

# EIA and SEA processes:

## international and national legislation, procedures and requirements

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# **I. EIA Legal and Institutional Context**



**Environmental Impact Assessment (EIA)** was introduced in the United States of America in **1969** with the US National Environmental Policy Act (NEPA).

- **NEPA** states that federal agencies are required to make analyses of environmental effects of implementing their **programs or actions**
- EIA in the US legislation was imposed upon the **federal government** for its projects and **not for those of the private sector**



# THE MEMBER STATES OF THE EUROPEAN UNION



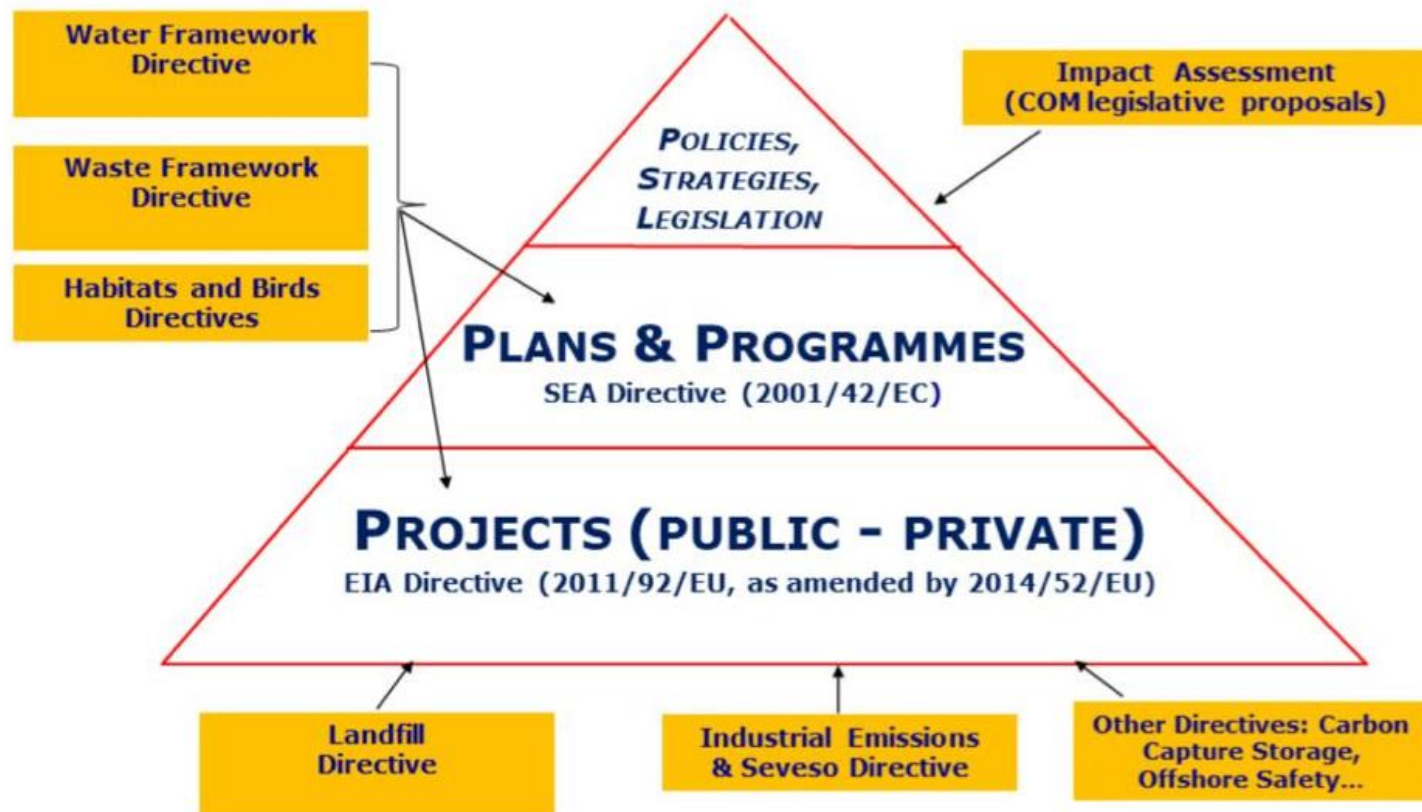
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## Environmental Assessments at EU level



**Strategic  
Environmental  
Assessment  
(SEA)**

**Policies /  
Strategies**

**Plans**

**Programmes**

**Environmental  
Impact  
Assessment  
(EIA)**

**Projects**

**Cascading  
tools**

- objectives
- indicators
- effects
- Measures

# General objective



**First EIA Directive 85/337/EEC**

**Recently updated by the Directive 2011/92/EU  
amended by the Directive 2014/52/EU**



The EIA European Directive was first issued in **1985** recently updated in **2014** — Directive 85/337/EEC recently updated by the Directive 2014/52/EU

- applies to **public and private** projects which are expected to have significant impacts on the environment.
- applies to projects that are identified into **two main list types of projects for which EIAs are required.**



## What does the EIA Directive apply to?

- projects likely to have significant effects on the environment (due to, among other factors, their nature/type, scale, and location)

## What are these projects subject to?

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

## When?

- before consent is given

# What projects?

- **Annex I projects**



**Mandatory  
EIA**

- **Annex II projects**



**Screening**

by Competent authorities to decide if  
EIA needed or not

# Some examples of projects

## ANNEX I

- Long-distance railway lines
- Motorways, express roads, roads of four lanes or more (of at least 10 km)
- Waste disposal installations
  - for hazardous waste
  - for non hazardous waste (above 100 tonnes/day)
- Waste water treatment plants (above 150000 p.e.)
- ....

## 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
- Marinas,
- Harbours,
- Golf courses
- ....

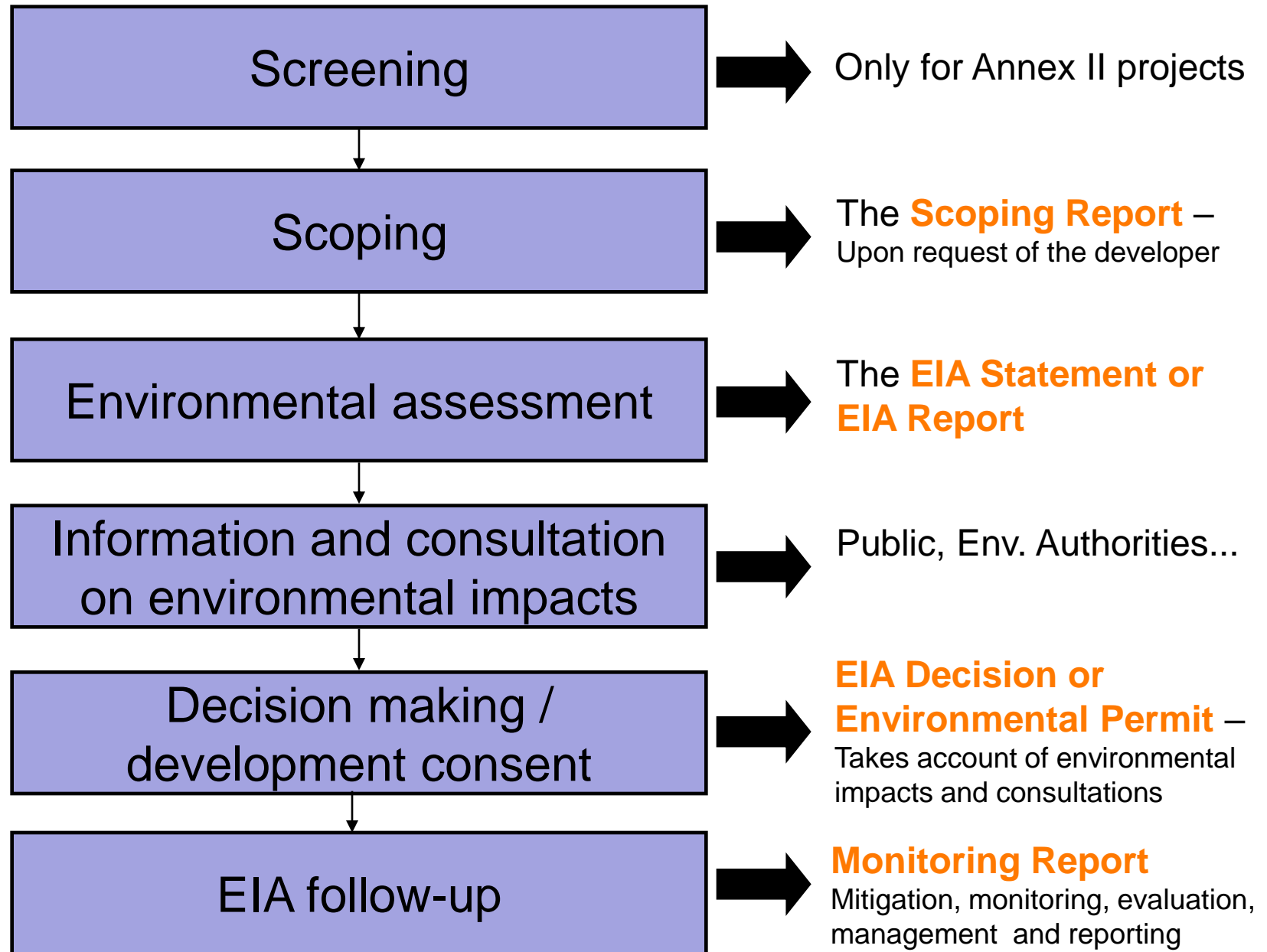
# What assessment?

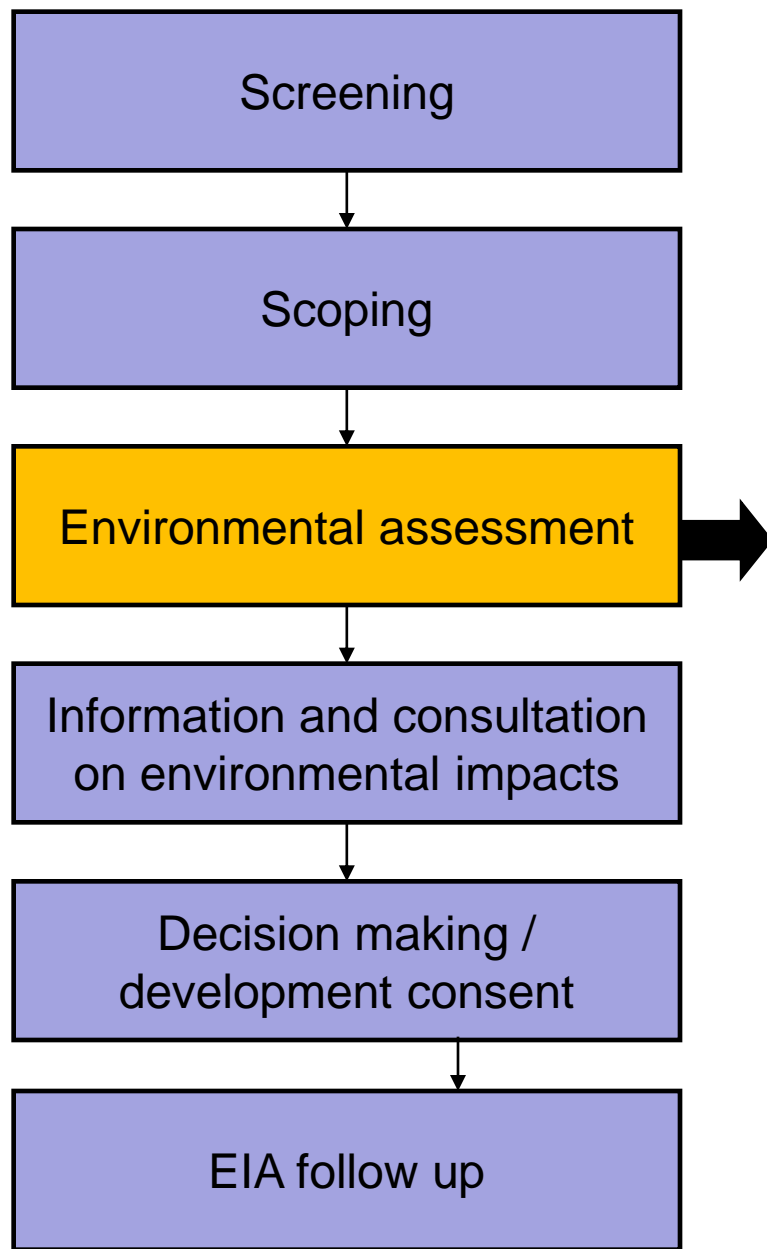
**EIA must identify, describe, assess likely, direct and indirect environmental impacts/effects of activities on**

- human beings / human health
- fauna, flora / biodiversity
- soil
- water
- air
- climate / climate change
- landscape
- land use management
- material assets
- cultural heritage

**and the interaction between those factors**

# EIA Process/Procedure

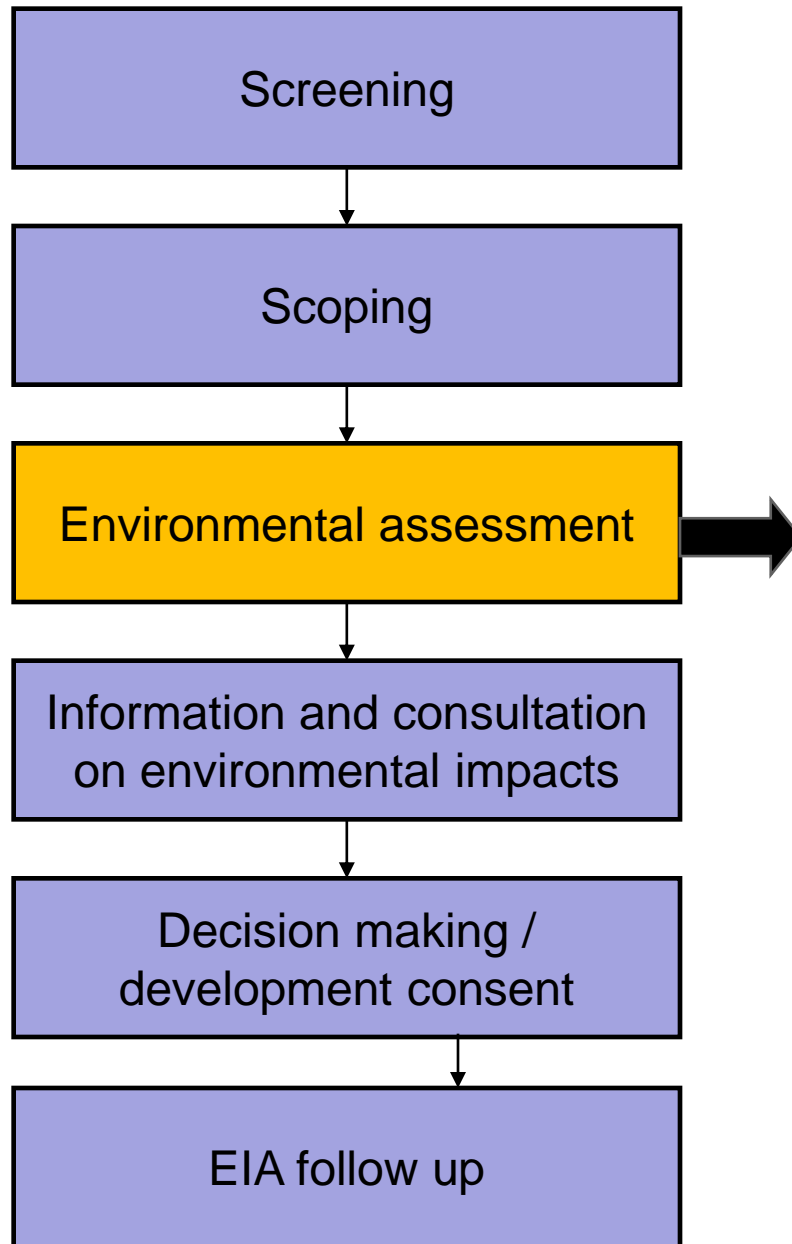




# EIA Statement

## *Main sections*

- 1. Project description / use of resources, emissions and residues (estimate)**
- 2. Baseline – description of the environment likely to be significantly affected**
- 3. Evaluation of likely significant environmental effects (and forecasting methods)**
- 4. Mitigation and Monitoring Plan**
- 5. Conclusions (to support decision making)**



## EIA Statement

*key features*

Main **alternatives** and reasons for the choice taking account of the environmental effects

**Cumulative** effects

**Short, temporary and long term** effects

**Secondary/indirect** effects

**Mitigation** measures

**Non-technical** summary

# Some features of the “new” EIA regulation system

- Legal responsibility rests with the **project proponent**;
- EIS teams/authors will have **legal status** (e.g. certification system);
- “New” thematic areas: **climate change; land use management, risks,...health issues**
- Particular emphasis in (i) **Project Alternatives** and (ii) **assessment of cumulative impacts**
- Monitoring is **mandatory**;
- Ministry of the Environmental has the **final decision** on project’s approval.



# National Legislation

- Portuguese **EIA practice** began in the **early 1980s**, on an informal and ad hoc basis: mining, power plants, ...
- Environmental assessment of projects was a goal of the 1<sup>st</sup> **Environmental Basis Law** from 1987 (Lei n. 11/87)
- The transposition of the EEC Directive and systematic EIA procedures only came about in **1990**, with Decree-Law No. 186/90.
  - Directive 85/337/EEC was later amended by Directive 97/11/EC. This was in turn transposed into Portuguese law by **Decree-Law No. 69/2000 (+EIA Guidelines stated in Ordinance 330/2001)**, which was amended by **Decree-Law No. 197/2005** and by **Decree-Law 151-B/2013**, de 31 de outubro.
- More recently **Directive 2014/52/EU** transposed by **Decree-Law 152-B/2017** by

Early 80s

...

1987

....

1990

...

2000

2001

2005

...

2017

Portuguese law follows closely the European Directive;

Recent national EIA Legislation– All the time periods were shortened, including for public participation, and no clarification for the roles of EIA vs SEA was provided.

## **II. SEA Legal and Institutional Context**

# Planning (Spatial) systems

- States the **conceptual model** of the national planning policy and identifies the respective **instruments**;
- Identifies the different **levels (spatial)** for planning;
- Identifies the instruments that will produce effects on **public versus private** domains;
- Identifies main land use classes: **rural, urban,..**
- States that **public participation** must be integrated in all stages of the planning cycle;
- Integrates **monitoring/follow-up evaluation** as mandatory step.



# The planning system

- **National Framework Laws on Land Use Management** sets the overall policy basis for spatial and sectorial planning, including its goals and principles
- The **Territorial Management System** through which planning policy is organized in three distinct levels:
  - national
  - regional
  - localand through different types of plans



# Types of Plans and Programs

(example for Portugal)

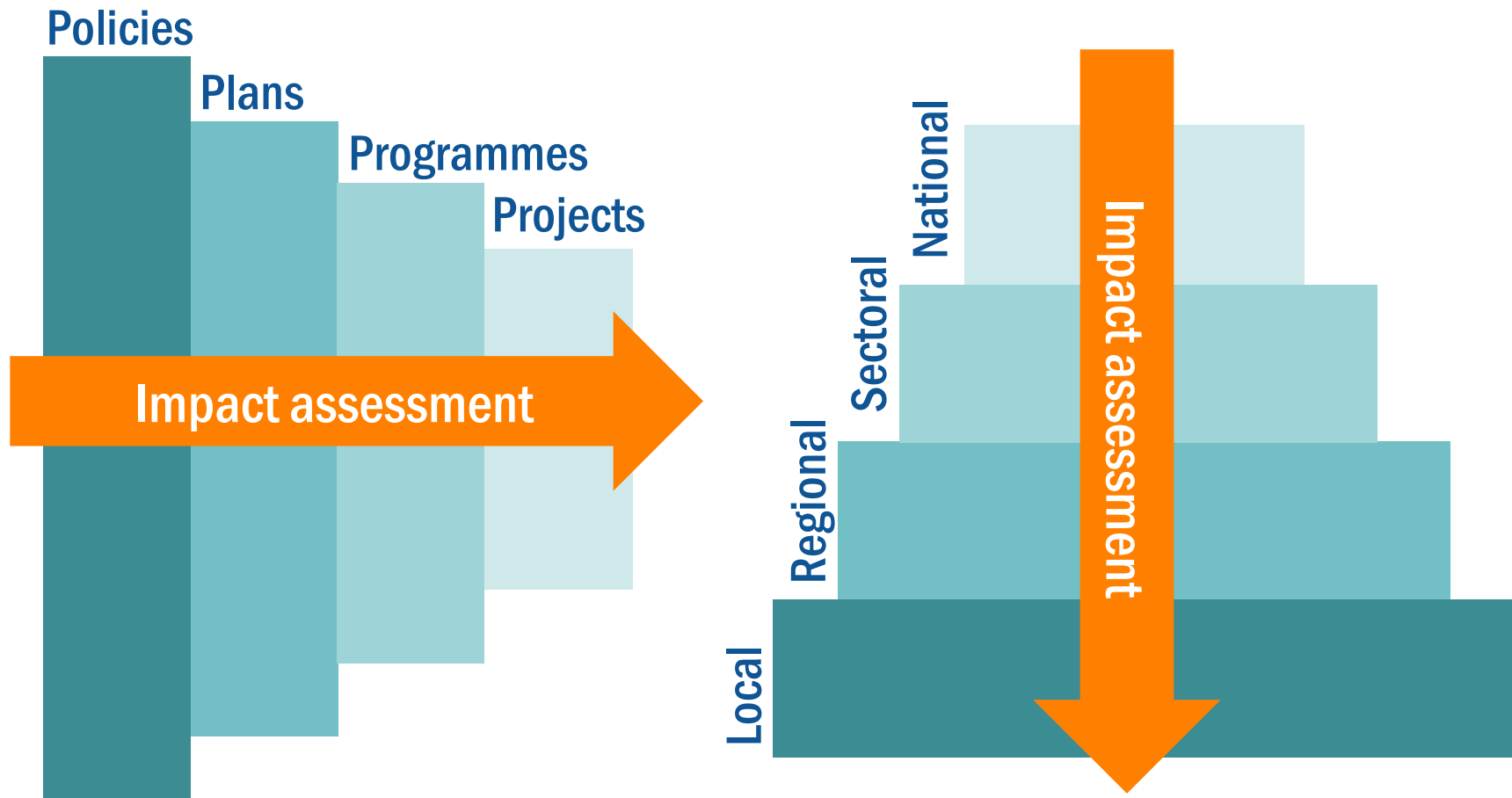
Scale	Type of Plans	Responsibility
National	<b>National Program for Spatial Planning Policy</b>	Central government
	<b>Sectoral Plans:</b> sector policies plans, programmes and strategies with spatial expression,	Central government
	<b>“Special” Plans:</b> environmental/natural resources protection and management: <ul style="list-style-type: none"> <li>• Plans for Coastal Areas</li> <li>• Plans for Protected Natural Areas</li> <li>• Plans for Water Reservoirs</li> <li>• Plans for Estuaries</li> <li>• Plans for Archeological Parks</li> </ul>	Central government
Regional (NUTS II)	<b>Regional spatial Plans:</b> articulate the national and regional level policies, and defining guidelines for spatial planning at local level	Decentralized authorities working at regional level at mainland Portugal (CCDR) and two regional authorities in the Madeira and Azores autonomous regions
Local	<b>Municipal Spatial Plans:</b> <ul style="list-style-type: none"> <li>• Master Plans (whole municipality)</li> <li>• Urban Development Plans</li> <li>• Detailed Plans (for smaller areas within the municipality)</li> </ul>	Local governments

# Origins of SEA regulations

- Originates jointly with EIA processes in 1969, in the US, but starts gaining prominence only in the 1990's
- Arises out of recognition of the limitations of project-level EIA – need to incorporate environmental considerations **from early planning stages**
- Need to inform strategic decisions about their **potential environmental consequences**

**European Directive 2001/42/EC —  
Environmental effects of plans and programmes**

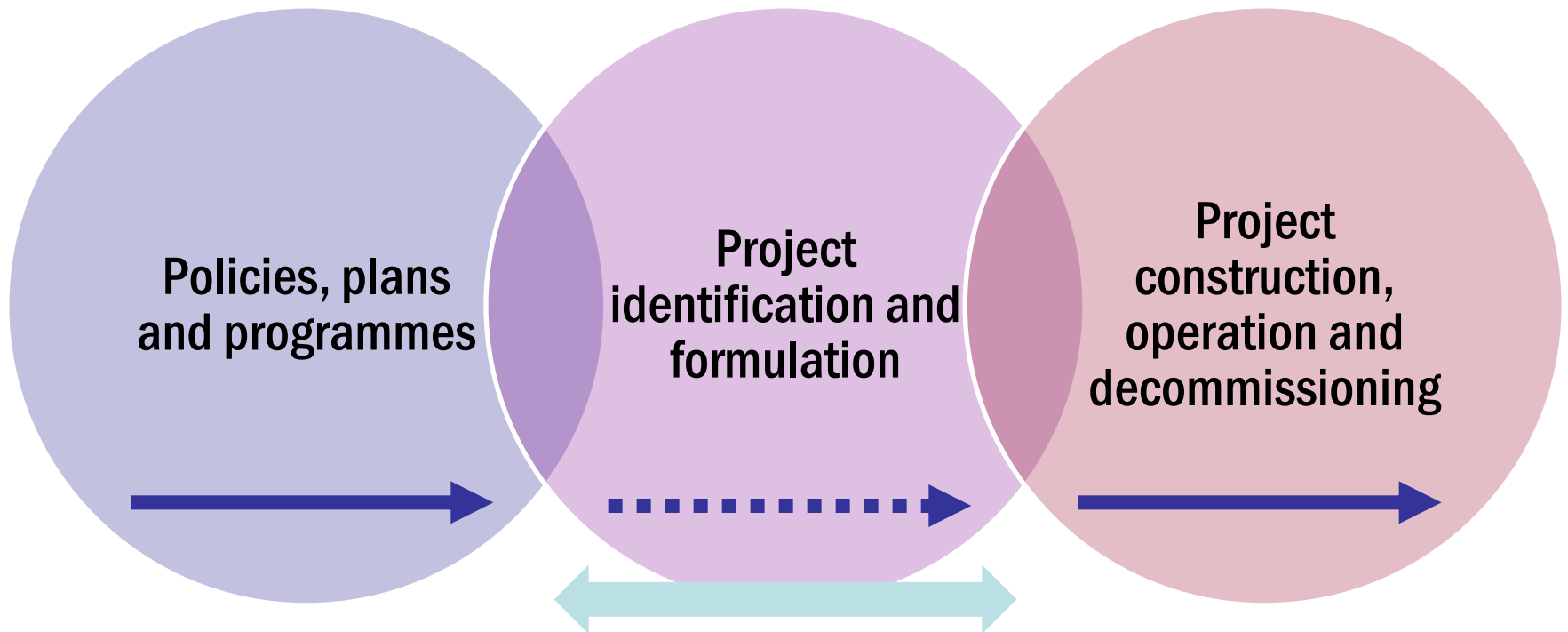
# Tiering approach



Source: European Commission

# Strategic Level (SEA)

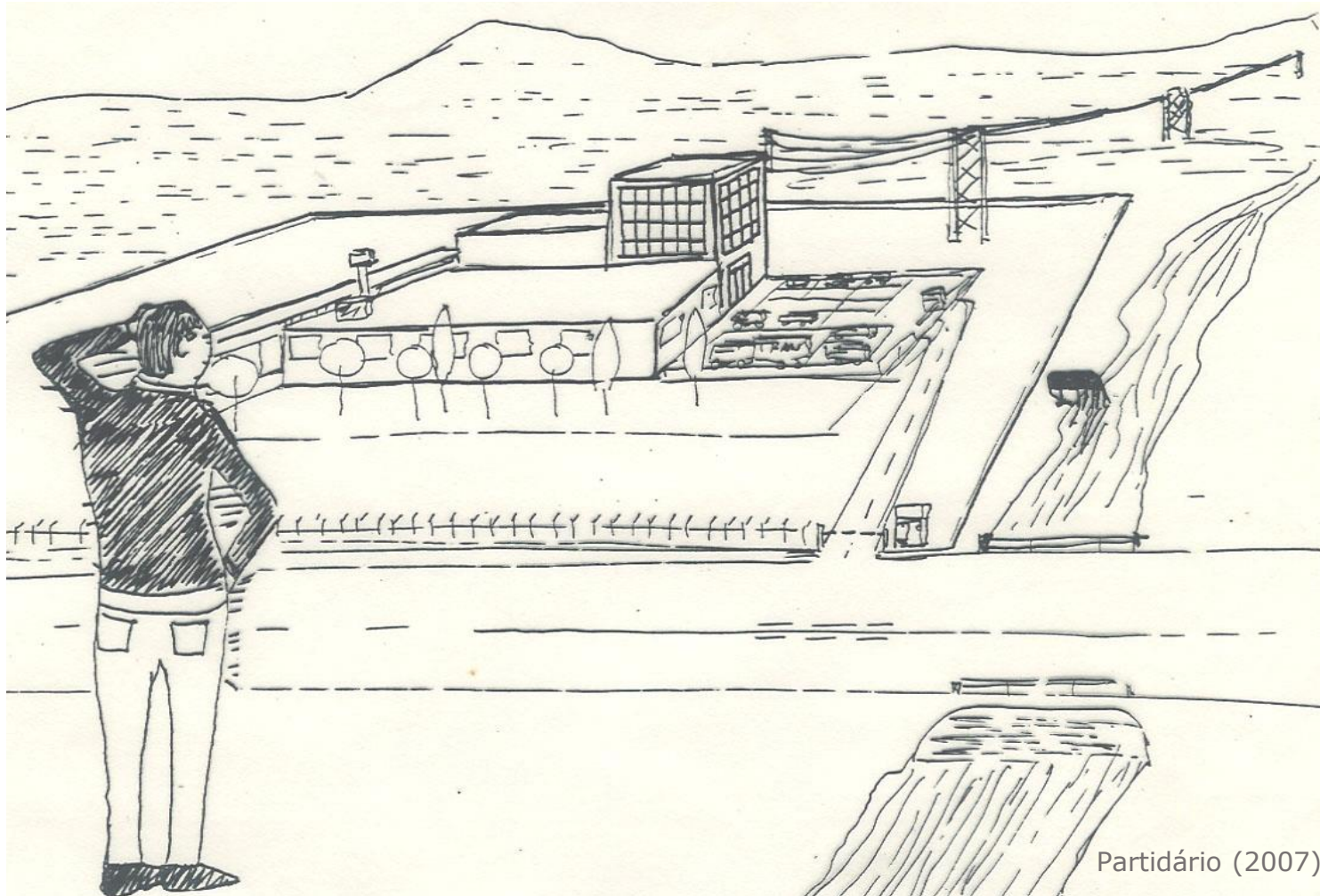
# Operational Level (EIA)



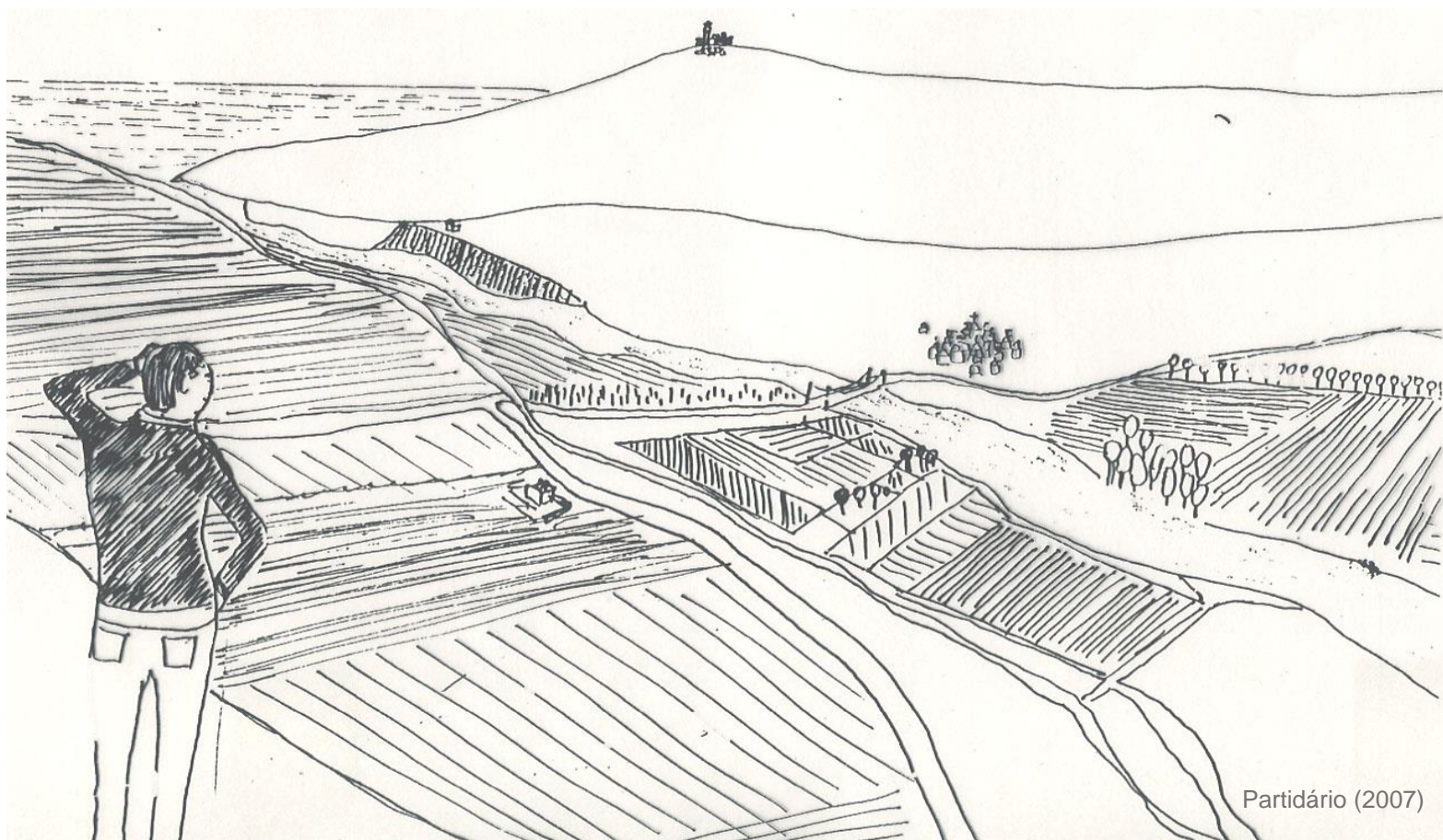
Source: European Commission



# EIA: we know what we want to assess



**SEA:** we have an idea of what we want,  
but don't know exactly what will be done



Partidário (2007)

# Key guiding questions

## Strategic planning (SEA)

**Which are the:**

- objectives?
- key drivers?
- strategic options?
- key restrictions?
- main interests?
- most important policies to be met?

## Project design (EIA)

- **Which are the main characteristics of the [project](#)?**
- **Where is it located?**
- **Which are its:**
  - possible designs?
  - main impacts on the environment?
  - mitigation measures?

Source: European Commission

# What is an SEA?

## Common to most SEA systems:

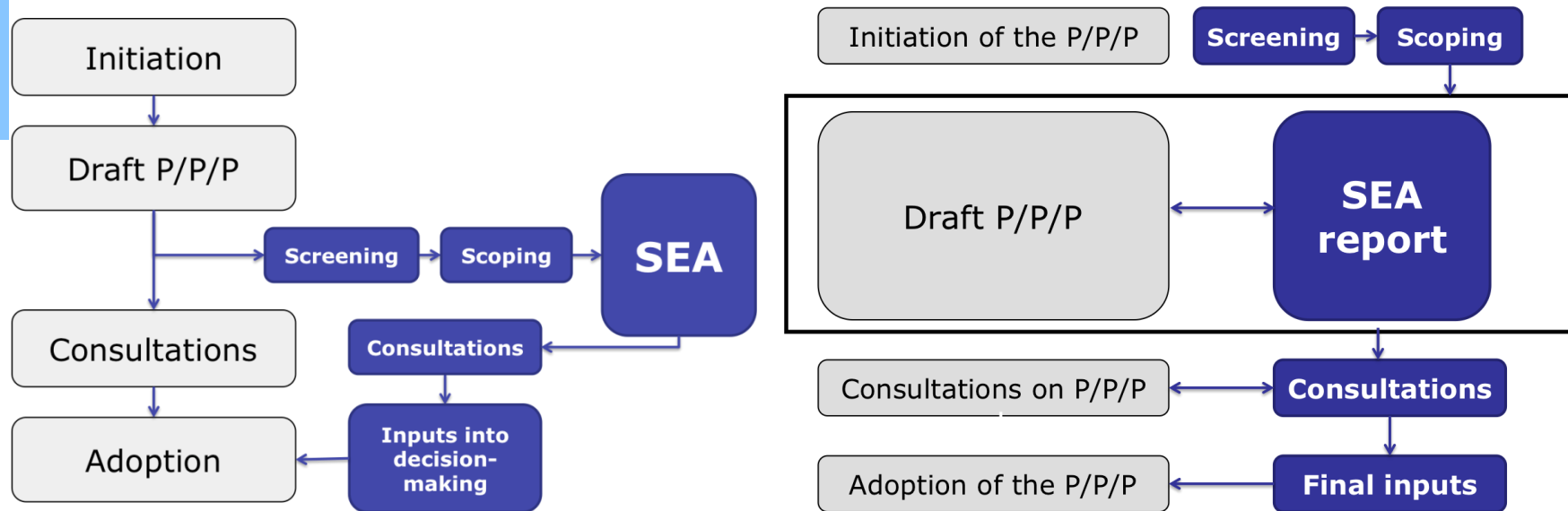
- What are the likely environmental consequences of the Policies, Plans and Programmes (PPP)?
- An iterative and participatory process, that
  - guarantees the integration of the environment into policy-making and planning processes
  - through the analysis of environmental implications of the different components of a policy, plan or programme.

Source: European Commission



# Approaches to SEA

Based on **draft PPP** vs **in parallel to PPP**  
elaboration vs fully integrated



Source: European Commission

Adapted from: GTZ (nd)

# Key stages in an SEA

## Screening

## Scoping – Scoping Report

## Environmental Assessment – Environmental Report

- Policy/Plan/Programme (PPP) description
- Environmental Baseline
- Identification of environmental and sustainability effects/impacts (opportunities and constraints/risks) of the PPP and alternatives
- Identification of elements that may conflict with or hinder env. policy objectives
- Conclusions and recommendations for formulation of preferred and improved alternative

## Decision making – SEA decision/statement

## SEA follow up – Monitoring Report recommendations/mitigation, monitoring, and indicators, reporting

**Scoping Report** – Public Authorities with an interest in the environmental effects of PP must be consulted on the scope.

**Environmental Report** – a broad public consultation is mandatory, engaging not only the Public Authorities but also the different interested stakeholders and the general public



The regulations do not state the form they should take, whether through participatory workshops, dedicated web pages, or other means.

*The Portuguese Environmental Agency is responsible for the storage and treatment of SEA information, ensuring the dialogue and interchange of information with the European Commission and other interested parties*

# Common international challenges to SEA

1. Weak strategic planning culture
2. Weak inter-institutional cooperation
3. Weak environmental commitment by sectoral authorities (this is not my area of work)
4. Obsession with quantification
5. Limitations of the regulatory framework
6. Confusion between EIA and SEA and SA
7. Who is best placed to deal with key recommendations?

Source: Adapted from European Commission



- ✓ **Directive 2001/42/EC — Environmental effects of plans and programmes**
- ✓ **SEA must also comply with the national regulations on Territorial Management System regulation: some specific procedural features for each type of plan.**
- ✓ **Environmental assessment of plans was a goal of the Portuguese Environmental Basis Law from 1987 (Article 30, Law no. 11/87).**
- ✓ **SEA was enacted in Portugal through the Decree-Law 242/2007, 15 June, which transposes the Directive 2001/42/EC — the transposition of the SEA Directive was done late.**
- ✓ **The SEA national legislation**
  - **Is very similar to the European Directive;**
  - **Supported on very mild/weak procedures;**
  - **The PP promoter has the main role in whole process;**
  - **The public administration has an “irrelevant” or poor role.**

National  
context

1987

...

2007

....

2007  
2009  
2011

The Portuguese legal framework on SEA defines the PP promoter as the following responsibilities:

- verify and decide if there is a need to carry out an SEA;
- determine the SEA scope. It is not mandatory to do a scoping report but it is usually done. Public Authorities with an interest in the environmental effects of PP must be consulted on the scope;
- develop the Environmental Report, which must reflect the inputs, including suggestions and comments, made during the scoping stage;
- organise the consultation of public authorities with environmental responsibility and interested public;
- develop and implement the monitoring scheme to follow the environmental effects;
- send at end of the process, and after the PP approval, to the Portuguese Environmental Agency an Environmental Statement saying how the contributions of the SEA and respective consultations were integrated into the PP, and how it will be pursued in the follow-up stage.

# Group Assignment

**Critical analysis of an Environmental Impact Assessment (EIA) of projects or a Strategic Environmental Assessment (SEA) of policies, plans, and programs**  
(50% of the total evaluation)

Professors: Tomás B. Ramos ([tabr@fct.unl.pt](mailto:tabr@fct.unl.pt)) & João Joanaz de Melo ([jjm@fct.unl.pt](mailto:jjm@fct.unl.pt))

Teaching Assistant: João Loureiro ([joao.loureiro.rodriques@novasbe.pt](mailto:joao.loureiro.rodriques@novasbe.pt))

## 1. Objective & Organization

- Analyse real case studies of **Environmental Impact Assessment (EIA)** or **Strategic Environmental Assessment (SEA)** under **EU Directives 2014/52/EU & 2001/42/EC**.
- **10 teams (5 students each)** act as **technical committees** evaluating different cases.
- Teams must **form independent opinions** on projects, policies, plans, or programs—regardless of official decisions.

# Group Assignment

**Critical analysis of an Environmental Impact Assessment (EIA) of projects or a Strategic Environmental Assessment (SEA) of policies, plans, and programs**  
(50% of the total evaluation)

## 2. Case Study Selection

- Based on an **Environmental Impact Statement (EIS)** (for projects) or **Environmental Report (ER)** (for policies/plans/Programmes).
- Cases may be **ongoing, completed, or implemented**.
- Teams analyse:
  - **Non-technical summaries, public consultation feedback, technical reports, and other relevant data.**
  - **Critical decision points** and propose **recommendations**.
- **Original Documents must be in English, Portuguese, Spanish, or French**

# Group Assignment

**Critical analysis of an Environmental Impact Assessment (EIA) of projects or a Strategic Environmental Assessment (SEA) of policies, plans, and programs**  
(50% of the total evaluation)

## 3. Evaluation & Structure

- **Three elements: Report, Presentation, Discussion** (all in English).
- **Report & Presentation Structure:**
  - **Team details** (course, date, authors, effort per person).
  - **Project/Policy/Plan Overview** (goals, alternatives, location).
  - **Key environmental & socioeconomic impacts.**
  - **Public consultation results** (if available).
  - **Proposed decision & justification:**  
☒ ☒ Approve ☒ Approve with conditions ☒ Reject ☒ Suspend (ask for missing information)
  - **References, including EIS/ER and respective links.**

# Group Assignment

**Critical analysis of an Environmental Impact Assessment (EIA) of projects or a Strategic Environmental Assessment (SEA) of policies, plans, and programs**  
**(50% of the total evaluation)**

## 4. Submission & Discussion

- **Submission & Discussion**
- **Register case study** on Moodle ('Case Study Selection' forum) – **No duplicates allowed.**
- **Report: max. 5 pages** (excl. cover and references).
- **Presentation: max. 10 slides** (incl. cover with names/photos).
- **Upload to Moodle by 10 March.**
- **In-class presentation & discussion: 12 and 17 March.**
  - 10 min. presentation + 10 min. Q&A
  - All team members must participate
  - Extra points for discussion contributions
  - Penalty for absence.