

TO:

Mr. Jonathan SCHEELE, Director, DG Tren, European Commission

Mr. Jack ENGWEGEN, Head of Unit, DG Regio, European Commission

CC:

Mr. Christos GOGOS, Deputy Head of Unit, DG Regio, European Commission

Ms. Yvette IZABEL, Policy Officer - Fonds structurels, DG Env, European Commission

Prague, 24th of June 2009

Subject: **Serious problems with road construction planning concerning the TEN-T network in the Czech Republic**

Dear Mr Engwegen,

We are writing to you regarding the recent developments surrounding transport projects which are considered to be part of the TEN-T network in the Czech Republic.

For a number of years Hnutí DUHA - Friends of the Earth, Czech Republic, has been following the planning process and preparations of transport infrastructure in the Czech Republic and promoting accurate assessments of impacts on society and environment as well as decision-making based on a multi-criteria analysis. However, to date such mechanisms have not been put in place although the Czech Supreme Audit Office (www.nku.cz) identified this problem a long time ago and repeatedly insisted that the Czech Ministry of Transport (MoT) implements them.

Decisions related to the new transport infrastructure in the Czech Republic are unfortunately often made on very questionable grounds. This not only poses serious risks of wasting public money and opens opportunities for potential corruption, but it is also very harmful for the implementation of the TEN-T network itself and to the interests of the European Union as a whole. Typical problems include attempts to bring heavy traffic into large agglomerations and creating new bottlenecks rather than preventing them. These wrong decisions effectively block other better solutions for many years ahead.

Considering that the Commission is familiar with the basic facts on the key controversial projects concerned (R1 – NW Segment of the Prague Ring Road, Connection Brno – Vienna and Vienna - Katowice, R55, R43 , etc.), we are providing only a short summary for key cases with the emphasis placed on recent developments. Please find these summaries attached.

We are aware of the fact that based on the subsidiarity principle decisions on detailed form of road

alignments fall within the scope of national authorities. Nevertheless, we believe that there is a strong role for the Commission to ensure that the TEN-T network as a whole is implemented in the most efficient way and with full respect to the EU interests. If this was not the case then the TEN-T network would not have been codified in the EU and no Decisions of the European Parliament and Council related to the TEN-T would exist.

Hence, we ask your directorates to:

1. As a matter of high priority and without any delay, **request the national authorities to provide the Commission with a comprehensive multi-criteria analysis** (publicly discussed in the Member States before its submission to the Commission) to serve as a basis for further decisions on road infrastructure development and to be assessed in the process of SEA. This is an essential first step towards creation of an efficient transport network to be in line with the needs of the society, which would provide a warranty that European interests are properly served and that EU money is not wasted.
2. **Initiate efficient oversight activities of the Commission to prove that the commitments which the Czech Republic accepted in the PREAMBLE of the Operational Programme Transport are fully observed.** Currently, Czech authorities are trying to escape from the Commission's scrutiny by financing controversial (non-variant) TEN-T projects from national resources, while submitting to the EC mostly projects of the third or fourth rank with limited transport significance instead. If the highest priority projects, like the one on the priority axes #25, are not to be submitted for EU funding, then the Commission should open a process which could lead to withdrawal of the funds originally intended for the priority axis #25 to prevent the misuse of the funds and to motivate the Czech Republic to properly evaluate the existing variants. In this context we refer to the letter No. A(07)561-D(07)620 dated 6 March 2007 of the Vice-president of the Commission and the former Commissioner for transport, Mr. Jacques Barrot, which clearly pointed out the need for the variant comparison for this important case noted above.
3. **Strengthen the monitoring of the implementation of projects forming the TEN-T corridors** in the Czech Republic, take a substantially more active role in providing expert feedback to the national authorities and fully utilize all the means that the Commission is entitled to use. For example, the role of JASPERS should not cover only the assessment of individual projects in isolation (what would be de facto a "*salami slicing approach*"), but also to provide the Commission with evaluations of the "big picture", i.e. how individual infrastructure projects help create one harmonized EU-wide road infrastructure. Therefore, the involvement of the Commission and its bodies in the evaluations and implementations of regional concepts could and should be significantly increased.
4. **Develop clear criteria that any project has to meet in order to be certified as a part of the TEN-T network.** If a project does not meet all these criteria, it should not be considered to be a part of the TEN-T network. Clear and timely feedback should be provided to

concerned national authorities. Funding utilizing the common EU resources (EU funds via the OP Transport or TEN-T budget) should not be allowed until the project complies with all the TEN-T criteria.

We would appreciate a confirmation of receipt of this letter and an early and full reply from the Commission to all points listed above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Příbyl', written in a cursive style.

Pavel Příbyl
Senior Transport Campaigner
Hnutí DUHA – Friends of the Earth, Czech Republic

R1 (the motorway ring road of Prague – North-Western Segment)

In the case of Prague motorway ring road (R1), only one variant (south or “J”) has been intensively promoted by relevant authorities from the very beginning. Only when a study was commissioned to a Mott McDonald¹, the consultancy took its own initiative and considered a second possible route suggested by civil society actors that was placed outside of inhabited areas further north (north or “Ss”) route. The study concluded that the **Ss variant has clear economical advantages** (CZK 4-8 billion savings) and besides it has several other advantages such as separating long-distance traffic from local traffic (the Ss variant includes a low level bridge for local traffic inside Prague). Furthermore, the **Environmental Impact Assessment study clearly stated a preference for the Ss route**, while the J route should be considered only if Ss could not be followed.

In the past, the main objection of the state authorities was that the Ss variant is to be located close to an existing nuclear research facility in Řež. Many authorities, including the MoT and the State Fund for Transport Infrastructure (SFDI), claimed that this aspect disqualifies the Ss variant altogether. It was, however, proven that such a claim is not based on any solid evidence. It is worth highlighting that the responsible authority, State Office for Nuclear Safety (SÚJB), repeatedly stated that **the proposed Ss variant does not pose any safety risks to the nuclear facility in Řež** and that its finding cannot be interpreted in a way that would forbid the Ss variant preparations to proceed (statements by SÚJB of 2.4.2002, 20.8.2007 and 21.8.2008).

On the other hand, the J variant has – apart from being much more costly – several major problems. The system of feeding tunnels and an exotic two level bridge in Prague – Suchbátka, all of which pose a safety hazards. This can be regarded as non-compliance with or questionable implementation of Decision No. 2004/54/EC on minimum safety requirements for tunnels on TEN-T roads. Moreover, in contradiction to the TEN-T directive 1692/96/ES, article 9, paragraph 1, the S route cuts through a populated area and it mixes long-distance and local traffic together, as shown below.

Table 1 presents traffic data of expected averages from road sections as stated in the study for the year 2040. As can be observed, the J variant attracts 3.5 times more local traffic, while the Ss variant provides better service for transit. Legend: internal (int.), which has both source and destination within Prague; external (ext.), which has either source or destination within Prague; transit (trans.), which has both source and destination outside of Prague.

variant	Cars / 24 hours			percentage		
	int.	ext.	trans.	int.	ext.	trans.
J	11 870	50 227	20 105	14%	61%	25%
Ss	3 037	52 802	25 192	4%	65%	31%

Table 1: predicted intensities by 2040. Source fo data: CityPlan, 2007, page 42.

¹ Assessment of the “J” and “S” variants of the north-west section of the Prague ring-road. Mott MacDonald, Prague August 2007.

Recent developments

On October 30, 2008, the Supreme Administrative Court of the Czech Republic dismissed the modification “Z 1000/00” of the Land Use Plan of Prague that included the J variant of the Ring Road. The court decision was based on the fact that legal and procedural requirements were not fulfilled. As a result, no application for a zoning decision for J variant can now be submitted legally.

The court ruling also identified major problems in the public consultation processes. It demonstrated that decisions have been taken by authorities without proper consideration of possible variants and that decisions are made firm by the authorities even before any consultations with concerned public begin.

The court noted a possible breach of the TEN-T directive:

“[...] the Decision of the European Parliament and the Council no. 1692/96/ES on Community Guidelines for the Development of the trans-European Transport Network is directed to the Member States and hence is binding in all its parts also for the Czech Republic. If the alignment of the Ring Road was in conflict with the Directive and its Article 9, Paragraph 1 stating that the trans-European road network shall bypass the main urban centres on the routes identified by the network, it could be successfully used as an argument in possible further court cases considering this project.”²

Motorways R52 (Brno- Mikulov) and R55 (Břeclav section)

One of these two projects shall theoretically create part of the South-Moravian part of the Katowice – Vienna TEN-T road corridor (R52/A5 vs. potential R55/A5) – the only Czech motorway project among the current top 30 TEN-T priorities.

A clear request from the EC was made that before the decision on the optimal route is taken, the Czech authorities should provide a relevant comparative analysis of the two potential routes of the South-Moravian part of the corridor (the so called Brno-Vienna highway, although the city of Brno itself does not necessarily fit into the corridor). Although JASPERS involvement in the case was agreed on, the Commission’s request itself to properly assess alternatives was not ultimately reflected. Indeed, there was a comparative study ordered in March 2008 with conclusions to be ready by the end of July 2008, most probably financed from the EC technical assistance. But this study was only focusing on the Brno – Vienna link, not providing relevant weight to the freight transit traffic on the Katowice – Vienna trans-european link. This international transit link does not touch the Brno agglomeration. Using the potential transit connection via Brno would mean a route roughly 30 kilometres longer than necessary. Also, the construction costs used in the analysis are clearly distorted in favour of the politically preferred alignment Brno – Mikulov/Drasenhofen – Vienna route (R52/A5) over the Brno – Břeclav/Reintal – Vienna (D2/R55/A5). Even so, the conclusion of the comparative analysis states that from financial point of view, **neither of the two**

² Decision of the Supreme administrative court of the Czech Republic no. 9 Ao 2/2008 – 62, taken on the October 10, 2008. Translation of this quote done by Hnutí DUHA.

alignments are economically viable³. Similar results can be found also in other studies^{4, 5}.

Nevertheless, whatever the quality of the comparative study would be it turned out to be not really necessary for the Czech decision-makers at all. On June 9, 2008 (that is nearly two months before the comparative analysis was due) the government approved the construction of both connections, with the R52 to be constructed first, and R55 Breclav-Reintal link sometime in the future (planned around 2020). The reasons for this decision can be clearly seen in a quote of the then prime minister Mirek Topolánek, who replied during an official hearing in the Czech parliament: *“A decision on the motorway you are asking about was taken by the government on the 9th of June this year after very complicated negotiations. At the end, both lobby groups will be satisfied. First, the one which has bought land under Mikulov as well as the second one that bought land under Breclav.”*⁶

Recent developments

On December 2, 2008 the constitutional court ruled (case no. 14/07) that the supreme court has to open a case on the land use plan for the larger area of Breclav (into which the R52 construction is incorporated). This legal case is still pending. The land use plan preparation is considered by several civil society actors to be very non-transparent and in breach of several legal requirements. We would like to point out that the Environmental Law Service (Czech based NGO) filed a complaint with the Commission more than one year ago; no results are known to this day.

Also, in spring 2009 the Czech authorities filed a request for funding to the Cohesion fund for the upgrade and maintenance of the current part of the I52 + R52 (requested amount approximately EUR 25 million). The request says that the project fits under the OPT priority no.2: Construction and upgrades of the motorway and road TEN-T network.

To approve financing by the EC for such a project would be, however, rather odd, because:

1. The R52 is not part of the TEN-T network, because there was no decision on concrete parts of the TEN-T taken in the Czech Republic (to this issue also see the letter of the vice-president of the EU Jacques Barrot from 6.3. 2007).
2. Part of the project contains an urban dimension, which is completely out of the TEN-T scope.

3 *Comparative study R 52 Pohořelice – Mikulov – border CZ/Austria and R 55 Břeclav (D2) –border CZ/Austria, Chapter E. Economic assessment., Jacobs Consultancy (as a part of a Comparative study R 52 a R 55, DHV CR, July 2008)*

4 *Assessment of 3 sections of the R52 (5204 Pohořelice–Ivaň, 5205 Ivaň–Perná, 5206 Perná–border CZ/Austria. Economic assessment of the construction; HBH Projekt, april 2006.*

5 *R 55 highway Břeclav, D2 – border CZ/ Austria, Reinthal. study, HBH Projekt, january 2008*

6 *Mr. Topolánek, The Parliament of the Czech Rep., <http://www.psp.cz/eknih/2006ps/stenprot/038schuz/s038096.htm#r4>, 25. 9. 2008*

Furthermore, we would like to focus attention on several other projects that sooner or later may be relevant for the European Commission to decide on:

R 43 expressway

R43, whose construction (together with the so called Southwest tangent of Brno) would be a consequence of the improper infrastructure planning in the South-Moravian region (if the R52 should materialise) with the route crossing a heavily inhabited district of the city of Brno. Altogether, the estimated construction costs would be approximately EUR 1.1 billion higher than necessary. Instead of cutting through densely inhabited areas, a proper routing should be found in order to provide Brno with a proper bypass (in fact, such optional variant exists).

R55 motorway– segment around Bzenec

The Commission has notified the Czech Republic (letter No. 2007/2219 dated October 17, 2007) about breach of the Treaty of European Union. The issued positive EIA statement for a part of the R55 road (crossing a Special Protected Area (SPA) under the Birds Directive) is in violation with the EIA Directive, as an existing alternative route avoiding the SPA has not been considered.

In the spring of 2008, the Czech Republic responded that no Directive could have been breached because the routing was planned already by the land use plan in 1998 (that is before the accession of Czech Republic into the EU). We are aware also of communication in between the Commission and the Zlín authorities in which our concerns were reconfirmed and the Commission stated that the information provided by the Governor “does not change substantially” the Commission's legal assessment of the ongoing infringement case⁷.

Czech officials decided to commission additional expert studies to prove that the protection of the environment is sufficient. Five studies have been completed so far. First two of these studies (assessing the possible impacts on bird populations) concluded that the official plan for the R55 alignment is unacceptable and they proposed a 12 km long tunnel under the SPA. The third study proved that the proposed route was not suitable, while the fourth and the fifth studies compared existing alternatives and proved that there is an alternative route which is viable (even though part of the result was that the change of routing would prolong the preparations).

Although all five expert studies proved the alternative route to be realistic, it seem to make no difference as the Czech Republic continues with preparation of the original proposal. The zoning decision, which will in practice end all discussions, is expected in 2010 or 2011. It is not clear what steps the Commission is taking as it is now that the decision can still be reversed and an alternative route chosen.

D8 motorway (Lovosice – Rehlovice section)

The D8 highway is an 'evergreen' among badly designed projects seeking funds from the OP

⁷ Letter ENV.A2./PO/JL/D(2008)9385, 18th of June 2008.

transport. The preparations and decision process connected with this part of the D8 highway are burdened by serious breaches of Czech legislation. A court case against the zoning decision has been ongoing since 2003 and the court has already twice ruled in favour of it. However, the supreme administrative court in both cases overruled the verdict and returned the case back because of serious mistakes it incorporated. It is feared that the base court is under strong pressure to give a green light to the construction. Two court rulings (from January 12, 2009 and May 29, 2009) in another court case cancelled two decisions on the impact of the D8 on the habitat of protected species. This should mean that further progress on the D8 should be halted until new decisions are issued – yet, all the same, construction activities continue. Furthermore, NGOs involved took to court six construction permits, which should be cancelled as they were based on previously mentioned decisions about the impact on habitat of protected species. The court decided to postpone its decisions. Even though it is believed that the permits will be eventually cancelled, the rulings might come too late and the road will be already built and no one would be willing to consider the existing alternative – a long tunnel under the area of concern. **The D8 has a potential to become the biggest illegal construction in the European Union.** We strongly believe that such a project should be under no circumstances financed from the EU funds or the EIB and it is a showcase of bad practice.

Europoint Brno – transfer of the Brno central railway station out of the city centre

In December 2008, the court cancelled a zoning decision for the transfer of the railway station to its new location. It was clear from the very beginning that many procedures were not carried out properly as there was a strong pressure to issue the zoning decision as quickly as possible. The reasoning was to enable funds to be drawn from the OP transport. Nevertheless, following this court ruling all preparations of the zoning decisions have to start once again. In September 2007, the municipality of Brno commissioned a comparative study. The results of the multi-criteria analysis speak clearly in favour of the retention of the main train station in the centre of Brno (namely, the variant proposed by the public and NGOs) – it is more convenient for people, for the public transport system and is cheaper.

We believe, upholding the preamble of the OP Transport, that the transfer of the train station should not be financed from the EU Funds as there is a better variant available.