

Climate change aspects within EIA proceedings

Austria: A5 – Northern National Highway –
Expansion

Case Study

Justice and Environment 2012

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A5 – Northern National Highway – Expansion

AUSTRIA

Art. 3 (b) and Annex No. IV. of the Directive of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (EIA Directive - 2011/92/EU) laid down that environmental impact assessments shall identify, describe and assess in an appropriate manner direct and indirect effects on climate, and shall include a description of the aspects of the environment likely to be significantly affected by the proposed project, in particular – and inter alia - climatic factors, and the inter-relationship between all the factors mentioned therein. Climate relevant impact of a plan should be assessed but in practice it is very limited and formal without deeper evaluation.

Case Summary

1. Title: A5 – Northern National Highway – Section II

Section II <i>Schrack - Poysbrunn</i>	Applicant/Authority/Claimant	Case reference	Date
Project Application	ASFINAG		4.11.2005
First instance decision	Federal Minister for Transport, Innovation and Technology	BMVIT- 312.505/0007- II/ST-ALG/2009	18.11.2009 ¹
Complaint with the Administrative Court	ÖKOBÜRO Citizens' group Municipality Dolní Dunajovice Ekologický Právní Servis EPS Brno reditelka Ekologického institutu Veronica		
a) Decision: suspensive effect	Dismissed	2010/06/0001	08.06.2010 ²
b) Decision: substantive points	Dismissed	2010/06/0002	24.08.2011 ³

2. Description of the project: The projected A5 Wien-Brno motorway proposes to connect Vienna (Austria) and Brno (Czech Republic). The construction of the A5 was planned in **three sections** – every section underwent a **separate EIA procedure**. The current analysis is about the Section II (Schrack – Poysbrunn) which was authorized with 18th November 2009. Due to political discrepancies and financial shortages EIA proceedings for the third section (submittal: August 2006) are still open.⁴

¹http://www.bmvit.gv.at/verkehr/strasse/autostrasse/a5/verfahren/download/schrack_poysbrunn/genehmigung.pdf

²http://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2010060001_20100608A00/JWT_2010060001_20100608A00.pdf

³http://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2010060002_20110824X00/JWT_2010060002_20110824X00.pdf

⁴ UBA, EIA Database:

<http://www.umweltbundesamt.at/umweltsituation/uvpsup/uvpoesterreich1/uvpdatenban>

2. Climate relevant impacts: Generally the transport sectors greenhouse gas emissions rose from 14,0 million tonnes to 21,7 million tonnes of **(+ 54.4%)** from 1990 to 2009. The most important cause is road traffic.⁵ The transport sector caused in the year 2009 **32% of the whole Austrian CO2 and 60% of the whole Austrian NOx, emissions.** In 2009, the allowable emission limit with 145 300 tons of NOx (without fuel exports) was significantly exceeded. Responsibility lies primarily with the continuing high emissions from road traffic, particularly from diesel vehicles.⁶ Especially the fact that beneath all EU Members Austria is backmarker in the attainment of the Kyoto goals, should provide for adequate impetus to accurately consider climate change impacts of huge infrastructure projects in Austria - The emissions produced during the operation of the A 5 national highway section II will **rise by about one third to a half** in comparison to the actual situation (regional assessment). The additional greenhouse gas emissions will rise by 40,000 tons, NOx emissions will rise by 115 tons annually.

3. Applicable Law: Austrian Environmental Impact Assessment Act 2000⁷.

The authority shall reject the application if serious environmental pressures are to be expected due to the project and its impact and those cannot be prevented or reduced to a tolerable level by obligations, conditions, deadlines, other requirements, project modifications or offsetting measures (cp. Art 24h/4 EIA-Act).

4. Environmental Impact Assessment: The Transport Ministry (first instance) stated that **an effective reduction of climate relevant emissions** - with regard to the Kyoto-aims - **produced by traffic is solely possible by shifting passenger and goods transportation to public transport systems.** The authority pointed out that this **change needs to be created by national and international political action** – no discussion of this problem can be done within an EIA of single projects. As well **the Administrative Court** argued in favour of the first instance authorities decision, denied the existence of a serious environmental pollution according to Art 24f/4 EIA-Act in this case (cp. VwGH 24.08.2011 2010/06/0002-14). The **division into three separate assessment proceedings** was ruled legitimate as no avoidance of EIA procedures was caused thereby.

[k/uvp_online/?cgiproxy_url=http%3A%2F%2Fwww5.umweltbundesamt.at%2Fuvpdb%2Fpz1schema.pl%3Fsession%3DxPc4il30ssISwTtSIX1CTPBA%26set%3D1%26idx%3D4](http://uvp_online/?cgiproxy_url=http%3A%2F%2Fwww5.umweltbundesamt.at%2Fuvpdb%2Fpz1schema.pl%3Fsession%3DxPc4il30ssISwTtSIX1CTPBA%26set%3D1%26idx%3D4)

⁵ UBA Klimaschutzbericht 2011, REP-0334, Vienna 2011, p. 27:

<http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0334.pdf>

⁶ UBA Emissionstrends 1992 – 2009, REP-0338, Vienna 2011, p. 7 and 72:

<http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0338.pdf>

⁷ BGBl. Nr. 697/1993, StF

Both the **Ministry of Environment (MoE)** (in its statement) and **the claimants (ÖKOBÜRO et al.)** argued that the **planned project prevents or hinders the achievement of the Kyoto goals and the compliance with further binding European and national emission reduction goals**. So there would have been the need to elaborate **alternative scenarios** supporting the reduction of emissions and fostering climate protection – the first instance authority did not take these scenarios into account by assessing the environmental impacts of the project. Furthermore the splitting of the whole project into three separate assessments was criticized as the environmental impacts cannot be assessed adequately. It is not rationally comprehensible why **on the one hand** EIA authorities use **climate change as a superior public interest** to justify the construction of hydroelectric power plants in nature protection areas and leaving aside all other relevant negative impacts on the environment (cp. EIA Case Summary – Gössendorf-Kahlsdorf. July 2012⁸) and **on the other hand do not consider climate change at all in such climate relevant sectors as the transport sector**.

5. Conclusions

- By **splitting the procedures** an overall assessment of environmental impacts for the whole motorway project is hardly possible – especially considering that the impact assessment for the northern part - which started already in 2006 - has still not been finished.
- The consequent **ignorance of climate relevant factors** within individual EIAs especially in the transport sector as a big emitter – with its territorial comprehensive extensions – **will definitely thwart the attainment of climate protection aims in the long run**. Recalling that in certain other EIA procedures (cp. EIA Case Summary – Gössendorf-Kahlsdorf. July 2012) **climate change arguments** are indeed assessed (climate change is in the **public interest**) and **used as justification** by the authority to **authorize projects with have huge negative impacts on other environmental factors** – thus the assumption arises that **climate change is used as strategic instrument to the pursuance of economic interests** - in some cases serving as thought-terminating cliché and in others left completely aside with the argument **“this global phenomenon” is not to be combated on the project level within single EIAs**.
- Thus the competent authority needs to put even **more emphasis on the design alternative scenarios** supporting the reduction of emissions and fostering climate protection – An assessment cannot be just excluded by indicating that this is a political responsibility on national and international level.

⁸ This procedure was about the construction of two run-of-river hydroplants at the Mur river - Gössendorf and Kalsdorf (in the south of Graz).

CASE STUDY

- Long version -

1. Title of the case

“A5 Nord Autobahn, Abschnitt Schrick –Poysbrunn” (A5 – Northern National Highway – Section II)

2. Description of the project

2.1. Features of the project, location, likely environmental impacts etc.

a) General

The projected A5 Wien-Brno motorway proposes to connect Vienna (Austria) and Brno (Czech Republic). The Czech part of the projected connection is the R52 highway. The latter would have to be extended if Austria builds the motorway to the CZ boarder. An R52 extension would, among others, lead to serious environmental impacts on Natura 2000 protected sites and species, UNESCO cultural heritage Lednice/Valtice.⁹

The construction of the A5 was planned in three sections – every section underwent a separate EIA procedure.

1. A5 South: Eibesbrunn-Schrick (23,5 km)

2. A5 Middle: Schrick-Poysbrunn (25 km)

3. A5 North: Poysbrunn-Drasenhofen (Mikulov, CZ), (9 km)

The southern section from *Eibesbrunn to Schrick* operates since the 31st of January 2010. The second section from *Schrick to Poysbrunn* was authorized (EIA) with the decision of 18th November 2009 (construction works will last from 2013 - 2016). The construction of section two and three is interconnected – without authorization for the second section, the third section will not be constructed and the other way around. According to the results of an evaluation of major infrastructure projects conducted in 2010, the construction of the A5 part from Schrick to the state border (section two + three) in principle was confirmed.¹⁰

⁹ Justice & Environment EIA Case Study Collection 2006 – Austria A5 Motorway:

http://doku.cac.at/je2006_eit_casestudies.pdf

¹⁰ Cp. Also the National Interurban Road Program 2012 – 2017:

http://www.bmvit.gv.at/verkehr/gesamtverkehr/ausbauplan/downloads/ausbauplaene_2_012.pdf

The planned start of construction works for the third section is planned 2015/2016 – operation might start in 2016/2017. Due to political discrepancies and financial shortages EIA proceedings for the third section (submittal: August 2006) are still open.¹¹

The here described project is about the EIA proceedings regarding the construction of the section “Schrack-Poysbrunn” – with a total length of 24,73 km.

b) Procedural Timeline

Section II <i>Schrack - Poysbrunn</i>	Applicant/Authority/Claimant	Case reference	Date
Project Application	ASFINAG		4.11.2005 ¹²
First instance decision	Federal Minister for Transport, Innovation and Technology	BMVIT-312.505/0007-II/ST-ALG/2009	18.11.2009 ¹³
Complaint with the Administrative Court	ÖKOBÜRO Citizens' group („BI A 5 Norderweiterung") Gemeinde Dolní Dunajovice Ekologický Právní Servis EPS Brno reditelka Ekologického institutu Veronica		
a) Decision: request on suspensive effect	Dismissed	2010/06/0001	08.06.2010 ¹⁴
b) Decision: substantive points	Dismissed	2010/06/0002	24.08.2011 ¹⁵

¹¹ UBA, EIA Database:

http://www.umweltbundesamt.at/umweltsituation/uvpsup/uvpoesterreich1/uvpdatenbank/uvp_online/?cgiproxy_url=http%3A%2F%2Fwww5.umweltbundesamt.at%2Fuvpdb%2Fpz21schema.pl%3Fsession%3DxPc4il30ssISwTtSIX1CTPBA%26set%3D1%26idx%3D4

¹²http://www.bmvit.gv.at/verkehr/strasse/autostrasse/a5/verfahren/download/schrack_poysbrunn/kundmachung.pdf

¹³http://www.bmvit.gv.at/verkehr/strasse/autostrasse/a5/verfahren/download/schrack_poysbrunn/genehmigung.pdf

¹⁴http://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2010060001_20100608A00/JWT_2010060001_20100608A00.pdf

¹⁵http://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2010060002_20110824X00/JWT_2010060002_20110824X00.pdf

The EIA procedure lasted over 4 years. Due to missing documents and improvement processes the application was published about **seven months after the project submittal (01.06.2006)**. In succession it took the first instance authority a long time to coordinate and obtain relevant statements and opinions, what can be enumerated as the main reasons for the long duration of the EIA procedure.

2.2. Does the project have likely harmful impacts on the environment, especially on climate?

The environmental impacts produced by the construction of this section were enumerated and assessed within an expert opinion (*“Umweltverträglichkeitsgutachten”*).¹⁶ The construction and operation of the National Highway will produce

- noise and vibrations to the surroundings
- considerable negative impacts on forest stands (clearings)
- Due to forest clearings increased insolation and higher temperatures are likely to cause soil dryness and sunburn damage in trees. A further consequence of the forest clearings are habitat destruction for several species.
- pollutants which are harmful beneath others for flora and fauna, for soils, for ground- and surface waters, human beings

The emissions produced during the operation of the National Highway will **rise by about one third** in comparison to the actual situation.

3. Applicable national regulation

3.1. Which are the main national provisions transposing the EIA Directive?

The EIA Directive was transposed by a separate act in Austria - the Environmental Impact Assessment Act 2000 (UVP-G 2000)¹⁷. The first section of this Act is about the **object and purpose of EIA**, definitions and modifications. The second section regulates the **EIA-proceedings in general**. The third section regulates **EIA-proceedings regarding federal roads and high-speed railway lines**. The present case was processed according to section three.

3.2. Does the national regulation on EIA demand taking climate change aspects into consideration in the procedure?

¹⁶http://www.bmvit.gv.at/verkehr/strasse/autostrasse/a5/verfahren/download/schrick_p_oysbrunn/uvp_gutachten.pdf

¹⁷ BGBl. Nr. 697/1993, StF

The EIA-Act states that the purpose of EIAs, shall be with public participation and on the basis of expertise,

“1. to identify, describe and assess the direct and indirect effects that a project will or may have on

a) human beings, fauna, flora and their habitats,

b) on soil, water, air, and climate,

c) on the landscape, and

d) material assets and the cultural heritage,

including interactions of several effects,

2. to examine measures that prevent or mitigate harmful, disturbing or adverse effects of a project on the environment or that enhance its beneficial effects,

3. to document the advantages and disadvantages of the alternatives examined by the project applicant as well as the environmentally relevant advantages and disadvantages of not proceeding with the project, and

4. to document the environmentally relevant advantages and disadvantages of the alternative sites or routes examined by the project applicant in case of projects for which the law foresees compulsory purchase.” (cp. Art 1 EIA-Act)

Article 6 EIA Act requires that the Environmental Impact Statement needs to contain *“a description of the aspects of the environment likely to be significantly affected by the project, including, in particular, human beings, [...] air, **climate**, landscape, material assets, including the cultural heritage, and the inter-relationship between the above factors.”*

In particular **data on emissions to be expected** (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the implementation and operation of the project is to be provided, and **data on the increase in the concentration of pollutants** in the ambient environment resulting from the project. Furthermore a presentation of emanating climate-related greenhouse gases produced by the operation. Measures for their reduction in terms of climate change have to be named (cp. Art 6/1 e) EIA-Act).

The **decision shall take account of the results of the environmental impact assessment** (in particular, environmental impact statement, environmental impact expertise or summary assessment, comments, etc.) *If serious environmental pressures are to be expected due to the project and its impact and those cannot be prevented or reduced to a tolerable level by obligations, conditions, deadlines, other requirements, project modifications or offsetting measures the application shall be rejected (cp. Art 24h/4 EIA-Act)*

4. Description of the impact assessment procedure

4.1. Type of procedure, competent authorities, claimants and other participants involved

As the project refers to the construction of a national highway the third section of the EIA-Act was applied and the development consent procedure was carried out in accordance to these provisions.

Competent authority was the **Federal Minister for Transport, Innovation and Technology** (Art 24/1 and 2 EIA-Act). The proceedings are partially consolidated – which means that the Federal Minister of Transport, Innovation and Technology shall apply all approval provisions that are required for the project’s implementation under federal administrative law and otherwise would have to be applied by himself/herself or another federal minister. Art 24/3 EIA Act states that *“the Land governor shall perform a partly consolidated development consent procedure in which he/she shall apply the rest of the approval provisions required for the project’s implementation under federal administrative law, also to the extent that they fall in the domain of the municipalities. The administrative district authority may be entrusted with the performance of the partly consolidated development consent procedure in full or in part if this is in the interest of expediency, speed, simplicity and cost savings.”*

The only legal protection against the before mentioned projects (as the Transport Minister organizationally is a last instance organ) lies with a **complaint with the Administrative or Constitutional Court**.

Basically the project applicant files the application with the competent authority. The application needs to contain an Environmental Impact Statement (*“Umweltverträglichkeitserklärung” – UVE*), which tends to describe the planned project, a description on environmental impacts, alternative scenarios, measures to prevent environmental risks and damages etc. The ombudsman for the environment, the Environmental Minister and other involved authorities may make comments on this statement. Furthermore the application and its annexes are to be made public and everyone can comment them. An expert opinion evaluating the environmental impacts of the project will be issued. An oral hearing is held afterwards where all parties and their doubts and objections may be heard. Proceedings end with the issuance or denial of the permit by the competent authority.

Project Applicant: ASFINAG¹⁸

Participants to the EIA proceedings:

Ombudsman for the Environment
Federal Ministry of Agriculture and Forestry, Environment
and Water Management
Concerned Municipalities
Austrian Neighbours
Czech Neighbours
ÖKOBÜRO (Austrian NGO)
EPS (Czech NGO)
Citizens' group („BI A 5 Norderweiterung“)

4.2. Does the project have likely harmful impacts on climate?

a) General

Generally the transport sectors greenhouse gas emissions rose from 14,0 million tonnes to 21,7 million tonnes of **(+ 54.4%)** from 1990 to 2009. The most important cause is road traffic.¹⁹ The transport sector caused in the year 2009 **32% of the whole Austrian CO2 and 60% of the whole Austrian NOx, emissions.** In 2009, the allowable emission limit with 145 300 tons of NOx (without fuel exports) was significantly exceeded. Responsibility lies primarily with the continuing high emissions from road traffic, particularly from diesel vehicles.²⁰

The transport sector is the one sector with the biggest backlog demand in comparison with the sectoral aims of the climate strategy. Greenhouse gas emissions from the transport sector in 2009 were about **2.8 million tonnes higher** than the sectoral goal for this sector stated in the climate strategy. Especially the fact that beneath all EU Members Austria is backmarker in the attainment of the Kyoto goals, should provide for adequate impetus to accurately consider climate change impacts of huge infrastructure projects in Austria.

So this project is not just to be separately but to be tightly associated with Austria's international and national obligations to prevent climate change – a **potential alternative** for a Wien-Brno motorway connection has not been considered at all.

¹⁸This state enterprise plans, finances, builds, maintains, and operates the entire Austrian motorway and highway system: <http://www.asfinag.at>

¹⁹ UBA Klimaschutzbericht 2011, REP-0334, Vienna 2011, p. 27:
<http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0334.pdf>

²⁰ UBA Emissionstrends 1992 – 2009, REP-0338, Vienna 2011, p. 7 and 72:
<http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0338.pdf>

b) Project level

See above Chapter 2.2. The construction and operation of the national highway produces pollutants which are harmful beneath others to flora and fauna, to soils, to ground- and surface waters, human beings etc. The emissions produced during the operation of the National Highway will **rise by about one third to a half** in comparison to the actual situation (regional assessment). The additional greenhouse gas emissions will rise by 40,000 tons, NOx emissions will rise by 115 tons annually (cp. Statement of the Ministry of Environment).

From the realization of this project results a **further increase of the total Austrian climate-relevant emissions up to 0.05%** (nation-wide assessment).

4.3. Did the assessment meaningfully evaluate the likely impacts of the project on climate?

The **first instance authority** did not evaluate the likely impacts of the project on climate in an adequate way by providing only superficial and inconsistent assessments like "climate change effects remain low" or "limited climatic impacts are restricted to the area around the traces".

It finally assessed that from a climatic perspective the project is environmentally compatible, taking into account that the realization of the project is strictly necessary from a strategic point of view. Beneath others the authority stated that **an effective reduction of climate relevant emissions** - with regard to the Kyoto-aims - **produced by traffic is solely possible by shifting passenger and goods transportation to public transport systems.** The authority pointed out that this **change needs to be created by national and international political action** – no discussion of this problem can be done within an EIA of single projects – anyway considerable effects on local climate may not be expected at all.

The **expert opinion** on Air and Climate indicated that unacceptable annoyances by air pollutants or microclimatic changes are not to be expected (*"impossible"*). In the documents there are no indications of how these **irrelevance levels** for the regional climate are defined. An evaluation stated that **no considerable microclimatic negative impacts** have to be awaited by the respective projects. **Macroclimatic impacts are considered low** and **no impacts on regional climate** have to be awaited. No broader assessment of climatic factors has been carried out within the expert opinion.

The Administrative Court firstly highlighted that on the basis of the project and the resulting greenhouse gas emissions no impacts on the regional climate are to be expected - Art 24f/4 EIA-Act requires severe **environmental pollution affecting the concrete project area.** This provision does not establish the obligation for an overall assessment of national climate.

It stated that from the Kyoto Protocol can not be deduced that individual projects (as in this case, a federal highway project), which cause some increases in emissions of greenhouse gases would not be permitted. No reason have been raised that - the by the operation of the respective national highway produced climate relevant emissions – reach such a level to be considered a serious environmental pollution according to Art 24f/4 EIA-Act (cp. VwGH 24.08.2011 2010/06/0002-14) See also below Chapter 5. Furthermore the splitting of the sections is considered as justified by the Administrative Court – only if the division aims to avoid the realization of an EIA-procedure the division would be illegitimate.

It is not rationally comprehensible why **on the one hand** EIA authorities use **climate change as a superior public interest** to justify the construction of hydroelectric power plants in nature protection areas and leaving aside all other relevant negative impacts on the environment (cp. EIA Case Summary – Gössendorf Kahlsdorf. July 2012²¹) and **on the other hand do not consider climate change at all in such climate relevant sectors as the transport sector.**

4.4. Had the claimant or other participants stressed the priority of preventing climate change? If yes, had been these arguments taken into account?

a)

The **Ministry of Environment** stated in its comments on the declaration of environmental impacts (provided by the Transport Ministry) that the **planned project prevents or hinders the achievement of the Kyoto goals and the compliance with further binding European and national emission reduction goals** – especially the Federal Act on National Emission Maxima for certain Atmospheric Pollutants (EG-L²²). The statement criticizes that no alternative scenarios supporting the reduction of emissions and fostering climate protection were taken into account by assessing the environmental impacts of the project. This important aspect for assessing the environmental impacts of the project has been excluded, by referring to political national and international approaches. Furthermore the MoE criticized that the procedural documents assume a particularly **unfavorable ratio of public transport and motorized individual traffic** by the year 2020: (18% public transport and 82% motorized individual traffic). – On national level especially within EIA proceedings solutions can be elaborated by providing **environmental friendly variant proposals – the project is to be compatible with legally binding environmental standards is an important element of EIA.**²³

²¹ This procedure was about the construction of two run-of-river hydroplants at the Mur river - Gössendorf and Kalsdorf (in the south of Graz).

²² BGBl. I Nr. 34/2003, StF

²³ <http://www5.umweltbundesamt.at/uvpdb/docs/UE/A5%20Nord-Autobahn%20Abschnitt%20Schrick-Poysbrunn/Stellungnahme.pdf>

b)

Neighbours to the project site highlighted the negative impacts of the operation of the National Highway by air pollutants, emissions, increased ozone concentration, nitrogen oxides and fine dust produced to human health and climate. Similarly the participating Austrian **citizens' group** objected to the project beneath others due to harmful air pollutants caused by the operation of the highway and leading to negative impacts on human health, flora and fauna etc. Apart from the focus on harmful air pollution and the endangerment of several protected subjects, no explicit reference to climate protection was made by these parties.

c)

The ÖKOBÜRO et al. highlighted the fact that within the development consent procedure the climate protection aspect was not considered in an appropriate way – referring thereby to Austria's obligations following from the Kyoto Protocol.

d)

The applicant just stressed the difficulty to deduce certain impacts on the microclimatic situation in the region produced by the construction and operation of the national highway, arguing that at present not even the cause and effects of an anthropogenically induced global climate change can be scientifically answered with absolute certainty (cp. Environmental Impact Statement²⁴).

e)

The ÖKOBÜRO raised in its complaint with the Administrative Court that no objective reason exist for splitting the middle (Schrack to Poysbrunn) and northern section (Poysbrunn to border) in two projects – and thereby subjecting them to separate EIA procedures. The overall impacts of the project can only be assessed in connection with the northern section (Poysbrunn – Border) which Environmental impact assessment has not finished yet. The first instance authority would have assessed completely different data by taking another road section into consideration.

Furthermore it was argued that the Austrian EIA-Act (Art 24) indeed requires the competent authority to seriously **consider the environmental impact of greenhouse gas emissions "as part of a project EIA"**. Austria has entered a legally binding burden-sharing agreement (Council Decision 2002/358/EC of 25 April 2002) on European level and thus is obliged to contribute to EU-wide emission reduction. Non compliance with this obligation could lead to the initiation of infringement proceedings. The competent authority should therefore have to include greenhouse gas emissions in its overall assessment in accordance with Art 24f/4 EIA-Act. It ought to have assessed if due to the expected project (considering all accumulations) serious environmentally harmful emissions were emitted or not.

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Regarding the **calculations** the complainants highlighted that it is inappropriate to set the emissions of a regional transport project in relation to total Austrian emissions (also including the emissions from heating and industry). Proper would be an emission comparison between non-realization of the project (0.1% according to first instance findings) and the realization of the project (=0.15%). The relative difference between these values amounts to 50%. Given the fact that Austria under international and European law is obliged to reduce emissions of these gases, the first instance authority had to have stated that serious environmental impacts can be anticipated due to the project realization. The first instance authority should have examined whether these impacts could have been reduced by imposing conditions, alternatives etc. to a manageable level.

5. Outcome of the proceedings / content of the final decision

The final authorization was given to the project applicant. **The ÖKOBÜRO et al.** filed a complaint with the Administrative Court in January 2010 – after the Court declined to grant suspensive effect – it considered the complaint partly inadmissible and partly without merits (cp. Arguments raised in Chapter 4.4 e).

With respect to the climate based arguments of the claimants **the Administrative Court has stated** that from the Kyoto Protocol can not be deduced that individual projects (as in this case, a federal highway project), which cause some increases in emissions of greenhouse gases would not be permitted. **No reason have been raised that - the by the operation of the respective national highway produced climate relevant emissions – reach such a level to be considered a serious environmental pollution according to Art 24f/4 EIA-Act** (cp. VwGH 24.08.2011, 2010/06/0002-14).

6. Obstacles/Challenges generated in this case

The Austrian EIA-Act does provide for a different procedure regarding railway high-speed lines and motorways. The only remedy possible is with the Administrative Court which acts according to different procedural rules than the Independent Environmental Tribunal (the second instance regarding all other EIA-procedures). Furthermore suspensive effect of a complaint with the Administrative Court is no automatism. In this case the complaint with the Administrative Court was **not granted suspensive effect** (cp. VwGH 08.06.2010, 2010/06/0001 – 11).

The EIA proceedings have been carried out on **one section** of the A5 Northern National Highway – so the assessments on air pollutants, emissions etc. harmful to the environment did refer only to territorial limited effects of the whole project. The applicants brought up, that it is illegitimate to cover only part of the whole project by the respective EIA proceedings – the Administrative Court expressly ruled this admissible (cp. VwGH 24.08.2011, 2010/06/0002).

7. Conclusions

The EIA proceedings for the construction of the A5 Northern Motorway were split in several parts – and thereby subjected to separate EIA procedures. By this method an **overall assessment of environmental impacts for the whole motorway project is hardly possible** – especially considering that the impact assessment for the northern part - which started already in 2006 - has still not been finished. Particularly with regard to climate relevant emissions, which according to our EIA Act need to be taken into account, the **whole motorway project with all its implications has to be examined** on climate change relevant factors. The competent authority should therefore have to include greenhouse gas emissions in its overall assessment in accordance with Art 24f/4 EIA-Act.

As already stated above the **transport sector has huge negative environmental impacts**. It is responsible for an increase in green house gas emissions by +54,4% within the last 20 years. In 2009 it caused about 60% of the whole Austrian NOx emissions. These developments are contrary to Austria's plans and strategies regarding emission reduction – not to speak about its international and European legal obligations. – **The consequent ignorance of climate relevant factors within individual EIAs especially in the transport sector as a big emitter – with its territorial comprehensive extensions – will definitely thwart the attainment of climate protection aims in the long run.**

Recalling, that in certain other EIA procedures (cp. EIA Case Summary – Gössendorf-Kahlsdorf. July 2012²⁵) **climate change arguments** are indeed assessed and **used as justification** (climate change is in the **public interest**) by the authority **to authorize projects with have huge negative impacts on other environmental factors** – thus the assumption arises that **climate change is used as strategic instrument to the pursuance of economic interests** - in some cases serving as thought-terminating cliché and in others left completely aside with the argument **“this global phenomenon” is not to be combated on the project level within single EIAs.**

²⁵ This procedure was about the construction of two run-of-river hydroplants at the Mur river - Gössendorf and Kalsdorf (in the south of Graz).

Thus the competent authority needs to put even **more emphasis on the design alternative scenarios** supporting the reduction of emissions and fostering climate protection – **An assessment cannot be just excluded by indicating that this is a political responsibility on national and international level.** - Climate relevant factors need to be given more importance in relation to economic, strategic and political aspects of not just infrastructure, rather climate relevant projects in general.

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