

# ÖROK-PUBLICATION NO 189 – PART 1: FUNDAMENTAL FRAMEWORK FOR SECURING SPACE FOR LINE INFRASTRUCTURE PROJECTS

The options available for erecting infrastructure depend on the availability of the space required. In the past few years, securing **space for high priority infrastructure** has become increasingly controversial, because pressure on land use is intensifying due to the limited space available for permanent settlement and the many different desires and plans for its use.

This study discusses the main **technical aspects and the legal framework for securing space for high priority line infrastructure**. Based on ÖROK's objective to address issues of general relevance for Austria and also of transnational significance, it has focused on “high priority infrastructure”, i.e., principle roadway networks, railways and energy grids. Apart from presenting an overview that enumerates the principal legal provisions and central actors involved in line infrastructure projects, it also deals with the **planning procedures and processes involved in infrastructure projects of supra-regional relevance**.

In a first step, the respective **processes are analysed based on the relevant legislation (relevant laws)**. The paper discusses the various types of infrastructure (rail, road, power lines) and the different planning steps from the initial analysis of needs to the drafting of (nonbinding) concepts and binding definitions of land use and project implementation. The possibilities of each of the line infrastructure types are analysed as well as the limitations of each of the planning instruments specified in the relevant laws.

This is followed by an explanation of the fundamental **system of the rules and regulations relating to spatial planning legislation**. Special attention is given to the steering possibilities and limitations of the administrative processes involved in “spatial planning” with respect to securing space for high priority infrastructure facilities at the several planning levels.

As there are growing **conflicts of use** with other public interests (esp. nature protection, environmental protection, property rights) in securing space for infrastructure for the long term, this publication also discusses the main common issues and points of interest relating to other legal provisions that (may) apply to the respective planning processes.

Using international and Austrian **best practice examples** (especially in Germany and Switzerland), possible approaches are discussed regarding spatial planning legislation that can help ensure more efficient policies for route planning.

The study closes with an overview of the most important areas requiring **action and makes some first recommendations** for cooperation and coordination, line infrastructure and spatial planning.

The study is based on current legislation, legal commentaries, rulings of higher courts, and specialized literature, with the corresponding sources being documented in the paper.

The study also makes a reference to reports of the Austrian Court of Audit “*Flächenfreihaltung für Infrastrukturprojekte*“ (Securing Space for Infrastructure Projects) from the year 2011 in which the Court of Audit investigated the planning instruments at the federal level and in four *Länder* (Burgenland, Lower Austria, Salzburg, Styria), and also identified and analyzed areas of conflict and requirements.

# Summary

## ÖREK-PUBLICATION NO 189 - PART 2: ACTIONS REQUIRED AND SOLUTION PROPOSALS FOR SECURING SPACE FOR LINE INFRASTRUCTURE

Starting out from the ÖREK 2011-task (Austrian Spatial Development Concept 2011-task) "Securing Corridors for High Priority Infrastructure" a working group was set up (a so called "ÖREK-Partnership") in order to do basic research and to develop solution proposals for securing space for line infrastructure projects. This ÖREK-Partnership specifically includes partners from decision-making bodies of the Ministry for Transport, Innovation and Technology and the Ministry of Economy, Family and Youth as well as the heads of the departments responsible for spatial planning of the *Länder*. Moreover, further actors were also invited to cooperate such as representatives of organisations responsible for building roads, railways and power lines – ASFINAG, ÖBB, APG and Gas Connect.

The necessary basic materials and a thorough account of the measures required were prepared by Ass.-Prof. Dr. Arthur Kanonier (Technical University of Vienna, specialty area: law) (cf. Part 1 of this publication).

The solution proposals were developed based on these materials within the scope of two workshops (ÖREK-Partnership and project developers) as well as at several ÖREK-Partnership meetings in the second half of the year 2012. The proposals are oriented on the planning level of the projects and cover the range from strategic planning to actual operation. Therefore, the proposals are grouped into two levels:

- [A] **Transport route planning and approval and operation phase**
- [B] **Strategic planning and possible ways of securing routes before initiating legal proceedings for projects**

Proposals have been developed for *transport route planning, the approval and operating phases* that require adjustments to the specific laws regarding rail, road, electricity and gas lines. Essentially, these proposals aim to give equal standing to the projects with respect to the zoning of space for routes (prior to approval procedures) and the term of validity for the respective projects.

Furthermore, it includes proposals to improve and organise communication within the projects between the federal institutions, project developers and the spatial planning departments of the *Länder*. Additionally, the paper states the need for clearer definitions in the provisions relating to spatial planning in the relevant legislation of the *Länder* and also recommends harmonising the guidelines for identifying relevant planning references in the spatial planning instruments (especially as regards local spatial planning).

As regards the *strategic planning level* and the period until the decrees defining the transport routes are issued, proposals are included to improve communication as well as for the formal and informal harmonisation and definition of areas for routes within the scope of spatial planning. Of crucial importance in this context is the close cooperation of the federal bodies, *Länder* and project developers.

### Overview: Solution Proposals

- [A] **Proposals for transport route planning and the approval and operation phases**

#### Proposal 1: Prolongation of the period for securing routes for federal roads and railway projects (high priority)

L1.1: Standardization of the provisions of the Austrian High Priority Railway Routes Act and of the Austrian Federal Roads Act with respect to periods up to *five* years.

L1.2: Additional definition in legislation of the *possibility to prolong periods or to suspend the "period of five years"* for applications still being processed or until the approval becomes legally valid; for example, an Environmental Impact Assessment to obtain a decision by official notice on the axis (federal roadway zones, projects submitted for high priority railway lines etc.). A maximum time-period should be given in this context.

L1.3: Inclusion of provisions similar to those of § 3 and § 5a Austrian High Priority Railway Routes Act in the Austrian Railways Act – *proceedings for issuing*

*decrees on transport routes also for railway lines* ahead of the railway construction permit proceedings under the Austrian Railways Act.

**Implementation partners:** Competent legal department of the Ministry for Transport, Innovation and Technology

**Proposal 2: Decree regarding power line and gas line routes**

L2.1: Implementation of the specifications the of Regulation of the European Parliament and the Council “Guidelines for the trans-European energy infrastructure” (Regulation (EC) No. 347/2013) giving special attention to formal instruments to secure space for routes and route corridors ahead of the concrete approval procedures for the relevant projects (provided these are part of the trans-European energy networks and have already been nominated or defined).

L2.2: Review of further options for formally securing space for routes (decrees regarding routes) for power lines of national and regional significance in the relevant federal laws (e.g. High Voltage Lines Act 1968 as amended, Natural Gas Act,...) and of the *Länder* (electricity acts of the *Länder*).

**Implementation partners:** Relevant legal departments of the responsible sections, if applicable, *Länder* (e.g. within the scope of the electricity acts of the *Länder*)

**Proposal 3: Securing routes and securing space for clearance areas through spatial planning instruments**

**Proposal 3.1:** Improvement of data transmission and communication of information between the federal and spatial planning departments of the *Länder* as well as their direct involvement in the decree and approval procedures for routes

L3.1.1: Information and transmission of data relating to routes that are the subject of hearings and spaces for routes or route areas already zoned with legal effect and the corresponding inclusion in digital information platforms (e.g. GIS platforms of the *Länder*); furthermore, the improvement of coordination within a Land with respect to the respective possibilities of the hearings and statement procedures conducted by the federal government. The preparation and regular updating of a list containing *relevant contact data for the contact persons*.

**Proposal 3.2:** Clearer definitions and supplementing of the provisions in the acts on spatial planning regarding approval procedures in the areas of the routes

L3.2.1: Definition and supplementing of the objectives and principles as well as provisions relating to supervisory approval in the spatial planning legislation of the *Länder* (cf. the principles and objectives in the Styrian spatial planning act).

L3.2.2: Clear definition of provisions for approvals by supervisory bodies and/or denied zoning approvals (building land and green land) in which the spaces for routes and clearance spaces are clear marked or identified in the spatial planning acts of the *Länder* as well as checking the options for denying zoning approval for “route planning areas”.

**Proposal 3.3:** Concrete formulation and harmonisation of the rules for marking/identifying routes and clearance areas

L3.3.1: Specification of the point in time or period (e.g. 6 months) by when routes and clearance areas must be clearly marked or identified in the local spatial planning instruments, e.g., after an official notice /decree has been issued pursuant to the Austrian High Priority Railway Routes Act and of the Austrian Federal Roads Act.

L3.3.2: Coordination and harmonisation between *Länder* with respect to the rules for marking identifying “safety and clearance distances” for the lines erected with the aim of harmonising the provisions governing clearances among the *Länder* and adjusting the distances required under approval procedures (e.g. with respect to land for residential purposes).

Review of conformity of the rules and provisions regarding the spatial planning instruments with those of the Land electricity laws (cf. LEG Salzburg and draft LEG Carinthia).

**Implementation partners:**

**3.1:** ÖROK within the scope of the ÖREK-Partnerships “Securing space for line infrastructure projects” and “Platform for spatial planning and transport” – for preparing the list of contacts of the critical contact partners in the procedures.

3.2. and 3.3: Any *Länder* working groups set up within ÖROK (spatial planning departments of the *Länder*) and support of the Secretariat of the Austrian Conference on Spatial Planning shall be done based on decisions by the Standing Subcommittee of ÖROK

[B] **Solution proposal relating to strategic planning and the securing of routes ahead of project-related proceedings**

**Solution proposal 4: Regular coordination and exchange of information between the federal govern-**

### ment, Länder and project developers “Infrastructure Day” – overall view of the strategic planning level

L4.1: Use of a platform consisting of representatives of federal ministries (*Ministry for Transport, Innovation and Technology, Ministry of Economy, Family and Youth, Ministry of Agriculture, Forestry, Environment and Water Management, Ministry of Defence and Sports, ...*) all infrastructure operators, spatial planning departments as well as the specialized departments (transport, energy...) of the *Länder*.

L4.2: Organisation of an “Infrastructure Day” to be held at least once a year or ad hoc (e.g. continuation of master plans and framework plans, pending projects ...) at which reports are presented on fundamental considerations regarding the strategy but also on planned projects and upcoming procedural steps as well as the related challenges.

Within the scope of this “Infrastructure Day”, the actors involved may agree to engage in more detailed coordination talks with respect to concrete projects. Likewise, it is also a platform for developing and defining the necessary measures to raise awareness among municipalities and political decision-makers.

**Implementation partners:** Continuation or supplementing of ÖREK-Partnerships “Securing space for line infrastructure projects” and the “Platform for spatial planning and transport” with the support of the ÖROK Secretariat – federal/Land/project developers as well as the Association of Towns and Association of Municipalities

### Solution proposal 5: Securing space for routes, informally or formally

**Solution proposal 5.1:** INFORMALLY securing space for routes by pursuing cooperative procedure for (current) agreed corridors

L5.1.1: Notification of the key technical data and spatial situation of the corridor planned by the project developer to the spatial planning departments

L5.1. 2: Define a specific joint corridor for agreement and definition of the required measures to secure the corridor

**Solution proposal 5.2:** FORMALLY securing of space for routes by implementing a cooperative and integrated planning model for routes

L5.2.1: Joint (project developer and spatial planner of the Land) development of space for routes based on technical and strategic key data of the project developer within a jointly agreed-on investigation area

L5.2.2: Common definition of FORMAL instruments to secure space for routes and corresponding legal procedure (including environmental assessment,...).

**Implementation partners:** Continuation and supplementing of ÖREK-Partnerships “Securing space for line infrastructure projects” and the “Platform for spatial planning and transport” with the support of the ÖROK Secretariat – federal/Land/project developers