent adequate follow-up and evaluation of EIAs by the authorities.

Procedural safeguards: EIA evaluation and public participation

The evaluation process can be divided in two main parts. First, an "objective" assessment
of the scientific soundness and technical competence of the EIA. This condition needs to be fulfilled before the EIA can be validly used in the "subjective" appraisal of the significance of the impacts and of the implications of various decision options.

In Wallonia, the EIA's are reviewed by a consultative body, the Conseil Wallon de l'Environnement (see 2(c)). The C.W.E. has been criticized for issuing political statements and for not reaching consensus on crucial matters. This is not surprising though in view of the composition of this consultative body (i.e. representing different interest groups) and of its mandate. It is unrealistic to expect an EIA to end all controversy. There is nevertheless a viewpoint that the C.W.E. has not adequately dealt with the preceding "objective" parts of its evaluation effort, and has instead jumped directly to the subjective (and political) appraisal. It should however be pointed out that the C.W.E. has only been given very limited resources to fulfil its mandate. Members of the C.W.E. have been reviewing EIA reports on a voluntary basis and as an add-on to their normal jobs. In Wallonia, there are pressures to strengthen the role of the regional environment administration in conducting EIA evaluation tasks.

In Flanders, EIAs are reviewed by the regional administration (see 2(c)). The essentials of their evaluation strategy has been described by Schreurs (1990). This contribution also includes a consideration of general review criteria. Contrary to the developments in Wallonia, some propose to withdraw the evaluation task from the Flemish administration, and to allocate it to a new dedicated body.

The adequate evaluation of EIA by the authorities requires organisational resources of several kinds (e.g. motivated and skilled staff, access to data resources and simulation tools, capacity to conduct specialised analyses, etc.). There is almost universal agreement that this requirement has not received sufficient political attention. Sancy (1990) calls the situation in Wallonia appalling in this respect. In the foreword to the 1989 annual report of the "Bestuur voor Leefmilieu", the leading official of this administration expresses his plain outrage (Bestuur voor Leefmilieu, 1989). The Flanders Environment Minister himself admits in his policy plan (Kelchtermans, 1990) that the ratio of staff to workload in implementing European Directives is a factor of four to ten lower in Flanders than in neighbouring EEC countries.
The organisation of public participation is an essential element within an adequate EIA process. Snoy describes the practical experiences in Wallonia in this regard. Public hearings are perceived as a difficult exercise. In case of controversial projects, it may lead to "a dialogue between the deaf". Also, EIA practitioners have invested too little effort in the non-technical summary of the EIA. Their basic aim has often been to make the EIA defensible in the eyes of other experts, rather than to produce a widely accessible report. In Flanders, public participation has been more "passive". The EIA may only be consulted by interested parties during a limited time within the existing licensing procedure. This public enquiry takes place after the "attestation of conformity" has been issued by the administration. There is no public involvement during EIA scoping, and the obligation to organise a public hearing will only become effective for industrial projects when the new "VLAREM" licensing regulations will become operational (Devuyst and Hens, 1990).

An underlying element is that the administrative culture in Belgium has been one of official discretion and reticence on the part of government officials. They are traditionally very cautious when asked specific questions.

Environmental groups often perceive the current EIA practice as a matter of negotiation among technicians with little interference from outside. They are reluctant to accept EIA findings because they believe they were excluded from the actual EIA process. Frustrating experiences are reported because their views are only solicited at a moment when the decision is already in an advanced stage, when the developer considers his proposal as final. Above all, environmental groups emphasize the need for transparency of the EIA process.

Developers are concerned that open procedures might be abused to delay decisions. They view with despair the potential ability of opposing groups to raise a plethora of issues of infinitesimal relevance which nonetheless they may be obliged to check out through exhaustive analysis. Developers fear that politicians might use EIA as an alibi to avoid their taking responsibility. They are concerned that their project might become negatively affected by policy disagreements on the appropriate approach or by the lack of an explicit vision.
From actual experiences, the following practical lessons on public participation can be drawn:

- People are more interested in matters of trust, credibility, and fairness than in the technical details of impact predictions and mitigation options. They focus on the legitimacy of the process by which EIA contents are determined. If they believe that this process is flawed (i.e. because of the weakness of the legal provisions, the lack of content guidelines, the lack of independence of EIA authors, etc.), they are likely to doubt the EIA findings even if the analysis is in fact technically competent and scientifically sound.

- Participants in the EIA process may not know or necessarily accept the legal and other practical boundaries that constrain the decision following a project related EIA. For instance, the legal standing and degree of fragmentation of the licensing system determine the kind of mitigating measures which may actually be imposed. Previous decisions at a higher planning or policy level, such as land use planning, have a distinct influence on the outcome. It is, therefore, increasingly realised that an EIA at project level may preclude solutions in the broader interest, and that there is justification to extend the EIA process to a higher planning level.

- A discrepancy may be observed in the focus of concern between authorities and the public. Because of their legal mandate and technical expertise, the former tend to focus on short term and direct issues, e.g. on the technical performance characteristics of a hazardous waste treatment process. The public attempts to widen the scope and raise more fundamental and long term issues such as, for example, the emphasis given to waste prevention policy. They wish to discuss the underlying value systems on which decisions are based, and argue that as long as this discussion remains below the surface, confusion and ambiguity are likely to remain.

- EIA does not always result in the responses a particular source might wish, nor does it always lead to consensus. People do not all share common interests and values, and therefore a better understanding will not necessarily lead them all to the same conclusion.
From the perspective of authorities, credibility is gained only through a sustained effort to be responsive to audience concerns and to be accurate, open and honest in disclosing essential information.

Improvements in public participation will not fully resolve environmental management problems and end controversy (although poor public participation can create such problems). Even when everything has been done to ensure the integrity of EIA, public scepticism about motives and honesty may persist. Scepticism, antagonism, and hostility will never be fully removed.

(c) Practical merits and value of EIA

The previous paragraphs have indicated weaknesses and unsatisfactory elements in EIA provisions and practice. There is, unfortunately, no shortcut to improving EIA efforts. It is a dynamic process. The improvements in performance that are needed can only come incrementally and only from assiduous attention to several aspects.

The main benefit from EIA practice has been that environmental considerations are being addressed earlier in the design process and also on a more systematic basis. It has led to increased informal contacts between developers and authorities. Within industry, EIA has contributed to greater professionalism with regard to environmental and safety issues, and also to a better recognition by management of the importance of these responsibilities. In the longer term, EIA is recognized as a guiding force towards improved environmental standards and preventive measures. In addition, it has brought about pressures for a more environmentally sound land use planning system, and for a consolidation of fragmented and cumbersome authorization procedures.

Related actions, which have been initiated, are influenced by the spirit of the EIA process. The Infrastructure Department of the Flanders government is developing a project manual, which is designed to better guide and justify project proposals from the earliest stages of planning (Hendrickx). The manual acknowledges that the real process of environmental assessment must commence well before the formal EIA process. The Vice-President of the
Flanders Government has supported the integration of ecological criteria within his industrial development policies (De Batselier, 1991). Related developments may also influence EIA practice. The Flanders Minister responsible for the civil service has challenged the rigid duty of secrecy imposed on civil servants, and has triggered a discussion on the concept of a more open approach involving a selective right to speak (Vandenbossche, 1990). Also, unions have acquired interest in the EIA process. Two unions have each edited a manual to assist their delegates in the follow-up of environmental affairs within company and health and safety committees (A.C.V., 1990; A.B.V.V., 1991).

Universities have undertaken research and training initiatives on EIA. The majority of these efforts have been directed towards the scientific, methodological aspects of EIA (Schreurs and De Wel, 1991). A broader view however would involve attention to the integrated EIA process. Such a wider research strategy would not only consider the quality of the EIA report as such, but also address its usefulness in support of the goals of environmental policy. This includes the use of the EIA report in the actual decision making process, together with its linkage with the follow-up inspection and monitoring activities. Such a research program was commissioned by the Vice-President of the Flanders government in the autumn of 1990. It is being carried out by an interdisciplinary group of experts from the research centre V.I.T.O., together with the Free University of Brussels. This ambitious project consists of three phases:

- an evaluation of the administrative EIA procedures;
- content requirements and methodological aspects;
- follow-up of case studies; evaluation of the effectiveness of EIA as an instrument of environmental policy.

The first phase of this research project was completed in March 1991. However, reports have not yet been officially released for distribution. The main reason for this reticence is that such a wider evaluation effort inevitably entails close connections with politically sensitive issues. Controversies about EIA practice turn out to be basic (politically sensitive) debates about the
limits of governmental accountability, legitimacy and authority. It directly invokes questions on credibility, such as what is the real weight attached to environmental policy? How much staffing and resources is one willing to make available to enforce environmental goals?, etc.

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APPENDIX

Table 1: List of effective and operational EIA regulations in Belgium (status: march 1991)

1. Flanders Region

1.1. Decree
- Decreet betreffende de milieuvergunning van 28 juni 1985. (Belgisch Staatsblad 17 september 1985)

1.2. Administrative Orders
- Besluit van de Vlaamse Executieve van 23 maart 1989 houdende organisatie van de milieu-effectbeoordeling van bepaalde categorieën van hinderlijke inrichtingen. (Belgisch Staatsblad 17 mei 1989)
- Besluit van de Vlaamse Executieve van 23 maart 1989 houdende bepaling voor het Vlaamse Gewest van de categorieën van werken en handelingen, andere dan hinderlijke inrichtingen, waarvoor een milieu-effectrapport is vereist voor de volledigheid van de aanvraag om bouwvergunning. (Belgisch Staatsblad 17 mei 1989)
- Besluit van de Vlaamse Executieve van 23 maart 1989 tot aanvulling voor het Vlaamse Gewest van het ministerieel besluit van 6 februari 1971 tot vaststelling van de samenstelling van het dossier van de aanvraag om bouwvergunning. (Belgisch Staatsblad 17 mei 1989)
2. Walloon Region

2.1. Decree
- Décret du 11 septembre 1985 organisant l'évaluation des incidences sur l'environnement dans la Région wallonne. (Moniteur Belge 24 janvier 1986)

2.2. Administrative Order

Table 2: Chemical installations subjected to EIA Comparison between the EEC Directive

85/337 and the legislation in the Flanders region of Belgium

1. EEC Directive

Annex I  6. Integrated chemical installations

Annex II  6. Chemical industry

(a) Treatment of intermediate products and production of chemicals (unless included in Annex I).
(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and
peroxides.
(c) Storage facilities for petroleum, petrochemical and chemical products.

2. Flanders regulations

Integrated chemical installations, defined as installations for the conversion by chemical processes of:
- a) unsaturated aliphatic hydrocarbons with less than 5 carbon atoms per molecule;
- b) unsaturated cyclic hydrocarbons, including aromatics, with less than 9 carbon atoms per molecule; with an annual production capacity of 100 000 tons or more. (A.O. I art. 3 no. 6)

Petrochemical installations or subsequent production facilities for cracking and gasification of naphtha, gas oil, L.P.G. or other petroleum fractions with a production capacity of 500 000 tons per year or more. (A.O. I art. 3 no. 15)

Installations for the manufacture of one of the following products:
- a) phenols, carbon disulphides and mercaptans with an annual capacity of 10 000 tons or more;
- b) amines and halogenated organic compounds with an annual capacity of 30 000 tons or more. (A.O. I art. 3 no. 16)

Production of pesticides with an annual capacity of 30 000 tons or more. (A.O. I art. 3 no. 17)

Table 3: Comparison between Annex II of the European Directive 85/337 and the applicable regulations in the Flanders region

1. Agriculture

(a) projects for the restructuring of rural land holdings

- area with total surface larger than 1000 hectares
- projects in relation to the following area types:
  - a nature reserve according to the regional plans for land use; or
  - a valuable ecological area according to the regional plans for land use; or
  - a bird protection area as determined according to the EEC Directive 79/409 of April 2 1979 and/or "Ramsar" area. (A.O. II - art. 2 no. 14)

(b) projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes

- forest clearing directed at another type of land use insofar as the area to be cleared exceeds 3
(c) Water-management projects for agriculture

- Water management projects which influence the water regime in the following area types:
  - A nature reserve according to the regional plans for land use; or
  - A valuable ecological area according to the regional plans for land use; or
  - A bird protection area as determined according to the EEC Directive 79/409 of April 2, 1979 and/or "Ramsar" area. (A.O. II - art. 2 no. 15)

(d) Initial afforestation where this may lead to adverse ecological changes and land reclamation for the purposes of conversion to another type of land use identical with no criteria or thresholds (A.O. II - art. 2 no. 17)

(e) Poultry-rearing installations

- Rearing installations for poultry, fowls, ducks, and aviary birds older than 3 weeks when the number exceeds:
  - 20,000 when the installation is located in a non-agricultural area;
  - 40,000 when the installation is located in an agricultural area, either at less than 300 meters from a housing area or at less than 500 meters from a drinking-water supply;
  - 80,000 when the installation is located in an agricultural area other than specified above. (A.O. I - art. 3 no. 8)

(f) Pig-rearing installations

- Pig-rearing installations when the number exceeds:
  - 1,000 when the installation is located in a non-agricultural area;
  - 3,000 when the installation is located in an agricultural area, either at less than 300 meters from a housing area or at less than 500 meters from a drinking-water supply;
  - 5,000 when the installation is located in an agricultural area other than specified above. (A.O. I - art. 3 no. 9)

2. Extractive industry

(c) Extraction of minerals other than metalliferous and energy-producing minerals, such as marble, sand, gravel, shale, phosphates and potash

- Industrial quarries and excavation sites for sand, gravel, clay etc. when the total area exceeds 10 hectares.
  (A.O. I - art. 3 no. 10)

(l) Coke ovens (dry coal distillation)
- production of cokes from coal when the annual production capacity equals or exceeds 1 million tons. (A.O. I art. 3 no. 12)

3. Energy industry

(c) Surface storage of natural gas

- installations for storage and transfer of L.N.G. with a storage capacity of 100,000 cubic meters or more. (A.O. I art. 3 no. 11)

(e) Surface storage of fossil fuels

- storage and transfer of coal and ores when the area equals or exceeds 50 hectares. (A.O. I art. 3 no. 19)

4. Processing of metals

(b) Installations for the production, including smelting, refining, drawing and rolling, of non-ferrous metals, excluding precious metals

- production facilities for primary non-ferrous metals with an annual capacity of 50,000 tons or more. (A.O. I art. 3 no. 13)

(k) Installations for the roasting and sintering of metallic ores

- facilities for roasting, pelletising or sintering of ores with an annual capacity of 1 million tons or more. (A.O. I art. 3 no. 12)

6. Chemical industry

Table 2 lists the types of chemical installations which are subjected to E.I.A. in Flanders.

10. Infrastructure projects

(a) Industrial-estate development projects

- when the area surface equals or exceeds 100 hectares. (A.O. II art. 2 no. 6)

(b) Urban development projects

- projects where demolition, construction, or rebuilding activities are planned in a merged area with
  - 2,000 or more houses; or
  - a total surface of 10 hectares; or
- office space with a total gross floor surface of 100,000 square meters or more. 
  (A.O. II art. 2 no. 7)

(f) Dams and other installations designed to hold water or store it on a long-term basis
- construction of a water-basin when the surface area is equal to 50 hectares or more. (A.O. II
  art. 2 no. 12)

(h) Oil and gas pipeline installations
- construction of a main transport line for liquid or gas situated in one of the following area types
  - a nature reserve according to the regional plans for land use; or
  - a valuable ecological area according to the regional plans for land use; or
  - a bird protection area as determined according to the EEC Directive 79/409 of April 2, 1979
    and/or "Ramsar" area. (A.O. II art. 2 no. 9)

(i) Installation of long distance aqueducts
- construction of a main transport line for liquid or gas situated in one of the following area types
  - a nature reserve according to the regional plans for land use; or
  - a valuable ecological area according to the regional plans for land use; or
  - a bird protection area as determined according to the EEC Directive 79/409 of April 2, 1979
    and/or "Ramsar" area.
- construction of a main transport line different from the above conditions when the distance
  beyond the built area equals or exceeds 10 kilometres and the pipe diameter equals or exceeds 1
  meter. (A.O. II art. 2 no. 9 and no. 13)

(j) Yacht marinas
- when the number of fixed docking places equals or exceeds 500. (A.O. II art. 2 no. 8)

11. Other projects

(a) Holiday villages, hotel complexes
- when the total area equals or exceeds 20 hectares. (A.O. II art. 2 no. 10)

(c) Installations for the disposal of industrial and domestic waste
- with an annual capacity of 25,000 tons or more. (A.O. I art. 3 no. 18)

Addendum: Projects which do appear in the Flanders regulations while not being explicitly included in Annex II of the European Directive:
- installations for rearing fur-bearing animals when the number exceeds 5,000. (A.O. I art. 3 no 20)

- installations for rearing indigenous small mammals when the number exceeds 10,000. (A.O. I art. 3 no 21)

- installations for rearing indigenous large mammals when the number exceeds 2,500. (A.O. I art. 3 no 22)

- erection of a tourist or recreational facility
  - which may attract an average traffic flow of 1,000 vehicles or more per day of operation; or
  - which covers an area of 50 hectares or more; or
  - which may include a complete golf course. (A.O. II art. 2 no 2)

Table 4: Comparison between Annex II of the European Directive 85/337 and the applicable regulations in the Walloon region.

**Important note**: Other projects listed in Annex II of the European Directive may be subjected to a full EIA study in Wallonia. Such a decision is made on a case-by-case basis and based upon an initial environmental evaluation note.

1. Agriculture

(b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes

identical with no thresholds or criteria (A.O. art. 2 § 2 no. 1)

10. Infrastructure projects

(d) Construction of roads, harbours, including fishing harbours, and airfields (projects not listed in annex I)

- construction of airfields with a runway length of more than 1200 meters. (A.O. art. 2 § 2 no. 2)

(f) Dams and other installations designed to hold water or store it on a long term basis

identical with no thresholds or criteria (A.O. art. 2 § 2 no. 2)
11. Other projects

(a) Holiday villages, hotel complexes
- holiday villages and week-end residential areas. (A.O. art. 2 § 2 no. 3)

(b) Permanent racing and test tracks for cars and motor cycles
- as defined by the royal order of 10 June 1976. (A.O. art. 2 § 2 no. 4)

Addendum: Projects which do appear in the Walloon regulations while not being explicitly included in Annex II of the European Directive
- dancing establishments which are located within 300 meters from a housing area. (A.O. art. 2 § 2 no. 4)

Table 5: List of draft proposals for EIA legislation, currently under discussion in Belgium.

(status: July 1991)

1. Flanders Region
- Voorontwerp van decreet houdende organisatie van de milieu-effectbeoordeling van bepaalde openbare en particuliere projecten.

2. Walloon Region

3. Brussels-Capital Region
- Projet d'Ordonnance relative à l'évaluation des incidences en milieu urbain. Ontwerp van Ordonnantie betreffende de beoordeling van de stedelijke milieu-effecten.

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Walloon Region: Administrative Order (Moniteur Belge 22 novembre 1991) - contains a
common reporting format for the initial environmental evaluation, and a list of projects for which EIA is mandatory.
ANNEX FOR DENMARK

1. **EXTENT OF FORMAL COMPLIANCE BY DENMARK WITH THE REQUIREMENTS OF THE DIRECTIVE**

(a) **Principal legal provisions**

In Denmark a form of environmental impact assessment has been carried out since 1972. The legal provisions relevant to the transposition of the EEC Directive have been strengthened by amending the National and Regional Planning Act, the Regional Planning Act for the Metropolitan Area and the Environmental Protection Act, Act No. 216 of 5 April 1989. These amendments aim to integrate EIA into the existing physical planning system. Executive Order No. 446 of 23 June 1989 on the environmental impact assessment of major projects and Executive Order No. 379 of 1 July 1988 on EIA of major projects in coastal waters (trading ports, etc., where the decision is taken by the Ministry of Transportation) have also been issued. Additionally, Executive Order No. 119 of 26 February 1991 specifies part of the EIA procedure.

The projects stipulated in Annex I of the Directive and the following types of projects from Annex II are included in Executive Order No. 446:

2. Cultivation of natural areas of more than 300 ha.
3. Drainage and irrigation of areas more than 300 ha.
4. Opencast mining of raw materials for a period of more than 10 years or with an annual production of more than 200,000m³ (not including sand and gravel).
5. Cement works and moler (clay) works.
6. Limeworks with an annual production of more than 200,000m³.
7. Holiday hotels with more than 75 rooms in coastal or special nature areas.

Most of the remaining projects mentioned in Annex II will be subject to environmental approval according to the Danish Environmental Protection Act (see section 2 and the Appendix).

According to the types of projects to which Executive Order No. 446 of 23 June 1989 applies the EIA procedure will vary.
Normally the regional authority prepares a supplement to the approved regional plan. The supplement will consist of the EIA for the specific project and is prepared according to the existing procedures in the National and Regional Planning Act which means, at present, 16 weeks of public consultation before adoption. The supplement has to be approved by the Minister of the Environment. After the supplement has been approved the necessary permissions according to other laws can be given by the regional authorities. For projects covered by the Danish Environmental Protection Act an EIA will also include an environmental approval (see section 2).

A new Planning Act was approved in June 1991 (Act No.388, which comes into force in January 1992). This Planning Act replaces the National and Regional Planning Act. The Planning Act changes the period of public consultation to 8 weeks and the approval by the Minister of the Environment will be replaced by a right of veto by the Ministry of the Environment.

For projects of national importance, a National Planning Directive is prepared according to the National and Regional Planning Act. The National Agency for Physical Planning, Ministry of the Environment, is the competent authority in these cases. Approval for projects is given by the Minister of the Environment. The EIA procedure at this level differs from the regional level concerning public participation. It is not mandatory by law to consult the public before the approval of a National Planning Directive but, nevertheless, the National Agency for Physical Planning has chosen to follow the same procedure as for regional level approvals.

For projects adopted by a specific act of national legislation no formal EIA procedure exists. Nowhere is it indicated which types of projects require a specific national act for approval. In general, these will probably be national infrastructural projects financed by the Ministry of Transportation and projects of national importance. An informal agreement between the Ministry of the Environment and the Ministry of Transportation guarantees that the following steps will be carried out:
• EIS, in full compliance with the Directive, will be prepared, before the bill is introduced in the Parliament;
• The notes to the act will contain a reference to the EIA;
• The notes to the act will contain the environmental conditions for the project;
• The Ministry of the Environment will participate in formulating the environmental conditions and notes to the act.

These steps mean that for projects approved by specific acts:

- an EIA is prepared at an early stage in the process;
- the EIA is made accessible to the public when the bill is introduced in Parliament;
- the public have the opportunity to influence the legislation;
- the EIA does not contest the validity of the Danish Fundamental Law.

(b) Further analysis and possible deficiencies in formal compliance

In the case of Executive Order No.446 projects there are no deficiencies in formal compliance. Denmark has made legal provision for all the requirements in the Directive. This covers projects of all the classes listed in Annex I and the seven Annex II projects mentioned above. In the case of i) the remaining Annex II projects, ii) the projects adopted under the Raw Materials Act, and iii) projects in coastal waters (Executive Order No.379), there are some deficiencies in formal compliance with the requirements in the Directive.

i) Annex II projects which are not covered by Executive Order No.446 are approved by the previously existing legislation, mainly the Environmental Protection Act but also the Water Supply Act, the Raw Materials Act and the Nature Conservation Act (see Appendix). Projects that are approved under Chapter 5 of the Environmental Protection Act will be subject to an assessment which, according to Ministry sources, is in accordance with Article 5.2, except in respect of the non-technical summary. Also, there is an opportunity for the public involved to express their opinion before the projects are initiated as part of the complaints procedure following the decision.
Despite the lack of investigation of the impact on landscape, cultural heritage and architecture, the National Agency for Physical Planning, Ministry of the Environment, asserts that these Annex II projects can only be located in industrial zones. The Agency states that such matters have no relevance for single projects because they are taken into account for the zone as a whole, in the approval process for the Regional Development Plan and the Local Development Plan provided for in the National Regional Planning Act. Outside areas covered by local development plans only buildings in connection with agricultural activities are permitted. This is controlled by the Urban and Rural Zone Act.

ii) For projects approved under the Raw Materials Act all the information mentioned in Annex III of the Directive is taken into account, except for a non-technical summary. There is the same opportunity as mentioned above for the public involved to express an opinion before the project is initiated.

iii) For projects in coastal waters the extent of the EIA is stated in Executive Order No.379 of 1 July 1988. The only deficiency in formal compliance with the Directive is the absence of the opportunity for the public to express an opinion before the project is initiated.

(c) Reasons for delays in full compliance

The Ministry of the Environment argues that the principal reasons for these deficiencies vary with the type of project:

i) Projects covered by previous legislation can only be located in zones where the topics covered by the EEC Directive are taken into account for the zone as a whole, rather than project by project, as mentioned above. The appeal procedure has a 4 week period for complaints against the decision. The decision and the possibility of appeal must be announced in the press and any complaint delays the initiation of the new project.

ii) A requirement for projects not covered by Executive Order No.446, but subject to the Raw Materials Act, to be assessed is in force. Furthermore an appeal procedure similar to the one described under i) is allowed under the Act.
iii) For projects falling under Executive Order No.379, the Order provides the Ministry of Transportation with the power to demand the information stated in the Directive from the developer. The Executive Order does not contain requirements for public participation procedures. However, for projects in coastal waters the Ministry of Transportation is always the competent authority for approval of projects, and the Ministry is under an obligation to follow the requirements in the Directive and has to define a procedure to allow the public concerned an opportunity to express an opinion before the project is initiated. In practice, this means that there is full compliance with the Directive in the case of these projects, notwithstanding the absence of a formal requirement.

(d) Remedy of any remaining deficiencies

As a consequence of the reasons above there are, at present, no further EIA measures in the process of being implemented.

(e) Competent authorities

The competent authority dealing with EIA varies depending on the planning level at which the EIA is prepared:

- In the counties the competent authority is the regional authority, of which there are 16 in Denmark. Regional planning, physical planning, socio-economic issues and environmental impact assessment are some of the usual functions and responsibilities of the regional authorities;

- In case of a National Planning Directive the competent authority is the Ministry of the Environment (the National Agency for Physical Planning). Approvals for projects are given by the Minister of the Environment. Coordination of physical planning and legislative measures is amongst the usual functions and responsibilities of the Agency;

- for projects adopted by a specific act of national legislation and for projects in coastal waters the Ministry of Transportation is the competent authority.
The authorities mentioned are all designated in general terms. Most of the approvals are decided regionally by the county or locally by the municipality. Only in the case of a complaint about the final decision will the central authorities be informed.

2. **CRITERIA AND/OR THRESHOLDS ADOPTED FOR THE SELECTION OF ANNEX II PROJECTS TO BE SUBJECT TO ASSESSMENT**

(a) **Outline of criteria/thresholds**

As mentioned above, seven types of projects have been selected from Annex II of the Directive and special criteria for these projects have been established except for one category. The criteria are described in Executive Order No. 446 of 23 June 1989. For the cement and molder works category the lack of specific criteria demonstrates that there are few of these plants in Denmark.

Table 1, in the appendix to this annex, shows which of the Annex II projects are subject to an environmental approval according to the Danish Environmental Protection Act and other legislation. It will be seen that virtually all Annex II categories are covered by the various provisions.

The Environmental Protection Act states a procedure for approval of all newly constructed plants (and of modified plants if the expansion implies a significant increase in pollution and activity generally. Chapter 5 in the Act regulates air pollution, noise and vibration and Chapter 4 regulates water pollution. These specific regulations are coordinated in a receiving water quality planning system and in a waste planning system. Approximately 25,000 enterprises, plants and activities are listed in an annex to the Environmental Protection Act as being subject to an environmental approval process. There is no screening procedure, but for many types of industries, the criterion for a Chapter 5 approval is more than 6 persons employed. This is one reason for the high number of projects. In 1991 the Danish Environmental Act was changed with the objective of reducing the number of new plants and activities which need an approval by 50 percent.

(b) **Comment on criteria/thresholds**
The criteria for the selection of projects from Annex II appear to be precise and reasonable. They cover the most common and the most polluting Annex II activities in Denmark.

The environmental approval system, under the provisions of the Environmental Protection Act, is a very effective and decentralized system of approval covering many of the remaining polluting projects in Annex II.

3. NATURE AND EXTENT OF PRACTICAL COMPLIANCE WITH THE DIRECTIVE

(a) Number and categories of EISs

In the period between June 1989 and June 1991 12 EISs have been published under Executive Order 446 of 23 June 1989. Four of these are for Annex I projects. Two projects belong to Category 9 (waste disposal installations) of Annex I, one project belongs to Category 7 (motorways) and one project to Category 8 (trading ports). Eight Annex II projects have been published under Executive Order No. 446. Seven of these projects belong to Category 11a of Annex II (holiday hotels) and one belongs to Category 3d (underground storage of combustible gases).

(b) Information specified in Article 5 and Annex III

Because of the tradition of using environmental approvals a developer in Denmark is used to providing relevant information relating to environmental issues to the authorities. All of the information specified in Article 5(2) of the Directive is demanded in existing Danish legislation. The same can be said about the full information requirements in Article 5 and Annex III of the Directive, though there are some shortcomings. Compared to the EIA system the environmental approval does not contain the coverage of flora/fauna, cultural heritage, visual aspects, landscape and the interaction between the issues. Nor is any formal 'statement' prepared. Some ecological aspects will be covered by the planning procedure related to environmental quality planning.
For minor projects it can be troublesome to obtain satisfactory information partly because of the costs and partly because of the expected minor impact. However, for large projects there will usually be good cooperation between the developer and the authorities in providing each other with satisfactory information.

Concerning alternatives, Executive Order No. 446 is more strict than the Directive. Investigated alternatives to the submitted project have to be described in the EIS. This makes it possible for the general public, local environmental amenity groups and public bodies with statutory environmental responsibilities to comment and perhaps to demand an alternative solution.

(c) Making authorities’ information available to the developer

The authorities make sufficient relevant material available to the developer.

(d) Arrangements for publication of EIS

The authorities announce where and when it is possible to obtain a copy of the EIS. Sometimes this is free and sometimes it has to be paid for. The arrangements for publication of the EIS and the Chapter 5 approvals are functioning satisfactorily in practice.

(e) Arrangements for consultation and public participation

The situation with only 12 EIAs for Annex I and Annex II projects performed makes it difficult to comment authoritatively on public participation questions. In regional planning, to which EIA is connected, there exists a tradition of public participation. Public participation is stipulated by law in the National and Regional Planning Act and the Nature Protection Agency is consulted on all plans. The procedure involves publication of the proposed regional plan and consultations with the general public in a 16 weeks period.

An approval from the local authorities has to be published in the local press and there is a period of 4 weeks in which to appeal against a final decision. Everybody affected by the decision and any party likely to have an individual, significant interest in the outcome of the decision has the right of appeal against it. In some specified areas environmental amenity
groups, like the National Danish Society for Preservation of Nature, have the right of complaint stated in the legislation. In practice, an environmental approval protects the plant from new demands for a period of 8 years.

In general, public consultation and participation arrangements appear to be amongst the best in the EEC. The press in Denmark is very active in relation to environmental issues generally. Another reason is the tradition of public participation in connection with regional and local development planning since the middle of the 1970s. A freedom of information act gives a public right of access to files held by regional and municipal authorities.

(f) Transborder impacts

Executive Order No. 446, Paragraph 2, makes provision for consultations over transborder environmental impacts. It is always the central authorities that undertake these consultations. There has, to date, been only one project in which a notification of neighbouring EEC countries about transborder impacts has been relevant. This is the project to provide a bridge between Denmark and Sweden: Germany has been notified.

(g) Role of EIS and consultation findings in project authorization

Executive Order No. 119 of 26 February 1991 specifies that an approved EIS is necessary for authorizations given in pursuance of the following acts:

- The Environmental Protection Act;
- The Water Supply Act;
- The Raw Materials Act;

The public has the right to be informed about the resulting decision and an EIS has to be announced. The authorities publish, according to the planning level, either a supplement to the regional plan, a Circular or an Act containing information about the environmental conditions and the resulting decisions.
In Denmark "integrated chemical installations" is interpreted to mean the installations regulated by the Seveso Directive (82/501/EEC). It has so far resulted in problems "catching" all the relevant projects for which an EIA should be undertaken. For large projects there are no problems because the competent authorities are the authorities at the regional level and they are aware of the EIA procedure. For minor projects the municipalities are the competent authorities and they are not yet fully aware of the consequences of Executive Order No.446. But the National Agency for Physical Planning is aware of this problem and has planned an information campaign directed to local authorities.

In relation to Article 2(3) of the Directive, there have been no exemptions of specific projects in Denmark.

(b) Modification of projects

In two cases the undertaking of an EIA has resulted in minor but significant changes in the final project. In one case, relating to natural gas storage, the internal locations of buildings and security zones were amended. In the other case, Helsingør Ferryport, the preservation of popular views of the Castle of Kronborg was enhanced. However, it appears that the actors (administrators, developers, politicians, the public, etc) acknowledge the possibilities of EIA in discussing different solutions and alternatives.

4. SPECIFIC ASPECTS OF THE DIRECTIVE'S TRANSLATION INTO DANISH LEGISLATION AND PRACTICE

(a) Measures to monitor implementation of Directive

It is expected that there will be between 10 and 20 projects per year in relation to Annex I and II for which a full EIA will be undertaken, and up to around 3500 projects subject to the approval system in relation to Chapter 5 in the Environmental Protection Act. There will also be several hundred projects subject to the Water Supply Act, the Raw Materials Act and the Nature Conservation Act.

Most of the projects subject to EIA will, at the same time, need an environmental approval according to the Environmental Protection Act. The existing review and monitoring
bodies will also be involved in EIAs. In particular, monitoring of the specific conditions for a project is required in the environmental regulations.

To assist implementation of EIA for Annex I and II projects, covered by Executive Order No. 446, several steps have been taken:

- implementation in the regional and planning acts;
- announcement of this to the authorities and the public;
- a leaflet about EIA;
- a seminar with regional authorities about EIA;
- several meetings for different authorities responsible for EIA;
- articles about EIA in relevant periodicals;
- the establishment of two science centres working on EIA in collaboration with the authorities;
- a more comprehensive leaflet about EIA;
- periodic information about EIA from the National Agency for Physical Planning (the overall authority in EIA matters);
- an exhibition about EIA;
- a Nordic Council publication about EIA;
- a Nordic Council seminar about EIA.

It appears that, at present, the regional authorities, developers and the public feel that they are well informed concerning the EIA procedure and formal criteria for quality, adequacy and appropriate coverage of an assessment.

(b) Provision for scoping

There is no formal procedure for scoping, but quality, coverage and adequacy are currently encompassed in the monitoring process by the authorities and during public participation when the responsible authorities must deal with questions raised by the public. As a result of experience to date, the National Agency for Physical Planning does not intend for the moment to create any other mandatory provision for the scoping process. Current practice
involves an interplay between authorities and the developer which means that the authorities must handle the assessment in such a way that experts cannot afterwards deny its quality. The authorities are accustomed to use experts, for instance from other sectors of the central administration in scoping. Scoping is thus a closed process, but appears to work.

(c) Quality of EISs

It appears that 7 out of the 12 projects that have been subject to formal EIA to date are not of satisfactory quality. The main kinds of deficiencies relate to:

- assessment of impact on the environment, visual effects and effects on landscape (holiday hotels, 5 projects);
- assessment of the impacts of emissions of certain substances;
- assessment of alternatives;
- assessment of long term effects.

It is obvious that one of the main causes for some of these deficiencies is the lack of guidelines for EIA and for methods of assessment of impacts. Lack of experience must also be important, as well as political resistance from the regional authorities especially in relation to holiday hotels. Finally, it seems that the advantages of the association of EIA with national and regional planning are not being fully achieved.

(d) Provision for formal review of adequacy and quality of EISs

Legal provision for the formal review of the adequacy and quality of EISs is included in the executive orders made to implement the Directive. In Denmark the statements are prepared by the authorities, not the developer. This means that the developer is obliged to provide the authorities with all the relevant information about the intended project. The legal power to demand information of the developer is provided in the National and Regional Planning Act. These legal provisions also make it possible for the authorities to demand an EIS from the developer, but it is usually the authorities which prepare the EIS.

The review is a part of the approval procedure. One result of this public procedure is
that, if the quality of the statement is not considered good enough, something must be added, for example more relevant information on alternatives. In this case a new statement has to be prepared and this will be the document laid down for approval. Checking the quality of the statement is a part of the public participation process. For instance, other authorities in the central administration, e.g. technical experts, will be consulted or given the opportunity to express their opinions during the public participation process.

Formal review bodies have not been established, but the National Agency for Physical Planning has supported the establishment of two reference centres for EIA. One is at the Department for Environment, Technology and Social Studies, Roskilde University and the other is at the School for Architecture, Royal Academy of Arts. These reference centres are supposed to support the authorities with background information related to specific projects and they are creating a network of scientists and resource institutions, at a national and international level, to fulfil this purpose.

(e) Provision for monitoring and post-auditing

Monitoring after approval and implementation of a project is likewise a part of the planning process and the legal provision for it is part of the implementation of the Directive and the Environmental Protection Acts. Local authorities following these acts are obliged to inspect the implementation of a project and to ensure that the measures, standards and specific threshold limiting values given in the approval are followed. This monitoring is undertaken regularly.

As far as is known this procedure is unique to Denmark. This inspection and control system has been in force since the first Environmental Protection Act in 1974, and experience has been, in general, very good when compared with a planning system that does not have these procedures.

(f) Assistance to practitioners

The list of activities to monitor the implementation of the EIA procedure (see 4(a) above) have all been made by governmental organisations. Further work for this purpose, especially in relation to practitioners, will be made by the EIA reference centres. This includes training.
(g) **Effect on timescale, costs, etc.**

Generally, it is thought that both the costs and timescale of projects are being affected only very moderately as a result of undertaking an EIA. This is because the existing planning procedure in Denmark already includes the assessment of impacts on the environment because of the existing inspection and control procedure and because it is the authorities that accumulate experience and knowledge about EIA. (It is, of course, the authorities that prepare the EIS.) In some projects it can be expected that the cost will be reduced because of better planning by the developer and by the authorities and because of better and less costly construction of the project and less costly operation of it.

5. **OVERALL ASSESSMENT OF THE EFFECTIVENESS OF IMPLEMENTATION AND OF REMAINING DIFFICULTIES**

(a) **Provisions already made**

It is still a matter of discussion whether or not Denmark has fully complied with the Directive. This discussion relates to Annex II projects where seven types of projects, with criteria, have been selected to be subject to EIA. For the remaining Annex II projects, there is no statement of general categories to be assessed nor a procedure for the examination of every project to determine whether an EIA is needed or not.

(b) **Ambiguities in the Directive**

The provisions of the Directive do not appear to be too ambiguous. An essential advantage of the EIA process is that all the information required by Article 5 and Annex III is considered simultaneously in the assessment. The complication weakness of Danish EIA in relation to Annex II projects not covered by Executive Order No. 446 is that the total assessment is not undertaken at the same time. This is not optimal environmental management.

However, Annex II consists of a highly heterogeneous list of activities in relation to their impacts on the environment and the Directive does not provide sufficient guidance about how to introduce EIA for all these activities. In particular the Directive is unclear about how to
implement EIA for the most important projects in relation to their impacts on the environment.

(c) **Recommendations for more satisfactory, cost-effective compliance in Denmark**

To facilitate more practical compliance in Denmark, by cost effective means, it is recommended that the EIA process and the environmental approval system in relation to Chapter 5 of the Environmental Protection Act are combined where both requirements apply.

Furthermore, it is proposed that the Ministry of the Environment should be the only central authority in EIA matters, rather than (as at present) sharing responsibility with the Ministry of Transportation. In situations where two or more EIA procedures have been undertaken for the same project, the possibility of creating an EIA procedure in which the EIA and the following approval provides a framework and principal approval for the specific project should be considered. Afterwards, minor changes made during the construction process could be made subject to an environmental assessment approval process like the Danish Chapter 5 approval system. This could result in a better total assessment of the project, a greater reduction in unfavourable impacts on the environment and could also lead to a reduction in costs for the whole process.
APPENDIX

Table 1: Projects subject to EIA, EPA, Chapter 5 and other approvals in Denmark

<table>
<thead>
<tr>
<th>Category of projects</th>
<th>EPA</th>
<th>NPA</th>
<th>RMA</th>
<th>WSA</th>
<th>LP</th>
<th>EIA PL</th>
<th>Other or comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex 1</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>1. Crude oil refineries</td>
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<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td></td>
</tr>
<tr>
<td>2. Thermal power stations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td></td>
</tr>
<tr>
<td>3. Radioactive waste installations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td></td>
</tr>
<tr>
<td>4. Integrated steel works</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td></td>
</tr>
<tr>
<td>5. Asbestos works</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td></td>
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<tr>
<td>6. Integrated chemical installations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td></td>
</tr>
<tr>
<td>7. Motorways etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td>state financed, specific act of national legislation.</td>
</tr>
<tr>
<td>8. Ports etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EIA x</td>
<td></td>
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<tr>
<td>9. Toxic waste disposal installations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(x)</td>
<td>EIA x</td>
<td></td>
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<tr>
<td>Annex 2</td>
<td></td>
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<tr>
<td>1. Agriculture</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>a) Restructuring of rural land holdings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EIA x</td>
<td>&gt; 300 ha remains</td>
</tr>
<tr>
<td>b) Use of uncultivated land</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>EIA x</td>
<td>&gt; 300 ha zones for afforestation</td>
</tr>
<tr>
<td>c) Water-management</td>
<td></td>
<td>$43</td>
<td></td>
<td></td>
<td>x</td>
<td>EIA x</td>
<td>only industrial plants &gt; 20,000 poultry</td>
</tr>
<tr>
<td>d) Initial afforestation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EIA x</td>
<td>only industrial plants &gt; 120 pigs</td>
</tr>
<tr>
<td>e) Poultry-rearing installations</td>
<td>chap5m</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EIA x</td>
<td>Zone Act approval from Ministry of Transportation.</td>
</tr>
<tr>
<td>f) Pig-rearing installations</td>
<td>chap5m</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EIA x</td>
<td></td>
</tr>
<tr>
<td>g) Salmon breeding</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EIA x</td>
<td></td>
</tr>
<tr>
<td>h) Reclamation of land from the sea</td>
<td></td>
<td>$43</td>
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<td>2. Extractive industry</td>
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<td>a) Extraction of peat</td>
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<td>x</td>
<td>EIA x</td>
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<td>b) Deep drillings (water)</td>
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<tr>
<td>c) Extraction of minerals</td>
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<td>x</td>
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<td>d) Underground coal mining</td>
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<td>e) Open-cast coal mining</td>
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<td>x</td>
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<td>f) Extraction of petroleum</td>
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<td>x</td>
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<td>g) Extraction of natural gas</td>
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<td></td>
<td></td>
<td>x</td>
<td>EIA x</td>
<td>Underground Act</td>
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*Note: EIA stands for Environmental Impact Assessment.*
Table 1: continued

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<thead>
<tr>
<th>Category of projects</th>
<th>EPA</th>
<th>NPA</th>
<th>RMA</th>
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<th>LP</th>
<th>EIA PL</th>
<th>Other or comments</th>
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<td>b) Extraction of ores</td>
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<td>i) Extraction of shale</td>
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<td>j) Extraction of minerals</td>
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<td>k) Industrial installations for the extraction of coal, etc.</td>
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<td>l) Coke ovens</td>
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<tr>
<td>m) Installations for the manufacture of cement</td>
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<td></td>
<td>more than 10 year approval or &gt; 200,000m³ / year</td>
</tr>
</tbody>
</table>

3. Energy Industry

| a) Industrial installations for production of electricity | chap5a/m | $42 |     |     |    |        | a > 30MW, m > 120KW                     |
| b) Industrial installations for carrying gas, etc. | chap5a/m |     |     |     |    |        |                                        |
| c) Surface storage of natural gas | chap5a/m |     |     |     |    |        |                                        |
| d) Underground storage of combustible gases | chap5a/m |     |     |     |    |        |                                        |
| e) Surface storage of fossil fuels | chap5a/m |     |     |     |    |        |                                        |
| f) Industrial briquetting of coal and lignite | chap5a/m |     |     |     |    |        |                                        |
| g) Installations for the production of nuclear fuels | chap5a/m |     |     |     |    |        |                                        |
| h) Installations for the reprocessing of nuclear fuels | chap5a/m |     |     |     |    |        |                                        |
| i) Installations for the collection of radioactive waste | chap5a/m |     |     |     |    |        |                                        |
| j) Installations for hydroelectric energy production | chap5a/m |     |     |     |    |        |                                        |

4. Processing of metals

| a) Iron and steelworks | chap5a/m |     |     |     |    |        |                                        |
| b) Installations for the production of non-ferrous metals | chap5a/m |     |     |     |    |        |                                        |
| c) Pressing of castings | chap5a/m |     |     |     |    |        |                                        |
| d) Surface treatment of metals | chap5a/m |     |     |     |    |        |                                        |
| e) Boilermaking | chap5a/m |     |     |     |    |        |                                        |
| f) Manufacture and assembly of motor vehicles | chap5a/m |     |     |     |    |        |                                        |
| g) Shipyards | chap5a/m |     |     |     |    |        |                                        |
| h) Installations for the construction of aircraft | chap5a/m |     |     |     |    |        |                                        |
| i) Manufacture of railway equipment | chap5a/m |     |     |     |    |        |                                        |
| j) Swaging by explosives | chap5a/m |     |     |     |    |        |                                        |
| k) Installations for the roasting of ores | chap5a/m |     |     |     |    |        |                                        |
Table 1: continued

<table>
<thead>
<tr>
<th>Category of projects</th>
<th>EPA</th>
<th>NPA</th>
<th>RMA</th>
<th>WSA</th>
<th>LP</th>
<th>EIA PL</th>
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<tr>
<td>5. Manufacture of glass</td>
<td>chap5a</td>
<td></td>
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<td></td>
<td>(x)</td>
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<td>6. Chemical industry</td>
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<td>(x)</td>
<td>EIA x risk impacts</td>
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<td>a) Production of chemicals</td>
<td>chap5a</td>
<td></td>
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<td>(x)</td>
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<tr>
<td>b) Production of pesticides, etc.</td>
<td>chap5a/m</td>
<td>(x)</td>
<td></td>
<td></td>
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<td>EIA x</td>
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<tr>
<td>c) Storage facilities for petroleum</td>
<td>chap5a/m</td>
<td>(x)</td>
<td></td>
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<td>EIA x</td>
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<tr>
<td>7. Food Industry</td>
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<td>remains</td>
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<td>a) Manufacture of oils</td>
<td>chap5m</td>
<td>(x)</td>
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<tr>
<td>b) Packing of products</td>
<td>chap5m</td>
<td>(x)</td>
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<tr>
<td>c) Manufacture of dairy products</td>
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<td>(x)</td>
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<tr>
<td>d) Brewing and malting</td>
<td>chap5m</td>
<td>(x)</td>
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<tr>
<td>e) Confectionery and syrup manufacture</td>
<td>chap5a</td>
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<td>f) Installations for slaughter</td>
<td>chap5a</td>
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<td>g) Industrial starch manufacturing installations</td>
<td>chap5m</td>
<td>(x)</td>
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<tr>
<td>h) Fish-metal factories</td>
<td>chap5m</td>
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<tr>
<td>i) Sugar factories</td>
<td>chap5a</td>
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<td>8. Textile, leather, wood and paper industries</td>
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<td>a) Wool factories</td>
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<td>(x)</td>
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<tr>
<td>b) Manufacture of board</td>
<td>chap5m</td>
<td>(x)</td>
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<td>c) Manufacture of pulp</td>
<td>chap5a</td>
<td>(x)</td>
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<td>d) Fibre-dyeing factories</td>
<td>chap5m</td>
<td>(x)</td>
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<td>e) Cellulose-processing installations</td>
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<td>f) Tanneries</td>
<td>chap5a</td>
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<td>9. Rubber Industry</td>
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<td>Manufacture of elastomer-based products</td>
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Table 1: continued

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<tr>
<th>Category of projects</th>
<th>EPA</th>
<th>NPA</th>
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<td>b) Urban-development projects</td>
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<td>x</td>
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<td>c) Ski-lifts and cable-cars</td>
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<td>d) Construction of roads</td>
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<td>e) Canalization and flood-relief works</td>
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<tr>
<td>f) Dams and others installations</td>
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<td>g) Tramways, etc.</td>
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<td>h) Pipeline installations</td>
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<td>i) Long distance aqueducts</td>
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<td>j) Yacht marinas</td>
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<td>(x)</td>
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<td>Ministry of Transportation</td>
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<td>11. Other projects</td>
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<td>a) Holiday villages, hotel complexes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>EIA x</td>
<td>EIA &gt; 75 rooms</td>
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<td>b) Racing tracks for cars</td>
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<td></td>
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<td>c) Waste disposal installations</td>
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<td>d) Waste water treatment plants</td>
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<td>e) Sludge-deposition sites</td>
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<td>f) Storage of scrap</td>
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<td>g) Test benches for engines</td>
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<td>h) Manufacture of artificial fibres</td>
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<td>i) Manufacture of explosives</td>
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<td>EIA</td>
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<td>j) Knackers’ yards</td>
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<td>12. Modifications to Annex I projects</td>
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<td>(a)</td>
<td>(x)</td>
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KEY

EPA = Environmental Protection Act
NPA = Nature Protection Act
RMA = Raw Materials Act
WSA = Water Supply Act
LP = Local Development Plan
EIA = Environmental Impact Assessment

PL = National and Regional Planning Act
chap5a = approval given by the regional authorities
chap5m = approval given by the municipal authorities
x = Local or regional plan provision is compulsory, for individual projects
(x) = Local or regional plan provision is compulsory, but only for zones, not for projects
<table>
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<th>Legal provisions in Denmark</th>
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<tr>
<td>2. The National and Regional Planning Act</td>
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<td>3. The Urban and Rural Zone Act</td>
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<td>4. Executive Order No. 119 of 26 February 1991</td>
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<td>5. Executive Order No. 379</td>
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<td>6. The Environmental Protection Act</td>
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<td>7. Executive Order No. 783</td>
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<td>8. The Nature Protection Act</td>
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</table>
ANNEX FOR FRANCE

INTRODUCTION

The preparation of this annex has been carried out using a large number of official documents and reports on the French EIA system and also information gathered directly through interviews with officials of the Ministry of the Environment, with practitioners and consultants and with representatives of independent associations (see the appendix to this annex).

EIA legislation in France dates from 1976. The law on the protection of nature, 10/7/1976, put into force through the implementation decree of 12 October 1977, made environmental impact assessment compulsory from 1 January 1978 for construction works and development projects initiated by local authorities or private developers where these could affect the environment. This law also establishes that land use plans are required to contain an environmental study but this does not amount to an environmental impact assessment. The law on the protection of nature also resulted in changes to existing laws and to the passing of new laws which also affect the EIA system.

Other legislative provisions are relevant to the use of the EIA tool and contribute to its effectiveness. Among these, provisions relating to 'installations classées' (industrial facilities) make it compulsory to include an EIS with the documents presented in support of applications for authorizations. Another major piece of legislation relevant to environmental impact assessment was passed in 1983. The 12/7/83 law on public enquiries set out the procedures for public consultation on certain categories of construction works, development projects and land-use plans. The central element relevant to environmental impact assessment contained in this law and its subsequent decrees is the requirement that an environmental impact assessment, where it is required, must be part of the legal documents to be published for the public enquiry. Furthermore, there are many other procedural frameworks which relate specifically to certain types of projects.

Therefore, when looking at French compliance with Directive 85/337/EEC on EIA, two
The important factors must be borne in mind:

1. The French EIA system is older than the Directive and therefore the formulation of the two may not match exactly.

2. The law for the protection of nature is the central framework for EIA. However, many additional provisions contained in other legislation establish specific procedures which contribute to make the tool more efficient for certain categories of projects. The "Instruction Mixte" procedure and the "Installations classées" procedure are the most important of these. In addition, it should be noted that the law for the protection of nature establishes, for certain cases, a simplified procedure called "notice d’impact".

Consequently, the examination of this system in regard to each of the requirements of the EEC Directive is more complex than for most other Member States and any evaluation must take into account the complexity of this legal framework.

1. EXTENT OF FORMAL COMPLIANCE BY FRANCE WITH THE REQUIREMENTS OF THE DIRECTIVE

(a) Basic principles and coverage of legal provisions

- The principal legal provisions relating to EIA and enacted by France are contained in the law on the protection of nature of 10/7/76 and its subsequent implementation decree of 12/10/77.

- In addition, the law on ‘installation classées’ of 19/7/76 and decrees of 21/9/77 concerning ‘les installation classées’ set up specific procedures for certain categories of projects, mainly in the industrial sectors.

- Furthermore, the law on public enquiries of 12/7/83 and subsequent decree of 23/4/85 contain legal provisions concerning information, consultation and participation, applicable
to most categories of projects.

A number of ministerial circulars, instructions and orders on environmental impact assessment complement these provisions for specific sectors.

The principles which underpin the environmental impact assessment system are contained in the law on the protection of nature of 10/7/76. In Article 2, this law states that works and projects undertaken by public authorities, or which require a planning permission or a decision of approval, and land-use plans, must take into account environmental considerations. Further, the law establishes that the documents submitted prior to the implementation of projects which, as a result of their importance and dimensions, have a significant impact on the natural environment, must contain an environmental impact statement.

The law on the protection of nature of 10/7/76 also specifies the need for a decree to implement measures relating to:

- The procedures necessary for informing the public;
- The list of projects to be exempted because of their lack of impact on the environment;
- The conditions under which the Ministry of the Environment can review the EIS, through its own initiative or following an appeal by a third party;
- Finally, the procedures through which a project can be halted because of the absence of an EIS.

The principal elements of Decree 12/10/77 in application of Article 2 of the law on the protection of nature are:

- The submission of an EIS prior to the implementation of a project is the responsibility of the developer except where a special decree for certain projects or works puts a public
authority in charge of the EIA, for example, in the case of an application by a local authority for land clearance;

All works and projects require an EIS before they can be implemented with the exception of those listed in a number of annexes included in the decree.

The categories of works and projects which are subject to EIA are therefore defined by default, with a number of projects requiring EIA specifically. The list of categories of projects, and works which are subject to EIA as defined by the law on the protection of nature and its implementation decree can be found in the appendix. In addition, the provisions establish a two-level procedure, depending on the degree of impact of the project. The first is a full EIA and the second is a simplified procedure called a ‘notice d’impact’ (projects in the second category are listed in Table 1). The notice d’impact should however comply with all the requirements of the law, particularly with regard to its content (a decision by the Council of State in the “Madame Coutras case” concerning a micro-electric power station rejected the authorisation because of a poor notice d’impact).

A comparison between the list in the appendix in this annex and the categories contained in Annex I and Annex II of the EC Directive appear to show that the French basic law on EIA does not cover all of the categories covered by the EC Directive. However, this is mainly due to differences of formulation. The only projects that are permitted to dispense with an EIA are those “installations classées” which only require a ‘declaration’; the “installation classées” which require an ‘authorisation’ are subject to EIA. In addition, a system of financial and technical thresholds exist for certain categories of projects.

The law on ‘installation classées’ of 19/7/76 is central to the EIA system since all the projects covered by it, and which require an authorization, are also subject to EIA. It governs:

‘factories, workshops, warehouses, construction sites, quarries, and generally all
<table>
<thead>
<tr>
<th>Projects and works requiring a simplified procedure or &quot;notice d'impact&quot;</th>
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<tbody>
<tr>
<td>- Electrical energy transmission lines not exceeding 225kV</td>
</tr>
<tr>
<td>- Hydroelectric power generation facilities not exceeding 500kW capacity</td>
</tr>
<tr>
<td>- Mine and quarry prospecting works requiring authorization</td>
</tr>
<tr>
<td>- Camping sites not exceeding 200 places</td>
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<tr>
<td>- Ski resort facilities not exceeding 6 million francs in cost</td>
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<tr>
<td>- Works and projects involving:</td>
</tr>
<tr>
<td>- modifying water falls</td>
</tr>
<tr>
<td>- land rehabilitation in mountain areas</td>
</tr>
<tr>
<td>- measures against avalanches</td>
</tr>
<tr>
<td>- dune fixation</td>
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<tr>
<td>- fire protection measures</td>
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<tr>
<td>- land clearing works (except for urbanisation purposes within areas governed by land-use and development plans - &quot;POS&quot;)</td>
</tr>
<tr>
<td>- local sewage treatment facilities for less than 10,000 inhabitants</td>
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<tr>
<td>- river or maritime public zones not exceeding 6 million Francs in cost</td>
</tr>
<tr>
<td>- construction or expansion of marinas</td>
</tr>
</tbody>
</table>

installations, publicly or privately owned and which may cause hazard or damage for neighbouring areas, on health, safety, public hygiene, agriculture, or may damage the environment, natural sites and cultural heritage’ (Article 1).

It therefore covers all types of activities including defence. However, these activities must be classified according to a nomenclature which is established by decree of the Council of State and
revised periodically. The list contains around 400 categories of project. (See: Journal Officiel, Installations Classées, Tome 1, textes généraux et nomenclature no. 1001-1.)

The 'code de l'urbanisme' requires a planning permission for all construction, modifications or changes of use of a building but this planning permission is not equivalent to an authorization for an 'installation classée'. The legal documents that have to be submitted for a planning permission and authorization of an 'installation classée' must contain an environmental impact statement. In addition, these two authorizations are granted through two different legal procedures. One is aimed at the construction of an 'installation classée' and the second is aimed at the operation of the facility.

(b) Contents, procedures, provisions for consultation and the EIA process

As explained earlier, the general provisions covering these aspects are contained in the law for the protection of nature and its decree for implementation. The law on "installations classées", the law on public enquiries and the law on "Instruction Mixte" complement the core text with regard to information, consultation and public participation procedures.

The law on the protection of nature and its implementation decree set out the principles that have to be respected:

- Scope
- Integration in the existing procedures;
- Provision for informing the public;
- Review procedures employed by the Ministry of the Environment.

Scope

Article 1 of the law of 10/7/76 stipulates that environmental considerations relate to:

- The protection of nature and natural landscape;
- Protection of fauna and flora;
Preservation of biological balances;
- Protection of natural resources from any kind of damage;
- Preservation of a harmonious equilibrium between the population and their urban and rural milieu.

The decree sets out the general aspects covered in the EIA process and leaves it to "arretés interministériels" to set out more detailed contents of the 'étude d’impact' for particular categories of project. The minimum content of an EIS is set out as follows:

- A baseline study of the site and its environment including natural resources, natural agricultural areas, forests, water resources, and leisure sites affected by the project;
- A description and analysis of the effects on the environment including effects on sites and landscapes, fauna, flora, the natural milieu and its balance and, where relevant, impact on neighbourhoods' tranquillity (noise, vibration, odour, luminous emissions) and on hygiene and public salubrity;
- The reasons why, in view of environmental considerations, the particular alternative has been adopted among those studied;
- Measures envisaged by the developer or the applicant for suppressing, reducing and if possible compensating for the negative consequences on the environment.

Procedures, consultation and participation

General provisions contained in the law for the protection of nature. There are general provisions which apply to all EIAs by virtue of the law for the protection of nature. It is usually the responsibility of the developer or the applicant to undertake the EIA (see above). The EIA is integrated into existing procedures and the EIS or ‘notice’ (simplified procedure) is added to the other documents submitted, and should not alter the timescale of the planning process. With regard to information and consultation, the main provisions are contained in the decree implementing the law of 1976. There are two possible situations: the project does not require a public enquiry; the project does require a public enquiry.
i) Projects non submitted to public enquiry

In practice there are virtually no projects subject to EIA that do not require a public enquiry if the financial or technical threshold for that type of project is reached. However, there is a gap between the thresholds established by the law for the protection of nature and those established by the law on public enquiry (6 million francs as against 12 million francs). For projects falling between these figures, there is in theory no public enquiry except when there is compulsory purchase involved - in which case, the older law on public enquiry applies.

Therefore, for these relatively exceptional projects, the provisions for information, consultation and participation are those general ones contained in the law for the protection of nature. In this law, there is no specific provision for statutory consultees. However, any individual or association may have access to the EIS after the competent authority has decided to consider the project (if such a stage is required) or has authorised the project. If the procedure does not envisage any of these decisions (e.g. in the case of a competent authority being the developer) access to the EIS is granted as soon as the decision to implement the project is taken.

The decision to consider, authorise, approve or execute a project must be preceded by a public notice mentioning the existence of an EIS. Such a notice is made according to the particular regulatory framework relevant to the category of project. When such a framework does not exist the notice is advertised in the local papers; for projects of national importance, the notice is also announced in at least two national newspapers.

The request to consult the EIS must be addressed to the 'Prefet' of the relevant 'departement'. The Prefet then notifies the person making the request where the EIS is available and the period of consultation which cannot be less than 15 days. For projects undertaken for the Ministry of Defence, the application is addressed to the Minister for Defence who ensures that the notice is made in accordance with the necessity to preserve national security.
Projects requiring a public enquiry

Projects subject to the law on public enquiries of 12/7/83 must comply with the procedures established by this law. This defines the public enquiry as a procedure whose aim is to inform the public and to register its advice, suggestions and counter-proposals, in order to provide the competent authority with all of the information it needs for its decision.

The law of 12/7/83 and the decree of 23/4/85 establish that applications for developments and works carried out by private or public developers which, by their nature, their scale or the characteristics of the sites concerned, are likely to affect the environment, must be submitted to a public enquiry and require an EIS. Works undertaken to prevent an immediate danger and repair and maintenance works are exempt from this procedure. The decree and its subsequent amendments establish a list of categories and the corresponding technical or financial thresholds. The 'installations classées' projects are only one of the categories listed in the decree.

The 'saisine facultative' This procedure confers power on the Environment Minister to 'call in' any proposal involving an EIS, at his own initiative or at the request of a third party (individual or group) and give his opinion on it. The environmental authorities can therefore intervene in a project which might have effects on the environment. However, their influence may be limited in view of the fact that they do not have the power to block a decision to authorise a project. Nevertheless, their dissuasive effect is not negligible.

Projects covered by the law on 'installations classées'. These projects are also subject to the law on public enquiries of 12/7/83 as well as to the law of 19/7/76 and the decree of 21/9/77.

The 'environmental public enquiry' is integrated into the existing procedure. When a project or operation falls into the category of an 'installation classée' requiring an authorization, the developer submits a complete dossier including an EIS to the Prefet. When the latter is satisfied that the application contains all the necessary legal documents, he transmits it to the President of the Administrative Tribunal who will then designate a 'commissaire enquêteur' (enquiry inspector). The duration of the enquiry is fixed by the Prefet as a period lasting not...
less than a month, which can be prolonged by up to 15 days by the Inspector if this is necessary. The Inspector must ensure that the publicity legally required throughout the area concerned (which is regulated by the law) is provided and that public access to the document is achieved. The Inspector can also legally require from the developer any additional information that he thinks necessary.

The Inspector, with the consent of the Prefet, can also initiate a public meeting, the recommendations of which are transmitted to the developer who then has 22 days to respond. When the enquiry is completed, the Inspector submits a report which must reflect the main comments made by the public but which must also contain his own justified advice. This report, which must be submitted one month after the completion of the enquiry, is then formally published. The decision to authorise the project belongs to the Prefet. In making his decision, the Prefet must take into consideration the advice and comments contained in the application documents - he has the authority to reject the application and to impose any necessary protection conditions on the developer. A ministerial circular states that environmental considerations have priority over economic and social benefits.

In summary, the procedure is as follows:

- Application for authorization submitted to the 'Prefet du Departement';
- Designation of a 'commissaire enquêteur';
- Consultation with interested administration;
- Advice of the Municipal Council;
- Public enquiry, comments of interested parties;
- Report by the inspector of 'installation classées';
- Advice by the Departmental Council for Hygiene;
- Authorization and publicity;
- Appeal.

The documents submitted with the application consist of three main elements:
An environmental impact statement;
- A report on accidental hazards;
- A report on conformity with hygiene and safety requirements.

The content of the EIS must conform to the law on the protection of nature and its implementation decree but must also include elements required by the law specific to the ‘installations classées’ which include:

- noise level of equipment;
- mode and condition of water consumption;
- means for the protection of the water table;
- water treatment methods;
- means of transport of input and output.

Simultaneous compliance with two decrees (those of 23/4/85 and 12/10/77) may seem complicated but has been recognised as legal by the administrative tribunals and by the Council of State.

Projects falling under the ‘instruction mixte’ procedure. The law of 29/11/52 on the ‘instruction mixte’ established a specific procedure for the authorization of certain types of projects, based on physical and financial thresholds. The categories concerned are the following:

- Linear infrastructure (major roads, motorways, railway lines, canals);
- Energy production and transport facilities;
- Dams;
- Ports.

Thresholds for linear infrastructure vary from 100 million francs for national projects to 25 million francs for local projects and trigger specific planning procedures which include EIA. These thresholds do not invoke EIA for projects to which other legislative frameworks and
These projects necessarily involve either the central administration of the Ministry of the Environment or its local agencies, the 'Direction Régionale de l'Environnement' (DIREN) - formerly 'Délegation Regionale à l'Architecture et l'Environnement' (DRAE). The review by the administration is however of an advisory nature rather than of an enforceable nature. Nevertheless, for major projects, the advice has a strong influence.

(c) Degree of compliance with the requirements of Directive 85/337/EEC

i) Compliance with Articles 1, 2, 4

It is difficult to make a direct comparison between projects listed in Annex I and II of the Directive and the projects covered by the various laws and decrees relevant to environmental impact assessment, because the legislation often overlaps in terms of coverage and varies in stringency. A detailed analysis shows, however, that most categories listed in the Directive are covered, either through the main legislation or through specific frameworks which generally complete the law on the protection of nature. As a reminder, the main acts of legislation relating to EIA are:

- As core legislation, the law on the protection of nature 10/7/76 and decree 12/10/77.

- In addition, the law on 'installations classées' 19/7/76 for the protection of nature and the implementation decree of 21/9/77 establish a specific procedure for projects requiring authorisation.

- Finally, the law on public enquiries 12/7/83 and decree 23/4/85 is applicable to all EIAs over a specific threshold.

Certain categories of projects fall under specific regulations; these include:
Decree 11/12/63, modified 27/3/73, covering nuclear installations.
- The mining code.
- Decree 20/12/79 concerning quarries.
- Decree 7/5/80 relating to the control of mining and quarrying operations.

Table 2 shows how the various types of project are dealt with under French law.

ii) Compliance with Article 5

The law for the protection of nature establishes the nature of the information which should be contained in an EIS. Article 2 of the law sets out the main elements which must be dealt with by the 'decret d'application'. The environmental impact statement should comprise as a minimum:

- a baseline study of the area involved including its environment;
- an analysis of the changes that would be generated by the project;
- the measures envisaged in order to suppress, reduce and if possible compensate for the damage done to the environment.

There is no specific mention of the items included in Annex III, Item 1 of the Directive, relating to the description of the project, the production process, nature and quantity of materials used, as well as the description of the expected residues and emissions in the main legislation but there are specific regulations for certain categories of projects. Item 3 of Annex III is only partially covered: information on material assets, including the architectural and archaeological heritage is not specifically mentioned, although this may possibly be covered by the law for the protection of historical monuments; however, this does not ensure that it is taken into consideration in the EIA process. In addition, the elements in Item 3 requiring the developer to describe the forecasting methods used to assess the effects on the environment are not covered. Items 6 and 7 of Annex III regarding the requirement of a non-technical summary and an indication of difficulties encountered by the developer are not covered by the law on the protection of nature.
Table 2: Comparison of French legislation and provisions for compliance with the Directive

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Regulations</th>
<th>Consultation</th>
<th>Informing the public</th>
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</thead>
<tbody>
<tr>
<td><strong>Annex I projects</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 1</td>
<td>Law PN, Decree EI, Law and Decree IC, Law and Decree EP</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Item 2</td>
<td>Law PN, Decree EI, Law and Decree IC, Law and Decree EP, Law IM</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Item 3</td>
<td>Law PN, Decree EI, Law and Decree IC, Law and Decree EP</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Item 4</td>
<td>Law PN, Decree EI, Law and Decree IC, Law and Decree EP</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Item 5</td>
<td>Law PN, Decree EI, Law and Decree IC, Law and Decree EP</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Item 6</td>
<td>Law PN, Decree EI, Law and Decree IC, Law and Decree EP</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Item 7</td>
<td>Law PN, Decree EI &gt; 6MF, Law IM when &gt; 25MF, Local or 100 MF for national projects, Law EP when &gt; 12MF</td>
<td>Yes when covered by IM</td>
<td>Yes when &gt; 12MF</td>
</tr>
<tr>
<td>Item 8</td>
<td>Law PN and Decree EI when &gt; 6MF, EP when &gt; 12MF</td>
<td>Yes when &gt; 12MF</td>
<td>Yes when &gt; 12MF</td>
</tr>
<tr>
<td>Item 9</td>
<td>Law PN and Decree EI, Law and Decree IC, Law EP &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Annex II projects</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 1</td>
<td></td>
<td>No statutory, except DIREN</td>
<td>Yes</td>
</tr>
<tr>
<td>(a)</td>
<td>Law PN and Decree EI</td>
<td>No statutory</td>
<td>No</td>
</tr>
<tr>
<td>(b)</td>
<td>Not covered</td>
<td>No statutory</td>
<td>Yes</td>
</tr>
<tr>
<td>(c)</td>
<td>Law PN and Decree EI when &gt; 6MF</td>
<td>No statutory</td>
<td>Yes</td>
</tr>
<tr>
<td>(d)</td>
<td>Law PN and Decree EI</td>
<td>No statutory</td>
<td>When decision is made</td>
</tr>
<tr>
<td>(e), (f), (g)</td>
<td>Law PN and Decree EI, Law and Decree IC</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>(h)</td>
<td>Law PN and Decree EI when &gt; 6MF, EP &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

continued
Table 2: continued

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Regulations</th>
<th>Consultation</th>
<th>Informing the public</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Item 2</td>
<td>Law PN and Decree EI, M or C depending on whether it is classified as mine or quarry</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>(a) - (j)</td>
<td>Law PN and Decree EI, Law and Decree IC, Law EP when &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>(j) - (m)</td>
<td>Law PN and Decree EI, Law and Decree IC, Law EP when &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 3</td>
<td>Law PN and Decree EI, IM, Law and Decree IC, Law EP when &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>(a)</td>
<td>Law PN and Decree EI when &gt; 6MF</td>
<td>No statutory except DIREN</td>
<td>When decision is made</td>
</tr>
<tr>
<td>(b)</td>
<td>No statutory except DIREN</td>
<td>When decision is made</td>
<td>Yes</td>
</tr>
<tr>
<td>(c)</td>
<td>Law PN and Decree EI, Law and Decree IC, Law EP when &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>(d) - (j)</td>
<td>Law PN and Decree EI, Law and Decree IC, Law EP when &gt; 12MF, IM when &gt; threshold</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 4</td>
<td>Law PN and Decree EI</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 5</td>
<td>Law and Decree IC</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 6</td>
<td>Law EP when &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 7</td>
<td>Law PN and Decree EI</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 8</td>
<td>Law PN and Decree EI, EP &gt; 12MF</td>
<td>No statutory except DIREN</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 9</td>
<td>Law PN and Decree EI, IM depending on thresholds, EP &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 10</td>
<td>Law PN and Decree EI</td>
<td>No statutory except DIREN</td>
<td>Yes</td>
</tr>
<tr>
<td>(a) - (c)</td>
<td>Law PN and Decree EI, EP &gt; 12MF</td>
<td>No statutory except DIREN</td>
<td>Yes</td>
</tr>
<tr>
<td>(d) - (j)</td>
<td>Law PN and Decree EI, IM depending on thresholds, EP &gt; 12MF</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- Item 11</td>
<td>Law PN and Decree EI</td>
<td>No statutory except DIREN</td>
<td>Yes</td>
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<td>(a), (b), (d)</td>
<td>Law PN and Decree EI, Law and Decree IC, Law EP</td>
<td>No statutory except DIREN</td>
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<tr>
<td>(e), (e) - (j)</td>
<td>Law PN and Decree EI, Law and Decree IC, Law EP</td>
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<tr>
<td>- Item 12</td>
<td>Law PN and Decree EI when &gt; 6MF, EP</td>
<td>No statutory except DIREN</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Abbreviations
Law PN and Decree EI - Law "Protection de la Nature" and Decree "Etudes d'impact"
Law and Decree IC - Law and Decree "Installations Classées"
Law and Decree EP - Law and Decree "Enquêtes Publiques"
IM - "Instruction Mixte"
However, the law on ‘installations classées’ and the various sectoral decrees are more
detailed and stringent and wholly cover items 1, 2, 3, 4 and 5 of Annex III of the Directive.
The minimum requirements specified in Article 5(2) of the Directive are only covered when the
project is an ‘installation classée’. The non-technical summary, however, is not covered at all.
It is perhaps also necessary to point out that the decree implementing the law on the protection
of nature specifies that ‘the content of the EIS must be in relation with the scale of the project
and the extent of its effects on the environment’.

The ‘Instruction Mixte’ procedure (interministerial procedure involving the Ministry of
the Environment) triggered for large projects goes beyond the minimum required by the 1976
law. However, smaller projects which are left to the standard procedure may not fulfil all the
content requirements, particularly since the financial thresholds are very low and inflation since
1976 has further eroded these.

The requirement for the competent authority (Article 5(3)) to make relevant information
available to the developer is not explicitly specified in the various legislation covering EIA but
it is part of the general mission of the administration to provide such information. In practice,
the DIREN is consulted and has at its disposal information either in the form of cartography or
of databases. The requirement for designated authorities to receive the information pursuant to
Article 5 and to give their advice before a decision is finalised on the project does not appear to
be fulfilled for those projects which fall under the standard EIA process. There is no general
provision stipulating that lists of interested authorities or organisations should be established for
the different categories of projects and environmental impacts. However, certain categories of
projects falling under specific procedures, e.g. “l’instruction mixte” do require such
consultations.

iii) Compliance with Article 6

With regard to public consultation, there are two cases:
(a) When the project is subjected to an 'environmental public enquiry', the public has the opportunity to express its opinion before the project is initiated, and even before a decision is taken.

(b) When the project is not subject to public enquiry, the public has the opportunity to express its opinion either at the date of consideration, decision, or execution of the project, depending on the procedure involved for that particular project.

The detailed arrangements for publicity and consultation appear to comply with the requirements of Article 6(3) of the Directive.

iv) Compliance with Article 7
   
   At present, French legislation does not specifically require the authorities to forward information to other Member States in cases of transborder impact. However, a decree is being prepared which will correct this gap.

v) Compliance with Article 8
   
   As explained earlier, the competent authority must take the advice and comments contained in the documents submitted into account in making its decision. However, the legal provision to do this exists only for 'installations classées' (where an inspectorate can check that binding prescriptions are met).

vi) Compliance with Article 9
   
   There are no provisions specific to EIA requiring the competent authority to inform the public of the content of the decisions or the justification of its decision. However, the decision for statutory authorisations must be made public either by "extrait" or in the official bulletin of the Department. In addition, the general law on 'Liberté d'Information', whereby the public is guaranteed access to public documents, applies to EIA and allows access to relevant information.
vii) **Compliance with Article 10**

Under the law on 'installations classées' the developer is required to transmit all the information at his disposal on the project to the 'commissaire enquêteur' and to the competent authority. Protection of industrial and commercial secrecy is guaranteed under the normal requirements of confidentiality that govern the relationship between the administration and the public.

viii) **Compliance with Article 13**

The combination of the provisions laid down in the law on 'installations classées' and the law on public enquiries provides, in many aspects, stricter rules and procedures than those contained in the Directive. Most of the apparent gaps which exist between French EIA legislation and the Directive are due more to wording than to substance. This can be explained by the following factors:

- The French law precedes the Directive;
- The EIA process is integrated into much wider planning frameworks in France;
- The apparent resistance to separate the concept of EIA from other planning tools and other environmental protection laws.

In practical terms, it seems difficult, without substantial changes to a great deal of legislation, to comply with the precise wording of the provisions contained in the Directive, since each operation or category of operations is governed by a different legal text, to which EIA provisions have been added.

However, a number of regulations are being prepared which will fill the gaps that have been observed:

- A decree will make a non-technical summary mandatory in the EIS, and will require the competent authorities to inform other Member States of the likely transnational impact of a project.
A ministerial 'arrêté' (order) is also being prepared, which will specify the information required in an EIS, in compliance with Annex III of the Directive.

A national commission for the environment (which will deal with all environmental issues including EIA) is being set up, which will be independent and have a clear role. (The Ministry of the Environment's role is mostly that of a mediator, whilst the 'College', as it is apparently going to be named, will have an advisory role to the Minister, particularly on plans, programmes and policies.)

The draft decree also brings the provisions concerning competent authorities into line with the law on decentralisation. The decisions on projects requiring EIA will not exclusively concern the Prefet any more, but can also be the prerogative of the Maire of a Commune or the Président du Conseil Général of a departement.

A modification to the 'Saisine' procedure is being considered which will strengthen its status and influence.

Finally, a few changes are being considered in the longer term. These include the setting up of inspectorates similar to those existing for the 'installations classées' for the monitoring of EIS predictions.

2. CRITERIA AND/OR_THRESHOLDS ADOPTED FOR THE SELECTION OF ANNEX II PROJECTS TO BE SUBJECT TO ASSESSMENT

(a) Outline of criteria/thresholds

As explained above, most Annex II projects, which in France fall under the 'installations classées' law, require an EIS regardless of their cost or physical dimensions. Other projects, which do not fall under the 'installations classées' law, require an EIS because of their dimensions or cost. These are:
Allotments and construction > 3000m², in a municipality without a land-use plan (POS).

Overhead energy transmission > 225kV.

The following categories exceeding 6 million francs:

- Gas transport equipment
- Roads and motorways
- Railway lines
- Canals and other works on waterways, private or public
- Works on and development of sea and river ports.

(b) Comment on criteria/thresholds

The 6 million francs threshold appears to be too low in today's economic conditions. However, it is not, as is widely believed, the main reason for the very large number of EISs undertaken in France each year. The main reason for the 5000-6000 EISs per annum, is the law on 'installations classées' which generates more than 2000 EISs each year (below). Nevertheless, a higher threshold, possibly 12 million francs, is being envisaged for the near future, which will probably eliminate about 500-700 EISs each year.

3. NATURE AND EXTENT OF PRACTICAL COMPLIANCE WITH THE DIRECTIVE

(a) Number and categories of EISs

Since the implementation of the law on EIA in 1978, about 5000-6000 EISs have been undertaken each year. Of this number, two thirds were carried out by private developers against one third by public developers. The sectoral distribution is as follows:

- 2000 statements relating to industrial developments, most of them falling under the law on 'installations classées';
- 1000-5000 statements relating to agricultural developments, chiefly land reclamation and land restructuring operations;
500 statements relating to quarries;
- 300 statements relating to transport infrastructure, mainly roads, motorways and railway lines;
- 100 statements relating to energy transport and production facilities such as overhead lines, nuclear power stations, conventional power stations, hydro-electric power stations, etc.;
- 200-300 statements relating to urban development projects;
- 100 statements relating to waste disposal and water treatment projects;
- 40-50 statements relating to tourism projects.

No breakdown of these figures between Annex I and Annex II projects has been attempted but a broad cross-examination seems to indicate that approximately 200 projects belong to Annex I, with the vast majority of projects falling under Annex II.

The average number of projects under the 'instruction mixte' procedure is about 50 per annum, including national and local level projects. The number of 'notices d'impact' carried out each year is even greater; although it has not been possible to collect global figures. An extrapolation of regional figures suggests that there may be as many as twice the number of EISs.

(b) Implementation of the different EIA procedures in practice

It is apparent that EISs for large scale projects are more comprehensive and more informed than for smaller projects. This is particularly true for energy, motorways and railway lines. Good relationships between the developers and the environmental administrations at national (Ministry) and at local level (DIREN) favour better scoping and more serious consideration of environmental impacts for large projects. EISs for public development projects tend to be more informative than for private developers' projects which are very often limited by scarce resources. The latter EISs usually contain the minimum information legally required and are undertaken in-house.

A large number of categories of projects are governed by specific regulations which are
generally stricter than the standard regulations.

There are considerable variations in the approaches and commitments to EIA within the public administrations and amongst developers. Some developers, thanks to the new generation of young and 'greener' engineers and to the influence of dedicated 'greens', produce more accurate and more detailed information. Where such personnel do not exist, the information provided tends to be formal and minimal.

For large scale and national projects, alternatives are generally considered in the planning process. However, very often, the approach adopted consists of gradually improving the initial option rather than considering different alternatives properly.

The degree and nature of public consultation and participation is very dependent on the scale and nature of the project, the location of the project and the environmental awareness and sensitivity to environment matters of those involved in the project.

Projects which are subject to public enquiry are generally better dealt with, if only because the public enquiry follows stricter procedures and is managed by the 'commissaire enquêteur'. However, many people are critical of the limited resources and often limited expertise of the 'commissaires'. The 'installations classées' procedure also enables the competent authorities to impose all the conditions which are deemed necessary for the protection of the environment. They have the power to reject the application from a developer or impose the necessary changes. Here again, in practice, there are wide variations in the extent to which the competent authority takes into account the comments, observations and advice from the 'commissaire enquêteur' and from the public.

The competent authorities' deterrent of refusing authorization is generally an effective weapon which puts pressure on the developers to comply with the procedures and to produce a reasonable EIS. In most cases, the powers given to the competent authorities help them ensure, if they are committed not only in the letter but to the spirit of EIA, that the developer takes the