

## **Extensive integration of SEA in spatial planning**

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This paper provides a review of experience from the Flanders Region of Belgium on the integration of the European SEA Directive (2001) into the Region's spatial planning legislation. It shows that a full integration of the SEA process and the planning process is the most effective way to obtain legally robust and social accepted spatial plans where environmental issues are efficiently included.

### **Land-use planning and SEA from 2002 until now**

In Flanders spatial policy plans are not mandatory subject to SEA but the three political levels – region, province, municipality - have to make their own spatial policy plan. Land-use plans, zoning plans, are the legal framework for licenses and therefore subject to SEA (article 3, paragraph 2 and 3, of the European SEA Directive 2001/42/EC). The determining factor for an SEA is a plan that is likely to have significant environmental effects. Flemish SEA legislation dates from 2002, and since then land-use plans are subject to SEA.

In Flemish legislation at least a SEA screening procedure is required for a land-use plan.

### **Reason for changing the legislation on SEA and land-use planning**

In the Flemish region, SEA's are mainly made for land-use plans. Most public sectors need a change of land-use to realise their sectorial goals (road construction, new housing zones, protecting of natural habitats, water management plans...). In the legislation on SEA there was no obligation for integration between the planning process and procedure to adopt a land-use plan and the procedure for an SEA, which resulted in difficulties to integrate both. The SEA for a land use plan is the responsibility of the initiating authority (region, province, local), but quality control is the competence of a separate regional (Flemish) EIA unit. This EIA unit screens all land use plans and decides the content of the corresponding SEA.

The lack of integration has led to several problems:

- Land-use planning process and SEA are completely sequential procedures in which different governmental entities take the lead;
- The separate SEA is not aligned with the land-use planning process, leading to superfluous information in the SEA, overloaded SEA reports, unfeasible alternatives and mitigation measures, etc.;
- The SEA is finalised and formally approved by the Flemish EIA-unit before the land-use plan is finalised, i.e. formally approved;
- Separate public participation for the SEA (in the beginning of the process, dealing with the content of the SEA) and the draft land-use plan;
- Tiering between the land-use plan and the following project level decision-making (licenses) is not enough reflected in SEA's because the level of detail of an SEA is too detailed;
- Difficulties are encountered in the translation of the results of an SEA into the land-use plan, and the proposed mitigating measures from the SEA are difficult to

implement at planning level. The legal instruments of land use planning are not appropriate for dealing with the different proposed mitigation measures in the accompanied SEA.

All these problems led to a lot of court cases resulting in annulment and/or suspension of the land use plans during the last 10 years in Flanders. It was clear that the lack of integration (in a broad sense) of the planning process and SEA process seems to be a major problem. A revision of the legislation to introduce a more integrated planning process was envisaged but a comparative study of the same issues in some European regions was considered to be very useful. A study was conducted in 2009 on the implementation of the SEA directive in land-use planning in some European Regions. This study (Arcadis, 2009) examined specific topics of the implementation of the EU-SEA Directive in spatial planning. Other publications also deal with the different issues of integration of SEA in land-use planning (Jones et al., 2005, Belcakova, 2003).

The main findings of the 2009 study were very similar to the findings stated earlier by Eggenberger and Partidario (2000) and Stoeglehner (2004). The findings from the 2009 study are listed below, as they provide a useful framework for the analysis of the new approach to SEA in Flanders that follows in this paper:

1. Integration: a strong integration of land-use planning and environmental assessment on all aspects (from scoping of the land-use plan and SEA, including alternatives, to quality control, participation...), and from the very beginning of the integrated process to the end of the formal procedure;
2. Participatory process: participation in an early stage is essential, ensuring early and transparent information to citizens at large and other stakeholders. Participation is also 'a process' (not an 'one time shot') that interferes with the integrated planning and SEA process, and should therefore be 'tailor-made' (means of participation, concerned stakeholders...). This enhances support capacity for the decision making of the final land-use plan.
3. A process with the right degree of formalism. Not everything should be included in legislation.

Another study was also commissioned on how SEA was integrated in land-use planning in practice, in Flanders in the period 2009-2012. The findings of these two studies were used as a basis for the new approach which is translated in new legislation for the integration of SEA and land-use planning in Flanders.

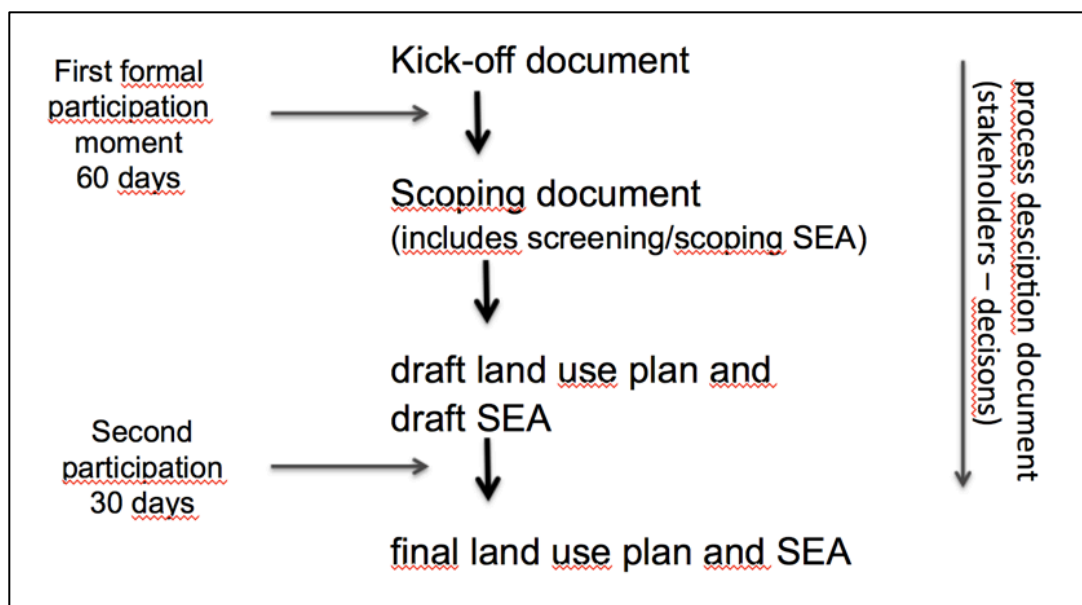
### **Key issues in the new approach on SEA and land-use planning**

Integration of SEA and land-use planning optimises the interference of the three main processes: the land-use plan, the SEA and other assessments and the participation process. A substantial revision of the legislation (spatial planning and SEA) was prepared in order to make this new approach possible and mandatory. Discussions between the administrations started in 2013. The administrations involved were mainly the land-use planning department and environmental department at regional level, the organisations representing the provinces and the municipalities.

Legislation is a tool to implement a new approach, but a change of mentality and the specific role of the involved stakeholders and advisory (governmental) bodies goes hand in hand with the new legal requirements.

The (formal) steps in the new integrated planning process and the necessary documents are (see figure):

- The kick-off document: is to be prepared at the beginning of the planning process and contains information on the aim of the planning process (including legal requirements), on the environmental (in broad sense) concerns to be examined or other concerns;
- A process description document: this note describes how the process is to be conducted, which stakeholders are involved, how the process will progress or does progress;
- A formal moment of early participation (first participation): at an early stage where a discussion on the content of the kick-off document is provided. Several advisory entities are to be consulted as well as the public concerned in hearings, info markets, workshops, etc. The method is tailor made for each planning process;
- A scoping document: the kick-off document evolves into a scoping document after the early participation, taking account of the results of the consultation and other ways of participation. At this stage, the EIA administration advises if the planning process could lead to significant environmental impact (screening and scoping together) and a further SEA should be integrated with the planning process;
- The draft land-use plan and draft SEA (and other assessments);
- Public enquiry (second participation);
- The final land-use plan and final SEA.



### **Characteristics of the “new” integrated planning-SEA process**

Integration: The SEA is completely integrated in the planning process: i.e. the content, stakeholders and the procedural requirements are the same for the land-use plan and the SEA. The walls between environmental concerns and research and the planning process on the one hand and the SEA experts and land-use planners on the other hand are (in the process of being) torn down. The integration of SEA in spatial planning changes the original planning objectives to include environmental concerns (Elling, 2000). The SEA is optimized by the land-use planning process and vice versa.

An official planning team ensures the integration process: it is a multidisciplinary team (denoted by the initiating government: region, province or municipality) to conduct the planning process. According to the scale, the level and the subjects of the planning process, different disciplines are involved in a team to guarantee the quality, EIA experts are part of the planning team when impact is significant. If needed and appropriate, the EIA unit can be part of this planning team to ensure the SEA quality.

Emphasis on early participation of not only stakeholders but also advisory entities and the public concerned. Planning processes are participatory but the level of participation is different from plan to plan and from municipality to municipality. In recent years the importance of a larger and earlier involvement of civil society and citizens has become more important which is also reflected in the new legislation (Aarhus Convention, article 7). There is a formal obligation for at least one moment of early participation at the beginning. In the new process, there are two formal moments of participation:

- On the kick-off document: stakeholders (including the involved public) and advisory bodies are asked to participate and help the making of the initial plan and to underline and include (environmental) concerns;
- On the draft land use plan and SEA: the public is asked to give their comments on the plan and SEA (= classic public enquiry).

The need to inform duly is emphasised because real participation requires people to be well informed. Hence the process description document contains the information about where and what is to be published and who is concerned.

Reduction of the formal requirements to what is necessary: legislation contains only the necessary obligations: 1) not including procedural requirements that are not necessary; 2) reduction to the necessary rule thus reducing the danger for mistakes. This is to avoid that the court can reject a ‘good’ plan, because a ‘superfluous’ procedural requirement was not fulfilled.

### **The land use plan and accompanying instruments (ensuring mitigation measures)**

This new integrated approach towards land-use planning and SEA also led to the search for a solution in order to implement concerns which are included in the SEA (e.g. measures to mitigate environmental impact), or measures which are the result of the planning process, but cannot be included in the land-use plan as such. A land-use plan in Flemish legislation is an instrument for regulating issues of land use (zoning and mostly urban regulations). But

during a planning and SEA process several collateral aspects and requirements are discussed and should be legally guaranteed. From the beginning it was agreed to not to overload the land-use plan with issues, which are not directly covered by a land-use plan. Therefore, other existing legal instruments are formally linked to the land-use plan to ensure those mitigation measures. Two legal instruments were included in the legislation: 1) an agreement (between private and public parties) to ensure the implementation of measures, and 2) a special ordinance for specific environmental (non-urban issues) restrictions to well-defined zoning (which can be overlaid onto the land use plan).

This solution, which is adopted in the new legislation, is to make a clear link between existing instruments in different sectorial legislations: the main instrument is the land-use plan which contains zoning regulations, a graphic plan and the other instruments which are to be agreed and decided at the same time.

### **Conclusions: The (bumpy) road to new integrated land-use planning legislation**

This new legislation is the result of discussions between the Flemish regional land-use planning department and the environmental department which was of course agreed by the government and parliament.

The main discussion among the different administrations has a lot to do about understanding each other's language and approaches. It is very important that the planning team fully understands the necessity to integrate the SEA in the planning process. The classical approach of making an SEA prior to the planning process is no longer the case. Next, a long list of mitigating measures in an SEA is not the right way to improve a land-use plan (in environmental terms), but that it is indeed important to take active part in the planning process discussions in order to integrate environmental concerns all along the planning process.

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