Czech Republic: The D8 motorway bulldozer approach

1. Introduction

The D8 Motorway is part of the Berlin-Istanbul IV European Transport Corridor. It is part of TINA, as well as the priority TEN-T list (List 3 of Van Miert’s High Level Group Report).

At the national level the D8 motorway is seen as an important link for the city of Usti nad Labem with Prague. This part of the motorway is projected across the Ceske Stredohori Protected Landscape Area (project section 0805), where an EIB loan will be used for the so far “missing” 16.4-kilometer long section. However, the main importance of the motorway lies in its role as part of the international transport system: when constructed, a new trans-European North-South motorway connection would be provided that would attract large volumes of traffic.

The other critical part of the motorway on Czech territory is located between the city of Usti nad Labem and the border with Germany (project section 0805). Construction of the 23.3-kilometer long section has already started here. This part receives support from an ISPA fund; an EIB loan is being provided as well. This part of the project has affected the designing of the borders of the potential protected NATURA 2000 site (Eastern Krusne Hory SPA). By not putting the adherent area into the Specially Protected Area proposal, the motorway was provided with “security” against potential problems that might appear if it was in conflict with EC nature protection legislation, particularly the Birds Directive 79/409/EEC.

1.1. Project history

- 1963 – The D8 motorway first approved by the communist government, project then ‘frozen’ for nearly 30 years.
- 1976 – Ceske Stredohori declared as a Protected Landscape Area.
- 1993 – Government re-approves the motorway construction plan from 1963.
- 1995 – Nature Park declared in the Eastern Krusne Hory Area overlapping with the current proposal for SPA, but also including the part that was later sacrificed to the future motorway body and adjacent segments that were not included in the SPA proposal later on.
- 1996 – EIA carried out for the 0807 section (from Trmice to Czech-German border).
- 1999 – SEA carried out for the whole proposed Transport Network Master Plan by 2010.

The D8 route questioned and expert recommendation issue to seriously consider two alternative options to be checked: 1. different route that would avoid the most valuable natural and landscape parts; 2. the option of longer tunnels than those projected so far.

- 2000 – Cabinet approves the Master Plan without taking recommendations of SEA experts into account.
- 2002 – First construction permits issued for the D8 ISPA section.
- Feb 2003 – EIB approves the loan for the section without making the decision public.
- July 2003 – EC internally approves ISPA contribution to the project, and the EC states that sufficient mitigation measures are in place.
- Sept 2003 – Czech ombudsman questions the quality of decision-making in the D8 case and demands that ministries look for a solution that would take into account the
environmental sensitivity of the affected areas.

- November 2003 – EC officially announces approval of ISPA co-financing for the project.

1.2. Summary of financial aspects

**Donors:** State Transport Infrastructure Fund (funded partially from privatization income, partially from the share of oil tax revenues and partially from the state budget), EC – grant from ISPA, loan from the EIB.

**Responsible authorities:** Ministry of Transport, Ministry of Environment, Roads and Motorways Directorate

**Main constructors:** Construction of Roads and Railways (SSZ), Metrostav

**Costs of the project:** D8, The Trnice-Eastern Krusne Hory section: EUR 634m (figures according to the Cabinet. Decision No. 125 from Feb 14, 2001). The portion of ISPA money equals EUR 58 million. The EIB’s loan for the section (according to DG Regio) is expected to reach up to EUR 400 million.

2. Evaluation of the appraisal process

2.1. EIA document

The EIA for the Eastern Krusne Hory section (0807) was prepared in late 1996. It was still in a relatively early stage of the project preparation. The EIA doesn’t specifically focus on the provisions of the EU Directives 79/409/EEC (Birds Directive) and 92/43/EC (Habitats Directive) or on the Bern convention aspects. The biological mapping works for NATURA 2000 purposes took place later on when the decision making process was already in quite a late stage (the land use decision proceeding were taking place). The mapping for NATURA 2000 documented that several valuable fauna species (among them corncrake, hen harrier, lynx) and habitats will be affected by the body of the motorway and the traffic, but there was no willingness from the side of the project promoter (Roads and Motorway Directorate, Ministry of Transport) to implement more significant mitigation measures in the project design.

The EIA didn’t take into account the climate change aspects. It of course mentions aspect of specific emissions that supposedly should decrease, because vehicles will use new shorter connection with lower gradients, less curves etc. But the fact that it will also generate traffic - with 562 000 lorries and four times higher the number of other vehicles predicted to use it twenty years after the operation starts - is not mentioned.

**Quality of the EIA and the inadequate selection of options**

The EIA proceeding undertaken by the Ministry of Environment ended with a statement of assent to the construction plan. This statement was issued for one of the variants that leads the route on the surface, and it sets a number of conditions for further project-planning work for this motorway; among them: further work on the motorway project in such a way as to avoid effects on beech woods fragments; run sections of the motorway that intersect bio corridors and bio-centres along a different level than ground level (using bridges and tunnels); monitor elements of the environment before commencing with construction; respect nature principles arising from the Czech Nature and Landscape Protection Act when leading the D8 highway through the territory of the Eastern Krusne Hory Nature Park; and to act in close cooperation with the environment department of the Usti nad Labem District Office.
However, the EIA documentation and final EIA assessment contain a number of defects that put it in conflict with the EIA Act already valid at the time (no. 244/1992 Sb):

- The EIA did not represent objective evaluation of variants for the highway route in the true sense of the word, i.e., including ones that would physically avoid the Eastern Krusne Hory Nature Park (by long tunnels), but rather mere minor adjustments within two options close to each other with short tunnels on the slopes of Krusne Hory. The “active null variant” was not seriously considered either.

- The final assessment of the EIA documentation refers to several places in the corridor selection process, which were fundamental for setting the highway’s route (the below-described “multi-criteria evaluation” using the method of “total indicators of environment quality”) and which took place entirely without public access, thus not fulfilling the preconditions of the EIA Act.

- Indirect effects of the highway’s construction and the effects of induced projects were not evaluated.

- Information on the planned traffic intensity was not properly documented, thus it is possible that the highway’s real effect on the environment will be different than was found in the course of the EIA evaluation.

- During EIA documentation works, three super-regional bio-corridors were not covered at all. These are a part of so called USES - roughly: “territorial systems of ecological stability” - a unit defined and given specific protection in Czech conservation law, and intersect with the body of the highway. The intersection of the highway with bio-corridors and bio-centres is not sufficiently handled in the design by level changes, especially tunnels.

- The biological evaluation that was part of the EIA documentation was not drafted to an extent appropriate for the scale of construction, i.e., minimally in the spring, summer, and fall aspects of a year-long or multi-year evaluation. The biological evaluation likewise did not cover all flora and fauna species protected under the Nature and Landscape Protection Act, nor were all species included in the NATURA 2000 system.

- Another major defect in the EIA process is the fact that no international evaluation of the highway’s effects between the Czech Republic and Germany has taken place, even though a ratified bilateral international agreement enables both states to perform international evaluations in such cases (from Jan 2, 1999). There was no willingness on both sites to do so.

- A fundamental defect in the highway route selection process was the fact that no strategic evaluation (SEA) of the conception of the Czech Republic’s highway network on the environment had taken place before the project EIA, even though this responsibility has existed ever since the 1992 Nature Act. The SEA finally took place in 1999, several years after the corridor for the D8 highway had been selected, and the land-use proceedings for placement of the highway construction had taken place.

- Finally, the SEA’s final statement that recommended going back and also evaluating the option of leading of the highway route through what is called the “Freiberg Corridor” (the corridor that would avoid Ceske Stredohori and, if designed properly, would also have a much smaller impact on the Krusne Hory mountain plateau) was neglected by the Government.

2.2. Legal aspects and the position of the Czech ombudsman
The approval proceedings in both of the critical D8 sections are connected with deficiencies and inaccuracies. In the case of the Eastern Krusne Hory section - except for the previously described problems regarding EIA and SEA (see Annex for description from the legal point of view) - it also includes illegal construction works on project subparts (those without proper approval from the construction offices or not fulfilling the construction authority requirements) and illegal tree cutting on the building site at the portal of the Panenska tunnel (this part is among those that are literally supported by ISPA). These deficiencies lead to official procedures that, among others, might lead to penalties and delays that will, very likely, result in extra construction costs.

Having said this, it must be stressed that the case is mainly problematic from a wider view - that NGOs were applying to the D8 motorway project from the very beginning. The core of the problems lies in an inappropriate neglect to assess alternative routes and measures (e.g. longer tunnels) of the D8 that should have been taken into account in order to avoid to the maximum number of significant impacts on the natural and landscape values.

The NGOs standpoint was also supported by the conclusion of the Czech ombudsman in September 2003:

“...When taking the Government decision about the Master Plan of the Transport Network Development till 2010 (No. 741, approved 21.7.1999), it is clearly mentioned in the Annex that in the D8 case an alternative route shall be considered in the case that Germany would find it possible to link it to the German road network. This alternative counted on the existing part of the R7 (Prague – Postoloprty) expressway plus new constructions of the R28 (Postoloprty – Most - Mnisek/German border). From the Annex it is apparent that this option, which is environmentally most acceptable, was still in place in that time. However, nothing documents that both corridors (D8 from Lovosice/CZ to Pirna/D and R28 from Most/CZ to Freiberg/D) would be consecutively elaborated and assessed according to the EIA legislation including trans-boundary impacts. This is in contradiction with the requirement of the Ministry of Environment in its approving statement to the Master Plan.”

2.3. Evaluation of social and economical aspects of the project

Expected “development” benefits of the whole project are not proved by any detailed analysis. Theoretically the whole D8 project in sections 0801- 0806 should improve traffic connection between Usti nad Labem and Prague and boost the development of Usti nad Labem and its close surroundings. The last section, 0807, which we are describing and is co-funded by the ISPA, only makes sense from the point of view of trans-European freight traffic.

When deciding on the motorway route, however, an alternative link via the Most region (R7 + R28), which is the most structurally disadvantaged region in the Czech Republic, was neglected by the Government, despite that having the motorway might serve the region with a faster connection to Prague and Germany, thus benefits for job creation could be higher. In such a way the necessity to construct the motorway across the Ceske Stredohori PLA (0805) and the valuable parts of Eastern Krusne Hory (0807), which both have significant potential for tourism, would also be avoided.

The motorway is expected to attract freight and individual traffic, which is at the moment using a number of border crossings in the region between the Czech Republic and Germany. Its trans-European character and removal of bottlenecks will also generate new traffic that will contribute to increased emissions and noise levels and thus worsen the potential for the combat of climate change. The expected numbers for freight transport are 432,500 trucks annually in the first year of operation with an increase to 520,000 after ten years and 562,000 after twenty years. The total expected numbers of vehicles that
will use the D8 connection are 5 times higher. Regarding the freight traffic, the Cabinet approved a plan saying that half of the traffic should be shifted to other routes and means of transport.

Ironically, the main step that will be taken in this regard is the supposed cancellation of the ROLA (Lorries on the Rail) combined transport system between Lovosice and Dresden, because of no more subsidies to be provided by the Saxonian government. Also, controversial attempts to build two new dams or weirs in the nearby Elbe river (and put expected NATURA 2000 sites under threat, while consequently the Elbe section in Germany would remain in the status quo, without upgraded navigation) are being pushed through. As a matter of fact, the improved navigation on this section of Elbe is not seen as beneficial by such institutions like the Supreme Audit Office and the World Bank; and even if it were, it would only compete with railways and hardly with the freight motorway traffic. But transport authorities keep silent about this. Except for these “measures”, no other steps to dissolve the expected high road traffic density are taken.

The D8 motorway is the part of the above mentioned Master Plan, the expected concrete outcomes of which are very general (basically, the motorways shall boost development and help in the creation of jobs and the mobility of the labour force). At the same time the financial backing for such an ambitious plan is insufficient. This is why the current Cabinet is planning to revise the Master Plan in 2004, and it is generally expected that the number of planned priority investments will be limited. The NGOs will insist that such a revision is accompanied with an appropriate cost benefit analysis that would also take into account other necessary spending in the transport sector. The reason is simple: The lack of money not only results in down-scaling of construction plans, but resources are also missing for the maintenance of pre-existing road infrastructure safety parameters, which then worsen. Also, the necessary money to invest in railways, combined transport and to the operation of public transport or even to the creation of more efficient integrated public transport systems is constantly missing.

2.4. Transparency and public access to decision-making

In principle, the public has access to the decision-making in the main stages of project preparation (EIA, SEA, land use proceedings, construction proceedings). However, the main problems with sections of the D8 motorway remain in the pre-selection of options that were considered and the unwillingness of the authorities to take more alternatives into account from the very beginning of the process. And this not only happens to the public or NGOs; SEA expert team recommendations and numerous requirements of the Ministry of Environment were not taken into account either. Except for this crucial deficiency, NGOs in some cases are not informed about the beginning of the proceedings; they do not get copies of the materials, their recommendations are being automatically neglected, and they are the object of hostile media campaigns from the side of the authorities.

Also, certain difficulties can be seen in communication with project co-sponsors. It was possible to receive responses and reactions from the EC, meet EC officials and consultants, and thus obtain at least very basic information about the stage of the decision-making process for the project in the Commission. Nevertheless, we are far from saying that it would be possible to receive timely and complete information. For example, the fact that ISPA contribution to the D8 section was approved by the Commission was internally known from July 2003, but publicly it was only announced in November.

The situation with another European institution - the European Investment Bank – is even worse. Since 1997, Czech environmental organizations have emphasized the issue of the D8 motorway’s environmental impacts in discussions with EIB. Sadly, the Bank has shown no interest in taking their calls for project review seriously, as is apparent from its response: “It is not for the Bank to discuss
individual projects with Friends of the Earth or other civil organizations." Despite further communications, the Bank’s attitude toward nature protection concerns of the project has not changed. In February 2003 the Bank even refused to make public the information that the loan for the D8 motorway construction was approved at its Board of Directors meeting and used false arguments why it can not provide this information to the public. The EIB stated that it can’t provide any information about the loan approved, pointing out it was asked by the Czech Government not to do it before such loans got the approval of the Czech parliament. However, when we asked the Czech Ministry of Finance, we got the reply that: "no request exists on the part of the Czech Government in any form, where the Government would ask the EIB not to provide information to the public regarding approved loans/projects that were still to be approved by the Czech parliament."

It is our strong belief that such attitudes of the public financing institutions are far from what can be called fair or even good practice.

2.5. Project approval process

The process that led to the project approval was not completely correct and cannot serve as an example of appropriate decision-making. The most critical fact was that the Cabinet decision from 1993, where the motorway construction Master Plan from 1963 was re-approved, didn’t pass through the SEA process, despite the fact that legislation for this was in place from 1992. This resulted in project preparation that started with the pre-selection of alternatives (the process that is not defined in legislation where the public has no possibility of getting involved) and “per partes” EIA processes for relatively short sections of the motorway.

The SEA took place only when land use proceedings were already in place, and there was no willingness of the authorities to properly assess other potential project alternatives.

Also, the decision-making of the EC about the ISPA contribution and the EIB loan remained hidden in the shadow as a result of the complex decision-making procedures in the EC, which automatically do not take into account the need to provide information to the public (for example, we have never seen conclusions of the consultant’s mission from April 2002 in order to check in detail the controversies about the D8 project, despite asking for it). In the case of the EIB, we have even witnessed the bizarreintention to keep the information confidential.

In autumn 2003 the COWI consultancy reported results of its investigation about what went wrong in the project approval process and why. It came to the conclusion that the project is controversial from the environmental point of view. It also provided an explanation of why, according to COWI, the Commission decided in favour of ISPA co-funding for the project in spite of this fact. The following main aspects of the decision were highlighted:

- There is strong political willingness on the EC side to provide money for the trans-European project (for political reasons and for the prospect of linking the EU and acceding countries)

- The fact that when EC decision-making came into place, the project preparatory process was already too far along to influence the shape of the project substantially; therefore, the Commission limited itself to demanding longer noise walls as the main mitigation measure.

As a result, COWI concludes that if the Commission were involved in time, it would probably have had a bigger influence on the quality of the project planning process.
Nevertheless, the comments to the COWI report provided by the EC (DG Regio) says that the EC will always come in the latter stages of the project, because the EC funding model expects that the member states submit the request for funding when the project stage already allows the decision about funding to take place.

Maybe this is the expectation of the Commission, but the reality is completely different. It is standard practice for states to submit a list of projects to be funded in the future, even without having the basic project details specified, including the route of the transport link. Currently, this can be seen in the Czech Republic’s request from spring 2003 to finance a waterway link between the town of Breclav and the Danube from the Cohesion Fund without having elementary issues like the project route clarified, nor even mentioning having the SEA and EIA procedure done. It is therefore obvious that the Commission’s involvement from the early stage is expected by the member countries, and, if it would only be desirable to do so, the Commission could significantly influence the final shape of the project.

3. Recommendations

In conclusion, it can be said that the D8 project represents an example of pre-1989 decision-making that was typical in its refusal to consider alternatives and in its ignorance to both public opinion and the project’s environmental impact. Civic organisations have promoted alternative routes for the D8 since the early 1990s, but their arguments, together with the SEA experts’ recommendations from 1999, were ignored. Environmental groups contacted DG Environment and DG Enlargement and pointed out the conflict between the EC’s investments in this capacity road (through the ISPA and the EIB) and EC’s requirements for nature protection. They also filed a complaint for projects negative impacts on the areas that fulfil the conditions for protection according to Directives 79/409/EEC (Birds Directive) and 92/43/EC (Habitats Directive). By supporting the project financially, and with implementing only cosmetic mitigation measures, the EU is contradicting its alleged concept of integration of environmental aspects into all sectors of development planning.

The decision to support the project from the ISPA Fund might be seen as a result of the project’s ‘long history’ where the EU came in ‘too late’ to change it significantly after all the formal approvals made by the Czech authorities were already issued. However, it is our strong belief that the Commission shall be more pro-active in demanding that all the environmental requirements are reflected in the project preparation process from the early project stage. Particularly we think the role of DG Environment should be strengthened in order to identify from the beginning which projects are completely feasible, which ones need to be modified, and which ones should be abandoned in case EC co-funding and fulfillment of the basic regulations (like the Birds, Habitats and Water Framework Directives) is required. Otherwise we would have to constantly raise the question of whether the quality of the whole decision-making process is important to the Commission at all. Maybe it is, and it is only the favouritism towards the trans-European projects that makes the Commission not take into account the environmental ‘details’. But why would all those declared environmental principles be in place?

This issue is also particularly important in connection to the updated TEN-T Master Plan and the Growth Initiative that was given political approval by the member states at the end of 2003. A number of priority list projects in Van Miert group’s report can appear equally or even more controversial as the D8 case has shown. It is therefore inevitable that environmental aspects are seriously reflected in the Commission’s future decision-making, and that environmental protection and the ‘partnership principle’ do not remain empty phrases intended to provide the EU with a pro-environmental facade without much content behind it. In this respect the information disclosure policy shall also be more proactive so that the public is informed about the projects in the pipeline and is provided with the possibility to submit their opinion about the projects. In such a way, the space would be created that might help to avoid
major deficiencies of some projects in the pre-financing phase.

Annex:

**Legal aspects of not considering alternatives in the EIA process**

- **Violating international treaties and conventions**

Both the Espoo Convention and the Czech-German Treaty on the Environmental Assessment of Projects with Trans-boundary Impacts were not fulfilled completely because the Ministry of Environment of both countries have agreed that a trans-boundary EIA is not necessary in the case of the D8 motorway and its A17 continuation in Germany.

- **Violating the national legislation and the EIA process and environmental permitting procedure not followed:**

The documents for the EIA process (its documentation and final assessment), as well as the assessment itself, contain a number of defects that put it in conflict with the EIA Act that was valid at the time (No. 244/1992 Sb):

  a) There was no objective evaluation of variants for the motorway route in the true sense of the word, i.e., ones that would physically avoid the Eastern Krusne Hory Nature Park (by long tunnels) or an “active null variant”, but rather mere minor adjustments within two options close to each other with short tunnels on the slopes of Krusne Hory.

  b) The corridor selection process, which was fundamental for setting the motorway’s route, was not based on the law. The so-called “multi-criteria evaluation” method not only was not legal, but it took place entirely without public access, and thus in conflict with the EIA Act.

  c) Indirect effects of the motorway’s construction and the effects of projects made necessary by it were not evaluated.

  d) Information on the planned traffic intensity was not properly documented; and thus it is possible that the motorway’s real effect on the environment will be different than was found in the course of the EIA evaluation.

  e) The biological evaluation that was part of the EIA documentation was not drafted with sufficient quality, because it was not drafted to an extent appropriate for the scale of construction, i.e., minimally in the spring, summer, and fall aspects of a year-long or multi-year evaluation. The biological evaluation likewise did not cover all flora and fauna species protected under the Nature and Landscape Protection Act or all species included in the NATURA 2000 system.

- **Weakness of the domestic legislation**

It is not implemented very strictly and lots of by-steps can influence the quality of the EIA process. The “public interest” is also not specified. Due to this, it is easy to state that the public interest in construction prevails over the interest of nature protection, as was the case with the other D8 section (across the Ceske Stredohori protected area).