

**Deutsches Institut für Urbanistik  
(German Institute of Urban Affairs)**

**Occasional Paper**

**Arno Bunzel**

**Contents of the Environmental Report - Practice test of  
the German Building Act in six German towns**

The „Occasional Papers“ are a collection of articles in languages other than German that have been written for various events such as conventions and conferences. They also contain summaries taken from selected publications of the institute. All papers of this collection are also available online: <http://www.difu.de/english/occasional/>

**The author:**

Dr.-Ing. Ass.Jur. Arno Bunzel  
German Institute of Urban Affairs, Berlin

**Distributed by:**

Deutsches Institut für Urbanistik  
German Institute of Urban Affairs

Straße des 17. Juni 112  
D-10623 Berlin

Tel.: +49 (0)30/390 01-0  
Fax: +49 (0)30/390 01-100  
E-Mail: [difu@difu.de](mailto:difu@difu.de)  
<http://www.difu.de>



## **Contents of the Environmental Report - Practice test of the German Building Act in six German towns**

This contribution contains a report about the experiences six German towns made, when they tested the draft bill which adopts the requirements of the SEA-Directive. I will concentrate my speech on the results of the practice test referring to the contents of the assessment and the Environmental Report.

### **1. The method “Practice Test”**

First as a background I am going to explain to you, why we have carried out a practice test and how this method works. A practice test of a draft bill is a way to test the impacts of the intended regulations. It has a long tradition in the German Building Act legislation.

In the current case the German Ministry of Traffic, Building and Housing engaged the German Institute of Urban Affairs to prepare and moderate the practice test and to evaluate its results. In this project we worked in partnership with the Forschungsgruppe Stadt + Dorf (Research Group Town and Village).

Six towns of different sizes participated in the practice test. They were Bochum and Leipzig as large municipalities, Bocholt and Reutlingen as middle and Forst and Freising as small one's. People from the department of urban Land-Use planning and – if they exist – the department of environment of the six towns were involved in testing the draft bill. The smaller towns have, in accordance with their size only small local administrations and have neither special departments nor specialists for environmental issues. County administrations are responsible for the environmental issues of smaller towns. Larger towns have their own department for environmental issues. In conclusion we have totally different conditions of local administrations in the six towns but they all are responsible for Urban Land-Use Planning and therefore to carry out Environmental Assessments.

In the beginning I also should point out, that the subject of the practice test is limited. It includes only the Urban Land-Use sector. Other sectors, for example airport and railway planning sectors are subject to a separate legislative act.

### **2. The current system of reporting impacts of Urban Land-Use Planning**

Before we focus on the proposed German regulation of Environmental Assessment for Urban Land-Use Plans it would be helpful to have a look at the current law. First we have to remember, that there are two levels of Urban Land-Use Plans:

- The preparatory plan for the entire town area and

- The binding plan for a group of landholdings or small areas. The binding plan stipulates the permitted use of the land in a legally binding manner.

Today an explanatory report or statement is required at both planning levels. This report has to include information about the reasons for preparing the Land-Use Plan and its likely impacts.

The contents of explanatory reports are regulated in a more general and less detailed way. Practice has shown us that some reports are more detailed than others. The scope and the content depend on the number of planning problems and their level of difficulty. The function of the report is to inform the public about the reason for and impacts of planning. The report is also important for the local authorities to use to check the plan since they are responsible for the plan's final approval.

In 2001 the German Building Act was amended to adopt the EIA-Directive-Adjustments. When preparing certain public or private projects listed in Annexes I or II of the EIA-Directive by producing an Urban Land-Use Plan, an EIA has been carried out as a part of the planning procedure. Now for these cases the law includes a regulation about the contents of the Environmental Report, which is very detailed. Environmental Reports can be written by using the legal regulation point by point to achieve a clear and unified structure. It has to be a part of the explanatory report to the plan.

Especially the larger towns have had some experience of carrying out an EIA for such plans. Smaller towns mostly have none or only a small number of projects listed in Annexes I or II of EIA-Directive and therefore they have less experience of EIA and Environmental Reports. Some large municipalities have decided to carry out an EIA even in those cases where an EIA is not required by law. They prefer a unified procedure for all Urban Land-Use Plans.

### **3. How Germany will adopt the directives demands**

Just as with the Environmental Assessment the Environmental Report will be incorporated through a series of small adjustments. The regulations regarding planning procedure contain a new element. What is new, is the early consultation of the authorities which are likely to be concerned by the environmental effects of the plan. Above all this early consultation aims to help to decide about the scope and the level of detail of the Environmental Assessment in accordance with Article 5 Point 4 of the Directive. Later a second consultation has to be carried out. This second consultation is already required by current law. It refers to the draft plan.

In a similar way the draft regulation of the required Environmental Report is based on the current regulation of the explanatory report and the 2001 regulation of the Environmental Report I described before.

In a change to the current regulation the contents of the Environmental Report are not listed in a similarly detailed manner. The required contents of the Report will be regu-

lated by a combination of several regulations spread over several separate sections and the Annex of the draft law.

Starting point of the draft legal regulation is to prepare the Environmental Report as a part of the required explanatory report. It has to include a description of the environmental issues which are identified and evaluated by carrying out an Environmental Assessment (section 2a). The subject and the contents of the assessment are regulated by other sections and by the annex of the draft bill. The subjects of the assessment are listed in section 1 (paragraph 6 point 7) and section 1a in a similar manner to Annex I (f) of the directive. The other contents of an Environmental Assessment, which are listed in Annex I of the directive, are incorporated in the Annex of the draft bill.

#### **4. The experiences of the six towns in the practice test**

The six towns that participated in the practice test were asked to prepare an Environmental Report for an existing Urban Land-Use Plan using the draft bill. In particular, they were also asked to compare the contents of the Environmental Report with the current practice of preparing Explanatory Reports for Urban Land-Use Plans in similar cases. They were also asked to consider the time and money required to do it. In doing this they had to differentiate between those cases, which require an EIA, and an Environmental Report in accordance with the current law and those with fewer legal requirements. Lastly we wanted them to evaluate whether the proposed regulation is understandable and clear to those people who have to apply the regulation in practice.

The practice test has shown that the elaboration of an Environmental Report can be based on information which has to be obtained in any case, whether an Environmental Assessment is required or not.

In accordance to the law this information is the legally required basis for any decision made about an Urban Land-Use Plan.

For example an assessment of noise pollution will be carried out, if noise pollution is likely. In a similar manner it is necessary to prepare statements on the state of and the expected impacts on nature in accordance with the German so called "Eingriffsregelung", if the specific situation and the likely effects make it necessary. The "Eingriffsregelung" is a regulation on the impacts of nature and the required measures to prevent, reduce and offset the significant adverse effects on nature and landscape. Another example is the statement on the contamination of the ground. If screening of the conditions of the planning area and of the available information in the beginning indicates that an assessment is required, then a statement will be carried out.

In any case to prepare an Urban Land-Use Plan requires a consideration of the likely planning problems and impacts referring to the specific state of the area and the specific aim of the plan. The scope and the level of detail of the required assessment depend on the result of this consideration. It does not depend on using the current law or the draft bill.

The participants of the practice test therefore had no significant problems by preparing an Environmental Report. The level of detail or the scope of the assessment hasn't changed. Only the reporting of the subject and of the result of the assessment has become more formal. This is because an Environmental Report has to be written and it has to include information which is listed in Annex I of the directive.

When the six towns prepared the Environmental Report as a test, they used the listed subjects and contents of the sections and the Annex of the draft bill, which I explained before. The large towns Bochum and Leipzig based their practice test Environmental Report on the table of contents which they previously used for Urban Land-Use Plans, which required an EIA in accordance with the amended Building Act of 2001. Only the following few points had to be added:

- The significant result of the likely evolution of the state of the environment without implementation of the plan (SEA-Directive Annex I (b)). This is the so called “do nothing” option.
- The environmental protection objectives which are relevant to the plan and the way those objectives and any environmental consideration have been taken into account during its preparation.
- The description of the measures envisaged concerning monitoring in accordance with Article 10 of the Directive.

One result of the practice test is that describing the “do nothing” impacts caused no problems for the participants. The description seems easier in cases of a Greenfield Development than in cases of Redevelopment. But in any case the participants were convinced that in the “do nothing” scenario it is possible to describe the likely evolution of the state of the environment based on current information without carrying out additional assessment.

Also no difficulty was found in explaining the relevant environmental protection objectives and how these objectives and any environmental consideration have been taken into account during its preparation. But there is no obligation to do this under the EIA-Directive or the amended German Building Act of 2001. But it is current practice in Urban Land-Use Planning, to give a description of the significant environmental, social and economic issues of the plan. Information about the basis of evaluation and in particular the objectives, which are relevant to the evaluation, have been included in the explanatory report.

Particularly new for all German local administrations is the obligation to monitor the significant environmental effects of the implementation of Urban Land-Use Plans. Therefore the decision about the appropriate measures required to adopt this obligation in each specific case is more difficult than other requirements of the directive. The contribution of my colleague Franciska Frölich will show you details of the results of the practice test on this subject.

In the beginning the smaller towns, which have little or no experience of carrying out an Environmental Impact Assessment or preparing an Environmental Report, encountered more problems when preparing this report. First they expected that the scope of the required assessments would increase and the level of detail would become greater in comparison to their Urban Land-Use Planning practice before the adoption of the SEA-Directive. But when they had a more detailed look at the draft bill, they saw that most of the amended requirements are not really new. In the final result, the smaller towns found that the scope and level of detail of the assessments for Urban Land-Use Plans depend on the specific issues of the plan and the number of difficulties. Principally the scope and the level of detail of the Environmental Assessment will be unchanged. The local authorities have to decide about the scope and the level of detail case by case. They have to consult other authorities but they make their own independent decision. Only the formal requirements for the planning procedure and the subjects and contents of the explanatory report for the plan have changed.

Principally, to write an Environmental Report requires a rearrangement of the current contents of the explanatory report. Information about the environmental issues and the environmental impacts of the plan has to be included in the Environmental Report as a separate chapter. Little additional information is required. And this information is already available elsewhere. Let me give you some examples:

As a principle alternatives for development have been taken into account in practice on both levels of Urban Land-Use Planning. On the level of the preparatory Urban Land-Use Plan for the entire town area, alternatives refer for example to industrial areas, housing areas, areas for certain particularly large and important public or private projects and for new traffic routes. In general these alternatives have already been checked in Urban Land-Use Planning practice. But practice shows that the explanatory reports for those plans often include none or little information about the checked alternatives. The conclusion of the towns was that they only have to complete the explanation with information about all alternatives dealt with and to describe the reasons for selecting them. This formal obligation can be handled by the local authorities without any significant problem.

On the level of the legally binding Land-Use Plan, alternatives refer to issues such as where the housing, streets and parks should exactly be placed. Alternatives on this level of planning and their environmental, economic and social effects have already taken into account the under current law. But in future the explanation of these issues in the Explanatory Report has to be more detailed compared to the current practice.

The towns came to a similar conclusion regarding the required information about the current state of the environment and the likely significant effects of the implementation of an Urban Land-Use Plan on the environment. This information is also necessary if they are preparing an Urban Land-Use Plan without the requirement to carry out an Environmental Assessment. Therefore the level of detail, which has to be taken into account, isn't increased by adopting the new regulations.

The same conclusion has been made referring to the required information about the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects. German towns have had a lot of experience concerning this subject, because German Law demands specifically, that the adverse effects of the implementation of the plan on nature and landscape have to be taken into account. German towns have to check all options to prevent and to offset those effects as a principle. The local authorities also have to try to prevent and to offset negative effects on other environmental subjects especially human health or cultural heritage, even if there is no similar specific regulation to prevent or offset effects on these subjects.

Although the six towns are generally happy with the new regulation, they consider the requirements of the Annex to be not clearly defined regarding the contents of the Environmental Report. In the opinion of the participants the introductory sentences of both paragraphs of the Annex are unclear. The wording refers to the environmental assessment but not to the environmental report. Following the introductory sentence of paragraph 2 of the Annex, the subjects listed there are the basis of the environmental Assessment, but in reality some of them are its result.

I will give only one example. The information about the way environmental protection objectives and any environmental consideration regarding the Urban Land-Use Plan have been taken into account is not the basis but the result of the Environmental Assessment. However this information is listed in paragraph 2 of the Annex as a basis of the environmental assessment and not as its result.

The draft bill has already been adjusted on this point.

## **5. Conclusion**

The towns propose to amend the regulation of the contents of the Environmental Report only in an editorial sense to achieve more clarity for the local authorities.

In the opinion of the participating towns the most important result of the practice test is that the legal requirements to Urban Land-Use Plans are not new with three exceptions. These exceptions are

- the additional formal legal requirements for the planning procedure
- the additional also formal legal requirements for the contents of the explanatory report and
- the monitoring.

The local authorities can handle these new demands without any significant problem. But they would like the federal authorities to work out guidelines, in order to avoid disagreements about the details of implementation in particular, but also about how the relevance of effects is to be evaluated.