EKOLOGICKÝ PRÁVNÍ SERVIS
ENVIRONMENTAL LAW SERVICE

Commission of the European Communities
(Attn: Secretary-General)
Rue de la Loi 200
B-1049 Brussels
BELGIUM

Complaint to the Commission of the European Communities concerning failure to comply with Community law with regard to implementation of the requirements of the 85/337/EEC Directive in the Czech Republic

1. Surname and forename of complainant:

Ekologický právní servis/Environmental Law Service (EPS)

2. Where appropriate, represented by:

Mgr. Pavel Černý

3. Nationality:

Czech Republic

4. Address or Registered Office:

Dvořákova 13
602 00 Brno
Czech Republic

5. Telephone/fax/e-mail address:

Tel: 00 420 545 575 229
Fax: 00 420 542 213 373
pavel.cerny@eps.cz

6. Field and place(s) of activity:

Environmental Law Service is a non-governmental organization (NGO) engaged in environmental protection and defense of other public interests by provision of free legal aid.
The activities are pursued in the Czech Republic.

7. Member State or public body alleged by the complainant not to have complied with Community law:

The Czech Republic, represented by The Ministry of Environment.

8. Fullest possible account of facts giving rise to complaint:

a) Introduction

This complaint is intended to present the **most typical and most important shortcomings of implementing the requirements of the 85/337/EEC Directive**, as amended by 97/11/EC and 2003/35/EC Directives (hereinafter **"**EIA Directive" or "Directive") **in the Czech Republic** and illustrate them in specific examples (mostly traffic infrastructure cases). To some extent, the complaint also deals with **insufficient transposition** of this Directive into the Czech legislation.

The complaint is attached with "case-lists" including more detailed description of specific cases, in which provisions of the EIA Directive were infringed.

The complainant is aware that the Commission initiated infringement procedures against the Czech Republic for failing to meet requirements of article 10a of the EIA Directive (only limited number of subjects having access to review procedures to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of the Directive)[1]. The complainant supports the Commission's observations concerning that point. At the same time however, as argued for in the following parts of this complaint, the complainant is convinced that the Czech Republic is infringing upon a number of other requirements of the EIA Directive, primarily by incorrect implementation of relevant (transposition) provisions of the Czech legislation. The Commission could therefore consider broadening the scope of the running infringement procedure on some of the problems described in this complaint.

If the correct implementation of the Directive is not secured, the institute of environmental assessment can never fulfill the goals expressed in it's Preamble (namely to be a core instrument for achieving Community objectives in the sphere of the protection of the environment and the quality of life). Conversely, as it is too often in the Czech Republic, the EIA procedure is seen as a costly and time-consuming burden, which does not make any difference with regard to final permit and realization of the project.

The main purpose of this complaint is, therefore, to bring the attention of the Commission to the systematic problems of incorrect implementations of EIA Directive requirements within the Czech Republic. According to the complainant's opinion, it is a logical next step after the conformity checking has been finished. The complainant welcomes the fact that the Commission already initiated steps to meet this goal. The complainant hopes that the complaint could help the Commission in this effort.

[1] The procedure is registered under no 2006/2271; letter of formal notice was sent to the Czech Republic on 27 June 2007.

b) Basic information about EIA and the development consent procedures scheme in the Czech Republic

Directives 85/337/EEC, 97/11/EC and (partially) 2003/35/EC have been transposed into Czech law mainly by Act No. 100/2001 Coll., on environmental impact assessment (hereinafter referred to as the "EIA Act").

It must be added, however, that the Czech EIA Act regulates only the EIA (assessment) procedure "*as such*". This procedure is, according to EIA Act, concluded by a non-binding "*EIA opinion*" on the part of the responsible authority. No subsequent administrative decision *necessary for realization of the project* (development consent) can be issued prior to "EIA opinion" exists. The content of the EIA opinion is, however, not binding for the authority issuing a development consent.[2]

The requirements of the EIA Directive refer not only to the EIA procedure "*as such*", but also to subsequent development consent procedures (see e.g. Articles 5.1 (a), 6.1, 6.2, 6.4, 7.3 (b), 8, and 9.1). These procedures are regulated according to Czech legislation and exercised separately from the EIA procedure (the development consent is sometimes issued many years after the "EIA final opinion!).

Therefore, other Czech laws regulating the development consent procedures (Building Act, Nature and Landscape Protection Act, Administrative Procedure Code, etc.) must also be considered as national acts transposing the requirements of the EIA Directive and the requirements of the EIA Directive have to be met in the procedures regulated by them. This is not fulfilled in many aspects, especially concerning requirements on publishing information and public participation (see bellow in part c) vi. of this section).

It is therefore questionable whether the general concept of transposition of the EIA directive into Czech law is suitable. In other words, it may inevitably lead to the problems and infringements described in detail in the next part of this section.

c) Description of systematic infringements of EIA Directive requirements

i. Failure to assess all projects with significant impacts

Article 2.1of the EIA directive requires that all projects likely to have significant impacts on the environment are subject to environmental assessment in compliance with the Directive. For the "Annex II projects", member states are, according to Article 4.2, entitled to determine whether the specific project shall be made subject to assessment.

However, as the European Court of Justice (ECJ) emphasized repeatedly, the discretion accorded to the member states by Art. 4.2 *must not undermine the objective of the Directive, which is that no project likely to have significant impacts on the environment should be exempt from the assessment*.[3]

According to Czech EIA act, the decision on whether a specific "Annex II" project will be subject to EIA is adopted by the responsible authority at the end of "screening procedure". The "screening decision" ("conclusion of the screening procedure") should be justified, but the EIA

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[2] For more detailed description of EIA procedure according to EIA Act, in comparison with another five EU Member States, see the legal analyses published at http://www.justiceandenvironment.org/wp-content/wp-upload/JE2006EITlegalanalysis.pdf), pp. 31-44.

[3] Case C-435/97 Bozen (WWF and others); see also cases C-72/95 Kraaijeveld C-329/96 Commission v Ireland, C-87/02 Commission v Italy

Act does not provide for any details. In practice, the screening decisions stating that the "Annex II projects" will not be assessed are often poorly (formally) justified, without making clear why, according to the authority, the project does not have significant effects on the environment. This can be interpreted as breaching the above mentioned requirement of art. 2.1 of EIA directive.[4]

At the same time, the Czech courts have (so far) ruled that screening decisions are not subject to judicial review. We interpret this approach as contravening the requirements of art. 10a of the EIA directive, because the conclusions of screening procedures are surely "*an act which is covered by the provisions of the EIA Act on public participation*" (see also point vii. bellow).[5]

Example:

Holešov industrial estate

This industrial estate is the largest prepared as a "greenfield" in the Czech Republic (the total area of the estate approximates 360 ha). The Government confirmed by its decision that it belongs to the category "*Strategic industrial zones of the Czech Republic*".

There is a spring area of drinking water near the border of the zone, which would come under serious risk of contamination by industrial uses nearby. A further serious impact of the project would be the absorption of large amount of agricultural land.

Despite of all these facts, the competent authority decided that the estate shall not be assessed in an EIA procedure. A lawsuit against this "*screening decision*" was dismissed by the court.

ii. Failure to carry out environmental impact assessments of whole projects ("salami-slicing")

Especially in transport infrastructure cases, investors often artificially "cut" the projects into pieces for the purposes of the development consent procedures (so called "salami-slicing").

Therefore only short sections of the projects (especially roads) are assessed and permitted. The environmentally less questionable parts of projects are "logically" authorized and built first, which in fact predetermines the ultimate route of a project, even across an environmentally valuable territory. This is contrary to article 2.1 of EIA directive, which requires that "projects" (and not parts of them) likely to have significant effect on an environment, are subject to the assessment.

This approach also leads, inevitably, to breach of the requirements of art. 3 and 5 of the EIA directive (see bellow part iii.), because the assessment of only parts of the whole project does not provide for a sufficiently comprehensive evaluation of all direct and indirect impact upon the project and their interactions.[6] It also makes it hardly possible to assess variants of the projects (see bellow part iv.), because on the basis of one short section of a particular highway, the variants cannot be compared.

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4 See e.g. Case C-87/02 Commission v Italy

5 The obligation of EC member states to allow a judicial review of a screening procedure for Annex II projects (if the EIA procedure is completed by it) has been repeatedly confirmed by the European court of justice, even before the 2003/35/EC "public participation" Directive had been adopted. See, for example, Case C-435/97 Bozen (WWF and others. It should be added that, according to the Czech Act, if an EIA process ends with a screening procedure it does not, on the basis of the EIA Act, qualify NGOs as parties to subsequent administrative procedures (see point vi. for more details)

6 See for example ECJ judgments C-392/96 of 21 Sept 1999 (Commission vs Ireland) or C-227/01 of 16 Sept 2004 (railtracks Valencia).

Examples:

D8 highway

This highway was divided into 7 artificial "projects" for the purpose of EIA and development consent procedures. The most controversial section of the highway, crossing the "České Středohoří" SPA, was not assessed in EIA before the developer began construction of another section between Ústí nad Labem city and the edge of the SPA. Meanwhile, development consent for another section was issued, which led the highway to the edge of the SPA from the other side.

Consequently, there was "no other choice" but to lead the motorway across the SPA (for which purpose the Ministry of Environment granted an exemption from the SPA protection).

R43 high-speed road

R43 is another illustrative example of the incorrect approach of Czech authorities to the evaluation of transport projects' impacts on the environment and a lack of general concepts regarding transport infrastructure development.

Rather than evaluating a planned road's overall impact, the investor proceeds by pieces. EIA opinions for non-controversial sections are issued, while the EIA procedure for the section closest to Brno (via Bystrc) has been under review for six years already.

One consequence of this salami slicing is that not all parts evaluated based on the same law. The most critical segment at Brno is still being evaluated using the EU-non compliant law 244/1992 Coll.

iii. Insufficient assessment of all impacts of projects, particularly the indirect and cumulative (synergetic) effects

Articles 3, 5.1 and 5.3 in combination with Annex 4 of EIA Directive, require the member states to ensure that developers supply whatever information is necessary to assess all important direct and indirect effects of projects. Similarly, pursuant to the EIA Act, projects shall be assessed "separately and within the context of the environmental impacts of the plan as a whole".

In practice, the indirect effects of projects and effects of their cumulation with other projects (planned or already existing) are not being taken into account. This is significant as concerns the traffic infrastructure projects. In many cases, when the impacts of new traffic projects are assessed, it is not taken into consideration that realization of these project would (directly or indirectly, by means of induced traffic), further increase burden of areas.

These are often areas in which the noise and particle matters (PM) air pollution limits are already exceeded.

Examples:

South Moravian traffic projects

At present, noise and air pollutants (diesel particles) in areas south of Brno (2nd largest city in the Czech Republic) already exceed legal limits.

Three new projects are planned in this area or it's surroundings: Extension of the **D1** (Prague-Brno) **motorway**, **R43** (Troubsko-Kuřim-R35) **high-speed road**, which would bring the transit

traffic to the area from the north, and **R52** (Pohorelice-Mikulov) **high-speed road**, which is supposed to become a part of the Brno – Vienna corridor.

All these high-density traffic roads would cross at Troubsko and Brno-Bosonohy municipal district in the south-west part of the Brno agglomeration. EIA procedures for D1 extension and R52 have been finished already, for R43 they are still in progress.

In none of them were the cumulative effects of the projects assessed. The assessment of R52 project did not deal with its impact on the area southwest of Brno at all.

Nokian Tyres' manufacturing plant
EIA documentation completely ignored the existence of adverse impacts on air conditions from pre-existing industrial complexes in the locality, where the new project was to be located. It also contained no measurements or calculations concerning increasing odor pollution, despite the fact that the affected area is currently burdened by heavy odors.

Incorrect determination of the projects, mentioned in previous point ("salami-slicing") deepens this problem. If, for example, the highway crosses the protected area and its sections are assessed separately, it is likely that for the sections outside the protected area, the information provided by the developer would assert that there are no impacts on the area. It is likely the authorities will accept this attitude.

Example:

R55 high speed road
EIA procedures were carried out for a number of separate, short sections of this planned road (one of them crossing the Bird habitat area "Bzenecká Doubrava – Strážnické Pomoraví") . This has led to the result that the indirect effects of the sections of the road which would border on the Bird area were not assessed. The responsible authority issued a statement that section next to the Bird area will have no impacts on it. The indirect and cumulative impacts of individual sections (which should have been assessed altogether) were omitted.

Additionally, there is a problem concerning insufficient transposition of Art. 5.3 of the EIA directive requirement that information provided by the developer must include a description of the measures foreseen in order to avoid, reduce and, **if possible**, remedy significant adverse effects. This formulation clearly means that, according to the Directive, it shall be obligatory to describe the compensatory measures when it is (objectively) possible.

However, according to the Czech EIA Act (Annex 4, Part D.IV.), the developer shall describe "measures to prevent, reduce and **eventually** offset any significant adverse effects on the environment". The Czech legislation could therefore be interpreted as if description of the measures foreseen to remedy significant adverse effects of the project would rest on the will of the developer, *which is not in compliance with the Directive*.

iv. Non-assessment of real alternatives of the projects

Article 5.3 of the EIA Directive requires the developer to outline the main alternatives to the project and to provide reasons for choosing a particular alternative (taking into account environmental effects).

In many cases (including traffic infrastructure projects), the information provided by the developer contains only technical variations of the same alternatives (e.g. corridors). Developers

fail to consider and assess more environmentally favorable alternatives, in spite of their practical existence.

Authorities accept this approach and do not ask developers to supply information regarding further alternatives. This fact raises a question of whether the practice of developers studying

- only technological variations of the same alternative,
- consequently providing only these information to authorities and public,
- and thus predetermining which alternative only can (or "must") be approved,

is in compliance with Article 5.3 of EIA Directive requirements.

Literally, it could be possible to interpret this provision in the way that "real" alternatives (e.g. different corridors of the motorway) must be presented only when the developer itself decides to "study" them.[7] This interpretation, however, clearly contravenes the purpose and spirit of the EIA Directive.

The situation differs in cases when projects may have negative impacts on "NATURA 2000 areas." In these cases, according to Article 6.4 of 92/43/EC "Habitat" Directive and Article 4.4 of 79/409/EEC "Bird" Directive, only alternatives with the lowest damaging impacts on the protected areas/species can be approved. This means, that all possible "territorial alternatives" (e.g. corridors) of the projects must be assessed, so that the less damaging one can be chosen.

Examples:

R52 high-speed road

Only partial 'sub-variants' (all in one corridor) were assessed in the EIA process. There was no assessment of any real alternatives for a highway-type connection between Brno and Vienna, which could make use of existing D2 (Brno-Bratislava) highway and the Breclav bypass, which is going to be built in any case.

R55 high-speed road

No alternative of the R55 corridor which would by-pass the Bird habitat area "Bzenecká Doubrava – Strážnické Pomoraví" was assessed. This despite NGOs and some authorities repeatedly asking for it, as well as a screening decision.

The NGOs submitted a study proving the technical possibility and transport effectiveness of such an alternative. The EIA opinion approving this particular project therefore violated Article 4 of the Bird Directive and Article 6 of the Habitat Directives.

Hyundai company automobile plant

The EIA procedure for the plant began immediately after the sale of the land for all three potential sites (in Nosovice, Mosnov and Holesov estates). Yet the documentation failed to contain a comparison of the environmental suitability of these individual sites.

[7] The requirement to assess the alternatives of the project was transposed into Czech EIA Act in this sense. The EIA Act entitles the competent authority to ask the developer to supply information on the main alternatives to the project. However, alternatives that deviate from the approved land planning documentation can be required only "exceptionally and when justification is supplied". This means that the land planning documentation pre-determines, to a certain extent, the scope of information and also the results of the assessment. It seems that the criterion of land planning documentation is thus put before the scoping criteria listed in Art. 5.1 (a) of the Directive, which is contrary to it.

v. Non-execution of trans-border assessments

According to article 7 of the EIA Directive (and the Espoo Convention), projects likely to have significant effect on the environment in another EU Member state should be subject to "trans - border" assessment.

Czech legislation allows affected Member States to participate in the EIA procedure "itself" (according to EIA Act), but not in the subsequent decision-making procedures (see above part b). This is an example of remaining insufficient transposition of EIA directive requirements into Czech legislation. In practice, to the complainant's knowledge, only one the "trans – border assessment has ever taken place for project located in the Czech Republic, although the environment of neighboring states was seriously affected by many more.[8]

Examples:

R52 high-speed road

R52 was announced to become part of the highway connection between Brno and Vienna. Therefore the project without doubt has significant effects on the environment of a neighboring EU Member State; Austria.

In the initial (screening) stage of the EIA procedure, the Austrian ministry (referring to the Espoo convention) indicated that Austria wishes to participate in the procedure and Austrian administrative bodies, municipalities, and NGOs sent their comments (although the EIA documentation was provided to Austrian authorities only in the Czech language). Despite that, the EIA was not carried out as a trans–border procedure, and no real explanation was provided for this omission.

D8 motorway

Trans – border assessment did not take place with justification that "specialists from both Czech Republic and Germany agreed that there is no need for it" Trans – border assessment did not take place with justification that "the ministries of environment of Czech Republic and Germany agreed that impacts of the motorway on the environment close to the borders were assessed by specialists from both countries and therefore separate EIA procedures in each country are sufficient.

vi. Failure to guarantee effective and timely public participation, especially to present all information in reasonable form and time frames and to take into account comments by the public

Articles 6, 8 and 9 of the EIA Directive should guarantee that

- the public receives sufficient information about the impact of the projects,
- that members of public concerned have effective and timely possibilities to participate in decision making procedures and
- that results of the public participation are seriously taken into consideration in the development consent procedure.

In principle, Czech legislation provides for a good level of public participation in the EIA process itself. However, it illustrates substantial problems in the development consent and judicial review phases.

[8] The only one was related to the spent uranium store of Dukovany nuclear power plant. The same can be said about plans and programs (e.g. SEA on Operational Program Transport).

With regards to information concerning the request for development consent, some of the information required by Article 6.2 of the EIA Directive (e.g. the nature of possible (consequent) decisions) and competent authorities, the course of the procedures, details concerning the manner of public involvement) is still not required by EIA Act. The requirement to make the contents of the development consent available to the public (Article 9.1 of EIA directive) is regulated by the 123/1998 Coll. "Right to Environmental Information Act". However, maybe due to this not very systematic legislative approach, it is not fulfilled in practice in most cases.

Pursuant to Article 6.4 of the EIA Directive, the public concerned shall be given early and effective opportunities to participate in decision-making procedures. Mainly due to the fact that the Czech legal system fails to define the term "public concerned" the following problems are encountered:

- Laws regulating the development consent procedures (as the Building Act) and their common interpretation make the participation of individuals in these procedures possible only for affected owners of the property, not for other persons affected *by*, or having an interest in the decision.
- Participation of NGOs in decision-making procedures subsequent to the EIA Act is limited by three requirements. Only one of them--*the NGOs must submit their written comments within the EIA procedure*--depends on the NGO's own activity and therefore complies with the Directive. The other two--*the competent authority has stated in the "final EIA opinion" that the NGO's comments are partly or fully included in the authority's opinion and the decision-maker in the follow-up procedure, has not decided that the public interests promoted by the NGO are not affected by the projec*t--are beyond the scope of the EIA Directive and cannot be met by activity of the NGO itself, since they depend on the will of public authority.
- There are another possibilities for NGOs to become participants of developments consent procedures (namely according to the Nature Protection Act), but it is not conceded that the scope of the procedures will be identical with those which are subject to the EIA Directive requirements.

Pursuant to Article 8 of the Directive**,** the results of consultations and the information gathered during assessment must be taken into account in the development-consent procedure.

On the contrary, pursuant to the EIA Act, only the "*final opinion*" is obligatory in the subsequent development-consent procedures. As standard practice, the developer submits only the EIA opinion apart from other documents to the competent authorities. In our opinion this is contrary to art. 8 of the EIA directive.

In practice, the objections and requirements of the public are mostly disregarded in the EIA final opinions on subsequent development consents, or they are dealt with only formally. It is a widespread feeling among the Czech public that participation in EIA procedures, which mostly requires studying long and difficult-to-read technical documents, is a waste of time and energy.

Example:

R52 high-speed road and the general evaluation of the Czech ombudsman, concerning assessment and permitting of big investment projects

The Czech Ombudsman wrote in his statement on the R52 permitting procedures: "*I consider it as a paradox, that through repetitive assessment of different conceptual materials and specific projects it is becoming almost impossible for the public to identify the "right moment" when specific proposals and public objections should have come up. I come across this phenomena quite often in the investigations I lead, especially those concerning controversial investment projects; the public is virtually pushed aside when it comes to decision making, the reason being that it is still to early for any remarks to be made and then the very same remarks are rejected*

subject to argumentation that they should have been submitted in earlier procedures and that the form and shape of the project has in fact already been decided. This attitude results to an "info–chaos", which is persuading the public that is was in fact omitted, the decision was known in advance and the respective procedures only served as a tool for its legalizing."
It can only be added that it was not the first time the ombudsman expressed his criticism concerning traffic infrastructure permitting procedures. His evaluation is, according to the complainant view, utterly precise.

R55 high-speed road
This typical failure showed itself very expressively in this case, where the public supported their arguments and requirements (to assess the variant by-passing the protected area) by a number of expert studies. Despite that, they were completely ignored.

vii. The impossibility of achieving an effective judicial review of the results of the EIA process

According Article 10a of the EIA Directive, *the public concerned must have access to a review procedure before a court of law to challenge the substantive or procedural legality of decisions, acts or omissions concerning public participation provisions of the EIA directive. Any such procedure shall be fair, equitable, timely and not prohibitively expensive.*

Insufficient transposition of this provision (which is already subject to an infringement procedure – see above) and, even more importantly, incorrect implementation of relevant Czech legislation (in particular Act No. 150/2002 Coll., Code of Administrative Justice) induces a number of deficiencies in this respect:

- The EIA final opinion is not considered "reviewable" by Czech courts, due to its non-binding character (see above)
- The scope of subjects considered to have standing against the development-consent is restricted, in comparison to the definition of "public concerned"
- Non-governmental organizations (NGOs), in cases when they have the position of a party to the administrative procedure, can (according to the prevailing opinion of administrative courts) only successfully challenge violations of their procedural rights, if objections concerning substantive shortcomings of the development-consents are not taken into consideration by courts
- Administrative lawsuits against development-consents do not regularly have a suspending effect. Courts may adjudicate only if strict requirements are met--and do so very seldom and practically never for actions lodged by NGOs. Environmental court proceedings have an average length of more than one year. An action cannot be lodged successfully immediately after the EIA opinion was issued, but only against the development consent (see above). Therefore, the initial construction of a project, in a majority of cases, moves forward a great deal or (in the worse case) is completed by the time of the court's decision.

Examples:

Dismissed lawsuits against EIA opinions
Lawsuits were entered against EIA final opinions concerning **R52 and R55 high-speed roads, D1 motorway extension**, and the **Holešov industrial estate** screening decision. All these lawsuits were dismissed as "premature".

The Supreme Administrative court refused to address the European Court of Justice with a request for a preliminary ruling, if the "EIA opinion" according to Czech EIA Act should be subject to "independent" judicial review according to Article 10a of EIA Directive. The complainant considers it as breaching of Art. 234 of the Treaty on European Union.

viii. Lack of logical cohesion between EIA and SEA procedures

On the top of the above mentioned "direct" shortcomings of implementation of EIA Directive requirements, it can be added that there is often lack of cohesion between SEA and EIA procedures, dealing with interrelated plans/programs and projects. On one hand, similar impacts are sometimes assessed in SEA and EIA procedures repeatedly. On the other hand, there are cases in which the EIA opinion for a specific project was issued prior approval of a strategic plan (mostly land use plan), setting the framework for that project and prior to when the related SEA procedure was finished.

In other cases, the results of SEA procedures (e.g. refusal of some specific project alternative, or request to assess alternatives in more details) are omitted in consequent EIA and development consent procedures. This occurs, even if it is the same authority, usually the Ministry of the Environment, who is responsible to both related SEA and EIA procedures.

Generally, it can be said that if an SEA procedure is not carried out in an appropriate manner (or does not take place at all) the EIA procedure can hardly fulfill its responsibility. This is especially the case for large infrastructure investments.

Examples:

R52 high-speed road and the Breclavsko-region Land use plan

The R52 high speed road corridor is contained in the land use plan for the Břeclav region, approved in November 2006. The EIA opinion for R52 was, however, issued in May 2005 already. By this Not only was the logical order of SEA and EIA procedures embarrassed by this fact, but it also contributed to the result that real variants of highway connecting Vienna and Brno were not assessed in any of them. In the SEA for the land use plan, the argument of the authorities why not to deal with other variants was just the "positive" EIA opinion.

R43 high-speed road

The results of SEA procedure for "Conception of Traffic Networks Development in Czech Republic" from 1999, which did not recommend the R43 project to be realised, are ignored in the EIA procedure. Currently, a new regional and use plan for South Moravia Region is being prepared, which will have to be subject to SEA. The regional assembly declared its resistance to the assessment of alternative corridor for R43 in this SEA procedure; at the same time, the politicians promote the positive EIA opinion for the "Bystrc alternative" to be issued prior the land use plan is adopted, what would "predetermine" its corridor in the plan.

9. As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

The complainant is convinced that the facts presented in section 8. c) of this complaint prove, that the following provisions of Community law are being ***repeatedly (systematically)*** infringed in EIA and subsequent development consent procedures in Czech Republic:

Article 2.1 of EIA directive – by non-assessment of "Annex II projects" despite the fact they are likely to have significant impacts on the environment (without sufficient justification), as well as by widespread using of "salami slicing" method, which determines that rather than complete "projects", their artificially separated segments are assessed. (see sections 8. c) i. and ii. of this complaint)

Article 3 of EIA directive – by not identifying, describing and assessing the indirect effects of projects, as well as the effects of their cumulation with other projects. (see section 8. c) iii. of this complaint)

Article 5.3. of EIA directive – by not requiring developers to supply information about alternatives to projects and to provide reasons for choosing a particular alternative. In cases where the project can have negative impacts on "NATURA 2000 areas, this also infringes **Article 6.4 of 92/43/EC "Habitat" Directive and Article 4.4 of 79/409/EEC "Bird" Directive.** (see section 8. c) iv. of this complaint)

Article 6.4 of EIA Directive - by not giving early and effective opportunities to participate in decision-making procedures to all subjects corresponding to the definition according to Article 1.2 of the Directive. This article has *not* been transposed into Czech legislation. (see section 8. c) vi. of this complaint)

Article 7 of EIA directive – by not transposing the requirement to make it possible for affected Member States to participate in the environmental decision-making procedures subsequent to EIA procedures. By not executing trans-border assessments in practice. (see section 8. c) v. of this complaint).

Article 8 of EIA directive – by not transposing the requirement to take into consideration, in development-consent procedures, all information gathered during assessments and by considering only the EIA final opinion in practice. (see section 8. c) vi. of this complaint).

Article 10a of EIA directive – by no direct transposition of this article into Czech legislation. By the practical impossibility of members of the public-concerned, especially NGOs, to achieve effective judicial review of outcomes of EIA and development-consent procedures. (see section 8. c) vii. of this complaint).

10. Where appropriate, mention the involvement of a Community funding scheme (with references if possible) from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

Some of the above mentioned traffic infrastructure projects, in relation to which infringements of EIA Directives and other EC law requirements were identified (see also attached case lists) are planned to be financed from the Operational Program Transport (OPT), approved recently by the Commission.

NGOs and other members of public raised many objections both against the OPT proposal and the manner in which the related SEA procedure was carried out. The main objections, which were also highlighted in the complaint that the complainant sent to the Commission on April 2007, referred to following problems:

- the SEA assessment did not include obligatory information, concerning the significant environmental effects of implementing OPT
- no variants of the proposed highway alignments were considered
- the SEA procedure was not performed as "trans - border", despite the fact that realization of OPT is likely to have significant effects on the environment in other member states (all neighboring states to the Czech Republic).
- comments and objections submitted by public were ignored during the preparation of the OPT proposal and prior to its adoption by the Czech government

After negotiations with the Commission prior to the OPT adoption, some substantial changes were made in its text. In spite of this, several principal concerns raised by NGOs in the course of the preparatory process remained unresolved, namely:

- Controversial transport projects, with negative or no SEA assessment (especially R52, R55, D3 and R1 north-west section) remain in the "indicative list" attached to OPT
- Valid SEA opinion for the "Conception of Traffic Networks Development in Czech Republic" from 1999 was not clearly quoted and de facto ignored
- With regard to the R52 high-speed road, legally invalid memoranda between the ministers of transport of the Czech Republic and Austria, with no legal power to predetermine the corridor of the motorway connection between Brno and Vienna, is mentioned in the OPT as an "international commitment"
- OPT does not include a specific demand to asses alternatives of some controversial projects. In this respect, it can be stressed that the Czech Motorway Directorate is continuing to take steps to receive building permits for the construction of the R1. Northwest section; R52 and other controversial projects, although so far no appropriate assessment of the project variants (according to the Preamble of the OPT) took place.

All these problematic points are related to factors relating to the individual projects' impact assessments and thus to the matter of this complaint.

The Commission decided to use JASPERS mechanism for f R1 and Europoint Brno projects and support the Czech Ministry of Transport proposal that ISPA funds should be used for assistance in the preparation of Brno-Wien alternative motorway connection assessments.

Nevertheless, it is apparent that these projects might obtain building permits beforehand the assessment of alternatives takes place. Therefore, the complainant takes the liberty to ask Commission to undertake all appropriate steps to avoid overriding of the OPT rules. It is necessary to ensure that the assessments will be carried out in compliance with EIA procedural rules and *prior to the development consents being granted.*

11. Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence):

The following approaches were made to the Commission services concerning the matter of this complaint and related questions:

- In November 2006, the 4 NGOs including the complainant addressed Commissioners for Environment, Regional Policy and Transport, regarding EC involvement in the Vienna-Brno motorway development. Several infringements of EU law in that specific case were

described in this letter which correspond to the systematic problems which section 8. c) of this complaint is dealing with. There was a follow-up correspondence with DG REGIO and DG and ENV on that letter.

- Several meetings with representatives of Czech NGOs, including the complainant, were held at DG TREN, DG REGIO and DG ENV in Brussels on February and June 2007, where some of the problems mentioned in this complained were raised in connection with a number of transport infrastructure projects and negotiations on the OPT proposal.

- The complainant with other Czech NGOs filed a complaint concerning the SEA procedure on the OPT proposal in April 2007. This complaint was supplemented in September 2007. There was a follow-up correspondence with DG Environment and Region on OPT topic.

12. Details of any approaches already made to other Community bodies or authorities (e.g. European Parliament Committee on Petitions, European Ombudsman). If possible, give the reference assigned to the complainant's approach by the body concerned:

No other Community bodies or authorities have so far been contacted in this matter.

13. Approaches already made to national authorities, whether central, regional or local (if possible, attach copies of correspondence):

On March 2007, the complainant sent a study, concerning problematic aspects of environmental assessments and permitting of traffic infrastructure projects and related strategic documents, to the Czech Minister of Environment. The study described similar problems concerning implementation of EIA Directive as this complaint.

Many proposals, submissions, complaints etc., were filed to national authorities (including courts) in specific cases, in which the general problems, described in this complaint occurred. It is not possible to mention them all in this complaint, whose aim is to present the systematic problems, rather than describe the individual cases in detail.

14. Specify any documents or evidence which may be submitted in support of the complaint, including the national measures concerned (attach copies):

Annex No. 1	Case list 1 - R52
Annex No. 2:	Case list 2 - R43
Annex No. 3:	Case list 3 - R55
Annex No. 4:	Case list 4 - D1
Annex No. 5:	Case list 5 - D8
Annex No. 6:	Case list 6 - Holesov industrial estate
Annex No. 7:	Case list 7 - Hyundai automobile plant
Annex No. 8:	Case list 8 - Nokian Tyres tires manufacturing plant
Annex No. 9:	A letter of NGOs regarding EC involvement in the Vienna-Brno motorway development (November 2006)
Annex No. 10:	A letter of Commissioner Barrot (December 2006)
Annex No. 11:	A letter of DG ENVI (January 2007)
Annex No. 12:	Complaint to the Commission concerning SEA procedure on OPT (April 2007)

Annex No. 13:	Supplement of the complaint concerning SEA procedure on OPT (September 2007)
Annex No. 14:	A letter of Commissioner Barrot (October 2007)
Annex No. 15:	A letter of NGOs to Commissioner regarding OPT (November 2007)
Annex No. 16:	A letter to the Minister of Environment of Czech Republic concerning SEA and EIA procedures for traffic infrastructure project in the Czech Republic (March 2007)
Annex No. 17:	Analyses concerning SEA and EIA procedures for traffic infrastructure project in the Czech Republic – attachment of the letter to the minister

15. Confidentiality:

"I authorize the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

16. Place, date and signature of complainant/representative:

Brno, 20 December 2007

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Pavel Černý
on behalf of Environmental Law Service