Towards an Effective Method of Governance of Cultural Heritage Sites

Maria Luisa Tufano, Lea Brizzi, Sara Pugliese, Valentina Spagna
(Università degli Studi di Napoli "Parthenope", Italia)

Abstract   2014 Commission Communication "Towards an integrated approach to cultural heritage for Europe" argues "Cultural heritage is… a common good". The fundamental characteristic of this kind of goods is that both their production and their fruition have a collective feature, since they are expression of a voluntary cooperation among individuals sharing an unifying element (territory, ethnicity, religion, ideology, etc.). The choice of the EU to consider CH as a 'common good' arises the problem about the best form of governance to apply to it, while seeking a fair balance between public action and private initiative able to maximize the benefits generated by CH and at the same time to assure its complete protection. The paper proposes an analytical reconstruction of the progressive affirmation of rights of information and participation within the international agreements and soft law. More specifically, the paper points out that, even if the 2003 and 2005 UNESCO Conventions contained references to stakeholders participation, the attempt of UNESCO organs and bodies to affirm this awareness passed mainly through soft law, in particular through the Operational Guidelines and Directives implementing the UNESCO Conventions. As a consequence, the full acknowledgement of stakeholders' information ad participation rights within the cultural sector is far from being considered accomplished. The second part of this study focuses on the models of participative land-use decision making concerning environmental matters established by the EU regulation, with particular attention to the Directives concerning European Impact Assessment and Strategic European Assessment. Then, the paper analyses some Italian experiences of participatory land-use decision making, mainly those concerning the infrastructure building. Considering the issues arisen from this analysis attached Annex proposes a model aimed at strengthening the awareness of CH dynamic value as an 'identity symbol' and the democratization of the land-use decision making for cultural purposes.

Summary   1 Introduction. CH as a 'Common Good': What the Most Suitable Form of Governance Might Be. – 2 International Law Concerning the Right to Information and Participation in the Cultural Sector. – 3 Models of Participatory Decision Making in EU Law: Environmental Impact Assessment and Strategic Environmental Assessment. – 4 Models of Participatory Decision Making in Italy. – 5 Conclusions. – Annex: I Phase: Stakeholders' Selection and Weighting. II Phase: Participation.

Keywords   Common good. Governance. Stakeholders. Participation.

1 Introduction. CH as a 'common Good': What the Most Suitable Form of Governance Might be

Since 2005, in the wake of the Faro Convention promoting CH governance founded on participation and valorization to the benefit of the whole community, the debate on the need to give greater weight to cultural policies and the search for innovative methods of CH governance has increased.[1] At the same time, the EU began to reflect on the value of CH within European society and how to manage it in such a way as to maximize its contribution to the growth of the EU's GDP, as well as fostering innovation, competitiveness and economic wellbeing.

Commission COM (2014) 477 *Towards an Integrated Approach to Cultural Heritage for Europe* states that "Cultural heritage is a shared resource, and a common good". From this perspective, the Commission offers Member States some guidelines concerning CH management, which are fully integrated into the participatory governance model proposed by the Faro Convention. Stakeholder participation is mentioned in several points.[2]

COM (2014) 477 and the *Mapping of Cultural Heritage Actions in European Union Policies, Programmes and Activities* adopted in compliance with it (European Commission 2014) respond to a 'dynamic' conception of CH that had gradually developed in Europe in the light of the UNESCO 2003 Convention and the 2005 UNESCO Convention. According to this vision, CH was not only seen as a stock of goods to be preserved, but also as a flow in a process of 'heritagization' (European Commission 2015, Annex I, 19), where "heritage affirmed itself as the dominant category, including if not overwhelming cultural life and public policy" (Hartog 2005, 10), which, encompassing tangible and intangible factors as well as natural

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Section 1 is the work of Prof. Tufano; section 2 is the work of dr. Brizzi; section 3 is the work of dr. Pugliese; section 4 is the work of dr. Spagna. The Conclusion and Annex I are the result of shared reflection.

1 See Faro Convention, art. 1(a); art. 4(c); art. 5; arts. 9-12.

2 Firstly, the Commission declares that its "overall aim is to help Member States and stakeholders make the most of the significant support for heritage available under EU instruments, progress towards a more integrated approach at national and EU level, and ultimately make Europe a laboratory for heritage-based innovation" (see COM (2014) 477, 3). Secondly, the involvement of stakeholders is envisaged both in order to adopt effective management and business models through public-private partnerships (COM (2014) 477, 5), and in order to launch the EU Research and Innovation policy framework and agenda for CH based on the contribution of a high-level group of experts looking at innovative and sustainable investment, financing and management of CH (COM (2014) 477, 8). Lastly, the stakeholders are invited to "jointly look into how public policies at all levels, including the EU, could better be marshalled to draw out the long term and sustainability value of Europe's cultural heritage, and develop a more integrated approach to its preservation and valorization" (COM (2014) 477, 13).

and human elements, can be inserted within the category of 'common goods'. The benefit to the community of CH falling into this category not only derives from its static preservation, but also from its transmission and constant regeneration according to a dynamic logic.

The category of *common goods*, defined in the field of public economics (Kaul, Grunberg, Stern 1999; Anand 2004; Deneulin, Townsend 2007) in the late '90s, responds to a logic of economic wellbeing that does not refer exclusively to single individuals, but to whole communities (Sandler 2001).[3] As a consequence, the fundamental characteristic of common goods is that their fruition and often their production have a collective aspect, as they are the expression of voluntary cooperation among individuals sharing a unifying element (territory, ethnicity, religion, ideology, etc.). It is important to specify that a 'common good' not only consists of the result of cooperation, but also the very process of cooperation and aggregation. They thus become the goods of the whole community, since their aim is to produce durable and shared, but not divisible, economic wellbeing (Deneulin, Townsend 2007, 27).

As a consequence, the choice of the EU to consider CH as a 'common good' poses the problem of the best form of governance to apply, while seeking a fair balance between public and private actions able to maximize the benefits generated by CH and at the same time to assure its complete protection.

In reality, the EU stresses the need for a CH decision-making model based not only on the involvement of all public actors according to a multilevel logic, but also on the participation of private stakeholders in both the definition of strategies[4] and, from a bottom-up perspective, in the implementation and assessment phase.[5]

Nevertheless, defining CH as a 'common good' and involving stakeholders in decision making is not sufficient to ensure that good governance is applied, without arranging for some mechanisms to make responsibilities for protection, sustainable management, funding, and monitoring clear and verifiable. Indeed, like all common goods, CH is exposed to the risk of 'free riding', highlighted by the so-called theory of the 'tragedy of commons', arising from the possibility that some may avoid contributing to the common efforts through their personal sacrifice, not investing their own resources, but nevertheless enjoying the collective results (Harding 1968). In the cultural sector, such free-riding behaviour may be exercised by

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3 In this sense 'common goods' are different from 'public goods' because, even if both classes of goods are non-rival and non-excludable in consumption, the second produce individual rather than collective wellness.

4 See COM (2014) 477, 8, 14,

5 See COM (2014) 477, 5.

States, enterprises, or groups of individuals. A classic example concerning States is non-compliance with the measures of protection and conservation established by UNESCO Conventions or recommended by other International Organizations such as the CoE or the EU, as they consider the efforts of other States sufficient to compensate for their lack of contribution. In situations of this kind, triggering mechanisms like 'naming and shaming' may well prove useful in inducing States to comply (Vadi 2015, 236 ff.). An example of free riding by enterprises is the acquisition of sites of cultural and naturalistic interest in order to transform them into production sites (the so-called *land grabbing*) (Silvestri 2012). Also the destruction of cultural sites through terrorist attacks could be considered a form of free riding by groups wishing to damage historic, artistic or archaeological sites and goods in order to destroy the culture they represent, generate fear, and disrupt the way of life of a community. Furthermore, the 'tragedy of commons' may also be brought about by 'negligent free riding' by public and private subjects in tandem, as in the case of inadequate prevention, thus exposing CH to destruction due to natural disaster.

Considering the exposure of CH to these risks, it is particularly difficult to find a way to manage it as a 'common good', as required by the Commission COM (2014) 477.

Legal studies have so far focused more on CH protection than on CH management. Conversely, other disciplines, such as public economics, have tried to develop effective methods of managing CH that can take into account the interests of stakeholders and involve them in decision making. Some scholars underline the need to set up institutions inspired by a logic of 'self-governance', where the different interests of stakeholders are mediated not by PAs, but through power-balance mechanisms characterized by voluntary cooperation (Zhang 2012, 168). Yet 'self-governance' has several limitations since it protects CH from risks 'internal' to the community but not 'external' ones (Buzio, Re 2012, 184 ff.).[6]

In order to overcome these limits, other scholars use the 'cultural districts' model (Santagata 2002). The expression, clearly inspired by 'industrial districts', refers to geographical areas with numerous tangible and intangible resources, including informal knowledge and know-how shared by the whole community.

It may appear easy to organize forms of self-governance into cultural districts, as they ought to represent the formalization of pre-existing relational capital, but the spontaneous and voluntary creation of forms of self-governance certainly cannot be taken for granted, given the scarce awareness of the value of CH in the community and a wealth of possible

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6   Examples of 'external' risks might be over-exploitation in tourism, harmful to tangible CH, or the risk of intangible practices (mainly artisanal production techniques) being counterfeited.

administrative, bureaucratic and procedural constraints. In addition, hierarchical and elitist mechanisms could impede the full and effective participation of all those with a stake in decisions relating to the protection, fruition, and valorization of tangible and intangible CH.

From this perspective, the EU needs to encourage the States through binding norms, guidelines, technical assistance and funding, as well as the exchange of best practices, in order to introduce innovative forms of governance inspired by participatory decision making and 'democratize' CH management.

However, participation alone is not sufficient to assure the 'democratization' of CH decision-making practices. If stakeholders are to be truly involved before consultation, they must be offered complete and substantiated information, showing the value of CH and the threats it is exposed to so as to identify the best protection and valorization measures to be implemented. After consulting the stakeholders, it is important to assess the impact that the proposed decisions will have on them in order to mitigate the negative effects and establish the sharing of responsibilities beforehand.

In order to analyse the regulations concerning stakeholder information and participation from a 'multilevel perspective' (international, European and national), this study takes as its starting point a critical reconstruction of the norms and guidelines on participatory governance found in international conventions and soft law. It then focuses on the participatory decision-making methods drawn up by the EU institutions within the land-use framework (EIA, SEA) and on the analysis of some participatory models that have been applied in Italy. The study then proposes an operative method of 'cultural strategic assessment' as a simple example of a decision-making process able to ensure full respect of stakeholders' opinions and to share responsibilities among them clearly.

2 International Law Concerning the Right to Information and Participation in the Cultural Sector

In international law, the issue of information and participation in CH management has gradually come to the fore as the conception of CH has evolved from something material and static to something intangible and dynamic (Ciampi 2014; Scovazzi 2014, 2015; Zagato 2012, 2014; Triggiani 2015).

The UDHR and the 1966 Covenants already contained some provisions on the link between human rights and CH,[7] and these formed the basis for

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[7]   See UDHR, art. 27; ICESCR, art. 15; ICCPR, art. 27.

subsequent CH conventions,[8] but, in spite of its gradual consolidation as a 'general interest', the issue of the participation of stakeholders in decisions concerning CH was largely ignored until the mid '90s.

In 1998, the Aarhus Convention guaranteed the rights to information, participation and access to justice in environmental matters for the so-called 'public concerned', an expression denoting

> the public affected or likely to be affected by, or having an interest in, environmental decision making (art. 2(1)(2)).

The Convention includes among those sharing this interest NGOs "promoting environmental protection and meeting any requirements under national law […] deemed to have an interest".

In reality, the Aarhus Convention does not take cultural sites into account directly. Indeed, within the definition of 'environmental information', the reference to 'cultural sites and built structures' is limited to cases where "they are or may be affected by the state of the elements of the environment" (art. 4). Nevertheless, the Convention has triggered a heated debate on the necessity to ensure stakeholder participation in decisions concerning the whole territory, including cultural sites.

This problem became a central issue in the 2003 UNESCO Convention.[9] Indeed, the Convention promotes a dynamic concept of 'safeguarding', conceived as

> measures aimed at ensuring the viability of the intangible cultural heritage, including […] the revitalization of the various aspects of such heritage.

From this perspective, it contains specific provisions concerning policies aiming to promote the role of ICH in society, ensuring the broadest possible participation of communities, groups and individuals that can create, maintain and transmit this heritage, involving them actively in its management. (arts. 11-15. Urbinati 2012, 207 ff.).

The question of participation is examined in depth by the 2005 UNESCO

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8   In addition to the 1954 Hague Convention, which cited "the CH of all mankind", the point of reference is the 1972 UNESCO Convention, which proposes a new perspective of CH as a *world heritage* and establishes that "parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole" (Leanza 2011, Francioni 2012, Magrone 2014).

9   In compliance with art. 1, the purposes of the Convention are "to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned; to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof".

Convention, establishing that

> Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention (art. 11).

The issue of participation is addressed more specifically in the implementation of the UNESCO Conventions. Indeed, the OG of the WHC adopted by the ICPWCNH (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage) in 1977, and last emended in 2016, establish that

> common elements of an effective management system could include: a) a thorough shared understanding of the property by all stakeholders, including the use of participatory planning and stakeholder consultation process

and that

> legislations, policies and strategies affecting World Heritage properties should [...] promote and encourage the active participation of the communities and stakeholders concerned with the property as necessary conditions to its sustainable protection, conservation, management and presentation.

Furthermore, participation is also required in the preparatory phase of a nomination for inscription on the WHL (para. 123) and it is increasingly becoming an essential requirement. Thus, it is possible to affirm that participation is an integral part of the governance model of UNESCO CH sites.

As for the 2003 UNESCO Convention, the Operational Directives, adopted by the General Assembly of the States Parties in 2008, last amended in 2016, contain several references to the participation of individuals, communities and groups, also establishing criteria for the accreditation of non-governmental organizations by the ICSICH (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage)[10] (paras. 79-91).

Finally, the Operational Guidelines to the 2005 UNESCO Convention adopted by the Conference of Parties in 2009, encourage the Parties to develop and implement policy instruments that

> aim at supporting the creation, production, distribution, dissemination

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10   See art. 5 of the 2003 UNESCO Convention.

and access to cultural activities, goods and services with the participation of all stakeholders, notably civil society as defined in the Operational Guidelines (art. 7 OG).

Thus, the OG establish a set of criteria for the admission of representatives of civil society to the works of the organs of the Convention (art. 11 OG).

The growing importance attributed by the UNESCO bodies to information and participation have led to a new focus on cultural rights, so much so that in the 2009 CESCR specified the extension of the right to take part in cultural life[11] (Zagato 2012; Ferri 2014).

Nevertheless, the solely programmatic nature of the 1966 Covenant definitions of rights, and the lack of effective instruments of enforcement by the Committee meant that the application of cultural rights was only partial and late in coming (Millar 2006).

In conclusion, even if the rights to information and participation attained a higher profile in international law, even becoming a crucial element in the governance model of UNESCO CH sites, attempts by the UNESCO bodies to affirm this model were carried out mainly through soft law (Montella 2015; Barile 2015; Barile, Saviano 2015, Urbinati 2012, 208).

Consequently, full acknowledgement of the right of stakeholders to be informed and to participate in decision making in the cultural sector is still far from being accomplished.

3 Models of Participatory Decision Making in EU Law: Environmental Impact Assessment and Strategic Environmental Assessment

If the need for a participatory method of CH governance has only recently emerged in international law, EU law, on the other hand, has been addressing the issue since the '80s in the area of regulating land-use decision making in environmental assessment processes.

The first directive to deal with the issue of stakeholder consultation was Directive 85/337 on EIA,[12] where CH was considered something static: just one of the important territorial elements in project assessment.

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[11] CESCR, General Comment no. 21, "Right of everyone to take part in cultural life", art. 15(1)(a) of the ICESCR.

[12] Member States should ensure that authorities with specific environmental responsibilities are consulted, guaranteeing that any request for development permission and any information concerning the project and its effects are made available to the public and that "the public concerned is given the opportunity to express an opinion before the project is initiated". However, no reference is made to the need to explain to the 'public' how their opinion was taken into consideration in the previous decision.

A more holistic approach was asserted by Directive 97/11, looking at territorial elements in a more integrated way (art. 3) and reinforcing the weight of the opinions of authorities with environmental responsibilities and citizens' right to information.

However, the EIA procedure gave States great discretionary power regarding the subjects to be consulted.

Moreover, after several European States signed the Aarhus Convention (*supra*, para 2), the EU considered it necessary to harmonize the procedures adopted by the States to assure stakeholder information and participation.

The first step towards the gradual coordination of procedures is Directive 2001/42 on SEA. SEA appears to be broader in scope than EIA, since it is to be applied to all public decisions (from land-use planning to infrastructure planning and financial programs, including cultural and touristic programs and programs co-financed by the EC).

SEA consists of several phases, including

> the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision.

Consequently, unlike EIA, which can be considered a binding phase of a PAs' consent procedure, SEA does not merely constitute a procedural constraint, but a real decision-making method based on consulting the public concerned and the prior analysis of the impact of any decision on the stakeholders' environmental interests (Rega, Baldizzone 2015).

In line with the Aarhus Convention, the *public* is considered mainly in an organized form, constituted by NGOs and associations representing diverse interests (art. 2).

SEA aims to balance the positions of experts, institutional stakeholders and the public (arts. 5-6; Illsley, Jackson, Deasley 2014). In both EIA and SEA, Member States maintain their discretionary power not only in the selection of the subjects to draw into the assessment procedure, but also in definition of the specific methods of informing and consulting with the authorities and the public (arts. 5-6). Opinions expressed during consultations have to be taken into account in the planning/programming/drafting phase and, when a plan or program is adopted, the authorities and the public are informed about how environmental considerations were integrated into it and how the opinions expressed during the consultation were taken into consideration (arts. 8-9).

Even if SEA is evidently broader in scope than EIA, CH is still considered just one of the elements to be taken into account in the environmental report and impact assessment. Thus, CH is still perceived as something

static, a territorial element to be preserved rather than a resource able to contribute to a successful plan/program, deserving specific measures to make management sustainable, unlike the measures concerning natural elements. This static approach is also confirmed by a greater focus on the potential 'negative' effects of the plan/program rather than on an overall assessment of its impact.[13]

Further, and on the one hand, the expression 'strategic environmental assessment' alludes to a process moving away from the merely evaluative, towards decision making, where considerations concerning the environment and CH become primary, orienting all the choices concerning the territory. On the other hand, excessive focus on only the potentially negative effects of the plan/program restricts the assessment spectrum, limiting the strategic function of the orientation of public choices and favouring a logic of risk, disaster and emergency assessment, prevention and management.

As a result, the national and local authorities responsible for land-use planning do not consider SEA to be a decision-making method capable of fostering the adoption of effective and organic choices for the territory, but as yet another procedural constraint to be eluded, if possible, or simply to be fulfilled as a matter of bureaucratic compliance. This is also demonstrated by the practice of the Commission[14] and EU case law.[15] The stakeholders, on their own, ignore the importance of being informed and participating in the consultation (Rega, Baldizzone 2015, 114).

The second step in affirming the rights acknowledged by the Aarhus Convention in EU States consists in the adoption of Directive 2003/4, establishing procedures to ensure the right of access to environmental information, together with Directive 2003/35 concerning participation in the environmental sphere. Directive 2003/35 amends the EIA Directive introducing the definition of 'public', that, in compliance with the Aarhus Convention, includes "one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups" specifying contents and possible methods of participation to be

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13   Indeed, concerning the 'likely significant effects on the environment of implementing the plan or programme', Annex I, F), footnote 1 specifies that "these effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects". Thus, the environmental report should not only point out the risks, but also the advantages arising from the plan/program. Nevertheless, Annex II concerns the effects to be assessed, referring prevalently to negative ones, such as, for example "the risks to human health or the environment (e.g. due to accidents) [...] the value and vulnerability of the area likely to be affected due to special natural characteristics or cultural heritage" (Lock 2013).

14   See the European Commission Letter of 20 October 2008 concerning the 'Strategic Environmental Assessment (SEA) of the waste management plan for the Campania region'.

15   C-295/10; C-41/11; C-177/11; C-473/14; see also the Opinion of Advocate General Kokott joined Cases C-105/09 and C-110/09, 4 March 2010.

offered to the public (art. 3.4), points 1-3; D'Arienzo 2010).

Directives 2003/4 and 2003/35 significantly erode the discretionary power left to the States by the EIA and SEA Directives, leaving them merely operative aspects (art. 3.4, point 5). So, in spite of the reluctance of the States to harmonize their systems, the contribution of these Directives to the strength of public information and participation rights is highly significant. However, the proposal for a Directive on access to justice in environmental matters was not adopted,[16] due to the important differences among Member States concerning the *status* and the role of NGOs.

In view of the difficulties States have in harmonizing their systems, after concluding the Aarhus Convention with Council Decision 2005/370, through Regulation 1367/2006 the EU Institutions proposed a model of NGO involvement in decision making regarding the application of the Aarhus Convention to Community institutions and bodies. In particular, the Regulation defined specific entitlement criteria for NGOs at Community level (art. 11), establishing that any non-governmental organization meeting these criteria must be entitled to institute proceedings before the Court of Justice for any infringement of environmental rights by EU Institutions (art. 12).

This procedure not only made a significant contribution to reinforcing NGO participation in the European environmental decision-making process, but also to allowing European judges to define more clearly the range and terms of NGO rights.[17] However, the definition of 'environmental information' in the Regulation, reproducing the definition found in Directive 2003/4, makes no reference to CH, perhaps due to the jealousy of Member States regarding their sovereignty over the cultural sector.

Furthermore, the Aarhus Convention, highlighting the need to ensure active stakeholder participation in decisions concerning territory – making choices but also sharing responsibilities – led to the reform of the EIA procedure through Directive 2014/52.

This Directive extended the category of environmental objectives to be taken into consideration in EIA, to now include "resource efficiency and sustainability, biodiversity protection, climate change, and risks of accidents and disasters". The connection between these dynamics and CH is evident. Indeed, in compliance with *considerandum* 16, one of the objectives of EIA is

> the protection and promotion of cultural heritage comprising urban historical sites and landscapes, which are an integral part of cultural diversity.

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[16]   COM (2003) 624 def., 24 October 2003, withdrawn by the Commission on 21 May 2014.

[17]   See T-545/11, C-673-13, T-111/11, C-612/13, T-245/11.

However, in spite of the emphasis of *considerandum* 16, all the references to CH in the binding part of the Directive seem to consider it as one of the environmental components (art. 3). Nevertheless, this Directive introduces important amendments concerning the consultation, now considered as a necessary phase of EIA, and the procedural norms related to the public participation, now significantly strengthened (Glucker et al. 2013).

Doubtless, Directive 2014/52 seems oriented to a more dynamic approach to the territory and to CH in particular. Indeed, the extension of the elements to be considered during the assessment process, and continuous references to the prevention and management of risk to CH and the landscape within the Annexes represent a step forward in overcoming a material and static conception of CH, shifting towards a more 'intangible' approach (Toro, Requena 2013). From this perspective, the Directive contributes to a gradual acknowledgement of the 'political' value of EIA, to be understood mainly as a phase in the decision making and not a mere procedural constraint.

However, in spite of this undeniable change in perspective, CH is still considered to be just one of the physical territorial elements in both EIA and SEA. This assumption is confirmed in the second part of *considerandum* 16, where

> in order to better preserve historical and CH and the landscape, it is important to address the visual impact of projects, namely the change in the appearance or view of the built or natural landscape and urban areas, in environmental impact assessments.

Once again, the effects associated with the perception of the landscape by the local community, and the sense of belonging, integration and cohesion are completely ignored.

Recently, several events concerning the construction of infrastructures have shown that, when the effects of a plan/program/project on the community's perception of the symbolic value of the territory are not taken into account, confrontation between the Institutions, experts and citizens may become conflictual. It is therefore necessary to develop forms of decision making for land-use management that, taking inspiration from the EIA and SEA models, can renew them in such a way as to mitigate the effects of decision making on the relationship between the territory and the community, and especially the identity value of CH (Tufano, Pugliese 2017).

4 Models of Participatory Decision Making in Italy

The need to adopt a fair decision-making approach to CH sites is perceived as extremely urgent at national level. In Italy especially, due to

the enormous value, regional diversification, and fragility of its CH, it is necessary to build better bridges between PA's land-use management and the local communities so that these can become protagonists in their own development.

Because of its impact on local identity and the sense of belonging, CH management is a crucial vehicle in building up a network of shared interests and a system of relationships among territorial actors that can contribute to effective local development (Gelosi 2013, 7 ff.). Furthermore, in order to form a network of relationships able to foster new participatory governance, ensuring virtuous management of CH and thus the whole territory, an effective system for disseminating full and substantiated information is required. Such a system must be able to spread awareness of the intrinsic value of the heritage itself, also promoting a process of shared decision making in a solid and constant relationship involving the institutions, the social and economic actors, and all citizens (Gelosi 2013, 17).

To achieve this goal, an instrument needs to be set up to collect and catalogue data on the local CH from which to create a widely accessible and easy-to-use digital information system. In this regard, it is essential to identify typologies of data useful to detect the specific characteristics of the cultural sites, indispensable to provide full and relevant information both for the competent authorities and all the other stakeholders. Appropriate data cataloguing must be able to intuitively highlight the strengths and weaknesses of the cultural sites, stimulating and directing the interests of stakeholders.

Once the widespread usability of an adequate information system has been guaranteed, it is necessary to identify efficient and effective models of participatory governance viable in the cultural field.

For this purpose, it may be of interest to examine some decision-making models that have already been implemented in Italy. Starting from the '90s, the Italian legislator has tried to overcome the rigid formalism of the traditional authoritarian system in place, introducing more flexible decision-making instruments for PAs in order to valorize the interests of the citizens and attract private investments for local development.[18]

Undoubtedly, the most emblematic experience of joint decision making in land-use management is represented by so-called 'Negotiated Planning',[19]

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[18] The reference is above all to L. no. 142/1990, reforming the local authorities' orders, and to L. no. 241/1990, about fair administrative procedures.

[19] 'Programmazione negoziata' in Italian. This expression refers to a set of administrative instruments introduced by the Italian legislator to promote inter-institutional cooperation in order to implement and accelerate regional development. The first 'negotiated planning instruments' were meant to be extraordinary instruments for the development of Southern Italy, L. no. 186/1964. These instruments gradually became standard, operating nationwide

and especially the 'Territorial Pacts',[20] consisting of agreements proposed by local authorities, social partners or other public or private stakeholders, aiming to draw up a programme of shared actions for local development. The decision-making process within these instruments is characterized by a negotiated procedure where public and private stakeholders make mutual commitments formalized in a binding Protocol and approved by a central administration after assessment of its consistency with the local development goals, after which a public body is made responsible for implementing and monitoring the Protocol.

Even if this system has indubitably marked a significant change in the traditional relationship between PAs and citizens, moving toward a more democratic model of land-use governance, results show that they have only rarely fulfilled their objectives. As a consequence, they have been replaced by other systems, such as PIT, less participatory than previous ones as they only afford private partners a consultative role (Bianchi, Casavola 2008). Even if an examination of the structure of 'Territorial Pacts' might prove interesting in itself, their inefficient results[21] and, above all, their specific aim of attracting private investments in order to address the challenges of local development, thus selecting only certain kinds of stakeholders (entrepreneurs), make these instruments unsuitable for CH-related purposes.

More recently, the need to involve citizens in the decision-making process has come to the fore in relation to the planning and localization of large infrastructures, actions that could have a significant impact on the identity and sense of belonging of the local communities, as they lead to territorial transformation.

The first significant application of a shared decision-making process in a field of this kind was related to the construction of the High Speed Train Connection between Turin and Lyon. In this case, the protests of the local community induced the institutions to develop a decision-making method involving dialogue and conflict management. The Observatory for the Turin-Lyon railway connection was set up[22] with a round table consisting of representatives of the national and local institutions and, as permanent invitees, ARPA, the Agency for Metropolitan Mobility, specialists from various fields, and technical teams for the preliminary and definitive plans as well as experts and bearers of particularly important interests (business

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(L. no. 142/1990; L. no. 488/1992; L. no. 104/1995; L. no. 662/1996. Contieri 2000; Cuonzo 2007; De Geronimo 2012).

20 'Patti territoriali' in Italian. These instruments, regulated by L. no. 662/1996, represent the most participatory 'negotiated planning' tools.

21 See the 2011 Ministry of Economic Development (Ministero dello Sviluppo Economico 2011) Report on "negotiated planning".

22 www.presidenza.governo.it/osservatorio_torino_lione/osservatorio.html.

associations, NGOs., etc.). The introduction of this round table, albeit after the decision to construct the infrastructure and relative localization, and despite criticisms over lack of transparency, undoubtedly constitutes a unique Italian example regarding the implementation of major public works (Averardi 2015).

Another interesting example was the construction of the Genoa motorway upgrading project where, for the first time in Italy on such a large scale, and clearly inspired by the French model of *démocratie de proximité*,[23] the Italian Government opened a public debate with the citizens before starting construction works. This debate, carried out by a Commission composed of independent experts, allowed all the latent conflicts regarding the project to come to the surface, so that the parties affected by the construction work were now informed and able to fully participate, at a time when it was still possible to make significant changes to the plans. In reality, this system was able to reduce the dissent, even if it was unable to overcome the opposition of those who were totally against the construction project (Averardi 2015).

Thus, the inherent limitation in the two consultation examples described above was that public debate had been driven by the need of the Institutions to stem dissent that had arisen from decisions already adopted unilaterally by the PAs, rather than the real desire to open the land-use policies to a new form of shared governance. Indeed, in both cases the public debate focused on 'how' the infrastructure should be realized rather than 'whether' it should go ahead at all.

Even purified of the above-mentioned critical issues, it does not seem an easy matter to apply the models described to the cultural sphere. The selection of the stakeholders in the case of large infrastructures occurs as a natural process, as the population living in the territory affected by the works is sensitive to, and interested in, participation in decision making, due to the preponderance of potentially negative effects that such actions may have on it.

It is certain, in fact, that the negative effects, impacting on tangible individual rights (e.g., health, property), are perceived more easily by the affected population. Conversely, decisions relating to the management and promotion of CH appear to be largely characterized by potentially positive consequences, less easily perceived by the local stakeholders unless they are provided with the necessary information to gain an awareness of the historical and cultural value of the local heritage as well as the possible impact that virtuous valorization would have on the economic and

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23 Over the last two decades, the French legal system has opened up its policies, above all regarding land use, towards a more democratic system to include listening and discussion procedures between citizens and the PAs. These instruments are disciplined by L. no. 276-2002 (Averardi 2015; Poquet 2001; Le Louarn 2002).

social assets of individual citizens and the community as a whole. In this field, therefore, it is much harder to identify the stakeholders to involve in decision-making processes and their interest in participation.

5 Conclusions

From the proposed scenario, it emerges that at international, European and national levels, a variety of methods have been employed to involve stakeholders in cultural site-related decision making. Nevertheless, in all these methods, cultural sites appear to be simply considered as an element of the territory, indistinct from other territorial assets (the environment, landscape, urban plans, and architectural features).

Furthermore, none of the methods adequately takes into account the *cultural dimension* of the sites, which would imply the need to move beyond the historic, artistic, archaeological or environmental value of these assets, considering their role as symbols of traditions, customs, and ways of life. Consequently, no method currently applied in land-use management is really able to assure effective cultural governance, or guarantee to all the stakeholders (including independent ones) participation in decisions and a share in the responsibility of implementing them, thus counteracting the opportunistic actions of 'free riders'.

In order to fill this gap, a solution might be to start from EIA and SEA as models, developing methods of consultation and impact assessment able to ascertain communities' true perception of the value of CH. These methods would offer them the chance to make proposals about CH site management, making commitments to bring them about. In this way, it would be possible to think about the CH as something dynamic, valorizing it not only as a memento of the past, but also as something which acquires a new 'life-blood' every time someone visits it, interprets it, feels emotions within it or exploits it for material purposes.

Annex presents a model of Cultural Strategic Assessment based on full and substantiated information, the involvement of the stakeholders and the assessment of the effects of cultural decisions in order to open a debate on the effective and dynamic management of cultural sites to be protected and exploited to the benefit of local, national, European and International communities as a *common good*.

Annex
The Cultural Strategic Assessment Model

I Phase: Stakeholders' Selection and Weighting

1. *Definition of two stakeholders' groups*: during this phase, the decision maker (DM) (public or private subject charged with management a CH site - CHS) communicates the starting of a consultation aimed to involve the stakeholders in the decision – making process concerning the exploitation, the management, or the transformation of the CHS.

   I group *Institutional Stakeholders (IS)*: public authorities, economic operators and associations which consider the CHS as a resource and which can be involved in initiatives, projects, funding of CHS management.

   II group *'Identity' Community (IC)*: people which consider the CH as an identity symbol. This group includes: i) *citizens*, which consider the CHS as a resource to reinforce cultural and moral values, a vehicle to affirm rights, an instrument to attract external people and external influences into the community; ii) *marginalized people* (migrants, handicapped people, drop-outs, alcoholics or addicts, young people involved in illegal circuits), which conceive the CHS as a symbol helping them to affirm or restore their belonging to the community, to share values, to be involved in projects devolved to common objectives, to feel themselves as 'co-owners' of common goods.

   Documentation is offered both the groups to give them a *full and substantiated information* about the historic, artistic and archaeological value of the site, its state of conservation, the number of visitors, the communication and promotion initiatives, the available funds.

2. *Phase of self – selection and self-weighting:* during this phase, IS and IC submit themselves to a voluntary questionnaire aimed to assume awareness about the value they perceive about the CHS and to assess their real interest to be involved into the CHS deci-sion – making process.

Questionnaire submission trough a cascading menu
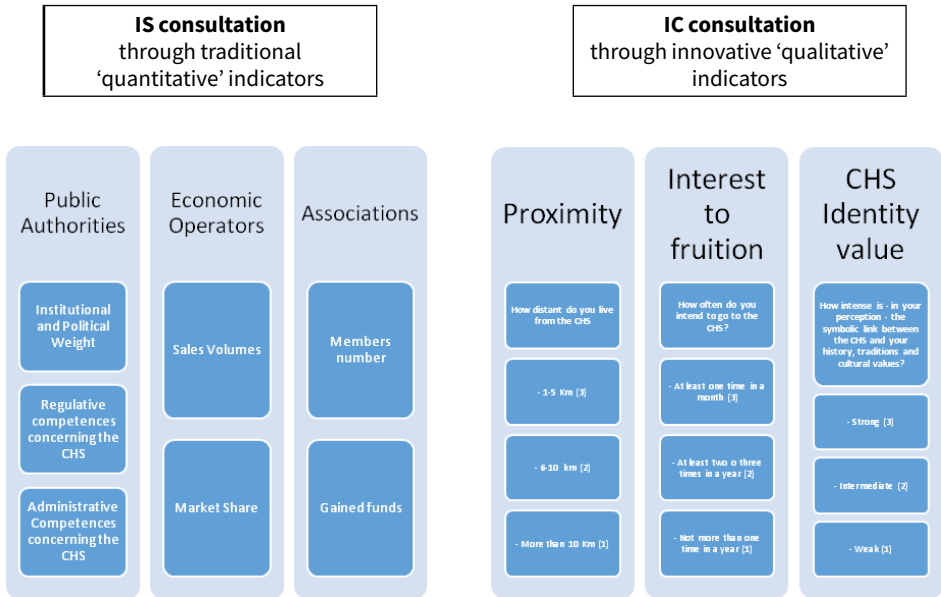
While quantitative indicator ranking is a free DM's choice, as it concerns the qualitative indicator ranking, only people which obtain a rank ≥ 6 will pass to the participation phase.

II Phase: Participation

During this phase, the DM verifies the real interest of IS and of IC to be involved in the CHS management

II. 1 Availability to be engaged

Are you interested in an operative engagement within the CHS management (event organization, touristic guide, contributions in kind, technical support, promotion)? YES (1) NOT (0)

• Will be your contribution free or paid? Free (1) Paid (0)
• Could You offer also a financial support to the initiatives organized within the CHS? YES (1) NOT (0)
• Are You available to pay an association fee or a ticket to enter the CHS? YES (1) NOT (0)

II. 2 Impact Analysis of decisions concerning the CHS

(available only to people obtaining at least 2 points to the II.1 question)

Could a better and easier fruition of the CHS offer you an added value from an economic perspective? YES NOT

If YES, what kind of added value?

a) Profit opportunity;

b) Work opportunity;

c) Investment opportunity;

d) Opportunity to start a touristic, commercial, artisan, gastronomic or promotional activity connected to the CHS

Could a better and easier fruition of the CHS offer you an added value from a social or relational perspective? YES NOT

If YES, what kind of added value?

a) Inclusion

b) Cooperation with NGOs operating within the zone;

c) Opportunity to share objectives and projects with the other members of the communty

Could a better and easier fruition of the CHS offer you an added value from a "cultural identity" perspective? YES NOT

If YES, what kind of added value?

a) Redescovering your traditions;

b) Strenghtening your sense of belonging to the community;

c) Being involved in the decisions concerning your community.

II.3 Proposition phase

- Current limits to the fruition of the CHS and the perception of its symbolic value (free answer)

- Proposal to overcome these limits (free answer)

- Syntesis of the proposals by the DM

- Submittion of the syntetized proposals to a preference vote by the IC members through an on - line platform

- Establishment of working groups (WG) composed by economic operators, NGOs and IC taking similar engagements (question II.1)

- Election of WG spokespeople

II.4 Decisional Phase

Institution of a "**Stakeholders Table**", composed by PAs and WG spokespeople.

The Stakeholder Table has the role to **traduce the proposal preferred by the IC voters in a binding document aimed to**

- **distribute the operative and the financial tasks to every involved subject**, taking account of the availability expressed during the II.1 question;

- **monitor the proposal implementation**;

- **assess the results**;

- releve and correct **negative externalities** coming from the decisions realization

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