

Purpose and scope of the study

This paper describes the study carried out with reference to the two Italian and Hungarian contexts on the outcomes of Strategic Environmental Assessment (SEA) processes. The different geography, population size and policy change are the background to the subject of the application of the SEA by allowing a greater emphasis in highlighting differences and similarities. Italy is administratively organized into 8092 municipalities 20 regions (with marked regional differences, both physical and economic) and the State; Hungary is organized administratively in 3145 municipalities, 19 provinces plus the capital Budapest and the State. Only the region of Lombardy in northern Italy combines a population about equal to that of the entire Hungary (almost 10 million inhabitants) and it has 1546 municipalities.

The research was conducted on two levels: national and regional. Through the examination of cases (four at national level and twenty-five at the municipal level in Italy; two at the national level and five at the municipal level in Hungary) based on a reading tab previously agreed we have tried to represent the evolution and maturity of applications from around the entry into force of the procedure in the European Community Member States. The construction of the reading tab was made keeping in mind the basic elements of the Directive and the final hypothesis of urban quality.

We then turned to the local urban plan with a view to highlight the role of SEA in achieving a better quality of life in urban areas.

The SEA development in the Italian context

The transposition of the Directive took place (with a delay) in Italy by Legislative Decree 152/2006 (so-called Environmental Code), then amended and supplemented by Legislative Decree 4/2008. Subsequently, the Legislative Decree no. 128/2010, also introduced in the previous article of the 'Environmental Code' the regulation of the Integrated Pollution Prevention and Control (IPPC).

The purpose of the decree include (in addition to the transposition of the Directive) mode 'for simplification and coordination of environmental and permitting procedures' and ensuring that '*The environmental assessment of plans, programs and projects have the purpose to ensure that human activity is compatible with the conditions for sustainable development, and therefore in compliance with the regenerative capacity of ecosystems and resources, protection of biodiversity and the equitable distribution of benefits related to economic activity*'.

After the definition and the scope of discipline (Arts. 5-6 D-Lgs. 4/2008) the Decree defines the respective tiering competences according to the statutory authority by which or on whose behalf the plan or program is prepared and to the hierarchy of plans and programs. There are procedures at the State, Regional and local level.

The SEA anticipates the environmental assessment of certain choices at the time of the general government of the territory that should be the frame of the next local action; the SEA takes the form of a 'reasoned advice' or an 'act of an advisory nature' on the sustainability of plans and programs.

The authority has in-chief plans, in collaboration with the competent authority responsible for the SEA procedure, and it shall where necessary, revise the plan or program in the light of the reasoned advice expressed before the adoption or approval. The Legislative Decree 128/2010 has thus recognized that the reasoned opinion is binding.

Furthermore, this decree has established that: '*for changes to plans and programs for the planning or land use measures resulting from the authorization of individual works, which by law have the effect of variation of such plans and programs, without prejudice to the application of regulations on EIA, strategic environmental assessment is not required for the localization of the individual works*'.

The SEA (and Environmental Impact Assessment EIA) procedures include the assessment of implications from plans and projects for the Natura 2000 sites (the priority natural habitat types of Community interest, site of Community importance and special areas of conservation) in view of the site's conservation objectives. The decree also recognized the requirement to review plans and programs taking into account the results of the procedure.

The 'Regions' under Decree with its laws and regulations govern the own competences and those of local authorities (which in turn are responsible for their SEA procedures). The 'Regions' also govern: a) the criteria for the identification of local and regional authorities concerned, b) the specific criteria for the identification of those competent in environmental matters, c) any additional procedures for the identification of plans and programs or projects to be submitted to the discipline of this Decree with respect to those specified in this

decree, and the carrying out of the consultation, d) the arrangements for the participation of neighbouring regions to the SEA process, in line with what is established by national laws.

In the absence of regional regulations exist the directly applicable rules of this decree.

The regions have implemented in different ways the National Decree and according to different levels of detail of the issues at stake. They range from the case of regions that apply directly to the National Decree, because they have enacted their own legislation in the case of regions that have produced several documents explaining the law, to help its proper application.

Not forgetting the role of the Provinces in the production of regulations, currently occupying an important role in monitoring the application, particularly in the context of urban plans that must verify compliance with the provincial development plan.

The results of the first phase of the application procedure (the period since 2004 where some regions take into account the SEA procedure to 2009 when one begins to detect their effects on the entire Italian area) have pointed out some critical points. We recall in particular:

restricted participation during the consultations, because of the novelty of the participation process, the analysis of the framework are general and uncircumstantial, sometime (also) too large, the environmental framework is often lacking, the analysis of alternatives weak or absent, the difficulty of integration in the Plan or Program of environmental considerations according with the opinion generated by the procedure, non-technical summary is often not effective, the monitoring is often inadequate, the lack of experience by many parties involved has produced misunderstandings and procedures that do not meet needs, highlighting in particular the difficult cooperation between the competent authority and independent prosecuting authority.

In the next period (from 2009 to today) some of these issues have diminished, as and regional legislation and various regulations, both at regional and provincial, were adopted.

The gap between the different regional situations has, however, remained, especially in light of the diversity of the current rules because of the different authorities in the field of environment and development programs and plans; legislative power is vested in the State and the Regions: the State has exclusive legislative powers in the field of environmental protection, ecosystem and cultural heritage. Territorial government, ports and civil airports, major transportation and shipping, production, transportation and distribution of energy (amongst others), are matters of concurrent legislation. In matters of concurrent legislation, the Regions have legislative power, except for the determination of the principles given to the fundamental law of the State (see art.117 Constitutional Charter - Text amended by Constitutional Law n. 3/2001). With regard to plans on issues concerning the environment, the regional standards indicate a way forward that all regions should follow. Otherwise each region follows a specific path that reflects its local characteristics and its evolution over time. Of all the more special cases is that of urban plans because some Regions have proposed a new planning model, while others still have not. In the former, the application of SEA is easier, the procedure being one of the fundamental elements of the new model, while in the latter it is in difficulty.

Differences also exist among the procedures applied to plans with different levels: wide-scale knowledge areas (national and regional) are more detailed and structured than those at the local scale and the effects are more easily identifiable; the attention of a major problem can be higher for the people, compared with topics addressed at the local scale that may seem less interesting and, therefore, participation may be larger. The interest may be more aroused by EIA procedures, which may propose topics perceived as vital to the health or safety.

Only in the current phase rules for the coordination procedures have been issued, preventing the duplication of data and unnecessary work.

The drawing up and updating of strategies for sustainable development and shared mutual consistency (at national, regional and local) is a useful step towards achieving integration of environmental decisions in the plans and programs.

The Hungarian situation between accession time to the European Union and membership

Hungary also took part in the extensive preparatory work for the enactment of the Directive since 1993, as a country that was in the pre-accession period (i.e. as a country outside the EU) at the governmental level, and counselling. Since 2001 (the adoption of the Directive) it has started the discussion period for transposition of the Directive (until 2004) which was attended by a number of experts, planners and consulting firms.

The codification of the Directive came into force with the Government Decree 2/2005 (I.11) on 'Environmental assessment of certain plans and programs', which is currently in force and governs the procedure for environmental assessment (KV=Környezeti Vizsgálatok).

There are procedures at the State level, Regional and local level. The intermediate Provincial level is weaker currently but it should become stronger under the new government decisions (a new legislation on powers of municipalities will be approved in 2012).

The main steps of the SEA process are: the initial step when the planner decides, if the plan is not subject to the procedure for law, whether it is necessary to make the environmental assessment, *inter partes* with the environmental authorities; the second step is the scoping (according to the Directive), in which the planner defines the content of environmental assessment, provides the necessary information, publishes the thematic and defines the circle of concerned public. The environmental authorities begin to form their opinion; the third step is the environmental assessment by the environmental report. As the last step the planner has to submit the draft plan with the environment assessment to the authority and the summary of the opinions and comments received during the procedure.

There should take a special emphasis on preparing prognosis on the specific environmental components like landscape, settlements, climate, ecological systems and biological diversity. The impact on the status, conditions and character of Natura 2000 areas also should be discussed as well as the potential for reserving, maintaining, restoring or improving the favorable natural conditions of the habitats and native species.

Already in 1996 a decree on the contents of the required spatial plans (regional) had entered into force providing, as a compulsory part, an analysis on the environmental, social and economic effects (KTGHV=Környezeti Társadalmi Gazdasági Hatás Vizsgálatok). The aim of the decree was the same as that of KV, but the operating mode was not specified.

In Hungary, therefore the environmental assessment regulatory system works in three logics that have intersected over time: KHV (Környezeti Hatás Vizsgálatok), the oldest procedure used on projects [the aim of the Government Decree 314/2005 (XII.25) on Environmental Impact Assessment (EIA) is to identify, describe and evaluate the effects of various activities and development; it has been amended several times], the KTGHV is used for spatial plans (regional), still existing, but currently covers in KV, a procedure for different levels of strategic planning and programming, according to the European Directive.

There are plans and programs for which it is always required to conduct the KV. Then there are other cases for which it takes causal decisions, because of the limited size of the territory or because of the narrowness of the expected effects. Such cases should not necessarily conduct their KV, but the government organization responsible/competent may prescribe to do so (for example in the case of a new zoning or building regulations, but not for the total territory of the municipality but only for a part).

The players of the process are: the planner, who is responsible for the environment assessment playing the most important role. The legislation only requires that the environmental assessment must be fulfilled by a person with adequate expertise. The legislator does not distinguish between the planner and the authority carrying out the environment assessment independently from the planner, therefore the planner is responsible for the environment assessment; the authority responsible for environmental protection are present in every phases of the process and their involvement is made compulsory by law, but they can only express their opinion; the concerned public is all the people affected by the plan or program; the decision making authority is the public organ to which the planner submits the plan and, as a part of the plan, the environmental assessment for approval.

In the theoretical discussion that has developed among researchers the main objective of the SEA is to identify the existence and scale of environmental conflicts and the dissolution of these conflicts in the programs and plans and the SEA expert must be a scientist who translates his environmental knowledge in the planning process (this kind of thinking has influenced the legislation in some).

Moreover it would go beyond the strict environmental assessment to a more complex assessment of the sustainability. In fact it would like the output of the procedure was a environment oriented planning.

Integration of the SEA into the process was compulsory according to the legal regulation as well as the cooperation of the planner, the SEA makers and the civil partners.

Regarding the team carrying out the environmental assessment it is better that it is a separate unit and independent 'external' expertise. But in some cases it was not in this way. The independency and externality of the expert can mean 'exclusion'.

At national level, a limited number of pilot cases were conducted until 2004; after 2005 the number of SEAs had a sharp rise, then they became stable. At regional and local level, the procedure is widely used to date increasingly in recent years.

The environmental targets used are derived from the Program of Environmental Protection (NKP), which the State draws up every six years and that each Province and municipality should propose in your area, according to the law. Unfortunately in this plan many municipalities do not prepare for lack of money.

The quality of the SEA process is affected by some limitations, which start late, and difficulties in public participation, but there are continuous improvements in cooperation with planners and decision-makers. Participation is less effective as the tier rises, not for lack of players (the difficulty sometimes arises simply from the different language that each party speaks), but for their inability to affect planning process. We experience a general lack of cooperative culture.

The quality of the SEA documents (KÉ=Környezeti Értékelés) is generally good but further improvements are needed in referencing and handling uncertainties, partly because the SEA is still not a widespread professional specialization.

The alternatives are often not formalized: most are made in the construction of the proposed plan, but are not documented because they are selected by the planning process, even when there are not necessarily the best alternatives chosen.

As for the indicators there are very different cases even the type of plan: information on water is numerous, certified and available, data for air is only available for a fee, noise data is difficult to find.

The effectiveness of the process is minimal in direct effects (i.e. changes in the strategic initiative), but it is huge in indirect effects and side benefits, especially learning, awareness raising and networking aspects.

The urban quality through the SEA of urban plans

In this part explicit reference is made only to the municipalities urban plans to highlight the role of SEA in achieving a better quality of urban life, precisely because of the fact that the SEA should introduce the environmental component in the Planning. The remarks that are reported refer to two geographical areas smaller than the two countries considered, respectively the region of Lombardy in Italy and the conurbation of Budapest in Hungary. The considerations outlined are based on the analysis of cases as well as direct participation in the SEA procedures.

In Italy, some uncertainties in the application of legislation were detected in the case of old procedures, after which the process has been officially interpreted from the formal point of view (e.g. in the identification of the competent authorities for SEAs). The competent authority is usually identified with the head of the Technical Office of the municipalities.

The sessions of the Assessment Conferences are usually two (one initial and final), according to the minimum required by regulation. This seems very little to discuss and solve specific problems (especially the comparison with the neighbouring municipalities and the discussion about effects of the plan on their areas, for which there has been, in some cases, the activation of next moments of confrontation and related to specific themes – e.g. roads and mobility). It seems that the opportunity of the SEA is not considered as useful for resolving problems that seem too complex compared with the duration of the procedure.

It is hard to highlight the effects that the procedure has produced on the plan; there were no positions at least detectable by the Environmental Report, which looks like a document formally correct, set in a structured and clear enough way. But the environmental report hardly enters into the merits of decisions, in the sense apparently uncritical mainly for two reasons: the first related to when the assessments are qualitative, they are large elements of common sense, but not necessarily to require the presentation of data which accompany, and the second related to when the assessments are quantitative: the quantitative indicators are not easily extrapolated to each activities of the plan.

It also assists in sizing considerations of the Planning that are very lenient in regard to decisions to be taken (e.g. when the alternatives are given, rather than they seem to be built at a table instead of being chosen from the real options under discussion, probably because the options are part of the informal path of the planning and they are almost never reported in the environmental report). It must be a registered real effort in setting goals and activities of the Planning, working on a broad spectrum items, not only socio-economic, but also physical and ecological; this effort is reflected in checking of consistency with the goals of all other plans that regulate the same territory (external coherence).

The indicators used in the environmental report are sufficiently large; a relative homogeneity of the indicators is detected when the provincial territorial plan showing the indicators used for monitoring the municipal spatial plan as in the case of the Province of Milan.

In some cases the number of indicators is very high (over fifty). Their quantification is often partial. In the structure of monitoring the same indicators are often used for the building phase of the planning. There are

several data sources: the regional and provincial information system, the environmental data of the Regional Agency for the Environment, census data and so on.

Looking at the indicators that can give us an account of an improvement of urban quality. We consider the following sustainability targets for a broad spectrum of the reading of the cases examined: reducing consumption of resources (soil and water), reuse and redevelopment of brownfield, landscape conservation, agricultural areas conservation, reducing pollution and reducing emissions greenhouse gas.

It is possible to reconstruct space consumed processing areas that the plan provides to build up. Therefore, the quantitative data is difficult to estimate. The regional information system requests this value to municipalities, so you can make a good quantitative estimate from each data. In a sample of 150 plans only 7% of the plans is to zero consumption, 67% of plans had a land consumption between zero and 20%, 16% between 20% and 50% and 5% above 50%. There is also an unclear definition of land consumption for which the data are not easily comparable. The purpose to minimize the consumed soil is already taken by the plan and the SEA does not affect too much, but rather is the provincial authority that intervenes.

The water consumption of the population under the plan is tested based on availability and the environmental report also suggests mandatory rules at times for the recovery of rainwater.

With regard to the green areas the increase is expected only in cases of redevelopment of brownfield sites. The afforestation and improvement modifications of existing types of green are expected, also as compensation measures, in some cases are already covered by the plan in other cases suggested by the SEA.

Topics such as attention to the rehabilitation and recovery of degraded areas, compaction of urban, fringe areas, are often within the goals and purposes of the Plan.

The landscape component assumes an important role, already in the plan. The mechanisms for assessing the sensitivity of landscape are explained (from an expert in the field); it does not detect a direct relationship between landscape features and actions, beyond consistency with the classification areas.

The theme of the agricultural areas is central in the plans and in relation to agricultural activities (farm, spreading manure, organic farming,...) and in relationship to the crisis of this activity that generates demand for building in agricultural areas. The specific approach depends on the context. The environmental report does not indicate additional actions in defense of the agricultural areas.

The reduction of pollution is an issue always treated: data on the various types of pollution are reported with abundance, but data is often general and not related to the context. In addition, the contribution of the actions of the plan to the growth or reduction in pollution is not discussed because often there is no instant causal relationship.

Regarding the effects on climate change and, therefore, its contribution to the reduction or increase of greenhouse gas emissions, the environmental report does not always goes on the merits. Some may argue that the issue should be addressed at the scale of a wide area.

In Hungary, the comments in the participatory process are often limited in number or zero especially in the case of small municipalities. When changes have been proposed, transposition is rarely made in the planning. Accordingly it is not made adequate disclosure to the public as to the effects that the procedure has had on the planning.

In addition there have been many cases where the public entity is passive: for failing to appear that private benefits are not involved in the procedure except in a formal way. Under these conditions, the planner alone has the task of improving the choices of the plan in the environmental sense, relying on the private operator.

As for the new soil consumed the soil of each municipality is classified by degrees of transformation under a law: land can not be used with higher quality than average quality, land use plans are also limiting the use of land by the maximum percentage of allotments. The control of water consumption is already envisaged by the plan even before the SEA. The attention to brownfield recovery is strong, but the municipality decides whether to give effect to this principle or not. The landscape is handled with attention to scale wide area, but not necessarily at the municipal level. The protection of agricultural areas is a priority issue at the regional scale and local level must respect the choices of the spatial plan. The control of pollution levels is always dealt with in the environmental report. The reduction of greenhouse gases is a theme invoked frequently, but citing specialized studies rather than contextualising the problem in the real case.

A case study for all gives a sense of the situation. The town of Fót in the agglomeration of Budapest produced a modification of the plan because of the intention of new investments in an ex-military area. The area covered by the planning has been privatized, and the new owner is a private individual. The territory in question had a vocation for some special function (having artificial caves, once used as silos for missiles), with the extraordinary conditions of topography. The town government has remained indifferent (never expected to have material benefits) and the owner wanted the most profit.

The planners have prepared three alternative processing to try to convince the owner to implement the best solution. But the owner has chosen the most trivial: a housing development.

The SEA process was not mandatory, but later the interest of the authorities of Ecology, Water and Parks it was made. When the procedure had been activated, however, he was presented only one alternative.

In this case, the project has been indifferent to the municipalities (and why could not ask for economic returns, both for the mentality) and no observation came from the inhabitants. Politicians have had only one goal to have a plan approved in the shortest possible time. The phase analysis was carried out in close relationship with the consultation phase of the municipal plan. The analysis and consultation have not highlighted particular influences on the environment and even the environmental impact has increased to an unacceptable degree, the municipality has no special task as a result of the intervention.

The environmental report (KE) includes the preliminary assessment (the entire document will be documented only after the municipal plan was discussed, but a summary is contained in the plan to give a broader picture and help those who decide on the plan, including the authorities not participating in the SEA procedure).

The depth of data is done only narrow the scope of relevance of the plan. The data have been documented (as they must). The result of the SEA process has been positive for the plan submitted. So another area will be built that could be almost natural. The mitigation measures imposed were limited to a percentage of greenery to maintain higher than the current rule and the requirement to limits planted closer to the part that belongs to the local ecological network. The planners were able to convince the owners that being well-cared for and not built on the edge of the area would increase the value of buildings, with a higher overall gain. In this way a natural area has been preserved (which will be taken care of, paid by new residents).

According to the intention of the investor the land will become a residential area although the area does not have close contact with the rest of urbanization. This consideration should have been treated in the SEA, although the base is a negative element for the planning.

Experiencing the SEA: open issues

Notwithstanding the different logical approach to the issue of SEA, targeted integration of the various policies with the environmental policy and the government of the territory in Italy and the identification and resolution of conflicts in Hungary and different planning systems (hierarchical in Hungary - the National Spatial Plan to provincial and territorial level to municipal plan – and now co-operative and shifted toward local in Italy), we can see some parallels.

It is difficult to reconcile environmental policy with other policies, especially because they are not always investigated their environmental effects, the integration of environmental components in the plans and programs will be facilitated when there will be greater integration of national regional and local planning. Moreover, the political party governing tend not give consent and does not work on the other side's choices.

Summarizing the two country studies presented we can still emphasize the following problematic:

a shortage or unavailability of data through such stress, concretely the nature and severity of environmental effects. The remedy for this is related to the growth of spatial data infrastructure (which suffered a halt because of the current economic contingency). But the correct setting of the monitoring may allow the acquisition of local data, including through the application of specific analysis to individuals who propose interventions.

The SEA procedure has a high proportion of innovations in the planning method, in the ways of participation, in the dissemination of environmental knowledge and sharing of responsibility with regard to its territory. The experience is a good way of learning, but we must also continue in the accompanying different players involved, with opportunities for training and discussion promoted by the government. The study of the applicability of best practices in other territorial and legislative contexts should be deepened.

The border effects are still to manage, especially at local level: the remedy is in a more effective institutional participation.

A more correct consideration of alternatives is necessary, the plan must propose reasonable alternatives on which they can work during the procedure. This will be possible if each person will play its role, without prevarication, including politicians.

It seems that the effects of the procedure on the decisions of the plan is very limited. This is not true at all. The reduction in terms of building is perhaps imputable to the current economic climate, but the widespread presence of environmental goals in the plans is due to the 'effect of procedure'. The role of the plan must continue to be proactive as well as the role of assessment which is to compare the reasonable alternatives to determine the one with the highest level of environmental integration.

The monitoring is a critical phase because after the approval of the plans the administration thinks it is a simple matter of routine management. It is not yet clear which department should take control of the planning. In order to comply with, Directive Member States must not suggest duplication of monitoring mechanisms and the Directive does not require that the plan is modified as a result of monitoring.

Independence in the SEA process between the political and the technical part is to ensure, but in fact it is difficult to achieve if there is no actual scientific evidence of an environmental effect. This duality appears in the contrast between the plan and its assessment. Formally, this problem is solved by the application of the principle of responsibility in relationship with the principle of subsidiarity, mentioned by the Regional legislation. But, going further, you begin to make attempts for an endorsement of independence throughout the process.

The public participation must be larger and effective, but not only and not for a more effective evaluation, but for a greater sharing of environmental choices of the plan that involve lifestyle choices.

The case of the Province of Massa and Carrara in Tuscany-Italy, which has recently issued a new regulation, is emblematic. The proposed regulation provides that the Technical Evaluation Unit is coordinated by a 'guarantor' of the SEA process for each individual proceeding figure appointed by the President of SEA and that the Province will be selected from both within the outside depending on the type of skills required by the content of each plan or program subject to SEA. The guarantor simultaneously states the decision-making autonomy of the SEA procedure compared to the plan/program and the public involvement in the SEA procedure.

Each element in relation to that new figure was verified by the legal point of view and for its consistency with the Directive, it remains to be seen whether this innovation will bring a real benefit to the procedures resulting in more positive effects on plans and real sharing with the public.

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