

## Personal Submission from Michael Ewing to the EPA Review Group

This Submission is based on the findings of the EPA funded research project on Environmental Democracy assessing the implementation of the Aarhus Convention. The full report is available at [www.environmentaldemocrasy.ie](http://www.environmentaldemocrasy.ie)

### General Recommendations

- **An amendment to the Constitution to include the right to a clean and healthy environment, and the rights of access to information, public participation and justice in environmental decision-making.**  
One cause of weakness in the legal system is the fact that the Irish Constitution was written in 1937, at a time when the environmental agenda had yet to come to the fore and Ireland was still the land of “forty shades of green”. As a mainly subsistence level agrarian economy, the country had yet to experience any major industrialization. Consequently, environmental values are not central to the construction of the document resulting in low ascribed values due to the non existence of many rights
- **Encourage the generation of precedent through Public Interest Cases**
- **Greater clarity in the drafting of laws,**
- **Reform of the structures of legislation.**  
The issue of environmental legislative reform is too vast to tackle here but suffice to say that the current piecemeal nature of statutory environmental liability, while commendable for its exhaustiveness, is a barrier to access to justice for many as its complexity creates confusion even among legal professionals working in the area, and among the general public as to their rights.
- **A Whistle Blower Act** is essential to enable early detection of systems failures. In Hungary, the Law on Public Complaints provides for remedies if an employer takes retaliatory action against a worker who has made a complaint in the public interest.<sup>1</sup> The employer is obliged to restore the employee’s lawful status immediately and to properly compensate material and moral damages. If necessary such restoration can be ordered by a superior body, which simultaneously should start disciplinary or criminal action.
- **The creation of an Ombudsman for the Future.** Sustainable decision-making requires an advocate for the generations to come and not just for

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<sup>1</sup> Stec S and Casey- Lefkowitz S. (2000) *The Aarhus Convention Guide*. UNECE p. 59

the human species The needs and rights of future generations are given attention in the preamble to the Aarhus Convention, however in Ireland there is no person with the responsibility for speaking on behalf of those that will inherit the planet from us. This issue has been tackled head on in Hungary with the establishment of an Ombudsman for the Future Generations.<sup>2</sup> The Ombudsman's task will be to safeguard, assess and monitor the exercise of rights ensuring the sustainability and improvement of nature and the environment. The Ombudsman will investigate abuses and initiate actions to redress these.

Clive Hamilton of the Australia Institute<sup>3</sup> suggested that the role of the Ombudsman for Future Generations would be to act on behalf of those who will inherit the planet. The functions would include the following:

- the Ombudsman would represent the interests of future generations in government decision- making processes affecting the environment. For example, it would have been extremely useful to have a body making out a strong case for future generations in greenhouse policy by reminding us, with the backing of impeccable scientific analysis, of the implications of failing to cut emissions;
  - the Ombudsman could, where appropriate, investigate complaints from citizens about public and private decisions that might have a major impact on future generations;
  - the Ombudsman could make submissions to key environmental impact statements; and
  - the Ombudsman could serve as a watchdog to alert the community to impending problems for future generations arising out of public and private activities.
- **In house training regarding the concepts underlying sustainable development** and the environmental implications of decision-making processes that are conducted by the authority should be provided for all staff of public authorities to ensure that they have a good grasp of both.
  - **EPA should be involved in developing good practice re SEA.** The SEA process is at a very early stage in its evolution in Ireland developing capacity. As far as Ireland is concerned, the lessons are clear. There is a steep learning curve ahead regarding the SEA process. All SEA must involve the public from the scoping phase onwards. The development of the capacity of the relevant bodies to conduct an SEA and in particular the public participatory aspects will require a major effort on the part of the government. The establishment of an independent review body to examine the quality of SEAs produced and to adjudicate on their compliance with national and international legislation would provide the necessary driver to bring about this capacity building.

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<sup>2</sup> Amendment to the Parliamentary Commissioner Act 59/1993, 26<sup>th</sup> November 2007.

<sup>3</sup> Hamilton C. Environmental Economics Seminar Series *Department of the Environment, Sport and Territories, 1996 ISBN 0 642 24878 8*

- **Ratification of the SEA Protocol** PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT TO THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT, Kiev 2003.

## **Access to Information**

- **SI No 133 of 2007**

The Commissioner for Environmental Information in commenting on SI 133 of 2007 stated:<sup>4</sup>

“For the AIE regime to work satisfactorily across all public authorities, it is necessary not only that the legislation be technically coherent and comprehensive but also that the regime should provide for:

- promotion of awareness of the right of access (people need to know)
- promotion of good standards of practice among public authorities (including training, support and proper administrative structures)
- external monitoring of performance
- reporting to the Oireachtas on performance.”

Recommendation: that SI 133 of 2007 is amended to

- require public bodies to compile and publish lists of the environmental information held by them and ensure that EPA is enabled to make them centrally available in such a manner that they are easily searchable. In this respect the EPA will take up the role of ENFO as prescribed in SI 133 of 2007

Under SI 133 Of 2007 the time limits are clear but the applicant is not informed of the status of the request until it is either acceded to or refused.

- **Capacity issues**

This need for capacity building is an essential part of developing constructive engagement between the EPA and the public as well as between the local authorities and the public. One particular barrier to information provision and

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<sup>4</sup> Address by Emily O'Reilly, Commissioner for Environmental Information at Irish Environmental Law Association, 15.01.2008

dissemination is the restriction on the use of maps owned by the Ordnance Survey of Ireland.

- **Coillte**

The absence of domestic legislation requiring Coillte to generate or report environmental information is quite extraordinary considering that this state-owned company manages vast tracts of land. A similar absence of legislation is also apparent with regard to ground water.

- **Electronic Availability of Information**

The EPA holds a lot of information regarding emissions from IPPC licensed facilities, but this is only available in paper format at their offices. Conversely, the development of tools such as the EPA's Envision interactive map is a very positive move in the right direction. The EPA website also hosts live information feeds on air pollution parameters. These two models could be expanded and copied by other holders of environmental information.

Article 5.5 of the Aarhus Convention requires active dissemination of information about international conventions, treaties etc, and yet ten years after Ireland signed the Convention its existence is been largely unheard of up until very recently in Ireland.

Where facilities operate under IPPC licenses they are usually required to provide onsite information on emissions to the public, but this is not always the case. Where the provision of information is a condition of a license this condition is generally not enforced with the same emphasis that is applied to other license conditions.

- **That the government amends the EPA Act, 1992** to include a provision that all IPPC licensees are required to provide:
  - public access to the environmental records held by them as required under the license
  - a clearly visible notice at the main entrance to the facility announcing the availability of this information as well as the times when and location where the information can be viewed. The notice should also carry the names and contact details of the person within the organisation responsible for the provision, and the relevant OEE Inspectorate.
  - a public communication programme to the EPA. This programme to be advertised at the time of its inception in the relevant newspapers, and to be displayed at the main entrance to the facility.
  - an appropriate place where the public can view the information
  - training for the appropriate staff on the provision of environmental information.
  - training for the staff responsible for this provision to enable them to assist the public in understanding the information.

- **EIA**

A number of areas of information provision are very much underdeveloped. The first of these is the collation and referencing of all Environmental Impact Statements (EISs). These are a rich source of information gathered across a range of disciplines and generally now available electronically. These should be a national resource available and searchable online through the ENvision website.

- **Ratify and Implement the PRTR Protocol.**

Introduce a national online PRTR Register showing all pollutant emissions and movements of waste from a wide range of industrial sectors as laid down in order to ratify the PRTR Protocol. This should be accessible through the ENvision web tool of the EPA.

The introduction of a national online PRTR Register showing all pollutant emissions and movements of waste from a wide range of industrial sectors as laid down in the Protocol is the first step. The Protocol calls for annual reports to the relevant authority, the EPA in Ireland. However as we are recommending live feeds of emissions information for IPPC licensed premises then it is logical to include this as part of the Register. The fact that the Protocol may require reporting from certain non IPPC facilities should not prevent this from happening. Whilst historical information regarding emissions is of interest to the public, and valuable for planning and policy development, live information is often more useful for protecting the environment and human health. Annual reports are generally not available for some months after the relevant year, with the result that some of the information relates to 15 months or more previous to it being posted on a PRTR website. The list of substances should be open to addition using a public participation based on the Canadian model in relation to modifying their National Pollutant Release Inventory.<sup>5</sup>

## **IPPC Licensed Facilities**

- **That universal environmental software is developed to enable the direct online feed of data to the EPA from the IPPC licensed facilities.**

Further that this software converts this data in real-time into user friendly information available through the ENvision environmental mapping system as well as on site at the IPPC facility. Here it should appear as a graph/bar diagram etc showing the value as a percentage of the limit value, together with a layman's explanation of the significance of the particular parameter being measured. The software system must also allow the member of the public to go beyond the graphics to access the raw data if they want to. The use of this software should be a condition of the licence.

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<sup>5</sup> <http://www.chem.unep.ch/prtr/nat00.html> [accessed 08/04/2008]

- **That the new ENVision interactive GIS environmental map facility on the EPA website be extended to show real-time environmental information in particular on IPPC licensed premises.** This valuable new tool has great potential for wide access use through public offices, libraries, schools etc.
- **That the EPA provides a basic training package for the staff of the IPPC licensed facilities regarding their public information requirements.**
- **That the licensee is required to periodically publish non-technical information regarding environmental performance of the facility in the local newspaper(s).**
- **That the public information programme is prioritised as an important condition of the Licence** as it provides the opportunity to enhance the activities of the OEE through community monitoring of a facility. In this regard Section 86 (6) of the EPA Act, 1992 (as amended) should apply equally to this aspect of the licence as to any other. "Section 86 (6) A person who fails to comply with any condition attached to a licence or revised licence shall be guilty of an offence."
- **That the EPA makes public the internal guidance document for inspectors in relation to assessment of the public information programmes in operation at licensed premises.**
- **That licensees should be required to engage with the communities that surround their facilities in a constructive way,** to share information and develop good practice. The development of a stick and carrot approach would be useful in this regard. The stick already exists for IPPC licensed operators, but a carrot in the form of an award for the best public information provider, perhaps as voted for by the host community, might be a more positive approach.
- **That where there is controversy regarding environmental monitoring** at a particular facility the EPA should be empowered through an amendment to the EPA Act to carry out the full range of the necessary environmental monitoring required under the licence, employing the appropriate contractors to perform the monitoring, and charging the Licence holder accordingly.

## **Seveso and Sub-Seveso Facilities**

- **That the government amends the EPA Act, 1992** to include a provision that all IPPC licensees that carry substantial stocks of flammable chemicals but where the quantities are below the threshold for section 17 of SI 74 of 2006 (Seveso Sites) are required to:

- provide a regularly updated inventory of same to the EPA and to the relevant local Fire Service
  - have a fire safety certificate
  - consult with the Fire Services, the EHO and the EPA in the creation of a periodically reviewed pre-fire plan, to include a public information programme
- **That the requirements contained in IPPC Licences for the preparation of Environmental Emergency Procedures should include consultation with the public, Fire Services and EHOs.** These procedures should include measures to inform the effected public as soon as is possible regarding the nature and gravity of the emergency, indicating the most appropriate actions for them to take to ensure their own safety. They should also include measures for reporting to the public and the relevant authorities after the emergency is over outlining the nature and scale of the event, the short and long term health/environmental consequences and the measures taken to ameliorate them and to prevent recurrences.
  - **That the EPA meet with the Fire Services to jointly address the general issues of safety and the environment relating to Sub Seveso Sites**
  - **That fire reports should be made available electronically by the fire services free of charge and in paper format for the cost of a photocopy.** This is environmental information and comes under S.I. No 133 of 2007.
  - **That the EPA ensures that the relevant Environmental Health Office is immediately informed in the case of a fire** at an IPPC licensed premises.

## State of the Environment Reports

- **That the EPA provides a variety of channels to access environmental information held by it.**
- **Public Participation. The contents of an SOE should depend upon the readers interests, in other words upon environmental priorities in our society.** It will also depend to a certain extent on available data, but should ideally be driven by national priorities. In this light, and in order to make sure that the report is broadly accepted as well as to ensure its quality, the public should be brought into the existing consultation process alongside the many bodies already consulted on an ad hoc basis, and the draft report should be made available for 6 weeks at the end for a final public review. The model

used by the US EPA would be a suitable template for this with public reporting of submissions and responses to same.<sup>6</sup>

- **Frequency of Reports. Whilst it is recognised that the four-yearly SOE report requires the commitment of major resources, the indicators developed for the Environment in Focus 2006 report should be used as the basis of an annual report with regular online updates in between of key data.** The UNEP/GRID-Arendal publication Cookbook for State of the Environment Reporting on the Internet provides a layman's guide to providing just such a facility.
- **Availability of Sources and Data.** The intelligence behind information presented in SOE reports can only be easily made available through interactive web based reporting, where the data that is used can be sourced easily, and references and sources for the data are presented. This is done by creating lists of links, sources and contact information. The information is then made available in layers with the front page presenting graphical format information in a style similar to that used in "Environment in Focus, 2006". A click on the visual graphic then presents the next layer and so on to references and sources.
- **A Clearinghouse Function.** The SOE should also provide links to all sectoral (e.g. Surface Water, Waste etc) SEA and EIA reports as deeper and regional/local resources. The Envision interactive mapping should be a part of the SOE online structure.

## Public participation

- **Capacity Building for SEA/EIA.** As far as Ireland is concerned, the lessons are clear. There is a steep learning curve ahead regarding the SEA process, and much work yet to be done on the EIA process. All SEA and EIA must involve the public from the scoping phase onwards. The development of the capacity of the relevant bodies to conduct an SEA and in particular the public participatory aspects will require a major effort on the part of the government.
- **SEA/EIA review body.** The establishment of an independent review body to examine the quality of SEAs/EIAs produced and to adjudicate on their compliance with national and international legislation would provide the necessary driver to bring about this capacity building.
- **That the EPA guidelines on conducting an EIA are amended** to include clear guidelines on public participation as outlined in Appendix on page 12 below.

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<sup>6</sup> USA Report on the Environment 2008  
<http://www.epa.gov/Envindicators/abouteei.htm> [Accessed 08/04/2008]

- **Prospective applicants should be encouraged in the relevant guidelines to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.** This relates to all projects likely to have an effect on the environment. Where an EIA is required then the public should be sought out prior to the scoping process and involved in this.
- **Revision of the notification procedures for all public notices.** Public notices should be placed in at least two newspapers circulating in the area of a proposed activity or development. They should be bilingual, i.e. in Irish and in English. Text should follow the NCBI guidelines. They should have the location of the proposal and the nature of the proposal in large bold print at the top of the advert, along with the name of the relevant permitting authority. Thought should be given to permitting authorities having a regular listing of applications at a regular time on local radio. Whilst the website listing is very useful, the majority of the population do not either have access or make regular checks of postings.
- **Introduction of a lead time of 2 weeks and an increase of the period set aside for participation** to take into account the time periods allowed under SI No 133 of 2007 for the public to access information they might need to participate effectively. The minimum period for participation should be 6 weeks following a lead in of 2 weeks of notification of the commencement of the process. The 6 week period should be seen as a minimum and be increased where the decision to be made is technically complex. The lead in time is intended to allow the public to digest the information provided in the notification
- **“Steps must be taken to ensure that less resourced groups are in a position to respond** to the consultation and that consultation methods take account of the fact that some parties may not have access to internet facilities. Care should also be taken to ensure that the views of vulnerable groups such as the elderly and disabled and those with literacy problems are reflected in the consultation process. This may necessitate the use of particular consultation methods such as public meetings, focus groups etc”.<sup>7</sup> This statement from the RIA guidelines should be applied to all public participation processes.
- **Establishment of Public Participation Schedule.** A public participation schedule or unit should be created and funded by each public body as part of their basic function. The main function of the unit will be to ensure proactive and effective public participation through capacity building for both the public and staff of the body. When established, such units should be monitored by the Department of the Environment.

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<sup>7</sup> RIA GUIDELINES - How to conduct a Regulatory Impact Analysis. 2005. [www.betterregulation.ie](http://www.betterregulation.ie)

- **Citizen participation in setting and monitoring environmental standards:** The positive effects of community environmental policing are described by O'Rourke and Macey<sup>8</sup> The model described by Andrews<sup>9</sup> could be developed to be used in a variety of situations including the oversight of County and Local Area Plans. To some extent this process is used by the EPA where there are contentious decisions to licence certain facilities, and a community/licensee committee is set up to enable structured communication between the operator and the host community. The role of such bodies as Coastwatch and the Irish Wildlife Trust are good examples of bodies that have developed monitoring structures based on voluntary actions, relating to our coastline in the former and SACs (Special Areas of Conservation) in the latter. Government should reach out and embrace these and the many other groups local and national that are carrying out monitoring. Funding should be provided to enable training for volunteers, and officials in the relevant public authorities should be trained in working with such groups.
- **In environmental decision-making all public authorities should give reasoned decisions that are widely disseminated.** The reasoning should be made available to the public together with a statement summarizing how the environmental, including health, considerations have been integrated into it, how the comments received have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered.

## Planning and Development

- **Regarding Planning and Development (Strategic Infrastructure) Act, 2006**
- The Act should be amended to enable the public to engage in the consultations regarding scoping the content of a planning application and any EIA that is required.
- **Examination of the far reaching changes contained in the Prisons Act 2007** and the implications they have for Public Participation under Directive 2003/35/EC, the SEA Directive (2001/42/EC) and the Aarhus Convention 1998.
- **A Protocol should be established for administrative chains of command monitored by the Department of the Environment, between the sub-national authorities such as the Local Authorities, An Bord Pleanála, and the EPA.**
- **The introduction of a system of administrative appeals boards based on the Dutch system,** where applicants pay a fee of €65 which is refundable

<sup>8</sup> O'Rourke d, Macey G.P. (2003) *Community Environmental policing: assessing new strategies of public participation in Environmental Regulation*. Journal of Policy Analysis and Management. 22 (3): 383-414.

<sup>9</sup> Andrews, Angela. *SOUTH AFRICA: CASE STUDY ON CITIZEN PARTICIPATION IN SETTING AND MONITORING ENVIRONMENTAL STANDARDS*. [www.inece.org/5thvol2/andrews.pdf](http://www.inece.org/5thvol2/andrews.pdf) [Accessed 28/03/2008] Legal Resources Centre, 54 Shortmarket Street, Cape Town 8000, South Africa

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if their appeal is successful. The decisions of the boards would be subject to further review in the courts.

- The EPA Guidelines on the EIA Process need to be amended to clearly define the changes required under the Aarhus Convention. See below.

### **Access to Justice**

Whilst there is a whole range of access to justice issues, the following is specific to the EPA.

#### **Regarding IPPC and Waste Licensing**

- The final decisions made by the EPA should be open to administrative review by a separate independent body, with the final option of a judicial review.

## Appendix - A Guide to the Amended EIA Process

"EIA can be defined as: the process of identifying, protecting evaluating and mitigating the biophysical, social and other relevant effects of development proposals, prior to major decisions being taken and commitments made"<sup>10</sup>

The World Bank expands this definition and describes EIA as a procedure that; "evaluates a projects potential environmental risks and impacts in its area of influence; examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation, by preventing, minimizing, mitigating or compensating for adverse environmental impacts and enhancing positive impacts"<sup>11</sup> The main aim of the process is to stimulate thinking, and encourage action, and not just the ticking off of boxes just to get another report<sup>12</sup>

The Institute of Environmental Assessment<sup>13</sup> identifies two sets of principles, 'basic' and 'operative'. The basic set applies to all stages of EIA as well as to Strategic Environment Assessment (SEA) of policies, plans and programmes. One of these states that the EIA process should be participative; providing appropriate opportunities to inform and involve the interested and affected public, and, that their inputs and concerns should be explicitly addressed in the documentation and decision-making"

In a review of 25 years of National Environmental Policy Act (NEPA) the Council on Environmental Quality (CEQ)<sup>14</sup> stated "the success of a NEPA process heavily depends on whether an agency has systematically reached out to those who will be most affected by a proposal, gathered information and ideas from them, and responded to the input by modifying the proposal or adding alternatives, through the entire course of the planning process".

The Irish EPA has comprehensive guidelines<sup>15</sup> on the content and preparation necessary for producing an Environmental Impact Statement

### The EIA Cycle and Public Involvement

The EIA process should be applied as early as possible in decision making for a project, providing for the involvement and input of communities and industries affected, as well as the interested public<sup>16</sup>

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<sup>10</sup> Saddler, B. et al. (1999) *Principles of Environmental Impact Assessment Best Practice*. Institute of Environmental Assessment U.K. [www.greenchannel.com/iea/](http://www.greenchannel.com/iea/)

<sup>11</sup> Klees, R. (2002) *Environmental Impact Assessment Systems in Europe and Central Asia Countries*. World Bank. [www.worldbank.org/eca/environment](http://www.worldbank.org/eca/environment)

<sup>12</sup> Verheem, R. (2002) *Recommendations for sustainability assessment in The Netherlands*. Netherlands Commission for EIA.

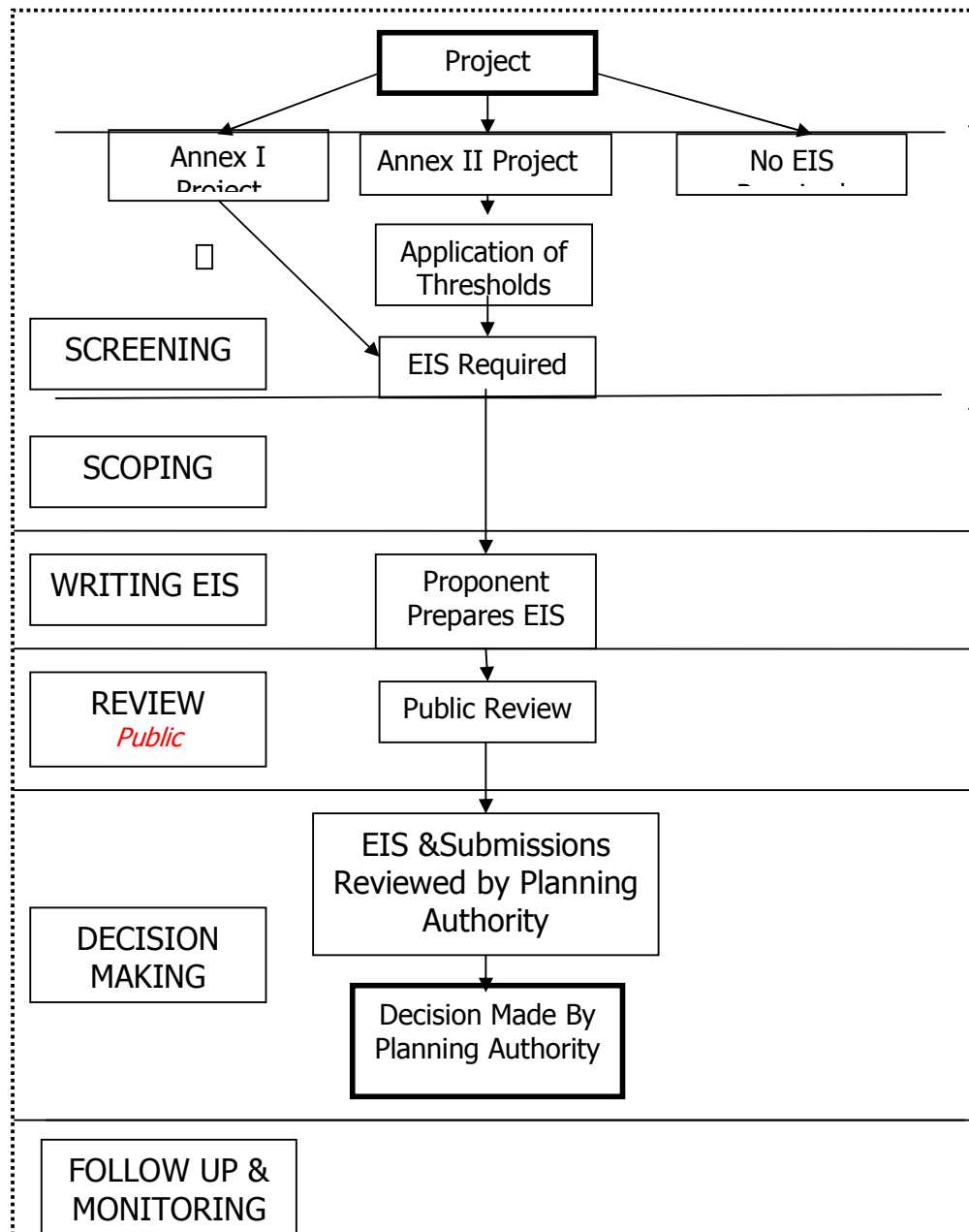
<sup>13</sup> Saddler, B. et al. (1999) *Principles of Environmental Impact Assessment Best Practice*. Institute of Environmental Assessment U.K. [www.greenchannel.com/iea/](http://www.greenchannel.com/iea/)

<sup>14</sup> C.E.Q. (1997) *The National Environmental Policy Act. – A Study of its Effectiveness After Twenty-Five Years*. Council on Environmental Quality, <http://ceq.eh.doe.gov>.

<sup>15</sup> <http://www.epa.ie/downloads/advice/ea/guidelines/> [Accessed 02/10/2009]

The EIA cycle, shown below, as part of the planning system and on the next page as part of the project cycle should provide for the following stages<sup>17</sup>, as outlined by the EPA in its "Guidelines on information to be contained in Environmental Impact Statements"<sup>18</sup>, as well as guidance for Consent Authorities regarding Sub-Threshold development.

**The following diagrams illustrate the amendments to Directive 85/337/EEC and where public participation should take place.**



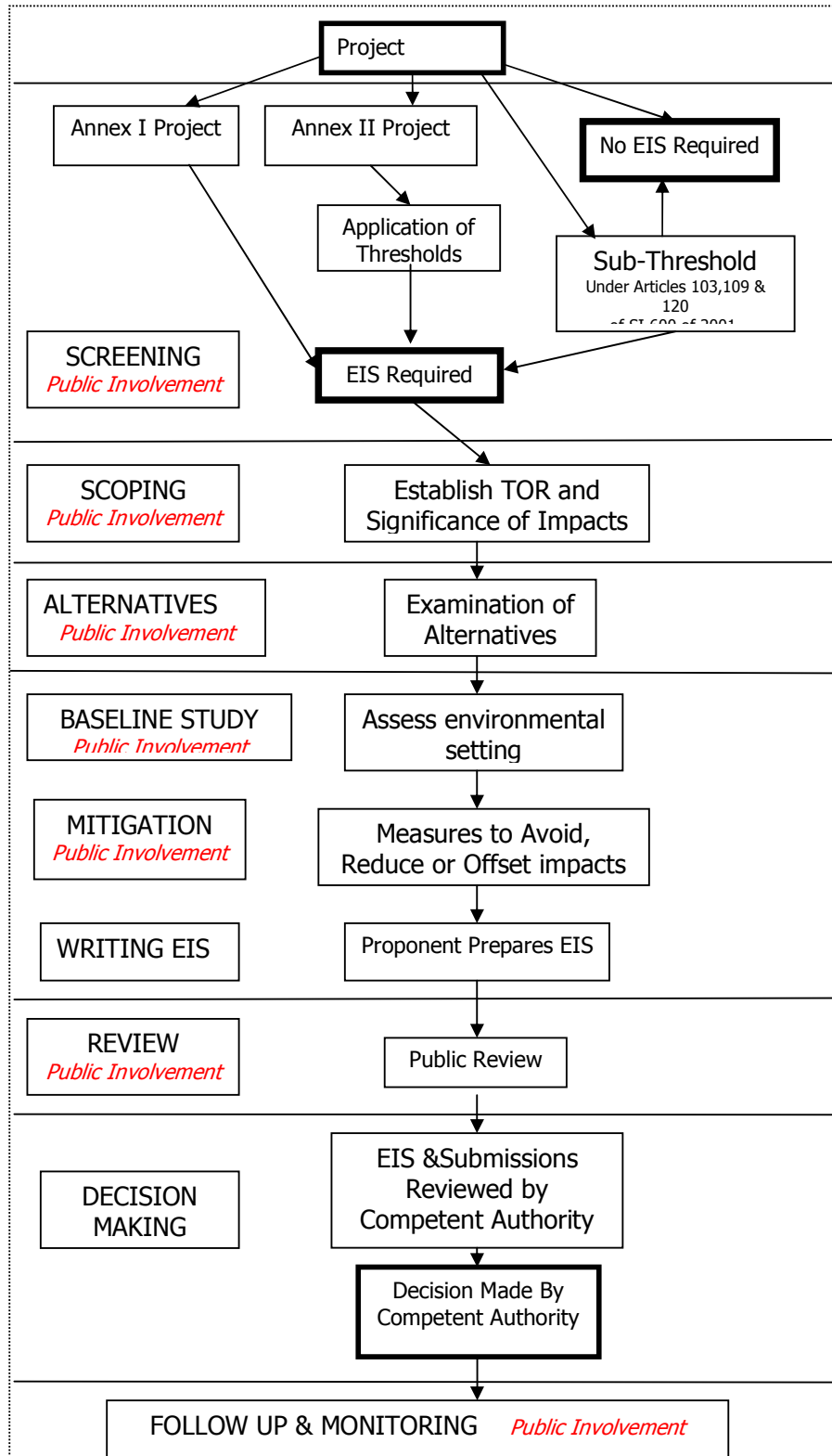
<sup>16</sup> Saddler, B. et al. (1999) *Principles of Environmental Impact Assessment Best Practice*. Institute of Environmental Assessment U.K. [www.greenchannel.com/iea/](http://www.greenchannel.com/iea/)

<sup>17</sup> European Commission (2000). Public Participation and Consultation. *Environmental Integration Manual: Good Practice in EIA/SEA*. Gibb Ltd., p.239 ([www.gibbltd.com](http://www.gibbltd.com))

<sup>18</sup> <http://www.epa.ie/downloads/advice/ea/guidelines/> [Accessed 22/08/2009]



**Diagram. Showing the EIA process, following Directive 85/337/EEC**



**Diagram. The EIA Process, Incorporating Directives 97/11/EC and 2003/35/EC**

## The EIA Cycle and Public Involvement

The EIA process should be applied as early as possible in decision making for a project, providing for the involvement and input of communities and industries affected, as well as the interested public<sup>19</sup>

The EIA cycle, shown above, as part of the planning system and on the next page as part of the project cycle should provide for the following stages<sup>20</sup>:

### Screening

Screening determines whether or not a proposal should be subject to EIA, and if so, at what level of detail. Consultation with potentially effected parties here will improve understanding of the nature and significance of potential impacts using 'local' knowledge, together with that of 'experts'.

The objectives here should be: to obtain a complete understanding of how the issue is viewed by all the relevant stakeholders; and to identify the future levels of interest in public participation activities on this issue. Techniques that could be used here are available in a participation tools list<sup>21</sup>. Eccleston, C.H.<sup>22</sup> has a checklist of tasks to consider as part of the pre-scoping phase. Added to this should be the preparation of a public participation plan, which includes a publicly available record of the process. The use of exploratory thinking techniques such as brainstorming and snow-storming at this phase helps stimulate the creativity need to seek alternatives.

### Scoping

This is a very early exercise in an EIA in which an attempt is made to identify the attributes of the components of the environment for which there is likely to be significant impacts based on public (and professional) concerns and upon which the EIA should be focused<sup>23</sup>. Good scoping is the key to a successful EIA process. Public involvement here ensures that all the significant issues are identified, local knowledge about the area is incorporated, and alternatives are identified and considered.

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<sup>19</sup> Saddler, B. et al. (1999) *Principles of Environmental Impact Assessment Best Practice*. Institute of Environmental Assessment U.K. [www.greenchannel.com/iea/](http://www.greenchannel.com/iea/)

<sup>20</sup> European Commission (2000). Public Participation and Consultation. *Environmental Integration Manual: Good Practice in EIA/SEA*. Gibb Ltd., p.239 ([www.gibbltd.com](http://www.gibbltd.com))

<sup>21</sup> Ewing, M.K. (2003). *Public Participation In Environmental Decision- Making*. [www.qdrc.org/decision/participation-edm.html](http://www.qdrc.org/decision/participation-edm.html) pp.34-60

<sup>22</sup> Eccleston, C.H. (2000) *Environmental Impact Statements*. John Wiley and Sons. p.65

<sup>23</sup> Singleton, R., Castle, P. and Short, D. (1999) *Environmental Assessment*. Thomas Telford.p.103

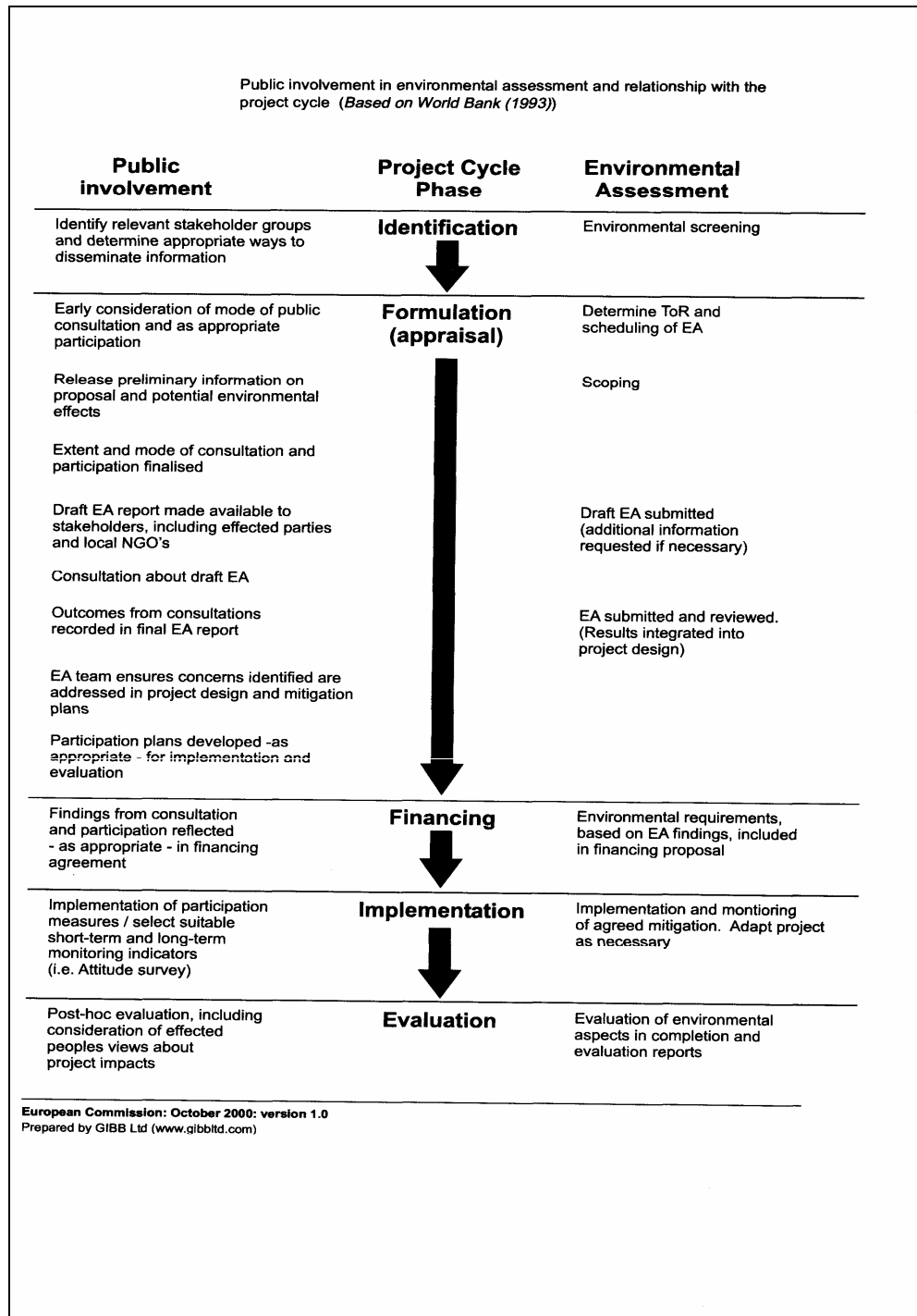


Figure. Public Participation in the EIA process shown as part of the project cycle. (European Commission, 2000).

The principal objectives of public scoping are<sup>24</sup>:

- Identify public concerns and the expertise needed to investigate same.

<sup>24</sup> Eccleston, C.H. (2000) *Environmental Impact Statements*. John Wiley and Sons.p.72.

- Identify alternatives to be examined
- Identify significant issues that need to be analysed, eliminating the unimportant.
- Identify problems and potential solution early in the process.
- Identify problems with the participation process and address same.
- Ensure that both the positive and negative aspects of the proposal are identified and studied.
- Identify potential mitigation measures.

A scoping information package should be put together to promote public involvement and to inform the scoping delegates. It should include:

- An invitation to participate showing how, when and where.
- A brief description of the working of the EIS process and the opportunities for participation.
- A description of the proposal, such that the objectives of the proponent are clearly laid out with maps, diagrams, figures etc.
- A description of the known potential impacts. A public notice should then be issued using any of the methods deemed necessary from Level 1.<sup>25</sup>

Public meetings, whilst commonly used are not the best method, unless they are based on small group sessions and workshops. Public opinion surveys, citizen advisory committees or any other methods listed in Level 2. Simple methods may suffice for describing, synthesizing and communicating information on the pre-project environment and the potential impacts e.g. using checklists, matrices and networks. Eccleston, C.H. (2000. p.75) and the Australian EIA Network, (1996)<sup>26</sup> both give a check lists for planning a public scoping meeting, and warn that "outside entities that participate in scoping generally do so because they are opposed to the proposal; the remaining participants who support the proposal often do so because they stand to gain from it. Not surprisingly numerous public scoping efforts have dissolved into sessions of frustration, dissension or outright confrontation. So it is essential to plan well and use professional facilitators or neutral moderators where debates are likely to be heated.

Alongside the general public scoping, it can be of value to conduct focus group/workshop meetings with stakeholders having special interests or expertise, in order to examine more detailed or complex issues. The results of these meetings should be made public, and so become part of the general 'responsible authority' scoping session. This can consider issues including technical ones, using in-house expertise, and in greater depth than might

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<sup>25</sup> Ewing, M.K. (2003). *Public Participation In Environmental Decision- Making*. [www.gdrc.org/decision/participation-edm.html](http://www.gdrc.org/decision/participation-edm.html) pp41-52

<sup>26</sup> Australian EIA Network. (1996) *International Study of the Effectiveness of Environmental Assessment*. EPA, Canberra, Australia [www.ea.gov.au/assessments/eianet](http://www.ea.gov.au/assessments/eianet)

otherwise be possible in a public setting. scoping process. Eccleston, C.H.<sup>27</sup> gives a methodology for handling the potentially voluminous, or complex scoping input, followed by an internal 'responsible authority' scoping session. This can consider issues including technical ones, using in-house expertise, and in greater depth than might otherwise be possible in a public setting.

The body conducting the EIA process, together with stakeholder representatives should then produce a post scoping document, summarising the scoping process, its findings and the reasons for decisions taken in reaching the scope for the resultant EIS Implementation Plans.

### **Impact Assessment/Mitigation**

"Public involvement here can serve to ensure that the analysis and mitigation, necessary to avoid, minimize or offset predicted adverse impacts is relevant to local concerns, and accurately reflects local value and preferences".<sup>28</sup>

Both impact mitigation, and the evaluation of significance are complex and time consuming processes, which cannot be dealt with by large groups. It is necessary, therefore, to use stakeholder representatives to work with the experts, reviewing the finding of the experts in workshop sessions or other facilitated small groups.

Regular reporting of progress in the process, to the wider publics will maintain their 'ownership' and sense of involvement.

### **The Evaluation of Significance**

This is a difficult issue to resolve even between specialists. It is, however, essential that the public be involved and their perspective included, as the interpretation of significance occupies a fluid boundary between science and politics<sup>29</sup>

The Canadian EA system of impact assessment is based solely on scientific, credible technical and other relevant information<sup>30</sup>. The resulting determination of significance must be 'objective' and reasonable so as to withstand court challenge. By comparison in the US system, under NEPA, public opinion and the controversiality of the proposal help to identify and determine significance. Ultimately, however, the relevant authority will decide, taking all inputs on board.

Evaluation of significance is subjective, contingent on values and dependent on the environmental and community context The intrusion of wider public

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<sup>27</sup> Eccleston, C.H. (2000) *Environmental Impact Statements*. John Wiley and Sons.

<sup>28</sup> European Commission (2000). *Public Participation and Consultation. Environmental Integration Manual: Good Practice in EIA/SEA*. Gibb Ltd., 239 ([www.gibbltd.com](http://www.gibbltd.com))

<sup>29</sup> Australian EIA Network. (1996) *International Study of the Effectiveness of Environmental Assessment*. EPA, Canberra, Australia [www.ea.gov.au/assessments/eianet](http://www.ea.gov.au/assessments/eianet)

<sup>30</sup> C.E.A.A. (2001) *Environmental Assessments*. [www.ceaa.acee.ga.ca](http://www.ceaa.acee.ga.ca)

concerns and social values, into the significances evaluated by scientists is inevitable, as discussed elsewhere. The challenging nature of this part of the process is, therefore, one in which the use of facilitated small groups would be essential for the more contentious issues. More information, on the technical aspects of the evaluation of impacts. is given by Lein, K.L. (2003)<sup>31</sup>.

### **Preparation of EIS**

It is essential to document clearly and impartially the impacts of the proposal, as well as those of the identified alternatives, the proposed mitigation methods, the significant effects and the concerns expressed by the public and communities affected by the proposal, as well as how those concerns were addressed.

The draft EIS, following internal review by the relevant body, should be made available for public review, and should include a non-technical summary.

### **Review of the EIS**

The review of the EIS should determine whether the report; meets its terms of reference, provides a satisfactory assessment of the proposal(s); and contains the information required for decision making. Involvement of the public can ensure the quality and comprehensiveness of the assessment and help to reduce any bias in the analysis.

Before the public review, the EIS should be complete in every aspect, except this final opportunity for public feedback. Any major changes resulting from this public review would probably trigger a second public review, though good public participation early on should make this unlikely.

Proposals for electronic transmission of the document along with public access through libraries, site offices, public displays, information repositories, and presentations, should give wide availability. Methods of feedback should be widely publicised. One method could be an interactive web-site page for this purpose.

All those who made major contributions to the process should receive a copy (finance permitting) or have access to a copy, along with the statutory bodies and the proponent.

The draft should be available and publicised at least 15 days before any stakeholder meetings to discuss it.

The final EIS should then include the changes based on the relevant feedback in the draft, together with the responsible body's reasons for not including any other issues raised.

Eccleston, C.H. (2000) gives useful guidelines on dealing with this stage of the process.

### **Decision Making**

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<sup>31</sup> Lein, K.L. (2003) *Integrated Environmental Planning*. Blackwell.

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It is generally the role of the planning/licensing authority to approve or reject the proposal and, if it is approved, to establish the terms and conditions of its implementation, taking into account the EIS, and its public input.

**Follow-up, Implementation and Monitoring**

The participation of local representatives and NGO's in monitoring the operational impacts of a project can lead to the early identification of problems, and can foster a sense of public partnership. The setting up of a community/stakeholder panel to review the operation of the project, in the light of the EIS and the planning permission as well as any IPPC licence, is one way of doing this.

**Continual assessment of the EIA process**

Continuous assessment of the process itself can ensure the implementation of the public participation plan, provide public transparency and strengthen the effectiveness of future EIAs.