

## **J&E Workplan 2007: SEA in transport sector**

### **Legal analysis on SEA implementation with regard to infrastructure projects**

#### **Czech Republic – EPS**

#### **1. General Information on transposition of SEA Directive in transport sector**

##### *a. Names of acts*

The Directive was transposed by several laws, which are applicable to the entire territory of the Czech Republic.

Specifically the directive has been transposed by these Acts:

- Act No. 100/2001 Coll., on the evaluation of environmental impacts and on the changing of certain related acts (Law of evaluating impacts on the environment).
- Act No. 114/1992 Coll., on the protection of nature and landscape, as amended by the lawmaking measure by the committee of the Czech National Council No. 347/1992 Coll., Act No. 289/1995 Coll. and Act No. 16/1997 Coll.
- Act No. 183/2006 Coll., on land use planning and Building Code
- As far as requirements for the participation of the competent administrative bodies and the public regarding the process of the Afterwards the directive as far as requirements for participation of relative administrative bodies and the public in the process of accepting plans or programs (art. 9 par 1 of the directive) is transposed by several special environmental laws, which are focused on acquiring several plans and policies. This regards predominantly these laws:
  1. Act No. 185/2001 Coll., on waste and changes in some other Laws
  2. Decree No. 142/2005 Coll., on planning in the area of water

We identified a large number of conformity issues as regards the transposition of the Directive into the Czech legal system. The most serious ones concern the restrictive transposition of the definitions of “plans and programmes”, of “environmental assessment” and of “environmental report”. Besides that, the scope of the assessment provided for by Czech law is limited due to a restrictive transposition of Directive 85/337/EEC and Directive 92/43/EEC. Also a transposition of the transitional provision of the Directive is missing.

##### *b. Transposition in time?*

The Act 100/2001 Coll. which transposes this Directive came into effect on 1st May 2004. Therefore, the Act applies to all plans and programmes of which the first formal preparatory act has been subsequent to 1 May 2004. In addition, the Act 100/2001 Coll. has a transitional provision determining that the strategic assessment of plans and programmes which was started before 1st May 2004 shall be carried out according to the previous SEA legislation. Please note that the previous SEA legislation was most probably not in conformity with the SEA Directive. It is not clear from national legislation to what extent the Act 100/2001 Coll. should be applied to plans and

programmes of which the first formal preparatory act was initiated before 1 May 2004 but which were not subject to any strategic assessment before this date.

The general principle of adherence of administration to the law (principle of legality) requires that authorities always apply the law in force unless the law itself makes an exemption, for example by virtue of transitional provisions. As the Czech legislation does not provide for any transitional provisions in this case, the authorities are generally obliged to apply the SEA legislation in force to all plans and programmes whose strategic assessment was started after 1 May 2004. In practice this is often not the case. The outdated SEA legislation is applied based on the argument that a first formal preparatory act was made before 1st May 2004. There is a problem with legal certainty regarding this issue because there is no definition of what criteria this “first formal preparatory act” has to fulfill. In practice for example the contracting of an expert concerning the preparation of a land use plan has been interpreted as sufficient.

Act No. 114/1992 Coll., was amended by Act. No.100/2004 Coll. This Act also transposed the SEA Directive and has been in force since 1 May 2004. Both transpose the substantial provisions of the SEA Directive thus transposition can be considered to have been on time.

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

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

### Strategies and policies

There is special act for land use planning and a special act for other strategies and policies. There are many other strategies or policies besides land use planning, which are not only related to the development of a region, besides the land use planning (and in the future also principals of regional development).

The environmental impacts of those strategies and policies but also of plans and other documents, if explicitly indicated, are determined according to Act No. 100/2001 Coll on the evaluation of environmental impacts. This contains for example the Operational Program for Transport, energy policies or governmental environmental policies. There is uncertainty about the question whether a double-tracked processing of those strategies and policies is taking place and if, for economic reasons, at least some issues should be examined together with the Principles of Regional Development or the land use plans. This could particularly make sense in case of the assessment of a regional development plan.

#### Land use planning

The SEA process in the Czech Republic is related, amongst others, to land use planning (Act No. 183/2006 Coll., Building Code). The land use planning documents define the permitted and tolerable methods of territory use. On this basis the future development of an area is determined. If, within the process of land use planning a certain activity is banned, no approval for such an activity may be issued in the future. Land use documentation () and the Regional Development Policies are evaluated based on their impact on the environment within an SEA. Principals of regional development are prepared by the Region while land use plans are prepared by Towns. Currently the legal system of the SEA process is essentially left up to the Building Code only<sup>1</sup>. Nevertheless within the Building Code there are certain insufficiencies and uncertainties regarding the SEA process.

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<sup>1</sup> Act No. 100/2001 Coll., on evaluating of environmental impacts contains only one provision and that being Sec. 10i, which however determines practically nothing

Czech legislation does not have a general provision defining the relationship between the transposing provisions on EIA and transposing provisions on SEA. As a result, both must be applied which can lead to overlaps (Art. 11 para 1 of SEA Directive).

Regarding the relationship between SEA and EIA it can be observed that both are separate proceedings which are still closely related and interlinked. Nevertheless there are examples of large transport infrastructure construction projects for which EIA and SEA are carried out without accordation of the two processes. This means that in the concrete examples it can not be assured that as a first step the variants for the corridors are evaluated within an SEA and then, based on those results, the options for concrete routes within the chosen corridor as part of an EIA. There is no clear separation of the two proceedings.

*d. Other remarks*

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

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

*a. Transposition*

- List in detail transposition provisions on article 5/1 and Annex 1 Act No. 100/2001 Coll. On evaluation of environmental impacts as amended by Act No. 93/2004 Coll. (This Act deals with strategies and policies in general)
  1. Sec. 10d par. 1 Act No. 100/2001 Coll.
  2. Sec. 10f par. 2 Act No. 100/2001 Coll.
  3. Annex 9 to Act No. 100/2001 Coll.  
Act No. 183/2006 Coll., Building Code (this Act deals with land use plans)
  4. Sec. 19 par. 2 Act No. 183/2006 Coll.
  5. Sec. 34 par. 1 letter d)
  6. Sec. 40 par. 2 Act No. 183/2006 Coll.
  7. Annex to Act No. 183/2006 Coll.
- *All provisions transposed?*

**Strategies**

The Czech legislation does not contain a definition of the environmental report. However, it operates with the term “evaluation” which can be considered equivalent to the environmental report. The scope of “evaluation” is defined by Annex I of the Directive which is transposed by Annex 9 of the Act 100/2001 Coll.. There is one issue with regard to conformity in this context: According to Annex I (f) of the directive the information which should be provided under Article 5(1) is the following: the likely significant effects on the environment, including information on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between those factors. Annex 9 of the Act 100/2001 Coll. f) only names the effects on public health as information to be provided. The other factors are not mentioned.

## Land use planning

The Building Code also does not contain a definition of the term “environmental report”. There is only an “assessment of impacts on sustainable development of the territory” or an “evaluation” which play the role of the report. The scope of the evaluation is determined in the Annex to the Building Code.

The annex to Building Code determines the general contents of the assessment of the development policy, of the development principles and of the plan impacts on the environment for the purpose of assessments of the impacts of concepts on the environment (Part A assessments of the impacts on sustainable area development)[As to § 19 par. 2 Act No. 183/2006 Coll., on town and country planning and building code (the Building Act)].

Annex 1 (f) of the SEA Directive is transposed in the Annex to the Building Code (5): It demands an assessment of the existing and expected impacts of the proposed variants of the development policy or of the planning documentation, including the secondary, synergic, cumulative, short-term, medium-term and long-term, permanent and transitional, positive and negative impacts; there are assessed the impacts on population, biologic variety, fauna, flora, soil, water, atmosphere, climate, tangible assets, cultural heritage including the architectural and archaeological heritage and impacts on landscape including the relations between the mentioned assessment areas.

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

- “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.*)

The term “reasonable alternatives” as contained in the SEA Directive does not appear in Czech legislation. The term “variant” is used instead of “reasonable alternatives”.

### **Strategies**

The Czech legislator has not transposed the provision of Art. 5 Sec. 1 SEA Directive on the environmental report. The report should determine, describe and assess possible important environmental impacts resulting from implementation of the plan or program and reasonable alternative solutions with respect to objectives and geographical area of the sphere of action of the plan or program.

Czech legislation does not contain the formulation “reasonable alternative solutions with respect to objectives and geographical area of the sphere of action” (Art. 5 para 1 of the SEA Directive). Within the inquiry proceedings, the respective body is only obliged to deal with reasonability of given solution variants in terms of reaching the strategies or policies objectives in question. As a consequence of the missing transposition provisions, alternative solutions (realistic variants) are not assessed in a number of cases, this concerns in particular transport infrastructure projects.

Czech legislation uses the word “variants” in § 10b para 4 act no. 100/2001 Coll.: For conceptions prepared in variants it shall be necessary to carry out the assessment pursuant to this Act (No. 100/2001 Coll.) for all variants. Under § 10d para (3) a) of the mentioned act, the relevant

authority shall lay down in the conclusion of the fact-finding procedure the content and scope of the evaluation, including the requirement to prepare possible variants.

### **Land use planning**

For land use planning documents, the procedures are carried out according to the Building Code. Land use planning is also supposed to assess the impacts of development policy, land development or land use plan principles on a balanced relation of land conditions for a favorable environment, for economic development and for cohesion of residents living on the territory in question (so called “assessment of impacts on sustainable development of the territory”).

The Building Code also uses only the term “variants”. Concretely according to § 34 para 1 the Ministry submits the development policy draft to the Government for the development policy approval. This draft is modified upon its debate with the representatives of the ministries, other central administrative authorities and administrative regions. Together with the development policy draft inter alia a notification stating how the assessment of the impacts on area sustainable development was taken into account together with the reasons for selection of the adopted solution variant has to be submitted.

- description of respective “*significant effects*”
  1. How is significance analyzed in practise? (*with regard to different issues mentioned in Annex 1 f (biodiversity, climate, air, soil, interrelationships..)*)?

### **Strategies or policies**

The Czech legislation correctly transposes the words “...which are likely to have significant environmental effects”, but refers to the incorrect definition of plans and programmes (§ 10a para 2 letter b) Act No. 100/2001 Coll. But Annex 1 f) of SEA Directive is not correctly transposed.

Annex II No. 1 of the SEA Directive has been almost completely transposed into the Czech legal system, except for two parts. Firstly, the transposition of the words „...by allocating resources...” has happened by use of the words „...with respect to natural resources“. This can be considered a restrictive transposition because the term „resources“ may include not only natural, but also financial and technological resources etc. Secondly, the Czech legislator has not transposed the words „...including those in a hierarchy...” as contained in Annex II No. 1 in the second indent.

As a result, the Czech legislator does not clearly indicate that the screening procedure must take into account not only plans and programmes of the same level, but also plans and programmes superior and inferior in the hierarchy. This results in a restrictive transposition of the criteria for the screening procedure.

The Czech legislation transposes the full scope of Annex II No. 2 of the SEA Directive except for the words “...geographical area..“ in the fifth indent. Instead, the Czech legislation covers „...significance and extent of the effect (size of the population likely to be affected)...“.

### **Practice**

In the Czech Republic the significance of impacts is assessed according to the Annexes to Act No. 100/2001 Coll. on the Evaluation of Impacts and with the Annex to Act No. 183/2006 Coll., Building Code. In addition there is a methodology for Evaluating Environmental Impacts of Concepts issued by the Ministry of the Environment in 2004. However, this methodology cannot be used for assessing land use planning documentation anymore.

It can be concluded that the assessment of environmental significance of strategies or policies is in principle carried out only on a general level. What is evaluated are impacts on individual components of the environment (water, air, soil, forests –i.e. land acquisitions, necessity of woodcutting as well as general impacts on public health and environment.

**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?*
- d. *Is the significance of alternatives covered too?*

**Strategies or policies**

Annex 9 to Act No. 100/2001 Coll. sets the requisites for the evaluation of the conception with a view to impacts on the environment and on public health. One of these requisites are significant impacts (including secondary, synergic, cumulative, short-term a long term, permanent, temporary, positive and negative impacts) of the proposed variants of the conception on the environment.

**Land use plans**

The Annex to Building Code No. 183/2006 Coll. contains the general information on the assessment of the development policy, of the development principles and of the land use plan itself regarding impacts on the environment for the purpose of assessing those impacts on the environment (Part A assessments of the impacts on sustainable area development) [As to § 19 par. 2 Act No. 183/2006 Coll., on town and country planning and building code (the Building Act)].

One part of this assessment is the evaluation of the existing and expected environmental impacts of the proposed variants of the development policy or the planning documentation. This includes the secondary, synergic, cumulative, short-term, medium-term and long-term, permanent and transitional, positive and negative impacts. Also the impacts on population, biodiversity, fauna, flora, soil, water, atmosphere, climate, tangible assets, cultural heritage including the architectural and archaeological heritage and impacts on landscape including the relations between the mentioned assessed areas are to be evaluated (Annex to Building Code, point 5).

As regards the strategies which are submitted as well as the plans for transport infrastructure constructions (but also in terms of other intentions), it is nevertheless common in practice to set aside the evaluation of cumulative and synergic impacts although the requirement to evaluate those impacts is prescribed both by the Act No. 100/2001 Coll. on the Evaluation of Environmental Impacts and by the Act No. 183/2006 Coll., Building Code. In practice the selection of variants is carried out outside the scope of SEA procedures (and/or subsequently EIA).

**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?)*

The national legislation does not define the “public” for the purposes of proceedings subject to this Directive. There is also no comprehensive definition of the “public affected or likely to be affected”.

However, national legislation allows “everybody” to issue comments on the draft plan or programme (§ 10c (3), § 10f (5), § 10j (3), § 14 and § 14b of Act 100/2001 Coll.). As a result, the

missing identification of “public” or “public affected or likely to be affected” does not constitute a lack of legal certainty, nor does it affect rights and duties of individuals and undertakings.

### **Practice in the Czech Republic**

It is usually very difficult for members of the public (i.e. citizens, NGOs and municipalities) who want to comment on a strategy or policy (e.g. land use plan) to become involved in the process of planning, especially during the initial stage, in which all options are still open. The possibility to participate formally exists, however, suggestions are rejected with only a formal reasoning (e.g. that the suggestion is not related to the strategy or policy in question).

The participation/commenting procedure related to the Operational Program for Transport is an example for the quality of public participation within the SEA process: The term for submitting suggestions and comments by the public elapsed on 10 November 2006. The Ministry of Environment already issued an affirmative SEA opinion three days later, on Monday 13 November 2006. It is not clear how the Ministry was able to evaluate and integrate all suggestions and opinions within this short timeframe.

Another example for a purely formal evaluation of suggestions by the public the proceeding regarding land use plan of the city of Brno (the main issue was positioning of the speed road R43). The results of the public participation procedure were dealt with within one single paragraph. The competent authority in its did not mention individual suggestions and it did not justify their rejection.

Regarding land development principles, there is a special situation. This is the only case in which the public can give their opinion only within the public discussion on the draft principles. The draft already includes an evaluation of the sustainable impacts (including SEA). At the point where public discussion on the principles of land development begins, the decision on the land use plan variants has already been taken. Within the initial stage there is also no possibility for the public to participate through their municipalities. The Building Code does not allow municipalities to comment on the principle application report, on the basis of which the draft principles of land development are elaborated. Municipalities of the respective Region are only consulted about the principle application report. The public is not involved in the process of evaluating sustainable impacts. Hence, in terms of land use planning, the SEA process runs without a direct participation of public.

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

### **Strategies or policies**

In the Act No. 100/2001 Coll. on the Evaluation of Environmental Impacts, the opportunities of public participation are regulated at every stages of the procedure. First, everybody may send a written statement on the notification of conception to the competent authority (§ 10c para 3). As a next step the fact-finding procedure takes place whose objective is to determine whether the conception or change of the conception is to be assessed pursuant to the Act No. 100/2001 Coll.. The public can submit its comments on the draft of the conception (§ 10f para 5).

### **Land Use Plans**

According to Building Code there are many types of town and country planning instruments: non-statutory planning materials, planning development policy and planning documentation (development principles, land use plan and regulatory plan). The public can

participate only in the preparation of the planning development policy, the development principles, the land use plan and of the regulatory plan).

Written materials in town and country planning are, in cases of stipulated by the law, delivered by a public notice. On condition that the written material is published on official notice boards, the date of this publication is considered the date, when the written material was put up last. In case of need the written material is also published in a different way, which is usual in the place.

The planning development policy is the supreme planning document. The Ministry publishes, in a method enabling the remote access (internet), the development policy draft including the assessment of the impact on the area's sustainable development. It also determines the term for submission of remarks by the public, which is not allowed to be shorter than 90 days. The remarks of the public are submitted directly to the Ministry for Regional Development. (§ 33 of the Building Code).

The development principles determine especially the basic requirements for purposeful and economic arrangement of the region's territory. A public debate is held about the modified and assessed draft of the development principles. The procurer shall ensure that the draft of the development principles is displayed for public inspection for the period of 30 days from the date of delivery of the public notice. The procurer also invites the appropriate authorities, municipalities within the area concerned and the neighbouring administrative regions to the public debate at least 30 days in advance. Objections to the draft of the development principles may be filed only by the municipalities within the respective area, by the municipalities neighbouring to this area and by the representatives of the public. At the public debate everybody may submit statements. The respective municipalities and the representatives of the public may submit objections (to their reasoning) and must, at the same time, delimit the area, which is concerned by the objection. As a conclusion to the public debate the respective authorities apply their assessments to the remarks and objections (§ 39 of the Building Code).

In terms of land use plans, the public can participate already at an early stage. However, it is necessary to mention that land use plans always have to be in accordance with subordinate land use planning documentation (development principles). The public and/or the owners of affected land can (usually) submit their suggestions or objections. Opinions, objections and suggestions concerning things that were decided during the issuing of land development principles are not taken into account (§ 47 para 2, § 48 para 2 and § 52 para 2, 3).

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

### **Land use planning**

regarding land development principles, PP is not provided for as the public can only comment on a complete evaluation of sustainable impacts (in the form of suggestions or in the form of objections, which can be submitted by affected land owners or by so called public representatives). The SEA to the planning development policy, the development principles and the land use plans is finished before PP takes place so this PP is only indirect.

In terms of land use planning, the public has a theoretical possibility to submit suggestions and/or objections already at the stage of assignment. However, land use plans must be created in accordance with land development principles (opinions, objections and suggestions concerning

topics that were decided on during the issuance of land development principles are not taken into account).

### **Strategy or policy**

In terms of strategies or policies, the public has a formal possibility to deliver opinions already at the stage of assignment, i.e. there is early participation at a stage when all options are still open. Public suggestions can be used as supporting documents when compiling the opinion by the respective body, without which the strategy or policy cannot be approved.

Concepts often include lists of specific investment intentions (i.e. motorway and speed road corridors). Simultaneously, they are usually assessed as documents of a strategic nature. Based on this estimation, the respective bodies and/or authorized individuals will not deal with suggestions by the public, justifying such a refusal with the argument that it is not possible to identify specific impacts on health and environment. Hence, the evaluation of impacts only has a general nature. The same is true for the measures suggested.

There is a problem regarding the fact that in connecting processes (be it RIA process or e.g. land use planning proceedings), which already concern specific intentions or projects, suggestions and objections by the public are usually not admitted, this time with reference to the affirmative opinion expressed within the SEA process.

It sometimes happens in practise that suggestions by the public are first rejected because it is too early and the plans are not yet elaborated enough and, subsequently, they are rejected because it is too late and the suggestions should have been made within the antecedent processes.

#### *b. PP in transboundary context (transposition and in practise)*

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

### **Strategies or policies**

In terms of transboundary consultations, Act 100/ 2001 Coll. has transposed the Directive. The national legislation contains two sets of provisions – one for plans and programmes prepared abroad and one for plans and programmes prepared in the Czech Republic. The two sets together transpose fully the requirements of the present provision of the Directive (§ 14a (2), (3)).

Transboundary assessment does not represent a usual part of SEA processes, not even if it is evident that the strategy or policy (and/or its implementation) may have a direct impact on the territory of another state (an example could be the assessment of the Operational Program for Transport or the land use plan of Břeclav area). Hence in practise, a transnational SEA assessment of strategy or policy impacts is not carried out. We can see the same insufficiencies within EIA processes (cases for example speed road R 52 or motorway D8).

### **Land use planning**

Pursuant to the Building Code (§ 33 (5), (6), § 34 (1), § 37(3), (4), neighboring countries shall be sent a draft of the Land Development Policy (it is a land use plan for the whole country). The neighboring country can subsequently take part in consultations. The Ministry of Environment, in cooperation with the Ministry of Foreign Affairs, sends the development policy draft to the neighbouring states, whose territories may be directly affected by applying the development policy and offers them consultations. If the neighbouring state shows an interest in consultations, the Ministry, in cooperation with the Ministry of Foreign Affairs, will participate in consultations.

Analogously, Draft Land Development Principles shall be sent to neighboring countries if their territory may be directly affected by applying the principles. Then, these countries shall be offered consultations. The regional office in cooperation with the Ministry of Foreign Affairs sends the draft of the development principles to the competent authorities of neighbouring countries, whose territories may be directly affected by the implementation of the development principles, and offers them consultations. If these authorities are interested in the consultations, the regional office in cooperation with the Ministry of Foreign Affairs participates in the consultations.

Neither a Land Development Policy nor Land Development Principles have until now been executed in the Czech Republic. Therefore, the way of their drawing up can not yet be evaluated. Nevertheless, it can be assumed that in particular the Land Development Policy, but also the Land Development Principles of certain Regions will have significant impacts on neighboring countries.

- Are all important documents translated?

There are not any provisions on translation of strategies or policies (project documentation) in the act 100/2001 Coll. and also in the building Code. In accordance with the answer to previous question it can be stated, that it is not a common practice. As a rule, documents are not translated.

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

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

- Transposition in general, practise in general

As described above the Czech Republic has not fully transposed art. 5 par. 1 of the Directive. The same is true for Annex 1 letter f).

Art. 8 of the Directive demands to take into account all results of the assessment procedure before the final adoption of the draft plan or programme. In this context, the Czech legislation contains a set of rules for national assessment and another set for transboundary assessment. The Czech provisions for national assessment determine that the competent authority, which conducts the assessment procedure, issues a summary opinion on the basis of the draft plan or programme, of the public hearing and of the opinions submitted according to Art. 6 of the Directive. The legislation does not expressly require taking into account the environmental report pursuant to Art. 5 of the Directive.

The summary opinion, but not the opinions collected pursuant to the requirements of Art. 6 of the Directive and the environmental report according to Art. 5 of the Directive, are then submitted to the authority which adopts the plan or programme. This can be considered a restrictive interpretation of the requirements of the Directive which may constitute non-compliance. .

The Czech legislator has chosen the same approach regarding the results of the public assessment of EIAs, this is illustrated in the EPS comments on Art. 8 of Directive 85/337/EEC in the previous round of conformity checking. For more information please see: [LINK](#). An example for this restrictive handling of public participation is the compilation of the Operational Program for Transport. The evaluation of environmental impacts did not include all obligatory information required by the Directive in Art. 5 par. 1, which relate to the significant impacts of the strategy or policy of implementation.

- ##### b. 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?

As explained above no environmental report is produced in SEA proceedings in the Czech Republic. The Czech legislation requires that the decision-making body takes into account only the summarizing opinion of the competent authority, but not the environmental report, opinions and transboundary consultations. In addition, the Czech legislation does not contain any requirement to give reasons why the plan or programme was chosen as adopted, in the light of other reasonable alternatives dealt with.

The Czech legislator has not transposed the requirement to inform of the measures (according to Art. 9 para. 1 lit c SEA Directive) adopted in order to monitor significant effects of the implementation of the plan or programme pursuant to Art. 10 of the Directive.

### **Practice**

However, the statement is not always respected, as the case of the development policy<sup>2</sup> may illustrate: The Ministry of Environment of the Czech Republic in its final position has defined the obligatory conditions for the policy. Those were not reflected in the strategy or policy. Also the resulting strategy or policy did not reflect some of the conclusions contained in the strategy or policy evaluation.

In practice the final position (positive) is usually on the contrary misused in further processes (e.g. the approving standpoint to the Operational Program for Transport) for a formal and unjustified rejecting of public remarks (while the main argument is that all impacts were already previously evaluated and were found to be acceptable). From this you can generally derive that the approval of SEA document is already the decisive moment regarding fundamental intents.

#### *c. How are Articles 6 and 7 considered in decision?*

- *Transposition in general, practice in general*

### **Strategies and policies**

Art. 6 and 7 of the SEA Directive are transposed by Act no. 100/2001 Coll.. Concretely § 10f para 1-5, § 3 c), d), e), § 11 para 1, § 14a para 1, 2, 3, § 14b para 1-4 of Act No. 100/2001 Coll. Contain the relevant provisions for the transposition. They require the draft plan or programme, together with the environmental report, to be made available to the public and to the authorities concerned. Comments may be issued within certain time limits. The general provisions on strategic assessment lay down that everybody, including the authorities concerned, can express their opinion on the draft plan or programme. .

The Czech law contains slightly stricter requirements for transboundary assessment. It determines, in addition to the requirements for national assessment, that the Czech competent authority shall include the complete statement of the affected Member State into the summarizing opinion. Otherwise it must give reasons why the statement has been included only in part or not at all. Again, the Czech legislation does not ensure that all opinions are submitted to their full extent to the authority which adopts the draft plan or programme.

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2 The Development Policy is a "National Land Use Plan", which is prepared according to the Building Code, No. 183/2006 Coll. Before its coming into effect the government has approved a departmental strategy – Regional Development Policy. This departmental strategy includes a series of controversial intents - especially regarding transportation. Currently there are situations in land use planning practices, where both documents are interchanged, even though these are not the same. Many Regional Offices are basing their acquisition of regional development principles on the departmental strategies and include intents included therein into the regional development principles. A real Regional Development Policy document (acquired in accordance with the Building Code) was not yet approved.

## Practice

In the application practice it can be generally noted, as was already stated, that the strategies or policies are usually not the subject of international impact evaluations, although their realization could have impact on the environment and human health in neighboring states.

An example again is the Operational Program for Transport, during the evaluation of which there was not interstate evaluation performed, even though the implementation of the Operational Program for Transport can have significant impact on neighboring states.

## Land Use Planning

Regarding the regional development policy and the planning documentation Art. 6 and Art. 7 of the SEA Directive are transposed by Act No. 183/2006 Coll., Building Code.. § 20 contains provisions on the publication of written materials, § 33 para 3 on the development policy, § 37 para 2 and § 39 on the draft of the development principles and § 47, § 48, § 50 and § 52 regulate this issue concerning land use plans.

Regarding Art. 7 of the Directive, in regional development policy issues a proposal must always be sent (through the Ministry for Regional Development and in cooperation with the Ministry of Foreign Affairs) to the neighboring states whose territory could be influenced by the application of the corresponding policy. Cooperation is to be offered. If it agrees with the results of the consultations, the Ministry for Regional Development will reflect the outcomes of these consultations in the regional development plan.

At the point in time of the writing of this study, the development policy of the Czech Republic is not yet being prepared. Therefore an evaluation of the practice of application is not possible.

Similar steps are to be taken according to the Building Code with the principles of regional development.

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

As mentioned above in the approving strategy or policy the Act No. 100/2001 Coll. on the evaluation of environmental impacts does not require that the competent authority bases its actions also on the results of the transboundary consultations. In addition it is a common practice that these results are not integrated into the SEA process. It can thus be doubted that the Czech legal and practical situation is in accordance with the requirements of the Directive.

## Strategies or policies

The conception may not be approved without the statement on the conception. The approving authority is obliged to take the results of the consultation process into account, or, if this statement contains requirements and conditions and these are not included or only partly included in the conception, the approving authority is obliged to justify its procedure and to publish this justification. (§10g para 4).

The Czech provisions for national assessment determine that the competent authority, which conducts the assessment procedure, issues a summary opinion on the basis of the draft plan or

programme, of the public hearing and of opinions submitted according to Art. 6 of the Directive. The legislation does not expressly require to take into account the environmental report pursuant to Art. 5 of the Directive.

The summary opinion, but not the opinions according to Art. 6 and the environmental report according to Art. 5, is then submitted to the authority which adopts the plan or programme. This is a very restrictive approach, which is most likely not in conformity with the requirements of the Directive.

The Czech legislator has adopted the same approach towards the results of the EIA assessment

In practice public remarks are usually not reflected in the strategy or policy approval, they are evaluated only formally.

### **Land Use Plans**

As mentioned above in case of the land use documentation, the public has no opportunity to express its opinion in the course of the SEA process. The public may only comment on the finished proposal of regional development principles, or more precisely, on the assignment of land use, on the SEA evaluation and on the final position of the competent authority.

The Ministry submits the development policy draft to the Government for the development policy approval. This draft is discussed and possibly modified in cooperation with the representatives of the ministries, other central administrative authorities and of the administrative regions. Together with the development policy draft the report on the debate about the development policy draft, containing the assessment of the opinions of the ministries, of other administrative authorities and administrative regions, the remarks of the public, possibly statements of neighbouring countries and the results of consultations together with reasons for and the method of their incorporation, shall be submitted (§ 34 para 1 Building Act).

When development principles are prepared a public debate is held. Then the regional office assesses the results of the debate and elaborates the draft of the decision. If it is necessary, it ensures the modification of the draft of the development principles in accordance with the assessments of the respective authorities or with the result of the dispute settlement process. Assessments, objections and remarks in the cases, which were already resolved within the approval of the development policy, are not taken into account (§ 39 para 3, 4 Building Act)

If, upon the public debate, a material modification of the draft of the development principles is decided, it is assessed pursuant to § 38 Building Act and the public debate is again held with the participation of the competent authorities. The assessments of the authorities as well as objections and remarks may be submitted at the latest in the repeated public debate, they are not taken into account otherwise (§ 39 para 5 Building Act).

The procurer (of the land use plan), in cooperation with the determined municipal representative, assesses the results of the debate and elaborates the draft decision on the basis of the assessments submitted to the draft plan and to the plan before approval. This happens in accordance with the assessments of the respective authorities, or possibly with result of the disputes settlement.

If the result of the public debate is a material modification of the plan (before approval), it is assessed according to § 50 Building Act and a repeated public debate is held with participation of the competent authorities. The assessments of the authorities as well as remarks and objections may be submitted at the latest upon the repeated public debate, otherwise they are not taken into account (§ 53 para 1, 2 of the Building Act).

- **How is public informed on the decision?**

The Act 100/2001 Coll. regulates only the strategic assessment of plans and programmes *stricto sensu* but does not regulate the decision-making procedures in which the plans and programmes are adopted. The regulation of the latter procedures is found in a number of special acts.

However Act 100/2001 Coll. lays down certain general rules for specific aspects of the decision-making procedures. In particular it stipulates, that the adopting body must include requirements from the summarising opinion into the plan or programme (see above). If the requirements are included only in part or not at all, the adopting body must give reasons why it has done so. These reasons must be published. This means that the Act No. 100/2001 Coll. requires publishing the reasons for not including the requirements from the SEA, but does not demand to publish the plan or programme itself. The obligations to publish the plan or programme itself are contained in the specific environmental acts, e.g. Act 185/2001 Coll., on waste or Regulation 142/2005 Coll., on water management planning.

These specific Acts contain various obligations regarding the publication of the plans and programmes which are adopted. The Czech Republic has not notified those Acts to the Commission in accordance with Art. 13 para. 4 SEA Directive. This study can not provide for a comprehensive list of the relevant legislation. Nevertheless, the result of a cursory examination of several crucial acts of national legislation, including the legislation on waste management plans, land use plans and water management plans was, that the publication requirements differ widely and that some of them do not seem to meet the standards of the Directive.

The results of the examination can be summarized as follows:

National legislation requires publishing the waste management plans via Internet or “...in another appropriate manner”. This gives the authorities a very wide margin of discretion and results in a lack of legal certainty.

Secondly, national legislation demands a publication of the binding parts of land use plans. The public may demand access also to the non-binding parts pursuant to Czech legislation on free access to information. However, the latter legislation, due to various structural weaknesses, which can within this study not be presented, Again, there is a lack of legal certainty.

Thirdly, water management plans, according to relevant legal acts, have to be published via the internet.

Out of the three areas, which were examined, only the Act on water management plans contains a clear requirement to publish the plan which was adopted.

This situation affects the public as well as the national authorities as mentioned in Art. 6 (3) of the Directive. It is a different situation for the Member States (pursuant to Art. 7 SEA Directive). The reason is that Czech legislation contains a special requirement to inform the Member State under Art. 7 of the final plan or programme adopted.

### **Land use plans**

Land use plans are issued as measures of general nature ( § 171, 172, 173 and 174 of the Administrative Code), their publication is therefore assured by general provisions of administrative law. The method of publication for measures of general nature are defined by the Administrative Code, Act No. 500/2004 Coll.

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

### **Strategies and policies**

As mentioned above Act 100/2001 Coll. regulates only the strategic assessment of plans and programmes *stricto sensu* but does not regulate the decision-making procedures in which the plans and programmes are adopted. The regulation of the latter procedures is found in a number of special acts. However, the Act 100/2001 Coll. lays down certain general rules for specific aspects of the decision-making procedures. Especially, it contains the obligation that the adopting body must include requirements from the summarising opinion into the plan or programme (see above). If the requirements are included only in part or not at all, the adopting body must give reasons why it has done so. These reasons must be published. This means that the Act No. 100/2001 Coll. demands to publish the reasons for not including the requirements from SEA, but does not require to publish the plan or programme itself.

## Land Use Plans

Building Code has transposed art. 9/1 of the SEA Directive. Concretely in § 34 para 1 , 40 para 2 and § 53 para 5 of the Building Code,

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

As mentioned above Czech legislation requires that the decision-making body takes into account (before the adoption) only the summarizing opinion of the competent authority, but not the environmental report, opinions and transboundary consultations (§ 10g (4) Act No. 100/2001 Coll.).

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

No, there is no difference in time between the formal adoption and the actual political decision on a plan in Czech law.

- Have any political plans been substantially changed after an SEA?

Yes, there have been changes. When for example the Development Policy (departmental conception by the Ministry for Regional Development) did not respect the SEA summarizing opinion and in certain points was not in complete harmony with impact evaluation. See footnote no. 2 for more information about Development Policy.

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

- (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))
- EIA procedures are carried out also for intentions that have received negative SEA opinions. This is only common practice, there is no legal provisions for procedure like this.
- EIA opinion is not subject to judicial review; it should change after the Act on Evaluation of Environmental Impacts (or the Building Code) has been amended
- Cumulative, synergic and both direct and indirect impacts are not assessed in general
- Suggestions from the public are not taken into account

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

## **Land use planning**

With regard to land use planning it can be considered an advantage that there is the possibility to judicially review land development principles and land use plans (including regulation plans). Land Development Policy on the other hand, which in fact has also the nature of a general measure (it shows its characteristics in a material way), is adopted as a governmental decree, against which administrative action is not possible.

The possibility to judicially review land use plans has a potential to effectively protect the environment against possible future damages caused by the plan. Participation in the land use planning process itself does not constitute a formal condition for the possibility to demand a judicial review of the plan.

## **7. Conclusions**

To conclude we can state that the SEA process in general is not an effective tool for assessing real environmental impacts in the Czech Republic. There are several reasons for such a conclusion, which have been mentioned in previous parts of the analysis. For example I can mention problems with public participation (not very effective), another problem is that the competent authority which conducts the assessment procedure issues a summary opinion on the basis of the draft plan or programme, of the public hearing and of opinions submitted under Art. 6. The legislation does not expressly require to take into account the environmental report pursuant to Art. 5.

We may conclude that there are many non-conformities in Czech transposition of the SEA Directive. There are also problems with application (practice) of transposed provisions and our experiences are not positive.