



# Tiering in the 2013 Portuguese EIA legislation

## The two phased EIA process

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# Three particular features of EIA in Portugal

- The participation of the competent authority;
- The two-phased EIA process;
- The focus on assessment of alternatives

# EIA Legislation in Portugal

|  |  |
|--|--|
| <b>1981 – 1990</b><br>No legislation           | Good practice, influenced by USA/Canada & training at CEMP (Scotland)  |
| <b>1990 – 2000</b><br>DL 186/90                | Transposition of EIA European Directive Practice (alternatives, public participation, content of the EIA report, etc.) largely exceeded the legal requirements |
| <b>2000 – 2013</b><br>DL 69/2000 + DL 197/2005 | Legal requirements for scoping (not mandatory), screening, a two-phased EIA process, assessment of alternatives and monitoring                                 |
| <b>2013 – ...</b><br>DL 151-B/2013             | Strengthening of: involvement of competent authority, two-phased process, assessment of alternatives   |

# Role of competent/licensing authority

- Decision-maker in the screening of Annex II projects below thresholds (in 2005) – initial studies
- Participant in the Assessment Committee appointed for each EIA process (in 2013) – quality control

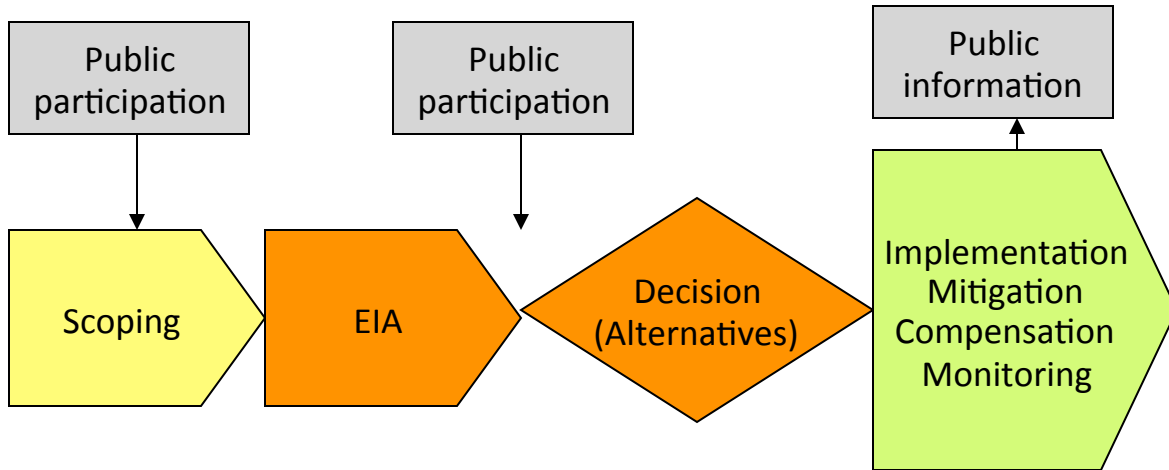
Rationale: if we have to live with it, than better make it work more efficiently.

# Tiering in EIA - Projects have phases

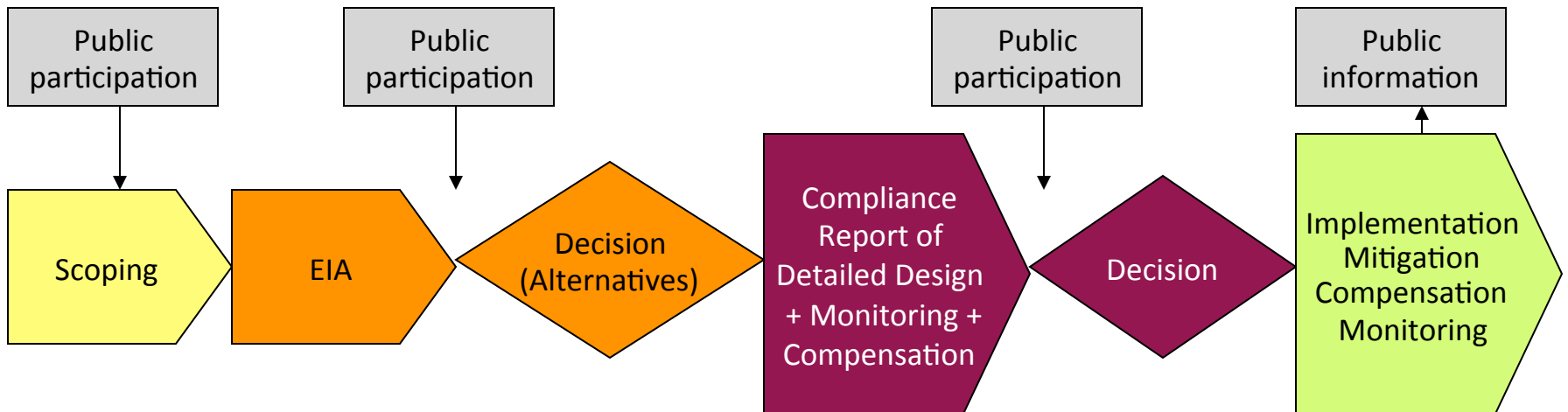
- **Planning design** - in general with alternatives, and flexible (allowing changes), but lacking detail important for the assessment and mitigation of some impacts (e.g. noise from the traffic of an highway could be different if the level of the road changes 2 or 3 meters)
- **Detailed design** - not flexible (any change could have huge costs and face major resistance!), but impacts could be predicted and mitigated more accurately

# EIA process – two options

## One phase process: Projects at the detailed design phase



## Two-phase process: Projects at the planning design phase + detailed design phase



# Why?

**Influence of 1990-2000 practice** (first legislation on EIA, which did not address the issue of the project phase):

- The importance of submitting alternatives for decision by the EIA Authority/Minister for the Environment
- The weight of the public consultation on that decision on alternatives

Although not prescribed in the regulations, at the detailed design phase the proponent had to submit a Report on Mitigation to the EIA Authority

# Alternatives assessment

The developer decides, since 2000, whether:

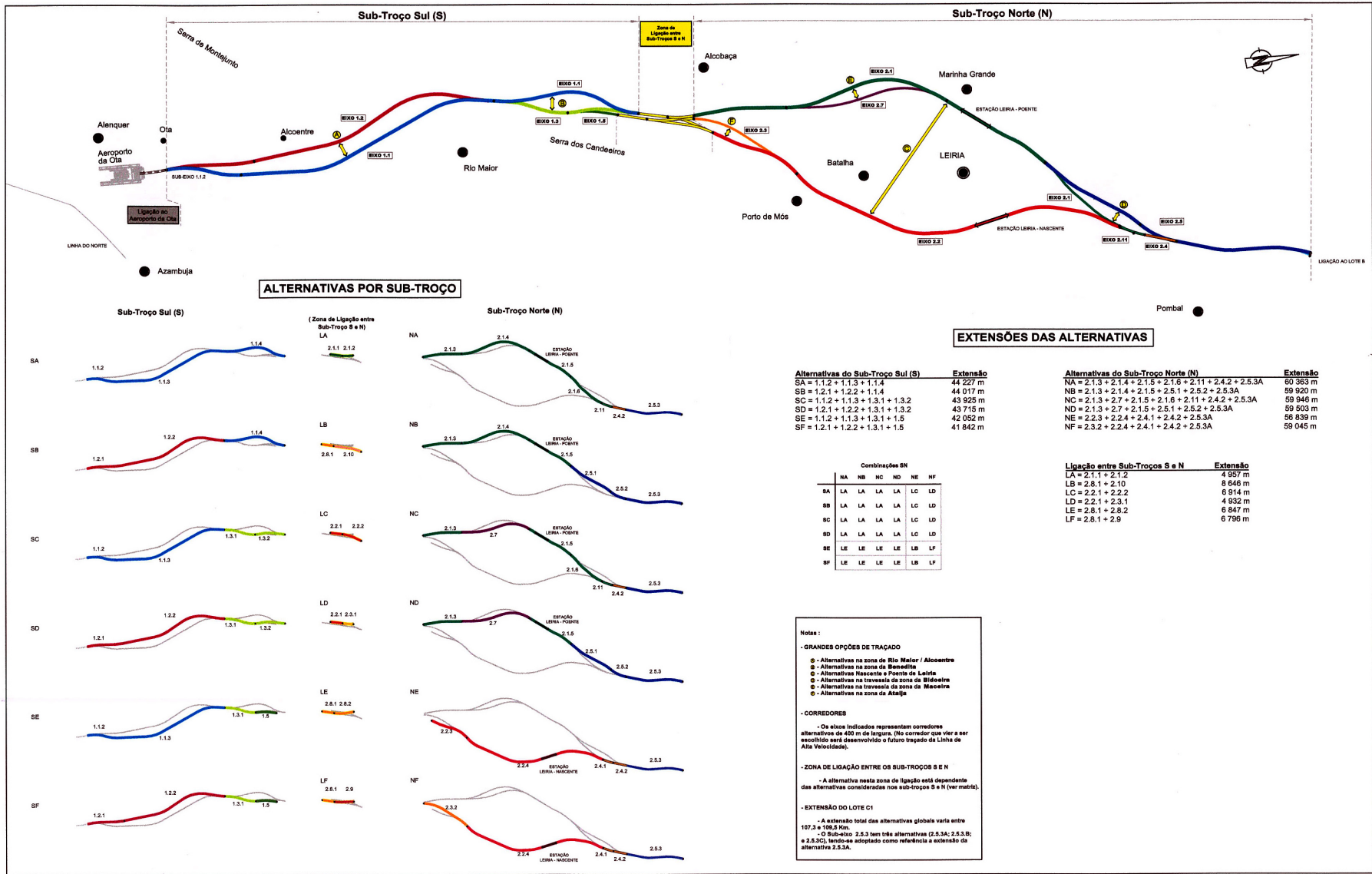
- he prepares a **planning study** to assess alternatives and submits it to EIA (together with the EIS), and
- after the Environmental Impact Declaration (EID) - submits a **Report on the Environmental Compliance of the Detailed Design (RECAPE)**

or

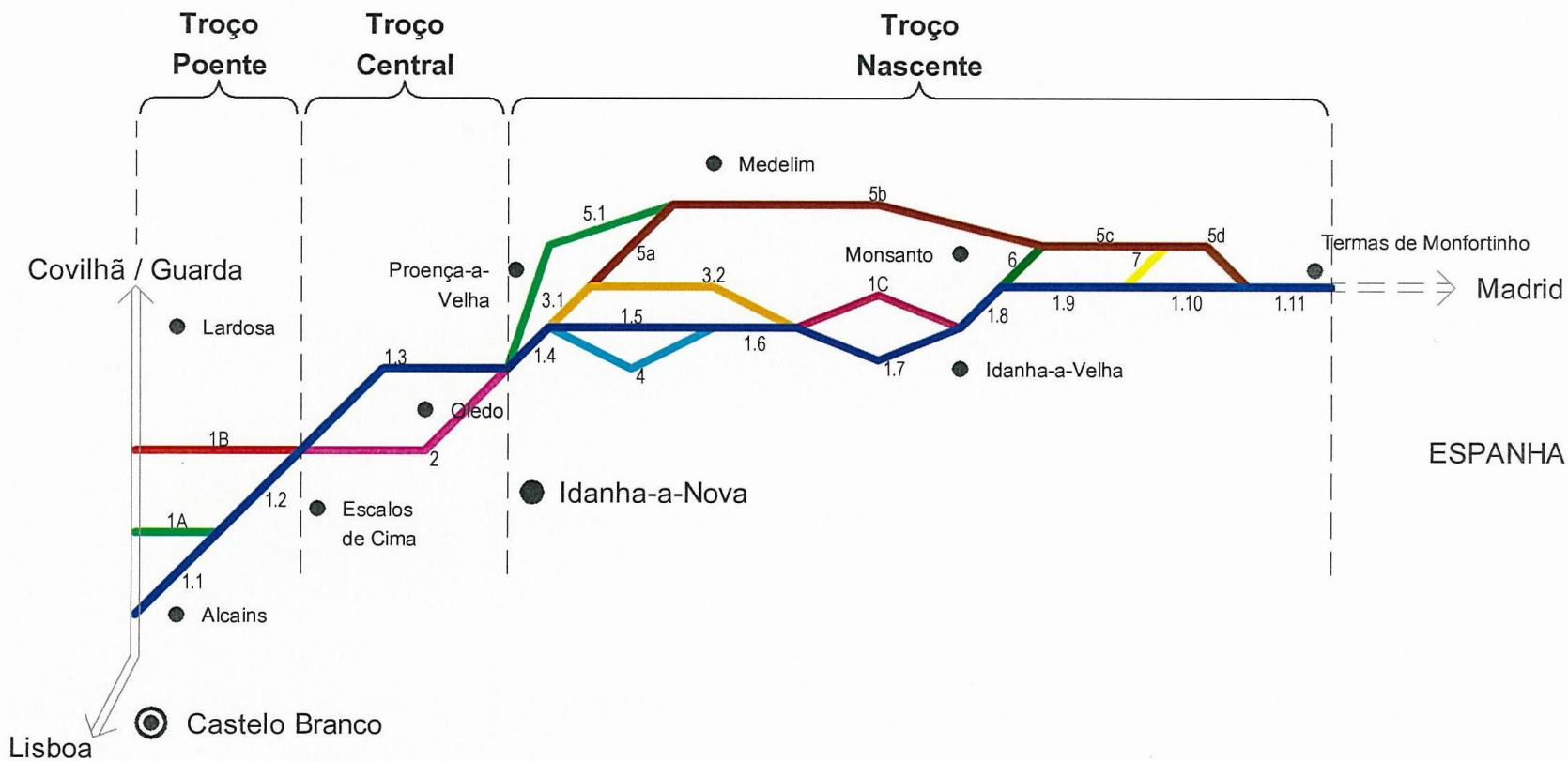
- he prepares the **detailed design** and submits it (together with the EIS) to EIA.



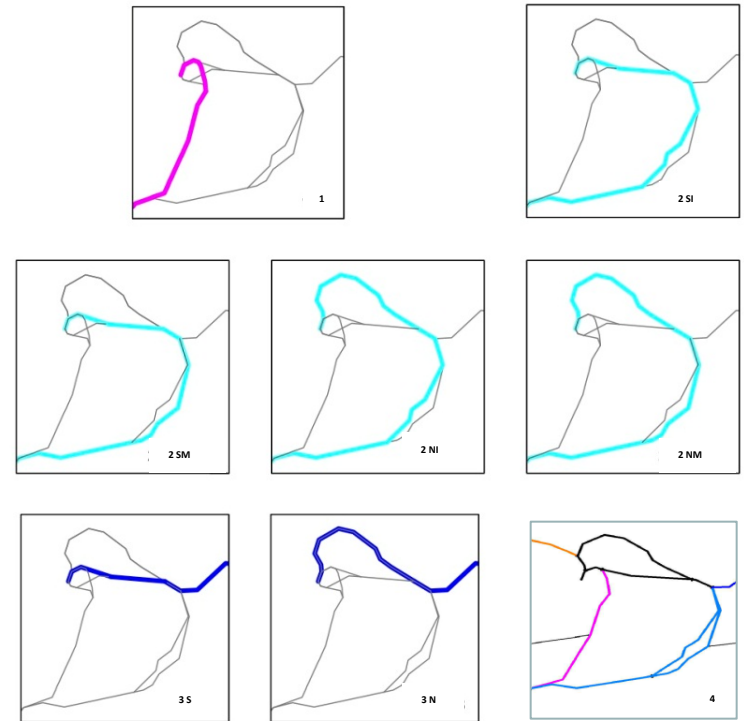
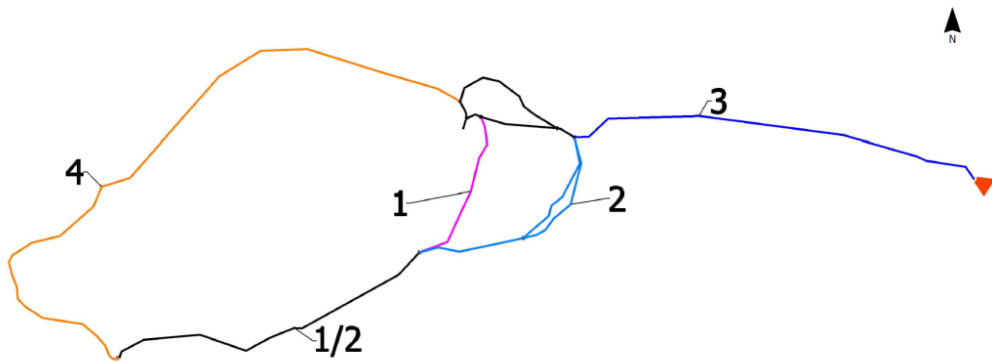
# High-speed railway Lisbon-Porto, stretch Ota/Pombal, 100km



# IC 31 Highway – Castelo Branco / Monfortinho, 40km



# Power line transmission of Foz Tua Hydroelectric Project, 40km



# RECAPE - The compliance report

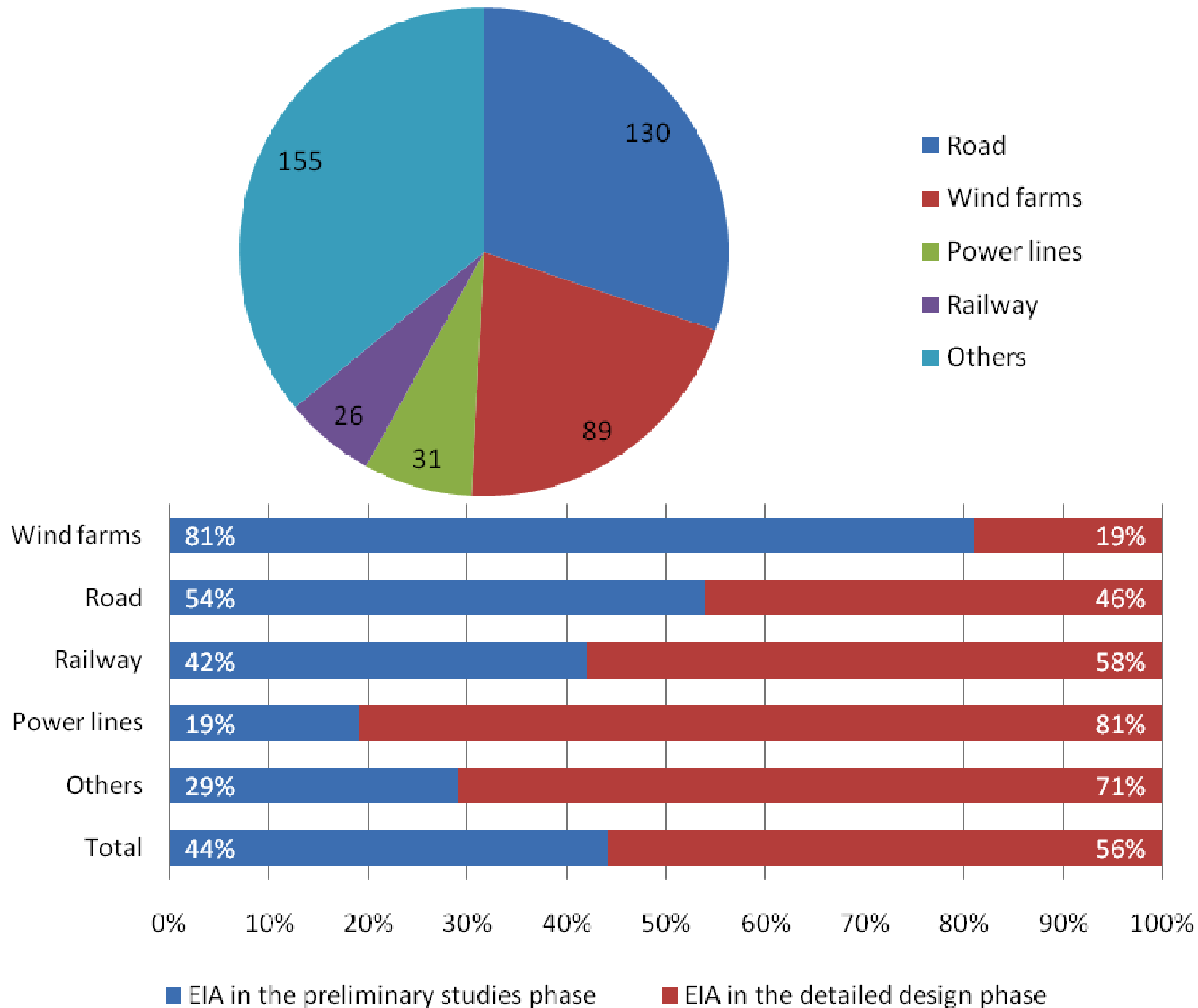
## The Report on the Environmental Compliance of the Detailed Project (*RECAPE*):

- Describes the relevant parts of the detailed design to show how it complies with the alternative approved, and with other restrictions imposed by the EID
- Presents the studies set in the EID and how the findings were taken into account by the detailed design
- Verifies the absence of unpredicted impacts due to changes in the environment or in the project
- Presents the details for mitigation measures, including offsite compensation
- Details the monitoring programmes

# Added-value of a two-phased EIA

| Criteria                               | EIA at the Planning design phase followed by a Compliance Report                               | EIA at the Detailed design phase  |
|--|--|---|
| Time                                   | Needs to wait a minimum of 6 months to obtain the EID and another 3 to get the RECAPE approved | Risk of delays due to a non-approval, namely in some types of project                               |
| Costs                                  | Slight increase in the costs of environmental studies  | Risk of a great increase due to major changes of the detailed design or the need for an alternative |
| Risk of public conflicts               | Reduced (gives a role to the public on the decision about alternatives)                        | High in some types of projects  |
| Perception by authorities/review panel | More confident because they have a second opportunity to detail some issues                    | The decision is made under more pressure and could be "Go" or "No Go"                               |
| Flexibility                            | Allows a phased approval of the detailed projects  | Not flexible  |

# Some figures 2000-2006



# Conclusions

Proponents tends to favour the approach of **EIA at the planning design phase + Compliance Report** in two situations:

- Projects with risks of difficulties with the EIA Assessment Committee or with potential to raise public conflicts or controversy
- Projects of a big size, that can be split in several detailed design, but with the benefit of a single EIA process and a single EID

The larger investment of EIA is on assessment of alternatives

Competent / licensing authority – increased co-responsible role