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## REPORT FROM THE COMMISSION

of the

### IMPLEMENTATION OF DIRECTIVE 85/337/EEC

on the assessment of the effects of certain public  
and private projects on the environment

and annex for the UNITED KINGDOM

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**IMPLEMENTATION OF DIRECTIVE 85/337/EEC**

on the assessment of the effects of certain public  
and private projects on the environment

and annex for the UNITED KINGDOM

Directorate-General for Environment,  
Nuclear Safety  
and Civil Protection

with the assistance of

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# **1. INTRODUCTION**

## **1.1 Terms of reference of the Review**

Article 11 of Directive 85/337/EEC (hereafter called the 'EIA Directive') provides that 'five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness'. The Directive was notified to the Member States on 3 July 1985 and the five year period, to which Article 11 refers, ended on 3 July 1990. However, due to some delays in implementation, the Commission decided to extend, by one year, the period to be covered by the report. The Review, upon which this report has been based, therefore covers the period up to the beginning of **July 1991**, i.e. 6 years since the Directive was first notified to Member States.

Since the process of implementing the Directive is a continuing one this report does not claim to describe the current state of it's implementation. However, where the information exists on subsequent developments (July 1991-March 1992) in formal compliance, this has been summarised in postscripts to the Member State annexes concerned (see 1.2 below)

The Commission decided that the Review should mainly focus upon the following topics:

1. The extent of formal compliance by Member States with the requirements of the EIA Directive.
2. The criteria and/or thresholds adopted by Member States for the selection of Annex II projects to be subject to assessment.
3. The nature and extent of practical compliance by Member States with the requirements of the Directive.

4. Key aspects of EIA practice (notably use of scoping, review of EIA studies, monitoring of implementation and post-auditing of EIA studies, provision of guidelines, and provision of training facilities).
5. Overall assessment of the effectiveness of the Directive's implementation, and difficulties in its implementation.

## **1.2 Structure of the Review**

The Review is presented in two parts:

Part 1: The Report

Part 2: The Member State Annex

The Report contains the principal findings and recommendations and incorporates a comparative analysis of the implementation of the EIA Directive in each of the twelve Member States up to July 1991. Chapter 2 briefly explains the purpose and main provisions of the Directive. The structure of the remainder of the Main Report closely follows the main topics addressed in the Review:

- formal compliance (including the coverage of Annex II projects): topics 1 and 2 in the Review (Chapter 3);
- practical application: topics 3 and 4 in the Review (Chapter 4);
- final considerations and action to be taken: topic 5 in the Review (Chapters 5 ).

The Member State Annex contains a short Introduction followed by separate chapters reviewing the implementation of the EIA Directive in each of the twelve Member States. The annexes have all been prepared according to a common brief which covers five main topics.

These are:

- the extent of formal compliance by the Member State concerned with the requirements of the Directive;
- the criteria and/or thresholds adopted by the country for the selection of Annex II projects to be subject to assessment;



- the nature and extent of practical compliance with the Directive;
- specific aspects of the Directive's translation into Member States legislation and practice; and
- an overall assessment of the effectiveness of the Directive's implementation in that country.

The annexes cover the same topics but, because of differences in the nature of the material to be presented, it has been more appropriate to use a different format, though one which is still easy to follow. A number of the Annexes conclude with a postscript listing subsequent regulatory changes, July 1991-March 1992.

Each annex has been prepared with the assistance of one or more consultants with a specialist knowledge of the application of EIA in the Member State concerned. The editors of this volume are very grateful to each of them for the professionalism and dedication with which they undertook this task. In preparing each Member State annex, the consultants have examined the relevant literature, drawn upon their own experience and, of especial importance, consulted widely to draw upon the experience and opinion of others. Consultations have been held with the Ministry of the Environment (or its equivalent) in each Member State and with other governmental offices and representatives of the other major types of organisations involved in the EIA process (developers, consultancies, competent authorities, environmental authorities and environmental interest groups). A high level of co-operation has been experienced from environmental ministries and from the great majority of those who were approached for assistance. Both the editors and the consultants have valued the help that they have received and wish to record their warm appreciation for this.

In carrying out these reviews, there has been a conscious attempt to collect information, experience and opinion from different perspectives, recognising that it was unlikely to find a single truth about EIA implementation. In the writing of their annexes, a genuine attempt has been made by the consultants to present an objective synthesis of the available information and a balanced evaluation of the Directive's implementation. Inevitably, not everyone who has been consulted will agree with every element of that synthesis and evaluation. It should therefore, be made clear that the content of each of the

annexes is the primary responsibility of the respective local consultant(s) and that those who others were consulted in its preparation do not necessarily endorse all that is contained there. Equally however, it is hoped that each will be accepted as a considered and informative assessment which can be constructively used in improving EIA practice in the future.

## **2. THE EIA DIRECTIVE**

### **2.1 Purpose and main characteristics of the Directive**

Directive 85/337/EEC (the 'EIA Directive') is designed to ensure that an environmental impact assessment is undertaken of certain projects and that this assessment is taken into account before those projects are approved and implemented. It is a relatively short legal instrument comprising 14 Articles and 3 Annexes but, as will be seen, it has wide ramifications both for the implementation of the Community's environmental policy as a whole and for the pursuit of sustainable development. In certain respects it has the character of a framework law. It establishes basic assessment principles and procedural requirements and then allows Member States considerable discretion in the details of their transposition into national legislation, provided these basics are respected.

The EIA Directive possesses three features of importance to modern environmental policy:

- 1. It is an anticipatory instrument. Successive Action Programmes of the European Communities on the Environment (Commission of the European Communities, 1973, 1977, 1983, 1987) have emphasised that 'the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects' (Preamble to the EIA Directive). One of the major purposes of the EIA Directive is to ensure that the environment is taken into account at the earliest possible stage in the planning and decision-making processes for certain projects.
- 2. It is an integrative instrument in two distinct, but complementary, senses:
  - Firstly, it covers impacts upon all environmental media and receptors. It uses a multi-media approach to environmental planning and management, which takes account of interactions between effects on the different environmental media;

- Secondly, it integrates environmental impact assessment into project planning and implementation within the major economic sectors. This is in accordance with Article 130R of the Treaty that ‘environmental protection requirements are to be a component of the Community’s other policies.’ As such, it is an instrument for achieving sustainable development.
  
- 3. It is both a technically-based and participative instrument. It requires the collection, analysis and use of sound scientific and technical data. However, it also recognises the importance of consulting environmental authorities and the general public, as part of the process of assessing the significance of a project’s environmental impacts and taking these into account when approving it.

Inevitably, the broad character of the EIA Directive has influenced the amount of time needed to approve and implement it. The breadth of its application means that it has implications for many different government departments, public authorities, and authorization procedures. The provisions relating to consultation require greater ‘openness’ in some of the procedures to be followed than was practised previously. Anticipatory and multi-media assessments involve some changes in approach and working practices among those professionally involved.

The initial, preparatory studies relating to the proposal for an EIA Directive were undertaken in 1975/6 and it was formally adopted as a Commission proposal in 1980. However, it was not until 1985 that it was finally approved by the Council of Ministers. This, however, did not signal the end of the process of adoption, but rather the beginning of gaining acceptance for the details of its transposition into national legislation and, ultimately of far greater importance, its satisfactory application in practice. Compliance, in both these aspects, was bound to take some time, given the nature and breadth of the changes which the Directive required, and this has to be taken into consideration in evaluating the progress made since 1985. Also, whilst the ‘framework’ nature of the Directive has, from one perspective, made the task of implementation easier - by giving Member States more flexibility in adjusting their existing procedures - its broad nature has, perhaps inevitably, entailed some

uncertainty over the precise interpretation to be placed upon the basic assessment principles and procedural requirements which have to be satisfied. This also needs to be taken into account when reviewing progress.

## 2.2 Main provisions of the Directive

This sub-section describes the main provisions of the EIA Directive, in order to show how these are sequentially linked in establishing an EIA process<sup>1</sup>, and to indicate how, in turn, this is related to the process of project planning, authorization and implementation of which it forms an integral part. The main provisions of the Directive are described in outline only and are not intended to provide a definitive legal interpretation of the Directive. Rather, the intention is to provide an overview of the Directive's requirements and intentions against which the achievements of Member States since 1985, in its formal transposition into national legislation and practical application, can be evaluated. To assist in this, cross-references are made to the Directive's articles and annexes, and to Figure 2.1 which locates the Directive's key requirements within the project planning and EIA processes to which they relate.

The Directive places a general obligation on each Member State to ensure that, before consent is given, projects likely to have significant effects on the environment ... are made subject to an assessment and that this assessment is integrated into the consent procedure (Articles 2(1) and 2(2)). Exclusions and exemptions from this general obligation are limited (Article 1(5) and Article 2(3)). Projects listed in Annex I are subject to this requirement, (Article 4(1)). Projects listed in Annex II are also subject 'where Member States consider their circumstances so require' (Article 4(2)). In interpreting this requirement (which must be undertaken within the framework of the general obligation stated above), Member States may, *inter alia*, specify certain types of projects or establish criteria and/or thresholds to determine which projects should be subject to this requirement (Article 4(3)).

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<sup>1</sup> In this Main Report, the term 'Environmental Impact Assessment' (EIA) is used to describe the environmental assessment process as a whole. 'Environmental Impact Statement' (EIS) is used to describe the environmental assessment information to be supplied by the developer at one stage in that process (see Figure 2.1). The actual terminology used in the different Member States, particularly when referring to the EIS, varies considerably.

The types of environmental impacts to be covered in assessments are defined in Article 3, which recognises that the actual coverage (or scope) of impacts should take account of the circumstances of the individual case. The Directive does not specify how, procedurally or methodologically, the scope of each assessment should be determined; this is left to Member States to decide. Similarly, the Directive does not specify when the assessment should begin, though its Preamble records 'the need to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes'; the timing of the start of the assessment process is also left to Member States to decide.

The responsibility for preparing each EIS rests with the developer of the project (Article 5(1)). The manner in which this is to be prepared is not prescribed in the Directive. However, in order to facilitate its preparation, the Directive provides that 'where they consider it necessary', Member States should ensure that the authorities holding relevant information make this available to the developer (Article 5(3)).

The developer is obliged to supply the competent authority responsible for the authorization of his project with the resulting information as specified in Articles 5(1) and 5(2) and Annex III. The information supplied must meet the requirements of Article 5(1) and Annex III whilst, in so doing, must not in any individual case contain less information than is specified in Article 5(2).

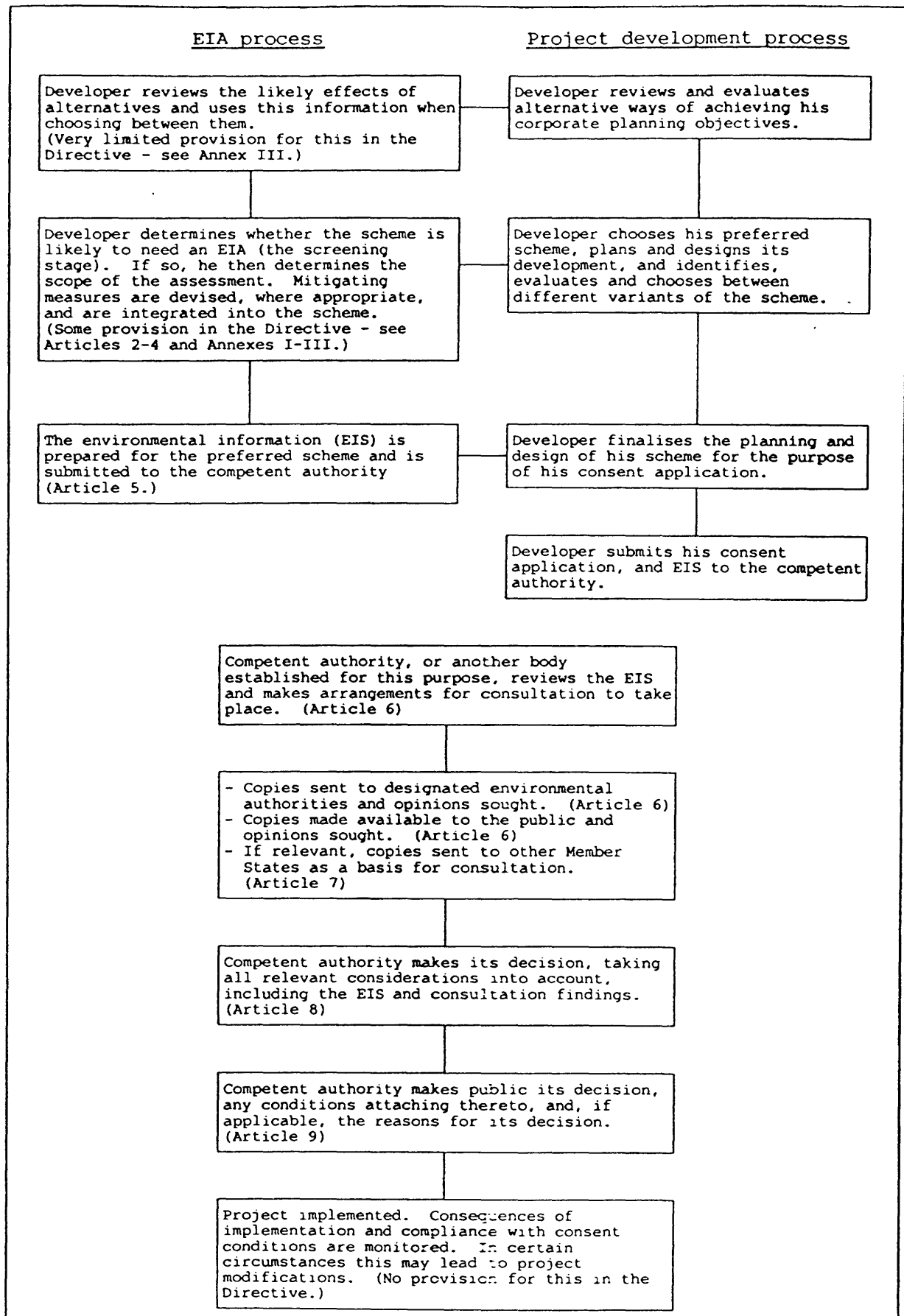
The form in which the information is to be supplied is not specified in the Directive. In practice, it is frequently supplied in a self-contained document (often called an environmental impact statement (EIS) or by a similar name). Alternatively, the information is included with the other documentation required by the consent procedure (to simplify the exposition, the term 'EIS' is also often used in this report to include such cases). There is no provision in the Directive for checking the completeness or quality of the information that has been submitted; such matters are for the Member States to decide.

The Directive provides for the above information to be made available to designated environmental authorities, the public and (in specified circumstances) other Member States as a basis for consultation. Member States are required to designate the environmental

authorities who shall receive copies of the environmental information and who must be consulted for their opinion on the consent application (Article 6(1)). Similarly, Member States must ensure that both the consent application and the environmental information are made available to the public and that the 'public concerned' is given an opportunity to comment before the project is initiated (Article 6(2)). The detailed arrangements relating to the above are to be determined by the Member States but the Directive does provide general guidance on the matters they might cover (Article 6(3)). Additionally, Member States are required to provide the above information, as a basis for consultations, to another Member State where the project is likely to have significant effects on its environment (Article 7).

The Directive requires that both the information provided by the developer, and the information supplied as a result of the consultations, must be 'taken into consideration' within the consent procedure (Article 8). The procedures and methods by which this is done, and the stages in the consent procedure at which this takes place, are not specified; these are matters to be decided by the Member States. The Directive requires, when the competent authority has reached a decision on the consent application, that the public (and any Member State that was consulted under Article 7) be informed and that any conditions attached to that decision also be made public. In certain circumstances, the reasons upon which the decision has been based should also be provided (Article 9).

**Figure 2.1 A simplified flow chart of the EIA process and its relationship to project appraisal, authorization and implementation**





The Directive does not provide for monitoring the implementation of the project and its resulting environmental impacts; such arrangements are matters for the Member States to decide.

It is apparent that the purpose of the Directive is much broader than carrying out assessment studies and preparing EISs. Its intent is to establish an EIA process and to integrate this into existing arrangements for project appraisal, approval and implementation. It establishes a number of the principal components of that process and the main forms of their integration but leaves the determination of the details of these and of other components in the process to the discretion of the Member States. This is illustrated in Figure 2.1. Success in fully achieving the Directive's purpose depends not only on formal compliance with the letter of its requirements by Member States, but also on broader practical compliance with the 'spirit' of what it attempts to achieve.

### **3. FORMAL COMPLIANCE**

#### **3.1 Introduction**

This chapter reviews the extent to which, by July 1991, Member States had transposed the requirements of the EIA Directive into their national laws; that is, the extent to which Member States had formally complied with its provisions. Issues relating to practical compliance, that is the extent to which the Directive's provisions are being satisfactorily implemented in practice, are examined in Chapter 4.

Member States use a variety of legal instruments in the transposition of Community Directives, and describe these in a variety of terms - laws, ordinances, decrees, regulations, mandatory circulars, etc. Frequently, because of the broad scope of the EIA Directive, transposition involves the approval of a number of new laws, regulations, etc., as well as amendments to existing legal instruments. Additionally, in Member States with federal constitutions, these legal instruments may be promulgated and/or amended by both national and regional authorities. Therefore, the legal measures to be taken by Member States to achieve full formal compliance with Directive 85/337/EEC may be quite extensive. Member States also issue guidance to assist in the interpretation and application of these legal instruments. These also are described in different terms - guidance notes, circulars, etc. However, whilst they may be very influential, they are, in the final analysis, non-mandatory in nature. Case law of the European Court of Justice has established that such administrative forms of communication are not generally a satisfactory means of transposing the obligations contained in Directives into national systems.

The numbers of complaints, petitions and questions raised in the European Parliament relating to the EIA Directive which have been received and processed by the Commission's Services are summarised in Appendix 2. This Directive has attracted a greater annual number of complaints, etc., than the average for all environmental directives and, since 1988, the numbers of complaints, etc., relating to this Directive, have increased each year.

This Review of formal compliance is separate from the procedure for dealing with these complaints. Its purpose is to identify the principal legal measures by which Member

States have attempted to implement the EIA Directive, to evaluate the overall extent to which formal compliance has been achieved within the Community and to highlight any principal deficiencies in formal compliance which remain to be addressed.

### 3.2 Legal measures to comply with the Directive

Table 3.1 summarises the principal legal measures implemented by each Member State to comply with Directive 85/337/EEC<sup>2</sup>. Fuller details are provided in the Member State annexes in the second volume of this Report. All Member States, with the exception of France, have approved some new legal measures since the EIA Directive was agreed in 1985, and France had previously enacted a number of EIA measures. As the Table shows, by July 1991 most Member States had introduced more than one legal measure and some had implemented a considerable range of EIA measures.

**Table 3.1 Summary list of principal legal measures by Member States to implement the EIA Directive (July 1991)**

<u>Member State</u>	<u>Laws, regulations, decrees, etc.</u>
Belgium	Flanders: • Environmental Licence Decree of 28 June 1985. • Administrative Order of 23 March 1989 concerning EIA for certain types of industrial projects. • Administrative Order of 23 March 1989 concerning EIA for certain types of infrastructure related projects. • Four Administrative Orders amending the existing building permit procedures. Wallonia: • Decree of 11 September 1985 concerning the assessment of impacts on the environment in the Walloon Region. • Administrative Order of 19 July 1990 implementing the EIA Decree of 11 September 1985.
Denmark	• Executive Order No. 379, 1 July 1988 concerning the environmental assessment of major projects in coastal waters. • Amendment of the Environmental Protection Act, No. 216, 5 April 1989. • Executive Order No. 446, 23 June 1989 concerning the assessment of the impact of major projects on the environment. • Executive Order No. 119, 26 February 1991 on environmental approval of activities covered by EIA in the National and Regional Planning Act. • Planning Act No. 388, June 1991.
France	• Law No 76-629 10/07/76 regarding the protection of nature. • Law No 76-663 19/07/76 regarding the protection of nature (classified industrial installations). • Decree No 77-1133 21/09/77 for industrial installations. • Application Decree No 77-1134 21/09/77 for the law relating to the protection of nature. • Application Decree No 77-1141 12/10/77 for the law relating to the protection of nature. • Law of 12/07/83 regarding public enquiries. • Decree No 85-453 23/04/85 relating to the application of the law of 12/07/83.
Germany	Federal: • Act on the Implementation of the Council Directive of 27 June 1985 on the Assessment of the Effects of Certain Public and Private Projects on the Environment (85/337/EEC) of 12 February 1990 (and consequential changes to eleven other Federal Acts). • Amendment to the Federal Mining Act of 12 February 1990 and Statutory Ordinance for Environmental Impact Assessment for Mining Projects of 12 July 1990. • Amendment to the Federal Land-Use Planning Act of 11 July 1989 and Statutory Ordinance to the Federal Land-Use Planning Act of 3 December 1990. Länder: Legal measures by individual Länder - Bavaria (1990), Hessen (1990), Saarland (1991), Schleswig-Holstein (1991).
Greece	• Presidential Decree 1180/81, ΦΕΚ 293 Α/81. • Law 1650/86 for the Protection of the Environment, ΦΕΚ 160 Α/86. • Ministerial Decision 69269/5387/25-10-90, ΦΕΚ 678 Β/90. • Ministerial Decision 75308/5512/26-10-90, ΦΕΚ 691 Β/90.

<sup>2</sup> France, Greece and Ireland enacted some EIA legislation prior to 1985 and these legal measures have been included in the table. A number of other Member State have also enacted more specialised environmental protection measures (see, for example, the Member State annex for Denmark for further details). These, because of their less comprehensive nature, are not regarded as EIA legal measures for the purposes of this comparative review. However, it is recognised that in certain cases they may collectively cover some of the features of an EIA system. This should be taken into consideration in the interpretation of the tables and other data which follow.

Ireland	<ul style="list-style-type: none"> <li>Local Government (Planning and Development) Regulations, 1977. (SI No.65 of 1977).</li> <li>European Communities (Environmental Impact Assessment) (Motorways) Regulations 1988. (SI No. 221 of 1988).</li> <li>Local Government (Roads and Motorways) Act, 1974 (Prescribed Forms) (Amendment) Regulations, 1988. (SI No. 222 of 1988).</li> <li>European Communities (Environmental Impact Assessment) Regulations, 1989. (SI No. 349 of 1989).</li> <li>Local Government (Planning and Development) Regulations, 1990. (SI No. 25 of 1990).</li> <li>Fisheries (Environmental Impact Assessment) Regulations, 1990. (SI No. 40 of 1990).</li> <li>Fisheries (Environmental Impact Assessment) (No. 2) Regulations, 1990. (SI No. 41 of 1990).</li> <li>Gas Act 1976 (Sections 4 and 40A) Regulations, 1990. (SI No. 51 of 1990).</li> <li>Air Navigation and Transport (Environmental Impact Assessment) Regulations, 1990. (SI No. 116 of 1990).</li> <li>Petroleum and Other Minerals Development, 1960. (Section 13A) Regulations, 1990 (SI No. 141 of 1990).</li> <li>Foreshore (Environmental Impact Assessment) Regulations, 1990. (SI No. 220 of 1990).</li> <li>Arterial Drainage Acts, 1945 and 1955. (Environmental Impact Assessment) Regulations, 1990. (SI No. 323 of 1990).</li> </ul>
Italy	<p><b>National:</b></p> <ul style="list-style-type: none"> <li>Law n.349, 8th July 1986, Regulations governing environmental damage, and establishment of Environmental Ministry.</li> <li>Decree of President of Council of Ministers n.377, 10th August 1988, Regulations governing ruling on environmental compatibility in accordance with article 6 of Law n.349, 8th July 1986.</li> <li>Decree of President of Council of Ministers, 27th December 1988, Technical regulations for the drawing up of the studies of environmental impact study and the formulation of the judgement of compatibility in accordance with article 6 of law 8 of 8th July 1986 n.349, adopted in accordance with article 3 of the Decree n.377 of 10th August 1988.</li> <li>Law n.142, 8th June 1990 Reform of Local Bodies.</li> <li>Law n.241, 7th August 1990, New rules concerning the administrative procedures and the access to administrative documents.</li> </ul> <p><b>Regional:</b></p> <ul style="list-style-type: none"> <li>Autonomous Province of Trento, Law n.28, 29th August 1988.</li> <li>Veneto Region, Law n.33, 16th April 1985, modified by Law n.28, 23rd April 1990.</li> <li>Abruzzo Region, Law n.66, 9th May 1990.</li> <li>Autonomous Region of Friuli Venezia Giulia, Law n.114, 25th July 1990.</li> <li>Autonomous Region of Valle d'Aosta, Law n.6, 4th March 1991.</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>Law of 9 May 1990 relating to the control of dangerous, dirty or noxious installations.</li> <li>Grand-ducal regulation of 18 May 1990 determining the list and the classification of dangerous, dirty or noxious installations.</li> <li>Grand-ducal regulation of 18 May 1990 appointing experts and agents to investigate and verify infringements of the law and implementing regulations relating to classified installations.</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>Environmental Protection (General Provisions) Act (Wabm), Extension, April 1986.</li> <li>Environmental Impact Assessment Decree, May 1987.</li> <li>Notification of Intent Environmental Impact Assessment Decree, July 1987.</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>Law n° 11/87, Portuguese Environmental Act.</li> <li>Decree-Law n° 186/90, EIA Process.</li> <li>Decree-Regulation n° 38/90, EIA Process.</li> <li>Decree-Law n° 109/91, Licensing procedures for industrial activity.</li> <li>Decree-Regulation n° 10/91, Licensing procedures for industrial activity.</li> </ul>
Spain	<p><b>National:</b></p> <ul style="list-style-type: none"> <li>Legislative Royal Decree 1302/1986 of 28 June.</li> <li>Royal Decree 1131/1988 of 30 September.</li> <li>Act 25/1988 relating to highways.</li> <li>Act 4/1989 on the conservation of natural areas and wildlife.</li> </ul> <p><b>Regional:</b></p> <ul style="list-style-type: none"> <li>Decree 4/1986, Baleares.</li> <li>Act 1/1987, Asturias.</li> <li>Order, 12 July 1988, Andalucía.</li> <li>Decreets 192/1988, 118/1989, 148/1990, Aragón.</li> <li>Decree 114/1988, Cataluña.</li> <li>Decree 245/1988, Navarra.</li> <li>Decree 269/1989, Castilla y León.</li> <li>Decree 27/1989, País Vasco.</li> <li>Act 2/1989, Decree 162/1990, Valencia.</li> <li>Decree 442/1990, Galicia.</li> <li>Act 11/1990, Islas Canarias.</li> <li>Decree 50/1991, Cantabria.</li> <li>Decree 45/1991, Extremadura.</li> <li>Act 10/1991, Madrid.</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI No. 1199).</li> <li>Environmental Assessment (Scotland) Regulations 1988 (SI No. 1221).</li> <li>Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988 (SI No. 1218).</li> <li>Environmental Assessment (Afforestation) Regulations 1988 (SI No. 1207).</li> <li>Land Drainage Improvement Works (Assessment of Environmental Effects) Regulations 1988 (SI No. 1217).</li> <li>Highways (Assessment of Environmental Effects) Regulations 1988 (SI No. 1241).</li> <li>Harbour Works (Assessment of Environmental Effects) Regulations 1988 (SI No. 1336).</li> <li>Town and Country Planning General Development Order 1988 (SI No. 1813).</li> <li>Town and Country Planning (General Development) (Scotland) Amendment Order 1988 (SI No. 977).</li> <li>Town and Country Planning (General Development) (Scotland) Amendment No. 2 Order 1988 (SI No. 1249).</li> <li>Harbour Works (Assessment of Environmental Effects) (No. 2) Regulations 1989 (SI No. 424).</li> <li>The Town and Country Planning (Assessment of Environmental Effects) (Amendment) Regulations 1990 (SI No. 367).</li> <li>The Electricity and Pipe-line Works (Assessment of Environmental Effects) Regulations 1990 (SI No. 442).</li> <li>The Roads (Assessment of Environmental Effects) Regulations (Northern Ireland) 1988 (SR No. 344).</li> <li>The Planning (Assessment of Environmental Effects) Regulations (Northern Ireland) 1989 (SR No. 20).</li> <li>The Environmental Assessment (Afforestation) Regulations (Northern Ireland) 1989 (SR No. 226).</li> <li>The Harbour Works (Assessment of Environmental Effects) Regulations (Northern Ireland) 1990 (SR No. 181).</li> </ul>

\* Fuller details are contained in the Member State annexes in the second volume of this report, which also lists additional legal measures implemented between July 1991 and March 1992.

Table 3.2 compares and analyses the dates at which these measures were approved. It shows that, whilst some measures were approved during the transitional period 1985-88 (e.g. in the Netherlands, Spain and certain Belgian regions), the main period of formal implementation has been in the post-July 1988 period and, particularly, during 1990-1. As will become apparent, the degree of formal compliance with the EIA Directive by the end of the transitional period was, for most Member States, very limited.

Despite substantially greater progress, between mid-1988 and mid-1991, the process of achieving formal compliance was not complete by July 1991. As Table 3.3 illustrates, there were a considerable number of additional legal measures still in the process of formulation and approval at that date. Additionally, there are some differences in interpretation (which will be explored later) about the extent to which the combination of

Table 3.2 Timing of legal measures to implement the EIA Directive (July 1985 - July 1991)

Member State	1985	1986	1987	1988	1989	1990	1991 (end June)
Belgium	Flanders: Decree Wallonia: Decree	-	-	-	Flanders: 6 Administrative Orders	Wallonia: Administrative Order	-
Denmark	-	-	-	Executive Order	Amendment of Act; Executive Order	-	Act; Executive Order
France	Decree	-	-	-	-	-	-
Germany	-	-	-	-	Act	2 Acts; Amendment to 11 other Acts and some Statutory Ordinances; 2 Länder Regulations	2 Länder Regulations
Greece	-	Law (implemented 1990)	-	-	-	2 Ministerial Decisions	-
Ireland	-	-	-	2 Regulations	Regulation	8 Regulations	-
Italy	-	Law (1 article)	-	2 Decrees; Regional Law	-	2 Laws; 3 Regional Laws	Regional Law
Luxembourg	-	-	-	-	-	Law; 2 Regulations	-
Netherlands	-	Act - extension	Decree; Notification of Intent	-	-	-	-
Portugal	-	-	Law	-	-	Decree-Law; Regulatory Decree	Decree-Law; Regulatory Decree
Spain	-	National Legislative Royal Decree; Regional Decree	Regional Act	National Royal Decree; Regional Act; Regional Order; 3 Regional Decrees	3 Regional Decrees; 2 Regional Acts	3 Regional Decrees; Regional Act	2 Regional Decrees; Regional Act
United Kingdom	-	-	-	11 Regulations	3 Regulations	3 Regulations	-

existing and proposed measures are likely to be sufficient to achieve satisfactory formal compliance.

**Table 3.3 Additional legal measures in the process of being approved, or envisaged, within the Member States (as at July 1991)**

Member State	Measures to remedy deficiencies
Belgium	Flanders: a new Administrative Order is anticipated to be in effect by 1-9-91, which will include, <i>inter alia</i> , the requirement for a public hearing for every industrial project subject to EIA; also the EIA report will have to be sent to the company safety committee and to the committees of neighbouring companies, where applicable. Wallonia: a new Administrative Order is anticipated to be in operation in the autumn of 1991, which will: contain an explicit list of projects to be subject to EIA, set out a common reporting format for the initial environmental evaluation, and cover transboundary effects. Brussels: a draft Ordinance has been prepared together with supporting discussion documents, and is undergoing legal review. Nuclear-related activities: a proposal exists to cover this type of development, possibly by a cooperation agreement between national government and regions.
Denmark	None is envisaged at present.
France	A decree is envisaged to make the non-technical summary mandatory, to change the provisions regarding competent authorities, and to cover transboundary effects. A ministerial order is being prepared which will specify the information required in an EIS, in compliance with Annex III of Directive. A strengthening of the status and influence of the "saisine" procedure (concerned with review) is also being considered. Possible longer term changes include setting up inspectorates, similar to those that exist for the "installations classées", for post-monitoring of the EIA.
Germany	Certain measures still to be adopted include the Statutory Ordinance to the Federal Immission Control Law (adopted by the cabinet, but still to be passed by the Bundesrat), the Statutory Ordinance to the Atomic Energy Act, and the General Administrative Provisions for the EIA Act (the guidelines and interpretation of the EIA Act). Various Länder-level legislation - state acts or statutory ordinances - have still to be adopted.
Greece	The Ministry of EPPP is to issue circulars (which will be binding) containing, <i>inter alia</i> , specific criteria and thresholds for Annex II projects.
Ireland	None is envisaged at present.
Italy	Law proposal n5181, "Regulations concerning the EIA procedure", was presented to Parliament on 25-10-90 - this will extend EIA to Annex II projects, with the regions being the competent authority; will include sectoral and territorial plans and programmes; will extend the public inquiry procedure to all Annex I projects; and will simplify administrative procedures. Other regional legislation is expected to follow, once the national legal arrangements are complete.
Luxembourg	A new draft regulation, "Draft grand-ducal regulation concerning the assessment of impacts on the environment of certain public and private projects", was submitted to Parliament in May 1991. It aims to cover current deficiencies relating to Annex I projects, the content of the EIA, transboundary information and cooperation, and EIA procedure and public participation for road building projects. Separate regulations will be prepared for those Annex II project types not covered by the draft regulation; these relate to land consolidation, afforestation and urban planning projects.
Netherlands	A Bill is to be sent to Parliament to delete the basis for exemption on the criterion of 'no serious harmful environmental consequences', to include the requirement to assess the individual Annex II activities to see if an EIS is necessary, and to include regulations for mandatory provision of information and consultation where transfrontier environmental effects are concerned. A change in the EIA Decree, so that there will be a screening procedure for the remaining Annex II projects, is also in preparation.
Portugal	None is envisaged at present.
Spain	None is envisaged at present at the national level. Some further legislation may be enacted by the Regions.
United Kingdom	The Drainage (Environmental Assessment) Regulations (Northern Ireland), and The Environmental Assessment (Discharges to Water) Regulations (Northern Ireland).

Failures to achieve satisfactory compliance, six years after the Directive was approved, are an obvious major source of concern.

### 3.3 Projects covered by the Directive

Subject to the exemption for projects approved by Acts of Parliament, the Directive provides that all projects which are likely to give rise to significant environmental impacts should be subject to environmental impact assessment. These projects, as previously

explained, may fall within the classes of projects listed in Annex I or in Annex II of the Directive.

Other than in individually determined, exceptional cases, all projects on the Annex I list must, according to the Directive, be subject to EIA. The extent to which Member States formally complied with this requirement, by July 1991, is summarised in Table 3.4. In the majority of cases, it would seem that formal compliance was broadly satisfactory. However, in four cases (Belgium, Germany, Luxembourg and the Netherlands) formal compliance was incomplete. The reasons for this differ. In the case of Belgium and Luxembourg it is due to the absence of national EIA legislation; in the case of Germany it is due to the delay in approving a statutory ordinance; and, in the case of the Netherlands, it is due to the use of thresholds excluding certain Annex I projects from assessment. In each case, remedies are envisaged by the Member States concerned (see Table 3.4 and the relevant Member State annexes). Additionally, but less obviously, the coverage of Annex I projects may differ to some extent between Member States because they have interpreted the scope of the classes differently. In particular, it has been difficult to provide a generally-accepted definition of an 'integrated chemical installation'.

**Table 3.4 The coverage of classes of Annex I projects within Member State legislation**  
**(as at July 1991)**

<u>Member State</u>	<u>Coverage</u>	<u>Additional coverage proposed</u>
Belgium	All classes (except 2. nuclear related activities).	A proposal is expected to implement the Directive for nuclear related activities, possibly through a cooperation agreement between the national government and the regions.
Denmark	All classes.	None proposed at present.
France	All classes.	None proposed at present.
Germany	All classes covered by legislation, but not in force for all projects until the Statutory Ordinance is adopted.	None proposed at present.
Greece	All classes.	None proposed at present.
Ireland	All classes.	None proposed at present.
Italy	All classes.	None proposed at present.
Luxembourg	Only roads (included in class 7).	New draft legislation submitted to Parliament in May 1991, once adopted, will ensure coverage of all classes of Annex I projects.
Netherlands	All classes, but subject to thresholds in certain cases.	The new EIA Decree will remove the thresholds for Annex I categories.
Portugal	All classes.	None proposed at present.
Spain	All classes.	None proposed at present.
United Kingdom	All classes.	None proposed at present.

According to the Directive, Annex II projects are to be subject to an environmental impact assessment where Member States consider that their circumstances so require. In interpreting this, they are expected to have regard to the general obligation to subject to assessment all projects likely to have a significant environmental impact. In assessing the extent of Member State compliance with this requirement it is appropriate to consider two questions:

- Which categories and sub-categories in the Annex II project list are covered by Member State law?
- What criteria and/or thresholds, etc., apply in determining which projects within these categories and sub-categories should be subject to EIA?

Table 3.5 summarises the coverage of Annex II categories and sub-categories under Member State law as at July 1991. It demonstrates that the coverage varied greatly between the Member States:



- some countries (for example, France, Greece, Ireland and the United Kingdom) cover all categories and virtually all sub-categories of projects within them;
- Germany covers virtually all categories and includes 49 of the 81 sub-categories of projects within them;
- other countries (for example Italy, Denmark, Spain) cover a relatively small number of sub-categories, leaving a considerable number of broad categories of projects uncovered.

These differences are further accentuated by the fact that some Member States (e.g. the United Kingdom) interpret Annex II to include modifications to existing Annex II projects, if they are likely to give rise to significant environmental impacts, whereas a number of other Member States do not. Whilst some of the new measures proposed by Member States will assist in reducing the existing deficiencies and discrepancies between countries, many are likely to remain unless further remedial measures are taken.

**Table 3.5 The coverage of categories and sub-categories of Annex II projects within Member State legislation (as at July 1991)**

<u>Member State</u>	<u>Coverage</u>	<u>Additional coverage proposed</u>
Belgium	Some categories. Some sub-categories.	Wallonia: the new Administrative Order will contain a list of projects (more closely resembling the requirements of the EIA Directive) for which EIA will be mandatory.
Denmark	Category 6. Some sub-categories (1b, 1c, 2a, 2c, 2k, 2m, 3h, 11a, 11f).	None proposed at present.
France	All categories. Most sub-categories (all except 1b).	None proposed at present.
Germany	All categories. Many sub-categories (1a, 1c-f, 1h, 2b-m, 3a-b, 3f-j, 4a-b, 4d, 4g, 4k, 6a-b, 7h, 8e, 10d-h, 10j, 11a, 11c-f).	Länder-level legislation may lead to more sub-categories of Annex II projects being subject to EIA.
Greece	All categories. All sub-categories.	None proposed at present.
Ireland	All categories. All sub-categories (except 1a).	None proposed at present.
Italy	No categories. Some sub-categories (10f).	Adoption of law proposal n.5181 will extend EIA requirement to all categories and sub-categories of Annex II projects. Other regional legislation may also achieve this.
Luxembourg	No categories. Some sub-categories or equivalents.	The new draft regulation will cover a number of Annex II projects. Special regulations will be formulated, by the Ministry of the Environment, to cover land consolidation projects, afforestation, and urban planning projects.
Netherlands	Category 9. Some sub-categories or equivalents (1a-c, 1h, 2a-e, 2j, 3a-c, 3e, 3h, 3i, 4b, 4k, 6a, 10a-b, 10d-j, 11a, 11c, 11e).	Regulations included in the new Bill will require a screening procedure for the individual activities covered by Annex II, to consider whether an EIS should be prepared. A change in the EIA Decree, is also in preparation, so that there will be a screening procedure for the remaining Annex II projects not covered at present.
Portugal	No categories. Some sub-categories (1a-f, 2c-h, 2m, 3b, 3d, 3g, 3i, 7f, 8c, 10b, 10f, 10h, 10j, 11a).	None proposed at present.
Spain	At national level, no categories. Some sub-categories (1d, 2e, 2j, 10d, 10f, 10j). At regional level, some additional categories and sub-categories.	None proposed, at the national level, at present. Regional level legislation may achieve fuller coverage of Annex II projects.
United Kingdom	All categories. Most sub-categories (all except 1a and 1b).	None proposed at present. Under the Planning and Compensation Act 1991, EIA can be required for additional classes of project likely to have significant environmental effects.

Most, though not all, Member States have adopted some thresholds and/or criteria to determine which particular projects, in given categories or sub-categories, should be subject to assessment and which need not be. These thresholds may be legally binding (as in the majority of Member States) or they may be advisory (as in the United Kingdom and Wallonia) leaving the competent authorities with some discretion as to how they should be applied. The extent to which criteria and/or thresholds are used in selecting projects varies greatly between countries and according to project category. In some cases, where thresholds are not provided (e.g. for certain project categories in Spain and Italy) or where the threshold is very low (e.g. in France) there are few exemptions and most of the projects within the categories concerned are subject to EIA. In other cases, where higher thresholds are common (e.g. Netherlands, UK), the great proportion of small and medium-sized projects are excluded.

Where thresholds do exist for the same kinds of projects in different Member State EIA provisions, it should be possible to make some assessment of their broad comparability. Unfortunately, this cannot be fully achieved because the categorisation of projects and the ways in which the sizes of projects are defined are often different. Where meaningful comparisons can be made there are examples to be found both of broad comparability and, seemingly, of major discrepancies. These are illustrated in Table 3.6 below. (The more detailed information from which this table is drawn is contained in the Member State annexes.) Whilst there is no *a priori* reason why the minimum size of projects giving rise to significant impacts should necessarily be the same in all the Member States, a number of the differences in threshold levels are equally hard to justify and these (of which only a small sample are presented in the table) merit further investigation.

**Table 3.6 Examples of project thresholds contained in Member State law and guidance**

<u>Project type</u>	<u>Examples of thresholds</u>
Pig rearing installations	<ul style="list-style-type: none"> <li>• Greece (20 pigs), • Ireland (1000 pigs), • Germany (1400 pigs),</li> <li>• United Kingdom (5000 pigs)</li> </ul>
Quarries	<ul style="list-style-type: none"> <li>• France (5ha or more), • Ireland (5ha or more), • Portugal (5ha or more), •</li> <li>Belgium-Wallonia (10ha or more), • United Kingdom (50 ha or more), •</li> <li>Netherlands (100ha or more).</li> </ul>
Non-ferrous metals	<ul style="list-style-type: none"> <li>• Belgium-Flanders (production capacity 50,000 tonnes or more p.a.),</li> <li>• Germany (production capacity 100,000 tonnes or more p.a.),</li> <li>• Netherlands (production capacity 100,000 tonnes or more p.a.).</li> </ul>

Urban development project	• Ireland (2ha or more), • United Kingdom (5ha or more), • Belgium-Flanders (10ha or more), • Portugal (10ha or more).
Four lane roads	• Netherlands (5km or more in a rural area), • Ireland (8km or more in a rural area), • United Kingdom (10km or more in a rural area).
Airports	• Ireland (runway length of more than 800m), • Belgium-Wallonia (runway length of more than 1200m), • Netherlands (runway length of more than 1800m).
Installations for the disposal of industrial and domestic waste	• Belgium-Flanders (capacity of 25,000 tonnes or more p.a.), • Ireland (capacity of 25,000 tonnes or more p.a.), • Netherlands (capacity of 25,000 tonnes or more p.a.), • United Kingdom (capacity of 75,000 tonnes or more p.a.).

Where the Member State has restricted the number of Annex II categories and sub-categories to be subject to EIA, and its thresholds are relatively high (e.g. Netherlands), then the number of Annex II projects requiring assessment will be smaller than average. Where the coverage is wide and thresholds are low (e.g. France) the number of assessments to be undertaken may be very large. Other Member States combine broad project coverage and relatively high thresholds or more limited project coverage and low thresholds. Thus, between the Member States, the full spectrum of possible combinations may be observed. Since a number of Member States are processing new legislation relating to Annex II and no clear consensus on threshold levels yet exists, the variability in treatment is likely to become even greater, if no remedial action is taken.

One final matter of importance, when considering which projects require assessment under the terms of the Directive, is how the exemption of projects approved by Acts of Parliament (as provided for in Article 1(5)) is being treated by Member States. Although the information available is not complete, it points to some variability in treatment. In some Member States, the use of this exemption appears to be insignificant (Belgium, Greece, Ireland). In one or two cases there is some evidence that Acts of Parliament have been used to approve projects to simplify and speed up the authorization process which, *inter alia*, avoid the need or weaken the provision for an environmental impact assessment. In one case (the United Kingdom) the Government and Parliament have established procedures to promote comparability of treatment between projects assessed under the terms of the Directive and projects approved by Parliament, but this does not seem to apply yet in other Member States. Further investigation may be desirable of the extent to which projects likely to give rise to significant environmental impacts are approved by Parliaments and how satisfactorily any alternative arrangements for their environmental assessment are working.

### **3.4 Coverage and preparation of assessments**

Article 3 of the EIA Directive defines the scope of the environmental impact assessment to be undertaken. This appears to have been transposed into most of the Member States' laws but with some partial exceptions in the case of Belgium, France, Luxembourg and Portugal. The deficiencies include, in particular cases, a failure to include an assessment of impacts relating to fauna/flora, material assets, cultural heritage or landscape, or of interactions between impacts.

Article 3 provides that the actual scope of the assessment should take account of the particular circumstances of the case but does not lay down any procedure by which this should be undertaken. Four Member States make some statutory provision for scoping - Belgium (Wallonia), Germany, Luxembourg and the Netherlands, whilst in a number of other cases some form of scoping is encouraged through non-mandatory guidance or existing administrative procedures (see Table 4.5).

Article 5(3) requires that authorities holding relevant information should make this available to the developer for preparing his EIS. In most cases, this has been transposed into Member State law, though in particular cases this may be contained in other, more general, administrative laws.

The required scope of the environmental information to be supplied by the developer (which is often described as the environmental impact statement or EIS) is described in Articles 5(1) and (2) and Annex III of the Directive. Most Member States require compliance with the so-called 'minimum requirements' contained within Article 5(2) but only the Netherlands, Italy, Denmark (for Annex I and certain Annex II projects) and Portugal (for Annex I projects) require the coverage of the types of information contained within Annex III. The complete implementation of Annex III is planned in Germany after the general administrative provisions have been adopted. A number of other countries require some elements of Annex III (e.g. France) to be covered and others (e.g. Ireland and the United Kingdom), indicate that the required information is that specified in Article 3 and Article 5(2) and that any additional information referred to in Annex III may be provided by way of explanation or amplification. Whether, and to what extent, these are a satisfactory

transposition of Article 5(1) of the Directive is, in the case of a number of Member States, open to question.

Included within Annex III is provision to include 'where appropriate' an outline of the main alternatives studied. Certain Member States (Denmark, Germany, Greece and the Netherlands) make legal provision for some information to be supplied relating to alternatives, though in some cases it is confined to certain categories of project. In some other cases this is mentioned but its provision is optional, whilst in the remainder of cases no specific reference to alternatives is made.

In summary, the main concern over the transposition of the above provisions into national law is over the coverage of the environmental information to be supplied by the developer and, in particular, that in some Member States at least, the requirements of Article 5(1) have not been satisfactorily transposed.

### **3.5 Submission of the environmental information, review and consultation procedures**

Article 5 of the Directive requires that the information be supplied by the developer but does not regulate the form in which it should be submitted or the procedures to be followed in its submission. The legal provisions which have been established relating to these matters vary considerably between the Member States (see Table 3.7).

Most Member States provide for the submission of the information in the form of a separate document (the EIS, or similar name) which normally accompanies the consent application. In certain cases, however, (for example, Germany, Italy) there is no distinction made between the provision of the environmental information and other information to be provided in support of the consent application - in these cases, the environmental information may not be supplied in a separate document. In most cases, also, the information is supplied directly by the developer (with the assistance of consultants in its preparation if so directed) but in two countries (Belgium and Denmark) the arrangements are somewhat different. In Wallonia, an independently appointed expert prepares the EIS using information supplied by the developer; in Flanders the EIS is jointly prepared by the developer and approved experts.

**In the case of Denmark, the EIS document for Annex I projects and certain Annex II projects is prepared by the regional authority as a supplement to the regional plan.**

**Table 3.7 Arrangements for the supply of environmental information within Member States**

<u>Member State</u>	<u>Supply of information</u>
Belgium	Wallonia: a separate EIS is prepared by an independent expert, but using information supplied by the developer. Flanders: the preparation of a separate EIS is carried out jointly, by the developer and experts. It has to be accepted prior to the initiation of the licensing procedure.
Denmark	For Annex I projects and certain Annex II projects a separate EIS document is prepared by the regional authority as part of a supplement to a regional plan.
France	A separate EIS document is submitted with the application for consent.
Germany	No separate EIS document is prepared, although this is sometimes done voluntarily. Information is submitted with application for consent.
Greece	A separate EIS document is submitted after the initial approval of siting, but before the approval of environmental conditions.
Ireland	A separate EIS document is submitted with the application for consent.
Italy	No separate EIS document is prepared, but the environmental information is submitted with the application for consent.
Luxembourg	A separate EIS document is prepared for some project types only, and is submitted with the application for consent.
Netherlands	A separate EIS document is submitted with the application for consent.
Portugal	A separate EIS document is submitted with the application for consent.
Spain	A separate EIS document is submitted with the application for consent.
United Kingdom	A separate EIS document is submitted with the application for consent.

The precise type and stage of the consent procedure at which the environmental information is submitted also varies - in a number of cases it is submitted as part of the application for a siting consent (e.g. Ireland, UK); in some other cases it is submitted at an earlier planning stage (e.g. Denmark, Germany, Italy), in other cases it is at a later procedural stage than the siting consent stage (e.g. Greece, and France in some instances).

Although there is no explicit requirement within the EIA Directive to review the environmental information for its adequacy and completeness, a number of Member States have made specific legal provisions for this. These are summarised in Table 3.8. In certain cases, this is achieved by using a separate Commission (in Wallonia, Italy and the Netherlands), in some other Member States the law specifically requires that these tasks are to be performed by an existing competent authority or government department (e.g. Denmark, Germany, Greece, Luxembourg, Portugal) whilst in other cases it is covered to the extent already provided for in existing administrative powers and procedures. It should be noted that where specific legal provisions have been made these may not be confined to checking the quality and the adequacy of the information provided but may also include some

checks and controls relating to performance at earlier stages in the EIA process (see Table 3.8).

**Table 3.8 Arrangements for the review of the information supplied within Member States**

Member State	Legal provisions for review and for a review body
Belgium	Flanders: the environmental agency (Bestuur voor Leefmilieu) in the regional administration is responsible for review. This agency has specific duties: to accept the study team preparing the EIS; review the study for completeness, quality and compliance with the legislation; and (for industrial projects) provide final advice on the acceptability of the project and on any conditions. Wallonia: an advisory consultative body (Conseil Wallon de l'Environnement) deals with the review of EISs, the follow-up of specific EISs, the production of an annual report, the accreditation of consulting firms, comments on proposed changes to legislation, and coordinates and promotes the development of EIA guidance and recommendations. It is composed of representatives from universities, environmental groups, other consultative bodies, and employers associations and unions.
Denmark	Provision for the formal review of the adequacy and quality of the information supplied by the developer is made in legislation. There is no provision for a review body.
France	There is no formal provision for the review of information supplied by the developer, other than, in certain cases, by the competent or environmental authorities.
Germany	Provision for formal review of the information supplied by the developer will form part of the general consent procedure. An administrative regulation will serve as the baseline for judging adequacy and quality.
Greece	The formal review of the information supplied by the developer is carried out by PERPA and other competent departments of the Ministry of EPPP.
Ireland	There is no formal provision for the review of the information supplied by the developer. The information is evaluated by the relevant competent authority, which has power to require further environmental information. In the future the proposed Environmental Protection Agency may have a role in this regard.
Italy	Provision for the formal review of the information supplied by the developer lies with an EIA Commission, which utilises some review criteria. There are 20 members and the chairperson is from the Ministry of Environment. Other members include representatives from universities, public bodies and public companies, and other experts with specific competence/experience.
Luxembourg	There is no formal provision for the review of the information supplied by the developer. The relevant competent authority must approve the EIS.
Netherlands	The competent authority initially assesses the EIS, which is then formally reviewed by an EIA Commission. This Commission is composed of independent experts, and comments on deficiencies and inaccuracies in the EIS. The Commission also advises the competent authority on the guidelines for the content of the EIS in the scoping phase.
Portugal	There is provision for formal review of the EIS by the relevant government department.
Spain	There is no formal provision for the review of the information supplied by the developer. A Declaration of Environmental Impact is issued by the environmental authority on the project. This is a written decision/judgement based on the EIS and the written comments from the public participation.
United Kingdom	There is no formal provision for the review of the information supplied by the developer. The information is evaluated by the relevant competent authority, which has power to require additional information.

The Directive makes provision for consultation of designated environmental authorities, the public and, in certain cases, other Member States. The procedures by which this is to be accomplished are largely left to the Member States.

It would seem that Member States have made provision for the designation of environmental authorities either by listing these in their specific EIA regulations, or empowering an appropriate Minister to draw up such lists, or adopting the same list of consultative bodies as already exists in the consent procedure to which the provision of the environmental information has been attached. Only by a detailed study of a sufficiently large sample of consent procedures would it be possible to establish whether all of the authorities



'likely to be concerned by the project by reason of their specific environmental responsibilities' are covered by Member State law. The limited information available on this subject suggests that in some Member States, and for certain procedures, the list of authorities who must be consulted on a mandatory basis may be too narrow. Article 6 also requires that the environmental information submitted be forwarded to these authorities as a basis for the consultation. Again, for the same reasons, the available knowledge is incomplete but there is some evidence to suggest that this requirement has not been fully transposed into national law in all areas (e.g. Portugal).

The Directive requires that the above information is made available to the public. In general, most Member States have made formal provision for this, though it would seem that in certain cases this is confined to the non-technical summary and it is possible that this requirement has not been formally covered in the regulations for all types of consent procedures (see Table 3.9). Both the way in which the information is made available and the timing of the stage at which this occurs is sometimes specified in regulations but, in practice, there appears to be a measure of discretion in how this is done. Typically, the environmental information is to be made available for consultation at specified places and times. Only in certain Member States (Denmark, Ireland, the Netherlands, United Kingdom) is there provision for members of the public to obtain their own copy (i.e. by request and/or purchase). Typically, also, the information is available after it has been submitted as part of the consent application but there may be an interval of time for its acceptance by the review body or competent authority before it is made generally available. The length of time for which it is available to the public may be specified in certain cases, but it is not precisely defined in all cases and therefore it is difficult to judge whether in all cases the formal arrangements here are adequate. In certain cases (e.g. until recently in Flanders) government officials have argued that the EIS should be treated as confidential once the official period for consulting it has ended. *Inter alia*, this acts as a legal obstacle to the assembly of EIS collections for training and research purposes.

**Table 3.9 Provisions for the information to be made available to the public within Member States**

<b>Member State</b>	<b>Provision of information to the public</b>
Belgium	The EIS is viewed as an integral part of the licence application file, and it is not normally published. In practice, however, the non-technical summary is sometimes distributed more widely at the discretion of the developer. Flanders: until recently, there was only provision for the information to be available to the public during the consultation stage of the process.
Denmark	In the case of regional plans the information is available for inspection and purchase, after the preparation of the supplement to the regional plan. These provisions are not mandatory for projects of national importance, where a National Planning Directive is prepared according to the National and Regional Planning Act, but in practice the same provisions are followed.
France	Provisions exist for the information to be made available to the public. The stage at which this occurs varies between the regulations from before the decision on the project is taken, to after the execution of the project.
Germany	The environmental information is available with the other information submitted with the application for consent. It is available after the application has been submitted.
Greece	Provisions exist for the inspection of the information after submission of the EIS and the application, prior to the approval of the environmental conditions.
Ireland	Provisions exist for the inspection, and purchase, of the information after submission of the application and the EIS.
Italy	Provisions exist for the inspection of the information after submission of the Environmental Impact Study documentation.
Luxembourg	Provisions exist for the inspection of the information after submission of the authorization application.
Netherlands	Provisions exist for the inspection and purchase of the information at the time of submission of the application.
Portugal	There is some ambiguity in the Portuguese regulations relating to this issue, as one set of regulations makes provision for the information to be made available, while another set only makes provision for the non-technical summary to be made available.
Spain	Provisions exist for the inspection of the information after submission of the EIS.
United Kingdom	Provisions exist for the inspection and purchase of the EIS after submission of the application and the EIS.

All Member States have made some provision for the public to express their opinion (see Table 3.10). The details of the arrangements for this vary between procedures within the same Member State as well as between Member States. In all cases public participation will normally include the opportunity to submit written comments; much less frequently there will be provision for public meetings or hearings at which oral comment can be made and at which those supplying the information may be questioned. This situation, however, often reflects the nature of the general provision for public comment within project authorization procedures in the countries concerned. In some Member States the definition of the 'public concerned' who have rights to give their opinions may be restricted (e.g. to those living within a certain distance of the site of the project or to certain bodies with consultative status) but in other cases the public at large may also comment. The length of time over which comments may be submitted is variable and not always closely defined. Also, whilst in certain cases the right to comment occurs prior to the decision on consent for the project, in other cases (e.g. Greece, certain French projects) it occurs after consent (i.e. at the appeal stage prior to implementation). More generally, there is concern that mandatory consultation occurs too late in the EIA process. In summary, the view is held that, in a number of cases

the minimum legal rights of citizens to consult the EIS and comment meaningfully on its contents are insufficiently safeguarded in law.

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**Table 3.10 Provisions relating to consultation of the public within Member States**

Member State	Consultation of the public
Belgium	In Wallonia provision is made for public involvement during the initial scoping procedure, and for a public hearing to take place before a decision is taken on the project. In Flanders consultation of the public takes place after the "attestation of conformity" has been issued by the administration.
Denmark	In the case of regional plans a tradition of public participation is already in existence, and is contained within the National and Regional Planning Act. Consultation of the public is not mandatory for projects of national importance, but, in practice a procedure similar to that for regional plans is followed. Consultation takes place before a decision is made.
France	Detailed mandatory arrangements exist for consultation of the public. The stage at which this occurs varies from before the decision on the project is taken, to after execution of the project.
Germany	Mandatory provisions exist for consultation of the public according to the sectoral laws, the EIA Act and the administrative procedure laws. Consultation and public participation have, to some extent, been part of the regular consent procedures in the past, and no particular problems are foreseen. Consultation and participation takes place before a decision is reached on a project.
Greece	Detailed provisions exist for consultation of the public prior to a decision being reached. The responsibility for overseeing this process lies with the council of the local prefecture, which consists of the mayors of the prefecture, government representatives, representatives of the Technical Chamber of Greece, etc.
Ireland	Arrangements exist for public consultation and participation, before a decision is reached. This includes, for planning applications, the right of appeal to the planning board at national level by third parties.
Italy	Detailed provisions exist for consultation of the public before a decision is reached. Any citizen of Italy may contribute to this consultation process.
Luxembourg	Detailed provisions exist for consultation of the public, except for road schemes. Consultation takes place before a decision is reached and is open to any person, or organisation (from Luxembourg or another country) who wishes to participate. For large scale projects, such as waste disposal sites, the organisation of public hearings is general practice.
Netherlands	Detailed provisions exist for consultation of the public at two stages in the process. Firstly, at the establishment of EIA guidelines, and secondly when the EIS is evaluated, before a decision is taken on the project. In the second stage a public hearing takes place. There are no restrictions with regard to "the public concerned".
Portugal	Under D.R. No. 38/90 public hearings may be carried out, if considered necessary.
Spain	A general procedure for consultation, during the scoping of the EIS, has been established. This is to be promoted by the public administration, and although voluntary, is understood to be followed in most cases. Additionally, there are provisions for mandatory public consultations before a decision is reached.
United Kingdom	The majority of the UK EIA regulations contain fairly detailed mandatory arrangements relating to consultation of the public. This takes place before a decision is reached. The planning regulations and the highways regulations, which cover most EISs, provide for the EIS to be placed on deposit in the locality for inspection by the public and for notices in local newspapers, and any member of the public may make representations.

Only a minority of Member States (Denmark, Germany, Greece, Ireland, Spain) appear, as at July 1991, to have made some formal provision for consultation of other Member States over trans-frontier impacts (see Table 3.11). This is one of the least satisfactory areas of transposition of the Directive although, in certain cases, such as the Netherlands, informal consultative arrangements do exist. This deficiency is likely to be of increased significance in the future because the EEC and all of its Member States are signatories to the ECE Convention on Environmental Impact Assessment in a Transboundary Context (United Nations, 1991).

**Table 3.11 Formal provision for consultation with other Member States over transborder impacts**

<u>Member State</u>	<u>Formal provision for consultation with other Member States</u>	<u>Has Member State signed the ECE Convention ?</u>
Belgium	No.	Yes.
Denmark	Yes.	Yes.
France	No.	Yes.
Germany	Yes, including non-EEC states.	Yes.
Greece	Yes.	Yes.
Ireland	Yes.	Yes.
Italy	No.	Yes.
Luxembourg	No.	Yes.
Netherlands	No (but in preparation).	Yes.
Portugal	No.	Yes.
Spain	Yes.	Yes.
United Kingdom	No (but informal).	Yes.

\* United Nations (1991) Convention on Environmental Impact Assessment in a Transboundary Context. E/ECE/1250. Espoo (Finland), 25 February 1991.

Note: The European Community has also signed the ECE Convention.

In summary, whilst all Member States have made some legal provision relating to most of the Directive's articles reviewed in this section, in a significant number of cases they are thought to be deficient in important details - particularly in respect of implementing Article 5(1) and in safeguarding the Directive's intentions in making the environmental information sufficiently available to those likely to be concerned and in making adequate provision for their opinions to be presented.

### **3.6 Decision-making and monitoring**

The EIA Directive makes provision that both the environmental information provided by the developer and the consultation findings must be taken into account in decision-making on the consent application. In most Member States some legal provision has been made for this to be done and in the remainder it is implicit to the extent that the environmental information and consultation findings are one of the sources of information available to those making decisions on consent applications. In most cases, however, it would seem that Member State regulations have not made any additional procedural arrangements to strengthen or guide its implementation beyond using any pre-existing arrangements in the existing consent procedures. Important exceptions to this are:

- in Germany, there is provision for preparing a summary record of the environmental impacts which can subsequently be issued with the decision on the consent application;
- in Italy, there is provision for the Ministries concerned to issue, on the basis of advice from the EIA Commission, a decision on environmental compatibility - if the two relevant Ministries consider that the project is environmentally incompatible the consent authorization procedure cannot proceed unless the Council of Ministers so provides;
- in the Netherlands, the regulations on EIA lay down that the competent authority shall mention in the decision the grounds on which it is based, including the contents of the EIS. The competent authority shall also state the way in which it took into account the environmental impacts of the activity and what consideration has been given to the alternatives described in the EIS. It shall also mention what consideration has been given to the comments and recommendations submitted with respect to the EIS by the public and advisers.
- in Spain, there is provision for the preparation of a Declaration of Environmental Impact which contains the written decision or judgement of the environmental authority on the project, based on the EIS and public consultations, which is the published in the official Bulletin of State.

The EIA Directive also provides that the outcome of taking the above information and consultations into account be reflected in the content of the consent decision (including any conditions attached to it) which should be made public. Also, 'where the Member States' legislation so provides the reasons and considerations on which the decision is based should be made public. It would seem that in most Member States provision is made for the decision (and conditions) to be made public either under EIA regulations or under pre-existing legislation relating to the publication of consent procedure decisions. Provision for the reasons to be given for such decisions appears to be more limited and is often closely related to existing practice in Member State consent procedures.

The EIA Directive contains no formal requirements for compliance monitoring to ensure that a project is implemented as authorised and that it does not give rise to unintended environmental impacts. The Directive does, however, provide that conditions may be attached to a consent decision, and these could include monitoring conditions. In a number of Member States, such monitoring conditions are already provided for under existing consent procedures and monitoring of EIA cases would be in accordance with existing practice. Most Member States have not made provisions additional to those that already exist and these are known to be highly variable. In three Member States, however, there are additional provisions that have been made to strengthen the existing situation:

- in Italy, the judgement on environmental compatibility may contain specific monitoring requirements;
- in the Netherlands, there is provision in the EIA regulations to monitor the environmental effects actually occurring and to compare these with the impacts predicted to occur in the EIS. Measures may then be taken to correct any significant negative discrepancies, by, for example, tightening licence conditions;
- in Spain, there is legal provision for a mandatory Programme of Environmental Surveillance.

To summarise, the basic legal requirements of the articles contained in the Directive, which are covered by this section of the chapter appear, in the main, to have been transposed into Member State law or were already provided for under existing consent procedures. However, these requirements were fairly general in nature and therefore the effectiveness of the transposition depended very much on Member States complying with these requirements in a sufficiently detailed way as to give them real effect. With certain exceptions, which have been noted above, this does not appear to have been done. This is of considerable significance since the use made of environmental information and consultation findings in reaching decisions on project authorizations is crucial to the effectiveness of the EIA process as a whole. Similarly, provision for monitoring the environmental impacts of a project, once approved, is critical to ensuring that the project's implementation does not have unintended

adverse impacts which remain undetected. Consequently, practical compliance with the 'spirit' of the Directive has less legal support at these two important stages in the EIA process, than is ideally required.

### **3.7 Formal compliance: an overview**

The transposition of the EIA Directive into Member State law has been seriously delayed beyond the approved date for full formal compliance and, three years later (July 1991), the transposition has not been completed in a number of cases. The reasons that have been given for this delay are various:

- the complexities of transposition where responsibilities for matters covered by the Directive are divided between national and regional levels of government;
- the broad, 'horizontal' nature of the Directive has meant that the transposition has involved securing the co-operation and support of many ministries and has involved changes to many regulations and consent procedures;
- certain of the requirements of the Directive, notably relating to greater 'openness' and provision for more effective consultation within existing procedures, have encountered resistance which has delayed reaching agreement or has led to agreements based on incomplete or 'minimalist' transposition.

Given the nature of this Directive, such delays and resistance were probably inevitable. However, in some Member States major problems of this kind seem to have been overcome. The remainder should reach this position once their draft legislation (see Table 3.3) has been implemented, and achieving this is obviously an urgent priority.

Whilst the delays are a matter of serious concern, this does not detract from the very considerable progress that has been made in the majority of Member States in transposing the Directive. The number of new EIA laws, regulations and ordinances approved in the Member States, particularly since 1988, has been very considerable and has greatly exceeded that which would typically be associated with the transposition of a single Directive.



A broader issue is the extent to which transposition, where it has occurred, has been complete. At one level, it can be said that the 'basics' of the EIA process are mostly in place:

- projects to be assessed have been listed or otherwise identified;
- provision has been made for the developer to provide the basic information identified in Article 5(2);
- some general provision has been made for that information to be made available and for consultation to take place;
- the general obligation for competent authorities to take the above information into account in reaching consent authorization decisions is established;
- the decision reached has to be made public.

However, closer examination shows that, as at July 1991, a number of areas of concern remain:

- not all Annex I project classes are subject to assessment in all Member States;
- there is great variability between Member States both in the extent to which Annex II project categories and sub-categories are covered and in the threshold levels applied within the same sub-categories;
- compliance with Article 5(1) relating to the nature and scope of environmental information to be supplied appears to be incomplete in some Member States;
- provisions relating to making this information available and to consultative arrangements may, in a number of instances, be insufficiently specific and detailed to provide legal support for satisfactory practical compliance;
- similarly, in a number of Member States, there is no clear indication how the environmental information and consultation findings are to be 'taken into account' in the decision process or how verification that this has been done satisfactorily is to be achieved.

Further, being a 'framework' Directive, the success of its implementation also depends in part upon how Member States make provisions for those stages and activities within the

EIA process which the Directive does not attempt to regulate. In this regard, a number of Member States have made formal provisions which exceed those which the Directive requires. This has been done by:

- extending the range of actions to which EIA applies beyond those itemised in Annexes I and II of the Directive (e.g. to include certain plans and programmes, modifications to Annex II projects, certain licence renewal applications, military installations and other specific project types not covered by the Annexes);
- making formal provision for a scoping stage in the EIA process;
- making the coverage of alternatives mandatory within the environmental information to be supplied;
- making additional provisions for checking the quality of the environmental information and/or evaluating its contents (e.g. through the establishment of a special Commission or by placing such obligations on specific existing authorities);
- making specific provision for monitoring the environmental impacts of projects arising from their implementation.

However, such provisions do not apply generally within the Community, and to this extent there may be legal 'weak links' in the EIA process which are subsequently reflected in the quality of practical compliance.

The significance of the various strengths and deficiencies in formal compliance which have been identified can be more clearly evaluated once the practical application of the Directive has been assessed. This is the subject of the next chapter.

## **4. PRACTICAL APPLICATION**

### **4.1 Introduction**

This chapter reviews two related topics:

- the extent to which the requirements of the EIA Directive are being implemented in practice in Member States;
- the broader issue of the extent to which the EIA process as a whole is working satisfactorily within Member States.

The extent to which the requirements of the EIA Directive have been implemented in practice depends upon:

- the extent to which those requirements have been transposed into Member State law;
- having been transposed, the extent to which they have been satisfactorily implemented in practice.

As explained in the previous chapter, the transposition into national law in most Member States has been very recent and, in certain cases, incomplete. Inevitably, therefore, implementation in practice is also very recent and incomplete. Similar conclusions apply when considering the working of the EIA process as a whole.

For these reasons, this Review can only provide an interim assessment of the practical application of the Directive up to July 1991 and a more definitive assessment requires 2-3 years further experience in its operation. Nevertheless, there are a number of important findings that can be reached, based on experience to date, which are helpful in guiding future actions and practice.

The structure of this chapter is broadly similar to that of the preceding chapter and covers the main components of the EIA process (see Figure 2.1) as well as certain more general topics relating to the practical application of the Directive.

## **4.2 Numbers and types of EIAs**

One of the key pieces of information relevant to an assessment of the practical application of the Directive is data on the total numbers and types of projects for which EIAs have been, or are being, prepared. However, so far, very few Member States have made arrangements to record and bring together all of this information. Additionally, in the case of those Member States in which the Directive has been implemented very recently, there is insufficient experience on which to base firm estimates. Therefore, the information which exists at the present is incomplete and subject to some error and needs to be interpreted with care. This also applies when making comparisons between Member States.

Table 4.1 summarises the data obtained by the Member State consultants relating to the total numbers of environmental impact assessments recently undertaken, under the legal measures summarised in Table 3.1, in each country. In most cases the statistics relate to the number of EISs (or their equivalent) which have been submitted in accordance with Article 5 of the Directive. In some other cases, the data relate to numbers of assessments at other stages of the EIA process. In certain cases, they are estimates of the expected annual numbers of EISs (or their equivalent) which will be submitted in the near future. In order to help in making comparisons between Member States, all data have been annualized and related to the size of the Member State concerned, measured by its GDP, its population and its surface area.

The aggregate numbers of EIAs now being undertaken within the Community are, in certain respects, very impressive and will become more so in the future as new and pending regulations are implemented. It is evident from these figures, and the interviews held in the Member States, that EIA is now widely regarded as an important component of environmental planning and management activities.

However, the data also suggest substantial differences, in both absolute and relative terms, between Member States in the annual number of assessments being undertaken or projected to be undertaken in the immediate future. The estimates in Table 4.1 range, in absolute terms, between the thousands produced each year in France to less than 30 currently produced in Denmark, Italy, Luxembourg and Portugal. Even after the data have been

**Table 4.1 Numbers of EISs submitted annually in each Member State, relative to size of gross domestic product, population and surface area**

<u>Member State</u>	<u>Basic information</u>	<u>Estimated number per annum*</u>	<u>Number of EISs per annum per '000 million PPS* Gross Domestic Product</u>	<u>Number of EISs per annum per million population</u>	<u>Number of EISs per annum per '000 sq km</u>
Belgium	Flanders: 23/03/89-31/12/90 = 49 Wallonia: 11/05/88- /06/91 = 39	Flanders= 28 Wallonia= 15 Combined= 43	0.31	4.34	1.41
Denmark	Since June 1989 = 12	6	0.07	1.17	0.13
France	Since 1978 = approx. 5,000-6,000 études d'impact p.a. (Additionally, there may be 10-12,000 notice d'impact p.a.)	5500	6.60	98.03	10.11
Germany	No current numbers available. Estimated that at least 1000 p.a. will be produced in the future.	1000	1.04	12.74	2.80
Greece	No estimates available.	-	-	-	-
Ireland	1988 = 13 1989 = 40 1990 = 70	49	1.54	14.00	0.69
Italy	01/01/89- /04/91 = 66 (submitted)	28	0.03	0.49	0.09
Luxembourg	10-20 p.a. (also approximately 100 notice d'impact p.a.)	15	2.34	50.00	5.76
Netherlands	01/09/87-01/12/91 = 286	67	0.33	4.53	1.63
Portugal	1988-1990 = approx. 24	12	0.16	1.16	0.13
Spain	/07/88- /05/91 = 23 (to central government) = 380 (to regions) 403 (total)	143	0.35	3.69	0.28
United Kingdom	15/07/88-31/12/90 = 472	189	0.22	3.30	0.77

\* PPS = Purchasing Power Standard: a common unit representing an identical volume of goods and services for each country.

+ Due to a gradual build-up in numbers, current annual numbers exceed average annual numbers in a number of Member States.

All measures of Member State size, etc., are taken from The European Community Political Map - Member States, Regions and Administrative Units (1990)  
Office for Official Publications of the European Commission.

standardised for differences in GDP, population and surface area, very substantial differences still remain (for example, between over 100 per million population in France and 0.5 per million in Italy). The major reasons for these differences are in the varying coverage of the lists of projects to which each Member State applies EIA (particularly differences in the lists of Annex II projects, and in the coverage of modifications to Annex II projects) and in the levels of the thresholds applied to Annex II projects. France, for example, applies EIA to a lengthy list of Annex II projects for which it has adopted low thresholds and this explains the large numbers of EIAs it undertakes each year. Italy currently applies EIA to very few Annex II projects and this explains its small numbers. Some other countries (e.g. the United Kingdom) apply EIA to a wide range of Annex II projects but adopt higher thresholds than France and the number of their EISs falls between the two extremes.

Table 4.2 summarises the information available on the distribution of EISs, by Member State, between Annex I and Annex II projects. The differences are quite striking - for example, 98% of Irish EISs, but only 28% of Italian EISs, relate to Annex II projects. Again, the differences are mainly explained in terms of the range of Annex II projects subject to EIA and the levels of thresholds in the countries concerned.

**Table 4.2 Distribution of EISs between Annex I and Annex II projects in selected Member States**

(% of total EISs)

<b><u>Member State</u></b>	<b><u>Annex I</u></b>	<b><u>Annex II</u></b>
Belgium - Flanders	37	63
- Wallonia	59	41
Denmark	33	67
France	3-4	96-97
Ireland	2	98
Italy	72	28
Netherlands	28	72
United Kingdom	12	88

Table 4.3 shows the distribution of EISs, by Member State, according to project category. Here, also, it is possible to detect the influence of differences in Member State regulations relating to types of projects covered and thresholds applied. It is also possible to observe some common features between a number of Member States - for example, the numerical importance of EISs relating to Category 10 (infrastructure) projects in Annex II. However, there are some other features which are less easily explained and which may justify further examination of practical application in the Member States concerned. For example:

- 13 out of 16 Annex II EISs in Wallonia related to motor racing tracks;
- all of Ireland's Annex I EISs have related to either road schemes (2) or ports (1);

**Table 4.3 Distribution of EISs between project categories within Annex I and Annex II for selected Member States**

(numbers and percentages of total numbers, classified by Annex)

Member State	Annex I projects									Annex II projects												
	I:1	I:2	I:3	I:4	I:5	I:6	I:7	I:8	I:9	II:1	II:2	II:3	II:4	II:5	II:6	II:7	II:8	II:9	II:10	II:11	II:12	
Belgium	2	1	0	0	0	7	3	0	5	20	2	0	0	0	0	0	0	0	6	0	0	0
Flanders	11%	5%				39%	17%		28%	71%	7%								22%			
Wallonia	0	1	0	0	0	9	3	0	10	0	0	0	0	0	0	0	0	0	2	14	0	0
		4%				39%	13%		44%										13%	87%		
Denmark	0	0	0	0	0	0	1	1	2	0	0	1	0	0	0	0	0	0	0	7	0	0
							25%	25%	50%			13%								87%		
France	2000 (33-40%) EISs relating to industrial developments; 1000-1500 (17-30%) EISs relating to agricultural developments, chiefly land reclamation and land regrouping operations; 500 (8-10%) EISs relating to quarries; 300 (5-6%) EISs relating to transport infrastructure; 100 (2%) EISs relating to energy production and transport; 200-300 (3-6%) EISs relating to urban development projects; 100 (2%) EISs relating to waste disposal and water treatment projects; 40-50 (1%) EISs relating to tourism projects.																					
Germany	Data not yet available.																					
Greece	Data not yet available.																					
Ireland	0	0	0	0	0	0	2	1	0	12	19	7	5	0	12	11	4	0	28	20	2	2
							67%	33%		10%	16%	6%	4%		10%	9%	3%		23%	17%	2%	2%
Italy	1	7	0	0	0	see I:1	2	2	36	0	0	0	0	0	0	0	0	0	18	0	0	0
	2%	15%					4%	4%	75%										100%			
Luxembourg	Most assessments take place for road projects; industrial sites; new industries; leisure projects (golf courses, etc.).																					
Netherlands	3	7	0	1	0	4	29	1	22	4	11	3	0	0	0	0	0	0	20	134	0	0
	5%	11%		1%		6%	43%	1%	33%	2%	6%	2%							12%	78%		
Portugal	Most EISs have been produced for highway schemes.																					
Spain	EIA carried out for the following project types mining (49%); urban projects (24%); others (8%); roads (7%); chemical industry (5%); ports (2%); large dams, railroads, thermal power stations, reafforestation and utilities each (1%).																					
United Kingdom	1	15	0	0	1	1	14	4	19	25	68	22	6	0	11	3	5	0	205	72	1	1
	2%	27%			2%	2%	25%	7%	35%	6%	17%	5%	1%		2%	1%	1%		49%	17%	1%	1%

N.B. Project categories are numbered and defined as in Annexes I and II in Directive 85/337/EEC.



- most Portuguese EISs, submitted since the 1990 regulations were approved, related to road schemes;
- relatively small numbers of manufacturing sector projects have been submitted to EIA in the United Kingdom.

Whilst, at the level of practical application, there is some concern over incomplete coverage of projects and high thresholds, there is also an opposite concern where the adoption of very low thresholds (or no thresholds at all) results in very large numbers of relatively small projects being submitted to EIA. Particularly during the early stages of implementing an EIA system, this can place considerable demands on the resources and assessment skills available and may make it harder to achieve good quality standards in the assessments which are provided. The choice of appropriate criteria and thresholds for different project categories is therefore an important consideration.

#### **4.3 Provision of environmental information and its quality control**

A second key piece of information relevant to an assessment of the practical application of the Directive, is the quality of the environmental information (EIS) supplied by developers. This is examined immediately below and is followed by an evaluation of two closely related matters, scoping and EIS review practice.

##### **Quality of EISs**

The objective assessment of quality is not a straightforward matter but there is a sufficient consensus of opinion to enable broad conclusions to be drawn. The principal conclusions of the Member State reviewers on the quality of the EISs currently being supplied by developers are summarised in Table 4.4. These suggest that, whilst there is little doubt that a minority of EISs are of good, and sometimes of outstanding, quality, there are substantial numbers in most Member States which are not of a satisfactory standard. In other words, there is a considerable quality problem.

Table 4.4 also contains an indication of the main types of deficiencies which have been observed and of some of their possible causes. The factors which may contribute to these deficiencies include the following:

- failure to start assessments at a sufficiently early stage in the planning and design of projects;
- failure to take account of alternatives where this would be justified, to identify mitigating measures sufficiently early and to incorporate them into the project;

**Table 4.4 Overall assessments of the quality of EISs in the Member States**

Member State	EIS quality, deficiencies and causes
Belgium	There is no information available at present.
Denmark	Of the 12 EISs produced five (42%) were judged to be of satisfactory quality. The main deficiencies related to the assessment of impacts on the environment, visual effects and effects on landscape; the assessment of the impacts of emissions of certain materials; the assessment of alternatives; and the assessment of long term effects. These deficiencies are mainly caused by the lack of guidelines for EIA, and by the methods used for the assessment of the impacts. The lack of experience is also a factor, as well as political resistance from regional authorities, particularly in the case of holiday hotels. It also seems that the advantages of EIA are not clearly recognised.
France	There are large variations in quality. Generally, EISs prepared for large and national projects are of better quality than those prepared for smaller projects. Sectors which are more "sensitive", and therefore lead to more contention and controversy, tend to produce better quality EISs, e.g. energy and important linear projects. EISs produced by small private developers (some 70% of EISs) are generally recognised to be of a lower standard. These developers have limited resources and undertake the EIA in-house, using guidance documents prepared by the ministry. EISs for public projects are generally undertaken by independent consultants with a specific budget, and the standard is generally recognised to be satisfactory.
Germany	As yet, no EISs have been prepared according to the EIA Act, but, in practice, a large number of documents are prepared equivalent to an EIS. The few studies relating to adequacy have revealed that particular deficiencies exist in the following areas: evaluating indirect, secondary and cross-sectoral (interactive) effects. Some outstanding studies do exist which go beyond the EIA Act in both content and methods - however, a number of studies were less than satisfactory.
Greece	EISs for industrial projects tend to be of better quality, compared with those for other projects, for which there is more limited EIA experience. The time and money devoted to the preparation of EISs tends to be inadequate; the documents may be large and include a lot of data, but often hide critical points and are not sufficiently substantiated. Alternatives are usually briefly presented and not considered of much importance.
Ireland	The quality of EISs varies considerably.
Italy	The quality of EISs has improved since the implementation of the existing legislation, due to the activities of the EIA Commission. Problems relating to incompleteness and bias have been experienced.
Luxembourg	EISs are generally prepared by consultants with expert knowledge in the environmental field, and for large scale projects they are often from other countries with greater experience of EIA. Deficiencies noted include a lack of detailed examination of alternatives, and in forecasting the impacts that a proposed project is likely to have on the environment.
Netherlands	As a result of the review of EISs by the EIA Commission, supplementary information is often produced. This ensures that sufficient, good quality information is available for decision-making. Deficiencies include insufficient attention to alternatives, and also to some environmental aspects.
Portugal	The majority of EISs are considered to be of unsatisfactory quality by the environmental authorities, although there are some exceptions.
Spain	It is estimated that about 20% of EISs are of satisfactory quality. Common deficiencies include: poor project description; poor forecasting of impacts; lack of consideration of secondary and indirect activities; use of unsuitable evaluation techniques; lack of reference to monitoring and control; mitigation measures only considered very generally; the most frequent and critical deficiency is the lack of a non-technical summary. These deficiencies are mainly due to a lack of commitment to EIA by developers, who tend to proceed with their preconceived ideas, and also to a lack of experience and skill in those preparing the EIS. Often only one person is used who relies heavily on information from sectoral administrations, and carries out few original project-specific studies.
United Kingdom	EISs are of variable quality ranging from very satisfactory to unsatisfactory, although there is some evidence of improvement over time (c. 60% of a sample of 1990-1 EISs were judged to be of satisfactory quality). Areas of particular weakness include: poor identification and scoping of potential impacts; poor consideration of types and quantities of wastes created; qualitative rather than quantitative treatment of impacts; poor consideration of risk of accidents; weaknesses in the assessment of impact significance; bias and misplaced emphasis in presentation; poor writing and presentation of often very diverse information; lack of a non-technical summary. The factors which contribute to these weaknesses include lack of experience, intensified by lack of guidance and training; bias, particularly where the developer and competent authority belong to the same authority; not starting the EIA process early enough; and unsatisfactory scoping.

- an overly narrow definition, based in some cases on limited requirements in Member State legislation, of the types of information that should be provided;
- unsatisfactory arrangements for scoping the coverage of the assessment;
- lack of experience of staff preparing and reviewing the environmental information, reinforced by insufficient guidance and training provision;

- bias in the assessment and presentation of environmental impacts.

Many of these deficiencies are not due to a failure in the formal transposition of the Directive's provisions. They relate to matters which the Directive does not directly regulate, but leaves Member States the discretion to regulate or handle by non-regulatory means. The responses by Member States have predictably varied, as illustrated below in the case of provisions for scoping and for EIS review.

### Scoping

Current practice relating to scoping (i.e. determining the scope of any particular assessment) in the Member States is summarised in Table 4.5. Virtually all Member States either require or encourage some form of scoping and, where it is used, it is generally considered to be very beneficial.

The nature and extent of provision for scoping vary considerably between Member States. In certain cases (e.g. the Netherlands, Germany and, potentially, in Greece and Ireland) there is regulatory provision for scoping. In certain other countries (e.g. Belgium, Spain) specific scoping arrangements have been made but their use is non-mandatory. In other cases (e.g. the United Kingdom) official encouragement is given to consultations early in the EIA process but these are not mandatory. Given the widely recognised benefits of scoping, the issue arises whether it should be more firmly and widely encouraged.

### Quality control and EIS review

A variety of different measures exist in different Member States to try to ensure that EISs are of a satisfactory quality. These include the following:

- in some Member States, the consultants used in the preparation of EISs have to be officially approved (e.g. Flanders, Wallonia, France);
- in many cases, the competent authority or the environmental authority is involved in reviewing the environmental information which is submitted and additional information may be requested before the submission is accepted (most Member States

provide for such powers, though the extent of such powers and their procedural requirements vary considerably);

**Table 4.5 Scoping practice in the Member States**

<u>Member State</u>	<u>Scoping</u>
Belgium	Scoping remains largely an informal process. In Flanders the administration makes extensive use of project specific EIA guidelines developed by the EIA Commission in the Netherlands, and practitioners also utilise the EIA handbook series published by the Environment Ministry (VRON) in the Netherlands. The administration has also actively participated in scoping meetings, although the limited numbers of staff available for this imposes a severe practical constraint. In Wallonia a public inquiry in the scoping phase is provided for, but only in the case of public sector projects. The Conseil Wallon de l'Environnement provides advice on generic guidelines.
Denmark	There is no formal procedure for scoping. However, informal discussions take place between the authorities involved in preparing the EIS.
France	There are no mandatory provisions for formal and systematic scoping. In practice, some form of scoping is carried out during the initial informal consultation process. The "instruction mixte" procedure also offers opportunities for scoping, as statutory environmental authorities are brought into the initial consultation process.
Germany	Provision for scoping is included in the EIA Act. This is achieved by discussions between the developer and the competent authority, and other authorities, experts and third parties may also be invited to participate. In practice, especially for complex consent procedures, some form of scoping was already in existence.
Greece	Arrangements for scoping will be included in the circulars that are in preparation. These arrangements will be binding.
Ireland	There is no formal provision for scoping. Consultation on scoping generally takes place between the developer and the competent authority, and sometimes with other interest groups. The proposed Environmental Protection Agency is intended to provide a scoping function through the preparation of general guidelines as to the information which EISs for various classes of projects should contain.
Italy	There are no formal/mandatory provisions for scoping. However, informal consultation between the developer and the EIA Commission is encouraged, and such experiences have proved to be helpful.
Luxembourg	As such, there are no formal provisions for scoping. However, the competent authorities prepare project-specific checklists for different categories of projects, concerning the content of the EIS, and the methodology to be used. These serve as a basis for a further determination of content and methodology by the developer and the competent authority. The Administration of the Environment contacts the promoters of new industries before any decision to start the official authorization procedure is made. No further measures relating to scoping are envisaged in the new legislation.
Netherlands	The competent authority draws up guidelines, with the advice of the EIA Commission and the officially appointed advisors, indicating the content of the EIS, with particular attention being paid to alternatives. Public participation in this process is organized by the competent authority.
Portugal	There is no mandatory provision for scoping. In some cases non-mandatory scoping has taken place.
Spain	There is no mandatory provision for scoping. However, a voluntary scoping procedure involving the consultation of the public takes place in most cases.
United Kingdom	There are no mandatory provisions for scoping. The Department of the Environment has issued a 'Checklist of matters to be considered for inclusion in an Environmental Statement'. Consultation by the developer with competent authorities and designated environmental authorities is recommended early in the process. Practice, however, is variable.

- in some cases, provision is made for the environmental information submitted to be reviewed by an independent body such as a Commission (e.g. Wallonia, the Netherlands, Italy and (it is proposed) Ireland);
- in some cases, the competent authority or an environmental authority is involved in processing the developer's information in the preparation of the EIS (Denmark).

Table 4.6 contains a fuller summary of the measures taken in each of the Member States.

**Table 4.6 Arrangements for reviewing the adequacy and quality of EISs within Member States**

Member State	Review of EIS adequacy and quality
Belgium	Flanders: the regional environmental administration (Bestuur voor Leefmilieu) evaluates all EISs for their completeness, quality, and compliance with EIA legislation, using general review criteria. If the EIS is acceptable an "attestation of conformity" is issued, which enables the start of the licensing procedure and public inquiry. The lack of sufficient resources allocated for this task is a problem. Wallonia: the Conseil Wallon d'Environnement reviews EISs and has been criticised for issuing "political" statements rather than addressing crucial matters relating to the proposed project. However, C.W.E. has few resources, and members have been reviewing EISs on a voluntary basis in addition to their usual jobs.
Denmark	Legal provision exists for the formal review of adequacy and quality of EISs. The developer provides the authorities with all the relevant information about a project and they prepare the EIS. Review by the authorities is then part of the approval procedure. There are no formal review bodies. Two Reference Centres have been set up to support the authorities. Following participation by the public it may be decided that the EIS is not of satisfactory quality, that further information must be added, that greater consideration must be given to alternatives, etc.. A new EIS may have to be prepared, and if so, this is the document that is submitted for approval.
France	No legal provisions exist for formal review of the quality of EISs. However, compliance with the regulations, in terms of procedures and content, is checked by the technical authorities, the environmental authorities and the administrative tribunals. Generally, this is concerned with procedural aspects rather than the substance of the EIS. If the letter of the regulations is not complied with, then the project is generally not authorised.
Germany	The formal review of the adequacy and quality of EISs will be handled through the supervisory and control powers of the sectoral laws. An administrative regulation will serve as a guideline and baseline for judging adequacy and quality.
Greece	The adequacy and quality of EISs is reviewed by PERPA and other competent departments of the Ministry of EPPP. No specific written guidance exists. The new legislation has made the review process stricter and more formal which should ensure better control of EIS quality, provided sufficient resources are made available for this purpose.
Ireland	There is, currently, no formal review system, but the proposed Environmental Protection Agency may have a role in this regard in the future.
Italy	The formal review of EISs is undertaken by the EIA Commission, which uses review criteria that are evolving over time, as experience is gained.
Luxembourg	There is no formal review of EIA studies. The competent authority(ies) must approve the EIA study, and can order further investigations where information is incomplete or lacking in precision. Consultation of other authorities, or of experts, or institutions is not practised.
Netherlands	The EIS is assessed by the competent authority, and then an opportunity exists for the public to comment on the contents and the quality. Finally, the EIS is formally checked, and reviewed, by the EIA Commission. The formal review indicates deficiencies and inaccuracies, and also whether the information is complete and correct according to scientific standards.
Portugal	EISs are reviewed by the relevant official departments to evaluate quality. Review criteria are used, but these are not uniform and consistent. In some cases this has led to delays, and caused misunderstandings and doubts for some developers. The number of staff available for review purposes is limited.
Spain	Reviews are made by the environmental authority. This authority issues the Declaration of Environmental Impact which is published. The Declaration can order further conditions or studies where the EIS is incomplete or lacking in precision.
United Kingdom	There are no formal measures for the review of the adequacy, or the quality, of EISs. There is also no independent review body. The competent authorities have powers, contained in other existing laws, etc., to evaluate EISs. In most cases further information can be requested. The Department of the Environment is commissioning the preparation of a document to assist planning authorities in the review of EISs. Individuals and organisations involved in work on EIA are establishing professional bodies which offer advisory and review services.

Given the relatively large numbers of unsatisfactory EISs that are being used by the authorities for consultation and decision-making purposes, it is evident that some (though not all) of these quality control measures are not yet working satisfactorily. More detailed examination is needed to determine the precise causes and remedies in particular cases. However, two general considerations have been identified in a number of the Member State annexes:

- the effectiveness with which quality control measures can be applied depends upon the staffing and resources which Member States make available for this purpose. In a number of cases, it would seem that the current provision is inadequate and this is particularly so in a number of the southern regions;

- the effectiveness of these measures also depends upon the objectivity and independence of those carrying out the review. This is particularly important if problems of bias are to be corrected in the information provided. One type of situation where it is especially important to ensure objective and independent review is where the developer and the competent authority belong to the same organisation, such as a central government department or a local or regional authority.

#### **4.4 Consultative practice**

Most of the Directive's general requirements relating to consultation have been transposed but, in certain respects, it may be deficient and not sufficiently detailed to achieve the Directive's intentions. As shown below, progress has been made in transposing these intentions into practice. However, this has been very uneven and, especially where there is not a well-established tradition of such consultative practice, further action is needed.

##### **Availability of environmental information**

Fundamental to the effectiveness of consultative arrangements is that the environmental information (for example, in the form of an EIS) provided by the developer, is made available to appropriate environmental authorities, the public and, in specified cases, other Member States. The current situation relating to this in each of the Member States is summarised in Table 4.7. It shows very considerable variations in practice:

- In some Member States (for example, Ireland, the Netherlands, the United Kingdom and Denmark (but chiefly in relation to Annex I projects)) copies of the information/EIS are generally available for consultation by the public but, additionally, individual copies may be obtained free or at a charge, from either the relevant authority or the developer. Where deficiencies in practice occur they arise because the availability of the documentation is not sufficiently well-known to the public or, in certain cases, the developer may be cautious about supplying individual copies to the public or he may charge an unjustifiably high price for copies. However, these problems do not appear to be widespread.

- In other Member States, the information/EIS is technically available for consultation by the public but, typically, they are unable to obtain individual copies for their own use. In some of these cases, the arrangements for the documentation to be available for consultation are broadly satisfactory. However, in other cases, it has been reported that members of the public have experienced difficulties in obtaining access and, in some instances, only the non-technical summary has been available. Clearly such difficulties and restrictions are at variance with the requirements of the Directive and seriously prejudice its consultative requirements.

**Table 4.7 Arrangements for making the EISs available to the public in Member States**

<u>Member State</u>	<u>Availability of EISs to the public</u>
Belgium	The EIS is seen as an integral part of the licence application, and beyond that there are no provisions for its publication. The non-technical summary is sometimes given a wider distribution, but this is at the discretion of the developer.
Denmark	The proposed regional plan is published and the authorities state where and when it is possible to obtain copies. Sometimes these are free and in other cases there is a charge.
France	Although there are provisions in the regulations for an EIS to be accessible, this is often not the case. Developers are often reluctant to put the EIS at the disposal of the public. There is no policy of duplicating EISs or of selling them.
Germany	According to the EIA Act there is no provision for the publication of an "EIS" or equivalent report, although this is sometimes done voluntarily. Information relating to the EIA is regularly presented to the public together with other information necessary for the consent or plan approval procedure.
Greece	Prior to November 1990, Law 1180/81 was applied which provided for the EIA of industrial projects. No information concerning EISs was made public and the EISs themselves remained official internal documents. Since November 1990 there have been a few examples of the publication of EISs. However, in some cases the EIS was only presented by reading it to the public.
Ireland	The EIS is available for inspection and/or purchase by the public, following submission of a planning application or other authorization procedure. A fee may be charged, which should not exceed "the reasonable cost of making the copy". Generally, EISs cost less than IR£20.
Italy	A copy of the environmental impact study documentation is deposited at the specified regional office. Some difficulties have been reported in consulting the full documentation.
Luxembourg	For projects requiring authorization under the "commode-law", the impact assessment study, together with the application, are placed on view and can be consulted at the town hall of the commune in which the proposed project is to be located. For road projects and projects under the law for the protection of nature and natural resources, the information about the project and copies of the impact assessment study can only be supplied on request.
Netherlands	The EIA legislation contains several sections covering the publication and availability of the EIS, and distribution appears to be taking place without any problems.
Portugal	So far very few EISs have been made available to the public. D.L. 186/90 specifies that the EIS and results should be made available, but D.R. 38/90 only specifies that the non-technical summary should be made available. There have been instances where only the latter has been provided.
Spain	There is no specific legal provision for publishing or making available to the public the EIS; it may be consulted, but it is not common practice to provide copies. The texts of the Declarations of Environmental Impact made by the State Authority are generally published in the official bulletins of the state, and some of the autonomous communities do the same with their declarations. However, in some cases only the fact that the Declaration has been made and is available for consultation is published. In some cases it is not published at all, the reason given being that no procedures are defined as to the location and the time limit.
United Kingdom	The EIS is available for inspection and/or purchase by the public, following submission of a planning application or other authorization procedure. In general, the situation concerning the publication of EISs and their availability for consultation is considered satisfactory. However, difficulties occur in a minority of cases, mainly in obtaining individual copies of the EIS. Copies can usually be obtained from either the developer or competent authority concerned.

Additionally, it has been reported (for example, in the case of Belgium) that even where the documentation has been made available during the consultation period, it may be treated as confidential once the consultation period has ended. This, if combined with

problems of availability during the consultation period, means that in some Member States it is very difficult to assemble collections of EISs which may be used for training purposes, for identifying and disseminating best practice and for EIA research. This, if it continued, would be a major stultifying influence on advances in the knowledge and practice of EIA.

#### Consultation of designated environmental authorities

Limited information exists at present concerning the effectiveness of these arrangements. More details are needed on the extent to which Member States are designating the most appropriate environmental authorities for consultation purposes and, where they are designated, on such matters as whether they receive copies of the required documentation, the actual length of time available to them for making comments, the resources available to them for this purpose, and the quality and effectiveness of their responses. In certain cases (e.g. Ireland, Netherlands and the United Kingdom) these arrangements are reported to be working reasonably well though there are concerns over lack of resources and, in certain cases, the authorities would have wished to be consulted initially at an earlier (i.e. scoping) stage of the process. In some other cases, the arrangements appear to be working less satisfactorily and, even where these comply with legal requirements, the lack of sufficient well-trained staff may prevent effective responses being given. More detailed studies of current practice are needed to identify more precisely where and how improvements should be sought.

#### Consultation of the public

The arrangements for consulting the public are working more satisfactorily in some countries than in others. To some extent, as previously stated, this is a reflection of the tradition of public consultation in the different Member States because some are faced with making greater changes in practice than others. In some countries (e.g. Denmark, Ireland, the Netherlands, the United Kingdom and, potentially, Germany) the required adjustments are similar. On the whole, these Member State annexes indicate that arrangements are broadly satisfactory, though some concerns have been expressed, for example where the EIS is too technical and does not contain a satisfactory non-technical summary, where the mode of consultation is felt inappropriate for ordinary local people or where it is felt that the consultation is taking place at too late a stage in the process. However, in a number of other



countries, greater concerns have been expressed over the effectiveness of the arrangements, as illustrated in Table 4.8.

**Table 4.8 Arrangements for public consultation in the Member States**

Member State	Public consultation
Belgium	<p>Wallonia: consultation of the public takes place through public hearings. These are perceived as a difficult exercise, and, particularly for controversial projects, may become confrontational. Often non-technical summaries are prepared without sufficient care and effort and are not widely understood by the public and others.</p> <p>Flanders: until recently the EIS could only be consulted during a limited time within the licensing procedure. A public inquiry takes place after the "attestation of conformity" has been issued by the administration. The obligation to organise a public hearing for industrial projects will only become effective when the new licensing operations become effective.</p> <p>The public appear to be more interested in matters of trust, credibility and fairness than in the technical details. Environmental groups tend only to be consulted when the decision process is at a fairly advanced stage, and therefore tend to view the EIA process with some suspicion. Developers are concerned that more open procedures might lead to abuse and delayed decisions.</p>
Denmark	<p>A tradition of public participation already exists in regional planning, and is stipulated by law in the National and Regional Planning Act. The press are also very active in raising issues of environmental concern.</p>
France	<p>The degree and nature of public consultation and participation is dependent on the scale and sensitivity of the project, its location, and the environmental awareness and sensitivity of those involved. Public consultation for those projects subject to the public inquiry procedure follows strict requirements and the consultation process appears to be working satisfactorily. However, there is a problem of limited resources and often limited experience. For other projects the opportunity for consultation comes too late in the process.</p>
Germany	<p>The EIA Act has led to some extension and standardisation of the provisions for public participation. Consultation and public participation have, to some extent, been part of the regular consent procedures in the past, so no particular problems are anticipated.</p>
Greece	<p>From the limited application of the Directive since late 1990 the few examples of consultation and public participation have not been encouraging. Public hearings were held locally, the relevant documents were only available a few days in advance and there was limited public participation. It is hoped that newly established procedures will remedy these deficiencies.</p>
Ireland	<p>In general, the arrangements for consultation and public participation are relatively extensive and appear to be working well in practice. There may be a need for more staff in several organisations to cope with the increased work load associated with implementation.</p>
Italy	<p>Further improvements are necessary, although the experience for power stations has been positive. Greater public awareness needs to be achieved; announcements in newspapers are proving to be insufficient.</p>
Luxembourg	<p>Public consultation only takes place after submission of the authorization application and, for class 1 and 2 projects only, an 'enquête de commodo et incommodo' is held. Earlier consultation is sought by NGOs.</p>
Netherlands	<p>The quality of the public participation in the first stage (scoping phase) varies greatly. The responses are often directed towards the question as to whether the activity should take place or not. The public participation regarding the EIS (the second stage) has proved to yield very specific, and often valid, comments on its contents.</p>
Portugal	<p>Although limited information is available, practice relating to public consultation and participation seems to have been variable. Concern has been expressed over the lateness and the effectiveness of the consultation process.</p>
Spain	<p>Opinions relating to public consultation and participation vary considerably. Some NGOs feel that their responses are merely accepted as a formality with little attention being paid to them; some public administrations state that they receive little response from the public.</p>
United Kingdom	<p>Generally, the public and environmental interest groups are given an opportunity to express their opinions, after submission of the EIS. This is usually in the form of written representations, although in some cases a public inquiry is held. Earlier consultation has been proposed by some interest groups, but would be opposed by others.</p>

### Consultation of other Member States

The provisions made by Member States for the transposition of Article 7 of the Directive have, on the whole, been limited and incomplete. There is very little information available on how any such arrangements are working in practice but there have been some examples of consultations taking place on the transfrontier impacts of proposed projects between Ireland and the United Kingdom, between Denmark and Germany, between Spain and Portugal, and between the Netherlands and adjoining Member States.

### 4.5 Decision-making and monitoring

The effectiveness of the EIA process depends, in the last analysis, upon its contribution to the specification of the project, its contribution to the decision taken on its

authorization, and upon the satisfactory implementation of the project from an environmental point of view. In this section of the chapter, the concern is with the practical effect of the two latter contributions.

### Decision-making

The Directive (in Article 8) requires that the information that has been provided, together with the consultation findings, are 'taken into consideration' in the consent procedure but the measures it specifies to support implementation (in Article 9) are limited. As described in Chapter 3, most Member States (though certain exceptions were noted), have transposed the general obligation into their national laws but largely rely on existing decision-making procedures and practice to secure its implementation.

Assessing the extent to which this requirement is being satisfactorily implemented in practice is very necessary but also difficult. Clear answers can probably only be provided after a number of fairly detailed case studies have been completed. In the meantime, more circumstantial evidence of two kinds may be used to make an interim assessment - the general views of those engaged in, or reasonably familiar with, the operations of the EIA process in the different Member States, and views on the extent to which the projects that are approved have been influenced by the EIA process.

In the former case, there is some evidence to suggest, particularly in the case of the larger environmentally sensitive projects, that the environmental information and consultation findings have been taken into account and have affected the resulting decision in particular situations. In such cases, however, this has not solely been due to the technical quality of that information, but also to the impact of the consultative activities and their findings. Therefore, the effectiveness of the consultative arrangements as well as the quality of the EIS have been important to the overall effectiveness of the EIA process. On the other hand, there have been examples where the basic formalities of the EIA process may have been respected but where, in the view of those closely involved, this has not had

**Table 4.9 Influence of EIA in modifying projects and on consent decisions in Member States**

<u>Member State</u>	<u>Influence of EIA</u>
Belgium	EIA has generally led to environmental concerns being addressed earlier in the design process, and on a more systematic basis. Greater contact has been achieved between developers and authorities. However, practice still needs time to develop and mature.
Denmark	In two cases the EIA resulted in changes to the project. The changes were not major and related to location of buildings within a site, and preservation of landscape aspects.
France	It is difficult to assess the degree of influence of EIA on the decision-making process. Very few projects are rejected on the grounds of a poor EIS, or significant negative impacts. It is generally the rule that projects are modified following pressure from competent authorities or the public. However, for many projects (particularly smaller projects) there is very little scope for any modification(s), as EIA comes too late in the design process.
Germany	Projects are modified as a result of the environmental assessment procedure. However, alterations are part of the regular planning and permit procedure, so changes cannot always be linked to EIA. Of the three cases in the trial run, one (power station) was dismissed, one (waste disposal installation) was given approval after mitigation measures, and the third (chemical plant) was dismissed after the initial scoping.
Greece	In cases where there have been strong objections by the public and/or significant environmental impacts exist, there are indications that the EIS has been taken into account and the project modified accordingly.
Ireland	There is no firm evidence to date as to the influence of EIA on project decisions. It will inevitably influence project design and increase awareness of environmental issues and is likely to influence locational decisions by developers.
Italy	In certain cases projects have been modified at design level, and for other cases modifications took place in the layout of plants.
Luxembourg	No projects have been stopped because of the results of an EIS. However, modifications have taken place, and this is especially true for road schemes.
Netherlands	Through the application of EIA the environment is taken into account, in the decision process, more fully than when EIA is not applied. In this way, environmental aspects are much more involved in the discussion about the development and in the design of the project.
Portugal	Approximately 12 earlier projects have been subject to modifications and extensive mitigation measures suggested by the EIA studies. Without EIA these beneficial mitigation measures may not have been introduced for a number of large infrastructure projects, notably highway schemes.
Spain	Only one negative Declaration of Environmental Impact has been issued at national level - a limestone quarry. This was agreed by the sectoral administration and the project was not authorised. At regional level, some negative Declarations have been issued, mostly for mineral extraction projects. No cases of disagreement between sectoral and environmental authorities have been recorded. In positive Declarations the influence may occur through conditions attached to the project authorisation.
United Kingdom	It is difficult to judge the extent to which EIA has specifically led to the modification of any projects, although such modifications have occurred for some projects. Modifications are regularly made in the course of the normal planning, and other, decision-making procedures. Early initiation of the EIA process is felt by many to have been a contributory factor in modifying the design of a number of projects to reduce adverse environmental effects.

a material influence on the decision. For example (and without implying that these situations are confined to the countries cited):

- "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" (France);
- "for most of the small industrial projects the EIA procedure is simply routine, i.e. it is just one of the various papers that accompany the application for a permit" (Greece);
- "there appear to be doubts about how effectively the provisions of Articles 8 and 9 of the Directive have been implemented" (Portugal);
- "some public developers ... are making efforts to consider them [Declarations of Environmental Impact], others, ... stand out because they do not fulfil them." (Spain).

The EIA process may influence the form of a project during its planning and design and during its authorization. In both cases, assessing the effect is difficult because there is uncertainty about the form the project would have taken if the Directive and the corresponding Member State laws had not been approved. A summary of the interim assessments which have been made in the Member State annexes are presented in Table 4.9.

### Monitoring

The EIA Directive does not provide for monitoring the environmental impacts associated with a project's implementation and most Member States, in transposing the Directive into their national laws, have not made their own additional provisions. Rather they have relied upon their existing monitoring procedures and practices. Italy, the Netherlands and Spain are the main exceptions to this. At present, therefore, monitoring is likely to be most effective where the existing procedures were strongest and least so where the opposite is the case.

The current state of monitoring the implementation of projects subject to the EIA Directive is summarised in Table 4.10. It indicates considerable variation but sufficient evidence of inadequate practice to suggest that a number of improvements are needed.

In summary, there are indications that the EIS and the consultative findings are being taken into account in some consent decisions and that, in certain cases, the resulting environmental impacts are being monitored. However, the extent to which this is occurring is variable and, in what is believed to be a significant range of cases, the deficiencies occurring at these important stages in the EIA process may be seriously reducing its overall effectiveness.

**Table 4.10 Monitoring arrangements and practice in the Member States**

<b>Member State</b>	<b>Monitoring</b>
Belgium	For industrial installations, the licence conditions provide a means of imposing monitoring conditions. However, in practice, this can be done in a partial and fragmentary way.
Denmark	Monitoring after approval and implementation is part of the planning process. Local authorities are obliged to undertake these procedures, and indeed, do so regularly. Experiences with this system have been very positive.
France	For projects coming under the "installation classées" procedure (e.g. mining projects, water projects) there are binding prescriptions, and the relevant inspectorates exert control over the installation to ensure that its construction and operation are in compliance with the terms of the authorization. For all other projects no such monitoring system exists.
Germany	Some projects are monitored on a regular basis, and the consent agency is entitled to require additional mitigation measures or alterations. Air quality, at least in areas where pollution might be expected, is monitored on a regular basis. For soil, water, and some nature areas, state-wide monitoring programmes also exist. At least three large-scale projects are currently undergoing post-auditing.
Greece	Monitoring environmental impacts and post-auditing is undertaken by PERPA, which makes occasional checks. Lack of funds precludes frequent and full monitoring of all projects and activities. It is felt that de-centralisation of the more routine elements of the monitoring system could lessen the duties of the central offices and so allow better overall strategic control by the Ministry.
Ireland	There is no formal provision for monitoring and post auditing within the EIA regulations. Legal measures to ensure compliance with, e.g., the conditions of a planning permission, conditions attached to emission/discharge licences granted under legislation relating to air and water pollution, exist within current legislation. The proposed Environmental Protection Agency will have a licensing and monitoring role with respect to air, water and noise impacts for certain projects.
Italy	When the final decision is taken on projects, some consent conditions may be applied, and these may include the establishment of a monitoring network for controlling some important environmental parameters.
Luxembourg	The commo-law provides for the monitoring of authorised projects. The competent authority can review the developer's compliance with the requirements and conditions stipulated in the consent. If unforeseen negative effects occur, the decision can be revised. However, due to a shortage of personnel, the control of authorised establishments is limited in practice.
Netherlands	The Dutch regulations include a provision that an evaluation should take place comparing the effects which actually occur, and those predicted in the EIS. If considerable differences are found, the competent authority can take further measures, e.g. tightening the licence conditions. A handbook exists regarding the evaluation programme.
Portugal	There is no formal, systematic, provision for monitoring. A lack of resources is inhibiting satisfactory monitoring, although it has been successfully applied to the implementation of some road schemes.
Spain	Legal provision for general environmental monitoring has been made through the mandatory Programme of Environmental Surveillance. Surveillance is a part of the EIS and is also included in the conditions of the Declaration of Environmental Impact. Its enforcement is the responsibility, not of the environmental authority, but of the sectoral authority which finally approves the project. In practice the commitment to monitoring is not strong, although some authorities do become involved in monitoring. A problem arises where the developer and the competent authority are the same; often monitoring will not be carried out.
United Kingdom	No mandatory provisions exist for either monitoring or post-auditing within the EIA regulations. However, under other existing legislation, powers exist to attach monitoring conditions for certain consent procedures. Some developers express a commitment to monitoring and post-auditing in their EISs.

#### **4.6 Guidance and training**

Given the nature and breadth of application of the EIA Directive, there is a need to provide sufficient guidance and training to intending practitioners if it is to be successfully implemented. The Commission has made a significant contribution to these activities but the main responsibility rests with the Member States.

The Commission has provided guidance through the meetings of the National Experts Group on Environmental Impact Assessment, which have provided a useful forum for reporting progress on implementation in the Member States, exchanging experience and dealing with common problems relating to the interpretation of specific provisions within the Directive. More detailed and specific issues requiring clarification have been handled on a bilateral basis with the Member States concerned. Additionally, Commission staff have

presented a number of papers and participated in various conferences and seminars on EIA implementation which have been held in different Member States.

The Commission commenced studies on EIA training within the Community prior to the approval of the EIA Directive. These identified the main training needs in the Member States and the means by which these might be most effectively satisfied. Since then the Commission has supported a strategy of 'training the trainers' which has involved the development and servicing of an EIA Trainers Network; the preparation of an EIA trainers' guide, case studies, newsletter and leaflets; the establishment of an EIA database and information service; and support for numerous courses and workshops. This programme was evaluated in 1990 where its usefulness was confirmed and the lines of its further development were agreed (Wood and Lee, 1991).

The Member States have also been active in preparing guides and initiating training activities, and a short summary of these is contained in Table 4.11. The nature and extent of provision varies considerably between Member States and this partly reflects the different stages they have reached in EIA implementation as well as differences in their guidance and training needs. Whilst some Member States have produced considerable guidance materials and training opportunities others, in both southern and northern regions, have not yet done so.

It is observed that, as EIA implementation proceeds, the nature of the guidance and training that is needed will change:

- With certain exceptions, most EIA guidance in the past has emphasised procedural rather than methodological matters. As Member States move further into the implementation phase the need will grow, initially, for general practical guidance on 'how to do' environmental impact assessment, followed by more specialised practical guidance on the assessment of particular categories of projects and particular types of impacts.

- Similarly, in the past, courses have often focused upon the policy and procedural aspects of EIA whereas, in the future, the emphasis is expected to switch to more practical 'how to do' courses relating to particular assessment tasks and using case studies and other 'learner active' training materials.



**Table 4.11 Provision of EIA guidance and training in the Member States**

Member State	EIA Guidance and Training
Belgium	<p>GUIDANCE: All guidelines produced by the EIA Commission in the Netherlands have been made available to the Flanders environmental agency. The Department of Infrastructure Issues internal guidelines with regard to screening, and is developing internal EIA manuals for specific project activities. Research has been commissioned by the government to develop a set of guidelines to encourage more consistent and standard EIA practice.</p> <p>TRAINING: Courses at some universities include some aspects of EIA. Several one-day conferences have been organised in Flanders, and seminars have also been organised for government employees.</p>
Denmark	<p>GUIDANCE: Leaflets about EIA have been produced by the Government, who also organised an exhibition. A Nordic Council publication on EIA also exists. Two Reference Centres for EIA have been established to provide advice to the government.</p> <p>TRAINING: Government-organised seminars for regional, and other, authorities have taken place. A Nordic Council seminar about EIA has also been organised. The EIA Reference Centres will provide training programmes for both students and EIA practitioners.</p>
France	<p>GUIDANCE: Guidance and technical documents have been prepared for sewage projects, quarries, waste disposal, dunes, erosion, forests, industrial establishments, roads and highways, rivers, tourism, urban planning and humid areas. A general document on EIA and public enquiries has also been produced.</p> <p>TRAINING: The central environmental administration organised much EIA training in the early stages of the implementation of the regulations. However, general training has now declined in relative importance, to be replaced by an emphasis on assessment in specific sectors and projects, and on developing techniques for specific studies.</p>
Germany	<p>GUIDANCE: The government has commissioned several studies on the implementation of the EIA Directive and for project related checklists. It has also published the results of its trial run of EIA. Other organisations have also produced publications.</p> <p>TRAINING: Government organised seminars are numerous at the state level, mainly through short courses. There is an increasing tendency to concentrate on more specific issues, e.g. specific project types, and the use of case studies is also gaining in importance. In-house courses have also been held at municipal level with respect to EIA for land-use plans. Full-time university courses are, as yet, rare.</p>
Greece	<p>GUIDANCE: None exists at present, but some are due to be prepared in the near future.</p> <p>TRAINING: The Ministry of EPPP and other government and non-government organisations have organised and are planning to organise a number of seminars to inform interested parties about the new procedures and arrangements.</p>
Ireland	<p>GUIDANCE: The Department of the Environment has issued two items of guidance relating to planning and to roads, for the competent authorities involved. A general guide to the EIA process has also been produced.</p> <p>TRAINING: The Department of the Environment has provided a number of seminars for local authority staff. Public seminars have also been organised by a variety of organisations, and some third level courses include aspects of EIA.</p>
Italy	<p>GUIDANCE: The Government has produced several circulars. A guide for EIA of waste disposal is in preparation.</p> <p>TRAINING: Since the legislation came into force there has been an increase in the number of training courses, organised by universities, private and public organisations.</p>
Luxembourg	<p>GUIDANCE: None is provided at present.</p> <p>TRAINING: No special EIA training is organised. Experts involved in the preparation of reports organise their own training.</p>
Netherlands	<p>GUIDANCE: The Ministries responsible for the introduction of EIA have produced a series of documents that provide guidance to all participants in the EIA process, e.g. a Manual of EIA and an eight volume series on prediction methods.</p> <p>TRAINING: Many training activities have been organised by government authorities, consultants and training institutes.</p>
Portugal	<p>GUIDANCE: One set of EIA guidelines has been produced, but it is generally not considered useful by developers and others.</p> <p>TRAINING: Some specific EIA courses have been held, organised by universities and other bodies, including the Portuguese EIA Centre.</p>
Spain	<p>GUIDANCE: The national administration has produced guides for highways and railroads, reservoirs and afforestation. Other similar guides are due to be published, and are much needed. The Comunidad de Canarias is preparing guides for quarries, golf courses and urban developments. Some departments of the universities have also published manuals and guides.</p> <p>TRAINING: Many training programmes have been organised. The Spanish EIA Centre has been set up and will shortly expand its activities.</p>
United Kingdom	<p>GUIDANCE: Some official guidance has been produced mainly of a procedural nature, which includes circulars, memoranda and other procedural guidance. Official guidance on the preparation of EISs is in preparation, and on the review of EISs is planned. Other, non-government bodies, have also produced guidance materials, both procedural and technical.</p> <p>TRAINING: Several seminars and courses have been organised. Several masters degree/diploma courses, specifically concerned with EIA, are now also available. Seminars and conferences of a more wide ranging nature are also being held in increasing numbers.</p>

#### **4.7 Costs and benefits: an overview**

In the final analysis, the success of the EIA Directive turns on the balance between the benefits and costs of its implementation. The comparison, at best, can only be broad and approximate, because of the short experience of its application, the difficulties of calculation, and because benefits and costs are not measurable in commensurate units. Nevertheless, the comparison is worthwhile, particularly as it can highlight opportunities for increasing benefits or reducing costs in the future.

## Costs

Costs can be considered in a number of different senses, for example:

- costs of carrying out assessments for EISs;
- costs of the mitigatory measures implemented as a consequence of EIAs;
- costs associated with any delays in implementing projects which are due to the EIA process.

Table 4.12 assembles the principal findings reached in the Member State annexes. In brief, these are:

- The financial costs of carrying out an assessment for an EIS are typically a small fraction of one per cent of the capital cost of the project. The size of the fraction varies with the size of the project and for some small, non-capital intensive, projects it may exceptionally rise above 1 per cent.
- The costs of the mitigatory measures vary greatly between projects and are very sensitive to the assumptions made about the measures that would have been required in any case, even if EIA had not been undertaken. If the environmental standards to be achieved are the same, the costs of mitigation should be lower where EIA takes place, because the mitigation needs should have been identified earlier at the planning and design stage. On the other hand, if there would have been no requirement for mitigation, in the absence of the EIA, then costs would be higher - in the case of environmentally sensitive projects this could account for 5% of the total capital cost of the project.
- The overall timescale of implementing projects does not appear to be significantly affected by EIA. In a well-managed process, any loss of time in EIA preparation should be offset by savings at later stages of project authorization.

**Table 4.12 Impacts of EIA on costs and timescale in Member States**

Member State	Costs	Timescale
Belgium	No firm information currently available.	The licensing procedure begins at an earlier stage due to EIA. This initially could lead to an increase in time, but should eventually save time, especially if used in conjunction with an appropriate decision procedure.
Denmark	Costs are only likely to be affected to a moderate extent. In some cases the cost of the project will decrease, because of better planning.	The timescale is only likely to be affected to a moderate extent as EIA is integrated into the planning process.
France	Figures generally quoted by independent environmental consultants are between 5-10% of total costs of project design and documentation (not of implementation costs).	Where EIA has not been integrated into the planning process from the outset there is some increase in time.
Germany	Some additional costs for administration personnel and related to studies are expected. Mitigation measures may also lead to some additional costs. However, there is no reason to expect that EIA will be a burden on a developer, and there may be cases where costs are reduced.	Initially, delays may exist due to uncertainties about the scope of the assessment and about the administrative procedures. In the future the EIA requirements should be integrated and no delays should be experienced. For the "parallel" approval procedures, EIA could stream-line the process and reduce the timescale. EIA could also reduce litigation and as such shorten the time from application to operation of the project.
Greece	Very low extra costs have been noted so far related to preparation of EISs. Overall costs are not being affected so far because of undertaking EIA.	No change is expected so long as developers accurately follow the legislative requirements.
Ireland	No firm evidence to date.	No firm evidence to date.
Italy	The impact of EIA on costs depends on the size and type of project. For fixed installations and linear developments the cost of the study, as a % of the capital cost, tends to decrease as the capital cost increases and may be as low as 0.1-0.5% of capital costs. For some waste disposal projects of low capital cost the environmental study could exceed 1% of the capital costs.	If new base-line studies need to be carried out, and these do not commence sufficiently early, there may an extension in timescale.
Luxembourg	There is some increase in cost to the developer who has to bear the costs of the study.	The affect of EIA on the timescale varies. For road schemes, there is little effect due to stringent organisation of the procedure. For new industrial installations the timescale may be increased due to the time needed to carry out the study, but savings may be seen at the authorization stage.
Netherlands	Varies. Generally, study costs are limited to 0.001-0.01% of the cost of large projects, and perhaps up to c. 1% for some smaller projects. Some of the costs would have been incurred anyway. If the results of the EIS are used for a developers own planning and project development the return on the costs could be higher.	The evaluation study reported that EIA did not cause delays. EIA has also resulted in fewer appeal procedures; possibly compensating for any loss of time in the preceding part of the procedure.
Portugal	An increase of up to 5% of the total capital costs for a small number of environmentally sensitive projects have been quoted. In other cases, cost changes are imperceptible.	There is no evidence of perceptible delays, particularly if the EIA process is well managed.
Spain	Increases of 1-5% of total costs, and 5-20% of the planning stage costs, have been quoted.	Increases of a couple of months are quoted by environmental authorities, mainly due to the lack of information and insufficient qualified staff to deal with the large number of assessments.
United Kingdom	Only a minor increase in overall costs.	No change overall. In some cases it may have shortened the timescale.

Provided the EIA process is well-structured and managed it should not increase assessment costs or time scales to any significant extent and, in favourable circumstances, could lead to cost and time savings. To achieve a cost-effective system, the following guidelines should be followed:

- avoid assessing large numbers of very small projects (where these are unlikely to have significant environmental impacts), particularly if resources are limited for EIA work;
- provide clear and realistic guidance on good assessment practice;

- start the EIA process early and ensure that the assessment is properly scoped and efficiently managed;
- ensure that consultative arrangements are satisfactory but operate within reasonable time limits;
- ensure the existing data relevant to assessments are accessible to those who need it;
- where the workload of the authorities is unavoidably increased, make sufficient additional resources available to permit effective working and prevent delays;
- take advantage of opportunities to co-ordinate consent procedures where this will enable more effective use to be made of the EIA process and will reduce the overall time needed to process consent applications.

### Benefits

The principal benefits resulting from the practical implementation of the Directive are the environmental benefits (and avoidance of disbenefits) which result from the implementation of projects which have been better planned and designed from an environmental point of view. If, as is suggested above, this can be achieved, in most cases, at little or no extra cost, then a net benefit should result.

The extent to which projects are modified, in order to make them environmentally more acceptable, has already been reviewed (see Section 4.5 and Table 4.9). Though, in a number of Member States, the period of implementation is as yet quite short, there is clear evidence that project modifications have and are taking place, due to the influence of the EIA process. However, there is also evidence that, as yet, its impact is not as widespread as intended and that modifications are mainly confined to those of a minor or non-radical nature (which may neither be the most cost-effective nor the most environmentally beneficial mitigatory measures).

The full realisation of the benefits obtainable from the implementation of this Directive may be achieved by, *inter alia*, the following:

- ensuring that the Directive's provisions are applied to the full range of projects which may have significant impacts on the environment;

- ensuring that the EIA process starts sufficiently early in the planning and design of projects and that alternatives and mitigatory measures which may be realistically considered at this stage receive adequate examination;
- strengthening quality control of the environmental impact assessment and review of the EIS;
- ensure that the arrangements relating to the availability of the EIS and consultations based upon it are made more effective;
- ensuring that satisfactory arrangements are made for taking the EIS and consultation findings into account in project authorization decisions and that these are working satisfactorily;
- strengthening arrangements for monitoring the environmental impacts resulting from project implementation and ensure that these are working satisfactorily.

Additionally, it is evident that some development options, which may be both environmentally and economically preferable, cannot be realistically considered for implementation at the relatively late stage of individual project planning and authorization.

## **5. FINAL CONSIDERATIONS**

### **5.1 Overall evaluation of the implementation of the Directive**

Although many Member States are in the early stages of implementation, their experiences demonstrate that the planning, design and authorization of projects are beginning to be influenced by the EIA process and that environmental benefits are resulting. However, they also show that the full potential of this is not yet being realised for, *inter alia*, the following reasons:

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

### **5.2 Role of the Directive in protecting the environment in Member States**

It is clear that the Directive has had certain beneficial effects in protecting the environment of Member States by, *inter alia*,

- providing lead authorities with environmental information to be used in the assessment of individual project proposals;
- identifying, in advance of project realisation, mitigating measures for the impact of the project on the environment and modifications to the project proposal (see Table 4.9);
- formal involvement of the designated environmental authorities in the process of project analysis, although not completely satisfactory, has led to a greater awareness of the impacts of projects on significant biotopes in the Community (see section 4.4). These benefits will be more evident once full implementation of the Directive has occurred.

### **5.3 Directive's response to environmental evaluation requirements at the point of decision-making**

It is clear from the evidence contained in the Member State Annexes that evaluation of the environmental impacts of certain projects is taking place too late in the development planning and decision-making process. In effect this has the result of removing from consideration the possible adoption of alternatives both to the individual project under consideration as well as to its particular location or route (in the case of linear developments).

This is a limitation inherent in an instrument restricted to the evaluation of environmental impacts at the individual project level since a number of important policy decisions will have been taken before the project level is reached which then limit the room for manoeuvre at the detailed project level.

### **5.4 Difficulties in transposition into national law**

Clearly, the results of this review have revealed that there has been a serious 'overrun' on the timetable for formal compliance by the approved date (3 July 1988) and in a number of instances this formal transposition had yet to be completed by July 1991 (and by March 1992 - see postscripts in Member State annexes). These difficulties can be attributed to a number of factors, *inter alia*:

- in Member States, with regional government competency, implementation of the Directive by different tiers of government has added to the complexities of introducing the provisions of the Directive into existing systems of development control;
- the nature of the provisions of the Directive has meant that the transposition has involved securing the cooperation and compliance of a number of different Ministries and consequently, in some cases, the passing of a number of different legislative instruments;
- the requirement to involve the public and designated environmental institutions has met with resistance in certain quarters where there was no prior established practice or legal requirement so to do;

- certain provisions within the existing Directive have given rise to difficulties in formal transposition into Member State law (e.g. interpretation of the words 'significant environmental effects').

### **5.5 Difficulties in application in practice**

Beyond formal, legal transposition, the application of the provisions in practice by the relevant Member State authorities is essential for the efficacy of the intentions behind the Directive (i.e. increased environmental awareness at the point of project approval, prevention or amelioration of damage to the environment). Given the fact that formal transposition is, in certain cases, incomplete, the conclusions under this sub-heading are restricted by the limited experience to date of the application of the provisions of the Directive in practice.

Certainly the aggregate number of EIAs being undertaken within the Community is significant and some evidence of the successful application of the provisions of the Directive in practice. However, the data provided in Table 4.1 reveal considerable variation between Member States in the numbers of EIAs carried out and hence in the coverage of projects likely to give rise to significant environmental impacts. Variations in practice are, to a certain extent, a reflection of the following factors:

- variations between those Member States with existing EIA systems and those without;
- variations between those Member States which have modified existing procedures as a means of implementing the Directive and those which have provided for a separate system of EIA;
- variations between Member States in the quality and coverage of environmental impact statements.

Additionally, the review reveals that, in a number of Member States, only a minority of EISs are of satisfactory quality. Many of the problems are common to several, if not all, Member States, for example:



- failure to start the assessments at a sufficiently early stage in the planning process;
- a lack of sufficiently experienced staff;

Nevertheless, there is evidence that the quality of studies carried out is steadily increasing as experience with the process develops. This reflects the growing number of practitioners who have carried out a number of EISs within individual Member States. However, further training of staff will be required to maintain this development of appropriately qualified practitioners.

## **REFERENCES**

Commission of the European Communities (1973) Declaration of the Council of the European Communities and of the representatives of the governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the Environment Official Journal of the European Communities C112, pp.1-53.

Commission of the European Communities (1977) Resolution of the Council of the European Communities and of the representatives of the governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment Official Journal of the European Communities C139, pp.1-46.

Commission of the European Communities (1983) Resolution of the Council of the European Communities and of the representatives of the governments of the Member States meeting within the Council of 7 February 1983 on the continuation and implementation of a European Community policy and action programme on the environment (1982 to 1986) Official Journal of the European Communities C46, pp.1-16.

Commission of the European Communities (1985) Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment Official Journal of the European Communities L175, pp.40-48.

Commission of the European Communities (1987) Resolution of the Council of the European Communities and of the representatives of the governments of the Member States, meeting within the Council of 19 October 1987 on the continuation and implementation of a European Community policy and action programme on the environment (1987 to 1992) Official Journal of the European Communities C328, pp.1-et seq.

Commission of the European Communities (1990) Council Directive of 7 June 1990 on the freedom of access to information on the environment Official Journal of the European Communities L158, pp56-58.

United Nations (1991) Convention on Environmental Impact Assessment in a Transboundary Context E/ECE/1250.

Wood, C. and Lee, N. (eds.) (1991) Environmental Impact Assessment Training and Research in the European Communities Occasional Paper 27, EIA Centre, Department of Planning and Landscape, University of Manchester, Manchester.

## **APPENDICES**

### **Appendix 1 Questionnaire regarding the transposition of the EEC Directive 85/337 into national legislations\***

#### **1. Transposition**

- 1.1 If the Member State has not yet transposed the Directive, what Acts or other legal instruments (decrees, regulations, rules) does it propose and according to what timetable?
- 1.2 Where some competences in this field are devolved to regional authorities (regions, Länder, départements, etc.), have these bodies adopted the measures necessary to bring into operation the objectives of the community directive, and if so what are they?

#### **2. Application**

- 2.1 Does the legislation allow exemptions as regards the projects in Annex I? How are the public and the Commission notified of them?
- 2.2 Are there screening procedures and/or thresholds used for determining the need for EIA for projects in Annex II? Are there entire categories of projects that have been excluded?
- 2.3 By what means are the competent authorities and the public consulted? At what stage of the proceedings does this consultation take place? How does the decision making process take account of their opinions?
- 2.4 Where relevant, how do the Member States inform their neighbours and how do they take into account the latter's observations?
- 2.5 By what means do the competent authorities make available to the public concerned the contents of and reasons for the final decision?

#### **3. Content**

- 3.1 What does an impact study need to include? In what cases can the developer be limited to the information provided for in article 5 rather than in Annex III of the Directive? Are alternatives to the submitted project taken into account?

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\* At the third meeting of the National Experts Group on Environmental Impact Assessment, on 5 July 1989, the chairman suggested adding "a question on the actual implementation of the Directive in the Member States: this could be answered in the form of the number and type of studies which had been made since the Directive was incorporated into national law".

3.2 Is there any scoping?

**4. Miscellaneous**

4.1 What problems of interpretation have you had with the contents of annexes I or II?

## **Appendix 2 Numbers of complaints, petitions, written and oral questions relating to Directive 85/337/EEC, 1988-1990**

### **Complaints**

Table A.2.1 records the number of complaints received by the Commission relating in whole or part to the EIA Directive's implementation in Member States. Table A.2.2 summarises the status of these complaints in early 1991, indicating those where their investigation has been completed and, for the remainder, the stage in the complaints procedure they have reached. The statistics themselves should be interpreted with care, particularly if used for comparative purposes, for a number of reasons. Firstly, there are variations between Member States in the extent to which the complaints procedure is used for all environmental directives. Secondly, the statistics do not indicate the breadth or severity of individual complaints nor do they record which of them is well-founded.

Despite these limitations it is noteworthy that the total annual number of complaints received in respect of the EIA Directive is considerably above the annual average for all environmental directives and that the trend in numbers of complaints relating to this Directive was rising throughout the period 1988-1990.

**Table A.2.1 Complaints received relating to the EIA Directive, 1988-90**

<b>Member State</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>	<b>Total</b>
Belgium	1	5	6	12
Denmark	0	0	0	0
France	3	13	17	33
Germany	4	18	15	37
Greece	5	8	21	34
Ireland	2	12	12	26
Italy	5	14	23	42
Luxembourg	0	0	1	1
Netherlands	0	2	1	3
Portugal	4	7	15	26
Spain	8	34	30	72
United Kingdom	2	17	29	48
<b>TOTAL</b>	<b>34</b>	<b>130</b>	<b>170</b>	<b>334</b>

**Table A.2.2 The outcome of complaints relating to the EIA Directive (as at early 1991)**

<u>Member State</u>	<u>Closed</u>	<u>Continuing</u>		
		<u>In progress</u>	<u>Article 169*</u>	<u>Reasoned opinion</u>
Belgium	7	3	2(3)	2
Denmark	0	5	0	0
France	15	21	3	1
Germany	15	25	5	1
Greece	10	24	6	2
Ireland	7	23	2	0
Italy	13	28	4(5)	2
Luxembourg	0	0	1	1
Netherlands	0	2	1	0
Portugal	4	20	4	1
Spain	23	52	5	1
United Kingdom	24	27	1	1
TOTAL	118	230	34(36)	12
		265		

\* In some instances, more than one complaint is dealt with. The figure in ( ) indicates how many actual complaints are covered.

#### Petitions, written and oral questions

Table A.2.3 records the number of Petitions received by the Commission from Members of the European Parliament which relate in whole or part to the EIA Directive. In certain cases these are subsequently progressed through the complaints procedure. Table A.2.4 records the number of written and oral questions submitted by Members of the European Parliament which relate to the EIA Directive. The same caveats which have been

mentioned relating to complaints statistics also apply to these data. Overall, the numbers of petitions and parliamentary questions concerning the Directive were increasing over this period.

**Table A.2.3 Petitions received, relating to the EIA Directive, 1988-1990**

<b>Member State</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>	<b>Total</b>
Belgium	0	1	0	1
Denmark	0	0	0	0
France	0	2	2	4
Germany	1	1	0	2
Greece	3	2	3	8
Ireland	0	1	0	1
Italy	1	2	3	6
Luxembourg	0	0	0	0
Netherlands	0	0	0	0
Portugal	0	0	0	0
Spain	0	0	5	5
United Kingdom	3	1	0	4
<b>TOTAL</b>	<b>8</b>	<b>10</b>	<b>13</b>	<b>31</b>



**Table A.2.4 Written and oral questions received, 1989 and 1990**

<b>Member State</b>	<b>Written questions</b>			<b>Oral questions</b>		
	<b>1989</b>	<b>1990</b>	<b>Total</b>	<b>1989</b>	<b>1990</b>	<b>Total</b>
Belgium	0	0	0	0	1	1
Denmark	0	0	0	0	0	0
France	2	8	10	0	0	0
Germany	2	5	7	0	0	0
Greece	5	9	14	0	1	1
Ireland	1	2	3	0	0	0
Italy	3	7	10	0	5	5
Luxembourg	0	0	0	0	0	0
Netherlands	3	0	3	0	0	0
Portugal	2	0	2	1	1	2
Spain	3	18	21	3	1	4
United Kingdom	2	4	6	0	2	2
General questions	0	7	7	1	1	2
<b>TOTAL</b>	<b>23</b>	<b>60</b>	<b>83</b>	<b>5</b>	<b>12</b>	<b>17</b>

## **ANNEX FOR THE UNITED KINGDOM**

### **INTRODUCTION**

The annex for the United Kingdom (UK) has been prepared using a variety of sources of information, including consultations with a wide range of authorities and other organisations within the country. These have included government departments, competent authorities, designated environmental authorities, developers, consultancies and environmental interest groups, as well as individual experts. The authors are grateful for the many useful contributions they have received from their respondents. However, the contents of this review are the sole responsibility of the authors and any views expressed are not necessarily shared by all of those consulted.

The annex is structured according to the five main objectives of the study, namely: the extent of formal compliance by the UK with the requirements of Directive 85/337/EEC; the criteria and/or thresholds adopted by the UK for the selection of Annex II projects to be subject to assessment; the nature and extent of practical compliance with Directive 85/337/EEC in the UK; specific aspects of the Directive's translation into UK legislation and practice; and an overall assessment of the effectiveness of the Directive's implementation in the UK, and of difficulties in its implementation. The numbering of sections within the Annex corresponds to that used in the Introduction to this volume.

#### **1. EXTENT OF FORMAL COMPLIANCE BY THE UNITED KINGDOM WITH THE REQUIREMENTS OF THE DIRECTIVE**

##### **(a) Principal legal provisions**

The UK has, as at the beginning of July 1991, implemented Directive 85/337/EEC through 17 different regulations; two further regulations relating to Northern Ireland were in preparation. All of these are listed in the appendix to this annex. The majority of the project categories listed in Annex I, and of the project categories and sub-categories listed in Annex II, are covered under the planning regulations. However, certain project classes, and project categories and sub-categories are covered by the other regulations (e.g. afforestation, major roads). It should be noted that the UK has adopted the term 'environmental

assessment' or EA for the EIA process, and the 'environmental statement' or ES refers to the document setting out the developer's assessment of the project's likely environmental effects, which is submitted with the application for consent.

**(b) Further analysis and possible deficiencies in formal compliance**

An analysis based upon the key articles of the Directive, reveals how the Directive has been brought into effect in the UK and where any deficiencies in formal compliance may remain. The Directive does not apply to projects approved by specific acts of national legislation, according to the provisions in Article 1(5). It is the view of the UK Government that where, but for this provision, EA would have been required for a project, the promoter of the legislation should provide an ES for consideration by the appropriate Parliamentary committee. The Standing Orders of each of the Houses of Parliament have been amended to require an ES to be submitted with any Bill to approve such a project (House of Commons, Hansard, 20.5.91, col.739-740; House of Lords, Hansard, 15.7.91).

All projects in the classes listed in Annex I are subject to EA. Exemptions may be made by the appropriate Secretary of State for a particular proposed development under the planning regulations for England and Wales but this would only be granted in exceptional circumstances. So far no exemptions have been made under these or any of the other regulations. There are no specific provisions in the regulations for notifying the European Commission of any such exemptions, but the Secretary of State has stated that he will ensure compliance with the requirements of Article 2(3). In Scotland there is provision for the exemption, by the Secretary of State, of Annex I projects subject to the Electricity Act consent procedures, but no exemptions have been granted to date. The regulations applying to other Annex I projects do not provide for exemptions.

Of the categories and sub-categories of projects listed in Annex II, the following are not subject to EA by any of the UK EA regulations:

- 1 (a) projects for the restructuring of rural land holdings; and
- 1 (b) projects for the use of uncultivated land or semi- natural areas for intensive agriculture purposes.

Projects in these categories are judged, by the UK Government, as unlikely to occur in the UK in a form that would require an EA in accordance with the Directive.

Legislation contained within the Planning and Compensation Act 1991, allows the extension of EA to projects other than those listed in Directive 85/337 where those projects require planning permission. It is understood that the UK EA regulations are already to be interpreted to include modifications to Annex II projects, where these are likely to give rise to significant environmental effects.

The competent authority or the Secretary of State determines whether EA is required on a case-by-case basis. General advisory criteria have been prepared to help authorities and the Secretary of State assess whether Annex II projects are likely to have significant environmental effects, supplemented by more specific indicative criteria and thresholds for certain categories and sub-categories. These are discussed more fully in Section 2 below. The UK has not adopted any other methods for selecting Annex II projects to be subject to EA.

Since the Directive has been implemented in the UK by means other than primary legislation through integration into existing consent procedures, some elements of the Directive's provisions (e.g. details relating to consultation of the public) are absent from the text of several of the EA regulations. However, these specific elements are covered by other primary legislation or previous regulations. Therefore the EA regulations relating to those procedures should be read in conjunction with these other primary laws and statutory regulations when determining the extent of formal compliance with the Directive.

The EA regulations provide that the information to be supplied by the developer is that specified in Article 5(2), together with the requirements of Article 3 of the Directive, and this must be supplied for all types of projects; for some regulations this is referred to as "the specified information". Most of the regulations allow for the submission of the other information listed in Annex III, "by way of explanation or amplification of the specified information".

Provision is made for information held by the relevant authorities to be supplied to the developer (Article 5(3)) by all the regulations except the Scottish roads regulations (such information could be obtained under other legislation), the highways regulations (although in

practice the relevant authorities are expected to provide such information), and all the regulations dealing with harbour works for England, Wales, and Northern Ireland. If the need for such information should arise in these latter cases, it would be dealt with administratively. The relevant authorities are not obliged to supply any information held in confidence.

All the regulations make some provision to designate appropriate environmental authorities, and to ensure that the information gathered pursuant to Article 5 is supplied to them, and that the opportunity exists to express their opinion before the decision is finalised on the project (Article 6(1)). The means of denoting these authorities or bodies ranges from a specific listing within the regulations concerned, to those specified by the appropriate Secretary of State or Minister having environmental responsibilities (see Table 1 for further details).

The majority of the UK EA regulations provide for the information gathered pursuant to Article 5 to be made available to the public, and for the public to have an opportunity to express an opinion before the project is initiated (or consent given). The harbour works regulations (SI No. 1336) make no such provisions, but the Department of Transport has indicated that this requirement would be implemented administratively; developers would be advised to present an ES as part of the information accompanying their application, which is made available to the public.

The majority of the UK EA regulations contain fairly detailed mandatory arrangements for the provision of information to, and consultation with, the public (Article 6(3)). For most of the regulations all the indented items within Article 6(3) are covered. The exceptions are the harbour works regulations (SI No. 1336), the Scottish roads regulations, and the Scottish drainage works regulations, where arrangements for provision of information to, and consultation with, the public are, contained within previous legislation. The public concerned is usually determined as those in the locality of the proposal, although for some regulations the definition is broader. In the case of some of the regulations "those appearing to have an interest in the land" are also specifically contacted.

Except where already noted above, all the regulations specify a location where the information gathered pursuant to Article 5, i.e. the environmental statement, can be inspected. In the case of over half of the regulations the location is to be specified on a case by case basis, whilst for others the information is to be held at the offices of the local planning authority, or the local post office (SI No. 1218). Applications under the planning

**Table 1: UK Regulations and provisions for consultation and participation of authorities with specific environmental responsibilities**

<u>Regulations</u>	<u>Authorities to which information is to be supplied</u>	<u>Opportunity to express an opinion?</u>
Town and Country Planning (1988) (SI No. 1199)	List of various bodies, including environmental authorities, local planning authorities, etc.	Yes.
Environmental Assessment (Scotland) (1988) (SI No. 1221)	Schedule of bodies to be consulted, but does not apply to section on drainage works; also for section relating to roads, Secretary of State will ensure that the appropriate environmental body is approached if a statutory site is affected.	Yes, but with provisos in previous column.
Salmon Farming in Marine Waters (1988) (SI No. 1218)	Schedule of authorities, bodies and persons to be consulted where appropriate.	Yes, where appropriate.
Afforestation (1988) (SI No. 1207)	NCC, CC, local authorities and other statutory bodies which appear to have an interest.	Yes.
Land Drainage Improvement (1988) (SI No. 1217)	NCC, CC and any other public authorities, statutory bodies, or organisations which appear to have an interest.	Yes.
Highways (1988) (SI No. 1241)	If a statutory site is affected the Secretary of State shall ensure contact with appropriate environmental body.	Yes.
Harbour Works (1988) (SI No. 1336)	Duty of Secretary of State to provide bodies appearing to have environmental responsibility, as he thinks fit, with material.	Yes.
Harbour Works (1989) (SI No. 424)	Minister may direct developer to supply such bodies as he may specify as appearing to him to have environmental responsibilities.	Yes.
Electricity and Pipe-line Works (1990) (SI No. 442)	Principal council for area, CC, NCC, HMIP.	Yes.
Roads (Northern Ireland) (1988) (SR No. 344)	Statutory bodies whose interests appear to the Department of the Environment to be affected by the proposal.	Yes.
Planning (Northern Ireland) (1989) (SR No. 20)	District councils and other statutory bodies as appear to have an interest in the proposal.	Yes.
Forestry (Northern Ireland) (1989) (SR No. 226)	District councils and other public authorities and statutory bodies which appear to have an interest in the project.	Yes.
Harbour Works (Northern Ireland) (1990) (SR No. 181)	Such bodies as appropriate Department specifies as appearing to it to have environmental responsibilities.	Yes.

and electricity and pipe-line regulations are placed on the planning register and are available for inspection by the public. Copies of the ES may also be consulted at local libraries, in the case of power stations and overhead lines, as well as at the offices of the electricity company in the case of the latter. The time available for consulting the information varies from 21 days to 42 days, although no specific limits are given in the planning regulations for Northern

Ireland, and the planning regulations for England and Wales since this is dealt with in previous legislation. The way in which the public are informed of a proposal is through publication in local newspapers - usually in at least one, but sometimes in at least two. For proposals in Scotland, publication must also take place in the Edinburgh Gazette.

For proposals under the salmon farming in marine waters regulations, publication should be in a local newspaper and either the Edinburgh or London Gazette. All the regulations stipulate that the public should make representations in writing, with time limits varying from 7 days to 49 days. Again, no time limits are specified in the planning regulations for Northern Ireland, the Scottish planning regulations, and the planning regulations for England and Wales; these are dealt with in previous legislation. Some of the regulations (planning regulations, roads regulations, and harbours and docks regulations for Northern Ireland, and harbour works (No. 2) regulations (SI No. 424)) make provision for a public inquiry for specific proposals, where necessary.

None of the UK EA regulations make provision for matters covered by Article 7 of the Directive. However, it is expected, by the UK Government, that because of their geographical location very few, if any, projects proposed in England, Scotland and Wales will have significant environmental effects in other Member States. It has stated that the appropriate government department considers every ES and the UK Government will notify any other Member State when it appears likely that their environment will be significantly affected by a project. Internal arrangements exist whereby the regional offices of the Department of the Environment (DOE), and also other government departments, are requested to consider ESs with Article 7 in mind. If the project is one where this article might be applicable the competent authorities are asked to advise DOE and also to send them a copy of the ES. Similar arrangements exist for Northern Ireland and, in addition, informal consultation arrangements have been established between DOE for Northern Ireland and the Department of the Environment for the Republic of Ireland. The consultation arrangements have been activated for one project. The UK Government is also a signatory to the Convention on Environmental Impact Assessment in a Transboundary Context.



All of the UK EA regulations, with the exception noted below, contain provisions to ensure that information gathered pursuant to Articles 5,6 and 7 is taken into consideration in the development consent process (Article 8). The harbour works (SI No. 1336) regulations do not contain provisions for considering the opinions of the public but it is understood, this would be dealt with administratively. None of the regulations contain any reference to consideration of the views of neighbouring Member States. However, the UK Government has stated that any such comments would be drawn to the attention of the decision making body which would be expected to take them into consideration before deciding whether a project should proceed.

The UK EA regulations contain varying provisions to ensure that the competent authorities provide the public with information relating to the content of a decision, and the reasons and considerations on which the decision is based (Article 9). No provisions are contained in the Scottish drainage regulations; however, provision is made in other, earlier, drainage regulations. Provision is made in the following regulations to communicate the decision only: forestry regulations for Northern Ireland - in the local newspapers and in writing to those making representations; harbour works regulations (SI No. 1336) - as the Secretary of State sees fit (provision of reasons and any conditions would be handled administratively); the forestry regulations - in at least two local newspapers and in writing to those making representations; the following Scottish regulations, planning - those consulted and those with an interest in the land; electricity and specific developments in new towns - those consulted, and a copy is also made available; roads. Projects subject to the planning procedures in England, Wales, Northern Ireland and projects approved under the electricity and pipe-line regulations must have the decision letter, including the reasons and any conditions, placed on the planning register for public inspection. The decision letter is also sent to all those registered as "objectors" to the scheme. The remaining regulations make provision for communication of both the decision, the reasons for the decision and any conditions attached. This information is communicated via at least one local newspaper, by the Northern Ireland roads regulations, and in writing to those consulted or making representations, in the case of the harbour works regulations SI No. 424 (published as the Secretary of State sees fit); for the drainage works improvement regulations (if the Minister so decides and there is no barrier to making this information public); for the harbours and

docks regulations for Northern Ireland; and for the marine salmon farming regulations. For the other regulations this article is implemented through other regulations and Acts. If a neighbouring Member State is involved, the UK Government has stated that it would communicate the decision, along with the reasons and any conditions, to that Member State.

The UK EA regulations do not contain any provisions to respect limitations imposed by industrial and commercial secrecy and the safeguarding of the public interest, or relating to the transmission of information between Member States (Article 10). However, the EA process does not require any further information than, for example, could be required under existing development consent procedures. Six of the UK EA regulations contain provisions regarding confidentiality, but, these relate solely to the provision of information to the developer for preparation of the ES.

Those consulted during the course of this study are generally, though not universally, of the view that the measures undertaken by the UK are in broad agreement with the letter of Directive 85/337/EEC. However, some of the above consider that formal compliance is minimalist, with the spirit of the Directive not always being fully reflected (e.g. the adoption of Article 5(2) as the minimum information that must be provided). One point of concern to some people is that only a grant consent procedure and not a development consent procedure exists for certain types of development subject to EA, i.e. for afforestation. Some developments of these types may not require a grant, including the Forestry Commission's own proposals, and in these cases the requirement for EA is not mandatory. However, the Forestry Commission has stated it will apply the principles of the regulations to its own afforestation projects. A further area of concern to some is the advisory status of the criteria and thresholds applied to Annex II projects.

**(d) Remedy of any remaining deficiencies**

Two further sets of regulations for Northern Ireland were in preparation at July 1991, relating to flood relief work and discharges to water. The latter regulations were expected to be in place by the end of 1991.

**(e) Competent authorities**

The competent authorities designated as responsible for performing the duties arising from Directive 85/337 in the UK are those responsible for approving the project or for authorizing a grant, whether it is a government department or another such body (see Table 2 for details).

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

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

The various UK regulations make provision for the competent authority to consider case by case whether a project in Annex II is likely to have significant environmental effects so as to require an EA, but do not specify any mandatory criteria or thresholds. Advisory criteria, and thresholds for certain Annex II projects, have been published by Government departments for guidance purposes only (DOE/WO, 1988; SDD, 1988; DOE(NI), 1989; Forestry Commission, 1988; Crown Estate Office, 1988; Department of Transport, 1989). These relate to projects subject to the planning regulations for England and Wales, Scotland, and Northern Ireland, afforestation, marine salmon farming and highways. Table 3 summarises the particular thresholds applicable to a selection of different types of projects. However, the criteria and thresholds need to be read in the context of the general guidance given in the same documents. In all cases, the fundamental test for each case, whether there are advisory thresholds or not, is whether in the view of the competent authority the proposed project is likely, on the facts, to have significant environmental effects. The three main criteria of significance to be applied relate to the scale, location and types of effects associated with the project in question (DOE/WO, 1988).

### **(b) Comment on criteria/thresholds**

Opinions amongst a sample of the competent authorities required to use the quantified indicative criteria, who have been consulted on this issue, are divided as to whether they are appropriate or not (Wood and Jones, 1991). Amongst those consulted it was, in general, felt that EA in the UK was being applied to appropriate types and numbers of projects. However, some of those consulted in the preparation of this Annex commented that the interpretation of the term "significant effects" by local planning authorities has been variable.

**Table 2: Competent authorities responsible for dealing with UK regulations**

<u>Regulations</u>	<u>Competent Authorities</u>
Town and Country Planning (1988) (SI No. 1199)	Local planning authority or appropriate Secretary of State
Environmental Assessment (Scotland) (1988) (SI No. 1221)	Local planning authority or appropriate Secretary of State
Salmon Farming in Marine Waters (1988) (SI No. 1218)	Crown Estate Commissioners
Afforestation (1988) (SI No. 1207)	Forestry Commission
Land Drainage Improvement (1988) (SI No. 1217)	Drainage bodies, <i>or</i> Minister of Agriculture, Fisheries and Food, <i>or</i> Secretary of State for Wales
Highways (1988) (SI No.1241)	Secretary of State for Transport <i>or</i> Secretary of State for Wales
Harbour Works (1988) (SI No. 1336)	Minister of Agriculture, Fisheries and Food, <i>or</i> Secretary of State for Transport <i>or</i> Secretary of State for Wales
Harbour Works (1989) (SI No. 424)	Minister of Agriculture, Fisheries and Food, <i>or</i> Secretary of State for Transport <i>or</i> Secretary of State for Wales, <i>or</i> Secretary of State for Scotland
Electricity and Pipe-line Works (1990) (SI No.442)	Secretary of State for Energy
Roads (Northern Ireland) (1988) (SR No. 344)	Department of the Environment (Northern Ireland)
Planning (Northern Ireland) (1989) (SR No. 20)	Department of the Environment (Northern Ireland)
Forestry (Northern Ireland) (1989) (SR No. 226)	Department of Agriculture for Northern Ireland
Harbour Works (Northern Ireland) (1990) (SR No. 181)	Department of the Environment (Northern Ireland) <i>or</i> Department of Agriculture for Northern Ireland

Designated environmental authorities consider that it would be beneficial if they were

consulted, and greater weight given to their views, at an early stage when these criteria and thresholds are being used and when the requirement for an EA is being decided. In the UK Government's view, the likely significance of a project's environmental effects should

**Table 3: Examples of indicative criteria and thresholds for Annex II projects\***

Project category	Criteria and thresholds
<u>Agriculture</u> Afforestation	EA will certainly be required where more than 100 ha is proposed for planting with within designated areas.
New poultry rearing installations	... those designed to house more than 100,000 broilers or 50,000 layers, turkeys or other poultry may require EA.
New pig rearing installations	... those designed to house more than 400 sows or 5,000 fattening pigs may require EA.
Salmon farming	... production of more than 100 tonnes of fish per year may require EA. or total cage area of more than 6,000m <sup>2</sup> within a 2km radius in certain defined areas. or total cage area of more than 12,000m <sup>2</sup> within a 2km radius in any other areas.
<u>Extractive industry</u> Opencast coal mines and sand and gravel workings	... sites of more than 50 ha may require EA, and significantly smaller sites could require EA if they are in a sensitive area or if subjected to particularly obtrusive operations.
<u>Infrastructure projects</u> Industrial-estate development projects	EA may be required where the site area is in excess of 20 ha. or significant numbers of dwellings in close proximity (e.g. more than 1,000 dwellings within 200m of the site boundaries).
Urban development projects	Schemes may require EA where the site area is more than 5 ha in an urbanised area, or there are significant numbers of dwellings in close proximity (e.g. more than 700 dwellings within 200m of the site boundaries), or a total of more than 10,000m <sup>2</sup> (gross) of shops, offices or other commercial uses would be provided.
Local roads	Outside urban areas, EA may be required for the construction of new roads and major road improvements over 10km in length, or roads over 1km in length if passing through a national park or through or within 100m of a site of special scientific interest, a national nature reserve or a conservation area.  Within urban areas, any scheme where more than 1,500 dwellings lie within 100m of the centre line of a proposed road, may be a candidate for EA.  EA will be required for highways over 10km in length.
Trunk roads	
Other infrastructure projects	Projects requiring sites in excess of 100 ha may require EA.
<u>Other projects</u> Waste disposal	Installations with a capacity of more than 75,000 tonnes per year may require EA.
Manufacturing industry generally	New plants requiring sites in the range 20-30 ha, or above, may require EA. In addition EA may occasionally be required on account of expected discharge of waste, emission of pollutants, etc.

\* Because of limitations of space, only an abbreviated summary of each selected threshold or criterion is provided. Refer to DOE (1989) for fuller descriptions. In all cases the overriding criterion is whether the development is likely to have significant environmental effects.

normally be evident from the information provided by the developer, bearing in mind the relevant guidance; the designated environmental authorities should, however, be consulted in case of doubt.

### **3. NATURE AND EXTENT OF PRACTICAL COMPLIANCE WITH THE DIRECTIVE**

#### **(a) Number and categories of EISs**

Information concerning the numbers of ESs produced in the UK has been compiled by the EIA Centre for the period 15 July 1988 to 31 December 1990 (Jones, Lee and Wood, 1991). The total number of ESs known to have been submitted to the authorities for this period was 472. Table 4 shows the project categories for which these were prepared. The principal categories were:

- in Annex I, power stations, roads and waste disposal installations; and
- in Annex II, extractive industry, infrastructure projects and other projects.

It is noteworthy that a relatively small number of ESs has been prepared for industrial projects.

Table 5 shows the UK regulations under which the ESs were prepared. The majority (60%) were prepared under the planning regulations for England and Wales. The Environmental Assessment (Scotland) Regulations accounted for 11% of the ESs prepared, while the land drainage improvement works, the highways regulations and the electricity and pipe-line works regulations each accounted for approximately 7% of the ESs prepared.

#### **(b) Information specified in Article 5 and Annex III**

The extent, and degree, to which developers are providing, in their ESs, the information specified in Article 5 and Annex III of the Directive is difficult to assess. Particular types of impacts may not be covered in individual ESs either because they are not significant or because they have been overlooked. In a number of cases the range of impacts covered appears to be broadly satisfactory.

**Table 4: Project categories of EISs known to have been submitted to UK authorities**

**15-7-88 to 31-12-90**

<u>Category</u>	<u>Number of EISs</u>
<b>Annex I</b>	
1: Crude oil refineries, gasification of coal	1
2: Power stations	15
3: Radioactive waste	0
4: Iron/steel works	0
5: Asbestos works	1
6: Integrated chemical installations	1
7: Roads, railways, airports	14
8: Ports	4
9: Waste disposal	19
All Annex I projects	55
<b>Annex II</b>	
1: Agriculture	25
2: Extractive industry	68
3: Energy production	22
4: Processing of metals	6
5: Manufacture of glass	0
6: Chemical industry	11
7: Food industry	3
8: Textile, leather, wood and paper industries	5
9: Rubber industry	0
10: Infrastructure	198
11: Other	72
Mixed 10: and 11:	6
12: Modifications	1
All Annex II projects	417
All (Annex I and Annex II) projects	472

**Table 5: Numbers of ESs prepared under UK regulations - 15-7-88 to 31-12-90**

<u>UK regulations</u>	<u>Number of ESs</u>
Town and Country Planning - England and Wales (SI No. 1199)	283
Environmental Assessment - Scotland (SI No. 1221)	51
Salmon Farming in Marine Waters - England, Wales, Scotland (SI No. 1218)	1
Afforestation - England, Wales, Scotland (SI No. 1207)	16
Land Drainage Improvement Works - England and Wales (SI No. 1217)	36
Highways - England, Wales (SI No. 1241)	39
Harbour Works - England, Wales (SI No. 1336)	0
Harbour Works - England, Wales (SI No. 424)	0
Electricity and Pipe-line Works - England, Wales (SI No. 442)	33
Roads - Northern Ireland (SR No. 344)	1
Planning - Northern Ireland (SR No. 20)	6
Afforestation - Northern Ireland (SR No. 226)	1
Harbour Works - Northern Ireland (SR No. 181)	0
Total	467

N.B. At least 5 ESs are known to have been prepared for Acts of Parliament

However, one study relating to a sample of planning ESs, found that many developers included only the 'specified information' required by Schedule 3 (based on Articles 3 and 5(2) of the Directive) (Wood and Jones, 1991). Much of the information requirements of Annex III are regarded as non-mandatory in the UK. The coverage of alternatives, risks of accidents and, to some degree, indirect and cumulative impacts, often appears to be incomplete (Jones, Lee and Wood, 1991). Only a minority of ESs include any consideration of alternatives; in some cases the consideration of alternatives is not considered applicable. However, in the case of motorways and trunk roads, the appropriate Government department consults the public at an early stage on a number of alternative proposals. Where such alternatives would have significantly different effects from those of the published scheme for which the ES has been provided, the ES includes a summary description of the main alternatives and the reasons for the choice of the published scheme.

**(c) Making authorities' information available to the developer**

Where authorities with relevant information in their possession are required to make this available to the developer, to facilitate preparation of the ES, they are, in the majority of cases, doing so. In some cases a charge is being made for the provision of such information. In some instances developers are choosing to prepare ESs without consulting these authorities, or indeed the competent authority concerned.

**(d) Arrangements for publication of EIS**

In general, it is considered that the situation in the UK is satisfactory concerning the publication of ESs and their availability for consultation once they have been submitted. Copies can, in most cases, be obtained from either the developer or the competent authority concerned. Where the information was available to the EIA Centre, just under half of 290 ESs were available free of charge, with 18% available for purchase at £20 or less, and the remaining 33% available at more than £20. In most cases copies of ESs are available, particularly in the specific locality where an application for consent is submitted. However, in a few cases copies of ESs are only available for consultation, but not for purchase by the public. Also, the absence of a central, up-to-date, listing of all ESs sometimes makes locating copies for purchase or consultation difficult.



**(e) Arrangements for consultation and public participation**

Consultation with designated environmental authorities, by the competent authorities, after the ES has been submitted, seems on the whole to be working reasonably well, although there have been instances where they have not been consulted at all (Wood and Jones, 1991). Generally, the public and other environmental interest groups are also given an opportunity to express an opinion about a proposal before any decision is taken. In several cases the developer has consulted the competent authority and the designated environmental authorities on an informal basis, before the submission of the ES. In some cases the public and environmental interest groups have also been contacted before submission of the ES. However, these latter groups are usually consulted less frequently and in less depth.

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

The uses made of the ES, and of the consultations based on it, by the competent authorities in the decision-making process are difficult to assess. Sometimes decisions appear to have been based on poor ESs and/or inadequate information. However, more research is needed in this area before definitive conclusions can be reached. The decisions reached, including reasons and any conditions, are made available to the public, where this is provided for by the UK regulations.

**(h) Modification of projects**

It is also difficult to judge the extent to which undertaking an EA has led to the modification of a project, although modifications have definitely been made to some projects (Wood and Jones, 1991). The process of project design and its progress through the development consent procedure tends, by its nature, to be one of change and modification at many points. Early initiation of the EA process is felt by several of those consulted to have been a contributory factor in modifying the design of a number of projects to reduce adverse environmental effects.

**4. SPECIFIC ASPECTS OF THE DIRECTIVE'S TRANSLATION INTO UNITED KINGDOM LEGISLATION AND PRACTICE**

**(a) Measures to monitor implementation of Directive**

Monitoring the implementation of the Directive in the UK is undertaken in different ways. DOE maintains and publishes details of planning cases subject to EA in Great Britain (i.e. England, Wales, and Scotland). The information published relates to ESs submitted, to "directions" and "opinions" as to whether an EA is required, and "notifications" that an EA has been requested. For each case the name of the relevant competent authority is given, together with a brief indication of the nature of the project, and the category of the project according to the UK regulations. Where relevant, the reasons for DOE/SO/WO directing that an EA is necessary are also briefly stated. When a decision has been made on a project this is also published, together with the date of the decision. The Planning Service of DOE Northern Ireland monitors implementation on a quarterly basis and advises DOE (London) of the determinations made, ESs received, etc.

A DOE commissioned study on the implementation of the Directive for planning projects in England, Wales and Scotland over the period July 1988 to December 1989, recently reported on the adequacy of the monitoring arrangements for planning ESs. It found that these were generally valuable, but that there was some under-recording taking place and made a number of recommendations to strengthen existing practice (Wood and Jones, 1991).

For non-planning projects, lists of cases subject to EA are maintained by the relevant competent authorities. These lists typically contain a brief description of each case, i.e. the name of the developer and either a title, or some indication of the nature, of the proposal. The lists are generally available on request from the relevant competent authority. Department of Transport regional offices are asked to provide headquarters with copies of published ESs for monitoring of their contents.

The absence of a system for centrally recording all ESs, relating to planning and non-planning cases, is considered a weakness in the present monitoring arrangements, as is the absence of a system for centrally depositing copies of all ESs (Jones, Lee and Wood, 1991).

**(b) Provision for scoping**

There are no mandatory provisions for 'scoping' an assessment in the UK. It is for the developer to identify the aspects that the ES should concentrate on, having regard to the

nature, size and location of the project, and its likely effects on the environment. In the circulars produced as guidance to the planning regulations, for England, Wales and Scotland, developers are recommended to consult the competent authorities and designated environmental authorities at an early stage in the planning of a project to discuss which features of the project will need most attention in the ES. However, the extent to which this happens is known to be very variable. The short guidance document produced to supplement the forestry regulations states that, "Information about environmental effects which are not likely to be significant is not required" (Forestry Commission, 1988). The brief note produced by the Crown Estate Office, for those intending to submit applications under the salmon farming in marine waters regulations, encourages developers to check with that Office at an early stage in the preparation of lease applications regarding the scope of the ES (Crown Estate Office, 1988).

**(c) Quality of ESs**

It is apparent that the ESs produced since the EA regulations have come into force have been of variable quality ranging from very satisfactory to very unsatisfactory, and this has been demonstrated in a number of published and unpublished studies (Lambert and Wood, 1990; Lee and Colley, 1990; Smith, 1990; Lee, 1991; Wood and Jones, 1991). Areas of particular weakness identified in the above studies include the description of types and quantities of wastes created; the identification and scoping of potential impacts; qualitative rather than quantitative treatment of impacts; risk of accidents; assessment of impact significance; bias and misplaced emphasis in presentation; poor writing and presentation of often very diverse information; and the lack of a non-technical summary. Several factors appear to have contributed to the poor quality of many ESs, including:

- lack of experience of EA, intensified by lack of guidance and training;
- bias, particularly where the developer and the competent authority belong to the same authority;
- not starting the EA process early enough, although the inherent limitations of environmental assessments confined to the project stage also need to be recognised; and
- lack of satisfactory scoping.

A majority of the sample of 1988 and 1989 ESs that have been evaluated were assessed to be of unsatisfactory quality. However, there are indications that, with increased experience, the overall quality of EISs is improving; 60% of a sample of 1990-1 ESs were assessed as of satisfactory quality, although half of these were only considered to be marginally satisfactory (Lee, 1991).

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

The UK Government has not officially established any provisions in its EA regulations, for the formal review of the adequacy and quality of ESs, nor is there an official, independent review body in existence in the UK. However, the competent authorities have powers, contained in other existing laws and regulations, to evaluate an ES. The competent authority is required (in all cases) to have regard to the ES, as well as any other material considerations, when determining an application. For some of the regulations (e.g. planning regulations) the competent authority can request the submission of further information. A planning application cannot be refused because of an inadequate ES, but it can be refused on the grounds that insufficient information has been provided for its determination (DOE/WO, 1989). In general, the competent authority assesses the ES using its own 'in-house' knowledge and experience, and the comments of other public authorities. In some instances outside consultants and other organisations are also used to comment on ESs. It would seem, nevertheless, that a number of ESs which are apparently inadequate are being accepted by competent authorities. The UK Government has indicated that it intends to issue guidance to competent authorities on the evaluation of ESs and other environmental information.

**(e) Provision for monitoring and post-auditing**

There are no provisions within the EA regulations themselves for monitoring the environmental impacts of projects after their implementation, nor for the post-auditing of EA studies. No official written guidance has been published on EA monitoring and post-auditing in the UK. However, under other existing laws and regulations the powers exist to attach monitoring conditions for certain consent procedures, and these are used in certain cases. In addition, the environmental effects of the operation of industrial plants and other installations, whether or not these have been subject to EA at the planning stage, may be monitored by Her Majesty's Inspectorate of Pollution, the National Rivers Authority, the Health and Safety Executive and local authorities.

**(f) Assistance to practitioners**

A list of EA guidance material produced by government departments and agencies for England, Wales and Scotland is given in the Appendix to this annex. Most of this has been of a procedural nature; guidance on EA practice and methods has been more limited, though it should increase in the near future.

The guidance issued includes circulars, memoranda, and short procedural guidance. The DOE has produced a helpful guide to the UK EA procedures, mainly dealing with the planning regulations in England and Wales. DOE, SO and WO have also produced leaflets, for the public. DOE (Northern Ireland) has produced several internal circulars, and makes frequent use of the guide to the EA procedures (see above). The Department of Transport is also currently revising its Manual of Environmental Appraisal (DTp, 1983) which sets out details of the issues to be assessed, and methods to be used, for motorway and trunk road schemes in England and Wales. A similar manual, prepared in 1986, is available in Scotland (SDD, 1986). A short booklet relating to forestry schemes has been supplemented by guidelines relating to water, landscape and conservation; guidelines for archaeology will be produced shortly. Revised guidance on the location and siting of marine fish farms, which will include consideration of EA, is also being produced by the Scottish Office. The Department of Energy has commissioned the preparation of a guidance note for the EA of pipeline proposals. The Ministry of Agriculture, Fisheries and Food (MAFF) provides guidance on a case by case basis. The DOE has recently commissioned practical guidance relating to the preparation of ESs, which will be directed at a wide audience. DOE intends to issue guidance on the EA procedures for projects approved by private Act of Parliament. DOE is also, as stated above, to commission guidance on the evaluation of environmental information, including the ES. This is expected to consider quality issues and the use to be made of the environmental information for decision-making purposes.

Other authorities and bodies have produced some EA guidance material. The Countryside Commission for England and Wales published a guidance note on EA and landscape and recreation issues, for use by their officers, by developers, and by local authorities (Countryside Commission, 1991). The Passenger Transport Executive Group has commissioned procedural and broad technical guidance on EA for major passenger transport schemes. The Council for the Protection of Rural England has produced a short pamphlet on EA (CPRE, 1990).

Practitioners have also been assisted through the provision of EA training courses. The Local Government Training Board held a short course for local authority planners, soon after the implementation of the Directive. Several local authorities have held one day, or

longer, seminars on EA for their officers. The Department of Transport has held several training courses for trunk road managers and their consultants, on a regional basis, dealing with EA. Similarly, the Nature Conservancy Council and Her Majesty's Inspectorate of Pollution have organised several training courses for their officers dealing with EA cases. DOE (Northern Ireland) Planning Service ran a series of workshops for all staff involved with EA. The EC training initiative on EIA, through the EIA Centre at the University of Manchester, has supported EA training and encouraged the dissemination of EA information. Several masters degree/diploma courses, specifically concerned with EIA, are now also available in the UK, as well as courses where EIA is a component of a specialist degree scheme. Seminars and conferences of a more wide ranging nature, relating to EA are also held in the UK. These are organised by various bodies, such as universities, consultancies, and professional organisations (Wathern, 1991).

The quantity of EIA training in the UK has increased considerably since Directive 85/337 was approved. However, there is still scope for improving the quality and practical relevance of certain of the training provided (Wood and Lee, 1991).

**(g) Effect on timescale, costs, etc.**

The majority of EA practitioners consulted in the UK (including public and private developers, consultants, designated environmental authorities and competent authorities) consider that EA for planning cases has, in general, resulted in only a minor, or no, increase in the overall costs of a project (Wood and Jones, 1991). It is also considered that EA has had very little overall effect on the timescale; in some instances the timescale may even have been shortened (Wood and Jones, 1991). A slight cost increase associated with the production of the ES has been noted for schemes under the highways regulations. There appears to be little or no delay for power station and overhead line projects, except where further information is requested and some elements of delay and additional cost then become apparent. The requirement for EA and the attendant consultation process has caused some delays and additions to costs for some pipe-line projects, and some land drainage schemes. In certain circumstances MAFF may provide grant aid towards the cost of preparing ESs. There is no information so far about the effects of EA procedures on costs and timescales for marine salmon farming projects, and harbour works, due to the limited number of

applications being made. Overall, given the short time in which the EA regulations have been in force, they seem to have been implemented so far with little noticeable cost or disruption.

Generally, UK government departments appear to consider that the regulations to implement the EIA Directive are working well in practice, with EA providing useful information for the decision-making process. Some other participants in the EA process, whilst making a positive judgement overall, have some reservations, and cite, *inter alia*, insufficient understanding of EA and a lack of training as two obstacles to better performance.

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

### **(a) Provisions already made**

A number, but not all, of respondents consider that the formal provisions made by the UK broadly implement the requirements of Directive 85/337/EEC. There are some remaining areas of uncertainty relating, for example, to the legal status and appropriateness of the indicative criteria and thresholds for Annex II projects and to the manner in which Article 5 and Annex III have been transposed into UK regulations.

There were more reservations among respondents about EA implementation in practice in the UK. In part this is expected, given the relatively recent approval of EA regulations. Nonetheless, there are a number of areas of concern which may need to be addressed. These include:

- inadequate monitoring of the Directive's implementation in the UK, especially in the case of projects covered by 'non-planning' regulations;
- failure to start the EA process sufficiently early and to include an adequate treatment of alternatives;
- insufficient use of systematic scoping procedures and methods;



- poor quality and insufficiently objective ESs being submitted by developers and accepted by competent authorities;
- uncertain use made of ESs and consultation findings in the decision process;
- insufficient provisions for monitoring the environmental impacts arising from project implementation and for monitoring their consistency with predictions contained in the ES.

**(b) Ambiguities in the Directive**

There have been some specific problems of interpreting the meaning of particular projects in Annexes I and II, e.g. ‘integrated chemical installations’ and ‘urban development projects’, and some respondents are unclear how to interpret ‘significant effects on the environment’. However, on the whole, those consulted have not experienced major problems in interpreting the provisions of the Directive, nor do they consider there have been major technical and procedural difficulties in transposing it into the UK situation.

**(c) Recommendations for more satisfactory, cost-effective compliance in the United Kingdom**

The following specific suggestions have been made to achieve more satisfactory practical compliance with Directive 85/337 in the UK. They originate from the organisations and individuals consulted and from other, recently completed, reviews of EA implementation in the UK which also contain more detailed recommendations (Wood and Jones, 1991; Jones, Lee and Wood, 1991).

- A system for centrally recording all ESs prepared under UK regulations should be established and the list of all such ESs should be published at regular intervals. An official central depository for all ESs should be established at which the ESs should be available for public consultation.
- Measures should be taken to ensure that the EA process starts sufficiently early and that its effectiveness during the early stages is strengthened by placing greater emphasis on early consultation and more systematic scoping of the assessment.

- More specific guidance should be issued to reduce any ambiguity in the interpretation of the indicative criteria and thresholds for Annex II projects; the application of these criteria and thresholds should be monitored, on a sample basis, to ensure satisfactory compliance.
- Measures should be taken to improve the quality and objectivity of ESs, including the provision of guidance for the preparation and evaluation of ESs.
- Guidance should be provided on the role of the public and voluntary groups in the EA process.
- Consideration should be given to the establishment of an independent statutory body to set and maintain standards relating to scoping, the determination of significant impacts, review of ESs and monitoring/post-auditing.
- More, and better targeted, training should be provided for those engaged in the EA process.
- More research should be undertaken of: the actual use made of the ES and consultation findings in the authorization of projects and of means of increasing their effectiveness; the costs, time and other resources associated with EA implementation in order to provide guidance on its cost-effective development.

## REFERENCES

- Council for the Protection of Rural England (1990) Environmental Statements: Getting them right CPRE, London.
- Countryside Commission (1991) Environmental Assessment: The Treatment of Landscape and Countryside Recreation Issues Technical Report, CCP 326, Countryside Commission Publications, Cheltenham.
- Crown Estate Office (1988) Environmental Assessment of Marine Salmon Farms dated 15 July 1988, CEO, Edinburgh.
- Department of the Environment (Northern Ireland) (1989) Environmental Impact Assessment Development Control Advice Note 10, DOE (NI), Belfast.
- Department of the Environment/Welsh Office (1988) Environmental Assessment DOE Circular 15/88 (Welsh Office 23/88), dated 12 July 1988, HMSO, London.
- Department of the Environment/Welsh Office (1989) Environmental Assessment: A Guide to the Procedures HMSO, London.
- Department of Transport (1983) Manual of Environmental Appraisal Assessments Policy and Methods Division, DTp, London.
- Department of Transport (1989) Environmental Assessment under EC Directive 85/337 DTp Departmental Standard notice HD18/88, dated July 1989, DTp, London.
- Forestry Commission (1988) Environmental Assessment of Afforestation Projects dated 4 August 1988, Forestry Commission, Edinburgh.
- Jones, C.E., Lee, N. and Wood, C. (1991) UK Environmental Statements 1988-1990: an Analysis Occasional Paper 29, Department of Planning and Landscape, University of Manchester, Manchester.
- Lambert, A.J. and Wood, C.M. (1990) 'UK implementation of the European Directive on EIA: spirit or letter?' Town Planning Review 61 (3): 247-262.

- Lee, N. (1991) 'Quality control in environmental assessment' Proceedings of Advances in Environmental Assessment Conference Legal Studies and Services, London, and Institute of Environmental Assessment, Grantham.
- Lee, N. and Colley, R. (1990) Reviewing the Quality of Environmental Statements Occasional Paper 24, Department of Planning and Landscape, University of Manchester, Manchester.
- Scottish Development Department (1986) Scottish Traffic and Environmental Appraisal Manual (STEAM) SDD, Edinburgh.
- Scottish Development Department (1988) Environmental Assessment: Implementation of EC Directive: The Environmental Assessment (Scotland) Regulations 1988 SDD Circular 13/88, dated 12 July 1988, SDD, Edinburgh.
- Smith, J. (1990) A Critical Appraisal of the Performance of the Environmental Assessment (Scotland) Regulations since their Introduction Unpublished M.Sc. Environmental Management, Stirling University, Stirling.
- Wathern, P. (1991) EIA Training in the UK. In Wood, C. Lee, N. (eds.) Environmental Impact Assessment Training and Research in the European Communities Occasional Paper 27, Department of Planning and Landscape, University of Manchester, Manchester.
- Wood, C. and Jones, C. (1991) Monitoring Environmental Assessment and Planning A report by the EIA Centre, Department of Planning and Landscape, University of Manchester for the Department of the Environment. HMSO, London.
- Wood, C.M. and Lee, N. (eds.) (1991) Environmental Impact Assessment Training and Research in the European Communities Occasional Paper 27, Department of Planning and Landscape, University of Manchester, Manchester.

## **APPENDIX**

### **UK EA regulations (as at beginning of July 1991)**

- Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI No. 1199)

- Environmental Assessment (Scotland) Regulations 1988 (SI No. 1221)
- Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988 (SI No. 1218)
- Environmental Assessment (Afforestation) Regulations 1988 (SI No. 1207)
- Land Drainage Improvement Works (Assessment of Environmental Effects) Regulations 1988 (SI No. 1217)
- Highways (Assessment of Environmental Effects) Regulations 1988 (SI No. 1241)
- Harbour Works (Assessment of Environmental Effects) Regulations 1988 (SI No. 1336)
- Town and Country Planning General Development Order 1988 (SI No. 1813)  
[revokes Town and Country Planning General Development (Amendment) Order 1988 (SI No. 1272) - provisions of this Regulation are now contained in Article 14(2) of SI No. 1813]]
- Town and Country Planning (General Development) (Scotland) Amendment Order 1988 (SI No. 977)
- Town and Country Planning (General Development) (Scotland) Amendment No. 2 Order 1988 (SI No. 1249)
- Harbour Works (Assessment of Environmental Effects) (No. 2) Regulations 1989 (SI No. 424)
- The Town and Country Planning (Assessment of Environmental Effects) (Amendment) Regulations 1990 (SI No. 367)
- The Electricity and Pipe-line Works (Assessment of Environmental Effects) Regulations 1990 (SI No. 442)  
[revokes The Electricity and Pipe-line Works (Assessment of Environmental Effects) Regulations 1989 (SI No. 167)]
- The Roads (Assessment of Environmental Effects) Regulations (Northern Ireland) 1988 (SR No. 344)
- The Planning (Assessment of Environmental Effects) Regulations (Northern Ireland) 1989 (SR No. 20)
- The Environmental Assessment (Afforestation) Regulations (Northern Ireland) 1989 (SR No. 226)
- The Harbour Works (Assessment of Environmental Effects) Regulations (Northern Ireland) 1990 (SR No. 181)

The following Regulations are in preparation:

- The Drainage (Environmental Assessment) Regulations (Northern Ireland);
- The Environmental Assessment (Discharges to Water) Regulations (Northern Ireland).

### **Other guidance materials**

DOE Circular 24/88 (Welsh Office 48/88) Environmental Assessment of Projects in Simplified Planning Zones and Enterprise Zones dated 25 November 1988.

Scottish Development Department Circular 26/88 Environmental Assessment of Projects in Simplified Planning Zones and Enterprise Zones (relates to Scotland) dated 25 November 1988.

DOE Memorandum of 30 March 1989 to the General Managers of New Towns Development Corporations and to the Chief Executive of the Commission for the New Towns on Environmental Assessment (advice on projects arising in new towns).

DOE free leaflet Environmental Assessment

Welsh Office free leaflet Environmental Assessment / Aseu'r Amgylchedd (bilingual).

Scottish Office free leaflet Environmental Assessment - a Guide.

### **EIA REGULATORY DEVELOPMENTS JULY 1991 - MARCH 1992**

- The Drainage (Environmental Assessment) Regulations (Northern Ireland). 15 August 1991.

### **APPENDIX**

#### **Checklist of questions considered in preparing a Member State annex**

1. The extent of formal compliance by the Member State concerned with the requirements of Directive 85/337/EEC

- a) What are the principal legal provisions enacted by the Member State concerned to implement Directive 85/337/EEC?
  - b) What, if any, are the principal deficiencies in formal compliance with Directive 85/337/EEC in the Member State concerned?
  - c) What are the principal reasons for any deficiencies in formal compliance and for delays in achieving full compliance?
  - d) What measures are in the process of being implemented, or are envisaged, to remedy any remaining deficiencies in the implementation of Directive 85/337/EEC in the Member State concerned?
  - e) Which are the competent authority or authorities that have been designated for performing duties arising from the Directive, and what are their usual functions and responsibilities? Are authorities designated in general terms, or are they designated for each request for consent?
2. The criteria and/or thresholds adopted by the Member State concerned for the selection of Annex II projects to be subject to assessment
- a) Have criteria and/or thresholds been established and, if so, what are their principal characteristics and their legal status?
  - b) In your judgement, and to the best of your knowledge:
    - are these criteria and/or thresholds sufficiently clear and are they at approximately the right level or are they too strict or too lax?
    - are they similar to, or very different from those being applied in other Member States?
3. The nature and extent of practical compliance with Directive 85/337/EEC in the Member State concerned
- The main purpose of section 3. is to establish the extent to which Directive 85/337/EEC has been implemented in practice in the Member State concerned.
- a) Approximately how many environmental assessments are being carried out in the Member State concerned each year and what are the principal project categories within which most of these assessments take place?
  - b) Are developers satisfactorily providing, in their environmental assessment documents (EISs) the information specified in Article 5 and Annex III of the Directive? Do alternatives to the submitted project have to be taken into account?

- c) Are authorities with relevant information in their possession making this information available to the developer (see Article 5(3))
- d) How satisfactorily are arrangements working in practice for the publication of the EIS (see Article 6)?
- e) How satisfactorily are arrangements working in practice regarding consultation and public participation (see Article 6)?
- f) How satisfactorily are the Directive's provisions relating to the assessment of transborder impacts being implemented in practice (see Article 7)?
- g) How well are the arrangements being implemented, in practice, to take account of the EIS and consultations based on it within project authorization procedures and to inform the public about the resulting decision (see Articles 8 and 9)?
- h) To what extent, if any, are projects being modified as a result of undertaking an EIA? To what extent have decisions made concerning the authorization of projects been influenced by EIA?

4. Specific aspects of the Directive's translation into legislation and practice in the Member State concerned

The main purpose of section 4. is to establish how well Directive 85/337/EEC is working in practice in the Member State concerned.

- a) What formal measures has the Member State concerned undertaken to monitor the implementation of Directive 85/337/EEC within its country?
- b) What provision, mandatory or non-mandatory, has been made for 'scoping' an assessment (i.e. determining the appropriate coverage of an assessment) in the Member State concerned? Are such provisions and practices working satisfactorily?
- c) What proportion of the EISs being produced are, in your judgement, of satisfactory quality? What are the main kinds of deficiency that have been experienced and what are the main causes of these deficiencies?
- d) Has the Member State concerned made legal provision for the formal review of the adequacy and quality of EISs (e.g. by establishing review bodies and review criteria)? If not, has it provided non-mandatory, written advice and guidance on this? How well are these working in practice?
- e) Has the Member State concerned made legal provision for monitoring the environmental impacts of projects after their implementation, and for post-



auditing EIA studies? If not, has it provided non-mandatory, written advice and guidance on this? How well are these arrangements working in practice?

- f) To what extent, in your judgement, has the Member State concerned (both through governmental and non-governmental organisations) provided satisfactory assistance in implementing EIA to practitioners (e.g. through circulars, guides, manuals, etc.,) and through training programmes? Brief details of the types of provisions that have been made would be helpful as well as an indication of the main deficiencies.
  - g) Is there any indication that the costs or timescale of projects are being affected (whether increased or decreased) as a result of undertaking an EIA?
5. Overall assessment of the effectiveness of the Directive's implementation in the Member State concerned, and of difficulties in its implementation
- a) To what extent, in your view, are the legal provisions already made by the Member State concerned:
    - in partial or total compliance with Directive 85/337,
    - being implemented in practice (i.e. are there discrepancies between formal and practical compliance)?
  - b) Which provisions of the Directive, has the Member State concerned found to be ambiguous, or have caused difficulties in implementation?
  - c) What measures would you recommend be considered to facilitate more satisfactory formal or practical compliance in the Member State concerned, by cost-effective means.

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