

Transport and environment – Hungary

Gyula Bándi

National legislation

Hungarian transport related legislation is not very environmental friendly today, although there are good signs also – these are mostly connected with the transposition of EU legal requirements. Generally speaking there is very limited public or professional debate related to the environmental content of transport policy or transport legislation.

A. Transport legislation

1. Renewable energy

The Act CXVII of 2010 covers the issues of promoting the use of renewable energy in transport and also minimizing the greenhouse gas emissions from energy used in transport. The act together with the implementing Government Decrees and ministerial orders transposes Directives 2009/30/EC and 2009/28/EC. The major aim is to use at least 10 % renewable energy in transport by 2020.

There are requirements related to biofuels, together with the specific Government Decree regulating biofuels and their sustainability requirements along the lines of the EC legislation. Also there are requirements related to the marketing of biofuels – these requirements are protected by specific fines (the details of which are specified in the act)

The second part of the act covers the requirements of limiting greenhouse gas emissions. This means that the fuel distributor shall keep the records of greenhouse gas emissions, related to the given product whole life-cycle. The reports shall be sent to the taxation authority. The distributor shall limit the emission with 6 % by 2020. The distributors may set up agreements to meet the requirements jointly.

Most of the details of sustainable biofuel production, such as sustainability conditions and certificate and others – record keeping and reporting provisions, etc. – are regulated by the 2009/28 and 2009/30 Directives are managed by the Government Decree 343/2010 (XII.28.)

2. Instruments to manage and Reduce Road Traffic

Directive 1999/62 has been transposed by the amendment of the Act LXXXII of 1991 on the vehicle taxation. The major source of the tax is the power of the vehicle, specified in kw in case of passenger vehicles – except buses -, and the unladen weight in case of buses, caravans, while the unladen weight plus 50 % of the loadability of trucks.

The rate of the tax is also determined by the age of the vehicle in case of passenger cars, interestingly enough, the rate is smaller and the vehicle is older! (in case of a new car the basis is 345 HUF/kw, in case of a 16 years old or even older vehicle it is only 140

HUF/kw.

There are several taxation differences, some are connected with environmental interests:

- the electric cars are exempt from taxation (the hybrids are not);
- there is a 20 % to 50 % reduction for those buses, trucks which have a better environmental performance;
- there is also a reduction – 10-20 % - for those trucks which use the combined transport (road + rail or river);
- those trucks, registered abroad, but running in Hungary are exempt in certain cases if using combined transport

B. Land-use planning and EIA

Specific legal requirements

There is the Act LIII of 2006 on the quickening and simplifying the implementation of those projects which are taken as prominent from the point of view of national economy. The scope of the act covers those individually specified projects, which are supported from EU or central funding, belong to concessions, significant from environmental, social, health-case, etc. points of view, and so on. The Government shall decide on the individual projects.

There are the following consequences of any such decisions:

- the first instance authority is usually the second instance authority or it is specified individually;
- also those other, secondary authorities who participate in the processes are the second instance authorities or those, specified individually;
- consequently it is very likely, that there is not second level authority in the field of environmental protection, due to the fact that the appeal level is the national level in environment, there are no more authorities left;
- the coordination of such cases shall belong to the second level authority, also specified in the governmental regulation, thus this may be different than in normal cases;
- the available time limit is shorter than usually, which limits the possibility to examine the cases carefully;
- the available time limit in the case of appeal is also limited (30 days);
- the specific government regulation, defining this opportunity may specify an even shorter time limit than provided here;
- the judicial supervision is also limited in several procedural means - it may only be initiated in an electronic way, all the correspondence shall be electronic, also the legal representation is a must, the court usually decides without a hearing (accept the parties require the hearing) ;
- the judicial supervision is also limited due to the available time, as all the time limits are much shorter, there is no real time for legal disputes or time to come to a satisfactory conclusion (e.g. there are only 8 days available to the completion of

documents, the first hearing – if necessary – shall be completed in 30 days and if there is no hearing, the 30 days mean the time-limit for judgment, etc.);

- the judicial supervision is the Supreme Court (Curia), and the parties may turn to the Curia in 15 days, and the Curia must decide in 90 days.

The EIA provisions also contain specific parts in connection with the above mentioned ‘prominent’ projects, under the Gov. Decree 314/2005. (XII. 25.) Korm. rendelet, Art. 25/A and 25/B. These only contain specific time limit for the public participatory parts of the procedure, but do not limit public participation as such.

**Major environmental problems of transport infrastructure projects
written by Ms. Gabriella Holovács (PhD student)
under the supervision of Prof. Gyula Bándi**

As a general introductory comment we have to admit that usually the environmental questions are raised in connection with those transport infrastructure projects (TIP) which are co-financed by EU funds. There are **two major reasons** of this:

- the need to have an outside, independent control over the investments. Most of these kinds of projects are undertaken on the basis of EU funds (Cohesion Fund, Regional Fund) and due this fact, the EU Commission provides an important legality check over the domestic legal regulations and practice via its monitoring preceding the decisions and via the decisions themselves. This control enlightens the major deficiencies, mostly in connection with the EIA Directive and its implementation.
- the EU carefully looks at the antecedents of the environmental authorizations, requiring that the project decisions should meet the EU environmental requirements at the time of making the funding decisions.

The major problems

1. The long preparatory/planning process and its consequences

The TIPs are usually preceded by a very long – in many cases it means decades! – preparatory process, the main steps of which are:

- a) *conceptual design* with alternative routs;
- b) *environmental authorization process* – meaning in the great majority of cases EIA process with all the steps. In case of smaller project, where EIA is not needed, the environmental authorities also play a role of secondary authority (consent);
- c) *construction permit process* – again, the environmental authorities also play a role of secondary authority (consent);
- d) *investment period*.

During the long preparatory process the underlying legal conditions are constantly changing and it is very likely, that the environmental aspects valid at the time of authorization are modified by the time of construction (see, e.g. the changes of EIA process, the entering into force of the Natura 2000 system in Hungary, etc.)

A good example of the above mentioned problem is the construction of the ***M43 highway between M5 (Szeged) highway and the Hungarian border (Csanádpalota)***. The planning in the given project started at the beginning of the 90s, and an EIS was made in 1993 along the lines of the valid legal requirements (much less details, no public participation process at this time, etc.) The environmental permit has been given in 1995, modified two times, in 1999 (allowing two options for the track or route, from among which only one may be realized) and in 2004 (providing an indefinite validity for the permit). The National Construction Authority issued a construction permit for a part of the highway at 18th December 2007.

By the time of the issuance of the environmental permit the Espoo Convention has not been implemented in Hungary (the implementing regulation was the Gov. Decree 148/1999. (X.13.) Korm. rendelet), thus the transboundary effect could not be analyzed. Also the Natura 2000 system was only introduced by the Gov. Decree 275/2004. (X. 8.) Korm. rendelet (Natura2000 Korm. rendelet). Neither of the two aspects had been taken into consideration, but the Commission required that projects meet the environmental requirements at the time of funding proposal. The whole could be solved by using the tool of the environmental review process (similar to IPPC in case of ongoing activities, but seemingly based on the voluntary decision of the investor, and does not ending up in a permit, but only in a consent), covering the missing elements.

2. Cutting the project into pieces

In many cases of TIPs the development or investments is cut into pieces, not necessarily because anyone wants to avoid stricter conditions, but due to the rational economic conditions. The validity of environmental permits may be usually longer – 5 years or more -then that of the construction permits.

We should know that the construction permit conditions for roads is defined by the Min. Order **15/2000. (XI. 16.) KöViM rendelet**, which covers the following steps:

- the so-called ‘theoretical permit’, valid usually for 1 year, may be prolonged twice. This may only serve as the basis for the ‘real’ construction permit and nothing more.
- the construction permit is valid for 3 years only. If the construction could begin within the 3 years, and is going on, then the permit is still in force. In case of transport safety or environmental, etc. conditions the validity can be shorter than 3 years. The validity may also be prolonged twice with two years each time in case if the legal and factual conditions do not change.

This time constraint is the major reason to cut the investments into pieces, covering only such sections of the project which most likely could be implemented.

A good example of this road **62. between M8 highway (Danube bridge) and Székesfehérvár**. The project design could begin also at the beginning of the 90s, and had been divided into 5 small sections (LOT1, LOT3, LOT4 és LOT5), which could mean that the specific environmental permit procedures had been missing, and the environmental conditions could only come up at the construction permit phase. No wonder that the Natura 2000 aspects could not be covered either.

The construction permit of the LOT2 of the road (around Seregélyes) was lapsed in March 2011, thus before issuing the new permit, preliminary environmental investigations started related to a new Natura 2000 area (yellow soil valley at Belsőbáránd, between the 35+200 – 35+450 km segments) in order to reveal the likely environmental effects, to clarify whether EIA is needed or not. The environmental authority could not find any likely significant effects, and decided that EIA permit is not necessary.

Again, they wanted to solve the problem how to look at the cumulative aspects of the five section via the above mentioned environmental review process. This was started in May 2011. According to the environmental authority, the studies prove that the given whole road does not have any significant environmental consequences – on the contrary, the noise and air emissions of the settlements of the given area shall even be significantly smaller -, thus the approval No. 68760/11. of the environmental authority was issued.

3. The authorities are addicted to thresholds (standards)

It was a general phenomenon that the authorities could only look at the thresholds of Annex II projects and they did not look at the details of the proposal, usually did not examine the cumulative aspects. This could only be solved partly in 2011 by the two subsequent amendments of the EIA regulation