

The Baku-Tbilisi-Ceyhan (BTC) Pipeline Project

A Note on Potential Breaches of the EC Directive on Environmental Impact Assessment

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The European Commission has made it a requirement of Turkey's accession to the European Union that Turkey take steps to adopt the EU's Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EC Directive 97/11/EC).¹ The Host Government Agreement signed between the Government of Turkey and the Baku-Tbilisi-Ceyhan (BTC) consortium also stipulates that the EIA for the BTC project should be "in accordance with the principles" of the Directive.

It is thus of grave concern that the EIA for the project, as approved by the Government of Turkey, falls far short of compliance with Directive. As a result, it may be argued that the project not only fails to comply with its own legal regime, as established under the Host Government Agreements, but also places Turkey in potential breach of its accession obligations, by moving Turkey *away from* its obligation to implement the EIA Directive.

Detailed analysis of the EIA for the project reveals 9 major breaches of the Directive. These are set out below:

1. Construction of the BTC pipeline began before an EIA was approved.

The Directive requires that an EIA is approved by the competent environmental authority prior to a consent being granted. In the case of the BTC pipeline, the EIA was made available in June 2002, with a 60 days comment period. The EIA was approved by the Ministry of the Environment in October 2002.² However, construction officially started on the project on 19 June 2002 – that is, four months before approval and before the comment period was over.³ Indeed, at the time, the EIA had only just been disclosed to the public for a 60-day consultation period. A ceremony to mark the start of construction, attended by deputy prime minister Mesut Yilmaz, also took place on 26th September, again before official approval of the EIA.

2. Inadequate Assessment of impacts on Flora and Fauna

Article 3, bullet 1: *"The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of the project on the following factors . . . human beings, **flora and fauna** . . ." (emphasis added).*

There is little or no baseline data already published for many of the areas through which the pipeline would pass. Detailed field work, over the full range of seasons, is thus required to identify and assess

¹ Moser, P., In the Matter of the Baku-Tbilisi-Ceyhan Pipeline – Counsel's Opinion, 2003 : "Decision 2001/235/EC expressly provides, under the heading 'Environment', that amongst the medium term priorities and interim objectives, Turkey must 'adopt a detailed directive-specific transposition programme of the acquis; transpose the environmental impact assessment'."

² BP AZERBAIJAN BUSINESS UPDATE, December 13, 2002, Year-End Press Meeting with David Woodward [http://www.ecbaku.com/docs/media/press/eng/BP%20business%20update%20\(eng\).doc](http://www.ecbaku.com/docs/media/press/eng/BP%20business%20update%20(eng).doc).

³ US Dept of Energy, Energy Information Administration, Azerbaijan: Oil and Natural Gas Export Options, June 2002, <http://www.eia.doe.gov/emeu/cabs/azerexpo.html>. The Turkish Energy Minister also announced on 3 June 2002 that construction would begin on 19th June.

the full range of impacts on flora and fauna. Yet the EIA was undertaken over less than a year and fieldwork was limited: indeed, the environmental baseline contractor for the project has admitted that all sites were only surveyed for species present once, in the summer, so have not been examined for species present in other seasons, and that some bird species and plant species have not yet been examined, but will be surveyed during construction.⁴ The bird survey, for example, was undertaken during one season and over just a couple of weeks. In the case of the Ulas and Alacorak lakes area – currently being considered for listing as an Internationally Important Wetland under the Ramsar Convention - the survey team spent just one day on site. The EIA acknowledges its lack of knowledge on the impacts of the pipeline on birdlife: “The degree to which the lakes are used as a staging point by migratory waders and waterfowl is as yet unknown”.⁵ Similarly, baseline data are lacking for a range of other species, including on the nesting patterns of the Green Turtle, which are potentially affected by the oil terminal at Yumurtalik.⁶

3. Failure to address indirect impacts on climate

Article 3, bullet 2: “The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of the project on the following factors . . . soil, water, air, climate and the landscape . . .” (emphasis added)

The EIA assesses the climate impacts of greenhouse gas emissions as a result of the day-to-day operations of the pipeline. However, it contains no study of the indirect impact of the project on climate, through the consumption of the oil it carries. This is a major omission, since the project is specifically intended to bring oil from the Caspian for consumption in Europe and the US. Independent experts calculate that the oil exported by BTC will add 6.4 billion tonnes of CO₂ to the atmosphere over the 40 year life-span of the project. The failure to assess the climatic impacts of these emissions is a clear breach of Article 3 of the Directive.

4. Failure to Reduce or Remedy Risk of Oil Spills at Ceyhan and of Decommissioning

Article 5 (3), bullet 2: “The information to be provided by the developer in accordance with paragraph 1 shall include at least . . . a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects . . .”

A. Oil Spills

The oil spill response plans outlined in the EIA, as approved by the Government of Turkey, are predicated on a maximum spillage of 70,000 barrels or 10,000 tonnes, far below the potential spillage if a supertanker (load: 300,000 tonnes) was involved in a serious accident. The EIA does not consider the risks of spillage outside the immediate area of the terminal.

B. Decommissioning

The pipeline is envisaged to be operational for 40 years, by which time it will be heavily contaminated with a range of toxic residues. However, no decommissioning plan is set out in the EIA.

⁴ Meeting of the Kurdish Human Rights Project, PLATFORM and Campagna Riforma Banca Mondiale with Coskun Yurteri of Envy, March 2003, reported in Second International Fact-Finding Mission Report, BTC Turkish section, pub. June 2003.

⁵ EIA, Volume II, Supplement I, June 2002, p.6-542.

⁶ For further details, see: Department of Environmental Sciences and Policy, Central European University, “Environmental Impact Assessment Report – Turkish Section of the Baku-Tbilisi-Ceyhan pipeline: Quality Assessment”, Budapest, 2003, p.12.

5. *Inadequate Assessment of Alternatives*

Article 5 (3), bullet 4: “The information to be provided by the developer in accordance with paragraph 1 shall include at least . . . an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.”

The EIA assesses a range of alternative pipeline routes and methods of transporting oil from the Caspian. However, as an assessment undertaken by MSc. Students at Department of Environmental Sciences and Policy, Central European University, points out: “It is not entirely clear why the Turkey route was finally chosen instead of various alternatives routes.” The review also concludes: “Seemingly viable alternatives such as, for example, refining crude oil in Azerbaijan and transporting only lighter products by the pipeline were not identified”.⁷

6. *Inadequate Consultation*

Article 6 (2): “Members shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted.”

The EIA claims that all affected landowners along the pipeline route have been consulted, in addition to key administrative and other stakeholders. Three Fact Finding Missions (FFM) carried out by independent non-governmental organisations, however, have revealed major deficiencies in the consultation process:

- Not all stakeholders had early access to project information;
- Not all stakeholders were notified of the nature of the project during the development of the EIA, depriving them of the opportunity to raise concerns at a stage when these could have influenced the EIA;
- Stakeholder groups (for example, the Worldwide Fund for Nature) listed in the EIA that was released for public comment as having been consulted had not in fact been consulted;
- Stakeholder groups have reported procedural irregularities in the consultation process;
- Some major public authorities (for example, the Mayor of Sivas, a major city that the pipeline passes) had not been consulted;
- Half of the affected communities visited by an FFM in August 2002 had not been consulted, even though listed as having been consulted in the EIA. In one case, a village listed as “consulted by telephone” had been abandoned and had neither people living in it nor telephones;
- Where villages had been consulted, the consultation could not be deemed meaningful, with villagers unaware of the risks that the pipeline posed;
- There was a consistent lack of provision of information about the project’s negative impacts and risks, while the potential benefits of the project were consistently overstated;
- The wording of the questionnaires distributed by the developer’s consultants discouraged frank expression of concerns about the pipeline’s impact;
- The project information provided could not be understood by a significant number of affected villagers and public consultation meetings were not accessible to all those who wanted to attend;
- Kurdish-speaking women in villages in the Northeastern section of the pipeline route report being unable to participate in public meetings since the representatives from BTC only spoke Turkish;
- The consultation package failed to take account of the political culture in Turkey, which inhibits the free expression of critical views about state-backed projects;
- In many instances, consultation took place in the presence of the military police (Gendarmerie), inhibiting the “*opportunity to express an opinion*”;

⁷ Department of Environmental Sciences and Policy, op.cit.6, p.5.

- An FFM conducted in March 2003 concluded that “Lack of freedom of expression and widespread repression, particularly in the Kars and Ardahan regions, renders wholly illegitimate the consultation process that the BTC has carried out”;
- The problems relating to repression are so systemic, according to the March 2003 FFM, that the prospect of a legitimate consultation process being carried out in the absence of major human rights reforms is unattainable.

7. Failure to address Transboundary Impacts of Tanker Traffic and to inform affected Member States

Article 7 (1): “Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the member in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:

- a) a description of the project, together with any available information on its possible transboundary impact;*
 - b) information on the nature of the decision which may be taken,*
- and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the Environmental Impact Assessment procedure, and may include the information referred to in paragraph 2.”*

At present, there is little supertanker (up to 300,000 tonnes or 2 million barrels capacity) traffic in the Eastern Mediterranean. However, as a direct result of the project, such traffic will increase substantially. At full operation, the terminal at Yumurtalik will receive 1 million barrels of oil a day for transportation: this translates into one of the largest available supertankers (300,000 tonnes) leaving the port every other day or over 7,200 over the lifetime of the pipeline. Should smaller tankers be used, the number of shipments will increase proportionately.

The EIA gives no details of the routes that the tankers will take once they leave Yumurtalik. But it is likely that the oil will be transported to refineries in Northern Europe, thus potentially affecting the coastlines of all the Mediterranean EU members states plus the UK, the Netherlands, Germany and Belgium and Portugal. Greece in particular will have considerably more tanker traffic passing its coasts than it would without BTC. Under the EC Directive on EIA, Turkey should have informed the affected states, but the EIA makes no mention of it having done so.

8. Failure to Consult with Authorities and Public in Affected Member States

Article 7(3): “The Member States concerned, each insofar as it is concerned, shall also:

- a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and (b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.”*

No such arrangements have been made.

9. Failure to Consult on Transboundary Impacts

Article 7 (4): “The Member States concerned shall enter in consultation regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.”

No such consultation has taken place.