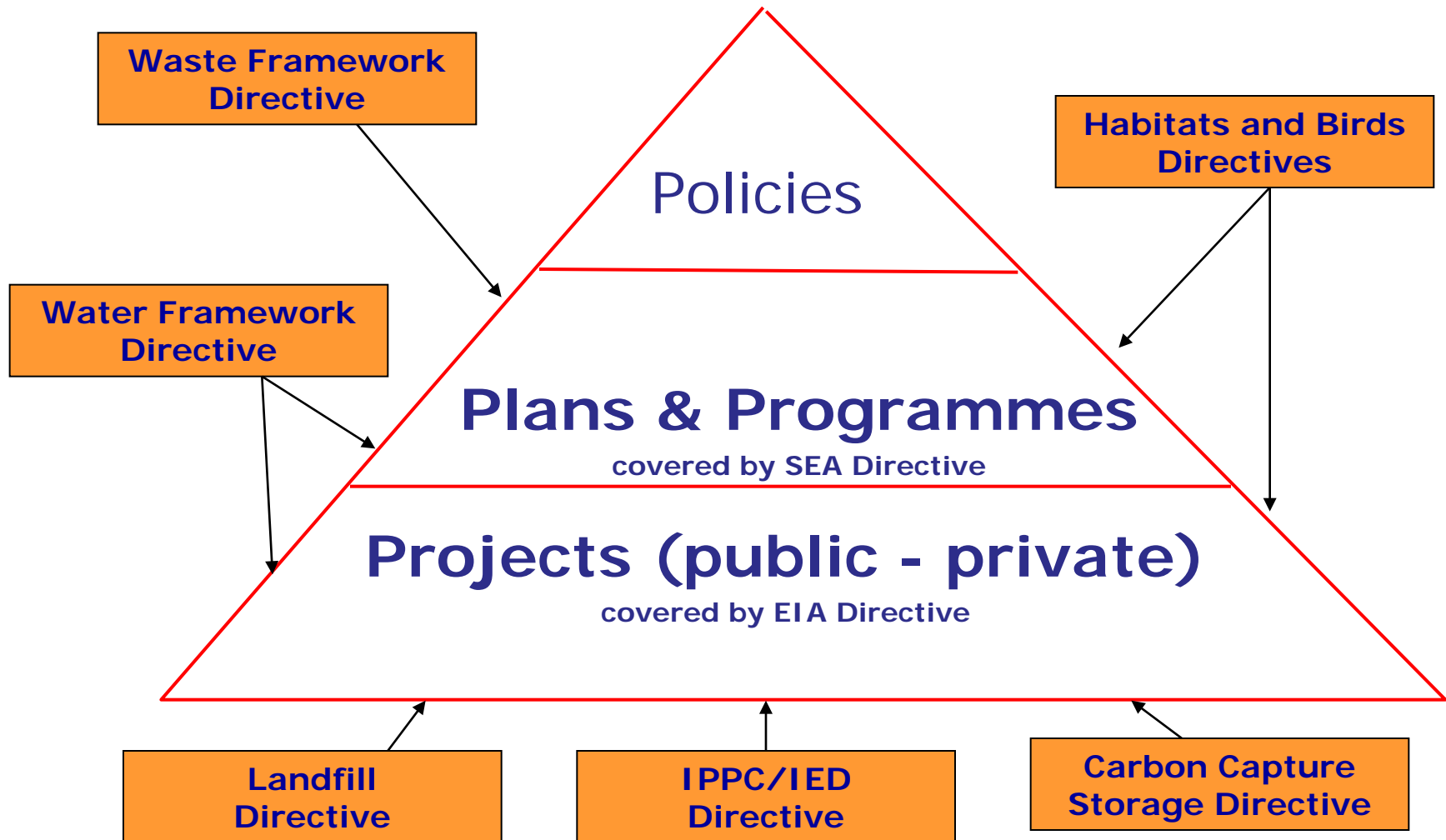




The revised Environmental Impact Assessment (EIA) Directive

Vienna, 12 May 2016

Environmental Assessments



EIA amendments not in the Energy Community Treaty

Directive 2009/31/EC amended the Annexes I and II by adding projects related to the transport, capture and storage of carbon dioxide (CO₂)

*Directive 2011/92/EU of 13 December 2011 **CODIFIED** the Directive and its three amendments*

*Directive 2014/52/EU **AMENDED** the codified EIA Directive*

Objectives of the revision

After 25 years of application, the EIA Directive has not significantly changed, while the policy, legal and technical context has evolved considerably.

General objective: adjust the EIA Directive in order to

- correct identified and persisting shortcomings.
- reflect ongoing environmental and socio-economic priorities and challenges.
- align with the principles of smart regulation.
- reflect the ECJ case-law.

Specific and Operational objectives of the revision

EFFECTIVENESS

Introduce and/or strengthen the quality related elements of the EIAD

- Specify the content and justification of the screening decision
- Specify the content and justification of the EIA report and the final decision
- Adjust the EIAD to the new environmental challenges

EFFICIENCY

Enhance policy coherence and synergies with other EU/international law and simplify procedures

- Streamline environmental assessments
- Specify time-frames for the various stages of the EIA process

Overall assessment of the final text

- **Efficiency objective**
- Some important elements: mandatory scoping and specific time-frames for some steps of the decision-making not kept.
- ✓ One-stop shop with a much narrower scope - limited to EIA/Nature Directives.
- **Effectiveness objective**
- ✓ Quality control mechanism;
- ✓ Assessment of reasonable alternatives;
- ✓ Monitoring measures;
- ✓ Broader scope of EIA covering new issues;
- ✓ Justification of screening/EIA decisions.

Main changes (1)

*Member States now have a mandate to **simplify their different environmental assessment procedures.***

***Timeframes** are introduced for the different stages of environmental assessments: screening decisions should be taken within 90 days (although extensions are possible) and public consultations should last at least 30 days.*

Members States also need to ensure that final decisions are taken within a "reasonable period of time".

Main changes (2)

*The **screening** procedure, determining whether an EIA is required, is simplified. Decisions must be duly motivated in the light of the updated screening criteria.*

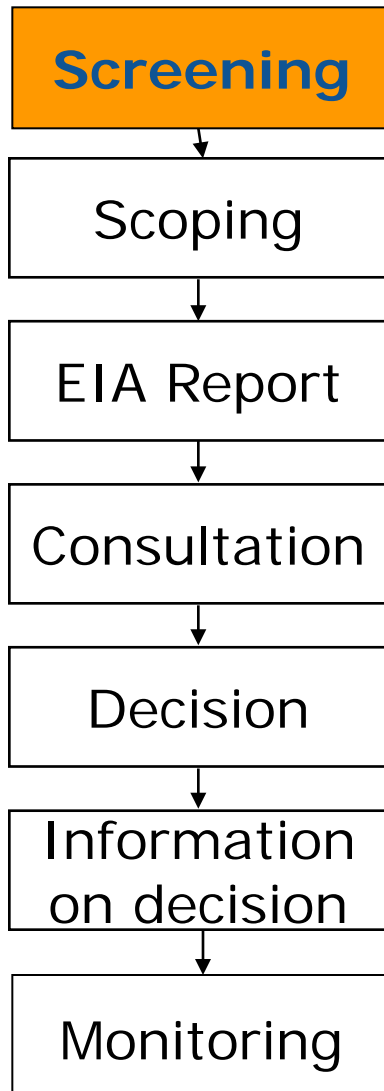
***EIA reports** are to be made more understandable for the public, especially as regards assessments of the current state of the environment and alternatives to the proposal in question.*

*The **quality and the content of the reports** will be improved. Competent authorities will also need to prove their objectivity to avoid **conflicts of interest**.*

Main changes (3)

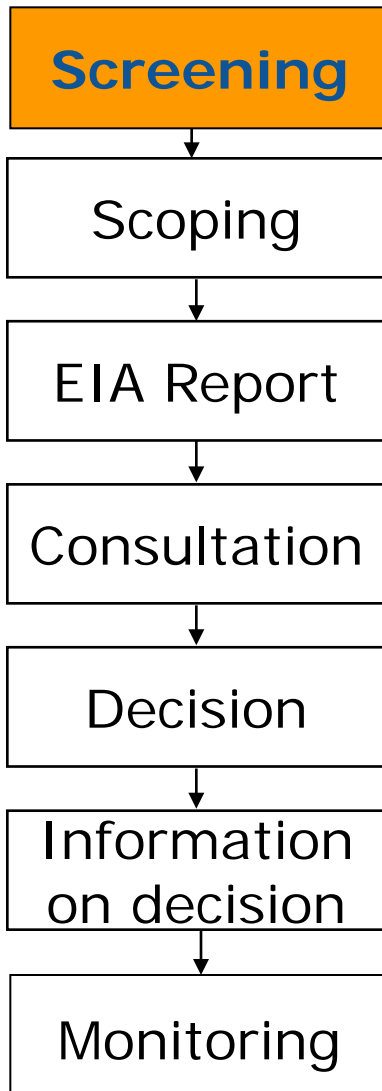
*The grounds for **development consent decisions** must be clear and more transparent for the public. Member States may also set timeframes for the validity of any reasoned conclusions or opinions issued as part of the EIA procedure.*

*If projects do entail significant adverse effects on the environment, developers will be obliged to do the necessary to avoid, prevent or reduce such effects. These projects will need to be **monitored** using procedures determined by the Member States. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs.*



Screening principles

- **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)).
- List of information to be provided **by the developer** (Art.4(4) and Annex II.A).
- **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).
- **Time-frame** for the screening decision (Art. 4(6)):
 - ✓ 90 days (from the date on which the developer has submitted all the requested information).
 - ✓ Possibility for extension in exceptional cases (in writing, informing the developer of the reasons for the extension and the expected new date).



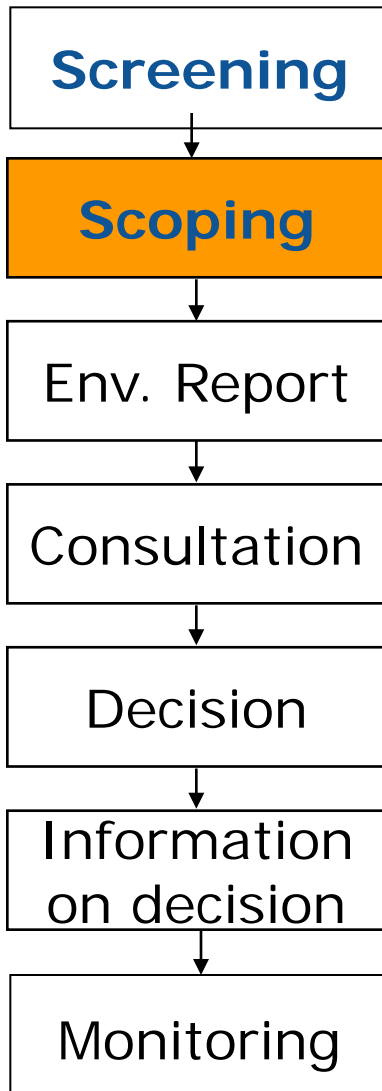
Screening – Annexes II.A & III

■ 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).

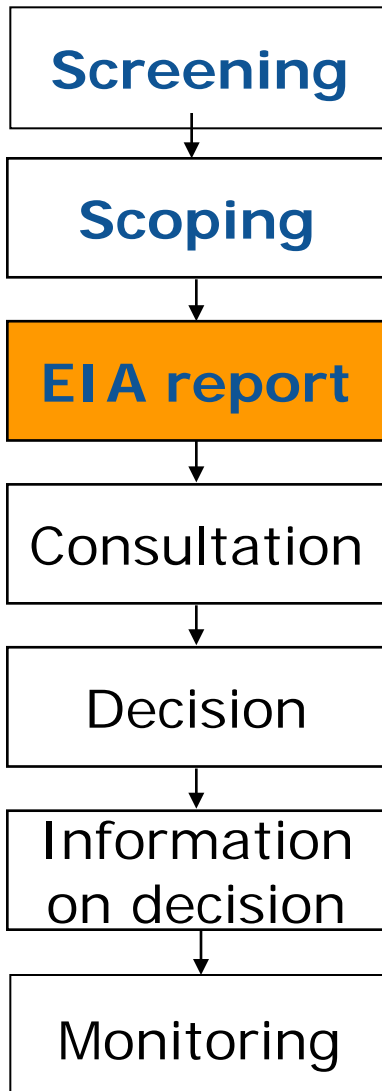


Scoping – Art.5(2)

Scoping is the process of determining the content and extent of the matters which should be covered in the environmental information to be submitted to a competent authority for projects which are subject to EIA.

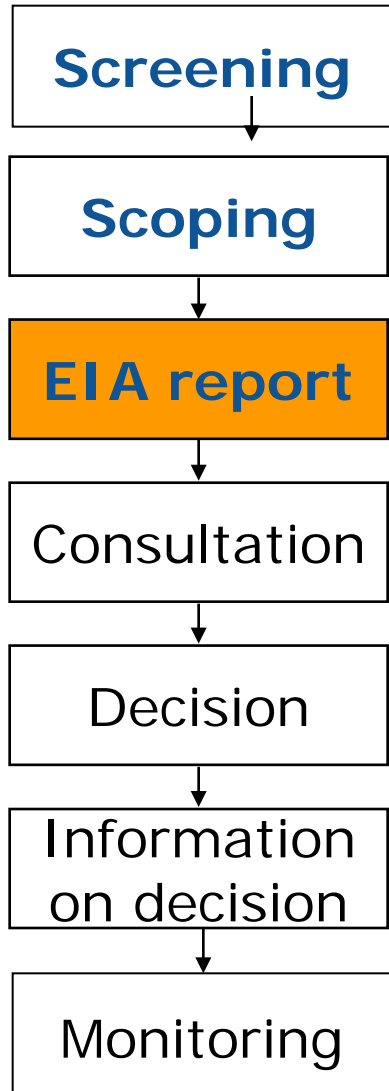
Very few changes:

- Voluntary character unchanged.
- 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 authorities needed.



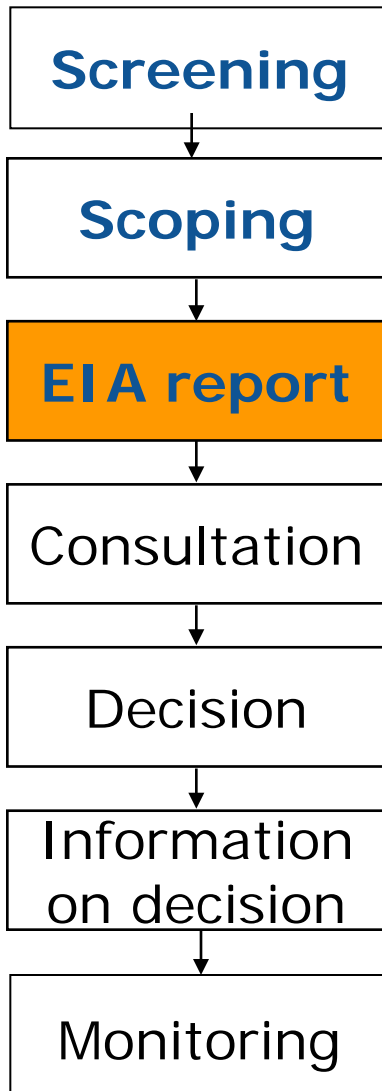
Information of the EIA Report – Art.5(1)

- Mirroring the changes in Article 3 (scope of EIA).
- 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;
 - ✓ 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;
 - ✓ additional information specified in Annex IV.



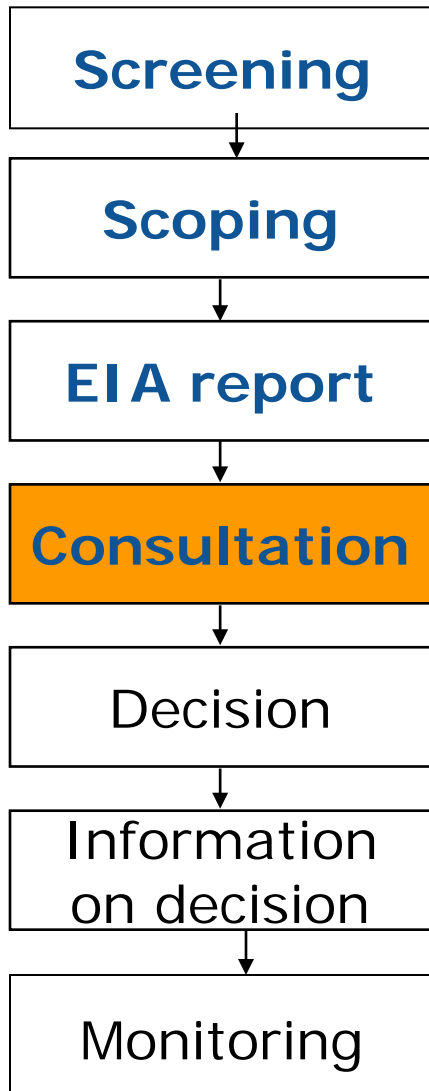
New elements in the information of the EIA Report – Annex IV

- 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).



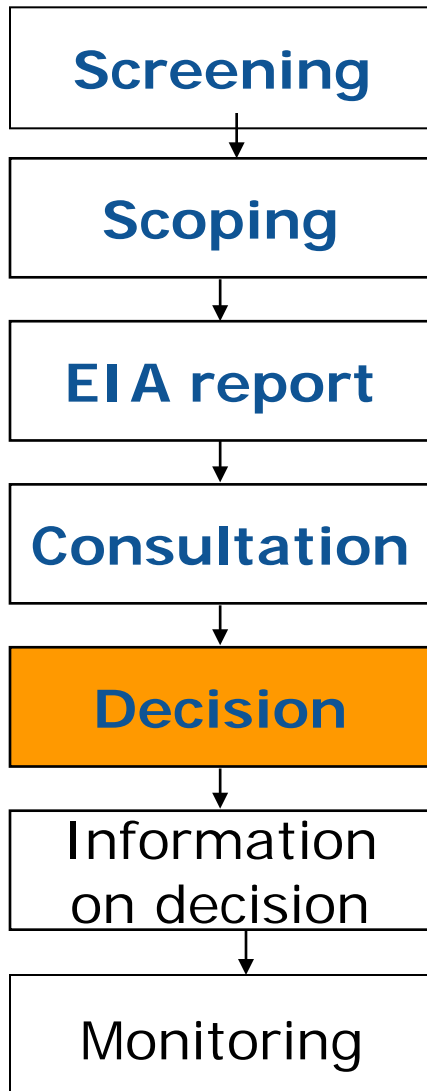
NEW: Quality of the EIA Report – Article 5(3)

- 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.



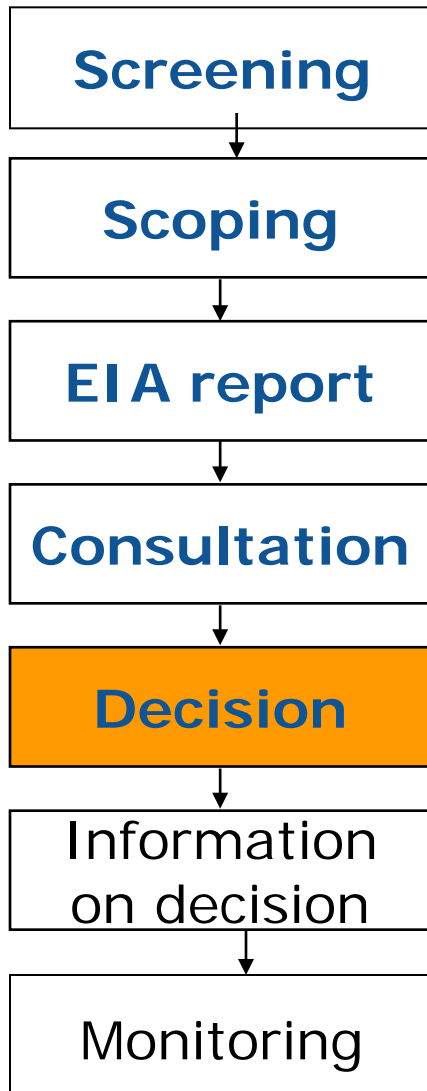
Consultation – Articles 6 and 7

- Broadened scoped: 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)).



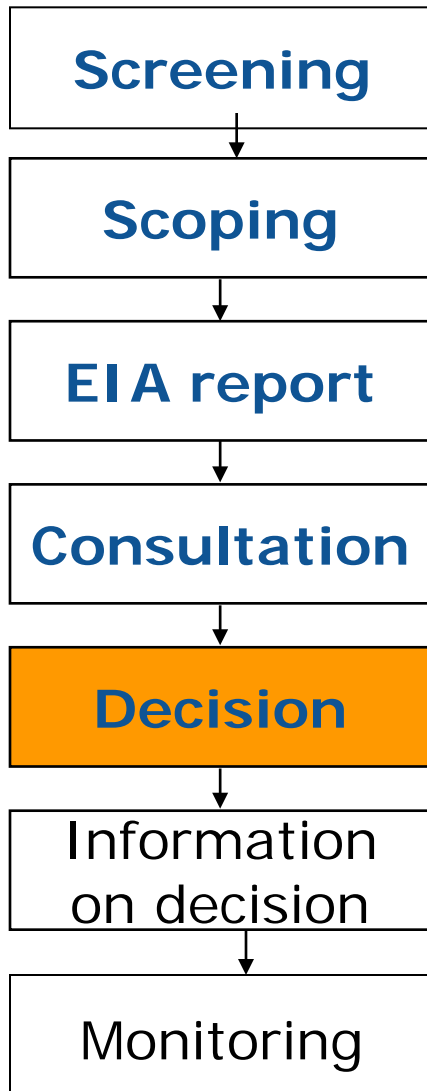
Final decision – Articles 8 and 8a

- 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.



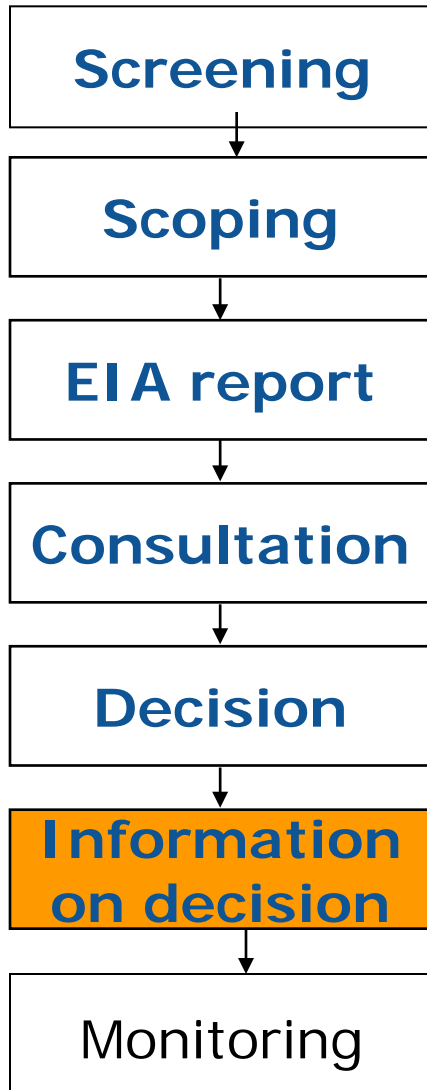
NEW: Conflict of interest (Article 9a)

- Obligation for MS 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).



NEW: EIA one-stop shop (Art.2(3))

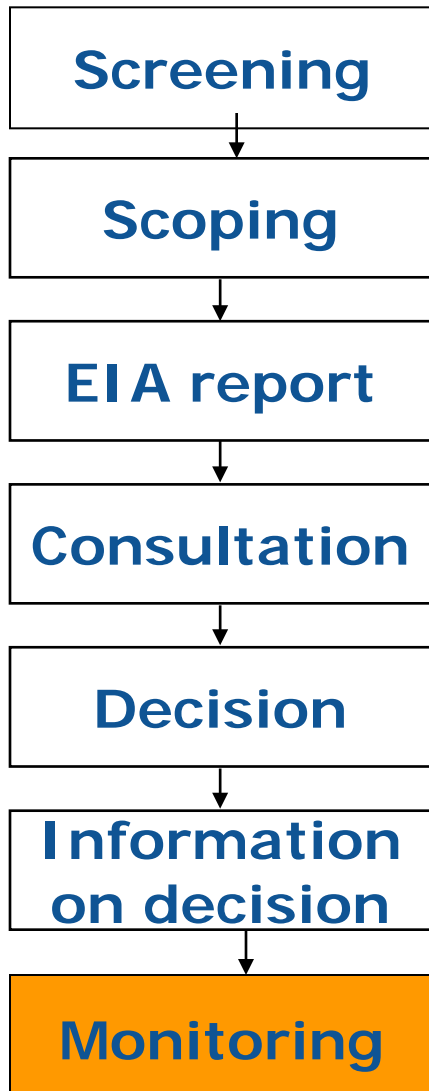
- Coordinated/integrated procedure, *where appropriate*, for assessments under EIA and/or Habitats/Birds Directives (only!).
- For assessments under EIA and other Union legislation (e.g. SEA, Water Framework, IED, Waste Framework, Seveso, listed in recital 37) possibility to apply one-stop shop.
- Short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

- **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(3)):
 - ✓ 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 to the Commission (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).

Transitional provisions – Art. 3 of Directive 2014/52/EU

- Projects for which the screening was initiated before 16 May 2017 shall be subject to the provisions of Directive 2011/92/EU (i.e. current regime).

- Projects for which:
 - the scoping was initiated or
 - the EIA report was submitted by the developerbefore 16 May 2017 shall be subject to the provisions of Directive 2011/92/EU (i.e. current regime).

Important dates

25 April 2014 – publication in OJ

16 May 2014 – entry into force of Directive 2014/52/EU

Till 16 May 2017 – transposition/application in Member States

Text of Directive 2014/52/EU: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.124.01.0001.01.ENG

**Unofficial consolidated text:
http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informa_l.pdf**