

The Ministry of the Environment
Department of European Union Funds
Ref. No.: 196/330/08
4399/ENV/08

M i n u t e s

of the 2nd Meeting of the Monitoring Committee of the OP Environment held on 13 December 2007 in the Olympik Hotel, Afrodita and Athena Halls

Attendance: see the attached attendance list

Meeting presided by: Ing. Rut Bízková, Chair of the Monitoring Committee of the OP Environment, Deputy Minister-Director of the Section of Economics and Environmental Policies

The Agenda of the Meeting:

1. Opening – an opening statement by the Chair of the MC of the OP E and approval of the agenda of the 2nd meeting of the MC of the OP E
2. Information on the progress of OP E negotiations
3. Amendment to the Statute of the MC of the OP E
4. Information on OP E calls that are under preparation
5. Discussing and approving modifications to the selection criteria and acceptability criteria for projects financed from the OP E
6. Miscellaneous
7. Conclusion

Item 1: Opening – an opening statement by the Chair of the MC of the OP E and approval of the agenda of the 2nd meeting of the MC of the OP E

The meeting was opened by the Chair of the Monitoring Committee of the Operational Programme Environment (hereinafter the “Chair”), Ing. Rut Bízková, Deputy Minister-Director of the Section of Economics and Environmental Policies of the Ministry of the Environment (hereinafter “ME”). The Chair welcomed the attendees and familiarised them with the main items of the meeting’s agenda. None of the attendees had any comments on the agenda, which was therefore considered to have been approved by consensus. The Chair then gave floor to Ing. Kříž (from the Ministry of the Environment) in order to inform the attendees about the OP E that is under preparation.

Item 2: Information on the progress of OP E negotiations

Ing. Kříž informed the attendees that the current OP E proposal was on track to be approved by the end of the year. A meeting was scheduled for the following week (20 December 2007) where the OP E was to be signed in the presence of Commissioner Hübner and the Minister of the Environment, Mr Bursík. It was mainly the water management agreements which posed a problem during the creation of the OP E, for which the OP E negotiations had been delayed by two months in relation to other large programmes. For this reason, in relation to other programmes, the submittal of the Position Paper of the European Commission (hereinafter “Commission”) on the OP E was also delayed. The comments of the Commission on the from the Ministry of the Environment) informed the attendees that the supporting documentation for the MC of the OP E included an OP E proposal with incorporated comments from the 2nd Position Paper, in addition to which the OP E underwent some other modifications because of further comments by the Commission. Therefore, the final version of the OP E, i.e. some passages thereof, differed from the version that the attendees had in their groundwork documentation.

Mgr. Petra Vančurová (from the Ministry of Finance) requested information about the 1st OP E call. Ing. arch. Štěpánek Ph.D., Director of the State Environmental Fund of the Czech Republic (hereinafter “SEF”), took the floor and stated that about 700 applications were submitted within the first call, totalling almost CZK 18 billion. He also stated that the 2nd OP E call was open at that time and project administration was being addressed by the SEF.

The Chair added that applications could be submitted in the 2nd OP E call through the end of January 2008 and specified that the CZK 18 billion as the total amount for projects submitted in the 1st OP E call represented the eligible costs, while the total costs for the projects from the 1st call stood at about CZK 25 billion. She then moved on to the next item on the agenda and gave the floor to Ing. Novák.

Item 3: Discussing and approving amendments to the Statute of the MC of the OP E

Ing. Novák informed the attendees about the proposed amendment to the Statute of the MC of the OP E. This comprised one modification, namely the addition of one new member upon the proposal made by the Section of Nature and Landscape Protection of the ME. The new member is a representative from the Department of Landscape of the ME.

The Chair welcomed the addition of the new member and stated that the new number of members – 43 – would be more advantageous from the MC’s decision-taking point of view, since it is an odd number. Ing. Kylar, Director of the Cohesion Fund Department of the Ministry for Regional Development (hereinafter “MRD”) suggested adding another representative, namely a representative from the National Coordination Body of the MRD, who would participate in the MC of the OP E as an observer (without voting rights). The Statute was approved by consensus. The Chair then granted the floor to Ing. Kříž in order to inform the attendees about OP E calls that were under preparation.

Item 4: Information about OP E calls that are under preparation

Ing. Kříž informed the present members about the calls that were under preparation. He stated that a call for applications of water-management project within Priority Axis 1,

Area of Support 1.1 was to be announced by the end of the year with reference to the implementation of Council Directive 91/271/EEC concerning urban waste-water treatment. Also, applications would be accepted within Priority Axis 3 for the Area of Support 3.2 concerning energy savings in schools and school facilities. The detailed introduction of the acceptability criteria associated with these calls was made later during the following item on the agenda. He also stated that the preparation of the schedule of calls for 2008 was to take place after approval of the OP E and the public would be informed of the scheduled announcement of the 2008 calls during January through the OP E website.

Ing. arch. Štěpánek, Ph.D. (SEF) added that a time-limited call would be announced within Priority Axis 1 for both individual projects and for large projects.

The Chair reminded the attendees that the part that had been announced for energy savings would close by the end of January, so that the school projects could be completed by the end of this year's summer holidays. She stressed that as long as the call was announced by the end of the year and the acceptance and subsequent processing of applications would not last beyond the end of January, this timeline was feasible. She also reminded the attendees that applications for water-management projects would be accepted through the end of March. Since none of the attendees had any comments or inquiries, the Chair proceeded to the next item on the agenda.

Item 5: Discussing and approving modifications to the selection Criteria and acceptability criteria for projects financed from the OP E

The Chair stated that this item would concern both Priority Axis 3 and Priority Axis 1. She reminded everyone that energy savings projects were supposed to apply to both public and residential buildings. Due to objections from the Commission, residential buildings had been excluded since they could not be financed from these resources. Pursuant to the statement, the Commission voiced the assumption that the regulation that makes it possible to modify the use of Cohesion Fund resources could be reviewed within a year to a year and a half so that these projects could also be financed from the Cohesion Fund. She asked Ing. Kříž to introduce the acceptability criteria for Priority Axis 1.

First, Ing. Kříž mentioned the selection criteria relating to all priority axes, which are listed in the document entitled *Selection Criteria and Acceptability Criteria*. He stated that pursuant to Government Resolution No 1005/2004 of 20 October 2004 and No 883/2007 of 13 August 2007 concerning structurally disadvantaged regions and the implementation of integrated city development plans, the document had introduced a 10% allowance for projects falling within these categories.

The amended acceptability criteria relating to Priority Axis 1 followed from an agreement with the Commission and were part of the updated version of the Operational Programme Environment, which, at that time, was under preparation, pending approval. He explained that in the case of these criteria, these did not have to be the entry criteria for the acceptance of applications and could apply after the acceptance of applications by the SEF for further assessment. The acceptability criteria were related to both existing and new operational contracts. He reminded everyone that the existing contracts had been entered into with the operator of water-management infrastructure, pursuant to a tender, before the OP E was approved and new contracts would be concluded after the OP E was approved. In the case of new operational contracts, there were two selection criteria. The first criterion was the maximum time of the operating condition, which would be 10 years, provided that no investment was provided by the operator. Otherwise the operating time would be extended.

The second criterion concerned the evaluation of the operator's selection, where, during the assessment of the economic advantageousness of the offers, the criterion would be the offered water and sewage rates constructed in accordance with the principles of price regulation, the amount of operating costs and the payment for a given service. The partial criteria that had to be included in every contract, both existing and new, concerned the performance indicators, the monitoring instruments and the sanctions in case of non-compliance with the relevant parameters. For existing operational contracts, this was the criterion of contractual length, where projects with an operational contract lasting beyond 2022 would not be financed from European funds. In addition, the price creation tariff in such existing contracts has to be set in such a way as to ensure long-term sustainability of the infrastructure and a reasonable profit for the private operator. He stated that the operational contract would have to be amended by the time a decision on state budget participation was reached or, as the case may be, on the grant of a subsidy. This decision is to be issued only after the successful winner of an infrastructure tender is awarded the given project. The first phase is the registration of the project. The second phase is the issue of the decision and, by that time, the contract has to be amended. This is true for projects assessed at the national level below 25 million euro. In the case of large projects, those above 25 million euro, the contract must be amended by the time the decision of the Commission is issued. He also stated that these selection criteria had been submitted to a working group that had been set up in order to solve water-management contracts and which, based on these criteria, had approved the call to be announced by the end of the year, thereby fulfilling Council Directive 91/271/EEC concerning urban waste-water treatment. He mentioned that methodological guidelines for applicants were being prepared in order to make the requirements for existing contracts as comprehensible as possible.

The Chair then allocated time for the attendees' inquiries and comments. Ing. Žák (ROP for the Central Bohemia NUTS II Cohesion Region) took the floor and stated that the criterion of the acceptability of the tariff for water and sewage rates was not acceptable. He was convinced that, in connection with a project, water and sewage rates may not be subject to competition, since the process of their construction would bring about a complete destruction of the principle of solidarity. In effect, this would result in low water and sewage rates in large cities, while in municipalities these would dramatically increase.

Ing. Kříž responded to the inquiry, stating that it would not be the rates that would compete, but rather the operating costs within the concession procedure. Regarding the destruction of the principle of solidarity, he drew attention to the institute of compensatory payment, which is used within the framework of concession procedures. Should this procedure indicate that the rate exceeds the socially acceptable level in a given area, these compensatory payments may then be employed in order to reduce the rates to a level that is acceptable from the solidarity viewpoint. Lastly, he quoted an excerpt taken from the MRD concerning compensatory payment in which the Concession Act addresses this issue. Should a situation arise within the concession procedure where the price for water and sewage rates is higher than in the surrounding areas and is socially unacceptable, it would be possible to apply this structure.

Ing. Kopáček (ME) raised the following question for Ing. Kříž: "Who will pay this payment, to whom and in what amount?"

Ing. Kříž stated that this payment would be paid by the contracting authority of the public contract or concession, i.e. the owner of the infrastructure. He remarked that a procedure was under preparation in which the payment would reduce the rent specified during the concession procedure. Thus the payment would be routinely made by the contracting authority of the relevant contract to the private operator; however, this payment could be

offset against a reduction in the rent that the operator paid to the owner of the infrastructure. In effect, this would mean a reduced rental payment.

Ing. Pařízek (ME) noted that, as opposed to the committee's previous meeting, the provisions in Area of Support 1.1 concerning areas that require special protection had been excluded. These are the areas of National Parks (hereinafter "NP") and Protected Landscape Areas (hereinafter "PLA"), where the application must also include a favourable statement by the agency or administration of the NP. He requested further explanation.

Ing. Novák (ME) responded, stating that the exclusion of this provision did not mean that it was not required. It was required in subsequent documents, for example in the directive on submitting applications, and it was not necessary for this issue to be included directly in the OP E.

Ing. Kylar (MRD) commented on the discussed proposal. His first remark concerned the selection criteria. He pointed out that no scales for point evaluation were available. However, he added that the material discussed at this MC of the OP E did include some point evaluation scales and this part had probably already been supplemented. In his second remark, he recommended supplementing the criteria with the criterion of synergy, i.e. the interconnectedness with other projects, in which case the project would gain points if it evidenced a time- or subject-related connection. He believed that this criterion could be applied as part of the individual calls for individual projects according to their nature.

Ing. Valdman (SEF) responded, stating that synergies were incorporated directly in the calls. He gave an example where the grant of a subsidy in Priority Axis 7 was preconditioned by the fact that the facilities would perform activities that are potentially subsidised from other OPs.

The Chair added that this was in compliance and could be accepted.

Ing. Perlík (The Union of Towns and Municipalities of the Czech Republic) noted that it was necessary to prevent small municipalities from implementing some economically senseless projects. He gave an example of a municipality with a population of 300 that had submitted a waste water treatment plant project in an amount of CZK 40 million. Subsequently, the economic and operating conditions represented an enormous burden for the municipality. He therefore suggested solving this issue in small municipalities by means of small domestic waste water treatment plants, which are less economically demanding.

Ing. Valdman (SEF) noted that this was currently the case, because all projects had to comply with the approved plan for water supply and sewerage systems. Among other things, this plan addresses in detail waste water treatment in small municipalities and provides unequivocal directions as to how a municipality should proceed. The SEF provides consultation and recommends that small municipalities should address this issue in ways other than by purchasing such an expensive waste water treatment plant.

Ing. Pařízek (ME) suggested amending the wording in Areas of Support 6.3 and 6.4, which state that a project is in accordance with the land-use planning documentation (hereinafter "LPD") so that it would state that a project is in accordance with LPD, provided that the LPD for the relevant area has been prepared. The reason is that some authorities that assess the land-use plan are reluctant to issue a certification if there is no LPD. This could result in a situation where reclamation projects could not be implemented. He had already cited an example in the previous meeting where the reclamation of small streams was not addressed in the LPD and it depended on the approach of individual construction offices whether a standpoint would be issued for an applicant, e.g. that the LPD would solve the construction of green areas etc.

Ing. Pešout (The Agency for Nature Conservation and Landscape Protection of the Czech Republic) added that, in his opinion, the problem consisted not only in Areas of Support 6.3 and 6.4, but also 6.5, since some Areas of Support that were supposed to be covered were not and would not be addressed by land-use plans at all. As an example in the Area of Support 6.5, he mentioned meadow greenery, which is not covered in land-use plans. He suggested including into the conditions for these Areas of Support that it is not in violation and, subsequently, it would be the responsibility of the land-use planning authority to assess this.

The Chair suggested adding into the conditions the wording saying that it is not in violation, which she considered to be a broader formulation. If necessary, it could be specified in detail in other implementing documents. She reminded the committee that a call for Priority 6 was in effect at that time in which the conditions had already been fixed, and who managed to meet them would be accepted, and who did not meet them could submit an application the next time. She stated that the conditions would definitively be specified once the OP E was approved.

Ing. Žák (The ROP for the Central Bohemia NUTS II Cohesion Region) quoted the Implementing Document (hereinafter “ID”), which stated that selection (evaluation) criteria were publicly available, yet, in fact, were nowhere to be found. His remark concerned the strict differentiation between selection criteria and acceptability criteria, since these were rather indistinctly mingled in the ID. This would cause the applicants considerable difficulties and be negatively reflected in the work of the MC of the OP E. Another remark concerned the Development Plan for Water Supply and Sewerage Systems (hereinafter “DPWSSS”) as a planning document which should constitute groundwork material for evaluation criteria and not for acceptability criteria.

Ing. arch. Štěpánek, Ph.D. (SEF) noted that detailed information had been published and was available in the Benefill. The evaluation criteria for the first call had also been published. It was being discussed with the Managing Authority for the OP E to what extent the criteria for the entire OP E would be published.

Ing. Valdman (SEF) responded to the DPWSSS. He stated that the implementing document had several times undergone both an internal commenting procedure at the ME and an interdepartmental commenting procedure, and that compliance with the DPWSSS had been required, in addition to the acceptability criteria, by the representatives of the Ministry of Agriculture and of the Water Supply and Sewerage Department, because it is not possible to support a project that would be in contradiction to the DPWSSS.

Ing. Kříž added that, based on an initiative of the ME, evaluation criteria including points for individual categories would be published for all new calls in order to improve transparency. This had not been done from 2004-2006.

The Chair pointed out the risk that when the selection criteria are published, for the sake of overall transparency, the applicants subsequently modify their applications to perfectly fit these criteria. However, in cases where financial resources for implementation are lacking, and is often true, it is the responsibility of the bearer of the project.

Mgr. Viktora (The Czech Society for Ornithology) had formal remarks with respect to Priority 6 Area of Support 6.2 – 6.5. He had already suggested at the previous MC of the OP E that these projects should be in accordance with the aggregate of recommended measures in the Natura 2000 areas, and not with the plan of care for Natura 2000 (Specially Protected Areas), as the categories of the care plan did not apply to these areas. He suggested rewording as follows: “If a project is to be implemented in a Specially Protected Area or in an area

within the Natura 2000 network, it is not in violation of the plan of care for Specially Protected Areas or of the aggregate of recommended measures for Natura 2000.”

Ing. Kopáček (ME) remarked that Areas of Support relating to the DPWSSS had to undergo assessment in a regional group and that, in connection with the call for water-management projects, it would be useful to meet one more time.

Ing. Kylar (MRD) responded to the aforementioned slight increase in costs against the originally specified amount. He wondered how the financing of large projects would be monitored - within a Priority, or in the same manner as in the case of existing projects, e.g. water management projects, that are addressed in the Cohesion Fund?

Ing. Kříž stated that large projects would be monitored separately by the Commission. Cost certification would also be subject to a special regime, since the decisions of the Commission would be in euros. In cooperation with the Ministry of Finance and the Ministry of Transport, it was endeavoured to make these projects CZK-based, as in the case of national projects, because of the enormous exchange-rate losses incurred in projects from the Cohesion Fund from 2004 – 2006.

The Chair asked Ing. Maroušek to give a presentation on Priority Axis 3 and its acceptability criteria.

Ing. Hájek (The Association of Regions of the Czech Republic) stated that, upon the recommendation of consultants, several buildings were submitted within a project at the same time, and if one building failed, all were excluded. How had the second call worked out? Could a project be submitted again in yet another call?

Ing. arch. Štěpánek, Ph.D. (SEF) stated that problems had to be addressed directly with the consultants. Schools were not in the second call, since it concerned Priority Axis 6. However, this problem could be addressed in the third call, which would be announced. Whoever fails can revise the project or modify it and resubmit it in all subsequent calls concerning the given area of support.

Ing. Valdman (SEF) stated that if one of a number of buildings comprising a single project failed to meet the required low-energy standard, the costs for implementing these buildings were not SEF eligible and it was up to the applicant to decide whether to implement these along with the entire project. However, the project would not be rejected as a whole, but only in part.

Mgr. Viktora (The Czech Society for Ornithology) remarked on the aforementioned projects, which were also supposed to comply with the Nature and Landscape Protection Act. This concerned specially protected endangered species and specially protected severely endangered species that live in these thermally insulated buildings and the thermal insulation of these buildings destroys their habitats.

The Chair remarked that it was not possible to implement measures that would be in violation of the law.

Mgr. Viktora (The Czech Society for Ornithology) responded, noting that, in most cases, these thermal insulation projects are in violation of the law, while the solutions are individual and painful. He stressed the non-existence of systemic solutions that are lacking even at the level of state administration.

The Chair noted that this issue could not be decided immediately within the framework of OP E, and that it was necessary to consider it thoroughly and then formulate a plan of action.

Ing. arch. Štěpánek, Ph.D. (SEF) asked Mgr. Viktora to give a concrete example. He mentioned two endangered species – the Common Swift and the Eurasian Jackdaw, adding that over 90% of their population live in buildings.

The Chair announced that the MC, with 34 members with voting rights, had a quorum and asked the attendees to vote on the adoption of the selection criteria and the acceptability criteria, including the supplementary criteria presented by Ing. Maroušek. Their adoption required an absolute majority of the present members' votes.

Mgr. Semorád (The ROP for the North-East NUTS II Cohesion Region) inquired if a vote would be held on the material with the changes that the MC members had received for the meeting. Would the MC not approve the detailed criteria for the individual calls?

The Chair stated that the selection criteria were based on the existing OP E and on the Implementing Document. Further elaboration of these criteria was not part of the existing material and they would therefore not be voted on.

Mgr. Semorád (The ROP for the North-East NUTS II Cohesion Region) commented on the Regional Councils' web pages with the selection criteria, where, for each project, both points and their weights were given for the individual criteria. He noted that in the case of OP E it was not clear which were the technical criteria.

The Chair suggested that the criteria should be approved as they were and, once the OP E was approved, similar and final criteria might be approved, if necessary. The present members agreed and proceeded to vote. The Monitoring Committee adopted the resolution with the following vote count 28 : 1 : 3 (in favour : against : abstained) and 2 members were not present at the time of the vote.

Item 6: Miscellaneous

The Chair informed the committee about the expected date of the following MC meeting, i.e. the second half of February 2008. She remarked that it was dependent on the approval of the OP E by the Commission.

Item 7: Conclusion

The Chair thanked the members for their participation in the MC meeting and closed the MC meeting.

Minutes taken by: Ing. Simona Dušková, Mgr. Markéta Domasová

Department of European Union Funds, ME

Verified by: Ing. Petr Novák

Department of European Union Funds, ME

Approved by: Ing. Rut Bízková

Deputy Minister-Director of the Section of Economics and Environmental Policies
Chair of the OP E Monitoring Committee