

Questionnaire on the Principle of Integration

Motto

Art. 6 EC

“Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.”

“The integration of environmental concerns into other policy areas is one of the basic principles of environmental policy. It is enshrined in Article 6 of the EU Treaty – but progress has been mixed. ... The Cardiff process – which was set up in 1998 in order to institutionalise this type of integration – has not lived up to expectations.

Impact assessments are now a standard feature of the policy making process and there is scope for greatly improving the assessment of the environmental impact that other policies will have. The Impact Assessment Board will be an important tool ...

... The Commission will explore all possibilities to further integrate environmental concerns into other policies, for example agriculture, research and development policy. ... The Commission will produce a strategic framework in order to address the issue of policy integration. ... At the Member State level, different Council formations should produce annual reports on how they have dealt with the obligation to integrate environmental issues into their work.”¹

I. How to understand the integration principle of Art. 6 EC (to be introduced by invited speaker; however all of the participants should prepare and submit their own views)

- object (‘policies and activities’, ‘definition and implementation’)
- addressees (Community, MS insofar as implementing EU policies?)
- criteria (‘environmental protection requirements’, ‘with a view to promoting sustainable development’)
- character of guidance (‘must be integrated’)
 - o enabling authorities to restrict economic activities?
 - o directing authorities?
 - Procedural => assessment and justification of impact? Mere consideration?
 - Substantive => Minimal standards?
- counterprinciples and the inflation of principling (Art. 127 II, 153 II EC)
- density of court review, ECJ case law (policy guidance or hard law?)
- corollary institutions and procedures (DG Environment, EP Environment Committee, Council of Environmental Ministers)
- Amendments by Lissabon Treaty (e.g. Art. 6a, 176a, 176b EC, Art. 8b EU)
- Suggestions for making the integration principle more effective (applicability of SEA to EU activities? Environmental Assessment Board?)

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Mid-term review of the Sixth Community Environment Action Programme {SEC(2007) 546} {SEC(2007) 547}

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

Consider for this purpose that the integration principle could have

- a narrower or broader scope of objects
- more or less precise and extensive criteria
- a more or less far-reaching character of guidance
 - o enabling/ directing
 - o procedural
 - o substantive

Consider further that the integration principle overlaps with the principle of sustainable development. Therefore, if sustainability appears in your legal system do include its analysis into your report to the extent it can be understood as meaning integration in the sense of Art. 6 EC.

Questions that may guide your research

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?
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 ?
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!
4. Are there governmental institutions playing an environmental watchdog-role in the legislative process?
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 agencies²?
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?

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

The SEA Directive comes closest to an instrument of alerting sectoral policies to environmental implications. We will not look at all details of understanding and implementation but will focus on the question whether experiences made with this instrument allow to conclude that it should be extended to further policy areas and even further forms of governmental action including legislation and rule-making. Questions of interest are the following:

² By this we mean administrative agencies in charge of policies which prima facie do not impact on the environment but do so indirectly or upon deeper consideration.

1. Was the SEA directive properly been transposed into national law? (see e.g. C-108-06)
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?
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*)
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”)?
5. In what way does the outcome of the SEA procedure affect the final decision-making? (see Art. 4 (2))
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 !
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!

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?

Dear Colleagues and Friends,

Please select one or max. two items of the list below, which is most interesting to you of which may provide good experiences for us. You may select from this pool, but you may add other areas, which may serve a better example.

Possible areas of policies:

Sectoral policies:

agriculture, fisheries, transport, energy, climate, energy, tourism, etc.

Horizontal policies:

contract law, company law, consumer protection, intellectual property, insurance, finance, public procurement, privatisation, subsidies, research funding, etc.