Review of present European environmental policies and legislation involving cultural heritage

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Abstract

Cultural heritage is being addressed by a number of charters and conventions and it is clear that its consideration within decision-making processes is progressively becoming a real challenge, both for developers and public authorities. Against this background, this paper reviews the environmental assessment framework developed by the European Community, as this should increasingly influence decision making about cultural heritage in an urban setting. The legislative framework for access to environmental information is also reviewed because of its relevance to the decision-making process. The Directives on Environmental Impact Assessment and Strategic Environmental Assessment both require a consideration of cultural heritage in decision making. This requirement can go some way to addressing the paradox in the European Community's position whereby the community wishes to conserve and enhance its own cultural identity whilst, at the same time, cultural heritage is usually defined at a local level. The present paper suggests that, given their flexibility, the two European Community directives on environmental assessment constitute a promising opportunity to address this seeming paradox, but that there is a significant gap between legal obligations and the methodological tools to meet them.
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1. Introduction

The protection of cultural heritage is presently addressed by a number of charters and conventions and it is clear that its consideration within decision-making processes is progressively becoming a real challenge, both for developers and public authorities. Obviously, heritage protection should not mean the transformation of cities into "open-air museums." On the contrary, it is crucial that new socio-economic uses are found for heritage buildings, areas or networks, in order to maintain them in sustainable activity cycles. The aim of present active conservation strategies is to achieve a better integration of urban heritage within the rest of the town so as to generate the investment— local development and citizen involvement—needed to support its continued maintenance (Tiesdell et al., 1996).

This paper will review the policy context for such an active conservation of cultural heritage within the European Community. Of particular significance in this review are the Directives on Environmental Assessment—both Directive 85/337/EEC (Council of the European Communities, 1985) on Environmental Impact Assessment (EIA; as amended by Directive 97/11/ EC; Council of the European Union, 1997) and the more recently adopted Directive on Strategic Environmental Assessment (SEA; Directive 2001/42/ EC; European Parliament and the Council of the European Union, 2001)—as these are the only pieces of European *legislation* that actually refer to cultural heritage.

There is a particular paradox to be examined with regard to the role of the European Community in this specific domain. Cultural heritage is usually perceived at local scales and there is a real concern among European populations that their cultural distinctiveness may be somehow harmed by foreign or centralised regulations. Any harmonisation of heritage conservation procedures is thus seriously constrained by the objective to protect and promote cultural diversity at a European level. This paper suggests that the two European Directives on environmental assessment provide a promising opportunity to address this seeming paradox as, although legally binding on Member States in terms of the results to be achieved, they do allow flexibility in the approaches to meeting the particular objectives set.

Section 2 will consider the background to urban conservation in the European Community, and especially the area-based conservation policies put in place by individual Member States. Section 3 will then briefly outline the European Community competencies in the domain of cultural heritage, in order to set the context for this review. Section 4 will review the provisions relating to environmental information, as public awareness and participation are key to success where cultural heritage has not only to be considered, but has first to be defined. Sections 5 and 6 will review the roles of the EIA and SEA Directives in the consideration of cultural heritage in decision making before Section 7 will draw conclusions.

2. Background to urban conservation

Two successive waves of urban heritage conservation policies are commonly distinguished (Tiesdell et al., 1996). The first wave of conservation policies mostly concentrated on the preservation of listed monuments and individual buildings, while the second wave of policies focused instead on groups of buildings, townscapes and the spaces between buildings. It was acknowledged that the initial conservation policies were significantly limited in effect, and a particular concern was the damage caused by inappropriate development close to listed buildings (Larkham, 1996; Tiesdell et al., 1996). Another reason for an extension of the built heritage concept was to be found in the cultural value of urban artefacts like an urban pattern, a specific waterfront, an outstanding built environment silhouette, the layout plan—namely a series of elements whose distinctive character could not be conserved through the preservation of buildings in isolation.

This second wave of conservation policies has led to the progressive emergence of so-called "area-based conservation policies" throughout Europe during the 1960s. Examples of this trend can be found in the *Secteurs Sauvegardés* as defined by Loi Malraux (1962) in France, the *Monumentenwet* in the Netherlands (1961), the *conservation areas* in the UK (1967) or the *Piani Particolareggiati per i Centri Storici* in Italy (1967) (Ashworth, 1991; Ashworth and Howard, 1999; Tiesdell et al., 1996).

The Amsterdam Charter (1975) definitively acknowledged this second wave of policies at a European level. Adopted by the Council of Europe, this charter recognised that genuine conservation of the built heritage required better integration into urban planning policies and called for "integrated conservation" as a way to resolve the possible conflicts between built heritage conservation and continued urban development. This declaration of principle ultimately led to the adoption of the Granada Convention (1985) by the members of the Council of Europe. By contrast to the Amsterdam Charter, the Granada Convention contains statutory measures to be adopted by the signatories, amongst which is the requirement to adopt integrated conservation policies (Article 10). In practice, it requires signatories "to include the protection of the architectural heritage as an essential town and country planning objective and ensure that this requirement is taken into account at all stages both in the drawing up of development plans and in the procedures for authorizing work."

Even though area-based conservation policies have gained a true European status, there remain significant variations in their practical implementation. In some countries (e.g., Italy, Spain), heritage protection is the subject of special legislation, with a specific machinery for its implementation and supervision. In others (e.g., Denmark, Sweden, Finland), area-based conservation is basically provided by using ordinary town planning law as the basic tool, whether or not it is combined with legal machinery for heritage protection (Council of Europe, 1996). Some countries, like France, have even set up distinct legal instruments to

achieve an area-based conservation (protection areas, ZPPAU and Secteurs Sauvergardé).

The criteria for determining which areas should be addressed by these policies also vary enormously from one country to another. Taking the UK and France as an example, there are some 13,110 listed monuments in France as opposed to 510,064 protected architectural heritage items in the UK (Council of Europe, 1996). Undoubtedly, these figures mostly reflect strong differences in the classification and heritage management systems adopted by these two countries rather than any significant quantitative gap between their respective cultural resources.

It is also apparent that there is no commonly agreed methodology for the delineation of these areas and, at best, the criteria proposed remain mostly visual. They usually fall short of targeting the complex networks of relationships, so often characteristic of the urban heritage and archaeological remnants.

Finally, the regulations associated with these areas and the way to enforce them also vary between Member States. In France, for instance, the Minister of Culture, represented by its *Architectes des Bâtiments de France*, has to give its formal approval prior to any development consent in these conservation areas. Thus, in France, the Central State still holds a strong decision-making power in matters of area-based conservation. This is in sharp contrast with some other European countries (the Netherlands for instance) where the development consent procedure within such areas is increasingly dealt with at the municipal level (Ashworth and Howard, 1999).

The specific role of the *Architectes des Bâtiments de France* also reveals that, in France, conservation policy still largely relies on the specific competency of individual experts, trained in built heritage management. This raises important questions about his or her individual ability to balance the different stakes of urban development. More generally, such a situation can probably be explained by the lack of methodological tools to objectively assess the effects of new developments upon cultural heritage.

Clearly, then, there is a problem in protecting urban cultural heritage in a consistent and sustainable way across the European Community. A central issue is certainly the fact that there remain intrinsic differences between Member States with respect to what constitutes "cultural heritage," and how to conserve it adequately. Providing a means of dealing with the current inconsistencies in conservation whilst being sympathetic to regional differences is a complex issue considering the European Community's typical approach of harmonisation, but one which environmental assessment can potentially solve at the project and strategic levels.

3. The competencies of the European Community with regard to cultural heritage

The preservation of cultural heritage falls under the scope of numerous European Community policies. First and foremost, Article 151 of the treaty

establishing the European Community states that "The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing common cultural heritage to the fore." However, community action in the domain of culture, and more specifically in the domain of cultural heritage, is severely constrained by the "subsidiarity principle." The subsidiarity principle is intended to preserve the independence of the Member States and avoid excessive centralism in the European Community. According to the subsidiarity principle, the European Community should only be involved when the envisaged objective cannot be better achieved by a lower level of authority. Subsidiarity means that responsibility for public tasks is placed at the level closest to the citizens, at local authority or regional level, for example. It is only when a particular problem cannot be solved at that level that authority to deal with it is passed "upwards" (Parleunet, 2000).

3.1. Culture and subsidiarity

The recent acceleration of European integration (evidenced by the common currency, enlargement process, etc.), combined with the growing speed of globalisation, raised real anxieties among citizens of the community that what they perceive as their culture, in the broader meaning, may be harmed by foreign or centralised regulations. Considering these concerns, Article 151 of the Treaty adopts a very cautious approach with respect to the subsidiarity principle. Point 5 of this article explicitly requires that European Community competencies are limited to incentive measures, excluding any harmonisation of the laws and regulations of the Member States. It also states that the European Council shall act unanimously in cultural matters, meaning that council members for all 15 Member States have to agree in order to reach any decision, and this constitutes a serious impediment to community action in this domain.

The treaty establishing the European Community is periodically amended at intergovernmental conferences, the most recent of which took place in Nice in December 2000. A major outcome of this intergovernmental conference was a significant extension of qualified majority voting in decision making rather than unanimity for secondary legislation introduced under many of the treaty's articles. However, Article 151 of the treaty was left unchanged and still requires unanimity in order for the council to reach a decision. Hence, it is unlikely that the European Community could force more harmonisation of area-based conservation policies in the near future. Whilst this may give the impression that there is no cultural policy at the European level, such a pessimistic view would be overlooking the two main aspects of present European Community policy, namely the recent adoption of the Culture 2000 Framework programme and the integration of a cultural dimension in many EC policies.

3.2. The Culture 2000 Framework programme

The European Community (EC) has recently adopted its first framework programme in support of culture (Commission of the European Communities, 1998). This program, called Culture 2000, seeks to integrate into a unified framework different incentive measures. More importantly, this programme also introduces the idea of a European cultural area, "which is open, varied and founded on the principle of subsidiarity, cooperation between all those involved in the cultural sector, the promotion of a legislative framework conducive to cultural activities and ensuring respect for cultural diversity, and the integration of the cultural dimension into Community policies as provided for in the Article 151(4) of the Treaty." This idea of a 'common European cultural area' is a way to promote the view that most cultural trends in Europe have progressively gained a transnational character, whilst preservation of cultural diversity and mutual knowledge are obviously very important aspects.

Three main types of actions were proposed in support of this programme, namely limited innovative and/or experimental actions (e.g., multimedia development, cooperation between cultural and socio-cultural operators), significant integrated actions (e.g., mobility of artists, training) and special cultural events (e.g., European Capital of Culture). The programme would thus maintain a strong orientation towards incentive measures and cooperation activities. Whilst it is obviously far too soon to gauge the tangible effects of this framework programme, it should still be considered as a first step towards a real European cultural agenda.

3.3. Culture in other European policies

It has also to be acknowledged that culture is likely to be affected by a number of other EC policies. It is important to remember in this respect that Point 5 of Article 151 of the treaty does not affect the bases on which a number of harmonisation measures with a cultural dimension have already been, and continue to be, taken in other EC competency areas. Amongst these are the social and human resources policy, the cohesion and regional development policy and the competition policy. Point 4 of Article 151 thereby states that "the Community shall take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and promote the diversity of its cultures." This provision is far from being impotent, since it places culture amongst the major objectives of the European Community.

A first report on the consideration of cultural aspects in European Community action was issued by the commission in 1996 (Commission of the European Communities, 1996c). It was rapidly followed by a report more specifically addressing the impact of cohesion policies on cultural development and derived employment (Commission of the European Communities, 1996a). The aim of cohesion policies is to reduce the economic and social imbalances between

European regions, through the distribution of so-called "Structural Funds" to the most deprived areas. Interestingly, these Structural Funds have sometimes been dedicated to projects concerning historic buildings, large industrial remnants or even entire urban historical areas. These projects constituted a significant contribution to the preservation and the conservation of European cultural heritage.

However, it is mostly environmental policies that will be considered here as, since their initial implementation in 1972, they have progressively involved more of a cultural heritage dimension, be it through incentive measures or through the scope of their directives and guidance. As soon as the environment is considered as being modified by the interaction between people and nature, it is clear that nearly all our present landscapes are characterised by a strong cultural stance. This has led to a progressive extension of the definition of environment, which now includes a human and cultural dimension besides the traditional ones.

4. Environmental information

Access to information soon appeared as an appropriate area of action for the community with regard to environmental policies. It was considered that an improved access by the public to environmental information might contribute to an increase in public awareness and thereby democratic control of environmental matters. Furthermore, the disparities between the laws in the Member States concerning access to information on the environment could create inequality within the community with regard to conditions of competition.

The community thereby adopted in 1990 a directive on freedom of access to information on the environment (Council of the European Communities, 1990). This directive was quite limited in its scope, but explicitly foresaw a critical review of its own achievements 4 years after its transposition in the different states. This review led to the identification of various limitations, and culminated in the community becoming a signatory of the Aarhus Convention under the auspices of United Nations Economic Commission for Europe (UN-ECE).[1]

4.1. Directive 90/313/EEC

The directive on freedom of access to information on the environment basically required that public authorities should make available any envir-

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[1] The UN-ECE comprises 44 European countries and the European Community. The Aarhus Convention is a legally binding instrument, which has been signed by the community and its 15 Member States. The convention entered into force on October 30, 2001, although the community and individual Member States have yet to ratify themselves; in accordance with current practice, the community will only be able to ratify the convention once the relevant provisions of community law have been made consistent with the obligations arising from the convention.

onmental information they held. An important aspect of this directive was that any refusal to grant access to information was to be justified by the relevant authority and that the possible motives for refusal were constrained by the directive (public security, matters under enquiry, etc.). The maximum delay for responding to a request for information was fixed at 2 months.

The notion of environmental information was restricted to (i) the state of water, air, soil, flora, land and natural sites; and (ii) activities and measures likely to affect these, and activities or measures designed to protect these, including administrative measures and environmental management programmes. It did not refer to cultural heritage in any way.

Furthermore, the directive was mostly oriented towards passive information, in that it referred to the freedom of access to existing environmental information. The provision of information had still to be triggered by an explicit request. Very little was said about the regular provision of information related to the state of the environment through periodic descriptive reports.

Despite these limitations, the directive proved to be the starting point of a gradual public awareness about environmental issues through a greater information openness and transparency.

4.2. The Aarhus Convention

The Aarhus Convention (United Nations Economic Commission for Europe, 1998) was intended to build upon the experience gained through the application of the Directive 90/313/EEC for 5 years in the different Member States. However, the convention significantly progresses the obligations imposed by the directive and not only embraces access to environmental information, but also public participation in decisions on specific activities as well as public participation concerning plans, programmes and policies (PPPs) relating to the environment. As these latter two aspects refer mostly to the EIA and SEA procedures, they will be discussed later in this paper. We shall now concentrate on two important modifications introduced (or at least implied) by the convention with regards to access to environmental information.

The convention extends the notion of environmental information by including human and cultural aspects of the environment "inasmuch [as] they are or may be affected by the state of elements of the environment or, through these elements, by the factors, activities or measures." Therefore, cultural sites and built structures are now explicitly acknowledged as environmental concerns.

The convention is also proactive in that it obliges the collection and dissemination of environmental information. In practice, it implies the regular publication of national State of the Environment reports at least every 4 years, and it also implies the publication of lists/registers of available environmental information. This general trend is further reflected by the phrasing of the objectives of the convention that shifted from ensuring a "freedom of access,"

as required by the Directive 90/313, to guaranteeing effective ''rights of access to information'' and public participation in environmental matters.

4.3. The proposed directive on public access to environmental information

Given these new developments and the number of amendments required, the commission proposed to replace the existing Directive 90/313/EEC rather than to amend it. A first directive proposal has been issued by the commission in June 2000, which has now to follow the traditional adoption procedure (Commission of the European Communities, 2000b). The following comments are based on this proposal and should thus be considered with caution because of the draft nature of this document. It can nevertheless be considered that the revision of the directive will imply significant modifications in order to comply with the Aarhus Convention.

The proposed directive adopts the broader definition of the environment used by the Aarhus Convention. ''The 'environmental information' shall mean any information in written, visual, aural, electronic or any accessible form on: ... (f) the state of human health and safety, conditions of human life, cultural sites and built structures in as much they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) to (d).''

With regard to accessibility, the proposed directive adapts the legislation to facilitate electronic access. ''Public authorities shall make reasonable efforts to maintain environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.'' Environmental information should thus be disseminated via electronic means whenever possible, in order to cut the delays and costs associated with the preparation, consultation and reproduction of the documents. The commission also considers that such a proactive approach contributes to the raising of public awareness in environmental matters.

This idea of accessible and periodically updated information should contribute to greater environmental awareness, transparency and debate. However, the regular publication of state of the environment reports is limited to the national state levels, and at other decision-making levels, the proposed directive only presents an indicative list of information that shall be provided. Furthermore, it is arguable whether environmental information, as defined by the proposed directive, will really foster more proactive decision making since it mostly covers existing effects, factors or discharges. Thus, this proactive approach still assumes an ex post decision making, through protests or other forms of reaction against existing environmental problems.

EIA, however, may be a way to reverse this trend for ex post decision making as it requires the developer to assess ex ante the possible effects of its scheme upon the environment. This shifts the responsibility for producing scientific, technical and environmental evidence towards the applicant (Commission of the

European Communities, 2000a) instead of towards the population or the public authorities.

5. EIA

The requirement to assess the impact of new developments upon the environment was introduced at a European level in 1985 by a Directive on Environmental Assessment (85/337/EEC). One of the major aims of this directive was to reduce the existing disparities between Member States with regard to environmental protection. It was, in the early 1980s, considered that such disparities might constitute a bias towards competition and thereby "affect the functioning of the common market" (Council of the European Communities, 1985). The Directive 85/337/EEC has since been transposed into national law by the different Member States and, following on from reviews of its performance (Commission of the European Communities, 1993, 1997), some 12 years later, it was amended by Directive 97/11/EC. The modifications extended the range of projects to be submitted to an EIA and were intended to correct the identified lack of consistency in the Member States' implementation of the 85/337/EEC directive. A further change can be expected as the European Commission published a proposal for an amendment to the directive to incorporate changes that will be required by the ratification of the Aarhus Convention (Commission of the European Communities, 2001).

Since EIA became a legal requirement in Member States, a number of texts have been written on the subject, but cultural heritage issues are not extensively covered by any of the existing EIA references. Morris and Therivel (1995) provide limited guidance as they consider methods for appraising a range of impacts specified by the directive, including a chapter on landscape (Goodey, 1995) and another one on archaeological and other cultural and material assets in which the focus is very much on archaeology and designated buildings (Bourdillon et al., 1995). Detailed guidance is thus limited despite the fact that the EIA Directive gives provision to identify, describe and assess in an appropriate manner the direct and indirect effects of a private or public project on factors including "landscape, material assets and cultural heritage" (Council of the European Union, 1997). Indeed, research suggests that EIA practice does not consistently consider cultural heritage at least in the UK (King, 1996), and there is evidence that the lack of consideration of cultural heritage in EIA is not just a European problem as it has been shown to be the case in the US also (King, 2000).

The EIA process can be broken up into a certain number of activities or stages (see, e.g., Wood, 1995, where effectiveness of the EIA process was considered for defined activities), which allow for an analysis of the depth of consideration of cultural heritage within EIA. The stages to be considered in this paper are *screening* (which are the projects to be considered for an EIA?), *scoping* (which

are the environmental issues to consider in the EIA?), the establishment of *alternatives* to be considered and the *baseline conditions* (reference situation over time), the preparation of the *Environmental Impact Statement (EIS)* (the document produced by the developer describing the predicted impacts upon the environment). These stages should ideally be completed by a *review* of the EIS and further *monitoring* and feedback after the decision has been made. These two were not considered by this review for they are not formally required by the 85/337/EEC directive nor its amendment. It should be emphasised that these stages are theoretical in that the practice of EIA is characterised by constant interactions between all these stages. The consideration of cultural heritage within each of these different 'stages' will be considered in turn.

5.1. Screening

The aim of screening is to determine whether or not a particular project requires an EIA. The 85/337/EEC directive, as amended, introduces a list of projects for which an EIA is always mandatory (Annex I) and a list of projects (Annex II) for which Member States shall determine the need for EIA through either (i) a case-by-case examination, (ii) thresholds/criteria or (iii) a combination of the two methods. Urban development projects and infrastructure projects are typical examples of Annex II projects, where information is required during the screening stage in order to make a screening decision.

For projects listed in Annex II, including urban development projects, and for both case-by-case examination and threshold/criteria methods, Member States have to take into account selection criteria set out in Annex III. These criteria involve characteristics and location of projects, and characteristics of the potential impacts. Among the project location criteria, we find "... (e) areas classified or protected under Member States' legislation", referring to Member States' designated areas like some urban historical areas, and also "... (g) densely populated areas, and (h) landscapes of historical, cultural or archaeological significance" (Council of the European Union, 1997). Among the characteristics of the impact, we find the reversibility of the impact, which may prove to be a crucial factor as long as heritage is involved.

The consideration of "historical, cultural or archaeological significance" at the screening stage is of prime importance as it means that heritage may cover tangible or intangible resources and is not restricted to official designations, like listed buildings, conservation areas, etc. These elements are clearly to be taken into consideration wherever they exist, but the screening process may lead to the consideration of potential impacts on resources that are not, or not yet, identified by government registries. Such flexibility is justified by the basic nature of some pieces of heritage, like archaeological remains, that may even be discovered, or have their presence verified quite late, during the course of a project. Good practice would require the screening to identify potential archaeological implications at the earliest possible stage of the assessment (Bond and Evans, 1996).

The definition of cultural heritage varies dramatically in space and time and it is often very subjective. As stated in some European Commission documents, "it is not for an institution to define the content of the concept of culture" (Commission of the European Communities, 1996c). According to UNESCO, "culture consists of all distinctive, spiritual and material, intellectual and emotional features which characterise a society or a social group." This definition reflects the fact that "culture is no longer restricted to 'highbrow' culture. Today, the concept also covers popular culture, mass-produced culture, everyday culture" (Commission of the European Communities, 1998). Clearly then, what constitutes "significant heritage" should ultimately refer to cultural groups and cultural values. The EIA Directive says nothing about the methods for facilitating and improving participation and consultation other than the usual requirements for publicity, and the Screening Guidance produced by the European Commission says only that: "Dialogue between the developer and the competent authority will also always be of assistance to the competent authority in making a screening decision and competent authorities may also find it useful to consult with and take advice from a number of other organisations including: ... other interested parties, including the public, to help identify any local concerns about the project" (Environmental Resources Management, 2001b).

Thus, there seems to be considerable room for the development of more specific screening methods for specific project types in the cultural heritage sector, as has already been the case for other issues like health impact analysis (Sadler, 1998). Screening requires an open and transparent approach to define what constitutes significant cultural heritage and some form of public participation would probably be helpful to increase its accountability.

5.2. Scoping

The aim of scoping is, inter alia, to identify potential impact issues and appropriate alternatives to be covered by the detailed EIA studies. It is usually based on discussions with outside organisations including local authorities, government bodies, interest groups and local communities. It is considered that a good EIS should focus on the relevant environmental issues rather than to seek to be very broad in scope. By identifying the information (and its form) to be provided and gathered by the developer in the EIS (or EIA report), scoping tends to stimulate the production of a higher quality impact assessment. It has also been shown that where scoping is employed from the start of the EIA process and is carried out jointly by the developer and competent authority, greater cooperation has been achieved and delays have been reduced (Land Use Consultants, 1996).

Unfortunately, the 85/337/EEC directive itself lacked precise requirements and there are important variations among Member States, mainly concerning the mandatory character of scoping and the people involved in scoping. It has to be underlined that, whilst there were genuine efforts to promote a more formal scoping stage in the amended directive, the requirement for scoping to be

mandatory was not carried forward into the final document. The 97/11/EC directive amending the 85/337/EEC directive only requires that "if requested by the developer", the competent authority must provide an opinion on the scope of the EIA (Council of the European Union, 1997).

Concerning cultural heritage, Annex IV of the amended directive specifies that the information supplied by the developer in the EIS shall include, inter alia, "a description of the aspects of the environment likely to be significantly affected by the proposed project, including ... material assets, including architectural and archaeological heritage, landscape and the inter-relationship between the above factors."

The European Commission has produced guidance on scoping to assist developers and competent authorities, and this has recently been updated (Environmental Resources Management, 2001a). This guidance provides a scoping checklist with a part on "project characteristics" and a part on "characteristics of the project environment." Even though the former does not include any specific reference to cultural heritage, the part on characteristics of the project environment does explicitly refer to "areas which are protected under international or national or local legislation for their ecological, landscape, cultural or other value, which could be affected by the project?" and to "areas or features of historic or cultural importance." There is also reference to visibility of the project and a question on whether the project is likely to affect "cultural identity or associations." The guidance also promotes early consultation with a wide range of stakeholders including "authorities responsible for protection of nature, cultural heritage and the landscape" and, of course, the general public.

Scoping should help to build a consensus amongst the different stakeholders about the cultural heritage resources, located on- and off-site, that could be affected by the project. Thus, to identify all potentially significant impacts, a wide perspective should be taken of cultural heritage resources, and scoping should not only consider the material assets, but also their broader context. Scoping should consider the environment, both past and present, of which the cultural heritage resource is an integral part. It should also include the association and relationship of cultural heritage to the network of tangible and intangible elements that contribute to its significance. The EIA Directive constitutes a first step in this direction, but it still falls short of addressing the complexity of the issue.

5.3. Alternatives and baseline conditions

The amended EIA Directive fosters the consideration of various alternatives during the EIA process, but whether this is a mandatory requirement is currently disputed and may have to be clarified by the European Court. The information to be supplied by the developer has to include "an outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects." The issue is whether it is acceptable to ignore alternatives, thereby not having anything to "outline" in

the EIS. In practice, the definition and evaluation of alternatives is an obligatory requirement in most of the Member States since implementation of the 1997 amendments to the directive. Some countries, like Denmark, also impose the consideration of the ''No-Action'' alternative (Commission of the European Communities, 1997) (i.e., no project takes place) in line with the guidance produced by the commission (Commission of the European Communities, 1996b).

It should be possible to derive a great number of alternatives to any given project, according to location, site layout, size and scale, working conditions, expected life cycle, etc. In practice, it is often observed that location is the most commonly studied alternative (Glasson et al., 1994), although when the project is dealing with cultural heritage, the location is not so relevant.

The ''No-Action'' alternative probably deserves a special mention as heritage resources are permanently threatened by obsolescence and decay, which is not always the case for natural resources (Tiesdell et al., 1996). Obsolescence occurs for physical reasons (deterioration), functional reasons (not suited to present uses) or locational reasons (disruption of an accessibility advantage). This is especially true for what is usually termed ''minor heritage'' or ''accompanying structures,'' often composed of mundane urban constructions, repetitive pattern, etc. Obsolescence may be further accentuated by three main factors: image deterioration (e.g., social dereliction), inappropriate legal barriers (e.g., safety standards) or financial ''brakes'' (e.g., taxes). Attempts to revitalize historic urban quarters must address and/or remedy obsolescence and extend the economic life of the historic building stock, taking care that excessive and restrictive preservation and conservation controls may constrain, inhibit or even deter rehabilitation and new development.

This last point basically refers to the establishment of the baseline conditions, namely the anticipated evolution of the environment in the absence of the project. This baseline knowledge is an essential element for impact prediction, as it constitutes the reference along which to measure the environmental performance of a project. The survey methodology, the visualisation of information as well as the assessment of baseline cultural heritage quality obviously raise technical, conceptual and ''political'' difficulties that urgently need to be addressed.

5.4. The EIS

The EIS reports the measurement of the environmental impact of a given project and its alternatives, although many EISs tend to minimise the importance of prediction at the expense of descriptive studies. Annex IV of the amended EIA Directive specifies that the information supplied by the developer in the EIS should include ''a description of the likely significant effects on the environment, including secondary, cumulative, synergistic, short-, medium- and long-term permanent and temporary, positive and negative effects.'' Among the criteria for significance, listed in Annex III of the amended directive are characteristics of

the potential impact including "the extent, magnitude, complexity, probability, duration, frequency and reversibility of the impact."

Such an evaluation may be far from trivial when real projects are at stake, and especially when cultural heritage issues are involved. Even where the impact of some environmental factors on built heritage conservation is clearly identified, there is still considerable uncertainty towards the likely effects of other types of physical alterations upon the long-term conservation of the built environment (Commission of the European Communities, 2000c). More research is needed to clarify these issues, but in the meantime, any impact prediction technique should leave room for the management of uncertainty and risk through sensitivity analyses, particularly as the amended EIA Directive not only requires the identification and measurement of individual impacts, but also the cumulative and secondary impacts of given projects. Hence, heritage protection cannot be isolated from its context, and cultural issues should be tackled along with their economic, social and environmental dimensions.

It has to be stressed that the assessment of impact significance towards cultural heritage basically involves value judgements. Otherwise, it would be impossible to balance positive and negative effects, and decide on which irreversible alterations, whether due to a project or simply the result of natural decay, should be considered as acceptable or not. Thus, impact evaluation should really be considered as a social construction, and involve a larger audience than just the consultants in charge of drafting the EIS:

> One cannot assume a distance decay of interest or concern as the viewer recedes from a site. Age, gender, activity patterns, family grouping education, holiday preferences and inherited traditions with regard to places unseen (such as images of an unvisited 'home' area) will require consideration. However, although it should never be presumed that 'people will get used to it', major features such as power-station cooling towers can be recognized positively as place markers, evidence of new technology, or as attractive design by some, while remaining offensive intrusions to others. The impact of visual intrusions will often depend on the viewer's commitment to, and time spent within, a given landscape. (Goodey, 1995)

Although the potential value of EIA in terms of being a useful tool for facilitating the consideration of cultural heritage in decision making is clear, there are limitations. A key limitation is time as, based on case study findings, the entire EIA process is usually completed in under 2 years, from the first studies to the final decision making. Typically, the environmental studies usually take 6–12 months, and the preparation of an EIS another 2–3 months (Land Use Consultants, 1996). Longer time frames (5 months to prepare the EIS) have been mentioned for the UK context (Jones et al., 1998) and there is great variation in the time taken to complete various stages. However, it is clear that EIA is a time-consuming procedure—perhaps too time-consuming for small projects, like urban development projects, which may have impacts on cultural heritage. Indeed, some Member States remark that the quality of information

supplied by the developer in an EIS strongly depends on the size of the projects, with smaller projects leading to more deficiencies. Accordingly, one of the main recommendations put forward by Member States is to set up some form of "mini-EIA" for small-scale projects (Commission of the European Communities, 1997).

It has also been identified that most important decisions were made during the initial feasibility studies and planning phase before individual development projects were defined (Land Use Consultants, 1996), thereby constraining the effectiveness of EIA.

Most Member States think that the introduction of strategic level assessments to cover PPPs could be helpful in reducing time and saving costs. So SEA may be able to offer an important contribution to the effective consideration of cultural heritage as it can allow a project-for-the-area approach, which would be able to create enthusiasm among the local community and enhance social adherence to the subsequent decisions, thereby contributing to active urban conservation strategies.

6. SEA

SEA has been defined as:

> the formalised, systematic and comprehensive process of evaluating the environmental effects of a policy, plan or programme and its alternatives, including the preparation of a written report on the findings of that evaluation, and using the findings in publicly accountable decision making. (Therivel et al., 1992)

By the mid-1990s, practical experience with SEA was growing rapidly at different decision-making levels in Europe (Lee and Hughes, 1995). Most experiences have developed at the level of land use plans, perhaps because the formulation of these plans is already iterative, relatively open to the public and geopolitically well defined (Curran et al., 1998). In this case, the basic rationale of a SEA is that once a land use plan is adopted, it may prove very difficult to deny planning permission for a project that conforms to the plan, even when its likely that environmental impacts seem significant, hence the point of assessing the effects of the land use plan itself. The same logic applied to other types of plans and programmes would lead to further ex ante assessments, thereby achieving a better integration of environmental concerns within the decision-making process. This was to lead the European Community to prepare a directive on the assessment of the effects of plans and programmes on the environment.[2]

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[2] Early drafts of Directive 85/337/EEC applied to PPPs, but pressure from some Member States restricted the directive to projects only (Therivel, 1993).

6.1. The SEA directive background and legal context

The history of the development of the SEA Directive up to just prior to its final adoption in July 2001 has been explained in detail by other authors (Feldmann et al., 2001). The overall objective of the directive is "to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an Environmental Assessment is carried out of certain plans and programmes likely to have significant effects on the environment."

Considering this objective, the SEA Directive potentially progresses the quality control aspect of environmental assessment relative to the existing EIA Directive in that, e.g., there is a requirement to review the environmental impact reports and to monitor the effects of the implementation of plans and programmes.

First and foremost, the SEA Directive will address plans and programmes that set the framework for future development consents of projects.[3] The directive introduces a distinction between plans and programmes that should always be submitted to a SEA and those for which some discretion is left as to whether or not they should undergo SEA, according to their likely significant environmental effects. In the latter case, Annex II recommends that "the value and vulnerability of the area likely to be affected due to special natural characteristics or cultural heritage" be considered. Effectively, area-based conservation policies, whether they are achieved through local plans or through some special legal machinery (see Section 2), should now fall under the scope of the directive.

For scoping, Annex I of the directive requires, inter alia, that the likely significant effects on the environment should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects (as in the EIA Directive). Additionally, these should be "identified, described and evaluated in the environmental report," instead of simply described as stipulated in the EIA Directive. The environmental aspects to be dealt with in the environmental report should include "cultural heritage including architectural and archaeological heritage." It has to be stressed the word "impact" has been dropped and changed into "effect." This should allow the consideration of both negative AND positive effects, in order to compare the alternatives more objectively. This is important when promoting the active conservation of urban heritage, as the outcome of conservation should not be to freeze development or to transform cities into open-air museums. Instead, a sustainable maintenance of the urban heritage implies a sustained transformation.

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[3] It was considered that SEA at the policy level requires a fundamentally different approach, which needs to be investigated through additional case analysis, and should be supported by the development of specific methods.

When considering this continuous process, it is of prime importance to consider both positive and negative effects of development, in order to balance the risk of the "No-Action" alternative (obsolescence and decay) with the one of overshoot (destruction and loss of identity).

Alternatives assessment is of paramount importance in this regard and the directive clearly states that the environmental report must identify, describe and evaluate the likely significant effects of the plan or programme and "reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme." Its Annex I also requires the following information to be included in the environmental report: "an outline of the reasons for selecting the alternatives dealt with." The "No-Action" alternative is not explicitly mentioned, but is implicitly required by introducing a time dimension within the consideration of baseline conditions, "the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme," to be included in the environmental report.

Concerning consultation, the SEA Directive already incorporates the requirements of the Aarhus Convention (Feldmann et al., 2001) and has a broader scope than the EIA Directive. It specifies that Member States identify the "public," including "relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned" and Member States designate "the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes." Before the adoption of the plan or programme or its submission to the legislative procedure, the draft plan or programme and the environmental report should be made available to the public and authorities with environmental responsibilities. The screening decision has also to be made public, as have the reasons for a decision in cases where an environmental report is not required. At the scoping stage, the directive requires that the authorities likely to be concerned by reason of their specific environmental responsibilities "shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report."

The SEA Directive has the potential to increase the level of consistency of area-based conservation strategies throughout Europe. Besides addressing plans and programmes, it forces the consideration of positive and negative outcomes and the consideration of alternatives. It also tends to involve nongovernmental organisations, whose role has often been essential in the domain of heritage conservation.

Ideal candidates for SEA are the European Community's Structural Funds, which form part of the European cohesion policy. Even if these funds are basically aimed at economic and social development, they usually also involve a strong strategic land planning dimension, whether it be at a regional or at a local level. These programmes often make use of urban redevelopment and cultural activities as a way to enhance regional or local resources as well as economic

development (Commission of the European Communities, 1996c). Such an integration of a strong cultural dimension in funded urban infrastructure projects is likely to increase in the future as Point 4 of Article 151 of the treaty now explicitly requires that the community should take cultural aspects into account in all its actions. Accordingly, the European Parliament's Second Reading of the proposed SEA Directive prior to its eventual adoption wanted to make all future plans and programmes under the current Structural Funds and rural development regulations or under new EC regulations subject to SEA, but the commission was not ready to accept this amendment and these are exempt from the need for SEA in the final text of the directive.

7. Conclusions

Cultural heritage is increasingly recognised as a key aspect of the ongoing European integration. The present challenge is to develop a strong cultural identity for the European Community whilst, at the same time, preserving the cultural heritage diversity of individual Member States. Such an objective requires a balancing act involving a degree of subsidiarity and a degree of consistency to be applied. This can only be successful through the use of a flexible approach—which is precisely what directives, as opposed to regulations, allow as they oblige Member States to meet objectives, but do not constrain methods to achieve them.

According to the Aarhus Convention, cultural heritage has to be considered by present and future environmental policies. Interestingly, both the EIA and SEA Directives specifically address cultural heritage and facilitate its protection at the Member State level without being in any way prescriptive about the definition of cultural heritage resources. This is a great strength of the directives in that they allow for the preservation of cultural identities whilst, at the same time, requiring the consideration of cultural heritage as part of the decision-making processes. These two directives hence appear as a promising opportunity for a better consideration of both positive and negative effects of future development projects and land use plans upon urban cultural heritage. As such, they could be a useful means to foster "active conservation strategies."

However, the experience related to practice in carrying out project-level EIA has demonstrated that some environmental aspects may be neglected even though the directive requires their consideration in the assessment process. Socio-economic impacts, e.g., are often largely overlooked as developers have chosen their own interpretations of what they have to do to consider impacts on "human beings." To some extent, the new guidance documents issued by the European Commission in 2001 have clarified the kinds of impacts which have to be included in an EIA, but in cases where methods and techniques are not developed, this is not helpful. In particular, the consideration of the potential impacts upon designated buildings and/or sites is far from being consistent in

practice. Furthermore, present assessments do not systematically incorporate residents' opinions about the elements or areas which they consider as "significant urban heritage."

The basic situation seems to be that the policy and legislative framework governing the consideration of cultural heritage in decision making, and the involvement of the public in that process, are currently more advanced than are the methodological tools that can deliver the objectives set by that framework.

There is no doubt that EIA and SEA are flexible tools that can be used effectively to consider cultural heritage as part of European decision-making processes. Given its flexibility, EIA is a tool that can facilitate good practice in different sectors, but there is an urgent need for reliable techniques to allow practitioners to include a comprehensive assessment of potential impacts on cultural heritage within environmental assessments. This advice is still lacking and is not provided by the latest guidance to be issued by the European Commission. The new SEA Directive places an obligation on Member States to ensure "sufficient quality" of environmental reports, but there is still a methodological vacuum in terms of the ability of practitioners to assess cultural heritage impacts at both project and strategic levels.

Studies are currently being financed by the European Commission, which should go some way to providing the necessary techniques and one of these, SUIT (Sustainable development of Urban historical areas through an active Integration with Towns, http://www.lema.ulg.ac.be/research/SUIT/), aims at establishing flexible and consistent environmental assessment methodologies at both project level and the level of plans and programmes to assist with the active conservation of historical areas and should go some way towards addressing the existing methodology gap.

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