

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

Supplementary Statement by Austria

At the hearing in front of the Aarhus Convention Compliance Committee held on 2 April 2009 in Geneva the chairman requested the Austrian representatives to provide further information, in particular regarding the legal bases for a strategic traffic assessment (above all, public participation and assessment of variants). Austria has also been requested to declare once again that – as mentioned at the meeting – no final decision has yet been taken as regards the choice of the route in the Enns valley.

In its Supplementary Statement of 23 April 2009 the communicant asserts that the decision of the Styrian Provincial Government on the choice of the route (Variant “Middle”) has already been taken through the latter’s decision of 21 April 2008. The communicant also criticised the way in which strategic environmental assessments (SEAs) for road construction projects are carried out in practice. To date, none of the arguments presented in the framework of public participation have led to any changes in the evaluation of the options, the communicant says. In further consequence the communicant asserts that Articles 7 and 8 as well as Article 9 of the Convention should be applied to the adoption of a ban on trucks having a gross vehicle weight exceeding 7.5t.

First, Austria would like to point out that the issues raised by the communicant at the hearing, in particular concerning the way in which SEAs are conducted in the field of transport, have not been mentioned in the communication of 15 July 2008. This argument is therefore not to be considered a subject-matter of the present complaints procedure, which is based on the submitted written communication.

Nonetheless the Republic of Austria permits to submit a supplementary statement on the questions of the Chairman of the Aarhus Convention Compliance Committee and on the Supplementary Statement by the communicant, as follows:

The legal bases for the conducting of strategic assessments in the Austrian transport sector are set forth in the **Federal Act on the Strategic Assessment of Transport (“Bundesgesetz über die strategische Prüfung im Verkehrsbereich”**, short: **SP-V Act**), Federal Law Gazette I No 96/2005.

The SP-V Act was adopted in 2005 to implement 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 programmes on the environment.

It provides that network alterations of the high-level road network have to be subjected to a strategic assessment of potential substantial adverse environmental impacts prior to being included in the Schedules of the Federal Roads Act. In Austria only such motorways and express roads that have been included in the Schedules of the Federal Roads Act are classified as federal roads (high-level roads).

At the hearing in front of the Compliance Committee the **communicant confirmed the mandatory application of the SP-V Act** in the subject-matter case (the Act would not apply to the old and meanwhile obsolete route option referred to by the communicant, as it is located in a Natura 2000 protected area and its construction would therefore not be compatible with the requirements of the EC provisions on the protection of nature).

Prior to outlining the essential parts of the SP-V Act, Austria would like to point out that the high-level road network is operated by a separate company, ASFINAG, which finances its services through income from tolls. The Federal Ministry of Transport, Innovation and Technology is authority, but not – as argued by the communicant – itself road planner and interested party.

ASFINAG is an initiator according to § 2 para. 6 of the SP-V Act and thus is entitled to suggest an alteration of the network.

§ 5 of the SP-V Act provides in essence that in the course of the strategic assessment

- an environmental report has to be published;
- the general public, the environmental authorities and other initiators must mandatorily be granted the right to present statements (not just the right to be heard);
- the results from the participation of the public have to be taken account of.

For any alteration of the high-level road network, among other things also the following aspects have to be taken into account in the assessment:

- Ensuring a sustainable passenger and freight transport under conditions as socially compatible and safety-oriented as possible
- Ensuring a high level of environmental protection by taking into account environmental considerations
- Ensuring optimal utilisation of the available capacities
- Providing interoperability and intermodality within and between the different modes of transport

According to § 6 *legis citatae* the presumably substantial adverse environmental impacts of the proposed alteration of the network as well as the reasonable alternatives have to be described and evaluated in the environmental report.

The environmental report must also contain a description of the presumably substantial adverse environmental impacts, including the impacts on aspects like the biological diversity, the population, human health, fauna, flora, soil, water, air, climate factors, material assets, the cultural heritage including the architecturally valuable buildings and the archaeological treasures, the landscape and the interaction between the above-mentioned factors, including secondary, cumulative, synergetic, short-, medium- and long-term, permanent and temporary, positive and negative impacts.

Comprehensive and timely information of the public is ensured by a two-step publication procedure (§§ 8 and 9 of the SP-V Act), in each case in the internet, namely:

- At the homepage of the Ministry of Transport with simultaneous publication in at least 2 daily newspapers:
The requirement of publication comprises the proposed alteration of the network and the environmental report as well as the information that, within a period of 6 weeks from the publication in the internet and the issuance of the two daily newspapers, everybody has the possibility to present a statement.
- After the finalisation or immediately after completion of the draft law or draft ordinance:
At the homepage of the Ministry of Transport:
The information to be published comprises the relevant draft law or draft ordinance, including a declaration explaining how the statements of the public have been taken into account, how the environmental considerations have been considered in the draft law or ordinance and for which reasons, after assessment of the examined alternatives, the draft law or draft ordinance has been prepared.

According to the provisions of § 4 of the SP-V Act among others the environmental authorities of the Provinces concerned and the Federal Ministry of Agriculture, Forestry, Environment and Water Management have to be consulted in the course of the scoping process preceding the preparation of the environmental report which has to be worked out in the case of a proposal for an alteration of the network (statements can be presented within a period of 4 weeks).

This means that the SP-V Act ensures comprehensive public participation at a very early stage of the assessment procedure. The law provides also that a comprehensive assessment, among others of substantial adverse impacts on the environment, has to be carried out.

However, which alternative will be chosen in the final end depends also on the outcome of the environmental impact assessment procedure, which is to be carried out at a later stage (on project level), and of the - equally not yet mentioned - nature compatibility assessment procedure provided for under EC Nature Conservation Directives 92/43/EEC (Fauna-Flora-Habitats Directive) and 79/409/EEC (Wild Birds Directive), which require also an assessment of the zero option.

At the hearing in front of the Compliance Committee the communicant also confirmed the mandatory applicability of the Austrian Environmental Impact Assessment Act 2000 (EIA Act 2000).

In its Supplementary Statement the communicant asserts (with reference to decisions of the Compliance Committee) that no sufficient participation of the public took place at an early stage of the planning process. From the Austrian point of view this argument has been confuted by our explanations on the possibilities of participation in the ongoing planning process that have already been granted (see in part. Annex 1 to the Austrian Statement of February 2009).

Austria also emphasises once again that neither the **planning process nor the public participation have been completed**. The explanations given on page 11 of the Austrian Statement should be interpreted in this context.

Against this background Austria would like to refer to the Compliance Committee's findings in the case of Lithuania (ACCC/2006/16, ECE/MP.PP/2008/5/Add. 6, 4 April 2008, para. 71) according to which each contracting party has a scope of discretion, as provided for in Article 6 of the Convention, to decide which option should be discussed at what time of the decision-making process.

Austria would like to point out once again that in the subject-matter procedure the Austrian legislation requires that the strategic assessment, which involves the above-mentioned rights of the public to present statements, is conducted first. After its completion an environmental impact assessment will be carried out. Information about the scope of participation rights under the EIA Act 2000 has been provided in the Austrian Statement of February (p. 8 f.).

Austria would like to repeat also that no final choice for a specific route has been made and that, contrary to the statement by the communicant, this has also not been done through the decision of the Styrian Provincial Government of 21 April 2008. With the said decision note is taken of the route selection process as conducted to date. The descriptions of the route selection process and of the possible alternatives have been provided in the application for the relevant meeting of the government (annex 5 to Austria's Statement of February 2009).

Annexed please find a press interview (of 16 October 2008) of the competent member of the Styrian Provincial Government, Kristina Edlinger-Ploder. In this interview the Provincial Counsellor emphasises that "Variant Middle" ("Variante Mitte") is not a detailed plan, but

rather a corridor which can still be changed, and that, moreover, the final corridor can only be determined after the strategic assessment.

Finally, as regards the preparation of the planning process and the selection of the route, Austria would like to mention that the preliminary assessment conducted for the B320 is a consequence of the fact that great parts of the Enns valley are protected in accordance with the EC Nature Conservation Directives (Fauna-Flora-Habitats Directive and Wild Birds Directive); it serves to clarify whether the nature conservation areas permit an expansion of the road network at all.

As regards the possible imposition of a **7.5t weight restriction on trucks** for the B320, Austria emphasises once again that, under Austrian law (Austrian Highway Code), this is definitely a regulation or an ordinance serving the regulation and the safety of traffic.

Weight restrictions are common traffic regulation ordinances. As they have a local effect only (e.g. a weight restriction for a bridge), they are usually announced to the public through road signs.

However, 7.5 t restrictions are adopted and announced to the public in accordance with the formalised procedure which has already been mentioned in the Austrian Statement (p. 13f.). Below please find two examples of ordinances (in excerpts) which were announced to the public in 2009:

Ordinance of the Federal Minister of Transport, Innovation and Technology imposing a truck ban on certain roads in Tyrol (traffic bans in Tyrol 2009), Federal Law Gazette II No 101/2009

§ 1. Trucks and semitrailers having a maximum gross vehicle weight exceeding 7.5t and trucks with trailer having a total maximum gross weight of the two vehicles exceeding 7.5t shall

1. on 11 April 2009 from 10:00 a.m. to 3:00 p.m., if the destination is in Italy or is to be reached via Italy, and
2. on 10 April 2009 from 0:00 to 10:00 p.m., if the destination is in Germany or is to be reached via Germany,

be prohibited on the A12 Inntal Motorway and on the A13 Brenner Motorway.

...

Ordinance of the Federal Minister of Transport, Innovation and Technology imposing a truck ban on certain roads (Traffic Ban Calendar 2009); Federal Law Gazette II No 118/2009

§ 1. Trucks and semitrailers having a maximum gross vehicle weight exceeding 7.5t and trucks with trailer having a total maximum gross weight of the two vehicles exceeding 7.5 t shall be prohibited

1. on 25 April 2009 from 10:00 a.m. to 3:00 p.m., on 2 June 2009 from 9:00 a.m. to 24:00 and on 5 December 2009 from 10:00 a.m. to 3:00 p.m. on the A12 Inntal Motorway and on the A13 Brenner Motorway, if the destination is in Italy or is located in a country which is to be reached via Italy;
2. on all Saturdays from 4 July 2009 until and including 29 August 2009 from 9:00 a.m. to 3:00 p.m., if the destination is in Italy or is located in a country which is to be reached via Italy, and on 3 October 2009 from 0:00 to 3:00 p.m., if the destination is in Germany or is to be reached via Germany, on the A12 Inntal Motorway and on the A13 Brenner Motorway;
3. on all Saturdays from 4 July 2009 until and including 29 August 2009 from 8:00 a.m. to 3:00 p.m. outside town limits in both directions on the
 - (a) Loferer Highway B178 from Lofer to Wörgl;
 - (b) Ennstal Highway B320, starting at kilometre 4.500; (emphasis added)
 - (c) Seefelder Highway B177 along the entire route;
 - (d) Fernpass Highway B179 from Nassereith to Biberwier;
 - (e) Achensee Highway B181 along the entire route;
4. on all Saturdays from 4 July 2009 until and including 29 August 2009 from 8:00 a.m. to 3:00 p.m. on the A4 East Motorway from the connection point Schwechat to the national border Nickelsdorf.

...

Also the email of 25 July 2008 referred to by the communicant, in which the environmental ombudsperson of the Province of Styria states that technical opinions were obtained or are being obtained which, however, are still being reviewed or have not yet been completed, has to be seen against the background of the procedure for the adoption of such a regulation. The medical opinion is not yet available, which means that the procedure is not yet completed.

For this reason, too, we cannot see any violation of the provisions of the Convention, as also in its Supplementary Statement the communicant does not specify in what way Articles 7, 8 and 9 of the Convention have been disregarded through the procedure for the adoption of an ordinance imposing a traffic ban.

Finally, as regards the question posed by the rapporteur, Mrs. Hey, on the state of procedure of the **complaints procedure** with the European Commission (154/08/ENVI), Austria would like to mention that the communication lodged by the association NETT was filed in the framework of the EU pilot project for the improvement of working methods (in the case of infringement procedures). Austria informed the European Commission that a communication of equal content and with similar reasoning had been submitted to the Aarhus Convention Compliance Committee and that Austria had to communicate a statement to the latter in late February 2009. The European Commission has so far not responded to this statement by Austria.