

Conclusions of session 1

1. On the national legislative context, in general the Directive 2001/42/EC is now transposed by the national legislation. Differences in the transposition techniques are explained by:
 - a) the formal structure of the legislative system (ex. transposition into the Environmental Code in France)
 - b) national chronic legislative delays (transposition was 3 years late in Portugal)
 - c) internal distribution of powers (transposition at the national and subnational level in Spain)
 - d) internal variations in legal culture (minimal transposition in England, gold plating transposition in Wales)
2. On the alleged failure to comply with the SEA Directive, there were a few EU infringement proceedings brought against the Member States, mostly because of the delay in transposition (Belgium, Italy, Portugal, Sweden).
3. On the objectives of SEA (mentioned in article Art. 1: " Objectives: the objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.") Member States are split: some did not transpose the objectives or did it indirectly (France, Hungary, Latvia, UK), others are strongly aligned with the wording and the spirit of the directive (Belgium, Croatia, Italy, Slovenia and Sweden). In between there are a few states that are neither strongly aligned nor strongly misaligned (Germany, Poland, Portugal).
4. Regarding the use of the objective by the national courts, six Member states' courts do use it to assist in the interpretation of relevant provisions of national law: Belgium, Germany, Italy, Latvia and Spain), while other six member states don't.
5. As for the definition of plans and programmes in national law, some Member States have adopted a literal transposition without further details (Croatia, France, Italy, England) while other have modulated or complemented with lists, general clauses or interpretation guidelines (Belgium, Germany, Latvia, Portugal).

6. On the question of having additional categories of “plans and programmes”, either in the law or on a case by case basis, some States do have both. Hungary, Italy, Latvia, Poland, Spain or Sweden.
7. The concept of “likely to have significant environmental effects” is developed further by law or by the courts in some States such as Croatia, Germany, Italy or Poland.
8. The meaning of “set the framework for future development consent of projects” was developed further but only in some Member States: Hungary Italy Slovenia, Sweden. Germany is waiting for the the ECJ rulling.
9. The concept of “small areas” was not explained in the law in the majority of the Member States but still Hungary, Spain and Italy do have some definition. In Portugal there was a reversal burden of proof regarding these PP in small areas. Belgium performs a narrow interpretation of the norm and Germany defines in detail using areas (hacres).
10. The Belgian case law of the ECJ that points at the relevance of the “content” over the “form” of the planning or programming act is still not followed in several legal orders as Croatia, France Hungary, Spain, UK.
11. The provision establishing a general obligation to carry out the assessment “during the preparation of” the plan or programme has been respected in every Member State.