

Environmental Impact Assessment of public and private projects

**EIA Directive 85/337/EEC
as amended by 97/11/EC
and 2003/35/EC**

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Relevant Directives

- **Directive 85/337/EEC** of 27 June 1985
- **Directive 97/11/EC** of 3 March 1997
alignment to Espoo Convention
- **Directive 2003/35/EC** of 26 May 2003
alignment to Aarhus Convention

(Art. 2.1)

General objective

To what does the EIA Directive apply?

- **projects likely to have significant effects on the environment** (by virtue, *inter alia*, of their nature, size and location)

What does it demand for these projects?

- a **requirement for development consent**
- an **assessment of their effects**

When?

- **before consent** is given

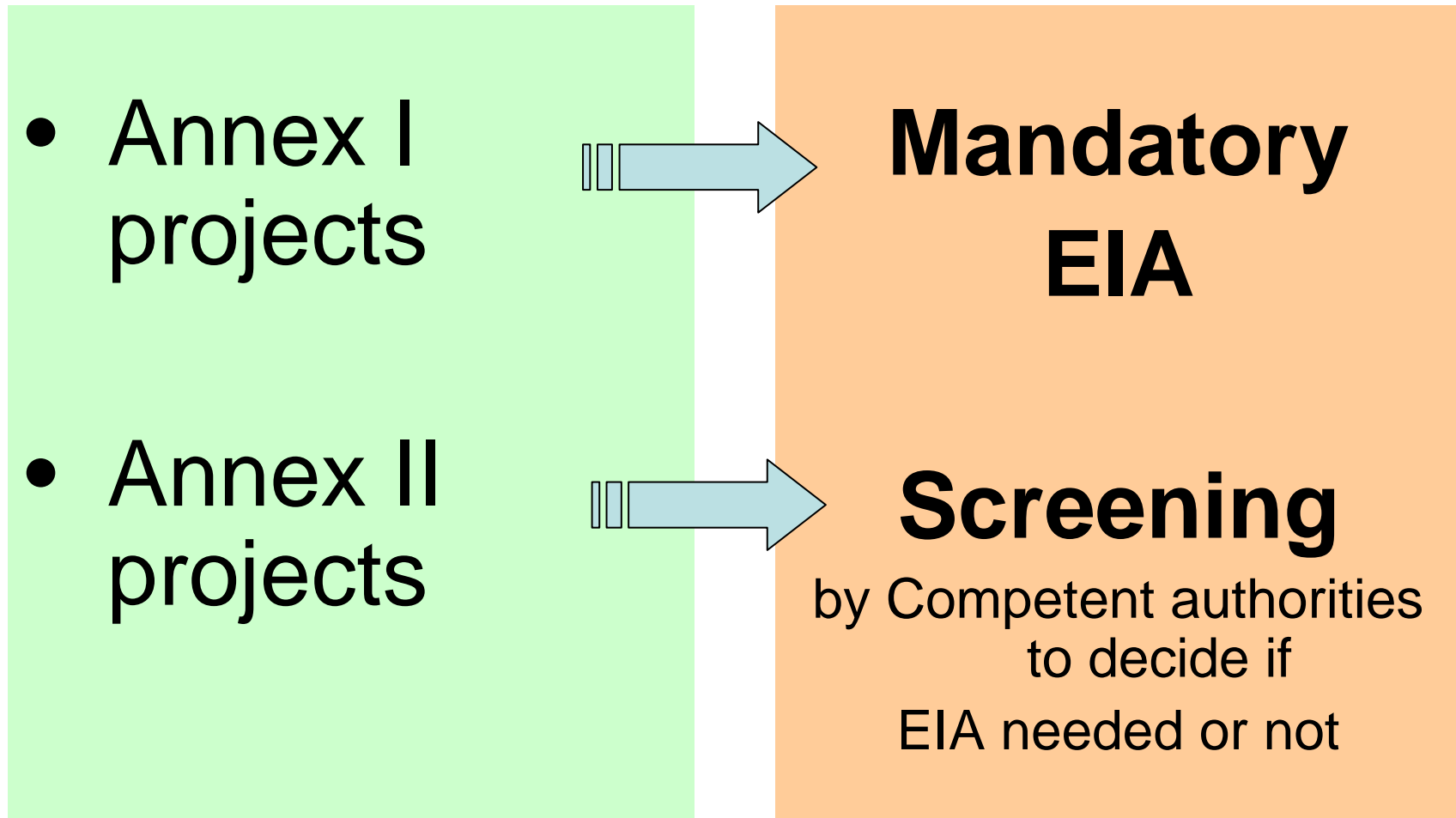
What must be assessed? ^(Art. 3)

EIA must identify, describe, **assess likely direct** and **indirect** environmental effects of activities on

- human beings,
- fauna, flora, soil, water, air, climate, landscape,
- material assets, cultural heritage
- the **interaction** between those factors

(Art. 4)

Which projects?



Some examples of projects

ANNEX I

- Long-distance **railway** lines
- **Motorways**, express roads, **roads** of four lanes or more (of at least 10Km)
- **Waste** disposal installations
 - for hazardous waste
 - for non hazardous waste (above 100 tonnes/day)
- **Waste water** treatment plants (above 150000 p.e.)
- Changes or extensions of Annex I projects meeting Annex I thresholds
-

ANNEX II

- Construction of **railways** and **roads** not included in Annex I
- **Waste** disposal installations and **waste water** treatment plants not included in Annex I
- **Urban development projects**
- **Changes or extensions** of Annex I and II projects that may have adverse environmental effects not included in Annex I
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Art 1(4)

- Note that National defence projects are not automatically excluded from EIA

... and some EIA terminology

- **Competent authorities**

Decide on development consent applications.

Are not necessarily environmental authorities.

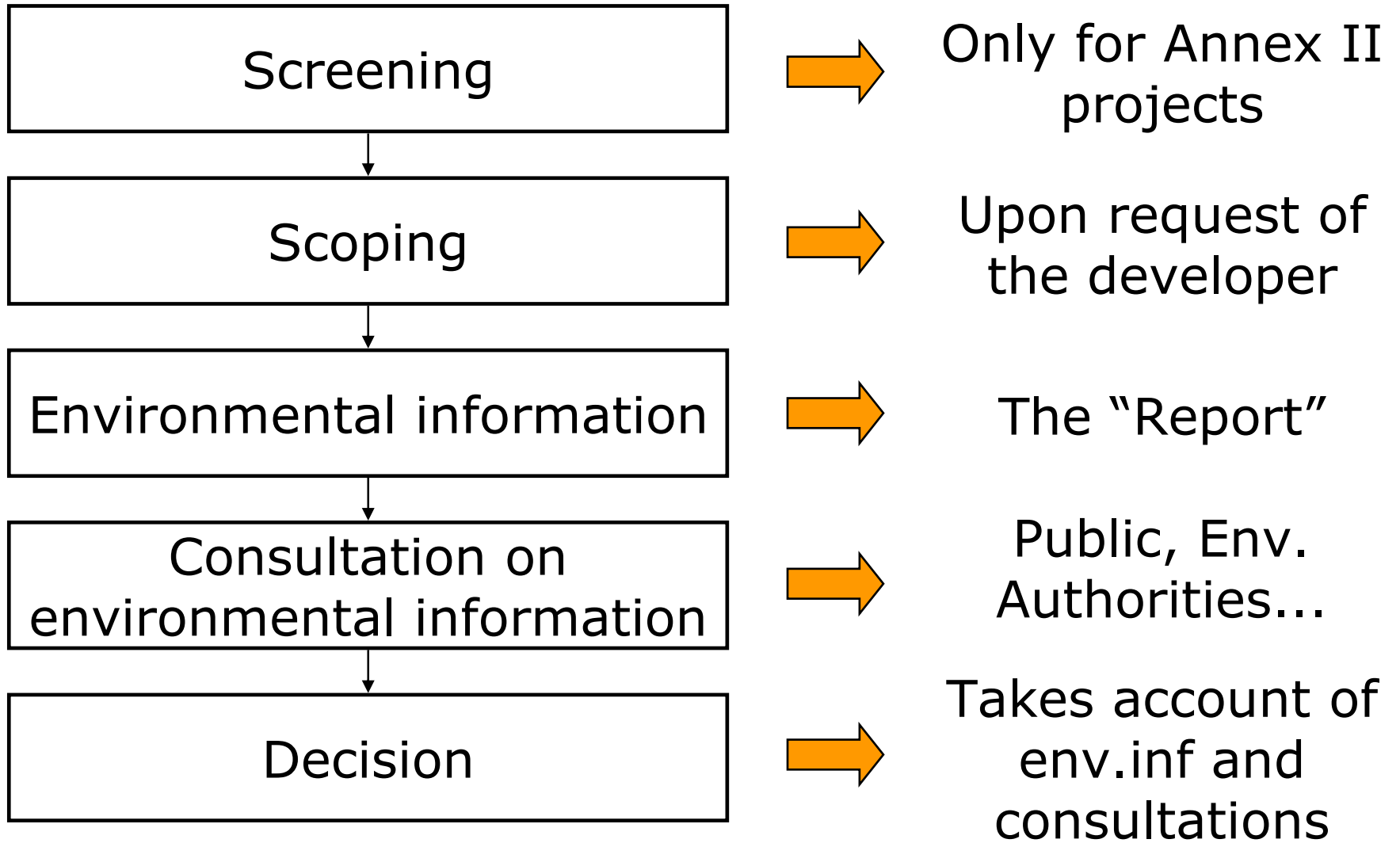
- **Environmental authorities**

Have specific environmental responsibilities. Are consulted by competent authorities.

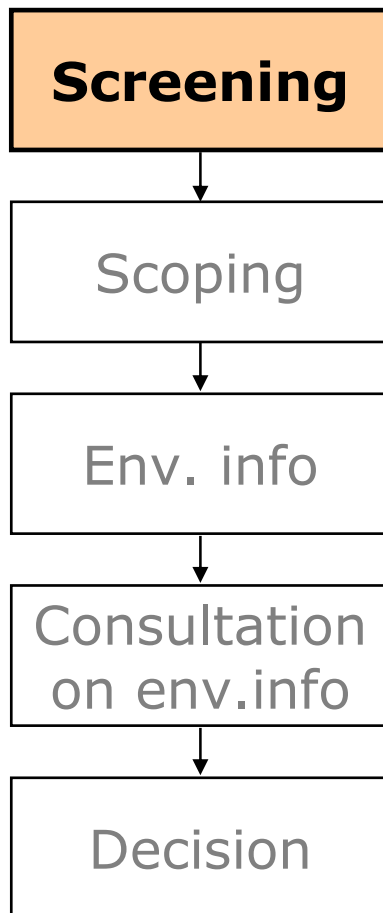
- **Environmental information**

Submitted by developers to competent authorities. Sometimes called « environmental report », « environmental statement », or « environmental study »

EIA procedure



Screening – what is it? ^(Art. 4)



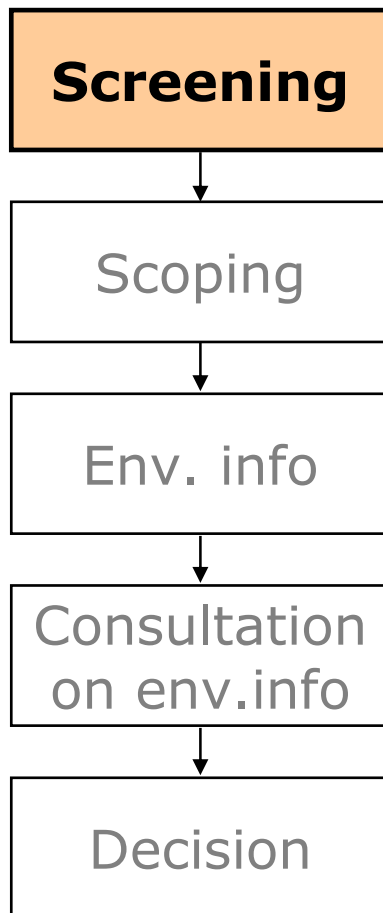
- Answers the question: ***is EIA required?*** (*Annex II projects*)
- The guiding principle: ***are significant environmental effects likely?***

If **yes** ⇒ **EIA** needed

If **no** ⇒ **no EIA** needed

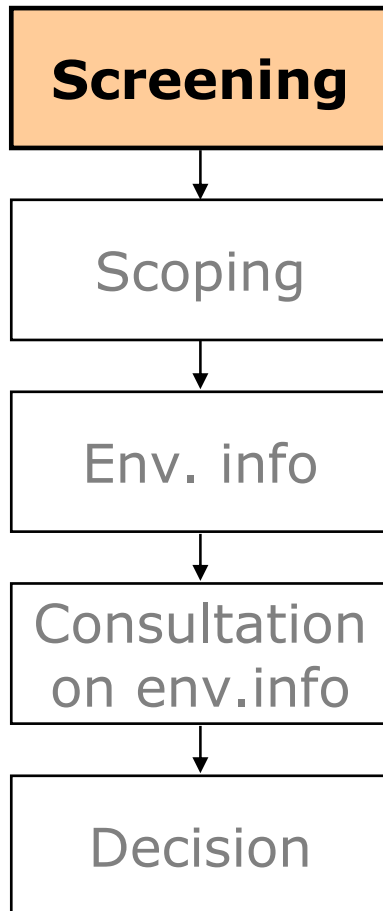
(Art. 4)

Screening – how?



- Determination through:
 - Case by case examination
 - and / or
 - Thresholds or criteria
- **Annex III criteria** must always be taken into account
⇒ **avoid “salami slicing”!**
- Screening determination must be made **available to the public**

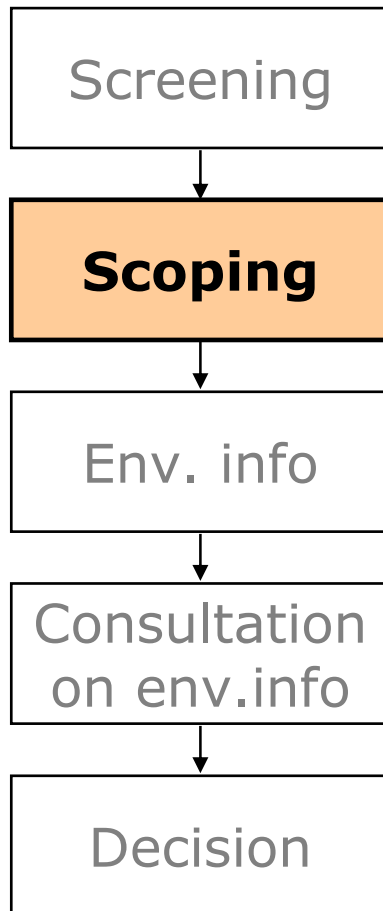
Annex III criteria



- ***Project characteristics***
 - size, **cumulation** with other projects, use of natural resources, waste production, pollution, risk of accidents ...
- ***Project location*** - environmental sensitivity of area likely to be affected
 - land use, natural resources, **Natura 2000** sites, **environmental standards already exceeded...**
- ***Potential impact***
 - extent, transboundary nature, probability, magnitude, duration, frequency, reversibility...

(Art. 5.2)

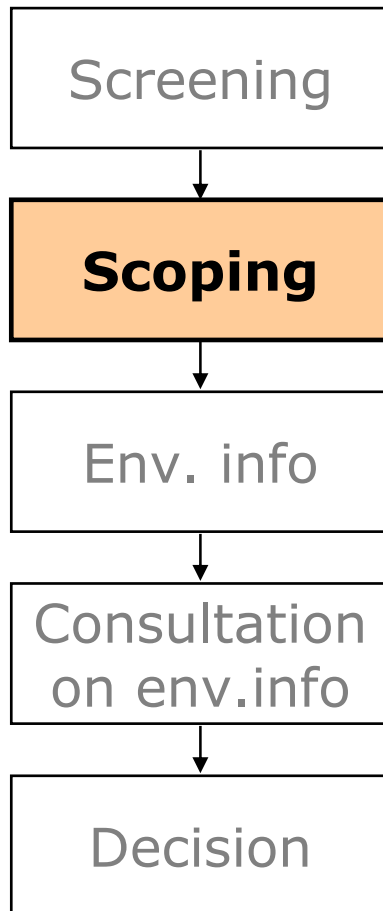
Scoping



- Answers the question “***what should be covered by the environmental information?***”
- Opinion by the competent authority
- On request of developer

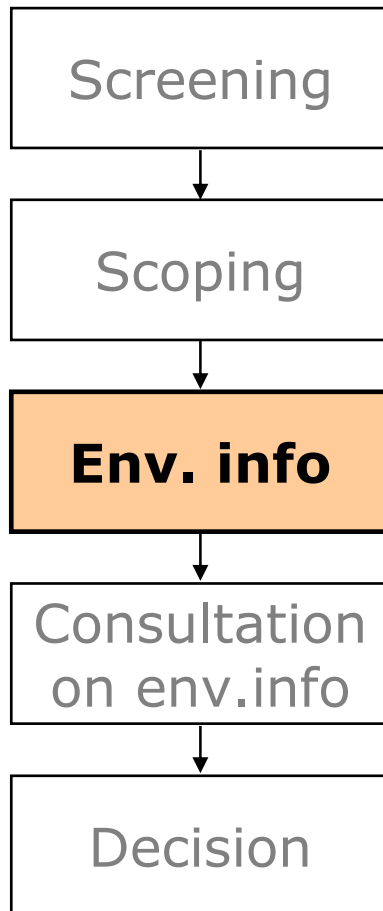
(Art. 5.2)

Scoping



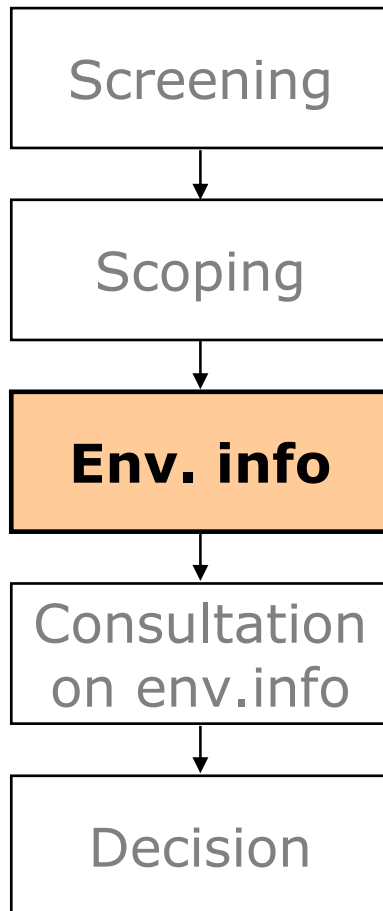
- Interaction between competent authority, developer, environmental authorities
- Before application for development consent is submitted
- Competent authority may subsequently require further information

Environmental information “the report” (Art. 5) (Annex IV)



- Project description
- Use of resources, emissions and residues (estimate)
- Description of the environment likely to be significantly affected
- Likely significant environmental effects (and forecasting methods)
- Difficulties encountered

Environmental information “the report” (Art. 5) (Annex IV)



The following must be covered, too !

- **Main alternatives and reasons for the choice taking account of the environmental effects**
- **Cumulative effects**
- **Short term and temporary effects**
- **Mitigation measures**
- **Non-technical summary**

Informing and consulting

1. **Environmental authorities** (Art. 5,6)

Consulted during scoping

Can express opinion on env.information

Informed of final decision

2. **Public** (Art. 4,6)

3. **Other Member States** affected by the project (Art. 7,9)

Informing and consulting

- **Definition of public:** one or more natural or legal persons,... their associations, organisations or groups
- **Public concerned:** «*public affected, or likely to be affected by, or having an interest in, the decision making procedure* » inc NGOs (Art 1(2))
- **Public concerned** to be given early and effective opportunities to participate in the decision-making procedure, and to comment when all options are open.
- Reasonable time-frames for public information, and for allowing public concerned to prepare and participate effectively
- Public concerned must have access to a review procedure (Art 10a)

Informing and consulting the public concerned

- **Screening determination** to be made available
- Public can express an opinion :
 - on **environmental information**
 - on the request for development consent
- When **final decision** is taken, public must be informed of:
 - its contents and reasons, including information about public participation process
 - attached conditions and mitigation measures

Transboundary consultation

- For projects likely to have **significant effects on the environment** of other Member States
- **Can be requested by** the **MS** likely to be significantly **affected**
- Provision of **information on request for development consent and environmental information** (« report »)
- Environmental authorities and public concerned in the affected MS can express opinions
- Reasonable time-frame
- Information on the final decision

***SELECTED
ECJ CASE-LAW***

European Court of Justice

- The meaning of the EIA Directive is not static
- Subject to interpretation by the ECJ
 - (infringements; references by national courts)

Considerable body of case law

- but need to apply judgments carefully.

The Court's approach

- The EIA Directive has “a wide scope and a broad purpose” (Kraaijeveld).
- Member States' discretion is limited.
- Consistent emphasis on the likely environmental effects of proposed projects.
- Exemptions to be interpreted narrowly.

The Kraaijeveld case C-72/95

- “The wording of the directive indicates that it has a wide scope and a broad purpose.”
 - Consistently quoted in subsequent cases by the Court (eg Bozen, Ireland).
- Uniform interpretation cannot be determined by one language.
- Some good news: criteria and thresholds have a role.

Ireland C-392/96

- Thresholds cannot exclude all projects of a certain type UNLESS, when viewed as a whole, they would not be likely to have significant environmental effects.
- Small-scale projects can have significant effects on the environment.
- Thresholds are to help in screening, not exempt classes.
- Cumulative effects of projects must be taken into account.

Linster C-287/98

- Individuals can rely on a Directive that has not been transposed on time.
- National courts are not restricted to the national law but can use the directive itself.
- Need for uniform application and principle of equality require autonomous uniform meanings for expressions in EC law.

Italy C-87/02

- **MSs have discretion about the methods they use to specify whether a project is subject to EIA.**
- **But this method must not undermine the Directive's objective.**
- **A decision that a project does not require EIA must contain or be accompanied by all the information that makes it possible to check that it is based on adequate screening, compliant with the Directive.**

Delena Wells C-201/02 (1)

- Concerned old mining permissions
- General Interim Development Orders (1946)
- Planning & Compensation Act 1991 – new rules: permissions in abeyance to be subjected to conditions and registered; applications to be made by 25 March 1992 or permission lapsed.

Delena Wells C-201/02 (2)

- In a consent procedure comprising several stages, assessment of environmental effects must be carried out as soon as they can all be identified and assessed.
- If the effects are not identifiable until the time of the implementing decision, the assessment should be in the course of that procedure.
- If MSs fail to carry out EIA, they must take measures to remedy that failure. These might include the revocation or suspension of a consent, or compensation if an individual has suffered harm.

Barker v Bromley (UK) C-290/03

- Meaning of ‘development consent’
- Development of leisure complex at Crystal Palace
- ‘Outline planning permission’ – consent in principle, subject to subsequent agreement of ‘reserved matters’
- Reserved matters – e.g. siting, design, external appearance, access, landscaping, etc
- Agreement of reserved matters essential for project to proceed

C-290/03 (2)

- The ECJ found that:
- ‘Development consent’ must be defined consistently with Community law.
- In multi-stage consent procedures, EIA must be at the time of the principal decision UNLESS the env effects are not identifiable until the implementing decision
- In that case EIA is necessary at that second stage.

Crystal Palace & White City (Commission v UK) C-508/03

- Crystal Palace – leisure complex; White City – retail & leisure facilities
- Outline planning permission granted and reserved matters agreed in both cases without EIA
- UK argued that consent is given by OPP, not by approval of reserved matters. Bromley also argued that in UK law, EIA impossible at Reserved Matters stage.

Crystal Palace & White City (Commission v UK) C-508/03

- ECJ found that:
 - The two decisions (OPP and Reserved Matters) constitute a (multi-stage) development consent (under Art 1(2))
 - Hence, following Wells, the rules allowing EIA only at OPP stage were contrary to Art 2(1) and 4(2).

EIA Guidance

- Please visit the EIA / SEA Homepage:
<http://europa.eu.int/comm/environment/eia/home.htm>
- Guidance documents and checklists:
 - Screening
 - Scoping
 - Review
 - Clarification of Art 2(3)

Espoo Convention homepage: <http://www.unece.org/env/eia/>