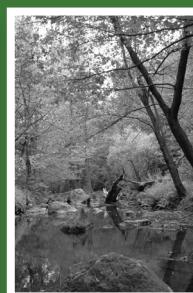
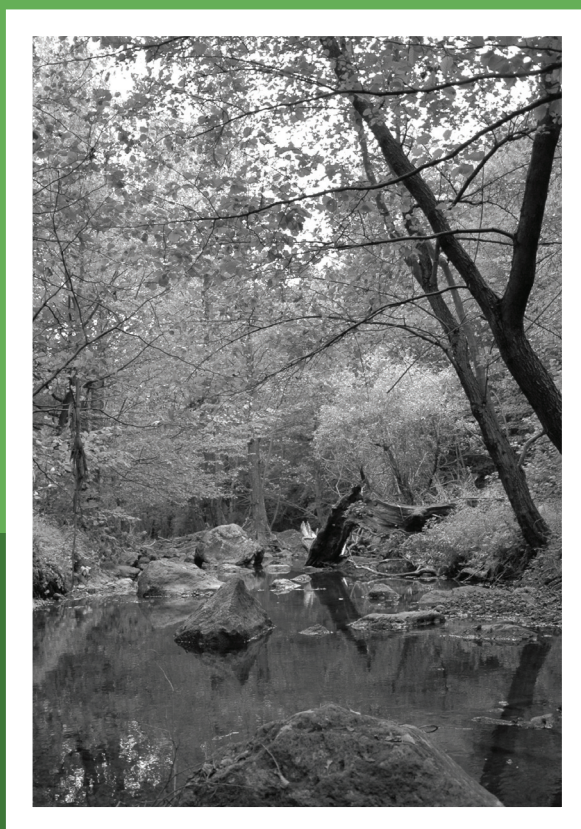


Justice & Environment – 2008

Good Examples of EIA and SEA Regulation and Practice in five European Union Countries



Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is a non-profit association with a mission that *aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature*. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information.

J&E was created in January 2003 and founded as a non-profit association in September 2004. J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBURO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS). J&E also has six associate members: Environmental Justice Association, Spain (AJA); Centre for Legal Resources, Romania (CRJ); Front 21/42 Citizens' Association, Macedonia (Front 21/42); MilieuKontakt International, the Netherlands (MKI); Independent Institute of Environmental Concerns, Germany (UfU); and Green Action – Friends of the Earth Croatia, Croatia (ZA).

All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity. Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

To carry out its programme of work J&E relies on a number of donors and supporters. First and foremost the members themselves financially contribute to the network. However J&E has been supported by: the European Commission through the LIFE+ programme, the International Visegrad Fund (IVF), The Ministry of Housing, Spatial Planning and the Environment of The Netherlands (VROM), the Sigrid Rausing Trust and its own member organisations

Contacts

Laszlo PERNECZKY, Coordinator, Tel.: +36 20 39 00 566, Skype: perneczky.laszlo

Lucie BRESOVA, Financial Director, Tel.: +420 54 55 75 229

Official address: Justice & Environment Secretariat Dvorakova 13, 602 00 Brno, Czech Republic

E-mail: info@justiceandenvironment.org

Website: www.justiceandenvironment.org

Justice & Environment – 2008

**Good Examples of EIA and SEA
Regulation and Practice in five
European Union Countries**



*The report was funded by
the European Commission – LIFE+ programme.*

Acknowledgements

This project of the Justice and Environment Network was made possible by the expertise and dedication of the legal experts and staff of the following member organisations:



K E S K
KONNA
ÖIGUSE
KESKUS

EELC – Estonian Environmental Law Center
Magasini 3, 51005 Tartu, Estonia
<http://www.k6k.ee>



EMLA – Environmental Management and Law Association
1076 Budapest, Garay u. 29-31. I. em. 1.
<http://www.emla.hu>



EPS – Environmental Law Service
Dvorakova 13, 60200 Brno, Czech Republic
<http://www.eps.cz>



OKOBURO Coordination Bureau of Austrian Environmental NGOs
Volksgartenstraße 1 A-1010 Wien, Austria
<http://www.oekobuero.at>



PIC – Legal-Informational Centre for NGOs
Povšetova 37, 1000 Ljubljana, Slovenia
<http://www.pic.si>

Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the European Commission or other supporters.

©2008 Justice and Environment

Co-ordinating Editor: Kärt VAARMARI

Contributions from J&E team:

*Thomas Alge and Clemens Konrad (Austria), Daniela Konecna (Czech Republic),
Kärt Vaarmari (Estonia), Zsuzsa Berki (Hungary) and Ana Matoz-Ravnik (Slovenia)*

Copy editing: Robert Atkinson

Design and layout: Petur Farkas, www.iconica.hu

Justice and Environment

European Association of Environmental Law Organisations

Dvorakova 13, 60200 Brno, Czech Republic

secretariat@justiceandenvironment.org

www.justiceandenvironment.org

Contents

Introduction	7
1. EIA: Examples of good practice	8
1.1. Consolidation of EIA and development-consent procedures	8
1.2. Opportunities to challenge screening decisions	8
1.3. Assessment of real alternatives	10
1.4. Guarantees for effective and timely public participation	10
2. SEA: Examples of good practice	14
2.1. Early and effective opportunities to comment SEA and draft plan within appropriate time frames	14
2.2. Access to justice against SEA and planning decisions	16
2.3. Obligation to take SEA results into account in final decision	18
2.4. Informing the public of final decisions and outcomes, plus monitoring measures	19
3. Conclusions	21

Introduction

Justice & Environment (J&E) is a European based association of public interest environmental law organisations. J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the implementation and enforcement of the European Union (EU) legislation through the use of European law and exchange of information about it.

One of the legal issues that J&E has been involved in since 2006 is the processes set out for the assessment of environmental impacts, especially those of large infrastructure projects. In 2006, J&E carried out a legal analysis on environmental impact assessment (EIA) regulations, more specifically about the transposition of certain aspects of EU Directive 85/337/EEC. J&E especially reviewed those aspects dealing with the consideration of alternatives, public participation, trans-boundary assessment and the question of how the results of environmental impacts are taken into account in final planning decisions. This analysis was carried out by J&E in six EU Member States: Austria, Czech Republic, Estonia, Hungary, Poland and Slovakia. In addition, for all of these Member States, examples of specific cases were collected and published as part of the J&E case study collection. On the basis of the analysis and the case studies, J&E developed a list of the most important problems in implementation of the EIA Directive.¹

Arising from the 2006 analysis, it was evident that the problems with plans for large infrastructure projects begin already at the strategic decision-making level. Therefore, in 2007, J&E carried-out a similar comparative legal analysis on strategic environmental impact assessment (SEA) and also more specifically about transposition and implementation of the corresponding EU Directive 2001/42/EC which regulates SEA. Again it focused on specific aspects, such as public participation, consideration of alternatives, trans-boundary assessment and the impact of SEA towards the final decision on the plan. This analysis was carried out by J&E in five EU Member States: Austria, Czech Republic, Estonia, Hungary and Slovenia. As before examples of cases were collected and published in the J&E case study collection. Again, and on the basis of the analysis and case studies, J&E has developed a list of the most important problems of implementation of the SEA Directive.²

Having focused, in previous year, on specific problems from different countries J&E decided, in 2008, to focus on good practices. This was done to find out whether some of the countries we had analyzed already have some solutions to the problems we had discovered earlier. J&E lawyers in five EU Member States (Austria, Czech Republic, Estonia, Hungary and Slovenia) have monitored and mapped good examples in their national legislation and practice, the results of which are presented within this paper. A further purpose of presenting this collection of good examples was therefore to widen knowledge on these more innovative ideas, or just useful solutions, for specific issues in EIA and SEA proceedings. We hope that these examples help to overcome situations where the national legislators or implementers have doubts whether some solutions could work.

It must be noted that the final examples of good practices represent not just ordinary correspondence to the requirements of the EIA and SEA Directives, but can be described as “a step further”. Thus the examples are divided as either good examples in law or in practice (or both). The examples in law only represent those situations where the issue is well regulated in law, but the regulation is not implemented in practice. The examples in practice are usually cases where good practice has been detected. The examples of both law and practice describe the “ideal” situation where there is good legal regulation that is also well implemented in practice.

¹ The legal analysis, case study collection and position paper are available at J&E webpage: <http://www.justiceandenvironment.org/je-international/eia-and-sea/>

² The legal analysis, case study collection and position paper are available at J&E webpage <http://www.justiceandenvironment.org/je-international/eia-and-sea/>

1. EIA: Examples of good practice

1.1. Consolidation of EIA and development-consent procedures

The problem in some countries of the separation of EIA and development consent procedure was discovered by J&E in its 2006 analysis. J&E is of the opinion that in such cases it is doubtful that the legal scheme sufficiently assures that EIA results are adequately considered when granting development consent. In other countries, the EIA may be a part of the development consent procedure, but for any activity there might be several different development consents, of which require that the EIA should be carried out separately (for example in Estonia).

EXAMPLES OF GOOD PRACTICE

AUSTRIA

Law and practice: Consolidated development consent procedure

The Austrian EIA Act is at the same time both the environmental and construction permitting procedure. The Austrian EIA Act (Umweltverträglichkeitsprüfungsgesetz, UVP-G) determines in its Article 3 that all acts that contain conditions for the permitting of a project have to be applied and decided on during the respective EIA proceeding (consolidated development consent procedure). The outcome is thus one single permit decision covering all relevant permitting issues for a specific project, including the construction permit. Construction activities may therefore begin immediately after it has been issued.

This construction permitting procedure has, as a consolidated development consent procedure, proven very successful in Austria and is very well accepted by all stakeholders. The major advantage is through the consolidation of permit proceedings where, as the EIA permit composes all relevant project permits, the applicant does not have to go through several different sectoral proceedings in order to obtain an overall permit. This shortens the duration of the proceedings and thus saves time for the applicant.

All relevant Austrian and European legislation have to be applied in the Austrian EIA proceedings. Thus the concentrated permit proceedings as envisaged by the UVP-G can be seen as a very positive example. Nevertheless an important exception exists for (federal) transport infrastructure (roads, railways) projects which are subject to different legislation.

1.2. Opportunities to challenge screening decisions

In the 2006 analysis, J&E discovered that in most of the investigated countries (four of the six), NGOs may not challenge the so-called screening decisions – decisions on whether a project of the type categorized in Annex II to the EIA Directive is likely to have significant environmental impact and therefore requires assessment. This prohibition appears to be out-of-line with Article 10a of the EIA Directive and with established case law of the European Court of Justice.

EXAMPLES OF GOOD PRACTICE

HUNGARY

Law and practice: Judicial review of screening decisions is guaranteed

The competent authority (the decision-making authority in EIA cases is the regional environmental inspectorate) issues a formal resolution at the end of the screening process which can then be appealed at the superior national environmental authority by those having standing, including environmental NGOs working in the impact area. Then the final administrative resolution can be taken to court for a judicial review process by the same group of parties.

ESTONIA

Practice: Access to Justice on procedural issues in environmental matters

In case no 3-3-1-86-06 (Maidla municipality vs Ministry of Environment -MoE) the Estonian Supreme Court established that in environmental matters legal standing for procedural issues must be broader than usual.

The case itself concerned plans for mining oil-shale in the Maidla municipality. The local government disputed the EIA screening decision of MoE (which in this case was actually positive and the EIA was initiated, but the local government claimed that MoE should have turned the permit applications down and not proceed with the screening at all).

In Estonia procedural decisions (like a screening decision in EIA proceedings) are as a rule are not disputable separately from the final administrative act. However, the Supreme Court has stated in earlier practice that legal review is possible, in the case where the procedural rules may have been violated to the extent that makes it already clear that the violation would inevitably bring illegality to the final act.

In this case the Supreme Court went even further and stated that environmental field is so specific that a person who has standing should have larger opportunities to dispute the procedural acts separately from the final administrative act. When deciding about possibility of legal review, the court must take into account the significance of the procedural act and also the significance of the alleged violation in fulfilment of the principal procedural requirements. The Supreme Court stated that for correct decision-making in environmental matters, the administrative procedure has a decisive value in itself: *“In most of such cases it is not possible to decide convincingly that despite of the deficiencies in administrative procedure, the final administrative act is lawful. It is only possible to presume lawfulness of the final adopted act, if the decision has been made in result of an administrative procedure that has been carried out according to law and principles of administrative procedure.”* [sic]

Therefore on the basis of this judgment it can be said that EIA screening decisions definitely are such decisions that would be subject to the judicial review and any person having connection to the decision has standing in these cases.

1.3. Assessment of real alternatives

The EIA Directive requires the developer to provide the reasons for choosing a particular course for the project, taking into account environmental impacts, and to outline alternative courses. In all cases studied (and in many other ones) project opponents have argued that the investors have failed to consider and assess more environmentally favourable alternatives. In none of the cases, described in J&E 2006 case study collection, did the authorities ask for further alternatives to be assessed.

EXAMPLES OF GOOD PRACTICE

CZECH REPUBLIC

Practice: Real alternatives considered

The case of Prague orbital R1 (Prague by-pass road) – the Ministry of Environment accepted an alternative variant proposed by a determined local public, represented both by NGOs and the municipal representatives of the affected Prague districts, and assessed this variant together with the “only” official variant proposed by the developer (state-owned organization Road and Motorway Directorate). In its final EIA statement the Ministry of Environment recommended the alternative variant (and thus accepted the public comments that the official variant was - by far - less environmentally friendly) and explicitly stated that the “official” variant should be pursued only if the alternative one proved to be non-viable.

Unfortunately, the subsequently accepted land-use plan ignored this EIA statement and set-out in the “official” variant. The land use permit for the “official” variant followed and NGOs appealed against this permit.

The case of D5-0510 Motorway (Plzen orbital). In 1998, the second EIA process took place in this case after the administrative court annulled previous the EIA statement, together with the associated land-use permit. Through this process a new variant must have been assessed (so called SUK2) along with the original “official” and zero variants. The author of the environmental information prepared for the developer therefore decided to assess up to five alternatives and carried-out a multi-criteria analysis; the SUK2 variant proved to be the most favourable.

However, a thorough review of the adequacy of the environmental information used disclosed several methodical and technical mistakes. As a result many of the crucial problems of the project were further discussed with relevant experts on the topics concerned. Eventually the reviewer recommended a combined variant (solving the central part of the Plzen orbital road via an underground tunnel). The Ministry of Environment (the competent authority in this case) then accepted this solution, thereby accepting a variant different to the one proposed under the developer’s own environmental information.

1.4. Guarantees for effective and timely public participation

1.4.1. Sufficient time limits

Insufficient time limits for public participation may arise not only from insufficient legislation, but also from poor practice. For example in cases where the law sets minimum time limits yet allows the relevant authorities

to determine longer time limits, but the authorities tend to use those minimum limits set by law. Therefore, it is important that the minimum time limits, provided by the law, guarantee effective periods for public participation.

EXAMPLES OF GOOD PRACTICE

HUNGARY

Law: Sufficient time limits are laid down in the EIA Decree

Both the procedure of screening and of the actual impact assessment has components of public participation, where the public has sufficient time to comment on documentation submitted by the project developer. In the actual impact assessment phase, there is also an obligation to hold at least one public hearing upon the project.

The rules of the EIA Decree 2005 apply the following timeframes for public information:

- the communication of the competent environmental authority published in the office and on the website of the authority must contain a warning that **within 21 days the public may make comments on the screening documentation** (The timing of the communication is not expressly specified in the EIA Decree, it simply says “following the receipt of the request from the project developer”);
- the clerks at the project location and of the potentially affected municipalities, must **publish the screening documentation** received from the competent environmental authority **within five days** by posting in it public places and in ways according to local custom;
- **access to the entire screening documentation** is ensured by the competent environmental authority **within five working days of its availability** (e.g. the minutes of the mandatory screening meeting is available within five days of the meeting);
- the clerks at the project location and of the potentially affected municipalities, must **publish the screening decision within five days** by posting in public places and in ways according to local custom;
- the clerks at the project location and of the neighbouring municipalities who receive the **EIA documentation must publish it** by posting in public places and in ways according to local custom;
- the public has at least **30 days for access to information and commenting**;
- **publication of the data** of the public hearing in a local or national daily newspaper and by posting in public places by the clerks of the participating municipalities **must precede the hearing at least with 30 days**;
- **access to the entire EIA documentation** is ensured by the competent environmental authority **within five working days** of its availability (e.g. the consulted authority statements are available within five days of their submission); and
- the clerks of the location of the project and of the potentially affected municipalities **must publish the EIA decision within five days** by posting in public places and in in ways according to local custom.

In most of the cases these rules were observed in practice and the environmental NGO community has not reported any significant number of cases where the rules for public information with the EIA Decree were neglected. In those cases where such rules of public information might have been breached, this alone is a sufficient legal basis for contesting the procedural legality of the EIA decision, according to accepted judicial practice.

1.4.2 Accessibility of documents

Inaccessibility to documents can be great obstacle to public participation within the EIA process. The usual regulation in the countries in question includes the accessibility of documents by the relevant authority. However, taking into account time pressures and the fact that sometimes the “public” is distant from the relevant authorities, initiatives for increasing accessibility of documents will undoubtedly improve the outcome of EIA proceedings.

EXAMPLES OF GOOD PRACTICE

ESTONIA

Law and practice: Legal obligation to publish documents in the Internet

In Estonia, the documentation in EIA proceedings is easily accessible because there is legal obligation to publish the EIA programme (results of the scoping phase) and the EIA report in the Internet. In practice, the documents are published on the webpage of relevant authorities and/or on the webpage of the EIA expert companies.

1.4.3 Information about opportunities for public participation, effective public notifications

In order to allow the public to participate effectively the information about opportunities must be given to the public clearly and in a timely fashion. The usual legal regulation and practice in countries reviewed involve public notices in newspapers and on the internet, which can be considered as good practices in themselves. However, in some countries the regulation does go even further.

Although the Aarhus Convention (art 6.2) requires that public should be “informed in an adequate, timely and effective manner”, it was discovered by J&E, through its 2006 analysis, that most countries in question have provisions that assure “timely notification”, but no country provides legal guarantees that the public is notified in an “effective manner”. However, the legal regulation in some countries is very detailed and thereby guarantees the notification of public in an effective manner.

EXAMPLES OF GOOD PRACTICE

ESTONIA

Law and practice: Legal obligation to inform environmental NGOs

In Estonia, the EIA Act from 2005 sets the rule that at least the umbrella organization of environmental NGOs have to be informed about procedural steps in EIA proceedings (public display of scoping results and EIA report). In practice, the relevant authorities or developer or EIA expert send e-mails or letters with the official announcement to Estonian Council of Environmental NGOs (EKO) which coordinates work of 9 environmental NGOs. This way, the most active and organized environmental NGOs are informed about the EIA proceedings.

HUNGARY

Law: Guarantees for effectiveness of notifications

The methodological solutions of communication are laid down in the EIA Decree as follows:

- official billboards of the municipalities and the environmental inspectorates
- publication of notification and other data (not the entire EIA documentation) of the EIA procedures on public spaces in the territory of the affected municipalities
- dissemination of information “in the locally customary way” (e.g. loudspeakers, street posting) - this is a mandatory element of both phases according to the EIA Decree
- putting the notification (not the entire EIA documentation) on the homepage of the environmental inspectorate
- putting the information and publishing the necessary information about the EIA procedure in one local or national newspaper (in case of highway projects 2 national newspapers) - this is also a mandatory element of both phases of the Hungarian EIA
- a public hearing
- direct access (at an agreed time) to the official in charged of the case at the environmental inspectorate or the official experts thereof

The following provisions of the EIA Decree contribute to the effectiveness of PP, too. The notification in both phases of the EIA procedure contains:

- the name, address and contact of the competent environmental authority
- the time when the notification was brought to the public attention
- the borders of the impact area and the list of the affected municipalities
- information about the ways and locations of access to the whole EIA documentation
- a call for public opinion on several topics including the location of the planned project, the necessity of the EIA and suggestions on the content of the EIA documentation
- the possible decisions in the case.

In case of the EIA procedure, in addition to these the notification also contains

- a reference to the fact that the EIA procedure has started
- information on the international EIA procedures, if any.

1.4.4 Informing the public on the outcomes of consultations

With regard to effective public participation one of the notable problems discovered in the J&E 2006 analysis was that the comments and suggestions of NGOs are not usually taken into account (and usually with no clear reasoning). This problem could be solved by ensuring that proper reasoning is included in the final decisions. This would clearly show which opinions were or were not taken into account and for what reasons.

EXAMPLES OF GOOD PRACTICE

HUNGARY

Law: Legal evaluation of comments and observations into the reasoning of the decision in merit

According to Article 10 of the EIA Decree 2005, the regional environmental inspectorates shall substantively examine the comments and observations received from the public concerned and from other participants in the procedure. Furthermore – and it seems to be the essence of this law – this EIA Decree obliges the regional environmental inspectorates to include the factual, professional and legal evaluations of comments and observations into the reasoning of their decisions in merit.

Thereby the Hungarian legislator has made a considerable effort to ensure that the respective EIA decisions contain specific references to public comments. In addition the public is made aware of the regional environmental inspectorates' position, with regard to the factual, professional and legal evaluation of their comments. In case the inspectorate makes a decision contrary to the interests of the participants and fails to give reasonable arguments why it disagrees with certain elements of such comments, the individual member or the association of the public can formulate specific counterarguments and submit them in a request for legal remedy.

Therefore, the proper and detailed manifestation of the regional environmental inspectorate's standpoint on the comments of the public is a key issue. Thus it is highly relevant not only in the field of participation in decision-making, but also in the area of access to justice.

2. SEA: Examples of good practice

2.1. Early and effective opportunities to comment SEA and draft plan within appropriate time frames

One of the major problems with SEA (especially for large infrastructure projects) is that in many countries public participation can only take place at a late stage when decisions have already been made and an assessment completed (see J&E 2007 legal analyses from Austria, Hungary and Czech Republic and case study from Austria). This also means that the presentation by the public of alternatives, which are usually chosen in beginning of process, is also too late. Another problem is that the timeframes for participation tend to be too short. As an example, in J&E 2007 case study from the Czech Republic the public had only 10 days to comment the SEA of an Operational Programme!

EXAMPLES OF GOOD PRACTICE

ESTONIA

Law and practice: Public Participation in stages of scoping and SEA report

The public and relevant authorities have the possibility to participate in two stages of SEA proceedings: in SEA programme (scoping) stage and in the actual public display of the SEA report. At the stage of the SEA programme the public has to have access to the draft plan, or at least the terms of reference of the plan, as Article (§ 37 (2) 3) of the EIA Act provides that notification about public display of SEA programme shall include “*the time and manner of accessing the terms of references or draft strategic planning document*”).

SLOVENIA

Practice: Effective PP in SEA of Rural development programme

In 2005 Slovenia started with the adoption of a Rural Development Programme (RDP) for the period 2007-2013. Within this an SEA³ has been done in order to determine whether the programme is in compliance with the environmental objectives of the legislation and the strategic documents. The public was invited to participate in the whole process, which was led by the Ministry of Agriculture, Forestry and Food. A special model for information and co-operation, between different organisations on local and regional level and the social partners, NGOs and professionals, was developed.

In November 2006 the Ministry published the Rural Development Programme 2007-2013 proposal on their web page (<http://www.mkgp.gov.si/en/>), where they received over 50 remarks from individuals and organisations. The communication between the public and the Ministry was a two-way process, because the Ministry gave written opinions on every suggestion, proposition and question. For the interested public the RDP was also available on CD, in written form or via e-mail. On the web page of the Ministry there was also a forum, where public officials answered questions put to them. There have been several co-ordination meetings, workshops and publications regarding the RDP proposal.

The beginning of the public hearing was announced in the media. After the public hearing was finished the Ministry issued a new RDP proposal that was updated with those remarks from the public hearing. The environmental report was then prepared and was approved by the environmental authority. Before this new proposal was issued every remark or suggestion was explained; covering why it was included in the updated RDP and why not.

³ SEA started late, because there was a different interpretation from DG Agriculture and DG Environment, whether SEA procedure for the Rural development programme is needed or not, because this was the first programme in the area of the new financial perspective. For that reason SEA procedure started after the draft of the Rural development programme has already been presented to the public.

AUSTRIA

Law: Water Act foresees multi-stage and early and effective Public Participation

The Austrian Water Act (WRG) can be seen as positive example of early and effective public participation, as multi-stage and early and effective public participation is foreseen within it. There is a six-month period to make comments (though this timeframe comes from the water framework directive (2000/60/EC)). Plans shall be published on several websites and announced through major newspapers. Modifications and updates of plans are covered as it is clear that all options are open when public participation takes place. Notably, the act foresees that the public can submit comments to the documents that formed the plan and not only to the draft plan itself. Thus the plan is only compiled once this process has taken place..

HUNGARY

Law: Sufficient time limits are laid down in the SEA Decree

The preparer of a plan or programme is obliged to make public the following: the goal of the plan or programme, the draft plan with the environmental report, and information about commenting possibilities and deadlines. Therefore the opportunity to express opinions and make comments is opened before the adoption of the plan or programme, and within at least 30 days from the date of publication. The way of publication is through a local or national daily newspaper and the website of the preparer, but if the plan or programme concerns only small areas it can be published according to local custom.

2.2. Access to justice against SEA and planning decisions

Taking account that one of the main problems with SEA is lack of early and effective possibilities for public participation, this problem could to some extent be solved by giving the representatives of the public the possibility for legal remedy in case their rights have been violated. Unfortunately, as shown in the J&E 2007 SEA legal analyses from Austria, Czech Republic, Hungary and Slovenia, the usual legal situation is a lack of access to justice as regards SEA decisions (in some cases also planning decisions, see for example the case study from Austria).

EXAMPLES OF GOOD PRACTICE

ESTONIA

Practice: Access to Justice regarding procedural issues in environmental matters

In practice, there is access to justice regarding SEA decisions, based on the Supreme Courts' practice on access to justice in procedural issues in environmental matters (see the description of the case No 3-3-1-86-06 above).

Law and practice: *Actio popularis* in spatial planning

In spatial planning there is in fact *actio popularis*, as according to the Planning Act, everybody who is of the opinion that a spatial plan is not in accordance to the law can dispute the plan in court (without having stated that his/her rights have been violated). In practice, this approach has been used by individuals and NGOs in a number of cases.

Practice: Access to Justice in environmental decision-making according to the Aarhus Convention

In case of SEA of the Restructuring Plan for Oil-Shale Energy Supply in Estonia (Estonian Supreme Court's decision No 3-3-1-81-03) the Estonian Green Movement disputed the restructuring plan because the SEA was not made in-line with the plan and there was a dispute about environmental NGO's standing. The Supreme Court has directly applied and interpreted the Aarhus Convention in the way that in all areas of environmental planning, environmental NGOs have access to justice, this was based on Article 7 and Article 9 of the Aarhus Convention (confirmed in judicial practice).

Three main conclusions can be drawn of this Estonian case:

1. The Aarhus Convention is directly applicable;
2. All decisions, acts or omissions that are made under some article of the Aarhus convention and can be regarded as administrative acts or measures in meaning of national law, are challengeable by environmental NGOs, whose interest will - in all these cases - be deemed sufficient and their rights are capable of being impaired; and
3. These decisions, acts or omissions are challengeable not only if they are in contravention with the Convention, but also if they are in contravention with other legal acts (including provisions of national law).

The case is a concrete example of good practice in implementing the Aarhus Convention. It could serve as an inspiration to others, in the sense of a direct application of the convention and instead of getting tangled into national legislation (especially in those cases where the Convention has not yet been fully transposed).

For more information about the case, see J&E Aarhus Case Study Collection:

<http://www.justiceandenvironment.org/je-international/aarhus/>

2.3. Obligation to take SEA results into account in final decision

The J&E 2007 SEA case studies certainly show that there is a problem with taking SEA results into account in planning decisions. This might be because it might be not clear what the decision really is (the Austrian case), that SEA results might be included in a very general and imprecise manner (the Czech case) or that the environmental report is just not taken into account, in other words the plan is simply not changed as a result of the assessment (the Hungarian case). However, the following examples show that in the law of some Member States there are several good solutions that could prevent such problems.

EXAMPLES OF GOOD PRACTICE

HUNGARY

Law: SEA integrated into decision-making

In accordance with the SEA Directive, the environmental report and the opinions and comments of the public and competent authorities have to be taken into account by the decision making (Article 10 of the SEA Decree).

AUSTRIA

Law: Obligation to take SEA results into account mentioned in special provisions

The environmental report and the opinions expressed shall be taken into account when preparing the relevant plans. Article 5 of the Austrian SEA Act for Transport and Article 8a of the Water Management Act state the following:

Article 5 SPV-G (Strategic Transport Act)

In the course of a strategic assessment the following shall be done:

4. When the drafts mentioned in § 3 para. 1 are prepared, the environmental report, the results of the involvement of the public, the environmental authorities and the initiators, as well as the result of consultations carried out (§ 7 para. 3,) shall be taken into account.

Article 8a AWG (Water Management Act)

The environmental report and the opinions expressed shall be taken into account when preparing the Federal Waste Management Plan.

Though in practice it has been very unclear to see if the elements had been taken into account (see J&E case study on SEA 2007, Austria for details).

ESTONIA

Law: SEA integrated into decision-making

Article § 43 of the EIA Act requires that “upon preparation of a strategic planning document,” the following shall be taken account of:

1. The results of the SEA and the adopted monitoring measures;
2. The opinions submitted by authorities and persons to the extent possible; and
3. The results of transboundary consultations.

In the best way this approach is clearly corresponds to the meaning of SEA Directive, as Article 8 of the Directive provides that the SEA results shall be taken into account “during the preparation of the plan or programme and before its adoption or submission to the legislative procedure”.

2.4. Informing the public of final decisions and outcomes, plus monitoring measures

In order to make public participation effective the public should be clearly informed on the final decision or how the environmental considerations were integrated in the decision, and also what kind of monitoring measures will be implemented for the plan or programme. In practice, an explanation of how environmental considerations are integrated in decisions is not often given or is given in a very general and vague way. The J&E 2007 SEA legal analyses has shown that in some countries even this obligation to inform public about the final decision is not foreseen in the law (or not thoroughly enough to fulfil the requirements of the SEA Directive) - see legal analyses from Czech Republic and Estonia.

EXAMPLES OF GOOD PRACTICE

AUSTRIA

Law: Obligation to inform public about the plan and consideration of SEA results

Both, the SEA act for transport and the Waste Management Act foresee the publication of a statement after the decisions have been. This statement should summarize the following information:

- How the environmental considerations have been integrated into the plan;
- How the environmental report, the opinions expressed and the results of transboundary consultations, if applicable, have been taken into account;
- For what reasons the plan has been prepared and which alternatives assessed were considered before preparing the plan; and
- Which measures are envisaged to monitor the significant environmental effects of implementing the Federal Waste Management Plan.

Still it is unclear how the situation in practice is. Especially with regard to transport projects, where the summarizing statement is usually very vague and it is uncertain whether the SEA has been taken into account.

HUNGARY

Law: Requirement of compilation of a summary for the public

After adoption of the plan or programme the adopting authority is obliged to compile a summary on:

- The adoption of the plan and programme;
- The reasons for adoption, in particular the preferences recommending the chosen alternative;
- With respect to the environmental aspects, environmental report and opinions and comments; and
- Finally the monitoring measures.

And to make it public (Article 11 of SEA Decree). The method of publication is at the least a local or national daily newspaper, and if the authority has a webpage also on that. In the case if the concerned public is limited to a small area of a town, the locally customary way of publication is also appropriate.

SLOVENIA

Law: Obligation to inform public about the plan and consideration of SEA results

The producer of the plan shall notify the public of the adoption of the plan and indicate the place and timing of public hearings and public debate. Additionally the methods for giving opinions and comments should be announced. This public announcement should be carried out by the usual and locally established manner, through local newspapers and on the Internet. A notification shall contain in particular:

- Description of the integration of environmental protection requirements into the plan;
- Observations on the opinions and comments on the plan's implementation obtained through the procedure of integral environmental impact assessment;
- Reasons for the adopted decisions made, with respect to the potential alternatives; and
- Description of the arrangements for monitoring environmental impacts during the implementation of the plan.

3. Conclusions

In order to find good solutions to those problems in EIA and SEA discovered by J&E in different Member States, J&E lawyers in five EU Member States (Austria, Czech Republic, Estonia, Hungary and Slovenia) have monitored and mapped good examples in their national legislation and practice.

As for **EIA**, the good examples found concern:

- Consolidation of EIA and development-consent procedures (Austrian law);
- Opportunities to challenge screening decisions (law and practice in Hungary and Estonia);
- Assessment of real alternatives (good cases in the Czech Republic);
- Sufficient time limits for Public Participation (Hungarian law);
- Public accessibility to documents (Estonian law);
- Information about opportunities for Public Participation, effective public notifications (law and practice in Estonian and Hungarian law); and
- Information to the public on how and where their opinions were considered and if not why not (Hungarian law).

As for **SEA**, the good examples found concern:

- Early and effective opportunities to comment on SEA and draft plans within appropriate time frames (law and practice in Estonia, good case from Slovenia and good legal solutions from Hungary and Austria);
- Access to justice against SEA and planning decisions (law and practice in Estonia); and
- Obligation to take SEA results into account in the final decision (good legal solutions from Austria, Hungary and Estonia).

As a result of collecting these examples about good practices, J&E has discovered that the main areas, where the good practice examples exist, are related to Public Participation. These examples could well be used as good role models and thereby improve the general practice of EIA and SEA procedures. However, the problems of: assessment of alternatives, assessment of impacts of the whole project and the proper assessment of impacts on different decision-making levels (which could be solved by tiered EIA and SEA proceedings), are areas in which good examples were not discovered in the practice of the five Member States in question. To some extent, this can be solved by providing effective public participation and granting access to justice for the public concerned; such as by using the examples provided in present work. Still the need remains for a proper assessment system. A system that would allow SEA to be really strategic and give sufficient basis for decision about of the strategic alternatives, and that would allow EIA to deal with more specific impacts and choices.

