Chapter 3
Evolution of EIA Law and Policy in European Union

This chapter discusses the evolution of the EIA law and policy in European Union and how it has acquired an important position today.

3.1 Introduction

The first agreement on environment among European countries was the Paris Declaration on Environment, and the first Action Programme on the environment was published in 1973 by the Commission of the European Community (CEC), as quoted by Wood. The EU legislations today are binding on all member national governments, without the need for ratification. Furthermore, the Commission has a duty to enforce EU legislation, eventually bringing matters to the European Court of Justice if necessary.

The Single European Act 1986 introduced a clear environmental policy in the form of articles which established principles of environmental protection. This policy developed further with the Treaties of Maastricht (1992) and Amsterdam (1997)\(^1\), and includes the prevention principle by which pollution nuisances are best avoided at source rather than their effects being subsequently counteracted. (Kramer, 2000\(^2\)). The Directive on EIA exemplifies the way in which European influence has led to an increase in planning and other controls over the environment affecting large numbers of people, by applying this principle, first articulated in 1977 (CEC, 1977).\(^3\)

The First EIA Directive represented the first EU encroachment into the planning domain, and had major repercussions on member states decision making and practice. It is for this reason that it took so long to progress from the Commission’s original proposal to adoption. The implementation of the Single European Act, which provided that environmental protection requirements shall be a component of the Community’s other policies, is unlikely to reduce environmental regulation. On the

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Ibid., p.34
contrary, it is likely to raise the importance of the environment in many fields. An overview of the provisions of the amended Directive and its implementation by the 15 member states of the EU is discussed in the following paragraphs.

3.2 Evolution of the EC Directive

The European Commission stated in 1977 that "too much economic activity has taken place in the wrong place, using environmentally unsuitable technologies" and added in its report in 1979 that "effects on the environment should be taken into account at the earliest possible stage in all technical planning and decision making processes". Because of this concern to anticipate problems and hence to prevent or mitigate them, the Commission became interested in EIA in the early 1970s.

The Commission started investigations on EIA in 1975. It was reported that many aspects of EIA procedures already existed within member states. As a consequence, it was felt that the requirement of a European EIA system could be integrated into member state decision-making processes without disruption or litigation which characterised early American experience. It was also suggested that a project EIA system should be the first stage of a European EIA system which would eventually encompass policies and plans, once more than rudimentary experience of project assessment had been gained.

The Commission decided that an EIA system should meet two objectives:

- ensure that distortion of competition and allocation of resources within EU is avoided by harmonising controls
- ensure that a common environmental policy is applied throughout the EU.

After extensive consultation with the state members, the Commission put forward a draft directive to the Council of Ministers in June 1980.

The draft directive specified that projects likely to have significant effects on the environment were to be subject to EIA. For 35 projects listed in Annex 1, EIA was obligatory. EIA was also obligatory for certain projects in other specified categories.

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4 Ibid., p. 49
listed in Annex 2 subject to criteria and thresholds to be established by member states. The developer was to include justification of the rejection of reasonable alternatives to the proposed project where these were expected to have less significant adverse effect on the environment.

The required content of the assessment in detail were delineated in Annex 3. The impacts to be considered included those arising from the physical presence of the project, the resources it used, the waste it created, and likely accident records. The competent authority had to release its assessment, a summary of the main comments received, the reason for granting or refusing permission, and conditions, if any, to be attached to the granting of the permission. In the event of the project being authorised, the competent authority was expected to check periodically whether any condition attached to the approval was being satisfied, and whether the project was having any unexpected environmental effects that might necessitate further measures to protect the environment.

The Council of Ministers did not approve the draft directive. Numerous representations were made to the Commission as a result of consultations and a number of alterations were made to the draft directive. These were mostly minor in nature and, on balance, strengthened, rather weakened the EIA provisions.7

During subsequent negotiations between the Commission and the British government, of the more controversial aspects of the draft directive, including the provision of reason for granting consent, were deleted to meet the British position. In the course of negotiations many types of industries were shifted from Annex 1, where assessment would have been compulsory to Annex 2, where their assessment would be much more discretionary. The British government withdrew its objections to the amended draft directive in 1983, only for the Danish government to continue to express serious reservations about the undermining of the sovereign power of the Danish parliament to approve development projects. A provision exempting projects approved by specific acts of national legislation paved the way to adoption of a much modified version of the draft directive in June 1985.

The adopted version of the directive (CEC, 1985)\(^8\) limited the Annex I projects to oil refineries, large coal gasification and liquefaction plants, large power stations, radioactive waste disposal sites, integrated steel works, asbestos plants, integrated chemical plants, motorways, railways and large airports, canals, and toxic waste disposal facilities. The list of Annex II projects grew substantially but the requirement for Commission coordination of criteria and thresholds was dropped.

The main text of the Directive did not mention the discussion of alternatives or the consideration of impacts upon neighbouring member states. The requirements for publication of the authority’s own assessment, and of its synthesis of public comments, were also substantially weakened. The monitoring provision was deleted. There was no mention of plan or programmes in the adopted Directive. Annex III, specifying the desirable (rather than the required) content of the information supplied by the developer, reflected the reduced sweep of requirements. In this context Brouwer (as quoted by Wood\(^9\)), a Dutch expert stated that:

“This EC-directive, like so many others, is a very weak compromise. It is more the result of the cumulative resistance from the development promoters and bureaucracies in the member countries than a synthesis of the best ideas for the protection of the environment.”

The EIA Directive provided a flexible framework of basic EIA principles to be implemented in each member state through national legislation. This flexibility provided member states to institute EIA systems which were more comprehensive and rigorous than the Directive put forward by the Commission. Several countries, including Germany, considerably exceeded the requirements of the original directive in their national EIA systems. As the Council of Environmental Quality stated, the European Directive represented a first step “toward establishing effective, efficient EIA processes to help reconcile economic growth and development with maintenance and enhancement of environmental quality”\(^10\).

Article 11 (3) of the EIA Directive 85/337/EEC states 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 report shall be based on the aforementioned exchange of information.”

Accordingly, a report on its application and effectiveness was prepared. This five-year review, which was completed in 1993, found that much of the transposition of the provisions of the Directive into member state legislation was still incomplete. The review also brought out the weaknesses in the coverage of certain projects with regard to the consideration of alternatives, screening, scoping, consultation and participation, and in monitoring.

As a result of these findings, the Commission proposed restoration of many of the elements which had been included in drafts of the original Directive but which were whittled away during negotiations. Following lengthy negotiations between the Commission and the member states, a draft of the new directive was published in 1994. This included an increase in the number of Annex I projects, a new asset of screening criteria, provisions relating to the consideration of alternatives and of transboundary impacts and to the publication of the reasons for the competent authority’s decision. In addition, provision for scoping involving the developer, the competent authority and relevant environmental authorities (but not public) was included. There was no provision for impact monitoring; this had been included in a preliminary version of the new directive.

Following a series of drafts and further debates between the Commission and the member states, and some weakening of the provisions, the amended Directive was notified in March 1997. The main casualty of the negotiations was scoping, which became discretionary, at the developer’s request. The member states were to implement the changes introduced by the amended directive by 1999. Wood11 explains the main changes brought about by the amended European Directive on EIA as under:

**Screening**

- Greater number of Annex I projects (incorporating former Annex II projects): now 21 categories
- New Annex II projects: 12 categories

• New Annex III selection criteria for use in Annex II screening decisions
• Screening decisions made in relation to Annex II projects must be made public.

Scoping
• A scoping opinion (detailing the information to be supplied) may be obtained by the developer, at his/her request, from the competent authority

Alternatives
• An outline must be given of the main alternatives to the proposal studied, and the main reasons for the choice made must be indicated.

Transboundary effects
• Consultation and public participation must take place with any other member state likely to be affected by a proposed project

Mitigation
• Main mitigation measures proposed must be made public.

Decision making
• Main reasons for the decision made must be public.

A further modification of the Directive was proposed in 2001 to strengthen its public participation provisions to accord with the Aarhus Convention\textsuperscript{12} on access to information by specifying requirements in greater detail.

3.3 The European Directive system

The legal basis of the EIA system, a European directive, is clear. It is left to member states to implement the requirements of the EIA Directive in whatever legislation they consider to be appropriate. The Directive provides a skeletal framework and leaves a great deal of detail to be determined by member states. The Directive\textsuperscript{13} as amended consists of 14 articles and 4 annexes. The main steps in the EIA process are shown in Figure 3.1.

\textsuperscript{12} The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention, was signed on June 25, 1998 in the Danish city of Aarhus. It entered into force on 30 October 2001. As of November 2005, it has been signed by 40 (primarily European) countries and ratified by 37. It has also been ratified by the European Union.

Figure 3.1
European Directive EIA process

ALTERNATIVES/DESIGN

Project initiated

Annex I project

Annex II project

Other proposal

SCREENING

Application of member state criteria, thresholds, in accordance with Annex III

EIA required

EIA not required

SCOPING

Proponent may request scoping

EIA REPORT PREPARATION

Proponent prepares EIA report

REVIEW

Public review

Competent authority evaluates EIA report, comments received

DECISION MAKING

Competent authority makes decision

MONITORING

Monitoring

(......optional step)


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Article 2(1) states that member states shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. Article 2(2) states that the environmental impact assessment may be integrated into the existing procedure for consent to member states, or failing this, into other procedures or into procedures to be established to comply with the aim of this Directive. Also Article 1(5) states that the Directive shall not apply to the projects the details of which are adopted by a specific Act of national legislation, since the objective of the Directive, including supplying information, is achieved through the legislative process. And specific projects may be exempted in exceptional cases, after making relevant information available to the public and to the Commission (Article 2(3)).

The scope of the Directive is confined to projects. The Directive as amended, applies to a considerably longer list of projects than did the original Directive, and now includes a number of environmentally sensitive projects previously excluded from coverage, for example water treatment plants. The word 'environment' is used to mean the physical environment. Social and economic environments are not included in this definition. Article 3 of the Directive states that:

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between the factors mentioned above

Other types of effects are shown in Annex IV where their use is largely discretionary.

The amended Directive introduces a requirement for any alternatives to the proposal studied to be documented. Thus, the information to be provided by the developer must include:
• an outline of the main alternatives studied by the developer and an indication of the main reason for his choice, taking into account the environmental effects. (Article 5(3))

In the original Directive Article 5(3) was included as a part of the Annex. In the amended Directive this has become mandatory rather than optional. However, this Article does not demand the study of alternatives. In European Directive 97/11 screening which projects should be subject to EIA based on their nature, size or location are listed in Annex I. In accordance with Article 4(1) all projects listed in the Annex are subject to assessment. In the amended Directive, Annex I has been considerably expanded and incorporates many projects originally placed in Annex II. Annex I includes 21 types of projects, such as power stations, major industrial installations, major communication infrastructure, waste disposal installations, groundwater abstraction schemes, quarries and overhead electrical power lines. The Annex lays down thresholds for most of these categories.

Annex II covers projects for which member states are to determine whether or not EIA is required, on the basis of either a case-by-case examination or the application of threshold or criteria set by the member state (Article 4(2)). A new Annex III introduced in the amended Directive sets down the selection criteria. These criteria, which are likely to have significant environmental effects, are to be used in Annex II screening decisions. The list of Annex II projects is wide-ranging, and includes categories not specifically referred to in the original Directive such as deforestation, wind farms, asbestos production, certain coastal works, ski runs and theme parks. Member states shall ensure that the screening decisions made by the competent authorities in relation to the Annex II projects are made available to the public (Article 4(4)).

The Directive provides that developers may request a scoping opinion from the competent authority. The scoping opinion will identify the matters to be covered in the environmental information. It may also cover other aspects of the EIA process. In preparing the opinion the competent authority must consult the environmental authorities Article 5(2). In some member states scoping is mandatory. Scoping is not mandatory under the Directive but member states must establish a voluntary procedure by which developers can request a scoping opinion from the competent authorities if they wish.
Residual evidence of the negotiations on the amendments to the Directive is provided by the admonition that member states “may require the competent authorities to give such an opinion, irrespective of whether the developer so requests” (Article 5 (2)). There is no provision in the Directive that the commencement of work on an EIA be announced.

In the preparation of the EIA report, the proponent has to utilise the information whose general nature of content is specified. Article 5(3) of the Directive states that the information to be provided by the developer shall include at least:

- a description of the project comprising information on the site, design and size of the project
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effect,
- the data required to identify and assess the main effects which the project is likely to have on the environment
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects
- a non-technical summary of the information.

Article 5 also indicates that the developer should furnish all the information listed in Annex IV where member states consider that it is relevant and reasonable to do so. This includes description of:

- the project
- alternatives to the project
- baseline environmental conditions
- the likely significant environmental effects of the project, mitigating measures
- a non-technical summary
- an indication of the difficulties encountered in compiling information.

Annex IV mandates that the description of the likely significant effects of the project should cover the direct effects and any indirect, secondary, cumulative, short-,
medium-, and long-term, permanent and temporary, positive and negative effects of the project.

Article 5(4) states that member states, shall, if necessary, ensure that any authorities holding relevant information shall make it available to the developer, in order to facilitate the assessment. It is, however, not necessary that liaison between the developer and relevant authorities takes place while the assessment is being undertaken. After carrying out the assessment, the developer is obliged to supply the resulting information to the competent authority responsible for the authorisation of the project. This is referred to as the EIA report. The Directive does not specify the form in which the report has to be submitted.

The directive does not provide for a formal review of the EIA report by the competent authority. However, Article 6 mandates that member states shall ensure that any request for development consent and any other information are made available to the public within a reasonable time in order to give the public an opportunity to express their opinion before the development consent is granted. Article 7, dealing with transboundary effects, also requires consultation and public participation on the EIA report to take place within any other member state affected by the project. Under the Directive there is no provision that the developer has to respond to the points raised by the public or consultees on the content of the EIA report. They also do not have to make these comments public.

Article 8 requires that the results of consultations, along with the developer’s EIA report, must be taken into consideration in taking the decision on the project. The Directive requires that when the competent authority has reached a decision on the consent application, the public and consultees be informed and that any conditions attached to that decision be made public. Article 9 of the amended Directive requires that the main reasons upon which the decision has been made should be provided along with a description of any mitigating measures. However, the Directive does not specify anything about the question of the monitoring of project impacts.

One of the main aims of the Directive is the mitigation of project impacts. As mentioned above, mitigation measures should be specified in the developer’s EIA report and should be a part of the development consent and must be communicated to
the public. Also it ought to be mentioned that the precautionary principle underlies the whole Directive.

Under the provisions of the amended Directive, consultation and participation is limited to commenting upon the EIA report. Article 6(1) states that member states shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, member states shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by member states. Also, member states must ensure that that both the consent application and environmental information are made available to the public and that the public is given opportunity to comment before the project is initiated (Article 6(2)). Consultation and public participation provisions are likely to be strengthened further by the proposed amendment to implement the Aarhus Convention on Access to Public Information.\textsuperscript{14} Also, there is no provision for third-party appeals against decisions involving EIA. Article 10 requires that the provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of public interest.

There is provision in the Directive for EIA system monitoring. Article 11 requires that member states and the Commission shall exchange information on the experience gained in applying this Directive and for member states to inform the Commission about the criteria and thresholds they have used in the selection of Annex II projects. There is also a requirement for the preparation of a five-year review of the amended Directive's application and effectiveness, just as there was for the original Directive.

Member states were required to take necessary measures to comply with the Directive within two years of its notification, i.e. by 14 March 1999, and to inform the Commission accordingly. The European Commission provides no guidelines as to

how the Directive has to be implemented. It had, however, arranged expert meetings and information exchange for implementation for the original Directive and which continue to operate for the amended Directive.

Neither the original nor the amended Directive mentioned about the costs and benefits of the EIA system but it is obvious that the benefits would exceed the costs.

Strategic environmental assessment (SEA) is not included in the provisions of the Directive. Even though the issue of SEA applicable to the plans and programmes was being pursued by EC since 1970, the proposed draft directive appeared first appeared only in the 1990s. A separate directive on assessment of plans and programmes was formally published on July 21 2001. SEA is stronger than the amended EIA in terms of scoping, quality control, and monitoring. The SEA Directive was implemented by the member states by constituting it as national law in July 2004.

3.4 Arrangement for Key Stages

This part of the report examines the operation of the amended Directive within the member states, with particular focus on the amendments by EIA Directive 97/11/EC. The slow acceptance of the amendments made to their own EIA systems, included many requirements of 97/11/EC. We now review the key stages of the EIA process.

3.4.1 Screening

The European Commission’s Guidelines defines screening “as that the EIA process which determines whether an EIA is required for a particular project”. In common with most EIA systems around the world, the EIA Directive requires an EIA to be carried out for projects likely to have significant effects on the environment (Article 2). The Directive provides two lists of projects covered under Article 2 and these are listed as Annex I and Annex II projects. Article 4 (1) requires that all projects listed in Annex I are made subject to EIA on a mandatory basis. As required by 97/11/EC and resulting from relevant ECJ rulings, all projects listed in Annex II must be made subject to screening. Thus for Annex II projects member states must first determine whether there are ‘likely’ to be significant environmental adverse effects. In the affirmative case the full EIA procedure of the Directive apply.

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15 European Commission: Guidance on EIA Screening June 2001
16 Ibid, p.14
Figure 3.2
Key Stages of the EIA Process

- Project Preparation
- Notification to Competent Authority
- Screening
- Scoping
- Environmental Studies
- Submission of Environmental Information to Competent Authority
- Review of Adequacy of the Environmental Information
- Consultation with statutory Environmental Authorities, other interested parties and the Public
- Consideration of the Environment Information by The Competent Authority before making Development Consent Decision
- Announcement of Decision
- Post-Decision Monitoring if Project is Granted Consent

The steps indicated by the bold letters must be followed in all Member states under Directives 85/337/EEC and 97/11/EC. Scoping is not mandatory under the Directive but Member states must establish a voluntary procedure by which developers can request a Scoping opinion from the Competent Authority if the wish. The steps which are indicated in the bold letters form part of good practice in EIA and have been formalised by some Member states but not in all. Consultations with environmental authorities and other interested parties during some of these additional in some Member states.

Source: European Commission: Guidance on EIA Screening, June 2001
The screening decision requires an examination of a project and its receiving environment to determine the likelihood of ‘significant environmental effects’. To facilitate this screening decision Directive provides member states with certain amount of discretion to determine the basis on which significant environmental effects should be identified. In the above referred cases, C-133/94 (Grosskrotzenburg case) and C-72/95 (Dutch Dyke case), ECJ ruled that discretion given to member states was considerably limited by clarifying the margin within which the member states may operate. Directive 97/11/EC inserted a new Article 4(2) that requires that member states make the screening determination through:

- a case-by-case examination of projects; or
- thresholds and criteria set by any of the Member states; or
- a combination of the above two.

Member states have embraced the flexibility permitted by Article 4(2) and as range of approaches to screening exists across the European Union. Many member states appear to be making use of the ‘traffic light’ approach to screening and have developed inclusion, exclusion and indicative or guidance thresholds. However, in some cases member states appear to be employing a variety approaches, using different screening procedures for different project types and in some cases only mandatory or inclusive thresholds are used. Very few member states employ a case-by-case approach for all project types.

It is not clear from the evidence reviewed that all Annex projects are being subjected to a systematic screening procedure. In some cases there is little evidence that the screening takes place below nationally established mandatory thresholds or criteria.

### 3.4.2 Scoping

The EU’s guidance document defines scoping as “the process of determining the content and extent of the matters which should be covered in the environmental information to be submitted to a competent authority for projects which are subject to EIA”. The purpose of scoping is to focus the environmental assessment on the main

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or significant impacts. The scoping process, therefore, requires a detailed characterisation of a project and its receiving environment in order to identify all potential impacts and from that to ascertain which of those impacts are likely to be significant. Due to the complexity of impact identification and scoping it will often be necessary for the developer to consult with the competent authority and other agencies with environmental responsibilities on the scope of the assessment. Consultation with the public on the scope of the EIA is considered to be a good practice by the experts.

Article 5 paragraph 2 of the EIA Directive was introduced by 97/11/EC and provides for a formalised scoping procedure. Directive 85/337/EEC did not have such a requirement although most member states applied forms of scoping in their national systems. The main purpose of introducing scoping requirement into Directive was to establish an early contact and a certain co-operation between the developer and the competent authority on key issues of importance in relation to the information to be provided by the developer and examined by the authority. This should happen before the developer submits the application for the development consent. This process is intended to avoid delays later on in the procedure and to ensure a certain quality and the completeness of the information to be provided.

The EIA Directive provides for two cases. On the one hand it requires competent authorities to provide, if developer so requests, an opinion on a list of the information to be submitted later on as an “environmental impact statement”. On the other hand, the Directive allows member states to make this a mandatory procedure, requiring competent authorities to provide for scoping opinion irrespective of whether the developer so requests. In the scoping process the Directive also requires that relevant public agencies with environmental responsibilities are consulted and that they may provide any information have in their possession that may aid the EIA process.

There is a wide variety of approaches to the scoping stage of EIA. It could appear that some member states appreciate the value of an early scoping stage more than others. There appears to be little real commitment to scoping in those countries that have not made it mandatory and have not provided for public consultation within their voluntary scoping stage. However, some of the member states show the opposite tendency and require the publication of draft scoping reports or even draft EISs. There is also a recognition in some member states that public involvement at the scoping
stage identifies the issues that are 'significant' to the people who will have to live with the project and not just the 'experts' who will not.

3.4.3 Review of Environmental Information

Directive 97/11/EC introduced new minimum requirements for the information to be supplied by the developer. Failure to provide adequate information constitutes grounds for refusal of development consent in the majority of countries, under a variety of arrangements. Some member states have formalised a review procedure to ensure that the environmental information supplied by the competent authority is in compliance with the Directive. However, since there is no explicit obligation in the Directive to provide such a review, there is no harmonized approach to the matter. Research studies conducted show that up to 50% of EIS do not fully comply with the requirements of the Directive.

The quality of the EIA process, and especially the EIS, are the key for an effective EIA. The Commission urges those member states that have yet to do so to introduce formal provisions for the review of the environmental information supplied by the developer to ensure strict compliance with the terms of the EIA Directive. Such measures could comprise establishment of expert pools, guidelines on the coordination of experts, clear instructions about responsibilities, the use of independent external expert review etc.

3.4.4 Decision Making

The purpose of EIA is to provide information about the environmental consequences of an action to decision-makers in advance of the decision so that that information can influence the decision making process. Article 8 requires that the environmental information supplied by the developer (the Environmental Impact Statement) and the consultation procedure required by Articles 6 and 7 taken into consideration in the consent procedures. Although the Directive focuses on environmental matters, it does not make the consideration of the environmental dimension more important than the other considerations that a competent authority has to take account of when making a decision. Many of the respondents pointed out that in decision making over development projects, other societal or economic benefits also need to be considered. The vast majority of member states do have legislation in place that provides for the
refusal of development consent in cases where serious environmental harm is unavoidable.

There should be minimum delays between environmental assessment and the consent for the project and between the consent and construction or operation. The competent authority reviews and assesses the information to determine whether it is up to date, requesting additional information where necessary. This is the most common approach adopted in the member states and when there are significant changes to the proposal, then typically a new EIS is required. In Germany, generally there are no delays between EIA and development consent and a planning consent ceases to be valid after five years.

Without formal monitoring of the outcomes of the EIA process and more detailed research, it is difficult to assess the effectiveness of the EIA Directive on decision making.

The quality of the EIA has consequences in the decision making process and is of key importance for the effectiveness of the Directive. In some member states, refusal of development consent is provided for in cases where serious environmental harm is forecast. The Commission believes that the member states should strengthen their national procedures to ensure that the conditions attached to the decision are adequate to prevent or mitigate any environmental harm that has been predicted.

3.4.5 Summary of Findings of Key Stages

The review shows that there is a wide disparity in both the approach and the application of EIA in the member states of EU. The approach used for screening of Annex II projects varies considerably in terms of both the use and level of thresholds. A variety of approaches also exist for scoping, with very few member states requiring any public involvement in this important stage of EIA. It may be noted that the Directive does not require such participation at the scoping stage. Very few member states have any real mechanism in place for national or centralised reviews of the operation of their EIA system. The influence of EIAS on decision making and the outcome of decision requires far more monitoring and research by member states.
3.5 Policy and Legal Context

The development of EIA within the European Union can be seen as an evolving process that is shaped by the development of policy and law. The five yearly reviews of the EIA Directive have been part of that evolution and the process of identifying the strengths, weaknesses, costs, and benefits of the operation of the EIA procedures. This process identified areas where improvements could be made and/or where the general provisions of the Directive clarified or strengthened. These reviews have not been the only influence on the development of EIA Directive. Since its adoption in 1985 and the passing of the deadline for transposition in 1988, there have been a number of cases brought before the European Court of Justice that have provided some clarification of key issues and helped to develop the interpretation and hence implementation of the Directive. There have also been some key policy decisions made by EU since 1985 that have needed to be integrated into the EIA Directive.

The EIA Directive predates very many important changes within EU. The first of these is the Single European Act of 1986, which, together with the Maastricht Treaty of 1992, consolidated the main principles of European Environmental Policy and made them central concern of all EU policy areas. These were followed by the adoption of the 5th Environmental Action Programme with its emphasis on an integrated approach to environmental protection and management. There have also been a number of key Directives that have had implications for EIA. These include:

- Directive 90/313/EEC on the freedom of access to information on the environment, which has implications for public participation and consultation within the EIA process;
- Directive 96/61/EC on integrated pollution, prevention and control, which introduced a new licensing authorisation scheme for many of the project types listed in the Annexes to the EIA’s Directives and 97/11/EC introduced Article 2(a) to allow member states to make use of a single procedure to fulfil the requirements of 85/337/EEC and 96/61/EC.
The Espoo Convention\textsuperscript{18} on EIA in a Transboundary Context was signed by 29 countries and EU in 1991 and widened and strengthened the requirements for consultation on transboundary as provided in 85/337/EEC. The requirements of the Convention meant that Articles 7 and 9 of 85/337/EEC had to be amended by 97/11/EC to provide for a greater level of information to be made available to affected member states. The convention defines transboundary impact as "any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party (to the convention) caused by a proposed activity the physical origin of which situated wholly or in parts within the area of under the jurisdiction of another party". This definition deals with both projects and impacts that cross boundaries and therefore does not limit in scope the effect of the Convention to a consideration of projects that are in close proximity to a boundary. ECJ ruled in C-133/94\textsuperscript{19} that the consultation obligation contained in Article 7 of 85/337/EEC were not confined to projects located in regions with frontiers with other countries. The Espoo Convention provides a list of project types to which the Convention applies and these included a number of projects not included in the Annexes to 85/337/EEC.

The amending Directive 97/11/EC added two project types namely nuclear fuel production and reprocessing installations and groundwater abstraction (10 million cubic metres or more per year) to Annex 1 and large scale deforestation to Annex II. It also moved a further eight Espoo Convention project types from Annex II to Annex I to make the EIA Directive compatible with the Convention.

\textbf{3.6 Implementation of the EC Directive}

While the Directive is binding in terms of the specific ends to be achieved, it leaves the member states the choice of means. Member states are mandated not only to introduce legal provisions, but also ensure that they work i.e. the ends specified in the Directives are achieved in practice. To implement the original EIA Directive, many countries like Belgium, France, Ireland, Luxumbourg and the Netherlands had incorporated, some legal requirements in their national laws but they were inadequate to implement the Directive fully. A five year review of the of the implementation of the original Directive revealed that the member s states had incorporated some EIA

\textsuperscript{18} Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991). The Espoo Convention is a key step to bringing together all stakeholders to prevent environmental damage before it occurs. The Convention entered into force in 1997

\textsuperscript{19} C-133/94 Commission v. Kingdom of Belgium ECR[1996]
provisions in their own legislation, but the transposition of the Directive into national legislation was not still complete. According to Kramer, the European Court of Justice has taken an active role in ensuring member states’ compliance with the directive, especially the definition of projects considered with its remit.

The European Commission reported in 1997 that all member states had transposed the original Directive. There was considerable achievement in carrying into practice both the letter and the spirit of the Directive. However these achievements varied considerably between member states. Barker and Wood report that a study of eight states showed that prior to the introduction of the amended Directive, these states had taken all steps, to a greater or lesser extent, to strengthen the procedures in different areas of the EIA process. Formal warnings were issued in 2001 to several countries, including UK and the Netherlands, for not making arrangements for implementation of the revised Directive.

The European Commission published in the mid-1990s, guidance documents on different aspects of EIA such as screening, scoping and EIS review which were updated by the in 2001. However, there is no comprehensive EC EIA guide. Many individual member states have issued procedural guidelines and have been active in providing training to support implementation of the Directive.

Many member states have not introduced mandatory requirement for providing alternatives and arrangement for dealing with alternatives varies between member states. It is expected that the amended Directive will lead to improvement in practice. While many member states had transposed the requirements of Article 5 and Annex III (now IV) regarding the contents of EIA reports into law, others had confined EIA report coverage to the minimum requirements specified in Article 5(2) and made inclusion of Annex III requirements fully discretionary. There were significant differences in the interpretation of the screening provisions of the original Directive between various member states. These differences were seen in the total number of projects subjected to EIA, and their composition, which differed greatly between member states.

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Member states like Germany others had made provision for scoping in their legislation even though the original directive was silent. The member states allowed the developers to access the environmental data, but there were complaints from the developers regarding lack of cooperation and lack of data. In 1996, the European Commission issued guidance on scoping to help the process. The discretionary scoping provisions in the amended Directive are expected to improve the practice.

Barker and Wood\textsuperscript{22} summarise a review of 112 EIA reports covering earlier and later years during the period 1990 to 1996 showed an increase in the number of ‘satisfactory’ reports during this time go up from 50% to 71%. The most important single factor in bringing about improvement was found to be the increasing experience of the participants in the EIA process. Changes in EIA legislation also appear to have been influential in some member states, while the type of project was a factor in others. They further report that the quality of EIA varied according to the size of the project and the degree of controversy associated with them. Also the European Commission’s guidance on the reviewing of EIA reports, originally issued in 1994, was not as widely used as it could have been.

The Commission found that that there was evidence to suggest that EIA was helping to strengthen and streamline the decision-making process. Also, there was also significant number of cases where EIA was considered to have little or no effect.

Dresner and Gilbert\textsuperscript{23} based on case studies in several member states report that EIA was taking place too late in the decision-making process and some times took too long.

Even though, monitoring of project impact is not a requirement of the Directive, many member states have made specific legal provision for this. Many member states also have relied on existing monitoring procedures and practice. However, serious deficiencies were noticed in the monitoring arrangements in many member states.

Mitigation comes in many forms, ranging from avoidance (for example, avoiding areas during sensitive periods such as breeding seasons), moderation (emission controls, noise barriers), rescue (translocation of animals), repair (reinstatement of plants or animals), and compensation (donating or creating substitute habitat areas or

\textsuperscript{22} Op. cit p.48

\textsuperscript{23} Ibid p.49
shadow projects). These forms of mitigation are commonly seen as technical exercises, about which there is some optimism that the adverse effects of the development may be reduced and beneficial effects increased, thus rendering the project or policy more acceptable in environmental terms. Thus environmental impact assessment becomes a technical tool for designing mitigation measures. The suggestion is that the mitigation of adverse effects defines and explains the entire environmental impact assessment process.

While mitigation practice has varied, it is apparent that amelioration has not always taken place, and certainly not at all the various stages of the EIA process.

Barker and Wood\textsuperscript{24} report that even though modifications have been made and are taking place due to the influence of the EIA process, there is no overall trend in the number or significance of the modifications.

Access by the public to copies of EIA reports and practice relating to public participation and consultation is reported to have improved over time, but it is far from satisfactory.

One of the most impressive aspects of the development of EIA in Europe during the 1990s has been the commitment by the European Commission to EIA system monitoring.

While it is hard to generalise from the varied experience of EIA both within and between member states, CEC\textsuperscript{25} opines that:

"The financial cost of carrying out an assessment for an EIS is typically a small fraction of one percent of the capital cost of the project. ... The overall timescale of implementing projects does not appear to be significantly affected by EIA."

A study by the European Commission\textsuperscript{26} of 18 EIAs in four member states concluded that EIA cost varied between Euro 10,000 and Euro 1.8 million and the EIA process has been accomplished within 24 months. This cost, together with the administrative cost of involvement in the EIA process, has been acceptable to the principal participants. CEC reported that the "planning, design and authorization of projects are

\textsuperscript{24} Op. cit. 49
\textsuperscript{26} European Commission, (1996a) Environmental Impact Assessment: A Study of Cost and Benefits (2 Vols.) Brussels: DGXI, EC, 1996 (a)
beginning to be influenced by the EIA process and that environmental benefits are resulting”. A later study carried out by the European Commission (para. 3.118) found that the costs of EIA were outweighed by the cost of reducing adverse environmental impacts. There has been a general agreement that EIA has been beneficial in reducing adverse environmental impacts.

The European Commission\textsuperscript{27} found that, in spite of considerable progress, it was apparent that, many years after the original Directive finally came into effect, EIA practice left much to be desired. A number of corrective measures need to be taken before the full realisation of the benefits obtainable from the implementation of the original Directive could be achieved. These included the requirements for better screening of projects, partial scoping, enhanced consultation and participation (including better international consultation), improved treatment of alternatives, and increased importance of EIA decision making which characterised the amended Directive. These amendments restored many of the provisions originally contained within the draft directive published in 1980.

It may be noted that many member states failed to implement the provisions of the amended Directive on time. It remains to be seen to what extent the remaining weaknesses relating to the treatment of alternatives, scoping, the quality of EIA reports, monitoring and consultation and participation influence the effectiveness of the amended Directive.

3.7 Quality Control in EIA

Quality control in EIA can be assessed at all stages of the process. There can be quality control measures to ensure that screening decisions are made in accordance with the Directive, there can be measures to check that all significant impacts have been properly at the scoping stage, that the consent decision has properly considered the environmental information and, although not covered by the EIA Directive, there can be post-decision quality control through monitoring. Quality control can also comprise the quality of public participation at each stage of the process. However, the Directive does not prescribe the manner in which competent authorities carry out their

screening duties, how the scoping process should operate, how the assessments should be completed, at what level of detail or their outcome should be reported.

There are few formal measures in place for the control of the quality of EIA procedures. The Directive itself is rather weak on this point and focuses more on the EIA procedural aspects. Ensuring quality control in EIA is largely left to the competent authorities and the checks provided by judicial review processes. The lack of central monitoring of the key stages of EIA make it difficult for member states to ensure their EIA systems are being consistently and correctly applied. Some member states are making use of post-decision monitoring of projects to ensure the quality of the outcome of the EIA process.

3.8 Effectiveness of the EIA Directive as a Whole

The preamble to the EIA Directive states that the “best environmental policy consists in preventing the creation of pollution at source, rather than subsequently trying to counteract there effects”. In the Commission’s view, EIA is an important aid to decision making that seeks to ensure that pro-active approach to environmental policy is implemented for major projects likely to have significant effects on the environment. The preamble goes on to say that the “principles of the assessment of environmental effects should be harmonised, in particular reference to the projects which should subject to assessment, the main obligation of the developers and the content of the assessment.” The degree to which the EIA Directive helps to achieve the preventive aspect of environmental policy and the degree to which harmonization of assessment has been achieved, can both be seen as measures of the effectiveness of the Directive as a whole.

The amendments made by 97/11/EC provided a significant strengthening of the procedural base of EIA. Directive 97/11/EC also strengthened the harmonisation of the projects made subject EIA by increasing the number of projects listed in Annex I. In providing the Annex III screening criteria for Annex II projects, 97/11/EC also provided a firm basis for ensuring that screening decisions are based on clear environmental considerations. Yet, as this review revealed, there remains wide disparity in both approach and the application of EIA in the member states of the EU. There are thus not only strengths but also some weaknesses that need to be addressed. The strengths and weaknesses of the EIA Directive, as an additional assessment of its
effectiveness, are examined in this review. After analysing the strengths and weaknesses the review also made recommendations for further strengthening of the application of the EIA Directive.

The review has produced a great deal of information on operation of EIA in the member states. It has reviewed ‘best practice’ and practice that is less good. A member State may have arrangements in place that are the ‘cutting edge’ of best practice in one respect and in others display only a weak commitment to the EIA process as a whole. It is difficult to draw a firm conclusions from the information gathered in the review about the role EIA plays in project decision making. In many instances, the environmental considerations raised by the EIA process are balanced against other societal and economic considerations in the decision making process. However, the review suggests that the most significant impact of the EIA Directive has been at the design stage of the projects where mitigation measures are built into projects at the start. Public participation in the decision making process of the EIA forces developers to put their projects in the best possible light at the start of the consent procedures, which results in better, less environmentally damaging projects. However, without monitoring either the process or the outcome of EIA, member states are not in a position to confirm that this is the case.

**Strengths**

This review brought out many strengths in the operation of the EIA Directive. These strengths reflects both the application of the procedures laid down by the Directive and the application of good practice by individual member states that often go beyond the requirements of the Directive. Many countries have developed their own guidance on the best practice which is as good or better than the guidance prepared by the European Commission on screening, scoping, review and cumulative impact assessment. Some countries have also prepared guidance, which are project specific and issues specific, such as on health impacts. Member states have embraced the subsidiarity principle\(^{28}\) in their transposition and operation of the EIA Directive with a range of approaches to screening, scoping and review operating across the European Union.

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\(^{28}\) The Principle of Subsidiarity was adopted by European Union member states, as per the Maastricht Treaty, to safeguard national identity within the Union and maintain member state decision-making autonomy in the context of European integration. In theory, the Subsidiarity Clause (hereinafter "Clause") allocates power from the greater Union to member states, as European Community institutions are required to abide by this principle in the application of European Community Treaties.
Union. Data bases on EIA activity prepared by some member states allows them to clearly list outputs by Annex and by project Type on annual basis. This is very useful for monitoring implementation, trends and for EIA research activities.

- There have been no demands from member states for further amendments to the Directive and few concerns regarding issues such as the current split between Annex I and Annex II projects or further clarification from the Commission on definitions of project types. Many member states use the ‘traffic light’ approach to screening and have developed inclusion, exclusion and indicative or guidance thresholds based on the screening criteria set out in Annex III. Almost all member states welcome the introduction of Annex III as an aid to making consistent screening decisions and have transposed it directly into their EIA legislation.

- Screening criteria for sensitive criteria have been incorporated into domestic EIA legislation of the member states.

- Many member states appreciate the value of early scoping stage and in some cases it has been made mandatory and includes public consultation.

- Some member states have formalised a review procedure to ensure that the environmental information supplied to the competent authority is in compliance with the Directive. Member states have also realised the problem of ‘salami slicing’ and the need to assess the impacts of changes and extensions to projects and some member states insist for an EIA when a change in capacity is proposed, which does not involve construction works. Many member states have procedures in place for dealing with these key issues such as reviewing the environmental information supplied by the developer, salami-slicing, cumulation with other projects, risk transboundary impacts, post decision monitoring and linking EIA and IPPC.

- Some member states have a main focus on the consideration of alternatives, and in majority member states an assessment of the zero alternative is a mandatory requirement. Many member states ensure that the public have an opportunity to participate in the very early stages of EIA and throughout EU the public are given an opportunity to comment on projects that are subject to
EIA. Furthermore, public participation and access to is considerably strengthened by the transposition of the Aarhus Convention into the EIA Directive. In some member states there is a requirement for post-decision monitoring of projects to ensure the quality of the outcome of the EIA process.

**Weaknesses**

There exist many weaknesses where the operation of EIA could be strengthened. The review of the transposition of 97/11/EC has shown that the new measures introduced by the Directive have yet to be implemented in full in all member states. The delay in implementing the amendments made by 97/11/EC by some member states has undermined the importance that the EU, as a whole, places on EIA as a tool for implementing wider environmental policies. The review does not confirm that all Annex II projects are subject to a systematic screening procedure. Also there is a wide variation in the levels of thresholds or criteria and there may still incidences of whole project types being excluded from EIA. The level of EIA activity appears to vary considerably between countries of the European Union and also there are wide gaps in the knowledge of EIA activity and in some cases there is little monitoring at national level. The part the public concerned can play in the screening stage is only recognised by a few member states.

- There appears to be little commitment to scoping in those member states that have not made scoping mandatory requirement or have not provided for voluntary public consultation within their scoping stage. In more than half the member states there is no research on the quality of information contained in environmental statements, and many member states appear to have little or no information on the quality or completeness of the environmental impact statements (EISs) being produced.

- The extent of public involvement varies considerably and the interpretation of “public concerned” varies quite narrow to wide. No standard practice across the EU and at present it is not possible to judge how effective public participation may be.

- There appears to be little co-ordination between the EIA Directive and other Directives such as IPPC and Habitat Directive. Few formal measures are I
place for the overall control of the quality of the EIA procedures and there appears to be little monitoring of EIA in practice by the member states.

- There were key information gaps on significant areas of EIA including: the number of EIAs that have taken place, screening decisions, quality of environmental information, public participation, salami-slicing, cumulative impacts, health aspects, biodiversity, and decision making – delays between the consideration of the environmental information and the decision and between decision and implementation.

3.9 EC Report on EIA

3.9.1 Introduction

The European Commission, has prepared the following 5 Years Report fulfilling the obligation found in Article 2 of Directive 97/11/EC and Article 11, paragraphs 1 and 2 of the Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive), which requires that "five years after the notification of the Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on exchange of information on experience gained in applying this Directive".

The report is in two parts, i.e., a summary of findings and actions to be taken and annexed the 5 Years review with detailed information on issues regarding the application of the EIA Directive prepared on the basis of answers by information provided by the Member states.

3.9.2 Summary of Findings

This report by the Commission reviews the operation of Directive 85/337/EEC as amended by Directive 97/11/EC (the EIA Directive). It is the third review of the EIA Directive and builds on those carried out in 1993 and 1997. This review comes five years after the entry into force of Directive 97/11/EC and examines the effectiveness of both the changes made by 97/11/EC and the EIA Directive as a whole. The bulk of the report is based on material collected following a questionnaire survey of member

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29 EIA Directive*/ COM/2003/0334 final *
states by DG Environment. The Impacts Assessment Unit of Oxford Brookes complemented missing elements and assembled the information. Apart from the changes introduced as a consequence of the Commission's first report evaluating the effectiveness of Directive 85/337/EEC, the amendments made by 97/11/EC also reflect the considerable strengthening and clarification given to certain elements of the EIA Directive as advanced by the European Court of Justice (ECJ). The report highlights the changes made by 97/11/EC and the ECJ rulings that underpinned them, and reflects upon the related policy context. The report also addresses the issue of complaints on the EIA Directive received by the Commission. Directive 97/11/EC widened the scope of EIA by increasing the number of types of project covered, and the number of projects requiring mandatory EIA (Annex I). It also strengthened the procedural base of the EIA Directive by providing for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and providing minimum information requirements. The review of the implementation and application of Directive 97/11/EC has shown that the new measures introduced by the Directive have yet to be implemented in full in all member states. The Commission's findings on the slow embrace of the amendments made by 97/11/EC by some member states do not detract from the general importance that most of the member states and the European Commission place on EIA as a tool for implementing wider environmental policies.

The Commission's report examines key areas of the operation of the EIA Directive including screening (the determination whether an EIA is required for a specific project), scoping (i.e., the identification of the issues to be covered by the environmental impact statement), review (the examination of environmental impact statements and other information submitted by developers to ensure it complies with the minimum information requirements of the Directive), and decision making. The report also examines the arrangements made by member states for dealing with key EIA issues such as the consideration of alternatives, public participation and quality control. Based on the information reviewed here there is no real evidence to suggest that further amendments to the EIA Directive are required at this stage.

- The survey revealed few significant concerns among member states regarding the current split between Annex I and Annex II projects; and member states appear to have embraced the flexibility permitted by Article 4(2) to employ
either a threshold or a case-by-case approach to screening Annex II projects. A variety of approaches to screening exists across the member states. Many member states appear to be making use of the 'traffic light' approach to screening and have developed inclusion thresholds (EIA always required - Red), exclusion thresholds (EIA never required - Green) and indicative or guidance thresholds (EIA may be required - Amber). However, in some cases member states appear to be employing a variety of different approaches, using different screening procedures for different project types. In some cases only mandatory or inclusive thresholds are used and it is not always clear from the responses received that sub-mandatory threshold screening takes place in all cases. Very few member states employ a case-by-case approach for all project types.

- In the survey a wide variation was found in approach to the setting of thresholds exists across the European Union. While many member states have set thresholds for the same project types, there are very large differences in the levels at which thresholds have been set. Some member states have made EIA mandatory for some project types regardless of size. This means that a project will be subject to EIA on a mandatory basis in one member state while the same project type of the same size will require EIA only after case-by-case screening in another member state. The report did not investigate the justification for the levels at which individual thresholds have been set. The information reviewed for this report is not based upon the operation of screening in practice by competent authorities and therefore it is not clear how the various thresholds and other screening criteria developed by member states are applied by competent authorities. Few member states involve the public in the screening process and many see it as a purely technical decision.

- The annual number of EIAs that take place appears to vary considerably between the countries of the European Union. It was not an easy task to gather this information and in some cases a reporting system exists only at national level but not at regional level. While the report provides estimates of the number of EIAs that have taken place both before the transposition of 97/11/EC and since, it has not been possible to break these figures down into project types or even provide a split between Annex I and Annex II projects.
In the Commission's view many member states do not appear to keep accurate annual figures on EIA activity and where member states do not, in their national legislation, distinguish between Annex I and Annex II projects it is difficult to disaggregate them for data collection purposes. The lack of national monitoring of EIA activity and the application of the EIA Directive in practice makes it difficult to speculate on the reasons why there are such wide variations between member states on the number of EIAs that have been completed. The variation may be explained by the relative economic conditions within countries, or it may also relate to the levels at which thresholds have been set.

- Scoping provisions are of a discretionary nature. The review revealed that there are a wide variety of approaches to the scoping stage of EIA. It would appear that some member states appreciate the value of an early scoping stage more than others. There appears to be little real commitment to scoping in those countries that have not made it mandatory and have not provided for public consultation within their voluntary scoping stage. However, some of the member states show the opposite tendency and require the publication of draft scoping reports or even draft EISs. There is also a recognition in some member states that public involvement at the scoping stage identifies the issues that are 'significant' to the people who will have to live with the project and not just the 'experts' who will not.

- Directive 97/11/EC introduced new minimum requirements for the information to be supplied by the developer. Failure to provide adequate information constitutes grounds for refusal of development consent in the majority of countries, under a variety of arrangements. Some member states have formalised a review procedure to ensure that the environmental information supplied to the competent authority is in compliance with the Directive. In some cases an independent specialist review commission or panel of experts carries out the review of the EIS. However, since there is no explicit obligation in the Directive to provide for such a review, there is no harmonised approach to the matter. The review of the information provided is, in all but a few member states, left to the competent authority and in many member states they are asked to do this without the aid of specific review
check-lists or review criteria. Whilst the elements listed in Annex IV underlie requirements for adequate assessments, this rather basic information has been built upon (e.g. with checklists) in only some member states. Some research has been conducted in about half of all member states on the quality of information contained in environmental statements and on the overall quality of the assessments. Where such studies have taken place, it has shown that up to 50% of EIS do not fully meet the requirements of the Directive.

- Without formal monitoring of the outcomes of the EIA process and more detailed research, it is difficult to assess how the process of environmental assessment has influenced applications for, and decisions on, development consent. One aim of the EIA Directive is to strengthen the consideration of likely significant effects in the decision-making, but many of the responses pointed out that other social or economic benefits also need to be considered when decisions are taken on applications for development. The responses to the questions relating to delays between the production of the required EIA information and the decision, and between the decision on development consent and the commencement of development have shown that these are tackled very differently in the member states and constitute an area of potential concern. This is because when there are long delays, changes to the state of the environment can occur, or new mitigation measures might become available. There is no indication from the member states as to the scale or frequency of delays occurring, there appears to be little recognition of the environmental implications of these problems, and there is little consistency of approach in dealing with them.

- In some member states the consideration of alternatives is a central focus of the EIA process, elsewhere the consideration of alternatives appears to be less complete than it might be. The majority of member states require assessment of the zero alternative and other project alternatives, which may include options for location, process, design, etc. A variety of institutions and sometimes the public may contribute to the selection of alternatives for assessment and these may include the most "environmentally friendly" alternative. Many of the member states see a link between the issues of 'salami-slicing', considering 'changes and extensions' to projects and
'cumulative impacts'. The issue of possible salami-slicing is recognised by the member states and some states have established measures to reveal and prevent such practice, including setting low thresholds or calling for assessment of "the whole programme" where this is appropriate. Very few member states have concrete evidence on how widespread the practice of salami-slicing may be [1]. A variety of approaches to dealing with changes and extensions are used across the EU, in line with existing requirements for other permits, the nature of the project and the nature of the change or extension. Both specific thresholds (often set as a proportion of the original project's size) and case-by-case screening are applied in different member states, or a combination of both. Some member states ask for an EIA when a change of capacity is proposed which does not necessarily involve construction works. According to the responses provided to the Commission there seems to be growing awareness of the issues raised by the requirement to assess the cumulation of impacts, and measures have been put in place in many member states to address this. Clear and comprehensive guidance for developers and others would appear to be lacking in most member states, e.g. on boundaries for the assessment area, on the need for co-operation between developers or other arrangements for making information available.

- Salami slicing refers to the practice of splitting an initial project into a number of separate projects, which individually do not exceed the threshold set or do not have significant effects on a case by case examination and therefore do not require an impact assessment but may, taken together, have significant environmental effects.

- Throughout the EU the public is given an opportunity to comment on the projects that are subject to EIA. The extent of public involvement varies considerably and the interpretation of "the public concerned" varies from quite narrow to wide. The responses provided to the Commission revealed that certain projects are more likely to generate high levels of participation. Given the large variety of project types covered by the Directive, the different consent systems used for different types of project and the different levels of interest they generate, it is not surprising that there is no standard practice of public participation across the EU. The transposition of the Aarhus
Convention into EIA legislation may provide an opportunity for improvements in public participation in EIA. There is a need, in the Commission's view, for better formal and informal arrangements for consultation on transboundary impacts with neighbouring countries, and a need to ensure that those arrangements are practical. A need has also been identified for an improvement in the current intra-regional procedures of some countries. More precise auditing arrangements are needed, to provide reliable information on the number, type and outcome of transboundary projects.

- The impacts of developments upon flora and fauna are assessed within EIA in the member states and the information requirements of Directive 97/11/EC seem to be met in this respect. The questionnaire responses are less explicit concerning the extent to which the various levels of biodiversity are addressed in practice. Guidelines on incorporating biodiversity issues into impact assessments have recently been adopted under the Convention on Biological Diversity.

- Risk is dealt with in a wide variety of ways and at very different levels across the EU, partly in response to the variety of geographical, geological, climate and other conditions. Risk is a screening criterion in Annex III and risk assessments appear in many EIS, and yet for most member states risk is seen as separate from the EIA process as it is often handled by control regimes to which the EIA Directive is not applied. Relationships between EIA and national environmental control regimes are complex and there appear to be little real co-ordination between the EIA Directive and other Directives such as IPPC and the Habitats Directive. Few member states have taken the opportunity offered by Directive 97/11/EC to provide for the greater consistency and reductions in repetitious documentation and assessments, provided by closer co-ordination of EIA and IPPC. In some member states a link is said to exist but this link may simply consist of a recommendation that EIA and other relevant procedure should be dealt with simultaneously.

- The assessment of health impacts is not a particularly strong feature of current practice. There is considerable variation in coverage from a narrow to a broad interpretation of health effects. There is evidence to suggest that health impacts are considered to be less relevant to EIA, and/or to a certain extent
covered by other legislation. There is some evidence to suggest that health impacts are considered under other headings such as pollution or risk.

• Although the current EIA Directive does not contain provisions on access to justice, the majority of member states provide for such in their national systems. Access to justice for EIA is largely confined to member of the public having legislative rights to challenge decisions through the courts. In most cases such challenges can only be made once project authorisation is granted, few member states provided for challenges at the earlier stages of EIA.

• There are few formal measures in place for the overall control of the quality of the EIA procedures. The Directive itself is rather weak on this point and focuses more on the EIA procedural aspects. Ensuring quality control in EIA is largely left to the competent authorities and the checks provided by judicial review processes. The lack of central monitoring of the key stages of EIA make it difficult for member states to ensure that their EIA systems are consistently and correctly applied. There are some examples of innovative practice, with some member states making use of post-decision monitoring of projects to ensure the quality of the outcome of the EIA process.

3.9.3 Recommendations - Action to be taken

The above discussion has revealed several shortcomings and weaknesses of the EIA laws and policies in Europe. According to the European Commission, in some member states there are examples of very good practice, e.g. in relation to encouraging public participation or providing for clear quality control procedures, while in others (and sometime in the very same member states that have elements of good practice), there are still weaknesses. These findings need to be carefully assessed alongside other factors in order for the Commission to decide whether the EIA Directive should be further amended at this stage. It appears that the main problem lies with the application and implementation of the Directive and not, for the most part, with the transposition of the legal requirements of the Directive. It is clear, however, from the weaknesses identified that there is a need to improve and strengthen the application of the Directive in several aspects and the Commission will continue to promote this. The Directive provides the framework and the existing infringement mechanisms provide legal support for better transposition and
application of the Directive. In order to improve the effectiveness of the Directive, The Commission believes that it is important that the member states act responsibly and use the information provided in this report positively to enhance their individual and collective performance.

Based on this review of the experiences the Commission has made the following recommendations to enhance the effectiveness of the EIA Directive:

• member states should check their national and regional EIA legislation and subsequently remedy shortcomings (e.g. with regard to thresholds, quality control, salami-slicing, cumulation etc). The Commission urges member states to use the coming amendment of the EIA Directive in the context of the Aarhus transposition to do so.

• a precise form of annual recording and monitoring is indispensable to provide reliable annual information on the number and type of EIA projects and the outcome of key decisions. Member states should introduce such systems where they do not already exist. This will assist them, in the Commission's view, in evaluating the number of EIAs carried out, and the types of projects involved, and in assessing the performance and quality of work done. In turn, this will help them to improve their systems.

• in relation to screening, those member states that employ a system with fixed mandatory thresholds should make certain it ensures that all projects that might have significant effects are subject to an appropriate screening process. In this exercise, the Commission expects that they will particularly consider projects planned in or near sensitive areas, and the possible cumulation of projects.

• the Commission urges member states to make more widespread use of its existing guidance on screening, scoping, review and cumulative impacts. There should also be more training at national levels in the use of these quality control documents. These documents are found in the web page of DG ENV: http://europa.eu.int/comm/environment/eia/home.htm.

• the quality of the EIA process, and especially the EIS, are the key for an effective EIA. The Commission urges those member states that have yet to do so to introduce formal provisions for the review of the environmental
information supplied by the developer to ensure strict compliance with the terms of the EIA Directive. Such measures could comprise the establishment of expert pools, guidelines on the co-ordination of experts, clear instructions about responsibilities, the use of independent external expert review etc. Another tool of quality control could be the introduction of an efficient post-decision monitoring system.

- the Commission believes that particular training needs to be introduced in certain member states for authorities at local and regional level in order to improve their understanding of the EIA Directive and its application within the respective national system. Mechanisms for efficient administrative management should help to enhance capacity building.

- in the transboundary context member states should make more use of guidance provided by the UNECE on bi- and multilateral agreements and the practicalities of trans boundary EIA (see UNECE web page: http://www.unece.org/env/eia). The Commission considers that this will help ensure that adequate provisions are in place, for instance for direct contact between the relevant competent authorities and other agencies for consultation on trans boundary effects.

- The quality of the EIA has consequences in the decision making process and is of key importance for the effectiveness of the Directive. How the outcome of the EIA influences decision-making is central to the purpose of EIA and the Directive. The quality of the decision depends on the quality of the information provided in the EIA process and the strength of an effective EIA should be shown in a decision that has properly taken on board and reflects the environmental dimension highlighted in the EIA process. In some member states, refusal of development consent is provided for in cases where serious environmental harm is forecast. In this respect the Commission believes that member states should, where necessary, consider strengthening their national procedures by ensuring that the conditions attached to the (subsequent) decision(s) are adequate to prevent or mitigate any environmental harm that has been predicted.
• The Commission will consider the need for further research into the use of thresholds and the various systems applied in screening in order to get more clarity and comparable data which would enable robust conclusions to be drawn on how to achieve improvement and greater consistency of approach in the screening process. (Initiative 1).

• These recommendations, if put into effect, would go some way to improving the effectiveness of the Directive and the Commission will consider, in conjunction with the member states, ways of improving and extending the guidance which is already available. The Commission envisages preparing interpretative and practical oriented guidance with the involvement of experts from the member states as well as other stakeholders like NGOs, local and regional authorities and industry. This could help to overcome some of the disparities reported in the definition of the projects which are subject to the Directive, the setting and application of thresholds and screening criteria, the way scoping is carried out, the relationship between the effects of different projects (cumulation, salami-slicing), the way that risk is dealt with in assessments, and the type of data which should be gathered in monitoring systems. It would also be designed to improve considerations of health effects which are often inconsistently or partly addressed in the EIA process in the member states. There is clearly a need for a more systematic approach. The forthcoming Community Strategy on Health and the Environment will form a sound basis for such an approach by establishing a consensus regarding the scope of environmental health, as well as strategies to increase awareness about the linkages between human health and the environment. (Initiative 2).

• The Commission will also consider with the member states what might be done to improve the training of officials responsible for EIA in order to improve the situation. (Initiative 3).

• Capacity building and voluntary action have their limitations, however, and the Commission will continue to take enforcement action in cases of incomplete or inadequate transposition, and/or poor application of the Directive. (Initiative 4).
• In due time, more consistent application may require further amendments to the Directive. Based on the results of the actions outlined above, the Commission will consider what further amendments should be introduced. For example, this might be the most efficient way of providing for proper quality control and consistent data collection and might also be necessary to improve the way thresholds and cumulative effects are handled. Other clarifications and improvements could be introduced at the same time (for instance to the procedure for exempting exceptional cases (Article 2(3)). All these actions, combined with the implementation of the SEA Directive, will produce a robust set of procedures to improve decision-making and help to achieve the objectives set out in the 6 EAP. (Initiative 5).

3.9.4 Five-year Review\(^\text{30}\) on the Application and Effectiveness of the EIA Directive


The prime purpose of EIA is to identify any significant environmental effects of a major development project, and where possible to design mitigation measures to reduce or remedy those effects, in advance of any decision making, EIA is widely seen as a proactive environmental safeguard that, together with public participation and consultation, can help meet the EU’s wider environmental concerns and policy principles. To achieve these objectives, the EIA Directive must be applied as consistently as possible across then EU as a whole. Evidence from the European Commission’s (EC) 1993 and 1997 reviews of the operation of Directive 85/337/EEC and other evidence indicates that there was little consistency in the application of the key EIA procedures such as screening and scoping. Furthermore, some important European Court of Justice (ECJ) cases\(^\text{31}\) found a number of member states to be failing to fully implement the Directive. Due to the different project authorisation procedures in place within member states there have been difficulties in achieving

\(^\text{30}\) This review was carried out by the Impact Assessment Unit (IAU) of the School of Planning, Oxford Brookes University

\(^\text{31}\) Case C-392/96; Commission v Ireland, Case C- 150/97: Commission v Portugal, and Case C-287/98 État du grand-duché de Luxembourg v Berthe Linster and Others.
consistency in implementation across the Community as a whole. Indeed a major objective of the amending Directive 97/337/EC was, in part, to minimise the differences of application between member states and to harmonise implementation.

The challenge of ensuring that the EIA Directive is adopted and implemented in an effective and consistent manner across all member states of the EU is considerable. To monitor the effectiveness of the EIA Directive, the EC carried out two reviews, which reported in 1993 and in 1997. There are three main objectives of this current review:

- provide a detailed overview of the arrangements made by member states for implementing the amendments made by 97/11/EC
- provide a detailed overview and evaluation of the application of the EIA Directive as a whole
- provide suggestions and recommendations for the further enhancement of the application and effectiveness of the EIA Directive as a whole.

In particular the review examines the implementation of the key stages and key elements of the EIA Directive, namely:

- the increase in the number of projects subject to EIA and the movement of some project types into Annex I
- the means by which member states exempt specific projects from the provisions of the Directive (Article 2, para. 3)
- the range and type of projects exempted from the Directive by means of Article 1, para. 5, the means by which they are authorised, and the way in which the environmental information is considered in the decision making process
- are the screening and scoping provisions in place in member states and the way in which case by case screening criteria or thresholds are employed

The review examines the implementation of the following key stages and key elements of the EIA Directive:

- the increase in the number and type of projects subject to EIA and the movement of some projects types into Annex I;
• the means by which member states exempt specific projects from the provision of the Directive (Article 2, para. 3)

• the range and type of projects exempted from the Directive by means of Article 1, para 5, the means by which they authorise, and the way in which the environmental information is considered in the decision making process

• the screening and scoping provisions in place in member states and the way in which case by case screening criteria or thresholds are employed

• information provided by the developer and the completeness of the information provided, as well as the means by which competent authorities check that it is complete

• health aspects and their relationship to matters such as air quality etc

• evidence of "salami slicing" or the potential for project proponents to avoid completing an EIA by designing developments in such a way that they fall below thresholds or triggers for EIA

• cumulation of projects, and how spatial and temporal boundaries are established

• risk assessment and the methods employed to assess and communicate risk

• relationship with other Directives, in particular the IPPC (Integrated Pollution and Prevention Control) and Habitats Directives

• the provisions in place for dealing with transboundary consultations

• the means by which member states deal with changes or extensions to projects once authorised

• the way that alternatives are assessed and reported, including how alternatives are identified and defined and


This report has been structured around the transposition and implementation of Directive 97/11/EC, which facilitated a more comprehensive overview of progress on transposition and implementation and highlighted key issues that warrant further
attention. The report provides an overview of the background on the adoption of 97/11/EC and the factors that shaped the amendments that were introduced by the Directive and then examines the progress that has been made on transposing the Directive by the member states and the issues raised by the implementation process. The report focuses on the details of the Directive’s implementation by examining the key changes introduced by the Directive in terms of screening, scoping and review, and the key issues that the amending Directive sought to address. It also provides a summary of the effectiveness of the EIA Directive as a whole and makes some recommendations for the future development of the EIA Directive.

The key findings of the 1997 review of the Directive can be summarised as follows:

- EIA is a regular feature of project licensing/authorisation systems, yet wide variation exists in relation to those procedures (e.g. different procedural steps; relationships with other relevant procedures)
- Different interpretations and procedures for Annex II projects
- Member states did not give enough attention to the consideration of alternatives; improvements have been made over public participation and consultation; and Member states complain about ambiguity and lack of definitions of the key terms in the Directive.

3.10 The EIA Directive and the European Court of Justice (ECJ)

The operation of the EIA Directive has been the focus of a great deal of attention in the ECJ. Many of the EIA cases considered by the Court have related to the implementation of Directive 85/337/EEC by individual member states, while others have related to the operation of the EIA Directive in specific cases. It is useful, in the context of the amending Directive 97/11/EC, to refer to some key court rulings and judgements that have helped to shape the changes introduced. The key cases, which resulted in many amendments provided for in 97/11/EC are C-431/92, C-133/94, C-72/95, and C-392/96.

33 C-133/94 Commission v. Kingdom of Belgium ECR [1996]
34 C-72/95 Kraaijeveld and Others v Gedeputeerde Staten van Zuid-Holland [1996] ECR 1-5403
35 C-392/96 Commission v. Ireland ECR [1999] I-5901
In C-72/95 (also known as the Dutch Dyke Case) the ECJ judgement post-dates the adoption of 97/11/EC. The Commission was mindful of the issues raised by the case when drafting the amendments to the Directive. ECJ has consistently ruled that the Directive should be interpreted as having a wide scope and very broad purpose, and the individual member states or competent authorities should not seek to narrow that purpose in its operation. Even though the EIA Directive provides for discretion in the application of the procedures under the principle of subsidiary, ECJ has limited the discretion available to member states in a number of ways. In this case, it was made obvious that the discretionary powers provided by the Directive should not be used to devalue the general requirements of the Directive provided by Article 2(1) that all projects in Annex II be the subject of EIA should they give rise to significant environmental effects. This means in practice that Annex II projects must be passed through a screening procedure.

In C-133/94, the ECJ ruled that member states were at liberty to use either case-by-case or threshold approach to screening Annex II projects. The ruling in this case, which was enunciated in other cases, also made clear that while member states had the discretion to define thresholds for screening Annex II projects, these thresholds could not be fixed at such a level as to exclude whole project types from assessment.

In C-392/96, ECJ held that screening criteria or threshold could not be limited to the consideration of the size of projects and that the nature and location of the project also needed to be taken into consideration. ECJ also held that the setting of thresholds or criteria for Annex II projects could not be set at such a high level that the objectives of the Directive would be circumvented by the splitting of projects into smaller units and that the cumulative effects of such an approach would need to be assessed.

Because of the issues raised on the screening of Annex II projects by these cases, together with the findings of 1993 review of the operation of the Directive, Article 4(3) and Annex III were inserted into the Directive 97/11/EC. This new Annex provides the criteria on which thresholds and other screening criteria must be based.
In C-431/92 and C-72/95 ECJ also dealt with the issue of changes or extensions to projects and ruled that additions or extensions to the existing projects should be subject to EIA should their size or scale or other factors meet the EIA requirements for a new project of that type. Aspects of these rulings were transferred into the EIA Directive by 97/11/EC through the addition of point 13 to Annex II, dealing with changes or extensions to Annex I or Annex II projects.

In response to the issues discussed above, the European Commission proposed an amending Directive 97/11/EC that would strengthen the Directive in line with wider development of the environmental policies of the European Community and the results of the five reviews of the operation of the Directive and consolidate the changes and clarifications provided by the Espoo Convention and the ECJ rulings. The amending Directive 97/11/Ec was adopted in 1997 and required member states to transpose the changes into their domestic legislation by March 14, 1999.

3.11 Some Issues

The key aspects of the EIA Directive are discussed hereunder:

Alternatives

A Major drawback of EIA Directive 85/337/EEC was that it did not require developers or competent authorities to examine alternatives, where they exist. In the Article 5 paragraph 1 of the Directive, in relation with Annex III, required the developer “where appropriate” to give an outline of the main alternatives studied and an indication of the main reasons for this choice, taking into the environmental effects. The term “where appropriate” for studying alternatives was dropped by Directive 97/11/EC. In addition, the information relating to alternatives was included in Article 5 paragraph 3 of the amended Directive, which requires that the minimum environmental information to be supplied to the competent authority, as part of the EIA process, must also contain this outline of the main alternatives ‘studied by the developer’. Thus the Directive has raised the importance of consideration of alternatives within the EIA Directive as a whole. A consideration of alternative solutions is therefore of growing importance within the EU environmental policy and law.
In some member states the consideration of alternatives is a central focus of the EIA process, elsewhere the consideration of alternatives appears to be less complete than it might be. The majority member states requirement assessment of the zero alternative and the other project alternatives, which may include options for location, process, design, etc. A variety of institutions and some times public may contribute to the selection of alternatives for assessment and these may include the most "environmentally friendly" alternative.

**Changes and Extension, Cumulation with Other Projects and Salami Slicing**

There are clear links between the issues of 'cumulation with other projects', 'changes and extensions' and 'salami-slicing' and the requirements under Article 3 to assess both the direct and indirect effects of a project. ECJ in the above-mentioned cases namely, C-72/95, C-431/92, C-392/96 and in the Bozen\(^{36}\) case held that any interpretation of 'cumulation with other projects' 'changes and extensions' and 'direct and indirect effects' should be made on he consideration of the broad and wide purpose of the EIA Directive as a whole. In the Bozen case ECJ ruled that the measures adopted by member states must not undermine the objective of the Directive, which is that "no project likely to have significant effects on the environment, within the meaning of the Directive, should be exempt from assessment." Thus all Annex II projects that are likely to affect the environment adversely, based on a consideration of the criteria set out in Annex III, should be made subject to the EIA procedures. The issue of possible salami-slicing is recognised by the member states and some member have taken steps to reveal and prevent such a practice, including setting low thresholds or calling for assessment of "the whole programme" where this is appropriate.

**Public Participation**

In EU, all member states provide public an opportunity to comment on the projects that are subject to EIA. The extent of public involvement varies considerably and the interpretation of "the public concerned" varies from quite narrow to wide. Public participation also depends on type of projects and the survey shows that certain projects generate high level of participation. Because of the large variations in

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\(^{36}\) C-435/97 World Wildlife Fund and others v Autonome Sektion Provinz and others
projects and the interests they generate, there is no standard practice for public participation across the EU.

Access to Justice

Article 9 of the Aarhus Convention requires each party to ensure that members of the public have access to administrative or judicial procedures to challenge acts and admissions by private persons and public authorities which contravene provisions of its national law relating to the environment. Directive 2003/35/EC amended, inter alia, the EIA Directive 97/11/EC so as to transpose the Aarhus Convention into EU legislation, which requires member states to ensure that the public concerned (subject to certain conditions) has access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions that are subject to the public participation provisions of the EIA Directive (Article 10a). The new Article 10a also requires member states to ensure that such procedures shall be fair and not prohibitively expensive.

- From the evidence of the survey it would appear access to justice for EIA appears to be largely confined to reliance on the judicial systems of the individual Member State. The use of judicial review systems to provide access to justice is often costly and slow and often limited to those who are directly affected by a decision rather than wider concept of the 'the public concerned' as provided for by the Aarhus Convention.

- Although the current EIA Directive does not contain provisions on access to justice, the majority of Member states provides for such in their national systems. Access to justice for EIA is largely confined to members of the public having legislative rights to challenge decisions through courts. In most cases such challenges can only be made once the project authorisation is granted, few member states provided for challenges at the earlier stages of EIA.

3.12 Recommendations

The information provided in the Commission's report has revealed several shortcomings and weaknesses. These need to be carefully assessed alongside other factors in order to decide whether the EIA Directive should be further amended at this
stage. It appears that the main problem lies with the application and implementation of the Directive and not, for the most part, with the transposition of the legal requirements of the Directive. The review points out that from the weaknesses identified need to be addressed. Also, there is a need to improve and strengthen the application of the Directive in several aspects. The Directive provides the framework and the existing infringement mechanism provide for legal support for better transposition or application of the Directive. In order to improve the effectiveness of the Directive, it is necessary that the member states act responsibly and use the information provided in this report positively to enhance their individual and collective performance.

How this can be achieved is briefly discussed hereunder:

- Member states should check their national and regional EIA legislation and subsequently remedy shortcomings. The Commission directs the member states to use the amendments to the EIAs Directive in the light of the Aarhus Convention.

- A precise form of annual recording and monitoring is essential to provide reliable annual information on the number and type of EIA projects and the outcome of decisions. This will help the member states in evaluating the number of EIAs carried out and the types of projects involved, and in assessing the performance and quality of work done and also improve their systems.

- In those member states where a fixed mandatory thresholds should make certain it ensures that all in Annex II list that might have significant effects are subject to an appropriate screening process.

- The Commission urged all member states to make more widespread use of its existing guidance on screening, scoping, review and cumulative impacts. There should be more training at the national levels in the use of these quality control documents.

- The quality of the EIA process, and especially the EIS, are the key for an effective EIA. The member states should introduce formal provisions for the review of the environmental information supplied by the developer to ensure strict compliance with the terms of the EIA Directive.
• The member states should introduce an effective post-decision monitoring system, which is very important tool of quality control.

• The quality of the EIA has a consequences in the decision making process and is of key importance for effectiveness of the Directive. The quality of the decision depends on the quality of the information provided in the EIA process.

• In some member states, refusal of development consent is provided for in the cases where serious environmental harm is forecast. The Commission insists that the member states should device procedures that are adequate to prevent or mitigate any environmental harm that has been predicted.

The recommendations, if put into effect, would go a long way to improve the effectiveness of the Directive. The Commission should also consider with the member states what needs to be done to improve training of officials responsible for EIA. Capacity building and voluntary action have their limitations, and therefore the Commission should continue to take enforcement action in case of incomplete or inadequate transposition, and/or poor application of the Directive. In due course, more consistent application may require further amendments to the Directive. Based on the results of the actions outlined above, the Commission may consider what further amendments should be introduced.

While concluding this discussion, one can say that the European Union has progressed very well in establishing and implementing the EIA legal processes and policies in most European countries. Developing countries can definitely derive some useful lessons from these experiences. The next chapter discusses the EIA law and policies in developing countries.