

**Opinion of the Clean Air Action Group
about the letter No. ENV.D.3/NM/mar D(2007) 17938
of 10 October 2007 from DG Environment**

CAAG received a letter from DG TREN on 06 July 2007 which did not reply our concerns, but stated only that our case has been forwarded to DG Environment for further investigation.

After this, we contacted the DG Environment by phone. Afterwards we travelled to Brussels to meet their representatives. The meeting took place on the 13th September 2007. The person in charge of our complaint had practically no information about the matter.

DG Environment was obliged to submit a statement before the adoption of the Decision. Note, that the Decision was adopted on 1st August 2007, so before our meeting took place. On the 29th September we sent a letter to DG Environment about our disappointment, and we received a reply on the 10th October from the Head of the Unit on Cohesion Policy and Environmental Impact Assessment.

This letter from DG Environment failed to refer to and/or attach any statement of the DG Environment made before the Commission Decision, therefore such statement is completely unknown for us and for the public as well. However, the reply of DG Environment is far from satisfactory for the following reasons:

a) The reply from DG Environment states:

As regards the Strategic Environmental Assessment (SEA) of the Hungarian Transport Operational Programme (TOP), the report does not contain any allegation of breach of environmental Community legislation in the strict legal sense; therefore your allegation of the OP not being lawful is unfounded in my view.

It is true that the SEA did not expressly state that the TOP breaches the Community legislation, however it did state that the TOP is unsustainable. Therefore it should have been evident for DG Environment that approving any EU aid for TOP is unlawful.

b) The reply from DG Environment states:

The 2001/42/EC Directive sets out the procedure of how to carry out the SEA in relation to certain national plans and programmes; DG Environment is entrusted with the task of checking the conformity of the procedure followed with the Directive during the adoption of the OP. Amongst others, the Directive requires the provision of an official statement (pursuant Article 9.1(b) of the SEA Directive) by the national authorities on how the OP has taken into account the findings of the SEA report, the opinions expressed by competent administrative services as well as by the wider public. The final version of the OP, which is available to the public, includes this statement. This statement of course has to become publicly available also according to the provisions of national legislation transposing the Directive.

From this it is evident that DG Environment accepted the TOP as it was prepared by the Hungarian Government without taking into consideration CAAG's complaint and without investigating whether the TOP really conforms to the Directive 2001/42/EC. If DG Environment would have done so, it would have found the following discrepancies in TOP:

b1) The statement of the Hungarian Government to which TOP refers fails to mention that

the SEA came to the conclusion that the TOP is unsustainable.

b2) The following statement of TOP is not true: “Following the evaluation of the opinions and proposals received, the organisations having given an opinion received response letters, similarly to what had happened following the completion of each round of social consultations.” CAAG has never received a response letter to its opinion concerning TOP, although it requested such response several times.

b3) Although some of the main concerns of CAAG are mentioned in TOP, the responses can hardly be accepted as adequate. For example TOP cites that a social partner mentioned the following concern: “*A basic condition of efficient operation of market economy is that prices should reflect real costs. Open and hidden state subsidies distort the market and often give preference to some enterprises or sectors without merit whereas they put some others to a disadvantage irrespective of their market performance. Therefore, the direct or indirect financing of public road and air traffic from EU resources contradicts to the principles of market economy and the “polluter pays” principle as set forth in the EU Basic Treaty.*”

TOP’s response is the following: “*We have not accepted this point. The issue of handling state subsidies goes beyond the KözOP (Transportation Operative Programme) competence. Development of public roads does not only serve the objectives of market economy but also the goals of societal and regional cohesion at least to this extent. Therefore, we cannot forgo the development of public roads. The OP does not support the development of air traffic.*”

Here, on the one hand, TOP clearly states that it refuses to take into account the polluter pays principle and the free market principles as laid down in the EU Treaty and other relevant EU legislation. On the other hand, it does not answer the concern raised by CAAG, which did not question the development of public roads, but only stated that such developments should be paid by the users of public roads. Besides, most of the EU aid will be spent for major roads used by international heavy truck traffic, not for smaller roads helping “societal and regional cohesion”. Even in the case of smaller roads, a large part is to be spent for roads stimulating urban sprawl, and not for helping socially and economically backward regions. According to our information some of the road investments will help access to airports, which is clearly a subsidy to air traffic.

It must be noted also, that we consider highly hypocritical that TOP is trying to justify road building by “societal and regional cohesion”, while at the same time the Hungarian Government is continuously taking measures leading to the deterioration of more environment-friendly transport modes. For example, in the beginning of this year it closed 14 railway lines (it planned to close 28, and only massive protests from local residents and local governments succeeded in saving the rest), and now it is planning to close another 36 lines – mostly in the poorest regions of the country. Recently there have been cuts in the bus services, too, in these regions. At the end of last year and the beginning of this year the government drastically raised the public transport fares, although the experiences of the last 20 years proved that such fare increases do not result in the increase of revenues of the public transport companies, but they lead to the decrease of the number of passengers. The track user fees for both passenger and freight railways have been raised to one of the highest in Europe...

c) The reply from DG Environment states:

Moreover, the SEA refers to the whole programme, which represents the national level. The question of sustainability will have to be looked at also on project level at the implementation stage of the OP. The OP will be implemented via 'action plans' and

concrete projects, where further Environmental Impact Assessment (EIA) is required in conformity with the 85/337/EEC Directive as amended by the 97/11/EC Directive.

Furthermore, let me draw your attention to the fact that the implementation of the OP will be monitored through the Monitoring Committee, which involves environmental authorities as well as NGOs as full members thus providing for another forum for ensuring environmental interests.

CAAG's complaint did not relate to any concrete project, but to TOP as a whole. Therefore this statement by DG Environment is rather irrelevant to the issue. Besides, we think it is quite cynical to ask us to raise the same complaint again and again at each concrete project.

d) The reply from DG Environment states:

In addition, the Commission pursues a policy of sustainable transport to which several Member States including Hungary have subscribed. The TOP reflects the commitment of the Member State to sustainable transport i.a. in terms of budget allocation.

This statement is highly questionable in view of the EU aid planned to be given in the years 2007-2013 to the new member states. This is not only CAAG's opinion. The study „EU cash in climate clash: How the EU funding plans are shaping up to fuel climate change” (<http://www.bankwatch.org/publications/document.shtml?x=1982979>) by CEE Bankwatch Network and Friends of the Earth Europe also comes to the conclusion that “the 177 billion euros to be spent in these countries is on a collision course with the EU's commitments to avoid climate change.” The study „Investing in our future: a European budget for climate security” (<http://www.green-alliance.org.uk/uploadedFiles/Publications/reports/InvestingInOurFuture.pdf>) comes to the same conclusion.

d) The reply from DG Environment states:

As regards the 'polluter pays' principle, I confirm the position taken by the Commission in its letter to you TREN/B1/SM/ nr D(2007) 310670 dated 04.05.2007.

As we have already stated above, this letter from DG TREN did not answer the question whether EU aid to be given in the framework of TOP conforms to the polluter pays principle.

Budapest, 12th November 2007



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President
Clean Air Action Group