Strategische Umweltprüfung

The SEA Directive\(^1\) and its context

Lieselotte Feldmann und Marc Vanderhaegen

Introduction

This article focuses on the last phase of negotiations of the SEA Directive in the context of the conciliation procedure between the European Parliament and the Council. It will discuss main aspects in which the final Directive differs from the Common Position and the original Commission Proposal. The first phases which started already a decade ago were already dealt with in previous articles of the UVP-report. The steps enshrined in the SEA Directive are not new to the ‘EIA/SEA world’ and based to a big extent on the existing EIA experience and related legal requirements. However, also other existing instruments served as a reference for developing the SEA Directive, such as the Structural Funds regime, the Trans-European Networks or the Habitats Directive. SEA as an instrument has a broad horizontal coverage and interlinks with many other approaches implying some sort of environmental assessment. This is why the SEA Directive contains specific provisions on interactions with other Community instruments dealing with environmental assessments. The lawmaker has ensured that the application of the SEA Directive does not lead to a duplication of assessments in case other requirements for an assessment for the same plan or for related plans already exist. Steps already carried out and issues already addressed can be made use of and supplemented by missing elements so that SEA and other approaches co-exist in a complementary way. Since the entry into force of the Amsterdam Treaty, increasing focus is put on the principle of integrating environmental considerations into all Community policies and on the objective of sustainable development. How does the SEA Directive relate to other Community initiatives, like the 6th Environmental Action Programme, the EU Sustainable Development Strategy, Integration of the environment into other sectors and recent UN/ECE\(^2\) developments, which address mainly the issue of policymaking? Some experience with policy assessment already exists in some Member States and at international level, including in the European Commission and the Council. Concrete or measurable results, however, are still few. Flexible practical methods and mechanisms need to be developed or improved to make policy assessment an automatic, integrated and easy applicable part of decision-making. SEA as a process and a method is acknowledged as being one successful way of reaching this goal.

From the Common Position to the Final Directive

The Common Position adopted in March 2000, was followed by the 2nd Readings of the European Parliament (EP) and of the Council, then by the conciliation between these two institutions. After the confirmation of the conciliation outcome in the 3rd Reading of EP and the Council the SEA Directive was finally adopted\(^3\). It is to be noted here that the EC Amsterdam Treaty entered into force during negotiations of the SEA Directive. This has had important implication for the negotiation process as it changed the balance between the institutions by moving the negotiations from the co-operation procedure to the co-decision procedure and, in particular, gave more influence to EP. It is therefore interesting to compare the influence of EP in the context of the co-operation procedure\(^4\) in comparison to the co-decision procedure that followed after the Common Position was reached. Under the co-operation procedure, the EP could be overruled by the Council and therefore only a small percentage of EP’s proposed amendments entered the text of a Directive. This situation has changed under co-decision where EP became a real co-legislator next to the Council. Although numerous conciliation procedures have already been carried out in the area of environmental legislation the new balance of power between the institutions still needs further consolidation. It is a learning process for all players involved. For many years now the debate is ongoing to give EP more influence, more legitimacy and more legislative power. The Amsterdam Treaty is a further step into this direction. More legislative power, however, should go hand in hand with the capacity and expertise of a legislator or co-legislator. Due to the political nature of EP it is unavoidable that certain difficulties are encountered when amending a piece of legislation that is rather advanced, like the SEA Directive at the stage of the 2nd Reading. At that stage, the SEA Directive had already gone through three years of discussions with EP, the Economic and Social Committee, the Committee of the Regions and negotiations with the Member States. In addition the deadlines required by the EC Treaty for the different procedural stages are quite tight which demands quick and efficient input, collaboration and exchange with the other institutions. It is there, where the Commission plays a key role in bridging gaps and mediating between the two legislators, the Council and EP. It is the Commission who first presented and then accompanied the SEA Directive from the very beginning through all stages and thus had at its disposal the expertise, details of previous stages and the overview of the process. It is also the Commission

Zusammenfassung


Abstract

There it is, the SEA Directive! After 4 1/2 years of intensive negotiations between Member States, the Council and the European Parliament the SEA Directive on environmental assessment of plans and programmes is finally adopted. A big step forward for the environmental policy of the European Union. This Directive will become an important instrument for applying the precautionary principle in a systematic way when integrating the environment in sectoral planning. The SEA Directive has improved in a number of areas since the adoption of the common position in March 2000 and is influencing future policy-making in the EU and the international level.
Strategische Umweltprüfung

... who contains the institutional memory of the file, not being interrupted for instance by rotating presidencies as in the case of the Council or by elections which lead in the case of SEA to the fact that a different EP voted respectively in the 1st and 2nd Readings.

Once it became clear that the Council would not accept all of EP's proposed amendments of 2nd Reading contacts and preparations for the conciliation phase started although formally the deadline for the finalisation of the 2nd Reading of the Council was still ongoing. It was especially in the phase of informal and later on formal conciliation were the new more powerful influence of EP became apparent. Some proposals like the introduction of monitoring or stricter quality control provisions would not have been included in the SEA Directive without the pressure exercised by EP due to its more powerful role.

Conciliation is a complex and resource-intensive process. About 30 formal and informal meetings on Council, EP and Commission side and in-between these initial talks took place between September 2000 and March 2001 with a view to achieving a satisfactory agreeable result as outcome of conciliation. In order to achieve a successful result close, good and constant collaboration between the three institutions was indispensable.

It is also interesting to examine the changed role of the Commission in this context. In comparison to the co-operation procedure, the Commission has in the co-decision procedure lost some formal power. Under the co-operation procedure, the Commission produced after the 2nd Reading in EP a re-examined Proposal which incorporated the amendments accepted by the Commission of EP. To take the amended EIA Directive as example, the Council followed the line proposed of the Commission to a big extent and did not go back to amendments from EP that were not taken on board by the Commission. The EP, even if it did not agree with this, had no means to impose its point of view. It could be overruled by the Council in the end. This shows that the re-examined proposal of the Commission had a major influence as to which amendments of EP got incorporated into the Directive. Under the co-decision procedure the Commission gave an opinion on the outcome of EP's 2nd Reading which was submitted to the Council. Again this line was to a big extent followed by the Council. However, EP did not agree with the line of the Council and consequently all of EP's proposed amendments of 2nd Reading became basis for negotiations in the context of conciliation between the Council and EP. In case no compromise between the Council and EP would have been found, EP would have had a final veto and the SEA Directive would not have been adopted. In comparison to above the Commission still influenced to a big extent the direction of the Council line with regard to EP's amendments but it was exactly at this stage were EP got the chance to 'overrule' this interim outcome.

Although the Commission lost power under the co-decision procedure, through its formal role as mediator between Council and EP and its informal influence due to its expertise and institutional memory, the Commission can play a major role during conciliation. It seemed that especially because of the shift of influence the Commission was perceived as a neutral player and the other institutions were more open to accept its contributions and proposals that often served as a starting point for compromises between the Council and EP.

Finally some light shall now be shed on the changed position in which the Council is put. One can really say 'new settings take time to spread and consolidate'. Under co-operation, after a Common Position was reached on a legislative Proposal the major orientations were set and most content details settled. Again, for example in case of the amended EIA Directive EP got some elements during the 2nd Reading which were of minor importance to the Council. Now, under the co-decision procedure, the Council is required to change its mindset. Decisions achieved in the Common Position risk to be re-opened and broadened due to EP's proposals and new influence. In case of the SEA Directive Member States had not yet fully started to accept and act within this new setting and were very reluctant to go beyond the result of the Common Position. The advantages of improving together with the co-legislator EP the result achieved in the Common Position or to get issues through which were not possible some months ago due to e.g. a different presidency or different political situations in the Member States seemed not yet fully appreciated by the Council.

One can summarise that the changes introduced by the Amsterdam Treaty become real and measurable in terms of outcome. It is a time and resource consuming learning process which needs time to further develop, get more accepted and automatically integrated. The Council and EP still need to develop a more open attitude towards and, in the light of the changed position, a new understanding of the respective position of the other institution. From an environmental perspective, however, it seems as if due to the higher influence and pressure from EP the environmental legislation has chances to improve.

Main changes introduced into the SEA Directive in comparison to the Commission Proposal

The 'integration principle' as highlighted in Article 6 of the Amsterdam Treaty which requires to integrate the environment into all Community policies was added to the SEA Directive as one of its objectives. Integrating environmental considerations into all decision-making areas is a substantial prerequisite of effective environmental protection and prevention with a view to contributing to sustainable development. This principle has to be followed whilst elaborating the environmental report and in the course of the planning process. Also after the adoption of the plan or programme the public has to be informed in a summarised way of how the environmental considerations have been integrated into the plan or programme.

The SEA Directive is the first piece of Community legislation which implements provisions of the second pillar of the UN/ECE Aarhus Convention on 'access to information, public participation in governmental decision-making and access to justice in environmental matters' concerning 'plans and programmes relating to the environment'. Also other Community legislation dealing with plans and programmes relating to the environment is currently being amended in order to take on board the relevant Aarhus requirements concerning public participation.

An important issue during negotiations was how the SEA Directive would relate to other Community legislation dealing with some form of environmental assessment in cases where a plan or programme would be covered by both the SEA Directive and another piece of Community legislation. To tackle this issue, several provisions have been inserted into the Directive. In general, the provisions of all legislation applicable to the relevant plan need to be fulfilled. However, in case of overlap Member States have the possibility of providing for co-ordinated or joint procedures in order to fulfil the relevant provisions. Such approach was also considered necessary for avoiding duplication of assessment.

Avoidance of duplication of assessments was one of the main concerns of the Member States during negotiations of the Directive. Since SEA is an iterative process and needs to be applied to the entire planning hierarchy (i.e. plans at national, regional and local level) Member States were afraid of too much administrative burden, high cost and duplication of work. The concept of the 'right of citizen' apart from the Member States, new points of view, new procedural co-ordination referred to above, additional provisions dealing with this concern have been inserted into the Directive. For example, relevant information available about environmental impacts of plans and programmes which was gained at other levels of decision-making or from other Community legislation can be used for the elaboration of the environmental report. Additionally a flexibility provision provides that the environmental report only needs to contain such information which can be reasonably obtained at the given planning stage taking into account, inter alia, the contents and level of detail of the plan.
Consultations in case of likely significant transboundary impacts on another Member State are already part of the existing EIA system at project level. In this situation, the affected Member State and its concerned public are involved, provided with the relevant documentation and given opportunities to comment. The results of such consultation need to be taken into account in decision-making. The SEA Directive includes similar provisions. Such approach takes on board the main principles of the UN/ECE Espoo-Convention on transboundary project impact assessment and extends it, as suggested in the Convention, to the planning/programming level. In the Espoo-Convention context currently a SEA Protocol is being negotiated with a view to adopting it at the next Environment for Europe Ministerial Conference in Kiev (in 2003).

Concerned to the original Commission Proposal the scope of application has been further elaborated and clarified. It is now split into an obligatory part and a well-developed screening approach for other plans and programmes. Exemptions were added and a transitory provision ensures that also plans and programmes which were formally started before the transposition date but only adopted more than two years after the transposition date shall be subject to the SEA Directive unless this is not feasible.

The biggest achievement of the conciliation process is the introduction of a monitoring requirement into the SEA Directive. The significant environmental effects of the implementation of the plan/programme shall be monitored in order to identify at an early stage unforeseen adverse effects and to enable Member States to undertake appropriate remedial action. If monitoring arrangements already exist and are appropriate they may be used for the described purpose, also with a view to avoiding duplication.

Regarding the quality of environmental reports, the mere reporting provision of the Common Position has been significantly strengthened in the final Directive. Member States have to ensure that the quality of the environmental reports is such that the requirements of the Directive are properly met. The measures taken in this respect shall be communicated to the Commission.

What kind of plans and programmes shall be covered according to the SEA Directive?

The scope of application is built in several steps. Basically all plans and programmes as well as their modifications which are likely to have significant impacts on the environment and which fulfill certain criteria are covered. Criteria of a formal nature, such as that plans and programmes would need to be required by legislative or administrative provisions and be adopted by authorities or Parliament apply to all plans and programmes to be covered.

One part of the scope of application is formulated in a way that its plans and programmes automatically require SEA. These are plans and programmes of certain areas which are exhaustively listed and set the framework for future authorisations of projects listed in the EIA-Directive 85/337/EEC. Such plans could, for example, be a national traffic plan dealing, inter alia, with the construction of future or changing of existing roads or railways. Plans and programmes which have significant effects on Natura-2000 sites (according to the habitat’s and birds directives) require a mandatory SEA as well.

Plans and programmes other than those shall only require SEA where Member States determine, by using certain selection criteria, that these are likely to have significant environmental impact, so-called ‘screening’. How are these other plans and programmes ‘screened’? One hears that these would again be ‘plans and programmes which set the framework for future authorisations of projects’.

In this case, however, not limited to projects listed in the EIA Directive. It remains to be seen, how many plans and programmes beyond the ones covered by the obligatory part will in reality be left to require SEA. One of the other hand, the screening procedure shall also apply to certain plans and programmes at local level and to minor modifications which will be quite numerous.

Finally a number of plans and programmes are explicitly excluded from the scope of application. These are national defence and civil emergency plans, financial and budget plans and plans of the current Structural Funds programming period (from 2000 to 2006/7).

As regards the remaining content of the SEA Directive it should be noted that basically the steps of the existing environmental impact assessment system were taken on board and adapted to the conditions at the planning level. The major improvements as result of the conciliation procedure between EP and the Council were already discussed above. Various provisions allow a flexible planning oriented approach in order to address the different planning levels and their specifics. This solution has been chosen also with a view to not overburdening administrations with the new instrument. On the contrary, useful linkages should be made use of and fostered in order to achieve efficient results and not to create high cost or long planning duration.

But of course, the work will not end with the adoption of the SEA Directive. This is only the beginning. The Member States have three years to transpose the Directive into their national legislation and systems and then have to start applying the SEA Directive. Now that the SEA Directive becomes part of the acquis communautaire, also the Accession Countries will have to transpose the Directive. But before that, further reflection and guidance will be needed for the SEA Directive to be interpreted and applied in a harmonised way. This work will already start now through collaboration between Member States, Accession Countries and the Commission.

The SEA Directive in the context of other policy developments

The Communication of the Commission lining out its strategic objectives for 2000-200511 says clearly that the degradation of the environment is now proceeding at a frightening pace and that the continuation of current development patterns is unsustainable. The Commission therefore calls for decisive collective reaction and a multiple Union response. The adoption of the SEA Directive is one of the many responses of the Union to the current trends of current unsustainable development patterns and should be seen in conjunction with a number of other major policy developments at EU level.

The Environmental policy of the European Union of the coming years will be shaped by two key strategic documents: the Sixth Environmental Action Programme (6EAP) and the European Union Strategy for Sustainable Development. The Commission adopted on 24 January 2001 a Communication on the Sixth Environmental Action Programme (6EAP), setting out the key issues and themes for Community environmental action until 2010. A decision on priority areas for action and targets is currently being negotiated at the Council and European Parliament level. Apart from recognising the importance of the SEA and also the EIA Directive for meeting the environmental objectives, the communication also points out that applying the principles of SEA at the policy level is important for the integration of the environment into other policies.

The Commission adopted on 15 May 2001 a Communication on a European Union Strategy for Sustainable Development, setting out a range of actions to change the way policy is made and implemented, both at EU level and in Member States. This Communication highlights, amongst others, the need of better information for policy making and hence the importance of environmental assessment of policy proposals and the need for early and systematic dialogue in policy making. These two issues can be recognised as the two main pillars upon which the SEA principles are built.

It should be underlined that both the 6EAP Communication and the Sustainable Development strategy have already been elaborated in the run up to the Gothenburg European Council in June 2001. At this Council, an important milestone will be reached in the political process of integrating the environment launched at the summit of Cardiff in 199814, with the adoption of a range of sectoral environmental integration.
Strategische Umweltprüfung

strategies and of a timetable for further measures and indicators on environmental integration. It is clear that the adoption of the SEA Directive should and will play an important role in the implementation of sectoral integration strategies.

Outlook

The influence of the adoption of the SEA Directive and of the debate that has led to its adoption concerning the reflection on future environmental policy-making should not be underestimated. This debate has led to a better understanding of a wide range of policy-makers in Member States and at EU level of the principles of SEA and of the benefits it can bring. It is therefore not a coincidence that the principles upon which SEA is based are explicitly recognised as important for policy making in the two key policy documents that will shape environmental and EU policy in the future. This evolution is encouraging. It can be hoped that this recognition will be followed up by concrete action to extend the principles of SEA beyond plans and programmes into the area of policy-making itself.

The SEA Directive already has its effects beyond the EU level. In February 2001 it was decided at the second Meeting of the Parties to the UN/ECE ESPON Convention that negotiations on an UN/ECE SEA-Protocol shall start. The Sofia Ministerial Declaration which was adopted at the margin of that meeting welcomed the important progress made with the SEA Directive at EC level. Certainly the SEA Directive will contribute to a bigger extent to the content of the future Protocol which will extend the project environmental assessment regime to strategic decision-making levels including policies and will as well focus on the assessment of health impacts. The views and observations made in this article are entirely those of the authors and do not necessarily reflect the view of the European Commission.

Note

2 UNECE. United Nations Economic Commission for Europe
3 3rd Reading in EP was concluded on 31 May 2001; the formal adoption in the Council will follow in June 2001
4 which still applied during the first Reading in EP where the Amsterdam Treaty was not yet in force
5 This means contacts during the phases of the 2nd Reading in EP and in the Council and before the start of formal conciliation
6 This means once the deadline for the 2nd Reading was over and the stage of conciliation was formally started
7 This includes the stage of the 2nd Reading of the SEA Directive in the Council which followed after the 2nd Reading in EP.
8 Including the respective Secretariat Generals
10 This agreement was signed in 1998 in Aarhus, Denmark, and will enter into force once 16 ratification instruments have been deposited.
12 agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use

Lieselotte Feldmann, Marc Vanderhaegen, Europäische Kommission, Generaldirektion XI, Unit X1.B.2, Rue de la Loi 2000, 1049 Brüssel
E-Mail: lieselotte.feldmann@cec.eu.int
marc.vanderhaegen@cec.eu.int

Wer macht Was?

● Mitgliedsunternehmen
● Leistungsangebote
● Regionale Verteilung


Die detaillierte Übersicht in neuer, überarbeiteter Auflage ist erschienen. Sie informiert den Leser über Leistungsangebote und regionale Verteilung der Mitgliedsfirmen in der UVP-Gesellschaft e.V.

Zu beziehen ist das 96-seitige Werk zum Preis von 10,- DM (Mitglieder) oder 30,- DM (Nicht-Mitglieder) bei der

UVP-Gesellschaft e.V.
Alfred-Fischer-Weg 4
59073 Hamm
Telefon (02381) 52129
Telefax (02381) 52195
E-Mail: info@uvp.de
http://www.uvp.de

Das Nachschlagewerk
vermittelt Ihnen Unternehmen
für die Bereiche
Umweltplanung, -beratung,
management, 
- verträglichkeitsprüfung

Auf über 80 Seiten
Anschriften und
Kontaktdressen
von Umweltexperten;
Mitgliedsfirmen
der UVP-Gesellschaft e.V.

UVP-report 3/2001

122