JUSTICE AND ENVIRONMENT
European Network of Environmental Law Organizations

Climate change aspects within SEA proceedings

Austria: S 8 Marchfeld expressway (Morava-field expressway; Vienna – Bratislava)

Case Study

Justice and Environment 2012

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AUSTRIA

SEA procedures are closely linked to new investments, projects, strategic planning, extension or adaptation of existing plants, roads etc. At strategic level, SEA influences the fundamental nature of the development. Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment (SEA Directive) contains some reference to climate change, however, this is far from being proportionate to the gravity of the problem. On the other hand, arguments referring to the problem of climate change often are used to justify environmental destruction, e.g. in planning and building water or wind power plants in special protection areas or having critical water impacts.

1. Short summary of the plan and/or program[1]

1.1. Title

S 8 Marchfeld expressway (Vienna – Bratislava)

1.2. Location

Austria

1.3. Area for that the plan/program has been prepared

The S8 Marchfeld expressway starts at the **eastern border of Vienna** (S1 Wiener Außenring Autobahn) and passes through Lower Austria **to the border of Slovakia** (Angern – Marchegg).

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

The construction of the planned road connection tracks to **improve the infrastructure network** Vienna and Bratislava (northern Danube). This plan is supplementing a larger road network consisting of various highways and motorways ("Regionenring") which aims to develop the transport infrastructure in Eastern Austria, namely the region surrounding Vienna ("eastern region").

This street connection is expected to **lead to:**

- improve the **cultural and economic relations** between Austria and Slovakia;
- **increase life quality** for the inhabitants of the region;
- to foster **economic development** within the region;

[1] Cp. Justice and Environment: SEA Case Study: December 2007: http://justiceandenvironment.org/_files/file/2009/06/sea-wp07-austria-case-study.pdf

Documentation concerning environmental aspects of the project focuses on an area of **30 x 30 square kilometers**. This area is situated between Vienna in the west and the Austrian border in the east, between the town of Angern an der March in the north and to the Danube river in the south. The city of Bratislava is situated across the border in Slovakia.[2]

1.4. Developer

Office of the government of Lower Austria[3]

Department General Transport Affairs

Amt der NÖ Landesregierung, Gruppe Raumordnung, Umwelt und Verkehr

Abteilung Gesamtverkehrsahngelegenheiten

Landhausplatz 1/16

A-3109 St. Pölten

Austria

[2] See further remarks in: Justice and Environment SEA Case Study: December 2007: http://justiceandenvironment.org/_files/file/2009/06/sea-wp07-austria-case-study.pdf

[3] http://www.noel.gv.at

1.5. Procedural Timeline

S 8 Marchfeld expressway	Procedural Timeline
July 2004 – October 2005	Elaboration of the environmental report initiated by the provincial government of Lower Austria
09 September 2005	The environmental report is forwarded to the Austrian Transport Ministry
23 September 2005	Publication of the environmental report on the homepage of the ministry
23 September 2005 – 04 November 2005	Public participation
23 February 2006	Publication of the summarizing statement
29 March 2006	Submission of the legislative proposal on the road in the national assembly
21 April 2006	Adoption of the legislative proposal in the federal assembly
09 May 2006	Publication of the decision in the official journal of the republic, date of entry into force
19 July 2011	Initiation of the EIA procedure for the Section West (from the link road S1 – Obersiebenbrunn/Gänserndorf) Afterwards EIA procedure for the Section East (Obersiebenbrunn/Gänserndorf – Marchegg/state boarder)
2014	Expected start of construction activity
2016	Expected completion of the project

2. Relevant national regulation

2.1. Which are the main provisions transposing the SEA Directive?

The respective provisions concerning SEA proceedings in adoption of the SEA Directive have **not** been **integrated in one general legal act in Austria**. The SEA was incorporated in a variety of different laws. Due to varying competences between the federal state and the provinces, regulations concerning **SEA can be found on federal and regional legislative level**.[4] The basic condition for an SEA procedure is that a legal provision has to ask for the development of the specific plan/program.

[4] Alge/Kroiss in Raschauer/Wessely (Ed.), Handbuch Umweltrecht² 2010 (p. 390f)

2.2. Which domestic legislative, regulatory or administrative provision required the preparation of the plan/program?

In Austria the relevant source of law as regards the transport sector is the **Federal Roads Act**[5]. The annex to the act lists the names of the existing and planned Austrian motorways. If a motorway wants to be constructed which cannot be found in the respective Annex to the Federal Roads Act **the projected motorway can be included**. Therefore a **strategic assessment according to the Austrian Strategic Transport Assessment Act**[6] is obligatory. Afterwards an EIA procedure is to be carried out and special authorizations according to the Federal Roads Act (Art 4 /1 and Art 7/2) have to be enacted.

The **strategic assessment** procedure according to the Austrian Strategic Transport Assessment Act (SP-V-G) consists of the following **main steps:**

- **"Initiators"** (e.g. the Minister for Transport, the Austrian *'bundeslaender'*, the ASFINAG[7] etc.) **propose a specific plan** for the construction of a new motorway/railway (Art 4/1 SP-V-G).
- This proposal has to **include an environmental report** (Art 6 SP-V-G) which is created without participation of the public.
- The Minister for Transport decides on a case-by-case basis whether a strategic assessment is compulsory or not. The crucial question is, whether the plan will ***"presumably have significant effects"*** (Art 3/2 SP-V-G).
- The proposal for the transport infrastructure and the environmental report are to be **published on the homepage of the Transport Ministry.** The **public** then has the possibility to **raise its opinion** on the infrastructure **within six weeks** (Art 8/1 SP-V-G).
- The **strategic assessment** has to **take into account both the environmental report and the statements**. (Art 5/4 SP-V-G). The assessment is carried out by the Minister of Transport who prepares the **draft legislation.** A summarizing statement needs 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 legislative draft.[8]

[5] Federal Law Gazette I Nr. 286/1971, stF
[6] Federal Law Gazette I Nr. 96/2005, stF
[7] This state enterprise plans, finances, builds, maintains, and operates the entire Austrian motorway and highway system: http://www.asfinag.at
[8] Cp. The explanations in Justice and Environment: SEA Case Study: December 2007: http://justiceandenvironment.org/_files/file/2009/06/sea-wp07-austria-case-study.pdf

2.3. Does the national regulation on SEA demand taking climate change aspects into consideration in environmental assessments?

The environmental report **identifies and evaluates the likely significant environmental impacts of the proposed infrastructure** and reasonable alternatives that take into account the objectives and the geographical scope of the proposed network changes (cp. Art 6/1 SP-V-G)

According to par 2 leg cit the environmental report must contain the following information in an appropriate detail for the proposed network changes:

"(...)

*8. a description of the likely **significant environmental impacts**, including impacts on aspects such as biodiversity, population, human health, fauna, flora, soil, water, air, **climatic factors**, (…)"*

According to the SP-V-G likely significant environmental impacts have to be assessed within the environmental report – **climate change** indeed is to be assessed as a possible significant environmental impact. Furthermore paragraph 2/8 of the mentioned provision explicitly refers to the assessment of climatic factors.

According to Art 6/3 SP-V-G the Transport Minister may establish **by regulation more detailed provisions for the environmental report,** in consultation with the Ministry of Environment (MoE). The establishment of a more detailed assessment of climate change factors might be a possible application of this provision.

3. The plan/program

3.1. Do the main objectives of the plan/program concern climate change? If yes, in which context is climate change referred?

The **main objectives** of the network changes were:

- The **improvement of the infrastructure** network for individual motorized traffic between Vienna and Bratislava (northern Danube)
- **Fostering the accessibility** from the district capital Gänserndorf to the federal capital city Vienna
- **Traffic relief** of the highly polluted town links along the national highway B8 between Vienna and Angern/March.

The plan was designed in support of the JORDES +[9] project (Joint Regional Development Strategy for the Vienna-Bratislava-Györ Region) which is an EU project to promote cross-border regional development. Main goal of the project is to initiate a common growth process leading to the **development of a competitive region (in this case Vienna – Bratislava)** in the system of European regions.

Although several spatial planning programs and plans for regional development were discussed in more detail in the section of the objectives of the plan, **no national or international climate change programs and strategies** (which indeed exist in a quite broad variety) **were assessed** or mentioned therein. Only the summarized goals of the environmental report (see Chapter 0.3.5[10]) mentioned climate change in one bullet point – ***"Reduction of C02 emissions, climate friendly transport management".***

3.2. Does the plan/program have likely harmful impacts on the environment, especially on climate?

The main cause of the Austrian greenhouse gas emissions in 2010 were the industry and manufacturing sector (29.2%), **the transport sector (26.6%),** energy production (16.9%), space heating and other small consumers (13.5%) and agriculture (8.8%). These sectors are responsible for about 95.0% of the Austrian greenhouse gas emissions. The strongest increase in greenhouse gas emissions since 1990, according to the current assessment shows the transport sector. The Austrian transport sector's greenhouse gas emissions rose from 14,0 million tonnes to 21,7 million tonnes of **(+ 7,7 tonnes = 54.4%)** from 1990 to 2009. The most important cause is road traffic.[11]

[9] http://www.pgo.wien.at/projekte/f_JORDES.htm
[10] http://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Praxis/Verkehr/Marchfeldstr/umweltbericht_marchfeld_kapitel0.pdf
[11] UBA Klimaschutzbericht 2011, REP-0334, Vienna 2011, p. 27:

According to the recently published Austrian climate report the transport sector's greenhouse gas emission have **even increased to 8.4 million tonnes of CO2 by the year 2010 (that means an increase of 60% since 1990).** In comparison the emissions in the industry sector increased by 3.4 million tonnes **(+16.2%)** CO2, the energy sector's CO2 emissions were increased by 0.5 million tonnes **(+3.3%).** Only in the sector "space heating and other small consumers" (- 3.0 million tonnes **-20.9%**), waste management (- 1.8 million tonnes **-49.8%)** and agriculture (- 1.1 million tonnes**, -13.1%)** greenhouse gas emissions were decreased since 1990.[12]

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. [13]

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.[14] The **Austrian greenhouse gas emissions in 2008 to 2010 were by 21.2% (relative to 1990) above the Kyoto target.** In the **EU-15 comparison, Austria takes the penultimate space** – whereas for example six EU-states achieved their Kyoto goals already by the year 2010.[15]

Till now only seven Transport SEAs have been carried out[16] lacking an appropriate climate assessment. As **Austria acts as back marker in the attainment of the Kyoto Protocol on EU level,** strategic planning acts should definitely pay higher attention to climate change effects within their assessments.

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

[12] Umweltbundesamt GmbH: Klimaschutzbericht 2012 (REP-0391) Wien 2012, p. 23f:
http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0391.pdf

[13] UBA Emmissionstrends 1992 – 2009, REP-0338, Vienna 2011, p. 7 and 72:
http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0338.pdf

[14] Cp. also Justice and Environment: EIA Case Study AUSTRIA; 2012
www.justiceandenvironment.org/publications/climatechange2012

[15] Umweltbundesamt GmbH: Klimaschutzbericht 2012 (REP-0391) Wien 2012, p. 38f:
http://www.umweltbundesamt.at/fileadmin/site/publikationen/REP0391.pdf

[16] http://www.strategischeumweltpruefung.at/sup-praxis/sektoren/verkehr/

Being an infrastructure project, the **main environmental effects** of the plan will be caused by an **increase in traffic volume**. Therefore the main impacts will be in the areas: air quality, noise, soil, water, climate change, nuisances, habitats (plants and animals), landscape and human health.[17] Documentation concerning environmental aspects of the infrastructure plan focuses on an **area of 30 x 30 square kilometers**. This area is situated between Vienna in the west and the Eastern Austrian border - between the municipality Angern/March in the north and to the Danube in the south. The city of Bratislava is situated across the border (Slovakia).

With respect to the above mentioned arguments on Austria's deficiencies in the achievement of climate change goals on international level and with regard to the high emissions the transport sector is responsible for, this plan should have been assessed on a broader geographical level. Especially because the **Marchfeldstraße is part of the Austrian Land use development concept 2001 (ÖREK)**, which tends to improve the cross linking of locations by establishing a good transport system – so all those connecting infrastructure projects should have been taken into account simultaneously.

4. Description of the SEA

4.1. Procedure

4.1.1. Preparer of the assessment

Federal Ministry for Transport, Innovation and Technology

4.1.2. Authorities involved

- Region of Lower Austria: Office of the government of Lower Austria, Department General Transport Affairs
- Federal Ministry of Agriculture, Forestry, Environment and Water Management
- Federal Ministry for Transport, Innovation and Technology
- Various municipalities (Raasdorf, Untersiebenbrunn, Marchegg, etc.)
- The Slovak Republic

[17] Cp. also Justice and Environment SEA Case Study: December 2007: http://justiceandenvironment.org/_files/file/2009/06/sea-wp07-austria-case-study.pdf

4.1.3. Short description of procedure of public consultation

The procedure of public consultation is regulated in Art 8 SP-V-G:

- According to this provision the proposed network change and the environmental report have to **be published on the website of the Transport Ministry** and a reference to this publication in at least two daily newspapers.
- The publication contains **information on the form and the place** where statements can be submitted by the public.
- **Everyone** shall have the option to submit statements and opinions **within six weeks** from the publication of the before mentioned documents.
- In his **summarizing statement** the Transport Minister is obliged to **take all negative and positive statements into consideration**.
- The public does not have **any remedy** to combat the Transport Minister's considerations on the provided statements.

So the **public** was therefore **incorporated** into the process **after the environmental report had been finished**. On 23 September 2005 the public was informed via edict on the possibility to assess the relevant documents. Within six weeks the statements had to be submitted. These statements by environmental organizations and citizen's initiatives were later, if brought in time, **only roughly mentioned in the summarizing statement** – The Transport Ministry did not at all refer to the substance of the submitted opinions.

4.1.4. Short description of transboundary consultation

The procedure of transboundary consultation is regulated in Art 7 SP-V-G.

The proposed plan was **forwarded to the Slovak Republic** – in accordance with the provision on transboundary consultations. The plan **was notified** by the Slovak Republic. The Slovak Republic has sought **public statements within its own territory** and has forwarded them to the Austrian Transport Ministry. The Slovak Republic **did not have objections or significant comments on the proposed plan** – The state welcomed the proposed network change. Furthermore the Slovak Republic requested to be involved into further planning and realization of thee planned expressway.

4.2. **Content**

4.2.1. Does the assessment of the current state of the environment concern climatic factors?

The assessment of the current state of the environment in the planning area **does not explicitly refer to climate change.** Climatic factors are mentioned within certain sections of the assessment. It was stated that climatic problems can be awaited mainly by lack of rainfall, drought and late frosts. Here the **microclimatic assessment definitely was preferred** to a macroclimatic examination of the planning area. Furthermore the influence of forestry on the microclimate was highlighted. In this respect the existence of forestry harmful air pollution was mentioned - the pollution decreased in the last years and lays under the established thresholds.

The **relevant emissions** (meaning emissions produced by motorized traffic which have relevant impacts on the planning area) of harmful substances were assessed with regard to eventual **threshold exceedances**. With this respect only **NO2, NxO and PM 10 emissions were assessed as relevant. CO-emissions were not assessed** justified by the argument that the immission load of CO is so low that exceedances are excluded in any case.

More than half of human induced greenhouse effect is generated by carbon dioxide (CO2) and carbon monoxide (CO) – an **assessment of the current status of CO emissions would have been essential for the observance of climate change aspects** with regard to a certain infrastructure plan which generally is linked to broader infrastructural initiatives, plans and programs. Especially for a proper assessment of the climatic impacts of a strategical plan or program it would be **recommendable to apply a broader geographical and strategic scope.**

4.2.2. Does the assessment evaluate the likely impacts of the plan/program on climate?

The assessment of the planning variants was done by an evaluation of the **effectiveness (macroeconomic examination)**, the added value for the achievement of a **sustainable development** in the region and the **anticipated significant environmental effects**. The period under observation for establishing a traffic prognosis and the identifying eventual negative/positive effects of the plan was till the year 2020.

- **Effectiveness (macroeconomic examination)**

A **cost-benefit analysis** regarding the realization of the plan has been conducted – the macroeconomic benefit was measured in **monetary benefit.** According to the environmental report also costs produced by emissions related to climate are to be taken into account. The analysis resulted in the conclusion that most of the proposed alternatives provide positive results regarding to emission costs.[18]

- **Sustainable development**

According to the environmental report the criteria of sustainability is to be understood in the following way: *"a development model that ensures that the needs of the present generation are met while maintaining the capabilities and development needs of future generations."* The assessment in this section was directed towards the question **if the proposed planning alternatives** for the connection Vienna – Bratislava **support sustainable development in a social, economical and ecological way.**

The assessment of the ecological sustainability of the planning alternatives regarding noise and air pollution stated, that a support of the concept of sustainable development by all the planning alternatives – in the sense of a compliance with the relevant thresholds – is given. Furthermore it was pointed out, that the planning alternatives planning motorized traffic in the examined territory support a decrease of pollution in residential areas.

"The reduction of climate relevant greenhouse gases cannot be supported by motorized traffic variants, solution strategies in this respect are to be elaborated on national and international level"[19]

[18] SEA Environmental Report: p. 416.
[19] SEA Environmental Report: p. 418.

What, if not climate relevant aspects – capable of the destruction of the whole anthroposphere, **are to be most seriously taken into account with regard to the concept of sustainable development** for "maintaining the capabilities and development needs of future generations". The support of ecological sustainability is crucial – considering the fact that environmental destruction cannot be revoked or adapted by social or economic programs which would most probably exercisable in social and economic matters.

Moreover it seems that climate **programs and strategies are not favored to be executed** within environmental procedures by the respective competent authorities at all. Climate strategies indeed exist on national and international level (e.g. the Austrian Climate Strategy[20] or a range of programs and packages on EU level[21]) and those **authorities executing environmental law** are to be urged to take the relevant aims and goals into consideration. The **consideration of climate change aspects on a project level within EIA proceedings in Austria is killed by the same argumentation**[22] **as on a strategic level within SEA proceedings** – naturally the question arises, who is responsible for the combat against climate change?

- **Significant environmental effects**

The assessment of significant environmental effects acted on the **assumption of a general motorized traffic increase** till the year 2020. Therefore an increase in the emission of climate relevant gases will be unavoidable anyway. It was explicitly stated that those **planning alternatives providing for an expressway would produce the biggest emission values.** Furthermore the doubt was raised, that the elaboration of a greenhouse gas emission balance is problematic for such a small investigation area, which therefore would distort the balance. The assumption was made that the extensive traffic relocations which have to be awaited in the planning area are closely linked with traffic clearings in other regions – consequently the greenhouse gas emission balance is distorted and cannot be evaluated objectively.

[20] http://www.lebensministerium.at/umwelt/klimaschutz/klimapolitik_national/klimastrategie.html

[21] http://ec.europa.eu/clima/summary/index_en.htm

[22] Cp. also Justice and Environment: EIA Case Study AUSTRIA; 2012 www.justiceandenvironment.org/publications/climatechange2012

The environmental report concluded that in order to **promote the dynamical economic and social development** in the region Vienna – Bratislava the planning variant **to establish an expressway till the border crossing in Marchegg would be the optimal solution.** As this planning variant connects two high density areas traffic increases and congestions are likeably – in this respect the report concluded that **environmental conflict potentials are locally existent but can be compensated to a large extent.**[23]

4.2.3. Had the Preparer received opinions - from authorities, from the public or neighboring countries - adverting priority of climate change?

There have been **several opinions** raised by the public - These statements by beneath others, environmental organizations and citizen's initiatives are **mentioned shortly in the summarizing statement by the Transport Minister** – if they were received in time.

The MoE criticized in its statement the election of a narrow geographical investigation area – mainly because the road project A 6 Northeastern Motorway (connecting the Eastern Highway (A4) at Bruckneudorf with Slovakia at the border crossing Kittsee) – which to this time was still under construction was not taken into account. Furthermore criticism was raised because the environmental media – air, climate and soil were not assessed adequately.

Other opinions held the view that the Marchfeld expressway stands in direct contradiction with international climate change goals and with the Lower Austrian Climate Program 2004-2008.

4.2.4. Were these comments or recommendations meaningfully taken into account?

The Ministry of Transport spent a **quarter page** of its summarizing statement to the consideration of the statements provided by the public and other institutions. Therein it concluded that after a general assessment of the negative and positive statements of the public etc. - in the context of the advantages and disadvantages of the proposed road plan which were elaborated by the environmental report – **the realization of the proposed road plan by setting further conditions and establishing further supervisory measures will take account on all opinions and therefore may be carried out.**

[23] SEA Environmental Report: p. 424f.

When referring to the opinions and comments from the public, the Transport Ministry uses a set phrase to show that adecuate consideration of all opinions has been carried out:

"The Ministry of Transport finds (…) that the comments (…) may be considered within the plan."[24]

5. Current status

5.1. of the plan/program

The **EIA procedure** for the Western section of the S 8 Marchfeld expressway was **initiated in July 2011**. A separate EIA procedure for the Eastern section will follow afterwards. Construction of the **Western section** of the expressway is planned to start in 2014 – The Western section of the road project may be **completed in 2016** according to ASFINAG. The construction works for the **Eastern section** may begin **in 2017 or later**.

5.2. of the SEA procedure

The SEA procedure was **finished in 2006**. On 29 March 2006 the legislative proposal on the road was submitted to the national assembly. The legislative proposal was adopted on **21 April 2006** (inclusion of the planned project in the Annex of the Federal Road Act).

6. Conclusions

Although several spatial planning programs and plans for regional development were discussed in more detail in the section of the objectives of the plan, **no national or international climate change programs and strategies** (which indeed exist in a quite broad variety) **were assessed** or mentioned therein. Only the summarized goals of the environmental report (see Chapter 0.3.5[25]) mentioned climate change in one bullet point – ***"Reduction of C02 emissions, climate friendly transport management".***

[24] Mittendorfer in Mittendorfer (Ed.) Die Strategische Umweltprüfung im Verkehrsberich. Informationen zur Umweltpolitik Nr. 176. Wien 2008: p. 14)

[25] http://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/SUP-Praxis/Verkehr/Marchfeldstr/umweltbericht_marchfeld_kapitel0.pdf

More than half of human induced greenhouse effect is generated by carbon dioxide (CO2) and carbon monoxide (CO) – an **assessment of the current status of CO emissions would have been essential for the observance of climate change aspects** with regard to a certain infrastructure plan which generally is linked to broader infrastructural initiatives, plans and programs. Especially for a proper assessment of the climatic impacts of a strategical plan or program it would be **recommendable to apply a broader geographical and strategic scope.**

As described in the course of this case study the transport sector is one of the main climate sinners in Austria – even though climate change aspects are not considered in an adecuate manner (as not to say they are not considered at all) within strategic assessments. Responsibility is shifted to the political level as a justification for leaving aside climate change assessments. As already stated above (see Chapter 3.2.2) the **consideration of climate change aspects on a project level within EIA proceedings in Austria is killed by the same argumentation**[26] **as on a strategical level within SEA proceedings. There is an overall need to urge authorities executing environmental law** to take the relevant aims and goals into consideration – **this pressure probably needs to be executed on a political level** as also jurisprudence argues in the same way against taking climate change into consideration than the competent authorities in the permit procedures (cp. EIA Case Study AUSTRIA; July 2012: Chapter 4.3).

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[26] Cp. www.justiceandenvironment.org/publiactions/climatechange2012; EIA Case Study AUSTRIA; July 2012