

Implementation of the SEA Directive in the EU Member States

dr. Szilvia Szilágyi
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Current issues regarding the EIA and SEA Directives
WORKSHOP

Introduction

- EIA, SEA Directives are crucial tools for the implementation of the sustainable development principle of the EU
- SEA Directive: adopted in 2001 - there is still not enough relevant information at EU level about the practical implementation of this legal instrument
- The next evaluation report will be done in 2013
- J&E decided to continue the work regarding the SEA Directive, to identify the level of implementation of the Directive in EU MSs and accession countries and also to analyse the conformity of the directive with international conventions where EU is signatory
- J&E developed recommendations for better implementation

SEA report

- Aim: to analyze the implementation of SEA Directive in Member States
- We identified examples of
 - very good practice, even better what SEA Directive requires,
 - cases where SEA Directive provisions are unclear determining also unclear transposition in MS, and also
 - cases of violation of SEA Directive.
- Based on case studies prepared by J&E's experts from Austria, Germany, Hungary and Romania we prepared an implementation report, highlighting the main problems of implementation of the SEA directive in those MSs.

Problematic areas of implementation

1. Plans and programs that are subject of the SEA Directive
2. Interpretation of the “importance of the modifications of plans and programs”
3. Meaning of the expression “significant effects of plans or programs” according to Art 3.5 and Annex II of the Directive
4. Problems of the consultation procedure
5. Public participation and conformity with the Aarhus Convention
6. Problems of the assessment of the significant effects
7. Problems by determining the alternatives

Plans and programs that are subject of the SEA Directive

- The SEA Directive applies to a wide range of public plans and programs
- Plans and programs in the sense of the SEA Directive must be **prepared or adopted by an authority** (at national, regional or local level) and **be required by** legislative, regulatory or administrative provisions.
- Cases where the SEA is mandatory / can be decided based on a screening procedure

Plans and programs that are subject of the SEA Directive

- Both the Hungarian and Romanian cases came to the conclusion that SEA Directive should be clearer regarding those plans and programs subject to the SEA.
- As it results from the Romanian case, there is no explanation regarding what kind of plans and programs should be subject of SEA.
- In our opinion Art. 3 para 2 and para 4 referring to *“plans that set the framework for future development consent”* should be clearer regarding the scope of the Directive, to avoid discrepancies.

Interpretation of the “importance of the modifications of plans and programs”

- When plans and programs determine the **use of small areas at local level** or **are minor modifications** to the above plans or programs, they should be assessed only where Member States determine that they are likely to have significant effects on the environment.
- Practical examples shows, that if the developer is not declaring the changes done to the plans or programs during or after the evaluation procedure, or he is appreciating that the modifications are “minor” the public has no legal mechanism to prove otherwise especially when the developer is the State.
- When referring to “small areas at local level” and “minor modifications to plans and programs”, we also think that the wording of paragraph 3 is not clear. The Directive should also provide definitions of such phrases to ensure a proper implementation by the member states.

Meaning of the expression “significant effects of plans or programs” according to Art 3.5 and Annex II of the Directive

- In those cases, where the SEA procedure is not mandatory, the Member States have to carry out a screening procedure to determine whether the plans/programs are likely to have significant environmental effects. If there are significant effects, an SEA is needed. The screening procedure is based on criteria set out in Annex II of the Directive.
- Practical examples shows, that the criteria set in Annex II is too general and depends on the good faith of the developer when analyzing the effects of the plan and program.
- As results from the Romanian case study, if the developer and its paid experts declares that there are no significant effects and especially when the developer is the State, there is no legal provision forcing the developer and the competent authorities to come to a different conclusion.

Problems of the consultation procedure

- It is necessary to provide that authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programs, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion.
- The case studies from Hungary and Romania reflects that there are major deficiencies of the consultation procedure during SEA.
- The Austrian and in some extent the German cases are the best practice case studies with good public participation regulations.

Problems of the consultation procedure

- The SEA Directive is prescribing the **obligation to have public participation** but **no enforcement of this principle** is introduced in the Directive. Therefore each MS realized the transposition differently, according to the importance given to environmental protection.
- The main conclusion of the case studies is that the SEA Directive is obliging the MS to organize public participation procedure and to take into account the opinions expressed during the consultations.
- However **there is no obligation of the MS to base their decision on the opinions expressed by the public concerned** and **no detailed mechanism about how the proposals of the public should be considered** and evaluated when the decision is made.

Public participation and conformity with the Aarhus Convention

- During the SEA procedure, accessibility of the documents and information is needed.
- In Germany there is no national database for the public to find out when the SEA procedures takes place. In Romania even if there is a national database, it is very disorganized and it is nearly impossible to obtain information about SEA procedures of important plans or programs.
- As the Hungarian example shows, elaboration of the environmental report, involvement of the public in the SEA procedure and elaboration of the given plan or program takes place sometimes totally independently form each other.

Public participation and conformity with the Aarhus Convention

- The public was identified and involved in the public consultation in all case studies, in excellence way in Austria where NGOs were part of the SEA working group and participated directly both in the drafting of the plan and also in the SEA procedure.
- In Romania however the authorities failed to invite NGOs to participate in the procedure.
- In all of our cases time frames were enough to ensure public participation.

Public participation and conformity with the Aarhus Convention

- Regarding the moment when public participation takes place, the public participation was organized only in Austria from the very beginning of the plan drafting.
- In all other cases a draft of the plan was suggested from the very beginning of the procedure, anticipating the final decision.
- In Germany some modifications of the plan has been done during the procedure.
- In Hungary and in Romania the decision was actually made before SEA took place, the entire procedure was only for tick off the requirements.

Problems of the assessment of the significant effects

- There is no provision in the SEA Directive to ensure that SEA report is objective and no provision to ensure that all significant effects are described and assessed.
- Therefore in Germany all significant effects were described but there was no final evaluation and no modification of the plan accordingly.
- In Romania the procedure is still not finished, but it is clear, that in the SEA report not all effects were assessed and no final evaluation was done. We can say that the significant effects were hardly identified, much less evaluated.
- Both in Germany and in Romania concrete impacts of the plans were left for EIA procedures to be assessed. This raises the question of utility of the SEA Directive. Why is it necessary if the effects and impacts are not analyzed anyway or when this evaluation has finally no effect on the procedure?

Problems by determining the alternatives

- SEA Directive doesn't require that feasible alternatives are assessed or that the most environmental-friendly alternative should be chosen.
- Therefore description of the alternatives is done so that only one alternative would be possible, of course, the one most wanted by the developer. For example in Romania 0 alternative was considered non existence and have not been analyzed at all during the SEA procedure of the energy strategy.
- SEA Directive is not defining the alternatives and the way they should be identified and assessed. The developers will never have any interests to analyze anything else then what would ensure the selection of the alternative most profitable for them.

Conclusions

- Summarizing our findings, the main conclusion is that even when the transposition of SEA Directive is complete, there are still problems in realizing a proper strategic evaluation of plans and programs.
- SEA should serve as a complementary element to EIA-procedure at an early planning stage.
- Whereas EIA is a project based and detailed assessment, SEA is a planning instrument with a strategic background at a stage where all planning options are open.

Conclusions

- Based on our cases from different EU MSs, in practice major problems were identified with regard to **public participation** and **lack of alternative assessments** as well as **poor application** of the legislation.
- Vague formulations in the directive and reluctance as well as possibly lack of resources and know how in MSs to improve SEA rules lead to weak transposition acts and poor application of SEA provisions.
- Public authorities lack guidance and clear rules in order to correctly apply the Directive.
- **SEA needs more than pure transposition of legal provisions.** A change in the planning cycle and an environmental assessment and public participation in an early planning stage are crucial to make the instrument work.
- **We therefore call upon member states and the European Commission to enhance activities in order to make the instrument SEA work.**

Thank you for your attention!

dr. Szilvia Szilágyi

szilvia@emla.hu

www.justiceandenvironment.org

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