Questionnaire on the Principle of Integration

MASSIMILIANO MONTINI

Report on Italy

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)

The principle of integration calls for an integration of the "environmental protection requirements" into the definition and implementation of all other EC policies.

Several typical features of the principle may be identified:

- The environmental protection requirements referred to in article 6 may be considered to encompass all the objectives, principles and conditions for action mentioned in article 174 EC Treaty, as well as all other EC principles, guidelines and criteria which can be derived from the secondary EC environmental legislation as well as all the relevant EC case-law on the matter.
- The object is the greening of all EC policies and measures referred to in article 3 EC Treaty, which may somehow limit its scope of application. However, the removal of the explicit reference to the article 3 policies and measures operated by the recent Lisbon Treaty should make this issue irrelevant.
- The addresses of the duty of integration are clearly the EC institutions only, with regard to the definition and implementation of all EC policies. Member States may be considered to be addressed by the integration principle only when implementing EC law provisions into their national legal systems.
- The kind of greening required by article 6 obviously consists in specific duty to "balance" environmental protection requirements against other possibly conflicting interests and goals. This duty does not amount to an obligation to give priority in all circumstances to environmental needs over the possibly conflicting objectives, but it is to be considered as a "procedural duty" rather than a "substantive duty" placed upon the EC institutions.
- On the basis of this understanding of the principle, it could be argued that the principle may be used in a Court to ask for the annulment of an EC legal act only in case the said "procedural duty" to balance conflicting interests at stake has been clearly disregarded by the EC institutions. However, considering the broad discretionary power given by the principle of integration to the EC institutions this is indeed a very remote possibility.
- In more concrete terms, the principle of integration may be used within the EC legal order as an useful means of interpretation of existing EC provisions, even if not directly linked to environmental protection goals. In this sense, in fact, it may be used in order to promote a greener way of implementing such provisions.

- The duty of integration requested by article 6 EC cannot be compared to the much softer duties to "take into account" an "high level of employment" (pursuant to article 127(2) EC Treaty) and consumer protection requirements (according to article 153(2) EC Treaty). Therefore, one cannot legitimately speak of an inflation of integration duties within the EC Treaty, since just with respect to the "environmental protection requirements" one can legitimately speak of a real "duty of integration" placed upon the EC institutions.
- The reference to the "protection of sustainable development" as the ultimate objective of the duty of integration contained in article 6 is meant to give a concrete and more substantive shape to the "procedural duty" represented by the principle of integration in itself. However, the practice so far seems to have demonstrated that, although appealing, in concrete terms such a reference to "sustainable development" has not succeeded in rendering the principle of integration stronger than it would have been otherwise.

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?

In the Italian Constitution, there is no explicit reference neither to the integration principle, nor to any other environmental legal principle. In fact, there is no general reference to the protection of the environment, although in the first part of the Constitution there is a general reference to the protection of landscape, which has been relied upon also to base initiatives aimed at the protection of the environment.

An explicit reference to the term "environment" was inserted in the Italian Constitution, thanks to the amendment of its Title V occurred through the Constitutional Law No. 3/2001. It is contained in article 117 (para. s) of the Constitution, which is dedicated to the distribution of competence between the State and the Regions. According to such a provision, the competence in the field of environmental protection lies exclusively with the State, whereas until 2001 there was a shared competence between the State and the Regions in this field.

In 2006, a general act on environmental protection was adopted, namely Legislative Decree n. 152/2006. Such a Decree, encompasses in a single framework all the most relevant pieces of environmental legislation, revising and updating the existing ones with some relevant amendments (e.g. legislation related to air, water, waste, EIA, SEA, IPPC, etc,). However, in the framework of such a general act, unfortunately, the general provisions are not very broad ones and no specific reference to the environmental principles is made in such a context.

The only notable reference to the integration principle contained in the Italian legislation on the protection of the environment may be found in the already mentioned Legislative Decree n. 152/2006. In such a context, the integration of environmental concerns is meant to represent a guiding principle in the elaboration, adoption and approval of all plans and programs with a potentially relevant effect on the environment.

To this effect, according to article 4(4) letter a), environmental assessment of plans and programmes which could have significant effects on the environment shall ensure a high level of environmental protection and the integration of environmental requirements when drafting, approving and adopting such plans and programmes. This should also ensure that they are consistent and they contribute to sustainable development.

According to article 11(2), the competent authority in order to promote the integration of environmental sustainability objectives into sectoral policies and consistency with European and national targets included in environmental plans and programmes, shall:

a) consider whether a strategic environmental assessment would be appropriate for the plans and programmes proposals for minor plans and programmes pursuant to article 6(3) of Legislative Decree 4/2008;
b) cooperate with the proponent authority in order to define the modalities and the stakeholders for the public consultation, the contents of the environmental report and the monitoring modalities;
c) on the basis of the public consultation and the opinions released by the competent bodies in the environmental field, express a reasoned opinion on the plans and programmes proposals, on the environmental report and on the monitoring plan feasibility.

In addition to that, article 34(6) provides that the Italian Ministry for the Environment, Land and Sea, the Regions and the autonomous Provinces of Trento and Bolzano shall determine, in the view to achieve sustainable development, the criteria for a full integration of environmental requirements into the definition and assessment of policies, plans, programmes and projects; moreover, they shall promote the sustainability of environmental integration.

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 ?

At national level the integration principle is contained in the CIPE (Interministerial Committee for Economic Planning) Deliberation 57/2002, which approved the "Environmental Strategy for a sustainable development in Italy 2002-2010". This document defines instruments and targets for the environmental sectors taken into account by the European Strategy for the Sustainable Development. In these sectors, namely climate and atmosphere, nature and biodiversity, environmental quality and quality of life in urban environment and sustainable use of natural resources and waste management, the integration of environmental requirements in all relevant policies is stressed as one of the most important instruments to overcome a sectoral only approach in the environmental field. To this extent, articles 1(5.2) and 1(5.3), titled respectively "integration of environmental concerns in all sectoral policies" and "integration of environmental concerns into the markets", foresee EIA, SEA and other specific instruments as appropriate tools to promote the implementation of the integration principle. Furthermore, article 1(2) states, in more general terms, that environmental protection should be considered as an "horizontal-factor" for all sectoral policies.

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!

To the best of my knowledge, the principle of integration has never been interpreted in a relevant way by the Italian judiciary. Therefore, there is no reference to be made here.

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

Within the Italian legal system, in the framework of the legislative process, an important watchdog-role is played by the permanent "Environmental Committee" which exists in each of the two chambers of the Parliament, namely the Chamber of Deputies and the Senate. The "Environmental Committees" are in charge of examining the draft bills relating to the environment, before they can be presented to the approval by the relevant chamber of the Parliament. To this effect may also hold hearings and draw up expert opinions.

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[1]*?*

In general terms, no such a broad and general requirement may be said to exist in Italian Law. However, in the administrative action for the adoption of individual acts there are several cases when environmental agencies may be called to cooperate with the proceeding administrative authority, in charge for instance to issue a permit or a licence, when specific environmental goods or interests whose protection falls within their competence may be possibly damaged as a consequence of the administrative decision to be taken.

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

Unfortunately, in the Italian legal system no general official advisory board or scientific group exist which is integrated into the legislative or administrative action with an environmental relevance. However, several experts may from time to time support the legislative or administrative action on a case by case basis, normally following a specific request by the proceeding administrative authority.

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)

The SEA Directive waas transposed into the Italian legal regime through the adoption of Legislative Decree No. 4/2008, which supplemented and amended Legislative Decree 152/2006, the general act on environmental protection. With specific regard to the implemenation of the SEA Directive, article 4(1), letter (a) of Legislative Decree 4/2008

[1] 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.

explictly states that its provisions are meant to implement the provisions of Directive 2001/42/EC into the Italian legal system.

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?

According to article 5(1), letter (e) of Legislative Decree 4/2008, "plans and programmes" are substantially defined in the same way as in Directive 2001/42/EC.

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)

Pursuant to article 5(1) letter p) of Legislative Decree 4/2008, the "competent authority" is defined as the public authority in charge to adopt a decision on the feasibility of the SEA, whenever required, or the final decision which concludes the SEA administrative proceedings ("SEA reasoned opinion").
The "proceeding authority" is defined, according to article 5(1) letter q), as the public authority in charge to elaborate the plan or programme or the public authority which adopts or approves a plan or programme, in case such a plan or programme is drafted by a different public or private entity.

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") ?

In Italy, there is no specific debate on this issue.

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

To this effect, article 11(3) of Legislative Decree 4/2008 states that the SEA procedure must be carried out during the drafting phase of the plan or programme and before its approval. Moreover, article 11(5) determines that for the relevant plans or programmes the SEA proceedings must be integrated in the administrative proceedings for their adoption or approval.

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 ?

Nothing to report on this issue.

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 !

Nothing to report on this issue.

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!

Nothing to report on this issue.

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?

In my opinion, the most relevant issue lies not so much in the question of identifying the areas where the integration of "environmental protection requirements" into the definition and implementation of other EC policies is not working well. The most relevant issue should rather consist in the assessment of whether the principle of integration, as it is presently conceived as a "procedural instrument" with a poor substantive effect on the concrete advancement of environmental protection requirements over other conflicting goals and needs works or not. This is in fact the issue that should be most urgently addressed: a question of method rather than content.