

## **J&E Workplan 2007: SEA infrastructure CASE STUDY**

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**Introducing remark:** Please focus in particular on questions 14 to 17.

### **1. Title of planning case:**

S8 Marchfeld expressway (Morava-field expressway; Vienna - Bratislava)

### **2. Matter of case:**

March river “Morava” is a river at the Austrian-Slovak boarder flowing from the Czech Republic to Bratislava. The meaning of “Marchfeld” is “Morava-field”. The Marchfeld is the flat-landed region between Vienna and Bratislava north of the Danube. This area is also called the “Austrian granary” (including vegetables and fruits) since the regional soil is very fertile and the environment in general is very fruitful.

According the Austrian Strategic Transport Assessment Act<sup>1</sup> a “strategic assessment” of the planning case is necessary before the beginning of construction work. This strategic transport assessment of the S8 Marchfeld expressway was carried out in summer 2005. In the view of the public and of non-governmental organizations in Austria, the implementation of the SEA- Directive in the transport sector is not in conformity with the Directive’s provisions. As a result in practice the SEA is often insufficient. One of the reasons is that the “strategic assessment” act has a broader focus than the assessment of environmental issues. SEA is only one of many other objectives (like economic growth, powerful transport network, competitiveness of Austrian economy etc) of this act.

The concrete project is part of a larger road network consisting of various highways and motorways (“Regionenring” – region ring)<sup>2</sup> which aims at the development of the transport infrastructure in eastern Austria, namely the region surrounding Vienna (the so-called “eastern region”). The S8 Marchfeld expressway is supposed to supplement the region ring with a connection to Bratislava, thereby assisting regional development and relieving existing cross-town links.

### **3. Country:**

Austria

### **4. Location:**

Map of the region:

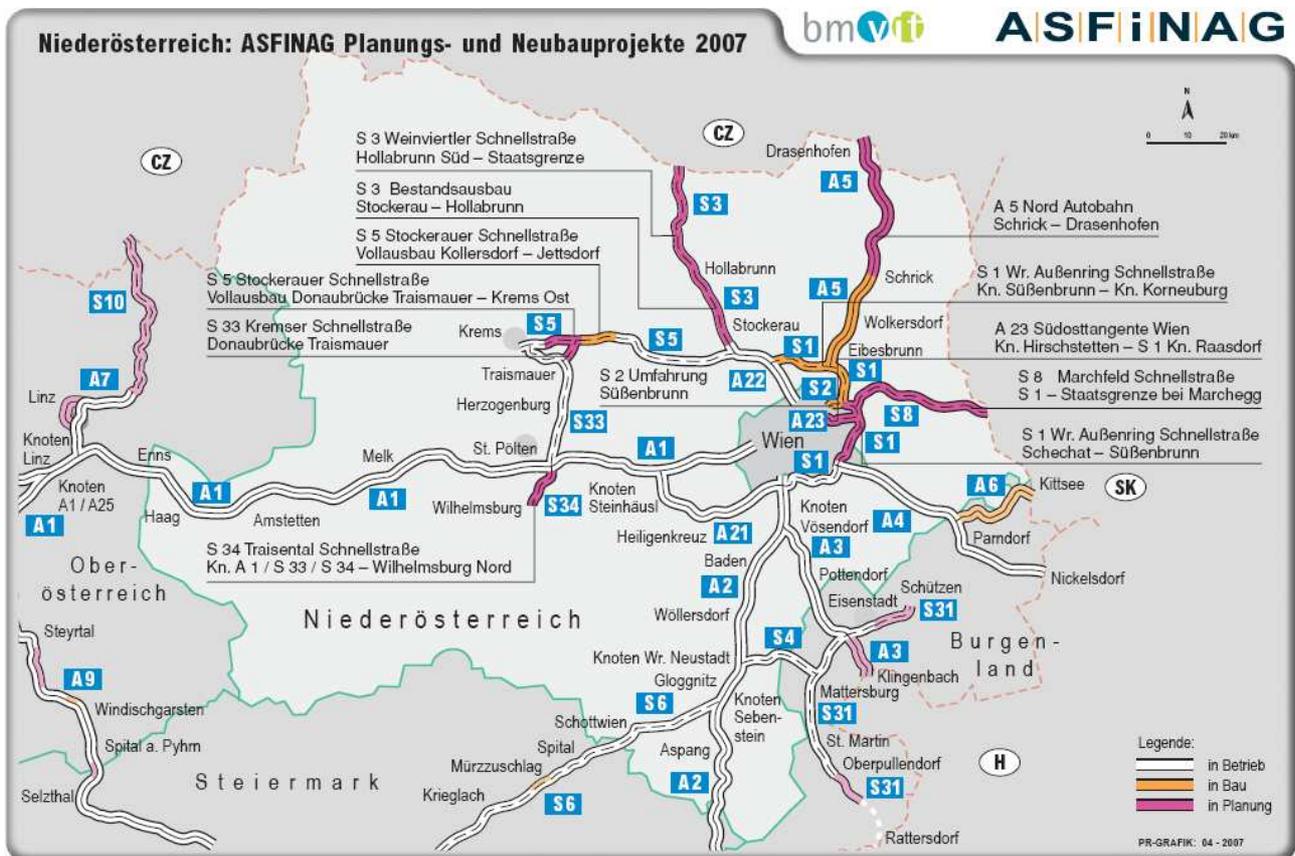
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<sup>1</sup> Bundesgesetz über die strategische Prüfung im Verkehrsbereich (SP-V-G), BGBl. I Nr. 96/2005.

<sup>2</sup> Please read J&E Workplan 2006 transport Austria for details.



The planned expressway runs from the border of the province (city) of Vienna and the province of lower Austria (represented by the S1 expressway) to the border of Austria and Slovakia (close to Bratislava; north of river Danube) at Marchegg and Angern respectively. The high-level transport network in this area is known under the umbrella term “region ring” see above). The following map shows an overview over existing and planned road transport infrastructure in the region.



(<http://www.asfinag.at/index.php?module=Pagesetter&type=file&func=get&tid=288&fid=pdf&pid=1>)

**5. Geographic dimension: (local, regional, national, EU, international - (especially, is the plan (shall it be) part of Trans-European Transport Network?)**

The S8 Marchfeld expressway starts at the eastern border of Vienna (S1 Wiener Außenring Autobahn) and passes through Lower Austria to the border of Slovakia (Angern – Marchegg). Therefore there is a local, a national as well as a trans-boundary dimension to the case.

The project is not part of TEN-T but it is part of the EU-project JORDES+, which aids the trans-boundary regional development within the framework of the EU programme INTERREG III A. The JORDES+ regions include Vienna - Bratislava - Győr. The JORDES+ project focuses on the sustainable development of these regions considering potentials of the nature and the culture of the region. The travel connection Vienna- Bratislava would, according to the relevant criteria, enhance the development of the whole region.

**6. Initiator of SEA/competent authority:**

Office of the government of Lower Austria, (<http://www.noel.gv.at>)

Department General Transport Affairs

Amt der NÖ Landesregierung, Gruppe Raumordnung, Umwelt und Verkehr

Abteilung Gesamtverkehrsahngelegenheiten

Landhausplatz 1/16

A-3109 St. Pölten

## 7. Participants involved

- Province of Lower Austria: Office of the government of Lower Austria, Department General Transport Affairs
- Federal Ministry of Agriculture, Forestry, Environment and Water Management
- Federal Ministry for Transport, Innovation and Technology
- ASFINAG AG (Austrian Organisation for Financing motorways)
- Various municipalities (Raasdorf, Untersiebenbrunn, Marchegg, etc.)
- Citizen's initiative Marchfeld-Marchegg
- NGO-Team "Marchfeldteam" (BIMM, Virus, WWF, Distelverein, Naturschutzbund Niederösterreich)

## 8. Other interested parties and/or stakeholders:

- Regional investors along the S8 track (planning and permit proceedings are already pending)

## 9. Background facts:

### 9.1. Account of facts (short summary of the planning case)

The main condition for the initiation of an SEA procedure is that the specific plan/programme is required by legislative, regulatory, administrative provisions. In Austria these special provisions in terms of the transport sector are contained in the Bundesstraßengesetz, BGBl.Nr. 286/1971, last change BGBl. I Nr. 154/2004 (Federal Roads Act). The annex of the act lists the names of the roads included in the existing Austrian motorway and expressway network as well as those that are to be constructed alongside with a short description of the routes. So if there is new motorway is to be built, the projected motorway has to be inserted into the Annex of the act. A strategic transport assessment has to be carried out before this insertion can take place.

In summer 2005 the assessment of the S8 expressway was carried out and in the process of the amendment of the Federal Roads Act the S8 Marchfeld expressway was registered in its Annex on 09. May 2006.

### 9.2. Description of the project and its main environmental impacts

#### 9.2.1. General description of the project

*(kind of the plan, its main goal, basic proportions, land-use requirements, etc.)*

The project is the construction of a street-connection between the border of the provinces Vienna and Lower Austria and the border of Austria and Slovakia at Marchegg and Angern respectively. The aim of the strategic transport assessment underlying this case is the incorporation of the S8 expressway as a high-level road connection into the above mentioned Federal Roads Act.

The main goals of the road construction are:

- improvement of the travel connection by car between Vienna and Bratislava, (north of the Danube);
- improvement of the transport connection between Gänserndorf (Lower Austria) and the Capital Vienna;
- relief of the heavily used cross-town links.

This street connection is expected to lead to:

- an improvement of the cultural and economic relations of Austria and Slovakia;

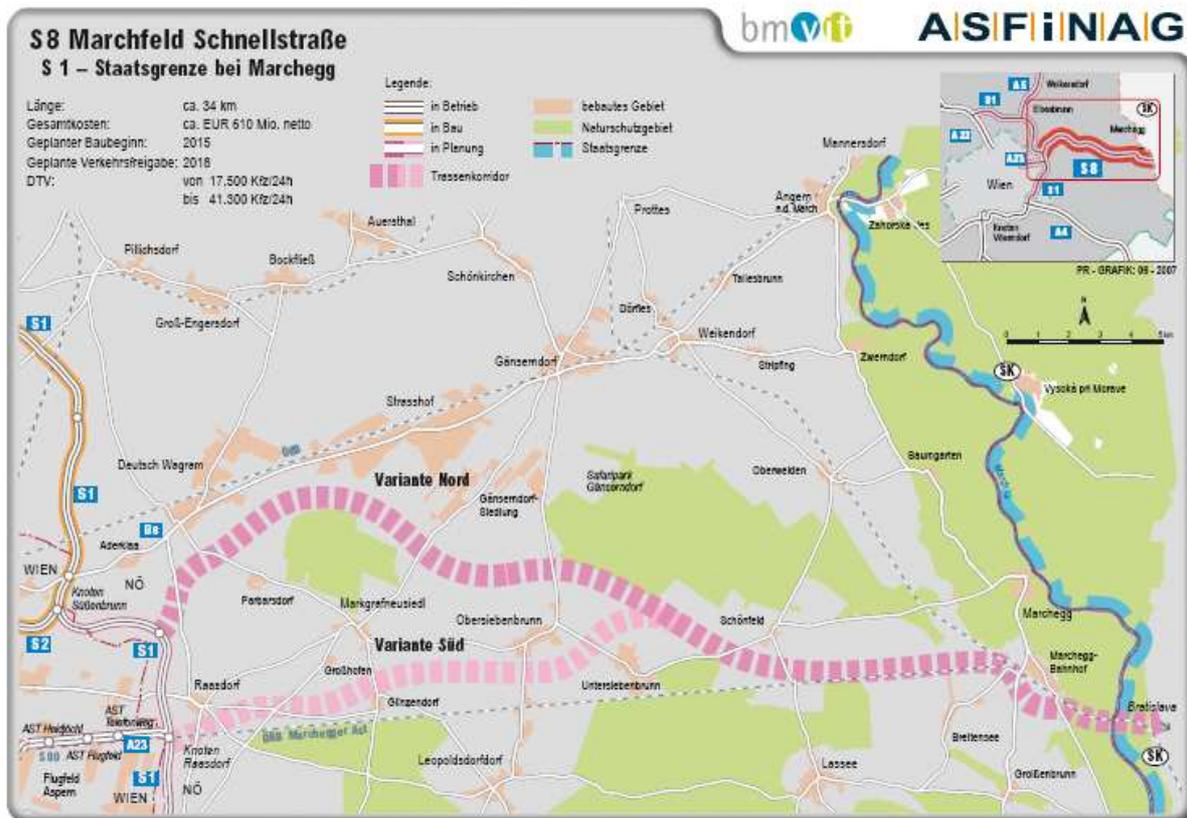
- an increased quality of life for people in the towns close to the old road;
- an improvement of the general conditions for economic development of the region;

Documentation concerning environmental aspects of the project focuses on an area of 30 x 30 square kilometers. This area is situated between Vienna in the west and the Austrian border in the east, between the town of Angern an der March in the north and to the Danube river in the south. The city of Bratislava is situated across the border in Slovakia.

It has to be noted that the railway connection Vienna-Bratislava is a TEN-T priority project but Austria is reluctant to plan this project. It is unclear when and where the rail connection will be constructed. It is therefore not clear why Austria focuses on the motorway project only, in particular since a new motorway connection Vienna-Bratislava (A6 motorway) has been opened for traffic only end of November 2007 (south of Danube river).



(This map shows the existing transport network of the Austrian Eastern Region, roads in white, railways in red)



(This map shows two possible variants of the project.

<http://www.asfinag.at/index.php?module=Pagesetter&func=viewpub&tid=287&pid=57&idtopic=29>

### 9.2.2. Description of the affected area

- general characteristics (scope, *character of land*, density and kind of settlement...)
- most important environmental characteristics, e.g. quality of air, water resources, protected areas, fauna, flora, important cultural sites... ; if possible, map of the area or sketch map of the project)
- overall evaluation of quality of environment in the affected area before realization of the project, extent of its “environmental burden”

The area expected to be affected by the construction of the S8 is equivalent to the 30 x 30 square kilometers the strategic transport assessment report is focusing on. The region is mainly part of the Marchfeld, which is situated in the north-east of Vienna and is limited in south by the river Danube, in the east by the river March, in the north by the hilly country of the Weinviertel (partially affected) and in the northwest by the Bisam mountain.

The region is, especially economically, strongly influenced by its proximity to Vienna as the center of the “Vienna Region”. The highest population density as well as the largest towns can be found along the existing road B8 and the “Nordbahn” train connection which both follow approximately the same route (see map). Five municipalities have more than 5.000 inhabitants but there are many more small and very small villages in the region. Approximately 65.000 people live in the affected area (63.986 in 2001).

Due to the composition of the subsoil the ground water is hard and strongly mineralized. A high concentration of nitrate was measured which is mainly due to the area-wide agricultural usage of the region. Roughly 154 square kilometers of groundwater protection areas can be found in the region. The two most important surface water sources are the rivers Danube and March but there are several other streams.

The largest part of the Marchfeld is covered with fields which provide a habitat for various kinds of animals and plants. Apart from fields the area in question contains forests (mainly pine and black locust), gravel pits, bodies of flowing and standing water and dry meadows. The riparian forests along the rivers Danube, March and Thaya are of special ecologic importance.

Birds are the most endangered animals in the area. There is a variety of species; some of them in danger of extinction like for example the Otis Tarda or the Bruhinus Oedicnemus. Additionally you can find important breeding and resting grounds for water birds along the river March.

The designated area contains two kinds of protected areas. On the one hand three **Natura 2000** areas are within the zone likely to be affected by the building of the expressway. Additionally nine nature protection zones, one national park and one area protected by the **Ramsar Convention** on Wetlands are within this area.

Natura 2000 areas in **Austria** affected by the project:

- March-Thaya Riparian Forest (bird sanctuary and FFH-SPA)
- Pannonian sand dunes (FFH-SPA)
- Sandboden and Prater terrace (bird sanctuaries by Markgrafneusiedl, Glinzendorf and Untersiebenbrunn)

Natura 2000 areas in **Slovakia** affected by the project:

- Morava (Záhorské Pomoravie) (bird sanctuary)
- Rieka Morava (FFH-SPA)
- Devínske alúvium Moravy (FFH-SPA)

### **9.2.3. Description of the main impacts of the project**

*according to the kind of the plan - mainly climate change, emissions, noise, nuisances, conflicts with special protection areas, changing characteristic of the landscape... )*

- possible **cumulative effects with other projects**

Being a road project, the main impacts of the project will be caused by an increase in traffic volume. The main impacts will be in the areas: air quality, noise, soil, water, climate change, nuisances, habitats (plants and animals), landscape and human health.

As mentioned above the project is closely linked to the “Regionenring Wien”, the projected motorway ring surrounding Vienna. Parts of the latter were subject to J&E Workplan 2006 case studies EIA transport Austria (Vienna-Brno motorway). The S8 expressway is a piece in a multi billion Euro motorway investment program in the Vienna region that will lead to a significant increase in road traffic and respective emissions in the next years.

Special protection areas (SPAs) are affected (see pt. 9.2.2).

### **9.3. Important interrelated aspects - transboundary impacts of the plan, relation to national and EU infrastructure (transport) development plans, EU funds etc.**

- *TEN-T?*
- *National transport programme*

- *EIB-funded?*

The project is part of the EU-project JORDES+, which aids the transboundary regional development within the framework of the EU programme INTERREG III A. The JORDES+ regions include Vienna - Bratislava - Győr. The JORDES+ project focuses on the sustainable development of these regions considering potentials of the nature and the culture of the region. The travel connection Vienna- Bratislava is supposed to enhance the regional development.

Further the Marchfeldstraße is part of the Austrian Land use development concept 2001 (ÖREK)<sup>3</sup>, which improves the cross-linking of locations by establishing a good transport system. The ÖREK refer to the establishing of TEN-T.

#### **10. Applicable articles of SEA Directive, relationship to EIA Directive, habitats and bird-Directives**

The applicable Articles of the SEA Directive (2001/42/EC) are in particular Arts. 3.1, 3.2a, 4, 5, 6, 8, 9, 10.

#### **11. Applicable national laws:**

- Bundesstraßengesetz (Federal Roads Act).
- Gesetz über die Strategische Prüfung im Verkehrsbereich (SP-V-G, Austrian Strategic Transport Assessment Act )

#### **12. Legal framework of SEA-proceeding:**

- *Position in legal system*
- *Administrative proceeding?*
- *particular planning proceeding?*
- *legal form of decision*
- *legal form of plan*
- *possibility to appeal against SEA decision and plan?*

Position in legal system

Regulations concerning SEA proceedings have not been incorporated into one single legal act in Austria. The SEA was included into the existing legal framework, it can now be found in a variety of different laws. Due to varying competences between the federal state and the provinces, regulations concerning SEA can be found on both legislative levels. The basic condition for an SEA procedure is, that the specific plan/programme is required by legislative, regulatory or administrative provisions.

In Austria the relevant source of law as regards the transport sector is the Federal Roads Act. The annex to the act lists the names and directions for the existing Austrian motorway network as well as those that are to be constructed. In other words, the act contains existing and planned roads. So if a new motorway is to be built, the first step is that the projected motorway is included into the Annex of this act. For this change of legislation a strategic assessment according to the Austrian Strategic Transport Assessment Act is obligatory. The further proceedings include the EIA-procedure as well as special authorizations according to the Federal Roads Act (Art 4 par1 and 7 par 2).

The procedure according to the Austrian Strategic Transport Assessment Act (SP-V-G) is the following:

<sup>3</sup> [http://www.oerok.gv.at/Raum\\_Region/oerek2001.htm](http://www.oerok.gv.at/Raum_Region/oerek2001.htm)

- Art 4 par 1 SP-V-G: “Initiators” propose a specific plan on a new motorway/railway. The most important initiators are the Minister for Transport, Innovation and Technology (Minister for Transport), the 9 regions (represented by the provincial governor), the ASFINAG AG (Austrian Organisation for Financing motorways) and the ÖBB (Austrian Federal railway organisation). This proposal has to include an environmental report which is created without participation of the public.
- The Minister for Transport can decide on a case-by-case basis whether a strategic assessment is compulsory or not. The decisive question is, whether the plan will “presumably not have significant effects” (Art 3 par 2 SP-V-G).
- The proposal for the new transport infrastructure as well as the environmental report has to be published on the homepage of the Transport Ministry. Within six weeks the public now has the chance to issue statements (Art 8 par 1 SP-V-G).
- When carrying out the actual strategic assessment, the environmental report as well as the statements have to be taken into account (Art 5 par 4 SP-V-G) by the Minister for Transport who prepares the draft legislation. A summarizing statement has to include, amongst others, information on how environmental concerns and the environmental report as well as the statements issued by the public have been taken into account in the drafting of the new legislation.

### **13. SEA/planning procedural history/timeline:**

- *information on formal proceeding (initiation of SEA, PP, decision etc)*
- *information on other relevant planning (political decision for the plan, start of internal planning, scheduled construction start)*
- *information on time between SEA and formal adoption of the plan*
- *information on scheduled timeframe between adoption of plan and (EIA)-permit proceeding and scheduled construction start*

#### **July 2004 – October 2005:**

Elaboration of the environmental report initiated by the provincial government of Lower Austria

#### **09 September 2005:**

The environmental report is forwarded to the Austrian Transport Ministry

#### **23 September 2005**

Publication of the environmental report on the homepage of the ministry

#### **23 September 2005 – 04 November 2005**

Public participation

#### **23 February 2006**

Publication of the summarizing statement

#### **29 March 2006**

Submission of the legislative proposal on the road in the national assembly

#### **21 April 2006**

Adoption of the legislative proposal in the federal assembly

#### **09 May 2006**

Publication of the decision in the official journal of the republic, date of entry into force

**2011**

Expected start of EIA

**2015**

Expected start of construction activity

**2018**

Expected completion of the project

#### **14. Relationship to EIA**

*Please explain the relationship of EIA and SEA in the legal system and planning/project practice in particular with problems indicated in J&E Workplan 2006 on EIA/infrastructure*

##### **Relationship SEA/EIA**

EIA and SEA work on two different levels. While within the EIA concrete projects are examined, the SEA is supposed to take place in an early planning phase, long before a real project is presented. This differentiation is not upheld within the SP-V-G. It establishes the SEA for transport projects at a point where it is almost too late to decide over basic questions. Even though the act speaks of an “intermodal and trans-network assessment of alternatives” which has to be carried out and presented in the environmental report, in practice a comparison between different carriers is avoided. Furthermore it does not make much sense if the federal motorway construction company ASFINAG would plan railway alternatives since ASFINAG is interested in constructing motorways.

The SP-V-G itself and its users in practice rather seem to be assuming a concrete project which makes a sensible separation of tasks between SEA and EIA very difficult. At the stage at which a SEA would still be meaningful no SEA is foreseen: The “Generalverkehrsplan Österreich” (GVP; general transport network plan for Austria) contains programmatic declarations and forms the basis for any later planning of transport infrastructure. The GVP is the document all motorway projects refer to with regard to justification and planning origin. Nevertheless, because it is not a legally binding document, no SEA is required for the GVP according to the directive. .

Due to these difficulties, the transposition of the SEA-directive has not significantly changed the Austrian practice. Up to now five plans for roads have been dealt with under the new law, there are no experiences with train or shipping traffic yet. Please see conference report on SEA-transport in Austria (Sep 2007) for further details.<sup>4</sup>

#### **15. Description of “significant effects” in environmental report (Article 5/1, Annex I (f))**

- *How does the environmental report deal with “significant effects” as compared to other parts of the report (Does elaboration of “significant effects” have a high priority in environmental report)?*
- *Does the report and to what extent analyze the issues mentioned in Annex I f (biodiversity, climate, air, soil, interrelationships..)?*
- *Does and to what extent the environmental report cover with regard to significant effects*
  - *cumulative, secondary and synergetic effects?*
  - *short-term, long-term, permanent and temporary effects?*
  - *positive and negative effects related to environment?*

<sup>4</sup> Die Strategische Umweltprüfung (SUP) im Verkehrsbereich. Tagungsband. Informationen zur Umweltpolitik Nr. 176, [www.arbeiterkammer.at/bilder/d73/InformationenzurUmweltpolitik\\_176.pdf](http://www.arbeiterkammer.at/bilder/d73/InformationenzurUmweltpolitik_176.pdf)

Art 6 par 2 No. 8 SP-V-G explicitly demands a description of the “anticipated significant effects on the environment” and repeats the subjects of protection contained in Annex I (f) of Directive 2001/42/EC.

The assessment of “significant effects” is, at least **from a quantitative point of view**, an important part of the environmental report. 150 pages are dedicated to the “Analysis of the anticipated effects of the alternatives on land and environment”, 95 of which actually deal with environmental factors. The environmental aspects covered by the report are noise, air, climate, soil, habitats, water and effects on landscape and urban areas.

Within the analysis each alternative is examined regarding its effects on the above mentioned subjects of protection. Taking the category habitats of plants as an example, after a short methodical introduction and description of indicators (area exposed, pollution intensity), **each alternative is treated on one single page**. This allows only a very cursory analysis of the effects. In a short summary the effects and possible countermeasures are briefly listed. In the concrete example all alternatives would most probably lead to deterioration for the habitats of plants, in the best case (no road, just public transport) the outcome could be neutral.

Concerning the determinations on **Natura 2000** areas the environmental report **does not deal** with the function of these areas. In the concrete case their function as migration corridors is of supra-regional importance. The planned road would cut through this corridor and will therefore have “significant effects” in a European context; this is not considered in the report.

**In general interdependencies are not taken into account.** There is no integrated consideration of all environmental effects for each alternative and no information on cumulative effects with other projects.

#### **16. Assessment of “reasonable alternatives” (Article 5/1, Annex I (h))**

- *what kind of alternatives are covered, for example different locations, different means of transport (like railways, motorways, water-ways)*
- *Are respective alternatives analyzed in a “reasonable” and serious way?*
- *Does and to what extent the report cover the significant effects of alternatives?*

The assessment of alternatives has happened very thoroughly and occupies a large part of the report. It covers different locations and different means of transport (road and rail) as well as combinations of the two. Also a “zero-version” is included which serves as basis for comparison. Altogether 8 alternatives are examined.

Of the 435 pages of the report almost 250 are dedicated to the examination of the different alternatives, 93 of which cover their effects on the environment. These 93 pages have to suffice for an assessment of impacts regarding noise, air, climate, soil, habitats and ecology and water. This is not very much space for a thorough analysis. Nevertheless, all alternatives are examined in the same way and results appear to be impartial. In any case this examination remains cursory.

Taking the effects on **soil** as an example the whole topic covers only **five pages** of analysis for all alternatives examined. These five pages include a short introduction on the indicators used and the area covered. For the actual assessment of their effects on the soil, each alternative is dedicated **only a few lines of text** which even contains redundant passages. Basically the information consists of the determination if there will be either no effect or a deterioration of the soil quality and that in case of deterioration compensatory measures will be necessary. It is also declared that the current status of soil quality is not high. 5 of the 8 alternatives are illustrated using maps. All in all the analysis can not be considered sufficient. **Standard phrases and text modules** seem to have been

used; **little effort has been made to clarify the advantages and disadvantages of the various alternatives** examined.

The issue of **noise** receives even less attention. **3 pages** seem to suffice to cover all significant environmental effects of noise of the different alternatives.

This approach leaves many questions unanswered. For effects on climate only a summary is presented (1.5 pages), measures against an increase of CO<sub>2</sub> emissions are not mentioned.

### **17. Early and effective public participation (Article 6 and 7)**

- *How was the public informed on SEA?*
- *At what stage in planning procedure does PP take place?*
- *At what stage in SEA procedure does PP take place?*
- *Did the SEA provide for early and effective PP at a planning stage when all options are open (in theory and effectively)?*
- *Has the SEA provided for sufficient time frame and arrangements to guarantee fair and effective PP?*
- *Is the information provided for consultation sufficient to assess the plan?*
- *In case of transboundary SEA*
  - *When and how was the public of the other country informed on SEA?*
  - *What information was provided for consultations?*
  - *Where SEA documents translated?*

The “Generalverkehrsplan Österreich” (GVP) contains programmatic declarations and forms the basis for any later planning of transport infrastructure. The GVP is the document all motorway projects refer to with regard to justification and planning origin. Nevertheless, because it is not a legally binding document, no SEA is required for the GVP, no public participation is foreseen.

Proposals for amending the existing transport networks that are not yet listed in the Annex of the Federal Roads Act on the other hand, require an environmental report as first step of an SEA proceeding according to the Austrian Strategic Transport Assessment Act (SP-V-G, read above for details). Unfortunately the public is not involved in the drafting of this report.

Only after the report on the proposal is finalized, it is published on the website of the Transport Ministry. Two regionally prevalent newspapers have to advert to this fact (Art 8 SP-V-G). Therefore the public not present in the concerned region and without access to the internet is practically excluded from the process.<sup>5</sup> Generally the provisions concerning public participation are not very well elaborated both on federal and on provincial level. The public is to be informed “**on the homepage**” or “**via the internet**” which does not provide for efficient and unrestricted access to relevant information. There is no clear and transparent information on where “the internet” or “the website” could be. In addition those 40 % of all Austrians which do not use internet are excluded. This concerns in particular the older and socially disadvantaged parts of the population.

In the concrete case the public was therefore only included into the process after the environmental report had been completed. On 23 September 2005 the public was informed via edict about the possibility to inspect the relevant documents. A timeframe of six weeks was fixed for the submission of statements. These statements by environmental organizations and citizen’s initiatives were later, if brought in time, mentioned in the summarizing statement.

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<sup>5</sup> *ibid.* 279 f.

It has to be noted that the summarizing statement of the Minister for Transport (is by the same time something like the SEA-decision) **did not refer to the substance of any comment and only stated that SEA and comments “can be considered” without stating what this consideration might look like or how it was conducted.** Another problem that appeared was the size and the complexity of the environmental report. There were complaints about a lack of time for the review of the report by non-experts.

In addition the decision **did not reflect the SEA procedure** and public participation at all (please read below for more information). The summarizing statement of the Minister for Transport only **took over the arguments of the environmental report** which was prepared before the public was consulted. It can therefore be concluded that the comments of the public **were not taken into account.** Thus this is not effective public participation in the sense of Article 6 and 7 SEA Directive as well as Article 7 of the Aarhus Convention.

The situation does not provide for effective public participation. As mentioned above, the public is not involved in the actual planning process. The first possibility for an active involvement appears at a point in time when the planning process is concluded and the SEA environmental report is completed. In practice this leaves only the EIA open to public intervention.

## 18. Consideration of SEA in planning decision (Article 8, Article 9)

### 18.1. Information and form of decision

- *In what form is the plan adopted?*

- *How was the public informed on the adoption and results of SEA?*

It is unclear in the Austrian Strategic Transport Assessment Act what the actual decision is with regard to SEA and this act. The act provides in Art 8 that the proposed amendment of the Federal Roads Act has to be published on the website of the Minister for Transport together with the environmental report. In addition “a summarizing statement” including the information provided in Article 9 of SEA directive has to be published as soon as the draft amendment to the Federal Roads Act has been completed (Art 9 SP-V-G). It is therefore unclear what the “decision” with regard to the SEA procedure is.

In Austria the **plan or program is a legislative act** and, for example in the case of a change in the road network, is adopted as an amendment to the Annex of the Federal Roads Act in parliament. This act of amendment can be considered as the actual decision as regards the SEA. This in turn means that the SEA “decision” is published as foreseen in the regular **legislative procedure.** It has to be noted that there is **no reference to the strategic assessment** in the parliamentary material regarding the amendment of the Annex of Federal Roads Act.

The public is informed about the decision through its publication “**in the internet**” on the Website of the transport minister (Art 9 par 1 SP-V-G). There is no obligation to actively inform the public about the internet publication.

Art 9 SP-V-G demands a publication of following information on the website of the Transport Ministry:

- the draft proposal of the amendment to the relevant act (in this case the Federal Roads Act)
- a summarizing statement containing, amongst others, information on the considerations leading to the proposed amendment, on how the environmental report was taken into account and on the reasons for the choice of a specific alternative.

The product of the whole process, the amendments to the Federal Roads Act concerning the inclusion of new roads into the federal transport network, is published in the official journal, as foreseen in the regular **legislative procedure** (this can be considered as the **third phase of publication**). It contains only the name of the road and a very cursory description of the route. In the case of the S8 the text is as follows:

*No.:* S8

*Name:* *Marchfeld Expressway*

*Description of route:* *Traffic junction Raasdorf (S1) – National border at Marchegg*

This information is very inaccurate and thus leaves a wide area of interpretation and discretion. It only means that motorway shall be constructed between the starting and the ending point without any reference on the concrete track.

It has to be noted that there is little if any reference to the strategic assessment in the parliamentary material regarding the amendment of the Federal Roads Act for the S8 expressway. This means it is uncertain if the parliament was informed about the SEA and its outcome. It is thus very uncertain if the parliament has taken into account the results of the SEA proceedings. It also remains unclear if subsequent decision makers are obliged to take the SEA into account at all.

## 18.2. Integration and consideration of SEA in decision

- *Did (and to what extent) the published statement summarizing SEA (Article 9/1/b) explain how **environmental considerations** have been integrated into the plan, in particular how*
- *the environmental report with regard to “significant effects” and*
- *the opinions of the public were **taken into account** in accordance with Article 8?*
- *Was SEA taken into account effectively?*

The summarizing statement explicitly mentions the environmental report and **takes over 100 % of the reports proposal**. Nevertheless the decision for a specific variant is **only justified on the grounds of a cost-benefit analysis**, which is also included in the environmental report. According to the report, the environmental impact of the preferred variant was “manageable” and public transport alone could not achieve the desired results. Therefore the cost-sum ratio was chosen as the decisive criterion.

The summarizing statement also contains a recapitulation of the statements received by the Transport Ministry. As demanded by Art 9 par 1 lit. b SP-V-G, statements issued by other initiators, by environmental authorities, by the governments of other concerned states and by the public are included. Serious criticism comes from the side of the Ministry of the Environment and from the public. **Three pages sum up the most important points of criticism**. Even though the negative statements are presented quite extensively, the concerns contained therein **are eventually declared as being compatible** with the project. By means of monitoring and other measures described in the summarizing statement (please read below for details) most of the demands could, according to the statement, be satisfied. They could therefore not inhibit further project proceedings. **The handling of criticism containing concrete demands or proposals which could not be taken into account is simply postponed to later proceedings**.

This is the typical style of treating critical statements issued by the public. Even though the law demands the Transport Ministry to show **how** the statements have been taken into account (Art 9 par 1 lit. b SP-V-G), **a simple reference to the proposed monitoring and optimisation measures has to suffice to resolve all doubts**. This is particularly cynical as the proposed **monitoring and**

**other measures** are by **no means sufficient** to compensate for and to significantly reduce the environmental impacts of the project (please read below 18.4 for details).

### 18.3. Reasoning for alternative chosen

- *Did the decision statement clearly state the reasons for choosing the plan adopted, by the light of other reasonable alternatives dealt with?*

- *Is the reasoning understandable and clear with regard to environmental impacts?*

The summarizing statement **does not clearly indicate the reason for the choice of a specific variant**. It refers to the recommendation in the **environmental report** as a justification. The note that the significant negative effects could be balanced by compensatory measures (see below 18.4) seems to allow the choice of a variant, which clearly is not the most considerate towards environmental concerns. The decisive reason for the choice indicated in the statement is the advantageous **cost-sum analysis** (as mentioned above). The summary only took over the arguments of the environmental report. This is another evidence for the fact that the results of public participation and of the consultation of environmental authorities are not taken into account at all.

### 18.4. Arrangement of Monitoring

- *Did the decision statement name the decided measures concerning monitoring of significant environmental effects in order to identify early stage unforeseen adverse effects in accordance with Article 10?*

The summarizing statement contains (according to the title of the subsection) various monitoring measures as well as “determinations” for projects “resulting out of the change in the transport network”. Concerning the environment the statement mentions among others the improvement of bridges regarding their ecological functions, the optimisation of the crossing of watercourses and forest improvement. All of the proposed measures are compensatory measures; **no monitoring measures are foreseen** in environmental questions. Therefore it does not seem possible to identify unforeseen adverse effects at an early stage (in accordance with Article 10) and to take appropriate countermeasures.

The **compensatory measures** introduced in the summarizing statement are of a **very general** kind. A part of them concerns obvious necessities like the **optimal integration of the constructions into the landscape** or the maintenance of crossing possibilities for bikers, horseback riders and hikers. The others speak of **optimisation of bridges** regarding their ecological function, the creation of adequate crossing possibilities for amphibians close to their habitats or the creation of vegetated eco-compensatory areas to filter air pollution and to serve as protection against noise, wind and erosion. This is as concrete as it gets. Other measures concern the “**optimisation of the crossing of watercourses**” and the “improvement of existing forests”. None of the measures is assigned to a concrete part of the project. It is **unclear where, when, how, to what extent** and with how much funding the measures are going to be realized.

### 18.5. Was there any other particular problem with regard to decision making?

There has been no other problem with regard to decision making.

## 19. Remedies taken:

*Is there a legal possibility to appeal against SEA decision?*

The Austrian Strategic Transport Assessment Act does not provide for the possibility of appeal against the SEA decision. It is even unclear what the decision according to this act is (is it the “summarizing statement”, the law proposal, or the law itself?..).

If it is argued that the parliamentary legislative act on the road track is the decision, there is no possibility to appeal against this decision.

If the summarizing statement is the “decision” of SEA this can not be appealed since the statement has no legal value. It is legally inexistent.

Thus there is no possibility to appeal against the decision.

## **20. Judicial procedural history/timeline (if relevant):**

No legal remedies were taken since there is no possibility to do so.

A complaint from a local group was submitted to the EC in October 2006 . It is not clear if the EC follows the complaint since it was not very well prepared from legal perspective (the authors view).

## **21. Outcome of the actions:**

No outcomes have been produced since it is not possible to take judicial remedies.

## **22. Current status of planning case:**

A pre-project is being carried out at the moment. This includes a formalized proceeding for the decision over an exact route and a comparison of alternative routes under the changed general conditions after the inclusion of the project into the Federal Roads Act. General assessment of environmental criteria; instructions by Transport Ministry. The affected area is being defined as federal roads planning area by the Transport Ministry by means of decree.

## **23. Follow-up actions planned and their timeline**

The public concerned is ready to participate in the subsequent permit proceedings and still tries to influence the S8 track decision. In the media different variants are under discussion. This is **other evidence that SEA did not play a role** in the decision making and that a change in variants is still possible even though the parliament has taken the decision that a motorway shall be constructed between the starting and the ending point without any reference on the concrete track.

## **24. Conclusions:**

The SEA under the federal transport planning act (SP-V-G) is not an ineffective environmental planning tool. Even though the act itself has some promising elements and appears to be a more or less correct transposition of the directive, the application of the law shoes serious shortcomings. This does not count only for this case, but also for the four other cases that followed this SEA procedure until now, as first assessments show.

There are major deficiencies in almost any major stage of the procedure:

- Public participation takes place at a point in time that is neither early nor effective.
- The environmental report (prepared by the initiator of the plan), despite its volume, covers crucial issues such as alternative assessments and potential environmental impacts only in a cursory way.
- The final track decision is taken by pure cost/benefit analyses and is not based on environmental matters.
- The authority takes over the results of the environmental report without any amendments.
- Comments from the public and other bodies such as the MoE are not reflected in the decision.
- Compensation measures are of no legal and practical value: They are vague, general and not concrete.
- No monitoring measures are foreseen

- There is no possibility to legally challenge the decision.

It can be concluded that SEA practice in federal transport sectors does not comply with any of the major elements of the SEA-directive and see a clear infringement of European law. Furthermore the approach as to public participation and access to justice is critical with regard to the obligations under the Aarhus Convention.

We recommend annulling this act immediately and setting up a functioning SEA system.

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