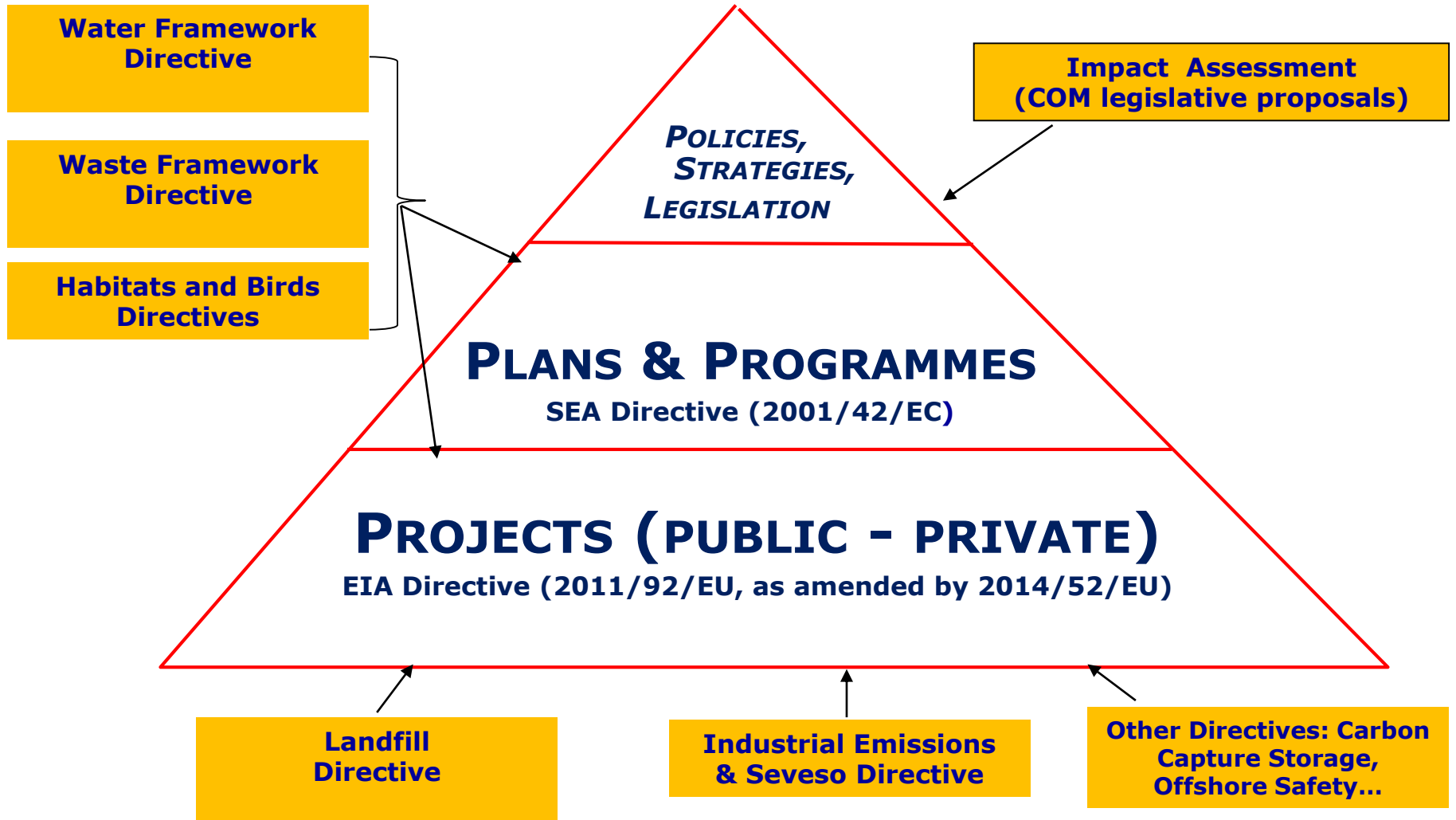




The revised EIA Directive

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Environmental Assessments





EU legislation

Environmental Impact Assessment (EIA)

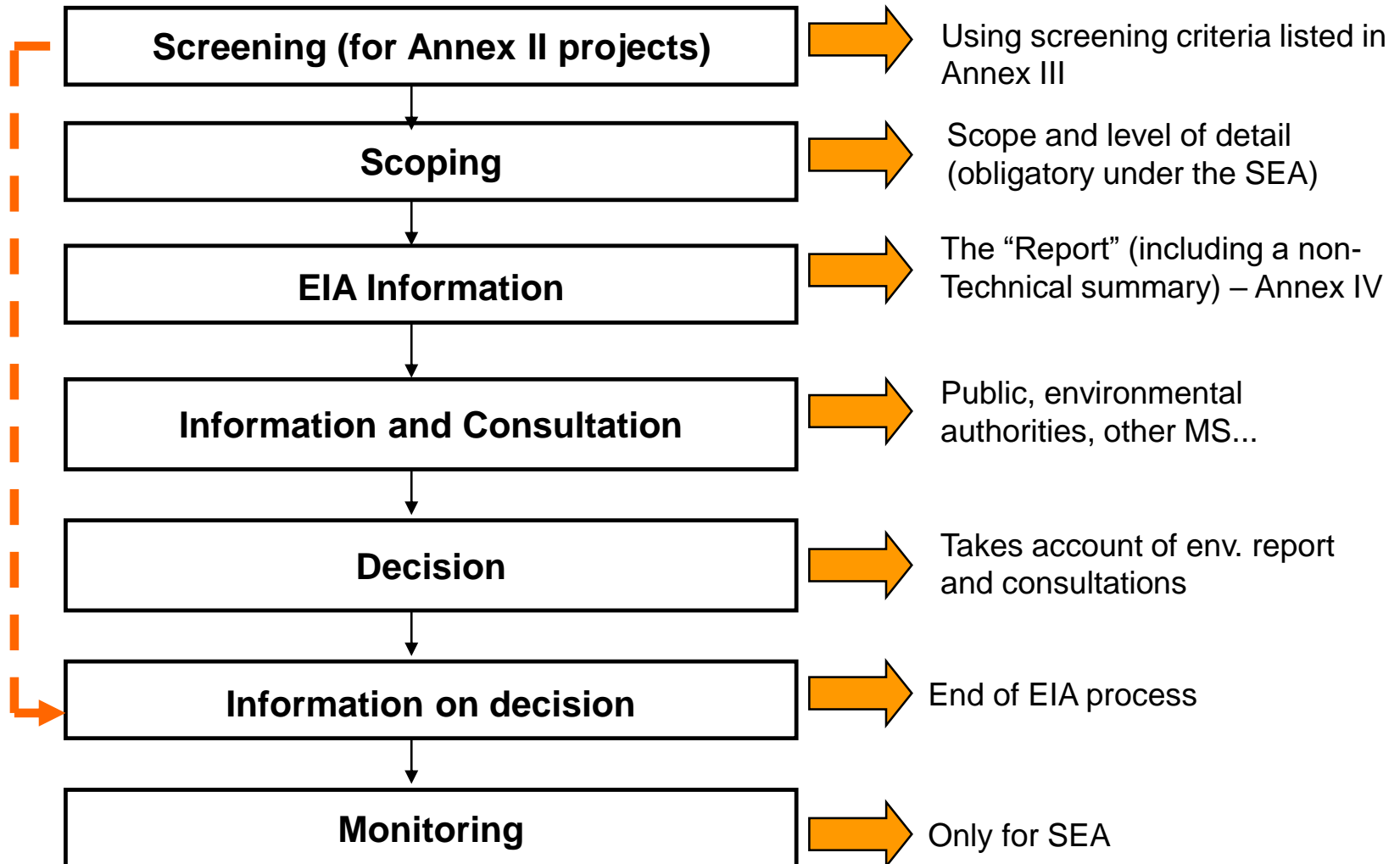
Directive 2011/92/EU codified:

- ❖ Initial EIA Directive 85/337/EEC
- ❖ Directive 97/11/EC
 - ✓ alignment to the Espoo Convention;
 - ✓ selection criteria for screening.
- ❖ Directive 2003/35/EC - alignment to the Aarhus Convention (public participation)
- ❖ Directive 2009/31/EC amends the annexes to include projects of storage and transfer of CO₂

Directive 2014/52/EU amending 2011/92/EU with a view to improving the effectiveness and efficiency of the EIA procedure

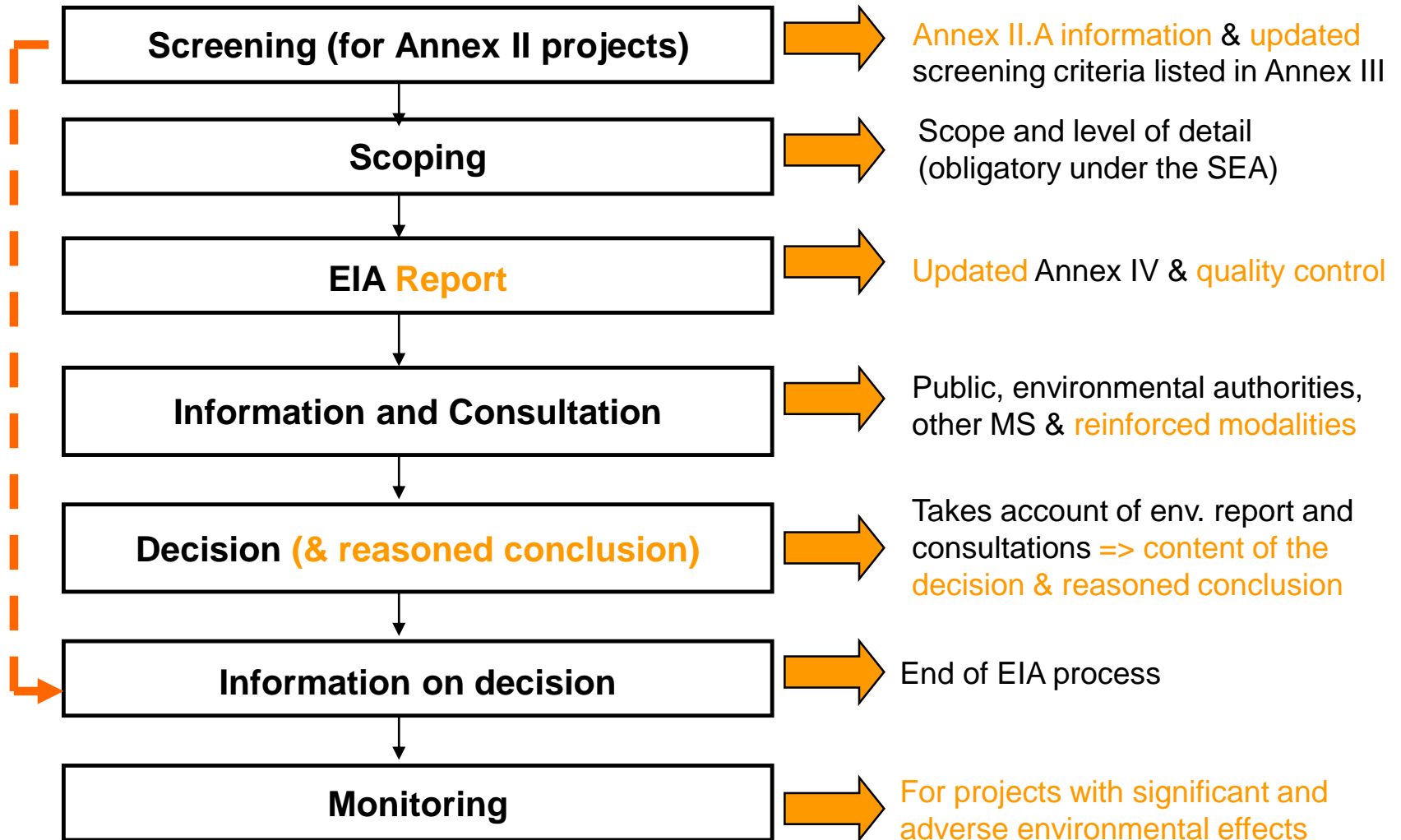
The EIA Procedure **prior** to the 2014 amendment

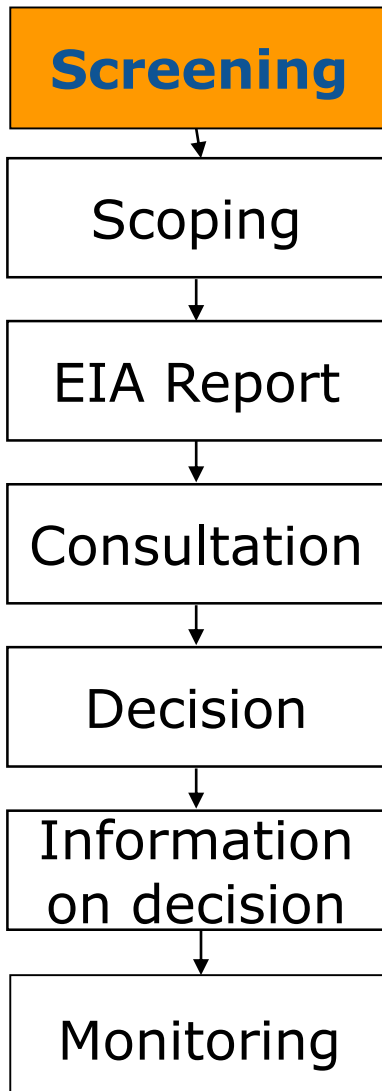
For projects screened out
(shorter procedure)



The EIA Procedure **after** to the 2014 amendment

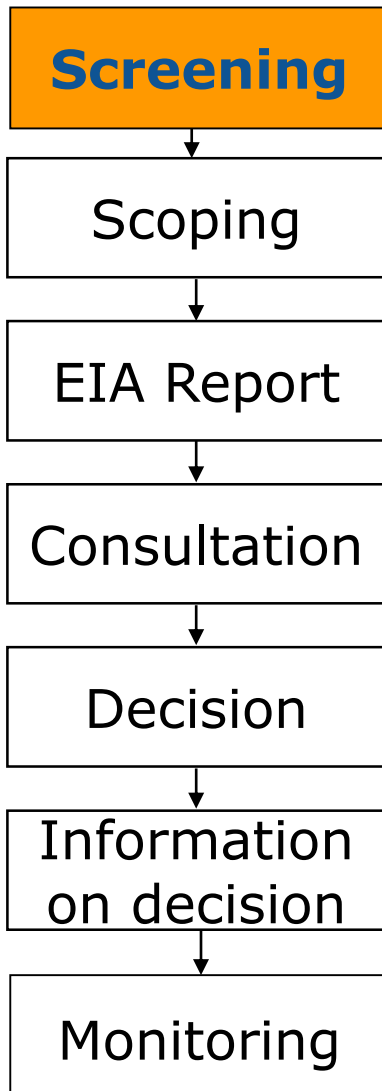
**For projects screened out
90 days + extension**





Screening principles & process

- **Thresholds** to decide when projects have/have not to undergo screening or EIA, taking into account relevant screening criteria of Annex III (Art.4(3)).
- **NEW:** List of information to be provided **by the developer** (Art.4(4) and Annex II.A).
- **NEW: Content** of the screening decision (Art.4(5)):
 - ✓ on the basis of the information provided by the developer.
 - ✓ take into account, where relevant, the results of preliminary verifications/assessments [SEA, Habitats, Water Directives].
 - ✓ use of annex III criteria reasons for any screening decision [see C-87/02 and C-75/08].
 - ✓ if no EIA: measures/features to avoid or prevent significant adverse effects ("tailored" project approach).
- **NEW: Time-frame** for the decision (Art. 4(6)):
 - ✓ 90 days (from the date on which the developer has submitted all the requisite information).
 - ✓ Possibility for extension in exceptional cases (in writing, informing the developer of the reasons for the extension and the expected new date).



Screening – Annexes II.A & III

■ Annex II.A: **NEW**

- ✓ Description of the 'whole' project.
- ✓ Description of the environmental factors aspects likely to be significantly affected.
- ✓ Description of the likely significant impacts of the project.
- ✓ Measures/features to avoid or prevent significant adverse effects ("tailored" project approach).

■ ANNEX III: **updated/new criteria**

- ✓ Use of natural resources.
- ✓ Risks to human health.
- ✓ Risk of major accidents/disasters, including those caused by climate change.
- ✓ 'Whole' project to be considered (incl. subsurface/underground) at ALL stages (construction, operation, demolition).
- ✓ Cumulative impacts with existing/approved projects.
- ✓ Landscapes and site of cultural heritage.
- ✓ Type of the impact (magnitude, intensity/complexity, onset, cumulation, possibility to reduce impacts).

C-411/17, Doel case (1): Concept of project

- Under a 2003 Act, each individual license for NPPs for the exploitation and industrial production of electricity expires 40 years after the commissioning of the respective plant.
- In 2015, a new law amends the timetable for phasing out nuclear energy postponed by 10 years the deadline for ending industrial electricity production from Doel 1 and Doel 2.
- Question referred for a preliminary ruling on the concept of 'project', a change or extension of a project and the need of an EIA.
- The term "project" refers to works or interventions that involve alternations to the physical aspect of the site (C-121/11).
- Measures to meet modern safety standards and renovation works are inextricably linked and together form part of the same project.

C-411/17, Doel case (2): Change or extension of a project

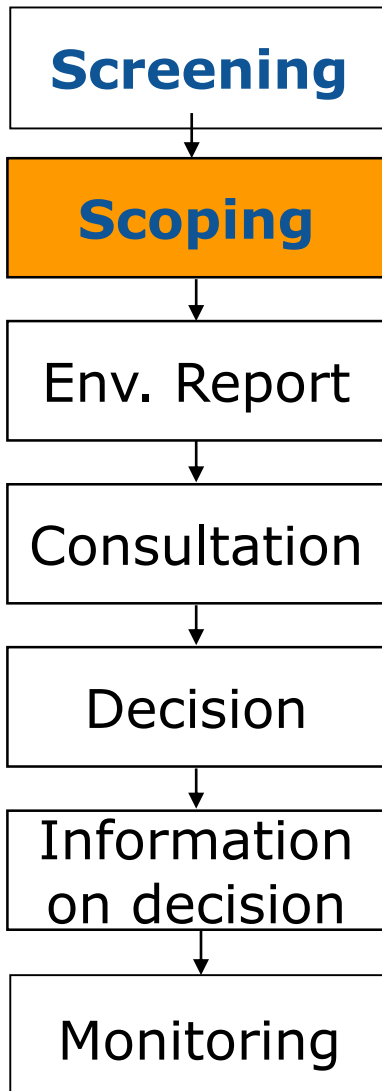
- As regards point 24 of Annex I to the EIA Directive, it is evident from the wording and general scheme of that provision that it applies to **any change or extension** to a project, which by virtue of, inter alia, its nature or scale, presents risks that are similar, in terms of their effects on the environment, to those posed by the project itself.
- In the present case, the measures at issue in the main proceedings (10-year extension of the consent combined with the major renovation works due to the aging of those plants and the obligation to comply with safety standards) are of scale comparable, in terms of the risk of environmental impact, to that of the initial commissioning of those plants.

Level of thresholds - case law

- Member States have a level of discretion to establish thresholds or criteria, **BUT** limited by the obligation (Art 2(1)) to make projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment subject to an impact assessment (C-244/12, *Salzburger Flughafen*, C-531/13, *Kornhuber and Others*, paragraph 40-41);
- Thresholds/criteria are to help in screening, **not exempt classes of projects**, UNLESS, when viewed as a whole, they would not be likely to have significant environmental effects – (e.g. C-392/96, *Commission v. Ireland*, C-66/06, *Commission v. Ireland*)
- Member States are obliged to take account of **all the relevant** selection criteria listed in Annex III when establishing criteria or thresholds for Annex II projects (C-66/06, *Commission v. Ireland*, C-255/08, *Commission v. Netherlands*, C-435/09 *Commission v. Belgium*, C-531/13, *Kornhuber and Others*).

Cumulative effects & "whole" project – case law

- It is necessary to **consider projects jointly** in particular where they are connected, follow on from one another, or their environmental effects overlap (Case C-147/07, *Ecologistas en Acción-CODA*; Case C-205/08, *Alpe Adria*).
- It is necessary to take into account the **cumulative effect** of such projects which have an objective and chronological link between them (Case C-244/12, *Salzburger Flughafen*).
- Works to modify an airport with a runway length of 2 100 metres or more thus comprise not only works to extend the runway, but all works relating to the buildings, installations or equipment of that airport where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at significantly increasing the activity of the airport and air traffic. (Case C-2/07, *Abraham and Others*).

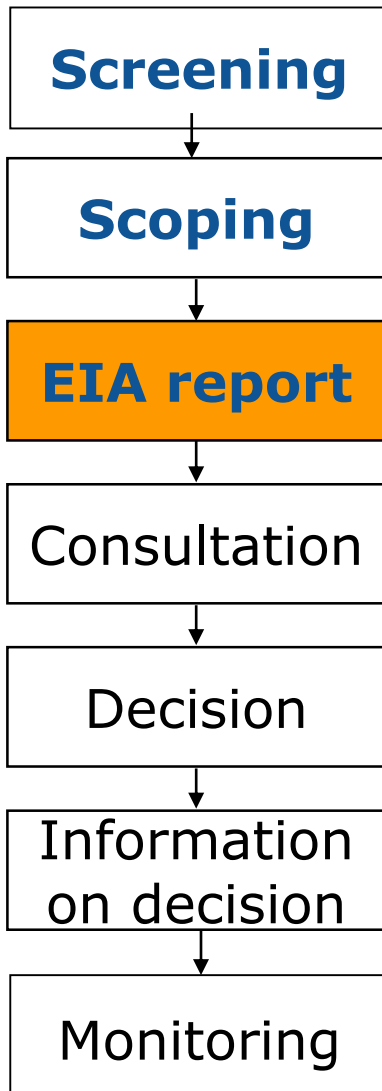


Scoping – Art.5(2)

Voluntary character remains!

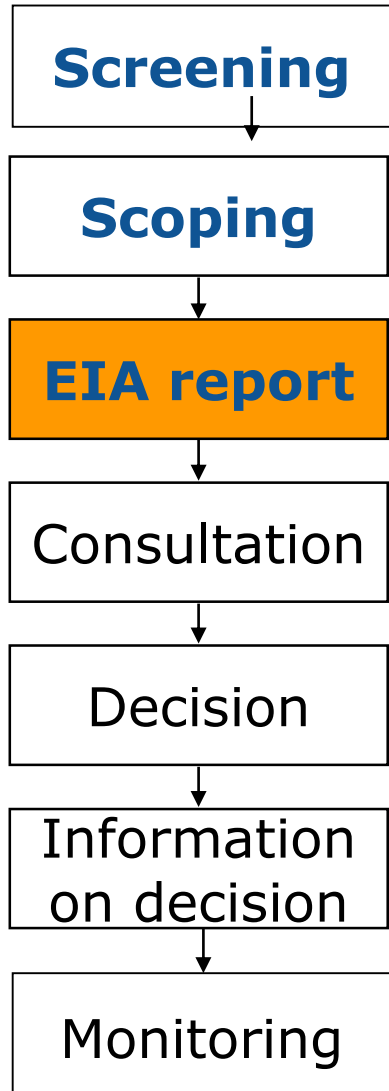
Very few changes:

- Information provided by the developer to be taken into account (incl. location and technical capacity and likely impacts).
- Opinion should refer to the scope and level of detail of the EIA report.
- Consultation of environmental and local/regional needed.



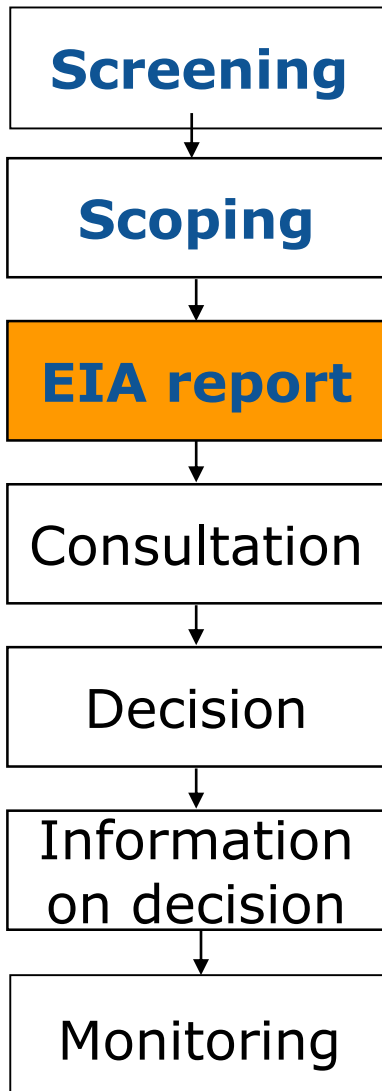
Information of the EIA Report – Art.5(1)

- Mirroring the changes in Article 3 (scope of EIA).
- **NEW:** To avoid duplication, the developer has to take into account the results of other relevant assessments [SEA, Habitats, Water Directives].
- Specific information to be provided by developer:
 - ✓ description of the project (site, design, size and other relevant features);
 - ✓ description of the likely significant effects;
 - ✓ description of the features and/or measures of the project envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects;
 - ✓ **NEW:** description of the **reasonable** alternatives studied by the developer relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen;
 - ✓ non-technical summary;
 - ✓ **NEW:** additional information specified in Annex IV.



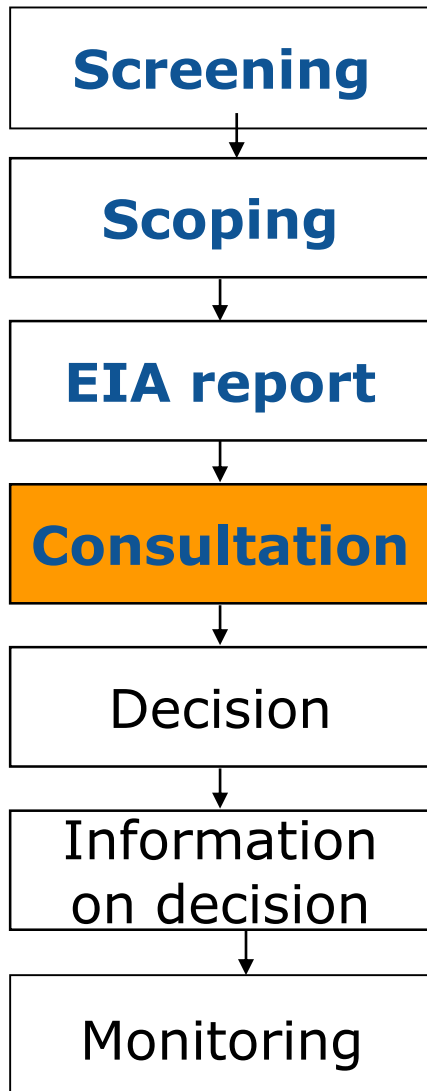
New elements in the information of the EIA Report – Annex IV

- Resource and energy efficiency elements (IV.1 and IV.5).
- Reasonable alternatives include baseline scenario (IV.2 and IV.3).
- Consideration of new environmental issues, such as climate change and biodiversity (IV.4 and IV.5).
- Cumulative impacts (IV.5.e).
- Risk assessment related to accidents/disasters (IV.8).
- More thorough description of mitigation/compensation measures, as well as introduction of monitoring (IV.7).
- Methods/evidence and list of sources used (IV.6 and IV.10).



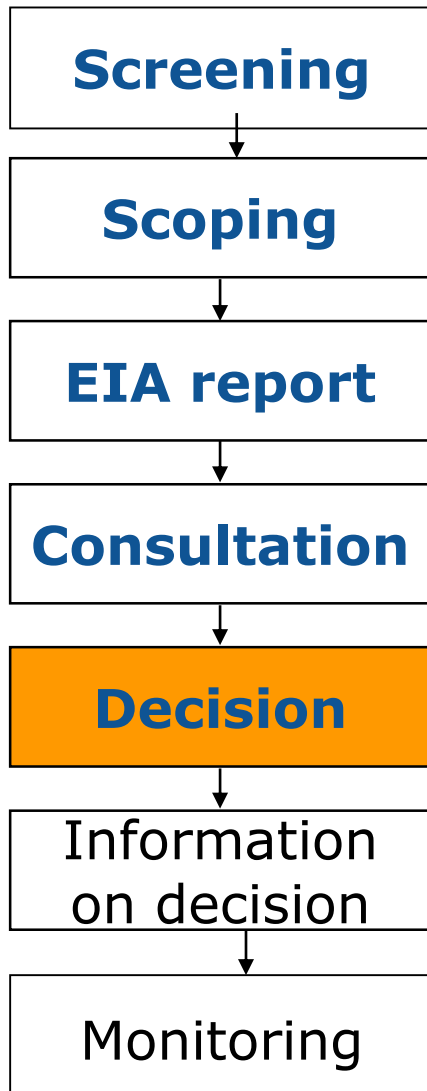
NEW: Quality of the EIA Report – Article 5(3)

- Objective: guarantee the completeness and quality of the EIA report.
- How: shared responsibility of the developer and of the competent authority (CA)
- Concretely: two cumulative conditions:
 - ✓ Developer shall ensure that the EIA report is prepared by competent experts and
 - ✓ CA shall ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA report.
- Where necessary, CA shall seek from the developer supplementary information, directly relevant to reaching the reasoned conclusion on the significant effects of the project.



NEW elements on Articles 6 and 7

- Broadened scope: local and regional authorities clearly spelled out as bodies to be consulted.
- Reinforced modalities:
 - ✓ Public to be informed electronically and by public notices (Art.6 (5))
 - ✓ Relevant information electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level (Art. 6 (5))
 - ✓ Reasonable time-frames for the different phases of the decision-making (Art. 6(6)).
 - ✓ Time-frame for consulting the public concerned on the EIA report - at least 30 days (Art. 6(7)).
- Transboundary consultations:
 - ✓ Consultations may be conducted through an appropriate joint body (Art.7(4)).
 - ✓ Time-frames for public consultation to be set (Art. 7(5)).



Final decision – Articles 8 and 8a

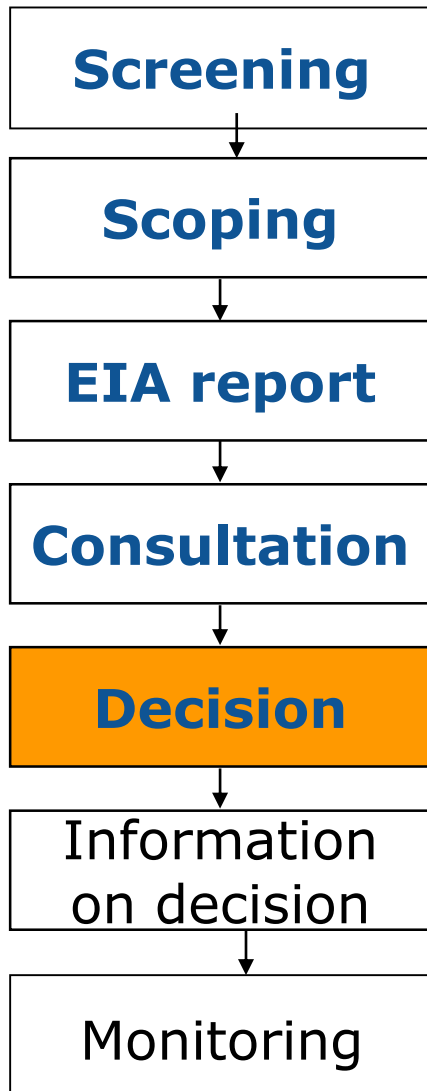
- Results of consultations and the information gathered shall be **duly** taken into account in the development consent procedure.
- Content of the decision to grant development consent:
 - ✓ the **reasoned conclusion** of the CA on the significant effects of the project;
 - any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.
- Decision to refuse development consent should include main reasons for it.
- Decision-making reflects the different EIA systems in the EU (Art. 8a(3) and recital 21): need for a binding EIA decision or an EIA integrated/part of the development consent.

'Assessment' is a fundamental obligation

- The assessment obligation the core of the procedure (Article 3, EIA Directive).
- It is **distinct from the rest** of the obligations laid down in the EIA Directive (to collect and exchange information, consult, publicise and guarantee judicial appeal).

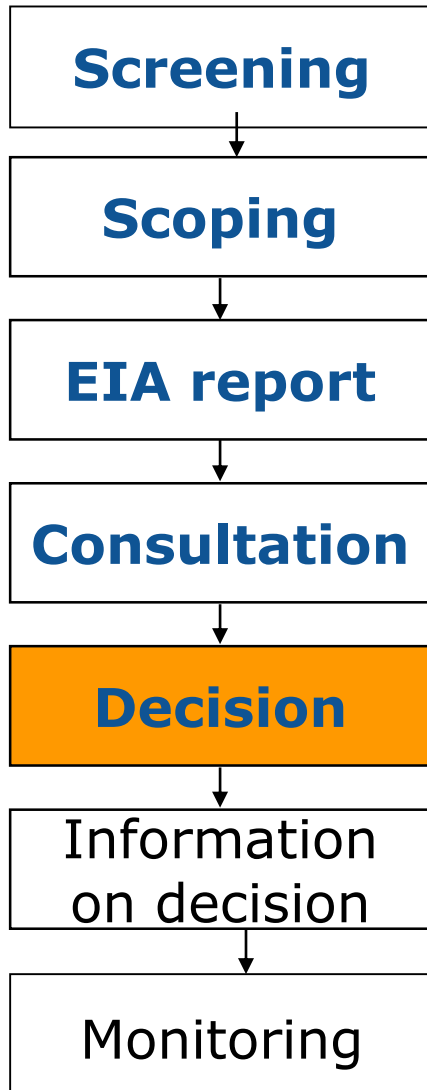
C-50/09, Commission v. Ireland

- This concept is now clearly translated as **'reasoned conclusion'**.



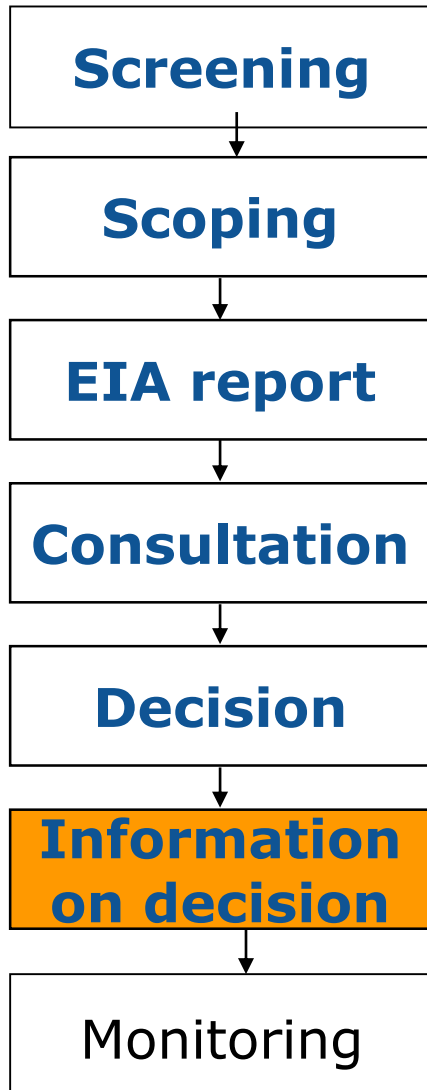
NEW: Conflict of interest (Article 9a)

- MSs obliged to avoid it.
- Ensure that CA perform the duties in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.
- Where the competent authority is also the developer:
 - ✓ Separation of the duties of the authorities.
 - ✓ Minimum obligation: functional separation (within national organisation of administrative competences, ensure an appropriate separation between conflicting functions).
- Inspiration: Seaport case (C-474/10)



NEW: Streamlining of the environmental assessments (Art.2(3))

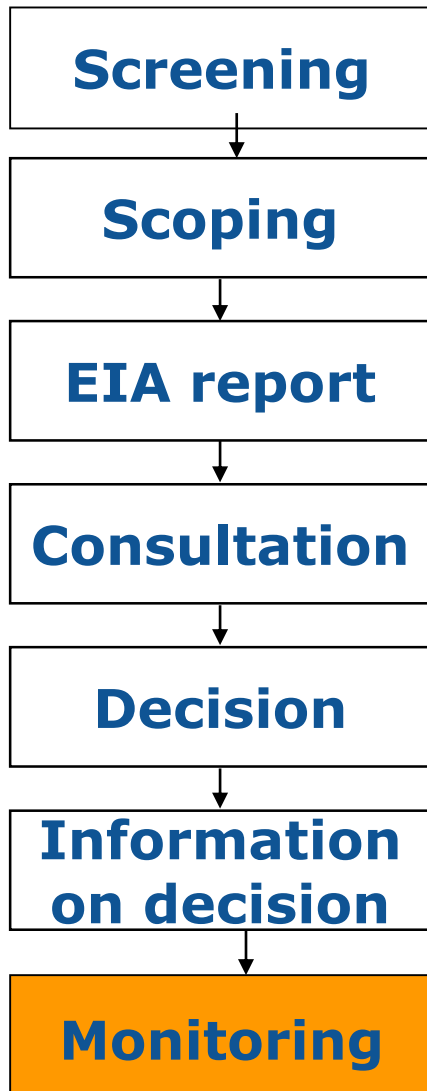
- Coordinated/integrated procedure, *where appropriate*, for assessments under EIA and/or Habitats/Birds Directives (only!).
- For assessments under EIA and other Union legislation (e.g. SEA, Water Framework, IED, Waste Framework, Seveso, listed in recital 37) possibility to apply streamlined assessment
- COM to issue guidance on joint/coordinated procedures.



Information on the final decision – Article 9

No significant changes:

- Obligation to inform the public and relevant (environmental and local/regional) authorities promptly;
- Obligation to make available to the public relevant (environmental and local/regional) authorities specific information:
 - ✓ Content of the final decision (no change).
 - ✓ Main reasons (no change).
 - ✓ **NEW:** Summary of the results of the consultations and the information gathered and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State(s), shall be made available as well.



NEW: Monitoring – Art.8a(4) and recital 35

- Requirement **ONLY** for projects with significant + adverse environmental effects.
- Scope of the obligation:
 - ✓ Measures/features to avoid, prevent, reduce offset effects have to be implemented by the developer.
 - ✓ MS to determine appropriate procedures to monitor such effects:
 - type of parameters to be monitored / duration of the monitoring: proportionate to the nature, location and size of the project and the significance of its effects on the environment;
 - use of existing monitoring from EU/national legislation (to avoid duplication).

Other amendments

- **Definition** of EIA (Art. 1(2)g), based on the case-law (C-50/09).
- **Limitation of exemptions** (Articles 1(3), 1(4), 2(4), 2(5)):
 - ✓ projects or part of projects, having defence as their **sole** purpose (see also recital 19);
 - ✓ projects having the response to civil emergencies as their **sole** purpose (recital 20).
 - ✓ projects approved in detail by law: exempted only as regards public consultation requirements, (see also recital 24).
- Standard provision on **penalties** (new Article 10a): MSs shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.
- Updated **reporting** obligation for MSs (Article 12(2))
 - As from May 2023.
 - Information to assess the effectiveness of the EIA (n° of EIAs/screenings, average duration of the EIA process; general estimates on the average direct costs of EIAs, including the impact to SMEs).

Commission support towards a better implementation

- Guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA (Commission Notice 2016/4701, OJ C 273, 27.7.2016)
- Guidance on exemptions under the EIA Directive (Commission Notice 2019/C 386/05, OJ C 386, 14.11.2019)
- Compilation of the CJEU case-law (updated 2021)
- Interpretation of definitions of project categories of annex I and II of the EIA Directive
- Guidance on the three key steps of the EIA:
 - Screening
 - Scoping
 - EIA report
- Guidance on the Application of the EIA Procedure for Large-scale Transboundary Projects

EIA/SEA Europa website

<http://ec.europa.eu/environment/eia/home.htm>

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

THANK YOU!