

# "The environmental assessment of plans, programmes and projects under the EU environmental legislation: successes – failures – prospects"

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# Outline of the presentation

- Legal context: environmental assessments required under the EU law
- SEA Directive
- EIA Directive

## For both Directives:

- Strengths and benefits
- Weaknesses
- Areas where improvements are needed
- The future of the SEA and EIA Directives

# Sources

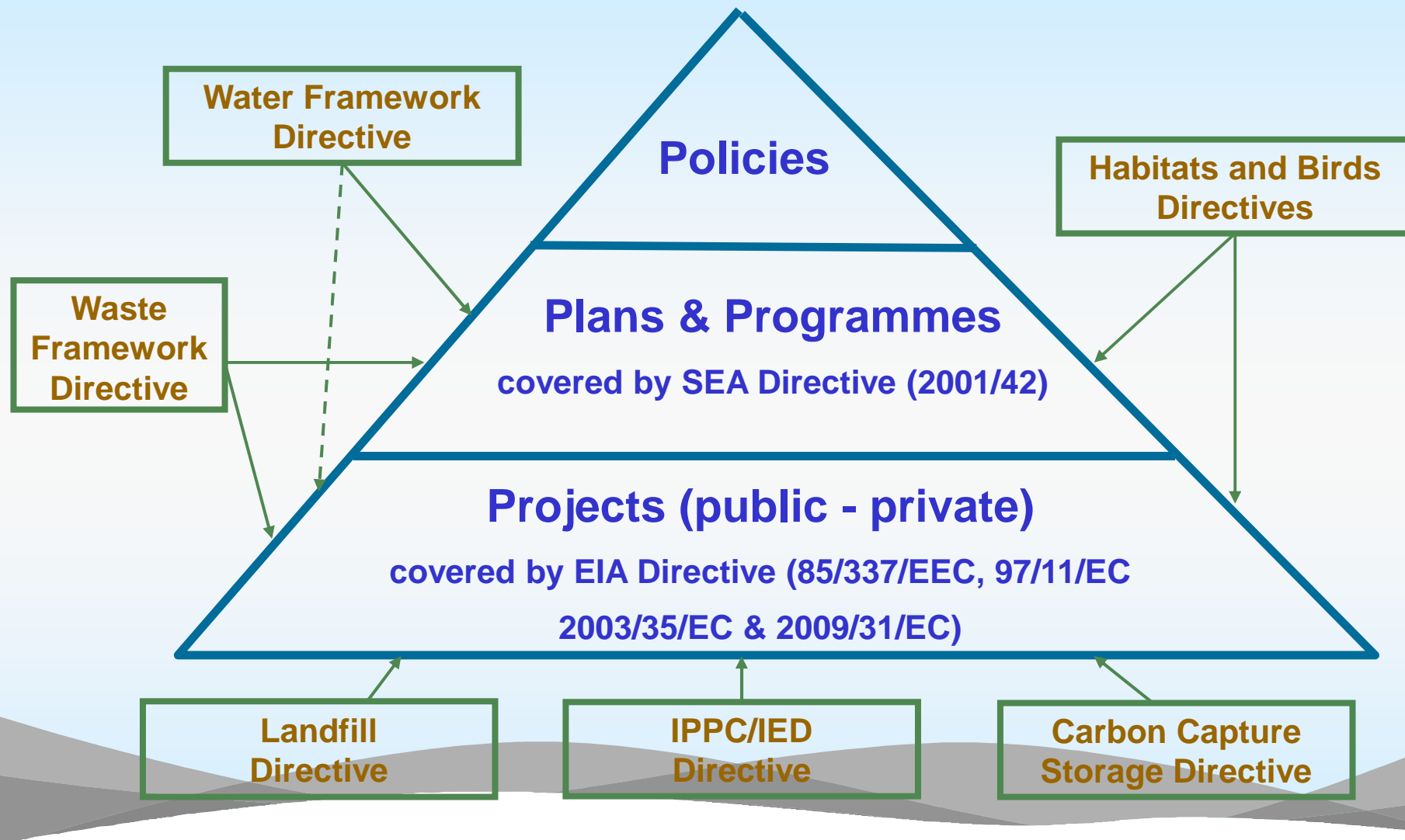
## ■ Reports of the Commission:

- **First Report** on the application and effectiveness of the Directive on **Strategic Environmental Assessment** Directive (COM(2009)469, 14.9.09).
- **Four Reports** on the application and effectiveness of the Directive on Environmental Impact Assessment Directive (last one: COM(2009)378, 23.7.09).

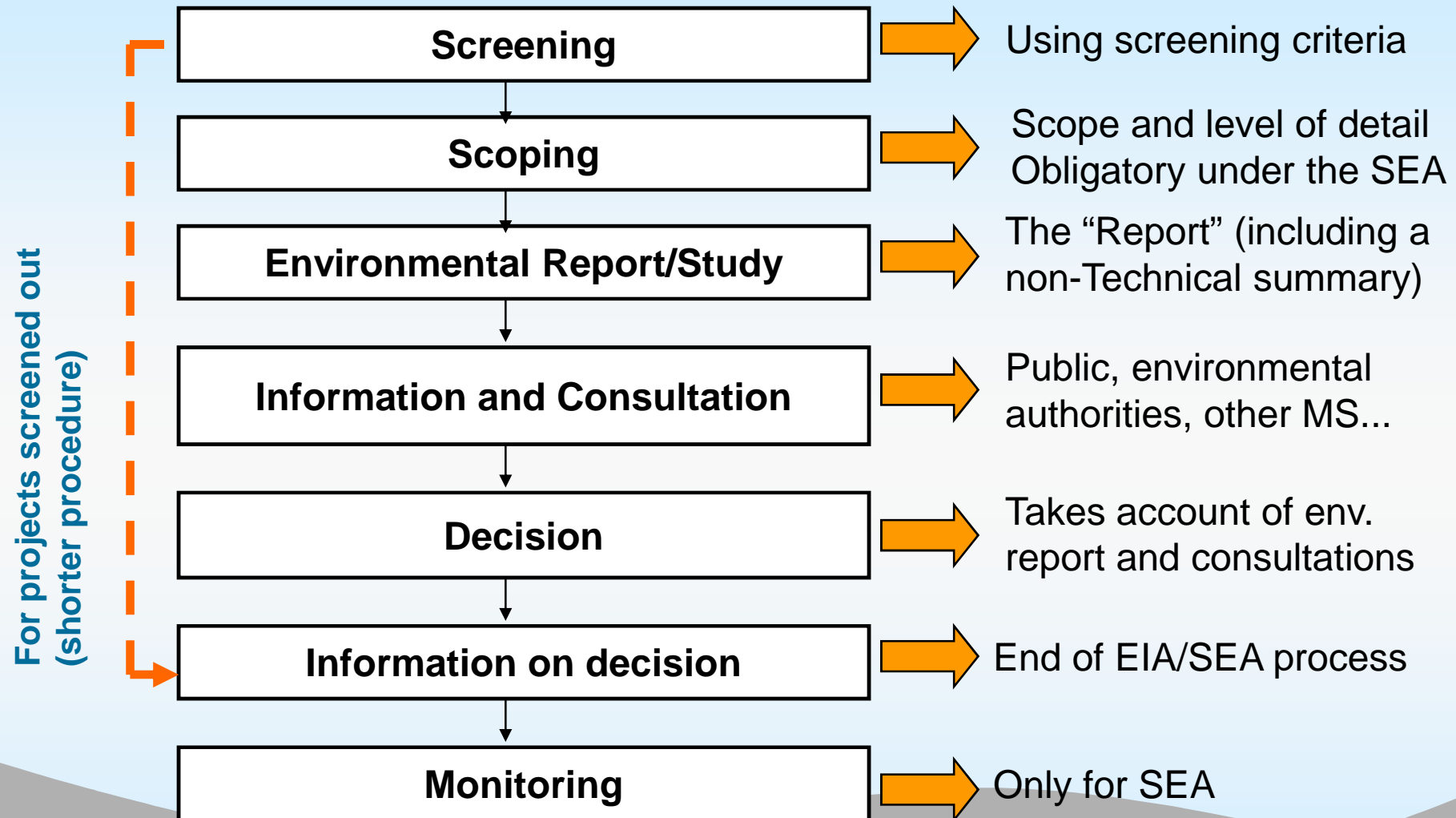
## ■ The Commission's experience from the implementation and enforcement of the SEA/EIA Directives:

- Handling of complaints and infringements.
- Application of the SEA to the EU co-financed programmes for the period 2007-2013.
- Application of the SEA to plans/programmes required by the EU legislation (e.g. RBMP, NAP, NREAP...).
- Application of the EIA to the EU co-financed projects for the periods (1994-1999, 2000-2006, 2007-2013): Cohesion Policy and TEN-T/E.

# Environmental Assessments under EU law



# The Environmental Assessment Procedures



# Transposition of the SEA in the EU-27

## ■ Delayed transposition of the SEA Directive

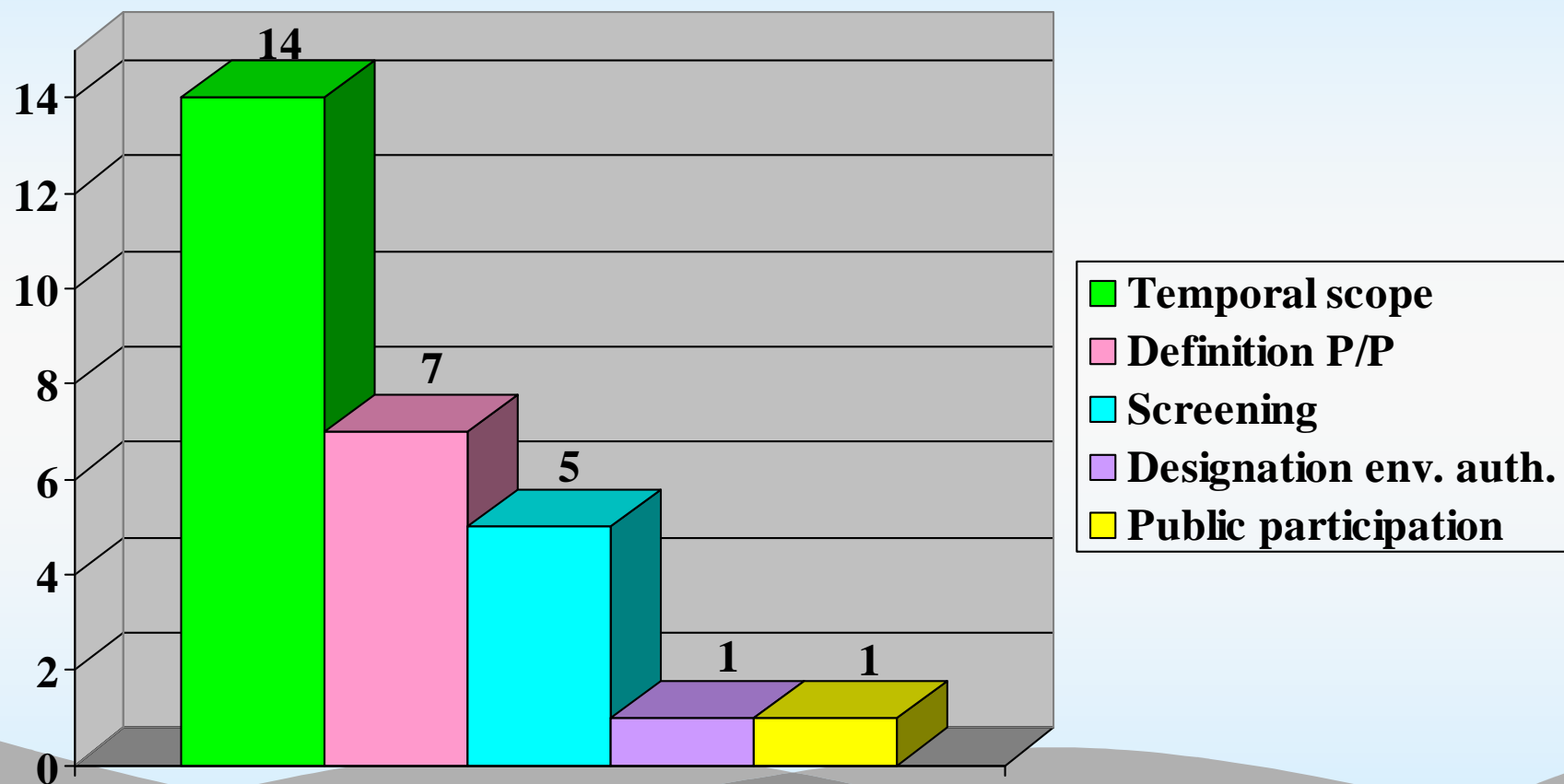
- Transposition due by 21.7.2004: only 9 of the 25 MS had transposed the Directive (infringement procedures were opened for failure to adopt the legislation transposing the SEA Directive and five MS were condemned by the European Court of Justice).
- By 2009, all MS have transposed the Directive.
- **SEA systems are established and operate in all MS.**

## ■ Still struggling for correct transposition

- The Commission checked the conformity of the SEA transposition in the MS.
- Infringement procedures were opened for 23 MS (often the problem is the scope of the SEA).
- 8 still open today...

# Implementation of the SEA in the EU-27

## Sample of 28 infringement cases



# Benefits of the SEA

- **Scope of the SEA** is now more clearly delimited (conditions of Articles 2+3).
- **Integration** of environmental considerations into **decision making** of plans and programmes.
- **“Greening”** of plans and programmes and **monitoring** of their effects.
- Strengthened role for **environmental authorities** through their participation.
- Better **cooperation** between different authorities (planning, environment and health).
- Increased **transparency** in decision making, due to the involvement of all levels of society.
- Less mitigation measures due to the **early inclusion of environmental considerations** in the P&P.
- Contribution of SEA to **improved compliance** with the requirements of other specific environmental policy areas.
- **Less litigation** at project level.
- Consideration of **cumulative effects** and of **alternatives** upstream.
- **Absorption of EU co-financing** made easier.

=> **The overall assessment is positive, e.g. in Cohesion Policy**



# Weaknesses of the SEA

- **Policies** not covered by the Directive: the policies which set the framework of the plans/programmes subject to SEA Directive are not subject to the SEA provisions.
- Many plans and programmes are not subject to the SEA provisions:
  - “**not required**” by administrative/legislative provisions (e.g. policies)
  - not subject to “preparation and/or adoption by an authority” (e.g. private plans and programmes for instance).
- Concepts to be defined:
  - Plans/programmes which “**set the framework**”.
  - “**Minor** modifications” to plans/programmes.
  - Plans/programmes which determine the use of **small areas** at **local** level.
- Links with other Directives
  - Projects: EIA
  - Habitats, Water FD, Nitrates, Renewable Energy...
- Lack of concrete provisions on **quality** control

# Opportunities for improvement: the future of the SEA

- **The Directive is still in its infancy: in the short term too early to propose amendments.**
- **Further experience is needed to understand thoroughly its functioning, also in the light of the experience under:**
  - ➔ SEA Protocol (entered into force in July 2010).
  - ➔ ECJ case law, which will play an essential role.
- **Further guidance needed in particular on climate change and biodiversity**
  - ➔ Commission guidance for both SEA and EIA Directives under preparation.
  - ➔ Expected end of 2011.
- **Amendments will be considered in the longer term.**
- **Next Commission's report in 2016.**

# Background on the EIA Directive

- **First Directive adopted in 1985 and amended 3 times: in 1997, in 2003 and in 2009.**
- **Substantial amendment by Directive 97/11/EC, which broadened the scope of the Directive:**
  - more projects covered (Annexes I and II).
  - more projects requiring mandatory EIA (Annex I).
  - new screening arrangements for Annex II projects (i.e. screening criteria listed at (new) Annex III).
  - minimum information requirements.
- **Targeted amendments**
  - Directive 2003/35/EC: align the provisions on public participation with the Aarhus Convention.
  - Directive 2009/31/EC: projects related to the transport, capture and storage of carbon dioxide (CO<sub>2</sub>) added to the Annexes I-II.

# Strengths of the EIA Directive

- Establishment of comprehensive EIA regimes in all MS.
- In several cases, MS go beyond the minimum requirements of the EIA Directive, e.g.:
  - Screening (more projects requiring an EIA).
  - Scoping (obligatory).
- Increasing public participation in the decision-making process (mainly due to Directive 2003/35/EC).
- Clarifications of the EIA Directive's provisions from the ECJ.
- Overall benefits of the EIA Directive:
  - Environmental considerations taken into account in decision-making processes earlier.
  - Transparency and social acceptance.
  - EIAs have improved the project design and the decision-making process (on the basis of experience from EC co-funding).
- Specific national dynamics (e.g. project categories, guidance,...).

# Weaknesses of the EIA Directive (1)

## ■ Concerns regarding the "screening" procedure:

- Wide variation in the types and levels of thresholds.
- Missing links of EIA with IPPC/IED (thresholds) and SEA (project categories).
- Cumulative effects and salami-slicing still a problem.
- Projects with significant environmental impacts escape the EIA.
- Not harmonised implementation and lack of certainty.

## ■ Concerns on the quality of the EIA process

- Poor quality of the information used in the EIA documentation (EIAs do not properly inform the decision process for delivering consents).
- Project alternatives are not properly assessed.
- Lack of provisions on monitoring significant effects (cases where projects generate more significant impacts or mitigation measures not put in place).
- Assessment of climate change, biodiversity, risks, resources efficiency issues.
- No validity of the EIA decision.

## Weaknesses of the EIA Directive (2)

### ■ Lack of harmonised practices for public participation.

- “Reasonable time-frames” for the different consultation phases to be provided (not harmonised implementation by the MS).
- Insufficient time-frames not ensuring effective participation or excessive duration generating additional costs for the developer.
- Results of the consultation not properly considered in granting development consent (in particular for projects likely to have negative environmental effects).

### ■ Difficulties regarding the transboundary EIA procedures.

- Co-ordination of the procedures
- Translation

### ■ Better coordination between the EIA and some EC directives (SEA, IPPC, climate change, biodiversity...).

# New challenges for the EIA Directive

## ■ Policy context

- New policies and growing environmental challenges (e.g. climate change, biodiversity, disaster prevention...)
- Enlargement

## ■ Legal context

- Important ECJ developments
- Simplification

## ■ International context

- Synergy with the Aarhus Convention
- Synergy with the Espoo Convention (including SEA Protocol)

**=> Review of the EIA Directive is needed.**

# Policy objectives of the review of the EIA Directive

## ■ Improve the functioning of the EIA Directive:

- Increase the degree of harmonisation of national laws.
- Simplify existing EIA procedures (i.e. screening).
- Reinforce the quality components of the EIA process (e.g. content of the report, alternatives, review of EIA information, monitoring, validity EIA).
- Clarify legal and technical issues (i.e. ECJ case-law, quality of the EIA report).

## ■ Improve the synergies between the EIA Directive and other EU environmental legislation:

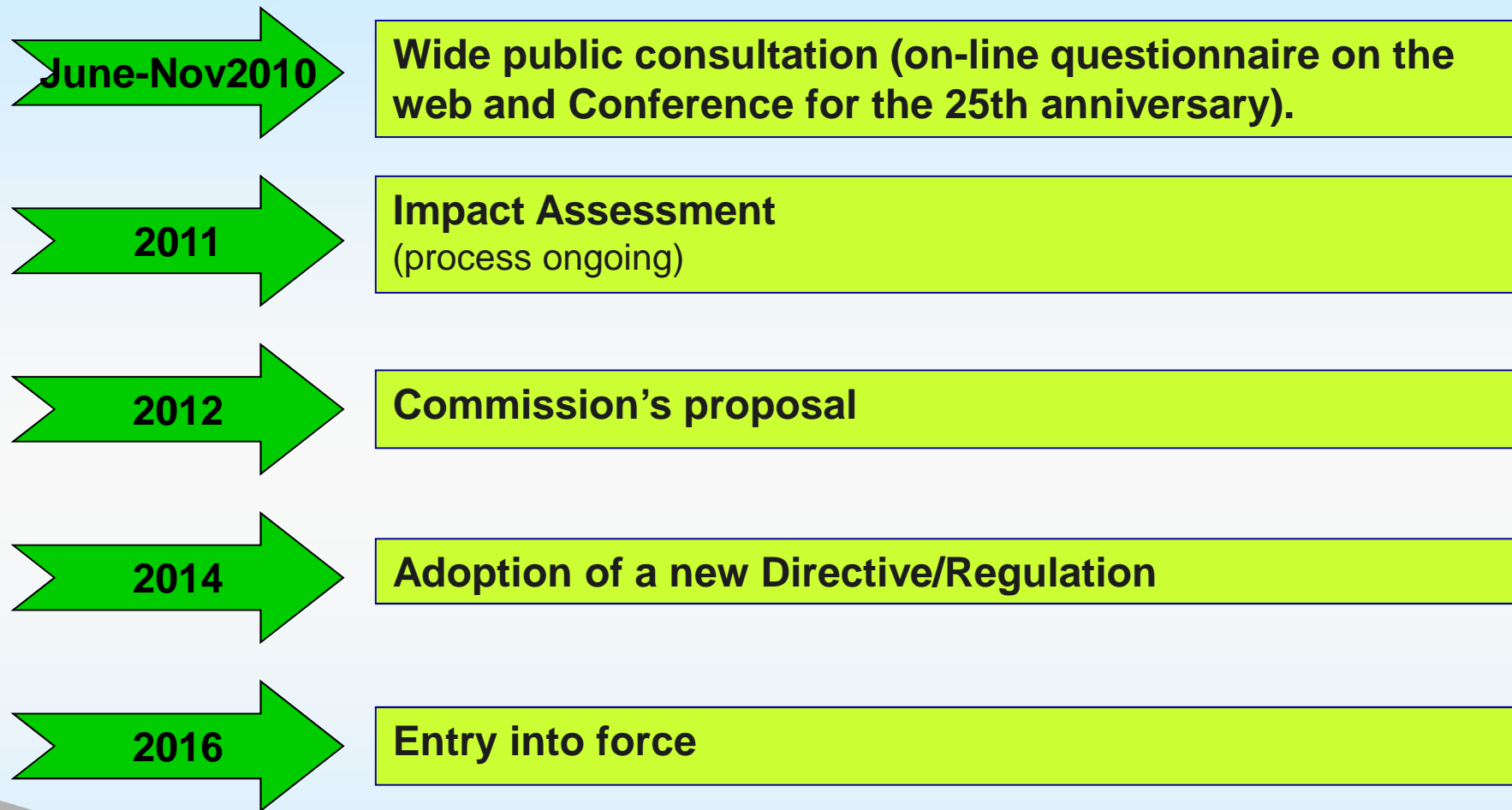
- Consistency with the international obligations (Espoo & Aarhus Conventions).
- Better coordination with sectoral assessments required by other Directives (SEA, Habitats and Birds Directives, IPPC, Water Framework...).



# Realistic policy options

- **No change (baseline scenario)**
- **Technical adaptation**
  - some of the existing problems would be tackled (e.g. project categories).
  - the main ones (e.g. quality) would remain, as the main provisions would not be amended.
- **Amendment/one-stop-shop**
  - it will address all the existing problems.
  - several variants available, depending on the scope of the modifications.
  - recasting or amendment of the codified Directive.
- **Radical options rejected (confirmed by the public consultation)**
  - Merging of the EIA/SEA
  - Regulation

# Tentative timetable



# Thank you for your attention

<http://ec.europa.eu/environment/eia/home.htm>

