

Questionnaire for the

REPORT OF **AUSTRIA** ON THE IMPLEMENTATION OF THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT TO THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

in the period 2010-2012

Information on the focal point for the Protocol

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Date on which report was completed: 17 05 2013

PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE PROTOCOL

In this part, please describe the legal, administrative and other measures taken in your country to implement the provisions of the Protocol. This part should describe the framework for your country's implementation, and not experience in the application of the Protocol.

Background information given by Austria:

In Austria the requirements of the SEA Protocol have been implemented by integrating them into existing Acts or into newly established Acts both at federal and provincial level. Due to the Austrian constitution, the legislative and executive competencies are shared between the federal and the provincial level (in all there are nine provinces in Austria). For example legislation on mining and forestry matters are federal competences, whereas spatial planning and nature conservation matters are legislative responsibilities of the provinces. Thus, there are SEA relevant plans and programmes both at federal level (e.g., the Federal Waste Management Plan) and provincial level (e.g., the regional waste management plans). That is why no sole SEA Act has been passed in order to transpose the SEA Protocol, whereas many existing Acts were amended or revised accordingly and some new Acts have been passed. In total, there are about 37 implementation Acts plus several regulations. The various implementation Acts may fairly differ from each other depending on the existing (or not existing) planning Acts. The following answers in the questionnaire try to cover all these different implementation Acts.

Article 2 - Definitions:

1. Is the definition of plans and programmes for the purpose of the Protocol the same in your legislation as in article 2, paragraph 5? Please specify.

- a) Yes ☐
- b) Yes, with some differences:
- c) No (please provide the definition):
- d) There are no definitions of plans and programmes in the legislation X

Your comments: The various Acts determine the types of plans and programmes (pp) for which a SEA has to be carried out. The specified pp were identified on the basis of the definitions in the Protocol.

2. Is the definition of “environmental, including health effect” in your legislation the same as in article 2, paragraph 7? Please specify.

- a) Yes ☐
- b) Yes, with some differences:
- c) No (please provide the definition):
- d) There is no definition of “environmental, including health effect” in the legislation ☐

Your comments: Depending on the particular implementation Act there is either a description of „environmental including health effects“ or a reference to Annex I of the SEA Directive is made. Both the description and the references cover the issues mentioned in Art. 2 para 7.

3. Is the definition of “the public” according to article 2, paragraph 8, in your legislation the same as in the Protocol? Please specify.

- a) Yes ☐
- b) Yes, with some differences: X
- c) No (please provide the definition):
- d) There is no definition of the public in the legislation

Your comments: Some implementation Acts provide explicit definitions in the light of Art.2 para 8 whereas others determine the public as „everybody“ (natural as well as legal persons) including NGOs.

4. Are there any conditions for non-governmental organizations to be able to take part in the assessment procedure? Please specify.

- a) Yes (please provide the conditions):
- b) No X

Your comments:

Article 3 – General provisions:

5. Provide legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (you can choose more than one option).

- a) Law on SEA (please indicate number/year/name): X
- b) SEA provisions are transposed into another law(s) (please specify): X
- c) Regulation (please indicate number/year/name): X
- d) Administrative (please indicate number/year/name):
- e) Other (please specify):

Your comments: In Austria the requirements of the SEA Protocol have been implemented by integrating them into existing Acts or by passing new Acts both at federal and provincial level (See also background information). A list of the implementation Acts can be found on the following website:

http://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Grundlagen/Gesetze/Bund/Liste_SUP_Umsetzung_2012.pdf

A translation is enclosed.

6. Indicate the specific legislation in your country, if any, that assures that the requirements of article 3, paragraphs 6 and 7, are met, and that these rights of the public are observed (you can choose more than one option).

- a) Constitution X
- b) Law on public participation (please indicate number/year/name):
- c) Law on SEA ☐
- d) Legislation which transposes the Protocol on SEA (please indicate number/year/name):
- e) Legislation which transposes the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (please indicate number/year/name):
- f) Other (please, specify):

Your comments: More detailed information can be found in the implementation report to the Aarhus Convention ECE/MP.PP/IR/2008/AUS.

Article 4 – Field of application

7. List the types of plans and programmes that require SEA in your legislation (art. 4, para. 2).

The plans and programmes which are subject to SEA can be found on the above mentioned website. For some of the listed pp a SEA has always to be carried out on a mandatory basis (e.g. net changes in the transport sector within federal responsibility). For others, depending on the content, a SEA has to be carried out either on a mandatory basis or when the pp is likely to have significant environmental effects (eg. certain spatial plans).

8. Explain how you define whether a plan or programme “set the framework for future development consent” (art. 4, para. 2).

No explicit definition is foreseen. The wording is interpreted as pp containing criteria or conditions which guide the way the consenting authority decides an application for development consent.

9. Explain how the terms “plans and programmes . . . which determine the use of small areas at local level” (art. 4, para. 4) are interpreted in your legislation.

Usually small scale plans and programmes at local level (e.g. certain local land use plans) are understood as pp according to Art. 4, para 4. In addition, some provinces provide explanations in guidances.

10. Explain how you identify in your legislation a “minor modification” to a plan or programme (art. 4, para. 4).

Usually the respective Act specifies the pp to which minor modifications are possible. In addition, for some of these identified pp specific regulations define different thresholds depending on the determination of land use. In addition, some provinces provide explanations in guidances.

Article 5 – Screening

11. How do you determine which other plans and programmes should be subject to a SEA according to article 4, paragraphs 3 and 4 (art. 5, para. 1)? Please specify.

- a) On a case-by-case basis ☐
- b) By specifying types of plans and programmes ☒
- c) By using a combination of (a) and (b) ☒
- d) Other (please specify):

Your comments: In most of the cases the legislation determines the types of pp according to Art. 4 para 3 and 4. In addition, criteria or thresholds in relation to certain determinations of land use were laid down in specific ordinances. Some of the ordinances contain also checklists, tables, etc.

12. Describe the procedures required in your legislation for consulting the environmental and health authorities (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 1). If different in screening, scoping and on the draft plans and programs and the environmental report, please specify.

According to the SEA Protocol the environmental authorities are involved in the relevant stages. The environmental authority is usually determined by the respective Act and often consists of a department within the respective provincial government assigned with specific environmental responsibilities. In addition, for some of the plan types the environmental ombudsman is also designated as an environmental authority as well as the Federal Ministry of Environment and/or the environmental agency.

13. Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation (art. 5, para. 3, and art. 6, para. 3)?

If yes, please specify (you can choose more than one option).

- a) By sending written comments to the competent authority ☒
- b) By sending written comments to the local municipality ☐
- c) By providing answers to a questionnaire ☐
- d) By taking part in a public hearing ☐
- e) There are no opportunities for public participation in screening and/or scoping ☒
- f) Other (please specify): Some provinces have foreseen the possibility to comment the outcome of the screening and scoping.

Your comments:

14. At what stage of the procedure for a plan or programme does your legislation require you to make the screening decision publicly available? What information do you provide in the screening decision (art. 5, para. 4)?

The screening decisions are made publicly available. Some of them are made available after the decision has been taken, others are made available in the planning report or planning documentation.

Article 6 – Scoping

15. How do you determine what is relevant information to be included in the environmental report in accordance with article 7, paragraph 2 (art. 6, para. 1)? Please specify (you can choose more than one option).

- a) By using annex IV ☒
- b) By using the comments from the concerned authorities ☒
- c) By using the comments from the public concerned, if it has been consulted ☐
- d) As determined by the competent authority based on its own expertise ☒
- e) By using other means (please specify):

Your comments: Different guidances are available to support the determination of the relevant information to be included in the environmental report. The guidances are listed on the above mentioned website.

Article 7 – Environmental report

16. How do you determine “reasonable alternatives” in the context of the environmental report (art. 7, para. 2)? Please specify.

- a) On a case-by-case basis ☒
- b) As defined in the national legislation (please specify):

Your comments:

17. How do you ensure sufficient quality of the reports? Please specify.

- a) The competent authority checks the information provided and ensures it includes all information required under annex IV as a minimum before making it available for comments ☒
- b) By using quality check lists ☐
- c) There are no specific procedures or mechanisms ☐
- d) Other (please specify): ☒

Your comments: Different guidances aim to ensure the quality of the reports. In addition, SEA examples are being collected. For this collection quality check lists are sent out to the SEA authorities. The collected SEAs are made public available via the website www.strategischeumweltpruefung.at

Article 8 – Public participation

18. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (you can choose more than one option).

- a) Through public notices ☒
- b) Through electronic media ☒
- c) Through other means (please specify):

Your comments:

19. How do you identify the public concerned (art. 8, para. 3)? Please specify (you can choose more than one option).

- a) Based on the geographical location of the plans and programmes ☐
- b) By making the information available to all public and letting them identify themselves as public concerned ☒
- c) By other means (please specify):
- d) Your comments:

20. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (you can choose more than one option).

- a) By sending comments to the relevant authority/focal point ☒
- b) By providing answers to a questionnaire ☐
- c) Orally ☐
- d) By taking part in a public hearing ☐
- e) Other (please specify):

Your comments:

21. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify.

- a) Yes (please provide the definition):
- b) No, the time frame is given by a number of days for each commenting period ☒
- c) No, it is defined case by case ☐
- d) Other (please, specify):

Your comments:

Article 10 – Transboundary consultations

22. As a Party of origin, when do you notify the affected Party (art. 10, para. 1)? Please specify.

- a) During scoping X
- b) When the draft plan or programme and the environmental report have been prepared X
- c) At other times (please specify):

Your comments: According to Art. 10 SEA Protocol the notification has to include the environmental report and the draft plan or programme. In some cases the possibly affected party is informed before the official notification is sent.

23. As a Party of origin, what information, do you include in the notification (art. 10, para. 2)? Please specify.

- a) The information required by article 10, paragraph 2 X
- b) The information required by article 10, paragraph 2, plus additional information (please specify):

Your comments: Usually the information required by Art. 10 para 2 is sent, sometimes, if available, additional information is included.

24. As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party (art. 10, para. 2)? Please specify.

- a) Yes (please, indicate how long):
- b) No X

Your comments:

25. If the affected Party has indicated that it wishes to enter into consultations, how are the detailed arrangements, including the time frame for consultations, agreed (art. 10, paras. 3 and 4)? Please specify.

- a) Following those of the Party of origin X
- b) Following those of the affected Party ☐
- c) Other (please specify):

Your comments: Austria follows the principle laid down in Art. 2 para 6 Espoo Convention, which determines that the public and authorities in the affected Parties shall be given equal opportunities provided to the public and authorities in the Party of origin.

Article 11 – Decision

26. When a plan or programme is adopted, explain how your country ensures that due account is taken of the (art. 11, para. 1).

- a) Conclusions of the environmental report X
- b) Mitigation measures X
- c) Comments received in accordance with articles 8 to 10 X

Your comments: The different legal implementations of the SEA Protocol oblige the authorities concerned to take the outcome of the SEA into account. The authority has to describe in a written summary how the SEA (environmental report, comments, mitigation measures, monitoring measures and the reasons for adopting the plan or programme in the light of the alternatives) has been taken into account.

27. How and when do you inform your own public and authorities (art. 11, para. 2)?
After the plan or programme has been adopted the public is informed by public notices and/or electronic media. Some provinces also foresee public events to inform the public.

28. How do you inform the public and authorities of the affected Party (art. 11, para. 2)?
Please specify.

- a) By informing the point of contact X
- b) By informing the contact person of the ministry responsible for SEA, who then follows the national procedure and informs his/her own authorities and public X
- c) By informing all the authorities involved in the assessment and letting them inform their own public ☐
- d) Other (please, specify):

Your comments: If the affected Party has nominated a contact person for the transboundary SEA, this contact person will be informed. It will be the Espoo Point of contact which receives the information if no contact person for transboundary SEA procedures has been nominated.

Article 12 – Monitoring

29. Describe the legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted under article 11 (art. 12, paras. 1 and 2).

The legal requirements for monitoring follow the requirements of Art. 12 SEA Protocol. Usually the planning authorities are responsible for the monitoring. Depending on the type of plan or programme some implementation Acts determine in which existing monitoring framework the monitoring has to be carried out. General guidance is available and is supposed to support the monitoring.

Article 13 – Policies and legislation

30. Do you have national legislation on the application of principles and elements of the Protocol as regards policies and legislation (art. 13, paras. 1–3)? Please specify.

- a) Yes (please specify which articles of the Protocol apply): X
- b) No ☐

Your comments: Federal laws, federal regulations, international agreements and certain projects of significant financial effects are subject to an environmental assessment.

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2010 -2012

In this part, please report on your country's practical experiences in applying the Protocol (and not your country's procedures, which were described in part one). The focus of this section should be on identifying good practices as well as difficulties encountered in applying the Protocol in practice. The goal is to enable Parties to share solutions. Please therefore provide appropriate examples highlighting application of the Protocol in your country and innovative approaches to improve its application.

31. Does your country object to the information on SEA procedures provided in this section being compiled and made available on the website of the Protocol? Please specify (indicate "yes" if you object).

- a) Yes ☐
- b) No ☒

DOMESTIC AND TRANSBOUNDARY IMPLEMENTATION IN THE PERIOD 2010–2012

32. Which competent authority/authorities are responsible for carrying out the SEA procedure in your country? Please specify.

- a) If they are different for different types of plans and programmes ☒
- b) If they are different at different levels (national, regional, local) ☒
- c) If they are different for domestic and transboundary procedures ☐
- d) Please name the responsible authority/authorities: *In Austria the authority preparing or conducting the pp is generally responsible for carrying out the SEA procedure.*

33. Does your SEA documentation always include a specific (sub)chapter on information on potential transboundary effects? Please specify.

- a) Yes ☐
- b) No, only when potential transboundary effects are identified ☒

CASES DURING THE PERIOD 2010-2012

34. If possible, provide the (approximate) number of domestic and transboundary SEA procedures initiated during the given period and list them by referring to the sectors in article 4, paragraph 2.

Transboundary SEAs: approx. 6 (land use, energy, transport, water)

National SEAs: federal level: 4 (waste, rural development, water, transport), provincial level: approx. 4 (transport), 2 (waste), 399 (local land use plans), 29 (provincial land use programmes/plans). The numbers are based on information provided by the SEA authorities.

EXPERIENCE WITH THE STRATEGIC IMPACT ASSESSMENT PROCEDURE IN 2010-2012

35. If your country has had practical experience in implementing the Protocol, has this supported the integration of environmental, including health, concerns into the development of plans and programmes? Have the conclusions included in the environmental report influenced the drafting and resulted in altering of a plan or programme? Please, provide examples, if you have this information.

The SEA helps to integrate environmental effects into the development of plans and programmes. In a few cases plans have not been developed or have been altered due to SEAs.

36. If your country has experienced substantial difficulties interpreting particular terms (or particular articles) in the Protocol, please indicate them. Does your country work together with other Parties to find solutions? If not, how does your country overcome the(se) problem(s)? Please, provide examples, if available.

Generally, the identification of plans and programmes which are covered by the field of application have created difficulties. The determination of contents and level of detail for the environmental report seems also to make difficulties. In Austria once a year the relevant SEA

authorities (SEA working group) meet to discuss problems and share solutions (see also answer to question 39).

37. Please share with other Parties your country's experience of applying the Protocol in practice, if such information is available. In response to each of the questions below, either provide one or two practical examples or describe your country's general experience. You might also include examples of lessons learned in order to help others. Please detail:

a) Your country's experience with domestic procedures:

- i. Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes?

There is some experience available, for example for waste management plans for the city of Vienna.

- ii. Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case to be published on the website of the Convention and its Protocol as a "case study fact sheet"?

Due to lack of resources additional information can't be provided but as mentioned before examples including documentation can be found in German on the website www.strategischeumweltpruefung.at

b) Your country's experience with transboundary procedures:

- i. Translation is not addressed in the Protocol. How has your country addressed the question of translation? What difficulties has your country experienced in relation to translation and interpretation, and what solutions has your country applied?

Party of origin: Usually Austria translates the draft pp and the environmental report or parts of the environmental report into the language of the affected Party.

Affected Party: Austria requests the documents in German; if it doesn't receive any translation Austria arranges for it itself. Sometimes Austria accepts documents in English.

- ii. What does your country usually translate as a Party of origin?

see above

- iii. Has your country carried out transboundary public participation according to article 10, paragraph 4? If so, how? Was your country the Party of origin or the affected Party? What has been your country's experience of the effectiveness of public participation? Has your country experienced

difficulties with the participation of its public or the public of another Party? (E.g., have there been complaints from the public about the procedure?)

Austria has experience both as Party of origin and affected Party. Sometimes it is difficult to give the Austrian public the same opportunities as the public in the Party of origin due to its time constraints. This refers especially to time frames for indicating whether to participate in the transboundary procedure or not and in relation to submitting comments.

- iv. Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes? If yes, describe such examples, if possible.

- v. Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case within a “case study fact sheet” to be published on the website of the Convention and its Protocol?

COOPERATION BETWEEN PARTIES IN 2010–2012

- 38. Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries?

Every transboundary SEA is a challenge due to different national legal and administrative systems and requires a cooperative attitude of the involved authorities and players.

EXPERIENCE REGARDING GUIDANCE IN 2010–2012

- 39. Are you aware of any use in your country of the Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment available online¹? If yes, please describe any experience with using this guidance document and how it might be improved or supplemented.

The Austrian authorities have been informed during the annual SEA working group which consists of members of SEA authorities from both the federal and provincial administration including the environmental ombudsmänner. The group meetings take place regularly in order to exchange SEA related information and experience. The Manual is also made available on the website www.strategischeumweltpruefung.at

There is no information available on the use of the Manual. Probably it has not been used too much since it seems to be quite extensive and doesn't take the Austrian planning situation into account.

- 40. Do you provide any assistance and guidance to the public? If yes, please specify.

The website www.strategischeumweltpruefung.at provides a chapter on public participation and contains also guidance information on participation of the public. The

¹ http://www.unece.org/env/eia/pubs/sea_manual.html

guidance is available in German and English

http://www.strategischeumweltpruefung.at/fileadmin/inhalte/sup/Methodik/Oeffentlichkeit/AB_Partizipation_1-6-engl.pdf

The guidance is intended for supporting the initiators of participation processes (authorities, project promoters, citizens, process facilitators, NGOs etc.) in order to successfully carrying out the participation process. Furthermore SEA guidances are available via the above mentioned website.

41. Do you support associations, organizations or other groups that promote the Protocol? If yes, please specify which and how.

42. Has your country had difficulties implementing the procedure defined in the Protocol?

For some authorities it was a challenge to integrate the SEA elements into the existing planning processes.

AWARENESS OF THE PROTOCOL

43. Does your country see a need to improve the application of the Protocol in your country and, if so, how does it intend to do so?

The requirements of the SEA Protocol (and SEA Directive) have been implemented within the Austrian legislation. The authorities concerned are fully aware of all the requirements. In the last years a more positive attitude towards SEA has developed. In order to enhance this development it is useful to show the positive effects and advantages of SEAs.

Some authorities recognize duplications with the EIA procedure regarding (local) spatial planning. Also difficulties are seen in the SEA regarding regional programmes which protect certain pieces of land from any further activities (e.g. green zones). Also SEAs for land use programmes which do not foresee the determination of land use but determine certain criteria seem to be difficult to assess in a useful way.

SUGGESTED IMPROVEMENTS TO THE REPORT

44. Please provide suggestions for how this report may be improved.

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