

## SEA – WP07

### Legal analysis on SEA infrastructure implementation - Austria

prepared by Clemens KONRAD and Thomas ALGE  
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#### 1. General Information on transposition of SEA Directive in transport sector

##### a. Names of acts

Gesetz über die Strategische Prüfung im Verkehrsbereich (SP-V-G, Austrian Strategic Transport Assessment Act ), BGBl. I Nr. 96/2005.

##### b. Transposition in time?

Transposition was too late. The deadline for compliance was 21 July 2004. The SP-V-G entered into force on December 08 2005, almost one and a half years after the deadline.

##### c. Overall framework of SEA in legal system

##### *i. (for example relationship to EIA-proceeding, regional planning, other planning proceedings, other informal planning activities*

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 bills. Due to varying competences between the federal state and the provinces, regulations concerning SEA can be found on both legislative levels. For SEA regarding transport infrastructure the Austrian Strategic Transport Assessment Act (federal law) contains the relevant provisions. Provinces (Bundesländer) are not obliged to carry out an SEA under the directive since such planning processes are not mandatory by law.

The main condition for a SEA procedure is that the specific plan/programmeme is required by legislative, regulatory or administrative provisions. In Austria this special provision in terms of the transport sector are:

- for roads: the Federal Roads Act (Bundesstraßengesetz 1971, BGBl. Nr. 286/1971);
- for railways: the Federal Act on High - performance Railway Routes (Hochleistungsstreckengesetz, BGBl. Nr 135/1989);
- for waterways: the Federal Act on Shipping (Schiffahrtsgesetz, BGBl. I Nr. 62/1997).

This paper will analyse the SEA infrastructure implementation in the light of the planning of **road** infrastructure.

The approach for the formal adoption on new roads is some particular in Austria. The annex to the Federal Roads 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. If a new motorway is to be built, the first step is that the projected motorway is included into the Annex of the act. For this change of legislation a strategic assessment according to the Austrian Strategic Transport Assessment Act is obligatory (with exceptions). The further proceedings include the EIA- procedure as well as special authorizations according the Federal Roads Act (Art4 par 1 and Art 7 par 2 Federal Roads act).

General perception on the SEA-transport approach:

The Austrian Strategic Transport Assessment Act is well suited for illustrating the problematic relationship between the EIA and the SEA in the Austrian legal system. EIA and SEA work on two different levels. While within the EIA concrete projects are examined, the SEA is concerned with phase of early planning, 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.

An effective comparison between different means of transport does not take place. The SP-V-G rather seems to be assuming a concrete project (motorway from A to B) which makes a sensible separation of tasks between SEA and EIA very difficult if not impossible.

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.<sup>1</sup>

d. Other remarks

i. *(for example no transposition necessary due to limited scope of SEA Directive)*

Explanation of the procedure under the SP-V-G

- Art 4 par 1 SP-V-G: “**Initiators**” **propose a specific plan** on a new motorway/railway/waterway: The initiators are the federal state (represented by the Minister for Transport, Innovation and Technology (Minister for Transport)), the 9 regions (represented by the provincial governors), the ASFINAG AG (Austrian Organisation for Financing motorways), and the ÖBB (Austrian Federal railway company) and the via Donau (Austrian waterway association). This proposal has to include an environmental report which is created by the initiator without participation of the public concerned.
- The Minister for Transport can decide on a case-by-case basis whether a strategic assessment is compulsory or not compulsory. 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, **statements issued by the public**, by environmental authorities or by other states affected by the project, have to be collected (Art 5 No. 2, Art 8 SP-V-G) by the Minister for Transport. He/she has to “**take them into account**” when preparing the draft legislation (Art 5 No. 4 SP-V-G). A statement summarizing the results of the environmental report and the decision making procedure within the Transport Ministry (“summarizing statement” please read below) has to be issued. This document 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.
- The **final decision** over the outcome of the SEA proceedings and therefore over the amendment of the Annex of the Federal Roads Act **is taken in parliament** and is subject to the general legislative procedure.

<sup>1</sup> ALGE, Thomas; KROISS, Fritz: *Strategische Umweltprüfung – SUP* in Handbuch Umweltrecht, WUV Wien 2006. 280 f.

## 2. Reasonable alternative assessment and significant effects (Article 5/1, Annex 1 (f) and (h))

### a. Transposition

#### i. List in detail transposition provisions on article 5/1 and Annex 1

Article 5 par 1 SEA Directive is transposed into Art 6 par 1 SP-V-G which contains an exact translation of the wording of Article 5 par 1.

The information to be included into the environmental report as laid out in Annex I (f) is described in Art 6 par 2 No. 8 SP-V-G. This provision is again an exact translation of the text of the directive. It also includes Annex I (1) by stating that the “*secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects*” have to be included in the description.

The provision on information required by Annex I (h) has been transposed into Art 6 par 2 No. 3 and No. 10 SP-V-G. Art 6 par 2 No. 3 contains the requirement of an outline of the reasons for the selection of a specific alternative and of how the assessment was carried out. Art 6 par 2 No. 10 demands a description of the difficulties encountered when compiling the information. Even though Annex I (h) is split into two provisions, both taken together still represent an exact translation of the text of the directive.

The Minister for Transport has the possibility to issue more detailed specifications for the preparation of the environmental report by regulation. This has to happen in accordance with the Federal Minister of Agriculture, Forestry, Environment and Water Management (Minister of the Environment).

What is particularly questionable about the provisions on the preparation of the environmental report is that according to Art 4 SP-V-G the report is **prepared by the initiator** who clearly has an overwhelming interest that “his” project passes the SEA-test.

#### ii. All provisions transposed?

As described above Article 5 par 1 as well as Annex I (f) and (h) SEA Directive have completely been transposed into the Austrian legal system.

### b. Analyse framework, quality and application of

#### i. “reasonable alternatives” (*what kind of alternatives are covered, for example different locations, different means of transport (like railways, motorways, water-ways); how detailed is information provided as to “objectives and geographical scope” of the plan.*)

According to Art 6 par 2 No. 3 SP-V-G, the assessment of alternatives contained in the environmental report has to include an inter-modal and cross-network evaluation. In other words, different means of transport (road, railway, and waterway) as well as their interoperability (possibility to use a combination of two or more means of transport) have to be taken into account before the final decision is taken. This assessment usually also comprises different geographical alternatives. A statement describing the reasons for the choice of the evaluated alternatives has to be included in the environmental report.

Unfortunately there is a huge discrepancy between theory and practice in the evaluation of alternatives. In most cases the (political) decision for a particular means of transport has already been taken before an SEA is even initiated. In the J&E case study supplementing this analysis (S8 Marchfeld expressway) it is shown clearly, that the assessment of alternatives is done only in a very

cursory way. Ultimately the decision for a specific alternative is taken on the basis of a cost-sum calculation.

The term “reasonable” is not explicitly defined in the SP-V-G. Article 5 par 1 SEA Directive demands that the “reasonable alternatives” are assessed “*taking into account the objectives and the geographical scope of the plan or programme*”. In this sense the minimum criterion for the reasonability of an alternative would be that it takes objectives and geographical scope of the plan or programme into account. The same wording as in the directive can be found in Art 6 par 1 SP-V-G and, like the Directive, it does not go into any further detail.

ii. description of respective “*significant effects*”

1. How is significance analyzed in practise? (*with regard to different issues mentioned in Annex I f (biodiversity, climate, air, soil, interrelationships..)*)?

Relevant for the determination of the “significant effects” in practice is Art 6 par 2 No. 8 SP-V-G. This provision demands that descriptions of the “anticipated significant effects on the environment” are to be included into the environmental report. It also repeats the subjects of protection contained in Annex I (f) of Directive 2001/42/EC (e.g. biodiversity, human health, water). The following estimation is taken from the J&E case study on the S8 Marchfeld expressway and shall illustrate practice in Austria:

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 areas covered by the report are noise, air, climate, soil, habitats, water and effects on landscape and urban areas. Within this 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. The analysis is thus not very elaborate and its results seem to reflect the political decision for or against a specific variant or alternative which has in most cases already been taken before the carrying out of the SEA. In addition, the results of the analysis of the significant effects seem to have little influence on the final decision as compared to cost-benefit analysis also carried out within the SEA.

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 as well as no information on cumulative effects with other projects.

2. Does the environmental report cover with regard to significant effects
  - a. cumulative, secondary and synergetic effects?

- b. short-term, long-term, permanent and temporary effects?
- c. positive and negative effects related to environment?

Annex I (1) SEA Directive has been transposed into Art 6 par 2 No. 8 Sp-V-G. This provision determines that the “*secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects*” of a project have to be taken into account when describing its implications for the environment in the environmental report. Thus, from legislation the report shall cover those aspect.

### 3. Public participation (PP, Article 6 and 7)

- a. “Early and effective opportunity within appropriate time frames” to express opinion on “draft plan”? (transposition and in practise?)

- i. At what stage in planning procedure does PP take place?

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 case which was analyzed for the case study supplementing this analysis (S8 Marchfeld expressway) the public was, as foreseen in the law, only included into the process after the environmental report had been completed. Then 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. It has to be noted that the summarizing statement of the Minister for Transport did not refer to the substance of any comment. The necessity for consideration of the statements was fulfilled by simply including the phrase “can be considered”. This gives no evidence about how and to what extent this consideration has happened.

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. 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.

- ii. Does legislation provide for early and effective PP at a stage when all options are open?

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

- b. PP in transboundary context (transposition and in practise)

- i. How is the public of another country informed about transboundary SEA?

Art 7 par 1 SP-V-G determines two cases in which another state (as defined in Art 7 par 5 SP-V-G: all EU member states directly bordering Austria, Switzerland in case of reciprocity) has to be informed about a planned change in the Austrian transport network:

- if a proposed amendment to the Austrian transport network is likely to have significant effects on the environment (not necessarily territory) of another state or
- if a state, which is likely to be significantly affected by the change in the transport network demands so.

In both cases the Minister for Transport has to inform the respective state at the latest until the publication of the environmental report. The state is to be granted an adequate timeframe for the decision if she wishes to take part in the SEA proceedings.

If the state decides to join, the Minister for Transport has to communicate the draft plan for the proposed change in the network as well as the environmental report. The state is to be given an adequate timeframe for issuing a response (Art 7 par 2 SP-V-G). If the state concerned demands consultations about the presumed trans-boundary effects of the planned change in the transport network and about the planned countermeasures they have to be held with the Minister for Transport.

The SP-V-G does not contain any provision on how the public situated in the state concerned is to be informed. Article 7 par 2 second paragraph SEA Directive was not directly transposed into the SP-V-G. There is just the general provision of Art 8 SP-V-G regarding the publication of the proposed changes and of the environmental report on the homepage of the Transport Ministry. This information is accessible also from outside of Austria. According to Art 8 par 1 SP-V-G two newspapers widely read in the affected area have to advert to this publication. This is also valid for the neighbouring countries and their newspapers.

In practise trans-boundary contacts have been established only in one SEA case up to now. In the case S8 Marchfeld expressway (see the J&E case study supplementing this analysis) the Slovak Republic was informed about the project. It decided not to take part in the SEA proceedings. It was stated however, that the competent Slovak Ministry expects a cross-border connection to be ordered in the area where the Austrian project would reach Slovak territory.

ii. Are all important documents translated?

According to Art 9 par 2 SP-V-G the Minister for Transport has to, in case of a trans-boundary participation in the sense of Art 7 SP-V-G, communicate the draft legislation to the state which has been consulted in an adequate way. The term “adequate” is not defined and would thus be open for the interpretation that the draft legislation has to be translated. This only concerns the state as defined in Art 7 par 5 SP-V-G and not the public of the state. There are no explicit provisions providing for the translation of the relevant documents.

These provisions alone would only partially transpose Article 7 SEA Directive. Article 7 par 2 second paragraph of the Directive demands however, that the states concerned agree on arrangements “*to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion*”. An interpretation in conformity with European law would thus demand that also the public of the neighbouring state is informed. This information can not be considered as adequate if not at least the most important documents are translated.

#### 4. Decision Making (Article 8 and Article 9)

Regarding the final decision in the SEA procedure in Austria a few **introductory remarks** have to be made in order to be able to treat this part of the analysis in a meaningful and comprehensible way.

The SP-V-G does not include special provisions on the publication of the adopted plan or programme (the actual “decision” in the sense of Article 9 SEA Directive). The reason is that in Austria the **plan or programme 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 in turn means that the SEA “decision” is published as foreseen in the regular **legislative procedure**.

As a **final step in the SEA procedure** the SP-V-G provides in Art 9 that the draft amendment of the Federal Roads Act has to be **published on the website of the Minister for Transport** alongside with a summarizing statement. This creates the impression that these two documents are already the final decision. Notwithstanding to what has been said above, in points 4.b.ii-iv, 4.c.i.(below) the draft legislation and the summarizing statement will be treated as the final decision in the sense of Article 9 SEA Directive. This can be justified by the fact that the Austrian legislator transposed Article 9 par 1 SEA Directive into Art 9 SP-V-G.

a. How are Article 5/1 and Annex 1 (f) and (h) considered in the decision?

i. Transposition in general, practise in general

According to Art 5 No. 4 SP-V-G the environmental report, along with the results of the public participation procedure, the statements by environmental authorities and the results of the consultations with other affected states, has to be considered when drafting legislation and therefore also in the decision-making process. The information mentioned in Annex I (f) and (h) are content of the environmental report and are not mentioned again in this context. The wording of Art 5 No. 4 SP-V-G seems to be in accordance with Article 8 SEA Directive.

In the decision making process problems appear in practice due to the fact that there are no legal determinations on how the environmental report is to be “considered”. This leaves a large area of discretion to the deciding authority. The J&E case study supplementing this analysis (S8 Marchfeld expressway) shows a typical example for this situation. The recommendations of the environmental report are directly taken over into the summarizing statement. There is no evidence that in the process of decision-making these recommendations have been subject to a critical analysis. It seems much more as if the decision has been anticipated by the report. The problem is that the environmental report itself is in parts insufficient and contains contradictions. In the end a cost-benefit analysis is used to justify the recommendation.

ii. Does (and to what extent) the decision have to take into account the environmental report in particular with regard to alternative assessment and significance of effects?

According Art 5 No. 4 SP-V-G the environmental report has to be taken into account when drafting the summarizing statement. How and to what extent this has to happen remains unclear even though Art 9 par 1 No. 2 lit. e SP-V-G demands reasons for the choice of alternative to be included into the summarizing statement.

The environmental report includes the alternatives assessment as well as determinations on the significance of effects; this information is therefore implicitly included in Art 5 No. 4 SP-V-G. However, the environmental report, the statements by the public and the results of consultations are just three out of all together thirteen elements which have to be considered according to Art 5 No. 4 SP-V-G. The other ten “aims” primarily concern economic and transport policy considerations, just one refers to a high level of environmental protection. For other problems regarding the consideration of the environmental report in the decision-making process please read above (4.a.i).

b. How are Articles 6 and 7 considered in decision?

i. Transposition in general, practise in general

Article 8 SEA Directive demands that opinions expressed by the public concerned and by the environmental authorities according to Article 6 SEA Directive have to be considered in the decision-making process. The same is true for the results of transboundary consultations pursuant to Article 7 of the Directive.

Article 8 SEA Directive was transposed into Art 5 No. 4 SP-V-G. This provision determines that the results of the public participation procedure, the statements by environmental authorities and the results of the consultations with other affected states, have to be considered when drafting legislation and therefore in the decision-making process. This is in accordance with Article 8. There are again no determinations on how and to what extent the information relevant for Articles 6 and 7 SEA Directive has to be taken into account. This situation allows the competent authority to decide without seriously considering the issues raised in the statements.

Regarding the handling of the results of national public participation and of the consultation of environmental authorities in practice, it seems enough to mention the major points of criticism and to state that they have been or can be considered to fulfil the criteria of the SP-V-G. The standard phrases “have been considered” or “can be considered” were used in practically all SEA cases in Austria. For a specific example please read the J&E case study supplementing this analysis (S8 Marchfeld expressway) and above (3.a.i).

No trans-boundary consultations have taken place up to now. Only in one case the authorities of a neighbouring state were informed about the SEA proceedings. The state did not demand consultations.

- ii. Does (and to what extent) the decision refer to the national and transboundary PP process

As mentioned above Article 8 SEA Directive was transposed into Art 5 par 4 SP-V-G. This provision demands that the results of trans-boundary consultations have to be taken into account when drafting the decision. Again the problem appears that the legislator has left open the modalities for this process.

The decision in the sense of the SP-V-G consists, according to Art 9 SP-V-G, of the draft legislative proposal as well as of the summarizing statement. The summarizing statement has to include the statements by the public and the results of the trans-boundary consultations (Art 9 par 1 No. 2 lit. b SP-V-G). However, as mentioned above, the decision in the sense of the SP-V-G is not the final decision as envisaged by Article 9 SEA Directive.

- iii. How is the public informed on the decision?

As mentioned above it is unclear what the “decision” is regarding the SEA procedure. As the last procedural step covered in the SP-V-G the public is informed about the “decision” in the **summarizing statement** which is, along with the **draft legislation**, published on the **website of the Transport Ministry** (Art 9 par 1 SP-V-G). This provision transposes Article 9 par 1 SEA Directive. According to Art 9 par 1 No. 2 SP-V-G the summarizing statement is a report illustrating

- how environmental considerations were included into the draft legislation (lit. a);
- how the environmental report and the statements by the public, the environmental authorities and the consulted states have been taken into account (lit. b);
- what reasons have been decisive for the choice of a specific alternative (lit. c);
- which monitoring measures are to be implemented (lit. d) and

- which determinations for projects resulting out of the change in the transport network can be made (lit. e).

This is a verbatim translation of Article 9 par 1 lit. b SEA Directive. If it wasn't for the fact that the actual decision is taken much later without reference to the SEA proceedings the transposition of this Directive provision would seem sufficient.

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.

- iv. Does the information to the public include the information provided in Article 9/1?

Yes, apart from the problems mentioned above. Art 9 par 1 SP-V-G demands that the draft legislation as well as the summarizing statement is made publicly accessible on the website of the Transport Ministry. The summarizing statement has to include the information demanded by Article 9 par 1 lit. b SEA Directive as well as the monitoring measures demanded by Article 9 par 1 lit. c SEA Directive.

- c. Is it assured that Articles 5 to 7 are effectively being taken into account before the adoption of the plan?

No, it is not. . Art 5 No. 4 SP-V-G determines that the environmental report as well as the results of the public participation procedure, the statements by environmental authorities and the results of the consultations with other affected states, have to be considered when drafting the relevant legislation and therefore within the decision-making process. However, there are no determinations on how and to what extent this information has to be taken into account. Consequently this situation allows the competent authorities to decide without seriously considering the issues raised in the statements. Regarding the environmental report a deviation from its recommendations would most probably have to be justified. In practice the problem is different: The competent authority uncritically takes over the results presented in the report.

Regarding the handling of the results of national public participation and of the consultation of environmental authorities in practice, it seems to be enough to mention the major points of criticism and to state that they have been or can be considered in order to fulfil the criteria of the SP-V-G. The **standard phrases "have been considered" or "can be considered" were used in practically all SEA cases in Austria.** For a specific example please read the J&E case study supplementing this analysis (S8 Marchfeld expressway) and above (3.a.i).

- i. Is there a difference in time between the formal adoption and the actual political decision on a plan?

Yes. Some of the initiators responsible for the proposition of a specific plan on a new motorway/railway/waterway are political bodies (Minister for Transport, the 9 regions) or at least to a certain degree affiliated with/dependant on the Austrian state (ASFINAG AG, ÖBB, via Donau). This makes already the proposed change in the transport network, which stands at the very beginning of the SEA proceedings, a decision which is, to a variable degree, politic.

As described above it is not clearly defined in Austrian law what can be considered as the actual "decision" in the SEA procedure. The competent authority for the political decision would be the Minister for Transport who decides, on the basis of the available data (proposal, environmental report, result of public participation and consultation with other states), over what he/she presents to

parliament. The formal adoption of the plan in case of a change to the Austrian high-ranking road network happens under the regular legislative procedure in parliament.

ii. Have any political plans been substantially changed after an SEA?

No. It rather seems as if Austrian authorities consider the SEA proceedings as a compulsory exercise which has to be completed before carrying on with the project.

**d. Is there a possibility for legal review (appeal) SEA decisions (and respectively the final plan) as well as for the case that an SEA has not been carried out for the public concerned ?**

There is no possibility for the review of SEA decisions in Austria. In the road transport sector the final plan is adopted in the form of a federal law, there is also no possibility for review at this stage.

#### **5. What other problems occur with regard to SEA proceedings?**

i. (Specific problem in Member State (for example different responsibilities on different planning levels like federal, regional, local; lack of obligatory strategic planning at all; competent authority etc))

Apart from federal transport regulation, SEA has been transposed, too late, in countless sectoral laws on different legislation and executive levels (federal, regional, local authorities). For the public it is difficult to get information as to when and where SEA proceedings are pending or shall be executed.

#### **6. What is particular positive with regard to SEA proceedings in your country?**

All materials are available online with regard to SP-V-G. Respective analyses are, compared to other countries, very comprehensive and of a good technical quality. In addition the alternative assessments are comprehensive (but nevertheless cursory, see above). It is unfortunate that the resources used are not embedded in an effective and appropriate procedure.

#### **7. Conclusions**

There is a variety of problems with the federal transport SEA in Austria.

The SEA in Austria takes place at a point in time when it is already **too late to decide over basic questions** relevant for the planning of transport networks (such as road or rail, four lane or two lane road, alternative assessments for larger corridors). It works close the EIA level with a concrete project already at hand. Thus, the **planning process is not very open for factual amendments after the SEA.**

The focus on one specific plan/project together with a specific route **does not encourage the impartial assessment** of alternative modes of transport since the environmental report is compiled by the **“initiator” of a plan** (such as the motorway construction company, federal provinces (Bundesländer), which has an **overwhelming interest in it’s proposal** to pass the SEA unchanged (e.g the federal motorway company to build a motorway, not a rail-track).

There is **no public participation in the screening, scoping and compilation of the environmental report phases.** There are no provisions determining how the results of the participation have to be taken into account by the deciding authorities. There is **no possibility for legal review** of the outcome of the SEA. It can be said that generally the law does not provide for a strong influence of the public in the SEA proceedings.

**Alternative assessment** related legislation appears promising on the first few and from legislation, but practice shows that environmental factors do not play the major role for the outcome of the

report since many other **transport policy and cost/benefit factors** are assessed by the same time. Furthermore **environment related factors are assessed only very cursory** such as **one page per alternative** for impacts on habitats or only **few sentences** for each alternative's noise impacts.

Statements by the public and environmental authorities receive no serious consideration and are regularly dismissed with the use of set phrases. It is not a strategic environmental assessment which is carried out in Austria; it is rather a general assessment with strategic transport related elements.

Another problems lies in the fact that the actual decision over the "plan or programme", which should be the result of the SEA proceedings, is not part of the actual SEA procedure. The outcome is merely a proposal to the legislator, the actual decision is taken much later by the parliament without a clear reference to SEA.

In the final decision the minister uncritically takes over what was proposed in the initiator's report and put's down comments of the public by standard phrases, compensatory measures are vague and cursory, monitoring measures are missing.

Overall it can be concluded that the act is subject to serious SEA related problems in particular in practice, does not lead to any added value for the environment and the transport planning process in Austria.