

**Communication to the Aarhus Convention Compliance Committee
filed by the association “NETT – Nein Ennstal-Transit-Trasse – Verein für
menschen- und umweltgerechte Verkehrspolitik”**

Statement by Austria

In the following the Republic of Austria would like to make a statement on the communication by the association NETT and the questions of the Aarhus Convention Compliance Committee as follows:

The communication by NETT was received by UNECE/Aarhus Secretariat on 15th July 2008 (ACCC/C/2008/26). In accordance with Chapter VI of the annex of Decision I/7 by the Meeting of the Parties to the Aarhus Convention, the Compliance Committee has declared the communication to be admissible. In a letter dated 26th September 2008 the Aarhus Secretariat sent the communication to Austria as a Party to the Convention requesting a response within five months, i.e. by 26th February 2009.

I. Regarding the Applicability of the Convention and EU Directives:

Austria became a Party to the Aarhus Convention in the year 2005. The ratification deed was filed with the Secretary General of the United Nations on 17th January 2005. At the end of the 90-day period set out in Art. 20 Par. 3, the Convention therefore entered into force in Austria on 17th April 2005. The Convention is a treaty under international law or state treaty as set out in Art. 50 of the Austrian Federal Constitution (*B-VG*). According to this article, state treaties of a nature that requires an amendment to laws must be passed by both the National Council and the Federal Council, if they regulate agendas which fall under the independent competency of the federal provinces.

The provisions resulting from state treaties do not come into force nationally until they have been approved by parliament (National Council and Federal Council) and have subsequently been ratified (by the Federal President) and promulgated in the Austrian Federal Law Gazette. The Aarhus Convention was promulgated on 10th June 2005 (Federal Law Gazette III No. 88/2005).

As can be seen from the parliamentary notes on the occasion of ratification of the Aarhus Convention, it is not open to direct applicability in domestic law. On the occasion of parliamentary approval by the National Council and the Federal Council a formal fulfilment proviso as set out in Art. 50 Par. 2 (3) *B-VG* was waived, however. With a fulfilment proviso the legal effects of the state treaty are suspended for the time being; it does not unfold any national legal effects until laws or regulations – fulfilling the state treaty – are passed.

A fulfilment proviso was not declared on the occasion of ratification of the Aarhus Convention in Austria, because the Aarhus Convention as a so-called “mixed treaty” also falls under the competence of the European Community (EC) in part or to a great

extent. The majority of provisions of the Aarhus Convention are implemented by EU Directives and therefore Austrian law had to be adapted to the provisions of the Convention by way of Community implementation.

State treaties or mixed conventions can be applicable directly, if they meet the requirement for direct applicability. Thereby it is prerequisite that the legislative treaty, taking its wording and the subject and type of treaty into account, contains a clear and unambiguous obligation; moreover its effectiveness must not be contingent on other conditions. A further enforcement act must not be required for its effectiveness either, and there must not be any further discretionary scope for its application (cf. ECJ judgment dated 29.1.2002 in case C-162/00 par. 19).

As can be seen from the general provisions of the Convention (Art. 3), the Parties must take the necessary (legislative and other) measures to fulfil the objectives of the Convention. A specific result obligation cannot be inferred from the Convention, so that it could be applied by an individual to support his plea in a national court without the adoption supplementary enforcement provisions being required inasmuch (cf. the justification of direct applicability, ECJ judgment of 12.4.2005 in case C-265/03 par. 23). The Parties must much rather create an appropriate legal framework for realisation of the rights to be granted by the Convention.

For these reasons the argument of the communicant that the provisions of the Convention were directly applicable, which is not substantiated in more detail, must be denied.

Moreover the communicant asserts – without further justification or concrete explanation – that the EU Directives adopted for implementation of the Convention were directly applicable.

Regarding direct applicability of EU Directives it must generally be said that these and individual provisions of the same may be directly applicable under certain circumstances, for instance in the case of default of a state on expiry of the implementation deadline or in the case of vertical legal disputes (e.g. between private parties or companies on the one hand and the state on the other hand).

Austria has fully implemented the EU Directives for implementation of the Convention (Directives 2003/4/EC, 2003/35/EC, 2001/42/EC) in national law both at the federal level and at provincial level. The Directive relevant to the concrete case on hand, Directive 2003/35/EC on public participation, was implemented by various declaratory laws at federal level and at provincial level (e.g. Environmental Impact Assessment Act 2000, Trade Act 1994, IPPC Plant and Seveso II Operations Act by the province). Therefore the Directive provisions are not directly applicable.

More detailed information about the implementation measures for the three pillars of the Aarhus Convention can be found in the Austrian implementation report of 14th December 2007.

II. Regarding the planning process to date and accompanying processes:

1. Background

The province of Styria already started preliminary studies for an express road in the Enns valley ("S8") in the year 1971.

Due to the unacceptable traffic volume and the safety risk for the population caused by the Enns valley road passing through the middle of towns and villages, the communities passed resolutions for road construction, the population set up road blocks to promote the implementation of a quick traffic project, and joint ventures for its implementation were established.

Ultimately voices were also raised against an express road project in the Enns valley.

The province of Styria examined further route variants.

The express road project was reduced to a federal road project, and the variant "Ennsnahe Trasse" (route along the river Enns) was born. Citizens' action groups against it were established.

The positions of the proponents and opponents became entrenched, and there were also acts of vandalism.

In October 1993 a public opinion poll was held in the Enns valley, in which 71% voted in favour of the route along the Enns.

Ultimately, only a small-scale bypass ("Wanne Stainach") was built for the town of Stainach, the community most badly affected by traffic.

2. Restart of the planning process

"Basler Study" and parties involved in the new road project:

In July 2001 the province of Styria commissioned the firm Basler & Partner to conduct a corridor study ("**Basler Study**").

Based on the Basler Study, a new planning process was started for the region from Pürgg – Trautenfels in the west to the A9 Phyrn motorway junction (Selzthal interchange) in the east, and quite generally for the entire width of the Enns valley.

From the very beginning it was deliberately an open process with broad participation of the general public. Thereby joint rules for cooperation, a general processing schedule and the composition of the parties involved in the process were defined.

Planning process:

Parties involved in process:

- Project proponent (province of Styria)

- Planning team (traffic/engineering and zoning/environment)
- Community forums

Note: The communities were asked to send a representative group of delegates to the community forum.

In the community forums the latest processing status was always presented, discussed and coordinated with the representatives.

- Liezen township
- Weißenbach municipality
- Wörschach municipality
- Lassing municipality
- Aigen municipality
- Stainach municipality
- Irdning municipality
- Pürgg-Trautenfels municipality
- Provincial forum (various departments of the provincial government)
- Regional forums (information and discussion platform for politicians and Chamber representatives)
- “**Round Table**” as forum for **NGOs**, e.g. **NETT**, **LIEB**, **Vogelwarte**, **Birdlife**, **WWF**

Note: the NGOs were provided with the same presentation materials as the community forums, partly with even more detailed information (see Annex 6).

- Neighbouring communities (above all the town of Schladming)

In order to develop a realisable road variant, more than 100 km of route variants were examined and assessed in an increasingly refined planning scale.

In the route selection process to date, non-realisable variants (e.g. because official permits could obviously not be obtained) were first eliminated. Subsections of the variants classified as realisable were compared with each other in pairs, whereby the better variant in each pair was pursued further. As a result of the constant reduction of route variants, two route variants were developed that appeared to be realisable. These two route variants were then examined for their regional and environmental impacts and their traffic effectiveness.

All interim results were discussed with the forums listed above, proposals were taken into account where feasible, or solutions were developed jointly in workshops.

The selection process so far has only created the basis with which the actual planning process can be started. The initiation of official procedures for the road is optimistically expected in 2012/2013.

Excerpt from press report of May 2005

Enns valley: The search for route variants has started
Communities are invited to submit proposals by the end of June

The Enns valley traffic model project is entering into a new phase: After surveying the status quo and defining possible corridors in some 14 months of planning, the project team is now starting to develop possible routes in cooperation with the affected communities.

The Enns valley traffic model project was started in the spring of 2004 with the aim of finding a solution for the traffic problems between the Selzthal interchange and the Trautenfels interchange.

On 9th May the community forum, an assembly of mayors and council members from the neighbouring communities and the Enns valley traffic model planning team, met in Liezen. Thereby the latest data regarding the traffic situation in the Enns valley was presented and possible corridors in which an improved road connection would be possible technically were presented to the participants. The community representatives are now called upon to submit proposals for possible routes by the end of June. Until autumn these proposals will be studied in detail by the planners and included in the later selection process.

Summary of Planning Process to Date and Status Quo:

In Annex 1 Austria presents a chronology of the planning processes and the measures taken to participate the general public in these processes.

Regional Traffic Concept (RTC):

In parallel to the relevant planning process, a **Regional Traffic Concept (RTC)** was developed for the district Liezen.

Regional traffic concepts are being developed for the whole of Styria. These involve intermodal traffic surveys for specific regions that are developed in collaboration with the regions based on generalised procedures.

Thereby a functional assessment of the traffic network for the entire region is made based on the parameters “basic provision, accessibility, safety, availability, deliberate promotion of non-motorised and public transport, cooperation between individual traffic and public transport, and funding based on the principle of causation”. This results in categorisations for the road network.

Depending on the importance of the road, various demands are made e.g. with regard to the operating speeds to be achieved, number and design of interchanges, etc.

Based on the result of the RTC, priorities are defined and short- and medium-term action plans are developed for the areas road construction, public transport, traffic safety and bicycle traffic.

This guarantees a high level of transparency right from the start.

Essentially, the aim is therefore to map the traffic-relevant factors of influence within a region and their development potential, as well as their interrelations.

When developing these regional programmes, a “planning council” is involved as a consultant on a voluntary basis. This council is constituted on the basis of the Styrian Regional Planning Act (for more see III. ad question 2 below).

A wide range of proposed solutions was discussed in the Regional Traffic Concept Liezen.

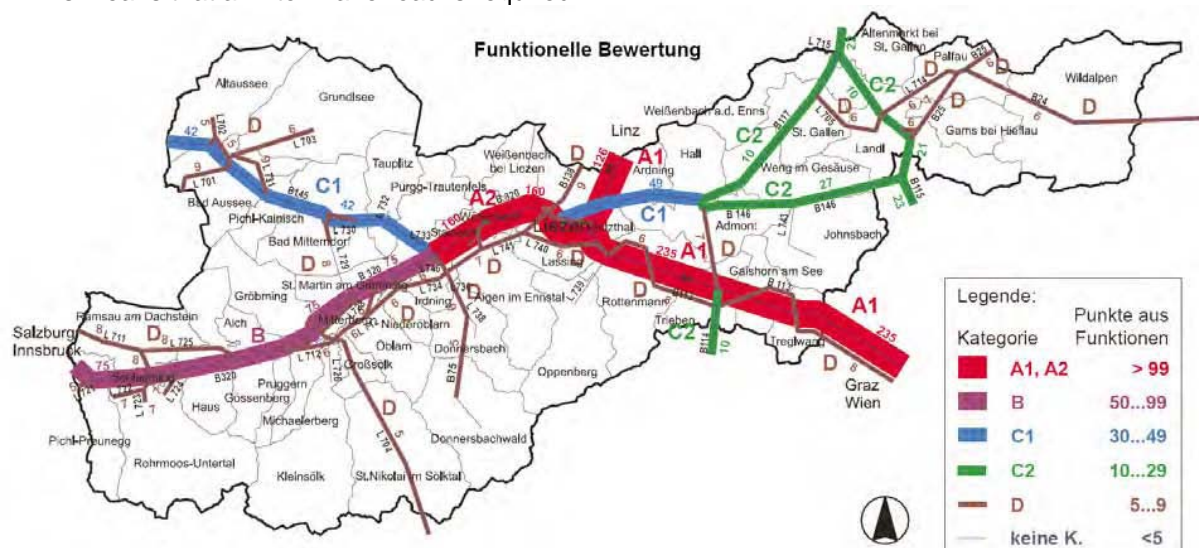
Based on the function of the road network in the district Liezen, a functional concept in two sections resulted for the B320:

- Mandling – Trautenfels: *Category “B”*

Agricultural and bicycle traffic is to be separated from the remaining motorised traffic on parallel paths.

- Trautenfels – Liezen – A9: *Category “A2”*

This means that a 2- to 4-lane road is required.



Functional assessment

Key:

Category	Points from functions
----------	-----------------------

no cat.

Currently the route “Variant Middle” is classified as realisable and having the least impact. The first concrete study (“pilot project”) has meanwhile been commissioned for this variant.

Moreover the pilot studies for a strategic traffic assessment have recently been started; planning works for a project within the meaning of the Aarhus Convention (environmental impact assessment) can only be commissioned thereafter.

Attention is once more drawn explicitly to the fact that this route selection is only preliminary. It merely serves as a basis for a first planning contract for the decision-making process within the meaning of Art. 6 of the Convention.

However, the planning process is still only in the phase of defining the decision-making bases and not already in the stage of a decision-making process. Therefore there is no decision-making process on the authorisation of a planned activity as set out in Art. 6 of the Convention yet.

In the course of the actual project works and in-depth studies for the official procedures it may also turn out that this variant has to be rejected again.

The initiation of an environmental impact assessment is planned for the years 2012/2013.

Basically all variants will be planned in such a way that they can be built both as 2-lane and as 4-lane roads.

The examination of a 4-lane results from the principle of prudence regarding feasibility and from the fact that the worst case must be applied when assessing possible environmental impacts, however.

III. Regarding the individual questions:

Question 1: Which law or laws, relevant to the present complaint, implement Articles 6 and 9 of the Aarhus Convention in Austria and at the level of the Province of Styria?

The 2nd pillar of the Convention (Art. 6, 7, 8 and 9 Par. 2) has essentially been implemented and applied in Austria on the basis of EU Directives that have already

come into force. Thereby the Directives were implemented both at federal level and at provincial level.

In order to comply with the provisions on public participation of the Aarhus Convention, the EIA Directive 85/337/EEC and the IPPC Directive 91/61/EC were adapted at the European level by way of Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment. The same Directive was used to implement the Aarhus Convention also for the plans and programmes (listed in Annex I to Directive 2003/35/EC) not yet covered by Directive 2001/42/EC on Strategic Environmental Assessment (SEA Directive) adopted only 2 years earlier.

Austria transposed the EIA Directive 85/337/EEC (amended by Directives 97/11/EC and 2003/35/EC), the UNECE Espoo Convention and the Aarhus Convention at project level into national law in the Federal Act on Environmental Impact Assessment 2000 (Federal Law Gazette I No. 697/1993, last amended by Federal Law Gazette I No. 2/2008).

Annex I to the Convention, to which the provisions set forth under Art. 6 refer, includes projects which are covered by the EIA and IPPC Directives. Further adaptations to the Aarhus Convention were made at a federal level in the area of industrial installations law by way of the 2005 Amendment to the Trade and Industry Act (Federal Law Gazette I No. 85/2005) with regard to the 1994 Trade and Industry Act, the Air Pollution Act for Steam Boilers and the Mineral Resources Act, the Amendment to the EIA Act (Federal Law Gazette I No. 153/2004), the Amendment to the Waste Management Act (Federal Law Gazette I No. 155/2004), by way of the Agricultural Amendment Act concerning the Federal Act on Forest and Pastures Usage Rights (Federal Law Gazette I No. 87/2005) and the Immission Control Act in the framework of the 2005 Act adapting the Laws on Environmental Protection (Federal Law Gazette I No. 34/2006).

In the case of the project on hand, Art. 9 Par. 2 of the Convention is implemented by the EIA Act 2000.

The EIA Act 2000 contains extensive regulations for protection against harmful environmental impacts and for participation of the general public in the process. In accordance with § 19 Para. 7 of the EIA Act 2000, those environmental organisations that have officially been recognised are granted party rights, if the planned project is within the federal provinces for which the environmental organisation has been recognised. § 19 Para. 6 of the EIA Act 2000 contains four prerequisites for an environmental organisation to be recognised: The environmental organisation must be established as an association or foundation; its primary objective must be the protection of the environment; it must be non-profit oriented; it must have existed and pursued the primary objective of environmental protection for at least three years before submitting the application.

The association “NETT – Nein Ennsnahe TransitTrasse” was recognised by notification by the Federal Ministry of Agriculture, Forestry, Environment and Water Management dated 10th July 2007, file ref.: BMLFUW-UW.1.4.2/0027-V/1/2007, as an environmental organisation for the provinces Styria, Lower Austria, Upper Austria, Salzburg, Burgenland and Carinthia. This results in the following legal status for the

association NETT in any environmental impact assessment procedures concerning the Enns valley road:

The Enns valley road in question is a provincial road located in Styria, as only such motorways and express roads that have been included in Schedules 1 and 2 of the Federal Roads Act 1971, Federal Law Gazette No. 286/1971, are classified as federal roads. The Enns valley road is not included in these schedules; with the Federal Roads Transfer Act, Federal Law Gazette I No. 50/2002, all other (former federal) roads were transferred to the provinces and thus became provincial roads.

For such a road project, an approval procedure in accordance with Section 2 of the EIA Act 2000 as applicable to provincial roads in conjunction with Annex 1 (9) to the EIA Act 2000 must be performed. As the authority of first instance the Styrian Provincial Government will be responsible for this procedure. However, the approval application necessary for the performance of such a procedure has not been submitted to the Styrian Provincial Government yet.

The road project in question is still in the planning phase; therefore a decision-making process within the meaning of Art. 6 of the Convention has not been started yet.

The scope of rights of a recognised environmental organisation in an permit procedure in accordance with Section 2 of the 2000 EIA Act 2000 is regulated in § 19 Para. 10 of the 2000 EIA Act 2000. According to this provision, recognised environmental organisations – such as the association NETT – have *locus standi* and are entitled to claim the observance of environmental provisions in the procedure. As a party it may participate in the procedure and safeguard the observance of objective environmental law as well as file complaints. The association NETT as a recognised environmental organisation would therefore be entitled, for example, to file an appeal against a first-instance permit notification issued by the Styrian Provincial Government with the Environmental Senate (*Umweltsenat*). However, it must be noted that it is prerequisite for the above party rights to be exercised that the association NETT files its objections within good time during the period for public inspection.

Questions 2, 4 and 5:

Question 2: What is the legal effect of decisions taken by regional planning committees under Austrian law, and in particular the effect of the decision related to the four-lane route taken by the regional planning committee on 25 April 2005?

Question 4: What is the legal relevance of the fact that the refusal to allow NETT to participate in the regional planning commission was communicated by letter instead of by official notification?

Question 5: In connection with the issue of the four-lane-route, the communicant alleges that Article 9 Para. 2 of the Convention has been violated due to lack of proper appeal possibilities. What possibilities were available to NETT to appeal the relevant decisions regarding the procedure (the decision not to allow NETT to participate in the regional planning commission referred to on page 8 of the English text of the communication) and substance (the decision of the Steiermärkische Landesregierung of April 2008)?

As the communicant correctly states, the Planning Council is a body that is legally based on the Styrian Regional Planning Act. The Planning Council is a body that **advises** the Provincial Government in regional planning issues (development plans, zoning plans) based on resolutions passed internally.

The resolutions passed by the Planning Council do not have any legal impacts nationally, they merely express the opinion of the Planning Council as a stakeholder and may be taken into account by the Provincial Government when it passes its resolutions. However, the Provincial Government is also free to decide differently.

The Planning Council is therefore merely established as an advisory body that does not make any decisions in the matter or on the admission of specific activities. The decisions of advisory bodies are not covered by the Aarhus Convention. Nor does the Convention indicate whether and by which institutions the domestic decision-making bodies should be advised.

The resolution by the Regional Planning Council of 25th April 2005 specified by the communicant relates to the **drawing up of the Regional Traffic Concept (RTC)** and not to the planning process for the B320. Regarding the Liezen Regional Traffic Concept, reference is made to the relevant notes in Annex 1.

The Planning Council was involved in the drawing up of the general traffic concept for the Liezen region (RTC) on a voluntary basis in analogue application of the Styrian Regional Planning Act.

On 25th April 2005 the Regional Planning Council approved the functional evaluation of the road network set out in the draft Regional Traffic Concept.

The actual resolution on the Liezen Regional Traffic Concept was passed by the Regional Planning Council on 19th October 2005. Legal impacts were not associated with this resolution. It merely expressed the opinion of the Planning Council for the region.

The Liezen Regional Traffic Concept – like all the other Regional Traffic Concepts issued for the 10 districts in Styria – was adopted by the Provincial Government.

It must be repeated that the Regional Planning Council is an **advisory body** established on the basis of the Styrian Regional Planning Act for regional planning issues and not specifically for traffic issues.

In accordance with § 14 Para. 2 of the Styrian Regional Planning Act, the members of the Regional Planning Council are:

- the Provincial Governor as chairman,
- as well as nine members of the parties represented in the provincial parliament (based on proportional representation (d'Hondt method),

whereby at least half of the representatives from each party must be mayors in office or town council members),

- two representatives from the Provincial Chamber of Agriculture and Forestry,
- one representative each from the Chamber of Labour for Styria,
- the Styrian Chamber of Labour in Agriculture and Forestry, and
- the Chamber of Engineers for Styria and Carinthia,
- two representatives each from the Styrian Municipality Federation and
- the Township Federation, Styrian Group,
- the mayor of the City of Graz,
- one representative from the Styrian universities,
- one representative each from the Roman Catholic Church and the Protestant Church (Lutheran and Reformed), as well as
- one representative from the Labour Market Administration.

The members are appointed by the Provincial Government. This provision does not grant any right to application.

Other persons than those named in this law provision may be consulted, if the Planning Council so resolves. There is no right to recourse in the case of non-inclusion, as this is merely an advisory body as already explained, and not a decision-making body.

The Styrian Regional Planning Act does not grant the Planning Council the right to exercise official functions and thus to issue notifications. Thus the Planning Council itself can only issue letters regarding any applications.

However, the association NETT has the right at any time to initiate and achieve an amendment to the Styrian Regional Planning Act and thus an amendment to the composition of the Planning Council within the scope of a petition for referendum in accordance with the Styrian Citizens' Rights Act (Provincial Law Gazette No. 87/1986).

For these reasons the communicant's argumentation whether a letter or a notification was issued is irrelevant, as there is no legal right to inclusion in an advisory body.

Inasmuch as the communicant speaks of a notification in the communication, he is entitled to the complaint options provided for by domestic law, including an appeal to the supreme courts (Administrative Court and Constitutional Court).

From the chronology presented in Annex 1 it is clear that no public participation process in accordance with the Convention has taken place yet regarding the road construction project, and that the association NETT had plenty of opportunity to participate in the planning process. The communicant had the possibility to participate in the planning process within the framework of the "Round Table".

Thereby it must be noted that the association NETT rejected participation in the planning process of its own volition and instead is now demanding consideration in another body, namely the Planning Council. The fact that the association NETT

rejected further integration in the opinion-forming process is not mentioned by the communicant in the communication, however.

In this respect Annex 2 contains an extract from the minutes of the 4th Round Table, in which the withdrawal of the organisations “LIEB” and “NETT” is recorded, as in their opinion their demands were not fulfilled.

Annex 2 also contains an accompanying letter from the Planning Department of the Styrian Provincial Government to the communicant (dated 7th March 2006) on the transmitted minutes of meeting, in which the Province reacted to this termination of the dialogue. This letter notes that the catalogue of demands presented by the citizens' action groups was not in compliance with the rules that had been defined by the bodies (the “Round Table”) at the beginning of the Planning Process.

On 1st April 2006 an article was published in the local section of “Kleine Zeitung”, in which the withdrawal of NETT from the Round Table is also reported. An excerpt from this article is enclosed in Annex 3.

Question 3: What was the scope of discretion which the Steiermärkische Landesregierung had to consider alternative options to the four-lane-route and to allow for public participation in April 2008?

Essentially the Styrian Provincial Government has the free decision-making right granted within the scope of the Provincial Constitution.

Therefore the Provincial Government also had the option of rejecting the motions submitted to it in all matters concerning the planning process for the B320 Enns valley federal road.

In the following the two relevant government motions are presented:

Government motion dated 22nd January 2004, adopted on 9th February 2004 (Annex 4):

MOTION

may the Styrian Provincial Government pass the following resolution:

Technical Department 18A is commissioned to conduct a route-finding process that should result in a sustainable traffic solution based on the current traffic counts.

With the participation of the region and taking the standards of environmental protection into account, route variants shall be drawn up and analysed in accordance with the relevant evaluation criteria. A route recommendation shall be presented. On this basis, further detailed planning can be carried out. Depending on the legal procedures, realisation can be started as of 2008. This must also be taken into account in budget planning. Partial measures can be realised at an earlier time in coordination with the route variant.

Government motion dated 31st March 2008, adopted on 21st April 2008 with the amendment that a planning variant must be found that will be supported by the region (Annex 5):

MOTION

may the Styrian Provincial Government pass the following resolution:

- 1.) The presented planning process and the result of the route selection process are taken note of with approval.
- 2.) The member of the Provincial Government responsible for transport, Mag^a. Kristina Edlinger - Ploder, is authorised to negotiate a funding option with ASFINAG and with BMVIT. The objective of the negotiations is to prepare and conclude a contract with regard to funding and implementation of the B320 in the above-named section. Provisions must be made in future budgets for the costs of financing resulting therefrom.
- 3.) Technical Department 18A, General Transport and Projecting, is authorised – in coordination with ASFINAG and BMVIT – to initiate and conduct the necessary procedures, such as e.g. the strategic traffic assessment.
- 4.) The presented project is an infrastructure project of significant provincial interest. The members of the Provincial Government declare that they will support the project in the best possible manner within the scope of their responsibility. The further procedure is taken note of and supported.

This clearly shows that the Provincial Government already

- passed resolution on public participation at the start of the new planning process,
- the necessary approval procedures were not initiated yet,
- an exclusively 4-lane solution was not subject of the Government resolution.

Question 6: Have any decisions on the 7.5 ton ban for lorries been taken and can such decisions be appealed?

With regard to the concrete question it must be said that bans for trucks with a total weight of more than 7.5t have not been issued yet for the B320 Enns valley federal road.

Art. 6 of the Aarhus Convention limits the public participation in decision-making procedures to certain activities that are listed explicitly in Annex I to the same. In the relevant section of Annex I regarding transport, for instance, only the (further) construction of various traffic routes is listed, especially as these must be of a certain magnitude. Traffic restrictions, such as bans or weight restrictions, are not listed in the Annex and are therefore not covered by Annex I as well as Art. 6 and 9 Para. 2 of the Convention.

As far as the relevant public participation during preparation of executive regulations (Art. 8) is concerned, there is merely an obligation to provide information and to ensure the right to comment on draft regulations already drawn up.

Generally it must be noted the issuance of a traffic ban regulation falls under the provisions of the Austrian Highway Code. The Highway Code contains the relevant provision in section C. "General Traffic Regulation and Safety".

Such a regulation is thus a measure to regulate traffic or the safety of traffic.

With regard to the issuance of regulations, the issuing authority is in principle obliged to carry out an advance examination procedure under domestic law. Statutory participation rights are provided for in specific cases (cf. § 94 f of the Highway Code) that relate to authorities or organisations, but beyond that there are no formal requirements in this area whatsoever.

In accordance with the established practice of the Constitutional Court, a hearing procedure must also be carried out peremptorily prior to a regulation being issued. If this is not done, the regulation is unlawful. However, there are no regulations as to how the procedure must be conducted. Usually the Chambers and other stakeholders are invited to participate.

Ultimately, the manner in which the authority conducts the examination procedure will also depend on the action to be taken. In most cases obtaining an expert opinion will be a suitable measure to provide justification for a specific action (e.g. speed limit). In accordance with the Highway Code the procedure for the issuance of a regulation must be carried out *ex officio*.

In the case of the procedure on hand, the issuance of such a ban regulation for the Enns valley was suggested by parts of the population. The province of Styria took up this suggestion and commissioned a traffic expertise on whether the prerequisites for a traffic ban were met.

Once the expertise was available, it was presented and discussed in public by the competent District Administration Liezen on 11th April 2007. This expertise presentation was attended not only by the communities of the Enns valley and representatives from the neighbouring districts and provinces, but also by several representatives of the association NETT and the press.

Currently further expert opinions on the possible imposition of a 7.5 ton weight restriction for trucks are being obtained, which will then also be presented to the public.

The province of Styria will publish a relevant draft regulation on the web portal of the province.

From this it follows that the standards set out in Art. 7 and 8 of the Convention were or are being met by informing the public about the expert decision-making bases prior to issuing a regulation, and by granting the public an opportunity to express its opinion.