

National Ecological Centre of Ukraine (NECU) comments on the HLG report on TEN-T extension to the neighbouring countries

The National Ecological Centre of Ukraine (NECU) welcomes the opportunity for comments on the HLG report on TEN-T extension to the neighbouring countries

Before answering the questions for consultation we would like to express agreement with the HLG group's conclusion on the need for further studies and analyses of the priority projects and axes. We consider that this is very much the case in Ukraine, where a comprehensive Transport Sector Strategy is missing. We consider that the EC should also advocate for regional and local transport links that are of great benefit for the general population, and not only advocate for the development of transit corridors which are strongly promoted by the Ukrainian government.

We would also like to bring your attention to the fact that there is a need for significant improvement of the way transport projects are designed and assessed in Ukraine. The example described below shows that currently the government pays little consideration to the environmental and social impact of projects.

We agree with the HLG report regarding the need for transparent procurement processes. However, our experience from monitoring the IFIs' investments in the region teaches us that transparency and public participation should be extended to overall project preparation and implementation. We believe that EC should take a leading role in the promotion of transparency in the region in order to ensure efficient and effective use of EU and Ukrainian taxpayers' money.

Responses to the questions for consultation

Question 1. Do the five main transport axes highlighted in the High Level Group (HLG) report, in your view, represent the main axes for international traffic and what would you add/delete, if given the opportunity, and why?

We consider that further independent analyses of the proposed priority axes and projects, their impact on the sustainable development of the neighbouring countries, and alternatives to the projects are essential. The case of Highway Lviv-Krakovets should be further investigated and addressed by the EC in its future Communication on TEN-T extension.

NORTHERN AND CENTRAL AXIS: Multimodal connection Dresden – Katowice – Lviv – Kiev

Ukraine, project No 14: Upgrading of road Lviv-Krakovets (Poland border)

The HLG report categorizes project No 14 as an upgrading of the existing road, but upgrading will take place only on some sections of the road and a **significant part of the road is planned to be constructed on a green field site.**

We also would like to bring to the attention of the EC that the residents of the villages of Zashkiv and Zavadiv (Lviv region) are strongly opposed to the construction of the Lviv-Krakovets highway, as it will significantly affect their livelihoods.

In 2002 the Lviv-Krakovets highway construction project was developed by the "Transmagistral" consortium. The planned width of the highway is 30 metres and the highway capacity should be about 20 000 vehicles per 24 hours. The approved project of Lviv-Krakovets highway will go

through the villages of Zashkiv and Zavadiv and impact a lake with a high recreation potential. Seven houses of local citizens will be demolished because they are located on the construction site.

The major problem, however, is that the project envisages only 10 m around the highway to be determined as a zone with a protective (special) regime where residential houses and agricultural production should not be allowed. According to Ukrainian legislation the size must be between 25 and 100 metres for roads in the state network and for this category of highways the sanitary-epidemic zone should be 300 metres. Many residents' houses are located in the 25-300 m strip along the motorway and they will be significantly affected by the construction of the motorway. Resettlement of the residents from the protective zone in Zashkiv and Zavadiv is not foreseen in the project. Thus the motorway construction violates these people's right to a safe and healthy environment, which is vested by Article 50 of the Constitution of Ukraine.

Public participation was not duly executed during the approval of the environmental impact assessment (EIA) of the highway project. The assessments of the project's compliance with legislation on sanitary-epidemic protection of population and its impact on species from the Red Book for flora and fauna were missing.

In October 2004 the residents of Zavadiv and Zashkiv applied to EPL (Ukrainian environmental advocacy NGO) asking for help to protect their right to a safe and healthy environment during the building of the concessionary Lviv-Krakovets highway. EPL helped residents to make a complaint to court (and represents residents in the court) challenging the decision of the state EIA approval, carried out in violation of residents' rights to public participation in environmental decision making and violation of the relevant legislation.

In August 2005 residents held a referendum and the overwhelming majority voted against construction of the highway through the villages of Zashkiv and Zavadiv.

NECU urges EC to consider including the Lviv-Krakovets highway in the list of priority projects only on the strong condition that the project is re-designed and uses an alternative route to avoid harm to the local population and environment.

NORTHERN AND CENTRAL AXIS: Inland waterway Belarus – Kiev – Odessa (Dneper)

The proposed waterway includes navigation through the Pripyat River. Some sections of the Pripyat River are listed among waterway bottlenecks as being not sufficiently deep for navigation¹: Pripyat (E 40) from Stakhovo to Pkhov - low maximum draught (1.3 m), (E 40) from Pkhov to Belarus/Ukrainian State border - low maximum draught (1.5 m).

Removal of such bottlenecks will require intensive dredging, which can be problematic since the mentioned sections of the river lie in territories contaminated as result of the Chernobyl accident in 1986. The dredging of sludge and bottom soils that are heavily contaminated with radionuclides creates the risk of radiation spread.

NECU urges the EC to take into account the aforementioned risk and properly address it during its detailed development of the related project within the scope of TEN-T extension.

Question 2. The HLG report outlines a number of measures, on so-called horizontal issues, are these the most important ones and do the recommendations made by the Group help to solve the problems?

¹ TRANS/SC.3/159. ECONOMIC COMMISSION FOR EUROPE INLAND TRANSPORT COMMITTEE. Working Party on Inland Water Transport. INVENTORY OF MOST IMPORTANT BOTTLENECKS AND MISSING LINKS IN THE E WATERWAY NETWORK. Resolution No. 49

NECU considers that the horizontal issues related to environmental assessment, public participation and transparency regarding priority axes and project assessment need to be addressed in the proposal for horizontal measures.

NECU particularly welcomes the High Level Group's examination of cross-border rail interoperability and marine safety, and considers these to be important areas. The reminder on p.19 of the report, that all projects must respect relevant EU legislation and best international standards in procurement and environmental assessment is likewise very welcome.

NECU also welcomes the High Level Group's examination of user charging and financing but feels that the conclusions reached in the report are too vague to play a decisive role in moving Europe towards fair charges for transport users. We consider that, at the minimum, the application of EU standards for user charges is crucial for ensuring adequate financing for the maintenance of the infrastructure and internalising the external costs for society caused by international traffic.

In addition, NECU considers that there are some outstanding horizontal issues that need to be included in the future EC communication on the TEN-T extension.

- Ensuring that Strategic Environmental Assessment is carried out on the plans for development of the corridors

In many countries SEA has still not been introduced on the national level, and the environmental impacts of transport are usually only considered in relation to protected natural areas rather than wider environmental impacts such as impact on greenhouse gas emissions. Likewise projects are not considered in relation to one another, leading to duplication of projects. Therefore the EC should ensure that SEA is carried out for the plans to extend the TEN-T network and clearly state whose responsibility it is to carry this out. **Technical support from the EC** for proper implementation of the Strategic Environmental Assessment on national transport policy will be fundamental.

- Enforcement of the precautionary principle when transport projects could harm valuable biodiversity sites that are still not protected according national legislation

Infrastructure construction programmes are proceeding much faster than the implementation of nature protection programmes in the neighbouring and accession countries, with the consequence that sites which should be included e.g. in the Natura 2000 network are not yet legally protected and are therefore threatened by infrastructure development. It needs to be made clear how these sites are to be taken into account during the project development process. Technical assistance on implementation of the precautionary principle and quality analyses of the EIA reports about the priority projects should be considered by the EC.

- Ensuring transparency and public participation in project development, implementation and public procurements

NECU's experience shows that transport infrastructure projects are often delayed due to poor public involvement especially in the early stages of project preparation. Public consultations are also a way for the projects to benefit from the public's knowledge and experience. Public access to the social, economic and environmental assessments of the specific transport project is an issue in most of the countries concerned. Taking into account the high cost of infrastructure construction for society and the relatively high corruption in most of the neighbouring countries the EC should consider a special mechanism ensuring full access to the economic, social and environmental studies of the projects promoted.

- Ensuring sufficient public resources for maintenance of regional transport networks and promotion of sustainable transport modes

TEN-T priority projects in neighbouring countries require a large amount of finance (around EUR 45 billion estimated in the report for both the short and longer term), which is a significant burden for the countries' national budgets. Therefore, there is a serious danger of crowding out investment in smaller projects on the local and national level, which benefit citizens more directly than the TEN-T projects. The EC and donor emphasis on international routes encourages government tendencies to embark on grand mega-projects, at the price of neglecting local transport projects with the greatest benefits for the country. This therefore also means that taxpayers are not getting good value for their money. Therefore, the EC should not limit its support to TEN-T projects but open also to local and regional projects. CEE Bankwatch Network calls also on the EC to ask Neighbouring Country governments for firm commitments and data that prove sufficient public resources for the maintenance and improvement of local networks and sustainable modes of transport.

Question 3. Financing transport investments is a headache. How can the implementation of these axes and horizontal measures be best financed? What could be the role of the private sector and user charges?

NECU believes that all projects implemented under the TEN-T should be economically viable and bring social benefits for Ukrainian citizens. The main problem is to use existing funds from different sources efficiently and with low costs for society and the environment.

Project promoters should undertake all possible means to finance the horizontal measures based on EC standards.

Taking into account the fact that Ukraine is considered as a transit country for traffic from and to Russia and Central Asia it is necessary to develop fair user charges, to decrease the subsidisation of international roads by Ukrainian taxpayers.

4. For the implementation and coordination of the recommended actions, the report calls for either a memorandum of understanding or an international agreement – do these help to achieve the objectives? If not, how would you ensure the implementation and coordination of the actions?

NECU considers that the requirement for implementation of the horizontal measures suggested in this document should become part of the Bilateral agreements between the EU and Ukraine and a condition for granting EU aid and EIB loans to Ukraine.

Through bilateral agreements with Ukraine (e.g. Association Agreements and Action Plans) many of the horizontal measures raised in this document could be successfully addressed. The EC should also consider the possibilities for ongoing communication with civil society and public in the neighboring countries and the establishment of a complaint mechanism as part of the EC Directorate on External Relations and European Neighbouring Policy. Furthermore, a regular meeting of the national government country representatives and the EC, where NGOs are invited as observers, could be a useful mechanism for monitoring and facilitating the process of TEN-T extension.

We also appeal to the EC to take a leading role for harmonization of the donor standards for environmental, social and economical assessment in Ukraine and neighbouring countries.

5. The Group has envisaged integrating the existing agreements and memoranda of understandings into a coherent framework. Should an international treaty be envisaged for this?

Yes, moreover stronger monitoring of implementation of the provisions under the international agreement signed by the neighbouring countries should also be considered by the EC. New international treaties could be considered in case this is not currently in place.

The EC should take more strong emphasis and support Ukraine to implement the already signed Conventions with special attention to the requirement including the Aarhus Convention on Access to Information, Public Participation and access to Justice.