



Preliminary Planning Study

New Railway Line Dresden - Prague

Task 1.2 Planning Process

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Task 1

Adjustment of the national (german/tschech) Guidelines and Standards in correlation of the european Technical Specifications for Railwayinfrastruktur

Subtask 1.2 The framework of public legislation

1.2 Einführung

The task of this work package was to identify the risks and opportunities concerning the planning steps resulting from the respective national legislation. Therefore a working group has been implemented consisting of:

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The working group met in four personal meetings between February and September 2015 in Dresden and Prague

- to identify and present the respective national legislation,
- to understand the differences and commonalities,
- to explore good international practices and
- to discuss and give recommendations for this international project.

The work resulted in several presentations and reports which are published in the attachment. The following chapters condense these to ten pages to allow a brief overview of the main results.

1.2.1 The legal framework in the Czech republic / The legal planning procedure

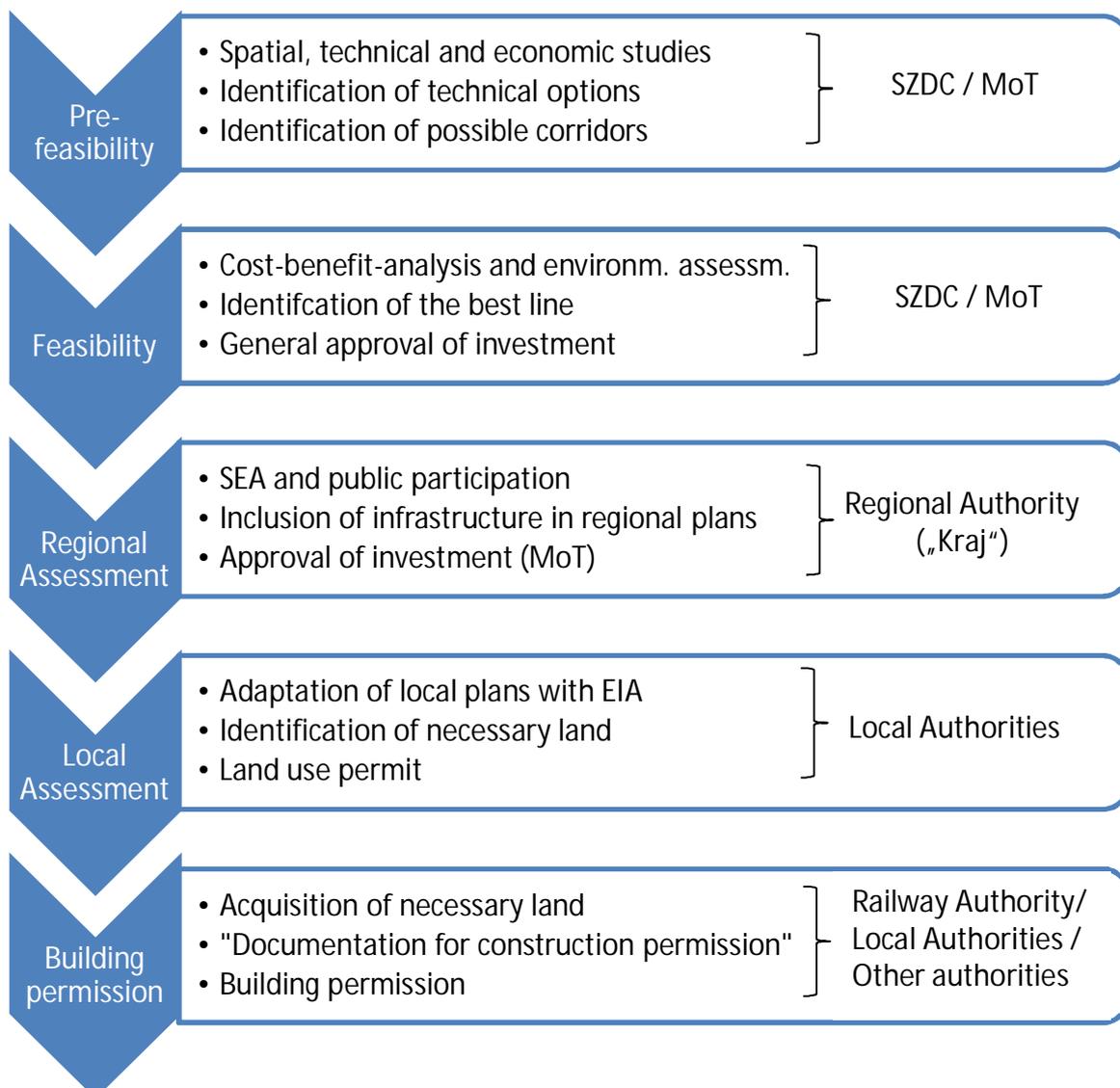
The legal planning procedures in the Czech republic are structured in a “Pre-investment period” starting from the first pre-feasibility study and ending with the regional assessment, and a subsequent “Investment period” ending with the building permission. All in all the legal planning steps and the respective responsibilities in the Czech republic can be summarised as follows:

1. The beginning of each project is a pre-feasibility-study undertaken by the Czech rail-infrastructure company SZDC in cooperation with the Ministry of Transport (MoT). The

aim of this rather technical work is the identification of operational opportunities, possible corridors (finding “all” possible variants) and possible technical risks. This step identifies internally possible infrastructure measures worth further investigation. At the end of this process there will be several possibilities identified and investigated by spatial, technical and/or economic studies.

- The feasibility study is undertaken by the inframanager SZDC in cooperation with the MoT. Its aim is (1) to assess the general value of the proposal and (2) to identify the best routing of the railway-line with regard to capacity, costs, and environmental and spatial impacts.

It therefore integrates a cost-benefit-analysis and a basic environmental assessment (below SEA or EIA). In case of general approval of the investment the best option/variant is chosen by the central commission (representatives of MoT, SZDC, State Infrastructure Fund) and will be part of the transport policy (“Dopravní politika pro období”) resp. the transport strategy (“Dopravní sektorové strategie”) of the national government.



3. Subsequently the MoT (only in the case of new high-speed lines, SZDC in the case of other railway lines) applies for a protection of the railway-line/corridor in the regional spatial plan ("zásady územního rozvoje") and the planning is handed over to the regions. The regional authority then implements the line in the respective regional spatial plan (updated in a cycle of four years). The whole document (regional spatial plan) is consulted by the public and needs SEA for approval in the responsibility of the regional authority. The regional authority will decide on this basis on an adaptation of the respective regional plan.

The corridor henceforth will be secured and privileged against other regional planning proposals either as "spatial reserve" (for long term projects which are not specified enough but need a protection) or as "proposal". Only in case of a "proposal" a project is matched as a project of public interest and gives the right to continue with its further development/preparation. At the end of this phase the MoT has again to approve the general investment.

4. If the line is part of the respective regional plan, the local area plans have to be adopted by the local authorities. Subsequently the constructor has to state in detail all territory necessary for the infrastructure. This is to be done in a two steps process:
 - Firstly in the case of a "proposal" (on the level of regional spatial plan) SZDC launches a "Documentation for spatial decision" ("dokumentace pro územní rozhodnutí") which describes all land needed for a construction and includes full EIA with public participation. This process finishes with a permission to localize the project where all plots of land and conditions for further preparation and realisation of a particular project are defined. On the basis of this compilation for all affected local authorities a single land use permit ("územní rozhodnutí") will be issued by one responsible community, where all land to be acquired including the exchange of premises is prescribed. In case of a strong public interest (as for "proposals") these land use permits are the legal basis for the possibility to expropriate of land owners.
 - Secondly (only in the case of publicly financed projects) an "Investment/project plan" (investiční záměr) has to be prepared as a specific preparatory step. The aim is to provide a detailed technical documentation, which can be used for more detailed alignment of a protected corridor within local spatial plans.
5. Only after the acquisition of all necessary land by the constructor (SZDC) the further step can be done – the preparation of the documentation for construction permission ("dokumentace pro stavební povolení") with its building permission at the end. This permission has to be given by different bodies separately:
 - By the Railway Authority for the operational permission of the infrastructure
 - separately by each affected local authority as a general building permission

- by other public authorities, if their realm is affected (e.g. waste disposal sites, groundwater resources, natural heritage, immissions etc.).

In case of dissent between concerned parties the higher authority (MoT) has finally to decide on the building permission. This decision will be ultimate.

Environmental legislation

The assessment of environmental impacts (EIA) concerning the planning procedures in the Czech republic is mostly regulated according to law 100/2001, which again orientates on the respective European guidelines. The contents and the process of the EIA are therefore identical with German legislation.

The basic steps in the assessment under the Act include drafting the notification, conducting a fact-finding procedure, evaluation of the proposed concept for preparation and publication of the final opinion. A final assessment is necessary for the approval of the concept. Part of the assessment process is adequate involvement of the public, which includes the disclosure of information and documents, submission of comments and a public hearing. The following is a general assessment of the Intent's impact on the environment and public health.

The subject of assessment (EIA process) under Act No.100 / 2001 Coll., as amended, are projects listed in Annex No. 1 hereto. The Intent for the new railway line Prague – Dresden in the territory of the Czech Republic can be classified as Category I, Intent 9. In this case the competent authority is the Ministry of the Environment in charge of the Environmental Impact Assessment. The proposed Intent will be subjected to an inter-state assessment during the assessment of the concept (SEA process) and the Intent (EIA) according to 14a of Act No. 100/2001 Coll., as amended. Without an assessment the concept cannot be approved.

The subject of the strategic environmental impact assessment (SEA) under Act No. 183/2006 Coll. on Zoning planning and the Building Code (Construction Act) is the regional plan. The assessment of the regional plan is designed to reflect the various steps and stages of the preparation of the regional plan. This SEA process includes public participation. The competent authority for assessment of the regional plan is the Ministry of the Environment.

Subsequently for the adaptation of the local plan the local authorities have to refer to the regional authority. On the basis of the criteria listed in Annex No. 8 (criteria for the fact-finding procedure) according to Act No. 183/2006 Coll. the regional authority stipulates the requirement for environmental impact assessment. In case that the local plan does not include projects listed in Annex No. 1 Act No.100 / 2001 Coll. the Regional Authority issues the fact that the Local plan is not subject to SEA.

Vice versa the Regional Authority issues the fact-finding procedure with the request of processing a SEA. This SEA process again includes public participation. The competent authority for the assessment of local plans is the regional authority.

Waste disposal

Wastes Act No. 185/2001 Coll., as amended ("Wastes Act") incorporates the relevant regulations of the European Communities. Under Section 2(1)(j) of this Act soils and other natural materials excavated during construction activities are excluded from the scope of the Waste Act only if the owner proves that they will be used in their natural state at the construction site and their use will not harm or endanger the environment or human health.

Rocks and soil used for reclamation and landscaping must satisfy the conditions for the use of waste on the surface, which are set out in Section 12 and in Annex No. 11 to Decree of the Ministry of the Environment of the Czech Republic No. 294/2005 Coll., on conditions of waste in landfills and their use on the ground surface, amending Decree No. 383/2001 Coll., on details of waste management.

In the case of this proposal it may be assumed that transboundary shipments of waste will take place, which must be reported as prescribed by the European Communities on waste shipments¹. On receipt of such a report the Ministry of the Environment of the Czech Republic decides to grant consent for waste shipment.

It is also worth noting that under the Wastes Act the Ministry of the Environment applies its assessment on the issues of waste management.² Subsequently, in the phase of approval or update of the Territorial Development Policy the competent regional authority applies a similar assessment.³ During the territorial and building procedure the authority which gives its assessment in terms of waste management is the municipality with extended powers (ternary municipal council).⁴

Land acquisition and expropriation

The right for land acquisition and expropriation is legally based on several important preconditions:

1. The planned investment has to be classified as a "proposal" by the regional authority in their regional plan. Only in case of a "proposal" a project is matched as a project of higher public interest and gives the right to continue with a privileged planning.

¹ Regulation of the European Parliament and of the Council (EC) No 1013/2006 of 14 June 2006 on shipments of waste.

² Section 72(1)(s) of the Wastes Act.

³ Section 78(2)(v) of the Wastes Act.

⁴ Section 79(4) of the Wastes Act.

2. The constructor has to state in detail all territory necessary for the infrastructure and to hand it over to the local authorities.
3. By the local authorities the planned investment has to be classified as a “building of common interest” in their land use permits.

If all these steps are fulfilled the legal basis for land acquisition and expropriation is laid. However, there are many ways to intervene for land owners before court, which can lead to severe delays or interruptions during the planning process.

In Czech Republic the expropriation is provided on the basis of separate expropriation proceedings before “Expropriation authority”. The Expropriation authority will issue a separate decision on the expropriation.

Mining

Act No. 44/1988 Coll. (Mining Act) covers the protection and rational use of mineral resources. This Act also transposes relevant EU regulations.

Implementation of the proposal extends into a Protected Deposit Territory (PDT), reserve deposits and mining areas. Construction activities unrelated to the mining of the exclusive deposit in a PDT reserve mineral is restricted within the meaning of Section 18 of Act No. 44/1988 Coll., as amended. In a PDT it is only possible to create constructions and facilities unrelated to the exploitation of an exclusive deposit with the binding assessment of a regional authority with delegated powers. The regional authority may agree to the implementation of construction and equipment after discussion with the district mining office (DMO), unless it makes more difficult or makes it impossible to mine a reserved deposit or construction in particularly warranted cases (Section 19 of the Mining Act).

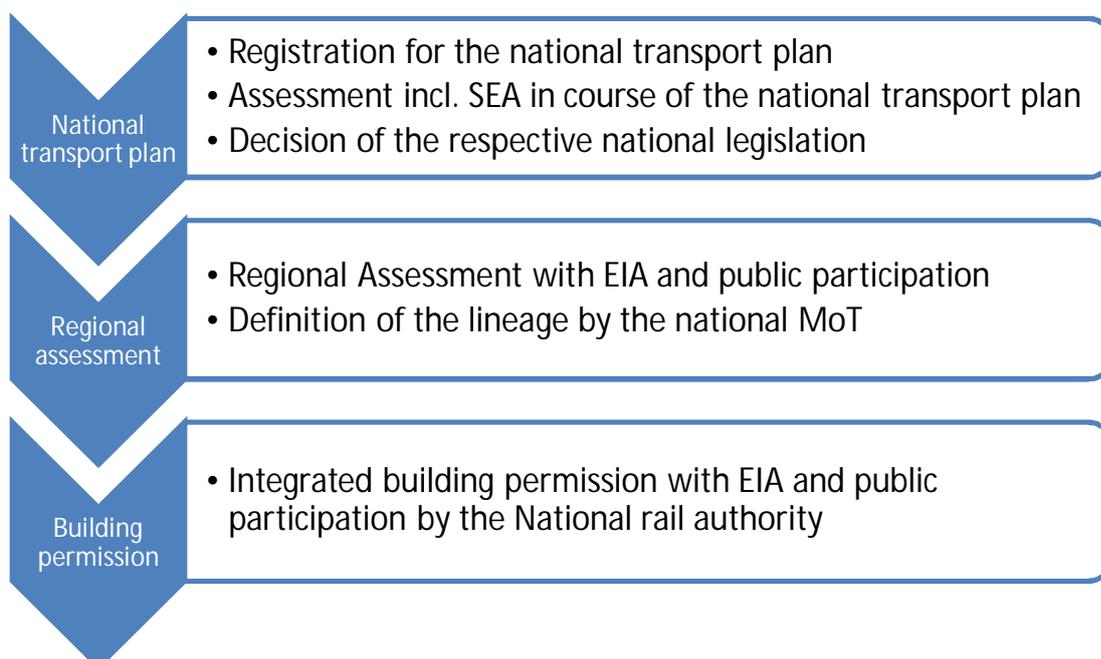
In the case of crossing with an exclusive deposit it is necessary to proceed according to Section 14a of the Mining Act (depreciation of reserved deposits). Depreciation of reserved deposits means exempting them from the reserve records or their transfer from balance-sheet reserves to off-balance sheet reserves.

It is only possible to erect a building or facility unrelated to the mining of an exclusive deposit in a Protected Deposit Territory in a manner that causes the least disruption in the utilization of mineral resources, and in the case of coal if a building of particular importance is concerned. The location of the construction is decided by the Railway Authority in its capacity of construction department on the basis of a binding assessment issued by the regional authority with delegated powers, after consultation with the district mining office. The applicant for the zoning decision procures the binding assessment (Cf. Section 18 and Section 19 of the Mining Act).

1.2.2 The legal framework in Germany / The legal planning procedure

The public planning procedures in the Germany can be structured in a “National Transport Planning” period with first pre-feasibility studies, a subsequent “regional assessment period” and ending with the building permission. All in all the legal planning steps and the respective responsibilities in Germany can be summarised as follows:

1. The registration of a proposal for the national transport infrastructure plan („Bundesverkehrswegeplan“) is necessary to place it in the national budgets. For rail infrastructures this registration can be undertaken by the infrastructure manager DB Netz AG and by the states („Länder“), but also by NGOs.
2. The subsequent assessment of all registered proposals follows a standardised procedure for assessing the external costs and benefits and defining the societal profitability and prioritising the single investment in the national transport plan. This assessment is undertaken by the national ministry of transport as part of the government.
3. On the basis of a governmental resolution of the national transport plan the German parliament will pass a “railway infrastructure investment act”, which comprises all selected rail investments, provides the respective budget and defines an unlimited order for further planning.
4. According to national and state legislation a regional planning procedure („Raumordnungsverfahren“) has to be undertaken for railway infrastructures. The responsibility for this formal procedure lies with the state os Saxony. Neighbouring and international countries have to be involved if affected.



5. On the basis of the above mentioned regional planning procedure the definition of the alignment will be made by the German Ministry of transport. However, the Federal Ministry is free to deviate from the regional decision, but this conflict will be part of the subsequent planning approval procedure.
6. According to German railway and planning legislation the official approval the planned infrastructure will be made in one single planning approval procedures („Planfeststellungsverfahren“). This procedure lies with the German Railway Authority and comprises a formal environmental impact assessment with public participation, where all affected parties – be it public or private – are asked to bring forward their concerns. In this procedure all conflicting interests have to be regarded and in a final decision all single environmental, technical and proprietary rights and permissions will be ultimately provided.

In course of the regional planning as well as during the subsequent planning approval procedures participation of other public bodies and the general public is compulsory.

Environmental legislation

The regulations concerning the environmental aspects during the planning process are stipulated in the German law on Environmental impact assessment (Gesetz über die Umweltverträglichkeitsprüfung – UVPG), which as a national act is again follows the respective European guidelines.

According to art. 2 UVPG the Environmental impact assessment (EIA) comprises identification, description and assessment of a project's effects on

1. human beings, animals and plants,
2. soil, water, air, climate and landscape, including the individual interaction that may occur,
3. cultural goods and other material assets.

Furthermore the environmental impact assessment represents an integral part of procedures applied by authorities when deciding upon the approval of projects. An EIA will be applied on the strategic level of the national transport infrastructure planning (strategic environmental impact assessment – SEA) as well as in course of the respective regional planning and subsequent planning approval procedures (project EIA).

According to art. 9 UVPG the competent authority shall hear the public on the project's environmental impacts on the basis of the documents presented pursuant to Article 6, i.e. an opportunity being given for the public to express its opinion. If a project might have significant environmental effects in another member state of the European Communities, the authorities determined by the member state shall be informed of the

project at the same time and to the same extent as the national authorities (art. 8 UVPG). This also includes the right for public participation (§9a UVPG).

Waste regulations

According to the National act on waste management (Bundesabfallgesetz) tunnel-excavation material has to be treated as waste. Disposal of such masses therefore falls under the legal regulations of waste management resp. immission control.

Disposal of excess material in landfill sites requires an approval procedure according to art. 10 federal immission control act (“Bundesimmissionsschutzgesetz”) and a previous regional planning procedure according to art. 15 national planning act (“Raumordnungsgesetz”).

If several autonomous legal licensing procedures, which require a planning approval procedure (“Planfeststellungsverfahren”), fall together in such a way, that only a joint and integrative decision is possible, for all these different proposals a single planning approval procedure will take place (§ 78 Act on Administrative Procedures (Verwaltungsverfahrensgesetz)). In Germany the disposal or treatment of excess material in landfill sites therefore will not require an independent approval procedure, but will be handled in course of the general approval of the rail infrastructure.

Land acquisition and property rights

The appraisal and consideration of affected private property is part of the planning approval procedure (“Planfeststellungsverfahren”). After this consideration land owners can be expropriated for the purposes of the construction or extension of railway infrastructures if necessary for the realisation of a publicly authorised project. A further consideration of the right for expropriation is not necessary (art. 22 General railway act – AEG).

Furthermore the property can even be delivered earlier by the expropriation board to the project executing agency, if the immediate begin of the building works is necessary the landowner refuses to hand over the property by agreement without prejudice to claims for compensation (art. 21 AEG).

Mining law

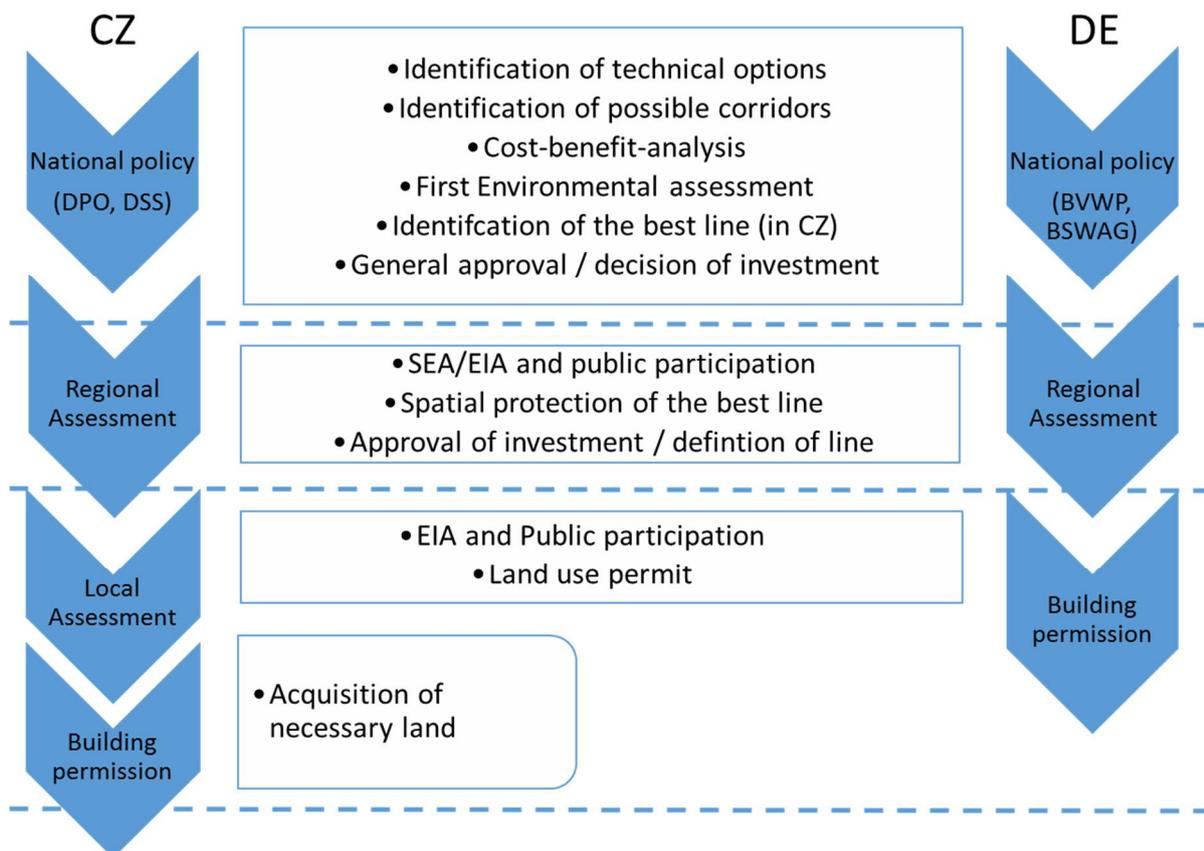
If landed property has to be used for the purposes of the exploration or extraction of natural resources, restricted areas can be allocated by the state government as long as the use of the mining material is necessary for meeting the needs of the general public. (Bundesberggesetz (BBergG) § 107). Respective privileged areas are marked in the spatial plans of Saxony on a state and regional level.

The appraisal and consideration of such affected mining property rights is part of the regional planning procedure (“Raumordnungsverfahren”) as well as the subsequent planning approval procedure (“Planfeststellungsverfahren”), where the legal basis for the claims for compensation according to the mining legislation will be laid.

If thus the preconditions for an allocation of privileged mining areas were removed, the respective areas have to be abrogated by statutory regulation.

1.2.3 A comparison: The legal framework in Germany and the Czech republic

A translation of the legal planning procedures in Germany and the Czech republic is shown in the following digram:



The first phase is concerned with the general decision of the national government on the investment of the railway infrastructure. In both countries this decision is based on feasibility studies and a thorough standardised cost-benefit-analysis including a first resp. strategic environmental assessment.

The second phase is concerned with the definition and protection of the best corridor/line for the new railway. In Germany this is task of the “Länder” (here Saxony), in the Czech republic task of the “kraj” (here Usteckij kraj).

In both countries the alignment of the railway line has to be done with an EIA under public participation. Again at the end of this steps the national ministries of transport will decide on the next planning steps.

The third phase is to provide the final building permission. Here the biggest differences between the countries exist: Whereas in Germany the building permission is given in one single – though spatially divided – legal procedure (“Planfeststellungsverfahren”) by one single authority (“Eisenbahnbundesamt”), in the Czech republic the building permission has to be given separately by the Rail Authority and each affected local authority, and additional permissions (e.g. waste disposal, nature protection) are still requested.

Concerning the right for land acquisition and expropriation both countries provide such possibilities. In Germany such rights are set in course of the “Planfeststellungsverfahren”, in the Czech republic the land use permit of the local authorities create such conditions, but land acquisition is a precondition for the local building permissions.

1.2.4 International experiences from other projects

To gather some international experiences with the erection of transnational rail-infratructure TEN-projects two examples were briefly analysed:

1. The **Brenner-Basis-Tunnel (BBT)** is an international project between Austria and Italy. It comprises the construction of a 58 km long flat trajectory tunnel plus the necessary feeding connections in both countries. According to the Austrian ministry of transport the first crucial step for a future success of the entire project was an unanimous commitment of both countries for the proposal and the contract of an international treaty, which had been signed in 2004.

Contents of this treaty were:

- Description of further planning steps and duties
- Division of costs, in a first instance only for the planning period with an outlook for the construction period
- Liabilities concerning planning legislation, warranties and maintenance
- Appointment of a joint interstate committee

After this the BBT SE was founded, a society according to European law, held to each 50% by ÖBB and RAI. The duties of this company are the financing (at the moment supposed to equal parts of 30% plus 40% of European money), the planning and construction as well as the operation of the tunnel after putting into service in 2024.

Planning legislation differs between Austria and Italy as much as between all European countries. All planning processes therefore had to follow the respective national

regulations, but as the border is tunneled the main spatial problems of routing and environmental impacts are not transboundary and could be solved nationally.

The approval of railway operation will have to follow European legislation as well as the national regulations. Whether the railway in the tunnel will be operated under Austrian or Italian regulations is not decided yet.

2. The **Fast-Ferren-Belt crossing (FFB)** is an international project between Denmark and Germany. It consists of a 18 km long seawater-tunnel for road and rail plus the necessary feeding connections in both countries. The respective interstate agreement was signed in 2008.

Contents of this treaty are:

- Financing (all DK)
- Description of Infrastructure incl. hinterland connections
- Responsible body
- Planning steps and duties
- Appointment of a joint committee

As responsible body Femern A/S was founded, a society according to Danish law, held to 100% by the state of Denmark. The duties of this company are in the first instance the planning and construction; the operation of the tunnel and the rail Infrastructure after opening similar to other Danish Examples is planned.

All planning processes had to follow resp. follow the national regulations. In Denmark the building permission issued by the National parliament ("folketing") has already been achieved, in Germany the "Planfeststellungsverfahren" is still ongoing. Concerning the further hinterland connection ("Fehmarnsund"-crossing) even the lineage and the regional planning and environmental impact assessment are still open.

As the tunnel will be Danish, the railway will be operated under Danish regulations, but nevertheless the approval of railway operation will have to follow European legislation as well as the national regulations.

3. Among the Czech-German joint infrastructure projects the **connection of the Czech D5 motorway and the German A6 motorway** can be mentioned. The transborder connection was provided through a motorway bridge, which was put into operation in 1997. In 1995, the Czech Republic and Germany concluded an interstate agreement on construction of this border bridge. The agreement provided
 - the specification of the state whose rules and construction laws will be binding in the preparation (in this case German laws have been applied),
 - the division of liabilities concerning construction of the bridge (Germany),
 - its maintenance and renovation,

- payment terms arrangements

and it also established a joint interstate committee, that should submit its recommendations on issues related to the border bridge construction. A very similar agreement was concluded also in relation to another motorway border connection between the Czech Republic and Germany – the border bridge connecting the Czech D8 motorway and the German A17 motorway.

Unlike in case of the Brenner-Basis-Tunnel or Fast-Ferren-Belt crossing, in neither of these two Czech-German infrastructure projects a separate, newly founded joint entity was established.

1.2.5 Recommendations concerning the framework of public legislation

There are as many similarities as differences between the legal planning steps in the Czech republic and in Germany. In general the further planning procedure for the international HSR-link will have to regard and follow the respective national legislation. However, if possible the planning steps should be harmonised and synchronised as much as possible. Therefore the following steps and milestones can be recommended:

1. The **decision on investment** in both countries is the next major milestone to continue with the work and to take up all further planning steps. This decision has to be done by the national governments in both countries on the basis of CBAs and EIA/SEA: In CZ the decision on investment lies with the MoT, in DE the decision is prepared by the MoT but finally has to be undertaken by the German Bundestag. The production of the necessary documents, the exploration of possible European funding, dissemination and lobbying should be done by the existing working group.
2. After this general decision on the HSR Dresden-Prague in both countries an **international agreement** on financing, responsible bodies and duties, integration of the proposal in the national transport networks and the further planning steps should be set up by the National governments.
3. International examples show that in course of this treaty also an **interstate planning board** should be implemented to harmonise and coordinate the subsequent planning steps until putting into operation. Members of this joint planning board should be governmental representatives as well as the national rail infrastructure companies.
4. The subsequent **regional planning procedures** lie in both countries with the regional bodies and are undertaken with SEA/EIA under (transnational) public participation. The preparation of the necessary planning documents should be coordinated by the interstate planning board, the public participation should in any case happen simultaneously to avoid prejudices or contradictions.

5. The procedures and preconditions for **building permission** are rather different in both countries. As the building permission procedure will be strongly influenced by the precised proposal and as there might be furthermore legal amendments in the Czech republic in the next years it seems not advisable to give further recommendations at the moment. However, in both countries there is a final EIA with public participation which must take place simultaneously in case of a joint building permission.