KfK 4507 B
September 1989

Environmental Impact Assessment in the Member Countries of the European Community

Implementing the EC-Directive: An Overview

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Abstract

The present report is based on a study which was carried out by the Department for Applied Systems Analysis of the Nuclear Research Centre Karlsruhe on behalf of the Federal Environmental Agency. The report gives an overview of the current state of implementation of Environmental Impact Assessment (EIA) in the Member States of the European Community.
The different concepts of incorporating the EC-Directive on EIA of June 27, 1985 into national law are analyzed and compared with regard to content, procedural and legal requirements. The report documents the state of implementation of summer 1988. All EC-Countries are included with the exception of Luxembourg.

Die Umweltverträglichkeitsprüfung in den Mitgliedstaaten der Europäischen Gemeinschaft

Die Implementation der EG-Richtlinie: Ein Überblick

Zusammenfassung

Der vorliegende Bericht basiert auf einer Studie, die von der Abteilung für Angewandte Systemanalyse des Kernforschungszentrums Karlsruhe im Auftrag des Umweltbundesamtes durchgeführt wurde. Er gibt einen Überblick über den aktuellen Stand der Implementation der Umweltverträglichkeitsprüfung (UVP) in den Mitgliedstaaten der Europäischen Gemeinschaft.
Die verschiedenen Konzepte zur Überführung der UVP-Richtlinie der EG vom 27. Juni 1985 in nationales Recht werden unter rechtlichen, verfahrensmäßigen und inhaltlichen Aspekten untersucht und miteinander verglichen. Der Bericht gibt den Stand der Umsetzung im Sommer 1988 wieder und umfaßt alle Länder der Gemeinschaft mit Ausnahme von Luxemburg.

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Preface

Environmental Impact Assessment (EIA) - as a preventive instrument - shall support decision-making on projects affecting the environment. EIA shall ensure that all potential effects on the environment of such projects are identified, analyzed and evaluated in a comprehensive, systematic and cross-sectoral approach before consent is given. It is the aim of the Directive of the EC-Council of June 27, 1985 (85/337/EC) on the assessment of the effects of certain public and private projects to introduce such an assessment procedure in all Member States of the EC. In order to harmonize already existing legal provisions in the Member States, minimum requirements are established especially with regard to the type of projects to be assessed, the main obligations imposed on the developer and the content of the assessment. However, the Directive shall not affect the right of Member States to lay down stricter rules regarding scope and procedure of the assessment process.

A period of three years was scheduled for incorporating the EC-Directive into national law. It expired on July 3, 1988. Most Member States failed to meet this deadline. Detailed regulations, in particular, are lacking in many countries. France and the Netherlands, however, had already introduced comprehensive legal EIA-provisions before the adoption of the Directive. Therefore, these countries do not regard further legal measures as necessary apart from individual aspects.

The present report is partly based on a study which was carried out by the Department for Applied Systems Analysis of the Nuclear Research Centre Karlsruhe on behalf of the Federal Environmental Agency. It was the aim of the study to analyze the current state of implementation of EIA in the EC-Member States. All EC-countries are included with the exception of Luxembourg. The report documents the state of implementation of summer 1988. The report is based on laws, decrees and administrative orders or corresponding drafts as well as on numerous discussions with experts from administration and science of the individual Member States. It is intended to actualize the report after EIA has been finally implemented in all EC-Member Countries.

In part I of the report (synopsis of the state and form of implementation of the Directive of the EC-Council of June 27, 1985) the concepts of implementation of the individual Member States are analyzed with regard to the following nine major

aspects of regulation and compared with the minimum requirements of the EC-Directive.

1. Legal Basis of EIA / Incorporation of EIA into the existing legal system
   (In which form is EIA incorporated into the legal system: by a separate law, by amending existing legislation or below legislative level? Is EIA integrated into existing procedures or implemented as a separate procedure?)

2. Area of application of EIA
   (Which projects are subjected to an EIA? Which procedures and criteria are used to decide on the necessity of an EIA?)

3. Responsibilities within the framework of the EIA-procedure
   (How are the duties distributed between the developer and the permitting authority? Are provisions made for an external review by a neutral body?)

4. Content of the EIA
   (What is the definition of the term 'environment'? Which are the requirements regarding the content of an EIA-study? To what extent are alternatives and socio-economic aspects analyzed?)

5. Consultation of other authorities and organizations
   (What is the function of consulting other authorities? Are new requirements of consultation introduced in connection with the EIA-implementation? Who has to be consulted?)

6. Public participation
   (What is the definition of the public entitled to participate? In which form and at which stages does public participation take place?)

7. Consultation of neighbouring states on projects causing transboundary effects
   Do the EIA-laws and regulations in the various Member States contain provisions to implement such consultation requirements? On which level does consultation take place?)

8. Linkage of EIA and decision-making
   (Who decides on the environmental compatibility of a project? How can it be ensured that the results of the EIA are taken into consideration in the decision-making process?)

9. Administrative monitoring / judicial review and enforcement of EIA / standing
(Do the legal provisions provide for monitoring the compliance with the environmental permitting conditions determined in the EIA? Are the predictions of the EIA reviewed after the projects have been realized? Are special possibilities of judicial review introduced within the framework of EIA implementation? What are the provisions regarding standing?)

Part II contains synoptic tables for each of these aspects in which the corresponding provisions introduced or planned by the member countries are presented in a concise and summarizing form. It also contains an overall table which facilitates a quick overview of the concepts of implementation pursued by the different countries. Detailed reports on the individual countries are available in a German publication:
(Coenen, Reinhard; Jörissen, Juliane: Die Umweltverträglichkeitsprüfung in den Mitgliedstaaten der Europäischen Gemeinschaft. Erich Schmidt Verlag, Berlin, Schriftenreihe Beiträge zur Umweltgestaltung, Band A 115, 1989).

All our discussion partners are thanked for supporting our work by providing useful information and suggestions: Gert Johansen (Ministry of the Environment, Copenhagen), Jean-Francois David and Franck Villey-Desmeserets (Department of the Environment, Paris), Xaver Monbailliu (Environmental Consultant, Paris), Michel Prieur (University of Limoges), Norman Lee (University of Manchester), John Mason (Department of the Environment, London), Karen Raymond (Environmental Resources Limited, London), Roger Goodwillie and Henk W. van der Kamp (An Foras Forbartha, Dublin), Joe Ryan (Department of the Environment, Dublin), Francesco da Camera and Costanza Pera (Ministry of the Environment, Rome), Enzo Coccia (Giunta Regionale della Regione Umbria), Enrico Falqui (University of Florence), Roberto Lewanski (University of Bologna), Henk Brouwer (Ministry for Health and Environmental Protection, Leidschendam), Santiago Gonzales Alonso (Ministry for Public Works and Urban Planning, Madrid), Angel Ramos (Technical University of Madrid) as well as William Kennedy (OECD, Paris).

Gratitude is also expressed to Marc Boes (University of Leuven), Lionel Canelas (New University of Lisbon) and Dimitros Tsotsos (PERPA, Athens) , who prepared country reports on Belgium, Greece and Portugal, for their fruitful co-operation; to Mrs. Heidi Gross for translating and to Mrs. Gabriele Rastätter for typing the report.

PART I

Synopsis of the State and Form of Implementation of the European Community's Directive on Environmental Assessment (EEC/85/337)

1. Legal Basis of EIA / Incorporation of EIA into the Existing Legal System (Table 1)

EC-Directives are not directly applicable law but must be incorporated into national law through appropriate measures. In general, member countries have a large scope of discretion with regard to the form of incorporation. It must only be ensured that the objectives of the respective directive are fully accomplished. In order to incorporate the EC-Directive into national law the EC-Member States discussed a number of different concepts ranging from implementation below legislation level by regulations or orders via amending existing environmental and planning laws to passing a separate EIA law.

As can be seen from Table 1, five of the Member States analyzed here, namely **Denmark, France, Greece, the Netherlands** and **Portugal**, have decided to introduce EIA within a single law which is either in existence or yet to be passed. The EIA-regulations have been integrated into the national and regional planning acts in **Denmark**, into the Nature Protection Act in **France**, and into general environmental protection acts in **Greece**, the **Netherlands** and in **Portugal**. However, the degree of the legal specification of the central principles of EIA differs considerably within the respective laws. The legislative solution in the **Netherlands** is undoubtedly the most ambitious one. In scope as well as depth of regulation it clearly surpasses the EC-requirements in many aspects.

The **Federal Republic of Germany** (FRG) intends to implement EIA by a so-called "article law" which, in Art. 1, determines some basic principles of EIA and amends relevant other environmental and planning laws in the following articles. However, Art. 1 has subsidiary character in relation to corresponding provisions of the amended laws. The **United Kingdom** (UK) and **Ireland** pursue a strategy of implementing EIA below legislation level by regulations under the town and country planning acts and other relevant laws. Only three of the Member States examined, namely **Belgium**, **Italy** and **Spain**, intend to implement EIA by a separate new law. So far, however, neither **Belgium** nor **Italy** have prepared corresponding draft legislation on the national level. There are, however, EIA-provisions on regional levels in both countries. In **Italy**, an interim regulation is in force at the national level which, at the same time, shall serve to test EIA in practice.

It is difficult to evaluate these different ways of legal implementation because one has to take into account the national legal context and measures of environmental

control already established. In general, it can be stated that introducing EIA by a separate law, as it is envisaged in **Belgium, Italy** and **Spain**, raises the political status of EIA as a preventive measure and can have a signal effect for environmental policy. The introduction into a new general environmental law, as provided for in **France, Greece**, the **Netherlands** and **Portugal**, can also generate such an impetus while this may not be true of the introduction strategies pursued by the **FRG, Ireland** and the **UK**.

According to the EC-Directive Member States can choose to integrate EIA into existing administrative procedures or to establish new procedures in order to comply with the goals of the Directive. It can be assumed that implementing EIA as a separate procedure largely ensures uniform enforcement in different areas of application whereas the integration into existing procedures may entail the risk that the competent authorities go their own ways in organizing the EIA process which may result in a multitude of procedures with different requirements regarding content and other elements of EIA.

However, the majority of the Member States. namely **Belgium, Denmark**, the **FRG, France, Ireland, Spain** and the **UK**, intend to integrate EIA into existing administrative procedures which, however, have to be supplemented if certain procedural steps required by the legal EIA provisions have not yet been provided for in the existing procedures. In **Greece** EIA will be introduced as a central part of a new procedure of determining the environmental conditions which the developer has to implement. In the **Netherlands** EIA is a separate new procedure, however, it has to be coordinated with the corresponding steps of the existing permitting procedures in order to avoid delays and unnecessary repeating of assessments and procedural steps, such as public participation. In **Italy** and **Portugal** EIA is factually introduced as a separate procedure which precedes the actual permitting procedure.

2. Areas of Application of EIA (Table 2)

Art. 2(1) of the EC-Directive requires that projects which according to type, size and location may have considerable effects on the environment are made subject to an assessment with regard to their effects. These projects are listed in two Annexes to the EC-Directive. Whereas projects of Annex I mandatorily require an EIA, Member States have a certain scope of discretion to determine which of the

projects listed in Annex II are subjected to an EIA or to establish criteria or thresholds for this purpose.

As can be seen from Table 2, EIA is mandatory for projects listed in Annex I in all EC-Member States. However, with regard to projects of Annex II a final statement on the solutions chosen in the various countries cannot be made at present. There are a number of reasons: In the beginning some countries assumed that it would be totally left to the discretion of the respective country to introduce EIA requirements for projects of Annex II or they took the view that the existing permitting procedures already complied with the requirements of the EC-Directive (**Denmark, Spain** and the **UK**). In other countries, namely **France** and the **Netherlands**, legal EIA-provisions had already been in force before the EC-Directive was adopted. In **Italy**, for the time being, an EIA will be introduced only for a restricted number of projects on a test basis. A list of projects for which an EIA is mandatorily required will be drawn up on the basis of the experience thereby gained.

In more detail, the current situation is as follows: Three of the Member States (**Belgium, Ireland** and the **UK**) intend to decide on the necessity of an EIA for projects of Annex II on a case-by-case basis. To facilitate this screening process **Ireland** and the **UK** will establish general criteria and thresholds the exceeding of which, however, does not automatically require an EIA. Their main purpose is to serve the authorities as guidelines. In the Walloon region of **Belgium** the decision to determine whether the respective project is subjected to an EIA shall be taken on the basis of a preliminary assessment report.

In **Greece, Italy, Portugal** and **Spain** an EIA will be generally required for some projects listed in Annex II, for others thresholds will be established. However, for the vast majority of the projects listed definite rules have not yet been determined.

According to the provisions proposed in the **FRG** an EIA is mandatory for all projects for which public consultation is provided for in the respective permitting procedures. In practice this means that a large number of Annex II-projects as well as alterations of such projects will be subjected to an EIA.

In the **Netherlands** the list of projects requiring an EIA comprises all projects of Annex II (apart from installations for large-scale animal rearing and for food production). However, the thresholds established are so high that, at present, large-scale projects only will require an EIA. 10 to 15 EIAs are expected per year.

In **France** certain projects generally require an EIA, others only when technical or financial thresholds are exceeded. As opposed to the **Netherlands** the thresholds are so low in **France** that all projects of Annex II are likely to be subjected to an EIA in a detailed or simplified form. At present, 4000 to 5000 EIAs are carried out per year.

In most Member States of the Community EIA is essentially introduced on the level of project permitting procedures. An exception is **Denmark** where EIA is exclusively implemented on the level of regional planning, thus having rather the character of a preliminary assessment especially with regard to the suitability of sites and the public acceptance of a planned project. Subsequent to the EIA most of the projects are made subject to the more specific procedures required by the Environmental Protection Act.

In the **Netherlands** a two-tiered procedure has been adopted for certain projects. Waste disposal plans of the provinces, for instance, are subject to an EIA as well as applications for individual larger-scale waste treatment installations. In order to avoid unnecessary repetitive work in such cases, the EIA on the project level should not analyze aspects which have already been dealt with on the preceding planning level. An EIA is not necessary at all on the project level, if the respective project has already been subject to detailed assessment on a preceding level and new additional information is not to be expected. In the **FRG**, too, an EIA is required for project-related planning procedures preceding the permitting stage, provided the procedures have prejudicial effects. In **Portugal** it is generally intended to introduce EIA for regional development plans, urban plans and for the planning of nature protection areas.

3. Responsibilities for Performance and Review of EIA (Table 3)

According to Art. 5 of the EC-Directive the developer is obliged to provide all information required to evaluate the project and its environmental effects when submitting the request for development consent. Art. 6 requires the competent permitting authority to make available the information supplied by the developer to the public and to other authorities which are affected in their environmental responsibilities. Art. 8 stipulates that the information gathered has to be taken into consideration by the competent authority in the development consent procedure.

As can be seen from Table 3 not all countries examined have restricted themselves to implementing the minimum requirements of the Directive, as far as the provisions for performing and reviewing the EIA are concerned, but have implemented partly diverging and/or more ambitious arrangements. It must be emphasized that the majority of Member States introduced an external review of the EIA through a neutral organization although this is not explicitly required by the Directive.

As stipulated in Art. 5, in most of the member countries the developer is obliged to supply the information required, to carry out the necessary studies and to prepare a report on his investigations. The only exception is **Belgium**, where the EIA-study shall be performed by a neutral state-recognized person or organization, whereas the developer has only the obligation to supply the information necessary for carrying out the analysis.

With regard to the responsibilities for evaluating the results of EIA and for deciding on the environmental compatibility of a project, **France**, the **FRG**, **Ireland** and the **UK** precisely meet the minimum requirements of the EC-Directive, i.e. both tasks lie exclusively with the competent authority. External review through an independent institution is not provided for in these countries. The other countries have chosen solutions which deviate from the requirements of the EC-Directive and can be regarded as more ambitious solutions.

In **Denmark** the regional planning authorities are responsible for collecting the information from the developer. However, they act on behalf of the Minister of the Environment who is responsible for approving the regional as well as the plan supplements in the framework of which the EIA is performed.

In **Italy** and **Portugal** it is not the competent permitting authority but the ministries responsible for environmental affairs who are in charge of organizing the EIA procedure, examining the information supplied by the developer and evaluating the environmental compatibility of the project. In **Italy** and **Portugal** independent expert commissions may be consulted in the evaluation process if it appears useful. In **Greece** these tasks are jointly performed by the Ministry for Environmental Protection, Regional Planning and Public Works and the ministry responsible for the approval of the project.

In the **Netherlands** the competent permitting authority is responsible for conducting the EIA-procedure and for evaluating the report presented by the de-

veloper. In addition, the law provides for an external review being carried out by an EIA-commission consisting of independent experts. The same applies for **Belgium**.

In **Spain** the competent permitting authority is only responsible for organizing the procedure. The developer is responsible for supplying the information required, for performing the necessary investigations and for preparing a report. However, the actual Environmental Impact Statement, including legally binding permission conditions, is elaborated by the authority responsible for environmental affairs on the respective government level on the basis of this report and the comments received from the public and other authorities.

4. Content of the EIA (Table 4)

The content of the EIA is outlined in Art. 3 of the EC-Directive which defines the term "environment". According to this article the EIA has to identify, describe and assess the direct and indirect effects of a project on human beings, fauna and flora, soil, water, air, climate and the landscape as well as on the interaction of these factors and on material assets and the cultural heritage. Art. 5(2) of the EC-Directive details the information required from the developer to fulfill this purpose: the developer must supply at least a description of the project comprising information on the site, design and size of the project, a description of the main effects which the project is likely to have on the environment, a description of the measures envisaged in order to avoid, reduce and remedy significant adverse effects as well as a non-technical summary of the information mentioned above. These minimum requirements are further specified in Annex III to the EC-Directive.

All Member States essentially adopt the content requirements of the EC-Directive in accordance with Art. 5 and Annex III or use those as a basis for project-specific checklists. In addition, some countries intend to introduce a scoping process or to ask for additional information on alternatives and socio-economic aspects, e.g..

A so-called *scoping* process as a formal procedural step aiming at an early definition of content and scope of the EIA and providing for the participation of other authorities and the public in this process is not required by the EC-Directive although this instrument has been successfully applied by various non-European countries, especially the **USA** and **Canada**. A scoping process can be a useful step to focus the analysis on the relevant issues and to avoid public conflicts at the permitting stage. Therefore, some Member States, namely **Belgium**, **Portugal**

and **Spain**, intend to introduce a formal scoping process. The **Dutch** EIA legislation, which has already been passed in the first half of the 1980ies, contains the most far-reaching and detailed scoping provisions.

The other countries examined, namely **Denmark**, the **FRG**, **France**, **Greece**, **Ireland**, **Italy** and the **UK**, do not intend to introduce a mandatory scoping process. However, early consultation between developer and competent authority with the involvement of other authorities and the public, if appropriate, is considered useful by these countries, too, but is left to the discretion of the competent authority. In the **UK**, e.g., an early scoping process on a voluntary basis is explicitly recommended. The **FRG** provides for preliminary negotiations regarding subject, scope and methods of EIA between the developer and the competent authority. It is up to the permitting authority to include third parties or the public in these preliminary negotiations.

Furthermore, it can be observed in many countries that developers tend to arrange a scoping process to collect information, which can be used in the internal planning and design process, in order to reduce public resistance and to avoid delays in the development consent procedure.

A detailed examination of *alternatives* which is frequently considered to be the heart of EIA is not required by the EC-Directive. According to Annex III, only an overview of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects, should be given "when appropriate". In most countries the provisions do not exceed these requirements of the EC-Directive. The **Netherlands**, however, attribute high importance in their legal provisions to the study of alternatives. In any case, the "No Action" alternative has to be analyzed, i.e. the total abandonment of the proposed project, as well as the alternative which makes optimal use of all possibilities available to protect the environment. It can also be expected that the study of alternatives will have certain significance in **Belgium** with regard to public projects and in **Denmark** with regard to the location. **Spain** has opted for a pragmatic solution, i.e. alternatives do not have to be dealt with mandatorily but only in as much as it appears appropriate in a specific case.

The consideration of *socio-economic aspects* in the EIA is controversial. This is particularly true of direct socio-economic effects while it is generally undisputed to consider indirect socio-economic effects which occur as a result of impacts on the natural environment, e.g. the economic effects on fishery resulting from a deteria-

tion of water quality caused by the respective project. As detailed regulations do not yet exist in many countries, it is difficult, at present, to anticipate which positions are going to be adopted by the individual Member States regarding this issue. **Belgium** and **Portugal** partly provide for the analysis of direct socio-economic effects. In **Denmark, Ireland** and the **UK** such effects can, in principle, be analyzed in the framework of the existing procedures into which EIA is incorporated. Other countries will provide for the analysis of indirect socio-economic effects only.

5. Consultation of Other Authorities (Table 5)

In the EIA-process consultation of other authorities has several functions: the function of providing information, the function of advising the competent authority and the function of reviewing. With regard to the information function the EC-Directive recommends in Art. 5(3) that Member States shall ensure that authorities with relevant information in their possession make this information available to the developer. According to Art. 6(1) the advising and reviewing function shall be ensured in the EC-Directive by giving the authorities affected by the project in their environmental responsibilities an opportunity to express their opinion on the request for development consent and on the EIA-report.

In most Member States the existing permitting procedures for projects likely to have effects on the environment already provide for extensive consultation. Therefore, some of the countries analyzed, namely **Belgium**, the **FRG**, **Denmark**, **France**, **Spain** and the **UK**, do not intend to introduce new provisions for inter-agency consultation in connection with the implementation of the EC-Directive. However, the EIA-provisions of other Member States, namely **Greece**, **Italy**, **Netherlands** and **Portugal**, explicitly stipulate additional consultation requirements. This aims at ensuring an early involvement on the one hand and, on the other hand, at involving organizations and persons with special environmental expertise whose participation has not been provided for in existing procedures.

The three functions mentioned above could best be fulfilled if the authorities concerned were not only given an opportunity to express their opinion after the application has been submitted. Their consultation should already start with the determination of the content and scope of the EIA. Exceeding the minimum requirements of the EC-Directive, in some countries, namely **Greece**, the **Netherlands** and **Portugal**, the consultation of other authorities is therefore mandatory during

the scoping phase already or it is recommended, e.g. in the **UK**. Early consultation appears to be especially appropriate if a project requires several permissions by different authorities. By legally requiring coordination, as in the **Netherlands** e.g., the introduction of EIA may contribute simultaneously to harmonizing and speeding up the various administrative procedures, which have to be applied on the basis of sectoral environmental laws. In the **FRG** it has been determined that if several permissions are required by different authorities a lead agency has to be appointed which has to perform its tasks in cooperation with the other permitting authorities.

6. Public Participation (Table 6)

Public participation in the EIA-procedure is regulated by Art. 6 (2 and 3) of the EC-Directive. The project application including the information supplied by the developer pursuant to Art. 5 has to be made available to the public. It has to be assured that the public concerned is given the opportunity to express an opinion before the project is initiated. However, the right to raise objections is only conceded to the "public concerned" which the Member States may determine by type and site of the project.

By granting the opportunity to comment only to the public concerned the EC-Directive attributes public participation primarily the function of preliminary protection of legal rights. Further essential functions of public participation are the "information function", which means the public serves as a source of information for the developer and the permitting authorities, as well as the "consensus function", which means reducing potential public opposition by early and comprehensive information and by conceding rights of active co-operation. However, the fulfillment of these functions presupposes that public consultation starts as early as possible, i.e. in the planning stage, and that the public entitled to participate will not be restricted by any means.

The importance of public consultation for improving the information basis and for increasing acceptance of decisions is taken into account by the EIA-provisions of most Member States. In some cases they clearly exceed the minimum requirements of the EC-Directive with regard to the timing of public participation as well as with regard to the definition of those entitled to participate.

In the **Netherlands** public consultation starts with the scoping phase and continues throughout the entire planning and decision-making process up to moni-

toring. Furthermore, there is an obligation to lay open all documents prepared in the framework of the EIA-procedure and other important information.

Belgium (for public projects) and **Spain** also intend to provide for public consultation starting as early as the scoping-phase. In **Portugal** and **Italy** possibilities of consultation are also provided for before the application is submitted. In **Denmark** the integration of the EIA-procedure into the regional planning procedure ensures rights of far-reaching and early consultation. In the **UK** a scoping procedure with public participation is recommended which aims at gathering information and reducing objections and opposition. However, public consultation is not mandatory before the submission of the application. In the **FRG**, **France** and **Ireland** the provisions for public consultation do not exceed the minimum requirements of the EC-Directive, as far as timing is concerned.

In most countries the possibilities to participate are not restricted to the persons concerned but each person and organization interested has the right to participate and to express an opinion. The **FRG** and **Spain** are exceptions because the opportunity to make comments is conceded only to persons and organizations concerned, as stipulated in the EC-Directive.

7. Consultation of Neighbouring States on Projects Causing Transboundary Effects (Table 7)

In the case of projects causing transboundary effects Art. 7 of the EC-Directive stipulates that the information supplied by the developer has to be forwarded to the neighbouring states concerned.

According to the present state of information this requirement of the EC-Directive has been implemented only in **Denmark, United Kingdom, Ireland** and **Spain.** In these countries consultation of neighbouring states takes place on the administration level.

In **France** and the **Netherlands** the legal provisions concerning EIA were passed or drafted before the adoption of the EC-Directive. Therefore, they do not contain such provisions. As it is usual administrative practice in **France** to inform neighbouring states and to grant foreign citizens and organizations rights to participate within the framework of the "public enquiry" in the case of projects with transboundary effect, **French** authorities claim that there is no need for further legal measures. Although the **Netherlands** have made first practical experiences in

consulting neighbouring states on planned projects causing transboundary effects, incorporation of Art. 7 of the EC-Directive into Dutch law is still pending. The EIA-Commission takes the view that citizens, authorities and organizations of neighbouring states should be granted the same possibilities of participation as Dutch citizens. For the time being the existing or proposed laws and regulations of the other EC-Countries do not contain provisions regarding the consultation of neighbouring states.

8. Linkage of EIA and Decision-making (Table 8)

EIA is generally understood to be primarily a procedure for preparing decisions. It serves to identify, analyze and evaluate all potential environmental effects by applying a systematic and cross-sectoral approach in order to build up a sufficient information base which enables the competent authority to take rational decisions. However, it does not mean that environmental concerns should be given priority over other concerns in the decision-making process. It must only be ensured that they are appropriately taken into account. It is an important pre-requisite that the competent authorities are legally entitled to respond to the results of the assessment in an appropriate way. This precondition is not always given in countries with a distinctly sectoral environmental law.

The provisions of the EC-Directive regarding the linkage of EIA and decision-making are relatively vague. Art. 8 only stipulates that the information supplied by the developer and the comments received are to "be taken into consideration" within the consent procedure. As the only indication of the extent to which the competent authority has complied with this obligation, Art. 9 of the EC-Directive requires that the content of the decision and the conditions possibly attached must be made available to the public as well as the reasons and considerations upon which the decision is based. However, the latter applies only if the legislation of the Member States so provides.

Thus, the linkage of EIA with decision-making is comparatively weak. As a result, the competent authority may make only insufficient use of the results of the assessment or may not take them into consideration at all. The majority of Member States tried to counteract this danger by establishing a closer linkage between EIA and decision-making. This was primarily done by introducing special decision documents in which the authority must explain in detail the influence which the results of the EIA had on the decision taken.

In some countries EIA has even prejudicial effects. This applies especially to **Portugal** where the permitting procedure is not initiated when the minister, who is responsible for environmental affairs, gives a negative judgment on the environmental compatibility of the respective project on the basis of the EIA. In **Italy** and **Spain** the decision is taken by the Council of Ministers in case of disagreement on the environmental compatibility of the project between the Minister of the Environment and the minister in charge of the permitting procedure. In **Greece**, the ministry responsible for environmental affairs and the ministry which has to grant permission for the project have to take a joint decision on the environmental measures which the developer has to implement.

In the other Member States the decision, whether or not a project is environmentally compatible, is taken by the same authority which is responsible for granting the permission.According to the legal requirements in the **Netherlands** and **Belgium** the competent authority must prepare a special report in which the decision is explained and the conclusions drawn from the EIA are to be presented.

The **FRG** and the **Netherlands** provide for special rules in cases in which a project requires various permits from different authorities. In the **Netherlands** the competence of decision-making of the authority responsible for the EIA procedure is extended in order to facilitate a comprehensive cross-sectoral consideration of all environmental effects. In the **FRG** all permitting authorities cooperate under the leadership of one authority in the evaluation of the results and have to consider the results of the EIA in their decisions.

The provisions proposed in **Denmark**, the **UK** and **Ireland** to link EIA and decision-making essentially satisfy the minimum requirements of the EC-Directive, i.e. the decision has to be explained and subsequently published. In **France** the provisions of the existing administrative procedures determine the requirements regarding justifying and publishing decisions.

9. Administrative Monitoring/Judicial Review of EIA/Standing (Table 9)

Administrative Monitoring

The EC-Directive does not explicitly provide for the introduction of monitoring for projects requiring an EIA although this appears appropriate for many reasons. On the one hand monitoring enables the competent authority to review the developer's compliance with the requirements and conditions concerning environmental protection as stipulated in the permission. On the other hand, the decision can be revised if negative effects occur which had not been foreseen. Finally, monitoring can serve to improve the methodology of EIA as a result of comparing the environmental effects which actually occur with those which had been forecast.

In **Belgium** (Walloon region), **Greece**, the **Netherlands**, **Portugal** and **Spain** monitoring is provided for in the sense that it will be examined if the developer has implemented the measures to avoid, reduce and counteract the environmental effects determined on the basis of the EIA. If a project is realized without development consent or if the conditions attached to the permission are not fulfilled an immediate stay of execution can be ordered. Furthermore, in **Greece** and the **Netherlands** conditions can be attached in retrospect to the development consent or it can even be revoked if monitoring proves that a project has far more negative effects on the environment than had been forecast.

Judicial Review of EIA

Among the Member States examined only **Belgium** (Walloon region) and **France** have introduced specific legal provisions for judicial review and enforcement of EIA. In both countries a permission can be revoked by the courts or a stay of execution can be ordered if it is proved that a project requiring an EIA has not been performed according to the legal requirements or that the content of the EIA-study presented is insufficient. All other Member States did not consider it necessary to enlarge the traditional possibilities of judicial review.

Standing

In recent years access to the courts has been liberalized in the EC-Member States. With the exception of the **FRG** and **Spain** the right to challenge administrative decisions is not restricted to persons affected in their individual rights, but is also conceded to environmental organizations. In **Belgium**, however, this applies only

to bringing an action at the Council of State, whereas access to ordinary courts presupposes a violation of a "subjective" right.

10. Summary and Evaluation

A final evaluation of the implementation strategies as they are pursued by the different EC-Member States will only be possible once the planned EIA-provisions have been implemented and sufficiently tested. At present, an evaluation can be based on concepts, only.

There is no doubt that the implementation strategy pursued by the **Netherlands** comes closest to the ideal concept of EIA. It is characterized by comprehensive and differenciated provisions on the legislative level, by an early and continuous consultation of other authorities and the public, by a formal scoping process, by an adequate consideration of alternatives and by an external independent review of the EIA. Furthermore, monitoring is provided for. The introduction of EIA was preceded by extensive practical tests. Although the Netherlands had a comprehensive sectoral environmental law, introduction of EIA was considered necessary in order to counteract the deficits of a sectorally oriented environmental policy and to guarantee a comprehensive cross-sectoral evaluation of the environmental effects of projects. Furthermore, EIA was regarded as an instrument to streamline and harmonize existing administrative procedures. It must be stated, however, that for the time being the area of application of EIA is very limited as a result of high thresholds for projects of Annex II to the EC-Directive. In view of the environmental problems caused by Dutch agriculture it is remarkable that installations for large-scale animal rearing and food production are generally exempted from the EIA-procedure.

The Member States of Southern Europe - **Greece, Italy, Portugal** and **Spain** - also pursue relatively ambitious strategies of implementation. Their EIA-concepts are characterized by giving the ministries responsible for environmental affairs a very powerful role in the EIA process and, thus, conceding EIA factually prejudicial effect not only for determining permitting conditions for environmental protection but also with regard to the overall permission of a project. This seems to indicate two deficits which exist in these countries; on the one hand a deficit of regulation and enforcement in the area of environmental law and on the other hand an unsatisfactory consideration of environmental concerns in administrative decisions. These deficits are expected to be offset by ambitious EIA-concepts and by

strengthening the position of the ministry responsible for environmental affairs. However, the lack of qualified technical and scientific personnel in the field of environmental protection in industry and administration is considered a major bottleneck for an efficient implementation of the EIA-provisions. Therefore, EIA-specific training programs are provided for which, however, will only produce the necessary manpower in five to ten years time. Furthermore, in view of the low state of industrial and infrastructural development of these countries compared to most Northern EC-Member States, one has to raise the question whether the ministries responsible for environmental affairs will be able to use their formally strong position resulting from the new EIA-provisions to ensure an appropriate consideration of environmental concerns in the reality of administrative decision-making. **Belgium** is also planning to implement ambitious EIA-concepts. However, an overall evaluation is not yet possible as existing regulations are still fragmentary.

The EIA-provision of **Denmark**, the **Federal Republic of Germany**, the **United Kingdom** and **Ireland** do not exceed the minimum requirements of the EC-Directive. These countries take the view that the existing permitting procedures for projects with environmental impacts already meet the requirements of an EIA. As a result they implement EIA-provisions which are characterized by a minimum of procedural and institutional change: EIA is integrated into existing procedures; the competence of authorities is not changed at all; external review of the EIA-process is not provided for; a scoping process is, if anything, only recommended. Essentially, the EIA-process is reduced to the elaboration of a report by the developer which must be taken into consideration by the competent authority like any other application document. Thus, the efficiency of the EIA-procedure will ultimately depend on the committment of the competent authority to the environmental goals and principles of EIA. If they regard EIA more as an onerous obligation, the result will be correspondingly poor.

As early as 1976 **France** has introduced EIA in a similar way, i.e. with a minimum of procedural and institutional change. The efficiency of the EIA-procedure in **France** is rated fairly negatively. As practical experience shows, the quality of Environmental Impact Studies strongly varies from area to area and from authority to authority. This clearly demonstrates that the results of the assessment procedure largely depend on the committment of the competent authorities to the environmental goals of EIA.

PART II

Synoptic Tables on Selected Aspects of EIA-Implementation in the EC-Member Countries

Table 1:

Legal Basis of EIA, Incorporation into the Existing Legal System

BELGIUM

As a result of the law on the reform of political institutions of 1980, the regional governments (Flemish, Walloon and Brussels regions) have become responsible for most areas of environmental protection.
EIA will be introduced via new laws on the national level or decrees on the regional level, which have the status of laws. In the Walloon region an EIA decree has been passed in September 1985 which regulates the procedural steps of EIA in general. However, detailed regulations are lacking. In the Flemish region EIA-provisions so far exist only within the framework of the decree of 1985 on authorizing plants creating pollution (mainly industrial installations). There are no legal regulations as yet on the national level and in the Brussels region. The EIA-procedure will be integrated into existing administrative procedures. If the new EIA-regulations require additional procedural steps (e.g. for public consultation) or provide for different time limits than the respective administrative procedures, the requirements of the EIA-decree apply.

DENMARK

The EC-Directive will be implemented by amending the Act on National and Regional Planning and the Act on Urban Planning in the Metropolitan Area. Projects requiring an EIA will be examined in the form of plan supplements to approved regional plans. These supplements are subject to the same procedures as the preparation and authorization of regional plans. Polluting plants will subsequently be subjected to a licensing procedure required by the Environmental Protection Act. Thus, in the case of such plants EIA will have the character of a preliminary examination, especially with regard to the suitability of the site and the acceptance by the public. At present, the draft legislation is being debated in parliament. It will be supplemented by detailed regulations which have not yet been elaborated.

FEDERAL REPUBLIC OF GERMANY

The EC-Directive will be transformed into national law by a so-called "article law". A corresponding legislative proposal has been prepared by the Federal Government, but has not yet been debated in parliament. Article 1 of the proposal contains autonomous regulations of the general requirements of EIA, whereas the following articles deal with the necessary amendments of existing sectoral laws. Article 1 has subsidiary character, i.e. it only applies if other legal provisions on the Federal and State level do not specify the assessment of environmental impacts in more detail or do not meet the requirements of the legislative proposal. EIA is integrated into existing administrative procedures.

FRANCE

EIA has been implemented by law for more than ten years. It has been introduced within the framework of the Nature Protection Act of 1976 and specified by a decree in 1977. For industrial plants and open-cast mining projects detailed regulations on EIA are contained in special decrees relating to the authorisation of such projects. EIA was not introduced as a separate procedure, but was integrated into existing procedures.

GREECE

Since 1981 there has been EIA-provisions for industrial plants on the basis of a presidential decree regarding environmental protection against industrial pollution. As the area of application of the EC-Directive is more comprehensive, further legal measures were required. The new Environmental Protection Act of 1986 provides for such measures. According to this act an EIA is required for all activities which, by nature and size, affect the environment. Detailed procedural guidelines will be established by a ministerial decree which is being elaborated at present. The EIA-procedure is performed as part of the procedure of determining permitting conditions for environmental protection.

IRELAND

As early as 1976 there have been legal EIA-provisions within the framework of the Local Government (Planning and Development) Act. However, according to this act the obligation to perform an EIA is relatively restricted. It only applies to private projects which cost more than 5 million Irish pounds and which cause emissions of noise, flue gas, solid and liquid wastes and waste water. Public projects do not require an EIA as they do not fall under the Local Government (Planning and Development) Act.
In order to satisfy the requirements of the EC-Directive therefore a substantial need for legal measures especially with regard to public projects arose. For the time being legal implementation is essentially based on circulars of the Department of the Environment which determine the EIA-procedure for public and private projects in general. Regulations under several sectoral laws which specify obligations regarding individual project categories have been drafted or are planned.

ITALY

While there have been legally based EIA-procedures in various regions (i.e. Emilia Romagna, Lombardy, Umbria, Veneto) for quite some time, there is only one normative reference to EIA on the national level. Art. 6 of Act Nr. 349 of July 8, 1986 (Act on the Establishment of a Ministry of the Environment) requires the government to submit a proposal for implementing the EC-Directive to parliament within a period of six months after the enactment of the act. The Ministry of the Environment has prepared a corresponding legislative proposal, which, however, has not yet been published. Until the enactment of this proposal Art. 6 provides for an interim arrangement which simultaneously will serve to test EIA in practice. A decree of the Council of Ministers of June 24, 1987, which has not yet become effective either, will specify the content, form, procedure and areas of application of EIA during the test period.

NETHERLANDS

A law on EIA supplementing the General Environmental Act (WABM) of 1979 came into force on May 13, 1986. It represents a central legal regulation which comprises all essential elements regarding content and procedure of EIA. In order to avoid delays and unnecessary duplications of examinations the law contains provisions to link individual steps of the EIA-process with corresponding steps of the established permitting procedures. Administrative orders regulate details, such as the precise definition of the area of application.

PORTUGAL

§30 of the Environmental Protection Act of 1987 provides for the implementation of EIA by a Legislative Decree which, however, has not yet been passed. A Legislative Decree is issued by the Council of Ministers and ratified by parliament. The EIA-procedure will precede the actual permitting procedure and will be performed by the Ministry for Planning and Administration of the Territory (MPAT).

SPAIN

EIA will be introduced by a Royal Legislative Decree which has been passed as early as June 1986. A Royal Legislative Decree has the status of a law. The EIA-procedure is integrated into existing administrative procedures which, however, will be extended in cases where certain procedural steps required for an EIA have not yet been provided for so far.

UNITED KINGDOM

EIA will not be introduced by new primary legislation but by regulations under relevant laws. The government's position is that the existing system of controlling and permitting activities causing adverse environmental effects meets the requirements of the EC-Directive to a sufficiently large extent.
EIA will be legally introduced on the basis of the European Community Act of 1972 which enables the government to implement EC-obligations through an order which is subsequently specified by regulations under relevant laws. Corresponding regulations based on laws relating to the different project categories have been drafted and will become effective when the period of implementation expires on July 3, 1988 (the majority of projects of Annex I and II require a permission on the basis of the Town and Country Planning Act). EIA will be integrated into existing procedures.

Table 2:

Areas of Application of EIA

BELGIUM

Walloon region: In general, an EIA is mandatory for projects of Annex I to the EC-Directive as well as for projects for which a pertinent administrative order requires an EIA. All other projects have to be subjected to a preliminary examination (screening). For this purpose the applicant is required to prepare a preliminary assessment report, which compiles the relevant environmental parameters and effects of a project. On the basis of this report the competent authority has to decide whether a detailed EIA will have to be performed.
The Flemish decree essentially refers to industrial installations only. Installations are subdivided into three classes. Plants of classes I and II require an environmental permit, plants of class III only require a declaration of the proponent. A list of plants for which an EIA is mandatory does not yet exist. However, it is likely to be restricted to selected projects of classes I and II.

DENMARK

According to the obligations of the EC-Directive an EIA will be generally mandatory for projects of Annex I. In the case of projects of Annex II, which are subject to the established procedure of regional planning law, it is assumed that information exceeding the usual information requirements of the planning procedure is not needed, especially since polluting plants listed in Annex II require an additional permit under the Environmental Protection Act. This permitting procedure provides for detailed and relatively comprehensive assessments and, thus, entails the compilation of correspondingly detailed information. For projects of Annex II, which are not subject to the procedures of the existing regional planning laws, e.g. various agricultural projects, EIA provisions have not yet been established.

FEDERAL REPUBLIC OF GERMANY

The area of application of EIA is determined by an appendix. The list of projects requiring an EIA comprises all projects of Annex I to the EC-Directive as well as the majority of those projects mentioned in Annex II. Contrary to the EC-Directive legal instead of physical characteristics are used to determine the projects requiring an EIA: all projects must be subjected to an EIA whose permitting procedures require public participation according to existing laws. This also applies to major changes of existing commercial plants. Preceding procedures which are project-related also require an EIA if they have prejudicial effects on the subsequent permitting procedure.

FRANCE

In France approximately 4000 to 5000 Environmental Impact Studies (Etude d'Impact) are performed annually. In addition, there is almost the same number of environmental impact summary reports (Notice d'Impact), which result from a simplified assessment procedure. For some projects an EIA is mandatory in general, other projects require an EIA because technical or financial thresholds are exceeded (e.g. projects with cost equal or superior to 6 million francs). As thresholds are very low, nearly all projects of Annex II will be subjected to a detailed or simplified EIA.

GREECE

The General Environmental Protection Act of 1986 provides for a classification of projects into three classes. An EIA is mandatory for projects of class I. However, projects have not yet been categorized. In any case, projects of Annex I to the EC-Directive will be assigned to class I which entails a mandatory EIA. A simplified EIA-procedure has been envisaged for projects of class II and III. Furthermore, since 1981 EIAs have been mandatory for a large number of industrial projects because of the provisions of the Presidential Decree regarding Environmental Protection against Industrial Pollution.

IRELAND

An EIA is mandatorily required for all projects of Annex I to the EC-Directive. In the case of projects of Annex II the competent authority must decide on the necessity of an EIA on a case-by-case basis. The decisive criterion to determine the question is whether a project can be expected to have significant effects on the environment by virtue of type, size or location. The circulars of the Department of the Environment do not contain more detailed criteria or thresholds which could facilitate the decision of the authority.

ITALY

For the experimental phase, the area of application of EIA is defined by a decree of the Council of Ministers. The list of projects, for which an EIA is mandatorily required, comprises all projects listed in Annex I to the EC-Directive as well as some selected projects of Annex II which appear to be particularly problematic because of the environmental situation in Italy. For some of these projects quantitative thresholds are established which either refer to the scope of the activity or the sensitivity of the location.

NETHERLANDS

In 1987 an administrative order which enumerates the projects for which an EIA is mandatorily required came into force. For each category of projects thresholds - relating to the scope of the activity and/or the sensitivity of the location - are established the exceeding of which triggers the need for an EIA. However, the thresholds are so high that EIA is mandatory for large-scale projects only (10 to 15 EIAs per year). The area of application comprises all Annex-I projects and the majority of the projects listed in Annex II to the Directive apart from installations for large-scale animal rearing and plants for food production. Contrary to the EC-Directive an EIA is also required for projects serving national defense purposes.

PORTUGAL

As the legislative decree and its procedural regulations have not yet been passed, one cannot give a clear picture at present. According to the current state of information it is intended that an EIA will be mandatorily required not only for Annex-I projects but also for some projects listed in Annex II. For other Annex-II projects thresholds will be established. A case-by-case procedure has not been envisaged. In general, an EIA will be required for those Annex-II projects which are proposed for sensitive areas (national parks and nature protection areas). In addition, it is envisaged to introduce mandatory EIA for regional development plans and plans for the creation of nature protection areas.

SPAIN

The area of application is defined by an Annex to the Royal Legislative Decree on EIA. Apart from Annex-I projects this annex contains some other projects for which an EIA will be mandatorily required in any case (large dams, afforestation projects causing large-scale ecological changes, open-cast mining projects, yacht marinas and private airfields). The situation concerning further Annex-II projects is still unclear because - when the Royal Decree was adopted - it had been assumed that the treatment of Annex-II projects would be entirely within the discretion of the Member States. Therefore, the Decree does not contain any further provisions regarding Annex-II projects.

UNITED KINGDOM

All projects listed in Annex I to the EC-Directive have to be subjected to an EIA. For projects of Annex II an EIA is mandatory only if significant effects on the environment must be anticipated by virtue of type, size or location of the project. This has to be decided on a case-by-case basis depending on the particular circumstances. The competent authority should use the following general criteria when deciding on the necessity of an EIA: an EIA is likely to be required for projects of more than local significance, for smaller projects proposed for particularly sensitive locations, and for projects, which are likely to produce unusually complex and potentially adverse environmental effects. In the case of some projects of Annex II to the EC-Directive the regulations establish thresholds the exceeding of which, however, does not automatically trigger the need for an EIA. These thresholds are only meant to be broad orientations for the competent authority.

Table 3:

Responsibilities for Performance and Review of EIA

BELGIUM

The permitting authorities are responsible for performing the EIA-procedure in the Walloon as well as the Flemish region. However, with regard to the preparation of the environmental impact study both regions provide for solutions which differ from the provisions of the EC-Directive. The developer is mainly obliged to provide information whereas the EIA-study is prepared by a neutral, government-recognized organization or person. Furthermore, external review of EIA by independent expert commissions is established in both regions.

DENMARK

The EIA-procedure is performed by the regional planning authority on behalf of the Minister of the Environment who has to approve regional plans as well as plan supplements in the framework of which the EIA is performed. The developer is obliged to supply the information required and to carry out the necessary analyses. The planning authority has to publish the plan supplement, which relates to the project, together with the report on the investigations carried out by the developer and its evaluation of the report. After the expiration of a certain period in which the public can comment on the Environmental Impact Study, it has to submit to the Ministry of the Environment the report and the comments received. The Minister of the Environment examines these documents involving his special departments and other competent ministries and subsequently decides on the approval of the plan supplement.

FEDERAL REPUBLIC OF GERMANY

The competent permitting authority is responsible for performing the EIA-procedure and for evaluating the results. In case a project requires several permits by different authorities, a lead agency is appointed by the State concerned. The developer is responsible for supplying the necessary information. External review by an independent body is not provided for.

FRANCE

The provisions concerning the responsibility for performing and controlling the EIA-process in France correspond to the requirements of the EC-Directive. The permitting authority is in charge of organizing the necessary procedural steps. The developer is required to prepare the EIA study. External consultants or scientific institutes can be engaged for this purpose. In practice this is done to a considerable extent. The competent authority is responsible for evaluating the EIA. It may request improvements, reject the EIA as inappropriate or refuse the permission entirely if the assessment report has not been submitted. There is virtually no external control by an independent institution. The Minister of the Environment has the right to examine every EIA on his own initiative or at a third party's request. However, he rarely makes use of this right provided for in the EIA-decree.

GREECE

The Ministry for Environmental Protection, Regional Planning and Public Works and the consent granting ministry are jointly responsible for the performance of the EIA-procedure and the evaluation of the results. Other authorities concerned are involved in the evaluation process. In the case of larger-scale projects committees are formed for this purpose which consist of members of different ministries under the leadership of the Ministry for Environmental Protection, Regional Planning and Public Works which control the EIA-procedure. The EIA-study is prepared by the developer.

IRELAND

As far as projects are concerned which are subject to the Local Government (Planning and Development) Act and, thus, require a planning permission, the competent local authority is responsible for performing the EIA procedure. The study is elaborated by the developer. In the case of projects of national and local authorities the respective public developer is responsible for the performance of the procedure and the elaboration of the study as well. The local authorities must involve the Minister of

the Environment in the EIA procedure in cases of projects which require his permission. External review of the EIA by a neutral institution is not provided for.

ITALY

The developer has to supply the information required and to prepare the EIA-study. It is not the competent permitting authority but the Minister of the Environment who is responsible for performing the procedure, evaluating the results, as well as assessing the EIA-study with regard to factual correctness, completeness, compatibility with legal requirements, appropriateness of the methodology applied, etc. Within 90 days after the assessment report has been submitted, the Minister of the Environment has to take the decision on the environmental compatibility of the proposed project in accordance with the Minister for Cultural and Environmental Affairs and after having consulted the region(s) concerned. In the case of projects to be realized in areas of special scenic or cultural interest, the formal evaluation of the EIA can be assigned to a special commission consisting of representatives of both ministries and of external experts.

NETHERLANDS

The authority which is responsible for the permission of the project has to perform the procedure. The developer has the obligation to collect the data required, to carry out the necessary investigations and to prepare the report on the potential environmental impacts. In the case of projects, for which several permits are required by different authorities, only one EIA shall be carried out. In these cases the responsibility lies with the authority which has to coordinate the different permitting procedures. As a rule this will be the provincial committee of the province in which the project is to be realized. If a project is not related to a special region, one of the authorities involved is appointed. The report submitted by the developer is first examined by the competent authority internally with regard to completeness, factual correctness, compatibility with legal provisions and the case-specific requirements laid down in the scoping process. Afterwards the report is subjected to external review by an independent EIA-commission.

PORTUGAL

The procedure is carried out by the Ministry for Planning and Administration of the Territory (MPAT) and is started, when an application for a location permit is submitted to the MPAT. If the MPAT determines that an EIA is required for the location envisaged, the EIA-study is carried out by the developer or by a qualified organization on behalf of the developer. Apart from the Ministry for Planning and Administration of the Territory and other authorities concerned an independent expert committee has to be involved in the evaluation and control of the EIA. Such committees are formed for each EIA and include experts and external personalities who are well reputed in the field of science and technology. The members are appointed by the General Directorates of the MPAT for Environmental Quality and Regional Planning. The expert committee has an advisory function during the entire EIA-process and evaluates the EIA-study.

SPAIN

The competent permitting authority is responsible for the performance of the EIA-procedure. The EIA-study has to be elaborated by the developer. The competent environmental department on the respective government level is responsible for controlling the EIA-study. It has to elaborate the actual Environmental Impact Statement (including permitting conditions) on the basis of the study submitted by the developer and to forward it to the competent permitting authority.

UNITED KINGDOM

The developer is in charge of elaborating the EIA study. The results are evaluated by the authority which is responsible for the consent-granting procedure. The majority of projects listed in Annex I and II to the EC-Directive require a planning permission by the local planning authorities on the basis of the Town and Country Planning Act, which means that, in general, these authorities will be responsible. If the authority considers the information supplied by the developer to be insufficient to decide on the planning application, it can call for further information. It is not intended to establish an independent agency to evaluate the EIA study. In principle, however, the Secretary of State for the Environment has the possibility to "call in" the decision on a planning application, e.g. in the case of highly controversial projects.

Table 4:

Content of EIA

BELGIUM

Walloon region: the Decree contains requirements regarding the content which largely correspond to those of Art. 5(2) of the EC-Directive. The competent authority shall determine the exact content under project-specific aspects taking into account the significance of the environmental impacts. The so-called "Walloon Council for the Environment", an independent advisory committee, can also make suggestions regarding content. In the case of public projects the public shall be consulted when defining the scope of assessment, a provision which aims, in particular, at identifying potential alternatives.
Flemish region: The Decree on authorizing plants creating pollution contains ambitious requirements regarding the content of the EIA. They provide for the consideration of alternatives as well as for the analysis of economic effects. The Decree does not explicitly stipulate a "scoping" process.

DENMARK

It is intended to use Annex III to the EC-Directive as a guide for delineating the content of the EIA. However, determining the content of the EIA on the basis of Annex III does not relieve the regional planning authority from the obligation to call for further information if it is considered to be necessary for evaluating the project. In principle, this obligation opens up possibilities for a "scoping" process which, however, is not required as a formal procedural step. It is envisaged to make provisions regarding the consideration of alternatives. Socio-economic impacts and other concerns are generally considered within the framework of the regional planning procedure into which EIA shall be integrated.

FEDERAL REPUBLIC OF GERMANY

Information requirements imposed upon the developer by the legislative proposal largely correspond to those of Art. 5(2) of the EC-Directive in connection with Annex III. The provisions of the sectoral laws have priority if they specify content and scope of the information required in more detail. In this case further requirements cannot be imposed on the developer. At the beginning of the procedure the competent authority shall determine the scope of analysis of the EIA (subject, scope and methods) together with the developer. It is at the discretion of the competent authority to consult external experts or the public in this early phase of planning.

FRANCE

Essentially the provisions of the EIA decree regarding content correspond to the EC-Directive. However, neither data on the methods applied and on any difficulties encountered in performing the study nor a non-technical summary are required. In addition to the EIA-study a risk assessment is required for certain industrial installations (installations classées). There are no provisions for a scoping process. For the different project categories specific checklists have been drawn up and laid down in guidelines and circulars. These checklists partly include socio-economic impacts, too. As far as the consideration of alternatives is concerned, it has only been stipulated that the developer must justify the alternative selected by him, taking into account the environmental effects.

GREECE

Only the minimum requirements of Art. 5(2) of the EC-Directive have been adopted in the provisions of the General Environmental Protection Act. Details of content are to be determined on a case-by-case basis by a joint decision of the Ministry for Environmental Protection, Regional Planning and Public Works and the consent-granting ministry. As far as industrial installations are concerned, for which an EIA has been required since 1981 according to the presidential decree on the protection of the environment from industrial pollution, relatively specific content requirements are determined in an annex to this decree, which include the need to consider alternatives to a certain extent.

IRELAND

The circulars of the Department of the Environment do not contain any provisions concerning the content of the Environmental Impact Study. The competent authority must specify the necessary content on a case-by-case basis according to Article 5(2) and Annex III to the EC-Directive. A scoping process involving other authorities and the public is not provided for. In general, the existing permitting procedure for private projects gives the authorities far-reaching possibilities to request any type of information. Thus, even in the past developers had often to fulfill information requirements which largely correspond to the content requirements of an EIA.

ITALY

The information obligations of the project proponent essentially correspond to those of Art. 5(2) in connection with Annex III to the EC-Directive. In addition, information has to be provided regarding the compatibility of the project with urban, regional and sectoral plans and landscape planning. At present, the Ministry of the Environment develops a scheme for the presentation of information as well as a guideline for the preparation of the report. An early consultation between the developer and the Ministry of the Environment on the exact definition of the scope of the EIA is regarded as necessary but has not been explicitly prescribed.

NETHERLANDS

On the basis of comments and recommendations made in the formal "scoping" procedure the competent authority elaborates case-specific guidelines which determine the information requirements the developer has to fulfill. The law only contains minimum requirements which approximately meet those of the EC-Directive. However, they attribute far greater importance to the examination of alternatives. The "No-Action" alternative has to be dealt with under all circumstances as well as the alternative which makes optimal use of all possibilities available to protect the environment. The concept of environment corresponds to the EC-Directive. Primary socio-economic effects are not dealt with in the EIA but environmental impacts which may have been induced by them as well as socio-economic consequences of environmental effects caused by the project have to be considered.

PORTUGAL

The provisions regarding content exceed the requirements of the EC-Directive in some areas, e.g. the purpose of the project has to be explained, and information must be provided on the infrastructure requirements, the labour demand as well as risk assessments regarding the environment and the population. Moreover, it is envisaged to define further content requirements on a case-specific and project-specific basis. Thus, starting points for a "scoping" process are given.

SPAIN

The Royal Legislative Decree on EIA almost literally adopts the content requirements of the EC-Directive according to Art. 5(2) and Annex III. The planned regulations will specify the content requirements for the different project categories. Socio-economic effects are to be included only if they represent secondary effects which have been caused by environmental impacts. Regarding the consideration of alternatives a pragmatic approach can be expected. This means that detailed analyses will only be required if it appears reasonable. According to the present state of information the planned regulations also provide for a "scoping" process with public participation.

UNITED KINGDOM

There are no binding provisions regarding content and form of the EIA-report. As a rule the developer has to meet the information requirements specified in Annex III to the EC-Directive. A "scoping" process is recommended on a voluntary basis. The connotation of the term 'environment' corresponds to that of the EC-Directive. In addition, socio-economic effects and environmental impacts induced by them have to be taken into consideration. It is up to the competent authority to decide whether the information presented is sufficient to enable it to determine the application or, if this is not the case, to request supplementary information.

Table 5:

Consultation of Other Authorities and Organisations

BELGIUM

Special consultation requirements are not explicitly mentioned in the EIA provisions. However, the usual administrative procedures provide for consultation of other authorities.

DENMARK

According to existing legal provisions consultation of other authorities is required during the preparation of regional plans and of plan supplements by the regional planning authorities as well as during the consideration of regional plans by the Minister of the Environment. Consultation on EIA will also take place within the framework of these established consultations.

FEDERAL REPUBLIC OF GERMANY

The provisions concerning the consultation of other authorities correspond to the EC-Directive. If several permits from different authorities are required, the authorities concerned shall cooperate under a lead agency.

FRANCE

Consultation of other authorities is not explicitly mentioned in the EIA-Decree. Normally, however, it takes place within the respective administrative procedure into which EIA is integrated. Thus, other authorities are also given the opportunity to comment on the EIA study as it is part of the documents which accompany the application during the administrative procedure.

GREECE

The obligation to coordinate the EIA-procedure with other (sectoral) permitting procedures guarantees the involvement of other ministries and authorities, whose area of competence is affected by the project. Local and regional authorities are consulted within the framework of the public participation process.

IRELAND

Specific consultation requirements have not been introduced with regard to private projects; the local planning authority is responsible for informing the authorities to be consulted under the Local Government (Planning and Development) Act on the performance of the EIA. In the case of public projects the competent authority shall, in principle, consult all authorities and other organizations whose responsibilities are affected by the project.

ITALY

The developer must forward the EIA-study to the Minister of the Environment, the Minister for Cultural and Environmental Affairs, the competent permitting authority and the region(s) affected. The regions affected have the possibility to express their opinion within 45 days. It is at the discretion of the Minister of the Environment to consult further public and private institutions with special expertise during the consideration process and to conduct special hearings.

NETHERLANDS

Besides the EIA-commission (for each project a working group of 4 to 8 experts selected from the members of the commission is set up) those authorities and agencies (ministries, provincial administrations, communal administrations) have to be consulted which have to be involved on the basis of sectoral laws (so-called "advisers"). Consultation starts in the "scoping" phase and continues throughout the entire EIA-process up to the monitoring phase. However, the advisers and the EIA-commission can only comment on the adequateness and completeness of the EIA-report submitted by the developer and not on the environmental compatibility of the project itself.

PORTUGAL

The Ministry for Planning and Administration of the Territory (MPAT) must approve the EIA-study carried out by the developer. Prior to this the MPAT consults other authorities and, if necessary, further persons and institutions of special scientific and technical expertise.

SPAIN

Apart from the participation of the environmentally responsible authority on the respective government levels the Royal Legislative Decree on EIA does not explicitly stipulate consultations of other authorities. However, the usual administrative procedures, into which EIA is integrated, provide for such consultation.

UNITED KINGDOM

As soon as it has been decided that an EIA will be performed, the competent authority must notify all authorities which, due to legal provisions, have to be consulted within the framework of the permitting procedure. In the case of projects which require planning permission on the basis of the planning law these are the authorities specified in Art. 15 of the General Development Order, e.g. authorities with responsibilities in the areas of nature and landscape protection. They are obliged to provide the developer with all information in their possession, which is relevant to the preparation of the EIA, and they have to be consulted once the EIA-study has been submitted.

Table 6:

Public Participation

BELGIUM

Walloon region: possibilities of participation are different for private and public projects. Projects of public developers (with the exception of projects competing with private projects) require public participation even at the beginning of the EIA process. This early participation aims primarily at identifying alternatives. In the case of private projects a public inquiry has to be organized after submission of the application to which the EIA has to be attached. Within the framework of this inquiry the public is given the opportunity to inspect the study and comment on it.
Flemish region: After the submission of an application for a plant creating pollution a public inquiry has to be organized which may include public hearings.

DENMARK

The introduction of EIA within the framework of the Regional Planning Acts ensures extensive and early public participation. It starts already when a draft of a regional plan or plan supplement is elaborated. Public participation is actively stimulated. It is the task of the regional and municipal planning authorities to conduct information campaigns and to encourage a public debate. The authorities have to inform the Minister of the Environment on public objections and comments regarding the draft plans and on their evaluation of the comments. Within the regional planning procedure there are virtually no restrictions regarding the persons entitled to participate in the process of public consultation.

FEDERAL REPUBLIC OF GERMANY

The legislative proposal adopts the "funnel-shaped" participation model of the EC-Directive, i.e. the application and the EIA are made available to the general public; the opportunity to express an opinion, however, is reserved to the public concerned. Only the public concerned has to be informed of the content and the reasons of the decision. As minimum requirements for public participation the proposal stipulates the provisions of the Administrative Procedure Act for the plan approval procedure (Planfeststellungsverfahren), a procedure for approval of infrastructure projects. However, if existing laws provide for more extensive public participation like the Nuclear Energy Act or the Federal Law on Ambient Act Quality (Bundesimmissionsschutzgesetz), the provisions of these laws apply. A simplified form of public participation will be implemented for preceding procedures, which require an EIA.

FRANCE

Officially public participation is only required after the application has been submitted. The EIA-study has to be attached to the application. In most cases the project-specific administration procedures prescribe public inquiries which are headed by persons who are appointed by the President of the Administrative Court or by a member of this court in charge of this task. The possibilities of examination of the leader of the public inquiry have been considerably extended by a reform in 1983, e.g. he has the right to conduct public hearings. When the public inquiry is finished, the leader of the inquiry presents his conclusions in a report to the competent authority. If the respective administrative procedure does not stipulate a public inquiry, it is sufficient that the EIA-study is published in an adequate form. In these cases possibilities of participation are criticized as being very poor.

GREECE

The public has to be informed of the EIA-study and has to be given the opportunity to express an opinion. The regional authorities are responsible for organizing public participation. Details of the procedure have not yet been determined.

IRELAND

After the application for a project requiring an EIA has been submitted, it has to be publicly notified and the application documents, including the EIA-study, have to be laid open for public inspection. Everyone - citizens as well as environmental organizations - has the right of inspection and commenting. Persons and organizations, who have submitted comments to the competent authority, must be informed about the decision by the authority.

ITALY

The developer must notify the regional and national press of the intention to perform an EIA. The notification must contain a short description of the project and of the location envisaged. Everybody has the right to comment in writing on the planned project within the following thirty days. The comments must be forwarded to the Minister of the Environment, the Minister for Cultural and Environmental Affairs or the region(s) affected. The comments must be taken into consideration in decision-making. However, this form of participation is criticized because public comments can only be based on a short description of the project in the newspapers. There is no obligation to disclose all relevant documents.

NETHERLANDS

All documents elaborated in connection with the EIA, including background information, comments received, minutes of hearings, have to be laid open for public inspection. Subject and time schedule of the EIA have to be published in the relevant media. Public involvement starts early, i.e. during the "scoping"-phase; the group of persons entitled to participate is not restricted in any way. The authority must explain its decision and illustrate the influence which the suggestions and objections presented by the public and the advisers had on the decision-making process.

PORTUGAL

Public consultation takes place in two phases. The first phase starts as soon as the request for approval of the location has been submitted to the Ministry for Planning and Administration of the Territory (MPAT) and a decision has to be taken on the performance of an EIA. The second phase takes place in the form of a public hearing when the EIA has been approved by the MPAT. Everybody has the right to participate, the general public as well as environmental organizations. The comments obtained in the hearing must be taken into consideration by the MPAT in the decision on the environmental acceptability of the project.

SPAIN

When the application is submitted, the EIA-study has to be published and made accessible to the general public. However, the right to raise objections is restricted to the public concerned (persons and organizations). According to our information the forthcoming administrative regulations will also provide for public consultation within the "scoping"-process.

UNITED KINGDOM

The application and the EIA-study have to be laid open for public inspection. A copy of the study must be made available to everybody on request. Further measures of public information (organization of public hearings, exhibitions etc.) are at the discretion of the competent authority, however, they may also be initiated by the developer. Furthermore, under the aspect of gathering useful information through an early involvement public participation is even recommended during the "scoping" phase on a voluntary basis. The decision and the conditions attached have to be published in the planning register. In case the developer raises objections against the decision or in case the Secretary of State for the Environment calls in a decision on a project, i.e. because of a public controversy, there are additional possibilities of public involvement because in such cases a public inquiry is organized by the Department of the Environment.

Table 7:

Consultation of Neighbouring States on Projects Causing Transboundary Effects

BELGIUM

The existing decrees of the Walloon and Flemish regions do not mention the problem of consulting neighbouring states on projects causing transboundary effects.

DENMARK

The forthcoming regulations on the details of the EIA-procedure will contain the provision that the regional planning authorities must inform the Minister of the Environment if neighbouring states may be affected by a project. The neighbouring states will be informed by the Minister of the Environment when the draft of the plan supplement relating to such a project is published.

FEDERAL REPUBLIC OF GERMANY

If a project has considerable effects on another Member State of the EC, the authorities of the country affected must be informed at the same time and to the same extent as the national authorities to be involved. If the country affected has not made known the authorities to be involved, the highest ranking environmental authority of the other Member State must be informed.

FRANCE

In France it is already general practice to provide the competent authorities of the neighbouring states with relevant information on projects located in the border area which may have transboundary effects. Citizens and environmental organizations from neighbouring states have the right to participate in the public inquiry. Finally they are even granted standing by French courts. Therefore, French authorities do not recognize a need for further legal measures.

GREECE

The General Environmental Act of 1986 does not contain any provisions regarding the consultation of neighbouring states on projects with transboundary effects. It is possible that the implementation of Art. 7 of the EC-Directive has not been considered necessary as there are no joint borders with other EC-countries.

IRELAND

The Minister of the Environment is in charge of informing neighbouring EC-countries possibly affected by a project. For this purpose the competent local authority must inform the Minister of the Environment of such projects.

ITALY

The interim regulation does not deal with the consultation of neighbouring states on projects with transboundary effects. This remains to be regulated within the planned law on the implementation of the EC-Directive.

NETHERLANDS

As the Dutch EIA-Act had been conceived as a national law long before the adoption of the EC-Directive, it does not contain any provisions regarding the implementation of this requirement. However, first practical experiences have been made in consulting neighbouring states on the planning of projects which may cause transboundary effects. The EIA-Commission takes the view that citizens, authorities and organizations of neighbouring states should be conceded the same rights of participation as the Dutch citizens, authorities and organizations i.e. that recommendations and comments made by foreign citizens, authorities and organizations should be attached the same importance within the EIA-process as those of Dutch participants.

PORTUGAL

Up to now there is no information available on the implementation of this requirement of the EC-Directive.

SPAIN

The Royal Legislative Decree stipulates that the environmental authority responsible on the national level notifies the competent authorities of the neighbouring states of the content of the EIA-study and the Environmental Impact Statement based on the study. Notification takes place on administration level. Direct participation of citizens and environmental organizations of neighbouring countries is not provided for.

UNITED KINGDOM

The consultation paper of 1988 does not explicitly mention the consultation of neighbouring states. The competent authorities are merely required to forward copies of the application and the EIA-study to the Department of the Environment in order to enable the government to meet its obligations arising from Art. 7 and 11 of the EC-Directive.

Summary Table on the EIA-Implementation Strategies in the EC-Member States

Ausgestaltung der UVP EC-MEMBER-COUNTRIES	Incorporation into the Existing Legal System	Area of Application of EIA	Responsibilities for Performance and Review of EIA
BELGIUM	Introduction of the EIA by separate laws (decrees) on the national and regional levels. Integration of EIA into existing administrative procedures.	EIA mandatory for projects listed in Annex I. In the Walloon region a preliminary assessment report is required for projects of Annex II on the basis of which it is decided whether a project is to be subjected to an EIA.	Performance of the EIA procedure by the permitting authority. Elaboration of the EIA study by a neutral organization on the basis of information provided by the developer. External control by an independent expert commission.
DENMARK	Implementation of the Directive by amending the acts on national and regional planning. Integration of EIA into the regional planning procedure.	EIA mandatory for projects of Annex I. For projects of Annex II it is assumed that existing procedures will provide sufficient information to assess the environmental compatibility.	Performance of the procedure by the regional planning authority on behalf of the Minister of the Environment as the authority responsible for approving regional plans. Elaboration of the EIA-report by the developer.
FEDERAL REPUBLIC OF GERMANY	Introduction of EIA through a so-called "article law" which determines the basic principles of EIA in Art. 1 and the necessary amendments to special laws in the following articles. EIA is integrated into existing procedures.	EIA is mandatory for all projects for which public consultation is provided for in the respective permitting procedures. In practice this means that not only all projects of Annex I to the EC-Directive but also a large number of Annex-II projects as well as major modifications of such projects are subjected to an EIA.	Performance of the EIA procedure by the permitting authority. In case of several permissions required from different authorities, a lead agency is responsible in cooperation with the other authorities involved. Elaboration of the EIA study by the developer.
FRANCE	Introduction of the EIA within the framework of the Nature Protection Act of 1976 which is specified by a decree of 1977. Integration of the EIA into the existing permitting procedures.	Because of low thresholds all projects of Annex I and II are likely to be subjected to a detailed or simplified EIA.	The permitting authority is responsible for performing the EIA procedure and for evaluating the results. The EIA-report is elaborated by the developer.
GREECE	Introduction of the EIA within the framework the Environmental Protection Act of 1986. Legal EIA regulations for industrial plants since 1981. Integration of EIA into existing administrative procedures.	In addition to projects of Annex I some projects listed in Annex II are mandatorily subjected to an EIA.	It is the joint responsibility of the ministry for environmental affairs and the ministry in charge of the permission to perform the EIA procedure and to evaluate the results. The EIA-report is elaborated by the developer.
IRELAND	Implementation below legislation level by regulations under the "Local Government (Planning and Developoment) Act" and other relevant laws. Integration of the EIA into existing administrative procedures.	EIA mandatory for projects of Annex I. It is decided on a case by-cvase basis whether projects listed in Annex II are subject to an EIA.	The permitting authority is responsible for performing the EIA procedure and for evaluating the results. The EIA-report is elaborated by the developer.
ITALY	Before a law on the implementation of the EC-Directive is passed, interim provisions on the basis of the law No 349 of 1986. Performance of the EIA as a separate procedure preceding the permitting procedure.	The list of projects for which an EIA is mandatory comprises all projects of Annex I as well as selected projects of Annex II for some of which quantitative thresholds are given.	Not the permitting authority but the Minister of the Environment is responsible for performing the EIA procedure and for evaluating the results. The EIA-report is elaborated by the developer.
THE NETHERLANDS	Introduction of EIA by amending the General Environmental Protection Act of 1979. EIA as a separate procedure, however, legal provisions to coordinate EIA with other procedures.	The area of application of EIA comprises all projects of Annex I and the majority of projects of Annex II. However, the thresholds established are so high that an EIA is factually mandatory for large-scale projects, only.	The permitting authority is responsible for performing the EIA procedure. If several permissions are required, one of the authorities involved will be in charge of coordinating the procedure. The EIA-report is elaborated by the developer. External control by an independent EIA-commission.
PORTUGAL	Introduction of EIA within the framework of the Environmental Protection Act of 1987. The EIA-procedure precedes the actual permitting procedure.	In addition to projects of Annex I some projects listed in Annex II are, in general, subjected to an EIA. For other projects of Annex II thresholds are to be defined. Regional and urban plans shall also be subject to EIA.	Not the permitting authority but the Minister responsible for environmental affairs is in charge of performing the EIA procedure. The EIA-report is elaborated by the developer. Evaluation of the results by the ministry, which may consult external experts.
SPAIN	Introduction of EIA by separate legislation (Royal Legislative Decree of June 1986). The EIA-procedure is integrated into existing administrative procedures.	In addition to projects of Annex I some projects of Annex II are, in general, subjected to an EIA.	Performance of the EIA procedure by the permitting authority. The EIA-report is elaborated by the developer. Evaluation of the EIA study by the authorities in charge of environmental affairs on the respective levels of government.
UNITED KINGDOM	Implementation below legislation level by regulations under the "Town and Country Planning Act" and other relevant laws. Integration of EIA into the existing permitting procedures.	EIA mandatory for projects of Annex I. It is decided on a case-by-case basis whether projects listed in Annex II are subjected to an EIA. General criteria and thresholds are established as a broad orientation.	The permitting authority is responsible for performing the EIA procedure and for evaluating the results. The EIA-report is elaborated by the developer.

Content of the EIA	Consultation of Other Authorities	Public Consultation	Linkage of EIA and Decision-Making
Beyond the requirements of the Directive EIAs for public projects must deal with alternatives and analyse socio-economic impacts. In the Walloon region a scoping process is required for public projects.	Other authorities are consulted in the framework of existing administrative procedures into which EIA is incorporated. Additional requirements of consultation are not envisaged.	Normally the public is consulted only after the application has been submitted. However, in the Walloon region public projects require participation to start in the scoping phase.	The competent authority shall prepare and publish a report which explains the decision envisaged and which specifies the conclusions drawn from the EIA.
Requirements do not exceed those stipulated by the EC-Directive. The existing regional planning procedure, however, provides for the analysis of socio-economic effects and other concerns.	Other authorities are consulted in the framework of the Regional Planning Procedure into which EIA is incorporated. Additional requirements of consultation are not envisaged.	The Regional Planning Procedure, into which EIA is incorporated, ensures extensive and early public consultation.	On the basis of the draft of the supplementary regional plan and the EIA-report attached, the Minister of the Environment takes the decision on the suitability of the site. The actual decision on the project is taken within a subsequent procedure required by the Environmental Protection Act.
Adoption of the requirements of the Directive. If these content requirements have already been specified in existing special laws, the provisions of the special laws have priority. Negotiations between the competent authority and the developer in order to determine the content, scope and methods of the EIA.	The provisions on the consultation of other authorities satisfy the EC-Directive. In case several permissions are required by different authorities, the authorities involved cooperate under the auspices of a lead agency.	The proposed provision meet the minimum requirements of the EC-Directive, i.e. the public has to be consulted after the submission of the application. The right to comment is restricted to the public concerned.	The competent authority has to prepare a summarizing description of the information supplied by the developer and the comments received from other authorities and the public. This summary must be taken into consideration in decision-making and has to be published.
Industrial plants require provisions exceeding the EC Directive (risk-assessment). Specific checklists have been elaborated for different project categories.	Other authorities are consulted in the framework of existing administrative procedures into which EIA is incorporated. Additional requirements of consultation are not envisaged.	The public has to be consulted in the framework of so-called public inquiries which are legally required after submission of application for most projects, for which an EIA is mandatory.	An explanation of the decision which deals specifically with the results of the EIA is not required. The provisions of the project-specific administrative procedures apply.
Requirements of the EC-Directive shall be detailed by project-specific checklists.	Other authorities shall be consulted even at the beginning of the EIA-procedure. A special EIA-committee shall be formed for major projects.	The EIA-report shall be published and everybody has to be given the opportunity to express an opinion on the report.	The ministry responsible for environmental affairs and the ministry in charge of the permission jointly decide on the environmental compatibility of the project and determine the permitting conditions.
Requirements of the EC-Directive have been adopted. In addition, the competent authority may ask for further information.	All authorities to be consulted in the framework of existing administrative procedures have to be involved.	The application as well as the EIA-study have to be laid open for public inspection. Everybody is entitled to comment and to raise objections.	It is not intended to establish a closer linkage between EIA and decision-making than that provided for in the EC-Directive.
Beyond the requirements of the EC-Directive, the developer is obliged to provide information regarding the compliance of the project with existing goals of urban, regional and sectoral planning.	The Minister for Cultural and Environmental Affairs has to be consulted. The affected regions have to be given opportunity to express their opinion. It is left to the discretion of the Minister of the Environment to consult additional public and private organizations.	The developer has the obligation to give notice in the press that an EIA will be prepared. This notification has to include a short description of the project and of the location envisaged. Within the following 30 days everybody can make his comments in written form.	The Minister of the Environment decides upon the environmental compatibility of the project. In case of disagreement between the environmental authority and the permitting authority the final decision is taken by the Council of Ministers.
Adoption of the minimum requirements of the EC Directive. The precise content of the EIA is defined on a case-by-case basis within of a formal scoping process. It is mandatory to consider alternatives.	The EIA-commission as well as all authorities which hvae to be consulted on the basis of sectoral laws for certain activities shall be involved. The involvement shall take place over the entire EIA process from the scoping phase up to monitoring.	Public consultation starts with the scoping phase and continues throughout the entire EIA process. All documents, comments, minutes of hearings, etc. shall be made available to the public.	The competent authority has to consider all environmental effects. The decision has to be justified and the influence, which the EIA and the comments received had on the decision, has to be described.
Requirements regarding the content partly exceed the EC-Directive, e.g. information on purposes of the project, infrastructural and labour requirements and potential risks have to be supplied by the developer.	Apart from the consultation of authorities concerned persons and institutions of special technico-scientific expertise may be consulted.	Public consultation takes place in two phases. Firstly, when deciding on the suitability of the location and on the preparation of an EIA, secondly, after the EIA-report has been submitted.	If a project is rated as environmentally negative by the Minister of the Environment, the permitting procedure will not be initiated. The mitigation measures proposed in the EIA are mandatory for the developer and are subject to monitoring.
Requirements of the EC-Directive have been adopted. However, they shall be specified by project-specific guidelines. The introduction of a scoping process has been envisaged.	The competent environmental authorities on the respective levels of government have to be involved in the EIA-procedure. There are no further consultation requirements beyond the scope of the existing administrative procedures.	The EIA-study has to be made available to the public after the application has been submitted. However, objections can only be raised by persons or organizations concerned.	The environmental authorities on the respective levels of government decide upon the environmental compatibility of the project. In case of disagreement between this authority and the permitting authority the decision is taken by the Council of Ministers or a comparable institution on the regional level of government.
Checklist on the basis of Annex III to the Directive as a guideline. Furthermore, the competent authority may ask for additional information. A scoping process is recommended on a voluntary basis	All authorities to be consulted in the framework of existing administrative procedures have to be involved.	Public consultation is mandatory after the application including the EIA-report has been submitted. Public participation is recommended within a non-mandatory scoping.	The competent authority must consider the results of the EIA including the comments obtained. The developer, the Minister of the Environment, the authorities involved and the public have to be informed on the decision.

Table 8:

Linkage of EIA and Decision-making

BELGIUM

Walloon region: the competent authority has to elaborate an EIA-report which explains the decision and presents the final conclusions which the authority has drawn from the EIA. This report must be published thirty days before the developer is notified of the decision. Furthermore, the decision has to be justified.
Flemish region: reasons must be given for the decision. However, the decree does not mention explicitly to what extent the competent authority has to recur to the EIA and the results of the public inquiry in justifying the decision.

DENMARK

The decision to be taken by the Minister of the Environment on the plan supplement relating to a specific project is essentially a decision on the suitability of the site. In the case of industrial installations causing emissions the actual decision on the project is taken within the subsequent procedure on the basis of Environmental Protection Act which is carried out by the regional planning authority, too. In this subsequent permitting procedure the competent authority will recur to the results of the EIA and utilize them as a framework for further steps of investigation and examination. According to Danish law all decisions have to be justified and published.

FEDERAL REPUBLIC OF GERMANY

On the basis of the data supplied by the developer and the comments obtained from other authorities and the public, the competent authority prepares a summary description of the environmental impacts of the project. Information gathered by the competent authority itself has to be taken into account. The competent authority evaluates the environmental effects on the basis of the summary description and takes these findings into consideration when the decision on the environmental acceptability of the project is taken. If a project requires several permits by different authorities, an overall evaluation of the environmental effects of the project has to be made by all the authorities concerned and has to be taken into consideration in the decision-making processess of these authorities.

FRANCE

Permitting authorities have wide scope of discretion in France. It is up to them which final conclusions they draw from the EIA-study. This applies also to the report on the results of the public inquiry and the final conclusions drawn from the public inquiry by the leader of the inquiry. There are no legal provisions that the competent authority has to deal with the results of the EIA in justifying its decision. Requirements to explain and publish decisions depend on the provisions of the project-specific administrative procedures.

GREECE

On the basis of the EIA the ministry responsible for environmental affairs and the ministry in charge of the permission of the project jointly determine the environmental conditions to be attached to the permit. This decision can be interpreted as the decision on the environmental compatibility of a project. The actual permission cannot be granted unless this joint decision is taken. The General Environmental Act does not provide for mechanisms in cases of disagreement between the respective authorities.

IRELAND

The competent local authority should take into consideration the EIA-study and the comments received when deciding on a project. In doing so its scope of discretion is relatively large. The circular letters of the Department of the Environment emphasize that environmental concerns should not be given priority over other concerns in the process of consideration. An explanation of the reasons and considerations, on which the decision is based, is only necessary if development consent is refused or if certain conditions are attached.

ITALY

The EIA-report should be submitted to the Minister of the Environment simultaneously with the submission of the application to the competent authority. The consent procedure is suspended for the following period of ninety days until the Minister has reached a decision. On the basis of the EIA-results and after having evaluated the comments of the authorities consulted or affected and of the public, the Minister of the Environment takes the decision on the environmental compatibility of the project in accordance with the Minister for Cultural and Environmental Affairs. Thus, the outcome of the subsequent consent procedure is factually pre-determined. If the minister competent for the approval of the project refuses to follow the decision taken by the Minister of the Environment, the question is passed to the Council of Ministers for resolution.

NETHERLANDS

First, the performance of an EIA is a compelling pre-requisite for the permission of projects requiring an EIA. The competent authority is required to consider all environmental impacts taking into account cross-sectoral effects. Therefore, its sectorally restricted competence to consider effects is extended to include cumulative environmental effects and such effects, which are not covered by other laws. However, the legislator has not accorded overriding importance to environmental concerns over other concerns. In the process of consideration the authority has a relatively large scope of discretion. It is empowered to attach conditions to the permission or to refuse permission entirely. Since the authority is required to explain its decision, the exercise of its discretionary powers is subject to public control.

PORTUGAL

There is a very strict linkage of EIA and decision-making. If the Ministry for Planning and Administration of the Territory (MPAT) considers a project to be environmentally incompatible on the basis of the EIA, the actual consent procedure is not even initiated. Furthermore, conditions proposed in the EIA, e.g. regarding mitigation measures, are mandatory for the developer and are subject to a monitoring process.

SPAIN

The Royal Legislative Decree accords very high importance to EIA in the decision-making process. If the permitting authority accepts the Environmental Impact Statement elaborated by the environmentally responsible authority on the basis of the EIA-study, it is required to enforce the implementation of the conditions contained in the EIS. If the permitting authority and the environmental authority disagree on the consequences to be drawn from the EIS, the decision will be taken by the Council of Ministers or a comparable body on an other level of government.

UNITED KINGDOM

A project requiring an EIA can only be granted development consent if the developer has submitted the EIA-report together with the application. The authority is required to consider the results of the EIA in the decision-making process together with the comments obtained. The developer, the Secretary of State for the Environment and the authorities involved (statutory consultees) should be notified of the decision taken. Furthermore, the decision is to be published in the Planning Register including the conditions possibly attached.

Table 9:

Administrative Monitoring / Judicial Review of EIA / Standing

BELGIUM

Walloon region: the permission granted can be voided by the competent authority or by an administrative court, if the EIA-procedure regarding a project, for which an EIA is mandatory, has not been correctly performed.
Flemish region: the decree regarding installations creating pollution does not stipulate special possibilities of judicial review. There are only the usual possibilities of challenging administrative decisions. Generally the prerequisite for filing an action in court is the proof of a "subjective" right. However, proof of an "interest" is sufficient for bringing an action at the Council of State. Pursuing the statutory goals of an environmental organization is recognized as an interest and, thus, as a sufficient basis for appealing to the Council of State.

DENMARK

There is no possibility of judicial review within the framework of the planning law, i.e. approved regional plans or plan supplements cannot be challenged in court. Decisions in the subsequent permitting procedure, which is required under the Environmental Protection Act, are not subject to judicial control either. However, parties affected, which include environmental organizations, have the right to appeal to the Minister of the Environment within a period of four weeks after the decision has been published. If the appeal is dismissed, it can be lodged again with a quasi-judicial board of appeal consisting of a judge, two representatives appointed by the Minister of the Environment and two representatives appointed by the Association of Industry.

FEDERAL REPUBLIC OF GERMANY

The legislative proposal does not contain provisions regarding monitoring. It is planned to decide on the introduction of monitoring once procedures and effects of EIA have been tested in practice. The introduction of EIA does not establish new legal titles. According to the existing provisions only those persons have standing whose own rights or legally protected interests have been violated as a result of an administrative decision. Recognized environmental organizations have standing only under the nature protection acts of certain states, but not on the Federal level.

FRANCE

The Nature Protection Act of 1976 provides for an injunction against the execution of administrative decisions, if action is filed in court because an EIA has not been submitted. In recent jurisdiction judges have ordered stays of execution also in cases where an EIA formally existed but its content was regarded as being insufficient. Administrative decisions can be revoked by an administrative judge in retrospect, if the plaintiff proves that an EIA mandatorily required for a project was not performed or that an EIA submitted was inadequate.
There is liberal access to the courts. Apart from persons affected in their rights standing is conceded to organizations and persons who are able to prove an interest. This applies also to citizens and organizations of neighbouring states in the case of projects located in border areas which may have transboundary effects.

GREECE

The General Environmental Protection Act of 1986 explicitly stipulates that additional conditions for environmental protection may be imposed if significant environmental impacts, which had not been anticipated in the EIA, occur after the realization of a project. Furthermore, the implementation of mitigating measures determined on the basis of the EIA is controlled. Up to the end of this control the project proponent is granted preliminary consent only. No EIA-specific possibilities of judicial review will be introduced within the framework of the Environmental Protection Act. In general, access to the courts in the case of questions of environmental protection is very liberal. Environmental organizations also have standing.

IRELAND

The appeal commission ("An Bord Pleanala"), established under the Local Government (Planning and Development) Act of 1976, has quasi-judicial functions with regard to complaints lodged by the developer or third parties against a decision taken by local planning authorities. The appeal procedure has a suspensive effect, i.e. the developer cannot start with the implementation of the project as long as the appeal is pending. Everybody has the right to appeal. However, in the majority of cases the appeal is lodged by the developer because of refusal of development consent or conditions attached.

ITALY

In the Law Nr. 349 of July 8, 1986 there are no specific provisions with regard to the possibility of judicial review or enforcement of the EIA. In principle administrative decisions which have adverse impacts on the environment and which violate legal provisions or disregard orders made on a legal basis, can be quashed in court.
Apart from persons whose own rights are affected by the decision, recognized environmental organizations, which are defined by a Decree of the Council of Ministers of February 20, 1987, have standing.

NETHERLANDS

The performance of administrative monitoring is legally mandatory. If the monitoring process shows that a project has significantly more negative effects than those forecast in the EIA, conditions can be attached to the decisions in retrospect or the decision may even be revoked if necessary. The EIA itself cannot be directly challenged but the decision on the project for which the EIA had been performed. However, the fact that the authority accepted an incomplete or incorrect assessment report may be reason enough to challenge the decision.
Within thirty days every person or organization (private persons, authorities, communities, environmental organizations), whose interests are affected by an administrative decision, may file a suit which has to be substantiated. However, only those persons and organizations have standing who raised their objections already in the course of the administrative procedure. This is based on the principle that administrative remedies must be exhausted before legal proceedings may be initiated.

PORTUGAL

After the project has been realized, the competent authorities are entitled to examine whether the permitting conditions have been fulfilled and the measures determined to avoid, reduce and remedy adverse effects on the environment have been implemented. Any violation of the legal provisions entails serious sanctions. If a plant has been built without development consent, an immediate stay of execution can be ordered or it can even be pulled down. Special provisions for judicial control have not been introduced in connection with the EIA decree. According to the constitution every citizen, as an individual person or together with other persons, has the right to appeal to the courts if health or property are endangered by a project.

SPAIN

If a project is started and the necessary EIA has not been performed a stay of execution may be ordered by the authority in charge of environmental concerns, irrespective of the responsibility for this situation. Suppression, falsification or fraudulent manipulation of data during the EIA-procedure and non-compliance with the conditions determined in the EIA may equally entail an immediate stay of execution. In such cases the developer is obliged to restore the original situation.
The Royal Legislative Decree does not provide for special possibilities of judicial review of an EIA. In general, access to the courts is restricted to persons who are able to prove that their own rights are affected by the project. A further requirement is the fact that they have raised objections already in the preceding administrative procedure. Environmental organizations also have standing as long as they meet the requirements mentioned above.

UNITED KINGDOM

The Consultation Paper of 1986 on implementing the EC-Directive does not stipulate any particular provisions with regard to the possibility of judicial review or enforcement of the EIA. Under certain conditions legal action can be brought against administrative decisions which were taken under the planning acts. Grounds for review are given e.g. if the authority exceeds its statutory powers, in the case of abuse of discretionary power or disregard of procedural requirements.
In recent years standing requirements in the planning field have become considerably liberalized. The courts are increasingly granting the public a general right to challenge administrative decisions in this area.