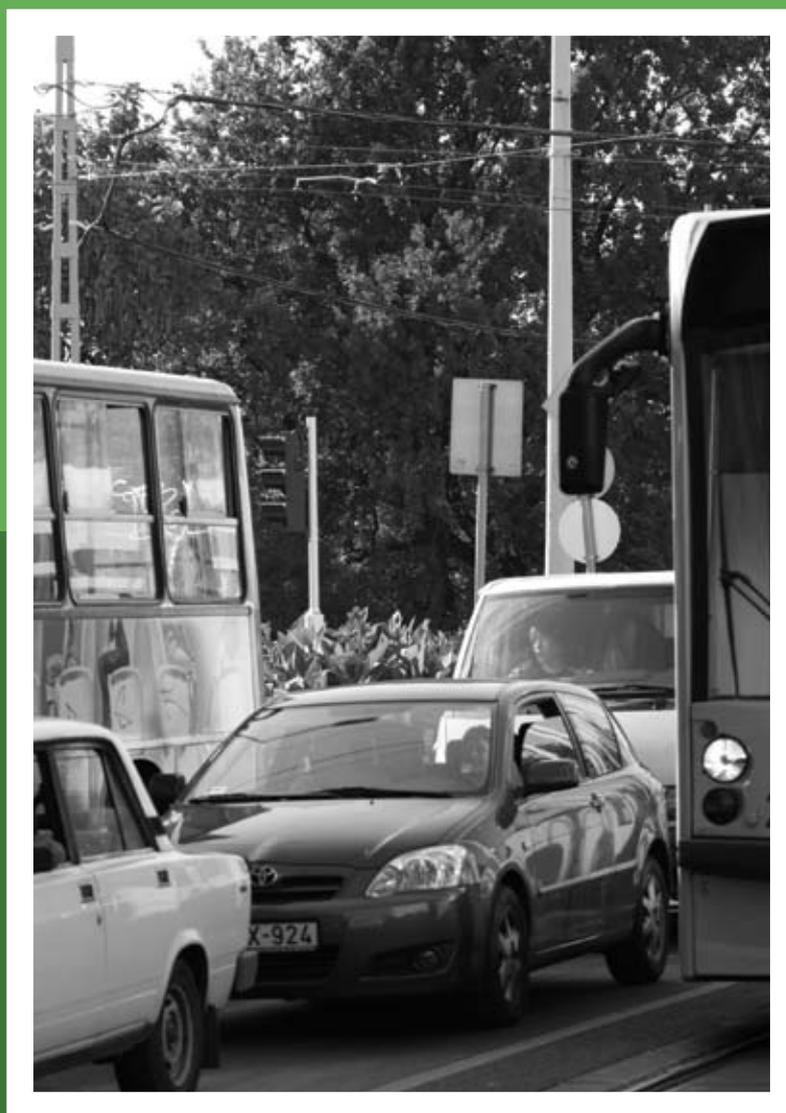


Operational Programmes Transport 2007-2013.

ANALYSIS OF ADOPTION PROCESS AND IMPLEMENTATION

The Case of the Czech Republic and Hungary



December 2008

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1. Operational Programmes Transport in General

Under the Regional Policy, new member states in particular may reach an unprecedented amount of money available in Structural Funds (e.g. European Regional Development Fund and Cohesion Fund)¹. Recently, so-called “operational programmes” in various areas were adopted for the period 2007-2013 in response to the European Commission’s recommendation to the member states concerned (MSs). The Operational Programmes Transport specifically should present development priorities of the transport sector which according to the MSs could and should be co-financed from the EU funds. As the whole process of money redistribution will happen (and has been already started) on the basis of these documents, they must be seen as important indicators of transport development in the given countries in the present days.

As for the Czech Republic and Hungary, the OPTs represent the most crucial plans in terms of the share of money potentially received from the Structural Funds by both countries (in CR it is the largest OP of all). They represent such amount of finances that costs of most of the needed traffic infrastructure projects can be covered by them. On the one side, this can be seen as a positive step towards a more functioning EU with effective transport networks, on the other hand this opportunity may turn into a Greek gift, enabling development of controversial road and motorway projects with corresponding effects on the environment and human health. However, any operational programme must not be seen as a final document listing the projects

¹ Within the objective “Convergence”, Structural Funds may support regions of the NUTS II level with gross domestic product (GDP) lower than 75 percent of the EU 25 per capita average measured in purchasing power parities. Only the Member States with GNI lower than 90 % of the EU 25 per capita average measured in purchasing power parities are eligible for support from the CF.

that will definitely be promoted by EU. Their preparation was largely influenced by the state of sector (transport) planning in individual MSs; e.g. whether there existed a coherent plan of traffic infrastructure development and transport projects were ranked into such plan (and through it into an OPT) according to their transport necessity, cost and benefit analysis and other criteria, incl. environmental impacts.

Still the OPTs are not final and unchangeable documents. They are prepared according to the EU “funding” legislation², they indicate the possible future transport development and they also set some requirements for projects which will seek EU financial assistance. In fact, the crucial phase is the one presently in process – the phase of OPTs implementation when each and every project will individually apply for the “OPT money”.

Therefore Justice and Environment pays great attention to the OPTs and closely monitors both the phase of their preparation and their implementation and realization. This analysis should represent a first brief entry into the problematic and aims to highlight the practical problems brought about by this large financial possibility. It is based on the Czech and Hungarian experience with the OPTs so far – both the Czech and Hungarian part of this analysis will briefly describe the main problems with OPT preparation, adoption and implementation up-to date. Also it will try to point out to aspects that may yet appear.

² The Council Regulation (EC) No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund, and the Cohesion Fund, and on repeal of the Regulation (EC) No. 1260/1999 (“General Regulation”); The Council Regulation No. 1084/2006 establishing the Cohesion Fund and repealing the Regulation (EC) No. 1164/1994 (“CF Regulation”); The European Parliament and Council Regulation (EC) No. 1080/2006 on the European Regional Development Fund and on repeal of the Regulation (EC) No. 1783/1999 (“ERDF Regulation”); The Commission Regulation (EC) No. 1828/2006 laying down implementing provisions to the Council Regulation (EC) No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, and to the European Parliament and Council Regulation (EC) No. 1080/2006 on the European Regional Development Fund (“Implementation Regulation”).

2. Czech Republic: Operational Programme Transport 2007-2013

The Operational Programme Transport 2007-2013 for the Czech Republic (referred to as “OPT C.R.”) was approved by European Commission as Decision No. C(2007)6367 of 10 December 2007. This document defines the framework for drawing money from EU Structural Funds for purposes of transport infrastructure development in seven priority axes in the given period. This framework respects and implements the corresponding provisions of the General Regulation (see Article 54) as a general “funding” legislation and of the CF Regulation (see Article 2) and the ERDF Regulation (see Article 3). The Czech OPT represents the biggest operational programme for the C.R. in this period as nearly EUR 5.8 billion is available for this sector.

As the OPT C.R. is an official and binding document for the “funding” purposes, the transport policy of the Czech Republic clearly reveals in it despite the fact that the OPT does not replace the official Transport Policy or any national planning documents. This document was adopted by the State and approved by the EC after two years of uneasy preparations and negotiations. In the first subsection we sum up the most blatant deficiencies of the adoption process. The problems of implementing phase are described subsequently.

2.1. OPT C.R. – Adoption Process

The lack of systemic approach

As mentioned above, the quality of the OPTs is largely dependent on the state of transport sector planning in itself in individual MSs. There is clearly no coherent transport policy based on careful evaluation of the traffic infrastructure needs. The Supreme Audit Office (SAO) of the C.R. has several times criticized Czech authorities for failure to provide an

efficient, economic and meaningful use of funds that would respect the requirements of human health and environmental protection. The official “Transport Policy” is a document too general to lay down particular priorities in traffic infrastructure development. Therefore it was determined that another planning document will evaluate particular transport projects and list them according to their results in a multi criteria analysis. Despite the fact that the Government started works on such a document³, it was never completed and was in fact replaced by “The Traffic Infrastructure Development Time Table for 2008 – 2013” (adopted in September 2007). This document completely fails to define the transport projects prioritization based on comprehensive economic, transport, social and environmental criteria. The only criterion considered therein was the formal readiness of each project. This list was subsequently used for the OPT purposes. Thus many of the transport projects contained in the national “time table” with no account to their real necessity appeared in the OPT list and are supposed to be co-financed from it.

Discrepancies in the SEA procedure

The Ministry of Environment of the Czech Republic has granted a positive SEA statement for the OPT proposal despite some very serious discrepancies in the assessed proposal, absence of evaluation of usefulness of the individual traffic projects, proposed for financing from the OPT and without alternative assessment. The SEA procedure itself was implemented in a very confusing way. In a whole, the SEA process lead to severe breaches of relevant EU legislation (e.g. the EIA, SEA and Natura 2000 directives). Some of them are listed below:

- the SEA assessment (environmental report) did not include a number of obligatory information on significance

³ It was so called General Plan of the Traffic Infrastructure Development (GEPARDI).

of environmental effects of the OPT implementation

- no variants of the proposed highway alignments were considered
- the public was not given an effective opportunity to express their opinion on the OPT and the environmental report prior to the adoption of the OPT (As the deadline for comments from the public on the SEA documentation was Friday 10th November 2006 and the Ministry issued the positive SEA statement already on Monday 13th November 2006, there was in fact not a single working day between the deadline for comments and the date of issuing of the final SEA statement). Comments and objections of the public were ignored during the preparation of the OPT
- transboundary SEA was not performed despite the fact that the OPT implementation will affect all neighbouring states

Controversial projects on the list

The OPT C.R. includes a list of particular transport projects, including projects of construction of new roads and motorways. Many of these projects are highly controversial. Even though it was confirmed during the preparation of the OPT that all individual projects will go through due SEA/EIA processes⁴, and the list is repeatedly called an “indicative one”, the fact that these projects appeared on the OPT list must not be underestimated. According to our experience, once a project is mentioned in a strategic document (even if on the “indicative” list only), such project is then incorrectly presented by the Czech authorities as already approved. Listing of such a project in a document which, on one side, went through the SEA process

but, on the other side, did not focus on specific road alignment alternatives, could be misused as an argument against undertaking a real evaluation and comparison of the alternatives. The environmental assessment procedures for some questionable projects included in the OPT are already in progress or even completed. No variants of the projects were taken into account or the variants were incorrectly treated. As a result, the alternatives were considered neither in the SEA/EIA processes for individual projects, nor in the SEA procedure for the OPT.

The Preamble of the OPT C.R. is of crucial importance, as mentioned above. The Preamble states:

“Preamble

The list of projects in Appendix 1 and the schemes in Appendix 2 are to be considered as indicative. These projects and their configuration (specific line routings, etc.) could be amended and changed during the programming period. Approval to co-finance any project mentioned in the OP Transport and in the appendixes, will be subject to the examination of his application for co-financing by the Managing Authority of the OP Transport, including the Environmental Impact Assessment (EIA) and the Cost-Benefit (C/B) analysis which should contain, inter alia, comparison of alternative options on the base of their cost and environmental aspects in line with the “letter and spirit” of the relevant Community legislation. The findings of the comparative studies of the examined projects alternatives, both from and economic and environmental point of view will be part of the formal application for the co-financing of the projects. It should finally be stated that approval of the operational programme and approval of financial support for individual projects are two separate processes and therefore the decision of the European Commission on the programme approval does not prejudice the approval of co-financing for any individual project.”⁵

⁴ A Preamble was incorporated into the text – see the English version of OPT C.R. at <http://www.opd.cz/cz/Programove-dokumenty>

⁵ Operational Programme Transport 2007-2013, Prague, October 2007, see the English version at <http://www.opd.cz/cz/Programove-dokumenty>

2.2. OPT C.R. – Implementation Process

Despite the irregularities and discrepancies of the adoption process of which some were mentioned in the previous section, the OPT C.R. was adopted by the Czech Government 15th November 2006 and subsequently approved by the European Commission 10th December 2007. As we continue to monitor the OPT C.R. and the way it is implemented, we can already spot several deficiencies in this phase. The implementation should correspond to the Implementation Provisions of the OPT C.R. itself.⁶

Monitoring Committee and public participation

The OPT C.R. Implementation Provisions establish a specific scheme of authorities participating on the implementation of the OPT. Among them, the Managing Authority (MA) and the Monitoring Committee (MC) are responsible for the quality of the OPT execution. The Monitoring Committee is set up pursuant to Article 63 of the General Regulation, and its objective is “to ensure that the assistance provided is effective and of good quality”. Members of the MC should include representatives of MA, implementing body, interested ministries, regions, cities and towns, experts, NGOs, EIB, European Commission and state investment organisations. In other words, it should represent also the external element and secure objectivity and effectiveness of spending of the OPT resources. It is also the MC’s task to assess and approve criteria for the selection of projects to be financed. The Czech experience with the MC functioning so far is however negative. In its final composition the NGOs representatives (which are in most cases of traffic infrastructure projects the only independent actors) create a meaningless

minority with low or zero possibility to enforce their ideas or affect any MC decision (in fact there is only one representative for the whole non-profit sector). The MC meets on a regular basis; in the C.R. this happened only three times so far. Moreover, the participation on the MC meetings is not remunerated, which causes capacity problem and places the NGOs representative in less favourable position. Generally, the real decisions are created elsewhere (that is in the Managing Authority).

Lack of information

Despite the Managing Authority expressed several times their willingness to make the OPT implementation process transparent and open to the public, this cannot be seen nowadays. Also the OPT C.R. refers to Art. 69 of the General Regulation according to which the MA will provide information about the projects and the programme to EU citizens and support beneficiaries, so that assistance provided by the funds is transparent. According to the Project Selection Process Setting, the beneficiaries will submit projects in response to pronounced project calls. While these project calls are naturally publicized (via internet on the special OPT site), no adequate information on the applicants and their projects is available until the MA decision. This prevents any NGO or other subject to raise comments or objections to any application, despite its possible breaching of EU and national legislation, as well as the OPT principles and provisions themselves. Despite the special OPT C.R site (www.opd.cz) includes a section called “Projects” the information given therein concerns only the already approved projects and is itself very fragmentary.

Who is the Managing Authority?

The Project Selection Process Setting in the OPT C.R. grants the crucial authority and decision making to the Managing Authority (MA). The MA performs project selection on the basis of the results of an expert evaluation,

⁶ See OPT C.R. at <http://www.opd.cz/cz/Programove-dokumenty>, p. 125 et.

in line with project selection criteria approved by the MC. Major projects (with overall costs exceeding EUR 50M) will be submitted to the European Commission through MA, other projects are selected for financing by the MA directly. The MA in the Czech Republic is the Ministry of Transport (MoT). Despite the fact that this role is officially fulfilled by the EU Funds Department of the MoT, in reality the hierarchical relations prevail and thus the Minister's (or in the C.R. his deputies, esp. Deputy Minister Jiri Hodac) word prevails. In the Czech reality, when the main investor and developer of roads and motorways is in fact a state organisation subjected to MoT (e.g. Road and Motorway Directorate of the Czech Republic, RMD), together with a weak role of the MC, this means that the RMD has an open door to an unprecedented money which can in case of "minor" projects be obtained without any obstacles. Only the "major projects" will have to truly undertake the test of conformity with the EU legislation as they will be assessed by the EC.

3. Hungary – Operational Programme Transport 2007-2013

3.1. Introduction

In Hungary, six percent of the GDP is generated by transport (passengers and goods). Taking into account the construction of transport networks and vehicle manufacturing, every tenth job is associated with transport.

In household consumption, the share of transport services is 12 percent (21 percent including the purchasing and operation of passenger vehicles)⁷. The value of the transport infrastructure is approximately one-fifth of the country's national wealth.

Because of its geographical and geopolitical position and open economy, Hungary's economic competitiveness and the quality of lifestyle, closely linked to the former, crucially depend on the development of the transport system. Due to the geopolitical position of Hungary, the country's most useful potential contribution to the European division of labour is the creation of the high-quality infrastructure conditions of the Western/Eastern movement of goods.

Safe railway, road, waterway and air-lift networks of adequate capacity are indispensable for the country's economic development.

On 1 August 2007, the European Commission approved⁸ Hungary's Operational Programme for Transport (OPT) for the period 2007-13. The OPT falls within the framework laid out for the Convergence Objective and has a total budget of around €7.3 billion. Community assistance through the European Regional Development Fund (ERDF) and the Cohesion Fund amounts to some €6.2 billion, which represents approximately 24.5% of the total EU investment earmarked for Hungary under the Cohesion Policy for 2007-13.

3.1.1. Aims and Objectives

The OPT supports the development of transport infrastructure. Good quality transport links make it easier for people to commute to and from work. The better the links the greater distances people can travel efficiently, which in itself can enable more people to enter the jobs market. What's more, improving transport links can also strengthen social and territorial cohesion.

The programme has the following specific objectives:

- Improving Hungary's integration into the European economy and developing

⁷ Hungarian Central Statistical Office 2005

⁸ No. of decision: C/2007/3794. Final approval date: 1 August 2007.

transport infrastructure that can support the country's emerging markets;

- Improving accessibility to Hungary's regions, both within and between individual regions;
- Improving the intermodality of Hungary's transport systems in a way that supports economic competitiveness;
- Contributing to the sustainable and economical development of public transport systems.

3.1.2. Expected Impact of the Investment

The Programme's impact will be seen in various infrastructure developments, which include:

- constructing about 330 km of new expressways;
- modernising about 500 km of railway track, including the upgrade of IT, safety and traffic control equipment;
- upgrading about 1100 km of roads so that they can take an 11.5 tonnes axle load capacity.

The Programme will also provide Hungary with a host of new urban transport systems including a sub-urban railway for Budapest. In addition, urban transport will be improved in Hungary's major regional centres through investment in infrastructure such as trams, trolley buses, intermodal hubs, etc. Money will also be set aside to build metro line No 4 in Budapest.

3.1.3. Priorities

The OPT is structured around the following priorities:

- Priority 1: Improving international accessibility to the country's road network

and regional centres (approximately 19.0% of total funding)⁹;

- Priority 2: Improving international accessibility to the country's rail and waterway networks (approximately 27.7% of total funding);
- Priority 3: Improving regional accessibility (approximately 24.5% of total funding)¹⁰;
- Priority 4: Linking modes of transport and improving the intermodality and transport infrastructure of economic centres (approximately 2.4% of total funding);
- Priority 5: Improving urban and sub-urban public transport (approximately 25.0% of total funding);
- Priority 6: Technical assistance (approximately 1.3% of total funding).

3.2. Adoption Process

Lack of systematic approach, discrepancies of public participation

The social debate of the OP-s of the New Hungary Development Plan (national strategic reference framework of Hungary 2007-2013 - NHDP) started on the 18th October 2006 and ended on the 8th November 2006. The conciliation of the SEA procedure of the OP-s with the civil partners was held between 15 November 2006 and 14 December 2006. On the 20th October 2006 the government adopted the NHDP.

The general impression of the civil organizations taking part in the public participation procedure of Operational Programmes and in OPT is clearly negative. The anyway complicated procedure became almost untraceable because of renaming of the framework document of

⁹ The ratio of road developments within the total TOP (Priority 1 and 3) = 43,5%.

¹⁰ 26,7 % for railway, 1% for waterway development.

the Operational Programmes several times: National Strategic Reference Framework, New Hungary Programme, and New Hungary Development Plan.

Following the elections in 2006, the government set up the National Development Agency (NDA) by merging the National Development Office and authorities managing the implementation of the National Development Plan. These changes of the institutional system and the frequent fluctuation of the staff of the Agency resulted into the fact that the content of the relevant documents became almost untraceable.

Upon the information published on the website of the NDA, 1350 organizations prepared approximately 3594 comments and sent opinions related to the drafts of the OP-s altogether. Assessing the utilization of the 180 comments and civil opinions in the social debate of the OPT, only 5% of the opinions materialized in the final text of the Programme.

Although the public participation procedure of the OP-s can be regarded correct in a technical sense (questionnaires, forums, direct involvement of civil partners, commenting via e-mail exchanges), evaluating the whole procedure the impression of the civil society was that from the side of the government the conciliation was merely formal. It was the weakest link of the planning process, a disturbing factor before preparing the final version of the OP-s.

Controversial projects on the list

The SEA of the OPT came to the conclusion that the Programme will promote activities which are environmentally not sustainable. Less than one per cent of the total aid would be spent on energy efficiency, although this is one of the most acute problems also in the transport sector.

The OPT prefers public highway constructions and investments (mainly motorways and expressways) instead of the development of public transport and railway network (and moreover, more than a half part of the total funding for improving urban and sub-urban public transport – Priority 5 - would be spent very inefficiently for a 7-kilometer long metro line in Budapest). Several projects aim to improve surface accessibility to airports and there are also plans to provide funding for local roads.

3.3. Implementation process

The implementation of the OPT is realized in the framework of Action Programmes (APs) lasting for two years. These APs present the concrete calls for tenders and the advantaged projects as well.

To speed up certain construction investments 'beneficial to the national economy', in the beginning of 2008 the government amended several laws with the reason that the long lasting and complicated permitting processes endanger and make the utilization of the EU-funds too complicated. This resulted in a less complex and less time-consuming authorization process. In the same time it is not clear and it is unknown who and how is authorized to recommend a project for the government to be regarded as 'beneficial to the national economy', and the uniform opinion of the civil society is that basic guaranties disappeared from the authorization process especially from the environmental point of view.

There exists no assessment and no information how many projects were realized in the framework of the OPT to this date.

2. Operational Programmes Transport – Interim Conclusions

Shall we make some preliminary conclusions on the OPT C.R. and OPT Hungary functioning so far, we must state this process lacks any real control as well as real guarantees that the OPT implementation rules and principles (such as OPT C.R. Preamble) and EU and national (not only) environmental legislation will be adhered to. Large amount of money can be distributed with no ex ante control whatsoever.

Furthermore, another danger has already started to appear in the OPT implementation process. This reverse side danger lies in the possibility that some of the most controversial major projects will profit from the fact that the OPT money are available to the MSs and will be finance exclusively from the national resources (State Budget) with the money spared due to OPT. The large OPT resources will be used for projects complying with EU legislation and thus able to stand the EC “conformity” test, and the MoT will flow the national funds into the controversial projects to please the political interests resting behind them.

This change of approach has become real in the Czech Republic with R1 Project (the Prague Ring road) and R52 (Brno – Vienna connection) – both are largely controversial, both have breached several EU directives as well as national legislation, both are included in the OPT “indicative” list. Still the new budgetary proposals transferred these two projects among the projects financed from national funds. The more striking thing in these cases is the fact they should become part of the TEN-T, thus they represent the most important transport projects of whole-European interest. The mere

possibility that Brno – Vienna connection¹¹ (TEN-T Priority Project No. 25) could not be financed from the OPT (with obvious intention to avoid the EC evaluation of this major project) clearly reveals the failure of cohesion between two EU policies – the transport policy and TEN-T on the one side, the regional policy and EU (OPT) funding on the other. It would be logical that the EU financial support would primarily be used to support transport projects of EU relevance and importance. The Czech intention not to finance R52 from the OPT C.R. clearly goes against this logic.

The SEA processes and low possibility of the general public to participate were the most serious deficiencies of the adoption process in both countries. The implementation period has so far been largely closed to the public and the whole process is far from being transparent. Most striking deficiency of the whole process is the complete lack of effective means of control whether the large financial sources are used to duly and lawfully chosen transport projects.

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¹¹ Important thing to say is the fact that R52 is not necessarily the correct route of the Brno – Vienna TEN-T connection. Nevertheless, the Czech responsible authorities claim that it is decided in the TEN-T regulation (the two TEN-T decisions) that R52 is the precise alignment of Priority Project No. 25. Despite the fact that the TEN-T regulation does not define precise routes and these should be chosen by the MSs themselves with regard to all relevant legislation, incl. the assessment of alternatives.

