

III. Strategic Environmental Assessment (SEA) under Scrutiny

Case study on the implementation of the SEA Directive

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The first slide shows the topic of the training module and speaks for itself.

Case Study by Dr Matthias Keller, Aachen

Case: „Super Supermarket“



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Notice:

The case scenario has nothing to do with the above shown US chain of „Super Supermarkets“ but is drawn from a German case I had to decide.



The same goes with this slide.

Structure of the Case Study

- Admissability
- On the Merits



Here the basic structure of the legal approach is shown.

■ A. Admissability



The slide is a title.

A. Admissibility

1. Urban plan = a reviewable administrative act?

In all Member States and the EU “administrative acts” are subject judicial review. A commonly used definition in this context would be:

“Administrative act means any measure of individual scope taken by a public authority and having legally binding and external effects.”

My opinion:

In the light of Art 9 Aarhus Convention (Access to Justice) and Art 47 of the EU Charta (Right to an effective Remedy) the challenged urban plan must be categorized as an

“administrative act”

if otherwise there will be no judicial review as regards to urban plans that contradict the SEA-Directive.



Here the subject matter of the legal proceedings is characterized in the context of the admissibility of the claim.

A. Admissibility:

2. Standing of Mr. Will Sleep

Problem in Germany, Austria, Czech-Republic:
Ordinary standing requires a

„possible violation of an individual public-law right.“

Mr. Will Sleep is affected in his health and/or property
which will grant him standing.

However, the general idea is totally different:

Mr Will Sleep is a part of the „**public concerned**“
and should therefore be entitled to Access to Justice,
cf. Art. 9 Aarhus Convention.



The key notions of “individual public-law right” and “public concerned” are mentioned and may give rise to a comparative view on administrative justice.



■ On the Merits



The slide is a title.

Is the lawsuit well-founded? Yes !

The urban plan is procedurally illegal.

The necessary procedural steps of a proper SEA,
inter alia public participation, have not been followed.



It is as simple as it is: The adoption of the urban plan lacks public participation. The normative act is to be treated as “procedurally illegal”.

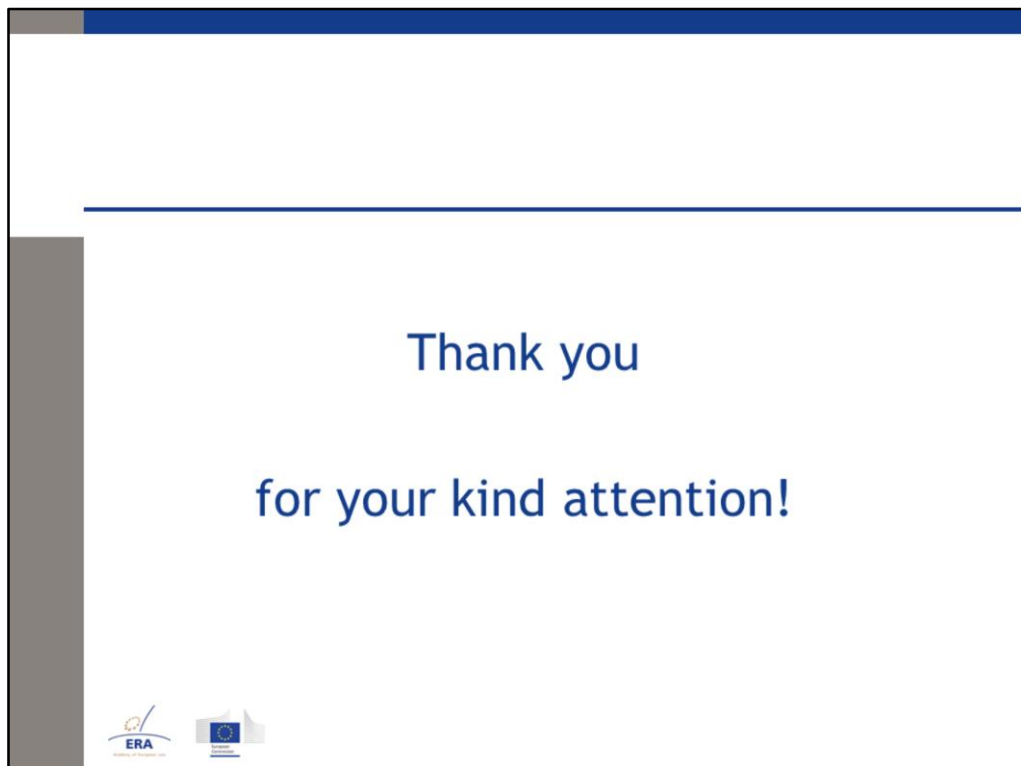
**The explanatory statement of the City Council
justifying a fast procedure is not convincing!**

**The urban plan is likely to have significant effects
on the environment** (here on residents like Mr. Will
Sleep affected by noise).

The argument put forward that a danger to human
health is excluded by the urban plan and the project
establishes a **far to high threshold**
when it comes to the question whether to open the
door to the SEA / public participation.



It is quite common that public authorities – in order to avoid bureaucratic burden - do not want to realize the broad scope of the requirement “likely to have significant effects on the environment” and use far too high thresholds.



This last slide of the unit speaks for itself.