

Report on SEA-Session 5 – Bernhard Wegener

Session 5 of the meeting was dealing with (1) SEA for proposed policies and legislation, (2) with national studies and databases on SEA, (3) with the impact of SEA in practice and (4) with recommendations for the improvement of SEA.

(1) SEA for proposed policies and legislation

Concerning SEA for proposed policies and legislation, the answers of the national rapporteurs were mainly negative. This was the case in Germany, Austria, France, Hungary, Italy, Poland, Portugal, Slovenia, Spain, Turkey and the UK. It should be noted however, that the term “proposed policies” is rather vague and open for different interpretations. Some reports highlighted the fact, that rules concerning the evaluation of the environmental effects of policies and programmes are sometimes largely ignored in the process. The discussion focussed on the case law of the CJEU concerning the standard-setting in Belgium. Due to this case-law some regulations are considered now to be SEA submitted plans or programmes. The CJEU has interpreted the concept of “plans and programs” as including an “order and circular” adopted by the Flemish Government concerning the installation and operation of wind turbines (Case C-24/19). The earlier decision of the ECJ concerning the same matter (Case C-290/15) has created some concern in German literature (see Faßbender, *Die Strategische Umweltprüfung: Anspruch und Wirklichkeit*, ZUR 2018, 323, 326) and jurisdiction (see OVG Münster, 29.11.2017 – 8 B 663/17, ZUR 2018, 159, 162 f.; Bay VGH, 21.2.2018, Vf. 54-VI-16). The decisions of the ECJ are considered by some as (too) far reaching, because they included decisions/programmes of a rather political or standard-setting nature.

(2) National Studies and Databases

National Studies of the implementation of the SEA-Directive and its impact have been prepared and published in a number of countries but not in all. The lack of studies in bigger countries such as Spain and the UK offers an impression of the rather limited importance of the SEA. In other countries, it has been mainly the administration itself, that has commissioned a number of studies on SEA especially in the initial phase of implementation. In general, the existing studies highlight a prevalence of SEA and

screening procedures at the local level. Here administrations try to minimize the bureaucratic burdens of SEA by different attempts to limit its application. Other problems concern the quality of the environmental impact assessment. Often the SEA documents do not specify the aim of the municipal plan and only seldom they include more than one plan alternative.

National databases on SEA are very heteronym among the EU-Member States. While some states have established rather sophisticated databases, in others databases are missing completely. Existing databases show a rather mixed picture, with some data available but with different problems of data quality, completeness and accessibility.

(3) The impact of SEA in practise

The impact of SEA in practice seems to be rather limited.

The general impression is that of a disappointment of high hopes initially attributed to the SEA directive. SEAs generally seem to have some but limited practical impact. They are often not more than “patient (non-consequential) paper”, normally carried out by private consulting firms. Main reasons for this rather bleak picture are the political unwillingness to strategic environmental planning and the “annex”-nature of the SEA which is normally integrated in an existing planning process following its own well established and often environmentally “non-strategic” approach. Often the SEA is carried out at stages where fundamental decisions have already been well established. Public participation in the SEAs is often large in numbers but limited in effect. Main reasons are the abstract and complex nature of many SEA and the time and resource-limits for public participation. Other significant issues concerned mainly the difficult or even missing access to courts concerning environmentally relevant plans and programmes

(4) Recommendations for the improvement of SEA

Recommendations to improve the SEA included more generous time-frames, better reporting/databases, the creation of an ombudsman dedicated to SEA and EIA, the adoption of European wide guidelines on good practices and better access to judicial review.