



The 2014 amendment of the EIA Directive – requirements for projects, transitional provisions

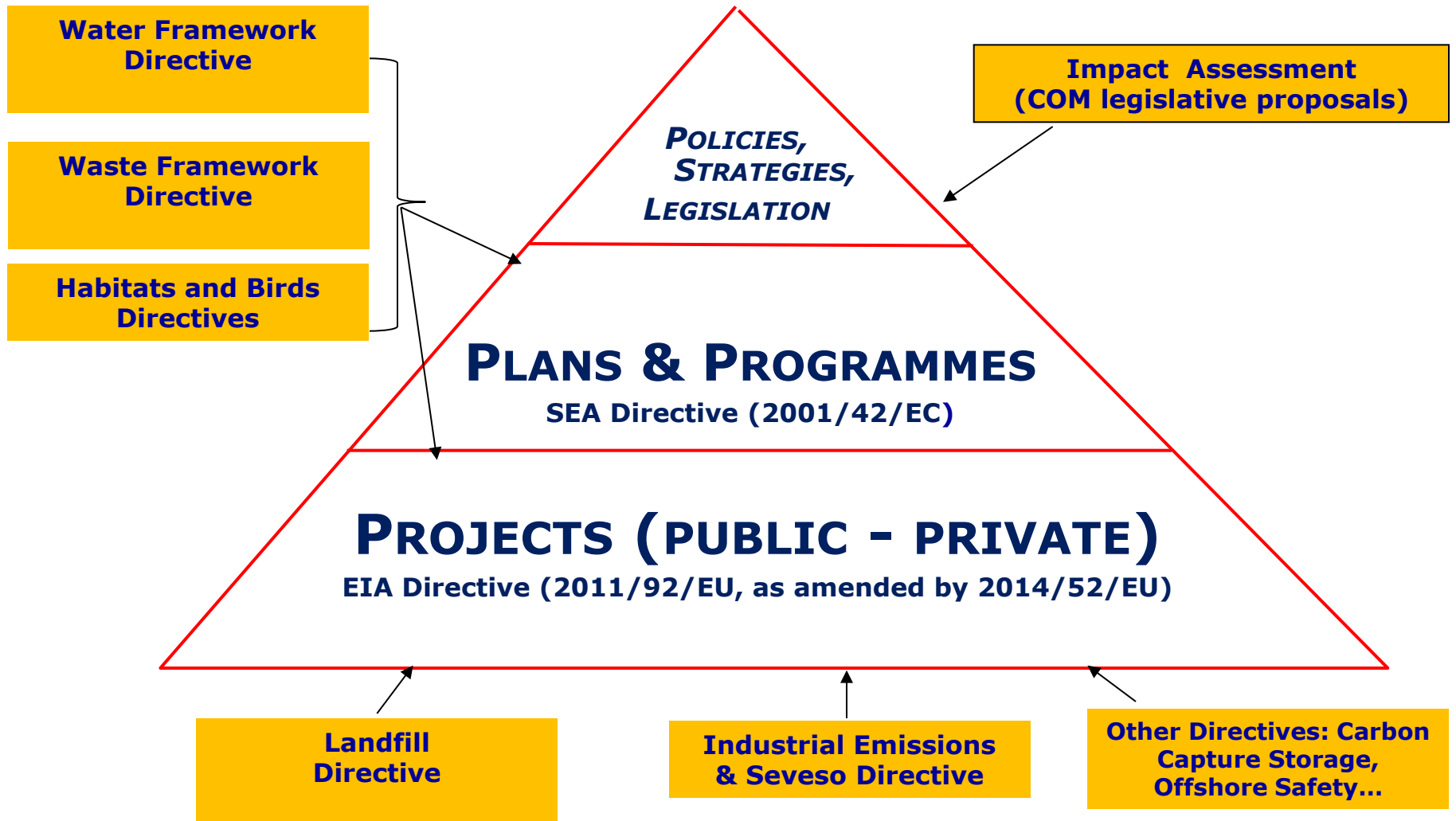
JASPERS Networking Platform

**Training on environmental requirements for cohesion
policy projects in the 2014-2020 programming period**

31 January 2018, Brussels

**Mainstreaming & Environmental Assessments Unit
DG ENVIRONMENT**

Environmental Assessments





EU legislation

Environmental Impact Assessment (EIA)

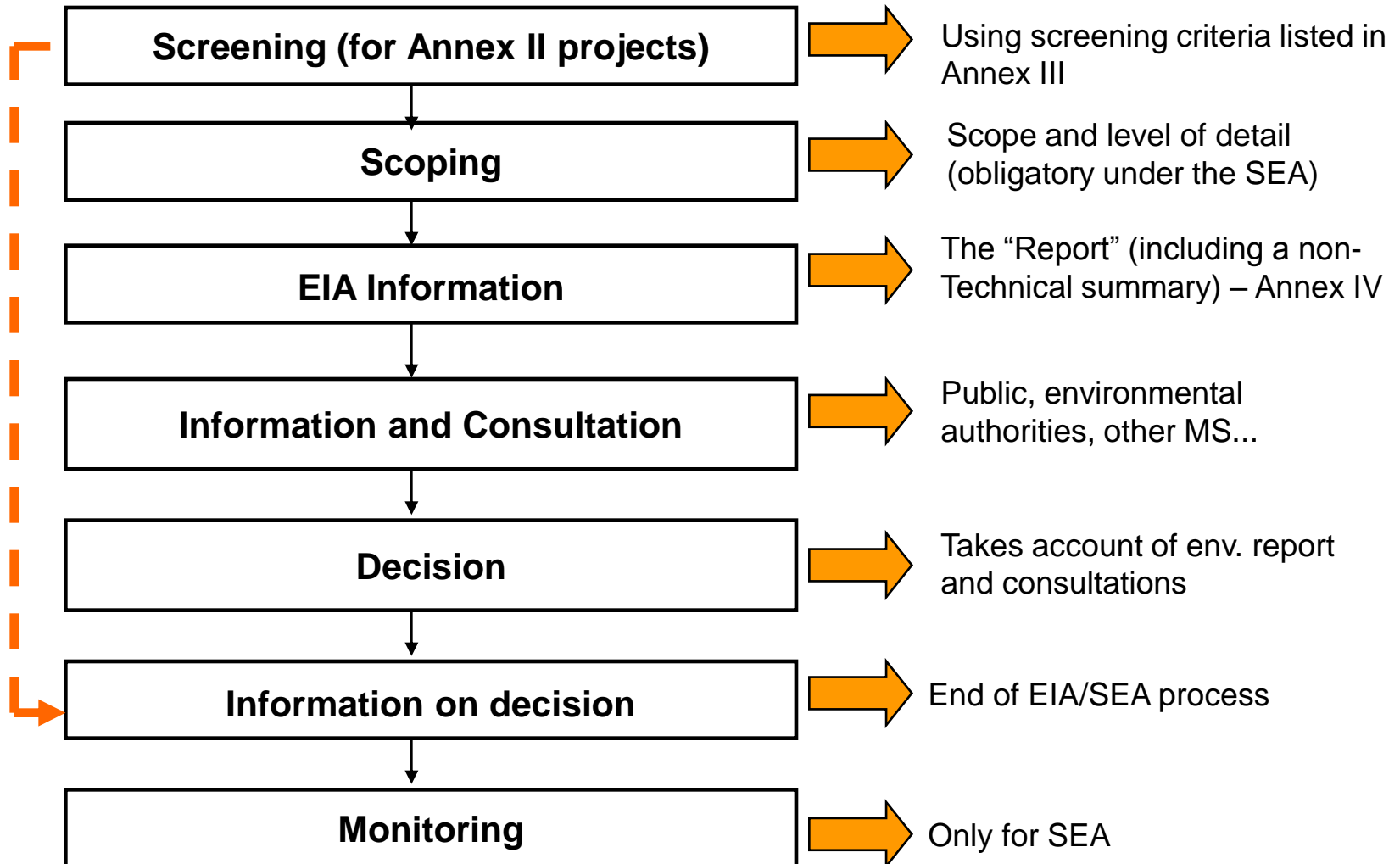
Directive 2011/92/EU codified:

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

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

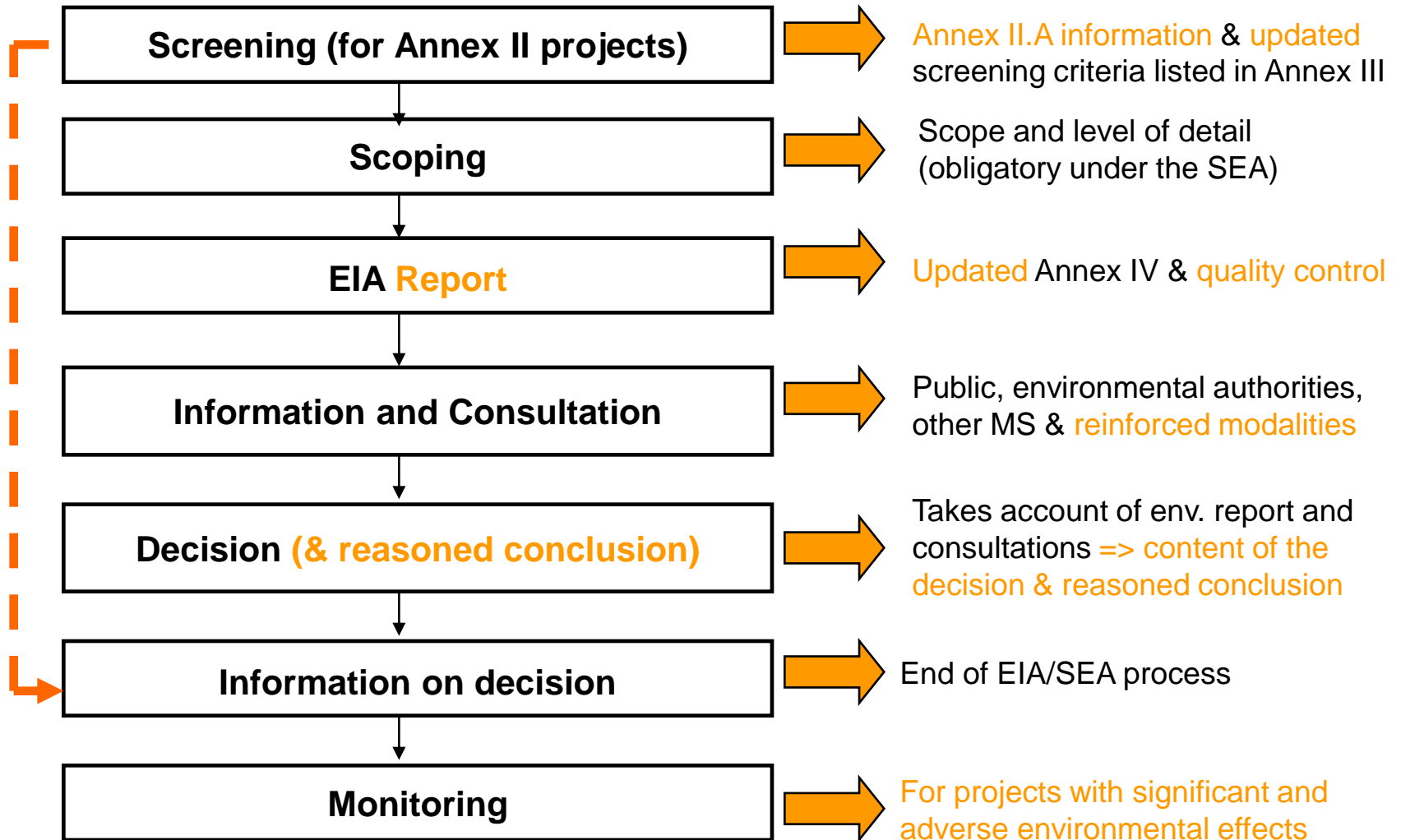
The EIA Procedure **prior** to the 2014 amendment

For projects screened out
(shorter procedure)



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

For projects screened out
90 days + extension

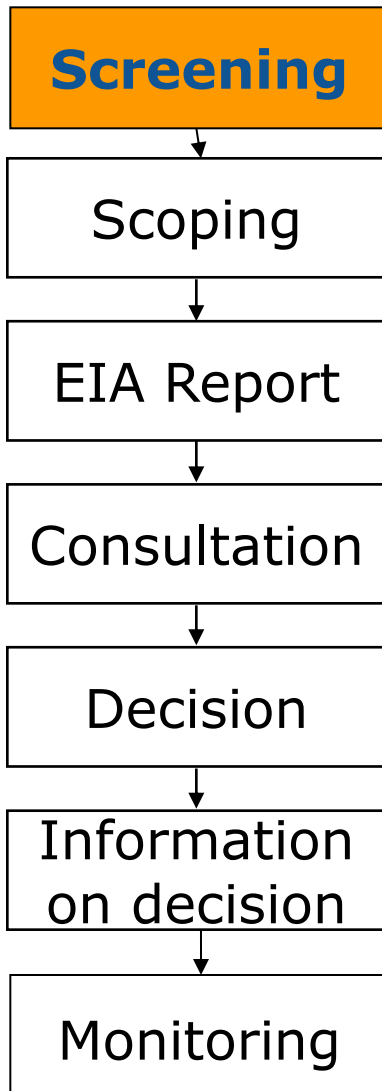


Transitional provisions

Art. 3 of Directive 2014/52/EU

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

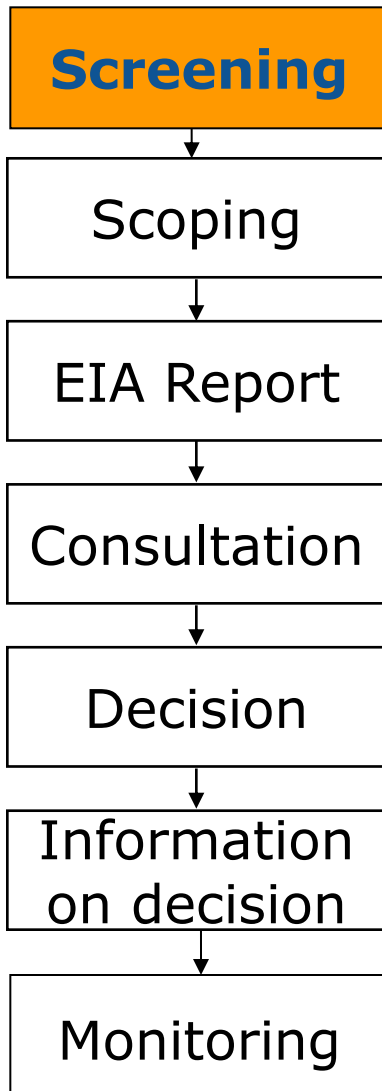
- Projects for which:
 - the scoping was initiated or
 - the EIA report was submitted by the developerbefore 16 May 2017 shall be subject to the provisions of Directive 2011/92/EU (i.e. regime of 2011/92/EU).



Screening principles & process

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

Screening – Annexes II.A & III

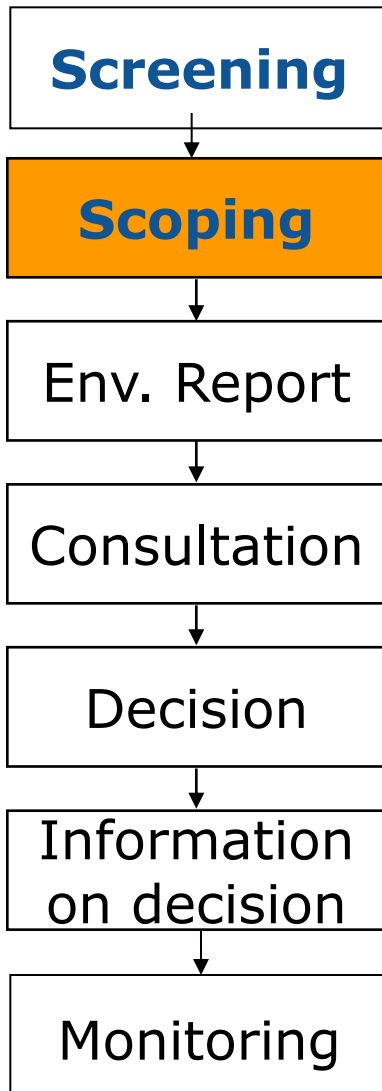


■ **Annex II.A: NEW**

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

■ **ANNEX III: updated/new criteria**

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

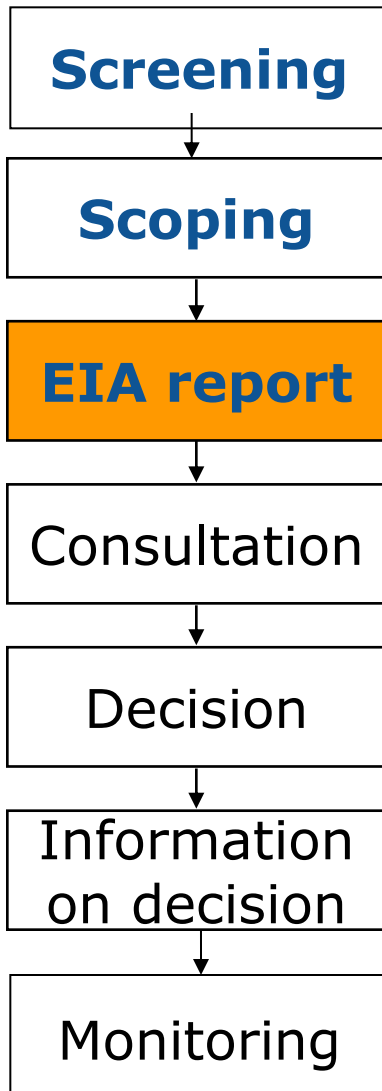


Scoping – Art.5(2)

Voluntary character remains!

Very few changes:

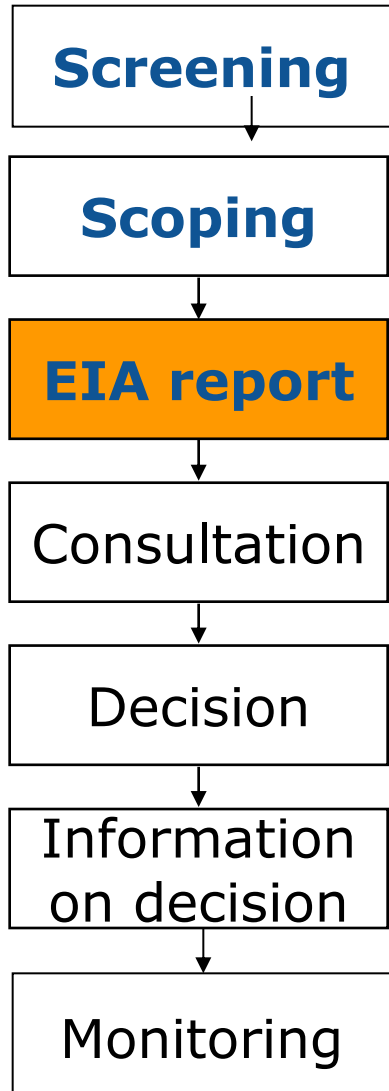
- Information provided by the developer to be taken into account (incl. location and technical capacity and likely impacts).
- Opinion should refer to the scope and level of detail of the EIA report.
- Consultation of environmental and local/regional needed.



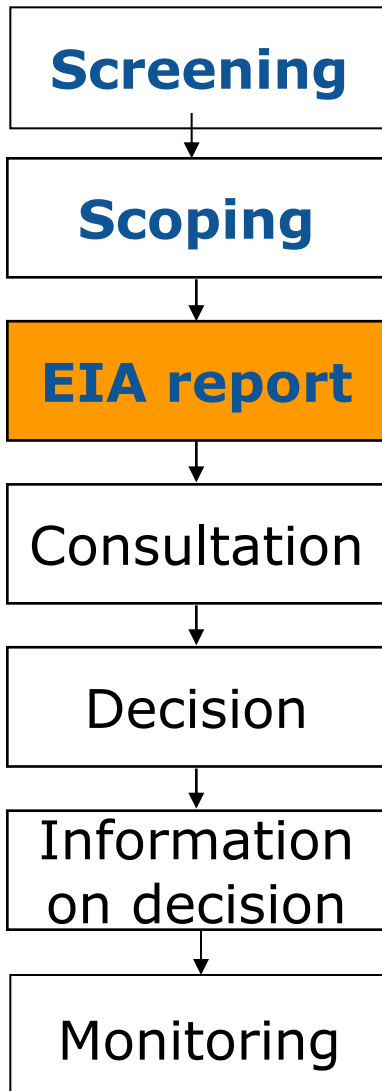
Information of the EIA Report – Art.5(1)

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

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

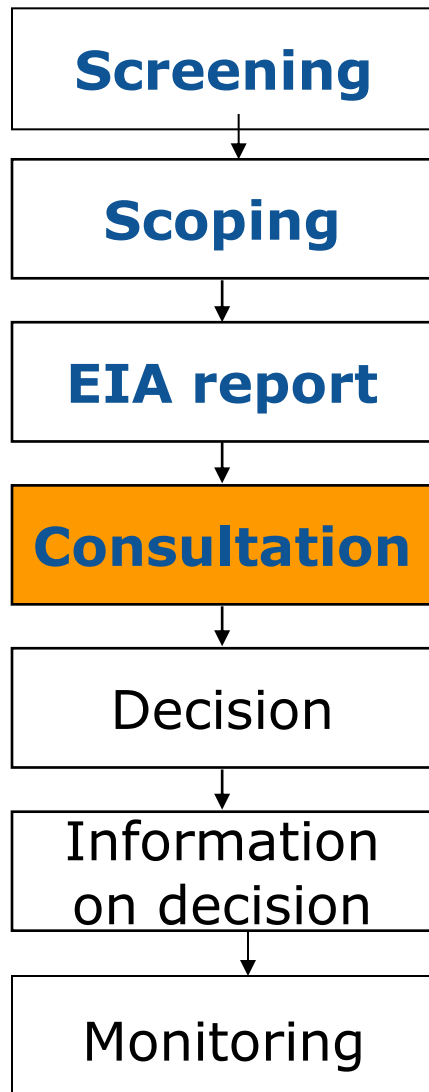


- Resource and energy efficiency elements (IV.1 and IV.5).
- Reasonable alternatives include baseline scenario (IV.2 and IV.3).
- Consideration of new environmental issues, such as climate change and biodiversity (IV.4 and IV.5).
- Cumulative impacts (IV.5.e).
- Risk assessment related to accidents/disasters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



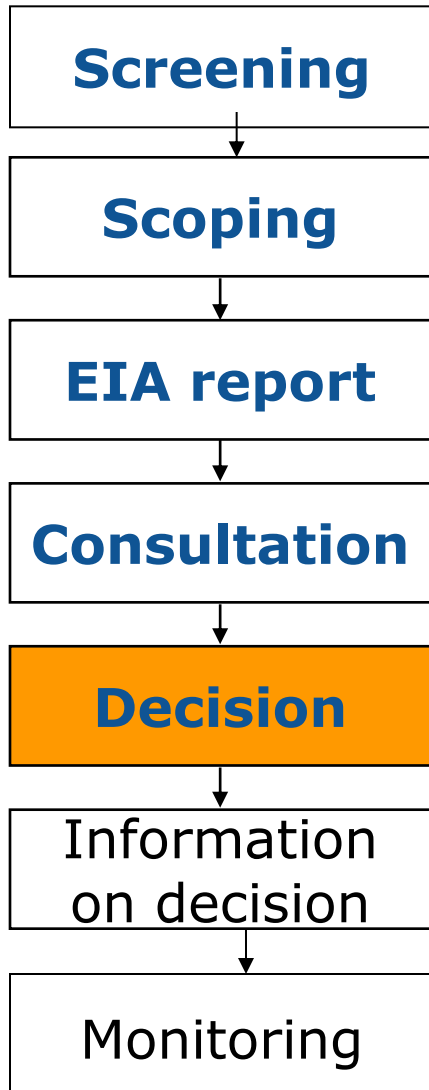
NEW: Quality of the EIA Report – Article 5(3)

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



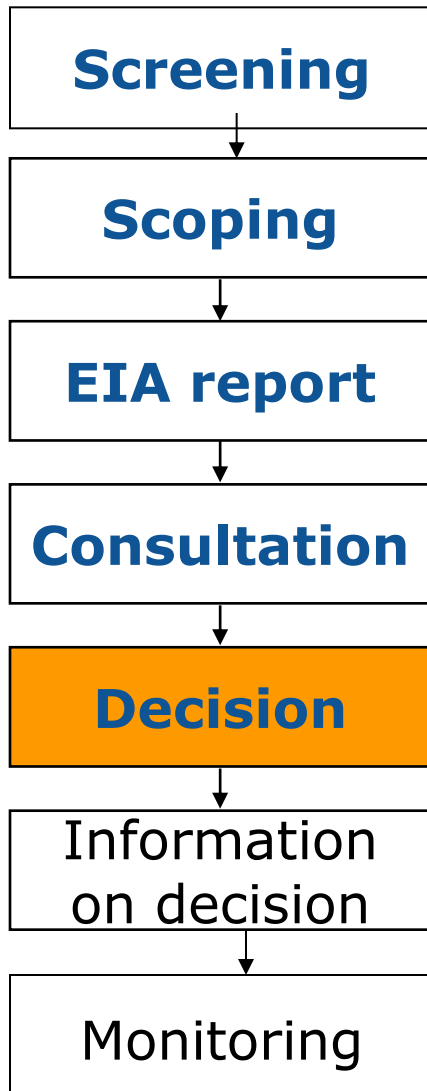
NEW elements on Articles 6 and 7

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



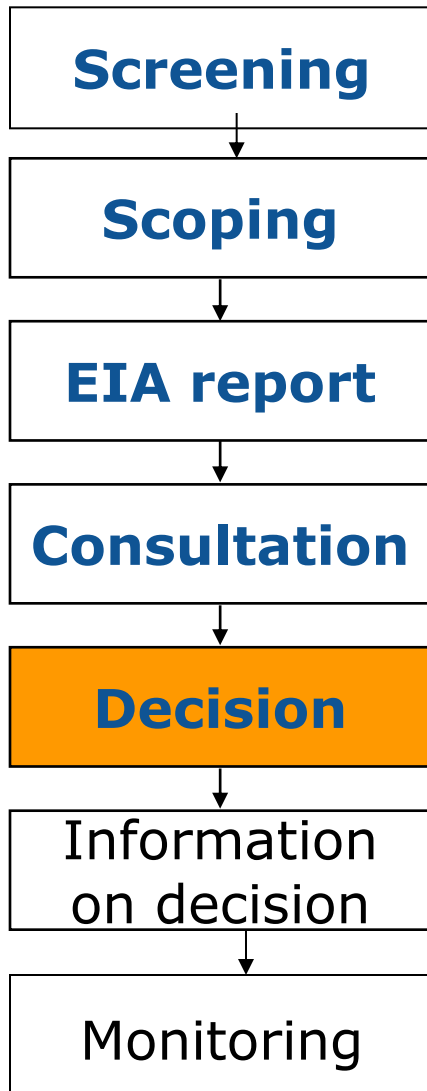
Final decision – Articles 8 and 8a

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



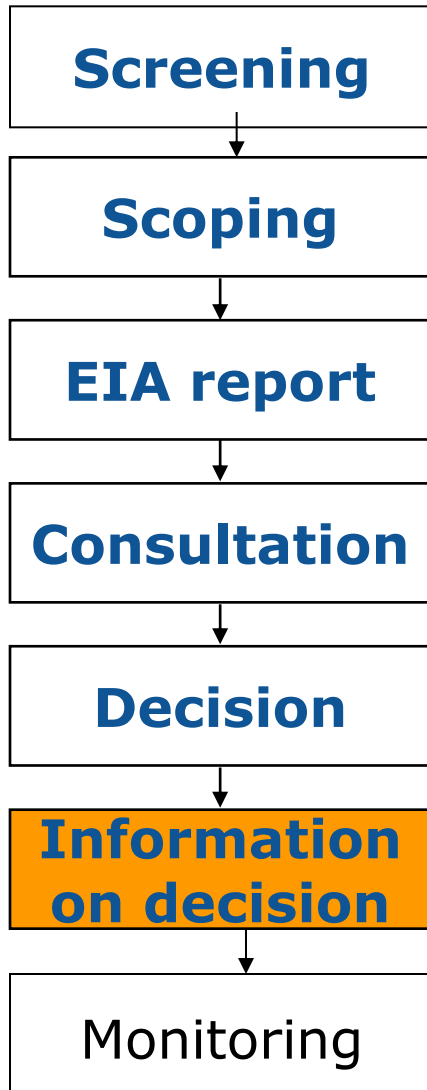
NEW: Conflict of interest (Article 9a)

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



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

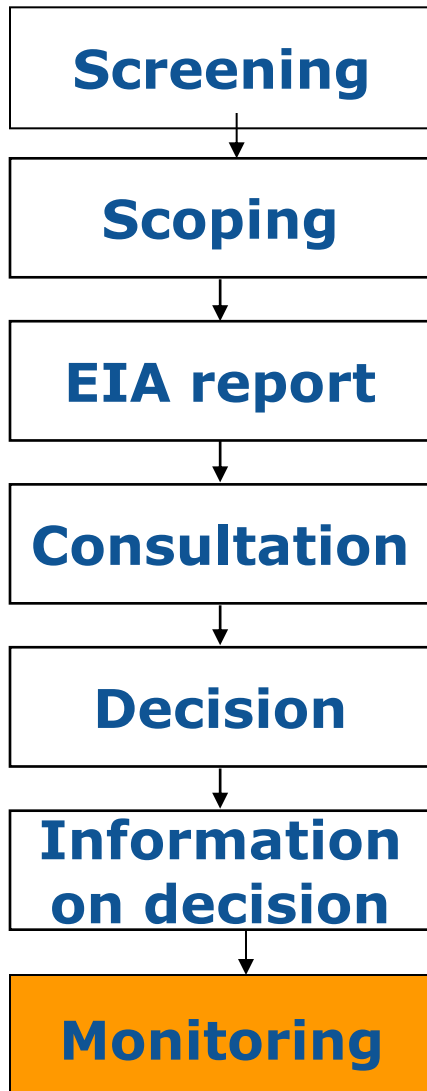
- Coordinated/integrated procedure, *where appropriate*, for assessments under EIA and/or Habitats/Birds Directives (only!).
- For assessments under EIA and other Union legislation (e.g. SEA, Water Framework, IED, Waste Framework, Seveso, listed in recital 37) possibility to apply streamlined assessment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



Information on the final decision – Article 9

No significant changes:

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



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

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

Other amendments

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

Transposition (state of play 19/1/2018)

😊 **Full notification** of transposition measures:

14 Member States

(BG, CZ, DK, EE, FR, IT, HU, MT, NL, PL, PT, SI, SK, SE)

Conformity check by the Commission (correctness of the measures)

? **Partial transposition** of transposition measures:

8 Member States (BE, DE, HR, LT, LV, AT, FI, UK)

verification by the Commission

😞 **No transposition**

6 Member States (IE, EL, ES, CY, LU, RO)

infringement process ongoing

What if Directive 2014/52/EU was not transposed?

An answer 'no' to a question deriving from Art. 3 of 2014/52/EU:

- If this is an Annex II project, was the screening initiated before 16 May 2017?
- If this is an Annex I project or screened-in Annex II project, was the scoping initiated before 16 May 2017?
- If this is an Annex I or screened-in Annex II project, was the EIA report provided before 16 May 2017?

implies that a *project falls under the revised EIA Directive!*

What shall be checked? (1)

For Annex II project

- Was the screening decision made available to the public? (not a new requirement)
- Does the screening decision (positive or negative) state the main reasons for requiring or not an EIA?
- Does the negative screening decision state any features of the project and/or measures envisaged to avoid or prevent significant adverse effects on the environment?

What shall be checked? (2)

For Annex I projects and for screened-in Annex II projects

- Was the EIA report prepared in accordance with Art. 5(1) and Annex IV?
- Were the environmental, local and regional authorities consulted on the EIA report?
- Was the information under Art. 6 electronically accessible to the public?
- Was the EIA report subject to a public consultation for at least 30 days?
- Does the decision to grant development consent incorporate all the elements as per Art. 8a(1) (including reasoned conclusion)?

What shall be checked? (3)

For Annex I projects and for screened-in Annex II projects

- For projects with significant adverse effects, are procedures for monitoring determined?
- Does the decision to grant development consent meet the requirements of Art. 9(1), namely: the public was informed about the decision and the following information was made publicly available:
 - the content of the decision and any conditions attached thereto,
 - the main reasons and considerations on which decision is based, including information about the public participation and summary of the results of the consultations and how these results have been addressed?

Commission support towards a better implementation

- Guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA (Commission Notice 2016/4701, OJ C 273, 27.7.2016, p.1)
- Compilation of the CJEU case-law
- Interpretation of definitions of project categories of annex I and II of the EIA Directive
- Guidance on the three key steps of the EIA:
 - Screening
 - Scoping
 - EIA report
- Guidance on the Application of the EIA Procedure for Large-scale Transboundary Projects
- Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment

EIA/SEA Europa website

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

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

THANK YOU!

More Information

For info or further questions on this seminar and the activities of the JASPERS Networking Platform, please contact the JASPERS Networking and Competence Centre at the following email:

jaspersnetwork@eib.org

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