



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

REGIONAL POLICY

Austria, Czech Republic, Germany, the Netherlands, Slovakia, Slovenia

Czech Republic

MEETING ON THE IMPLEMENTATION OF ANNEX 7 OF THE OPERATIONAL PROGRAMME ENVIRONMENT 2007-2013

CONCLUSIONS

BRUSSELS, 29 JUNE 2011

Participants: Czech side: a) Ministry of Environment (hereafter "MoE") - Ms V. Šafránková (Acting Director General), **b)** MoE consultant - Mr T. Young, **c)** Czech Permanent Representation - Ms M. McAndrew

DG REGIO/F.2: Mr C. Gogos, Ms L. Žáčková and Ms P. Blažková

1. INTRODUCTION

The meeting was held on request of the MoE in order to clarify a number of issues for the appropriate implementation of Annex 7 of the OP Environment 2007-2013 (hereafter "Annex 7").

The MoE prepared a presentation with detailed description of seven (7) groups of specific project cases, which in total represent 44 "complex" projects with existing operating contracts.

The (7) groups of specific project cases have been examined in the sense of Annex 7, based on the following essential principles:

- (1) The new/extended/upgraded water project assets represent less than 20% of the existing operating contract value in terms of the future annual income of the current operator: the existing operating contract has to be amended in line with all the requirements set out in Articles 2.3 and 2.4 of Annex 7 (i.e. duration, tariffs setting, performance criteria, monitoring and sanctions).
- (2) The new/extended/upgraded water project assets represent more than 20% of the existing operating contract value in terms of the future annual income of the current operator: the existing operating contract has to be cancelled and a new open public tender should be launched to select an operator for the whole infrastructure. The new operating contract has to be in line with all the requirements of Chapter 1 of Annex 7 ("New operating contracts").
- (3) For co-financed water projects where the operational contract covers more than circa 50 000 p.e. it is agreed that, in duly justified cases and in compliance with the public procurement rules, partial contractual separability can be applied.

The following two additional options are available where the aim is to modify a single contract to comply with the Annex 7 rules:

- i) the existing contract for the entire sewerage system (including the WWTP) or the entire water supply system (including the WTP) can be shortened whilst leaving the duration of the other half untouched so as to comply with the Annex 7 rules, whilst the contract must also incorporate the requirements of Annex 7 in terms of tariffs setting, performance criteria, monitoring and sanctions (for both water supply and sewerage); or
- ii) the existing contract for the entire sewerage system (including the WWTP) or the entire water supply system (including the WTP) can be cancelled, leaving the other half of the contract in place – in which case this other contract must also be modified to incorporate the requirements of Annex 7 in terms of tariffs setting, performance criteria, monitoring and sanctions (but not duration).

There are also cases where there will be more than one contract in a given agglomeration and in this case the following approach is possible:

- a) The operating contract for the system co-financed under the OP Environment must be in line with all the requirements of Annex 7 (whether it is a new contract or a modified existing one); and
 - b) The existing operating contract for the non co-financed system is amended to incorporate the requirements of Annex 7 in terms of tariffs setting, performance criteria, monitoring and sanctions, while leaving its duration unchanged.
- (4) The “removal” of a part of a water infrastructure from an existing operating contract just for the purpose of co-financing is not acceptable for the following reasons:
- a) It creates an even greater fragmentation of the water market in the Czech Republic;
 - b) It is not in line with the objective and spirit of Annex 7, which is to improve the unbalanced character of a number of existing operating contracts, in their entirety;
 - c) It limits genuine competition in the Czech water market and violates the public procurement principles of equal treatment, non-discrimination and transparency.

The Czech representatives acknowledged that DG REGIO has been consistent in its pursuit of the above-mentioned principles.

2. GROUPS OF SPECIFIC PROJECT CASES

2.1. Group 1 - Project Strašice (5 PROJECTS AFFECTED)

The municipality owns the entire water infrastructure on its territory which is managed under one operating contract. The project extends the sewerage network so that the future annual income of the current operator after the new infrastructure is put into operation would increase by more than 20% when compared to the current overall annual income under the existing operating contract.

DG REGIO POSITION:

This is a situation governed by the principle (2) as described above, therefore the whole existing operating contract has to be cancelled and a new open public tender should be launched to select an operator for the whole water infrastructure.

2.2. Group 2 - Project Zruč-Senec (3 PROJECTS AFFECTED)

Two owners own the water infrastructure network: a) the municipality of "Zruč-Senec" and b) a joint stock company (a regional grouping of municipalities in which "Zruč-Senec" is one of the shareholders). The water infrastructure network of the two owners is operated under two separate long-term operating contracts by the same operator.

DG REGIO POSITION:

Option 1:

If the co-financed project under the OP Environment extends the water infrastructure of only one owner (i.e. Zruč-Senec municipality) by less than 20% in terms of the future annual income of the current operator, the respective existing operating contract has to be amended in line with all the requirements set out in Articles 2.3 and 2.4 of Annex 7.

In addition, the second existing operating contract (i.e. of the regional association), can be left unchanged in terms of duration, however, the tariffs setting principles and the other quality parameters of Annex 7 have to be introduced.

Option 2:

If both owners are co-financed under the OP Environment:

- The "Zruč-Senec" municipality operating contract has to be amended as described in option 1 above;
- If the regional operating contract > 50 000 p.e. and either only the sewerage system or the water supply system is co-financed under the OP Environment, it has to be amended applying the "separability" principle (3) a) and b) above.

2.3. Group 3 - Project Hlubočky (2 PROJECTS AFFECTED)

Two owners own the water infrastructure: a) the municipality of Hlubočky and b) a joint stock company (a regional grouping of municipalities in which Hlubočky is

one of the shareholders). The water infrastructure of the two owners is operated under two separate long-term operating contracts by the same operator.

DG REGIO POSITION

Option 1:

If the co-financed project under the OP Environment extends the water infrastructure of only one owner (i.e. Hlubočky municipality) by more than 20% in terms of the future annual income of the current operator, the respective existing operating contract has to be cancelled and a new open public tender should be launched to select an operator for the whole infrastructure.

In addition, the second existing operating contract (i.e. of the regional grouping), can be left unchanged in terms of duration, however, the tariffs setting principles and the other quality parameters of Annex 7 have to be introduced.

Option 2:

If both owners are co-financed under the OP Environment:

- The "Hlubočky" municipality operating contract has to be cancelled and a new open public tender should be launched to select an operator for the whole infrastructure as described in option 1 above;
- If the regional operating contract > 50 000 p.e. and either only the sewerage system or the water supply system is co-financed, it has to be amended applying the "separability" principle (3) a) and b) above.

2.4. Group 4 - Project Třeboň (5 PROJECTS AFFECTED)

There is one owner of the entire water infrastructure and the existing old WWTP is owned and operated by a private company. The water infrastructure (except the existing WWTP) is managed under one existing operating contract. The OP Environment is to co-finance a new WWTP to be owned by the municipality. The applicant (municipality) wishes to operate the new WWTP by its own technical services while leaving the existing operating contract unchanged.

DG REGIO POSITION

Option 1

If the co-financed project extends the wastewater infrastructure by less than 20% in terms of the future annual income of the current operator, and it is possible in line with public procurement rules to extend the existing contract to cover the assets of a new owner, the existing operating contract has to be amended in line with all the requirements set out in Articles 2.3 and 2.4 of Annex 7.

Option 2

If the co-financed project extends the wastewater infrastructure by more than 20% in terms of the future annual income of the current operator, or if option 1 is not possible because of public procurement rules, the existing contract has to be cancelled and a new open public tender should be launched to select an operator for the whole water infrastructure.

2.5. Group 5 - Project Kolín (10 PROJECTS AFFECTED)

The municipality owns the entire water infrastructure on its territory which is operated under one existing operating contract. The OP Environment co-finances the upgrading of an existing WWTP. The applicant (municipality) wishes to remove the WWTP from the existing operating contract and retender its operation in an open public tender while leaving the existing operating contract related to the water network unchanged.

DG REGIO POSITION

Option 1

If the co-financed project extends the water infrastructure by less than 20% in terms of the future annual income of the current operator, the existing operating contract has to be modified in line with all the requirements set out in Articles 2.3 and 2.4 of Annex 7.

Option 2

If the co-financed project extends the water infrastructure by more than 20% in terms of the future annual income of the current operator, the existing contract has to be cancelled and a new open public tender should be launched to select an operator for the whole infrastructure.

Option 3

If the existing operating contract > 50 000 p.e. and either only the sewerage system or the water supply system is co-financed, the contract has to be amended applying the "separability" principle (3) a) and b) above.

2.6. Group 6 - Project Varnsdorf (16 PROJECTS AFFECTED)

The whole infrastructure on the territory of the municipality is owned by a joint stock company (a regional grouping of municipalities in which "Varnsdorf" is one of the shareholders). The infrastructure is operated under one existing long-term regional operating contract. The OP Environment extends the network. The applicant (municipality) wishes to "remove" part of the infrastructure, including the co-financed network extension, from the existing regional operating contract and tender its operation in an open public tender, while leaving the existing operating contract (remaining part) unchanged.

DG REGIO POSTION

Option 1

If the co-financed project extends the water infrastructure by less than 20% in terms of the future annual income of the current operator, the existing operating contract has to be amended in line with all the requirements set out in Articles 2.3 and 2.4 of Annex 7.

Option 2

If the co-financed project extends the water infrastructure by more than 20% in terms of the future annual income of the current operator, the existing contract has to be cancelled and a new open public tender should be launched to select an operator for the whole infrastructure.

Option 3

If the existing operating contract > 50 000 p.e. and either only the sewerage system or the water supply system is co-financed, the contract has to be amended applying the "separability" principle (3) a) and b) above.

2.7. Group 7 - Project České Žleby (3 PROJECTS AFFECTED)

There are three agglomerations on the territory of a single municipality. There is an existing water infrastructure within the main agglomeration of the municipality operated under one existing operating contract. The OP Environment co-finances a new water infrastructure outside the main agglomeration of the municipality. The new water infrastructure represents more than 20% in terms of the future annual income of the current operator.

DG REGIO POSITION

This is a situation is governed by the principle (2) as described above, therefore the whole existing operating contract has to be cancelled and a new open public tender should be launched to select an operator for the whole infrastructure.

Note: In this particular case, considering the very small size of the agglomeration (approx. 59 inhabitants), the technical solution of the project needs to be checked in order to verify that the proposed technical option respects the "value for money" principle.

2.8. General consideration

All the described options above are based on the four (4) abovementioned essential principles.

Nevertheless, the owners (municipalities or regional associations) may also opt for a different operating model than the "separate operating model"; for example an "autonomous model" where, after the expiry of the existing operating contract, the water infrastructure may be operated by themselves.

3. THE SPECIFIC CASE OF PRAGUE WWTP

Short information on the Prague WWTP project was provided by the MoE:

- The modified Prague WWTP project application is expected to be submitted within days (June/July 2011) by the applicant to the State Environmental Fund (SEF). It will be reviewed and when ready it will be sent to JASPERS for the last comments and who will thereafter be requested to issue the Action Completion Note. If an agreement on the option analysis is reached, MoE would then organise the last Prague Working Group meeting, possibly in the second half of July 2011 and in any case prior to the official submission of the project to the EC.

- The Office for the Protection of Competition issued its legal opinion on the existing operating contract compliance, including its amendments, with the EU public procurement and competition rules. This opinion together with the opinion of MoE on the same issue will be sent to DG REGIO shortly and the latest, together with the project application.

The DG REGIO representatives pointed out the following:

- The meeting of the Working Group is meaningful only if there is a common agreement on the option analysis of the project.
- According to Annex 7, the amendment of the existing operating contract of Prague city should be effective before a decision to fund the corresponding renewal/extension of the Prague WWTP is taken under the Regulation (EC) 1083/2006. For this particular project it means that the existing operating contract for the whole water infrastructure of the Prague city except the WWTP should be amended in line with the requirements set out in Article 2.3 of Annex 7. Prior to the completion of the new WWTP line, a new open public tender should be launched to select an operator for the entire wastewater treatment (existing WWTP line, new WWTP line and sludge management) in line with the chapter 1 of Annex 7 ("New operating contracts").

4. FUTURE PROGRAMMING PERIOD

DG REGIO stressed that the water agreement is seen as a first step towards the harmonisation of the Czech water market aiming to introduce a number of important principles to the contractual relationships, such *reasonable contract duration, balanced tariffs setting, performance criteria, monitoring and sanctions and fair rent principles aiming to allow replacement of the infrastructure at the end of its functional life*.

DG REGIO hopes that the clarifications provided to the seven project cases above will allow a better implementation of the water agreement on the ground. The four main principles included in the chapter 1 of this paper are of fundamental importance. In that respect, it is important that the Czech decision makers are driving pro-actively forward the debate aiming to better organize the so far fragmented water market with divergent standards and quality parameters.

MoE role will certainly be crucial in the consolidation of our common efforts, by introducing the necessary changes to the existing legal framework aiming to incorporate the above mentioned principles, including the establishment of an independent water regulator, which is a DG REGIO recommendation in the water report from June 2009. All this will be important aspects in view of the next programming period negotiations.

5. FINAL CONSIDERATION

Four years after the water agreement was reached, a lot of successful steps have been undertaken to improve the existing water contractual relationships in the Czech Republic. However, neither these achievements nor the principles behind Annex 7 are known and communicated to the wider public. A water communication strategy and information campaign aiming to inform the wider public of what has already been achieved for the better management of the water infrastructures in the Czech Republic should be developed.