



RAPPORT SUR LA CONSULTATION DU RÉSEAU DE MONITORAGE DE LA SUBSIDIARITÉ SUR LA MISE EN ŒUVRE ET L'EFFICACITÉ DES DIRECTIVES EIE ET ESE

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Introduction et méthodologie	3
1. Directive EIE	3
1.1 Nécessité de modifier la directive EIE: aspects à améliorer et propositions de mesures visant à réaliser ces améliorations. Rôle de l'UE	3
1.2 Évaluation de l'application de la directive EIE	5
1.3 Meilleures pratiques pour l'établissement de modèles opérationnels visant à mettre en œuvre la directive	6
2. Directive ESE	6
2.1 Nécessité de modifier la directive ESE: aspects à améliorer et propositions de mesures visant à réaliser ces améliorations. Rôle de l'UE	6
2.2 Évaluation de l'application de la directive ESE	7
2.3 Meilleures pratiques pour l'établissement de modèles opérationnels visant à mettre en œuvre la directive	7
3. Consultation possible sur l'analyse d'impact territorial	8
ANNEX 1	9
Austrian State Governors' Conference	9
Union of Greek Prefectural Authorities	18
Regional Assembly of Extremadura	26
Catalan Parliament	34
Emilia-Romagna Region	40
Lombardy Region	47

Introduction et méthodologie

La consultation vise à définir la façon dont les partenaires du Réseau de monitoring de la subsidiarité perçoivent la mise en œuvre et l'efficacité de la directive relative à l'évaluation des incidences sur l'environnement (EIE)¹ et de la directive relative à l'évaluation stratégique environnementale (ESE)².

La procédure EIE garantit l'identification et l'évaluation des conséquences environnementales des projets publics et privés susceptibles d'avoir un impact significatif sur l'environnement avant l'octroi de toute autorisation. La directive EIE définit les catégories de projets auxquelles s'applique l'EIE, la procédure à suivre, ainsi que le contenu de l'évaluation.

La directive ESE vise à garantir que les incidences de certains plans et programmes sur l'environnement sont identifiées et évaluées au cours de leur élaboration, avant leur adoption. L'ESE contribue à une planification plus transparente en associant le public et en intégrant des considérations environnementales dans une perspective de développement durable.

La consultation a été lancée le 24 novembre 2009 et s'est achevée le 8 janvier 2010. Six contributions émanant de quatre États membres ont été reçues³. Tous les participants sont des autorités régionales et/ou des associations d'autorités locales et régionales responsables de la mise en œuvre et/ou de la transposition des directives susmentionnées au sein de leurs territoires respectifs.

1. Directive EIE

1.1 Nécessité de modifier la directive EIE: aspects à améliorer et propositions de mesures visant à réaliser ces améliorations. Rôle de l'UE

Les partenaires du réseau ont été invités à donner leur avis sur l'éventuelle nécessité de modifier la directive EIE et la manière de procéder à ces modifications.

Bien que certains estiment qu'une modification majeure de la directive EIE ne soit pas nécessaire, l'ensemble des participants sont unanimes quant à la perfectibilité de la directive. Selon certains, les mesures nationales d'application sont à la base des difficultés rencontrées lors de la mise en œuvre de la directive. D'une manière générale, la plupart des participants soulignent les avantages d'une simplification de la procédure EIE et attirent l'attention sur le besoin d'améliorer la coordination entre les directives EIE et ESE.

¹ Directive 85/337/CEE concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement modifiée par la Directive 97/11/CE et la Directive 2003/35/CE (Directive relative à l'évaluation des incidences sur l'environnement ou EIE).

² Directive 2001/42/CE relative à l'évaluation des incidences de certains plans et programmes sur l'environnement (Directive relative à l'évaluation stratégique environnementale ou ESE).

³ Vous trouverez en annexe une liste (en anglais) des partenaires et leurs contributions.

Les participants estiment que les **principaux domaines à améliorer** dans la directive sont les suivants: la procédure de sélection, la qualité des EIE, ainsi que la coordination entre l'EIE et d'autres directives et politiques de l'UE (intégration et simplification de procédures définies par différents instruments de l'UE). Les pratiques instaurées par la directive EIE en matière de participation du public aux projets ayant des incidences transfrontières sont également préoccupantes pour certains participants.

La **procédure de sélection** semble constituer l'une des questions les plus préoccupantes pour les participants. Certains proposent d'utiliser des critères plus détaillés pour définir les projets soumis à l'EIE. Un partenaire estime que les projets de développement de zones industrielles et de zones urbaines qui sont jugés similaires à des plans et programmes devraient relever de la directive ESE, plutôt que de la directive EIE. Un participant est d'avis qu'une procédure simplifiée devrait être instaurée pour les projets pour lesquels une procédure complète n'est pas jugée nécessaire au terme d'une première évaluation. Enfin, une dernière contribution souligne la nécessité d'associer davantage les autorités environnementales compétentes et le public à cette phase de la procédure.

En ce qui concerne **la qualité des EIE**, certains participants estiment que la procédure dite de "scoping" devrait constituer une étape obligatoire de la procédure EIE, et que l'UE devrait adopter de nouvelles mesures législatives détaillant le contenu obligatoire d'une EIE. Un participant souligne qu'il pourrait être utile d'inclure dans la directive une "mention spécifique" en faveur des demandes de documentation complémentaire par les autorités compétentes. Enfin, un autre participant évoque l'absence manifeste de compétence dans ce domaine et s'interroge sur la capacité des autorités locales à suivre des études sur l'impact d'un projet sur l'environnement. Le même partenaire plaide en faveur d'une plus grande interdisciplinarité des études.

En ce qui concerne les **pratiques visant à assurer la participation du public**, deux positions se dégagent: d'une part, certains partenaires estiment utile de prévoir un large éventail de mesures de consultation du public dans le cadre des procédures d'information et de participation (communication d'observations écrites; enquêtes et auditions publiques, avec dialogue entre les administrations et le public; dialogue entre les organismes et le public ou les associations qui ont communiqué les observations, etc.); d'autre part, comme le souligne un partenaire, la participation du public aux différentes phases de la procédure pourrait ralentir considérablement cette dernière. La nécessité de définir plus précisément le concept de "public concerné" et de continuer à promouvoir la participation du public a également été signalée.

Pour ce qui est des **procédures** portant sur les projets ayant des incidences transfrontières, un participant estime qu'un développement est nécessaire afin de définir clairement les procédures et délais, surtout en ce qui concerne les consultations transfrontières. Ce partenaire est surtout préoccupé par la communication des informations entre les États membres, les délais et les occasions dont bénéficient les États membres pour exprimer leurs points de vue et inquiétudes.

En ce qui concerne la **relation entre la directive EIE et d'autres directives et politiques de l'UE**, une majorité des partenaires considèrent qu'il convient de renforcer la coordination entre les directives EIE et ESE, surtout en cas de double emploi. À cet effet, les catégories de projets concernées par les EIE pourraient être définies plus précisément. Pour ce qui est de la relation entre la directive EIE et d'autres réglementations de l'UE, un participant estime que les seuils définis dans les directives EIE et IPPC doivent être harmonisés. Un autre partenaire propose d'inclure expressément la procédure d'évaluation définie aux paragraphes 3 et 4 de l'article 6 de la directive Habitats⁴ dans la directive EIE afin de garantir la conformité des projets avec les deux directives, et également de réduire la durée d'évaluation.

Les participants proposent également un **large éventail d'autres mesures** visant à améliorer la directive, telles que la possibilité de refuser une EIE pour des raisons fondées, le relèvement des seuils pour certaines catégories de projets afin de refléter leur incidence réelle sur l'environnement, la promotion du développement des capacités des administrations et la définition de la responsabilité des auteurs des EIE par rapport à leur contenu.

Enfin, les participants invitent l'UE à prendre davantage de mesures et à développer la législation existante afin de garantir la cohérence et d'améliorer la qualité. La plupart de ces participants considèrent que les mesures obligatoires dans ce domaine sont essentielles étant donné qu'ils estiment qu'il est **fortement souhaitable de parvenir à un degré d'homogénéité supérieur entre les États membres** dans ce domaine. Des documents d'orientation visant à expliquer l'application et l'interprétation de la directive seraient également les bienvenus.

1.2 **Évaluation de l'application de la directive EIE**

La majorité des participants estiment que les **retombées environnementales positives et l'amélioration de la fiabilité de la planification des projets** obtenues grâce à la mise en œuvre de la directive EIE correspondent aux coûts encourus par leur administration. Toutefois, certains soulignent que dans certains cas, les concepteurs ont dû faire face à des coûts excessifs en raison du retard pris par leurs projets du fait de la procédure EIE. Dans d'autres cas, les coûts accrus sont imputés aux mesures de transposition nationales.

D'une manière générale, les participants n'estiment pas que les exigences imposées par la directive EIE représentent une charge administrative inutile. Néanmoins, certains demandent l'adoption de **mesures de simplification**, telles que l'application obligatoire de la directive EIE au début du processus de planification, assortie d'éventuels contrôles de conformité portant sur le projet définitif, la mise en œuvre d'une évaluation d'impact simplifiée dans le cadre de la procédure de vérification, ce qui éviterait de procéder à une EIE, l'obligation de confronter les procédures IPPC⁵ et EIE, l'élaboration de plans d'affectation des sols nationaux, régionaux et locaux qui prennent en compte l'incidence générale des projets sur l'environnement.

⁴ Directive 92/43/CEE concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages.

⁵ Directive 2008/1/CE relative à la prévention et à la réduction intégrées de la pollution

L'ensemble des partenaires considèrent que la directive EIE contribue à **mieux informer l'opinion publique** et à renforcer la participation des citoyens au processus d'élaboration des décisions. Néanmoins, certains estiment que cet aspect pourrait être amélioré en associant davantage les organisations environnementales au processus d'élaboration des décisions et en favorisant la participation des citoyens dès les prémises du projet.

1.3 **Meilleures pratiques pour l'établissement de modèles opérationnels visant à mettre en œuvre la directive**

Concernant les meilleures pratiques existantes, les participants évoquent presque tous les règles qu'ils ont adoptées afin de mettre en œuvre la directive EIE. Un partenaire recommande l'utilisation généralisée des nouvelles technologies de consultation et de communication, et a rédigé un guide pour l'élaboration des plans de surveillance des effets sur l'environnement en vue de garantir le strict respect des mesures correctives EIE.

2. **Directive ESE**

2.1 **Nécessité de modifier la directive ESE: aspects à améliorer et propositions de mesures visant à réaliser ces améliorations. Rôle de l'UE.**

Les participants estiment nécessaire de modifier et d'améliorer la directive ESE. Un partenaire déclare que la directive doit "prévoir une intégration plus globale et résolue des aspects environnementaux dans les plans et programmes".

Les **principaux aspects** de la directive que les participants estiment perfectibles sont les suivants: le champ d'application de la directive, l'identification des "solutions de substitution raisonnables", le suivi des effets importants sur l'environnement, ainsi que la coordination entre la directive ESE et d'autres directives et politiques de l'UE.

En ce qui concerne le **champ d'application de la directive**, certains estiment qu'il convient de le modifier étant donné que bien souvent une ESE n'est pas nécessaire, surtout lorsqu'il s'agit de plans et programmes qui se bornent à mettre en œuvre des plans et programmes antérieurs qui ont déjà été évalués à un autre niveau politique. Par ailleurs, certains partenaires signalent qu'ils sont souvent confrontés à des cas de double emploi avec la directive ESE et qu'il faudrait résoudre ce problème.

Une majorité de participants considèrent par ailleurs que l'"**identification des solutions de substitution raisonnables**" constitue un autre aspect à améliorer. En particulier, la directive devrait proposer une définition plus détaillée des "solutions de substitution raisonnables". L'absence de méthodologie dans ce domaine est également soulignée.

Les améliorations à apporter au mode de **suiti** des effets importants sur l'environnement, notamment par une meilleure définition du concept, sont également mises en exergue par les participants. Un partenaire propose de rendre obligatoires pour tous les plans et programmes soumis à une ESE l'établissement de "plans de suivi" respectifs et l'intégration de lignes directrices définissant un cadre commun pour les modalités et indicateurs de suivi, le but étant de constituer un ensemble d'indicateurs communs permettant de comparer les plans, programmes et leurs ESE respectives à l'échelle européenne.

Pour ce qui est des synergies possibles entre la directive ESE et d'autres politiques et directives de l'UE, les observations formulées sont similaires à celles résumées au point 2.1.

En outre, certains participants proposent une série d'autres **mesures** visant à améliorer la directive, par exemple des solutions administratives applicables en cas d'application incorrecte de la procédure.

Enfin, tous les participants s'accordent pour dire qu'il convient de prévoir **davantage de lignes directrices** afin de garantir une application et une interprétation correctes de la directive.

2.2 **Évaluation de l'application de la directive ESE**

Selon les participants, les retombées environnementales positives pouvant découler de la mise en œuvre de la directive ESE dépassent les coûts envisagés par leur administration. Cependant, un partenaire souligne la nécessité d'instaurer une procédure simplifiée pour les cas qui ne nécessitent pas une étude approfondie.

D'une manière générale, les participants ne considèrent pas les exigences imposées par la directive ESE comme une charge administrative inutile. Un participant suggère néanmoins qu'une intégration plus globale des procédures contribuerait à la minimisation des coûts.

Enfin, les participants semblent partagés quant à l'influence que le retard pris dans la transposition de la directive ESE par certains États membres pourrait avoir eue sur la mise en œuvre de la directive par rapport à leur administration propre.

2.3 **Meilleures pratiques pour l'établissement de modèles opérationnels visant à mettre en œuvre la directive**

Seuls deux participants ont fourni des exemples de meilleures pratiques pour l'établissement de modèles opérationnels visant à mettre en œuvre la directive ESE. Les meilleures pratiques suivantes ont été citées: la définition précise des critères et objectifs environnementaux à remplir avant de pouvoir procéder à la mise en œuvre des propositions du concepteur et de consulter les parties prenantes et administrations publiques, la création de mécanismes légaux visant à éviter les évaluations redondantes et à garantir la mise en œuvre de l'ESE et de l'EIE, ainsi que la publication de "guides d'utilisateur" permettant d'identifier au cas par cas les projets qui doivent être évalués.

3. **Consultation possible sur l'analyse d'impact territorial**

Enfin, les partenaires du réseau étaient invités à mentionner s'ils souhaiteraient participer à une éventuelle future consultation de la Commission européenne sur l'impact des modifications apportées aux directives EIE et ESE.

Selon les réponses que nous avons reçues, l'ensemble des participants se disent intéressés (et dans certains cas "très intéressés") par une telle consultation. Ils déclarent également être disposés à partager des informations, documents et expériences relatifs à la mise en œuvre des directives EIE et ESE.

ANNEX 1

Austrian State Governors' Conference

**COMMITTEE OF THE REGIONS – DIRECTORATE FOR CONSULTATIVE WORK
DEVE Commission and "Networks & Subsidiarity" Unit**



**QUESTIONNAIRE ON THE APPLICATION AND EFFECTIVENESS OF THE
EIA AND THE SEA DIRECTIVES
COM (2009) 378 final and COM (2009) 469 final**

**Submitted by Mr José Macário Correia (PT/EPP) for consultation of the Subsidiarity
Monitoring Network**

Please complete and submit by **Friday 8 January 2010**. You can upload the completed questionnaires directly on the Subsidiarity Monitoring Network webpage (<http://subsidiarity.cor.europa.eu> – remember to log in). Alternatively, you can send them by email to subsidiarity@cor.europa.eu.

Name of the Authority:	Austrian State Governors' Conference
Contact person:	Austrian States' Liaison Office
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BACKGROUND

Environmental Impact Assessment (EIA)

The Directive on the assessment of the effects of projects on the environment (Environmental Impact Assessment or EIA Directive) was introduced in 1985 and was first amended in 1997⁶.

The EIA procedure ensures that the environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.

⁶ Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Following the signature of the Aarhus Convention by the Community on 25 June 1998, the EIA Directive was amended once more in May 2003.

Strategic Environmental Assessment (SEA)

The purpose of the Directive on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA Directive)⁷ is to ensure that the environmental consequences of certain plans and programmes are identified and assessed during their preparation and before their adoption. The public and environmental authorities can give their opinion and all results are brought together and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the event of the likelihood of significant transboundary effects, the Member State concerned and its citizens are informed and have the possibility to make comments which are also taken into account in the national decision-making process.

SEA will contribute to more transparent planning by involving the public and by taking into account environmental considerations. This will help to achieve the goal of sustainable development.

Please complete the following questions:

A. EIA/SEA Directives
<i>1. Has your administration (or the members of your association) been involved in the implementation of the EIA or the SEA Directives, and if so in what capacity?</i>
The departments of the offices of the state governments, empowered in accordance with the rules of procedure of the State governments, were involved in the application of the EIA and SEA Directives and the application of the national laws implementing these directives (state governments in the EIA procedure, first instance authority; for the SEA the environment authority and the authority responsible for drawing up the plan under the SEA Directive).
B. EIA DIRECTIVE
<i>2. Based on your experience of the application of the EIA Directive, do you see a need for the EU to improve the process of Environmental Impact Assessment by eventually amending the Directive? Please give reasons for your answer.</i>

⁷

Directive 2001/42/EC.

Experience to date does not suggest that there is a need to improve procedures. The EIA Directive provides a (sufficient) framework for the implementation of environmental impact assessments.

There is, however, a perceived need for changes to the scope of application of the directive.

The scope of application of the directive (i.e. the types of project for which an EIA is to be carried out) is defined sufficiently clearly (N.B. the detailed procedures should continue to be a matter for the Member States, as this is closely linked with the structure of domestic authorities), but Annex II, point 10(a) and (b) of the EIA Directive list "industrial estate development projects" and "urban development projects". The EIA does not generally apply to specific projects but rather to planned land use. At the time the EIA is carried out the specific construction measures to be undertaken are still unknown. These projects should therefore be taken out of the EIA Directive. A SEA, in accordance with the SEA Directive, would be the more appropriate instrument with a view to taking comprehensive account of environmental considerations.

Better coordination with the SEA Directive would be desirable, in order to prevent duplication of assessments, as assessments are in practice sometimes duplicated, which brings no benefits for the environment. It not only means unnecessary work but also meets with incomprehension on the part of those involved.

Moreover, some of the threshold values set out in the EIA Directive are disproportionately low, e.g. those concerning the incineration or chemical treatment of hazardous waste and waste oil installations or chemical/physical treatment plants. As a result, EIA procedures have to be carried out for these types of project, for which appropriate approval procedures are, however, already in place, which are sufficient from the point of view of environmental protection.

3. *Which of the following aspects of the EIA Directive do you believe should be fundamentally improved in the future? Multiple answers are possible.*

- a. *The screening procedure*
- b. *The quality of the EIAs, namely the quality of the information used in the EIA (scoping procedure), quality of the documentation and of the EIA process itself*
- c. *Practices put in place for public participation*
- d. *EIA procedures for projects with transboundary impacts*
- e. *Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive⁸, the SEA Directive, the Habitats⁹ and Birds¹⁰ Directives, the overall climate change and energy policy, etc.)*
- f. *Other issues (please specify)*

⁸ Integrated Pollution Prevention and Control, Directive 2008/1/EC.

⁹ Directive 92/43/EEC.

¹⁰ Directive 79/409/EEC.

We do not see any need for a radical improvement of the EIA Directive in relation to the points listed above. There is, however, some room for improvement regarding points c, d and e.

4. Which concrete measures would you propose to achieve these improvements?

Local and cross-border public participation often proves unwieldy in practice and significantly lengthens the procedure. It would be a good idea to streamline these aspects of the procedure.

There should be an option to decide that under certain conditions an EIA is unnecessary.

It should also be possible under certain conditions to submit reasoned "no impact statements" in relation to certain aspects (e.g. exclusion of certain protected items from further analysis at an early stage, if these are not affected).

Plan-like projects (see question 2) should be dealt with under the SEA rather than the EIA procedure.

Thresholds for certain types of project (e.g. waste plants) should be raised in line with their actual environmental relevance.

5. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the EIA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation etc? Please give reasons for your answer.

Apart from the changes listed under point 2 and point 4, second and third paragraphs, changes to the EIA Directive are not considered necessary. Guidance and/or other supporting documents are seen as a suitable instrument for making implementation of the EIA Directive uniform and eliminating implementation problems. In relation to the participation of the public at home and abroad, the expectations of project developers and the public often diverge significantly, and a Commission document delineating the management of the procedure would facilitate matters.

6. Do you believe the possible environmental benefits and the improvement in the reliability of the project planning achieved thanks to the implementation of the EIA Directive are commensurate with the costs borne by your administration and the developers in order to comply with its requirements?

In the case of more complex projects, the answer to this question is clearly yes. In other cases the fact that national environmental rules already require detailed assessments for many types of project means that the additional benefit is sometimes minimal (see also question 2). Thus, for example, the workload involved in carrying out individual assessments to establish the extent of possible environmental impacts and whether an EIA needs to be carried out (and which authority is responsible for approval) is often extremely heavy, almost as much as for the EIA itself. Moreover, the threshold values for certain types of project are disproportionately low and are not justified by environmental protection considerations (e.g. golf courses in Austria of more than 10 ha, which means that in practice EIAs have to be carried out for all golf courses).

N.B.: Various specific laws already guaranteed a high environmental standard in relation to planned public or private projects with an environmental impact even before the EIA Directive entered into force. Domestic procedural provisions have generally ensured a coordinated approach by the responsible authorities and thus a joined-up assessment of environmental impacts. From the point of

view of the environment, therefore, there was no pressing need for the introduction of a new procedure. It is undeniable, however, that the adoption of the EIA Directive has ensured a higher environmental standard Europe-wide, which is particularly significant from the point of view of establishing equal conditions of competition.

7. *Do you consider the requirements imposed by the EIA Directive as unnecessary administrative burdens for developers or your administration?*

If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the EIA process? Please give reasons for your answers.

The EIA Directive has undoubtedly led to an additional administrative burden. Apart from the consideration of environmental aspects required by the specific laws, there now has to be an assessment focused purely on protected items, independently of the specific laws. We cannot, however, see any real alternative to the EIA Directive with a view to achieving uniform environmental standards.

8. *Do you believe the EIA Directive has helped to better inform the public and increase public participation in the decision-making process? Please give reasons for your answer.*

The EIA Directive has increased the provision of information to the public. The increase in the number of parties involved in the procedure and the publication of the proposal for the initiation of the procedure serve the interests of both information and public involvement. On the other hand, the requirement for participation in the procedure also means that project developers have to inform the affected groups before the procedure is initiated and under certain circumstances incorporate proposals for improvements into their project.

With regard to public participation in the decision-making process, experience shows that the emphasis is often on the promotion of individual (subjective) interests. As the various specific laws already ensured comprehensive protection of the local area, there has been no significant change here. Environmental organisations are, however, more closely involved in the decision-making process than previously.

9. *If possible, please provide examples of best practices for establishing operational models to implement the EIA Directive.*

This is unfortunately impossible, as each procedure is dealt with individually.

C. SEA DIRECTIVE

10. *Based on your experience of the SEA Directive, do you see a need for the EU to improve the process of Strategic Environmental Assessment? Please give reasons for your answer.*

The Strategic Environmental Assessment procedure is in general considered appropriate for achieving the intended comprehensive consideration of environmental aspects in the planning and programming process. In some areas, however, there is room for improvement (see below for further details).

11. Which of the following aspects of the SEA Directive do you consider should be fundamentally improved in the future? Multiple answers are possible.

- a. *The Directive's scope of application*
- b. *The scope and content of the environmental report*
- c. *The identification of "reasonable alternatives" – lack of a definition of this concept*
- d. *Consultations (public, and environmental authorities)*
- e. *Particular issues pertaining to transboundary consultations*
- f. *Monitoring significant environmental effects*
- g. *Coordination between the SEA and other EU directives and policies (such as possible synergies between the SEA Directive and the IPPC Directive¹¹, the EIA Directive, the Habitats¹² and Birds¹³ Directives, the overall climate change and energy policy, etc.)*
- h. *Others (please specify)*

There is considered to be room for improvement in relation to points a, b, c, f and g.

Comment on point a (Directive's scope of application):

The existing requirements, which are essentially based on formal criteria, mean that no SEA needs to be carried out for plans and programmes where an EIA appears appropriate (e.g. because they are being drawn up on a voluntary basis, for example in the areas of mobility, energy, raw material extraction etc). However, in the case of plans and programmes, or changes to them, in relation to local spatial planning, an assessment has to be made each time of whether there is likely to be a significant impact on the environment and whether a SEA must be carried out. In many cases this is disproportionate, and moreover ineffective in environmental protection terms.

Comment on point g (Coordination between the SEA and other EU directives and policies): coordination between the EIA and SEA Directives (see also answer to question 2).

11 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

12 Directive 92/43/EEC.

13 Directive 79/409/EEC.

12. Which concrete measures would you propose to achieve these improvements?

In order to prevent multiple assessments being carried out on plans or programmes which are part of a plan or programme hierarchy, the SEA Directive provides that information obtained in the course of an EIA carried out at another planning or programme level may be taken into account when drawing up the environmental report for subsequent planning or the follow-up programme. It is assumed that the various plans and programmes will exhibit significantly different degrees of detail and that the assessments of the expected environmental impacts will therefore also differ considerably in their degree of detail.

In some cases, however, follow-up planning is merely the implementation of detailed plans already adopted at a higher planning level, for example in relation to the interaction between local spatial planning approaches and the follow-up land use or construction planning. In these cases a further environmental assessment is not essential, as the environmental impacts associated with the specific planning measure have already been determined comprehensively and taken into account in the planning process. The Member States should therefore have the possibility of completely exempting plans and programmes, the environmental impacts of which have already been fully established at a higher planning or programming level, from the requirement for the implementation of a SEA.

The assessment of environmental impacts poses difficulties in practice. There is in particular a lack of specific rules governing environmental indicators and the assessment of environmental impacts.

More detailed provisions on the compulsory "alternative assessment" would also be helpful.

It would also be helpful to be able to take greater account of planning hierarchies of the kind which exist in Austrian spatial planning law, so that under certain conditions the requirement to carry out a SEA could be waived.

In relation to the SEA, there should also be the possibility under certain conditions of issuing reasoned "no impact statements" for certain aspects of the assessment (e.g. exclusion of certain protected items from further assessment at an early stage, where these are not affected).

It is questionable whether monitoring measures are in fact needed in every case. The purpose of monitoring measures is to identify unforeseen environmental impacts at an early stage, so that appropriate remedial action can be taken. There are, however, undoubtedly cases of planning where all the environmental impacts have been comprehensively considered and their implications assessed, so that monitoring is not essential. The requirement to carry out such measures should therefore be restricted to cases in which there is actually a real possibility of unforeseen environmental effects.

<p><i>13. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the SEA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation, etc.? Please give reasons for your answer.</i></p>
<p>In principle guidance documents etc on the implementation of the SEA Directive would seem sufficient. If this were to prove insufficient in practice, however, regulatory measures amending the SEA Directive should be adopted.</p>
<p><i>14. Do you believe the possible environmental benefits achieved thanks to the implementation of the SEA Directive are commensurate with the costs envisaged by your administration in order to comply with its requirements?</i></p>
<p>The SEA Directive has undoubtedly meant that the environmental impacts associated with a plan or programme are dealt with in more detail. Insofar as plans and programmes establish a framework for future projects, project developers are thus offered greater certainty with regard to the viability of their project, as "knockout criteria" can be identified at an early stage. To this extent the workload would appear acceptable. The environmental benefits achieved depend above all on the alternative assessment. And here – as stated above - there is room for improvement.</p> <p>It regularly happens that a SEA has to be carried out for plans and programmes, or changes to them, where there is no clear environmental relevance. This is for example often the case at local spatial planning level. Even assessments intended to establish whether a significant environmental impact may be expected and whether a SEA therefore has to be carried out involve an avoidable burden in these cases.</p>
<p><i>15. Do you consider the requirements imposed by the SEA Directive as unnecessary administrative burdens for developers or your administration?</i></p> <p><i>If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the SEA process? Please give reasons for your answers.</i></p>
<p>In principle, no. See however the comments on question 14 and the proposals made in relation to question 12.</p>
<p><i>16. In many Member States the transposition of the SEA Directive into national or regional law was delayed. Has this affected in any way the work of your administration in the implementation of this Directive?</i></p>
<p>No.</p>
<p><i>17. Can you provide examples of best practices for establishing operational models to implement the SEA Directive?</i></p>

C. Possible future impact assessment consultation

18. *In the event that the European Commission comes forward with proposals to amend the EIA and/or the SEA Directives in the future, it would probably conduct an impact assessment to accompany its proposals.*

In view of the role of local and regional authorities in the implementation of these Directives, would you be interested in participating in a possible Impact Assessment Consultation of the CoR Subsidiarity Monitoring Network?

What kind of information would you be willing to share with the Committee of the Regions and the European Commission (e.g. experience in the implementation of the Directives, possible best practices, quantitative data regarding EIA and SEA and in particular the costs thereof, etc.)?

Austria has comprehensive documentation on the implementation of the SEA Law (paragraphs 43 and 44 of the SEA Law and corresponding reporting obligations of the SEA authorities). This information should be used.

Union of Greek Prefectural Authorities

**COMMITTEE OF THE REGIONS – DIRECTORATE FOR CONSULTATIVE WORK
DEVE COMMISSION and "Networks and Subsidiarity" unit**



**QUESTIONNAIRE ON THE APPLICATION AND EFFECTIVENESS OF THE EIA AND
SEA DIRECTIVES
COM(2009) 378 final and COM(2009) 469 final**

**Submitted by Mr José Macário Correia (PT/EPP) for consultation of the Subsidiarity
Monitoring Network**

Please complete and submit by **Friday 8 January 2010**. You can upload the completed questionnaires directly on the Subsidiarity Monitoring Network webpage (<http://subsidiarity.cor.europa.eu> – remember to log in). Alternatively, you can send them by email to subsidiarity@cor.europa.eu.

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BACKGROUND

Environmental Impact Assessment (EIA)

The Directive on the assessment of the effects of projects on the environment (Environmental Impact Assessment or EIA Directive) was introduced in 1985 and was first amended in 1997¹⁴.

The EIA procedure ensures that the environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.

¹⁴ Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Five years after the signature of the Aarhus Convention by the Community on 25 June 1998, the EIA Directive was amended once more in May 2003.

Strategic Environmental Assessment (SEA)

The purpose of the Directive on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA Directive¹⁵) is to ensure that the environmental consequences of certain plans and programmes are identified and assessed during their preparation and before their adoption. The public and environmental authorities can give their opinion and all results are brought together and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the event of the likelihood of significant transboundary effects, the Member State concerned and its citizens are informed and have the possibility to make comments which are also taken into account in the national decision-making process.

SEA will contribute to more transparent planning by involving the public and by taking into account environmental considerations. This will help to achieve the goal of sustainable development.

Please complete the following questions:

A. EIA/SEA Directives
1. <i>Has your administration (or the members of your association) been involved in the implementation of the EIA or the SEA Directives, and if so in what capacity?</i>
The basic legal text establishing the EIA in European Union countries is Directive 85/337 of 27 June 1985 "on the assessment of the effects of certain public and private projects on the environment". Environmental impact studies were first introduced in Greece in 1981 under Presidential Decree 1180/81 regulating issues arising from the establishment and operation of manufacturing or craft businesses, any kind of machinery and warehouses and associated environmental protection in general, which provided for studies to be drawn up for industrial and similar activities. The basic law governing the procedure for environmental impact studies for projects and activities and basic aspects of the timing, content, evaluation and authorisation of environmental impact studies is Presidential Decree 1650/86 on environmental protection, pursuant to Article 24 of the Constitution. This decree was implemented through Joint Ministerial Decisions Nos 69269/90, on the classification of projects and activities into categories and the content of the environmental impact study and special environmental studies (relating to the protection of areas of special natural interest), and 75308/90 on procedures for publishing the content of environmental impact studies for the purpose of informing the public and the organisations representing them. A more recent law (3010/02) amended certain elements of Presidential Decree 1650, while Joint Ministerial Decision 15393/02 amended the

¹⁵ Directive 2001/42/EC.

classification of projects and activities and Joint Ministerial Decision 11014/03 amended procedures for submitting, evaluating and approving environmental impact studies. These new regulations introduced the concept of the preparatory environmental assessment and evaluation, which takes the form of a preliminary environmental impact study and replaces the authorisation of land-use study that was in place previously.

The basic remit of the ENAE in its official role and in accordance with its founding law, includes its involvement, through its representatives, in all kinds of bodies and organisations. It is also able to publish opinions on all draft laws of direct or indirect relevance to the prefectural authorities.

In this way, although it was not involved in the procedure that led to Presidential Decrees 1180/81 and 1650/90 and implementing decisions 69269/90 and 75308/90 (the ENAE was only set up in 1995), it does and will continue to play an institutional part in every act affecting local communities represented by second-tier local authorities.

Meanwhile, across the country, the prefectural authorities play an active part in the day-to-day practical process of applying the EIA Directive in Greece, by articulating and implementing democratic planning provisions.

In this way, the ENAE's members are effectively involved in the process of applying the EIA Directive, given that in certain cases the competent prefectural departments (environment, energy, urban planning, etc.) make recommendations to the Prefectural Council, which in turn gives its expert opinion on the preliminary environmental impact studies, for projects of prefectural interest.

Any member of the public concerned has an opportunity to take part, speak and express their views at these Prefectural Council meetings, as information on them is published in advance and they are open to the public. This means that the process of discussion, exchange of views and, finally, negotiation is sufficiently thorough, even though there is no defined phase for this process.

In addition, the opinions of the Prefectural Council are now published in the local press.

In accordance with a recent amendment to the legislation, environmental authorisation for projects and activities in Category A (Sub-categories 1 and 2) require the submission of an environmental impact study either centrally to the Greek Ministry for the Environment, Physical Planning and Public Works or to the regional environment departments. Projects in Category B, and more specifically subcategory 3, are subject to screening and scoping procedures; in some cases, an EIA will be required, while for the rest a simple "environmental report" must be submitted to the prefecture. Other projects in Category B (Sub-category 4) require an "environmental report" to be submitted to the prefecture.

Every year, approximately 3 000 environmental impact studies for projects and activities are submitted for approval to central, regional and prefectural departments. A small proportion of them are technical studies on combating pollution. In the early years, this number was much larger than in

other European countries, giving an initial indication of the failings of the system in Greece.

B. EIA DIRECTIVE

2. *Based on your experience of the application of the EIA Directive, do you see a need for the EU to improve the process of Environmental Impact Assessment by eventually amending the Directive Please give reasons for your answer.*

The Environmental Impact Assessment is a modern tool used by developed societies to realise the necessary compromises between growth and environmental concerns. The procedure comprises one or more scientific studies (environmental impact studies), disclosure of findings and dialogue (to try and reach a social consensus), appraisal of findings during decision-making procedures, and procedures for monitoring and implementing corrective measures.

Implementation of the EIA Directive, despite some disadvantages, was a major step towards protection of the environment in Greece. However, implementation of the system in Greece was informed more by the need to meet the requirements for conforming to European law than by the development of an environmental awareness of the need for a preventive policy.

As a result, the approach adopted initially was superficial, the aim being to achieve formal compliance with the requirements. For many years, the system worked primarily as a procedure for granting permits. Those in charge of projects and activities - public and private bodies - often view the assessment of environmental impact studies and approval of environmental requirements as a formal procedure. However, as society becomes more aware and legislation improves, the EIA will have to play a more substantial role.

3. *Which of the following aspects of the EIA Directive do you believe should be fundamentally improved in the future? Multiple answers are possible.*

- a. *The screening procedure*
- b. *The quality of the EIAs, namely the quality of the information used in the EIA (scoping procedure), quality of the documentation and of the EIA process itself*
- c. *Practices put in place for public participation*
- d. *EIA procedures for projects with transboundary impacts*
- e. *Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive¹⁶, the SEA Directive, the Habitats¹⁷ and Birds¹⁸ Directives, the overall climate change and energy policy, etc.)*
- f. *Other issues (please specify)*

16 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

17 Directive 92/43/EEC.

18 Directive 79/409/EEC.

We believe that the following aspects of implementing the EIA Directive need to be improved in Greece:

1. The quality of the EIAs, namely the quality of the information used in the EIA (scoping procedure), quality of the documentation and of the EIA process itself. Experts are not qualified to fulfil all the requirements of the environmental impact studies owing to deficiencies, practical difficulties and low salaries, while local authorities have limited capacity to monitor studies and the environment. Many studies lack an interdisciplinary dimension, and are carried out by people who do not have appropriate expertise in the relevant subjects.
2. Practices put in place for public participation. Public participation – through the Prefectural Councils - takes place for Category A projects with the procedure for publishing environmental impact studies, in accordance with Joint Ministerial Decision No 75308/90, but such participation is often limited. In many cases the Prefectural Councils, as well as bodies representing the general public, such as local authorities, do not reply to relevant questions from environment departments.
3. Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive, the SEA Directive, the Habitats and Birds Directives, the overall climate change and energy policy, etc.). The social, economic and cultural impacts tend to be underestimated. The indirect environmental implications of a project are insufficiently addressed (owing to lack of data, standards and experience), as are generally the long-term implications. There is no understanding of the combined impacts or of the systemic nature of the environment.
4. There is a very serious deficit in terms of monitoring compliance with environmental standards. Staffing, especially of regional departments, for evaluating the environmental impact studies is inadequate. Often just one scientist is responsible for checking the studies, with responsibility for all the environmental issues of their region.
5. Environmental data are lacking at central government level, and even more so at regional government level, and among individual experts. Maps (geological, forest, etc.) are in short supply throughout Greece, as are intelligent maps (geographical information systems). There is no land registry and the property ownership situation is opaque. Information organisation (databases) is inadequate, making it difficult to access and use information.

4. *Which concrete measures would you propose to achieve these improvements?*

- Improving and applying skills using scientific research and environmental technology. More specifically, the following types of environmental impact need to be distinguished: positive/negative, large-scale/small-scale, short-term/long-term, direct/indirect, cumulative, synergistic, reversible/irreversible. Another suggestion would be to improve the quality of environmental impact studies through an interdisciplinary approach to the use of graphical data; monitoring the direct, indirect, primary and secondary effects resulting from a given activity; and using simulations to present key environmental processes. The aim would be to make a more accurate assessment of environmental impact, taking account of interactions and dynamic processes.
- Promoting environmental education, information, awareness-raising and public engagement.

<ul style="list-style-type: none">• Creating a competent administration and adequate control and corrective mechanisms to tackle environmental risks. Active involvement of experts to assist the work of environment departments.• Use of economic tools to protect the environment and aligning environmental policy with other sectoral policies, e.g. industrial, agricultural and tourism policy.
5. <i>Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the EIA Directive , or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation etc? Please give reasons for your answer.</i>
We think the EIA Directive needs to be improved in the ways outlined above through regulatory provisions at EU level.
6. <i>Do you believe the possible environmental benefits and the improvement in the reliability of the project planning achieved thanks to the implementation of the EIA Directive are commensurate with the costs borne by your administration and the developers in order to comply with its requirements?</i>
<u>Yes</u> , we believe that the administrative costs, as well as those borne by developers, are commensurate with the likely environmental and other benefits achieved through application of the EIA Directive. Aside from this, however, we think (and local communities and the bodies representing them, as well as the manufacturing sector, are committed to this) that the administrative costs are commensurate, in the main, with the purpose they serve, namely to raise awareness about the environment and thus also about its protection.
7. <i>Do you consider the requirements imposed by the EIA Directive as unnecessary administrative burdens for developers or your administration?</i> <i>If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the EIA process? Please give reasons for your answers.</i>
<u>No</u> , we do not consider these to be unnecessary administrative burdens. Nonetheless, drawing up national, regional and local land-use plans that take account of the overall environmental impact of such projects would help to reduce red tape and simplify procedures.
8. <i>Do you believe the EIA Directive has helped to better inform the public and increase public participation in the decision-making process? Please give reasons for your answer.</i>
<u>Yes</u> , but improvements are needed to ensure more effective information and involvement of the public in the decision-making process, especially in the case of large-scale measures. Thus a very important next step would be to increase and formalise use of the internet during the process of publicising the contribution of intermediate local authorities to implementation of the Directive, i.e. the opinions of the Prefectural Council on preliminary environmental impact studies.
9. <i>If possible, please provide examples of best practices for establishing operational models to implement the EIA Directive.</i>
C. SEA DIRECTIVE
10. <i>Based on your experience of the SEA Directive, do you see a need for the EU to improve the process of Strategic Environmental Assessment? Please give reasons for your answer.</i>

We consider the effects of implementing the SEA Directive, as well as the consequent need for improvements in the Strategic Environmental Assessment, to be a matter of national planning and therefore irrelevant to local government.

Thus we do not think it is appropriate for the Prefectural authorities to provide answers to the questions below.

11. *Which of the following aspects of the EIA Directive do you believe should be fundamentally improved in the future? Multiple answers are possible.*

- b. The Directive's scope of application*
- b. The scope and content of the environmental report*
- c. The identification of “reasonable alternatives” – lack of a definition of this concept*
- d. Consultations (public, and environmental authorities)*
- e. Particular issues pertaining to transboundary consultations*
- f. Monitoring significant environmental effects*
- g. Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive¹⁹, the SEA Directive, the Habitats²⁰ and Birds²¹ Directives, the overall climate change and energy policy, etc.)*
- h. Others (please specify)*

12. *Which concrete measures would you propose to achieve these improvements?*

13. *Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the SEA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation, etc.? Please give reasons for your answer.*

14. *Do you believe the possible environmental benefits achieved thanks to the implementation of the SEA Directive are commensurate with the costs envisaged by your administration in order to comply with its requirements?*

19 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

20 Directive 92/43/EEC.

21 Directive 79/409/EEC.

15. Do you consider the requirements imposed by the SEA Directive as unnecessary administrative burdens for developers or your administration?

If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the SEA process? Please give reasons for your answers.

16. In many Member States the transposition of the SEA Directive into national or regional law was delayed. Has this affected in any way the work of your administration in the implementation of this Directive?

17. Can you provide examples of best practices for establishing operational models to implement the SEA Directive?

C. Possible future impact assessment consultation

18. In the event that the European Commission comes forward with proposals to amend the EIA and/or the SEA Directives in the future, it would probably conduct an impact assessment to accompany its proposals.

In view of the role of local and regional authorities in the implementation of these Directives, would you be interested in participating in a possible Impact Assessment Consultation of the CoR Subsidiarity Monitoring Network?

What kind of information would you be willing to share with the Committee of the Regions and the European Commission (e.g. experience in the implementation of the Directives, possible best practices, quantitative data regarding EIA and SEA and in particular the costs thereof, etc.)?

Regional Assembly of Extremadura

COMMITTEE OF THE REGIONS – DIRECTORATE FOR CONSULTATIVE WORK
DEVE Commission and "Networks & Subsidiarity" Unit



**QUESTIONNAIRE ON THE APPLICATION AND EFFECTIVENESS OF THE
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BACKGROUND

Environmental Impact Assessment (EIA)

The Directive on the assessment of the effects of projects on the environment (Environmental Impact Assessment or EIA Directive) was introduced in 1985 and was first amended in 1997²².

The EIA procedure ensures that the environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.

²² Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Following the signature of the Aarhus Convention by the Community on 25 June 1998, the EIA Directive was amended once more in May 2003.

Strategic Environmental Assessment (SEA)

The purpose of the Directive on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA Directive)²³ is to ensure that the environmental consequences of certain plans and programmes are identified and assessed during their preparation and before their adoption. The public and environmental authorities can give their opinion and all results are brought together and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the event of the likelihood of significant transboundary effects, the Member State concerned and its citizens are informed and have the possibility to make comments which are also taken into account in the national decision-making process.

SEA will contribute to more transparent planning by involving the public and by taking into account environmental considerations. This will help to achieve the goal of sustainable development.

Please complete the following questions:

A. EIA/SEA Directives
<i>1. Has your administration (or the members of your association) been involved in the implementation of the EIA or the SEA Directives, and if so in what capacity?</i>
Yes. The Directorate-General for Environmental Assessment and Quality is the body responsible for the environment in the Autonomous Community of Extremadura. It carries out environmental impact assessments of projects, plans and programmes falling outside the remit of the national government.

B. EIA DIRECTIVE
<i>2. Based on your experience of the application of the EIA Directive, do you see a need for the EU to improve the process of Environmental Impact Assessment by eventually amending the Directive? Please give reasons for your answer.</i>
The directive covers the essential aspects of the procedure and many of the aspects that could be included in the directive have already been covered by national legislation in Royal Legislative Decree No 1/2008. Therefore, we consider that the environmental impact assessment procedure for projects in Spain is more or less closed. Nonetheless, the directive could be modified in relation to the points mentioned below.

²³

Directive 2001/42/EC.

3. Which of the following aspects of the EIA Directive do you believe should be fundamentally improved in the future? Multiple answers are possible.

- a. The screening procedure
- b. The quality of the EIAs, namely the quality of the information used in the EIA (scoping procedure), quality of the documentation and of the EIA process itself
- c. Practices put in place for public participation
- d. EIA procedures for projects with transboundary impacts
- e. Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive²⁴, the SEA Directive, the Habitats²⁵ and Birds²⁶ Directives, the overall climate change and energy policy, etc.)
- f. Other issues (please specify)

a. The directive establishes the possibility of setting thresholds or analysing on a case-by-case basis the projects to be submitted for environmental assessment. The case-by-case analysis, based on the criteria set down in Annex III, is likely to be problematic, and we therefore do not believe that the solution would be to set thresholds applicable to the criteria in Annex III, as it would be a difficult and lengthy process and some cases could be omitted. However, it could be useful to have interpretation manuals such as those that exist in many other areas. One issue that remains to be solved is whether preventive and corrective measures can be set up within the preliminary assessment procedure, without requiring the project to be subject to a detailed environmental assessment: this would mean setting up a "simplified procedure".

b. As regards the quality of environmental impact studies, we believe that it is up to the Member States and, where applicable, the Autonomous Communities, to monitor this. Nonetheless, it could be useful if the directive included a general mention supporting the request for additional documentation from administrations competent in the field of the environment; also, it is to be assumed that with the development of legislation relating to the Aarhus convention, access to information by authors of environmental impact studies will be improved.

With regard to the period of validity of the EIA and the monitoring of environmental impacts, the directive could include the relevant aspects of RD1/08, which we consider to be appropriate.

c. Public information seems to be a complex issue to regulate in the directive, insofar as procedures could vary greatly between Member States. In any case, and in relation to the aspects included in the document, we believe that if the directive establishes anything concrete, it should be made clear there must only be one occasion for public participation, as otherwise the procedure could become too drawn out. We believe that RD 1/08 gives the right solution.

d. We believe that there are aspects regarding cross-border consultations that should be regulated,

24 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

25 Directive 92/43/EEC.

26 Directive 79/409/EEC.

such as: how can a Member State be aware of a project in another Member State that might affect it? What timeframe does it have to highlight this? On what aspects may it give its opinion? Etc. Our experience with various cross-border consultations has not been very satisfactory, particularly as regards the deadlines by which the consulted country must send reports. It would be helpful if the directive cleared up certain aspects and established standard agreements.

e. We believe that coordination between the EIA and SEA is clear and simple. Their scope and range are different, and so we believe that they should not be recast. As regards the possibility of overlaps, this could occur in some cases related to land use, although we believe that given the diversity of cases that will exist between countries, it should be the Member States' task to delimit the scope.

As regards the connection with the IPPC directive, it would be useful to harmonise the thresholds defining the activities to which it applies. We do not believe that coordination measures should be set down in a directive, as the Member States should be free to set these up themselves.

With regard to the Habitats Directive, we believe that the EIA Directive should expressly refer to the assessment procedure in Article 6 (3) and (4) of the Habitats Directive. This is how it is done in our Autonomous Community, and this clearly improves the environmental assessment, complies with the Habitats Directive and reduces the assessment time.

Lastly, we believe that it is difficult to take climate change into account in the environmental impact assessment of a specific project. Moreover, the climate factor is already included in Article 3 of the directive. The SEA directive should develop this issue further, however, and it would also be very useful to publish manuals explaining how to include climate change in environmental assessments.

4. Which concrete measures would you propose to achieve these improvements?

- + Include a period of validity for the EIA, follow-up requirement and surveillance plan.
- + Broader development, establishing procedures and timeframes for cross-border consultations.
- + Harmonise EIA and IPPC thresholds.
- + Determine more explicitly the concept of "public concerned".
- + Expressly include in the EIA directive the assessment procedure set down in Article 6(3) and (4) of the Habitats Directive.
- + Publish manuals for interpreting and implementing the legislation.

5. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the EIA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation etc? Please give reasons for your answer.

The five points mentioned should be modified in the directive.
As stated in point 3, for other aspects such as clarification of threshold application criteria, publication would be sufficient.

6. Do you believe the possible environmental benefits and the improvement in the reliability of the project planning achieved thanks to the implementation of the EIA Directive are commensurate with the costs borne by your administration and the developers in order to comply with its requirements?

Yes, in general, the environmental impact assessment is a very useful instrument for monitoring the impact of a project on the environment. Its use might be debatable for certain small projects which have such a minor impact that they would not require the procedure. It should be pointed out that, in this respect, the problem has more to do with the transposition of the directive by the Spanish government than the directive itself. See, for example, the transposition carried out in relation to the extractive activities stated in Annex I.

7. *Do you consider the requirements imposed by the EIA Directive as unnecessary administrative burdens for developers or your administration?*

If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the EIA process? Please give reasons for your answers.

See above point. In this regard, the mandatory performance of preliminary consultations for all projects established by national legislation could be debated. While this preliminary consultation is very useful for many projects, it takes up a disproportionate amount of time and money for certain activities covered by national legislation which, due to their smaller scale, drag on unnecessarily, thus delaying projects.

8. *Do you believe the EIA Directive has helped to better inform the public and increase public participation in the decision-making process? Please give reasons for your answer.*

Yes, without doubt. In practice, the procedure has led to the inclusion of public information and consultations that did not previously exist. Moreover, the environmental impact assessment is now a broad concept that is fully disseminated amongst the population.

9. *If possible, please provide examples of best practices for establishing operational models to implement the EIA Directive.*

Work should be carried out in areas such as:

- + improving the dissemination of environmental information to developers and citizens;
- + determining the concept of "public concerned";
- + guides for drawing up environmental impact studies according to activities;
- + defining the scope of information that administrations must supply to the public (sometimes submission requests are received that comprise photocopies of entire projects of over 500 pages);
- + reconciling the public's right to information with the preservation of the interests of developers who want to protect their projects and the methodologies they have developed.

C. SEA DIRECTIVE

10. *Based on your experience of the SEA Directive, do you see a need for the EU to improve the process of Strategic Environmental Assessment? Please give reasons for your answer.*

The strategic environmental assessment procedure has been implemented at national level through law No 9/2006. On the whole, with the implementation of the directive and the abovementioned law, we believe that the strategic environmental assessment objectives are being adequately met, notwithstanding the comments and potential improvements mentioned below.

11. *Which of the following aspects of the SEA Directive do you consider should be fundamentally improved in the future? Multiple answers are possible.*

- a. *The Directive's scope of application*
- b. *The scope and content of the environmental report*
- c. *The identification of "reasonable alternatives" – lack of a definition of this concept*
- d. *Consultations (public, and environmental authorities)*
- e. *Particular issues pertaining to transboundary consultations*
- f. *Monitoring significant environmental effects*
- g. *Coordination between the SEA and other EU directives and policies (such as possible synergies between the SEA Directive and the IPPC Directive²⁷, the EIA Directive, the Habitats²⁸ and Birds²⁹ Directives, the overall climate change and energy policy, etc.)*
- h. *Others (please specify)*

a. We believe that the wording of the directive could be misleading as regards the treatment of modifications and plans that do not include projects covered by the environmental impact assessment. It would also be useful to clarify the aspects relating to land use.

b. We believe that national legislation sufficiently deals with this point.

c. This aspect could be developed further.

d. We believe that national legislation sufficiently deals with this point.

e. The comments on the environmental impact assessment of projects apply here. This point should be improved.

f. National legislation covers this point, although the directive could develop it further, and it would be useful to publish guidelines on the subject.

g. We believe that coordination between the EIA and SEA is clear and simple. Their scope and fields of application are different, and so we believe that they should not be recast.

With regard to the relation with the IPPC directive, we do not believe that any type of coordination would be appropriate.

With regard to the Habitats Directive, we believe that the EAE Directive should expressly refer to the

27 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

28 Directive 92/43/EEC.

29 Directive 79/409/EEC.

assessment procedure in Article 6 (3) and (4) of the Habitats Directive. We believe that it could be helpful to include an express reference to climate change.
<i>12. Which concrete measures would you propose to achieve these improvements?</i>
+ Define more clearly the plans and programmes subject to assessment on a case-by-case basis. + Define a shortened procedure for plans and programmes assessed on a case-by-case basis.
<i>13. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the SEA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation, etc.? Please give reasons for your answer.</i>
The two improvements mentioned could be covered by guidance documents. Also, other practical manuals could be drawn up for different sectors, etc.
<i>14. Do you believe the possible environmental benefits achieved thanks to the implementation of the SEA Directive are commensurate with the costs envisaged by your administration in order to comply with its requirements?</i>
Overall, yes. Only for certain low-impact plans and programmes would this assessment not be required. We therefore believe that a shortened procedure should be developed for certain cases.
<i>15. Do you consider the requirements imposed by the SEA Directive as unnecessary administrative burdens for developers or your administration? If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the SEA process? Please give reasons for your answers.</i>
In general, no, although the comments made in the above point also apply.
<i>16. In many Member States the transposition of the SEA Directive into national or regional law was delayed. Has this affected in any way the work of your administration in the implementation of this Directive?</i>
Yes. The directive has been implemented through national legislation.
<i>17. Can you provide examples of best practices for establishing operational models to implement the SEA Directive?</i>
+ Manuals to determine which projects are assessed on a case-by-base basis. +Manuals to determine, for each sector, the content of environmental documents generated in the procedure.

C. Possible future impact assessment consultation

18. *In the event that the European Commission comes forward with proposals to amend the EIA and/or the SEA Directives in the future, it would probably conduct an impact assessment to accompany its proposals.*

In view of the role of local and regional authorities in the implementation of these Directives, would you be interested in participating in a possible Impact Assessment Consultation of the CoR Subsidiarity Monitoring Network?

What kind of information would you be willing to share with the Committee of the Regions and the European Commission (e.g. experience in the implementation of the Directives, possible best practices, quantitative data regarding EIA and SEA and in particular the costs thereof, etc.)?

Yes.

We would be willing to share any information that we possess regarding the environmental assessment falling within our remit, together with our practical knowledge and experience of the issues arising when these environmental procedures are implemented.

Catalan Parliament

COMMITTEE OF THE REGIONS – DIRECTORATE FOR CONSULTATIVE WORK
DEVE Commission and "Networks & Subsidiarity" Unit



**QUESTIONNAIRE ON THE APPLICATION AND EFFECTIVENESS OF THE
EIA AND THE SEA DIRECTIVES
COM (2009) 378 final and COM (2009) 469 final**

**Submitted by Mr José Macário Correia (PT/EPP) for consultation of the Subsidiarity
Monitoring Network**

Please complete and submit by **Friday 8 January 2010**. You can upload the completed questionnaires directly on the Subsidiarity Monitoring Network webpage (<http://subsidiarity.cor.europa.eu> – remember to log in). Alternatively, you can send them by email to subsidiarity@cor.europa.eu.

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BACKGROUND

Environmental Impact Assessment (EIA)

The Directive on the assessment of the effects of projects on the environment (Environmental Impact Assessment or EIA Directive) was introduced in 1985 and was first amended in 1997³⁰.

The EIA procedure ensures that the environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.

³⁰ Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Following the signature of the Aarhus Convention by the Community on 25 June 1998, the EIA Directive was amended once more in May 2003.

Strategic Environmental Assessment (SEA)

The purpose of the Directive on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA Directive)³¹ is to ensure that the environmental consequences of certain plans and programmes are identified and assessed during their preparation and before their adoption. The public and environmental authorities can give their opinion and all results are brought together and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the event of the likelihood of significant transboundary effects, the Member State concerned and its citizens are informed and have the possibility to make comments which are also taken into account in the national decision-making process.

SEA will contribute to more transparent planning by involving the public and by taking into account environmental considerations. This will help to achieve the goal of sustainable development.

Please complete the following questions:

A. EIA/SEA Directives
<i>1. Has your administration (or the members of your association) been involved in the implementation of the EIA or the SEA Directives, and if so in what capacity?</i>
In transposing them to the Catalonian legal system, and in their implementation.

B. EIA DIRECTIVE
<i>2. Based on your experience of the application of the EIA Directive, do you see a need for the EU to improve the process of Environmental Impact Assessment by eventually amending the Directive? Please give reasons for your answer.</i>
Yes, by improving coordination of the EIA and SEA directives, revising annexes I and II and requiring an environmental report to be drawn up for any project or facility.

³¹ Directive 2001/42/EC.

<p>3. Which of the following aspects of the EIA Directive do you believe should be fundamentally improved in the future? Multiple answers are possible.</p> <ul style="list-style-type: none">a. The screening procedureb. The quality of the EIAs, namely the quality of the information used in the EIA (scoping procedure), quality of the documentation and of the EIA process itselfc. Practices put in place for public participationd. EIA procedures for projects with transboundary impactse. Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive³², the SEA Directive, the Habitats³³ and Birds³⁴ Directives, the overall climate change and energy policy, etc.)f. Other issues (please specify)
<p>A, b and e</p>
<p>4. Which concrete measures would you propose to achieve these improvements?</p> <p>Reduce the cases in annex II to avoid subjectivity. Make those drafting the EIA responsible for its content. Draw up the EIA during the preliminary phase.</p>
<p>5. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the EIA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation etc? Please give reasons for your answer.</p> <p>Unambiguous, universal regulatory measures. Other actions would generate differences between countries, as each one may adopt and interpret them differently.</p>
<p>6. Do you believe the possible environmental benefits and the improvement in the reliability of the project planning achieved thanks to the implementation of the EIA Directive are commensurate with the costs borne by your administration and the developers in order to comply with its requirements?.</p> <p>Yes.</p>
<p>7. Do you consider the requirements imposed by the EIA Directive as unnecessary administrative burdens for developers or your administration?</p>

³² Integrated Pollution Prevention and Control, Directive 2008/1/EC.

³³ Directive 92/43/EEC.

³⁴ Directive 79/409/EEC.

<p><i>If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the EIA process? Please give reasons for your answers.</i></p>
<p>NO</p>
<p>8. <i>Do you believe the EIA Directive has helped to better inform the public and increase public participation in the decision-making process? Please give reasons for your answer.</i></p>
<p>A little; nonetheless, the EIA Directive has represented a real step forward.</p>
<p>9. <i>If possible, please provide examples of best practices for establishing operational models to implement the EIA Directive.</i></p>
<p>Creation of documents laying down the environmental surveillance plan (vital to ensure that corrective measures are properly set up). Incorporation of new technologies to facilitate access to information and procedures (web, email).</p>
<p>C. SEA DIRECTIVE</p>
<p>10. <i>Based on your experience of the SEA Directive, do you see a need for the EU to improve the process of Strategic Environmental Assessment? Please give reasons for your answer.</i></p>
<p>It should be improved by extending its scope to policies and legislation, and by setting up guidelines for dealing with major or complex new environmental requirements (climate change; assessment of alternatives, cumulative impact, etc.).</p>
<p>11. <i>Which of the following aspects of the SEA Directive do you consider should be fundamentally improved in the future? Multiple answers are possible.</i></p> <ul style="list-style-type: none">a. <i>The Directive's scope of application</i>b. <i>The scope and content of the environmental report</i>c. <i>The identification of "reasonable alternatives" – lack of a definition of this concept</i>d. <i>Consultations (public, and environmental authorities)</i>e. <i>Particular issues pertaining to transboundary consultations</i>f. <i>Monitoring significant environmental effects</i>g. <i>Coordination between the SEA and other EU directives and policies (such as possible synergies between the SEA Directive and the IPPC Directive³⁵, the EIA Directive, the Habitats³⁶ and Birds³⁷ Directives, the overall climate change and energy policy, etc.)</i>h. <i>Others (please specify)</i>

35 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

36 Directive 92/43/EEC.

37 Directive 79/409/EEC.

<p>The scope, as regards policies and laws.</p> <p>The lack of methodology for the identification of "reasonable alternatives", which could differ widely depending on the varying types of plans and programmes.</p> <p>The lack of methodology or minimum requirements concerning the inclusion of conditions for mitigating and adapting to climate change.</p>
<p><i>12. Which concrete measures would you propose to achieve these improvements?</i></p>
<p>Extend the scope of the directive to include instruments for defining and enforcing national, regional and local policies. Guidance documents (manuals, guides) regarding the issues raised in the previous paragraphs.</p>
<p><i>13. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the SEA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation, etc.? Please give reasons for your answer.</i></p>
<p>As the SEA Directive has only recently been issued, any modifications should be restricted to the inclusion of policies and legislation. The other measures should essentially involve the creation of guidance documents, as mentioned previously.</p>
<p><i>14. Do you believe the possible environmental benefits achieved thanks to the implementation of the SEA Directive are commensurate with the costs envisaged by your administration in order to comply with its requirements?</i></p>
<p>The environmental benefits that have been evident since the initial implementation phase of the directive in Catalonia largely surpass the administrative costs it has incurred.</p>
<p><i>15. Do you consider the requirements imposed by the SEA Directive as unnecessary administrative burdens for developers or your administration?</i></p> <p><i>If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the SEA process? Please give reasons for your answers.</i></p>
<p>The requirements of the SEA directive are absolutely necessary from the viewpoint of sustainable development. Its implementation in Catalonia has made it possible to minimise the burden on developers by including procedures, adjusting deadlines, avoiding duplications and providing technical support.</p>
<p><i>16. In many Member States the transposition of the SEA Directive into national or regional law was delayed. Has this affected in any way the work of your administration in the implementation of this Directive?</i></p>
<p>The lack of specific legislation prior to 2006 prevented the directive from being fully implemented until that date.</p>

17. Can you provide examples of best practices for establishing operational models to implement the SEA Directive?

During the initial procedural phases, precise definition of the environmental criteria and objectives to be implemented, prior proposals from the developer and consultations of the public administrations and sectors of the public concerned.

Legal mechanisms set up to prevent duplications in assessments and to implement the SEA and EIA.

Strategic assessment of corridors in planning transport infrastructure and land-use.

C. Possible future impact assessment consultation

18. In the event that the European Commission comes forward with proposals to amend the EIA and/or the SEA Directives in the future, it would probably conduct an impact assessment to accompany its proposals.

In view of the role of local and regional authorities in the implementation of these Directives, would you be interested in participating in a possible Impact Assessment Consultation of the CoR Subsidiarity Monitoring Network?

What kind of information would you be willing to share with the Committee of the Regions and the European Commission (e.g. experience in the implementation of the Directives, possible best practices, quantitative data regarding EIA and SEA and in particular the costs thereof, etc.)?

All the information available is public and can therefore be shared.

Emilia-Romagna Region

COMMITTEE OF THE REGIONS – DIRECTORATE FOR CONSULTATIVE WORK
DEVE Commission and Networks & Subsidiarity Unit



**QUESTIONNAIRE ON THE APPLICATION AND EFFECTIVENESS OF THE
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**Submitted by Mr José Macário Correia (PT/EPP) for consultation of the Subsidiarity
Monitoring Network**

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BACKGROUND

Environmental Impact Assessment (EIA)

The Directive on the assessment of the effects of projects on the environment (Environmental Impact Assessment or EIA Directive) was introduced in 1985 and was first amended in 1997³⁸.

The EIA procedure ensures that the environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.

³⁸ Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Following the signing of the Aarhus Convention by the Community on 25 June 1998, the EIA Directive was amended once more in May 2003.

Strategic Environmental Assessment (SEA)

The purpose of the Directive on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA Directive)³⁹ is to ensure that the environmental consequences of certain plans and programmes are identified and assessed during their preparation and before their adoption. The public and environmental authorities can give their opinion and all results are brought together and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the event of the likelihood of significant transboundary effects, the Member State concerned and its citizens are informed and have the possibility of making comments which are also taken into account in the national decision-making process.

SEA will contribute to more transparent planning by involving the public and by taking into account environmental considerations. This will help to achieve the goal of sustainable development.

Please complete the following questions:

A. EIA/SEA Directives
<i>1. Has your administration (or the members of your association) been involved in the implementation of the EIA or the SEA Directives, and if so in what capacity?</i>
The Emilia-Romagna region is the competent authority for environmental evaluation of the region's, province's and river basin administrations' plans and programmes, under Legislative Decree 152/06, as amended by Legislative Decree 4/08 and Regional Law 9/08. Moreover, under Legislative Decree 152/06, as amended by Legislative Decree 4/08, the Emilia-Romagna region is the competent authority for EIA, and issued Regional Law 9/99, which conferred competence for EIA and screening on provinces and municipalities as well, in accordance with positive lists appended to RL 9/99.

B. EIA DIRECTIVE
<i>2. Based on your experience of the application of the EIA Directive, do you see a need for the EU to improve the process of Environmental Impact Assessment by eventually amending the Directive? Please give reasons for your answer.</i>

³⁹ Directive 2001/42/EC.

Yes.

It is necessary to provide for integration and simplification of the procedures laid down by different European standards, particularly SEA (Directive 2001/42/EC); IPPC (Directive 2008/1/EC); impact assessments for special protection areas and sites of Community importance (Directives 92/43/EEC and 79/409/EEC), authorisations for emissions to air, emissions to water, waste management, permit trading, etc., in order to achieve better, more comprehensive, integrated consideration of environmental issues and iron out a number of contradictions between the different European rules.

3. *Which of the following aspects of the EIA Directive do you believe should be fundamentally improved in the future? Multiple answers are possible.*

- a. *The screening procedure*
- b. *The quality of the EIAs, namely the quality of the information used in the EIA (scoping procedure), quality of the documentation and of the EIA process itself*
- c. *Practices put in place for public participation*
- d. *EIA procedures for projects with transboundary impacts*
- e. *Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive⁴⁰, the SEA Directive, the Habitats⁴¹ and Birds⁴² Directives, the overall climate change and energy policy, etc.)*
- f. *Other issues (please specify)*

- a) The screening procedure.
- b) The scoping procedure.
- c) Public participation.
- e) Coordination between European directives.

4. *Which concrete measures would you propose to achieve these improvements?*

a) As regards the screening procedure, it seems useful, not to say necessary, to provide forms of participation by authorities competent in environmental matters and the public in order to obtain more comprehensive information on environmental aspects of the project (as already introduced in Emilia-Romagna under RL 9/99).

b) As regards the scoping procedure, the possibility should be considered of making the process a necessary, mandatory stage in the EIA procedure in order to improve and fine-tune the quality of EIA procedures.

c) It would be useful to provide, within information and participation procedures, for a wide range of public consultation arrangements: submission of written comments; public enquiries and hearings, with dialogue between administrations and the public; dialogue between proposing bodies and the

40 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

41 Directive 92/43/EEC.

42 Directive 79/409/EEC.

public or associations submitting comments, etc. (as already introduced in Emilia-Romagna under RL 9/99).

e) It is necessary to provide for integration and simplification of the procedures laid down by different European standards, particularly SEA (Directive 2001/42/EC); IPPC (Directive 2008/1/EC); impact assessments for special protection areas and sites of Community importance (Directives 92/43/EEC and 79/409/EEC), authorisations for emissions to air, emissions to water, waste management, permit trading, etc., in order to achieve better, more comprehensive, integrated consideration of environmental issues (as already introduced in Emilia-Romagna under RL 9/99).

5. *Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the EIA Directive , or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation etc? Please give reasons for your answer.*

We believe it necessary, as regards almost all the issues mentioned, to lay down regulatory measures, in order to provide legal certainty for integration of procedures, enabling Member States to act in a uniform way. There is also a need for both guidance documents and guidelines and, most importantly, arrangements for exchanges of views and experiences between the competent authorities in the different Member States.

6. *Do you believe the possible environmental benefits and the improvement in the reliability of the project planning achieved thanks to the implementation of the EIA Directive are commensurate with the costs borne by your administration and the developers in order to comply with its requirements?.*

Yes.

The environmental benefits more than justify the costs.

7. *Do you consider the requirements imposed by the EIA Directive as unnecessary administrative burdens for developers or your administration?
If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the EIA process? Please give reasons for your answers.*

No.

8. *Do you believe the EIA Directive has helped to better inform the public and increase public participation in the decision-making process? Please give reasons for your answer.*

Yes.

The introduction of formalised participation procedures has led to increasing public participation in decision-making processes, often just to express first impressions but also occasionally to point out important points from an environmental perspective which have helped to make the decision taken more environmentally friendly.

9. *If possible, please provide examples of best practices for establishing operational models to implement the EIA Directive.*

The regulation of the EIA procedures laid down by the Emilia-Romagna region's RL 9/99 and reproduced in part by the recent national Legislative Decree 4/08, in particular as regards integrating procedures.

C. SEA DIRECTIVE

10. *Based on your experience of the SEA Directive, do you see a need for the EU to improve the process of Strategic Environmental Assessment? Please give reasons for your answer.*

Yes.

More comprehensive, resolute integration of environmental aspects into plans and programmes needs to be provided for, in particular by strengthening dialogue and exchange of information and assessments between the authorities developing the plan or programme and the authorities with competence in environmental matters.

In addition, it would be useful to provide for better, formal integration (involving subsequent simplification of their procedures) with other European policies and directives, particularly SEA (Directive 2001/42/EC); IPPC (Directive 2008/1/EC); impact assessments for special protection areas and sites of Community importance (Directives 92/43/EEC and 79/409/EEC), etc., in order to achieve better, more comprehensive, integrated consideration of environmental issues.

11. *Which of the following aspects of the SEA Directive do you consider should be fundamentally improved in the future? Multiple answers are possible.*

- a. *The Directive's scope of application*
- b. *The scope and content of the environmental report*
- c. *The identification of "reasonable alternatives" – lack of a definition of this concept*
- d. *Consultations (public, and environmental authorities)*
- e. *Particular issues pertaining to transboundary consultations*
- f. *Monitoring significant environmental effects*
- g. *Coordination between the SEA and other EU directives and policies (such as possible synergies between the SEA Directive and the IPPC Directive⁴³, the EIA Directive, the Habitats⁴⁴ and Birds⁴⁵ Directives, the overall climate change and energy policy, etc.)*
- h. *Others (please specify)*

43

Integrated Pollution Prevention and Control, Directive 2008/1/EC.

Scope.

c) Identification of “reasonable alternatives”.

f) Monitoring

g) Coordination with other directives and policies.

12. Which concrete measures would you propose to achieve these improvements?

a) With regard to scope, plans and programmes (and minor amendments thereto) which merely implement plans and programmes already subject to SEA need to be excluded from SEA and screening, to avoid duplicating assessments unnecessarily and making them unnecessarily lengthy.

c) It would be useful to try and lay down a better, more detailed definition of "reasonable alternatives", as well as providing appropriate guidelines which distinguish between the different planning and programming instruments.

f) It would be useful to provide a better definition of monitoring with regard to SEA of plans and programmes, making it legally binding for all plans and programmes subject to SEA to set out respective "monitoring plans" and developing guidelines providing common provisions on monitoring arrangements and indicators, with the aim of building a core set of common indicators which will enable plans, programmes and their respective SEA to be compared on a European scale, along with their environmental effectiveness.

g) In addition, it would be useful to provide for better, formal integration (involving subsequent simplification of their procedures) with other European policies and directives, particularly EIA (Directive 85/337/EEC), e.g. excluding consideration of alternatives to a project provided for by a plan or programme subject to SEA; IPPC (Directive 2008/1/EC); impact assessments for special protection areas and sites of Community importance (Directives 92/43/EEC and 79/409/EEC), e.g. excluding impact assessments being carried out on projects provided for in their entirety by a plan or programme subject to SEA.

13. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the SEA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation, etc.? Please give reasons for your answer.

The improvements can be achieved partly by amending legislation and partly through administrative provisions such as "guidelines", as stated in the response to point 12 above.

14. Do you believe the possible environmental benefits achieved thanks to the implementation of the SEA Directive are commensurate with the costs envisaged by your administration in order to comply with its requirements?

44

Directive 92/43/EEC.

45

Directive 79/409/EEC.

Yes.
The environmental benefits more than justify the costs.
<i>15. Do you consider the requirements imposed by the SEA Directive as unnecessary administrative burdens for developers or your administration?</i>
<i>If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the SEA process? Please give reasons for your answers.</i>
No.
<i>16. In many Member States the transposition of the SEA Directive into national or regional law was delayed. Has this affected in any way the work of your administration in the implementation of this Directive?</i>
Yes.
<i>17. Can you provide examples of best practices for establishing operational models to implement the SEA Directive?</i>
No.

C. Possible future impact assessment consultation

18. In the event that the European Commission comes forward with proposals to amend the EIA and/or the SEA Directives in the future, it would probably conduct an impact assessment to accompany its proposals.

In view of the role of local and regional authorities in the implementation of these Directives, would you be interested in participating in a possible Impact Assessment Consultation of the CoR Subsidiarity Monitoring Network?

What kind of information would you be willing to share with the Committee of the Regions and the European Commission (e.g. experience in the implementation of the Directives, possible best practices, quantitative data regarding EIA and SEA and in particular the costs thereof, etc.)?

The Emilia-Romagna region would be extremely interested in taking part in the consultation on SEA and EIA.

The information provided is based on the experience of the Emilia-Romagna region concerning, in particular, implementing directives, quantitative data and evaluations on improving SEA and EIA.

Lombardy Region

COMMITTEE OF THE REGIONS – DIRECTORATE FOR CONSULTATIVE WORK
DEVE Commission and "Networks & Subsidiarity" Unit



QUESTIONNAIRE ON THE APPLICATION AND EFFECTIVENESS OF THE EIA AND THE SEA DIRECTIVES COM (2009) 378 final and COM (2009) 469 final

Submitted by Mr José Macário Correia (PT/EPP) for consultation of the Subsidiarity
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BACKGROUND

Environmental Impact Assessment (EIA)

The Directive on the assessment of the effects of projects on the environment (Environmental Impact Assessment or EIA Directive) was introduced in 1985 and was first amended in 1997⁴⁶.

The EIA procedure ensures that the environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into

⁴⁶ Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

account in the authorisation procedure of the project. The public is informed of the decision afterwards.

The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Following the signature of the Aarhus Convention by the Community on 25 June 1998, the EIA Directive was amended once more in May 2003.

Strategic Environmental Assessment (SEA)

The purpose of the Directive on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA Directive)⁴⁷ is to ensure that the environmental consequences of certain plans and programmes are identified and assessed during their preparation and before their adoption. The public and environmental authorities can give their opinion and all results are brought together and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the event of the likelihood of significant transboundary effects, the Member State concerned and its citizens are informed and have the possibility to make comments which are also taken into account in the national decision-making process.

SEA will contribute to more transparent planning by involving the public and by taking into account environmental considerations. This will help to achieve the goal of sustainable development.

Please complete the following questions:

A. EIA/SEA Directives
<i>1. Has your administration (or the members of your association) been involved in the implementation of the EIA or the SEA Directives, and if so in what capacity?</i>
Yes, mainly in the capacity of competent authority for the EIA and SEA, and in drawing up the national and regional implementing rules.
B. EIA DIRECTIVE
<i>2. Based on your experience of the application of the EIA Directive, do you see a need for the EU to improve the process of Environmental Impact Assessment by eventually amending the Directive? Please give reasons for your answer.</i>
Yes, particularly as regards: – EIA-SEA coordination – ensuring that environmental aspects are considered and incorporated from the very first stages of planning, when there is a real possibility of influencing the alternatives.

⁴⁷

Directive 2001/42/EC.

3. Which of the following aspects of the EIA Directive do you believe should be fundamentally improved in the future? Multiple answers are possible.

- a. The screening procedure **YES**
- b. The quality of the EIAs, namely the quality of the information used in the EIA (scoping procedure), quality of the documentation and of the EIA process itself **YES**
- c. Practices put in place for public participation
- d. EIA procedures for projects with transboundary impacts
- e. Coordination between the EIA and other EU directives and policies (such as possible synergies between the EIA Directive and the IPPC Directive⁴⁸, the SEA Directive, the Habitats⁴⁹ and Birds⁵⁰ Directives, the overall climate change and energy policy, etc.) **YES**
- f. Other issues (please specify). **The planning level at which the EIA procedure is to be applied.**

4. Which concrete measures would you propose to achieve these improvements?

- a. Specify the criteria for the EIA screening procedure.
- b. Make "scoping" obligatory in certain cases; promote directives on the content of environmental impact studies.
- c. //
- d. //
- e. Closer coordination of the EIA and SEA Directives in cases where they could overlap (particularly when the approval of a project subject to EIA will affect an existing plan or programme), inter alia by specifying more clearly the planning categories subject to EIA; make concurrence of IPPC and EIA procedures obligatory.
- f. In certain cases make it obligatory to apply the EIA Directive from the initial planning stages, where there is a real possibility of influencing the alternatives.

5. Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the EIA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation etc? Please give reasons for your answer.

For all points [except the second part of point b] regulatory measures are needed, as alterations of the content of the Directive are involved or, at any rate, aspects which should be made binding on the Member States.

6. Do you believe the possible environmental benefits and the improvement in the reliability of the project planning achieved thanks to the implementation of the EIA Directive are commensurate

48 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

49 Directive 92/43/EEC.

50 Directive 79/409/EEC.

<i>with the costs borne by your administration and the developers in order to comply with its requirements?.</i>
The direct costs (such as those for drawing up studies, inquiries, staff) appear commensurate. In some cases the costs for developers are too high, because of delays in the implementation of projects following on from the application of the Directive.
<i>7. Do you consider the requirements imposed by the EIA Directive as unnecessary administrative burdens for developers or your administration?</i> <i>If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the EIA process? Please give reasons for your answers.</i>
In some cases the costs for developers are too high, because of delays in the implementation of projects following on from the application of the Directive. Possible ways of simplifying things: <ul style="list-style-type: none">– require that the EIA Directive be applied at an initial stage of the planning process, with possible conformity check on the definitive project– specify that in the verification procedure a simplified impact assessment can be conducted, so that it is not necessary to undergo EIA– provide for the possibility of coordination between the EIA and SEA Directives in certain cases make concurrence of IPPC and EIA procedures obligatory.
<i>8. Do you believe the EIA Directive has helped to better inform the public and increase public participation in the decision-making process? Please give reasons for your answer.</i>
Yes, in particular because comments from the public are assessed by a third authority which has recognised technical competence. It could improve further if it were promoted during the initial planning stages.
<i>9. If possible, please provide examples of best practices for establishing operational models to implement the EIA Directive.</i>
The EIA procedure for "strategic infrastructure", carried out on the preliminary project with compliance check on the definitive project.
C. SEA DIRECTIVE
<i>10. Based on your experience of the SEA Directive, do you see a need for the EU to improve the process of Strategic Environmental Assessment? Please give reasons for your answer.</i>
Yes, in particular as regards: <ul style="list-style-type: none">– coordination between environmental assessments (EIA – SEA – impact assessments under Directive 92/43/EEC);– coordination of procedures with authorisations granted under other Directives concerning the environment;– incorporation of economic and social sustainability assessments into the SEA Directive.
<i>11. Which of the following aspects of the SEA Directive do you consider should be fundamentally improved in the future? Multiple answers are possible.</i>

<p>a. <i>The Directive's scope of application</i></p> <p>b. <i>The scope and content of the environmental report</i></p> <p>c. <i>The identification of "reasonable alternatives" – lack of a definition of this concept</i> YES</p> <p>d. <i>Consultations (public, and environmental authorities)</i></p> <p>e. <i>Particular issues pertaining to transboundary consultations</i></p> <p>f. <i>Monitoring significant environmental effects</i> YES</p> <p>g. <i>Coordination between the SEA and other EU directives and policies (such as possible synergies between the SEA Directive and the IPPC Directive⁵¹, the EIA Directive, the Habitats⁵² and Birds⁵³ Directives, the overall climate change and energy policy, etc.)</i> YES</p> <p>h. <i>Others (please specify)</i> YES</p>
<p>h1. the possibility of providing for power of substitution or penalties where the SEA Directive is not properly implemented in individual P/P procedures, to limit any appeals to administrative courts in the individual Member States or the launch of Community infringement procedures.</p>
<p>12. <i>Which concrete measures would you propose to achieve these improvements?</i></p>
<p>See the answer to question 13.</p>
<p>13. <i>Do you think that the aforementioned improvements should be carried out at EU level through regulatory measures amending the SEA Directive, or do you consider that alternatives to legislation would suffice, i.e. guidance documents from the European Commission, voluntary commitments, self-regulation, etc.? Please give reasons for your answer.</i></p>
<p>In general, we feel that the adoption of appropriate regulatory measures could be useful.</p>
<p>14. <i>Do you believe the possible environmental benefits achieved thanks to the implementation of the SEA Directive are commensurate with the costs envisaged by your administration in order to comply with its requirements?</i></p>
<p>15. <i>Do you consider the requirements imposed by the SEA Directive as unnecessary administrative burdens for developers or your administration?</i></p> <p><i>If so, can you identify any ways of reducing unnecessary administrative burdens by optimising or simplifying the SEA process? Please give reasons for your answers.</i></p>
<p>It could be useful to minimise any burdens arising from implementation of the Directives concerning</p>

51 Integrated Pollution Prevention and Control, Directive 2008/1/EC.

52 Directive 92/43/EEC.

53 Directive 79/409/EEC.

the environment by means of greater integration of procedures in the assessment and authorisation processes relating to landscape and the environment.

16. In many Member States the transposition of the SEA Directive into national or regional law was delayed. Has this affected in any way the work of your administration in the implementation of this Directive?

No, as with Regional Law 12/05 the Lombardy region implemented the SEA Directive and with Regional Executive Resolution No. 361/07 and Regional Council Resolution 6420/07 and subsequent amendments and additions it regulated the procedural aspects of the Directive.

17. Can you provide examples of best practices for establishing operational models to implement the SEA Directive?

C. Possible future impact assessment consultation

18. In the event that the European Commission comes forward with proposals to amend the EIA and/or the SEA Directives in the future, it would probably conduct an impact assessment to accompany its proposals.

In view of the role of local and regional authorities in the implementation of these Directives, would you be interested in participating in a possible Impact Assessment Consultation of the CoR Subsidiarity Monitoring Network?

What kind of information would you be willing to share with the Committee of the Regions and the European Commission (e.g. experience in the implementation of the Directives, possible best practices, quantitative data regarding EIA and SEA and in particular the costs thereof, etc.)?

We are willing to take part in the initiative, contributing our expertise in implementing the SEA Directive in Lombardy and helping to draw up an amended version of the SEA Directive or any document or regulation on implementing the different aspects thereof.