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"The environmental protection in the urbanistic planning and land development in the European Union law"

ANSWERS TO THE QUESTIONNAIRE
RÉPONSES AU QUESTIONNAIRE

Part A

I. How is the SEA-directive (Directive 2001/42/EC) implemented in your country? What is the scope of its implementation?
I. Comment la Directive SEA (Directive 2001/42/CE)[1] est-elle transposée dans votre état ? Quel est l'étendue de cette législation ?

AUSTRIA

Austria is a federal state and jurisdiction regarding environmental protection is fragmented. Both the federation and the federal provinces (Laender) have legislative and administrative powers in this field.1 Consequently there is no general SEA-Act in Austria. The SEA-directive is implemented in many different federal and federal state laws. Hence implementation of the directive is fragmented and inhomogeneous.

Regional planning laws of the Laender make a major contribution to the implementation of the SEA-directive. Regarding federal law, SEA is implemented in different laws concerning water, waste, noise protection and transport (Wasserrechtsgesetz, Abfallwirtschaftsgesetz, Bundes-Umgebungslärmschutzgesetz, Bundesgesetz über die strategische Prüfung im Verkehrsbereich, Immissionsschutzgesetz-Luft). In general, only plans and programmes that are required by legislative provisions are subject to a strategic environmental assessment. However, many important strategic plans, like for example the General Masterplan on Transport (Generalverkehrsplan), are not required by legislative provisions and are therefore not subject to SEA; a fact that has often been criticised by environmental and planning experts.
For an overview on the relevant legislation see: http://hw.oeaw.ac.at/6631-3

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

- FED = Federal Legislation

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0042:FR:HTML

- FLE = Legislation of the Flemish Region
- BRU = Legislation of the Brussels Capital Region

FED :
The Act of 13 February 2006 concerning the assessment of the effects of certain plans and programmes on the environment and the participation of the public during their elaboration (*Moniteur belge* (*Official Journal)* 10 March 2006) was adopted in view of the implementation of Directive 2001/42/EC on the federal level. The Act is applicable to plans and programmes which are prepared and/or adopted by a federal authority or which are prepared by a federal authority for adoption by the federal Parliament or the King (Federal Government) and which are required by legislative, regulatory or administrative provisions.
FLE :
The Decree "Algemene Bepalingen inzake milieubeleid" of 5 April 1995 (further *DABM*), Chapter IV (added by a Decree of 18 December 2002, *Moniteur belge* 13 February 2003, modified by a Decree of 27 April 2007, *Moniteur belge* 20 June 2007) implements the SEA- and EIA-directives in the Flemish
legislation. More in particular, Chapter II handles SEA, further implemented by an Executive Order of the Flemish Government of 12 October 2007 on environmental impact assessment of plans and programmes (*Moniteur belge* 7 November 2007) and a *Circulaire* of 1 December 2007 (*Moniteur belge* 17 December 2007). The Flemish legislation is applicable to plans and programmes that are elaborated on the regional, provincial or local level as well as plans and programmes which are prepared by an administration for adoption by the Flemish Parliament or the Flemish Government, and which are required by legislative, regulatory or administrative provisions.
BRU :
The Brussels Town Planning Code, or COBAT, established by Decree of the Brussels Regional Government of 9 April 2004 (*Moniteur belge* 26 May 2004), implements the SEA-directive in the legislation of the Brussels Capital Region, as far as urbanistic development plans and land use plans are concerned. The other plans and programmes, as mentioned in the directive, are covered by the Ordinance of 18 March 2004 on the environmental impact assessment of certain plans and programmes (*Moniteur belge* 30 march 2004) (SEA-ordinance).

BELGIUM (WALLOON REGION)

En Wallonie, la transposition de la directive 2001/42/CE est assurée par le décret du 27 mai 2004 relatif au Livre Ier du Code de l'Environnement et son arrêté d'exécution du Gouvernement wallon du 17 mars 2005.

L'article D.6,13° du Livre Ier du Code de l'environnement définit les plans ou programmes comme étant les décisions à l'exclusion de celles visées au CWATUP (Code Wallon d'aménagement du territoire de l'urbanisme et du patrimoine – et de l'énergie), ainsi que leurs modifications ayant pour objet de déterminer :
- soit une suite d'actions ou d'opérations envisagées pour atteindre un ou plusieurs buts spécifiques en rapport avec la qualité de l'environnement:

- soit la destination ou le régime de protection de zones ou site afin de définir le cadre dans lequel peut y être autorisée la mise en oeuvre d'activités déterminées
et qui :
a) sont élaborées et/ou adoptées par une autorité au niveau régional ou local ou élaborées par une autorité en vue de leur adoption par le Parlement ou le Gouvernement wallon
ET
b) sont prévues par des dispositions décrétales, réglementaires ou administratives.

Les **Plans**, **Programmes** dont l'adoption, l'approbation ou l'autorisation comporte une phase de participation du public sont classés en trois catégories : A1, A2 et B.

Les plans, schémas et rapports visés par le CWATUPE, ainsi que des plans urbains ou communaux de mobilité ne sont pas visés par ces catégories.(Article D.29-1 du Livre 1er Code de l'Environnement)

Relèvent de la **catégorie A.1**, les plans ou programmes suivants :
1. le plan d'environnement pour le développement durable
2. les programmes sectoriels
- plan de gestion des déchets
- programme d'action pour la qualité de l'air
- programme d'action pour la qualité des sols
- programme d'action pour la protection de la nature

3. les plans et programmes, couvrant l'ensemble du territoire wallon, pour la qualité de l'air
4. les plans et programmes, couvrant l'ensemble du territoire wallon, en matière de lutte contre le bruit
5. le plan des centres d'enfouissement technique
6. les conventions environnementales

Relèvent de la **catégorie A.2**, les plans ou programmes suivants :
7. les plans et programmes soumis à évaluation des incidences sur l'environnement conformément à l'article D.53 du Livre 1er du Code, pour autant qu'ils ne soient pas déjà visés par la catégorie A1
8. les plans et programmes pour la qualité de l'air, pour autant qu'ils ne soient pas déjà visés par la catégorie A1
9. les plans et programmes en matière de lutte contre le bruit, pour autant qu'ils ne soient pas déjà visés par la catégorie A1
10. les parcs naturels
11. les désignations et les révisions des désignations des sites Natura 2000
12. les déclassements des sites Natura 2000
13. les périmètres d'incitation autour des sites Natura 2000

Relèvent de la **catégorie B**, les plans ou programmes suivants :

14. les plans et programmes soumis à évaluation des incidences sur l'environnement conformément à l'article D.53 du Livre 1er du Code, qui ont été exemptés de l'évaluation des incidences sur l'environnement
15. les zones de prévention des prises d'eau
16. les zones de surveillance des prises d'eau
17. les zones de prévention des prises d'eau destinées à recevoir un statut de protection en fonction des contraintes environnementales particulières auxquelles elles peuvent être soumises dans le cadre d'activités agricoles
18. les programmes visant à réduire les épandages dans le cadre d'activités agricoles
19. les déclarations d'utilité publique de l'établissement d'installations de production ou de distribution d'eau ou de collecte ou d'assainissement des eaux usées
20. les décisions relatives au classement des cours d'eau non navigables
21. les plans et arrêtés d'expropriation pour cause d'utilité publique des immeubles nécessaires à l'exploitation, à l'aménagement de leurs voies d'accès ou aux travaux complémentaires d'infrastructure d'une carrière
22. l'aménagement des réserves forestières
23. les plans de gestion d'une réserve naturelle domaniale

* Deux domaines sont exclus : 1)le plan des centres d'enfouissement technique et les plans de mobilité qui sont régis respectivement par les décrets du 27 juin 1996 relatif aux déchets et du 1er avril 2004 relatif à la mobilité et à l'accessibilité locale ; 2) la planification en matière d'aménagement du territoire et d'urbanisme qui est régie par le CWATUP.

CZECH REPUBLIC

The SEA-directive is implemented primarily by the Act No. 100/2001 Coll. on Environmental Impact Assessment which came into force on 1 January 2002 and which has been amended several times in order to implement the EIA-directive as well as the SEA-directive.
Furthermore, special provisions are provided for the environmental impact assessment of a spatial development policy and land-use planning documentation. In this case the Construction Code (Act No. 183/2006 Coll.) and the Sec. 10i of the Act No. 100/2001 Coll. shall be applicable.
The SEA-directive has been fully implemented in national law.
In addition, it should be noted that the Act No. 114/1992 on Nature and Landscape Conservation regulates special type of environmental impact assessment with regard to sites of Community importance and implements the Habitats and Birds Directives.

DENMARK

The SEA Directive (2001/42) was formally implemented in Danish Law by the Parliament's adoption of Act no. 316 of 5 May 2004 on Environmental Assessment of Plans and programs (the SEA Act). In contrast to the Danish implementation of the EIA-directive (see below), the Danish implementation of the SEA Directive is horizontal. This means that the SEA Act covers all plans and programs on all the sectors required by art. 2(a) of the SEA-Directive (see the SEA Act section 1(3) – which is contrary to the vertical implementation of the EIA Directive (see below). Any plan or program which fall within the scope of art. 2(a) of the SEA

Directive is subject to an environmental impact assessment procedure – or at least a screening procedure as required by art. 3 of the SEA Directive (see the SEA Act section 2 and 3).
The SEA Act was amended by the Parliamentary Act no 250 of 31 March 2009 on amending the SEA Act which was caused by an opening letter of the Commission which stated certain failures in the Danish implementation. By the amending Act in 2009 the objective of the Act was clarified. Moreover, the scope of the SEA procedure was expanded to include not only plans adopted by authorities in accordance with legislation but also other plans adopted by public authorities and also to include amendments to plans (which were not included in the first Danish implementation). The amending Act also include a new section 11a with the same wording as article 11 of the SEA Directive clarifying that the SEA-procedure cannot substitute the EIA-procedure under the EIA Directive. This does however not prevent that the SEA-procedure and the EIA procedure are carried out simultaneously (see below on EIA).

FINLAND

The SEA Act (8.4.2005/200) obliges public authorities to assess the environmental impact of plans or programs that may have significant adverse impact on the environment. The SEA Act concerns any authority responsible for making the plans defined by the Act. The government budget proposal is exempted from assessment, as are also plans concerning defence and public rescue service. The scope of plans to be assessed correspond to the provisions of Article 2-3 in the SEA Directive (2001/42/EC)

FRANCE

L'ordonnance du 3 juin 2004 a transposé la directive selon laquelle l'élaboration ou la révision des plans susceptibles d'affecter l'environnement doit faire l'objet d'une évaluation environnementale. La transposition s'est achevée avec des décrets de 2005 fixant le droit commun de la nouvelle procédure (R. 122-17 et suivants du code de l'environnement) et l'application aux documents d'urbanisme (R.121-14 du code de l'urbanisme). aux documents d'urbanisme (SCOT : schémas de cohérence territoriale) et aux PLU (plans locaux d'urbanisme) pour mettre en cohérence les orientations et les choix d'aménagement des collectivités territoriales dans tous les domaines ayant un impact environnemental (habitat, déplacements, activités, risques , qualité de vie, paysage…). Les orientations et choix doivent définir des préconisations et orientations fondées sur les principes d'un aménagement durable, avec notamment la prise en compte de la préservation de l'environnement et de la biodiversité . Par exemple des choix d'aménagement peuvent en eux-mêmes être facteurs de maintien, voire d'amélioration de la biodiversité : maintien en état naturel des zones inondables (zones d'expansion de crues), création de jardins ouvriers, création de parcs urbains etc…Le cadre d'élaboration des SCOT et des PLU , ainsi que des cartes communales permet notamment de mettre en œuvre des actions et d'imposer des règles qui permettront de lutter contre l'étalement urbain et la fragmentation des territoires.
Le SCOT est opposable seulement aux documents de niveau inférieur (il ne peut imposer des prescriptions qu'aux PLU) alors que les PLU sont opposables aux tiers.
Mais avec la loi Grenelle II, le SCOT , désormais, arrête des objectifs chiffrés de consommation économe de l'espace et de lutte contre l'étalement urbain (article L.122-1-5 al 3 du II), définit les grands projets d'équipements et de services (article L.122-1-5 IV), précise

les objectifs d'offre de nouveaux logements et ceux de la politique d'amétioration et de la réhabilitation du parc de logements existant public ou privé (L.122-1-7 1° code de l'urbanisme) définit encore les grandes orientations de la politique des transports et de déplacements ainsi que « les grands projets d'équipements et de dessertes par les transports collectifs» (art. L. 122-1-8 al. 1er).

De plus ,l'article L. 122-1-5 créé par la loi Grenelle 2 prévoit toute une série de nouvelles règles d'urbanisation conditionnelles autorisant les SCOT à « imposer, préalablement à toute ouverture à l'urbanisation d'un secteur nouveau, l'utilisation de terrains situés en zone urbanisée et desservis par les équipements mentionnés à l'article L. 111-4», «la réalisation d'une étude d'impact» ou celle «d'une étude de densification des zones déjà urbanisées» (c. urb., art. l. 122-1-5 IV), , ou encore à « définir des secteurs dans lesquels l'ouverture de nouvelles zones à l'urbanisation est subordonnée à l'obligation pour les constructions, travaux, installations et aménagements de respecter : 1° Soit des performances énergétiques et environnementales renforcées ; 2° Soit des critères de qualité renforcés en matière d'infrastructures et réseaux de communications électroniques» (c. urb., art. L. 122-1-5 V).
Le SCOT est désormais conçu, grâce à sa partie intitulée « document d'orientation et d'objectifs (DOO) » comme un outil de planification stratégique au service de l'aménagement durable des territoires.
Il pourra fixer également des normes parfois très précises relatives à la densité de l'occupation de l'espace , par exemple fixer des normes minimales de gabarit, de hauteur, d'emprise au sol etc…dans certains secteurs délimités et les règles des PLU qui seraient contraires à ces normes minimales définies au SCOT deviendraient inopposables dans un délai de 24 mois.

Les objectifs définis pour les PLU , opposables aux tiers, portent sur :
-l'équilibre entre le développement des espaces urbains et celui de l'espace rural, tout en prenant en compte la préservation des espaces affectés aux activités agricoles et forestières ;
-la diversité des fonctions et la mixité sociale dans l'habitat urbain et l'habitat rural, en prévoyant les besoins futurs en matière d'habitat et d'activités économiques ;
-l'utilisation économe et équilibrée des espaces naturels, ruraux et urbains, et la prévention des risques, des pollutions et nuisances de toute nature ;
A ces objectifs déjà existants, le nouvel article L 121-1 du code de l'urbanisme, issu de la loi Grenelle 2, ajoute :
-une démarche qualitative de la valorisation de l'existant : en ce qui concerne la restructuration des espaces urbanisés, la revitalisation des centres urbains et ruraux, la mise en valeur des entrées des villes et de développement rural ;
-des actions à mener sur le plan écologique et environnemental en matière d'économie et de maîtrise d'énergie, de production énergétique à partir de sources renouvelables, de préservation des ressources naturelles, de la biodiversité, des écosystèmes et des continuités écologiques.

L'article L.121-10 du code de l'urbanisme impose également une évaluation environnementale pour les directives territoriales d'aménagement et les documents d'urbanisme : «*font l'objet d'une évaluation environnementale (…) les documents qui déterminent l'usage de petites zones au niveau local» dont « les plans locaux d'urbanisme :*

- *Qui sont susceptibles d'avoir des effets notables sur ['environnement, au sens de*

l'annexe 1/ à la directive 2001/42/CE du Parlement européen et du ConseiL du 27 juin 2001, (...) compte tenu notamment de la superficie du territoire auquel ils s'appliquent, de la nature et de ['importance des travaux et aménagements qu'ils autorisent et de la sensibilité du milieu dans lequel ceux-ci doivent être réalisés ;

- *Ou qui comprennent les dispositions des plans de déplacements urbains mentionnés aux articles 28 à 28-4 de la loi no 82-1153 du 30 décembre 1982 d'orientation des transports intérieurs ».*

Le même article prévoit par ailleurs que, sauf dans le cas où elles ne prévoient que des changements qui ne sont pas susceptibles d'avoir des effets notables sur l'environnement, au sens de l'annexe 1 à la directive 2001/42/CE du Parlement européen et du Conseil précitée, les modifications des PLU donnent lieu soit à une nouvelle évaluation environnementale, soit à une actualisation de l'évaluation environnementale réalisée lors de leur élaboration.

GERMANY

The German Federal Environmental Impact Assessment Act (Gesetz über die Umweltverträglichkeitsprüfung - UVPG) as published in the announcement of 24 February 2010 (Federal Law Gazette I p. 95) is primarily implementing the SEA-Directive 2001/42/EC, especially section 3 and Annexes 3 and 4 of this Act. The implementation was completed by an amendment of this Act, which was enacted on the 29th of June, 2005. Furthermore the legislation of the German States *(Länder)* contains SEA-provisions for such plans and programmes that are regulated by the legislation of the Länder.

In accordance with Article 3 paragraph 2 of the SEA-Directive, Article 14b paragraph 1 UVPG differs between plans and programmes that always require a mandatory SEA and plans and programmes that require a SEA only if they set the framework for future development consents of EIA projects. The plans and programmes referred to in Article 14b paragraph 1 UVPG are listed in annex 3 of the UVPG. For other plans and programmes Article 14b paragraph 2 UVPG provides a screening mechanism, in accordance with Article 3 paragraph 3 to 5 of the SEA-Directive.

HUNGARY

Directive 2001/42/EC has been implemented in Hungary through the enactment of *Act 53 of 1995, General Rules of Environmental Protection*, and also through *Governmental Decree 2 of 2005*, which monitors the effects of plans and programmes on the Hungarian environment.

These laws cover those plans and programmes, and any modifications to them, including those co-financed by the European Community, which are likely to have significant effects on the environment. Additionally they cover

- directives required by law, or by the orders of Parliament, the national government, or local governments;

- directives subject to preparation and/or adoption by an authority, by a body with administrative duties, or by local governmental bodies; and
- environmental directives introduced by the national government for adoption by Parliament.

THE NETHERLANDS

The first regulation of environmental impact assessment in the Netherlands dates back to 1986.[i] On would expect that by this regulation the European EIA-directive 85/337 was implemented. Bud this is not the fact. The regulation of 1986 has a history of 10 years. A recommendation on EIA was issued in 1976 by the Preliminary Central Council on Environmental Protection. In 1979 this recommendation was followed by a governmental Note on EIA and in 1981 by a draft-act. Parliamentary discussions took about five years to come to a new part in the Act General Provisions on Environmental Protection. Bud already from 1981 on EIA was practised on the basis of an informal policy decision. The new legal regulation on EIA was more inspired by the US and especially the Canadian legislation on EIA as by the EU-directive. As a result of this the Netherlands legislation on EIA has some elements that are not in the directive. On the other hand the legislation needed to be amended because it was on some points not in conformance with the directive.
Two specific Netherlands elements in the regulation of EIA were first the Commission on EIA and secondly the obligation to select and describe alternatives for the activity for which EIA has to be followed. The Commission on EIA was an advisory commission of over 100 scientist of different disciplines that are relevant for EIA. The Commission advised on every Environmental Impact Statement (EIS) as far as completeness en correctness concerns. For every EIS a small working group of about five members was composed. They were specialists of fields that are relevant for the specific EIS. The position and role of the Commission is abolished in july 2010. The legal regulation on the content of EIS describes that it does contain a description of the relevant alternatives to the project, among which the zero-alternative and the most environmental friendly alternative.
Amendments were needed because of the fact that the scope of EIA in the Netherlands regulation was not in conformity with that of the EU-directive.
The legal regulation of EIA is now in chapter 7 of the General Act on Environmental Policy. Chapter 7 contains the obligation to follow EIA for the activities that are mentioned in a governmental decree. It prescribes the procedure that has to be followed, the possibilities for public participation, the competent authorities, the role of the Commission on EIA, the content of EIA and the evaluation of EIA-projects. The scope of EIA in the sense of the activities for which EIA is obliged are mentioned in the governmental decree on EIA. According to the Netherlands system this decree contains two lists of activities; the first one contains the activities for which EIA is compulsory; the second one contains activities for which an EIA-consideration procedure has to be followed. This means that for the projects on this list the competent authority has to consider in advance whether an EIA has to be followed because of the specific characteristics of the project or not.

The SEA-directive is implemented in Netherlands legislation by adding a number of new articles to chapter 7 of the Environmental Policy Act (EPA) and by completely renewing the governmental Decree on EIA. This is done by act of juli 5th 2006, Stb. 2006, 536..
Art. 7.2, first section EPA now holds that activities are designated by governmental decree that:

a. may have considerable harmful consequences for the environment;
b. of which the competent authority has to consider whether they may have these considerable harmful consequences.

Art. 7.2, second section holds that for the activities mentioned in the first section by governmental decree the plans are designated in the preparation of which an EIS has to be made. A plan is only designated when it is a framework for decision mentioned in the third and fourth section. A plan is in any case a framework when it

a. holds the location or the track for these activities, or
b. one or more locations or tracks for these activities are considered in it.

Art. 7.2, section 3 says that in relation to the activities mentioned in section 1 under a the decisions are mentioned in the preparation of which an EIS has to be made. For the activities mentioned in section 1 under b the same is mentioned for decisions of which the competent authorities have to consider whether they may have these harmful consequences and when they do have, an EIS has to be made.
So the scope of this legislation is the same as that of the legislation on EIA for project activities. The scope of EIA in the Netherlands is defined in the governmental decree on EIA. As already said, the decree holds two annexes. The first one holds a list of activities for which EIA is compulsory. The annex first mentions the activity, then for a number of activities the criteria under which the activity is under EIA, then the plans fort this activity and then the decisions for the activity. For example: the construction of a motorway is an activity under EIA, there are no criteria; this means that any building of a motorway is under EIA, the plans mentioned are a specific plan based a Panning act traffic and transport, a so called Structurevision based on the Act on physical planning and the destinationplans based on the same act. The decision under EIA is the so called trackdecision based on the Track act. The construction of a way with four lanes not being a motorway is also an activity under EIA, but this is only the case for a way with a track of over 10 km; so the criterium in this case is 10 km.; the plans under EIA are the same as for the decision to construct a motorway; the decision in the preparation of which an EIS has to be made is the same as for the motorway.
The second annex is the one with the activities of which the competent authority has to consider whether the consequences of the activity are that harmful that an EIS has to be made. The scheme of this annex is the same of that of the first one: activity, criteria, plans and decision.
Next to art. 7.2 is the scope of EIA enlarged by art. 7.2a. This article holds that an EIA has to be made in the preparation of a plan that has to be established by law and for which because of the activity that is in its content, a decent review has to be made based on an article of the Netherlands Nature protection act. In this article the obligation of the Habitat-directive implemented to make a decent review of activities that may cause a serious harm to Habitat-area's..

NORWAY

Introduction

In Norway, both the SEA directive (2001/42) and the EIA directive (85/337) are implemented by the Regulation on Environmental Impact Assessment 26 June 2009, (hereinafter "the Regulation"), laid down by Royal Decree pursuant to the Planning and Building Act of 27 June 2007, (hereinafter the "PBA").The PBA regulates planning at the national, regional, and national levels. It covers strategic planning by regional and municipal authorities, and decisions by the municipal authorities to allow development projects. It also covers social and land use planning. Except for offshore oil, gas, and energy planning, sectoral legislation does not require hierarchical planning. Contrary to this, both sectoral legislation and the PBA regulates development projects, cf. column B in Annexes I and II to the Regulation.

The Regulation covers projects under the the EIA directive and plans and programmes under the EIA directive. In the implementation of the SEA directive Norway has adopted the same structure as in the EIA directive with a division between projects and plans always subject to assessment under Section 2 of the Regulation, and projects and plans subject to screening, cf. Section 3 of the Regulation. The procedural/case processing and content requirements however, are by and large the same for plans and projects

As is evident from the attached correspondence between Norway and the EFTA surveillance Authority, there is a debate on whether the Regulation is in conformity with the SEA and EIA directives. My answers below does not in any way intend to take sides with neither Norway nor the EFTA authority. In addition to this, my answers are based on a translation of the Regulation. I accept sole responsibility for any errors in the translation.

The SEA-directive (Directive 2001/42/EC) is implemented by the Regulation. The scope follows from Sections 2 and 3 of the Regulation. I refer to my answer to question II where Sections 2 and 3 are explained.

POLAND

The provision of the SEA-directive (Directive 2001/42/EC) are introduced to Polish law by the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments (Article 46; Official Journal of the Laws of 7 November 2008).

The Act lays down:

1) the principles and procedures to be followed in the matters of:
   a) the provision of information on the environment and its protection,
   b) environmental impact assessments,
   c) transboundary impact on the environment;
2) the principles of public participation in environmental protection;
3) the administration authorities competent in the matters referred to in point 1.

The scope of the implementation of the SEA-directive is consistent with the scope of the SEA-directive.

PORTUGAL

The SEA Directive (Directive 2001/42/EC) is implemented through the Decreto-Lei n.º 232/2007, 15th June.
In accordance with article 3, §a) of the Decreto-Lei n.º 232/2007, 15th June, the plans in the agricultural fields, forests, transport, waste, water uses, telecommunications, tourism, rural and urban management are subjected to a strategic environmental assessment.
In accordance with article 3, §b) of the Decreto-Lei n.º 232/2007, 15th June, the plans and programs related with ecological classified areas or with special protection zones or with places included in a the Rede Natura 2000 are subjected to a strategic environmental assessment.
In accordance with article 3, §c) of the Decreto-Lei n.º 232/2007, 15th June, the plans and programs not included in the above mentioned paragraphs whose projects have environmental significant consequences are subjected to a strategic environmental assessment.

SLOVAK REPUBLIC

Directive 2001/42/EC is implemented into the system of the law of the Slovak Republic by the Act no. 24/2006 Coll. on the assessing of influences upon the environment which deals with strategic documents which are the subject to compulsory assessment and which will be assessed only if the competent authority so decides, environmental report, make available the environmental report and draft strategy document, opportunity of the concerned authorities and the public express their opinion on the environmental report and draft strategy document, disclose approved strategic document, monitoring and transboundary consultations.

SLOVENIA

SEA – directive (Directive 2001/42/EC) is in Slovenia entirely implemented with Environment Protection Act – EPA (Zakon o varstvu okolja – ZVO-1) and also with Spatial Planinng Act – SPA (Zakon o prostorskem načrtovanju – ZPNačrt).
Within the procedure of drawing up a plan, programme, spatial planning or any other documents the implementation of which is likely to have a substantial impact on the environment **an integrated environmental impact assesment (IEIA)** is carried out for the purpose of implementation of sustainable developement, integrity and prevention. IEIA determines and evaluates impacts on the environment and integration of the requirements of environmental protection, conservation of nature, protection of human health and cultural heritage into the plan. In the procedure of IEIA is substiantially to prepare **an environmental report** which defines, describes and evaluates the impacts of the implementation of the plan on the environment and possible alternatives. The producer of a plan must provide this report before carrying out IEIA. After that a plan producer must submit the plan and the environmental report to the Ministry of the Environment and Spatial Planning (MESP). At this stage public participation and assessment of transboundary impacts must be guaranteed. The final step in this procedure is decision of MESP. MESP either approves or refuses the

plan depending on its consideration whether the impacts of the plan implementation are acceptable or not.
The plan producer has an obligation to notify of the adoption of the plan:
1. the competent ministries,
2. organizations (that are with regard to the content of the plan responsible for particular environmental protection matters or for the protection or use of natural assets or protection of cultural heritage),
3. the Member State (when the implementation of the plan could have a substantial impact on the environment of this state) and
4. general public.

SWEDEN

General background, adequate for both the SEA- and the EIA-directives

In Sweden, important parts of the environmental legislation are compiled in the Environmental Code. The Environmental Code – together with ordinances issued by the Government - covers different subject areas and implements important parts of the European Union environmental law. For example the directives on environmental quality standards, Natura 2000-areas, IPPC-industries, waste and chemicals are all implemented by the Code and its ordinances. In some cases, for instance when it comes to the SEA- and the EIA directives, the directives are only partly implemented by the Code and the full implementation is achieved by a combination of the Code and other environmental legislation on special subjects that is not included in the Code. Some important acts that together with the Code complete the implementation of the SEA- and EIA directives are for example the Planning and Building Act, the Road Act, the Act on Certain Pipelines, the Railway Act, the Act on Electricity and the Act on Nuclear Plants. These acts all contain references to the Environmental Code, so that the Code is to be applied together with the special regulation.
Mainly, chapter 6 of the Environmental Code gives the rules that concern the environmental report (the SEA-directive) and the Environmental Impact Statement (the EIA-directive). Both the content of these documents and the proceedings to produce them – including consultations – are regulated in this chapter. The legislation on the adoption of plans and programmes and on development consents of projects is found in other parts of the Code or in special legislation.

The SEA-directive

The SEA-directive is mainly implemented by chapter 6 of the Environmental Code.
You find special regulation that complements chapter 6 of the Environmental Code, and also references to the general rules of this chapter in legislation concerning certain kinds of plans and programmes. This is the case when it concerns for example the Planning and Building Act that regulates the land use planning and building, and it is also the case in the specific chapter of the Environmental Code that regulates programmes of measures to achieve environmental objectives in accordance to the water framework directive (2000/60/EG) and air quality standards.
There is a governmental ordinance that is common to environmental assessments both of plans and programmes and of projects. The ordinance regulates details on the environmental

assessment. Parts of the annexes to the SEA- and EIA-directives are for example implemented by the ordinance.
Furthermore, the National Swedish Environment Protection Agency has published guidelines on the application of the regulation on environmental assessments of plans and programmes.
There are no obvious differences between the scope of the directive and its implementation in Swedish law.
The information required in the environmental report according to the Swedish legislation is also the same as what is required according to annex I in the SEA-directive.

THE UNITED KINGDOM

The SEA Directive has been implemented by the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633). The Regulations apply to plans and programmes relating solely to any part of England, or to England and any other part of the United Kingdom. They do not apply to plans and programmes relating exclusively to Northern Ireland or Wales, for which separate, similar Regulations have been made, or to Scotland. In Scotland implementation was initially by Regulations, but these have been superseded by an Act of the Scottish Parliament, the Environmental Assessment (Scotland) Act 2005. This expands the requirement for SEA beyond the scope of the Directive.

For this purpose, England is treated as including any territorial waters of the United Kingdom that are not within Northern Ireland, Scotland or Wales, and waters in areas for the time being designated under the Continental Shelf Act 1964.

II. What types of public plans and programmes are subject to a strategic environmental assessment in accordance with the SEA-directive?
II. Quels types de programmes ou de plans public font l'objet de l'évaluation environnementale stratégique en application de la Directive SEA ?

AUSTRIA

A variety of plans and programmes are subject to a strategic environmental assessment in Austria. The most relevant examples are:
- Regional and local development programmes (Regionale und örtliche Raumordnungsprogramme)
- Development and Zoning Plans
- Waste Management Plans of the Laender and the Federal Waste Management Plan
- National Water Management Plan and Action Programmes

1. Legislative competences of the federation are predominant in environ-mental matters. The most important competences of the federal provinces in the field of environmental protection encompass nature preservation legislation and zoning law.

2
- Ordinances (drafts) concerning the designation of new high-speed railroad lines and draft legislation on the designation of new federal roads
- Actionplans on Noise Reduction

BELGIUM (FLEMISH REGION & BRUSSELS CAPITAL REGION)

FED :
The Act of 13 February 2006 lists some plans and programmes for which SEA is mandatory: plans and programmes concerning the production and the supply of electricity, plans for the development of the electric grid, plans for supply of natural gas, the general programme for the management of radio-active waste, plans for the exploration and exploitation of the continental shelf, plans and programme that might have a significant effect on Natura 2000 areas. Furthermore "every other plan or programme which set the framework for future development consent of projects and that are likely to have significant environmental effects" and the modification or review of such plans and programmes is subject to SEA1. Plans and programmes which determine the use of small areas at local level and minor modifications to plans and programmes may be exempted when they are likely to have no significant environmental effects.
FLE :
DABM, Chapter IV, duplicates the SEA-Directive: plans and programmes concerning agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in the EIA-Directive as well as plans and programmes which are likely to have a significant effect on Natura 2000 areas. Furthermore, other than the aforementioned plans or programmes that are likely to have significant environmental effects are also subject to SEA. Plans and programmes which determine the use of small areas at local level and minor modifications to plans and programmes may be exempted when they are likely to have no significant environmental effects. Finally, plans and programmes solely concerning national defence or civil emergency, and financial or budget plans and programmes, are not subject to SEA.
BRU :
Title II (Planning) of the Brussels Town Planning Code, or COBAT, refers to Regional and communal development plans, as well as Regional and communal land use plans. The SEA-Ordinance duplicates the directive, with the same exemptions.
1 See for the running or completed SEA-procedures on the federal level:
http://www.health.belgium.be/eportal/Environment/Inspectionandenvironmentalrigh/SEAStrategivEnvironme
ntalAsses/HetAdviescomiteSEA/Teruggegevenadvies/index.htm?fodnlang=fr

BELGIUM (WALLOON REGION)

Pour ce qui concerne l'évaluation environnementale des plans et programmes nous faisons référence aux articles D.52 à D.61 de la partie décrétale et R.47ainsi qu'à l'annexe V de la partie réglementaire.

Ce sont les articles D.53, §1er,alinéas 1 et 2 de la partie décrétale du Livre Ier du Code de l'environnement ainsi que l'annexe V de la partie réglementaire qui définissent les plans et programmes soumis d'office à évaluation environnementale.

L'article D.53 paragraphe 1er dispose que seuls sont soumis d'office à une EES les plans et programmes de la liste I reprise à l'annexe V du Code qui :

1° sont élaborés pour différents secteurs **ET** définissent le cadre dans lequel la mise en oeuvre des projets soumis d'office à étude d'incidences en vertu de l'article 66, §2, pourra être autorisée à l'avenir ou
2° sont soumis à évaluation environnementale en vertu de l'article 29 de la loi du 12 juillet 1973 sur la conservation de la nature.

Deux types d'exemption sont prévus :

Le premier, **systématique,** est défini à l'article D.53 §4 et concerne :
- les plans et programmes destinés uniquement à des fins de défense nationale et de protection civile;
- les plans et programmes financiers ou budgétaires ;
- le plan des centres d'enfouissement technique visés à l'article 24, §2 du décret du 27 juin 1996 relatif aux déchets car l'article 25 §2 de ce décret impose la réalisation d'une étude d'incidences pour le plan et chacun des sites envisagés;
- les plans et les programmes dont l'évaluation des incidences sur l'environnement est réglée par le CWATUP.

Le second, **facultatif**, doit expressément être sollicité par l'auteur du plan ou programme auprès du Gouvernement qui statue après consultation du CWEDD (Conseil Wallon de l'Environnement pour le Développement Durable : articles R3 à R16 du Code de l'environnement : http://www.cwedd.be/presentation/les-missions.html), des communes concernées et des personnes et instances qu'il juge utile de consulter.

Ce sont :

D'une part:
- les plans et programmes qui déterminent l'utilisation de petites zones au niveau local ou constituent des modifications mineures d'autres plans et programmes ou ne définit pas le cadre dans lequel la mise en oeuvre de projets soumis d'office à étude d'incidences pourra être autorisé à l'avenir ;
- les plans et programmes qui, **à l'estime de l'auteur du plan ou programme, ne sont pas susceptibles d'avoir des incidences non négligeables** sur l'environnement (article D.53, § 1er).

D'autre part:
- les plans et programmes figurant sur la liste II qui, **à l'estime de l'auteur du plan ou programme, ne sont pas susceptibles d'avoir des incidences non négligeables** sur l'environnement. Comme cette liste II n'existe pas, ce cas d'exemption facultative est superfétatoire par rapport au précédent (article D.53, §2).

Remarque :

Il existe deux listes : 1) La Liste I qui est en principe soumise à évaluation des incidences dans la mesure où elle (ou plus exactement les plans et programmes repris dans cette liste) est présumée avoir des incidences notables sur l'environnement ; 2) la liste II qui est soumise à évaluation des incidences quand elle est susceptible d'avoir des incidences non-négligeables sur l'environnement.
L'une et l'autre sont susceptibles de faire l'objet d'une exonération (de l'étude d'incidence) si l'auteur du plan ou du programme estime que ce dernier n'est pas susceptible d'avoir des incidences non négligeables sur l'environnement sur laquelle le gouvernement est appeé à statuer (article D53, § 2)
Par ailleurs, le gouvernement wallon peut soumettre à évaluation des plans et programmes « susceptibles d'avoir des incidences non négligeables sur l'environnement mais qui ne sont pas prévus par une disposition décrétale, réglementaire ou administrative (Code, article D53, §3)Il s'agit là, à l'opposé des deux hypothèses précédentes, d'une simple faculté pour le gouvernement.

CZECH REPUBLIC

Pursuant to Sec. 10a (1) Act No. 100/2001 Coll. the subject of environmental impact assessment of a conception[2] **shall be**
a) conceptions which set the framework for future permits of plans set forth in Annex 1 [of this Act], prepared in the field of agriculture, forestry, hunting, fishery, surface or groundwater management, energy industry, industry, transport, waste management, telecommunications, tourism, land-use planning, regional development and environment, including nature protection,
conceptions for which, in view of their possible effect on the environment, the necessity of their assessment follows from a special regulation
and furthermore conceptions co-financed by European Community funds;
these conceptions shall always be subject to assessment if the affected territory is comprised of the territorial area of more than one municipality;
b) conceptions pursuant to letter a) if the affected territory is comprised of the territorial area of only one municipality, if so laid down in a fact-finding procedure pursuant to Sec. 10d;[3]
c) changes of conceptions pursuant to letters a) and b) if so laid down in a fact-finding procedure pursuant to Sec. 10d.
Pursuant to Sec. 10a (2) Act No. 100/2001 Coll. the subject of assessment **shall not be**
a) conceptions prepared only for the purposes of the state defence;
b) conceptions prepared for cases of extraordinary events which are likely to significantly and directly endanger the environment or the health, safety or property of persons;

[2] The term "conception" used throughout the Act No. 100/2001 Coll. corresponds to the term "plans and programmes" defined in Article 2 (a) of the SEA-directive. Pursuant to Sec. 3 (b) of the Act No. 100/2001 Coll. "conceptions shall be strategies, policies, plans or programs prepared or farmed out by a public administration authority and subsequently approved or submitted for approval by a public administration authority".
[3] The term „fact-finding procedure" includes the screening and scoping. Pursuant to Sec. 10d the objective of the fact-finding procedure shall be to specify the content and scope for evaluating the impacts of the conception on the environment and public health. For a conception set forth in Sec. 10a (1) letters b) and c) the objective of the fact-finding procedure shall also be to determine, whether the conception or a change of the conception is to be assessed pursuant to this Act.

c) financial and budgetary conceptions.

DENMARK

As it follows from the first answer, the SEA procedure must according to the Danish SEA Act be applied before the final adoption of any plan or program by public authorities. So formally there seems no deficit in the Danish implementation. However, in practice the SEA procedure has until now mainly been applied on physical planning under the Planning Act. Because the way the EIA-procedure is integrated in the Planning Act as formally an amendment to the Municipality Plan, the EIA-procedure itself is often cause to the SEA procedure. If the EIA-procedure ignore SEA obligation, the EIA will be invalid, which can be illustrated with one rather spectacular case from 2008 published in the magazine for environmental case law (MAD 2008.1193 Nkn).
MAD. 2008.1193 NKN: The Major of Copenhagen and the majority of the City Council wanted to built 5.000 flats for young people at a very polluted industrial site named Kløverparken placed only few hundred metres from the fuel storage for the airport and Copenhagen with status as Seveso Plants. The owner of the site Kløverparken was a developer who want to build houses on the site and the use of the site for houses was in accordance with the physical planning for the site. Since the site was heavy polluted, the developer ask for a clean-up the contaminated soil on site, which has a legal status as a landfill and require an IPPC-permit and an EIA procedure. Since the EIA procedure is formally a proposal for a plan under the Planning Act, the initiating of the EIA procedure was appealed to the Nature Appeal Body claiming a SEA-procedure was needed because of the intention of constructing houses close to Seveso Plants. The Nature Appeal Board agreed and annulled the Council's initiating of the EIA procedure under the Planning Act - and in the very end, the project of constructing houses on the site was cancelled.
Regarding plans falling outside the Planning Act, the SEA procedure is in practice almost ignored because lack of knowledge by local authorities and certain state agencies. Thus, despite the SEA Act requires environmental impact assessment (or at lest screening) regarding waste management plans, waste water plans, plans for drinking water supply, plans for energy supply and a number of other plans, the SEA-procedure are mainly not applied before plans are adopted in these sectors.
Moreover, comparing with the ECJ ruling in the united cases C-105/09 and C-110/09 Terre Wallone in which the ECJ concluded that action plans to implement the Nitrate Directive (91/676) must be subject to SEA procedure even if the plan is adopted by a legislative Act, it can be observed that the Danish plan to reduce nitrate pollution from agriculture is adopted by an administrative order issued without a prior SEA procedure.

FINLAND

By the Finnish SEA Act, an assessment shall be made for plans that may significantly impair the conservation status of a Natura 2000 -site as well as for plans that are called for by the provisions in an Act or a Decree or by an administrative order and concerning:
agriculture, forestry or fisheries
energy supply and industrial activity
transport

waste management
water supply
telecommunications
tourism, regional development or areal planning
protection of nature and the environment

A Government Decree on the application of the SEA Act (SEA Decree,19.5.2005/347) lays down specifically, that an assessment is to be made for national land-use plans, regional waste management plans, national nature conservation plans, regional development plans and for traffic network plans in the capital area of Helsinki.

FRANCE

Le décret du 27 mai 2005 a précisé quelles étaient les catégories de plans et programmes assujettis à la nouvelle obligation et les seuils à partir desquels celle-ci s'appliquait.
Sont concernés les SCOT (schémas de cohérence territoriale) et les PLU (plans locaux d'urbanisme) qui doivent être accompagnés d'un rapport analysant l'état initial de l'environnement dans les territoires concernés, leurs effets sur l'environnement et les mesures de protection projetées.
Jusqu'à la loi Grenelle 2 (voir les modifications envisagées par le projet de décret actuellement soumis à discussion publique) les plans et programmes concernés étaient définis à partir de deux éléments : des critères généraux, et le système de la liste énumérative.
Les critères généraux de la directive (selon son article 3-2) sont un critère territorial , à savoir tous les plans qui sont susceptibles d'affecter des sites Natura 2000, et un critère concernant le contenu des plans : ceux qui définissent un cadre dans lequel la mise en œuvre des projets assujettis à une étude d'impact est autorisée. (on a une en quelque sorte une complémentarité-voire un chevauchement- des deux directives).
Pour transposer ces critères , le législateur français, dans son ordonnance du 3 juin 2004 a procédé différemment pour les documents d'urbanisme, d'une part, et pour les autres plans, d'autre part.
Pour les documents d'urbanisme , il a énuméré limitativement les catégories qui étaient toujours soumises à évaluation environnementale (article L.121-10 du code de l'urbanisme).
La difficulté s'est présentée pour les PLU compte tenu de leur diversité, et de leur nombre élevé : 36.000 communes et 17.000 PLU rendaient impossible et injustifié de les soumettre tous à la nouvelle obligation d'évaluation environnementale. Il a donc été décidé (article L.121-10 du code de l'urbanisme) de n'assujettir à l'évaluation environnementale que les PLU susceptibles d'avoir des « effets notables » sur l'environnement compte tenu d'un certain nombre de critères :
-la superficie du territoire auxquels s'appliquent les PLU ;
-la nature et l'importance des travaux et aménagements qu'ils autorisent ;
-la sensibilité du milieu dans lequel ceux-ci doivent être réalisés.

Pour les autres documents d'urbanisme : ils sont régis par des dispositions du code de l'environnement : l'article L.122-4 définit trois critères qui président à l'élaboration d'une liste annexée au décret n° 2005-613 du 27 mai 2005 :

- les plans visés doivent être susceptibles de porter atteinte à l'environnement ;
  à signaler une difficulté : certains plans (plan d'exposition au bruit, plan de prévention des risques naturels, chartes des parcs naturels régionaux…) concernent bien l'environnement, mais n'ont pas pour objet de prévoir la réalisation d'opérations ayant un impact sur l'environnement. Au contraire, ils ont pour objet de protéger l'environnement ou de prévenir des risques existants, au besoin par l'instauration de servitudes.

- ils doivent être opposables juridiquement : exclusion de schémas non opposables à des actes susceptibles de porter atteinte à l'environnement ;

- la nature des actes auxquels doivent être opposables les plans et programmes : les documents concernés n'ont pas comme objet d'autoriser directement la réalisation d'opérations assujetties à l'étude d'impact de l'article L. 122-1 mais seulement d'en conditionner la réalisation : étant susceptibles d'avoir des incidences notables sur l'environnement et concernant des milieux sensibles, ils sont opposables à des travaux ou projets particulièrement risqués pour l'environnement qu'ils soient ou non assujettis à une étude d'impact. Ainsi par exemple un schéma départemental de carrières n'autorise pas l'ouverture de carrières, qui doivent faire l'objet d'autorisations postérieures, mais en revanche celles-ci devront être compatibles avec les dispositions du schéma.

Les principales difficultés et objections en France ont concerné les PLU : à l'exception de ceux situés dans une zone Natura 2000, ils se sont trouvés exonérés de l'obligation d'être accompagnés d'une évaluation environnementale dès lors que le territoire était couvert par un SCOT ayant lui-même fait l'objet d'une évaluation environnementale. L'article 3-3 de la directive 2001 prévoit lui-même que , pour les plans et programmes déterminant l'utilisation de « petites zones au niveau local », l'évaluation environnementale n'est exigée que si les Etats établissent qu'ils sont susceptibles d'avoir une incidence notable sur l'environnement , le législateur a considéré que cette incidence pouvait être évaluée en amont au niveau du SCOT , c'est-à-dire à l'échelle territoriale que retiennent la plupart des pays européens.

Il faut également signaler que les articles L.122-5 du code de l'environnement et L.121-10 du code de l'urbanisme , pour transposer l'article 3-3 de la directive, décident que lors de la révision d'un plan ou programme il n'y aura pas lieu à nouvelle évaluation environnementale ou à actualisation de celle existante si les modifications n'ont qu'un caractère mineur. Sur la base de ce critère l'article R.121-15 du code de l'urbanisme précise que les modifications et révisions des documents d'urbanisme qui ne portent pas « atteinte à l'économie générale » sont considérées comme des « modifications mineures ».
L'évaluation environnementale (articles L.122-6 et R.122-20 du code de l'environnement) se traduit par l'annexion, aux plans et programmes, d'un rapport en six parties . Il doit contenir :
-une analyse de l'état initial de l'environnement ;
-l'exposé de l'impact du plan sur celui-ci ;

-la présentation des motifs qui ont justifié les choix opérés au regard des autres solutions envisageables ;
-la présentation des mesures envisagées pour éviter, réduire et, si possible, compenser les conséquences dommageables du plan sur l'environnement et en assurer le suivi ;
-un résumé non technique et l'exposé des méthodes d'évaluation.
Ce sont des éléments très similaires à l'étude d'impact ; s'y ajoute cependant l'obligation de joindre au dossier une présentation résumée des objectifs du plan et l'exposé de son articulation avec les autres documents de planification avec lesquels il pourrait être compatible ou qu'il doit prendre en considération (article R.122-20-1° du code de l'environnement).

La grande différence entre l'évaluation environnementale et l'étude d'impact est que pour la première il s'agit d'apprécier les effets d'un acte juridique organisant un territoire de plus ou moins grande superficie et non pas seulement les incidences de travaux ou d'opérations présentant des caractéristiques beaucoup plus précises.

Compte tenu de cette différence d'échelle et d'optique, l'évaluation environnementale oblige à prendre en compte non seulement l'état initial de l'environnement sur le territoire concerné mais aussi « les perspectives de son évolution », et l'évaluation requise porte aussi sur la santé et le patrimoine culturel.

Une certaine liberté est laissée aux auteurs des plans avec des notions comme « les incidences notables probables » du plan sur l'environnement , ou le fait que l'exposé doit porter sur les caractéristiques des zones susceptibles d'être touchées « de manière notable ». De même le rapport environnemental ne doit contenir que les « informations qui peuvent être raisonnablement exigées compte tenu des connaissances et des méthodes d'évaluation existant à la date à laquelle il est élaboré ». Il y aura donc place pour un contrôle du juge sur le contenu de l'évaluation environnementale, similaire à celui qui s'exerce pour les études d'impact et plus généralement des rapports de présentation des documents d'urbanisme (principe de proportionnalité, caractère global de l'évaluation …voir la jurisprudence citée à la fin de la réponse).

GERMANY

Annex 3 UVPG lists all types of plans and programmes for which a SEA is mandatory.

Annex 3:

1. Compulsory Strategic Environmental Assessment pursuant to Article 14b para.1 no. 1

1.1 Traffic route planning at national level including requirement plans according to national traffic route development legislation

1.2 Development plans pursuant to Article 12 para.1 of the Civil Aviation Act, if the preparation or modification of these plans goes significantly beyond the scope of decisions pursuant to Article 8 para. 1 and 2 of the Civil Aviation Act

1.3 Risk management plans pursuant to Article 75 of the Federal Water Act and updates of similar plans according to Article 75 paragraph 6 of the Federal Water Act

1.4 Programmes of measures pursuant to Article 82 of the Federal Water Act

1.5 Regional and subregional plans pursuant to Sections 8 of the Federal Regional Planning Act

1.6 Regional planning carried out by the national government pursuant to Section 17 paragraph 2 and 3 of the Federal Regional Planning Act

1.7 Designation of particularly suitable areas pursuant to Article 3a of the Offshore Installations Ordinance

1.8 Land use plans pursuant to Sections 6 and 10 of the Federal Building Code

2. Strategic Environmental Assessment for plans and programmes when setting a framework pursuant to Article 14b para.1 no. 2

2.1 Noise action plans pursuant to Article 47d of the Federal Immission Control Act

2.2 Clean air plans pursuant to Article 47 para. 1 of the Federal Immission Control Act

2.3 Waste management concepts pursuant to Article 19 of the Closed Substance Cycle and Waste Management Act

2.4 Updating of waste management concepts pursuant to Article 16 para. 3 4th sentence, 2nd alternative of the Closed Substance Cycle and Waste Management Act

2.5 Waste management plans pursuant to Article 29 of the Closed Substance Cycle and Waste Management Act, including special chapters or separate subplans for the disposal of hazardous waste, waste batteries and accumulators or packaging and packaging waste

Moreover, there is a general obligation to carry out an SEA for plans and programmes requiring an impact assessment under the Federal Nature Conservation Act (Bundesnaturschutzgesetz - BNatSchG) (Article 14c UVPG).

The UVPG further contains provisions for preliminary case-by-case examinations to be carried out for certain plans and programmes that are not already subject to a SEA according to Annex 3 (Article 14b para. 2 UVPG). A case-by-case examination must also be carried out for minor modifications or for plans and programmes which determine the use of small areas at local level.

Similar provisions apply at Länder level. Special provisions may apply to particular types of plans and programmes. For example, the Federal Building Code (Bundesbaugesetz) contains special provisions for land use plans, the Federal Regional Planning Act (Raumordnungsgesetz) contains special provisions for spatial plans.

HUNGARY

Category A: Assessments must occur on

- regional plans
- settlement-construction plans, local building regulations, and regulation plans which are prepared for entire settlements
- national development plans
- operative programmes of national development plans
- national, county, and local waste-management plans, and common waste-management plans of small areas
- medium-term plans of agricultural policy
- national plans of water management and national programmes
- catchment management plan
- national and local development plans for road networks

Category B: Assessments must also occur for plans and programmes not listed above, but

- which are created for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism or regional development and set a framework for future development consent of projects listed in the annex to the *Government Decree on Environmental Impact Assessment*, but which are independent from the currently-set thresholds and territorial limits, or
- likely to have harmful effects on *Natura 2000* territories.

The necessity of environmental assessment is measured by defining the probable environmental effects of

- regulation plans and local building regulations not prepared for an entire settlement
- smaller modifications of plans and programmes listed in Category B
- plans and programmes not listed in Category B, but which set framework for future development consent of activities or projects with environmental impacts.

THE NETHERLANDS

The scope of directive 2001/42/Eu is given in art. 3, section 2: an environmental assessment is made of all plans and programmes:
a. that are prepared in relation to agriculture, forestry, fishery, energy, transport, wastepolicy, watermanagement, telecommunication, tourism and physical planning and that form a

framework for the granting of future licenses for the projects mentioned in annex I and II of directive 85/337/EEG (EIA-directive), or
b. for which , taken into account the possible effect on area's, a review according to art. 6 or 7 of directive 92/43/EEG (Habitat-directive) has to be made.
This means that the scope of directive 2001/42 is related to the projects of the annexes of directive 85/337 and to the plans or projects mentioned in section 6 or 7 of directive 92/43.
This rather general scope has got concrete form in annexes of the governmental decree on EIA by mentioning concrete plans for every activity that is under EIA. The plans mentioned in the annexes are
- structurevisons based on the Physical planning act,
- plans according to different acts like the Water act, the Planning act traffic and transport, the econstruction act concentrationarea's, the Drinking water act, the Genrela Act on Environmental Policy etc.
- destinationplans according to the Physical planning act.
These are on the one hand rather concrete, operational plans such as the destination plans and on the other rather strategic plans such as the structurevisions.

NORWAY

Pursuant to SEA directive Article 3 (2) and Section 2 of the Regulation, the types of plans and programmes where an environmental assessment is mandatory are: Regional master plans for land use (PBA Section 8-1), Municipal master plans for land use and municipal master plans for parts of the municipality (PBA Section 11-5), Area Zoning plans (PBA Section 12-2), and Zoning plans (defined in the PBA Section 12-1) containing projects listed in Annex I to the Regulation. Detailed Zoning plans (PBA Section 12-3) regulating plans for building/construction and land use alterations are treated in accordance with the EIA Directive.
*Pursuant to Art 3 (4-7) of the SEA directive and the Regulation Section 3***,** the following plans and projects shall always, after a screening process set out in Section 4 of the Regulation, be dealt with in accordance with the Regulation if they may have significant effects on the environment, natural resources or the community:
- Zoning plans if the plan includes or lays down a framework for subsequent administrative decisions relating to projects or activities listed in Annex II of the Regulation, including but not limited to: commercial, warehouse and office buildings, and public buildings and buildings of public utility, with a usable Area exceeding 5 000 m2, deforestation with a view to conversion to another type of land-use, ski runs and ski lifts, aerial cableways and associated installations, yacht marinas, holiday villages and hotel complexes outside urban Areas, permanent camping and caravan sites and theme parks, roads, railway lines, tram and underground lines, cable cars for the carriage of persons, landing places, ports and harbour installations and inland waterways, golf courses with nine or more holes and racing and test tracks for motorized vehicles, extraction industry, including quarries and gravel pits, and waste disposal sites, large dumping sites on land and at sea, metal production and processing, mineral, food, textile, leather, wood and paper industries and chemical industry, and Zoning plans for the development of towns and urban Areas,
- Zoning plans including projects listed in the Regulation Annex II, including, but not limited to: commercial, warehouse and office buildings, deforestation with a view to

conversion to another type of land-use, ski runs and ski lifts, aerial cableways and associated installations, yacht marinas, holiday villages and hotel complexes outside urban Areas etc.,

- Area Zoning plans entailing substantial changes of municipal master plans except those that concern the laying out of new Areas for building purposes,
- Detailed Zoning plans entailing changes of Regional master plans or Area Zoning plans, and
- Projects that require a permit pursuant to sector legislation such as for example the Petroleum Act, the Water Resource Act, Land Act, and the Forestry Act.

Section 3 plans or projects shall be dealt with pursuant to the Regulation if they meet any of these criteria set out in Section 4:

- are located in or are in conflict with Areas with particularly valuable landscapes, natural environments, cultural monuments or cultural environments that are protected or preserved, temporarily protected or preserved of which the protection or preservation has been proposed, or where there is a strong likelihood of finding automatically preserved cultural monuments that are part of a cultural environment that goes far back in time,
- are located in or are in conflict with important natural Areas on which there has been no encroachment, or pose a threat to directly endangered or vulnerable species and their habitats or to other Areas of particular importance for biological diversity,
- are located in large natural Areas that are particularly important for the pursuit of recreational activities, including forests bordering urban Areas, and in important Areas close to watercourses that have not been set aside for physical development and in major green structures and important recreation Areas in towns and urban Areas, and where the plan or project conflicts with outdoor recreational interests,
- fall within the scope of the National Policy Guidelines (NPG) for planning in coastal and marine Areas in the Oslo Fjord region, NPG for protected watercourses and NPG for coordinated land-use and transport planning and, at the same time, conflict with the purpose of these guidelines, or which conflict with guidelines for the development of shopping centres that have been laid down in regional sub-plans,
- may conflict with the pursuit of Sami commercial activities in uncultivated Areas, or are located in Areas of special value for reindeer husbandry or limited seasonal pasture and may conflict with reindeer husbandry interests, or may in other ways conflict with the land-use needs of reindeer husbandry,
- entail the substantial reallocation of agricultural, natural or outdoor recreational Areas or Areas that have been zoned for agriculture and that are of significant importance for agricultural activities,
- result in a significant increase in the number of persons who are exposed to high levels of air pollution or noise, or may lead to significant pollution of soil, water and sediments, or entail a risk of serious accidents, radiation, landslides and flooding,
- may have consequences for public health or the composition of health in the population
- may have significant consequences for the population's access to outdoor Areas, buildings and services,
- or may have significant negative consequences for another state.

POLAND

According to the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments (Article 46; Official Journal of the Laws of 7 November 2008) a strategic environmental assessment shall be required for:

1) a draft concept of national spatial planning policy, a draft study on the conditions and directions of local spatial development, draft spatial development plans and draft regional development strategies;
2) draft policies, strategies, plans or programmes in the fields of industry, energy, transport, telecommunications, water management, waste management, forestry, agriculture, fisheries, tourism and land use, drawn up or adopted by the administration authorities, setting out a framework for the subsequent implementation of projects likely to have a significant impact on the environment;
3) draft policies, strategies, plans or programmes other than those listed in points 1 and 2 the implementation of which is likely to have a significant impact on a Natura 2000 site, where they are not directly related to the protection of the Natura 2000 site or do not result from such protection.

According to Article 47 a strategic environmental assessment shall also be required in the case of draft documents other than those in Article 46, where in agreement with the relevant authority referred to in Article 57, the administration authority which prepares the draft document states that they set out a framework for the future implementation of projects likely to have a significant impact on the environment and that the implementation of the provisions of these documents may cause a significant impact on the environment.
A strategic environmental assessment is also required in the case where the already adopted document referred to in Articles 46 or 47 is modified.

This regulation is consistent with Article 3 paragraph 2 and 3 of the SEA Directive.

PORTUGAL

In accordance with the article 3, §2, a), of the Directive 2001/42/CE, from the 27th June of 2001 – SEA-directive, are subjected to a strategic environmental assessment the plans in the plans in the agricultural fields, forests, transport, waste, water uses, telecommunications, tourism, rural and urban management.
In accordance with the article 3, §2, b), of the Directive 2001/42/CE, from the 27th June of 2001 – SEA-directive, are subjected to a strategic environmental assessment the plans and programs related with ecological classified areas or with special protection zones or with places included in a the Rede Natura 2000.
In accordance with the article 5, of the Directive 2001/42/CE, from the 27th June of 2001 – SEA-directive, are subjected to a strategic environmental assessment the plans and programs whose environmental effects are significant according to the criteria of the annex II of the SEA-directive.
The Decreto-Lei n.º 232/2007, 15th June, follows the SEA-Directive.

SLOVAK REPUBLIC

Subject to mandatory assessment are strategy documents reffered to in Annex of the Act for areas: extraction and treatment mineral resources, energy, industry, agriculture, forestry, water management, transport and telecommunications, sports, recreation and tourism, waste management, environment, and which determine land use: regional development, territorial planning documentation.
If the competent authority decides on the basic of the results of the screening procedure on the assessment of the strategic document, subject to assessment are strategic documents not listed in Annex, which set the framework for approve projects in particular for areas: agriculture, forestry, fisheries, energy, transport, waste management, water management, telecommunications, tourism, planning or land use, regional development and environmental conservation, which could have impact on the environment, including those which could have impact on the protected areas.

SLOVENIA

According to article 40 EPA plans or amendments to a plans that are according to EPA subject to an IEIA are:

- plans or amendments to a plans for the area of spatial planning, water management, forest management, hunting, fisheries, mining, agriculture, energy, industry, transport, waste and waste water management, drinking water supply, telecommunications and tourism, when they lay down or foresee an activity affecting the environment for which an environmental impact assessment according to EIA procedure shall be carried out;
- plans or amendments to a plans which cover a special protection area under the regulation on the conservation of nature and
- plans or amendments to a plans if the implementation of the plan is likely to affect such an area.

SWEDEN

A strategic environmental assessment shall be carried out when an authority or a municipality changes or adopts a plan or programme that is required by law or other statutes, if this is likely to have significant environmental effects.
The following types of plans or programmes are always considered likely to have significant environmental effects:
- plans and programmes that involves measures that are likely to have a significant effect on a Natura 2000-area
- plans and programmes that sets the conditions for certain kinds of listed projects (the list is mainly conform to the list of projects in annex II of the EIA-directive) and constitutes
  - a comprehensive plan for the land use of a municipality,
  - a municipal plan on supply, distribution and use of energy,
  - a municipal waste plan,
  - a programme of measures to achieve environmental quality standards (including environmental objectives in accordance to the water framework directive),
  - a regional plan for roads, railways and other transportation infrastructure, or

- other plans and programmes for agriculture, forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use.

A strategic environmental assessment is also required for detailed development plans - if they do not concern small local areas only, and certain listed criteria (corresponding to annex II to the SEA-directive) are not fulfilled.

THE UNITED KINGDOM

The Directive and, accordingly, the Regulations, do not apply to plans and programmes whose sole purpose is to serve National Defence or Civil emergency, or to financial or budget plans and programmes. Neither do they apply to a plan or programme co-financed by the European Community under various Council Regulations.

The Regulations apply to certain plans and programmes, including those co-financed by the European Community, and any modifications to them which are required by legislative, regulatory of administrative provisions and are either-

a) Subject to preparation or adoption by an authority at National, Regional or local level; or
b) Prepared by an authority by adoption, through a legislative procedure by Parliament or Government.

Subject to certain exceptions, where the first formal preparatory act in relation to a plan or programme to which the Regulations apply is on or after the 21 July 2004, the plan or programme cannot be adopted, or submitted for adoption, unless it has been subjected to environmental assessment under the Regulations.

The requirement for environmental assessment applies, in particular, to any plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, which sets the framework for future development consent of projects listed in Annex 1 or to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC; and to any plan or programme which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of Council Directive 92/43/EEC on the conservation of natural habitats and wild flora and fauna, as amended.

There are exceptions for plans and programmes that determine the use of a small area at local level, and for minor modifications, if the authority responsible for preparing the plan or programme (referred to in the Regulations as the "Responsible Authority") has been determined under Regulation 9(1) that the plan or programme is unlikely to have significant environmental effects (Regulation 5(6); Article 3.3 of the Directive). The responsible Authority's determination may, however, cease to have effect if the Secretary of State gives a Direction under Regulation 10(3).

The requirement for Environmental assessment also applies to other plans and programmes which determine the framework for future development consent of projects if they are the subject of a determination under Regulation 9(1) that the plan or programme is likely to have significant environmental effects (Regulation 5(4); Article 3.3 of the Directive). The responsible authority's determination may, however, cease to have effect if the Secretary of State gives a Direction under Regulation 10(3).

Regulation 7 makes provision for environmental assessment of plans and programmes co-financed by the European Community (other than those excepted by Article 3.9 of the Directive) to be carried out in conformity of the specific provisions in relevant community legislation (Article 11.3 of the Directive).

III. What kind of authority (local, regional, central) is responsible for performing the duties arising from the SEA-directive?
III. Quelle est l'autorité compétente (locale, régionale, centrale) en charge du respect des obligations découlant de la Directive SEA ?

AUSTRIA

Depending on the applicable laws, different authorities are responsible for conducting a strategic environmental assessment. Concerning regional planning laws, the state government (Landesregierung) is the competent authority in most cases. In case of federal law, the respective federal minister is the competent authority in the majority of cases.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
The SEA shall be carried out by the federal authority that prepares the plan or programme. The authority may rely for that on external consultants, provided that they have no direct interest in the
plan or programme concerned. Before the SEA work starts, the competent authority should provide a
sort of outline of the SEA to the Advisory Committee that was established under the Act and that is
composed of 10 environmental experts from different federal agencies. The outline comprises the
envisaged scope and level of detail of the SEA and the alternatives to be examined. The Advisory
Committee delivers within 30 days an opinion on the draft outline that should be taken into account
by the author of the SEA.
FLE :
The SEA shall be carried out under the responsibility and at the expense of the authority that prepares the plan or programme. The authority must rely for that on an accredited external

consultant (EIA-coordinator). The coordinator may have no direct interest in the plan or programme concerned. Before the SEA work starts, the authority that prepares the plan/programme asks the advice of the administrations/authorities that can be involved by the plan. After this consultation, she provides an outline of the plan/programme as well as the remarks of the other involved administrations to the competent authority, established by the Flemish Government, in order to obtain a derogation of the obligation to carry out an SEA, if applicable. Otherwise, or in the case of a refusal, the authority that prepares the plan/programme notifies the envisaged scope and level of detail of the SEA, information on the coordinator etc. to the same competent authority. Within aperiod of 20 days, the competent authority notifies her decision on the proposed SEA.

BRU :

SEA for regional development and land use plans (COBAT) are carried out under the responsibility and at the expense of the Regional government. For local plans, the *commune* is responsible. For regional plans, the government elaborates the SEA, but local authorities must rely for their plans on an accredited external consultant. SEA for the other plans/programmes are drafted by the authority that prepares the plan or programme.

BELGIUM (WALLOON REGION)

L'autorité régionale, soit la Région Wallonne.

CZECH REPUBLIC

The authorities responsible for performing the duties arising from the SEA-directive and the Act No. 100/2001 Coll. are (1) the **Ministry for the Environment** and (2) the **regional authority** in delegated jurisdiction for the territorial administrative area of which the conception is being prepared [Sec. 3 (f) and Sec. 20].

The regional authorities shall provide for the assessment of conceptions in cases when the affected territory covers exclusively the territory of the region, unless the Ministry is competent pursuant to Sec. 21 (d) [Sec. 22 (b)]. Pursuant to Sec. 21 (d) the Ministry shall provide for the assessment of conceptions in cases when the affected territory comprises the whole territory of a region or extends to the territories of several regions or the territory of a national park or the protected landscape area or if the affected territory comprises the territory of the whole state.

The Act No. 100/2001 Coll. (Sec. 10j) stipulates special provisions for environmental impact assessment of a conception if the conception is being prepared by a central administrative authority. In this case the SEA shall be performed by the Ministry.

In case of the transboundary environmental impact assessment of a conception the relevant authority shall be the Ministry for the Environment and shall proceed in cooperation with the Ministry of Foreign Affairs. The regional authority shall be obliged to submit the assessment of a conception to the Ministry for the Environment if (a) the affected territory can extend

beyond the territory of the Czech Republic, (b) the state, the territory of which can be affected by significant environmental impacts, so requests, or (c) the conception is planned to be implemented in the territory of another state and can have significant environmental impacts in the territory of the Czech Republic [Sec. 11 (1) and (3)].

DENMARK

The obligation to apply the SEA-procedure covers all public body: state agencies and local municipalities and regional councils. Thus, the authority competent to adopt the plan or program has under section 4 of the Act to ensure compliance with the SEA obligations. Before any plan or program is adopted, the competent public authority must at least make a screening if the draft plan has a major environmental impact and requires a SEA procedure. If the answer to this is positive, the public authority must ensure an environmental impact assessment of the plan is made and that the proposal for the plan together with the environmental impact assessment is subject to a public hearing.

FINLAND

According to the Finnish SEA Act, the authority responsible for the plan is also responsible for the assessment. The plans to be assessed are national or regional. Therefore, responsible authorities are national authorities (ministries and central agencies) or regional authorities (Regional Councils responsible for planning and development, regional State authorities). Local authorities are not excluded, but due to the scope of the plans that fall under the SEA Act, they are not likely to be responsible for an assessment.

FRANCE

Une circulaire du 6 mars 2006 est venue assurer que des éléments techniques, matériels ou juridiques susceptibles de concerner l'évaluation environnementale d'un document d'urbanisme et qui seraient détenus à d'autres échelles par d'autres collectivités publiques , puissent être repris à l'occasion de l'élaboration ou de la révision d'un document d'urbanisme inférieur, ainsi que la directive et la loi de transposition l'ont prévu. La reprise de ces informations suppose que les autorités décentralisées élaborant le document en aient connaissance. Le préfet , érigé au rang « d'autorité environnementale » a une mission d'information à cet égard . Il devra notamment fournir aux communes les études techniques en matière de prévention des risques et de protection de l'environnement mais aussi en matière d'inventaire général du patrimoine culturel. Ce qu'on appelle le « porter à connaissance » doit être complet et alimenté en continu.
Par ailleurs la collectivité territoriale compétente pour élaborer un SCOT ou un PLU peut consulter le préfet sur le degré de précision des informations que doit contenir l'étude environnementale du rapport de présentation : il s'agit d'une saisine facultative a pour finalité d'aider les collectivités publiques compétentes dans la réalisation de l'évaluation environnementale, en vue d'améliorer le contenu de celle-ci.
Il est important aussi d'indiquer que lorsqu'un document d'urbanisme, comme un SCOT ou un PLU, en cours d'élaboration est susceptible d'avoir des incidences notables sur l'environnement d'un autre État membre de la communauté européenne, ou lorsque cet autre

Etat en fait la demande, la consultation de cet État est obligatoirement effectuée. Cette saisine se fait par l'intermédiaire du Préfet avec avis donné au Ministre des Affaires Etrangères et donne un délai aux autorités étrangères pour donner leur avis, délai qui ne peut pas excéder trois mois.
Les préfets doivent rendre compte à chaque année au Ministre de l'Equipement chargé de l'urbanisme de la façon dont la procédure d'évaluation environnementale a été mise en œuvre au niveau de chaque département.(nombre d'avis en distinguant SCOT, et PLU , avec également une distinction au sein des PLU, notamment pour ceux ayant une incidence sur un site Natura 2000).

GERMANY

In Germany SEA is an integral part of the procedure for the preparation of a draft plan or programme, Therefore the competent authority for this planning procedure is at the same time responsible for the carrying-out of the SEA. Depending on the kind of plan or programme this can be a local, regional or federal authority.

HUNGARY

Plans and programmes overseen by authorities of national competence

- regarding protection of environment and nature conservation: National Inspectorate for Environment, Nature and Water
- regarding environmental health and hygiene of settlements: Office of the Chief Medical Officer
- regarding forestry, soil-protection, quantitative protection of arable lands and agricultural environment: Minister of Agriculture and Rural Development.

Plans and programmes overseen by authorities without national competence

- regarding protection of environment: inspectorate for environment, nature and water,
- regarding nature and landscapte conservation: national park directorate
- regarding environmental health and hygiene of settlements: Policy Administration Services of Public Health (conuty-based government offices)

THE NETHERLANDS

Both the central government, the provincial boards and the municipal boards may be responsible for these duties. This the depends of the plans to which the duty to make an EIS is linked. Structure visions according to the Physical planning act may be established by the municipal board, or the provincial board, or the minister of infrastructure and environment together with the minister involved. Destinationplans are in general local plans, established by the local board. The central government or the provincial boards may be responsible for the establishment of the plans of the specific sectoral legislation.

NORWAY

The Regional Municipality establishes regional plans.
The municipality establishes regional master plans for land use, municipal master plans for land use and municipal master plans for parts of the municipality, Area Zoning plans, and Zoning plans containing projects listed in Annex I to the Regulation. The municipality also establishes: Zoning plans if those plans includes or lays down a framework for subsequent administrative decisions relating to projects or activities listed in Annex II of the Regulation, Zoning plans including projects listed in the Regulation Annex II, Area Zoning plans entailing substantial changes of municipal master plans except those that concern the laying out of new areas for building purposes, and Detailed Zoning plans entailing changes of Regional master plans or Area Zoning plans.
For projects pursuant to sector legislation such as the Energy Act, the Watercourse Regulation Act, the Water Resources Act, the Petroleum Activities Act or the Natural Gas Act, and other sector legislation, the competent central authority is listed in Annex I in the Regulation. The Ministry of the Environment sometimes deal with large projects, for example the construction of a double railroad line from Oslo to Ski.

POLAND

The authority which prepares the draft documents referred to in Articles 46 or 47 of the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments is responsible for performing duties arising from the SEA-directive. The type of document being the subject of a strategic environmental assessment determines a kind of authority. It means that local, regional and central authorities are responsible for conducting of a strategic environmental assessment of the certain plans and programmes.

The Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments determines the bodies competent to provide their opinions and approvals within the procedure of strategic environmental assessment.

PORTUGAL

In accordance with the article 5, §1, the Decreto-Lei n.º 232/2007, 15th June, the authority in charge with preparing the plan or the project should accomplish the duties arising form the SEA-directive. These authorities are either municipalities or state's departments, depending on the kind of plan or program which is to be prepared and approved.

SLOVAK REPUBLIC

At the central level - Ministry of Environment of the Slovak Republic,
at the regional level - regional office of the environment,

at the local level - district office of the environment.

SLOVENIA

The Ministry of the Environment and Spatial Planning (MESP) - central authority is generally responsible for performing the duties arising from the SEA – directive. MESP adopts a decision whether the impacts of the plan implementation are acceptable or not and monitors the implementation of the plan. An inspection body (of MESP) is responsible for control over the implementation of the provisions of Environment Protection Act and of regulation adopted on the basis of this act.
The producer of a plan (ministries – central authority, competent municipality authority – local community) has an obligation to provide an environmental report in accordance with the SEA – directive and is therefore also responsible for performing the duties arising from the SEA – directive.

SWEDEN

It is the municipality or the authority that is changing or adopting the plan or programme that is responsible for carrying out the duties. Since many of the plans and programmes for which the SEA-directive applies are municipal, it is often the authorities on the local level that are responsible.

THE UNITED KINGDOM

Regulation 9 deals with the making of determinations by the responsible Authority as to whether a plan or programme is likely to have significant environmental effect. The criteria to be applied are set out in Schedule 1 to the Regulations (Article 3.5 of, and Annex 2 to, the Directive). Determinations cannot be made unless the responsible authority has consulted designated environmental authorities ("the Consultation Bodies"). The authorities can be local, regional or central.

IV. Does the competent authority normally ask other authorities on different administrative levels in the process of a strategic environmental assessment for their opinion or consultation?
IV. L'autorité compétente consulte-t-elle d'autres autorités situées à un niveau administratif différent dans le processus d'évaluation environnementale stratégique ?

AUSTRIA

Additionally to the information of the public, all relevant laws lay down the participation of other authorities and administrative bodies. The Federal Water Management Act (Wasserrechtsgesetz) for example lays down the participation of various authorities depending on the fields affected by the plan (e.g. nature conservation authorities, aviation authorities). Regarding regional planning law of the Laender, for example the Lower Austrian

Regional Planning Act (NÖ Raumordnungsgesetz) states i, that the Lower Austrian Chamber of Commerce and municipalities inter alia, may submit a comment on the strategic assessment.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:

After the SEA has been carried out, the draft plan or programme and the SEA, shall be considered again by the Advisory Committee. Advisory opinions are also requested from the Federal Council for Sustainable Development (a multi-stakeholder advisory council), the regional governments and every other body that the author feels it is appropriate to consult. They should deliver their opinion within a period of 60 days. If the plan of programme is believed to have transboundary effects, the competent authorities of the relevant states are consulted too.

FLE :

See also A III. After the SEA has been carried out, it has to be sent to the competent authority, that approves or disapproves the plan/programme within 50 days, and informs the other authorities and administrations as mentioned sub A III of her decision, as well as the authority that took the initiative for the plan/programme, that has to consult all the local communities that are concerned, as well as the SERV (Sociaal-economische Raad van Vlaanderen) and MINA-Raad (Milieu- en Natuuurraad van Vlaanderen). If the plan or programme is supposed to have transboundary effects, the competent authorities of the relevant states are consulted too.

BRU :

Before the SEA work starts, the authority that prepares the plan/programme asks the advice of the administrations/authorities that can be involved by the plan (under COBAT the *Commission régionale* and *Institut Bruxellois pour la Gestion de l'Environnement* or IBGE, as well as other concerned administrations or public organisations, for most other plans and programmes, depending on the scope, the consulted authorities are the Environmental Advisory Board, the Economical and Social Board for Brussels, the Regional Board for Nature Protection etc.). After the finalisation of the SEA follows a public consultation, including - if the plan or programme is supposed to have transboundary effects – consultation of the competent transboundary authorities, the aforementioned administrations and the IBGE.

BELGIUM (WALLOON REGION)

L'article D.56, paragraphe 4 précise que le Gouvernement ou la personne qu'il délègue transmet le projet de contenu du rapport ainsi que le projet de plan ou programme pour avis au CWEDD, aux communes concernées et aux personnes et instances qu'il juge nécessaire de consulter et que ces avis portent sur l'ampleur et la précision des informations que le rapport doit contenir.

Outre les communes dont il est question ci-dessous, le projet de plans ou programmes ainsi que le rapport sur les incidences environnementales sont soumis **pour avis**

* au CWEDD et

* aux autres personnes et instances que le Gouvernement juge utile de consulter.

Pour les plans ou programmes de catégorie A1, toutes les communes wallonnes sont évidemment concernées.

Pour les plans ou programmes de catégorie A2, l'article D.29-4 dispose qu'il appartient au Gouvernement de préciser les communes sur lesquelles une enquête publique doit être réalisée.

A préciser que lorsque le gouvernement wallon statue sur une demande d'exemption évoquée à la question II, il consulte alors le CWEDD, les communes concernées et les personnes et instances qu'il juge utile de consulter.

CZECH REPUBLIC

After the notification of a conception has been submitted, the relevant authority shall within 10 days of obtaining the notification send a copy thereof for a viewpoint to the affected administrative authorities and affected territorial self-governing units. The regional authority shall send a copy of the notification to the Ministry within the same period of time [Sec. 10c (2)].

The viewpoints are then taken into account when the relevant authority carries out the fact-finding procedure [Sec. 10d (2)].

The relevant authority shall without delay send the conclusion of the fact-finding procedure to inter alia the affected administrative authorities and the affected territorial self-governing units [Sec. 10d (6)].

The reviewer (a person authorized to prepare the evaluation) shall be authorized to require information essential for the preparation of the evaluation from inter alia the affected administrative authorities and the affected territorial self-governing units and these shall be obliged to provide him with information to the necessary extent [Sec. 10e (4)]. Rejecting disclosure of information shall be possible only on conditions laid down in special regulations (e.g. Act No. 123/1998 Coll. on the Right to Environmental Information, Act No. 148/1998 Coll., on the Protection of Classified Information, or Act No. 101/2000 Coll., on the Protection of Personal Data).

After the submitter submits the draft conception, incl. evaluation prepared by the reviewer, to the relevant authority, the relevant authority shall send the draft conception within 10 days of the date of its receipt to the affected administrative authorities and affected territorial self-governing units for a viewpoint [Sec. 10f (1), (2)].

The relevant authority shall base its statement on the assessment of impacts on the environment and public health on the draft conception, the viewpoints submitted thereon and the public hearing [Sec. 10g (1)]. The relevant authority shall without delay send the statement on the conception inter alia to the affected administrative authorities and affected territorial self-governing units [Sec. 10g (3)].

The approving authority shall be obliged to publish the approved conception, its justification and measures for monitoring and analysis of the impacts of the approved conception on the environment and public health. It shall be also obliged to inform the relevant authority, the affected administrative authorities and affected territorial self-governing units on publishing of this information within 7 working days [Sec. 10g (5)].

The affected administrative authorities within their scope of responsibilities pursuant to special regulations shall monitor the impacts of the approved conception on the environment and public health and shall be entitled to suggest a modification of the conception, if, in agreement with the approving authority, unexpected significant impacts on the environment or public health cannot be averted or mitigated in a different way [Sec. 10h (2)].

DENMARK

As part of the public hearing of the draft plan and the environmental impact assessment of the plan, there is an obligation of the public authority under section 6(4) of the SEA Act to inform and ask other effected public authorities for their comment. Moreover, as part of the screening procedure, the competent must according to section 4(3) of the SEA Act ask other effected authorities on their opinion of whether a SEA procedure is needed. If the competent authority fails to make such request to other public authorities, the Nature Appeal Board has find the plan is invalid. Thus in MAD 2005.957 Nkn the Nature Appeal Board annulled a local plan because the Municipality Council has decided that the local plan procedure didn't need a SEA procedure without asking other effected public authorities.

FINLAND

Considering whether an assessment is to be made or not and the scope of the assessment, the responsible authority shall consult regional authorities (*Centres for Economic Development, Transport and the Environment* responsible for regional development tasks of the state administration), as well as local Council environmental and health authorities and other authorities in the area affected.

THE AUTHORITY DRAFTING THE PLAN SHALL EVALUATE THE THE SOCIAL AND ENVIRONMENTAL EFFECTS OF THE PLAN. IN A PUBLIC HEARING, THE AIMS OF THE PLANS, THE DRAFT PLAN AND THE EVALUATION ARE MADE PUBLIC ON THE AUTHORITY WEBSITE, BY PUBLIC NOTICE AND THROUGH NEWSPAPER NOTICE. IN THE HEARING, ALL AUTHORITIES CONCERNED MAY COMMENT ON THE PLAN.

FRANCE

Le dispositif de contrôle matérialisé par un avis de l'autorité de l'Etat pose deux problèmes :

1. celui de l'indépendance : il n'y a pas de problème lorsque les plans qui font l'objet d'une évaluation environnementale sont décentralisés : les rapports sont rédigés sous la responsabilité des collectivités territoriales, et la qualité et le sérieux des rapports est apprécié par une autorité de l'Etat. En revanche, s'agissant des plans de l'Etat (c'est-à-dire des plans qui sont de la compétence du préfet de département ou du préfet de région) le contrôleur sera la même autorité que le contrôlé : c'est sous la responsabilité du préfet qu'est établie l'évaluation environnementale dont la qualité doit faire l'objet d'un avis. En France on va toutefois vers la décentralisation progressive des plans (ainsi pour l'élimination des déchets ménagers et des déchets industriels spéciaux depuis la loi du 13 août 2004) mais la question demeure notamment pour les schémas directeurs d'aménagement et de gestion des eaux , par exemple.

2. celui de la sanction du contrôle : l'autorité consultée n'émet qu'un simple avis qui ne lie pas l'autorité responsable du plan.

En tout état de cause, le contrôle de légalité que le préfet est chargé d'exercer sur les actes arrêtant et approuvant les documents pourrait être utilement fondé, dans certains cas, sur l'absence d'évaluation environnementale, sur le caractère incomplet ou la mauvaise qualité environnementale de celle-ci, ou sur l'absence de suivi périodique d'un document soumis à évaluation environnementale.

GERMANY

Pursuant to Article 14h UVPG and in line with the SEA Directive all "authorities whose environmental or health-related responsibilities are affected by the plan or programme" must be consulted. This can be authorities on all administrative levels. The decision which authorities are to be consulted in the respective procedure is made by the authorities preparing the plan or programme on a case-by-case basis.

Furthermore Article 14f paragraph 4 UVPG provides for an involvement of "authorities whose environmental or health-related responsibilities are affected by the plan or programme" in the scoping step of the procedure.

HUNGARY

Yes, the competent authority asks the opinion of the bellow mentioned authorities.

If concerned by plans and programmes, elaborated by authorities of national compatence takes part:

- regarding protection of geology and mineral properties: Minister of National Resources,
- regarding the protection of natural characteristics of natural curative factors and health resorts: Minister of National Resources
- regarding protection of historical monuments: Minister of National Resources
- regarding protection of built environment: Minister of National Development
- regarding chemical safety: Minister of National Resources
- regarding the prevention of industrial accidents: National Directorate of Disaster Recovery

If concerned by plans and programmes, elaborated by authorities of not national compatence takes part:

- regarding local environmental protection and nature conservation: notary of the affected municipality
- regarding the protection of built environment: local main-architecture office
- regarding quantitative protection of water: Inspectorate of the Environment, Nature, and Water
- regarding forest protection: the local agricultural office

- regarding soil protection: local agricultural office
- regarding quantitative protection of arable lands: local office of land administration
- regarding the protection of geology and mieral properties: mining district authority
- regarding the protection of natural characteristics of natural curative factors and health resorts: Office of the Chief Medical Officer
- regarding protection of historical monuments: the regional office of cultural heritage
- regarding chemical safety: National Institute of Chemical Safety of József Fodor National Public Health Centre
- regarding prevention of industrial accidents: local directorates of disaster recovery

THE NETHERLANDS

Art.7.8 EPA prescribes that before drafting an EIA the competent authority consults the advisors and other administrative authorities that according to the legal provision for the plan have to be drawn in the preparation of the plan, as far as the scope and the level of specification of the information that is of relevance for the plan and belongs tot the content of the EIS.
For example: the nationale waterplan and the regional waterplans according to art. 4.1 en 4.4 Waterwet are plans under EIA for a land reclamation, a land drainage or an embankment. (The criterium is 20 ha). According to art. 4.4 Waterdecree the minister of Infrastructure and Environment consults in the preparation of a national waterplan representatives form provincies, waterboards and municipalities, provincial boards and daily boards of waterboards of the areas of ……and the competent authorities of other countries in the districts.. of Rhine, Meuse, Schelde and Eems.

NORWAY

In accordance with Section 7, the proposed planning programmes or notices of assessment – programmes shall be circulated to the authorities concerned and special interest organizations for consultation and made available for public inspection. If the authorities concerned, on the basis of proposals for planning or assessment programmes, consider that the plan or project may conflict with national or important regional interests, this shall be stated in their comments on the proposed planning or assessment programme. On the basis of the proposal and the comments thereon, the competent planning authority shall prescribe a programme for the planning or assessment work. An account shall be given of the comments received and the way they have been assessed and taken into consideration in the prescribed programme. A copy of the prescribed programme shall be sent to those who have submitted comments on the proposed programme.
If the authorities concerned have considered that the plan or project may conflict with national or important regional interests, the competent authority shall submit the programme to the Ministry of the Environment before it is prescribed, cf. Section 8 of the Regulation.

Section 10 decides that proposed plans or applications with an environmental impact assessment shall be circulated to authorities and special interest organizations concerned for comments and made available for public inspection.

POLAND

According to Article 54 paragraph 1 (Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments) the authority which prepares the draft document being a subject of a strategic environmental assessment makes it, along with the environmental impact prognosis, subject to the opinion of the competent authorities. There are two main types of bodies taking part in the process of a strategic environmental assessment.

According to Article 57 the authority competent to provide its opinion within strategic environmental assessment shall be:

1) the General Director for Environmental Protection – in the case of documents prepared and modified by central government administration authorities;
2) the Regional Director for Environmental Protection – in the case of documents other than those mentioned in point 1.

The second kind of body taking part in a strategic environmental assessment is the State Sanitary Inspectorate. The authority of the State Sanitary Inspectorate competent to provide its opinion and approval within strategic environmental assessments shall be:

1) the Chief Sanitary Inspector - in the case of documents prepared and modified by central government administration authorities;
2) the Voivodship State Sanitary Inspector - in the case of documents other than those mentioned in points 1 and 3;
3) the County State Sanitary Inspector - in the case of local land-use plans.

The mentioned competent authorities participate in the decision making process. The authority which prepares the draft documents referred to in Article 46 (2) may decide, in agreement with the mentioned competent authorities, not to carry out a strategic environmental assessment where it determines that the implementation of the provisions of a given document would not have a significant impact on the environment.

Moreover the approval of the mentioned competent authorities are necessary to define the scope and level of detail of the information required in the environmental impact prognosis (one of the main documents in the procedure of a strategic environmental assessment)

The authority which prepares the draft document shall submit the approved document, to the competent authorities (the General Director for Environmental Protection or the Regional Director for Environmental Protection and the State Sanitary Inspectorate).

PORTUGAL

In accordance with article 5, §3, of the Decreto-Lei n.º 232/2007, 15th June, the authority competent to approve the plan or program should ask others authorities with environmental responsibilities to give her opinion about the plan or project.

SLOVAK REPUBLIC

Yes, the competent authority serves environmental report and draft strategy document to comment to the concerned authority.

SLOVENIA

Yes, according to article 42 EPA MESP forwards the plan and the environmental report to **the ministries** and **other organisations** that are with regard to the content of the plan responsible for particular environmental protection matters or for the protection or use of natural assets or protection of cultural heritage. MESP invites them to give their written opinions on whether the environmental report enables them to assess environmental impacts of the implementation of the plan from the position of their competencies or whether the environmental report is to be supplemented by additional or more detailed information to enable the environmental impact assessment to be carried out.

SWEDEN

Before a municipality or an authority decides on the scope of an environmental report, it shall ask other municipalities and regional authorities (County Administrative Boards) that are concerned for their opinion. For plans and programmes on national level, the Environmental Protection Agency and other national authorities should be heard.
Before a plan or a programme is adopted or changed, the responsible municipality or authority shall make the environmental report and the proposal for plan or programme available to other municipalities and authorities that are concerned, as well as to the public. They shall be given appropriate time to express their opinion.

THE UNITED KINGDOM

Regulation 4 deals with the designation of the consultation bodies (Article 6.3 of the Directive). In the case of every plan and programme to which the Regulations apply, the consultation bodies will consist of, or include, the Countryside Agency, English Heritage, English Nature and the Environment Agency. In respect of the part of a plan or programme to which the regulations apply that relates to any part of Northern Ireland, the Department of the Environment for Northern Ireland will also be a consultation body. In respect of the part of a plan or programme to which the regulations apply that relates to any part of Scotland, the Scottish Ministers, the Scottish Environment Protection Agency and Scottish Natural Heritage would also be consultation bodies. In respect of the part of a plan or programme to which the regulations apply that relates to any part of Wales, the National Assembly for Wales and the Countryside Council for Wales will also be consultation bodies.

Regulation 10 enables the Secretary of State to require responsible authority to provide him with relevant documents. It also enables him to direct that a particular plan or programme is likely to have significant environmental effects. In the latter case, any determination to the contrary made under Regulation 9(1) by a responsible authority ceases to have effect. If the responsible authority has not made any determination under that provision, the Secretary of State's Direction relieves it of the duty to do so.

V. What types of decision are resulting from a strategic environmental assessment proceedings?
V. Quelle est la nature des décisions issues des procédures d'évaluation environnementale stratégique ?

AUSTRIA

In general the SEA proceedings are integrated in the preparation and drafting of plans and programmes. When the plan is finally adopted by ordinance, the relevant authorities have to take into consideration the environmental report and the comments by the public and other authorities. For example the Federal Minister of Agriculture and Forestry, Environment and Water Management adopts the National Water Management Plan by ordinance which is generally binding. The same procedure applies to the adoption of the Federal Waste Management Act (Abfallwirtschaftsgesetz) or the adoption of Regional development programmes of the Laender by the competent authority.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
The environmental report, the opinions expressed in the course of the SEA procedure and the results of any transboundary consultations shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure. When a plan or programme is adopted the competent authorities shall issue a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report, the opinions expressed during the SEA procedure and the results of consultations have been taken into account. The statement mentions the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and the measures decided concerning monitoring.
FLE :
See FED
BRU :
See FED

BELGIUM (WALLOON REGION)

Il s'agit de décisions administratives, susceptibles de recours au Conseil d'Etat. Par conséquent elles doivent notamment répondre à l'obligation de motivation formelle des actes

administratifs en application de la loi du 29 juillet1991 sur la motivation formelle des actes administratifs.

CZECH REPUBLIC

The outcome from strategic environmental assessment proceedings is the statement on the assessment of impacts on the environment and public health by implementing the conception (hereinafter the "**statement on the conception**"; Sec. 10g). The statement shall be based on the draft conception, the viewpoints submitted thereon and the public hearing.
In its statement, the relevant authority may express disagreement with the draft conception from the point of view of potential negative impacts on the environment and public health, it may furthermore propose its completion, or, if appropriate, propose compensatory measures and measures for monitoring impacts on the environment and public health by implementing the conception.
The conception may not be approved without the statement on the conception. The approving authority shall be obliged to take the requirements and conditions resulting from the statement on the conception into account, or if this statement contains requirements and conditions and these are not included or only partly included in the conception, the approving authority shall be obliged to justify its procedure.
The approving authority shall be obliged to publish the approved conception, its justification and measures for monitoring and analysis of the impacts of the approved conception on the environment and public health.

DENMARK

The SEA-procedure implies that an environmental impact assessment report of the draft plan must be carried out before the public hearing of the draft plan according to section 6 of the SEA Act. The environmental report must comply with the requirements laid down in section 7 of the SEA Act which is almost identical with article 5 of the SEA Directive. When the environmental impact assessment report on the draft plan has been made a public hearing of the plan and the environmental report must be held in accordance with section 8 of the SEA Act (almost identical with article 6). The final adoption of the plan must according to section 9(1) of the SEA Act take into account the environmental report and the comments under the public hearing. Moreover, according to section 9(2) of the SEA Act, the competent authority has the obligation to explain how environmental consideration has been taken into account in the final plan. The final plan and the explaining report must according to section 10 of the SEA Act be made public. Finally the competent authority must according to section 11 of the SEA Act adopt a plan for surveillance of the environmental impact when the plan is carried out.

FINLAND

SEA IS TO BE MADE FOR CERTAIN PLANS AND PROGRAMS LAID DOWN BY LAW (SEE QUESTION A2). THE FUNCTION OF THE SEA IS TO IMPROVE THE PLANNING PROCESS AND TO OPEN IT UP TO THE PUBLIC. THEREFORE, THE ASSESSMENT AS SUCH RESULTS IN NO DECISION BUT INSTEAD, ASSESSES THE ENVIRONMENTAL IMPACTS OF DIFFERENT PLANNING OPTIONS. ON THE BASIS OF

THE ASSESSMENT, THE RESPONSIBLE PLANNING AUTHORITY MAKES THE FINAL PLAN OR PROGRAM. THE CONCLUSIONS OF THE ASSESSMENT ARE NOT BINDING.

GERMANY

In Germany strategic environmental assessments are fully integrated in the procedure for preparation and adoption of plans and programmes. Decision-making in this context means that while deciding on the adoption or rejection of the draft plan or programme the results of the SEA must be considered. This means, that the content of the environmental report as well as the outcome of the consultation of the public, authorities and, if a transboundary SEA procedure has been carried out, other affected countries have to be taken into account. The type of decision-making depends on the respective mechanism for adopting the kind of plan or programme in question.

HUNGARY

The draft plan or programme and the environmental assessment, together with the summary of opinions and remarks of the environmental assessment may be submitted to the accepting authority, or in case the accepting authority is the national Parliament, then to the Government. The draft can be accepted or refused by the authority.

THE NETHERLANDS

According to the Netherlands system of regulation this decisions may be only the decisions mentioned in the annexes of the Decree on EIS.
I do not have more specific information about this question. One may expect that the environmental information gathered in the EIS will be of influence on the content of the plan. The question is whether there would not be such influence without having an EIS. One may expect that in the Netherlands situation also without an EIS environmental consequences would be gathered and taken into account. The advantage of and EIS will be that this will taken place on a systematic base.

NORWAY

Decisions made by the administrative authorities in plans and in relation to EIAs prior to projects are not "individual decisions" or "enkeltvedtak" on the merits, cf. the Public Administration Act Section 2. They are rather process – leading decisions, or decisions which steers the directions or progress of the plans or projects and do not decide individual cases on the merits.

POLAND

The authority which prepares the draft documents referred to in Article 46 (2) may decide, in agreement with the competent authorities referred to in Articles 57 and 58, not to carry out a strategic environmental assessment where it determines that the implementation of the provisions of a given document would not have a significant impact on the environment.
The draft document referred to in Articles 46 or 47 must not be adopted, unless the premises referred to in Article 34 of the Nature Conservation Act of 16 April 2004 occur, where the strategic environmental assessment indicates that it may have a significant adverse effect on a Natura 2000 site.

The authority which prepares the draft document (strategic documents) is obliged to take into account the findings of the environmental impact prognosis and the opinions of the authorities (the General Director for Environmental Protection or the Regional Director for Environmental Protection and the State Sanitary Inspectorate) and consider the comments and suggestions submitted as a result of public participation.

If there aren't any legal obstacles the procedure of the strategic environmental assessment is finished by a resolution on adoption of the documents referred to in Article 46 and 47 (the draft documents requiring a strategic environmental assessment).

PORTUGAL

The final decision from a strategic environmental assessment proceeding is regulated in article 9 of the Decreto-Lei n.º 232/2007, 15th June. That could be an approval decision or a non approval decision or an approval decision with some conditions or obligations in charge of the authority responsible for the implementation of the plan in order to protect or to mitigate the eventual environmental damages. It must be stressed that the plans or programs should be submitted at the approval proceedings with a environmental report (article 6 of the Decreto-Lei n.º 232/2007, 15th June), which includes the reasons of placing the damaging installation at the zone or the area chosen, the reasons of rejecting alternative solutions more environmental friendly and the mitigating environmental impact measures deemed necessary to prevent environmental damages.

SLOVAK REPUBLIC

Final opinion on the assessment of the strategic document,
approved startegic document,
approved strategic document in other version which has been submitted.

SLOVENIA

According to articles 42/3 and 42/4 EPA after the written opinions of ministries and organisations regarding the environmental report have been obtained, MESP informs the plan producer that the environmental report **conforms** or that it **must be supplemented** with more

detailed information and gives hime time limit to reply. This supplemented environmental report then must be again forwarded to the ministries and organizations to give written opinions. In case that producer of the plan does not supplement environmental report it is deemed that the plan producer has abandoned the intention to draw up the plan. Taking into consideration all the opinions of the ministries and organizations according to article 46 EPA MESP then **approves** or **refuses** the plan depending on its consideration whether the impacts of the plan implementation are acceptable or not.

SWEDEN

The plans and programmes can have different legal status. For example a comprehensive plan for the land use of a municipality is binding to neither authorities nor public, and the content of such a plan cannot be appealed. A detailed development plan on the other hand, is legally binding and can be appealed to the Land and Environmental Court.
A programme of measures to achieve environmental standards is binding to authorities but not to the public, and its contents cannot be applied.

THE UNITED KINGDOM

Environmental assessment under the Regulations includes the preparation of an environmental report (Regulation 12; Article 5 of the Directive). The matters to be included in the environmental report are specified in Schedule 2 to the Regulations (Article 5.1 of, and Annex 1 to the Directive).

VI. How does the authority ensure the public access to environmental information in the proceedings based on the SEA-directive?

VI. De quelle manière l'autorité compétente assure-t-elle l'accès du public de l'information environnementale dans les procédures engagées dans le cadre de la Directive SEA ?

AUSTRIA

As the SEA directive does not provide detailed specifications about the procedures for public consultation, many different methods are laid down in the laws applicable. The most important methods are public announcements and publications in the press or on the internet. The duration of the public consultation differs; in general the consultation period lasts at least one month. The Federal Water Management Act for example lays down consultation periods up to six months.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:

The draft plan and programme and the SEA are subject to public participation. The public consultation is announced, at the latest 15 days before the start of it, by an announcement in the *Moniteur belge*, on the federal portal website2 and by another means of communication determined by the competent authority. The consultation period runs for 60 days and is suspended in the period from 15 July to 15 August. During the consultation period everyone can consult the draft plan or programme and the SEA (as a rule they are published on the internet) and send its comments by post or electronically to the author of the plan3.

FLE :

The draft plan/ programme and the outline of the SEA, as notified to the competent authority, and the final plan/programme and SEA are subject to public participation. The first public consultation is announced on the website of the competent authority4, and by the authority that prepares the plan/programme. The second consultation (the finalised SEA) is organised by the local authorities.

BRU :

Under COBAT, as well as under the SEA-Ordinance, the draft plan/programme and the finalised SEA are submitted to public consultation.

BELGIUM (WALLOON REGION)

L'article D 29-7'prévoit que les collèges communaux des communes concernées font procéder à **l'affichage à la maison communale** et aux endroits habituels d'affichage de l'avis d'enquête publique au plus tard 5 jours avant le début de l'enquête et pendant toute la durée de celle-ci

Outre les modalités d'affichage énoncées ci-dessus il appartient à l'auteur du plan ou programme de procéder, dans les 8 jours précédant l'enquête publique, à **une autre forme de publicité** qui est fonction de la catégorie à laquelle le plan ou programme appartient.

Pour les plans ou programmes de catégorie A1 :article D29-8,a)

* par un avis inséré au Moniteur belge ;
* par un avis inséré sur le portail environnement du site de la Région wallonne et sauf pour les conventions environnementales (article D-82 et suivants) ;
* par un avis inséré dans au moins 3 journaux diffusés dans l'ensemble de la Région wallonne dont un en langue allemande ;
* par un communiqué diffusé à 3 reprises par la RTBF et le centre belge pour la radiodiffusion télévision de langue allemande (BRF).

Pour les plans ou programmes de catégorie A2 ou B : (article D29-8,b))

* par un avis inséré dans les pages locales de 2 journaux ayant une large diffusion dans la Région wallonne dont au moins un est diffusé sur le territoire des communes concernées par l'enquête publique et, si l'une des communes concernées est de langue allemande, au moins un des journaux est d'expression allemande ;
* par un avis inséré dans un bulletin communal d'information ou un journal publicitaire toutes-boîtes distribué gratuitement à toute la population ;

* sur le site internet de la commune concernée.

Durée de l'enquête publique
(article D29-13)
Pour les plans ou programmes de catégorie A1 ou A2 : 45 jours.
Pour les plans ou programmes de catégorie B : 30 jours.
Si le dernier jour d'enquête est un samedi, dimanche ou jour férié légal, l'enquête publique se prolonge jusqu'au premier jour ouvrable suivant.
Ces durées sont suspendues entre le 16 juillet et le 15 août et entre le 24 décembre et le 1er janvier.

Le dossier est consultable à l'administration communale aux heures d'ouverture des bureaux ainsi qu'un jour par semaine jusqu'à 20 heures ou le samedi matin sur rendez-vous pris 24 heures à l'avance auprès du conseiller en environnement ou, à défaut, du collège communal ou de l'agent communal délégué.
Toute personne peut obtenir des explications auprès du conseiller en environnement ou, à défaut, du collège communal ou de l'agent communal délégué.
Les réclamations et observations sont envoyées par télécopie, courrier électronique, courrier ordinaire ou remises au conseiller en environnement, au collège communal ou à l'agent communal délégué avant la clôture de l'enquête publique ou le jour de la séance de clôture.
Les réclamations et observations verbales sont recueillies sur rendez-vous par le conseiller en environnement ou, à défaut, l'agent communal délégué qui les consigne et les transmet au collège communal avant la clôture de l'enquête.
Le dernier jour de l'enquête publique, un membre du collège communal ou un agent communal délégué à cet effet organise une séance de clôture où sont entendus tous ceux qui le désirent.
Le conseiller en environnement ou, à défaut, le membre du collège communal ou l'agent communal délégué à cet effet préside la séance.
Celui-ci, dans les cinq jours de la clôture de l'enquête publique, dresse le procès-verbal de clôture en y consignant les remarques et observations émises et le signe.
Il est dommage que le législateur n'ait pas précisé si le procès-verbal pouvait être mis à la disposition du public.

DECISION
Les articles D.29-21 et D.29-22 fixent les **modalités de publicité de la décision.**
1° Pour tous les plans ou programmes, la décision doit être annoncée par :
* une publication au Moniteur belge
* une publication sur le portail environnement du site internet de la Région wallonne.

2° Pour les plans ou programmes de catégorie A2, en plus des obligations visées sous le 1°, la décision doit également être annoncée par une publication sur le site internet de la ou des communes concernées.
3° Pour les plans ou programmes de catégorie B, en plus des obligations visées sous le 1°, par un avis affiché endéans les 10 jours de l'adoption ou de la notification et pendant une durée de 20 jours dans la ou les communes où une enquête publique a été organisée.
L'avis défini au paragraphe 2 de l'article D.29-22 mentionne :
* l'objet de la décision;

* l'endroit où elle peut être consultée;
* l'existence éventuelle d'une déclaration environnementale (obligatoire pour toutes décisions concernant les plans et programmes - article D.60);
* les modalités de suivi;
* les heures de consultation possibles;
* les modalités de recours;
* le droit pour toute personne à l'accès au dossier.

CZECH REPUBLIC

The access of public to environmental information is ensured by the Act No. 100/2001 Coll. in several stages of the process:
(1) After the notification of a conception has been submitted, the relevant authority shall within 10 days of its receipt publish the **notification** on the internet and information on the notification pursuant to Sec. 16 [Sec. 10c (2)].
(2) The relevant authority shall publish in accordance with Sec. 16 the **outcome of the fact-finding procedure** [Sec. 10d (6)].
(5) After the submitter has submitted **the draft conception**, the relevant authority shall publish it on the internet and also information on the draft conception pursuant to Sec. 16 [Sec. 10f (2)].
(6) The submitter shall be obliged to publish **information on the place and time of the public hearing** on the draft conception on its official notice board, on the internet and in at least one other way usual in the affected territory (e.g. in the press, etc.), within at least 10 days before its holding [Sec. 10f (3)].
(7) The submitter shall be obliged to publish on the internet the **minutes taken on this public hearing** at the latest within 5 days of the date of the public hearing [Sec. 10f (4)]. Facts protected by special regulations [e.g. Civil Code, Commercial Code, Penal Code, or the Act on Data Protection] shall not be the subject of a public hearing [Sec. 17 (7)].
(8) After the relevant authority has issued the **statement on the conception** it shall publish the statement pursuant to Sec. 16 [Sec. 10g (3)].
(9) The approving authority shall be obliged to publish **the approved conception**, its justification and measures for monitoring and analysis of the impacts of the approved conception on the environment and public health.
Publication of information on documents obtained during the assessment and on public hearings is regulated by Sec. 16 of the Act No. 100/2001 Coll. This provision lays down the range of information that the relevant authority shall publish, as well as place and method of publication:
"(1) The relevant authority shall ensure that information is published on
[...]
f. the notification of a conception and when and where it may be perused;
g. the draft conception and when and where it may be perused;
h. the consultation within transboundary assessment.
(2) The relevant authority shall also ensure that the conclusion of the fact-finding procedure, the EIA statement and statement on a conception are published.

(3) The relevant authority shall ensure that, information and statements referred to in paragraphs 1 and 2 are published
a. on the official notice boards of the affected territorial self-governing units,
b. on the internet, and
c. in at least one of the other ways usual in the affected territory (e.g. in the local press, on the radio, etc.).
[...]
(5) Information that cannot be made public pursuant to a special regulation [e.g. Civil Code, Commercial Code, Penal Code, or the Act on Data Protection] shall be deleted from information and statements made available to the public pursuant to paragraphs 1 and 2."
To sum up, the public may peruse the published documents, make extracts and copies of them, and attend the public hearing.
Moreover, pursuant to Sec. 23 (1) the relevant authority, affected administrative authorities and affected territorial self-governing units shall be obliged to make all documents, prepared in the framework of the assessment according to this Act, available pursuant to special regulations – i. e. the Act No. 123/1998 Coll. on the Right to Environmental Information.
Information about the SEA procedure in individual cases may be find out also in the **information system on SEA** which is run by the CENIA (the Czech Environmental Information Agency; a state allowance organization reporting to the Ministry of the Environment). The information system is available at the following address: http://eia.cenia.cz/sea/koncepce/prehled.php

DENMARK

Public access to environmental information is ensured by the public hearing. In practice there will be a public announcement in newspaper that the competent authority has drafted a plan and an environmental impact assessment of the plan and what the drafted plan is about (for example a plan for a windmill farm, e new city area or a new industrial area). The announcement will inform the public that all detailed information of the drafted plan and the environmental impact assessment can be achieved by contacting the competent authority.
The access to enforce the right for the public concerned created by the SEA Directive was in the first SEA Act (no. 316 of 5 May 2004) rather limited and depend on whether their was access to administrative appeal under the legislation which found the basis for plan. After an opening letter from the Commission the SEA Act was amended by the Parliamentary Act no 250 of 31 March 2009 on amending the SEA Act which by section 16(2) of the SEA Act now provide access to administrative appeal to the Nature Appeal Body on missing SEA or failure in the Sea procedure for any plan adopted by public authorities, except for plans adopted as legislation by Parliament.

FINLAND

See question A4 above. Hearing is public and is announced by newspaper notice stating the matter and where the assessment documents are available. The assessment materials are also made available on the website of the responsible authority. Normally, the hearing is in writing, but hearing meetings can be arranged.

FRANCE

Les textes règlementaires organisent un système de publicité de l'avis porté sur la qualité du rapport envIronnemental, ce qui peut pallier l'absence de sanction du contrôle.Cet avis, s'il est émis, doit être joint au dossier d'enquête publique ou de mise à disposition du public (art. R. 122-21 du code de l'environnement ; art. R. 121-15 du code de l'urbanisme) Pour que cet avis soit réel, les textes obligent à saisir l'autorité de contrôle « trois mois au plus tard avant l'ouverture de l'enquête publique ou de la consultation du public», la méconnaissance de ces délais devant être considérée comme de nature à vicier la procédure. On peut penser qu'il sera difficile dans ces conditions aux auteurs d'un plan d'organiser une procédure de consultation du public sans améliorer le rapport environnemental, dès lors qu'ils devront publier un avis qui pourra en contester la qualité.

GERMANY

On the federal level, according to Article 14i UVPG, the draft plan or programme, the environmental report and further documents which the competent authority considers relevant have to be displayed for public inspection at an early stage and for an appropriate period of time of at least one month. With due regard to the nature and content of the plan or programme, the display location shall be determined by the competent authority in such a way as to ensure effective participation of the public affected. A public notice is to inform about the opportunity of inspection.

The public affected may comment on the draft plan or programme and the environmental report. For such comments, the competent authority sets an appropriate timeframe of at least one month. A hearing must take place for certain plans and programmes as provided by national law.

The Länder in their legislation mostly refer to these provisions. Some Länder also provide that documents can additionally be published on the Internet and that comments can also be communicated electronically.

In some specific provisions, as for example in the Federal Building Code, the opportunity to comment in the framework of public consultation is not restricted to the public affected.

HUNGARY

To make comments on environmental assessments or to the drafts of plans and programmes, the elaborator publishes the following:

- the aim of the plan or programme
- the place and time where the compliance documentation of plan and programme—including the environmental assesment—can be checked
- the possbilities of making comments

Opinions and comments must be submitted within thirty days. The elaborator only has to consider those opinions and comments submitted within this thirty-day period. The draft of the assessment must be published by the elaborator in at least one national or local daily newspaper. If the elaborator has a homepage, the information must be published here, as well.

THE NETHERLANDS

Public participation is a common element in the legal proceedings for many plan in the Netherlands. For example: art…….. In the case it is not, art. 7.11 EPA prescribes tot on the draft of such a plan art. 3:11 and 3:12 of the General Act on administrative law are applicable. These articles are part of the so called uniform public preparation procedure of this act. This procedure is applicable on f.i. the process of license granting in building and environmental cases. Art. 3.11 holds that the draft decision (on a plan) is made public by the competent authority, that art. 10 of the Act on openness of public administration is applicable, that the authority will supply copies of the files that are made public and that these files are made public for a period of six weeks. After this period the files remain public, but the period restricts the possibility to raise objections within six weeks. Art. 3:12 holds that the competent authority gives notice of the possibility to see the files in daily newspapers or local papers. In this notice the place where and the time within the files may be seen is mentioned, who will be entitled to raise objections, how this should be done an in some cases the time within a decision should be taken.
Besides this, the EPA and the Act on openness of public administration contain specific provisions on openness of environmental information. According to the Act on openness of public administration information will be given by public authorities in fulfilling there tasks. This information is given both on the own initiative of the public authority and be request. Art. 19.1 EPA gives a definition of environmental information. The Act on openness of public administration holds some specific provisions on environmental information. The act is amended on this points to meet the requirements of the Arhus-convention. In addition to the Act on openness of public administration the EPA holds some specific articles on f.i. openness of files related to environmental licenses, the duty to give information on own initiative of public responsibilities, functions and public services related to the environment and it holds a specific regulation on confidentialness of information in an application for an environmental license.

NORWAY

In accordance with Section 7, the proposed planning programmes or notices of assessment – programmes shall be circulated to the concerned special interest organizations for consultation and made available for public inspection. Section 10 decides that proposed plans or applications with an environmental impact assessment shall be circulated to the concerned special interest organizations for comments, and made available for public inspection. Relevant background documents and expert reports shall be available at the premises of the competent authority and the party proposing the project.
Subject to Section 13, the proposed plans or applications with an environmental impact assessment and any expert reports shall be made available publicly in national newspapers and on the Internet. The written presentation or the recommendation with grounds shall be

made available to the general public in the same way. The resulting administrative decision in the case shall also be announced publicly. In addition, and as far as possible, the documents shall be made available on the Internet.

POLAND

The authority which prepares a draft document requiring public participation shall provide the public without an undue delay with information concerning:

1) the launch of the preparation of the draft document and its subject matter;
2) the possibilities of becoming acquainted with the necessary documentation of the case and the place where it is available for review;
3) the possibility of submitting comments and suggestions;
4) the manner and place for submitting comments and suggestions, providing, at the same time, for at least 21-day period for their submission;
5) the authority competent for handling comments and suggestions;
6) the procedure for the transboundary impact on the environment, where it is conducted.

The public may submit comments and suggestions:

1) in written form;
2) verbally to be recorded in the minutes;
3) using the means of electronic communications without the need to secure them with the safe electronic signature referred to in the Act of 18 September 2001 on the Electronic Signature.

The authority which prepares a draft document requiring public participation is obliged to:

1) consider comments and suggestions;
2) enclose with the adopted document the justification containing information on public participation in the procedure and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used.

The authority which prepares a draft document requiring public participation shall inform the public that the document has been adopted and about the possibilities of becoming acquainted with its content.

PORTUGAL

In accordance with article 7, §§ 6 and 7, of the Decreto-Lei n.º 232/2007, 15th June, the draft of the plan or of the program submitted to strategic environmental assessment proceeding should be made known to the public through newspapers of national and regional level.
In accordance with the article 7, §8 of the Decreto-Lei n.º 232/2007, 15th June, the draft of the plan or of the program submitted to strategic environmental assessment proceeding should be accessible to the public at the administration buildings or at the internet institutional sites.

SLOVAK REPUBLIC

Competent authority publishes on the website of the Ministry individual procedures in the SEA process,
concerned commune inform the public on the official board, by local press, local TV or similar about individual procedures in the SEA process.

SLOVENIA

The public access to environmenal information in the proceedings based on the SEA – directive is according to article 43 EPA ensured by **the public participation.** After the environmental report is found to be in conformity the plan producer must, in the procedure for its adoption, make the plan and environmental report available to public by submitting it to a **public debate** for at least 30 days, thus enabling public discussion on the documents. During the submission to a public debate the public has **a right to give opinions and make comments** on the plan and the environmental report. A plan producer must indicate the place and period of submitting the plan to public exhibition and public debate and the method of giving opinions and comments by a public announcement by locally established methods and on the global network.

SWEDEN

How the environmental report and the proposal for plan or programme are made available to the public is generally decided from case to case. According to the guidelines published by the Environmental Protection Agency, it is often suitable to advertise in the media. Information on the consultation should at least be given on the website or on the notice board of the municipality or authority.
When it concerns special kinds of plans or programmes, the procedure concerning consultation can be regulated in detail. That is the case for plans (comprehensive plans for the land use of a municipality, and detailed development plans) according to the Planning and Building Act. In these cases the environmental report and the proposal for a plan is always advertised in newspapers. When it concerns comprehensive plans, the plan is exhibited for at least two months after the advertisement. Detailed development plans must be exhibited for at least three weeks and a copy of the advertisement is always sent to known parties.

THE UNITED KINGDOM

Regulation 13 specifies the consultation procedures that must be undertaken in relation to a draft plan or programme for which an environmental report has been prepared under these Regulations (Articles 5.4 and 6 of the Directive). Once the information is provided in an environmental report, there must be consultation with —the Consultation Bodies and with the public, including relevant environmental non-Government organisations, in a similar way to EIA. Unlike EIA, however, authorities responsible for preparing a plan or programme have to consult the consultation bodies at an earlier stage on the scope and level of detail of information to be included in the report, effectively providing for mandatory scoping. A further noticeable difference is that environmental information be taken into consideration during the plan-making process, rather than simply before adoption; the public must be given

an "early and effective opportunity within appropriate time frames" to comment. Precisely what this means is left to the member state.

VII. Who is authorized to take part in a strategic environmental assessment proceedings? What about for example people living in the neighbourhood, NGO's and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?
VII. Qui est autorisé à prendre part aux procédures d'évaluation environnementale ? Qu'en est-il par exemple des personnes vivant dans le voisinage, des ONG et des autorités situées à un niveau administratif différent (local, régionale, centrale)? Quels sont les droits des pratiquants aux procédures ?

AUSTRIA

In general neighbours, NGO´s and different authorities (see also question IV above) can submit comments on the proceeding. These comments have to be taken into consideration but are not binding for the competent authority. As stated above, SEA-procedures often lead up to the adoption of a plan by ordinance. Under certain and exceptional conditions, that is, if this ordinance directly and immediately infringes legal rights of individuals concerned, they can file a complaint against an ordinance at the constitutional court (Verfassungsgerichtshof).

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
The public participation procedure is open to the "public", that is: "one or more natural or legal persons and their associations, organizations or groups, including those aiming to protect the environment." So there is not any restriction as who should have access to the participation procedure. They have the participation rights contained in the Act and described in answer to question VI. However, when for one or another reason those rights would not been respected, legal proceedings are subject to respective conditions set out for the different types of proceedings.
FLE :
See FED
BRU :
See FED
3 See:
http://www.health.belgium.be/eportal/Environment/Inspectionandenvironmentalrigh/SEAStrategivEnvironme
ntalAsses/index.htm?fodnlang=en
4 See:
http://www.lne.be/themas/milieueffectrapportage/raadplegen-milieueffectrapportages/dossierdatabank

CZECH REPUBLIC

The participation of public in the SEA procedure is ensured by the Act No. 100/2001 Coll. in several stages of the process:
(1) Every person may send his or her written viewpoint on the notification of the conception to the relevant authority within 20 days of the day when the notification was published [Sec. 10c (3)]. The viewpoints are then taken into account when the relevant authority carries out the fact-finding procedure [Sec. 10d (2)].
(2) Every person may attend the public hearing on the draft conception.
(3) Every person may send his or her written viewpoint on the draft conception to the relevant authority at the latest within 5 days of the date of the public hearing on the draft conception [Sec. 10f (5)].
(4) The relevant authority shall issue the statement on the conception on the basis of the draft conception, the viewpoints submitted thereon and the public hearing [Sec. 10g (1)].
Legal rights. The public can in the light of the above mentioned facts express their viewpoints which shall be taken into account by the relevant authority when carrying out the fact-finding procedure as well as when issuing the statement on the conception.
For the participation of affected administrative authorities see question IV above.

DENMARK

According to section 8(3) of the SEA Act the public must have at least 8 weeks to comments on the drafted plan and the environmental impact assessment. The public is defined by section 1(3)(4) of the SEA Act which define the public as any physical or legal person who direct or indirect are effected by the plan or program, and any organization or association which has the protection of the environment, the nature, the cultural heritage or the landscape as the objective provided the organization or association has at least 100 members.

FINLAND

PUBLIC PARTICIPATION IN SEA OR EIA IS UNLIMITED. ANY PARTY THAT IS AFFECTED BY THE PLAN IN QUESTION, OR RESIDENT IN THE AREA, OR JUST INTERESTED IS INVITED TO COMMENT ON THE ASSESSMENT. ALSO NGO'S, WHOSE GOALS OR ACTIVITIES ARE AFFECTED BY THE PLANS ARE INVITED. ALSO EVERY AUTHORITY ON THE NATIONAL, REGIONAL OR LOCAL LEVEL, THAT FEELS A CALL TO COMMENT MAY DO SO.
PARTICIPANTS IN THE EA PROCESS HAVE THE RIGHT OF OPINION AND OF HAVING THEIR COMMENTS RECORDED IN THE HEARING PROCEEDINGS. OPINIONS EXPRESSED IN THE PROCESS ARE NOT BINDING TO THE AUTHORITY.

FRANCE

La procédure d'information et de participation du public est au cœur du dispositif d'évaluation environnementale dans la directive.
En droit français, déjà avant la directive, la plupart des plans et programmes devant comporter un rapport environnemental, notamment les documents d'urbanisme, étaient précédés d'une enquête publique et l'article L. 122-8 du code de l'environnement a considéré que cette

enquête publique répond déjà aux exigences de la directive. Le seul apport de la réforme pour les plans ainsi concernés est d'adjoindre au dossier d'enquête le rapport environnemental et l'avis de l'autorité de contrôle.
Pour les quelques documents non soumis à enquête publique (schémas départementaux de carrière, plans régionaux de déchets industriels spéciaux etc…) le législateur a institué une nouvelle procédure d'information et de consultation du public par mise à disposition. Le texte (R.122-21 du code de l'environnement) laisse une grande liberté d'appréciation aux autorités organisatrices, les seules obligations étant qu'il y ait une information sur l'organisation de la procédure, que soit élaboré un dossier et que soient définies une période et des modalités de consultation de ce dossier par le public. Des textes particuliers pour tel plan ou programme mettent en œuvre ces principes .
Enfin, pour transposer l'article 9 de la directive, qui concerne l'information qui doit être donnée au public lors de la décision d'approbation du plan, L'article L. 121-10 du code de l'environnement prévoit non seulement l'obligation de tenir le plan adopté à disposition du public, mais surtout de l'accompagner d'une déclaration résumant la manière dont il a été tenu compte dans la décision définitive du rapport environnemental et des consultations les accompagnant . Cette déclaration doit également justifier les choix opérés et les mesures destiné.es à assurer le suivi dans le temps des incidences du plan sur l'environnement.

La transposition de la directive a introduit en droit français pour les plans et programmes les plus importants des obligations supplémentaires de motivation et un système d'évaluation de l'efficacité des procédures de participation du public de nature à en renforcer la portée.

GERMANY

The SEA procedure in Germany is open for participation of

- authorities whose environmental or health-related responsibilities are affected by the plan or programme (see question A. IV. above),
- the public, including NGOs (see for the procedure question A. VI. above),
- if transboundary impacts of the plan or programme are likely, the authorities and the public of any affected state (see Article 14j UVPG).

With regard to consultations of the public, the UVPG distinguishes between the public and the public affected. Article 2 para. 6 UVPG defines:

For the purposes of this act "the public" shall refer to individual or several natural or legal persons or groupings of such persons. For the purposes of this Act, with regard to participation in procedures pursuant to paragraph (1) sentence 1 and paragraph (4), the "affected public" shall refer to any individual whose interests are affected by a decision pursuant to paragraph (3) or a plan or a programme within the meaning of paragraph (5); this shall also include associations whose activities as described in their statutes are affected by a decision pursuant to paragraph (3) or a plan or a programme within the meaning of paragraph (5), including associations which promote environmental protection.

Authorities and the public affected participating in the consulting procedure have the right to comment on the draft plan or programme and on the environmental report.

The right to file an appeal against plans or programmes subject to an SEA depends on the kind of plan or programme. With regard to land-use-plans pursuant to Sections 6 and 10 of the Federal Building Code for example an appeal may be filed according to Article 47 of the Administrative Court Proceedings Code (*Verwaltungsgerichtsordnung* – VwGO). The right of NGOs to appeal is regulated by the Act Concerning Supplemental Provisions on Appeals in Environmental Matters pursuant to EC Directive 2003/35/EC (Environmental Appeals Act) of 7 December 2006 (Federal Law Gazette I p. 2816).

HUNGARY

The *concerned public* may take part in a strategic environmental assessment. *Concerned public* is defined as a natural person, legal person or organisation without legal personality

- that is affected or could be affected by a decision which may be subject to an environmental report; or
- that is otherwise interested in the decision, especially environmental or other non-governmental organisations, whose scope of activity is affected by the decision that may be subject to an environmental report; or
- that is qualified as such by other laws or by the elaborator

The *concerned public* may submit comments and ask questions, which must be considered by the elaborators as long as they are submitted within the thirty-day deadline.

THE NETHERLANDS

According to the Netherlands legislation everybody is authorized to take part in an environmental assessment procedure. This means people living in the neighbourhood, bud also living on a big distances, NGO's and administrative authorities. It is not needed to have a specific interest. Bud the material possibilities are restricted. Compared with some years ago the procedure for EIS is streamlined; so there is only an indirect legal provision to give comments on a draft EIS. The EIS and the plan are rather strict related.
As already said art. 7.8 EPA holds the obligation for the competent authority to consult advisors and other public authorities. Art. 7.9 EPA holds that as soon as possible after the moment on which the competent authority has made up its mind to prepare a plan, but at least on the moment that it consults advisors and other authorities, it gives notice of this intention in daily or local newspapers. In this notice contains that files related to the intention will be made public, that there will be a possibility to give opinions about the intention and to whom, where and within which time this possibility will be given. To the files will belong a draft EIS. So there will be a possibility to comment on this draft, bud there is no legal regulation about what should be done with this comments. The only provision is art. 7.10 EPA saying that the EIS should be ready on the moment on which the draft plan will be published. It may be part of the plan or an annex to the plan. One may expect that a competent authority

conflicts the duty to take good care when it does not respond on serious comments on a draft EIS. This may be brought forward in an appeal against a plan, bud not every regulation foresees in the possibility of appeal against plans.
The fact that everybody can take part in the EIS proceedings does not mean that everybody has a right of appeal against the decision to which the EIS is related. According to the general Netherlands system of the General act on administrative law one has a possibility to raise objections against a decision to the competent authority and to have the right of appeal in one or two judicial instances against the decision on objections. According the already mentioned uniform public participation procedure the scheme is a little different: a draft decision will be published on which everybody may comment; after that the decision will be taken en there will be a possibility of appeal in one or two judicial instances. The possibilities of objection or comment are open for everybody; there is no need to have an interest or a specific right, bud the possibilities of judicial appeal are only open for those who have an interest in the decision.

NORWAY

No provisions in the Regulation regulates this. Basically, it is subject to the discretion of the planning autorities. Cf. also my answer to question VI above regarding Sections 7, 10, and 13 of the Regulation. NGOs take part in the discussions in the SEA process. The planning authority circulate the SEA to the concerned public authorities, cf. my answer to question IV above. If a planning decision directly affects the area of responsibility of another state, regional, or municipal authority, this authority may issue an appeal against the planning decision. Neighbours or NGOs cannot issue appeals against the land-use parts of the municipal master plans or regional (regional) master plans.
Section 20 in he Act on the Right to Environmental Information and Public Participation of 9 May 2003 establishes that all administrative agencies have a legal duty to make provision for public participation in legislation, and plans and programmes relating to the environment. During the preparation of decisions that may have a significant impact on the environment, a public hearing shall be held. The hearing shall be held well before a final decision is taken. An account of the environmental impact of the proposal shall be available at the hearing.

POLAND

Act of 3 October 2008 about popularisation of information about the environment and its protection, public participation in the environmental protection and assessments of impact on the environment regulates the issues of public participation in the procedure concerning a strategic environmental assessment. Everyone is admitted to take part in the procedure concerning a strategic environmental assessment, regardless of his/her nationality and origin, place of residence and direct profits or loss resulting from the conduct of proceedings. Everyone has the right to express his/her comments and submit motions. According to Article 28 Code of Administrative Procedures, the party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.
Ecological organizations may lodge an appeal or a complaint about a decision requiring public participation even if they have not taken part in the proceedings about issuance of the decision (Article 44 Act about popularization of information about the environment and its

protection, public participation in the environmental protection and assessments of impact on the environment). This regulation ensures proper transposition of Article 10a of directive 85/337/EEC regarding the necessity to ensure access to justice in matters related to the environment to all members of "the interested society".

PORTUGAL

In accordance with article 7, §6, of the Decreto-Lei n.º 232/2007, 15th June, the draft of the plan or of the program submitted to strategic environmental assessment proceeding should be submitted to public consultation, within a period of 30 days. In that period, NGOS, the environment associations and the people affected by the plan are allowed to present observations, proposals to be considered at the final draft of the plan or project. That is named the public inquire proceeding.

SLOVAK REPUBLIC

Concerned authority – administrative authority whose opinion is required before the adoption or approval of the strategy document,
concerned commune - the commune whose territory can affect the impact of the strategic document,
they are served notice about execution of the strategic document, the decision whether the proposed strategy document will be assessed, environmental report and draft strategy document, final opinion on the assessment of the strategic document and issue written opinion on the notice about execution of the strategic document, environmental report and draft strategy document, may submit comments on the scope of the assessment of the startegic document.
Public - one or more natural or legal persons, associations, organizations or groups,
municipality concerned informs the public about the notice regarding the execution of the strategic document, whether the strategic document will be assessed, environmental report and draft strategy document, final opinion on the assessment of the strategic document,
public may inspect, to make depreciations, extracts or at its own expense make copies of the notice about execution of the strategic document, environmental report and draft strategy document, final opinion on the assessment of the strategic document,
may submit written opinion on the notice about execution of the strategic document, environmental report and draft strategy document, submit comments on the scope of the assessment of the startegic document,
right to attend the public hearing environmental report and draft strategy document.

SLOVENIA

Authorized parties in a strategic environmental assessment proceedings are:

- the producer of a plan (ministries – central authority, competent municipality authority – local community),
- other organizations (that are with regard to the content of the plan responsible for

particular environmental protection matters or for the protection or use of natural assets or protection of cultural heritage),

- the Member States (when the implementation of the plan could have a substantial impact on the environment of this state),
- general public (in the context of the public participation are included general public (all people and not only people living in the neighbourhood) and also NGO's).

According to article 42 EPA **Ministries and other organizations** have a right to give written opinions on whether the environmental report enables them to assess environmental impacts of the implementation of the plan from the position of their competencies or whether the environmental report is to be supplemented by additional or more detailed information to enable the environmental impact assessment to be carried out.

According to articles 44 EPA and 45 EPA **the Member States** have a right to give opinions and comments or express opinions and proposals in other forms of consultation about the reduction or elimination of potential transboundary environmental impacts of the plan, when the implementation of the plan could have a substantial impact on the environment of this state.

The producer of the plan has a right to appeal and after that the right to judicial review. **The Member States, other organizations and general public** (if they participates in the IEIA proceedings according to article 43) do not have a right to appeal *per se,* but only if they prove legal interest. There is no case -law regarding this subject.

SWEDEN

There is no limitation as to which persons, organizations or authorities that can give their opinions on an environmental report and a proposed plan or programme.

Their right to appeal the final adoption of the plan or programme depends on the kind of plan or programme that is adopted. In some cases it is not possible to appeal the material content of a plan or programme at all.

The adoption of detailed development plans is an example where only people concerned by the plan have the right to appeal. The right to appeal is also limited to those that have given their opinion on the proposal earlier during the process. Which NGO:s that are entitled to appeal detailed development plans is stated in the Environmental Code. Thus, only NGO:s that according to their statutes have nature or environment protection as their main purpose, are not profitable, have been active in Sweden for at least three years and have at least 100 members can appeal.

THE UNITED KINGDOM

There must be measures for monitoring the implementation of the plan or programme. However, the 2004 Regulation provide only for publicity (Regulation 11) and consultation with the consultation bodies described above as well as “public consultees”, i.e. the public likely to be affected or having an interest (Regulation 13). The right is for the consultation bodies and public consultees to express their opinion on the relevant documents to the responsible authority: Regulation 13(2)(d). Once the plan or programme is adopted then it must be publicised: Regulation 16. Legal challenge at any stage would be by way of judicial review through the Administrative Court.

VIII. To what extent are the SEA and EIA procedures were integrated in your country? If a new industrial project also needs a change of the building plan, can the same documentation be used for the assessment of both the project and the plan? Are there problems related to the integration or the lack of integration for different actors (such as the public, the operator of the project, the municipality or authorities)? Can you give examples?
VIII. .Dans quelle mesure les procédures SEA et EIA (études d'impact pour projets) sont-elles intégrées dans votre état ? Dans le cas où un nouveau projet industriel nécessite également un nouveau plan de construction, le même document peut-il être utilisé dans l'évaluation à la fois du projet et du plan ? existe-t-l des problèmes d'intégration ou un manque d'intégration pour les différents acteurs (tels que le public, l'opérateur du projet, la municipalité ou les autorités) ? Pouvez-vous en donner des exemples ?

AUSTRIA

In general SEA- and EIA-proceedings are separate. Nonetheless, it is of course possible and desirable to use the same documents or parts of them in both proceedings. The Austrian EIA Act 2000 lays down (Art 6.2) that certain documents that were used in a strategic assessment can be reused in the environmental impact assessment. This only works, if there is no time lag between the proceedings, as documents have to be up-to-date.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
There are no specific provisions on this issue.
FLE and BRU :
When a project is submitted tot EIA, but is part of a (land use or development) plan that formerly has been evaluated in an SEA, the EIA is limited to the specific (additional) effects of the project (Brussels), or the competent authority can even grant a derogation (Flanders).

BELGIUM (WALLOON REGION)

L'Art. D. 61. §1er. Stipule que les projets prévus par un plan ou par un programme ayant déjà fait l'objet d'une évaluation des incidences des plans et programmes sur l'environnement en application de l'article 53, et qui sont soumis au système d'évaluation des incidences de projets sur l'environnement, visé au chapitre III, ne sont pas dispensés de celle-ci.

Il est à noter que l'auteur d'une évaluation des incidences des plans et programmes sur l'environnement ne doit pas être agréé par la Région wallonne par opposition à l'auteur d'évaluation des incidences des projets sur l'environnement qui doit l'être.

CZECH REPUBLIC

Given their different purpose, the EIA and SEA are two separate procedures. They are both regulated by the same law (the Act No. 100/2001 Coll.); however, they are being performed separately. We are not aware of any problems arising from the fact that the EIA and SEA are separate procedures.
The same documentation can be used as long as it fulfills the conditions laid down by the Act No. 100/2001 Coll. Pursuant to Sec. 10 (3) of this Act data of another assessment may be used in the assessment of a conception pursuant to this Act, if they correspond to the data defined pursuant to this Act.

DENMARK

In accordance with article 11 of the SEA Directive, section 11a of the SEA Act states that an environmental impact assessment under the SEA Act doesn't substitute the Environmental Impact Assessment under the Planning Act which is part of the Danish implementation of the EIA Directive. As explained above (see question II) the way the EIA Directive has been implemented into Danish Law in fact implies that the EIA procedure in it self is often the cause to a SEA procedure. However, the Nature Appeal Board has accepted that the competent authority carries out the EIA Procedure and the SEA Procedure simultaneously for EIA projects, meaning that the environmental impact assessment report is in fact the same and that the public hearing under the two schemes is done at the same time. So the documentation of environmental impact of the plan and the project is in fact identical and the public hearing is also identical.

FINLAND

EIA ASSESSMENT SHALL BE MADE FOR A NUMBER OF INDUSTRIAL AND BUILDING ACTIVITIES LISTED IN THE FINNISH EIA DECREE, ALL OF WHICH REQUIRE AN ENVIRONMENTAL LICENSE OR WATER CONSTRUCTION PERMIT AND WHICH MAY REQUIRE ALSO OTHER PERMITS. THE EIA PROCEDURE IS LINKED TO THE ENVIRONMENTAL PERMIT PROCESS, AND MATERIALS PRODUCED IN THE EIA WILL BE USED ALSO IN THE PERMIT PROCESS. THE SEA PROCESS, ON THE OTHER HAND, DOES NOT CONCERN PRACTICAL, PHYSICAL PROJECTS BUT ONLY AUTHORITY PLANS AIMING TO REGULATE THE FUNCTIONING OF SOCIETY ON A GENERAL LEVEL. THE TWO PROCEDURES, THUS, DO NOT MEET. THE MATERIAL PRODUCED IN ONE ASSESSMENT PROCESS CAN, OF COURSE, BE USED ALSO IN ANOTHER, IN ASSESSING POSSIBLE EFFECTS ON A NATURA 2000-SITE OR IN THE ENVIRONMENTAL PERMIT PROCESS.
BY THE LAND-USE AND BUILDING ACT (5.2.1999/132), SOCIAL AND ENVIRONMENTAL EFFECTS OF LAND-USE PLANS ARE TO BE EVALUATED. THIS PROVIDES FOR A FACTUAL ASSESSMENT OF ENVIRONMENTAL IMPACT EVEN WHEN A FORMAL EIA OR SEA IS NOT REQUIRED. IN THE CASE OF LARGE-SCALE BUILDING OPERATIONS FOR WHICH EIA OR SEA IS REQUIRED, THERE IS AN EXPLICIT PROVISION THAT THE EIA MATERIALS ARE TO BE USED ALSO IN THE PERMIT PROCESS.
EXAMPLES
RECENT EXAMPLES OF PLANS AND PROJECTS SUBJECT TO SEA ARE:
REGIONAL WASTE MANAGEMENT PLANS (REGIONAL CENTRES FOR ECONOMIC DEVELOPMENT, TRANSPORT AND ENVIROMENT, REGIONAL COUNCILS)

FINNISH LONG-TERM CLIMATE AND ENERGY STRATEGY (MINISTRY OF EMPLOYMENT AND THE ECONOMY)
NATIONAL LAND-USE PLAN (MINISTRY OF THE ENVIRONMENT)
NATIONAL WASTE MANAGEMENT PLAN (MINISTRY OF THE ENVIRONMENT)
REGIONAL DEVELOPMENT PLANS (REGIONAL COUNCILS)

ADDITIONALLY, THE MINISTRY OF THE ENVIRONMENT HAS UNDERTAKEN EVALUATIONS OF THE NATURE CONSERVATION ACT AND OF THE EIA ACT ITSELF. FORMALLY, SEA IS NOT REQUIRED FOR LEGISLATION.

FRANCE

En France, en dehors des SCOT et des PLU, il n' y avait pas obligation de faire des études d'incidence pour d'autres documents de planification, concernant par exemple la gestion des ressources naturelles (eau, carrières etc…) ou les grands services urbains (par exemple les déchets) alors que les projets de travaux, assujettis à une étude d'impact trouvent souvent leur fondement dans des plans et programmes qui prévoient précisément leur réalisation à plus ou moins long terme.
La directive 2001/42/CE a eu pour objet précisément d'étendre l'obligation d'analyser les incidences sur l'environnement jusqu'alors limitée aux travaux et projets d'aménagement (étude d'impact de la directive 85/337 du 27 juin 1985 concernant l'évaluation de certains projets publics et privés sur l'environnement) aux décisions de planification elles-mêmes : l'évaluation environnementale est devenue une procédure générale du droit de l'environnement.
Le code de l'environnement français comprend désormais dans un seul chapitre intitulé « Evaluation environnementale » une section 1 concernant les études d'impact et une section 2 intitulée « Evaluation de certains plans et programmes ayant une incidence notable sur l'environnement ».

GERMANY

In Germany SEA is integrated in the respective procedures for the preparation and adoption of plans and programmes, EIA is integrated in the procedures for development consents of projects. This approach has proved to work well in practice.

For land use plans the Federal Building Code provides for an environmental assessment that fulfils the requirements both of EIA and SEA. Therefore, in the given example the same documentation may be used for both assessments.

HUNGARY

There is no relationship between the two governmental decrees which have implemented the SEA and EIA procedures in Hungary, and there is no reference to the use of documents.

THE NETHERLANDS

SEA en EIA procedures are not integrated in the Netherlands. In the example of the new industrial plant and the building plan (in the Netherlands, destination plan) it will be different actors that are responsible to make the EIS's; the municipal authorities will be responsible for the EIS related to the building plan and the private operator for the EIS related to the license for the plant. The information of the EIS will only to a certain extend be of interest for the EIS for the license for the plant. In the EIS for the license for the plant information has to be gathered about production alternatives and methods and techniques to prevent or overcome emissions that will not be of much relevance for the EIS for the building plan. Of course, when some information for the EIS for the building plan will be important also for the EIS for the license for the plant, there is no legal or other obstruction to use it. But I suppose that taken into account the different nature of the two decisions and the different procedures for this decisions, this will only be an restricted part of the relevant information.
As far as I know the point of integration or non integration forms no specific problem in the Netherlands. EIS is not extremely popular by operators. When they see a possibility to evade an EIS procedure they tend to do so by formulating an application that will be just under the criteria for EIA. For example the establishment of a pig farm is under EIA, when it concerns a farm for 3.000 pigs. Applications for licenses for such farms of 2900 or 2950 pigs are often seen. Sometimes after a couple of years a new application to enlarge the farm will be send in. The question then raises whether the two application should be taken together or not.

NORWAY

Both procedures are fully integrated in the Regulation. In other words, the Regulation covers both procedures. Norway is one of the few countries (the only country?) that have done this. The answer is yes – in principle. However, the planning authorities will require more detailed documentation concerning the specifics of the industrial project. Due to the fact that both the SEA and the EIA-directives are implemented through the same Regulation there are hardly ever such problems.

POLAND

Where the environmental impact assessment has been carried out for a project, the competent authority is obliged to issue a decision on the environmental conditions, taking into account:

1) the results of the approvals and opinions referred to in Article 77 (1);
2) the findings of the environmental impact report for the project;
3) the results of the public participation procedure;
4) the results of the procedure for the transboundary environmental impact, where it has been conducted.

The competent authority should issue a decision on the environmental conditions after it has determined that the location of the project is consistent with the provisions of the local land-use plan, where this plan has been adopted. It doesn't apply to a decision on the environmental conditions issued for a public road, for a railway line of national significance,

for the projects related to Euro 2012 and for the projects requiring concessions for prospecting for and exploration of mineral deposits.

Modification of the building plan results in obligation to modify a decision on the environmental conditions. The rules are the same as for a project being the subject to a first environmental impact assessment. The modified decision on the environmental conditions has to be issued prior to obtaining a decision on the construction permit, a decision to approve a construction design and a decision to allow the construction works to resume issued pursuant to the Construction Act of 7 July 1994 (Official Journal of 2006, No 156, Item 1118, as amended). The authorities to conduct the environmental impact assessment and to approve a construction design usually are not the same.

PORTUGAL

The SEA and the EIA procedures are different and separated procedures. The former is regulated through the Decreto-Lei n.º 232/2007, 15th June. The later is regulated through the Decreto-Lei n.º 197/2005, 8th November.
They aren't integrated, although they can be integrated in some individual case.
For instance, the project called "Troiresort" which includes both an environmental friendly touristic project and an urbanisation plan for the area involved, was submitted to SEA and the EIA procedures (consulted at http://www.apai.org.pt/index.php?idmenu=1).

SLOVENIA

According to the case – law of the Administrative Court and the Supreme Court of Republic of Slovenia our national court has never ruled on this issue.

SLOVAK REPUBLIC

Assessment of impacts which are likely to have effects on the environment of the strategic documents and proposed activities are governed by one act, however the assessment of the proposals of the strategic documents and assessment of the proposed activities are governed by law self as separate processes.
Building plan is not subject to assessment, unless the competent authority so decides. Act and annex to act provide for individual documents submitted during the SEA and EIA process detailed particulars which must contained, so the same documentation should not be submitted.

SWEDEN

The SEA and the EIA directives are integrated in the sense that they are implemented in the same chapter of the Environmental Code. In many parts the requirements on the environmental report and the EIS respectively resemble. According to the Environmental

Code, authorities and municipalities shall attempt to coordinate the reviews and descriptions when several environmental reports and/or EISs are required.
The impression is that in practice, when it concerns a project that also needs a new detailed development plan, the content does not differ much and the consultation often involves the same authorities, NGO:s and persons. A difference is that while it is the developer that is responsible for the EIS, it is the municipality that is responsible for the environmental report (SEA).
When it concerns large projects, there is often one document produced that covers the demands for both an EIA according to the EIA-directive and an environmental report according to the SEA-directive.
In Swedish practice, there have been uncertainties when it regards the question if consultations according to the EIA- and the SEA-directives - involving for instance hearings with the public - can be carried out jointly.
When it concerns large projects, such as the building of Botniabanan (an almost 200 km long new railway in the north of Sweden) the number of consultations concerning different parts – bridges, tunnels, passages of protected areas and such – grows very large when separate consultations are made for each part, and also for every different piece of legislation that is involved. Besides that this is not always effective in the terms of time and economy for the developer and the authorities, it can also be confusing, not least for the public that does not know at which stage in the proceeding of what legislation their opinions should be given.

THE UNITED KINGDOM

The SEA and EIA procedures are not integrated in the United Kingdom. The SEA operates in a similar way to project-based assessment under EIA. Not all aspects of development plans or waste plans will relate to matters governed by EIA. In practice, it must be assumed that the EIA-related aspects of plans and programmes will not be looked at in isolation, and that, for convenience (and regulatory coherence), all aspects of these types of plans – for example, the whole of the National Waste Strategy under the Environment Act 1995 and perhaps also the Air quality strategy under the same Act would be subject to SEA.

Part B

I. How is the EIA-directive implemented in your country? What is the scope of its implementation?

I. Comment la Directive EIA (Directive 85/337/CEE)[4] est-elle transposée dans votre état ? Quel est l'étendue de cette législation ?

AUSTRIA

Before EIA was introduced in Austria, operators had to address multiple administrative agencies on federal, state and local level in order to obtain environmental permits. Over the

[4] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0337:FR:HTML

years, considerable efforts have been made to unify the permit system. Following years of discussion, with the process of joining the European Union, a breakthrough was finally achieved. An amendment to the Austrian Constitution unified legislative and administrative powers in the field of EIA. The Federal Act on Environmental Impact Assessment fundamentally reformed environmental permit procedures for major installations and activities in Austria.2 In contrast to the SEA-directive, the EIA-directive is not implemented in different federal and state laws. The EIA-procedure is integrated into a consolidated development consent procedure, thus assuring comprehensive review of environmental impacts. The authority competent for the EIA (Landesregierung, State Government) is required to apply all relevant legislation both at the state and federal levels and to determine if the criteria of the relevant legislation are met. Also the EIA-Act provides for some permit requirements. This means, that although the permit standards and regulatory framework are not unified in a single act, each matter is dealt with by one single authority in one procedure3. If the EIA authority grants the permit, a single permit is issued instead of the multiple permits usually required by federal or state law. The final development consent encompasses all applicable requirements of all relevant environment legislation. However, regarding high-level traffic-projects (high-capacity railroad lines and highway sections) the situation is different. Those project are not subject to a fully consolidated permitting procedure. In those cases EIA is integrated into the permit procedure for the construction consent. Consent regarding matters of water management or nature conservation is granted in seperate procedures. The competent authorities have to take the EIA-decision into consideration.

Regular EIA-procedure - Overview
1) Scoping (not mandatory)
2) Application for development consent including Environmental Impact Statement
3) Public Announcement of the project
Anybody may submit written comments on the project and on the environmental impact statement. By support of 200 citizens, ad hoc citizens groups can gain locus standi.
2. Bundesgesetz über die Prüfung der Umweltverträglichkeit und die Bürgerbeteiligung [UVP-G]
[Environmental Impact Assessment and Citizens's Participation Act], BGBl No. 1993/697, as last amended by
BGBl I No. 2009/87 (Austria). As amended by BGBl I No. 2000/89 (Austria), the title of the Austrian EIA Act was
changed to Umweltverträglichkeitsprüfungsgesetz 2000 [UVP-G 2000].
3 § 3 (3) and § 17 EIA-Act.
5
4) Environmental impact expertise
The competent authority commissions experts to prepare an environmental impact expertise. This expertise evaluates and complements the Environmental Impact Statement and also discusses the statements received from the public.
5) Public announcement of the Environmental Impact Expertise
6) Hearing of the parties
7) Decision on the application for development consent

The authority has to decide, wheter all relevant permit standards and requirements are met. The decision has also to take account of the results of the environmental impact assessment procedure(in particular, environmental impact statement, environmental impact expertise, comments of the public including the comments and the results of tansboundary consultations). The decision has to include conditions, deadlines, monitoring, measuring and reporting duties. In any case, if an overall assessment shows that, when considering public interests, in particular that of environmental protection, serious environmental harm is to be expected due to the project and its impact, including, in particular, interactions, cumulative effects or shifts that cannot be prevented or reduced to a tolerable level by conditions, deadlines, the application has to be rejected

8) Inspection for compliance with the development consent

Inspection before operations of the development starts.

9) Post-project analysis

Inspection takes place 3 – 5 years after completion of the development.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:

Nuclear sector: For installations belonging to the category I – nuclear reactors, installations in which combustibles are used or held in quantities of more than halve the minimal critical mass, installations for the reprocessing of irradiated nuclear fuels that are enriched or not, nuclear waste treatment plants, nuclear waste disposal facilities – an EIA is part of the application for an operating permit delivered by application of the federal regulation on the protection of the public, the workers and the environment against the dangers of ionizing radiations (Art. 6.2.9 of the Royal Order of 20 July 2001). On top of that an EIA is under the relevant regional legislation also necessary for obtaining a building permit for such facilities, as well as an environmental permit for the non-nuclear parts of such facilities. *Marine environment:* each activity in the marine areas of Belgium that is subject to a permit or consent –except fishing activities - is subject to EIA (art. 28 of the Act of 20 January 1999 on the protection of the marine areas within the jurisdiction of Belgium; Royal Order of 9 September 2003; Royal Order of 1 September 2004).

FLE :

The Decree "Algemene Bepalingen inzake milieubeleid" of 5 April 1995 (further *DABM*), Chapter IV (added to DABM by a Decree of 18 December 2002, *Moniteur belge* 13 February 2003) implements the SEA and EIA-directives in the Flemish Region. In particular, Chapter III concerns the Directive 9 85/337/EC on EIA. An Executive Order of the Flemish Government of 12 October 2007 (*Moniteur belge* 17 February 2005) lists the projects that are submitted to EIA.

BRU :

For activities that are subject to an environmental permit, the EIA-directive is implemented by the Ordinance of 5 June 1997 on the environmental permit (*Moniteur belge* 26 June 1997) and an Ordinance of 22 April 1999, listing the installations of class 1A (*Moniteur Belge* 5 august 1999). Environmental impact assessment for installations and buildings that are solely subject to a building permit, is covered by the Brussels Town Planning Code, or COBAT, established

by Decree of the Brussels Regional Government of 9 April 2004 (*Moniteur belge* 26 May 2004).

BELGIUM (WALLOON REGION)

En Région wallonne, la transposition de la directive 85/337/CEE est assurée par le décret du 27 mai 2004 relatif au Livre Ier du Code de l'Environnement et son arrêté d'exécution du Gouvernement wallon du 17 mars 2005.

En Région wallonne, l'étude d'incidences est définie à l'article D.6 du décret relatif au livre Ier du Code de l'environnement comme "*l'étude scientifique réalisée par une personne agréée dont l'objet est d'identifier, décrire et évaluer de manière appropriée, en fonction de chaque cas particulier, les effets directs et indirects, synergiques(*) ou cumulatifs(*), à court, moyen et long termes, permanents et temporaires, d'un projet sur l'environnement, et de présenter et évaluer les mesures envisagées pour éviter, réduire les effets négatifs du projet sur l'environnement et, si possible, y remédier*"
C'est l'article D67, §7de la partie décrétale du Livre Ier du code de l'environnement et l'annexe VII de la partie réglementaire qui fixent les informations minimum qu'une étude d'incidences doit contenir

Pour ce qui concerne l'évaluation environnementale des projets nous faisons référence aux articles D.62 à D.77 du décret et R.56 et R.57 ainsi qu'à ses annexes VI et VII.

En Région wallonne, l'étude d'incidences doit être réalisée **par un auteur agréé.**

Remarque : Par le décret du 11 mars 1999, la RW a introduit dans sa législation un élément original, le permis unique : en effet, si la demande de permis d'environnement requiert des aménagements soumis à permis d'urbanisme, les demandes sont regroupées en une seule demande soumise à une procédure unique aboutissant à la décision de permis unique.

CZECH REPUBLIC

The EIA-directive is implemented by the Act No. 100/2001 Coll.
The subsequent related procedures, for which the EIA statement is a mandatory precondition, are regulated in various specific laws, e.g. the Construction Code (Act No. 183/2006), Act No. 254/2001 Coll. on Waters, or Act No. 76/2002 Coll. on IPPC.
As regards the scope of implementation, it should be noted that there was an infringement procedure commenced by the Commission against the Czech Republic for not compliance with Article 10a of the EIA-directive, i.e. for not giving access to courts to affected public, especially NGOs. The ECJ in its judgment from 10 June 2010, *European Commission v Czech Republic*, C-378/09, declared that "by failing to adopt within the time-limit prescribed the laws, regulations and administrative provisions necessary to comply with the first, second and third paragraphs of Article 10a of the Council Directive 85/337/EEC [...], the Czech Republic has failed to fulfil its obligations under that directive".
As a reaction on the infringement procedure the Czech Republic adopted the amendment No. 436/2009 Coll. (effective since 10 December 2009) which introduced new paragraph 10 of

Sec. 23 of the Act No. 100/2001 Coll. This provision gives standing to a civic association or generally beneficial society, whose sphere of activity is protection of the environment, public health or cultural monuments, or a municipality affected by the project if they have submitted a written viewpoint on a documentation or expert report within the time-limit laid down in the Act No. 100/2001 Coll. They can challenge at court the final decision issued in the subsequent related procedures which has been or should have been based on the EIA. This amendment seems to heal the lack of access to justice for which the infringement procedure was commenced. The Court nevertheless declared the failure of the Czech Republic pointing out that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation obtaining in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes.
However, even after the amendment there still remains a problem – the action brought by the civic association or generally beneficial society does not have suspensive effect. It is thus doubtful whether the access to justice provided by Sec. 23 (10) is effective and meaningful.
With the above mentioned exception, the EIA-directive has been fully implemented into national law.

DENMARK

The Danish implementation of the EIA Directive has been a troublesome process where the EIA Directive only gradual has been implemented into Danish Law – and it is disputed whether the formal Danish implementation of the EIA Directive even in 2011 is fully in place. The implementation of the EIA Directive is vertical, meaning that the obligations under the EIA Directive are (more or less) integrated in a number of sector legislations. The complexity of the implementation makes it impossible to describe the Danish EIA legislation in few pages. For this reason only a brief survey of the Danish EIA implementation is presented in this paper.
The Danish EIA legislation can overall be divided between legislation related *to projects on land* and legislation related to *projects on the Sea.*
1.1 The land related Danish EIA implementation was until 2007 one regime covering all projects on land which establish a special procedure for amending municipality plans under the Planning Act before projects under in Annex I or II of the EIA Directive could be permitted. In 2007 the Livestock Act came into force establishing a special regime outside the Planning Act for livestock (pig, cattle, poultry, sheep, fox-farm and so on) with the intention to integrate EIA into the pollution-abatement legislation of livestock installation.
1.1.1 The EIA procedure under the Planning Act is governed by the Ministerial Statutory Order no. 1510 of 15 December 2010 on the assessment of the environmental impact of certain public and private projects under the Planning Act – the EIA Statutory Order.[5] The scope of the Danish EIA Statutory is defined by section 1 of the EIA Statutory Order which refers to the definition of 'projects' in the EIA Directive article 1 (although the EIA Statutory Order use the confusing term "constructions). According to section 3 of the EIA Statutory Order, the Statutory Order must be applied for all projects listed in Annex 1 and Annex 2 to

[5] In Danish named the VVM Statutory Order base don the Danish Acronyms Vurdering (Assessment) Virkning (Impact) and Miljøet (the Environment).

the EIA Statutory Order which include the same activities as listed in Annex I and II of the EIA Directive with the exception of livestock installations and certain activities at Sea. According to section 2 of the EIA Statutory Order it is prohibited to establish any projects or change of projects listed in Annex 1 or 2 without a prior notice to the municipality and the initiating of the project or the change of project must according to section 2(4) wait until either the competent authority has informed the developer that the project doesn't require an EIA or procedure or until the EIA permit is granted. Section 4 of the Statutory Order exclude military projects and projects decided by legislation adopted by Parliament similar to the derogations in article 1(4) and 1(5) of the EIA Directive.

The EIA Statutory Order distinguish between Annex 1 projects were EIA procedure is mandatory (section 3(1) of the EIA Statutory Order) and Annex 2 project were an EIA Screening is required under section 3(2) in accordance with the criteria laid down in Annex 3 of the EIA Statutory Order (which is similar to Annex III of the EIA Directive). According to section 5 of the EIA Statutory Order the decision that EIA is required or that EIA isn't required must be published and is subject to appeal to the Nature Appeal Body. The assessment and information required by the EIA Statutory Order must according to section 7 of the Statutory Order meet the requirement under article 3 and article 5 of the EIA Directive.

1.1.2 Livestock installations: The establishment or modifications of livestock installations is governed by the Livestock Act which intends to integrate the EIA procedure into the IPPC-regime and other the pollution-abatement legislation of livestock. Regarding livestock falling within the IPPC regime, the Livestock Act require a public hearing of the requested project before a permit can be granted. The Act does however not require that the assessment of the environmental impact includes all information required under article 3 and article 5 of the EIA Directive. For livestock which are smaller than the threshold for IPPC Livestock the Livestock Act has established a regime under which a public hearing of the application for the permit isn't needed if the public authority conclude that the livestock will not cause negative impact on the environment. This means in practice that conditions for the permit to livestock replace the public hearing. It has by several scholars been argued that the implementation of the EIA Directive in the Livestock Act is not in accordance with the EIA Directive as this is interpreted by the ECJ.

1.2 Projects on the Sea Territory: Because the scope of the Planning Act is restricted to the land territory projects on the Sea Territory falls without the Planning Act. The Danish implementation of the EIA Directive for projects on the Sea territory vertical referring to a number of sector legislations on the Sea: the Port Act, the Coastal Protection Act, the Act on Protection of the Marine Environment, the Continental Shelf Act, the Undergrounds Act, the Raw Material Act, the Act on Renewable Energy, the Energy Supply Act – so each of these sector legislation has its own EIA regime. Projects on the Sea which falls outside these sector laws are for the EIA part covered by Statutory Order 809 of 22 May 2005 on EIA of certain projects on the Sea which is sort of residual legislation to ensure that Danish legislation requires EIA for all projects falling within the scope of the EIA Directive.

1.3 Confusing division of competences regarding EIA: The complexity created by the vertical implementation of the EIA Directive is confusing with overlapping competence and raise in it self obstacles for the Danish compliance with the EIA Directive which can be illustrated by two cases:

Enlargement of Esbjerg Port – MAD 1999.113 Nkn: Esbjerg Port is one of the biggest harbours in Denmark and is placed at the west coast of Jutland nearby the Waddenzee which is designated as one of the most import Special Bird Protection Areas. In 1996/97 the port requested the Minister of Transport for extension of the land area to enlarge the port with 50.000 m². Permit for the enlargement of the port was granted by the minister in 1997 without an EIA and without an assessment under the Habitat Directive article 6(3). After the 50.000 m² was filled up the port request the Municipality Council for a local plan to use the filled up area for port activities. The Municipal Council adopted a local plan which by local citizens was appealed to the Nature Appeal Body claiming that an EIA was required. The Nature Appeal Board rejected the claim arguing that the Nature Appeal Body has no competence regarding the decision of the minister and after the former sea area was filled up the decision of using the area to port activities didn't have any major environmental impact. It seems rather obvious that an EIA was required under the Directive. The case illustrates how the division of competence in this case escape EIA obligations by dividing the decision of the project into slices.

Expanding the dike (sea wall) at West Amager - MAD 2009.2111 Nkn, MAD 2009.2131 Nkn, MAD 2010.3115 Nkn: West Amager is established by reclamation work (diked in land) in 1939-1944 of marshland and is at Sea level. The area has for decades been an protected by a nature conservation order and a 14.1 hectar of the area is designated as Special Protected Bird and Natura 2000 site. Behind the nature area the new City "Ørestad" is established. To protect the area against flooding there is a 7 km. and 3.7 meter high dike. Referring to future raise of Sea level because of climate effect the local authorities asked the Minister of traffic for a permit to extend the dike's high from 3.7 meter to 5.9 meter. The extension of the dike will at the same time will help the local authorities to get rid of a surplus of soil from the digging to a new Metro in the Capital since the project will require about 700.000 cubic metre of soil. Permit under the Coastal protection Act was granted by the Minister of Traffic without an EIA, and later on the Local Nature Conservation Board granted a dispensation from the conservation order under the Nature protection Act. The dispensation was appealed by the Danish Ornithological Association arguing that the project will damage the bird habitat area, why the dispensation was in conflict with article 6(3) of the Habitat Directive and that the enormous size of the project could not been justified by climate impact for the next 200 years. In March 2009 (MAD 2009 2111 Nkn), the Nature Appeal Board rejected the claim and upheld the dispensation. Two month later the Municipality Council concluded that the project didn't need an EIA procedure. This decision was appealed by the Danish Ornithological Association. Normally such appeal has suspensive effect. However, in this case the Nature Appeal Body in august 2009 (MAD 2009.2131 Nkn) decided that the appeal didn't have suspensive effect, so while the case was pleading before the Nature Appeal Body the construction of the enlargement of the dike was started by the local authorities. After the construction was about half away, the Nature Appeal Body in October 2010 finally concluded the appeal of the EIA Screening with the conclusion that an EIA was needed and that further construction on the dike should stop until an EIA permit was granted.

FINLAND

THE EIA ACT (10.6.1994/468, MAJOR REVISION 8.6.2006/458) LAYS DOWN THE PROCEDURE, THE RESPONSIBLE AUTHORITIES AND THE RULES OF APPEAL. THE LIST OF ACTIVITIES SUBJECT TO EIA IS GIVEN IN THE GOVERNMENT EIA DECREE (17.8.2006/713).
THE ACTIVITIES FOR WHICH AN OBLIGATORY EIA IS REQUIRED, ARE LARGE SCALE INDUSTRIAL AND BUILDING OPERATIONS ALL REQUIRING ENVIRONMENTAL PERMIT (AS WELL AS OTHER PERMITS). THE LIST CORRESPONDS TO THAT OF THE EIA DIRECTIVE. ADDITIONALLY, THE RESPONSIBLE AUTHORITY MAY *IN CASU* REQUIRE EIA ALSO FOR PROJECTS NOT ON THE DECREE LIST, BUT WHICH MAY HAVE A SIGNIFICANT NEGATIVE IMPACT ON THE ENVIRONMENT. IN DECIDING WHETHER EIA IS REQUIRED, THE ENVIRONMENTAL AUTHORITY (REGIONAL CENTRE FOR ECONOMIC DEVELOPMENT, TRAFFIC AND THE ENVIRONMENT) AND THE ADMINISTRATIVE COURTS ARE TO OBSERVE THE RULINGS OF THE EUROPEAN COURT OF JUSTICE

FRANCE

En droit français l'étude d'impact porte sur les conséquences d'un projet sur l'environnement dans le cadre d'un fonctionnement normal des installations classées :elle est systématique, avec un contenu formalisé par les lois et règlements , pour chaque demande d'autorisation d'une installation classée ou d'aménagement répondant à certains critères.
Elle analyse les incidences des projets sur l'environnement et propose des mesures pour éviter, réduire, et lorsque cela est possible, compenser les effets négatifs notables du projet sur l'environnement.
Elle vise trois objectifs : améliorer la conception des projets en prévenant leurs conséquences environnementales, éclairer la décision publique et rendre compte auprès du public.

Selon l'article L.122-3 du code de l'environnement « Le contenu de l'étude d'impact comprend au minimum une analyse de l'état initial du site et de son environnement, l'étude des modifications que le projet y engendrerait, l'étude de ses effets sur la santé et les mesures envisagées pour supprimer, réduire, et, si possible, compenser les conséquences dommageables pour l'environnement et la santé : en outre, pour les infrastructures de transport, l'étude d'impact comprend une analyse des coûts collectifs des pollutions et nuisances et des avantages induits pour la collectivité ainsi qu'une évaluation des consommations énergétiques résultant de l'exploitation du projet, notamment du fait des déplacements qu'elle entraîne ou permet d'éviter ».
La loi Grenelle 2 a prévu la réforme des études d'impact des « projets de travaux, d'ouvrages et d'aménagement » pour achever la transposition des objectifs non encore transposés en 2010 de la directive 85/337/ CEE du 27 juin 1985.
Elle élargit le champ d'application des études d'impact en vue de rendre leur champ d'application conforme à celui de la directive. Elle vise en particulier tous les projets qui « par leur nature, leurs dimensions, leur localisation »sont susceptibles d'avoir des incidences notables sur l'environnement ou la santé humaine.
Dorénavant, pour déterminer la catégorie de projets faisant l'objet d'une étude d'impact au cas par cas, la loi renvoie expressément à l'annexe III de la directive qui énumère les informations devant être fournies par le maître d'ouvrage (les caractéristiques des projets, leur localisation et leur impact potentiel)

En effet, auparavant, le critère de mise en œuvre d'une étude d'impact était uniquement un seuil financier (au-dessus d'un montant de 1 900 000 euros) ce qui était systématiquement sanctionné par la juridiction européenne.
Ce sont désormais des seuils techniques qui sont retenus et une étude au cas par cas pour les projets en deça des seuils obligatoires.
Le nouvel article L. 122- 1, IV du Code de l'environnement prévoit que la décision de l'autorité compétente autorisant le pétitionnaire (ou le maître d'ouvrage) à réaliser le projet prend en considération, non seulement l'étude d'impact, mais également l'avis de l'autorité administrative de l'État compétente en matière d'environnement et le résultat de la consultation du public. Ceci dit, ni la loi, ni les débats parlementaires n'apportent d'éclaircissements sur la nature de cette prise en considération dont la convention d'Aarhus nous dit qu'elle relève pour le moins d'une forme de « due diligence. »
Un projet de décret portant réforme des études d'impact , pris en application de l'article 230 de la loi n° 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement (Grenelle 2) est actuellement soumis à consultation publique. Les principales modifications apportées par cette réforme des études d'impact sont les suivantes :

- la procédure d'« examen au cas par cas» porte sur la nécessité de réaliser ou non une étude d'impact en fonction de la nature du projet, de sa localisation ou de la sensibilité du milieu ; cette vérification est effectuée par l'autorité administrative de l'Etat compétente en matière d'environnement (ministre de l'écologie, formation d'autorité environnementale du conseil général de l'environnement et du développement durable (CGEDD) ou préfet de région selon les cas ;
- lorsque le projet a été soumis à l'obligation de réaliser une étude d'impact, la décision autorisant celui-ci mentionne les mesures d'évitement, de réduction et de compensation à la charge du pétitionnaire et précise les modalités de leur suivi.

GERMANY

The German Federal Environmental Impact Assessment Act (UVPG - Gesetz über die Umweltverträglichkeitsprüfung) as published in the announcement of 24 February 2010 (Federal Law Gazette I p. 95) is primarily implementing the EIA-Directive 85/337/EEC. This Act was first enacted on the 1st of August 1990 and has been amended regularly since then. Despite the provisions on SEA the UVPG contains provisions on the obligation to carry out an EIA and on the EIA-procedure.

According to the relevant provisions of the Federal EIA Act the EIA procedure in Germany consists of the following sequence of steps:

- Request for a development consent or permit by the developer

- Determination of EIA obligation by the competent authority (Article 3a):
    - EIA obligation due to type, scale and capacity of a project (Article 3b) or
    - EIA obligation in individual cases - Screening (Article 3c) - if the result of the screening step is that no EIA has to be carried out, this negative result will be

made public by public announcement

- Scoping (Article 5) - Independent experts and third parties may be consulted by the competent authority

- The competent authority receives the developer's documents, including the EIA documentation (Article 6)

- Consultation with other authorities (Article 7)

- Transboundary consultation with authorities of an affected state (Article 8)

- Consultation with the domestic public, including a hearing (Article 9)

- Transboundary consultation of the public in the affected state (Article 9a)

- Summary description of environmental impacts by the competent authority (Article 11)

- The competent authority shall take the results of the consultations into account in the final decision (Article 12)

- Possible access to justice against the decision by members of the public, including NGOs

Annex I of the Federal EIA Act defines the scope of EIA in Germany. It lists all projects
- for which it is mandatory to carry out an EIA or
- for which a case-by-case examination (screening) has to be carried out in order to investigate if the project has significant adverse effects on the environment and therefore requires an EIA.
This Annex 1 implements at the same time the EIA Directives 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC, and the UN ECE – Espoo Convention.

HUNGARY

The EIA directive has been implemented in Hungary through the enactment of *Governmental Decree 314/2005*. The scope of the decree covers activities and installations listed in Annex 1-3, and its significant modifications or amendments.

THE NETHERLANDS

As I explained before the EIA-directive is not really implemented in the Netherlands. We developed a EIA-regulation based on a Canadian example in about the same time in which the EIA-directive was developed. Later on the Netherlands regulation has been amended to get it in conformity which the directive. These amendments had mostly to do with the governmental decree on EIA in which the scope of EIA is regulated. Certain Netherlands criteria for activities under EIA were weaker than those of the directive. According to European law the criteria of the directive will than have priority over the domestic ones.

NORWAY

As mentioned, the EIA-directive is also implemented by the Regulation In order to avoid repetition I will refer to my answers under Part A when they are relevant. The scope of the implementation of the EIA directive follows from my answer to Part A question II above.

POLAND

The provision of the EIA-directive are introduced to Polish law by the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments (Official Journal of the Laws of 7 November 2008).

The Act lays down:

1) the principles and procedures to be followed in the matters of:
   a) the provision of information on the environment and its protection,
   b) environmental impact assessments,
   c) a transboundary impact on the environment;
2) the principles of public participation in environmental protection;
3) the administration authorities competent in the matters referred to in point 1.

PORTUGAL

The EIA-directive is implemented through the Decreto-Lei n.º 197/2005, 8th November; this statute has the same content of the last version of EIA-Directive. The Habitats and Birds Directives are implement through the Decreto-Lei n.º 49/2005, 29th February; this statute has the same content of the of the last version of the implemented Directives.
At the moment, all the public and private projects implemented in sensitive environmental zones are submitted to EIA.
In Portuguese's courts, the discussion focus is not the submission of a project with significant environmental effects to EIA, but the type of mitigating measures, their efficacy to prevent the environmental damage and the kind of analyse of the environmental elements affected by the project realised in the report previous to the final resolution of the EIA proceeding.

SLOVAK REPUBLIC

EIA - directive is implemented into the system of the law of the Slovak republic also by the Act no. 24/2006 Coll. on the assessing of influences upon the environment which deals with proposed activities which are subjects to compulsory assessment and which will be assessed only if the Ministry so decides, criteria which determine whether the proposed activity will be subject to assessment, informing the public about the EIA process, make available the

information to the public, opportunity to attend the process, opportunity to express comments and opinions and transboundary consultations.

SLOVENIA

EIA – directive (Directive 85/337/EGS) is in Slovenia entirely implemented with Environment Protection Act – EPA (Zakon o varstvu okolja – ZVO-1) and also with Construction Act (Zakon o graditvi objektov – ZGO-1).
The entity responsible for the planned activity (hereinafter referred to as "the entity"), that is likely to have a significant impact on the environment has a obligation to carry out an assessment of environmental impacts of such activity (**environmental impact assessment – EIA procedure**) and obtain **environmental protection consent** (hereinafter referred to as "consent") from The Ministry of the Environment and Spatial Planning (MESP). The entity must apply to MESP for granting this consent by submitting an application containing **the project for the planned activity** affecting the environment and **a report on environmental impacts.** If the planned activity is manifestly contrary to legislation and regulation, MESP rejects the application (without public participation and assessment of transboundary impacts). If such is not the case, at this stage public participation and assessment of transboundary impacts are ensured by MESP. MESP forwards ministries and organisations that are with respect to the planed activity responsible for particular environmental protection matters, or for the protection or use of natural assets or protection of cultural heritage the application for granting the consent and the draft decision on the consent and invites them to give their opinion on the acceptability of the planned activity. The final step is a decision of MESP, which either grants the consent or rejects the application.

SWEDEN

For a general background, see the answer to question I in part A. As described there, the EIA-directive is partly implemented by chapter 6 of the Environmental Code. This chapter contains general regulation regardng when an Environment Impact Statement (EIS) is required, its content, how and with whom consultation concerning the EIS shall be carried out, how the EIS shall be advertised and finally how and by whom an EIS shall be accepted.
The requirement for an actual decision on whether a project is allowed to be carried out or not, follows by regulations on special kinds of projects. When it concerns EIA-projects that are also IPPC-plants and projects that involve building in water a permit is required according to the Environmental Code (chapter 9 and chapter 11 respectively). When it concerns roads, railways, pipelines and other infrastructural projects, there are special acts demanding different kinds of decisions that implements the EIA-directives requirement for development consent.
The scope of the implementation of the EIA-directive is wider in Sweden than is required by the directive. The procedure to gain a permit is the same for all IPPC-plants, whether it concerns a plant that is also an EIA-project or not. Earlier - ten years ago - the permit procedure for every IPPC-plant also fulfilled the EIA-directive. Since then there has successively been a change so that the demand on the IPPC-plants that are not also EIA-projects has decreased to some extent. Plants that are not EIA-projects still require an EIS, but

the EIS in these cases does not need to be as comprehensive as for the EIA-projects. The scope of the consultation on the EIS can also be less wide. Otherwise the proceedings are the same for all IPPC-projects.
The required content of the EIS for the EIA-project is also more comprehensive than follows by the directive. In addition to what is required by the directive, an EIS in Sweden shall also contain
- information on how the project will contribute to fulfill environmental quality standards (including environmental objectives according to the water framework directive)
- information needed to assess the impact of the project on the management of land- and water areas and other natural resources
- an account for alternative locations of the project

THE UNITED KINGDOM

The Directives have been implemented into the town and country planning system of England by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293), as amended[6]. These Regulations cover about 80% of the projects listed in the Directive with the remainder covered by Regulations under other consent systems and the answers given below relate to these Regulations unless specific reference is made to other Regulations. Equivalent provisions exist for the Devolved Administrations of Northern Ireland , Scotland and Wales.

II. What types of public and private projects are subject to an environmental impact assessment in accordance with EIA-directive?
II. Quels types de projets publics et privés font l'objet d'une étude d'impact environnementale en application de la Directive EIA ?

AUSTRIA

The projects subject to an EIA are listed in an annex to the EIA Act. (Annex 1, EIA Act 2000).
There is no differentiation between public and private projects. The EIA Act covers a rich spectrum of projects, including large infrastructural projects such as urban-development projects, roads, railroads, airports, power-lines, power plants, waste-incinerators and other waste management installations, extractive industries like the extraction of mineral raw material, water management installations. Also smaller projects likely to have significant local environmental impact such as intensive livestock installations, ski lifts, shopping malls or holiday villages may be subject to an EIA. In practice it is mostly infrastructural projects (roads, power lines, shopping malls, golf and ski resorts), and projects from energy industry and waste management that are subject to an EIA in Austria.
Major projects have to be examined in a regular procedure (Column 1, Annex 1 EIA Act; e.g.

[6] The Town and Country (Environmental Impact Assessment) Regulations 2011 (SI No. 1824) will replace these Regulations when it comes into force on 24 August 2011.

installations for the treatment of hazardous waste). Other projects, which are listed in column 2 and 3 of Annex 1, can be examined by applying a simplified procedure (about 50% of EIA procedures so far). Main features of the simplified procedure are: summary assessment of environmental impacts, ad hoc citizen´s groups do not have locus standi (NGO´s do have locus standi) and decisions on the development consent have to be delivered within six months after the application has been filed.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
Nuclear sector: see answer in response to question I *Marine environment:* each activity that requires a permit or a consent –fishing activities excepted – is subject to EIA. However, the Minister who is competent for the protection of the marine environment can determine activities with little environmental impact for which EIA is restricted to the fill in a standard form (cf. Ministerial Order of 3 June 2009).
FLE :
The Executive Order of the Flemish Government of 12 October 2007 lists (*mutatis mutandis*) all the public and private projects as mentioned in the Annexes I and II of the EIA-Directive, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC. As Annex II of the EIA-Directive is concerned, those projects are however only subject to EIA if they meet some threshold values defined in the aforementioned Executive Order. The Court of Justice of the European Union is in its judgment of 24 March 2011 (case C-435/09) of the opinion that by excluding smaller projects not meeting this thresholds completely from EIA, without securing that they have no important environmental impacts, taking into account Annex III to the Directive, the Flemish legislation is not in conformity with the Directive. The Court declares that " *by reason of the fact that the measures necessary for the correct and complete implementation have not been adopted as regards the Flemish Region, Article 4(2) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of 26 May 2003, in conjunction with Annexes II and II thereof, the Kingdom of Belgium has failed to fulfil its obligations under that directive.*"5
BRU :
The Ordinance of 22 April 1999, listing the installations of class 1 A (*Moniteur belge* 5 August 1999) and the Annexes A and B of the Brussels Town Planning Code, or COBAT, established by Decree of 5 ECJ, 24 March 2011, C-435/09, *European Commission v. Belgium*
10 the Brussels Regional Government of 9 April 2004 (*Moniteur belge* 26 May 2004) at first glance contain all the public and private projects as mentioned in the Annexes of the EIA-Directive, albeit it in a different order. However, as projects of Annex II of the Directive are concerned, for some of the categories threshold values were introduced like in the Flemish Region. This approach was also condemned by the Court of Justice of the European Union in the said judgement for similar reasons. The Court declares that "*by reason of the fact that the measures necessary for the correct and complete implementation have not been adopted as regards the Brussels-Capital Region, Article 4(2) and (3), in conjunction with Annexes II and III of Directive 85/337, as amended by Directive 2003/35, and Annex III as such, the Kingdom of Belgium has failed to fulfil its obligations under that directive*"6.

BELGIUM (WALLOON REGION)

L'article 3 du décret du 11 mars 1999 relatif au permis d'environnement **distingue les activités selon 3 classes en fonction de l'importance de leurs impacts sur l'homme et l'environnement**.
Les installations et activités sont répertoriées dans des rubriques et réparties en trois classes (classes 1,2, et 3) selon l'importance décroissante de leurs impacts sur l'homme et sur l'environnement ainsi que leur aptitude à être encadrées par des conditions générales, sectorielles ou intégrales. La troisième regroupe les installations et activités ayant un impact peu important pour lesquelles le Gouvernement peut édicter des conditions intégrales.

Les projets énumérés à l'annexe 1 de la Directive 85/337/CE sont répertoriés en classe 1 et la demande de permis relative à ce type de projet doit obligatoirement est accompagnée d'une étude d'incidences sur l'environnement.

Plus précisément, les projets marqués d'une croix dans la colonne EIE du tableau de l'annexe I de l'arrêté du Gouvernement wallon du 4 juillet 2002 arrêtant la liste des projets soumis à étude d'incidences et des installations et activités classées sont soumis d'office à étude d'incidences pour autant que la demande porte sur :
* la création d'un nouveau projet ;
* le renouvellement d'un permis relatif à une installation existante;
* la transformation ou l'extension d'une installation ou projet existant ou en cours de réalisation qui atteint ou entraîne le dépassement d'un des seuils visés dans l'arrêté du Gouvernement wallon du 4 juillet 2002 précité;
* la transformation ou l'extension d'une installation ou projet visé dans l'arrêté du Gouvernement wallon du 4 juillet 2002 précité et qui a pour conséquence d'augmenter de plus de 25% la valeur autorisée par le permis délivré sur base de la dernière étude d'incidences pour le paramètre pris en considération pour la définition des seuils déterminant les projets soumis à étude d'incidences;
* la transformation ou l'extension d'une installation ou projet visé dans l'arrêté du Gouvernement wallon du 4 juillet 2002 précité qui sont soumis à étude d'incidences sans condition de seuil et qui a pour conséquence l'augmentation de plus de 25% de la capacité autorisée par le permis délivré sur base de la dernière étude d'incidences.

CZECH REPUBLIC

The Act No. 100/2001 Coll. encompasses Annex 1 which divides the projects into two categories in accordance with the EIA-directive. Category I implements Annex I of the EIA-directive and includes those types of projects which are to be assessed under all circumstances. Category II implements Annex II of the EIA-directive and includes those types of projects which require prior screening.
Pursuant to Sec. 4 (1) of the Act No. 100/2001 Coll. the subject of the assessment **shall be**

"a) projects set forth in Annex 1 of this Act , Category I, and changes thereof if the change of the project reaches by its capacity or extent the relevant threshold, in case it is specified; these projects and changes of projects shall always be subject to assessment;
b) changes of a project set forth in Annex 1 of this Act, Category I, if its capacity or extent is to be increased significantly or if there is a significant change in the technology, management of operations or manner of use thereof and these changes are not covered by letter a); these changes of projects shall be subject of assessment if so laid down in a fact-finding procedure[7];
c) projects set forth in Annex 1 of this Act, Category II, and changes thereof if the change of the project reaches by its capacity or extent the relevant threshold, in case it is specified, or if their capacity and extent are to be increased significantly, or if there is a significant change in the technology, management of operations or manner of use thereof; these projects and changes of projects shall be subject of assessment if so laid down in a fact-finding procedure;
d) projects set forth in Annex 1 of this Act which do not reach relevant threshold, in case it is specified, and the relevant authority decides that they shall be subject to the fact-finding procedure; these projects shall be subject of assessment if so laid down in a fact-finding procedure;
e) constructions, activities and technologies which according to the statement of the nature conservation authority issued pursuant to the Act No. 114/1992 Coll. on Nature and Landscape Conservation can independently or in conjunction with other projects significantly affect the sites of Community importance or birds areas; these constructions, activities and technologies shall be subject of assessment if so laid down in a fact-finding procedure."
Pursuant to Sec. 4 (2) of the Act No. 100/2001 Coll. the subject of assessment **shall not be**
"a project or part thereof about which the Government makes a decision in cases of emergency, state of danger and state of war, for urgent reasons of defence or to comply with international agreements binding the Czech Republic and when the plan is employed for immediate prevention or mitigation of unpredictable events that could seriously affect the health, safety or property of the population or the environment. This may not be laid down for projects that are subject to transboundary environmental impact assessment."
Furthermore, the obligation to undergo EIA can be excluded also by the regional authority which may decide not to assess a project if implementation of the project is necessary to mitigate or prevent the consequences of an event that seriously and immediately endangers the environment, or the health, safety or property of the population [Sec. 23 (7) of the Act No. 100/2001 Coll.].

DENMARK

[7] The term „fact-finding procedure" includes the screening and scoping. Pursuant to Sec. 7 "[t]he objective of the fact-finding procedure is to refine information that should be included in the documentation on the environmental impact, in relation to
a. the nature of the specific plan or kind of plan,
b. environmental factors referred to in Sec. 2 that could be affected by implementing the plan,
c. the current state of knowledge and assessment methods.
For plans set forth in Annex 1, Category II, and for changes in plans pursuant to Sec. 4 par. 1 letters c), d) and e), the objective of the fact-finding procedure shall also be determination of whether the plan or change therein is to be assessed pursuant to this Act."

From a formal perspective the Danish implementation of the EIA Directive include all the projects listed in Annex I and Annex II of the EIA Directive. However, in practice there are a lot of problem – see answer to question 1.

FINLAND

BY SECTION 6 OF THE EIA DECREE, ENVIRONMENTAL IMPACT IS TO BE ASSESSED FOR THE FOLLOWING ACTIVITIES, WHEN PRODUCTION OR THE SCALE OF OPERATION EXCEEDS THE THRESHOLD VALUE SPECIFIED FOR EACH ACTIVITY:

3. LARGE-SCALE ANIMAL HUSBANDRY

EXTRACTION AND PROCESSING OF MINERALS (INCLUDING URANIUM), PEAT EXTRACTION AND PRODUCTION OF OIL

DAMS, ARTIFICIAL LAKES, REGULATION OF RIVERS, FLOOD CONTROL AND SURFACE WATER EXTRACTION

METAL INDUSTRY

PULP AND PAPER INDUSTRY

CHEMICAL INDUSTRY

PRODUCTION OF COMBUSTION OR NUCLEAR ENERGY

TRANSPORT AND STORAGE OF ENERGY

CONSTRUCTION OF ROADS, RAILWAYS AND AIRPORTS

MUNICIPAL WATER SUPPLY AND WASTE WATER HANDLING

WASTE MANAGEMENT

CHANGES IN PRODUCTION OR OPERATION OF THE ABOVE, WHEN THE MAGNITUDE OF CHANGE CORRESPONDS TO THE THRESHOLD VALUES SET FOR EACH ACTIVITY

THE NUMBER OF FINNISH EIA 'S IS 30-50 YEARLY AND THE MEAN TIME SPAN OF AN ASSESSMENT IS 1 - 1½ YEAR. THE BULK OF ASSESSMENTS IS IN WASTE MANAGEMENT (36% OF TOTAL NUMBER IN 1994-2008) AND MINING PROJECTS (19% OF TOTAL NUMBER). OF ALL ENVIRONMENTAL PERMIT CASES, EIA IS MADE ONLY IN A SMALL FRACTION. IN 2000-2008, EIA WAS MADE IN 2,6% OF ALL ENVIRONMENTAL PERMIT CASES. *(EIA EVALUATION REPORT, JORMA JANTUNEN & PEKKA HOKKANEN 2010, THE FINNISH ENVIRONMENT 18/2010).*

GERMANY

Annex I of the Federal EIA Act implements inter alia the Annexes I and II of the EIA Directive.

HUNGARY

1. Projects listed in Annex 1 of the *Governmental Decree* can be started with an environemntal permit issued after an environmental impact assessment process.

2. Projects included in both Annex 1 and 2 can be started with an integrated environmental usage permit issued after an environmental impact assessment and an integrated environmental usage permitting process.

3. Projects, included only in Annex 2, can be started with an integrated environmental usage permit issued after a integrated environmental usage permitting process.
4. Projects included only in Annex 3 and the expected environmental effects of the activity are significant, can be started with an environmental permit issued after an environmental impact assessment process.
5. Projects included in both Annex 2 and 3 and the expected environmental effects of the activity are significant can be started with a integrated environmental usage permit issued after an environmental impact assessment and a integrated environmental usage permitting process.
6. Projects included in both Annex 2 and 3 and the expected environmental effects of the activity are not significant can be started with an integrated environmental usage permit issued after a integrated environmental usage permitting process.

In the cases of Paragraph Point 2. and 5 the environmental impact assessment and the integrated environmental usage permitting procedures can be merged upon the decision of the environmental, nature protection and water management Inspectorate with authority based on the process of the preliminary examination.

THE NETHERLANDS

The list of activities of the first annex to the Netherlands EIA-decree starts with

- infrastructure activities, such as the construction of a motorway or a highway, a national railway or an underground or overhead railway or the modification or enlargement of these projects, the construction or enlargement of a waterway or canal, the construction or enlargement of a navy or a civilian harbour or the construction of a in sea pier,
- activities on the sea or river bottom, such as the construction or enlargement of installations on the sea bottom, the heightening of the sea bottom and the construction of an island, the same activities on a river bottom,
- the construction, the lay-out and the use of an air field, the modification, enlargement or the modification of the use of a runway,
- the construction of a military practise-area,
- the construction, modification or enlargement of a pipe-line for the transport of gas, oil or chemicals,
- the lay-out of the rural area, the construction of recreation or touristic provision, the construction of a golf-link, the construction of a recreation harbour,
- the building of houses, the construction of an industrial area, of an area for horticulture under glass, of an area for the culture of flower-bulbs,
- the construction of a primary dike or dam or the modification or enlargement of a sea, delta- or river dike, reclamation of land, draining or making polders,
- the establishment, modification or enlargement of a farm for poultry or pigs,
- the infiltration of water into the soil or the withdrawal of water from the soil and the modification or enlargement of infiltrations or withdrawals, the construction of a water-basin or a dam,

- the mining of surface-minerals or the modification or enlargement of it on land or in the North Sea, the mining, modification or enlargement of a stone-pit or surface-mine, the mining of peat,
- the tracing of oil and natural gas, the mining of oil and gas,
- the decision about the policy for waste, the establishment of a plant for burning, chemical treatment, discharge or discharge into the deep soil of dangerous waste, the establishment of a plant for the discharge of mud, the establishment of a plant for the burning or chemical treatment of non-dangerous waste, the establishment of a plant for the discharge or the discharge into the deep soil of non dangerous waste, the establishment of a plant for waste water purification,
- the execution of works to bring water from the one ……..to the other either to prevent lack of water or not,
- the establishment of a plant to produce paper-pulp out of wood, the establishment of a paper or cardboard factory,
- the establishment, modification or enlargement of an oil-refinery, the establishment of a steel or iron factory, the establishment of a plant to get raw non-ferro metals from ore by using metallurgic, chemical or electrolytical techniques, the establishment, modification or enlargement of an asbestos-plant, the establishment of an integrated chemical factory for the production of organic or anorganic basic chemicals, phosphor, nitrogen or potassium nutrients, basic products for pesticides or biocides, pharmaceutical basic products or explosives,
- the establishment, modification or enlargement of a power-plant, the establishment of a nuclear power-plant including the dismantling of such a plant, the establishment of a plant for the enrichment or the production of nuclear materials,
- the establishment of a plant for the treatment, discharge or storage of radio-active materials,
- the construction, modification or enlargement of a high voltage track,
- the construction, modification or enlargement of an oil or chemical storage,
- the construction, modification or enlargement of a plant for coal-gasification,
- the modification of the water-level in several big enclosed sea-arms,
- an activity for which the assignment as an protected natural area will withdrawn.

Most of the activities are public, but a number will be private. For most of the activities the annex of the decree holds – as said - criteria.

NORWAY

The answer is given in Part A question II above. As explained, Sections 2 and 3 regulate this.

POLAND

The environmental impact assessment is required for the implementation of the following public and private projects which may have a significant impact on the environment:

1) a proposed project which may always have a significant impact on the environment;

2) a proposed project which may possibly have a significant impact on the environment, where the requirement to carry out the environmental impact assessment for a project has been determined pursuant to Article 63 (1).

The implementation of a proposed project other than those defined above require the assessment of the impact of a project on a Natura 2000 site, where:

1) the project may have a significant impact on a Natura 2000, but it is not directly related to the protection of this site or does not result from such protection;
2) the requirement to carry out the assessment of the impact of the project on a Natura 2000 site has been determined pursuant to Article 96 (1).

Based on the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments and taking into account the possible environmental impacts of projects and the factors referred to in Article 63 (1), the Council of Ministers defined:

1) projects which may always have a significant impact on the environment;
2) projects which may possibly have a significant impact on the environment;
3) the cases where the modifications made on sites are qualified as the projects referred to in points 1 and 2.

These matters are regulated by the Regulation of the Council of Ministers of 9 October 2010 on projects likely have a significant impact on the environment.

V SA/Wa 414/11 - Wyrok WSA w Warszawie

PORTUGAL

In order to answer this question, we can visit the site of "Portuguese Authority of environment" - http://www.apambiente.pt/Paginas/default.aspx ;
As far as concern projects included in annex I of EIA-directive, we should refer the following projects:

- construction of railway traffic;
- construction of airports;
- construction of motorways and express roads;
- construction of a new road of four or more lanes;
- waste disposal installations for the incineration;
- dams;
- construction of overhead electrical power lines;
- pipelines for the transportation of gas, oil and chemicals;
- installations for storage of petroleum, petrochemical or chemical products.
- (…)

As far as concern projects included in annex II of EIA-Directive, we should mention the following projects:

- 1. Agriculture, siviculture and aquaculture - intensive livestock installations; intensive fish farming;

- 2. Extractive industry – quarries, open-cast mining; underground mining;
- 3. Energy industry – industrial installations for the production of electricity, stem and hot water; transmission of electrical energy by overhead cables; installations for hydroelectric energy production; installations for the harnessing of wind power for energy production;
- 6. Chemical Industry – Treatment of intermediate products and products of chemicals,
- 10. Infrastructure projects – Industrial estate projects – Plataforma logística; construction of railways and intermodal transhipment facilities, and of intermodal terminals; construction of airfields; tramways, elevated and underground railways;
- 11. Other projects – installations for the disposal of waste.
- 12. Tourism and leisure – marinas; holiday villages and hotel complexes outside urban areas and associated developments; Theme Parks;

SLOVAK REPUBLIC

Subject to assessment of the impacts on the environment are proposed activities for the extractive industry, energy industry, metallurgical industry, chemical, pharmaceutical and petrochemical industry, wood, pulp and paper industry, industry of building materials, machine industry, electrical engineering, infrastructure, water management, agricultural and forest production, food industry, transport and telecommunications, objective projects for sport, recreation and tourism and military buildings.

SLOVENIA

Types of public and private projects that are subject to EIA procedure in accordance with EIA – directive are defined in Regulation on types of activities for which EIA procedure must be carried out on (Uredba o vrstah posegov v okolje, za katere je treba izvesti presojo vplivov na okolje - Uredba) in accordance with Environment Protection Act. There are two types of projects:

1. projects that **in any case must be subjected to EIA** procedure (they are the same as defined in Anex I of EIA – directive) and
2. projects that must be subjected to EIA procedure **if they achieve or exceed treshold value** (They are the same as defined in Anex II of EIA – directive. However, they are set out in greater detail.)

SWEDEN

In addition to what is required by the directive, also smaller IPPC-plants are subject to environmental impact assessments. Nowadays the requirements on the content of the EIS and the scope of the consultation on the EIS can be somewhat less strict for these plants than for actual EIA-projects. (See also answer to question B I.)

THE UNITED KINGDOM

These separate regulations all follow the framework of the general planning regulations.

III. What are selection criteria that should be applied by the developer or the competent authority to identify projects requiring an EIA because of their potentially significant environmental effects?

III. Quels sont les critères de sélection devant être appliqués par le promoteur ou l'autorité compétente pour identifier les projets nécessitant un EIA en raison de leurs incidences environnementaux notables potentiels ?

AUSTRIA

Primarily, there are quantitative criteria/thresholds which have to be applied by the authority, for example the capacity of a waste management installation (tonnes/year); the size of a shopping centre or the number of parking lots or hotel beds. These quantitative criteria are listed in Annex 1. For projects listed in column 1 and 2 of Annex 1 an EIA is mandatory.
Furthermore, certain projects (listed in Annex 1 column 3) may require an EIA because the project is located in specific protected or sensitive areas. These areas (e.g. Alpine Region, Nature Protection Areas, Areas subject to air pollution) are listed in Annex 2. In that case the project is subject to a case by case screening-procedure (Einzelfallprüfung). If the project is likely/supposed to cause substantive negative effects, it will require an EIA. If projects listed in Annex 1 are below the threshold values or do not fulfil the criteria defined therein but are spatially related to other projects and, together with them, reach the relevant threshold value the authority has to examine on a case-by-case basis whether significant harmful, disturbing or adverse effects on the environment are to be expected due to a cumulation of effects and therefore an EIA has to be carried out. Such a case-by-case examination will however not be carried out if the capacity of the project submitted is less than 25% of the relevant threshold value.
The modification of projects listed in Annex 1 is usually subject to a case-by-case screening procedure. If however the modification amounts to a capacity increase of at least 100% of the threshold, an EIA is mandatory.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
Nuclear sector: all category I installations are subject to EIA.
Marine environment: see answer to question II
FLE :
The Executive Order of the Flemish Government of 12 October 2007 lists (*mutatis mutandis*) all the public and private projects as listed in the Annexes I and II of the EIA-Directive, as amended by Directives 97/11/EC and 2003/35/EC. However, the selection criteria as mentioned in Annex III of the Directive, and to be read in conjunction with Annex II, criteria that should be applied to identify projects requiring an EIA because of their potentially

significant environmental effects, are not implemented in the Flemish legislation. This resulted in the judgement of the Court of Justice of 24 March 2011 (C-435/09), declaring that Belgium failed to fulfil its obligations under that directive. Ithe main time, and in anticipation to an adaptation of the legislation, the Flemish Government prepares a *Circulaire*, that specifies that the criteria of Annex III must be applied by the competent authorities when identifying the potentially significant environmental effects.

BRU :

As for the Flemish legislation, the abovementioned judgement of the Court also applies to the Brussels Capital Region, in so far that the criteria of Annex III are not, or not completely, implemented.

BELGIUM (WALLOON REGION)

Les demandes de permis pour lesquelles une évaluation n'est pas requise d'office doivent être accompagnées d'une notice d'évaluation des incidences sur l'environnement sur la base de laquelle l'autorité devra décider, par un acte formel et motivé, si la réalisation d'une étude d'incidences est nécessaire. Le contenu minimal de la notice est précisé à l'annexe VI du Code.

L'autorité compétente examine si le projet est susceptible d'avoir des incidences notables sur l'environnement en se fondant sur des critères qui quasi textuellement les critères énoncés par l'annexe III de la Directive 85/337/CE et, le cas échéant, décide d'imposer une étude d'incidences.

Remarque concernant les réponses aux questions II et III :

Dans le décret du 11 mars 1999, l'étude d'incidence et la notice d'évaluation avaient un caractère alternatif, en fonction du degré d'impact du projet sur l'environnement soit, concrètement : les projets soumis à étude d'incidence sont repris dans une liste fermée, c'est-à-dire dans une énumération exhaustive qui exclut la possibilité pour l'autorité compétente, au-delà de cette liste, de prescrire encore la réalisation d'une étude d'incidences sur un projet soumis à simple notice.[8]

Ce système n'était pas sans poser problème puisque la Cour d'Arbitrage (aujourd'hui Cour Constitutionnelle) avait estimé dans son arrêt du 19 janvier 2005 : « le législateur décrétal a méconnu le principe d'égalité en établissant deux catégories de procédures dont l'une ne comporte pas des garanties de consultation et d'impartialité suffisantes [9] ».

Ce problème est à présent résolu puisqu'il résulte de l'information communiquée par l'administration régionale que dans le cas où une évaluation n'est pas requise d'office, l'autorité compétente examine si le projet est susceptible d'avoir des incidences notables sur l'environnement en se fondant sur des critères qui sont quasi textuellement les critères énoncés à l'annexe III de la Directive 85/337/CE et, le cas échéant, décide d'imposer une étude d'incidences. (cf réponse question III ci-dessus)

CZECH REPUBLIC

[8] RPDB, complément 10, Urbanisme et environnement,, n° 2121, p.1304
[9] RPDB, op. cit. n° 2125, p. 1305

The criteria for selection of projects requiring an EIA are included in Annex 2 of the Act No. 100/2001 Coll. and are divided in three categories (1) characteristics of projects, (2) location of projects, and (3) characteristics of potential impact on the population and the environment. These categories include further detailed criteria which are almost verbatim taken over from Annex III to the EIA-directive.

DENMARK

The criteria in Danish legislation to select when Annex II projects must be subject to an EIA are almost identical with the criteria laid down in article 4(2) and (3) and Annex III of the EIA Directive. The Danish EIA Statutory Order and a number of the vertical legislation for projects on Sea contain a copy text of Annex III of the EIA Directive.

However, in particular two problems can be identified in the Danish implementation. First, the Livestock Act doesn't include the criteria for selection of EIA projects required by article 4(2) and (3) and Annex III of the EIA Directive and many scholars find for this reason that the Livestock Act isn't in accordance with the EIA Directive – but until now, the concern has not been dealt with in any published cases. Second, as it can be illustrated with the Skodsborg Beach Park case (MAD 2008.1950 Ø / UfR 2009.509) which was concluded by the Eastern High Court - several scholars has disputed the Danish interpretation of Annex II(13) which states that EIA-screening is required for:

Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)

Skodsborg Beach Park case (MAD 2008.1950 Ø / UfR 2009.509): The municipality named Søllerød owns one km beach to Ôresund at Skodsborg. The beach has been used by bathers for more than a Century. In the 1990'ties the council of the municipality agreed to establish a Beach Park at the area. In 2004 the council the Minister of Transport for a permit under the Coastal protection Act for the construction needed for the Beach Park. A permit was granted by the Ministry without even an EIA Screening of the project. Protest was submitted by neighbours which raise a legal action at the lower court against the Minister of Transport and the municipality arguing that the permit was invalid since no EIA screening was made. The Ministry and the Municipality didn't dispute that no EIA Screening was needed but argued that the establishment of the Beach Park should be considered a modification under the EIA Directive Annex II(13) and since no significant environmental harm was demonstrated, EIA screening wasn't needed. This position if the Ministry was upheld first by the lower court and later by the Eastern High Court arguing that although the establishment of the Beach Park will substantial increase traffic this wasn't sufficient reason to criticize that the permit was granted without a prior EIA screening.

FINLAND

AS LAID DOWN IN SECTION 4 OF THE EIA ACT, AN ASSESSMENT IS TO BE MADE WHEN REQUIRED BY INTERNATIONAL TREATY (*I.A.* BY EU LAW OR THE ESPOO EIA CONVENTION), OR WHEN THE OPERATION MAY HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS DUE TO THE SPECIAL FEATURES OF FINNISH NATURE AND ENVIRONMENT. FOR THOSE ACTIVITIES REQUIRING OBLIGATORY EIA, THE CRITERIA FOR ASSESSMENT IS THE ACTIVITY AND THE SCALE OF OPERATION. *E.G.*, A NUCLEAR POWER PLANT WOULD ALWAYS REQUIRE EIA WHILE A COMBUSTION POWER PLANT REQUIRES EIA ONLY IF THE FUEL EFFECT IS AT LEAST 300 MW.
In the case of discretionary EIA, the Decree lists an number of criteria, which also illuminate the criteria behind the list of activities requiring obligatory assessment. Criteria to be considered are, *i.a.*, the scope of operations and joint effect with other projects, site of operation and size of the impact area as well as conservation values of the area.

FRANCE

En complément des points précédents , et pour prendre l'exemple d'un projet de parc éolien ou photovoltaïque, le ministère de l'écologie et du développement durable a mis en place des guides méthodologiques , qui ont été conçus en association par des acteurs administratifs, professionnels et associatifs concernés par la problématique des parcs éoliens et solaires.
Ils fixent les principes fondamentaux à respecter pour une étude d'impact de qualité :

- La proportionnalité : le contenu de l'étude d'impact doit être en relation avec les enjeux ;
- L'itérativité : la réalisation de l'étude d'impact menée conjointement à la conception du projet permet d'aboutir à un parc éolien de moindre impact environnemental ;
- L'objectivité et la transparence : deux qualités des études menées tout au long de l'élaboration du projet.

Les guides présentent les obligations réglementaires, auxquelles tout projet ne peut se soustraire, les recommandations émises pour la réalisation des études d'impacts des parcs éoliens ou solaires, en proposant des clés pour le choix des méthodes à mettre en œuvre pour mener à bien les études. Ces guides n'imposent aucune des méthodes, le choix relevant des opérateurs et de leurs partenaires. Ils s'adressent :

-aux **opérateurs** pour leur permettre de prendre conscience des enjeux environnementaux et des démarches permettant de les intégrer le plus en amont possible, afin de concevoir des parcs éoliens et solaires respectueux de l'environnement,
-aux **services administratifs** pour y trouver les éléments nécessaires au contrôle qu'ils sont chargés d'effectuer sur la pertinence et le sérieux des documents fournis dans le dossier de demande d'autorisation, et d'évaluer la qualité des projets,
-aux **élus et autres décideurs locaux** pour les aider dans leur appréciation des projets, leurs choix et décisions en matière énergétique et d'aménagement du territoire, et de formuler leur avis lors de l'enquête publique,
-aux **bureaux d'études** pour mettre en place une démarche et des moyens humains et techniques à la hauteur du travail à réaliser, notamment par le recours à des spécialistes pour les études spécialisées spécifiques impératives sur chaque projet éolien,
-aux **spécialistes** pour trouver et suivre une méthodologie souvent propre au contexte éolien et solaire affinée grâce au **retour d'expériences** aujourd'hui disponible,

- au **public et aux associations** pour être informés du contenu de l'évaluation environnementale du proiet et mieux participer aux débats qui sont organisés et à l'enquête publique ;
- aux **commissaires enquêteurs** pour évaluer la qualité des projets.

GERMANY

If a project type, listed in Annex I of the Federal EIA Act, is marked in column 1 with the letter X an EIA is always mandatory.
If a project type, listed in Annex I of the Federal EIA Act, is marked in column 2 with the letter A or S a screening is required. The screening mechanism of the Federal EIA Act makes a distinction between a general screening ("A") and a site-related screening ("S"). The need for the general or site-related screening depends on whether the respective thresholds laid down in the Annex have been reached or exceeded. The criteria pursuant to Annex II of the EIA Act, which is based on Annex III of the EIA Directive, shall be used for screening. The selection criteria cover the characteristics of projects, the location of projects and characteristics of the potential impacts**.** The general screening must examine these criteria fully, the site-related screening concentrates primarily on the criteria concerning the project site according to No. 2, Annex II of the EIA Act.

HUNGARY

Criteria for deciding upon the necessity of an environmental impact study

1. Characteristics of the project, in particular,
a) the size of area use, including the area demand of connected activities and facilities;
b) extent of the use of other natural resources and of the limitation on their use;
c) extent of its capacity or of its other size characteristics;
d) amount, hazardous nature and mode of disposing of waste produced during its siting, realization and abandonment;
e) size and significance of its burdening of the environment;
f) extent of risk of an accident or of a break-down, having regard in particular to substances or technologies used;
g) its attractive force for the realization, in the neighborhood of siting, of other activities and facilities having significant environmental impact;
h)

2. The environmental sensitivity of the area of siting and of the impact areas likely to be affected by the project, in particular,
a) sensitivity of the landscape, having regard to the existing land use, landscape use and landscape image;
b) the relative scarcity, quality and regenerative capacity of the affected natural resources;
c) its absorption capacity (including the capacity to be burdened, to regenerate, to adsorb pollution and to buffer of the affected environmental elements and systems), in particular in the following areas:

ca) wetlands, mountain and forest areas;
cb) protected nature reserves, Nature 2000 areas, nature areas, sensitive nature areas and elements of the ecological network;
cc) areas in which an environmental quality standard has already been exceeded;
cd) densely populated areas;
ce) landscapes of historical significance, areas of architectural and archaeological heritage, settlements or settlement districts with characteristics to be preserved.

3. Characteristics of the potential environmental impacts, in particular,

a) the extent of their geographical area and the size of the population living on the area, expected to be affected;
b) possibility of their transboundary nature;
c) their complexity and complication (having regard, in particular, to the possibility of inducing impact processes covering more environmental elements, and to the synergies of the impacts);
d) possibility of accumulation of the impacts of other activities exercised or planned elsewhere in the region;
e) their magnitude and intensity;
f) probability of their occurrence;
g) their duration, frequency and reversibility (taking into account the possible preventive and mitigation measures);
h) extent of damaging or disturbing impacts on the final receivers of impacts (human beings, natural systems);
i) other characteristics, which can be significant from the viewpoint of environmental effects.

THE NETHERLANDS

As explained before these criteria are in the governmental decree. They deal with the length of the track, the area in which the activity will take place, the growth of the ships that can make use of the waterway, the surface of the activity, the production power of the plant, the length of the runway, the number of visitors, the number of houses to be build etc.

NORWAY

Projects within the purview of Section 3 shall be dealt with pursuant to the Regulation if they meet any of the criteria set out in Section 4. Section 4 is treated above in Part A question No. 2.

POLAND

The requirement to carry out the environmental impact assessment for a proposed project which may possibly have a significant effect on the environment shall be determined, taking into account all the following factors:

1) the type and characteristics of the project, considering:

a) the scale of the project, the surface area of the land occupied and their mutual proportions,
b) the interactions with other projects, in particular the accumulation of the impacts of projects situated in the area affected by the project,
c) the use of natural resources,
d) emissions and the occurrence of other annoyances,
e) the major-accident hazard, taking into account the substances used and the technologies applied;

2) the location of the project, taking into account the possible danger for the environment, in particular as a result of the existing land use, the self-cleaning capacity of the environment, the renewal of natural resources, natural and landscape values as well as the conditions of local land-use plans, taking into account:
a) wetlands and other areas where groundwater lies at shallow depth,
b) coastal areas,
c) mountain or forest areas,
d) areas covered by protection, including the protective areas of water intakes and the protective areas of inland water reservoirs,
e) areas requiring special protection in the light of the occurrence of the species of flora and fauna or their habitats and natural habitats covered by protection, including Natura 2000 sites and the other forms of nature conservation,
f) areas where the environmental quality standards have been exceeded,
g) areas with landscapes of historic, cultural or archaeological significance,
h) the population density,
i) areas adjacent to lakes,
j) health resorts and the areas under health resort-specific protection;

3) the type and magnitude of the possible impact considered in relation to the factors listed in subparagraphs 1 and 2, which result from:
a) the range of impact – the geographical area and the size of the population on which the project may have an effect,
b) the transboundary nature of the impact of the project on the individual natural elements,
c) the levels and complexity of the impact, taking into account the load on the existing technical infrastructure,
d) the probability of the impact,
e) the duration, frequency and reversibility of the impact.

The decision shall also be issued where the authority does not determine the need to carry out the environmental impact assessment for a project.

The requirement to carry out the environmental impact assessment for a project shall be determined on an obligatory basis, where the ability to implement the project referred to in paragraph 1 depends on the establishment of a restricted use area within the meaning of the Environmental Protection Act of 27 April 2001.

PORTUGAL

In accordance with article 1, §3, of the Decreto-Lei n.º 197/2005, 8th November, all the projects include in annexes I and II of the above mentioned decree/statute should be evaluated through EIA. The content of Annex I and of Annex II follows the content of the respective annexes of EIA-Directive; the projects included in either one or the other annex are mandatory evaluated through EIA; there are quantitative threshold for each project in order to assume that it will be included in annex I or in annex II. For instance, the construction of motorways and express roads is submitted to EIA, when it implies a length superior of 10 Km, in accordance with §7, of annex I of the above mentioned decree. In accordance with §10, of annex II, the national and regional roads, with a length superior of 10 Km should be submitted to EIA.
Another threshold used by the decree to make mandatory a EIA of, for instance, a road with a length inferior to 10 km is the sensitive character of the area where it is supposed to be located. According to article 2, item b), sensitive areas are the following: i) classified landscapes; ii) network Nature 2000; iii) classified monuments and buildings.

SLOVAK REPUBLIC

If the Ministry decides whether the proposed activity will be subject to assessment, takes particular account of the nature and scope of the proposed activity, place of performance of the proposed activity, in particular admissible load, and protection provided under special regulations, importance of expected impacts.

SLOVENIA

Selection criteria for identifying projects requiring an EIA are the same as in Anex III of IEA – directive. They are specified in article 54 EPA that regulates the obligatory content of the environmental report and also they are set out in greater details in Regulation on environmental report and detailed procedure of IEIA.

SWEDEN

The criteria that should be considered are stated in a list in the Ordinance on Environmental Assessments. It is the same as the list in Annex III of the directive.

THE UNITED KINGDOM

In the EIA Directive, the term “project” is defined as the execution of construction works, or of other installations or schemes. This equates roughly with the concept “development” in English planning laws. However, many activities listed in the EIA Directive fall outside the range of activities classed as “development” in planning law and hence the specific regulations referred to above have been enacted. Whether something is a “project” is a secondary consideration. Thus in R. (Edwards) v Environment Agency (No.2) [2007] Env LR9, a case about changing the fuel source at a cement works to waste tyres, the Court of

Appeal could not find a category listed in the Directive into which this fell, so whether it was a "project" was irrelevant. The Court of Appeal did stress that operations, as well as constructions, could be "projects" which is line with the interpretation given to "projects" under EC Nature Conservation Law. Two further issues can arise. EIA might be avoided by breaking up a development project into several small projects, none of which individually require EIA. The second issue is the cumulative impacts of development projects. In National Guidance (DOEC Circular 2/99 paragraph 46) local planning authorities are advised to have regard to possible cumulative effects and where appropriate to consider together more than one application for development to determine whether or not EIA is required.

The selection criteria set out in Annex III of the Directive are copied out in all UK Regulations. Specific Regulations refer to the selection criteria when considering general provisions relating to screening development.

IV. What kind of authority (local, regional, central) is responsible for performing the duties arising from the EIA-directive?
IV. Quelle est l'autorité compétente (locale, régionale, centrale) en charge du respect des obligations découlant de la Directive EIA ?

AUSTRIA

Authorities and competences are listed in § 39 EIA Act 2000. State Government (Landesregierung) is the competent authority for the majority of projects subject to the EIA Act4.
Concerning high-level transport infrastructure projects (federal roads and high-speed railroads), the Federal Minister of Transport, Innovation and Technology is the competent authority5.
For matters regarding EIA and development consents, a special tribunal, the Environmental Senate (Umweltsenat), has been established. The Environmental Senate is the authority of
4 Section 1 and 2 of the EIA Act 2000.
5 Section 3 of the EIA Act 2000.
7 appeal with substantive jurisdiction.
The Umweltsenat has unlimited jurisdiction. It may change the decision of the administrative authority in any respect. The effects of the decision are suspended ex lege during the appelate procedure unless there is express provision to the contrary. In summary, although the decisions of the Umweltsenat have the characteristics of an administrative action, they have the force of res judicata: they must state reasons; they are delivered in open court; they are enforceable; and they may be contested only before the Administrative Court (Verwaltungsgerichtshof) or the Constitutional Court (Verfassungsgerichtshof). The Umweltsenat is considered a court or tribunal for the purposes of Article 267 TFEU which can refer questions for preliminary ruling to the ECJ (C-205/08, Umweltanwalt von Kärnten v. Kärntner Landesregierung).

Appeals against permits regarding high-level traffic projects cannot be brought before the Umweltsenat. However the Austrian Administrative Court recently decided (VwGH, Sept. 30, 2010, Docket No. 2009/03/0067, 0072) that in order to fully apply community law and to protect the rights conferred there under on the public by the public participation provisions of the EIA Directive, the Umweltsenat also is to be regarded as the competent authority to hear appeals against permits for high-level traffic projects. The Constitutional Court rejected this interpretation. According to the Constitutional Court European Union Law does not require courts having „full jurisdiction" in order to protect individual´s right granted by the EIA-Directive.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
Nuclear sector: It's the operator who has to compile the Environmental Impact Report (EIR) as part of the application for an operating permit. The application will be reviewed by the Scientific Council, the European Commission, the government of the commune concerned and the government of the Province concerned in the framework of the opinion they have to deliver on the application for the operating permit. The decision is taken by the Federal Minister for the Interior. *Marine environment:* the Environmental Impact Report must be drawn up by a co-ordinator who can be in the service of the operator. The co-ordinator has to perform its duties in an independent way. The Management Unit of the North Sea Mathematical Models and the Scheldt Estuary (MUMM)7 has to review the quality of the EIR. It delivers also an opinion about the acceptability of the proposed activity. The decision is in the hands of the Minister responsible for the protection of the marine environment. MUMM is also in charge of monitoring the environmental effects of permitted activities that were subject to EIA.
FLE :
The EIA shall be carried out under the responsibility and at the expense of the operator that prepares the project, as part of the application for an operating permit or a building permit. The operator must rely for that on a team of accredited external (independent) consultants, managed by an EIA coordinator. The experts and the coordinator may have no direct interest in the project concerned. Before the EIA-work starts, and if applicable, the operator asks the advice of the competent (regional) authority, in order to obtain a derogation of the obligation to carry out an EIA, if applicable (projects as listed under Annex II). Otherwise, or in the case of a refusal, the operator notifies the competent authority of his intention to carry out an EIA, with information on the project, the outline of the EIA, the team of experts, the possible transboundary effects etc. Within a period of 20 days, the competent authority decides on the formal completeness. The operator has to inform the local authorities, as well as the authority that will grant the (environmental of building-)permit for the project, other administrations that can be involved by the project, and, if applicable, the workers union representation in the plant where the project will be realised. The local authorities (the municipality) also informs the public and, if applicable the competent authority informs other member states or regions that may be affected by the environmental impacts of the planned project. After the public consultation, and within a period of 60 days, the competent authority decides on the proposed outline of the EIA, and the team of experts. After finalisation of the report, the competent

authority has to validate it. Only after this validation, the operator can introduce his demand for an environmental and/or building permit. The validated impact assessment is part of the application file(s).

7 http://www.mumm.ac.be/EN/index.php

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BRU :

The EIA is carried out under the responsibility and at the expense of the operator that prepares the project, as part of the application for an operating or a building permit. The operator must rely for that on an independent consultant company, accredited by the Brussels government to assess environmental impacts. The application form for an environmental or building permit for a Class IA installation of a project of list A (COBAT) contains the basic information to allow the competent authority (in the case of an environmental permit, the competent authority is the *Institut Bruxellois pour la Gestion de l'Environnement* or IBGE, in the case of a building permit, the *Administration de l'aménagement et du territoire* or AATL) to decide on the content of the EIA and to draft the estimate-document within a periode of 30 days. After that, the entire file is sent to the Commune, in order to organise a public consultation and ask for the advice of the *Commission de concertation*, the communal environmental and urbanistic advisory board. Based on the results of the public consultation, a supervising board with *inter alea* civil servants of IBGE, AATL and other experts, decides of the final content of the EIA. Once the EIA is finalised, the supervisory board validates the report, and, if applicable, instructs the operator to conform his application file to the conclusions and suggestions of the EIA. However, the operator can decide to keep the demand unchanged, in case he doesn't agree with the conclusions of the final report. For projects as defined on list B (COBAT) (almost identical to Annex II of the Directive), one has to add a study on the environmental impacts (a light-version of the EIA), submitted *mutatis mutandis* to the same publicity. However, in exceptional conditions and based on the study, the competent authority can suggest the government to instruct the operator to follow the procedure of an EIA.

BELGIUM (WALLOON REGION)

L'autorité compétente pour délivrer les permis est l'autorité régionale de l'environnement et l'autorité régionale de l'aménagement du territoire.

Il faut préciser toutefois qu'en matière de permis d'environnement tout comme en matière de permis unique, c'est le Collège des Bourgmestre et Echevins de la commune sur le territoire de laquelle est situé l'établissement qui est compétent sauf exceptions :1) établissements mobiles et établissements situés sur le territoire de plusieurs communes, auxquels cas c'est le Directeur de la Direction extérieure de la Division de la Prévention et des Autorisations de la commune auprès de laquelle la demande a été introduite qui est compétent[10] ; 2) projets qui s'étendent sur plusieurs communes, sollicitation par une personne de droit public ; projet concernant des actes et travaux d'utilité publique ; projet qui concerne des actes et travaux situés dans une zone de services publics et d'équipements ferroviaires ou aéroportuaires et des ports autonomes ; projet qui concerne des actes et travaux situés dans le périmètre d'un site d'activités économiques à réhabiliter ou d'une site de réhabilitation paysagère et

[1010] RPDB, n°2125, p. 1305

environnementale ; projet qui concerne des actes et travaux situés dans le périmètre visé à l'article 1er, 5° du décret relatif aux infrastructures d'accueil des activités économiques.

CZECH REPUBLIC

The authorities responsible for performing the duties arising from the EIA-directive and the Act No. 100/2001 Coll. are (1) the **Ministry for the Environment** and (2) the **regional authority** in delegated jurisdiction in the territorial administrative area of which the project is proposed [Sec. 3 (f) and Sec. 20 of the Act No. 100/2001 Coll.].
Pursuant to Sec. 21 of the Act No. 100/2001 Coll. the **Ministry** shall
"a. be the central administrative authority in the field of environmental impact assessment;
b. execute supreme state supervision in the field of environmental impact assessment;
c. provide for assessment of projects set forth in Annex No. 1 [of this Act], column A, and for projects whose developer is the Ministry of Defence, also in columns B, and changes therein;
d. provide for the assessment of conceptions in cases when the affected territory comprises the whole territory of a region or extends to the territories of several regions or the territory of a national park or the protected landscape area or if the affected territory comprises the territory of the whole state;
e. provide the European Commission, in conformity with regulations of the European Community [Union], with information in the field of environmental impact assessment;
f. provide for transboundary assessment of projects and conceptions;
g. provide for assessment of other plans, for which the competent authority is the regional authority, if it has reserved this jurisdiction in individual specific cases;
h. keep summary records of all commenced assessments and records of all conclusions of the fact-finding procedure and statements issued;
i. grant and withdraw authorization;
j. keep and once annually publish a list of authorized persons in its Bulletin;
k. by the end of February of each year publish a list of expert reports and the persons preparing these reports and furthermore a list of conceptions and their reviewers for the previous calendar year;
l. issue a statement on environmental impact assessment of a spatial development policy and spatial development principles."
Pursuant to Sec. 23 (4) the Ministry may in justified cases reserve the assessment of a project or a conception, where the regional authority is competent for the assessment. On the other hand, the Ministry may in justified cases and after agreement with the regional authority delegate the assessment of a project pursuant to Sec. 21 (c) or the assessment of a conception pursuant to Sec. 21 (d) to the regional authority, if that can contribute to the promptness and economy of the assessment.
Pursuant to Sec. 22 of the Act No. 100/2001 Coll. **the regional authorities** shall
"a. provide for the assessment of the projects set forth in Annex No. 1 [of this Act], Column B, and changes therein and projects set forth in Sec. 4 (1) (d) a (e);
b. provide for the assessment of a conceptions in cases when the affected territory covers exclusively the territory of the region, unless the Ministry is competent pursuant to Sec. 21 (d);

c. keep records of the statements issued thereby and send one copy of each conclusion of a fact-finding procedure and statement issued thereby to the Ministry for summary records;
d. by the end of February of each year publish a list of expert reports and the persons preparing these reports and furthermore a list of conceptions and their reviewers for the previous calendar year;
e. issue a statement on environmental impact assessment of a territorial plan.

DENMARK

The competent authority to ensure the EIA obligation depends on what sector legislation governs the project. Regarding land based projects the competent authority is mainly the Council of the Municipality with three exceptions. For windmills higher than 100 meter, the EIA Authority is the Ministry of the Environment (in practice the Environmental Protection Agency). For establishment or modifications of port and for projects effecting the coastal line the Ministry of Transport is the competent EIA authority. For projects at the Sea, the competent EIA authority is the Ministry which are responsible for issuing the permit for project under the relevant legislation (see answer to question 1).

FINLAND

NORMALLY, IN AN EIA, THE AUTHORITY RESPONSIBLE FOR SUPERVISING THE ASSESSMENT IS THE REGIONAL ENVIRONMENTAL AUTHORITY (REGIONAL CENTRE OF ECONOMIC DEVELOPMENT, TRAFFIC AND THE ENVIRONMENT). IN CASE THE AUTHORITY ITSELF IS INVOLVED IN THE PROJECT TO BE ASSESSED, THE RESPONSIBILITY IS TRANSFERRED TO AN ADJACENT REGIONAL ETE CENTRE.

FRANCE

C’est l’autorité administrative qui va délivrer l’autorisation ou le permis puis le juge en cas de recours contentieux contre la décision d’autorisation ou de refus.

GERMANY

In Germany, EIA is an integral part of development consent procedures and of other forms of permit procedures (e.g. siting procedures). This means, that the authority responsible for the decision on the project (licensing authority) is responsible for the EIA too.

Apart from a few exceptions, the authorities of the Länder are responsible for these procedures. Usually the competence has been assigned to authorities on the local or regional level. In some rare cases authorities on the governmental level are responsible. For certain kinds of projects with national relevance (e.g. railways) a Federal authority is the competent authority. As the transboundary EIA procedure is integrated into the national EIA procedure, there are no special authorities for transboundary cases, i.e. transboundary EIAs will be carried out by the same authorities which are responsible for domestic EIA procedures.

HUNGARY

On the first insatnce level: regional inspectorates for environment, nature and water, on the second instance level National Inspectorate for Environment, Nature and Water.

THE NETHERLANDS

According to the Netherlands legislation it is the developer who is responsible for drafting the EIA. So when a local, regional or central authority will develop an activity under EIA each of them will be responsible for the drafting of an EIA.
For each activity under EIA the governmental decree appoints a decision to which the EIA will be linked. These decisions may be taken by each of the authorities depending of the kind and the importance of the activity. So for the building of more than 2.000 houses outside the built up area or 4.000 wi8thin this area two decision are mentioned, namely the structure-visions and the destination-plans. Destination plans will be established by municipal boards, while structure visions may be established by either the minister, or the provincial or the municipal board.

NORWAY

Municipalities are responsible for conducting EIAs concerning local projects, the regional authorities - regional municipalities) are responsible for conducting EIAs relating to regional projects. The various sector authorities (petroleum energy, watercourse regulation, and land use – etc.) are the central authorities obliged to conduct EIAs of projects falling under their jurisdiction.

POLAND

The authority competent to issue a decision on the environmental conditions depends on the type of a project:

1) the Regional Director for Environmental Protection – in the case of:
   a) the following projects which may always have a significant impact on the environment:
   – roads,
   – railway lines,
   – overhead power transmission lines,
   – installations for the transport of crude oil, oil products, chemical substances or gas,
   – artificial water reservoirs,
   b) projects carried out on closed sites,
   c) projects carried out in marine areas,
   d) the conversion of a forest which is not the property of the State Treasury into farmland;

2) the head of the county administration – in the case of land consolidation, exchange or division;
3) the Director of the Regional Directorate of State Forests – in the case of the conversion of a forest which is the property of the State Treasury into farmland;
4) the head of the local administration and the mayor of a town/city – in the case of the other projects.

PORTUGAL

In accordance with article 5 of the of the Decreto-Lei n.º 197/2005, 8th November, the authorities responsible for performing the duties arising from the EIA-Directive are the administrative agency (which can be either a state department or a independent agency or a municipality) competent to issue the mandatory authorisation of the project or the administrative agency competent to issue the environmental compatibility declaration – environment authority.

SLOVAK REPUBLIC

At the central level - Ministry of Environment of the Slovak Republic,
at the regional level - regional office of the environment,
at the local level - district office of the environment.

SLOVENIA

MESP (central authority) is generally responsible for performing the duties arising from the EIA – directive. However, Agency of Republic of Slovenia for Environment (hereinafter referred to as "the agency") which is body affiliated to the ministry conducts the administrative procedure on first instance and is competent to issue an administrative decision which either grants the environmental protection consent or rejects the application for such consent. MESP decides on an appeal against such a decision.
An inspection body (of MESP) is responsible for control over the implementation of the provisions of Environment Protection Act and of regulation adopted on the basis of this act.

SWEDEN

The decision to grant or refuse development consent has different shape and is issued by different authorities depending on the kind of project.
When it concerns IPPC-plants and projects that involve building in water, the decision has the form of a permit according to the Environmental Code. Permits concerning IPPC-plants are issued by either the County Administrative Board (a regional authority) or the Land and Environment Court, depending on the kind of plant and its capacity. (In a list of different kinds of plants, the larger and more complex ones are marked “A” and require a permit from the court, while the somewhat less complicated are marked “B” and require a permit from the County Administrative Board.) Projects involving building in water always require a permit

from the Land and Environment Court. In these cases (both the IPPC-plants and the water projects) it is also the permit authority – the court or the County Administrative Board – that passes the EIS.
For other kinds of projects, there are other forms of decisions. When it concerns for example roads and railways, the decision has the form of an adoption of a plan (a road plan or a railway plan). Normally this adoption is made by the Transport Administration, the national authority that is responsible for transport infrastructure in Sweden. The largest road and railway projects also require development consent from the Government. The procedure in cases concerning roads and railways involves an approval of the EIS by the County Administrative Board (the regional authority).
Still other kinds of projects – like the building of large pipelines or electric lines - are decided by the Government.
Some building projects which require an EIS, such as hotels, amusement parks etc are examined according to the Planning and Building Act and follow the same rules as for detailed development plans described in Part A.
The County Administrative Board, or in some cases the municipality, in its role as a supervisory authority always takes part in the preparation of the EIS. The supervisory authority advises the developer on the scope of the EIS, and on how and with whom consultation shall be carried out. The consultation on the EIS always involves the County Administrative Board. If the municipality is also a supervisory authority, consultation with the municipality is also mandatory. Specialized national authorities – specially the Environmental Protection Agency – might be consulted on the EIS too.

THE UNITED KINGDOM

In the first instance it falls to the Local Planning Authorities in England to consider the need for EIA under the Regulations referred to in the answer to question 1. Developers can appeal to the Secretary of State where the LPA has required EIA or where it has failed to issue a screening opinion within the statutory time limit.

Under other Regulations other statutory bodies may be the main competent authority and in some cases this is the Secretary of State.

V. When should an environmental impact assessment take place during the investment procedure?
V. A quel moment de la procédure d'investissement doit intervenir l'évaluation de l'impact environnemental ?

AUSTRIA

The EIA is integrated in the permit procedure. Before passing the EIA a project must not be permitted or established. If the developer lodges an application for consent, the application must also include the environmental impact statement. It is the responsibility of the investor to decide when the permit procedure and therefore also the EIA process should start. As the

investor has to hand in many different materials and documents in order to guarantee a detailed impact assessment, he or she should already have detailed information about the project at that point of time. Usually an informal scoping procedure takes place before the application is lodged. Regarding large infrastructural projects it takes about one year of preparation to be ready to start the EIA.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:

Nuclear sector: EIA is part of the procedure for obtaining an operating permit. It has to be performed before an operating permit is granted en thus before construction and operation of the facility can start. *Marine environment:* EIA is part of the permitting procedure (Royal Decree of 7 September 2003) and thus EIA has to be carried out before a permit is delivered and activities can start.

FLE :

The EIA takes place – and has to be finalised and validated – before the application file for an environmental of building authorisation can be introduced.

BRU :

The EIA takes place – and has to be finalised and validated – before the application file for an environmental of building authorisation can be introduced.

BELGIUM (WALLOON REGION)

La procédure d'évaluation des incidences d'un projet a lieu **préalablement** à l'introduction de la demande de permis, laquelle doit être accompagnée de l'étude d'incidences. [11]

La procédure peut-elle être régularisée par la suite ?

En principe, selon l'administration, le dossier qui serait incomplet est renvoyé pour être complété et il n'y aurait donc pas de possibilité de régularisation a posteriori.

Dans cette hypothèse, le demandeur est tenu de déposer une nouvelle demande de permis accompagnée de l'étude d'incidence. Il peut contester la nécessité d'une étude d'incidences via une demande de reconsidération de la décision (une telle demande ne pourra vraisemblablement être introduite que dans les cas où l'administration exige une étude d'incidences dans un projet qui a pu être introduit sur la base d'une simple notice – et non dans les cas oµ l'étude d'incidence est automatiquement exigée)[12].

CZECH REPUBLIC

The environmental impact assessment should take place prior to the issuance of a final development consent. In case where the Act No. 100/2001 Coll. requires that a project shall always be subject to assessment or that a project shall be subject of assessment if so laid down in a fact-finding procedure, the EIA statement is a mandatory precondition for the subsequent related procedures.

[11] RPDB, n°2142, pp.1311-1313

[12] C. De Doncker, Autorisations et permis d'environnement, Waterloo, Kluwer, 2008, p. 172

DENMARK

The placement of the EIA in the timetable before issuing permits depend on the legislation governing the project. See answer to question 1.

FINLAND

THE EIA PROCEDURE IS INTENDED AS PART OF THE GENERAL PLANNING PROCESS PRECEDING A COMPANY DECISION TO RUN A SPECIFIC OPERATION AND APPLY FOR AN ENVIRONMENTAL PERMIT. BY SECTION 9 OF THE EIA DECREE, THE ASSESSMENT SHALL BE MADE FOR ALTERNATIVE OPERATIONAL SOLUTIONS AND ALSO FOR NON-ACTION, *I.E.* REFRAINING FROM THE PROJECT.
In practice, the company may have already chosen the project alternative to be pursued and operational planning may be well advanced at the time EIA is made. By Section 7 of the EIA Act, assessment shall be made before operation affecting the environment commences and before an environmental permit is issued for the project.

FRANCE

Dès l'élaboration du projet, avant les consultations et enquête publique.

GERMANY

According to Article 1 UVPG the environmental impacts of a project shall be identified, described and assessed early and in a comprehensive manner. Consequently an EIA procedure should begin as early as possible in order to detect any possible environmental impact of a project. Due to the fact that the EIA is integrated into the development consent or permit procedure, the EIA documents shall be prepared at the same time as the documents for the development consent or permit request. In this regard the scoping step as envisaged under Article 5 UVPG is most important for the efficiency and effectiveness of the procedure.

HUNGARY

At the very beginning of the investment procedure.

THE NETHERLANDS

The Environmental impact statement will be published together with the draft about the activity under EIA. This means that all the environmental information about the consequences of the activity has to be gathered and analysed in advance. It is not quite clear what the relation is between EIA and the investment procedure. In general the decision to develop the activity will be taken before the EIA-procedure star, but the EIA-procedure may produce environmental information that will be of influence on the investment decision, especially on certain alternatives that may be or may be not taken into account.

I do not know example of activities on which the investment decision has been withdrawn because of the content of an EIS. In a case like that already in the preparation of the investment decision information about the harmful environmental consequences of the activity have been gathered and analysed.

NORWAY

Normally, the EIAs and planning processes are conducted before the project in question is initiated. To my knowledge, investment decisions are very rarely made prior to having established the legal basis for the procject.

POLAND

A decision on the environmental conditions defines the environmental conditions for the implementation of a project.
A decision on the environmental conditions shall be issued prior to obtaining a decision granting the final development consent.

PORTUGAL

In accordance with article 21 of the Decreto-Lei n.º 209/2008, 29th October (authorisations in the field of industrial activity), the EIA proceedings may take place simultaneously with the authorisation proceedings.

SLOVAK REPUBLIC

At the beginning of the investment process.

SLOVENIA

EIA procedure must take place at the beginning of the investment procedure. Before the start of the environmental impact assessment the entity may request from the ministry the information on the scope and content of the report on environmental impacts of the planned activity. The ministry must prepare such information in writing and send it to the entity after obtaining views of ministries and responsible organizations and consulting with the entity. Because it is not allowed to carry out the planned activity before environmental protection consent becomes final the entity can decide after obtaining this information whether investment is still in its interest.

SWEDEN

It is not formally stated when, during the investment procedure, the assessment shall take place. This is a decision made by the developer. Since the procedure is costly and time consuming for the developer, there has to be a high potential for the project to be carried out.

THE UNITED KINGDOM

Applicants can, at any time prior to making a planning application, seek a screening opinion from the local planning authority as to whether a proposed development falls within Schedules 1 or 2, and requires EIA (Regulation 5(1) of the 1999 Regulations). If the local planning authority either fails to give an opinion within the statutory period (3 weeks), or finds that the project is subject to EIA, the developer may request the Secretary of State to issue a "screening direction" (in effect, an appeal of the screening opinion: Regulation 5(6)). The Secretary of State can also make a screening direction without a request from the developer, in line with his power to require an environmental statement after an application has been called in or has gone to appeal (Regulations 4(7) and 9). What is clear is that the question of whether environmental impact assessment should take place is best taken as early as possible and before the making of a planning application.

VI. Does the decision resulting from an environmental impact assessment grant the final development consent?
VI. La décision découlant de l'évaluation de l'impact environnemental accorde-t-elle le permis (de construire) final ?

AUSTRIA

Yes, the decision resulting from an impact assessment grants the final development consent. However, the investor has to notify the (near) completion of the approved project. Subsequently the competent authority controls the compliance with the development consent. After this procedure, the project can be taken into operation (Art 20 EIA Act 2000).

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:

Nuclear sector: EIA is part of the application for an operating permit. There is no separate decision taken on the EIA. The decision on the operating permit allows the operator to operate the facility. He however will need first a building permit for the construction of the facility in accordance with the regional legislation. *Marine environment:* an EIR that has been approved by MUMM or that has been reviewed by MUMM will be part of the application of a permit or consent. Final development consent is given at the end of that procedure by the competent Minister.

FLE :

EIA is part of the application for an operating or building permit. There is no separate decision taken on the EIA. According to art. 4.1.7. DABM, the authority that grants the permit, has to take into account the conclusions of the EIR, and motivates her decisions on the

proposed actions, alternatives etc. In general, the operator confirms his project to the conclusions of the EIA.
BRU :
Cfr B IV. In general, the operator confirms his application file for a permit to the conclusions of the EIA.

BELGIUM (WALLOON REGION)

L'autorité compétente appelée à délivrer le permis est tenue de motiver sa décision (octroi ou refus) notamment au regard des incidences du projet sur l'environnement et des objectifs poursuivis par le Code relatifs à l'évaluation des incidences. Elle n'est pas liée par les conclusions de l'étude d'incidences, ni par les avis recueillis lors de l'instruction de la demande. La directive et ses mesures de transposition ont une portée procédurale en ce sens que les autorités concernées sont seules tenues de déterminer leurs décisions par rapport à l'évaluation effective[13].

Il est toutefois rappelé par la doctrine que l'auteur, s'il n'est pas tenu par les conclusions de l'étude, doit prendre en considération les résultats de l'évaluation des incidences, en vertu des articles 8 et 9 de la Directive 85/337/CE.
En ce qui concerne l'obligation de motivation, il est rappelé que l'autorité a des obligations en matière de protection de l'environnement : 1) une autorité ne pourrait adopter sur la base d'une motivation adéquate, une décision défavorable pour l'environnement[14] ; 2) Les pouvoirs d'action sont des devoirs. Avec le système d'évaluation, les nuisances potentielles seront plus apparentes et, par conséquent, l décision de renoncer à protéger l'environnement au profit d'un autre intérêt sera sans doute plus difficile à justifier[15].

Il faut préciser enfin que les procédures d'évaluation des incidences interfèrent avec le principe de spécialité des polices administratives de sorte que l'évaluation faite par l'autorité doit rester dans le cadre de ses compétences[16].

CZECH REPUBLIC

The outcome resulting from an environmental impact assessment, i.e. the statement on the environmental impact assessment (hereinafter „EIA statement"), is a basis for subsequent procedures on the final development consent according to special regulations, e.g. the Construction Code, the Act No. 254/2001 Coll. on Waters, or the Act No. 13/1997 Coll. on Roads.
Pursuant to Sec. 1 (3) of the Act No. 100/2001 Coll. the purpose of the environmental impact assessment shall be to obtain an objective professional background document for issuing a decision or measure pursuant to special regulations.

[13] RPDB, n° 2149, p.2150 ; p. 1315.
[14] B. Jadot, cité par RPDB, n°2150, p.1315
[15] M. Pâques, RPDB, n°2150, p.1315
[16] RPDB, op.cit. p. 1315

The relevant authority deciding on the final development consent shall always take into account the content of the EIA statement; however, the authority is not bound by the content of the EIA statement. In case the relevant authority does not include the requirements of the EIA statement in its decision or include them only partly, it is obliged to provide justification. Pursuant to Sec. 10 of the Act No. 100/2001 Coll. "(3) The EIA statement shall be a basic expert background document for issuing a decision or measure pursuant to special regulations. The statement shall be submitted by the developer as one of the basic background documents for related procedures or processes pursuant to special regulations. (4) In the absence of the EIA statement, it shall not be possible to issue a decision or measure required for implementing or carrying out the project in any administrative or other procedure pursuant to special regulations. In such procedures, the relevant authority shall be the affected administrative authority. An administrative authority that issues a decision or measure pursuant to special regulations **shall include**, in its decision or measure, requirements for protection of the environment set forth in the statement, if set forth therein, **or it shall state in its decision or measure the reasons why it did not do so or did so only partly**."
Therefore, the EIA statement is binding in the procedural sense, it is a necessary precondition for the procedures on the final development consent; however, it is not absolutely binding as regards the content. It is enough for the administrative authority deciding pursuant to special regulations to justify why it did not reflect the EIA statement.

DENMARK

After the latest Danish implementation (since 2007) of the EIA Directive, the EIA-permit is the final development consent regarding projects covered by the Planning Act. But as explained above on the project of extension of the West Amager Dike this doesn't fully apply when permits for projects can be issued by the Ministry of Transport.

FINLAND

EIA is made for operations requiring environmental permit. The assessment procedure ends with a statement by the supervising authority, stating whether the assessment is adequate and, as the case may be, listing open questions that need to be clarified before the environmental permit decision. The assessment, thus, is required when the application for an environmental permit is considered and confers no rights to the applicant. Hence, the assessment report or the supervising authority statement are not decisions against which appeals can be lodged.

FRANCE

La décision qui accorde l'autorisation d'exploiter (installations classées) ou autorise le projet (déclaration d'utilité publique, permis de construire etc…) n'est en général pas fondée exclusivement sur l'étude d'impact. Celle-ci ne fait pas l'objet d'une décision de validation ou d'annulation en elle-même. Mais étant considérée comme un élément substantiel du dossier de demande d'autorisation, ses irrégularités aboutiront au rejet ou à l'annulation de la demande de permis ou d'autorisation dès lors qu'elles auront eu pour effet de « nuire à la

bonne information du public » et de « nuire à l'exercice, par l'administration, de son pouvoir d'appréciation ».(voir la jurisprudence citée à la fin de la réponse au questionnaire)

GERMANY

In accordance with Article 8 of the EIA Directive, Article 11 and 12 of the Federal EIA Act provide that the competent authority has to consider the results of the EIA while deciding on the development consent requested. This means that the content of the EIA documents as well as the outcome of the consultation of authorities, the public and other affected countries, if a transboundary EIA has been carried out, have to be taken into account. Of course the permit has to be rejected, if other legal requirements are not met by the project in question.

HUNGARY

No, the request for the final development consent has the be lodged with the EIA consent.

THE NETHERLANDS

According to the Netherlands legal system there will be no separate decision about the EIA. The EIS for the activity under EIA will be made public together with the draft decision about it. Public may react on both. Also in appeal against the decision one of the grounds may be that the EIS is insufficient, unreliable or untrue. In the past, when the Commission on EIA advised on every EIS about correctness and sufficiency, the judge could base his judgment on this advice. Nowadays the Commission is abolished and the judge has to find other contact points to survey an EIS. One may expect that he will do this in a rather reluctant way. It will be possible that the judge appoints some scientists to advise him about the EIS.
Once the decision about the activity under EIA will be taken and will be uphold in appeal, this also means that the EIS is considered to be complete and correct.

NORWAY

The EIA provides for a general legal framework for the actual project. The EIA leads up to a written, process- leading decision, not a final decision. Before a final developmental consent is awarded, more specific obligations are tailored to fit the development in question. If a polluting factory is to be built for example, the Pollution Authority will issue a permit setting limits for the type and quantity of the pollution. Consequently, the decision-making process has two stages: the EIA phase and the detailed obligations – phase. After these stages, the final decision is taken.

POLAND

The decision resulting from an environmental impact assessment doesn't grant the final development consent. The decision on the environmental conditions is the necessary step in the procedure to get the final development consent. It is one of the attachments to the request for the issue of a decision granting the final development consent.

PORTUGAL

In accordance with the article 20, §1 of the Decreto-Lei n.º 197/2005, 8th November, the project submitted to EIA can't be approved if hasn't a previous favourable or favourable environmental compatibility declaration. But the project may be rejected by the competent licensing authority due to other legal grounds which are in the scope of her duty to preserve.

SLOVAK REPUBLIC

No, the process of the assessment does not replace the consent procedure.

SLOVENIA

No, because preparation of the environmental impact report (which is the first step of EIA) does not include public participation, assessment of transboundary impacts and opinions and views of ministries and other responsible organizations. On the other hand, environmental protection consent takes into account all of above mentioned views and opinions. That is why the decision on such consent (without which it is not allowed to carry out the planned activity) can be different.

SWEDEN

The decision resulting from an environmental impact assessment also constitutes final development consent and it is the only development consent needed when it concerns roads and railways. When it concerns IPPC-plants and building in water, a new detailed development plan and/or a building permit according to the Planning and Building Act can be needed in addition to the environmental permit.

THE UNITED KINGDOM

The environmental impact assessment does not determine the grant of development consent. The role of the environmental impact assessment is to inform the planning application process, and the LPA must take into account the information provided in the environmental statement (which reports on the findings of the assessment) and representations made by third parties before determining whether to grant development consent.

VII. How does the authority ensure the public access to environmental information in the proceedings based on the EIA-directive?
VII. De quelle manière l'autorité compétente assure-t-elle l'accès du public à l'information environnementale dans les procédures engagées dans le cadre de la Directive EIA ?

AUSTRIA

The competent authority has to communicate one copy of the application - including the environmental impact statement - to the host municipality. The host municipality has to ensure that these documents are made available for the public for at least six weeks. Everybody (regardless of citizenship, nationality or domicile) can submit written comments on the project and on the impact statement to the authority within six weeks. (Art 9 EIA Act 2000).

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
Nuclear sector: the environmental impact report, as part of the application for the operating permit, is made public at the local administration during the public consultation process of 30 days – period that is suspended between 15 July and 15 August - in the commune concerned and in other communes in a circle of 5 km around the planned facility. *Marine environment:* applications of permits or consents are made public trough an announcement in the *Moniteur belge.* There is a public consultation procedure of 60 days. During that period the application and the EIR can be consulted with MUMM and with all local administrations alongside the Belgian coast. The EIR may also be posted on the website of MUMM.
FLE :
The decision on the derogation (if applicable cfr Annex II), and the decision on the formal completeness of the outline and scope of the projected EIA, can be consulted. Therefore, the local authority informs the public that the notification is available, and that possible remarks can be suggested within a period of 30 days. Furthermore, the public is invited to consult the finalised anvalidated EIR (as part of the application file) during the public consultation process (30 days), in the beginning of the application procedure for an environmental or building permit. Also in this stage, the public (people living in the neighbourhood, ngo's with an environmental interest etc.), can suggest remarks on the project and the EIR.
BRU :
See above, sub B IV. Further on, the public is invited (by means of billboards in the neighbourhood),
to consult the finalised and validated EIR (as part of the application file) during the public consultation process (30 days), in the beginning of the application procedure for an environmental or building permit. Also in this stage, the public can suggest remarks on the project.

BELGIUM (WALLOON REGION)

1) Phase préparatoire à la réalisation d'une étude d'incidences

Pour les projets qui font l'objet d'une étude d'incidences, une réunion d'information **doit** être réalisée par le demandeur de permis avant l'introduction de la demande de permis.
*Pour les projets qui **ne font pas** l'objet d'une étude d'incidences, une réunion d'information **peut** également être réalisée par le demandeur de permis avant l'introduction de la demande de permis, mais elle n'est nullement obligatoire.*
Cette réunion a pour objet :

- de permettre au demandeur de présenter son projet ;
- de permettre au public de s'informer et d'émettre ses observations ou suggestions concernant le projet ;
- de mettre en évidence des points particuliers qui pourraient être abordés dans l'étude d'incidences ;
- de présenter des alternatives techniques pouvant raisonnablement être envisagées par le demandeur et afin qu'il en soit tenu compte lors de la réalisation de l'étude d'incidences.

(cfr. art. D.29-5 du Livre 1er du Code de l'Environnement)

Outre la ou les communes sur lesquelles s'étend le projet, il appartient à l'autorité chargée d'apprécier le caractère complet et recevable de la demande de déterminer les communes susceptibles d'être affectées par ledit projet.

Sont également invités à la réunion et ils peuvent s'y faire représenter:

- la personne choisie par le demandeur pour réaliser l'étude d'incidences *(celui que l'on appelle "l'auteur agréé")*;
- l'autorité compétente pour délivrer l'autorisation;
- les administrations

☐ de l'environnement et
☐ de l'aménagement du territoire;

- les Conseils et Commissions

☐ le Conseil wallon de l'Environnement pour le Développement durable,
☐ la Commission consultative communale d'aménagement du territoire et de mobilité,
☐ la Commission régionale d'aménagement du territoire, qui peuvent y déléguer deux de leurs membres au plus;

- les représentants de la ou des communes concernées, telles que définies par l'autorité chargée d'apprécier le caractère complet et recevable de la demande

2) Le Code impose que le public soit consulté sur le projet et sur l'étude d'incidences sur l'environnement. cette consultation se fait sous la forme d'une enquête publique dans les communes concernées par le projet.

3) La décision adoptée fait également l'objet d'une publicité.

A titre de synthèse : la doctrine précise : « *Une phase de consultation du public précède la réalisation de l'étude d'incidences. Son but est de mettre en évidence les points particuliers qui pourraient être abordés dans l'étude et de présenter des alternatives à l'auteur de projet, alternatives qui devront être examinées dans le cadre de l'étude L'étude d'incidences se déroule en dehors du cadre de la procédure de délivrance du permis. Le demandeur doit cependant d'abord notifier à qui de droit le choix de l'auteur de l'étude. Il doit également organiser une réunion d'information suite à laquelle la population peut formuler des suggestions et observations. Si le projet est situé sur le territoire de plusieurs communes, la consultation du public est organisée dans chacune d'elles. L'organisation d'une réunion d'information est obligatoire et non facultative lorsque le projet requiert la réalisation d'une étude d'incidences.*[17]

[17] C De Doncker, op.cit., p. 177

CZECH REPUBLIC

The access of public to environmental information is ensured by the Act No. 100/2001 Coll. in several stages of the process:

(1) After the developer has submitted a notification of the project to the relevant authority, the relevant authority shall within 7 working days of obtaining the notification publish the **information on the notification** pursuant to Sec. 16 and shall further publish at least the textual part of the notification on the internet [Sec. 6 (6)].

(2) In case of notification of a project which does not reach the relevant threshold, the relevant authority shall publish on the internet the information as to whether this project shall be subject to the fact-finding procedure [Sec. 6 (3)].

(3) The relevant authority shall publish in accordance with Sec. 16 the **outcome of the fact-finding procedure** [Sec. 7 (3)].

(4) After the developer has submitted the documentation, the relevant authority shall publish the **information on the documentation** pursuant to Sec. 16 and shall further publish at least the textual part of the documentation on the internet [Sec 8 (2)].

(5) After the authorized person has submitted the expert report, the relevant authority shall publish the **expert report** on the internet and publish the information on the expert report pursuant to Sec. 16 [Sec. 9 (7)].

(6) After the relevant authority has issued the **EIA statement,** it shall publish the statement on the internet and pursuant to Sec. 16 [Sec. 10 (2)].

To sum up, the above mentioned provisions always specify which document shall be published on the internet as a whole (e.g. the expert report, EIA statement) and which at least partly (e.g. the textual part of the documentation). Besides that, they specify which information shall be published also by other means pursuant to Sec. 16 (see below).

Publication of information on documents obtained during the assessment and on public hearings is regulated by Sec. 16 of the Act No. 100/2001 Coll. This provision lays down the range of information that the relevant authority shall publish, as well as place and method of publication:

"(1) The relevant authority shall ensure that information is published on
a. the notification and when and where it may be perused;
b. the place and time of the public hearing pursuant to this Act;
c. returning documentation for reworking or supplementing;
d. the documentation and on when and where it may be perused;
e. the expert report and on when and where it may be perused;
[...]
h. the consultation within transboundary assessment.
(2) The relevant authority shall also ensure that the conclusion of the fact-finding procedure, the EIA statement and the statement on a conception are published.
(3) The relevant authority shall ensure that information and statements referred to in paragraphs 1 and 2 are published
a. on the official notice boards of the affected territorial self-governing units;
b. on the internet, and
c. in at least one of the other ways usual in the affected territory (e.g. in the local press, on the radio, etc.).

[...]
(5) Information that cannot be made public pursuant to a special regulation [e.g. Civil Code, Commercial Code, Penal Code, or the Act on data protection] shall be deleted from information and statements made available to the public pursuant to paragraphs 1 and 2."
Besides that, the public can access information on the EIA procedure at the **public hearing** (Sec. 17 of the Act No. 100/2001 Coll.):
"(1) The relevant authority shall be obliged to publish information on the public hearing pursuant to Sec. 16 at least 5 days prior to the holding thereof.
(2) The relevant authority shall be obliged to ensure that the public hearing is held at the latest 5 days after expiry of the period of time for stating a viewpoint on the expert report.
[...]
(5) The relevant authority shall draw up minutes of the public hearing, which shall contain in particular information on participation and the conclusions of the hearing, and shall also prepare a complete stenographic recording or audio-recording thereof.
(6) The relevant authority shall be obliged to send the minutes of the public hearing to the developer, the affected administrative authorities and the affected territorial self-governing units and to publish them on the internet.
(7) Facts protected by special regulations [e.g. Civil Code, Commercial Code, Penal Code, or the Act on Data Protection] shall not be the subject of a public hearing."
The public hearing may be omitted if the relevant authority has not received any justified negative viewpoint on the documentation [Sec. 9 (9)].
To sum up, the public may peruse the published documents, make extracts and copies of them, and attend the public hearing.
Moreover, pursuant to Sec. 23 (1) the relevant authority, affected administrative authorities and affected territorial self-governing units shall be obliged to make all documents, prepared in the framework of the assessment according to this Act, available pursuant to special regulations – i.e. the Act No. 123/1998 Coll. on the Right to Environmental Information.
Information about the EIA procedure in individual cases may be find out also in the **information system on EIA** which is run by the CENIA (the Czech Environmental Information Agency; a state allowance organization reporting to the Ministry of the Environment). The information system is available at the following address: http://tomcat.cenia.cz/eia/view.jsp

DENMARK

The access of public to environmental information is ensured by the Act No. 100/2001 Coll. in several stages of the process:
(3) After the developer has submitted a notification of the project to the relevant authority, the relevant authority shall within 7 working days of obtaining the notification publish the **information on the notification** pursuant to Sec. 16 and shall further publish at least the textual part of the notification on the internet [Sec. 6 (6)].
(4) In case of notification of a project which does not reach the relevant threshold, the relevant authority shall publish on the internet the information as to whether this project shall be subject to the fact-finding procedure [Sec. 6 (3)].
(3) The relevant authority shall publish in accordance with Sec. 16 the **outcome of the fact-finding procedure** [Sec. 7 (3)].

(4) After the developer has submitted the documentation, the relevant authority shall publish the **information on the documentation** pursuant to Sec. 16 and shall further publish at least the textual part of the documentation on the internet [Sec 8 (2)].
(5) After the authorized person has submitted the expert report, the relevant authority shall publish the **expert report** on the internet and publish the information on the expert report pursuant to Sec. 16 [Sec. 9 (7)].
(6) After the relevant authority has issued the **EIA statement,** it shall publish the statement on the internet and pursuant to Sec. 16 [Sec. 10 (2)].
To sum up, the above mentioned provisions always specify which document shall be published on the internet as a whole (e.g. the expert report, EIA statement) and which at least partly (e.g. the textual part of the documentation). Besides that, they specify which information shall be published also by other means pursuant to Sec. 16 (see below).
Publication of information on documents obtained during the assessment and on public hearings is regulated by Sec. 16 of the Act No. 100/2001 Coll. This provision lays down the range of information that the relevant authority shall publish, as well as place and method of publication:
"(1) The relevant authority shall ensure that information is published on
a. the notification and when and where it may be perused;
b. the place and time of the public hearing pursuant to this Act;
c. returning documentation for reworking or supplementing;
d. the documentation and on when and where it may be perused;
e. the expert report and on when and where it may be perused;
[...]
h. the consultation within transboundary assessment.
(2) The relevant authority shall also ensure that the conclusion of the fact-finding procedure, the EIA statement and the statement on a conception are published.
(3) The relevant authority shall ensure that information and statements referred to in paragraphs 1 and 2 are published
a. on the official notice boards of the affected territorial self-governing units;
b. on the internet, and
c. in at least one of the other ways usual in the affected territory (e.g. in the local press, on the radio, etc.).
[...]
(5) Information that cannot be made public pursuant to a special regulation [e.g. Civil Code, Commercial Code, Penal Code, or the Act on data protection] shall be deleted from information and statements made available to the public pursuant to paragraphs 1 and 2."
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(2) The relevant authority shall be obliged to ensure that the public hearing is held at the latest 5 days after expiry of the period of time for stating a viewpoint on the expert report.
[...]
(5) The relevant authority shall draw up minutes of the public hearing, which shall contain in particular information on participation and the conclusions of the hearing, and shall also prepare a complete stenographic recording or audio-recording thereof.

(6) The relevant authority shall be obliged to send the minutes of the public hearing to the developer, the affected administrative authorities and the affected territorial self-governing units and to publish them on the internet.
(7) Facts protected by special regulations [e.g. Civil Code, Commercial Code, Penal Code, or the Act on Data Protection] shall not be the subject of a public hearing."
The public hearing may be omitted if the relevant authority has not received any justified negative viewpoint on the documentation [Sec. 9 (9)].
To sum up, the public may peruse the published documents, make extracts and copies of them, and attend the public hearing.
Moreover, pursuant to Sec. 23 (1) the relevant authority, affected administrative authorities and affected territorial self-governing units shall be obliged to make all documents, prepared in the framework of the assessment according to this Act, available pursuant to special regulations – i.e. the Act No. 123/1998 Coll. on the Right to Environmental Information.
Information about the EIA procedure in individual cases may be find out also in the **information system on EIA** which is run by the CENIA (the Czech Environmental Information Agency; a state allowance organization reporting to the Ministry of the Environment). The information system is available at the following address: http://tomcat.cenia.cz/eia/view.jsp

FINLAND

The EIA procedure comprises the following steps 1) approval of assessment plan by the supervising authority, 2) announcement of the project and the assessment plan, 3) public hearing, 4) announcement of the assessment, 5) public hearing and 6) evaluation statement by the supervising authority.
Upon submission of an assessment plan, the supervising authority makes the project plan and the assessment plan public by publishing them on the authority's website, by public notice in newspapers and by letter to concerned authorities. The public, including NGO's, as well as concerned authorities are invited to express their opinion on the project and on the adequacy of the assessment program.
When the assessment is completed, including a description of different project alternatives and a comparison of their impacts, a new public hearing is held as described above. The opinions expressed are stated in the final assessment report.

FRANCE

L'étude d'impact est jointe au projet et donc soumise à toutes les phases organisées par la loi au titre de la participation du public (saisine de la commission nationale du débat public, enquête publique etc…)

GERMANY

See the answer to question A.VI. above. The procedure envisaged by Article 9 of the Federal EIA Act for public participation in EIA was the model for the corresponding SEA provision provided by Article 14i UVPG.

HUNGARY

After receiving the request, unless the activity is subject to military secret protection, the Inspectorate shall publish an announcement in at least one local or national daily newspaper and on its home page that contains:
a) the name, seat and availability of the Inspectorate with authority;
b) the fact of initiation of environmental impact assessment;
c) an information if transboundary environmental impact assessment procedure is initated;
d) the way of information of the public and the possibilities of making comments and asking questions;
e) the types of the possible decisions.

In the same time as publishing the announcement, the Inspectorate shall mail the announcement and
a) the request and its attachments to the locality according to the clerk of the municipality of the site of the activity,
b) the request and the non-technical summary from the attachments to the clerks of the municipalities supposedly concerned. The clerks shall immediately but not later than five days arrange for publishing the announcement on public places and also in another way usual at the locality. The announcement shall contain a reference to the possibility of access to the request and its attachments. The term of public announcement and of the possibility of access to the materials shall be at least thirty days.

After receiving the request, insofar the activity is not subject to military secret protection, the Inspectorate shall arrange public hearing on the territory of the municipality of the site of construction unless it rejected the request after its submittal. In the case of an activity subject to military secret protection the Inspectorate shall inform the clerks of the municipality of the locality of construction and of localities concerned. In the case when more than one locality is concerned or it is reasonable because of the number of concerned persons, the public hearing might organised in several localities.

THE NETHERLANDS

The answer is the same as that under VI, Part A. Environmental information is public according to provisions of the Act on openness of public administration and the Environmental Policy Act.
When a decision under EIA is taken according to the Uniform public preparation procedure of the General Act on administrative law this procedure has the obligation the publish the draft decision and all the files including the EIS that are related to it. During six weeks the public may comment. In addition to this art. 7.27 EPA holds the same obligation for decisions not taken under this procedure. Art. 7.30 EPA holds that when a procedure for decision taking prescribes the publishing of a draft-concept or a draft of the decision the EIS will be made public together with the draft concept or the draft.

NORWAY

I refer to my answer under Part A question IV above. Sections 7, 10, and 13 regulates this.

POLAND

Prior to the issue of a decision on the environmental conditions, the authority competent to issue the decision ensures the possibility of public participation in the procedure within the framework of which the environmental impact assessment for a project is carried out.
All persons shall have the right to submit comments and suggestions in the course of a procedure requiring public participation.

The administration authority competent to issue such decisions is obliged to provide the public without an undue delay with information concerning:

1) the launch of the environmental impact assessment for a project;
2) the initiation of the procedure;
3) the subject matter of the decision which has to be issued in the matter;
4) the authority competent to issue decisions or the authorities competent to provide opinions and grant approvals;
5) the possibilities of becoming acquainted with the necessary documentation of the case and the place where it is available for review;
6) the possibility of submitting comments and suggestions;
7) the manner and place for submitting comments and suggestions, providing, at the same time, for a 21-day period for their submission;
8) the authority competent for handling comments and suggestions;
9) the date and place of the administrative hearing open to the public referred to in Article 36, where it is to be conducted;
10) the procedure for the transboundary impact on the environment, where it is conducted.

Everyone is authorized to submit the comments and suggestions in written form, verbally to be recorded in the minutes or using the means of electronic communications without the need to secure them with the safe electronic signature referred to in the Act of 18 September 2001 on the Electronic Signature (Official Journal of the Laws, No 130, Item 1450, as amended17)). The comments or suggestions submitted after the expiry of the period defined by the regulation can't be considered. The administration authority competent to issue the decision may conduct an administrative hearing open to the public.

The open administrative session should be conducted if:

- the authority expects some social protests;
- local society expresses opinion and views actively;
- installation has significant impact on the local environment and it is controversial.

Distinctive features of an open administrative session during the proceeding concerning the issuance of the decision on the environmental conditions are as follows:

- a formalized part of the administrative proceedings (kpa)
- enable exchange of opinions;

- enable common discussion about comments and motions of the society;
- give opportunity to negotiate standpoint.

The authority which conducts the procedure of the environmental impact assessment:

1) shall consider comments and suggestions;
2) in the justification of the decision, irrespective of the requirements under the Administrative Procedure Code, shall provide information on public participation in the procedure and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used.

The authority competent to issue the decisions is obliged to inform the public that the decision has been issued and about the possibilities of becoming acquainted with its content.

PORTUGAL

The project submitted to EIA, and all the reports elaborate during the proceeding are made known to the public through the internet sites at the administrative building of the agencies involved (article 22 and 23 of the Decreto-Lei n.º 197/2005, 8th November).
During the EIA proceeding there must be a public inquiry on the projects and the environmental reports annexed to it (article 15 of the Decreto-Lei n.º 197/2005, 8th November).

SLOVAK REPUBLIC

Competent authority publishes on the website of the Ministry individual procedures in the EIA process,
municipality concerned informs public on the official board, by local press, local TV or similar about individual procedures in the EIA process.

SLOVENIA

According to article 58 EPA in the proceedings based on the EIA – directive the ministry must make available to the public **the application** for environmental protection consent, **environmental impact report** and **the draft decision on environmental protection consent**, and allow the public to give its opinions and comments. The ministry must inform the public by means of a public announcement in locally established way and on the global internet . Time limit in which the public has a right of access and an opportunity of giving opinions and comments is 30 days of such public announcement. According to article 65 EPA the ministry must also inform the public of the issued environmental protection consent in 30 days after serving the decision on parties at the latest, by means of an announcement in the locally established way and on the global internet. Such announcement must comprise in

particular:

1. substance of the decision and indispensable conditions for carrying out the planned activity, when specified,
2. main reasons for the decision made,
3. description of the principal measures for preventing, reducing or eliminating detrimental impacts of the planned activity on the environment when the environmental protection consent is granted and
4. indication of public opinions and comments taken into account. In its clarification of the environmental protection consent the ministry indicates how the public opinions and comments have been observed in the decision.

SWEDEN

According to the regulation the developer is obliged to consult with the public and the organizations that might be concerned on the content of the EIS.
The permit authority (when it concerns IPPC-plants and building in water) is obliged to advertise the application for permit and the EIS in the newspapers. When it concerns roads or railways the Swedish Transport Administration has the responsibility for the advertisement. The public is in the advertisement invited to give written comments on the project.
Normally, the permit authority (IPPC-plants and building in water) has an advertised public hearing, where representatives of the developer as well as representatives of national, regional and local authorities, organizations and the public participate. Concerning roads and railways it is the municipality or the Transport Administration that organizes these public hearings.
The permit itself - when it concerns IPPC-plants and building in water - is also advertised in newspapers.

THE UNITED KINGDOM

Regulations require the publicity of an EIA application and the publication and advertising of the availability of environmental information (referred to as an *environmental statement*).

Regulations also require the applicant to certify that the availability of the environmental statement has been advertised by notice and in the local press and that sufficient copies are provided to do this and be purchased. A non-technical summary also has to be made available and guidance encourages this to be made freely available.

The LPA are required to inform other persons (including non-Government environmental organisations) of the environmental statement who would not be made aware by site notices and local advertising

VIII. Who is authorized to take part in an environmental impact assessment proceedings? What about for example people living in the neighbourhood, NGO's and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?

VIII. Qui est autorisé à prendre part aux procédures d'évaluation de l'impact environnementale ? Qu'en est-il par exemple des personnes vivant dans le voisinage, des ONG et des autorités situées à un niveau administratif différent (local, régionale, centrale)? Quels sont les droits des parties aux procédures ?

AUSTRIA

As stated above (Q. III) an EIA- screening decision is required for projects in sensible areas.
Under the Austrian EIA Act the general public is not allowed to participate in the EIA screening procedure in which the competent authority assesses whether an EIA is required and therefore an EIA development procedure has to take place.
For projects that are subject to a mandatory EIA (because the meet the criteria/thresholds in Annex 1 to the EIA Act), the situation can be summarized as follows: In the EIA development procedure the general public is authorized to comment on the project and on the environmental impact statement. These comments have to be taken into consideration by the competent authority.
Furthermore the EIA Act 2000 contains possibilities of legal protection for different kinds of interested parties and persons concerned. Many parties have locus standi, which means that they have the right right to inspect the files and to participate in the hearing. They have the opportunity to take notice of the result of the evidence taken and to comment on it. They also have the right to appeal. Locus standi is granted to (e.g.):
- the neighbours,
Their rights are dependent on their concernment. Generally they may claim health risks, heavy nuisance and property rights, whereas for example, permit conditions on emission limit values according to BAT or obligations concerning nature preservation are considered public interest legislation that is not subject to neighbour rights
- other persons whose legal interest or title is affected (e.g. fishery rights)
- certain public authorities, eg the inspectorate for the protection of health at the work place
- the ombudsman for environment (Umweltanwalt)
The Environmental Ombudsmen of the Laender have been established by state law to defend environmental interests in administrative proceedings, notably in proceedings concerning nature preservation legislation. The EIA Act conferred to the Environmental Ombudsmen the right to act as party in EIA proceedings and entitled to claim the observance of EIA procedure and all environmental provisions
- citizens´ groups
Ad hoc citizens´ groups (Bürgerinitiativen) which fulfill certain criteria (200 local supporters, written statement of support giving specific reasons) have the right to act as party in EIA proceedings (not in EIA-simplified procedures, see Question III above) and are entitled to claim the observance of EIA procedure and all environmental provisions.
- Non-governmental-organisations (NGOs)
if they meet the specific criteria of Art 19 (6) EIA Act (non profit orientation, environmental goals, at least 3 years of existence) and have therefore been accepted by order of the Federal Minister of Agriculture and Forestry, Environment and Water Management, NGOs have the right to act as party in EIA proceedings and are entitled to claim the observance of EIA procedure and all environmental provisions. Also NGOs from abroad have locus standi if that

state has been notified pursuant to the transboundary effects of the project (Art 10 para 1 no. 1 of the EIA) and if the environmental organisation would be entitled to participate in an EIA and a development consent procedure if the project was implemented in this foreign state
- the water management planning body to protect the interests of water management
- the host municipality and the directly adjoining Austrian municipalities

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
Nuclear sector: this is not specified in the regulation. As mentioned, local and provincial governments and the Scientific Council will deliver an opinion. The opinion of the Scientific Council is binding when it its negative for the application. *Marine environment:* Art. 18 of the Royal Decree of 7 September 20903 states that "every interested party" can participate in the public participation process around the application of a permit or a consent. An "interested party" is defined as "each person that as a consequence of the envisaged activity can be harmed and each legal person that has as is objective the protection of the marine environment that can be harmed". Environment Ngo's can thus participate. Interested parties have access to the application and the EIR. They may send their observations, points of view and objections to MUMM. MUMM will deliver a reasoned opinion to the Minister taking into account the results of the public participation.
FLE :
Cfr B VII
BRU :
Cfr B VII

BELGIUM (WALLOON REGION)

La réalisation de l'étude d'incidences se déroule sous le seul contrôle du C.W.E.D.D. et de la C.C.A.T. ou à défaut de la C.R.A.T.
Le Conseil wallon de l'environnement pour le développement durable (C.W.E.D.D.) est chargé de remettre un avis sur la qualité de l'étude d'incidences et sur l'opportunité environnementale du projet.
La Commission consultative communale d'aménagement du territoire (C.C.A.T.) ou, à défaut, la Commission régionale d'aménagement du territoire (C.R.A.T.) sont, quant à elles, chargées de remettre un avis sur la qualité de l'étude et sur les objectifs du projet conformément aux objectifs définis par l'article 1er, § er, alinéa 2, du Code wallon de l'aménagement du territoire, de l'urbanisme et du patrimoine lorsque la demande porte sur un permis unique (permis d'environnement couplé à un permis d'urbanisme).

Une fois la demande de permis introduite, le mécanisme des consultations commence notamment avec celles du C.W.E.D.D. et de la C.C.A.T. ou à défaut de la C.R.A.T..

Le deuxième type de consultation est celui des Etats Membres et régions concernés par les impacts transfrontaliers et transrégionaux du projet.

Enfin, une enquête publique est organisée pour le projet et l'étude d'incidences.

Synthèse :Consultation du CWED (Conseil wallon de l'environnement pour le développement durable) pour remettre un avis sur la qualité de l'étude et l'opportunité environnementale du projet ; consultation de la CCAT (Commission consultative de l'aménagement du territoire) ou de la CRAT (Commission consultative régionale de l'aménagement du territoire) pour remettre un avis sur la qualité de l'étude et les objectifs du projet ; consultation des Etats Membres et des régions en cas d'impact transfrontalier ou transrégional.[18]

CZECH REPUBLIC

The participation of public in the EIA procedure is ensured by the Act No. 100/2001 Coll. in several stages of the process:
(1) Every person may send his or her written **viewpoint on the notification** of the project to the relevant authority within 20 days of the day when the information on the notification was published [Sec. 6 (7)]. The viewpoints are then taken into account when the relevant authority carries out the fact-finding procedure [Sec. 7 (2) (c)].
(2) Every person may send his or her written **viewpoint on the documentation** to the relevant authority within 30 days of the day when the information on the documentation was published [Sec. 8 (3)]. The relevant authority can on the basis of the viewpoints return the documentation to the developer for reworking or supplementing [Sec. 8 (5)].
(3) Every person may send his or her written **viewpoint on the expert report** to the relevant authority within 30 days of the day when the information on the expert report was published or express his opinion during the public hearing [Sec. 9 (9)]. The authorized person shall prepare the expert report on the basis of the documentation or notification and all the viewpoints submitted thereon [Sec. 9 (2)]. Furthermore, the person preparing the expert report shall deal with the received written viewpoints on the expert report and the viewpoints which were raised during the public hearing and, if appropriate, modify the draft statement on the basis of these viewpoints [Sec. 9 (10)].
(4) The relevant authority shall issue an EIA statement on the basis of the documentation or notification, expert report, public hearing and the viewpoints submitted thereon [Sec. 10 (1)].
(5) Pursuant to Sec. 23 (9) the locally relevant unit of a civic association or generally beneficial society, whose sphere of activity is protection of the public interest protected pursuant to special regulations, or a municipality affected by the project shall become a **participant in the subsequent related procedures** pursuant to special regulations if
a. it has submitted a written viewpoint on a notification, documentation or expert report within the time-limits laid down in this Act,
b. the relevant authority stated in its statement pursuant to Sec. 10 (1) that this viewpoint is fully or partly included in its statement, and
c. the administrative authority making a decision in a related procedure did not decide that the public interests, defended by the civic association, are not affected in the related procedure.
Legal rights. The public can in the light of the above mentioned facts express their viewpoints which shall be taken into account by the relevant authority when carrying out the fact-finding procedure as well as when issuing the statement on the conception. Similarly, the

[18] RPDB, n° 2154 et svts, p. 1316-1317

authorized person preparing the expert report shall deal with the received written viewpoints and, if appropriate, modify the draft statement accordingly. For the right to access to courts see the following question.

The participation of affected authorities in the EIA procedure:

(1) After the notification of a project has been submitted, the relevant authority shall within 7 working days of obtaining the notification send a copy thereof for a viewpoint to the affected administrative authorities and affected territorial self-governing units. The regional authority shall send a copy of the notification to the Ministry within the same period of time [Sec. 6 (6)].

(2) The viewpoints are then taken into account when the relevant authority carries out the fact-finding procedure [Sec. 7 (2) (c)].

(5) After the documentation of a project has been submitted, the relevant authority shall within 10 working days of obtaining the documentation send a copy thereof for a viewpoint to the affected administrative authorities and affected territorial self-governing units [Sec. 8 (2)]. The relevant authority can on the basis of the viewpoints return the documentation to the developer for reworking or supplementing [Sec. 8 (5)]. In case the documentation has been reworked or supplemented, the relevant authority can send a copy thereof for a viewpoint to the affected administrative authorities and affected territorial self-governing units [Sec. 8 (6)].

(6) The authorized person shall prepare the expert report on the basis of inter alia all the viewpoints submitted thereon [Sec. 9 (2)].

(7) After the authorized person has submitted the expert report, the relevant authority shall send a copy thereof within 10 working days of its receipt to the affected administrative authorities and affected territorial self-governing units [Sec. 9 (7)]. The person preparing the expert report shall deal with the received written viewpoints on the expert report and, if appropriate, modify the draft statement on the basis of these viewpoints [Sec. 9 (10)].

(8) The relevant authority shall issue an EIA statement on the basis of the documentation or notification, expert report, public hearing and the viewpoints submitted thereon [Sec. 10 (1)]. The relevant authority shall send the EIA statement within 7 working days to the affected administrative authorities and affected territorial self-governing units [Sec. 10 (2)].

(7) The authority which issued the EIA statement shall be the affected administrative authority in the subsequent related procedures [Sec. 10 (4)]. It can thus express its opinion as to how the EIA statement was reflected.

DENMARK

The parties entitle to take part in the EIA proceedings and the public hearing is the public concerned which is defined in accordance with the definition of the public concerned in article 1(1) of the EIA Directive. So the public concerned includes neighbours, NGOs and effected authorities. The right to participate gives the right of the public concerned to comment on the project as well as to comment on the environmental impact. There is no formal distinction related to the level of decision regarding public participation.

FINLAND

The public hearing described above gives private and legal persons and NGO's access to information about the project and the environmental impact and gives them the occasion to

express their opinion, regardless of whether they would be considered parties in, *e.g*, an environmental permit procedure for the same project. State and Council authorities responsible for environmental and health matters have specific standing in the EIA process. The supervising authority, on making the final evaluation of the assessment, also refers the opinions and statements that have been put forward in the proceedings. The applicant is not required to change his plans in response to the opinions expressed.

GERMANY

See the answer to question A.VII. above.
The EIA procedure in Germany is open for participation of

- authorities whose environmental or health-related responsibilities are affected by the project (Article 7 UVPG),
- the public, including NGOs (Article 9 UVPG),
- if transboundary impacts of the project are likely, the authorities and the public of any affected state (Article 8, 9a UVPG).

With regard to consultations of the public, the UVPG distinguishes between the public and the public affected. Authorities and the public affected participating in the consulting procedure have the right to comment on the project and on the EIA documents.

HUNGARY

The so called **concerned public**: is a natural person, legal person or organisation without legal personality
a) that is affected or could be affected by the decision brought in the process determined by this Decree, or
b) that is otherwise interested in the decision brought in the process determined by this Decree.

The environmental organisation according to Article 98, Paragraph (1) of Act 53 of 1995 on general rules of environmental protection shall always be considered concerned.

Concerned public can make comments, ask question, has the right to appeal.

THE NETHERLANDS

The answer is the same as under VII Part. A. Everybody, including NGO's and administrative organs, do have the right to comment on a draft decision including the EIS. Once the decision is taken only those who have an interest in the decision may raise an appeal. This may be also NGO's or administrative authorities depending of their statutory aim and factual activities or their public responsibilities.

NORWAY

As already mentioned, the decisions contained in the EIAs are only process-leading. Because they are not individual decisions on the merits, private parties or NGOs have no right to appeal against plans or projects, cf. the Public Administration Act Sections 2 and 3.
Section 10 decides that proposed projects with an environmental impact shall be circulated to authorities and special interest organizations concerned for comments and made available for public inspection. Relevant background documents and expert reports shall be available at the premises of the competent authority and the party proposing the project. Subject to Section 13, the proposed plans or applications with an environmental impact assessment and any expert reports shall be made available publicly in national newspapers and on the Internet. The finished EIAs are usually published in national newspapers and on the internet.
As we can see, both the EIA and the process leading up to it lays the foundation for an enlightened public debate. It also ensures that all the relevant objections are heard, so that the public authority that will ultimately decide upon whether the proposed project shall be allowed has a broad and balanced factual basis on which to base its decision.

POLAND

Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact regulates the issues of public participation in the procedure concerning an environmental impact assessment. Everyone is admitted to take part in the procedure concerning environmental impact assessment, regardless of his/her nationality and origin, place of residence and direct profits or loss resulting from the conduct of proceedings. Everyone has the right to express his/her comments and submit motions, take part in an open administrative session, if the authority decides to carry it out, yet he/she does not have the right to appeal against the administrative decision, since this right is vested only to the parties. According to Article 28 Code of Administrative Procedures, the party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.
Ecological organizations may lodge an appeal or a complaint about a decision requiring public participation even if they have not taken part in the proceedings about issuance of the decision (Article 44). This regulation ensures proper transposition of Article 10a of directive 85/337/EEC regarding the necessity to ensure access to justice in matters related to the environment to all members of "the interested society".

PORTUGAL

In accordance with the article 14 of the Decreto-Lei n.º 197/2005, 8th November, the draft of the project submitted to EIA proceeding (and the environmental report elaborated previous or during the proceeding) should be submitted to public consultation, within a period of 15 days. In that period, NGOS, the environment associations and the people affected by the plan are allowed to present observations, proposals to be considered at the final draft of the plan or project.

SLOVAK REPUBLIC

Departmental authority - central governmental agency, having jurisdiction over the proposed activity,
authorizing authority - municipality or governmental agency competent to issue decision of the permit on the proposed activity,
concerned authority – the administrative authority whose binding expertise, consent, or opinion underlie permit the proposed activity,
municipality concerned - the communne whose the cadastral area proposed activity will be realize and whose area may affect the impact of the proposed activity,
they are served the project, decision whether the proposed activity will be assessed, report on the assessment of the impacts of proposed activity on the environment, final opinion on the assessment of the proposed activity, issuing written opinion on the project, report on the assessment of the activity, may submit comments on the scope of the assessment of the proposed activity, may attend the public hearing of the proposed activity.
Public - one or more natural or legal persons, associations, organizations or groups,
municipality concerned informs the public about the project, whether the proposed activity will be assessed, scope of the assessment of the proposed activity and its timing, report on the assessment of the activity, final opinion on the assessment of the proposed activity,
public may inspect into the project, inspect, make depreciations, extracts or at its own expense make copies of the report on the assessment of the activity, final opinion on the assessment of the proposed activity,
may submit written opinion on the project, report on the assessment of the activity, submit comments on the scope of the assessment of the proposed activity,
right to attend the public hearing proposed activity.
The public concerned is the public having interest or may have interest in the environmental decision-making procedures,
they are served the decision whether the proposed activity will be assessed, final opinion on the assessment of the proposed activity, may submit written opinion on the report on assessment of the activities.

SLOVENIA

According to article 64 EPA a party to the proceeding for granting the environmental protection consent is **the entity responsible for the planned activity**.
A person permanently residing in the affected area or owning or possessing a real estate and **NGO's** have a legitimate interest in line with the regulations on administrative procedure and has the status of an accessory participant in the procedure, if they file an application to intervene within the 30 day of the public announcement. They have rigth to appeal and right to judicial review.

SWEDEN

Everybody – single persons and organizations alike - is entitled to take part in consultation on the EIS and in the proceedings in the first instance that decides on the development consent. The right to appeal is limited to those concerned by the project (for instance neighbors to the project). Not all that have participated in the first instance are thus entitled to appeal. Which NGO:s that can appeal is stated in the Environmental Code. It is the same as was described above in the answer to question A VII, that is only NGO:s that according to their statutes have nature or environment protection as their main purpose, are not profitable, have been active in Sweden for at least three years and have at least 100 members can appeal.

THE UNITED KINGDOM

A developer can ask for a scoping opinion prior to the submission of a planning application about the information that should be made available in the environmental statement. On receipt of such a request the LPA must consult statutory consultees and the developer about the content of the scoping opinion.

Once the environmental statement has been published third parties, NGOs and other authorities can submit representations on the environmental information in the environmental statement. The same are able at any time during the EIA process to make representations to the Secretary of State about any decision regarding the need for EIA, although there is no formal requirement for the Secretary of State to issue a screening direction in response to such representations.

IX. In what way are questions concerning the application of the EIA-directive brought to court? Please give one example of the proceeding and the judgement.
IX. De quelle manière les questions portant sur l'application de la Directive EIA sont-elles portées à la connaissance des juridictions ? Veuillez donner un exemple de procédure et de jugement.

AUSTRIA

In general, questions of the application of the EIA-directive can be raised in an appeal to the Umweltsenat or in a complaint to the Administrative Court and to the Constitutional Court. In several proceedings questions of the scope of the implementation of the EIA-directive have been raised, for example regarding the interpretation and implementation of Annex I, II of the EIA-directive.
In a case concerning the construction of a power line connecting Austrian and Italian networks in the Alpine Region an EIA screening procudure took place. The competent authority (The Kärntner Landesregierung) determined that no environmental impact assessment was required for the project at issue because the length of the Austrian part of the project did not reach the minimum 15 kilometre threshold stipulated in the Austrian EIA Act. The Environmental Ombudsman filed an appeal to the Environmental Senate (Umweltsenat) against the decision seeking the annulment of the contested decision. The Ombudsman argued

that according to the aims of the EIA-directive the project as whole (and not only the Austrian part) has to be taken into consideration in the screening procedure. The Umweltsenat refered the question to the ECJ.
The ECJ decided that the total length of a project is relevant, even if it is a transboundary project 10 (US, May 8, 2008, Docket No. 8B/2008/2-8; C-205/08, Umweltanwalt von Kärnten v. Kärntner Landesregierung, 2009 E.C.R.).
In a case concerning the EIA-screening decision for a waste management facility, the Administrative Court decided on a complaint by the project developer that the EIA directive was directly applicable because the thresholds of the EIA-directive were exceeded and implementation in the EIA-Act was insufficient (VwGH, Docket 2003/07/0127, see also Docket No. 2001/07/0171).
Recently, in a proceeding concerning the EIA-development consent for two high-speed railway projects (Angertalbrücke and Brenner Basistunnel), an NGO and the Environmental ombudsman failed a complaint against the decision of the competent authority (Ministry of Transport). The petitioners held that the implementation of Art 10a EIA-directive in Austria was insufficient because the EIA-development consent for a high-speed railway is not subject to full judicial review. For high-level transport projects the Environmental Senate does not act as authority of appeal, the decision can only be contested by a complaint to the Administrative Court.
The Administrative Court is a court of cassation, it can squash a decision if, inter alia, substantial procedural provisions have been neglected or if an essential part of the facts needs to be amended; the Administrative Court has however no competence to ascertain the relevant facts of the case on it´s own and hear evidence. The Austrian Administrative Court shared the viewpoint of the petitioners that the implementation of Art 10a EIA-directive was insufficient nd decided6 that in order to fully apply community law and protect the rights conferred there under on the public by the public participation provisions of Art 10a of the EIA Directive, the Umweltsenat also is to be regarded as the competent authority to hear appeals against permits for high-level traffic projects. The Constitutional Court rejected this interpretation in a recent decision7. According to the Constitutional Court the Administrative Court is a tribunal in line with Art 6 ECHR; the law of the European Union does not require courts having „full jurisdiction" in order to protect individual´s right granted by the EIA-Directive.

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

Most of the Court cases dealing with EIA issues are demands for annulment (or suspension) of permit decisions (building permits, environmental permits or operating permits). In these cases it is argued that the permit has been delivered in violation of the law, because, either an EIA was lacking, or an EIA was available but was of poor quality not meeting the legal standards or the permit decision has not taken fully account of the EIA or the results of the public participation. As a rule these cases are brought directly before the Council of State. Only in the Flemish Region and as building permits (not environmental permits) are concerned there is now a specialised Administrative Court of first instance (*Raad voor Vergunningsbetwistingen*) where such cases can be brought.

BELGIUM (WALLOON REGION)

Le régime wallon, à la différence du régime bruxellois, instaure un régime spécifique de sanctions en cas de méconnaissance du système d'évaluation des incidences.[19] En outre, toute demande de permis comporter les documents d'évaluation des incidences, le dossier doit, en leur absence, être considéré comme incomplet[20].
Outre cette sanction procédurale, l'article D 63 du Livre Ier du code de l'environnement (DEI art 5 al 1er) permet à l'autorité compétente sur recours - et au juge administratif- de prononcer la nullité – et donc l'anéantissement rétroactif- de tout permis délivré en contradiction avec le système d'évaluation des incidences.[21]
C'est à l'autorité compétente sur recours que revient cette prérogative dans la mesure où l'on conçoit mal que l'autorité qui a délivré une autorisation prononce elle-même la nullité de celle-ci[22].
L'annulation épuise la compétence de l'autorité de recours et le demandeur doit réintroduire une nouvelle demande de permis conforme au système d'évaluation des incidences.
C'est le Conseil d'Etat qui statue après épuisement des autres recours.[23]
Il est à noter que conjointement ou postérieurement, des procédures peuvent être intentées devant les tribunaux de l'ordre judiciaire, au civil, pour remédier aux éventuels troubles de voisinage, ou statuer sur une action en responsabilité. Une action en cessation est également possible devant le juge des référés, agissant « comme en référé », sur la base de la loi du 12 janvier 1993, qui confère ce pouvoir d'action en cas d'atteinte grave à l'environnement ou de risque d'atteinte grave, au ministère public, à l'administration et aux associations (ASBL) (moyennant certaines conditions d'ancienneté (3 ans) et d'objet social) qui se voient reconnaître, contrairement à la jurisprudence en vigueur devant le Conseil d'Etat, une plus large voie d'accès à la justice.

CZECH REPUBLIC

As mentioned above (question VI), the EIA statement does not give the final development consent; it is merely a basis for subsequent procedures according to special regulations. Therefore, the EIA statement itself cannot be subject to court review in a separate procedure. However, it can be reviewed within the judicial procedure commenced against a decision adopted in an administrative procedure which was based inter alia on the EIA statement. Pursuant to Sec. 75 (2) of the Code of Administrative Justice "[t]he court shall review the contested statements of the decision within the scope of objections. If the binding ground for the decision under review were another act of the administrative authority, the court likewise reviews its lawfulness […]".
Generally, an action against a decision of an administrative authority can be brought by "[a]nyone who claims that his rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative authority whereby the person's rights or obligation are created, changed, nullified or bindingly determined […]" [Sec. 65 (1) of the Code of Administrative Justice]. Furthermore, "[a]n action against a

[19] RPDB, n°2154 et suivants
[20] A. Lebrun, Memento de l'environnement, 2005, n° 496.
[21] RPDB, n° 2155
[22] B. Jadot, La réglementation de l'évaluation des incidences sur l »environnement, p.344, note 184)
[23] C De Doncker, op.cit., p. 185

decision of an administrative authority can be brought even by a party to the proceedings before the administrative authority who is not entitled to file an action under paragraph 1 if the party claims that his or her rights have been prejudiced by the administrative authority's acts in a manner that could have resulted in an illegal decision" [Sec. 65 (2) of the Code of Administrative Justice].

The Act No. 100/2001 Coll. provides for special rules as regards standing of NGOs. Pursuant to Sec. 23 (10) "[a] civic association or generally beneficial society, whose sphere of activity is protection of the environment, public health or cultural monuments, or a municipality affected by the project if they have submitted a written viewpoint on documentation or expert report within the time-limit laid down in by this Act can challenge at court, by means provided in the Code of Administrative Justice, the decision issued in the subsequent related procedures on grounds of breach of this Act." However, as pointed out in question I of Part B, the action does not have suspensive effect.

In the ***case No. 1 As 39/2006***[24] from 14 June 2007 the Supreme Administrative Court held that the possibility to challenge the EIA statement only within the judicial review of the subsequent decision giving final development consent is in accordance with the Aarhus Convention as well as with the EIA-directive. It is up to the Member States to determine at what stage the decisions, acts or omissions may be challenged (Article 10a of the EIA-directive). In addition, the Court held that both the EU law and the Aarhus Convention require that requests of the affected public to be given suspensive effect to their actions should be granted. Otherwise, it can happen that by the time the court decides about the contested decision, the project will be already realised and it would not be possible to reverse it. Thus the judicial protection would not be timely and fair.

DENMARK

The access to justice of the public concerned follows different tracks depending on the legislation which is the basis for permit of the project. For projects falling within the Planning Act, any decision on EIA (or not making EIA) can be appealed to the Nature Appeal Body, and the decision of the Nature Appeal Body can be brought before the court. For projects at Sea, no such administrative appeal is possible, so for these project, the only access is to raise a case directly before a court. Until now the Danish Court have been very reluctant to overrull decisions of the EIA authority as illustrated by the Skodsborg Beach Park case mentioned above.

Some major national projects has been decided by a Parliamentary legislative Act and until now three of these projects have went to Court: the Öresund Bridge Case (MAD 1998.1227 H), the Öresund City case (MAD 2000.139 Ø) and latest on the Act establishing a Testcenter for Windmills which is still pleading.

The first case was regarding the establishment of the Öresund Bridge to Sweeden. In this case, the decision of the Act as well as the later public hearing was made before there was an environmental impact assessment of the project. During the pleading of the case before the

[24] The Supreme Administrative Court reitareted these conclusions in a number of other cases, e.g. No. 3 As 36/2008-57 of 23 October 2008; No. 2 As 59/2005-136 of 14 June 2006; No. 1 As 13/2007-63 of 29 August 2007; or No. 1 As 91/2009-83 of 19 January 2010.

Eastern High Court and the Supreme Court at least four different interpretation of the derogation clause in article 1(5) of the EIA Directive was taken by different judges. In 1998 (MAD 1998.1227 H), the Supreme Court finally concluded that the decision of the project was not in conflict with the EIA Directive based on an interpretation of the EIA Directive which according to several scholars differ from the ECJ interpretation of the same clause one year later in C-435/97 WWF v. Borzen.

FINLAND

APPLICATION OF EIA IS BROUGHT TO COURT IN A NUMBER OF WAYS:

1. THE APPLICANT MAY APPEAL TO THE REGIONAL ADMINISTRATIVE COURT AGAINST A DECISION BY THE REGIONAL ENVIRONMENT AUTHORITY THAT EIA IS *REQUIRED*

A DECISION BY THE REGIONAL ENVIRONMENTAL AUTHORITY THAT EIA IS *NOT REQUIRED* MAY NOT BE BE CHALLENGED BY THE PARTIES AS SUCH. A CONCERNED AUTHORITY (OTHER THAN THE ONE DECIDING EIA IS NOT REQUIRED) MAY APPEAL AGAINST A PERMIT DECISION ON THE GROUNDS THAT EIA WAS NOT MADE

2. APPEALING AGAINST A PERMIT DECISION UNDER THE ENVIRONMENTAL PROTECTION ACT OR WATER CONSTRUCTION ACT, PARTIES MAY IN BOTH CASES ABOVE CLAIM THAT EIA WAS NOT PROPERLY MADE AND THAT THE PERMIT DECISION THEREFORE SHOULD BE REPEALED.

ORIGINALLY, THE FINNISH EIA ACT DID NOT ADMIT APPEALS AGAINST AN ENVIRONMENTAL AUTHORITY DECISION THAT EIA WAS *NOT REQUIRED* AND THE ADMINISTRATIVE COURT WAS NOT COMPETENT TO REPEAL SUCH A DECISION. THE ACT WAS REVISED IN 2006 IN ORDER TO COMPLY WITH THE AIMS AND PROVISIONS OF THE EIA DIRECTIVE.

Examples

DECIDING ON WHETHER AN APPLICANT FOR A STONE QUARRY PERMIT WAS TO MAKE AN EIA, THE REGIONAL AUTHORITY HAD DECIDED THAT ASSESSMENT WAS NOT REQUIRED. THE AC RULED THAT, ALTHOUGH THE QUARRY IN QUESTION WAS SMALLER THAN THE THRESHOLD FOR OBLIGATORY EIA, THE NEED FOR ASSESSMENT WAS TO BE CONSIDERED TAKING INTO ACCOUNT ALSO TWO NEIGHBOURING QUARRIES AFFECTING THE SAME AREA. TOGETHER, THE QUARRIES WERE LIKELY TO HAVE SEVERE EFFECTS ON THE ENVIRONMENT AND THE IMPACT WAS TO BE ASSESSED. THE DECISION OF THE REGIONAL AUTHORITY WAS REPEALED. (*TURKU AC 22.2.2010 NR 10/00138/1, CASE PENDING IN SAC)*

A PRIVATE COMPANY PLANNED AN OFFSHORE WIND POWER INSTALLATION CONSISTING OF 100-200 WIND TURBINES OF 5 MW EACH ON A BANK 10 KM OFF THE FINNISH COAST. THE REGIONAL ENVIRONMENTAL AUTHORITY DECIDED THAT EIA WAS REQUIRED. WIND POWER PRODUCTION WAS NOT THEN LISTED FOR OBLIGATORY EIA, BUT DUE TO THE SCALE OF OPERATIONS, THE ENVIRONMENTAL IMPACT WAS CONSIDERED COMPARABLE TO THAT OF OPERATIONS FOR WHICH EIA IS OBLIGATORY AND ASSESSMENT WAS, THEREFORE, REQUIRED. (*WEST FINLAND ENVIRONMENTAL CENTRE 5.6.2007).* NOTE: THE EIA DECREE WAS REVISED IN 2011, BRINGING WIND POWER PARKS OF AT LEAST TEN MILLS OR WITH A TOTAL EFFECT OF AT LEAST 30 MW ON THE LIST FOR OBLIGATORY EIA.

THE REGIONAL ENVIRONMENTAL AUTHORITY HAD DECIDE THAT EIA WAS NOT REQUIRED FOR A 90 KM LONG STRETCH OF GAS PIPE LINE WITH A DIAMETER OF 500 MM. THE THRESHOLD VALUE FOR OBLIGATORY EIA WAS 40 KM AND 800 MM. SAC DECIDED, THAT THE SCOPE OF THE PROJECT AND ITS IMPACT WERE COMPARABLE TO THOSE PROJECTS FOR WHICH EIA IS

MANDATORY, AND REPEALED THE DECISION. BECAUSE EIA WAS REQUIRED, ALSO THE STATE COUNCIL DECISION ALLOWING THE COMPANY TO EXPROPRIATE LAND FOR THE PIPE LINE, WAS REPEALED. (SAC 3.7.2008/1633)

FRANCE

Elles sont portées à la connaissance des juridictions par les mécanismes classiques de recours contre les décisions administratives (contrôle de légalité, excès de pouvoir). L'étude d'impact est une formalité substantielle de la demande d'autorisation administrative ou de permis et son contenu est apprécié souverainement par le juge du fond.

GERMANY

The right to file an action against development permissions subject to an EIA is regulated primarily by the Administrative Court Proceedings Code (*Verwaltungsgerichtsordnung* – VwGO). Additionally the right of NGOs to file an action is regulated by the Act Concerning Supplemental Provisions on Appeals in Environmental Matters pursuant to EC Directive 2003/35/EC (Environmental Appeals Act) of 7 December 2006 (Federal Law Gazette I p. 2816).

Example: A planning permission may be quashed by the administrative court, because the EIA is missing and it seems possible to the court that the responsible authority would have come to a different decision, if the EIA had been undergone. The plaintiff can be a neighbour or another local authority.

HUNGARY

There has not yet been a decision issued on an EIA directive in a Hungarian court.

THE NETHERLANDS

As already said in the past cases are bought to court in which following domestic law no EIA was required while it was prescribed by the EIA-directive. This was because of the fact that the scope of EIA according to Netherlands law did not completely fit the scope of the EIA. According the European law an applicant may ask for the direct applicant of the provision of the directive instead of the domestic provision.
Later on we had several cases in which an application was made for an activity smaller than the criterion for EIS for this decision. The applicants stated that this application should have taken together with another one for the same activity in the direct neighbourhood, because of the fact that this was in reality one activity. This case dealt with applications for the building of windmills in the polder Wieringermeer. The establishment , modification or enlargement of one or more coherent installations for the production of electricity by wind energy is mentioned in the second annex to the EIA-decree. This means that this is an activity for which the competent authority according to art. 7.2, section 1 under b and 7.17 has to consider whether an EIS has to be made or not. The criteria for this activity are a production power of 15 megawatt or 10 or more windmills. The application was done by a firm of farmers with

support of the electricity company for 6 windmills, while half year later another application was done by another firm of farmers supported by the same electricity company for again 6 windmills along the same road along which according to the first application the windmills would be established. The representative of the first firm stated that it had nothing to do with the firm that did the second application. The suspicion was of course that this was a construction to prevent the risk of an EIA-consideration that may result in the obligation to draft an EIS.
Later on we had several cases in which a pig or poultry farm was enlarged. The applicants stated that the new enlarged farm together with the already existing part had more pigs or poultry then the criteria, so that an EIS was obliged together with the application for a new license for the enlarged farm. The representatives of the farmers stated that no EIS was required because of the fact that already a license was granted for a part of the farm en that the enlargement was less than the criteria. In this cases the Department of Justice of the Council of State decided that EIA is primary connected to activities and secondly to decisions. So for the question whether an EIS is obliged the growth of the activity is decisive. When a farmer decides to pull down has old stable and to build a new one for a number of pigs or poultry that is over the criteria he is under EIA no matter that he has already a license for a part of his animals. When he decide to only build an additional stable for a number of pigs or poultry that is under the criteria he is not under EIA, no matter that the total number of animals in his two stables will be over the criteria. Situations may be complex for farms that have a number of stables of which some will be pulled down, others not, but the last ones will be enlarged or renewed.
Nowadays we do have cases resulting from the decision of European Court of Justice that the criteria for a activity under EIA are not fully decisive but that in every case the competent authority has to estimate whether there will be other circumstances because of which an activity that is under the criteria still will be under EIA. One of these circumstances may be that the activity will take place in an extraordinary sensitive area.
In the Netherlands case law cases related to EIA have mostly to do with the scope of EIA and not with the content of an EIS.

NORWAY

I would imagine that the question before a court would deal with the validity of individual decisions to grant a permission or licence, say for example in a building development case. Neighbours of the grantee or other concerned parties with the capacity to sue could argue that the EIA was not conducted in conformity with the directive or the Regulation implementing it, and that the permission should be deemed invalid due to a procedural error, cf. the principle in Section 41 of the Public Administrative Act.
In the so – called Husebyskog case concerning the placement of the US embassy in Oslo, the Norwegian Supreme Court found that the EIA directive was inapplicable and that the obligation to conduct an EIA flowed from Norwegian law, and not from the directive. Thus, the question of how to apply the EIA –directive did not arise. To my knowledge, this is the only case where the directive is mentioned.

POLAND

The issues concerning application of the EIA-directive are brought to the administrative court as a litigation upon prior lodging of an appeal of a decision on the environmental conditions.

Appeals against the decision resulting from an environmental impact assessment are heard by the Self-Government Board of Appeals (Samorządowe Kolegium Odwoławcze) or the General Director of Environmental Protection.
The entities authorized to lodge appeals are parties of the administrative proceedings, even if they have not taken part in the pending proceedings and ecological organizations having the rights of a party. According to Article 28 Code of Administrative Procedures (kpa), a party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.

The rights of the authority to issue a decision have been specified in Art. 138 Code of Administrative Procedures, based on which the authority may:

1. Uphold the appealed decision,
2. Reverse a decision in part and in this scope adjudicate about the essence of the matter,
3. Reverse an entire decision and in this scope adjudicate about the essence of the matter,
4. Reverse a decision in full or in part and in this scope discontinue the proceedings in the authority of first resort,
5. Discontinue the appeal procedure,
6. Revoke the appealed decision and remit the case for re-examination to the authority of first resort.

In the event a decision or a provision is issued by the Self-Government Board of Appeals in first resort, a claim should be preceded by an application for re-examination of the case, else it will be rejected by the court. If a party does not agree with the decision of the Self-Government Board of Appeals, it can bring a case before the court. Decision issued by the Self-Government Board of Appeals is subject to control by the Administrative Court after lodging an appeal against decision by the parties of the proceedings. A claim should be submitted to the locally appropriate Administrative Court through the Self-Government Board of Appeals that has issued the decision. There should be an instruction related to submission of a claim in the decision of the Self-Government Board of Appeals. A party has 30 days to submit the claim, commencing on the day of delivery (announcement) of the decision by the Board. Submission of a claim itself does not result in a stay of enforcement of the decision. A party may submit an application for such a stay of enforcement of the decision together with the claim.

The administrative court decides a case with a judgment, if it accepts a claim and then it:

1) reverses a decision in full or in part,
2) states the invalidity of the decision.

In such a case the court usually specifies which legal regulations have been violated by the authority and brings the case before the court for re-examination. If the court dismisses a claim, it shall justify the judgment on request of a party within 7 days of the day of pronouncement of the judgment by the Voivodeship Administrative Court.

PORTUGAL

In the case known as Tunel do Marquês, the Municipality of Lisbon decided to built a tunnel with 1,200 Km, in the centre of the town. Some organizations and a singular citizen sue the Municipality of Lisbon in order to sustain the undertaking until the accomplishment of the EIA proceedings. The Court of first instance follows the plaintiff's thesis and ordered the stopping of the public works. The sentence wasn't upheld by the Supreme Court.
In the case known as Costaterra, the owner of a large farm which includes flora, fauna and sites classifieds as priorities under the Natura 2000 Network, has received from de environmental agency a declaration of environmental compatibility with some conditions, which were designed to mitigated the negative effects of the tourist project of thousands of beds. In spite of the not so positive declaration of compatibility, the government decides to issue permission to implement the project because this was thought to be in accordance with the public interest.
The NGOs pledge in Court for the suspension of the works arguing the offense of the above mention priorities species, as was described in the final reports attached to the final resolution of the EIA.
The Court follows the plaintiff's thesis. The sentence wasn't upheld by the Court of Appeal.

SLOVAK REPUBLIC

Questions concerning the assessment of the proposed activities do not occur often in the trial. Claimant alleged that he was injured on his rights and intersts protected by law unlawful intervention administrative authority, account on that the Ministry of Environment of the Slovak Republic in the EIA process determined biased person as a professionally qualified person to develop expertise on the proposed activity. The action was denied by a court as unfounded because the claimant did not prove any relevant evidence about it, that fact which gave reason for bias could have affect on develop of expertise determined professionally qualified person.

SLOVENIA

Supreme Court of Republic of Slovenia has rendered a decision several times on the questions concerning the status of party to the IEA procedure. For example in case X Ips 985/2006 on 18th of February 2010 Supreme Court has rulled that in the Environmental Protection Consent procedure only person owning or possessing a real estate in the area, where the planned activity will cause environmental burdens which are likely to affect human health or property and which was defined in environmental impact report, has the status of accessory intervener.

SWEDEN

When it concerns the larger IPPC-plants and projects that involve building in water, the Land and Environment Courts are directly involved since they constitute permit authorities in these cases. That means that they decide on the development consent and on the approval of the

EIS. Permits issued by the Land and Environment Courts can be appealed to the Land and Environment Court of Appeal, and further to the Supreme Court.
The proceeding of an application for a permit is presented in an attached scheme. The first part of the proceedings – the production of the EIS – takes place before the application and the EIS is delivered to the Land and Environment Court.
Infrastructural projects – roads and railways – often contain parts that involve building in water (such as bridges and tunnels) that requires a permit from the Land and Environment Court. They can also affect areas that are protected, for instance Natura 2000-areas – and in these cases a decisions or a permits is required from the County Administrative Board. The decision or permit can be appealed to a Land and Environment Court.
Infrastructural projects and other kind of projects that does not involve building in water or protected areas, are decided by national authorities or the Government. In these cases the procedure of the assessment can be tried by the Supreme Administrative Court. A question for the court is then whether the EIS has been sufficient and if the procedure in assessing the project has been correct.
A very common standpoint from the public and NGO:s is that the EIS is insufficient or inadequate, and that development consent of that reason cannot be granted. The courts have in many cases declared that a sufficient and adequate EIS is a prerequisite for the proceedings for development consent. (A case is presented below.)

THE UNITED KINGDOM

Questions concerning eg why a local planning authority decides that no EIA is required or if environmental effects have been considered without an EIA when an EIA was required or a failure to consult are dealt with by an application for judicial review to the Administrative Court.

The best example we can give involves the issue of whether a planning permission was lawful given that there was a failure to undertake an EIA. The case is Berkley v Secretary of State for the Environment, Transport and the Regions [2001] ENV LR16. The brief facts were that planning permission had been granted, without environmental impact assessment, for redevelopment of the ground of Fulham Football Club. As well as the ground redevelopment, the proposal involved the building of flats above a riverside walk and some encroachment onto the River Thames. Mitigation measures were proposed to compensate for potential damage due to aquatic habitat caused by the walkway. These satisfied the (then) national rivers authority, not the London Ecology Unit. The Secretary of State called in the application, but did not require an EIA and granted the planning permission, albeit subject to various conditions aimed at mitigating the environmental impact. The proposed redevelopment was opposed by a group of local residents.

The House of Lords emphasised the extent to which EIA is a procedural mechanism involving the opportunity for informed public participation: it is not simply an information gathering exercise. Lord Hoffman, in the leading judgment, held that the available documents provided a mere "paper chase" which fell short of what was required of a proper environmental statement. It was not sufficient, for example, that interested parties had the opportunity to trace all of the relevant documents, if this would require "a good deal of energy and

persistence" on their part. Here, the developer had not provided an environmental statement in a single source and there was no non-technical summary, meaning that the rights of the public to be involved in the decision making process were inevitably hindered. This was regardless of how much information was made available for the planning enquiry, of the objector's chance to comment on this and present her own information, and even, it seems, of whether the objector could point to any particular prejudice that she had suffered. The House of Lords stressed that, when it came to errors of law – especially in cases related to EC law – the Courts had little room for discretion. There is now a considerable body of English case law about this issue and we will be happy to discuss it at the conference.

X. What are the specific characteristics of the transboundary environmental impact assessment of certain public and private projects?
X. Quels sont les caractéristiques spécifiques de l'évaluation de l'impact environnemental transfrontalier de certains projets public et privés ?

AUSTRIA

The competent authority shall notify the project and its environmental impact to the state concerned as early as possible (Art 10 EIA Act 2000). Furthermore, the competent authority has to publish the relevant information in order to inform the state concerned. Subsequently, the competent authorities of both countries have to hold consultations if necessary (i.e. the project may have relevant transboundary environmental impact). If the state informs the authority that it wishes to participate in the EIA procedure it shall be provided with the environmental impact expertise.
Consultations aim at appropriate measures to prevent transboundary pollution; they may result i.a. in project modifications, specific monitoring obligations or inspection rights.
6 VwGH, Sept. 30, 2010, Docket No. 2009/03/0067, 0072.
7 VfGH, June 28, 2011 B-254/11

BELGIUM (FEDERAL STATE/ FLEMISH REGION/ BRUSSELS CAPITAL REGION)

FED:
Nuclear sector: each application for a category I facility is subject to the opinion of the European Commission (see also art. 37 of the EURATOM Treaty). When the Scientific Council is of the opinion that the facility can have serious environmental impacts in other Member States or if the authorities of such Member States demand so, a transboundary consultation will take place. *Marine environment:* when the activity has transboundary effects transboundary consultation will take place (art. 19 of Royal Decree of 7 September 2003)
FLE :
For projects with possible transboundary effects, transboundary information/consultation is foreseen in the different stages of the procedure (derogation, notification, validation, application for a permit, final decision on a permit).
BRU :
Idem.

BELGIUM (WALLOON REGION)

Lorsqu'un projet **situé en Région wallonne** est soumis à étude d'incidences et que l'autorité chargée d'examiner le caractère complet du dossier de demande constate qu'il est susceptible d'avoir des incidences non négligeables sur l'environnement

- d'une autre Région,
- d'un autre Etat membre de l'Union européenne ou
- d'un Etat partie à la Convention d'Espoo du 25 février 1991 sur l'évaluation de l'impact sur l'environnement dans un contexte transfrontière,
- ou lorsqu'une autre Région,
- un autre Etat membre de l'Union européenne ou
- un autre Etat partie à la Convention d'Espoo en fait la demande,

l'instance qui a considéré que le dossier de demande était complet et recevable transmet **le dossier**, accompagné de **l'étude d'incidences** et de **toute information dont elle dispose sur les incidences transfrontalières du projet**, aux autorités compétentes de l'Etat et/ou de la Région susceptible d'être affectés en indiquant.

- l'autorité compétente et le délai endéans lequel la décision sur la demande de permis doit être prise ;
- les modalités d'organisation de l'enquête publique afférente à l'instruction de la demande de permis et notamment la durée de l'enquête, la date probable de début de celle-ci et l'autorité chargée de recevoir les observations du public.

En même temps qu'elle transmet le dossier, elle informe le Gouvernement et l'autorité compétente de cette transmission.

L'autorité compétente doit envoyer sa décision sur la demande de permis par courrier recommandé aux autorités visées ci-dessus.

Lorsqu'un projet situé sur le territoire

- d'une autre Région,
- d'un autre Etat membre de l'Union européenne ou
- d'un autre Etat partie à la Convention d'Espoo du 25 février 1991 sur l'évaluation de l'impact sur l'environnement dans un contexte transfrontière

est susceptible d'avoir des incidences sur l'environnement en Région wallonne, les informations sur le projet, accompagné des documents d'évaluation des incidences, qui ont été transmises par les autorités compétentes de cette autre Région ou de cet autre Etat doivent être transmises par le Gouvernement wallon :

1. aux collèges communaux des communes susceptibles d'être concernés par les incidences du projet, qui doivent les mettre à la disposition du public conformément à la procédure d'enquête publique prévue au Titre III de la partie III du Livre Ier du Code de l'Environnement;
2. au Conseil wallon de l'environnement pour le développement durable.

Ces instances recueillent les observations du public et les transmettent, accompagnées de leurs avis éventuels, au Gouvernement dans un délai de trente jours à dater du jour où ils ont reçu les informations visées ci-dessus.

Synthèse : lorsqu'une demande relative à un projet situé en région Wallonne est susceptible d'avoir des incidences dans une autre région ou un autre Etat, l'instance qui a considéré que le dossier de demande était complet et recevable transmet celui-ci accompagné de l'étude d'incidences ou du rapport d'incidences et de toute information dont elle dispose sur les incidences transfrontalières du projet aux autorités concernées de l'Etat ou de la région susceptible d'être affecté en indiquant : 1) l'autorité compétente et le délai endéans lequel la décision doit être prise ; 2) les modalités d'organisation de l'enquête publique afférente à l'instruction de la demande de permis et notamment la durée de l'enquête, la date probable de début de celle-ci et l'autorité chargée de recevoir les observations du public[25].
La réciproque est également valable[26].

CZECH REPUBLIC

The transboundary environmental impact assessment is regulated by Sec. 11 to 14b of the Act No. 100/2001 Coll.
Pursuant to Sec. 11 (1) the subject of transboundary environmental impact assessment shall be "a) a project set forth in Annex No. 1 of this Act and a conception pursuant to this Act, if the affected territory can extend beyond the territory of the Czech Republic;
b) a project set forth in Annex No. 1 of this Act or a conception pursuant to this Act, if the state, the territory of which can be affected by significant environmental impacts, so requests,
c) a project and a conception which are planned to be implemented in the territory of another state and which can have significant environmental impacts in the territory of the Czech Republic."
The relevant authority for transboundary assessment of projects and conceptions is the Ministry for the Environment and it shall proceed in cooperation with the Ministry of Foreign Affairs [Sec. 11 (2)]. The communication between the states often proceeds by means of diplomatic negotiations.
For a project set forth in Annex No. 1 to this Act, column B, the regional authority shall be obliged to submit its assessment to the Ministry, if it discovers that this is a project pursuant to Sec. 11 (1) [see above]. Furthermore, it shall be obliged to submit the assessment of a conception to the Ministry, if it discovers that this is a conception pursuant to Sec. 11 (1).
In transboundary assessment the Ministry may prolong the deadlines for viewpoints by up to 30 days if the affected state so requests. In such case the other deadlines shall be appropriately prolonged [Sec. 12 (1)].
In case of contention as to whether transboundary assessment shall be subject to the regulations valid in the territory of the affected state or the regulations valid in the state of origin, the legal regulations valid in the territory of the state of origin shall apply unless an international agreement binding the Czech Republic lays down otherwise [Sec. 12 (2)].
Another specific characteristic of the transboundary assessment is the **post-project analysis**. Pursuant to Sec. 12 (3) "[o]n the basis of a request from either of them, the state of origin and the affected state shall determine whether post-project analysis is to be carried out and, if so, to what extent, taking into account potential significant detrimental transboundary impact of the projects that was the subject of transboundary assessment. Any post-project analysis will

[25] C. De Doncker, op.cit., p. 179
[26] ibid

include especially constant monitoring of the consequences of implementing the project and determination of any detrimental transboundary impact. This constant monitoring and determination of impacts may be carried out for the purpose of achieving the following objectives:
a. monitoring of compliance with the conditions laid down in the decision or measure pursuant to special regulations and the effectiveness of mitigating measures,
b. examination of the impact of the project and dealing with questions arising during the post-project analysis,
c. verification of previous forecasts in an attempt to utilize the information gained in implementing similar plans in the future."
Furthermore, pursuant to paragraph 4 of Sec. 12 "[i]f, on the basis of the post-project analysis, the state of origin or affected state has justified reasons for concluding that there is a significant detrimental transboundary impact, or if factors have been determined that could lead to such an impact, it shall immediately inform the other state. After coming to an agreement, the state of origin and the affected state shall subsequently lay down necessary measures to decrease or prevent this impact."

DENMARK

The transboundary environmental impact of project has not been enlightened by any cases until now. The question was raised in the Öresund Bridge Case but in this case the Supreme Court assumed that the environmental impact in Sweden was a Swedish matter which should not be dealt with by the Danish Court.

FINLAND

IN CASE OF A PROJECT CAUSING SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT WITHIN THE AREA OF JURISDICTION OF ANOTHER COUNTRY, THE APPLICANT SHALL INFORM THE MINISTRY OF THE ENVIRONMENT, WHICH IN TURN INFORMS ITS COUNTERPART IN THE OTHER COUNTRY. THE ASSESSMENT PROCEDURE IS CONDUCTED ACCORDING TO THE PROVISIONS OF THE FINNISH EIA LEGISLATION AND THE PROVISIONS OF THE ESPOO EIA CONVENTION OF 1991 (CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT, ESPOO 1991).

FRANCE

Voir la réponse au A III

GERMANY

See the answer to question B.I. above. If Germany is state of origin, the transboundary EIA procedure is part of the domestic EIA and therefore integrated into the development consent or permit procedure. Specific details are regulated in Article 8, 9a of the Federal EIA Act.

If Germany is the affected state the national procedure is prescribed by Article 9b of the Federal EIA Act. The German authority which would be competent for a project of the same kind in Germany shall ask the competent authority in the other state for documentation about the project and ensure that the domestic authorities and the domestic public can participate in the transboundary procedure.

In addition Germany and most of its neighbouring countries have established bilateral treaties, common declarations or other kinds of bilateral arrangements in order to safeguard details of the bilateral cooperation in transboundary EIA procedures, for example with regard to questions on translation of documents.

HUNGARY

In the case of activities and facilities listed in Appendix I of the Convention on environmental impact assessment in a transboundary context, done at Espoo (Finland) on 25 February 1991 (hereinafter: Convention) and proclaimed by Gov. Decree No. 148 of 1999 (13th of October), that have size limit indicators such as "large" or "major" instead of numeric values, conditions and size limits given at the obligation for a environmental impact assessment of the respective activities and facilities of Annex 1 shall be applied.

The Convention shall be applied in the case of activities not included in the Convention but included in Annexes 1 or 3 of this Decree if a transboundary effect can be supposed and the party of origin or the affected party is a member of the EEC. Coordination necessary for the implementation of the Convention's provisions and correspondence with the concerned parties of Article 1 point (iv) of the Convention are to be performed by the Ministry of Environment and Water Management (hereafter: Ministry).

1. Acting as Party of Origin

The Inspectorate, if during the preliminary examination process, in case the occurrence of a significant transboundary environmental impact – especially according to the criteria set forth in Appendix III of the Convention – is presumable, shall inform the Ministry and the user of the environment. The Inspectorate attaches to the information:
a) two copies of the request and of the documentation of the preliminary examination;
b) the announcement;
c) statements of the inspectorate and of the special authorities about
ca) upon what grounds can the significant transboundary impact be presumed,
cb) what data and environmental information have to be requested from the impact area of the affected party (Article 1 point (iii) of the Convention) in order to complete the environmental impact study.
d) translation of the preliminary examination documentation (in English or in the language of the affected party), prepared by the user of the environment.

These information and the documentation shall be sent before finishing the preliminary examination process. The Ministry – defining a deadline for response conforming to the time frames of the environmental permitting process – shall prepare the notification defined by the

Convention and send the notification to the affected party and to the Inspectorate that shall forward it to the user of the environment. The Ministry shall forwarding the response and comments given on the notification by the affected party, as well as data and environmental information sent of the impact area on the territory of the affected party, to the inspectorate that shall deliver them to the user of the environment. In case the affected party in its response for the notification announces its desire to participate in the environmental impact assessment process, this shall be published on the homepages of the Inspectorate and the Ministry and the procedure shall be continued with taking the provisions of the Convention and of Articles 12-15 into account.

The user of the environment shall have the translation of the international chapter and the non-technical summary prepared, by a deadline defined by the inspectorate, in English or in the language of the affected party, and it shall be filed to the inspectorate. The translation will have to be prepared if the inspectorate does not reject the application directly after issuing the environmental impact study and its possibly required supplements.

The Inspectorate shall immediately send two copies of the environmental impact study, the translation and the information mentioned above to the Ministry that forward them to the affected party and initiate consultation based thereupon. The Ministry involves the Inspectorate and if necessary the special authorities in the consultation. The inspectorate, with the involvement of special authorities concerned, may order the supplementing of the environmental impact assessment study upon the consideration of comments received at the consultation with and given by the public of the affected party. The Inspectorate shall send its substantive resolution upon the environmental permit and the integrated environmental usage permit to the Ministry that shall forward it to the affected party. In case further decisions are being made in the case due to legal remedies, they shall be forwarded likewise.

2. Acting as Affected Party

The Ministry, upon the notification sent by the party of origin (Article 1 point (ii) of the Convention), after preparing the necessary translations
a) shall request the statements of the Inspectorate and of the concerned authorities upon the planned activity, its presumable environmental impacts, the significance thereof, and the necessity of participating in the Environmental impact assessment process of the party of origin. The Ministry shall request either the regional organs or the superior organs thereof, depending upon the extension of the presumed impact area;
b) shall organize information for and request comments from the public of the presumed impact area, with the involvement of local municipalities if necessary.

The Ministry shall indicate in its response for the notification whether – upon the significance of presumed environmental impacts – Hungary intends to participate in the environmental impact assessment process of the party of origin and sends the opinions collected.

In case no notification has taken place by the party of origin but significant environmental effects can be presumed on the territory of Hungary, the Ministry request statements in possession of the available information from the inspectorates and concerned authorities upon

the planned activity. If occurrence of a significant environmental impact can be presumed on the territory of Hungary, the Ministry signal it to the party of origin and request to apply the Convention.

The Ministry, after having prepared the necessary translations of the environmental impact study documentation sent by the party of origin,
a) request statements from inspectorates and concerned authorities;
b) organize information for and request comments from the public of the presumed impact area, with the involvement of local municipalities if necessary;
c) organize a public forum and invite the representative of the party of origin thereto.

The Ministry shall publish the information sent by the party of origin on the decision about permitting the activity – after the necessary translations – on its homepage and shall send the translation to the concerned inspectorates in order to publish it on their respective homepages.

THE NETHERLANDS

Trans boundary environmental impact assessment as such does not have specific characteristics. In this impact assessment environmental consequences of the activity under EIA in the neighbour country are taken into account, the government of the neighbour country will be informed, the competent authority in that country will be given a draft plan and the EIS on the moment the draft is published in the Netherlands. The same for an application for a decision under EIA. Everybody, so also the people, NGO's and authorities in the neighbour country may react; when they do have an interest they do have access to court.

NORWAY

Section 19 in the Regulation deals with Environmental impact assessments in the event of transboundary environmental effects.
Section 19 dictates that if a plan or a project may have significant environmental effects in another state, the competent authority shall send the programme for the planning or assessment to the authorities in the concerned state for comment. A copy of the documents shall be sent to the Ministry of the Environment, which shall notify the authorities in the concerned state. It obliges the competent authority to consider comments from the state concerned in the same way as other comments and subject to the same time limits.
Under Section 19, the Ministry of the Environment may order the party proposing a project to prepare a notification document and a proposed plan or an application with an environmental impact assessment in the foreign languages necessary, and to take part in a public meeting in the state concerned.
Section 19 further stipulates that if Norwegian authorities are notified of, or in another way learn of projects in another state that may have significant effects for Norway, the Ministry of the Environment shall be informed of this. The Ministry of the Environment shall ensure that information concerning the plan or the project from the country of origin is made known to

the Norwegian authorities concerned and other interested parties, and that comments made by Norwegian authorities and other interested parties are sent to the country of origin.

POLAND

Where it is found that a significant transboundary impact on the environment may originate in the territory of the Republic of Poland, as a result of the implementation of proposed projects covered by a decision on the environmental conditions, the procedure for the transboundary impact on the environment shall be carried out.

The procedure for the transboundary impact on the environment shall also be carried out on the request of another Member State of the European Union, whose territory may be affected by a project.

The procedure for the transboundary impact on the environment shall also be carried out where the possible impact which originates outside of the borders of the Republic of Poland could manifest itself in its territory.

The General Director for Environmental Protection is the competent authority to carry out the transboundary environmental impact assessment of certain public and private projects.

PORTUGAL

In accordance with the articles 32 and 35of the Decreto-Lei n.º 197/2005, 8th November, in case of the installation of a project with transboundary environmental effects the member state were is to be located the main structure of the project should notified the others members states whose territories would be affected in order to allow the participation in the EIA proceedings and must assure the access to all the information and reports produced during the procedure in order to have as far as most complete evidence as possible on the environmental impacts of the project.

SLOVAK REPUBLIC

Assessment of the impacts of the proposed activities executed on the territory of the Slovak Republic
Competent authority on the assessment of the transboundary impact is the Ministry. Ministry notifies the affected party about the proposed activity which may have significant impact on the environment in the transboundary context, serves to the concerned party documentation about assessment of the impact of the proposed activity, if concerned party expresses interest, transboundary consultations takes place. Final opinion on the activity must include opinion on the comments concerned party including the comments of its public. The Ministry serves to

concerned party the final opinion on the activity and decision to grant consent proposed activity.

Assessment of the impacts of the proposed activities carry out in the territory another state

If the party of origin notifies the Ministry that proposed activity is likely to have significant negative impact in the territory of the Slovak Republic, the Ministry is obliged to respond, whether will be participate on the assessment. At the request of the party of origin, the Ministry will provide available information on the proposed activity is likely to have impact in the territory of the Slovak Republic. Documentation and comments on its of the party of origin form the basis of consultation the Ministry with the party of origin. The Ministry discloses the decision to grant consent proposed activity issued to the party of origin after its delivery from the party of origin.

SLOVENIA

According to articles 59 EPA and 60 EPA when the planned activity could have a substantial impact on the environment of a Member State or a Member State so requests, the ministry must send together with the public announcement at the latest, the competent authority of that Member State a notice containing:

1. description of the planned activity and available data on potential transboundary environmental impacts of the activity,
2. information about the nature of decision permitting or refusing the planned activity, and
3. time limit for the Member State to inform the ministry whether it wishes to participate in the environmental impact assessment of the planned activity.

When a Member State informs the ministry that it intends to participate in the environmental impact assessment, the ministry must forward to the competent authority of that Member State the application for environmental protection consent for the planned activity, and must agree with that authority on the time limit in which the authority will convey its opinion on the planned activity, or any other forms of consultation on the reduction or elimination of potential detrimental transboundary environmental impacts, if the Member State so requests.

On the other hand, when the ministry receives a notice by a Member State of the planned activity affecting the environment in its territory and estimates that the activity might have a substantial impact on the environment in the Republic of Slovenia, it must inform that member state in the time limit specified by that state whether it wishes to participate in the environmental impact assessment of the activity.When the ministry is informed of the planned activity referred but has not received a communication by the Member State concerned, it must request such notice from the competent authority of that state. After receipt of the notice, the ministry must inform the Member State whether it wishes to participate in the environmental impact assessment of the activity. When the ministry decides to participate in the environmental impact assessment procedure in the Member State concerned, it shall seek opinions of the ministries and other bodies responsible for particular environmental protection issues or the use of natural resources about the data relevant to the planned activity and furnished by the Member State concerned, and ensure the participation of the public.Upon receipt of the opinions of ministries referred to in the preceding paragraph, the ministry shall form its opinion on the planned activity and forward it, together with the comments from the public, to the competent authority of the Member State concerned within the set time limit. The ministry may also arrange with the competent authority of the Member Stat concerned for

a consultation on the reduction or elimination of potential adverse transboundary environmental impacts of the planned activity in the Republic of Slovenia.
According to article 65/3 EPA the Member State that has participated in the environmental assessment procedure must be informed of the issued environmental protection consent by the ministry.

SWEDEN

The transboundary environmental impact assessments do not differ from the national assessments in any other way than that authorities, NGO:s and public from the neighboring country are also involved in the proceedings. For them however, the possibilities to appeal are restricted.

THE UNITED KINGDOM

The UK Regulations transpose the requirements of the directive on transboundary consultation more or less in copy out format. The process is dealt with on an initially state to state basis, and to date we have not been informed of projects that would have significant effects on the UK. This is in the main due to the UK being separated geographically from other member states.

Northern Ireland and the Irish Republic have an informal understanding for dealing with cross border projects that would be analogous to consultation between two planning authorities in England.

The summary of interesting cases which illustrate your answers.

CZECH REPUBLIC

Selected case-law of the Supreme Administrative Court (hereinafter also "the SAC" or "the Court"); the case-law is divided into three groups according to the subject matter: (1) the EIA statement; (2) access of affected public to justice; and (3) the SEA and NATURA 2000 assessment.

1) The EIA statement (its character and judicial review)

Judgment of the Supreme Administrative Court of 14 June 2006, No. 2 As 59/2005-136

The complainant (the municipality Troubsko) filed an action against the EIA statement issued by the Ministry for the Environment on environmental impacts of the project - extension of the highway D1. The action was dismissed as inadmissible since the Municipal Court in Prague concluded that the EIA statement cannot be subject to separate judicial review. The complainant therefore lodged a cassation complaint with the SAC.
The SAC upheld the decision of the Municipal Court and confirmed that the EIA statement represents merely a background document for the subsequent related procedures and cannot be reviewed by courts as such in a separate procedure. The EIA statement as such cannot

prejudice the rights of natural or legal persons since the administrative authority deciding on the final development consent is not bound by it. The administrative authority is allowed not to include the requirements of the EIA statement in its decision or to include them only partly if it provides adequate justification. However, the EIA statement becomes part of the subsequent decision of the administrative authority which is subject to judicial review.
Therefore, the SAC dismissed the cassation complaint.

Judgment of the Supreme Administrative Court of 15 May 2008, No. 2 Aps 1/2008-77, No. 1623/2008 Collection of Reports of the SAC

The complainants (two natural persons) filed an action for protection against unlawful interference, instruction or enforcement from an administrative authority. They alleged that the relevant authority performing the EIA interferred with their rights when it included another variant (relocation of the road I/13 to a place which borders with the land of the complainants) in the project documentation. This variant was not included in the notification of the project and therefore the complainants did not have the possibility to express their viewpoint thereon. The Municipal Court in Prague dismissed their action as inadmissible and therefore they lodged a cassation complaint.
The SAC first reiterated its settled case-law that the EIA statement cannot be subject to separate judicial review. Therefore, the outcomes of the particular stages of EIA (e.g. the documentation of the project which was contested in the instant case) a fortiori cannot be subject to separate judicial review. Neither the EIA statement nor the outcomes of the particular stages of EIA cannot by themselves violate rights of individuals; therefore, it is not possible to challenge them at court by means of an action for protection against unlawful interference. If the complainants feel that the relevant authority interferred with their right to express their viewpoint on the project, they can raise this objection within the subsequent related procedures.
In the light of the above, the SAC dismissed the cassation complaint.

Judgment of the Supreme Administrative Court of 19 January 2010, No. 1 As 91/2009-83

The Agency for Nature and Landscape Conservation (hereinafter “the Agency”) approved pursuant to the Act No. 114/1992 Coll. on Nature and Landscape Conservation the construction of the highway D8. The appeal of the complainants (two NGOs) against that decision and their action filed with the Municipal Court in Prague were dismissed. The complainants therefore lodged a cassation complaint with the SAC maintaining that the municipal court erred in law concluding that the EIA statement was not a mandatory background document for the contested decision.
The SAC held that the contested decision of the Agency was a final decision which could be subject to judicial review and the Agency breached the law by not taking into account the EIA statement. The EIA statement shall be a mandatory background document for the decision-making of the Agency. The Court backed up his conclusion on the fact that the decision of the Agency shall be binding for the building authority (in case the construction or activity can adversely affect the landscape character or extends to the protected areas) which subsequently decides on the building permit. Therefore, if the EIA statement would not be included in the decision of the Agency, the building authority would not be able pursuant to the legislation effective at the relevant time to include the information and requirements of the EIA statement as regards the subject matter regulated by the decision of the Agency (e.g. the

impact of the construction of the highway on specially protected areas) in its decision and the EIA statement would be thus deprived of any value.
In the light of the above mentioned facts the Court quashed the judgment of the Municipal Court in Prague and referred the matter back for further proceedings.

Judgment of the Supreme Administrative Court of 31 March 2010, No. 8 As 6/2010-246

The municipal authority in Znojmo decided on location of a publicly beneficial construction (a ring road of the town Znojmo) in 2005. The appeal of the complainant (a civic association) against the decision and its subsequent action filed with the Regional Court in Brno were dismissed. The complainant therefore lodged a cassation complaint with the SAC.
The SAC was invited to determine whether the EIA statement issued in 1994 pursuant to then effective legislation (the Act No. 244/1992 Coll.) can be used as a background document for the proceedings on location of a construction commenced in 2005 (i.e. three years after the new legislation – the Act No. 100/2001 Coll. – came into force). The previous legislation did not limit the validity of the EIA statement.
The SAC emphasized that the purpose of the EIA is the assessment of the environmental impacts which takes into account the achieved level on knowledge about the environment. Moreover, reflection of the current knowledge on the given territory as well as on the options available to protect the environment is an essential principle of the legislation. It is thus clear that the level of knowledge can be substantially different after 11 years. The fact that the legislation according to which the EIA statement was issued did not limit its validity cannot alter this conclusion. Therefore, if the validity of the original decision on location of the construction expired in 2001 and new procedure on location of that construction was commenced in 2005, the original EIA statement from 1994 could not have been used as a background document. A new EIA proceeding should have been commenced. This holds true especially in the case when there have been significant changes in the project since then.
Therefore, the Court quashed the judgment of the Regional Court in Brno and referred the matter back for further proceedings.

2) Access of affected public to justice

Judgment of the Supreme Administrative Court of 13 March 2011, No. 1 As 7/2011-397

In the instant case a civic association filed an action with the Municipal Court in Prague seeking to quash the decision of the Directorate of Roads and Highways of the Czech Republic which dismissed its appeal against a building permit for a road in Brno. The Municipal Court quashed the contested decision and referred the matter back for further proceedings.
The Directorate of Roads and Highways (hereinafter “the complainant”) lodged a cassation complaint alleging that a civic association participating in the proceedings on a building permit pursuant to Sec. 70 of the Act on Nature Conservation (which enables civic associations to participate in administrative proceedings where the interests of nature and landscape conservation protected under this Act may be affected) can only raise objections which have procedural character. Moreover, the objections which a civic association can make are further limited by its scope of activities, which results from its statute. Therefore, the civic association was not allowed to raise objections pursuant to the Act No. 258/2000 Coll. on Protection of Public Health as regards protection against noise.
On the one hand, the SAC approved the opinion of the complainant that a civic association cannot claim that its substantive rights were violated. The civic association can effectively

argue before the court only such a violation of its procedural rights which could have resulted in an unlawful decision in the matter. The procedural objections are further limited by the scope of activities of the civic association, which results from its statute. Therefore, only those objections which regard nature and landscape conservation are permissible. The SAC agreed with the complainant that the civic association (the plaintiff before the Municipal Court) lacked standing for raising objections regarding protection against noise pursuant to Sec. 70 of the Act on Nature Conservation.

However, the civic association had in the instant case standing pursuant to the Act No. 244/1992 Coll. on Environmental Impact Assessment (which was subsequently replaced by the Act No. 100/2001 Coll.) which extends the scope of protection to other components of the environment, such as protection of the population. Therefore, the objections of the civic association in relation to protection against noise were permissible.

The SAC therefore dismissed the cassation complaint.

Judgment of the Supreme Administrative Court of 13 October 2010, No. 6 Ao 5/2010-43, No. 2185/2011 Collection of Reports of the SAC

The petitioners (a civic association and a natural person) filed a petition against a measure of a general nature[27] - National Park Visitors Regulations issued by the Administration of the National Park Šumava. The petition to repeal a measure of general nature or its parts may be filed by those who claim that their rights were by the measure of general nature prejudiced (Sec. 101a of the Code of Administrative Justice).

The preliminary question in the instant case was whether the petitioners' rights were prejudiced by the National Park Visitors Regulations (hereinafter "Regulations"). They alleged that their right to a favourable environment was violated by the Regulations which permitted boating activities in a particular section of the river Vltava. In their opinion this permission represents a threat to populations of freshwater pearl mussel (Margaritifera margaritifera), which is a critically endangered species and its occurrence in the National Park Šumava is exceptional.

However, given that a civic association is a legal person, it cannot claim according to Czech legislation and case-law of the Constitutional Court violation of its right to a favourable environment. The other petitioner was a natural person who no doubt can assert her right to a favourable environment. However, it was questionable whether the threat to populations of freshwater pearl mussel is capable to interfere with the petitioner's right. The SAC concluded that neither of the petitioners can successfully claim violation of their right to a favourable environment in the instant case and therefore, the Czech legislation does not give standing to either of the petitioners.

However, the SAC pointed out that the European law should be taken into account since the relevant sector of the river Vltava is considered as a site of Community importance which is protected by the Habitats Directive and by Sec. 45h and § 45i of the Act on Nature Conservation which is implementing this Directive.

The Court distinguished the instant case from its previous case-law (e.g. case No. 1 As 39/2006, see above question IX) according to which Article 10a of the EIA-directive cannot have direct effect since it stipulates that it is up to the Member States to determine at what

[27] A measure of a general nature is a new type of decision-making by administrative authorities, introduced into the Czech legal system by the Act No. 500/2004 Coll., Code of Administrative Procedure, and modelled on the "Allgemeinverfügung", existing in the Germanic legal culture (Germany, Austria and Switzerland).

stage the decisions, acts or omissions may be challenged. In those cases the Court concluded that it is in accordance with the EIA-directive if the EIA statement is subject to judicial review only as part of the subsequent decision giving final development consent. The contested Regulations shall be based on the EIA statement pursuant to Sec. 45h of the Act on Nature Conservation. However, since the Regulations were issued in the form of a measure of general nature, there is no subsequent procedure which could be challenged before courts. Therefore, the question at what stage the decisions, acts or omissions may be challenged does not arise. Thus, Article 10a of the EIA-directive can be invoked in the instant case directly and the petitioner who is a civic association shall be given standing. In order to back up its conclusion, the SAC referred to the case-law of the ECJ, in particular to the case of 4 December 1974, *Van Duyn*, 41/74, and of 15 October 2009, *Djurgården-Lilla Värtans Miljöskyddsförening*, C-263/08.

The other petitioner, a natural person, is not covered by the Article 10a of the EIA-directive and therefore her petition was dismissed as inadmissible for the lack of standing.

Thereafter, the SAC proceeded to assess the merits. The civic association alleged that procedural laws were violated in the proceedings preceding the issuance of the contested Regulations. More specifically, it maintained that the EIA was unlawfully omitted. The boating activities in the particular section of the river Vltava can allegedly adversely affect the site of Community importance and therefore performing EIA was a mandatory precondition. The Court pointed out that this project can be assessed in two ways: first, through the EIA process pursuant to the Act No. 100/2001 Coll., or second, through the environmental impact assessment on the site of Community importance pursuant to the Act on Nature Conservation. The procedural rules are almost the same; however, the criteria for the assessment are different. Each project shall be at first submitted by the developer to the nature conservation authority which shall assess whether the project independently or in conjunction with other projects or conceptions can have a significant impact on the state of the protected subject or the integrity of sites of Community importance or bird areas. If the significant impact is not excluded, the environmental impact assessment pursuant to the Act on Nature Conservation shall take place. The question whether also an EIA pursuant to the Act No. 100/2001 Coll. shall be performed, will be answered in the fact-finding procedure pursuant to Sec. 45i (2) of the Act on Nature Conservation in conjunction with Sec. 4 (1) (e) of the Act No. 100/2001 Coll.

The respondent who issued the contested Regulations did not comply with its obligation to submit the project to the nature conservation authority in order to assess impact on the site of Community importance. Therefore, the respondent seriously erred if it concluded that neither of the types of the EIA was necessary.

In the light of the above mentioned facts, the SAC abolished the National Park Visitors Regulations in the contested part.

3) The SEA and NATURA 2000

Judgment of the Supreme Administrative Court of 20 May 2010, No. 8 Ao 2/2010-644, No. 2106/2010 Collection of Reports of the SAC

The petitioners (two authorities of municipal parts of Prague and six natural persons) filed with the SAC a petition to abolish a measure of general nature – the Principles of Spatial Development (hereinafter "the Principles") issued by the Prague City Assembly. The petitioners alleged unlawfullness of the Principles as regards the planned construction of a

ring road of Prague. They argued that their rights to a favourable environment, rights to property and rights to fair trial were violated.

More specifically, they claimed inter alia that the SEA statement does not assess the environmental impacts with regard to their location. In the case of projects with linear structures (such as roads) effects in the individual parts of the territory can obviously vary. However, the SEA statement does not respect that each section of the ring road has specific effects on the environment. The petitioners further maintained that there exists a variant of the ring road with much smaller impacts on the environment. Furthermore, the SEA statement does not allegedly reflect possible cumulative and synergic effects of the ring road in conjunction with the Prague-Ruzyně airport. In addition, it is not possible to verify from the statement whether the Principles will not adversely affect any of the sites of Community importance in the relevant area.

According to the SAC the major problem rested in the absence of environmental impact assessment on the sites of Community importance. Relying on the case-law of the ECJ, the SAC held that if the Principles are effecting a site of Community importance, it is necessary to perform the environemental impact assessment even though the site has been so far included only in the national list of proposed sites transmitted to the Commission. The SAC referred to the case of 13 January 2005, *Dragaggi*, C-117/03, in which the ECJ concluded that "on a proper construction of Article 4(5) of the Directive, the protective measures prescribed in Article 6(2), (3) and (4) of the Directive are required only as regards sites which, in accordance with the third subparagraph of Article 4(2) of the Directive, are on the list of sites selected as sites of Community importance adopted by the Commission in accordance with the procedure laid down in Article 21 of the Directive." However, the ECJ continued, "[t]his does not mean that the Member States are not to protect sites as soon as they propose them, under Article 4(1) of the Directive, as sites eligible for identification as sites of Community importance on the national list transmitted to the Commission. [...] It is apparent, therefore, that in the case of sites eligible for identification as sites of Community importance that are mentioned on the national lists transmitted to the Commission and may include in particular sites hosting priority natural habitat types or priority species, the Member States are, by virtue of the Directive, required to take protective measures appropriate for the purpose of safeguarding that ecological interest."

Therefore, the SAC concluded that proposed sites of Community importance cannot be until their recognition by the Commission subject to measures which could irreversibily affect their integrity or adversely effect the protected subject. These proposed sites have to be given adequate protection since the time they have been included in the national list. Under the Czech legislation the adequate protection can be provided by means of Sec. 45i of the Act on Nature Conservation according to which a draft of a conception or a project shall be submitted to the nature conservation authority which shall assess whether the project or conception independently or in conjunction with other projects or conceptions can have a significant impact on the state of the protected subject or the integrity of sites of Community importance or bird areas. If the significant impact is not excluded, the environmental impact assessment pursuant to the Act on Nature Conservation shall take place. The assessment of the impacts on a proposed site of Community importance at the time when it is "merely" included in the national list is the most adequate measure with regard to prevention of environmental damage and the precautionary principle.

The Principles in the instant case failed to assess the impacts on the site "Kaňon Vltavy u Sedlce" which had been included in the national list of proposed sites of Community importance before the Principles were issued. This omission represents a serious procedural fault which by itself shall lead to the abolition of the relevant part of the Principles.

Nonetheless, the Court went further. In case the significant impact on the site of Community importance is not a priori excluded pursuant to Sec. 45i (1) of the Act on Nature Conservation, the conception shall be assessed pursuant to the second paragraph of the same provision. If the negative impact cannot be excluded the submitter of the conception shall include in the draft conception different variants. In case a variant without a negative impact on the site of Community importance does not exist, a variant with a negative impact can be approved only if there exist urgent reasons of public interest and only after compensatory measures have been ensured. In case of a locality with priority habitats, the conception can be approved only on the basis of exhaustively enumerated grounds of public health, public security or positive impacts of undisputed importance on the environment. Other grounds would have to be approved by the Commission.

The SAC pointed out that since 1 Decemeber 2009 the legislator has changed the above mentioned provision and added the adjective "significant" before the words "negative impact". It means that whereas before the 1 Decemeber 2009 the assessment on sites of Community importance was necessary if a "negative impact" thereon was not excluded, under the current wording the assessment on sites of Community importance shall take place only if a "significant negative impact" is not excluded. The Court found this change to be at variance with the Habitats Directive which in Article 6 speaks primarily about "negative impact".

Therefore, taking into account the purpose of the legislation and the requirements of the Habitats Directive, the Court concluded that if in the instant case the assessment of the Principles had been performed and possible negative impact had not been excluded, other variants without a negative impact should have been sought. The Court further emphasised that precisely at the stage when the Principles are adopted, it is the most convenient time for searching for alternative variants. It can happen that in subsequent stages of the land-use process, it will not be possible to take alternative solutions into consideration.

The petitioners further objected that the SEA was unlawful. The Court first reiterated its settled case-law regarding the judicial review of the EIA statement according to which neither the Aarhus Convention nor the EIA-directive require the EIA statement to be judicially reviewed in separate proceedings. It is sufficient if it is reviewed at the stage when rights of natural or legal persons can be interfered with. This conclusion is applicable in case of assessment of a conception (SEA) as well. This holds true in the case of SEA even more since the SEA-directive does not stipulate any requirements for judicial review. The interference with rights of the petitioners cannot occur until a final binding act of an administrative authority has been issued - in this case, the issue of the Principles of Spatial Development. The contested SEA statement can be therefore reviewed only as a background document for the Principles.

The SAC concluded that the objection of the petitioners was well-founded since the Prague City Assembly which issued the Principles did not respect the requirements of the Ministry for Environment (the affected authority in this case) and did not justify why they were omitted.

The petitioners also alleged that the SEA statement does not reflect possible cumulative and synergic effects of the ring road in conjunction with the Prague-Ruzyně airport. The Court

found also this objection well-founded since the procedure in which the Principles are to be adopted can be considered as the optimal moment when cumulative and synergic effects of projects envisaged in the conceptions should be assessed with regard to the individual components of the environment. At this stage it is still realistically possible to effectively deal with individual variants and thus to respond to any findings regarding the synergic effects of individual projects. The omission to consider the cumulative and synergic effects was therefore another substantial procedural error.
Finally, the petitioners argued that the SEA statement in the instant case does not assess the environmental impacts with regard to their location. However, in case of projects with linear structures (such as roads) the effects in the individual parts of the territory can obviously vary. The SAC emphasised that the purpose of the SEA is inter alia to provide to the affected subjects sufficient expert information on potential impacts of the conception on the environment. Therefore, it must be clear from the SEA statement what are the conclusions and how these conclusions have been reached. The SEA statement in the instant case indeed does not assess the environmental impacts with regard to their location. As a consequence, it does not provide to the authority deciding about the conception and also to the affected public sufficient expert information on potential impacts.
In the light of all the above mentioned facts, the SAC abolished the relevant part of the Principles of Spatial Development.

FRANCE

1. EVALUATION D'INCIDENCE :

Tribunal administratif de Nice 9 décembre 2010 n° 0706357 assoc.APE

Aux termes du d) du 2°du II de l'article R. 121-14 du Code de l'urbanisme, les PLU des communes littorales qui prévoient la création, dans des secteurs agricoles ou naturels, de zones U ou AU d'une superficie totale supérieure à 50 hectares doivent faire l'objet d'une évaluation environnementale.

En l'espèce, le PLU de Saint Mandrier sur Mer, qui constitue une commune littorale au sens de l'article L. 321-2 du Code de l'environnement, a créé une zone U constituée de 161 hectares de terrains précédemment classés en zone ND. Saisi d'un recours formé contre la délibération approuvant ce PLU, le tribunal administratif de Nice en prononce l'annulation totale en raison de l'insuffisance de l'évaluation environnementale. Le tribunal constate, en effet, qu'en méconnaissance des dispositions de l'article L.121-11 du Code de l'urbanisme qui définit le contenu du rapport de présentation des PLU soumis à évaluation environnementale, les rédacteurs du PLU en cause n'ont pas présenté les mesures susceptibles de compenser les incidences notables que pouvait avoir le parti d'urbanisme retenu par eux sur l'environnement, ni même exposé les motifs du choix retenu au regard des objectifs de protection de l'environnement.

B- ETUDE D'IMPACT :

1°) Conseil d'Etat 28 mars 2011 n° 330256 Recueil Lebon : collectif contre les nuisances du TGV (train à grande vitesse) de Chasseneuil du Poitou et de Migne-Auxances c/ Ministère de l'écologie

Des ONG attaquaient un décret ayant déclaré d'utilité publique et urgents les travaux nécessaires à la réalisation d'un tronçon de ligne de train à grande vitesse et emportant mise en compatibilité des documents d'urbanisme des communes concernées par l'opération et du schéma directeur d'aménagement et d'urbanisme de la région. Dans le cadre de la consultation du public préalablement à la phase d'enquête publique la commission nationale du débat public avait été saisie pour savoir si un débat public devait être organisé
En l'espèce la commission avait pris une décision disant n'y avoir lieu à organisation d'un débat public mais recommandé à l'entreprise de poursuivre la concertation engagée sous la responsabilité d'une commission de suivi élargie , qui avait été publiée et était devenue définitive : le Conseil d'Etat juge qu'aucune irrégularité relative aux dispositions consacrées à la participation du public à l'élaboration des projets d'aménagement ou d'équipement ayant une incidence importante sur l'environnement et l'aménagement du territoire ne peut plus être invoquée lorsque l'acte par lequel la Commission nationale du débat public a renoncé à organiser un débat public est définitive.
La phase suivante du processus était l'enquête publique : qui avait porté à la fois sur l'utilité publique ou l'intérêt général de l'opération et la mise en compatibilité des plans qui en était la conséquence : toutes les irrégularités de forme et de procédure
ont été écartées par la juridiction administrative.
Le dossier soumis à la procédure d'enquête publique comprenait **l'étude d'impact**.
Après avoir rappelé les informations que doit obligatoirement contenir une étude d'impact le Conseil d'Etat a procédé à l'analyse de son contenu de la façon suivante : « *S'agissant de l'analyse de l'état initial du site et de son environnement : Considérant, en premier lieu, que s'il est soutenu que la présentation de l'état initial du site dans l'étude d'impact · était manifestement erronée concernant la commune de Veigné, il ne ressort pas des pièces des dossiers que la zone d'aménagement concerté (ZAC) des Gués n'ait pas été prise en compte dans le dossier relatif à la mise en compatibilité du plan local d'urbanisme de la commune ; que si le dossier soumis à l'enquête publique initiale a légèrement sous-estimé l'impact du projet de ligne à grande vitesse sur la ZAC des Gués, cette erreur mineure ayant été partiellement corrigée dans le dossier soumis à l'enquête publique complémentaire, et si l'emplacement réservé n°35 ajouté au plan local d'urbanisme par la mise en compatibilité et correspondant à l'emprise du projet de ligne à grande vitesse se superposait partiellement à la ZAC des Gués, jusqu'à la modification simplifiée de ce plan opérée en juillet 2010, ces deux seules circonstances ne peuvent être regardées comme ayant substantiellement vicié la procédure d'enquête publique ; Considérant, en second lieu, que contrairement à ce qui est soutenu, il ressort des pièces des dossiers que l'étude d'impact analyse les risques naturels et technologiques affectant les territoires traversés par la ligne projetée, notamment ceux liés aux inondations, aux aléas géotechniques et à l'activité sismique et ceux liés aux installations classées pour la protection de l'environnement et aux établissements classés Seveso ; S'agissant de l'analyse des effets du projet sur l'environnement et des mesures envisagées pour supprimer, réduire et, si possible, compenser ses conséquences dommageables :*

Considérant, en premier lieu, qu'il ressort des pièces des dossiers que l'étude d'impact étudie les effets du bruit généré par le chantier et la circulation future des trains ; qu'elle prend en compte le bruit d'origine aérodynamique et se fonde sur des prévisions de trafic à l'horizon 2036 intégrant l'état prévisible du réseau ferroviaire à cette date ; qu'elle ne se fonde pas sur une vitesse de circulation des trains inférieure à la vitesse à laquelle les trains pourront circuler sur la future ligne compte tenu des contraintes techniques ; qu'elle étudie les effets du bruit sur la santé en n'omettant pas l'incidence des pics de bruit ; que la circonstance qu'elle ne prenne pas en compte les effets cumulés du bruit engendré par le projet et une autre infrastructure de transport dont la réalisation est encore hypothétique n'est pas de nature à établir que l'étude d'impact serait insuffisante, s'agissant de l'évaluation des effets acoustiques du projet sur la santé humaine ; qu'elle prend également en compte l'impact des phénomènes vibratoires sur les riverains, en particulier les personnes fragiles, ainsi que les effets des champs électromagnétiques générés par une ligne ferroviaire à grande vitesse ; que, plus largement, l'ensemble des effets du projet sur la santé humaine est analysé, et les mesures visant à les réduire ou les supprimer sont exposées de façon suffisamment précise ; Considérant, en second lieu, qu'il ressort des pièces des dossiers qu'en ce qui concerne la faune, l'étude d'impact prend en compte l'ensemble des données disponibles sur les espèces les plus remarquables, expose les précautions qui seront prises lors de l'exécution des travaux pour réduire les risques de destruction des spécimens de ces espèces et décrit aménagements qui seront réalisés pour éviter les risques de collision et faciliter la traversée de l'ouvrage par la faune ainsi que les mesures destinées à compenser la destruction de certains habitats ; que, par suite, les requérants ne sont pas fondés à soutenir que l'étude d'impact serait insuffisante, s'agissant de la prise en compte de la faune susceptible d'être affectée, de l'analyse des effets du projet sur cette dernière et des mesures envisagées pour y faire face ;S'agissant des raisons pour lesquelles le projet présenté a été retenu : Considérant qu'il ressort des pièces des dossiers que l'étude d'impact respecte les exigences des dispositions de l'article R. 122-3 du code de l'environnement relatives à la présentation des raisons pour lesquelles notamment du point de vue des préoccupations d'environnement, parmi les partis envisagés qui font l'objet d'une description, le projet présenté a été retenu ; qu'elle étudie notamment, contrairement à ce qui est soutenu, le tracé alternatif, jouxtant l'autoroute AIO, entre l'échangeur du Futuroscope et l'échangeur Nord de Poitiers, la demande de protection contre le bruit sur les deux viaducs situés à cheval sur les communes de Chasseneuil-du-Poitou et de MignéAuxances, ainsi que le choix d'une tranchée couverte au droit des communes de Preuilly et du Pontreau et dans la commune de Migné-Auxances au niveau de la rue des Cosses ; En ce qui concerne l'évaluation des incidences du projet sur les zones Natura 2000 : Considérant, qu'il ressort des pièces des dossiers que, contrairement à ce qui est soutenu, le dossier d'évaluation d'incidences établi en application de ces dispositions étudie précisément l'avifaune présente au sein des zones de protection spéciale Plaines de Mirebalais et du Neuvillois , Plaine de la Mothe-Saint-Heray Lezay et Plaine de Villefagnan, en particulier l'outarde canepetière, ainsi que l'impact sur cene-ci du projet de ligne à grande vitesse ; que les mesures de nature à supprimer ou réduire les effets dommageables du projet sur ces trois sites Natura 2000 sont précisément décrites ; que si les requérants soutiennent que le dossier d'évaluation des incidences concernant la zone de protection spéciale Vallée de la Charente en amont d'Angoulême serait incomplet, dès lors qu'il ne présente pas les raisons pour lesquelles il n'existe pas d'autre solution satisfaisante et les éléments qui permettent de justifier la réalisation du projet, il ressort des

pièces des dossiers que le projet, une fois prises en compte les mesures destinés à en supprimer ou à en réduire les effets dommageables, n'aura plus de tels effets sur les populations et habitats des espèces ayant justifié la désignation du site en zone de protection spéciale ; que, par suite, le dossier n'avait pas à comporter les éléments dont l'absence est contestée ;

2°) Cour administrative d'appel de Marseille 15 janvier 2010 n° 07MA00898 Sté Trelans Lozère Energie :

Cette décision rejette la demande d'annulation d'un arrêté du Préfet de la Lozère délivrant un permis de construire un parc éolien de huit aérogénérateurs , au motif que le projet constitue une rupture notable dans les perspectives paysagères et altère la qualité des lieux avoisinants : l'intérêt de cette décision est de montrer que l'appréciation du juge reste souveraine et qu'il n'est pas lié par la teneur de l'étude d'impact , qui en l'espèce faisait état, à partir d'une simulation graphique et d'observations de plusieurs points éloignés , d'une insertion réussie dans le site , en insistant sur la visibilité partielle ou inexistante du parc éolien à partir de ces points éloignés.
Dans d'autres affaires le juge a considéré au contraire comme légal un projet de parc éolien alors même qu'il se situait en périphérie d'une zone protégée, ou qu'il s'inscrivait dans le paysage qui était préservé.

3°) tribunal administratif de Clermont-Ferrand 16 juillet 2010 n° 0901615 Commune Ste Anastasie et a. Environnement n°2 février 2011 comm.20 (David Gillig)

le tribunal a annulé une autorisation de mise en service d'une carrière de basalte, en raison de l'insuffisance de l'étude d'impact. Les omissions qui affectent le contenu de l'étude d'impact jointe au dossier de demande de mise en service d'une installation classée sont constitutives d'un vice de procédure substantiel
En l'espèce, après avoir rappelé que « *l'étude d'impact a pour objet de permettre, d'une part, au demandeur d'en apprécier les incidences prévisibles et de proposer des mesures permettant de les minimiser et, d'autre part, d'assurer une information complète du public et de permettre à l'autorité administrative d'apprécier la conformité du projet aux règles de droit applicables* »le tribunal administratif de Clermont-Ferrand précise « *qu'elle doit à cet effet comprendre le recensement et l'examen des caractéristiques essentielles du milieu naturel et leur évolution prévisible résultant de la réalisation du projet et doit donc comporter l'examen des différents points ci-dessus rappelés et être adaptée à l'importance des enjeux concrets du projet, au regard de l'état initial du site* ». Il annule l'autorisation en litige, au motif que « *eu égard à la qualité environnementale du site dans lequel s'intègre le projet et à la nature et l'ampleur de ce dernier, l'étude d'impact, faute de mentionner et d'analyser avec suffisamment de précision la faune et la flore, et de permettre ainsi d'apprécier l'évolution prévisible du milieu naturel résultant de la réalisation du projet, est entachée d'une insuffisance notable de nature à avoir nui à la bonne information du public ainsi qu'à l'exercice par l'administration de son pouvoir d'appréciation* ».

4°) Cour administrative d'appel de Marseille 4 septembre 2008 n° 07MA01524 Sté Ocréal c/ Assoc pour la protection de l'environnement du Lunellois

Comporte des insuffisances substantielles l'étude d'impact relative au projet d'implantation d'une unité d'incinération et de valorisation des déchets ménagers qui n'analyse pas avec précision les conséquences du projet sur les cultures viticoles et maraîchères et sur la qualité des eaux.

La décision rappelle le contenu de l'étude d'impact : les motifs d'insuffisance sont les suivants : « *Considérant qu'il est constant, en premier lieu, que l'étude d'impact ne mentionne pas la dangerosité des effluents liquides résultant du lavage des fumées au regard des dispositions du décret du 97-517 du 15 mai 1997 relatif à la classification des déchets dangereux précités, ni même les conditions particulières dans lesquelles ils doivent être éliminés, conformément aux dispositions de l'article L. 541-24 du Code de l'environnement ; qu'elle ne précisait pas non plus les raisons pour lesquelles la société Ocreal a décidé de rejeter des effluents liquides dans le canal de Lunel, dès lors qu'elle mentionne elle même qu'il existe des solutions alternatives de traitement des effluents ; qu'en second lieu, il existe de nombreuses imprécisions dans l'étude sur l'aptitude hydrogéologique du site en particulier sur l'absence de communication entre le canal de Lunel, dans lequel sont rejetés les effluents liquides, et la nappe du Villefranchien ; qu'eu égard à la dangerosité de tels effiuents liquides, à la localisation de l'incinérateur dans des périmètres de captage et aux nombreux forages très proches du site, l'étude d'impact ne saurait être regardée comme analysant de façon suffisante tant les risques de pollution de la nappe du Villafranchien et de l'étang de l'Or que les mesures de protection des eaux ; qu'en dernier lieu, l'étude d'impact ne mentionne pas non plus la compatibilité d'une telle installation avec les dispositions du schéma directeur d'aménagement et de gestion des eaux de la région Rhône Méditerranée Corse en matière de qualité des eaux de surface ; qu'ainsi, il résulte de l'instruction que, compte tenu de l'importance de l'installation projetée, l'étude n'a pas suffisamment analysé les effets directs et indirects de l'exploitation d'un incinérateur d'ordures ménagères sur la qualité des eaux ; Considérant, qu'en outre, l'unité d'incinération et de valorisation énergétique de déchets ménagers et assimilés est située notamment dans une zone à dominante agricole, comprenant notamment des producteurs de fruits et des vignobles, en particulier l'AOC « Muscat de Lunel» ; que l'étude d'impact, tant au niveau de l'analyse de l'état initial du site que des effets du projet sur l'environnement, analyse de façon sommaire les effets de l'accumulation des métaux lourds dans le sol en ce qui concerne la vigne, elle ne fournit aucune précision sur les effets possibles de l'usine sur les cultures maraîchères, sur les arbres fruitiers ou encore sur les animaux d'élevage, notamment les œufs de poules ou les taureaux de Camargue ; que dès lors, cette étude est également insuffisante sur ce point ; Considérant que de telles insuffisances de l'étude d'impact dont le contenu n'est pas en relation avec ses incidences prévisibles sur l'environnement, ont eu pour effet de nuire à l'information complète de la population à l'occasion de l'enquête publique et revêtent un caractère substantiel ; que par suite, les associations « pour la protection de l'environnement du Lunellois » et « Lunel-Viel veut vivre » sont fondées à soutenir que l'autorisation du 18 février 1999 a été accordée au terme d'une procédure irrégulière ; »*

Le contrôle au fond par le juge porte sur la suffisance qualitative de l'étude d'impact , le juge procédant à une analyse minutieuse du contenu de l'étude et sanctionnant la décision dès lors que les insuffisances constatées revêtent un caractère substantiel. La jurisprudence s'attache

en outre à appliquer le principe de proportionnalité du contenu de l'étude d'impact à l'importance de l'installation projetée et de ses incidences prévisibles sur l'environnement. Il faut souligner qu'il appartient aux auteurs de l'étude d'impact relative à la mise en service d'une installation classée de mentionner les mesures de protection dont bénéficient les sites, paysages, espèces animales ou végétales et milieux naturels susceptibles d'être affectés par cette installation, lorsque ces mesures « constituent un élément substantiel de l'analyse de l'état initial du site et de son environnement »

5°) Cour administrative d'appel Bordeaux 30 juillet 2010 n° 09BX02233 Sté d'exploitation du parc éolien du pays d'Ecueille jurisdata n° 2010-019934 :

Selon l'article R.421-2 8° du code de l'urbanisme le dossier joint à la demande de permis de construire comprend l'étude d'impact lorsqu'elle est prévue par le code de l'environnement. A défaut, le permis de construire est affecté d'un vice substantiel de forme. Toutefois, même si l'étude d'impact est produite dans le dossier de demande de permis de construire, celui-ci encourt l'annulation si cette étude d'impact présente un caractère insuffisant. En l'espèce le litige concernait un permis de construire autorisant l'implantation d'éoliennes. La cour d'appel annule le permis de construire dès lors que l'étude d'impact, qui était jointe au dossier, si elle mentionnait l'existence de plusieurs monuments historiques dans un rayon de 3 à 6 kilomètres autour de l'aire d'implantation des éoliennes projetées, ne comportait aucune précision sur les conséquences de la présence du parc éolien sur l'environnement visuel de ces édifices protégés.

GERMANY

Some recent decisions of the Federal Administrative Court

On the Internet: www.bverwg.de (in German)

Beschluss vom 23.11.2010 - 4 B 37.10 (planning permission, wind energy plant)
Urteil vom 14.4.2010 - 9 A 13.08 (motorway, transboundary impact)
Urteil vom 4.8.2009 - 4 CN 4.08 (local plan)
Urteile vom 16.10.2008 - 4 C 5.07, 3.07, (airport, transboundary impact)
Urteil vom 20.8.2008 - 4 C 11.07 (planning permission, turkey-farm)
Urteil vom 9. 4. 2008 - 4 CN 1.07 (local plan)
Urteil vom 13. 12. 2007 - 4 C 9.06 (airport)
Urteil vom 7. 12. 2006 - 4 C 16.04 (airport, maintenance hall)

SWEDEN

Some cases from the Environmental Court of Appeal
Example showing that an EIA is a prerequisite for the proceedings for development consent – the Scanraff case (MÖD 2003:95)
A refinery on the Swedish west coast had applied for a permit according to the Environmental Code to increase and change its production. The company had also asked for a building

consent – that is a permission to start the building (but not the operation) of the new parts of the plant before the permit was issued.
The Land and Environment Court – the first instance – had given such a building consent, and this was appealed to the Land and Environment Court of Appeal by a NGO. The NGO claimed that no building consent should be given, since the EIS was not complete.
The Land and Environment Court of Appeal found that the EIS was insufficient, especially when it concerned alternative locations, the general impact on the seawater and the impact on a certain sea bay that constitutes a Natura 2000-area. The EIS was – according to the Court of Appeal – not sufficient, neither to assess the permissibility of the project as a whole nor to set the appropriate conditions for a permit. Although it concerned just a building consent - that the developer uses on his own risk – a complete EIS was prerequisite. Thus the Court of Appeal cancelled the building consent.
This case was noted in Sweden, since the developer had started the building, and the cancellation of the building consent implied large economic consequences.

Example showing the required scope of an EIA – the case of the Citybanan (MÖD 2007:50)
The Swedish Transport Administration was planning a new system of tunnels under the city of Stockholm to expand the railway system for commuter trains. The system consists of a main tunnel for the railway from the south to the north of Stockholm, and of a number of service tunnels, connected to the main tunnel, for building purposes.
The building of such a railway system needs a railway plan, according to the Railway Act. Since the building of tunnels affects the groundwater levels, a permit is also needed according to the Environmental Code.
The Transport Administration applied for permit according to the Environmental Code for one of the service tunnels and presented documentation on the impact of the tunnel on the groundwater levels. The Land and Environment Court issued a permit. This was appealed by owners of houses that could be affected by the tunnel.
The Land and Environment Court of Appeal found that the scope of the application and of the EIS was insufficient in two ways. First the geographical scope was insufficient, since the impact on the groundwater levels due to this service tunnel, would collaborate with the impact on the same groundwater levels by other parts of the tunnel system – for instance the main tunnel. Thus it was not possible to try just the service tunnel, separate from other parts of the tunnel system. Second, although the Swedish legislation ties the need for a permit for a tunnel to the impact on the groundwater level, the EIS cannot be limited to describe this impact. An EIS has to cover all relevant effects on the environment, such as – beside the impact on the groundwater level – also for instance the pollution of water and the noise and vibrations from the building of the tunnel. Since the EIS was insufficient, the Court of Appeal cancelled the permit.
The Transport Administration later applied for a permit concerning the whole northern part of tunnel system. The EIS connected to this application concerned all kinds of effects for the environment. This application was also tried by the Land and Environment Court of Appeal. This time the question was if all the different kinds of possible effects on the environment, presented in the EIS, could be subject for conditions for the permit, or if the conditions could only concern the impact on the groundwater levels. The court found in this case that the conditions could concern all relevant types of effects on the environment.

An example where the content of an EIA has been tried - the Eslöv-Lund waste combustion plant (MÖD 2008:44)

The two municipalities of Eslöv and Lund had applied for a permit for a new waste combustion plant. A permit was issued by the Land and Environment Court, but this was appealed to the Land and Environment Court of Appeal by neighbors to the planned plant.

The Land and Environment Court of Appeal found that the investigation on alternative localizations in the EIS was inadequate. The investigation was more than ten years old, and covered only the municipality of Eslöv. Since the investigation was done, circumstances had changed. Among other things, the pipeline system for heating the two municipalities by hot water had been expanded, and the two municipalities were now connected.

Since there were relevant objections to the localization chosen by the developer, the demands on the localization investigation in the EIS should be strict, and therefore the permit was cancelled by the Court of Appeal.

Scheme of the proceedings of an application for a permit for an IPPC-plant or a project involving building in water. (The public is involved in the steps that are underlined.)

Consultation
The developer consults with authorities and the public

EIS
The developer produces an Environmental Impact Statement

Application and EIS to the permit authority
The developer sends the application for permit and the EIS to the permit authority (the county administration or the Land and Environment Court)

Need of complements?
The permit authority often asks the authorities involved if the application and the EIS are sufficient, or if complements are needed.

The application and the EIS are announced
The application for permit and the EIS are advertized in the newspapers by the permit authority, and the public is invited to give written comments

Consultation with the authorities
The permit authority sends the application and the EIS for comments to national, regional and local authorities that are involved

Hearing

The permit authority holds a public hearing where the developer, the authorities, NGO:s and the public participates

Permit decision
The permit authority issues a permit decision (a development consent with conditions or a rejection) which is advertized in the newspapers

Possible appeal
The developer, certain authorities and NGO:s and public that are concerned have the right to appeal

[i] Act of april 23th 1986, Staatsblad (Official Publication) 1986, 211.