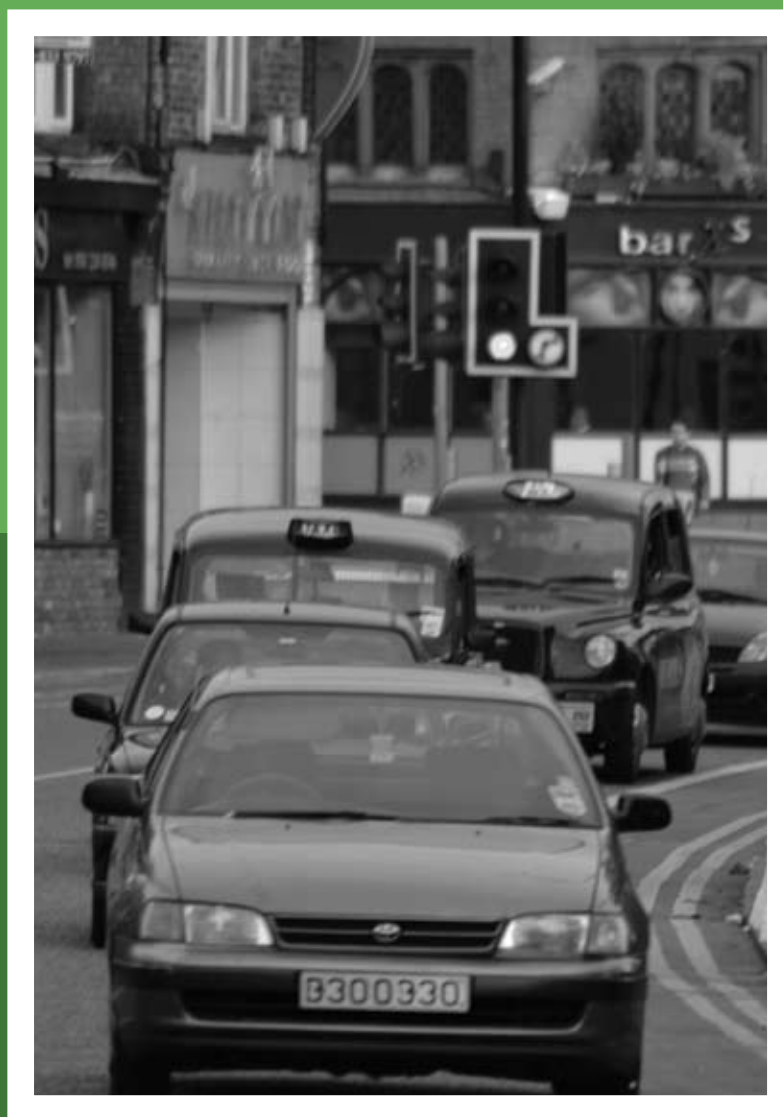


## Mini Guide on operational programme

# TRANSPORT

EU Structural Funds in the Transport Sector



December 2008

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## 1. Introduction – What Are Transport Operational Programmes?

The Operational Programme Transport is a document that establishes the mechanism of drawing the financial support from the EU funds in transport sector. The OPTs were demanded by the European Commission from the new MSs of the EU and were approved for the period 2007 – 2013. As the OPTs in general rank among the largest operational programmes (these documents were similarly prepared in other areas), they are a great financial stimulus and large development of traffic infrastructure can be expected, including construction of completely new sections of roads and motorways.

As some of these projects might have very negative effects on the environment and might ignore important legal provisions such as the need of alternative assessment, proper SEA and EIA evaluation etc., and still they will apply for the EU money, the affected public (incl. NGOs) should know what to do. This material should be used as a brief guide in situations where a national project goes to Brussels applying for EU funds co-financing. Its aim is to explain certain categories, name important principles and suggest some measures that might be taken. It does not offer more general information on OPTs as such, for this you might see the Justice and Environment analysis on <http://www.justiceandenvironment.org/je-international/eit/>.

This Mini Guide on the OPTs implementation phase stems from the Czech experiences and from the Czech version of the transport operational programmes. However, as the implementation principles are laid down in the EU regulation of Structural Funds, the conclusions presented and recommendations made might be correspondingly used in other countries of the EU which are now entitled to drawing money from these funds.

## 2. The legislative framework and the OPTs

The whole mechanism of drawing from the EU funds is based on the following EU legislation:

- The Council Regulation (EC) No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund, and the Cohesion Fund, and on repeal of the Regulation (EC) No. 1260/1999 (hereinafter “General Regulation”);
- The Council Regulation No. 1084/2006 establishing the Cohesion Fund and repealing the Regulation (EC) No. 1164/1994 (hereinafter “CF Regulation”);
- The European Parliament and Council Regulation (EC) No. 1080/2006 on the European Regional Development Fund and on repeal of the Regulation (EC) No. 1783/1999 (hereinafter “ERDF Regulation”); and
- The Commission Regulation (EC) No. 1828/2006 laying down implementing provisions to the Council Regulation (EC) No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, and to the European Parliament and Council Regulation (EC) No. 1080/2006 on the European Regional Development Fund (hereinafter “Implementation Regulation”).

These legislative provisions are transposed into OPTs where the whole mechanism is concretely set up, the authorities responsible for the OPT implementation determined and wherein the principles are laid down which must be adhered to during the whole process.

### 3. Major and Other Projects

Not all of the transport projects co-financed under the OPTs will be evaluated directly by the European Commission. The crucial difference in this matter is among the so-called “major” projects and other projects. Only the major projects will appear before the EC prior to when their co-financing starts and thus there is a better possibility to prevent financing of ineligible projects. This is due to the fact that in the case of other projects their evaluation lies basically fully in the hands of subjects interested in the development of transport projects, therefore far from being independent. In the C.R. for example, the Managing Authority of the OPT (this body decides about the projects to be financed) is the Ministry of Transport itself, whose inferior organization, the Road and Motorway Directorate, is the main investor of road and motorway infrastructure in the C.R. The Managing Authority will evaluate the projects and will grant the money, with the EC being merely in the role of ex post evaluator of the already carried-out projects.

Major projects are defined in Section 2 Art. 39 of the General Regulation:

*“...an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature, which has clearly identified goals and whose total cost exceeds EUR 25 million in the case of the environment and EUR 50 million in other fields (hereinafter referred to as major projects)”.*

Given the average price of roads and motorways construction, it can be expected that projects on development of new roads and motorways will fall under the major projects definition. Thus the EC, if supplied with information about breaches of the EU environmental legislation, may decide this project will not be supported and in the end this project will not be realized for lack of finances. In case of other projects, the EC can only refuse to repay for already financed and realized projects.

### 4. How does the EC evaluation of major projects look like?

Art. 40 of the General Regulation provides for exact information the EC will require to evaluate each applying major projects. Among these there is:

- information on the nature of the investment and a description of it, its financial volume and location;
- the results of the feasibility studies;
- a timetable for implementing the project
- a cost-benefit analysis, including a risk assessment and the foreseeable impact on the sector concerned and on the socio-economic situation of the Member State and/or the region
- an analysis of the environmental impact
- a justification for the public contribution
- the financing plan showing the total planned financial resources

The Commission shall then appraise the major project according to these factors and will also take into account the project’s consistency with the OPT priorities and other Community policies. If the submission is in accordance with Art 40 (e.g. it includes all the necessary information, feasibility studies etc.), the EC shall adopt a decision no later than three months after the submission.

## 5. Role of the EC in the OPT Implementation Process

Based on our experiences from mutual meetings and on information generally available, in the OPT implementation process the EC reserve for themselves the position of the “final judge”. This means that the EC repeatedly refuses to take any steps prior to the moment when an application for EU funding for a particular major project appears “on the table”. Even though some projects are highly controversial even at their stage of preparation (for example it is generally known that no proper alternative assessment took place and still the responsible authorities push its development further), the EC states that the sole responsibility is on the part of the Member States which must obey all relevant legislation.

Such a position of EC can clearly be read in the Preamble of the Czech OPT:

### *“Preamble*

*The list of projects in Appendix 1 and the schemes in Appendix 2 are to be considered as indicative. These projects and their configuration (specific line routings, etc.) could be amended and changed during the programming period. Approval to co-finance any project mentioned in the OP Transport and in the appendixes, will be subject to the examination of his application for co-financing by the Managing Authority of the OP Transport, including the Environmental Impact Assessment (EIA) and the Cost-Benefit (C/B) analysis which should contain, inter alia, comparison of alternative options on the base of their cost and environmental aspects in line with the “letter and spirit” of the relevant Community legislation. The findings of the comparative studies of the examined projects alternatives, both from an economic and environmental point of view will be part of the formal application for the co-financing of the projects. It should finally be stated that approval of the operational programme and approval of financial support for individual projects are two separate processes and therefore the decision of the European Commission on the programme approval does not prejudice the approval of co-financing for any individual project.”<sup>1</sup>*

The inclusion of the Preamble into the OPT text can itself be seen as a very positive step. The EC standpoint described above might however bring far-reaching consequences. The EC regularly refers to the subsidiarity concept, claiming that the EU level should decide and account for only such matters which cannot be solved at the national (or regional) level. In the OPT context, this means that other projects (e.g. not major) might be financed and the given roads and motorways constructed and only subsequently the EC will or will not confirm the payments made<sup>2</sup>. In case of major projects, this standpoint puts large responsibility on those who wish to prevent any controversial transport construction from being financed from EU – these subjects will have to gather all necessary information and submit them to EC in due time (which might be very difficult to find out) before the EC returns the final verdict.

Moreover in the transport sector, some of the projects form part of the TEN-T networks which can inter alia be understood as networks of roads and motorways of utmost EU importance with corresponding demands for its quality and utility. In this respect we find a huge gap between the two EU policies – regional policy and its OPTs and transport policy and TEN-T projects. Practically what might happen is that a part of the TEN-T networks (some national section of a motorway etc) will be enforced by the Member State despite it is proven that more economic, transport utile and environment friendly alternative exists. The EC will decide that EU funds should not be granted, the given country will however finance it from national resources. The EC role in the OPT implementation will be fulfilled, however the given part of the TEN-T network will not meet the EU environmental law requirements, will possibly pass through large agglomerations and create bottlenecks. The quality of TEN-T is therefore at stake and references to “subsidiarity” principle by the EC are surely not the right to be made.

<sup>1</sup> Operational Programme Transport 2007-2013, Prague, October 2007, see the English version at <http://www.opd.cz/cz/Programove-dokumenty>

<sup>2</sup> As said above, in the Preamble stated MA is generally MoT (a subject far from independent)

## 6. Yours Is the Responsibility – A Few Recommendations

The EC clearly relies upon the presumption that the applicant for particular major project will submit all the necessary information and thus the correct funding decision can be adopted. In fact, it can be anticipated that the applicant will submit only information speaking for his project. The deficiencies of the EU environmental law implementation in MSs are largely described, it is known that positive SEA and EIA statements are often issued without no real alternatives assessment, public participation etc. When the alternatives are assessed, still the objectivity of the comparative studies is often questionable. Thus it may easily happen that the EC will not get “the whole picture” while evaluating the project application.

The greater is the responsibility of those who seek to protect the human health and friendly environment or who would like to see the EU legislation respected. There are just few recommendations for this uneasy task:

- Get the information: For this it will be necessary to communicate with the Managing Authorities of respective OPT (these MAs are determined in the OPT documents, in the C.R. this is the Ministry of Transport) and require regular information of the dates of incoming calls as well as of the applying projects – reference should be made to provisions of General Regulation and OPT document (this contains a section on Publicity)

- Send your comments: Let the responsible authorities as well as the EC know what are the greatest dangers and controversies of the particular project in advance. The national authorities will as such be informed that such a project is closely monitored by the public. The EC will have better chance and longer time to understand the complications despite no action can be expected prior to the application.
- Channel the information to the affected public – information on particular project applying for EU funds should get to municipalities or local NGOs which might be negatively affected by its realization.
- Monitor compliance with national and EU environmental law – is there another alternative in existence? Was the environmental impact assessment carried out in compliance with the SEA and EIA Directives? Has the multi criteria analysis been carried out?
- Send the information which is needed to the key decision-makers – the EC will strongly need information as stated in Art. 40 of the General Regulation, above all information concerning the available comparative studies, their conclusions, the compliance/breaches of the EU environmental legislation, compliance with the recommendations in the TEN-T Regulations on the quality of TEN-T projects.<sup>3</sup>

<sup>3</sup> See the Decision No. 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community Guidelines for the Development of the trans-European Transport Network and the Decision No. 884/2004/EC of the European Parliament and of the Council of 29 April 2004 Amending the Decision No. 1692/96/EC

