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Integration Principle - Finland

(Questionnaire on the Principle of Integration, Avosetta/Budapest, 18-19 April 2008)

I. How to understand the integration principle of Art. 6 EC

The integration principle is essential link between sustainable development, including environmental and other aspects, and other policy areas. On the EU level principle seems to play role in policy making, in preparation of new legislation and even in ECJ practice.

In policy making as examples can be presented environmentally integrated product policy and recent development of energy policy. As an example of "new" legislation are public procurement directives. There are also couple of ECJ decisions in which principle has shifted the scale for environmentally more sound result. (See e.g. ECJ C-513/99 (Helsinki Bus case), C-379/98 (PreusenElectra case) and C-448/01 (Wienstrom case, in this case via directive 2001/77/EC)).

II. To what extent has the integration principle become part of the constitution or general principles and practises of law-making in your MS?

1. Are there any direct provisions or references to the principle of integration in the Constitution, a framework environmental act or other act of general application, and if the answer is positive, how is it formulated?

The Constitution of Finland includes only general provision on responsibility for the environment (section 20). According to it nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment. From the general declaration that environment is responsibility of everyone can also be read as it includes some kind of integration idea. However the general interpretation of this provision is that it is "only" declarative.

There is on general practice concerning integration principle in Finland. It seems to play different role in different areas of legislation depending the traditions and how direct the link to environmental issues has been. There are sectors which have relatively long history of - at least somewhat - take into account or pay attention to environmental matters. E.g. into Finnish forest legislation nature conservation issues has been integrated related certain - relatively small - naturally valuable areas. There has been discussion that this integration is not sufficient or that this system does not work properly, but at least in system level there is integration. Other example for relatively deep integration will be the new mining legislation which is under preparation in the Ministry of Trade and Industry.

2. Are there any references to making integration a legal principle on the level of federal/national/regional, etc. environmental policy papers (e.g. National Environmental Action Plan) or sectoral environmental policies (climate change, waste, etc.) and if the answer is positive, how is it formulated ?

There are two important policy papers that should be mentioned related to integration principle, namely National sustainable development strategy and Programme to promote sustainable consumption and production.

Finland's national strategy for sustainable development "Towards sustainable choices. Nationally and globally sustainable Finland" was adopted in June 2006 by the Finnish National Commission on Sustainable Development (The national strategy for sustainable development, Prime Minister's Office Publications 7/2006). The characteristic feature of the Finnish national sustainable development policy is a wide-reaching participation of various societal actors both in the definition of the contents and implementation of the measures. The approach is already referred to as the "Finnish model", in which broad-based, multi-stakeholder participation is combined with high-level political leadership. One of the ultimate aims is to consider impacts of sustainable development in an integrative way and, consequently, enable the materialization of the potential win-win-win opportunities in building up a sustainable society. Finnish municipalities are also active in promoting sustainable development. In 2007, two thirds of the Finnish municipalities had either established or were in the process of establishing their own local agenda 21.

Finland's programme to promote sustainable consumption and production is one of the first such national programmes to be launched. The programme was initiated in 2005 in response to a decision made at the UN Sustainable Development Summit in 2002 to create ten-year framework programmes to promote sustainable forms of production and consumption. The programme "Getting more from less" (The committee on sustainable consumption and production, (Ympäristöministeriö ja kauppa- ja teollisuusministeriö, Kestävän kulutuksen ja tuotannon toimikunta (KULTU), 2005) includes the objective that eco-efficiency should be increased throughout production chains to make Finland one of the world's most eco-efficient societies.

The programme aims at decreasing and managing material and energy flows (instead of only decreasing end-of-pipe pollution), promoting production and know-how based on environmental technologies and promoting environmental education and awareness. The vision of the programme is Eco-efficient Finland. It includes 73 recommendations for action on social structure, food, transport, housing and construction, lifestyle, technology, international cooperation. The programme was introduced to the government and the national commission for sustainable development in fall 2005 and now there are several follow up sub programmes related to it.

3. The principle of integration or some part of it has it ever been interpreted by the judiciary? If the answer is positive, please provide a short summary!

Not very often directly or expressly, but indirectly this has hapened.

4. Are there governmental institutions playing an environmental watchdog-role in the legislative process?

No, although in Finland there is long tradition on consensus base preparation of new legislation in committees or working groups with different fields of administration and organisations.

5. Are there general requirements as to inviting environmental agencies to comment on or cooperate in the rule-making and individual administrative action by environmentally remote agencies?

Yes, see above.

6. Are there general official advisory boards or scientific groups which reflect, discuss and recommend policies, measures or actions on environmentally remote legislative or administrative action?

No.

III. How has the SEA Directive 2001/42/EC been implemented in your country?

1. Was the SEA directive properly been transposed into national law? (see e.g. C-108-06)

Yes, by special legislation: Act on environmental assessment of the effects of certain public plans and programmes (200/2005, laki viranomaisten suunnitelmien ja ohjelmien ympäristövaikutusten arvioinnista). There were also some modifications of in other parts of the legislation (e.g. Land Use Planning and Construction Act).

2. In Art. 2 (a) there is a broad definition for 'plans and programmes'. How has this definition been adopted ? Copied and pasted, or with some more words attached to them and even extending the scope?

More or less according to Directive.

3. What is the general understanding of the concept of the 'authority' ? What kind of organisations are included ? (See on public services, eg. C-188/89 Foster and others v British Gas)

The Act refers section 2 (subsection 2 and 3) of Public Administrative Procedure Act (434/2003). According to these provisions Act is applicable by state authorities, municipal authorities and independent institutions under public law, as well as in the agencies under the Parliament and the Office of the President of the Republic (authorities) and Act is also applicable by state enterprises, associations under public law and private parties when these are performing public administrative tasks.

4. In Art. 3 (2) there is a special list of issues, which provide the automatic application of SEA. Is there any debate related to the content of this list ? Is it understood as a limitation of the definition of Art. 2 (see the different wording in Art. 3 (2): "and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC")?

No.

5. In what way does the outcome of the SEA procedure affect the final decision-making? (see Art. 4 (2))

Not too much.

6. If you have had personal experience with SEAs or if there are reports on how SEA was used in practise: what are the conclusions, and do they encourage to extend the instrument to further sectors and even to law-making and sublegal rule-making in general?

7. Were there/or are there any similar requirements in force in your county before/since the entering into force of the Directive ? In case of a positive answer, please provide a short introduction, mainly in connection with the relationship of the two types of requirements !

Yes, there were practices in some sectors and also legislation e.g. related to land use planning.

8. Do you have any information on any ongoing cases or judicial decisions in connection with the implementation of SEA requirements ? Please, provide a summary, if there is any example!

No.

IV. Where do you see deficiencies of environmentally remote legislation and implementation with regard to environmental concerns, and what legal rules and institutions could improve the situation?

1. General

The recent development in Finland shows some progress in integrating environmental matter to other policy sectors. Unfortunately there is also recent information on not that successful integration. As examples of promising development can be introduced the new car taxation system in Finland and public procurement legislation and policy. As an example of challenging sector for integrating environmental issues to practice can be demonstrated agriculture.

2. New Car taxation system in Finland

The Car taxation legislation (Act on Car Tax, 1482/1982) was totally renewed in the beginning of 2008. The personal cars have been very expensive in Finland compared to other European countries except Denmark and there was pressure for changes over 10 years for more environmentally sound personal car system, but mainly fiscal matters postponed the changes. The main arguments for new car taxation system were environmental, mainly CO2 emissions, but the general level of taxation also sunk about 16%.

The alteration of Act on Car Tax (1292/2007) means that car tax is collected at the first registration of a passenger car is classified on the basis of the carbon dioxide emissions corresponding to the specific fuel consumption of the car. Finnish Customs establishes the CO2 reading of a car to be applied in taxation from the vehicle documents or from official registers. This information can be obtained e.g. from the registration certificate of the car issued in an EU member state or in an EEA country, from the certificate of compliance (COC) or from the certificate issued by a representative of the manufacturer. When there is not any information available on the carbon dioxide emissions of the car in accordance

with the EC type approval, an estimated level of emissions is determined for the car.

The taxable value of the passenger car remained unchanged, in other words it is the general retail value of the car in Finland at the time of taxation. The amount of usual discounts for a used vehicle is 5 per cent of the asking price of a used vehicle with an addition of 750 euros, or 1500 euros, depending on which of these results in a greater reduction. The amount of reduction for new vehicles is however 20 per cent at the highest, and for used vehicles it is 30 per cent at the highest when calculated from the asking price.

The tax rate of a passenger car is classified on the basis of the carbon dioxide emissions of the vehicle. Each gramme of carbon dioxide affects the tax rate which is increased by one percentage unit for every ten grammes of carbon dioxide. The tax rate is determined according to the formula: quantity of emissions (grammes per kilometre)/10 + 4. The amount of the tax rate is however 10 per cent at the minimum and 40 per cent at the maximum. A minimum-level tax will be collected for a car whose carbon dioxide emissions are at most 60 g/km, and a maximum-level tax will be collected for a car whose carbon dioxide emissions are 360 g/km or higher. The important turning point in the curve is 180 g/km, from which the angle steepens. The amount of car tax for a passenger car is the share of the tax rate in the taxable value of the car.

For a new car new system means that e.g. if CO₂ reading accordant with the EC type approval is 120 g/km, general asking price of the vehicle in Finland 25000 €, reduction of usual discounts (4% x 25.000 €+ 300 €) is 1300 € the general retail value i.e. taxable value of the car will be 23000 €, the car tax (120g/10+4=16 % x 23.700 €) is 3 792 € (and value added tax of the car tax would 834,24 €).

There were scepticism concerning this new taxation car taxation system, but according to registration statistics from first three months of 2008, it seems that consumers have been acting rationally and they are preferring lower CO₂ emission cars (mainly diesel engines). The change has not been dramatical, about 6% less CO₂ emissions in average, but the direction is right. From environmental point of view the renewal of the car taxation system could have been more advanced, but the new system makes changes relatively easy in the future.

3. Public procurement legislation and policy

European and national public procurement legislation is one examples of balancing the environment and market. The integration principles plays its role also in this competition based area. The recital (2) of the public procurement directives (2004/17/EC and 2004/18/EC) expresses general principles related to the directive, which is given in respect of the principles of the Treaty and in particular to the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and the principles deriving therefrom, such as the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency. In addition, recital (6) of the directive refers to the integration principle. Accordingly, article 6 of the Treaty requires environmental protection measures to be integrated into the definition and implementation of the Community policies and activities referred to in article 3 of that Treaty, in particular with a view to promoting sustainable development. Therefore, the directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best

value for money for their contracts.

Even in the jurisprudence of the European Court of Justice, the integration principle has now and then played a significant role. It can be said to be an important link between environmental sustainability and other objectives in practice, as well as in the abstract in terms of theory. In public procurement case ECJ: C-513/99 (the Helsinki bus case), the integration principle was referred to in the reasoning. (See also ECJ: C-379/98, PreussenElectra, on integration principle and ECJ C-448/01, Wienstrom case, in which integration principle was indirectly taken into account (via directive 2001/77/EC)). As a result of some of the cases, the principle can shift the balance in favour of the environment.

One of the examples of a national modification or amendment is section 2 of the "Public Procurement Act" of Finland which came in to force June 1, 2007 (Laki julkisista hankinnoista (348/2007)), same kind of provision has also been included in "Public Procurement Act for Water, Energy, Transport and Postal Services Sectors", Laki vesi- ja energiahuollon, liikenteen ja postipalvelujen alalla toimivien yksiköiden hankinnoista (349/2007). The section 2 requires authorities to organise their public procurement so that purchases can be carried out as economically and systematically as possible and in appropriate completeness, taken into account environmental aspects. In the legislative process in the parliament, the environment committee proposed in its statement to the economic committee, the draft to be modified (YmVL 29/2006 p. 4) as follows: section 2, 1 should be modified so as to more strongly direct to take environmental aspects into account. The committee suggested this to be done by deleting at the end of sub item 2 "taking into account environmental aspects" whilst adding a new sentence "In public procurements environmental aspects must always be taken into account when possible". The committee argued that modified as it proposed the section would guide more effectively to include environmental aspects into procurements.

In Finland there is a new proposal for action plan for sustainable public procurement (Ehdotus kestävien hankintojen toimintaohjelmaksi, Julkisten hankintojen työryhmän ehdotus

13.2.2008), which was drawn up by working group set by the Ministry of Environment and Ministry of Trade and Industry. The goal of this plan is that public purchasers would take environmental aspects into account in all public purchasing and would give example in control of climate change. Working group presents goal for public purchasers in 5 sectors: electricity purchasing, buildings and real estate services, energy consumptive devices and foodstuff. Same kind of plans has been carried out in many other countries (e.g. the Norwegian Action Plan 2007 - 2010 (Environmental and Social Responsibility in Public Procurement (Sustainable Public Procurement), The Norwegian Action Plan 2007 - 2010, Norwegian Ministry of the Environment, Norwegian Ministry of Children and Equality and Norwegian Ministry of Government Administration and Reform, 06/2007).

4. Agri-environmental support system

General

Agriculture is one of the sectors in which integration of environmental matters could be done in very efficient way. The whole picture of EU and national legislation concerning agriculture and environmental matters integrated into agricultural policy is very complicated and therefore only outlines and most interesting parts of this legislation will be introduced.

In Finland environmental support is very acute topic because large study on results of the environmental support mechanism was published 1st of May 2008. The study was carried

out by the Finnish Environmental Institute (SYKE) and Agrifood Research Finland (MTT).

The basis of the environmental agricultural support system is at the moment laid down in articles 36 and 39 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). These articles are on section 2 (axis 2, improving the environment and the countryside) of the Regulation. According to article 36 support under this section shall among other things concern measures targeting the sustainable use of agricultural land through (36(a)) including agri-environment payments (36(a)(iv)). According to article 39(1) (agri-environment payments) Member States shall make available support provided for in Article 36(a)(iv) throughout their territories, in accordance with their specific needs. Agri-environment payments shall be granted to farmers who make on a voluntary basis agri-environmental commitments. Agri-environment payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Articles 4 and 5 of and Annexes III and IV to Regulation (EC) No 1782/2003 as well as minimum requirements for fertiliser and plant protection product use and other relevant mandatory requirements established by national legislation and identified in the programme (39(2)). These commitments shall be undertaken as a general rule for a period between five and seven years. Where necessary and justified, a longer period shall be determined according to the procedure referred to in Article 90(2) for particular types of commitments. The payments shall be granted annually and shall cover additional costs and income foregone resulting from the commitment made. Where necessary, they may cover also transaction cost. Where appropriate, the beneficiaries may be selected on the basis of calls for tender, applying criteria of economic and environmental efficiency. Support shall be limited to the maximum amount laid down in the Annex of the Regulation.

There are several national Act and Decrees concerning agri-environmental support. The most important of these are related to European agricultural policy: Act on Implementation of the Common Agricultural Policy of the European Community (1100/1994), Act on Natural Handicap Payments, Agri-environmental and Other Support Payments related Improvements of Environment and Countryside (1440/2006), Decree on Natural Handicap Payments and Agri-environmental payments in 2007-2013 (366/2007) and Decree of Ministry of Agriculture and Forestry on Base measurement, and Additional measurement Support and Special Agri-environmental Support (503/2007). National agricultural support system, including environmental support, is based on these Acts: Act on National Support for Agriculture and Horticulture (1559/2001) and annual Decree on National Add (lisäosa) for Agri-environmental payments (65/2008). (This national legislation is based on articles 141 and 142 of the Accession Treaty.)

Support system

From the practical point of view the Decree on Natural Handicap Payments and Agri-environmental payments in 2007-2003, Decree of Ministry of Agriculture and Forestry on Base measurement, and Additional measurement Support and Special Agri-environmental Support and annual National Add Decree are certainly the most important ones, because it includes the exact amounts of support. It should be noted that before this programme period the system differed somewhat from the current one and the studies on effectiveness of environment based support concern the former system. Although the fundamental ideas seems to be relatively alike in current and former support system.

According to Decree on Natural Handicap Payments and Agri-environmental payments in 2007-2013 environmental support system is divided to three different types of support: base support, additional support and special support. (The former support system included

only two types of support base and special support, but in practice also the new system has two main parts.) System requires that all farmers that take part in environmental support scheme should follow the preconditions of the base level. Base level requirements concern environmental planning and follow-up, fallow with vegetation, fertilisation, banks and protection strips, natural biodiversity and landscape maintenance. In support areas A and B farmer should also participate in 1 to 4 additional measurements which are reduced fertilisation, defined nitrogen fertilisation, green winter vegetation and lighter shaping, spreading of manure in growth period. In support area C only 0 to 2 of these additional requirements is needed. Support period is 5 years. Almost every farmer in Finland had participated in base level support system.

Special support system period is 5 or 10 years and it is based on agreement between farmer and state. Different types of special support agreements can include funding and maintenance of protection zone, maintenance of wetland, field agriculture of ground water area, organic production, maintenance of traditional biotope, special promoting diversity of nature or landscape, breeding on original cattle breed or cultivation of original flora.

Study results

The Finnish Environment Institute (SYKE), Agrifood research Finland (MTT), the Finnish Game and Fisheries Research Institute (RKTL) and the University of Helsinki (HY) evaluated the efficiency of the agri-environment scheme (see more from here: <http://www.ymparisto.fi/default.asp?contentid=275784&lan=en>). According to evaluation the agri-environment scheme in 1995-2006 did not essentially improve the water quality in water bodies heavily burdened by agriculture. The special subsidies, such as the subsidies for traditional cultural biotopes, have been more efficient, but as a whole the agri-environment scheme has not stopped the decline of biodiversity in agricultural areas.

In fact environmental support has been - and still is - a compensation for the expenses and income losses caused to farmers by environment and landscape protection measures. Some 91 % of active farms and 94 % of field area are covered by the agri-environment scheme. Because the criteria for the subsidies has not been very strict and almost all farmers have joined the programme, the environmental subsidies have predominantly ended up being income subsidies to farmers.

The total phosphorus load from agriculture to water bodies decreased slightly during the period 1995-2006. This was probably because the erosion rate in the fields had decreased due to more buffer zones and less heavy tillage of soil. The use of fertilizers decreased quickly in the early 1990s, but it took almost a decade before the phosphorus concentrations in soil began to decrease. Nitrogen loading did even increase in some areas during the period 1995-2006.

The agri-environment scheme has not stopped the impoverishment of agricultural ecosystems. The voluntary special scheme has to some extent promoted biodiversity in agricultural areas. The decline of bird populations in agricultural areas has stopped and partly reversed towards the better in the last ten years. Of the agri-environment measures, especially the buffer zones along lakes and watercourses have been beneficial to birds. However, the predominantly positive development of the bird fauna is not so much due to the agri-environment scheme. More significant factors have been the CAP fallows of the common agriculture policy of the EU and the relatively large proportion of fields not used for cultivation.