

SEA in Binding Land Use Plan Procedures with Special Focus on Transboundary Consultation

Prof. Dr. Eike Albrecht
Centre for Law and Administrative
Sciences
BTU Cottbus
albrecht@tu-cottbus.de





SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Legal Situation

- Introduction of the provisions on the SEA in Binding Land Use Plans Procedures in Germany with the Act to Adjust the Building Code and other Acts to European Law from 24. June 2004 (Fed. Law Gazette I, p. 1359)
- Entry into Force: 20. July 2004
- New Announcement of the German Building Code from 23. September 2004 (Fed. Law Gazette I, p. 2414)



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Contents:

- General obligation to carry through an SEA for all Binding Land Use Plans
- Exceptions only for very special cases (for example: post Land Use Planning)
 - ➔ No “Screening”-Step in German Building Law
- Comparison to former law:
 - Separate environmental report
 - Monitoring measures
 - Transboundary consultation and information of the public and authorities



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Questionnaire:

Start: May 2005

End: July 2005

Topics:

- SEA
- Planning of Construction and Deconstruction of Windmills/ Windfarms
- Amended Procedure for the Division of Land

Participants in Brandenburg:

59 participating municipalities (from 207 in total)



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Main subject matters in respect to the questionnaire on SEA:

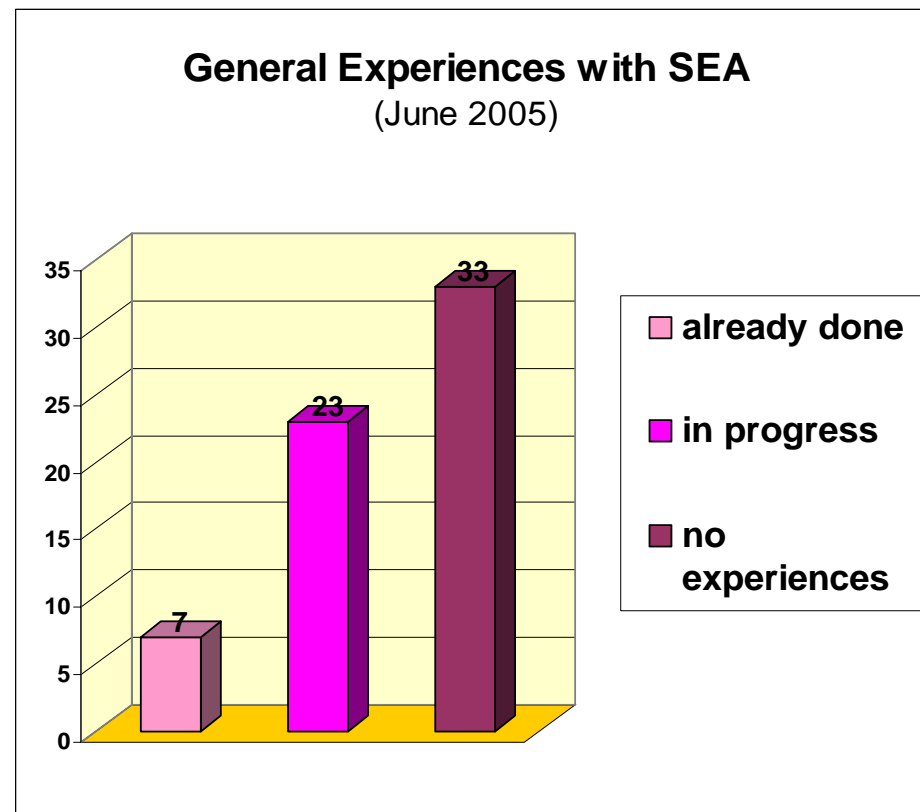
- Experiences with SEA in general
- Consideration of the SEA in the decision-making process
- Scoping
- Consultation of the public and authorities
- Transboundary consultations
- Monitoring



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Experiences with SEA in general:

- Only 7 municipalities already have carried through an SEA (in total 19 SEA)
- 23 municipalities (inclusive 4 of the above mentioned) are actually carrying through SEA procedures (in total 38 SEA)
 - ➔ 26 municipalities have experiences with SEA
- 33 municipalities do not have any experience with SEA
 - Reasons: No planning procedures since July 2004
 - Reserve decisions in respect to binding land use plans of the municipal assembly (as the competent body in German communal law) to avoid SEA



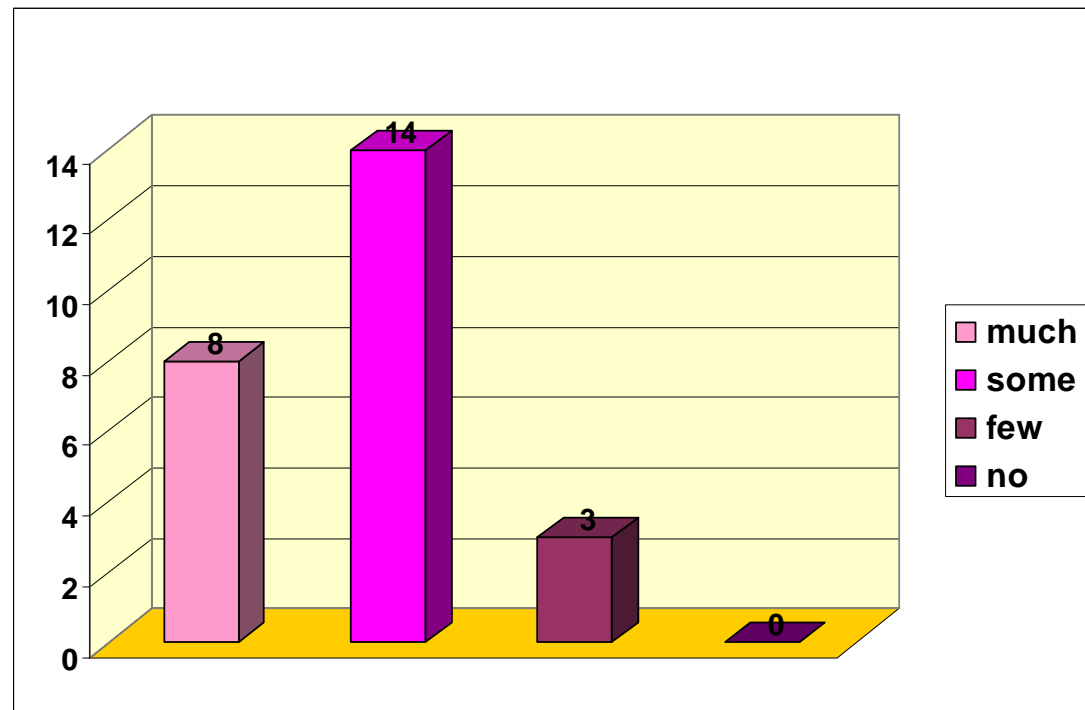


SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Additional expenditure for SEA (in comparison to former law)*

- Much : 8
- Some: 14
- Few: 3
- No : 0
- Reasons:
 - time consumption
 - financial effort

* From 26 municipalities which have carried through an SEA, 1 did not answer the question

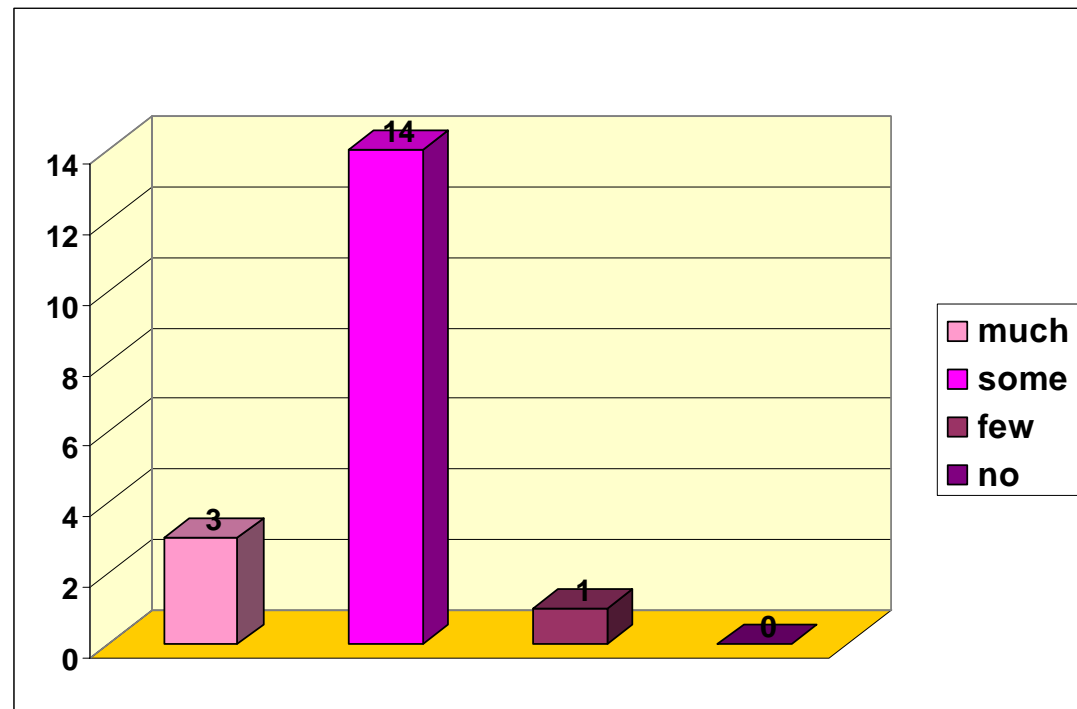




SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Additional expenditure for SEA (in comparison to former law) expected*

- Much : 3
- Some: 14
- Few: 1
- No : 0
- Reasons:
 - time consumption
 - financial effort

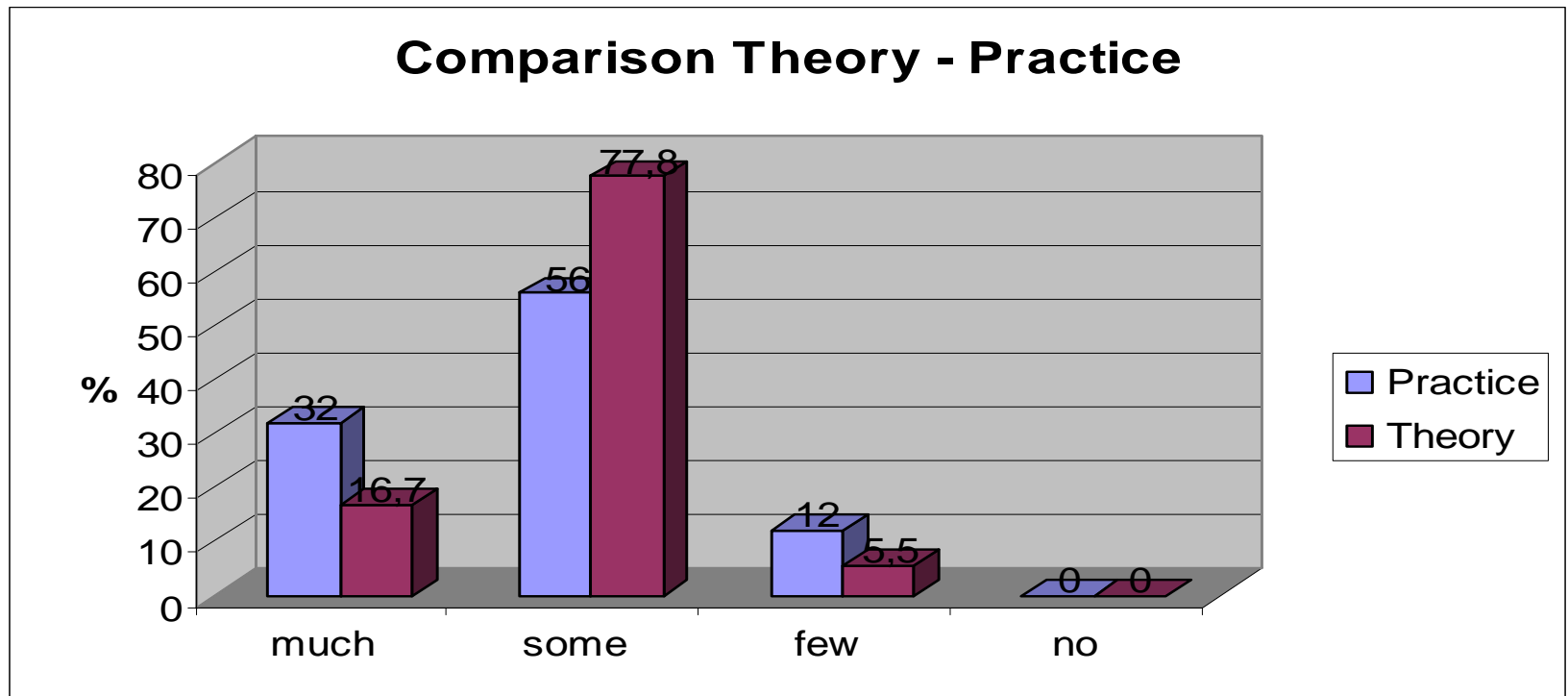


* From 18 municipalities which already have not carried through an SEA,



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Comparison between theory and practice*

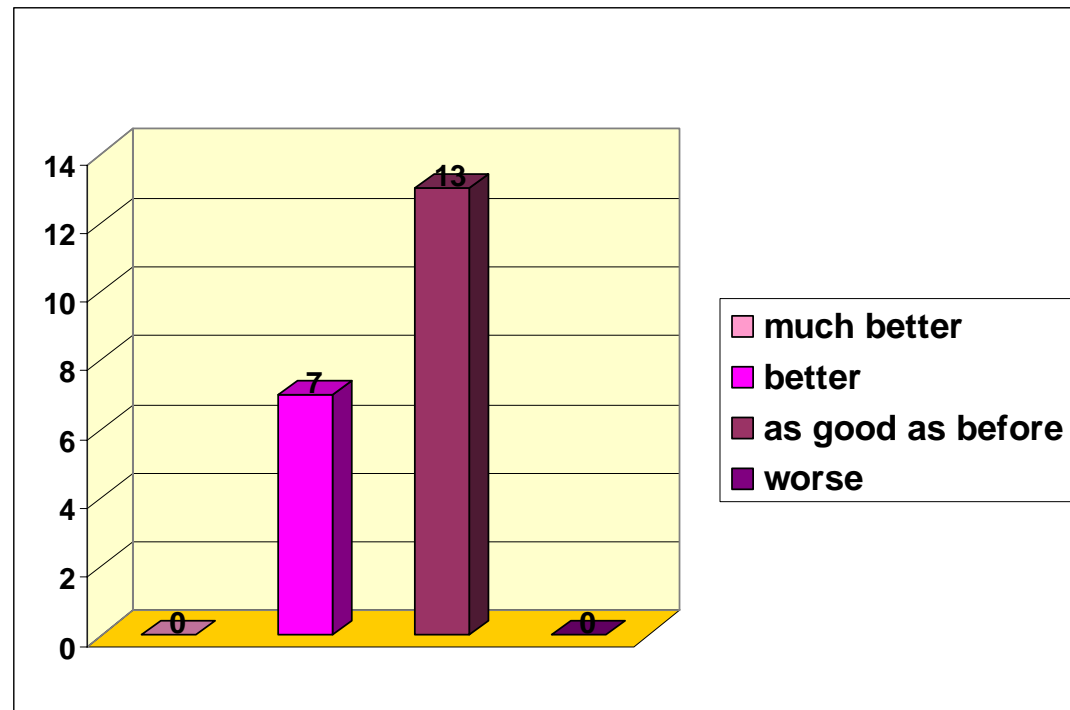




SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Does SEA lead to a better decision (in comparison to former law)*

- Much better: 0
- Better: 7
- As good as before: 13
- Worse: 0



* From 26 municipalities which already have carried through an SEA, 20 answered

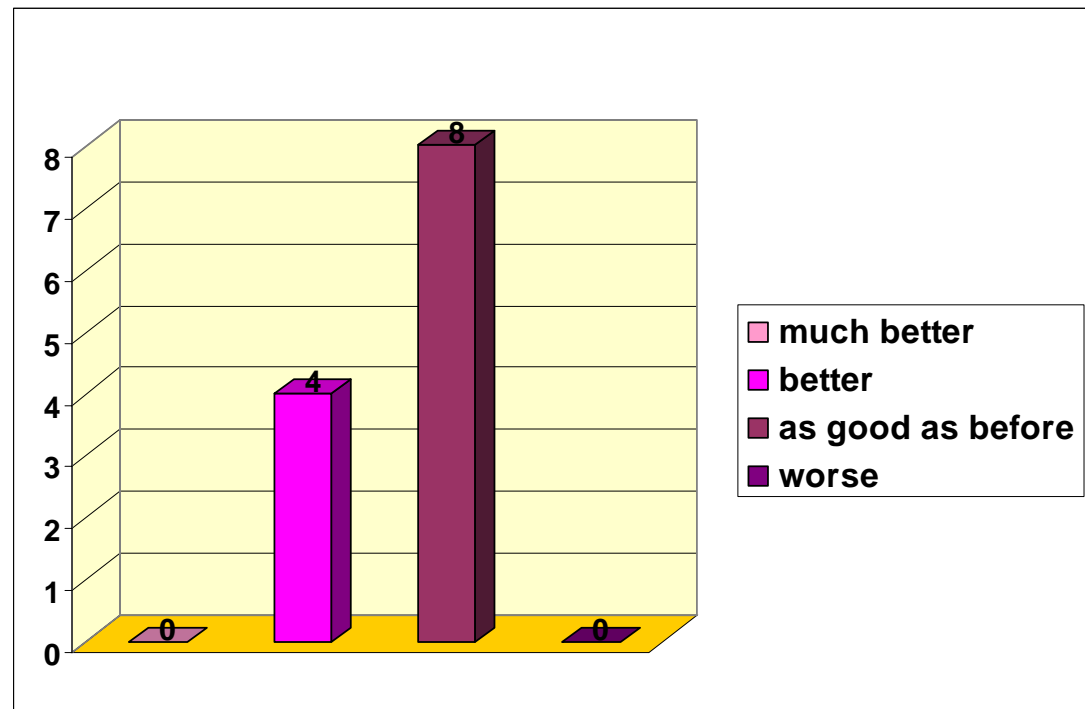


SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Does SEA lead to a better decision (in comparison to former law) expected*

- Much better: 0
- Better: 4
- As good as before: 8
- Worse: 0

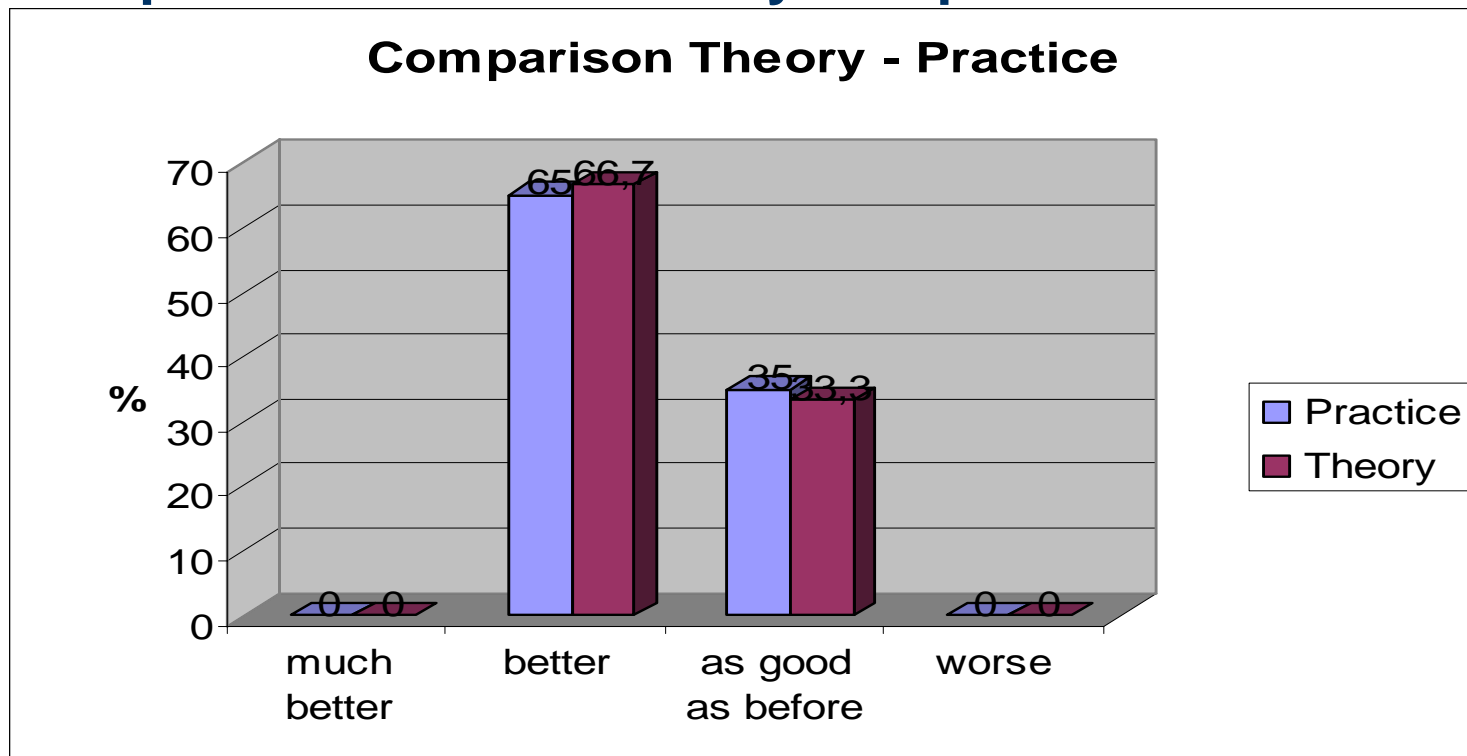
* From 12 municipalities which already have not carried through an SEA





SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Comparison between theory and practice*





SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Additional Expenditure – Results:

- There is a significant additional expenditure by carrying through an SEA
- Additional expenditure should not be underestimated
- Additional expenditure is justified, if the decision is better; but: only every third municipality expects/recognises a better decision
- Reasons for better decisions:
 - More extensive determining
 - Better acceptance of the consideration process
 - Consideration of environmental matters of the citizens
 - Early consideration of environmental matters in the planning procedure



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Consultation of the Public:

- Improvement of the process of public participation is main target of European Environmental Law in general (→ Aarhus Convention, Espoo Convention and transposing Directives)
- Also main target of the SEA Directive (recital 15 ff. and Art. 6, 7, 9)

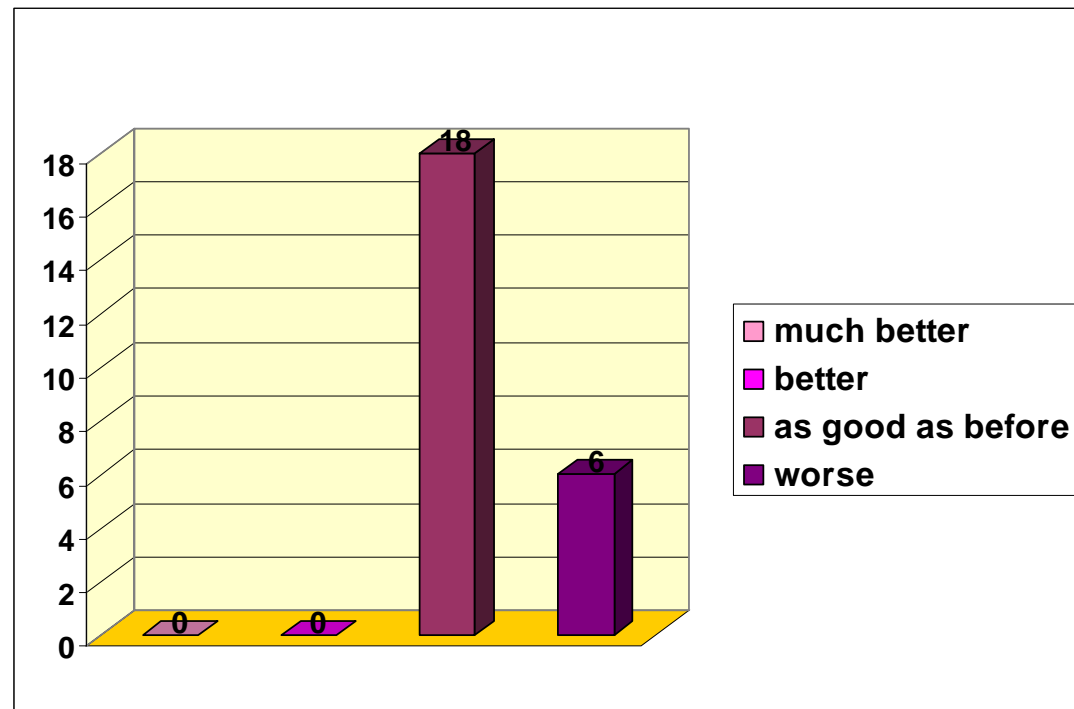


SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Public Participation (in comparison to former law)*

- Much better: 0
- Better: 0
- As good as before: 18
- Worse: 6

* From 26 municipalities which have carried through an SEA, 2 did not answer the question



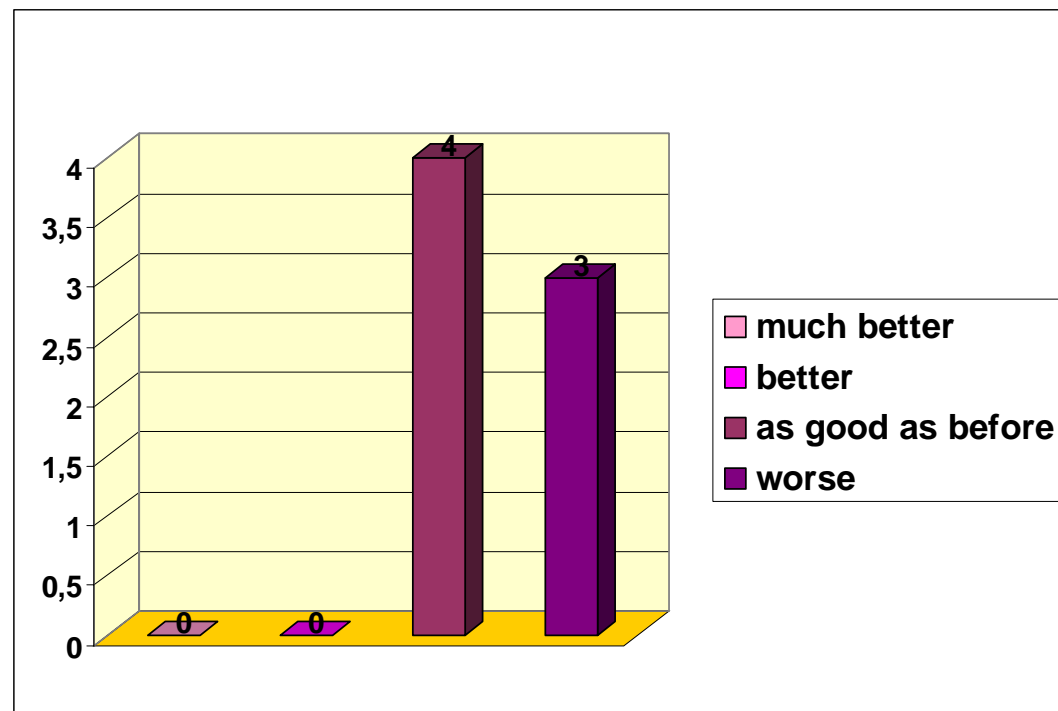


SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Public Participation (in comparison to former law) expected*

- Much better: 0
- Better: 0
- As good as before: 4
- Worse: 3

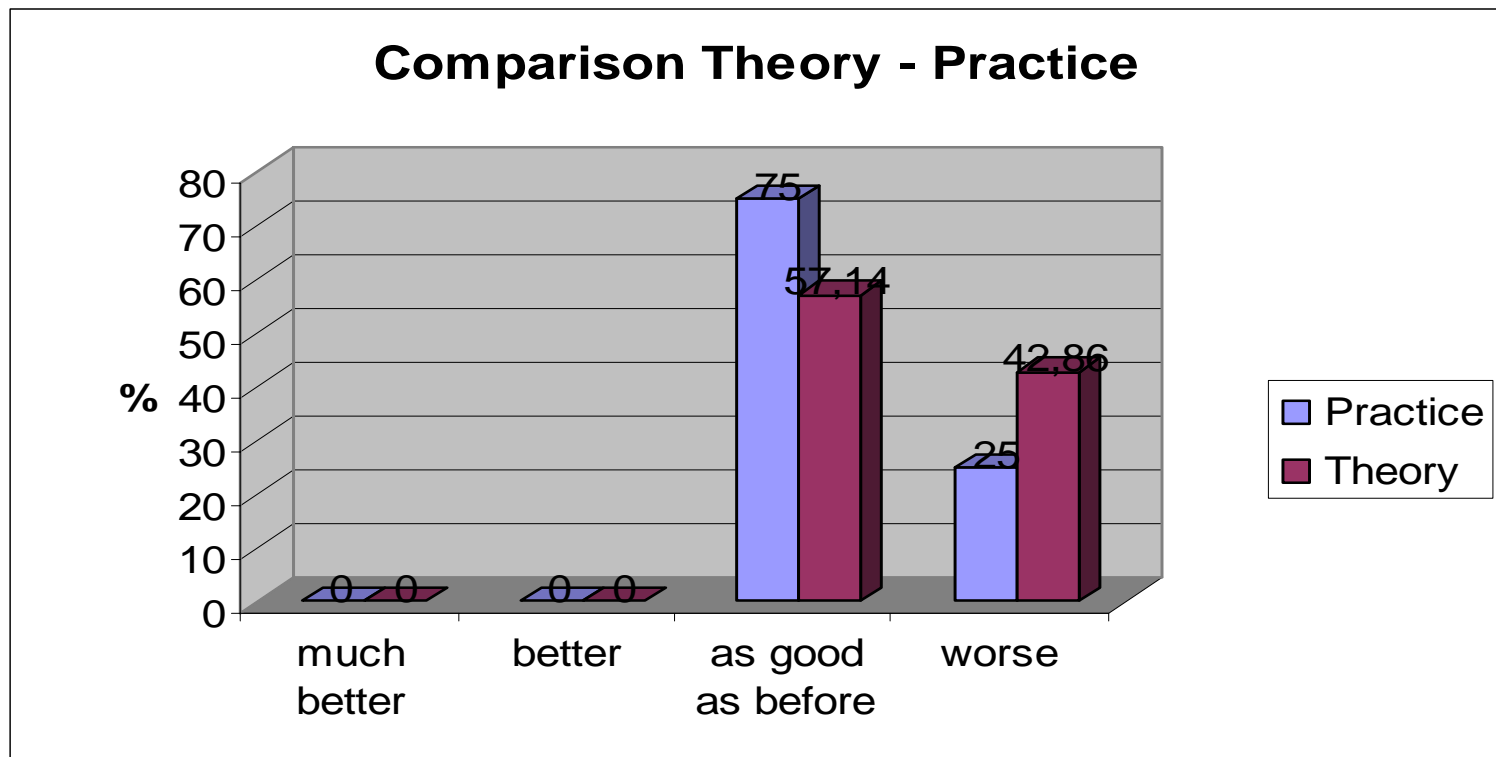
* From 7 municipalities which already have not carried through an SEA





SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

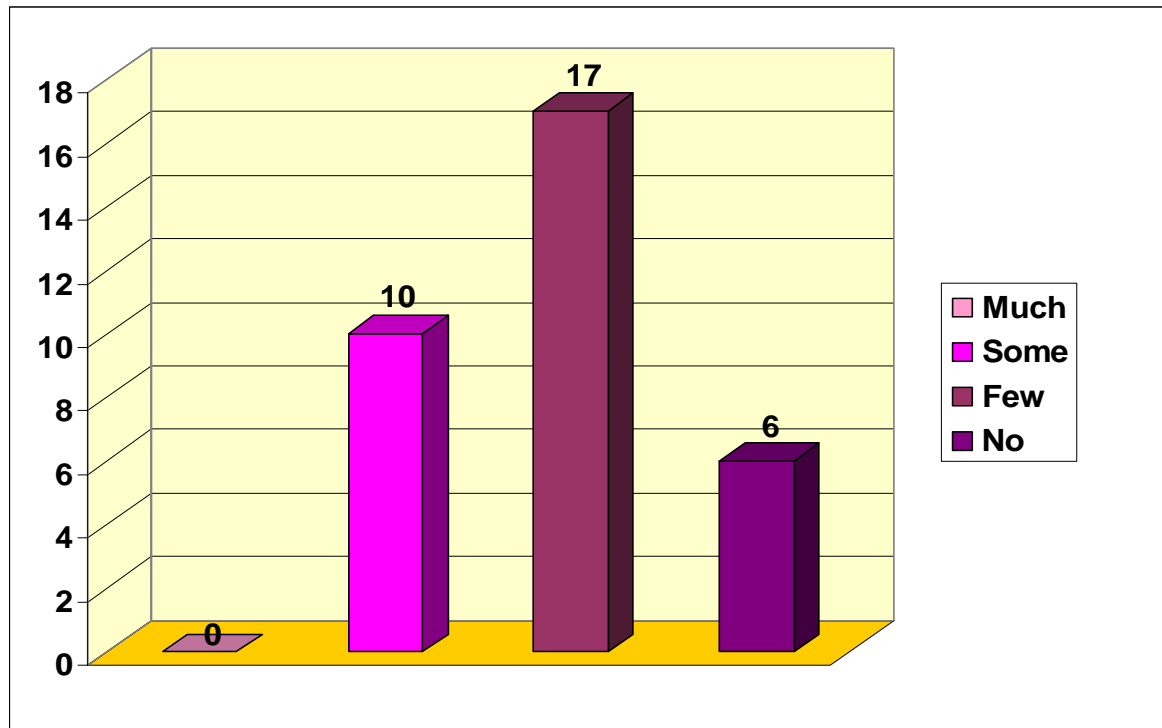
Comparison between theory and practice*





SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Results of the participation of the public:

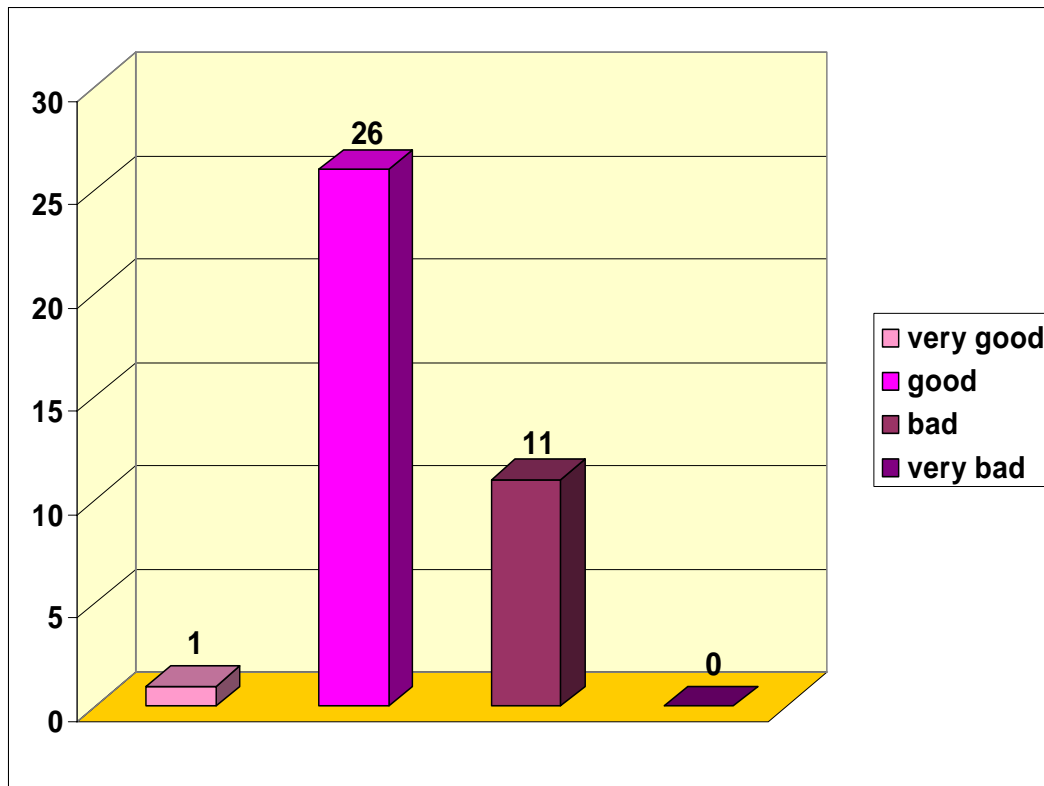


- Much: 0
- Some: 10
- Few: 17
- No: 6



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Experiences with the consultation of authorities



- Very good: 1
- Good: 26
- Bad: 11
- Very bad: 0



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Public Participation – Results:

- In general: weak public participation
- The practice of public participation is better than expected
- But: no improvement of public participation by the SEA procedures



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Experiences with transboundary consultation of the public:

- Almost no experiences, only 2 answers on transboundary consultation
 - Question: no procedures at all in municipalities close to the border or no transboundary environmental effects??? Maybe denied to avoid transboundary consultations.
 - Results in both cases were good, though both municipalities are not situated close to the German-Polish border and both have not carried through an SEA !!!
(Mühlberg/Elbe and Rietz-Neuendorf)
- Results are definitively not significant



SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Questionnaire:

Start: August 2005

End: September 2005

Topics:

- SEA, with special emphasis on transboundary consultation

Participants in Woivodeship Lubuskie:

13 participating municipalities (from 83 in total)



SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Legal situation in Poland in regard to SEA:*

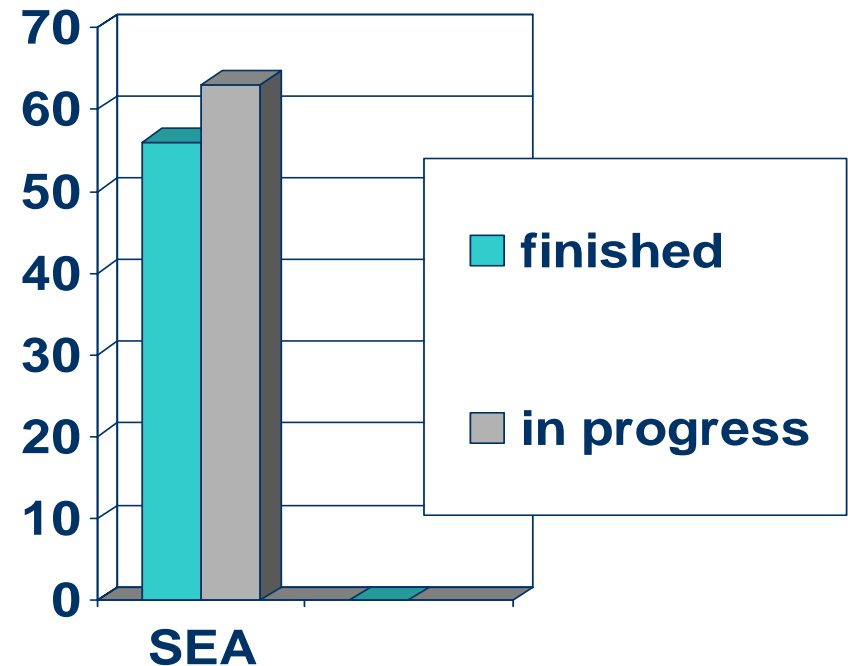
- Introduction of SEA before the SEA Directive went into force and before the accession to the EU
- But: no transboundary consultation procedure → no complete transposition of European Law
- Transboundary consultation procedure (→ transposition of European Law) was amended to the Polish Law in July 2005

* For further information see: Chapters 5 (Jerzy Sommer) and Chapter 14 (Joanna Mackowiak-Pandera and Beate Jessel, in Schmidt/Joao/Albrecht, Implementing SEA, Springer Verlag, 2005)

SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Experiences with SEA in general:

- All municipalities have carried through SEA (13 from 13)
- In total: 56 SEA being carried through and 63 SEA being in progress

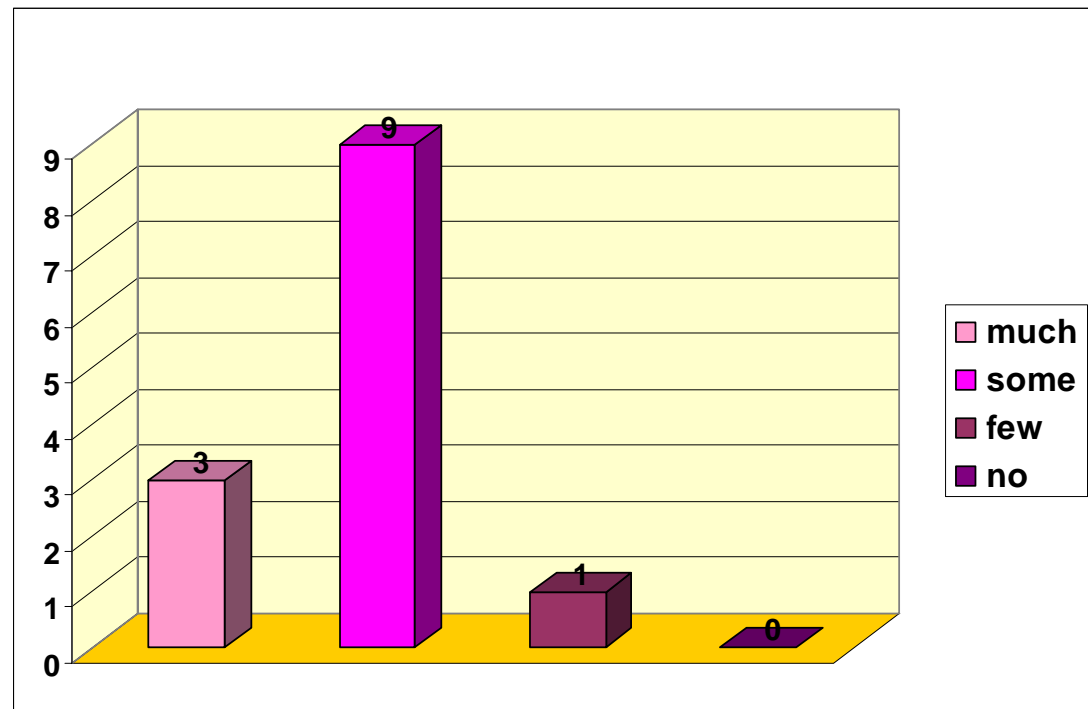




SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Additional expenditure for SEA (in comparison to former law)*

- Much : 3
- Some: 9
- Few: 1
- No : 0



* From 13 municipalities which have answered the question

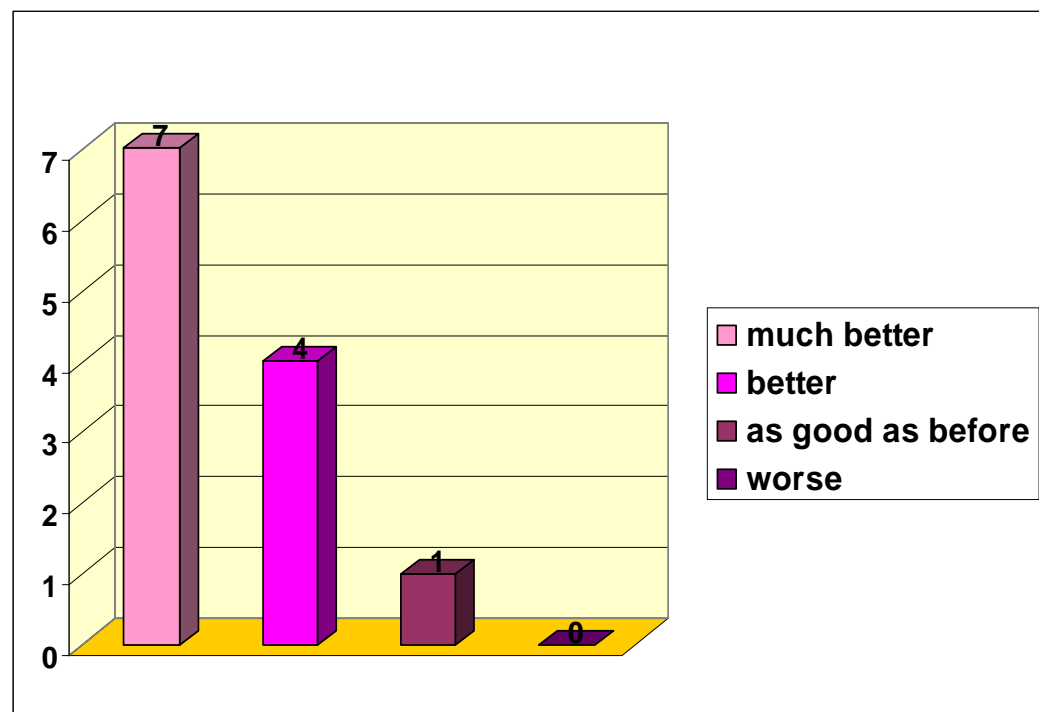


SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Does SEA lead to a better decision (in comparison to former law)*

- Much better: 7
- Better: 4
- As good as before: 1
- Worse: 0

* 12 municipalities answered, 1 did not answer the question





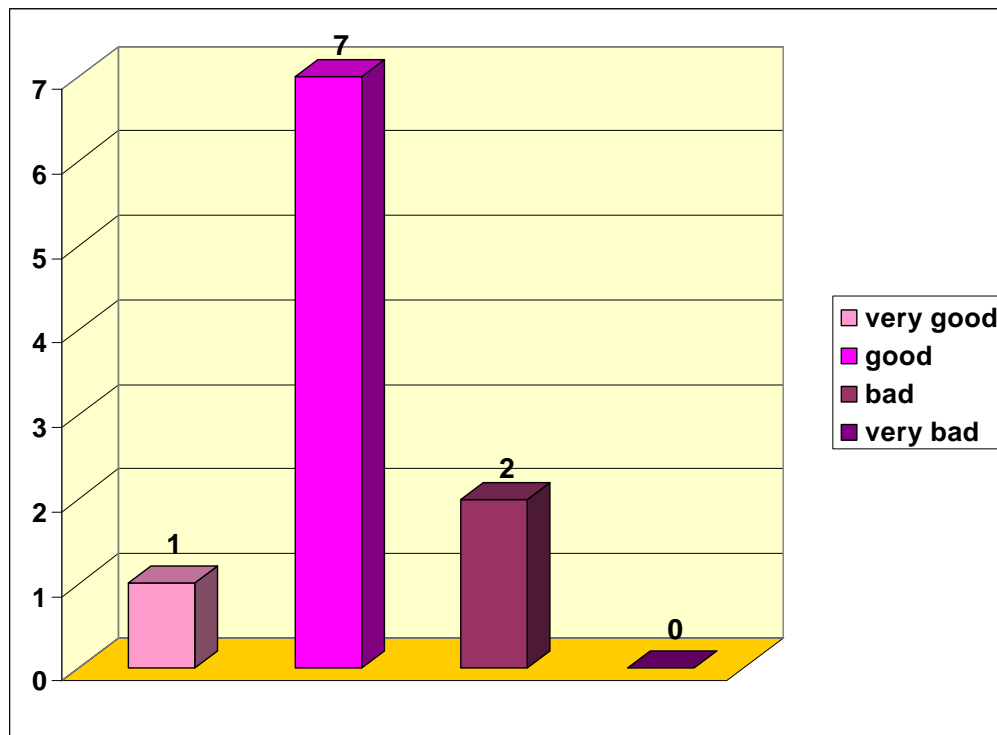
SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Additional Expenditure – Results:

- There is a significant additional expenditure by carrying through an SEA
- Additional expenditure is justified, if the decision is better; and (difference to Brandenburg, where only every third municipality expects/recognises a better decision), the decision is better:
 - Experts from outside have more experience
 - Environmental assessment describes positive and negative sides of the investment/plan
 - But: additional effort leads to time consuming procedures with negative effects on investments

SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Experiences with the consultation of authorities*



- Very good: 1
- Good: 7
- Bad: 2
- Very bad: 0

* 10 from 13 municipalities answered

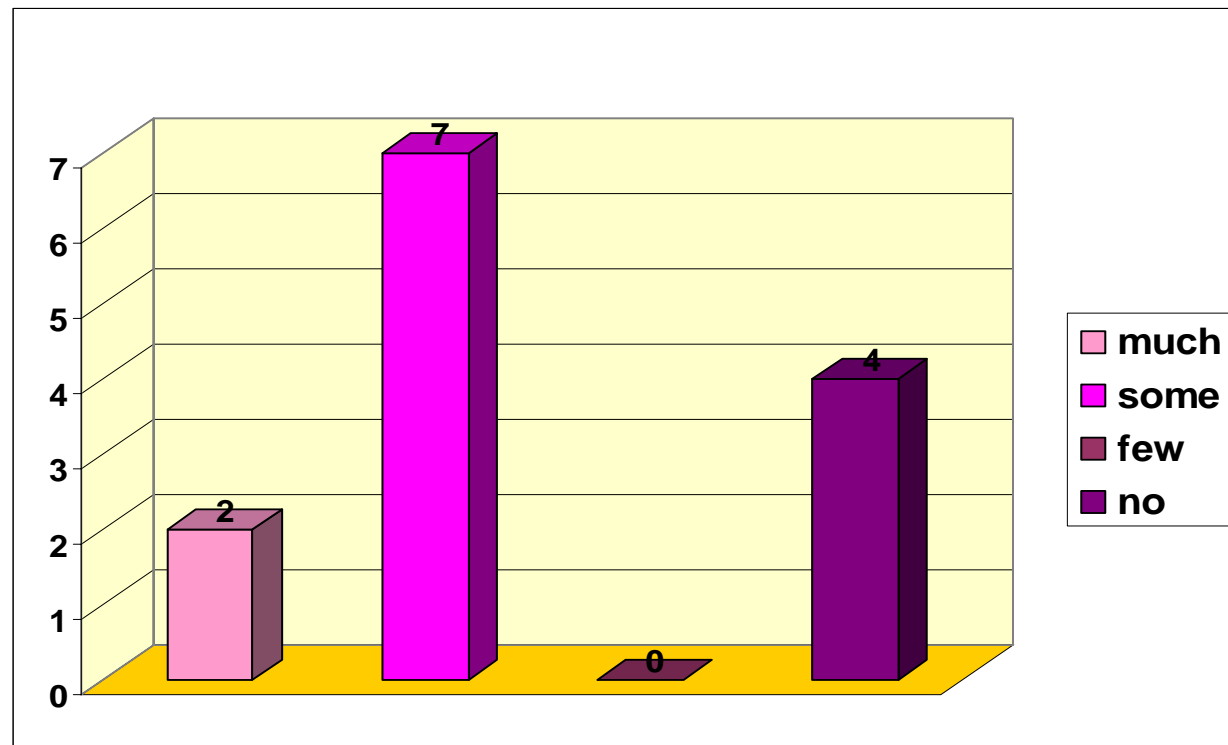


SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Results of Public Participation*

- Much: 2
- Some: 7
- Few: 0
- No: 4

* From 13 municipalities





SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Public Participation – Results:

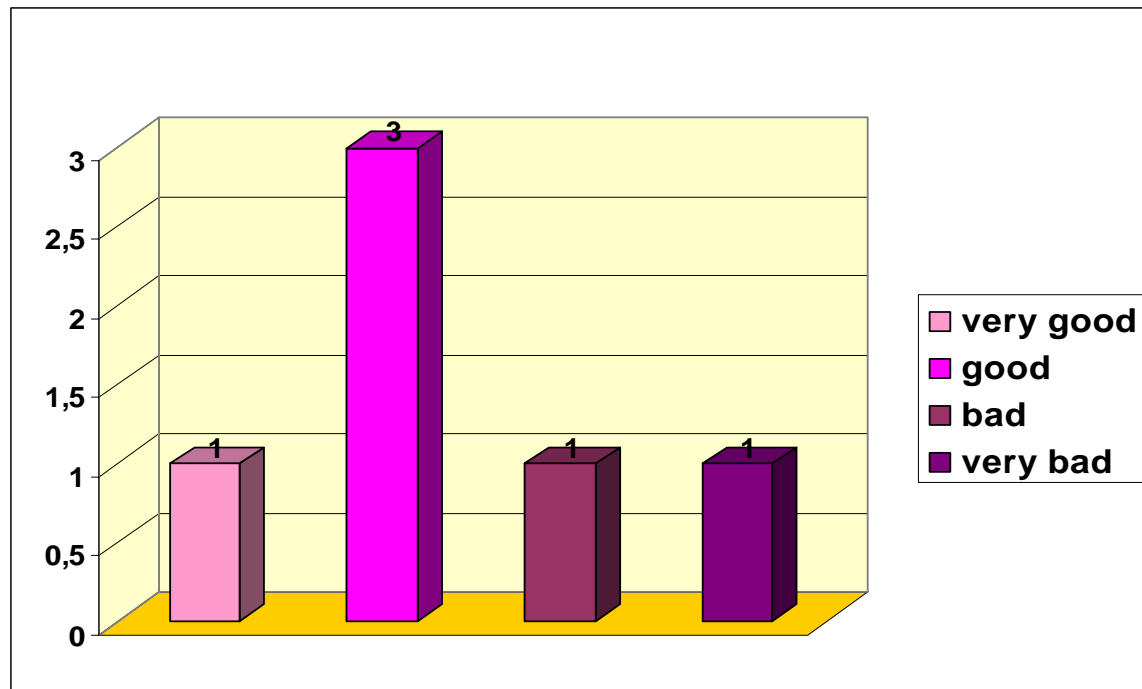
- General: weak interest of the public
- Public discussion and objections in respect to certain projects and plans
- Extensive protests of citizens could be canalised in the public participation procedure (case: mobile communication tower in Zagan)



SEA in Binding Land Use Plan Procedures in Brandenburg/ Germany

Experiences with transboundary consultation of the public and authorities:*

- Very good: 1
- Good: 3
- Bad: 1
- Very bad: 1



* 6 municipalities from 13 answered



SEA in Binding Land Use Plan Procedures in Lubuskie/Poland

Transboundary Consultations – Results:

- Surprisingly good results in respect to transboundary consultation
- Difficulties mentioned:
 - Language problems
 - Transboundary working apparatus



SEA in Binding Land Use Plan Procedures

Results of the two projects:

1. Public participation is still weak → better decisions by more public participation not likely at the moment in Poland and in Germany, concerning binding land use plans
2. Consultation of the authorities is in a surprisingly high number of cases improvable in Poland and Germany
3. In respect to land use planning, no experience in transboundary consultation procedures in Germany, few (and quite good) experiences in Poland, though for example language problems were mentioned.
4. The highly ambitious provisions of the SEA Directive on consultation of the public seem to come to nothing.



SEA in Binding Land Use Plan Procedures

Thank you very much for
your attention!