

## **ANNEX**

### **Observations on the operational programme ‘Enterprise and innovations for competitiveness’ (OP EIC)**

#### **CCI 2014CZ16RFOP001**

The following observations are made in reference to Article 29(3) of the Regulation (EU) No 1303/2013 of the European Parliament and of the Council common provisions regulation (CPR). The Czech Republic is asked to provide to the Commission any necessary additional information and, where appropriate, revise the operational programme (OP).

#### **GENERAL OBSERVATIONS**

1. The Commission has to stress that before it will be able to adopt the Czech operational programmes of the 2014–20 period, the Czech authorities will have to comply with their commitments included in the partnership agreement regarding the Civil Service Act.
2. The financial allocation of the programme and other tables should be amended appropriately, in order to be fully in line with the final version of the partnership agreement adopted on 26 August 2014 by Commission Decision C(2014)6143.
3. The managing authority (MA) is asked to ensure that the OP inserted in the SFC2014 system is consistent with the stand-alone document of the OP, in particular on financial tables, indicators and responsibilities for implementation. In addition, it has to be ensured that financial data across all different documents are consistent and calculations are correct.
4. In accordance with Article 4(2) of Commission Implementing Regulation (EU) No 215/2014, the Commission needs clear and understandable information on the methodological bases for the identification of the milestones and target values, information on the financial coverage of the output indicators selected for the performance framework and an explanation of the selection of the output indicators and key implementation steps. Some Member States have sent a separate document outlining the requirements of Article 4(2) for each indicator of the performance frameworks in a table.
5. The information provided in Annex 3 on the performance framework is still very general. It should show that the values of the milestones are plausible and that the output indicators selected for the performance framework are suitable. For each selected indicator of the performance framework, we need to understand why the values of the milestones and targets have been fixed in this way. It should be clear what the selection criteria for the output indicators used in the performance framework are.
6. The financial milestones of the performance framework have been revised fulfilling the criteria to avoid applying the N+3 rule. Nevertheless, the financial targets of the

performance framework only relate to the European Union support. As stated in Article 126 of the CPR, the financial indicator relates to the total amount of eligible expenditure entered into the accounting system of the certifying authority and certified by the authority. This means that the financial indicators have to include the national counterpart as well. The performance framework should be revised accordingly.

7. More information shall be provided on the set-up of the indicator system described. It is not clear why individual output indicators will be identified according to the programme focus and will be continuously updated and further defined in the annual implementation reports. The difference between this described method and the setting up programme-specific output indicators should be elaborated.
8. Related to the information provided on the coverage of the output indicators and the basis for fixing the milestones and targets, this is very general. It is not sufficient to only state that the output indicators have to relate to operations representing more than 50 % of the resources allocated to the priority. It should be easily understandable why the values of the milestones and targets have been fixed in this way (e.g. the output milestones in the performance frameworks for PA2 and 3 seem to be quite low now, what is the methodology behind it?). Further explanation is still required.
9. Using mainly three common indicators (No 1, 2 and 6) for the entire OP may be an appropriate strategic tool at programme level, but it is necessary to define more programme-specific output indicators. Output indicators are supposed to capture the operations supported and shall cover all investment priorities of a programme as indicated in Articles 27(4)(b) and 96(2)(b) of the CPR. If common indicators are insufficient to reflect the actions of a certain programme, it is necessary to identify programme-specific output indicators which are derived from the intervention logic of the programme.
10. Results should be expressed using the indicators of European Statistics, where these exist at the appropriate NUTS level 1, and if they correspond to the intervention logic and fulfil the criterion of responsiveness to funded activities as required by the general ex ante condition 7. Where relevant, specific areas and regions referred to in the interventions (urban, rural, metropolitan, coastal etc.) should be delineated, according to the harmonised definitions published by the European Commission.
11. The Commission notes that the amount of the performance reserve represents 6.11 % of the EU allocation to the OP, therefore above 6 %, whereas Article 22 of the CPR stipulates that the total amount of the performance reserve allocated by the ESI fund and category of region shall be 6 %, whereas the performance reserve shall constitute between 5 and 7 % of the allocation to each priority within a programme. Compliance between the overview table on the performance amounts foreseen by the fund and the category of region as required by Article 15(1)(a)(vii) of the CPR to be included in the PA and OP would need to be checked as far as the performance reserve is concerned.

12. The ESI funds can contribute to financial instruments only following the results of an *ex ante* assessment and the beneficiary must be selected in an open, transparent and non-discriminatory procedure. As this *ex ante* assessment has not been finalised yet, in order not to pre-empt its results, an appropriate balance will need to be achieved between providing too much and too little information to avoid subsequent OP modifications.

It is sufficient at this stage that the managing authority signals whether it envisages the use of financial instruments or not at the priority axis level. The OP can be amended in the following way: ‘Possible use of financial instruments, subject to the *ex ante* assessment’. In the table on category of expenditure, dimension two (form of financing) some plausible numbers under the specific categories (loan, guarantee and equity) shall be added. The difference between the repayable assistance (Article 66 of the CPR) and financial instruments (title IV of the CPR) has to be clearly noted.

13. Taking into account the 2007–13 experience with the implementation of financial instruments in the Czech Republic (e.g. delays in launching venture and seed funds, financial corrections applied on the guarantee and loan scheme), a number of measures need to be introduced in order to improve in particular the delivery mechanism for financial instruments, the level of management costs and compliance with state aid rules.
14. According to the *ex ante* evaluation submitted with the OP, the strategic environmental assessment (SEA) statement issued by the Ministry of Environment was not available for this *ex ante* evaluation. Therefore this evaluation cannot be considered as fulfilling the requirements of Article 55(4) of the CPR which states that ‘*ex ante* evaluations shall incorporate, where appropriate, the requirements for strategic environmental assessment set out in Directive 2001/42/EC of the European Parliament and of the Council taking into account climate change mitigation needs’.
15. A number of very important conclusions/recommendations of the *ex ante* evaluation are not reflected in the OP (e.g. need to increase the thematic concentration, improve the intervention logic of the OP to avoid overlaps among individual priority axes and exploit the synergies, and better describe the specific objectives). It is not clear and explanation should be provided as to why these comments have not been appropriately reflected in the OP.
16. The beneficiaries of the OP shall be amended to be in line with the adopted partnership agreement in the following way: ‘With regard to the principle of transparency and to avoid potential conflict of interest, the applicants will be obliged to disclose their ownership structure on the basis of proportionality in line with the methodological instruction on the financial flows, either during the submission of the project’s application or during the selection process. Those projects, or their applicants, who will not be able to disclose their ownership structure or where there was a conflict of interest, will not be able to receive support from the OP.’

17. On the basis of Article 2(10) of the CPR only public or private bodies may be considered as beneficiaries. Natural persons can only be beneficiaries under the EAFRD and EMFF Regulations. Therefore, natural persons may not be beneficiaries under the Structural Funds and the Cohesion Fund. Please amend the OP correspondingly.
18. The Commission draw the attention of the Czech Republic to the fact that the decision approving the operational programme is without prejudice to the Commission's position regarding compliance of any operation supported under that programme with the procedural and substantive state aid rules applicable at the time when the support is granted, in particular with the 'Framework for state aid for research and development and innovation'.

The granting of state aid falling within the scope of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), granted under aid schemes or in individual cases, requires prior approval by the Commission under Article 108(3) of the TFEU, except where the aid is exempted under an exemption regulation adopted by the Commission under Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 to certain categories of horizontal aid and its amendments or under Commission Decision of 20 December 2011 on the application of Article 106(2) of the TFEU to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest or granted as general de minimis aid.

19. Managing authorities should ensure that ESIF funding does not support relocation of firms within the EU and conforms to the EU state aid framework. The following standard clause shall be included in the text of the OP: 'Where assistance is granted from the Funds to a large enterprise, the managing authority shall assure itself that the financial contribution from the Funds does not result in a substantial loss of jobs in existing locations within the Union'.
20. In light of the gradual transition to mandatory e-procurement starting in 2016 foreseen by the recently-agreed revised public procurement Directives, appropriate measures and adequate funds should be foreseen within the framework of the OP to ensure the timely and full implementation of this requirement.

## **SECTION 1 STRATEGY FOR THE OPERATIONAL PROGRAMME'S CONTRIBUTION TO THE UNION STRATEGY FOR SMART, SUSTAINABLE AND INCLUSIVE GROWTH AND THE ACHIEVEMENT OF ECONOMIC, SOCIAL AND TERRITORIAL COHESION**

(Reference: Article 27(1) and point (a) of the first subparagraph of Article 96(2) of the CPR)

21. The current OP draft does not seem to differ significantly from the OP Enterprise and Innovations of the 2007–13 programming period. The specific objectives are designed in a way to simply continue 'the programmes' co-funded by the previous OP. As a consequence, the Commission fears that it can fail to deliver the paradigm shift of

innovation support, to move from an imitation- to innovation-based knowledge economy, as underlined in the partnership agreement.

22. The OP diagnosis and OP architecture require improvements. 'Optional annex No 2 to the OP' includes an analysis of needs supported with data. But the SWOT analysis which would form a proper basis for a clear prioritisation of main development needs and challenges is still missing. The OP shall be amended in such a way, that the analysis from annex No 2 is moved directly to the text of the OP and the conclusions of this analysis are reflected in the SWOT analysis.

23. The Commission would like to stress that the inclusion of specific types of activities in the description of investment priorities under Article 5 of Regulation (EU) No 1301/2013 (ERFD) does not mean that such types of activities shall be supported by the ERDF in each operational programme. Article 5 of the ERDF Regulation makes the selection of investment priorities conditional on 'accordance with the development needs and growth potential referred to in point (a)(i) of Article 15(1) of the CPR and set out in the Partnership Agreement'.

This means that not only investment priorities but also what is in fact planned to be supported within them must be, as per point (a)(i) of Article 15(1) of the CPR, aligned with 'an analysis of disparities, development needs and growth potential with reference to the thematic objectives and the territorial challenges, and taking account of the National Reform Programme, where appropriate, and relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU'.

24. Any relevant country-specific recommendation adopted in the framework of the 2014 European semester shall be taken into account for the OP, in accordance with Article 96(2)(a) of the CPR. In this respect, the Czech authorities are invited to translate the relevant 2014 CSRs addressed to the Czech Republic within the Europe 2020 process into investment priorities. The contribution of the OP to the EU 2020 targets should be quantified, even with estimations.

25. Justifications of financial allocations within the strategy have not been supported by sufficient analysis, references or hard data. This applies to all thematic objectives (TOs). Justification of splitting the financial allocation according to the absorption capacity shall not be one of the main criteria as this is the case in the current OP.

26. More efforts can be made in concentrating the available financial resources on a limited number of interventions. The OP intends to support a rather high number of different investment priorities under many TOs. The activities to be co-financed are presented without any prioritisation. They lack clearly defined linkages to challenges to be tackled. This leads to a potential risk of scattering available funds without any leverage effect for Czech research, innovation and entrepreneurship.

27. The OP must clearly justify the use of more than one TO under a single priority axis, which is not the case at the moment for the priority axis 3.
28. The planned investments under the TO7 shall be underpinned by a sound analysis and be properly justified as the Commission position paper does not include the support of transmission network among the priorities for ESI funds. More explanation should be provided on why TO4 and TO7 shall be combined in one priority axis.
29. The OP shall contain a short summary of the main priorities emanating from the RIS3 once it is finalised. Since the RIS3 is a basic strategic document laying down objectives and policies for research and innovation in the Czech Republic, it has to be made evident that all planned investments under the thematic objective 1 have their basis in the needs identified in the RIS3.
30. For the time being, the OP includes references to the RIS3 but only in relation to horizontal priorities, whereas vertical priorities (e.g. economy fields of specialisation) are not explicitly mentioned. This should be clarified and amended.
31. All investments under the thematic objective 1 will have to closely reflect the conclusions of the RIS3 in terms of priorities, policy mix, instruments and indicators, and it should be evident how the OP will contribute to the fulfilment of the objectives of the RIS3. This alignment also applies to complementary financing of projects approved under Horizon 2020, and also for projects that have successfully passed the evaluation, but could not be funded for lack of Horizon 2020 budget (so-called shortlisted projects).

The links with the RIS3 will have to be checked at a later stage, once the final version of the RIS3 is available.

32. With regard to TO3, clear preference should be given to investments aligned with the RIS3 in order not to waste the potential for a high innovation impact on small and medium-sized enterprises (SMEs). This however does not exclude general support for SMEs under TO3. This should be adequately translated into principles for selection of operations.
33. References to synergies between the ESI funds, Horizon 2020 and other EU instruments are developed in the text. Nevertheless, the Commission recommends including a provision to allow possible co-financing of projects located in at least one other Member State (under Article 70 of the CPR) which can be crucial for projects of international cooperation.
34. The OP refers to relevant national strategies. However, it does not refer to the Danube strategy as a key strategic document. Taking into account that the OP's strategy should be consistent with the partnership agreement, the chapter on how the OP contributes to the achievement of economic, social and territorial cohesion should refer to the EU strategy for the Danube region as well.

35. The OP shall foresee to support activities within the European innovations partnership on active and healthy ageing, that was launched by the Commission as part of the EU2020 flagship 'Innovation Union' and helps regions, SMEs, stakeholders to develop and upscale innovative products and services and inspires them to undertake research in areas that will be important for an ageing society.

Large enterprises still appear as beneficiaries under several priority axes. The OP specifies that maximum 25 % of the total OP financial allocation and even up to 50 % of the financial allocation for the specific objective 1.1 will be spent in favour of large enterprises (although the indicative financial allocation for the objective 1.1 is not stated in the OP). As the allocation of the priority axis 1 amounts to 31 % of the OP total resources (in nominal terms to EUR 1.3 billion of ERDF support), this proposal does not capture the essence of this OP. The MA is asked to reassess this proposal and to ensure a clear prioritisation of SMEs. In case of large enterprises, preference must be given to projects implemented jointly with SMEs, or foreseeing cooperation with SMEs. The state aid rules have to be respected in any case.

Primarily the ERDF supports the development of endogenous potential in research and innovation. Large companies are important for the EU economy, but are less in need of public support - including ERDF. The purpose of the ERDF is not to crowd-out private investments but to provide real incentive effects. Support to SMEs constitutes a priority for the ERDF. SMEs play a major role in growth and job creation and their anchoring in the local economic landscape. Compared to SMEs, large firms face less problems in terms of market failures, access to finance, access to public procurement contracts, access to markets, asymmetry of information, etc.

As an exception, ERDF support to large firms is allowed in fields that yield the highest added value for socioeconomic development in the EU, namely research, innovation and the low-carbon economy. ERDF support to large firms is intended to focus on fields with high risk/low profitability or projects with a unique character that cannot be delivered via SMEs.

## **SECTION 2 PRIORITY AXES**

(Reference: points (b) and (c) of the first subparagraph of Article 96(2) of the CPR)

Please note that the general comments above also refer directly to the design of priority axes so they should be read together with the comments below.

36. There is still room for improvement of the overall OP structure and the intervention logic for all priority axes/investment priorities. The scopes of the investment priorities are not precise enough. All proposed activities should directly contribute to the specific objectives under the investment priority.
37. The formulation of the type and examples of activities should be considerably amended to respect Article 96(2)(b)(iii) of the CPR. The activities should be formulated in a

concrete and precise way. Please note that the programme has to present the consistent list of activities to be supported under each investment priority which means all the activities to be taken with their concrete examples and not - as is the case currently - indicative lists of supported activities to achieve the specific objectives. The activities should clearly demonstrate the planned scope of interventions.

38. Investments from the OP, mainly under the priority axis 1, will be cross-checked with the RIS3 and if not duly justified in the RIS3 such investment cannot be considered as eligible for co-financing under the OP.
39. In line with the Commission position paper, commercial tourism facilities, such as hotels, leisure and spa facilities, should be financed from private funds and not from the ESI funds. Please amend the beneficiaries of the OP accordingly that no commercial tourism facilities or restaurants will be supported by the OP under any of the priority axes (e.g. the PA2, 3 or 4).
40. More details about financial allocations planned for different investment priorities/specific objectives should be provided. It shall be clear on the basis of which criteria the financial allocation has been divided in the given way.
41. The MA is further asked to explain and provide more information on how the financial allocation for specific objectives and activities are translated into the financial allocation under intervention codes.
42. In the table on category of expenditure, dimension two (form of financing) some plausible numbers under the specific categories (loan, guarantee and equity) shall be added.
43. According to the description of selection criteria, submitted applications will first be assessed by internal evaluators (primarily by the Czechinvest) and for projects which will 'require special expert assessment, mainly in the area of research, development and innovation', an assessment by external evaluators will also be done. More concrete information on the selection of operations should be provided. It should be clear in which cases the managing authority will use only internal and when also external evaluators and how exactly the demarcation line will be defined.

In view of the audit findings detected in the implementation of the OP Enterprise and Innovation of the 2007–13 programming period, particular attention should be paid to setting up a system for the transparent and objective selection of projects. The issue of potential conflicts of interest of evaluators involved in the selection of projects shall be dealt with as well.

44. The selection criteria shall reflect the priority to be given to SMEs.
45. More detailed information on the composition of the evaluation committee and its competences/role in the selection of operations should be provided in the OP.



46. The individual priority axes of the OP are drafted in a different way: for some axes, the specific objective is described and then expected results and supported activities follow. For other priority axes, however, more specific objectives are first described and then expected results and supported activities follow. In order to gain more clarity, the structure should be the same: specific objective — expected results — supported activities. Please amend the OP correspondingly.

#### **PRIORITY AXIS 1 — RESEARCH AND DEVELOPMENT FOR INNOVATION**

47. Out of the total OP financial allocation, 31 % is expected to be spent on this priority axis. However, the OP does not currently provide an accurate picture of what is planned to be supported. The activities should be formulated in a concrete and precise way.

One of the planned supported activities is 'industrial research and development'. According to the OP, 'specific attention will be paid to research in the area of industrial challenges and key enabling technologies (KETs)'. More detailed explanation should be provided in the OP on what exactly is planned to be supported and which sectors/specialisation areas are to be tackled. The current reference to KETs is rather vague and mentions neither specific KETs nor related initiatives. This part needs to be further developed and be fully in line with the RIS3 strategy.

48. Please provide more details about financial allocations planned for both specific objectives of this priority axis.
49. According to the codes of intervention and the description of the priority axis, a significant part of the financial allocation is expected to be channelled in favour of large enterprises. For the specific objective 1.1 it is even expected to use up to half of the allocation (which is not specified) for large enterprises. This is not in line with the Commission priorities to primarily support SMEs. An appropriate explanation and rationale behind this approach is currently missing.
50. Twenty-eight per cent of the priority axis 1 financial allocation is planned to be spent in rural areas (defined as municipalities with less than 5 000 inhabitants). Taking into account the scope of this priority axis on research and innovation, this share seems to be rather high. Please provide an explanation on how the financial allocation has been divided: individual specific objectives and codes of intervention (with detail on intervention fields, forms of finance, territory type, etc.).
51. The text of the OP has to state clearly that the ESI funds will focus on optimising existing research and innovation infrastructure, rather than building new physical objects.
52. From the selection criteria it shall be clear, how the current issue of insufficient collaboration between the research institutions, universities and enterprises will be tackled, how the technological transfer will be ensured as much as possible. It shall be also described, how the priority will be given to projects which create synergies with projects supported from the OP RDE.

53. Higher education institutions (HEI) are recognised as part of the innovation system. In order to assess the entrepreneurial capacity of higher institutions, it is suggested to explore the possibility of using the HEInnovate tool, an initiative launched in November 2013 by the European Commission and the Organisation for Economic Cooperation and Development (OECD).
54. For the specific objective 1.1 'Increase innovation performance of firms', the result indicators are defined as 'Expenditure on R & D in the business sector, as % of the GDP'(the regions of the Czech Republic except for Prague). Increasing only the expenditure on R & D does not reflect the new approach of the cohesion policy implementing a results-oriented policy. Measuring an input (public expenditure on R & D) does not express the change in innovation. Private investment in R & D would be more acceptable. Please clarify that we are talking about 'private' expenditure on R & D.
55. Some programme specific output indicators, in particular to capture the infrastructure built/renovated shall be used for the specific objective 1.1. If jobs will be created, the common indicator No 8 shall be used.
56. The common indicator No 26 currently used under the specific objective 1.2 'Increase intensity and efficiency of cooperation in R & D and innovation' refers only to enterprises to be supported. For capturing the support to research organisations, some programme-specific indicators need to be used. Please follow the same approach for an infrastructure to be built/renovated.

## **PRIORITY AXIS 2 — DEVELOPMENT OF ENTREPRENEURSHIP AND SME COMPETITIVENESS**

57. The specific objective 2.1 has been redefined compared to the previous version of the OP. In this way it does not refer to an activity anymore. Nevertheless, we still suggest splitting the specific objective in two as two different types of objectives are included (new start-ups and developing enterprises).
58. Consequently, the result indicator 'Added value of SMEs as % of value added of the Czech Republic' is now better aligned with the specific objective 2.1 on developing enterprises, but it does not reflect the number of new firms.
59. The supported activities should be more precisely elaborated, so that the scope of interventions is clear (see the general observation). Example: it should be clear how existing services provided in the supporting infrastructure (e.g. business incubators) will be improved and why the focus is only on non-metropolitan, mainly peripheral regions.

According to the description of supported activities, projects of start-ups and developing projects of lower innovation, primarily in sectors of the manufacturing industry and services will be tackled. As stated above, the description shall be more precise to understand the scope of planned interventions. It shall be clear which types of activities will be considered as eligible under this specific objective (e.g. focus on which technologies, which services).

60. One of the expected results to be achieved under the specific objective 2.1 is to 'increase the accessibility of external financing for start-ups and innovative enterprises, including risk capital, for entrepreneurs in the sector of services'. This expected result needs to be clearly explained to understand correctly what is envisaged.
- SMEs mention the access to finance as one of the main issues they are facing, especially in the early phases, when they are considered by banks as too risky to provide them with loans. It is not clear then why the OP is currently limiting its support to SMEs only to the sector of services.
  - The Commission would like to recall on this occasion that according to the Commission position paper, commercial tourism facilities, such as hotels, leisure and spa facilities, should be financed from private funds and not from the ESI funds.
61. One of the expected results to be achieved under the specific objective 2.1 is 'development of creative sectors'. Please clarify and duly justify why support shall be given to 'creative sectors' and which sectors would be specifically tackled.
62. The support under the specific objective 2.1 is planned to be provided to 'innovations of lower grades', to support modernisation and development projects leading to GDP growth and job creations. The link between this envisaged support and the main objective of this OP ('to achieve a competitive and sustainable economy based on knowledge and innovation') shall be explained to justify this support from the OP.
63. The cases in which the grants will also be provided to enterprises other than micro-enterprises shall be clarified. The OP is not clear in this respect. If grants will be also provided for SMEs, how will the conditions be defined?
64. The specific objective 2.1 plans to support the establishment and development of new enterprises through the provision of financial instruments. In order not to pre-empt the results of this assessment, details on possible types of financial instruments should not be indicated in the OP at this stage.
65. Under the specific objective 2.2 'Increase the internalisation of SMEs' the following activities are planned to be supported: consultancy services, participation in international fairs, etc. The content of this specific objective follows the programmes 'Consultancy' and 'Marketing' co-funded from the OPEI during the 2007–13 programming period. No qualitative shift is evident in the new OP. Simple participation in international fairs or promotion of companies abroad cannot be considered as sufficient support under the investment priority 3(b) of Article 5 of the ERDF regulation.

The investment priority 3(b) aims at designing and implementing new business models of SMEs, in particular with regard to internationalisation. A business model is a business strategy which makes full use of a company's assets to gain a comparative advantage in the long term. Therefore the OP should outline activities, such as: targeted client

selection, adjustment of product/service offer to the particular market, opening of new business models to facilitate sales abroad, etc.

66. As under the specific objectives 2.3 support to energy efficiency measures in buildings of enterprises seems to be possible as part of reconstruction and renovation, the demarcation line with the specific objective 3.2 shall be clearly defined to avoid any potential overlaps.
67. With regard to any possible renovation of buildings under the specific objective 2.3, an effort should be made to maximise energy savings by going significantly beyond cost-optimal requirements of the energy performance of buildings directive (EPBD). Any investment has to be conditioned by an energy audit, which identifies the most suitable measures.
68. Some programme specific output indicators shall be added for the specific objective 2.3 to capture in particular the infrastructure renovated.
69. The result indicator 'The total area of regenerated sites in the national database of brownfields' does not capture the intention to use these sites for commercial activities of SMEs. The regenerated sites of brownfields could be used for other sectors as well.
70. The specific objective 2.4 is focused on increasing the capacity for education in SMEs. The description of activities to be supported should be better elaborated (see the general observation). The link between the specific objective, the expected results and activities to be supported shall be strengthened.

It shall be clearly stated in the OP that only infrastructure used for vocational education which contributes to increasing the innovativeness and competitiveness of SMEs will be supported. Supporting infrastructure for 'other activities linked with the development of human resources in enterprises' shall not be included under this OP as eligible activity. The need to support training facilities shall be clearly assessed during the selection procedure.

71. The common indicators currently used (No 1, 2 and 6) are not connected to the specific objective 2.4 'Increase the capacity for further education in SMEs' as they do not address the capacity. Some programme specific output indicators, in particular to capture the infrastructure built/renovated, shall be used instead.
72. According to the intervention codes, approximately 36 % of the priority axis 2 financial allocation is planned to be spent in rural areas (defined as municipalities with less than 5 000 inhabitants). Please provide a detailed explanation on how the financial allocation has been divided among individual specific objectives and codes of intervention (with detail on intervention fields, forms of finance, territory type, etc.).

**PRIORITY AXIS 3 — ENERGY EFFICIENCY, DEVELOPING THE ENERGY INFRASTRUCTURE AND RES, SUPPORTING NEW TECHNOLOGIES IN ENERGY AND SECONDARY RAW MATERIALS**

73. The measures described should be clearly linked to objectives relevant in the context of the Czech Republic and in line with EU energy policy priorities, such as: integration of renewable energy sources (RES), implementation of Internal energy market (IEM) and Energy efficiency directive (EED) 27/2012/EU (smart metering and grids), consumer empowerment, etc.

A starting point for analysing high energy consumption should be an outline of sectors with the highest energy consumption and potential for energy savings along with its quantification. This is needed to justify clearly the selection of intervention areas. Concerning the energy efficiency in enterprises, information shall be in line with the new National energy efficiency action plan (NEEAP) for the period 2014-2016. Better linkages shall be made to the new NEEAP, due under the EED to ensure consistency of financial allocations under the OP with the EED requirements and priorities identified under the NEEAP.

74. According to the codes of intervention, more than half of the financial allocation for this priority axis is planned to be channelled in favour of large enterprises (codes 3, 5 and 70 represent a 52 % share). This proposal is not in line with a clear prioritisation of SMEs and therefore has to be reassessed.
75. The ESIF support should be primarily targeted to non-mature RES technologies or addressing identified market gaps. It is not clear that OP will address these. Therefore, other types of investments should be subject to the national schemes and should be removed from the OP. Additionally, only the RES with the highest coefficient of efficiency can be supported. This has to be explicit from the selection criteria defined in the OP.
76. Regarding renewable energy, combustion of biomass leads to particular matter (PM) which is bad for lungs and cardiovascular system, carcinogenic according to the WHO. PM is already a problem in the Czech Republic. Therefore it is necessary that any promotion of biomass is explicitly accompanied by low emission standards, in line with the air package of 18 December 2013, and strict abatement measures in the procurement criteria, in particular the emission limit values as proposed under Ecodesign for household heaters and in the air package of 18 December 2013 for medium combustion plants. This has to be included in the procurement criteria and be stipulated as a condition in the OP.
77. Focus shall be on small-scale decentralised RES. The OP states that in ‘relevant cases’ support will be also possible to resources in ‘vytopensky rezim’. Please provide an explanation of ‘vytopensky rezim’ and justification for ‘relevant cases’ of exemptions. It should be clearly stated in the OP that investments related to coal will not be supported from the ESI funds.

Fuel switching from coal to biomass can be considered as eligible activity but only provided that it does not lead to worsening the PM situation, that criteria on sustainable use of biomass are respected and if technically possible a conversion into high-efficient CHP is supported. Reference to the EC report from July 2014 on 'State of play on the sustainability of solid and gaseous biomass used for electricity, heating and cooling in the EU' shall be added.

78. The selection criteria defined for the specific objective 3.1 plan to take into account among others the ratio of investment costs to installed capacity and energy produced. While cost-effectiveness is an important criterion, the Czech Republic should also consider broadening the support to innovative technologies beyond what might be the cheapest options in the short term.
79. It should be clear from the OP that investment in RES technologies can be only provided under the condition that they are not covered by the national feed-in-tariffs (FIT) scheme to avoid double funding.
80. For the specific objective on increasing the share of energy from renewables in gross final consumption in the Czech Republic, we doubt that the interventions will be only delivered through support to enterprises. Programme specific output indicators which would capture the types of stations/plants to be supported can be used instead. As far as the common indicators are concerned, please take into account that common indicator No 34 must be used in conjunction with common indicator No 30.
81. The result indicator 'Share of renewable energy in gross final consumption' is too high level to be of use in this context. Moreover, the value of 13 % has to be reached already in 2020 as part of the obligation of the Czech Republic under Directive 2009/28/EC. This means that any target value for 2023 shall be higher than that as otherwise it would imply that no new projects are co-funded after 2020.
82. With respect to small hydropower installations, their support has to be subject to clear conditions enshrined in the OP, i.e. the strategy on which the projects are to be selected and individual investments have to be in compliance with the requirements set out on Article 4(7) of the Water directive and of Article 6(3) and (4) of the Habitat directive. The Commission would like to recall at this occasion that several gaps have been identified in the Czech river basin management plan, in particular with respect to Article 4 and therefore only once these gaps are properly addressed, the support to small hydropower installations can be granted.
83. A clear definition of what is considered as 'a small hydropower installation' shall be included in the OP and in the selection criteria.
84. The *ex ante* conditionality on the water sector is applicable for the investment in hydropower installations under the specific objective 3.1. Please amend the OP and submit an action plan for this *ex ante* conditionality.

85. The following key principles for the support under the specific objective 3.2 shall be properly reflected in the OP:
- Use of financial instruments, including Energy performance contracting to be prioritised;
  - Monitoring and verification of achieved energy savings;
  - The need to ensure a complex (EE and RES) and coordinated approach towards buildings across relevant OPs. The energy audit will identify both measures to improve energy efficiency and possibilities for RES support.
86. The Commission position paper clearly states that the financial support to hotels, restaurants and spa facilities belong to areas where private funding should be used. This requirement is also valid for energy efficiency measures. The beneficiaries under the specific objective 3.2 shall be correspondingly modified.
87. The description of supported activities needs to be more precise (see a general observation in this respect). The current OP mentions as the first supported activity 'Upgrade and reconstruction of electricity, gas and heat distribution in buildings and in energy industries of production facilities to increase the efficiency'. More details on this planned activity should be added and the difference between this activity and the third activity ('Upgrade, reconstruction and reduction of losses in the distribution of electricity and heat in building and production facilities') should be clarified.
88. The result indicator 'Final net energy consumption' is currently too broad to accept. It shall be clarified which sector is planned to be targeted, whether the industry or the whole entrepreneurial sector. Only in the first case this result indicator would be a good result indicator.
89. It shall be clarified for the specific objective 3.3 on increasing the application of smart grid elements in distribution systems how only the common indicators Nos 1, 2 and 6 can capture activities which are focused on implementing pilot projects for smart distribution systems. The common indicator No 33 shall be added to reflect the specific objective properly and also some programme specific output indicators shall be used.
90. The beneficiaries under the specific objective 3.4 (innovative low-carbon technologies) have been extended compared to the previous OP version. Now not only enterprises, but also universities, municipalities, regions and organisations established by them, can benefit from the support. Please amend the OP to avoid possible overlaps with the OP Environment in the way that only enterprises will be indicated as beneficiaries under this specific objective. Support for regions, municipalities and universities is foreseen under the OP Environment. The information provided in the OP must be in compliance with the adopted partnership agreement.
91. Please provide an explanation on what you consider as 'innovative' low-carbon technology and how you will assess the 'innovativeness' of certain technologies. It must be specified enough in order to avoid potential overlaps among individual specific objectives.

92. One of the supported activities under the specific objective 3.4 is also ‘Implementation of low-carbon technologies in buildings’ (integration of RES in buildings). It should be clarified what kind of buildings are planned to be supported and what is the demarcation line with the specific objectives 3.2 and 2.3.
93. The following key principles for the support under the specific objective 3.5 shall be properly reflected in the selection criteria, so that is clear what will be supported and what will be the main priorities for co-funding.
- Priority focus will be on renovation of heat networks and on smaller installations with predominantly own local consumption of produced energy.
  - Requirement that investment has to be recognised in the overall low-carbon strategies/sustainable energy action plans.
  - Neither support for the coal-based cogeneration of combined heat and power (CHP) nor for co-firing: not only new constructions, but neither renovations nor upgrades. Fuel switching from coal to biomass can be considered as eligible activity but only provided that a) it does not lead to worsening the PM situation, b) that criteria on sustainable use of biomass are respected and c) if technically possible a conversion into high-efficient CHP is supported. Reference to the EC report from July 2014 on ‘State of play on the sustainability of solid and gaseous biomass used for electricity, heating and cooling in the EU’ shall be added.
  - Recognition of linkages with the EE and use of energy from RES
94. One of the planned supported activities under the specific objective 3.5 is also ‘Installation of co-generation plants in the heat distribution networks’, whereas under the specific objective 3.1, the support of construction and reconstruction of co-generation plants using the RES (biomass) is envisaged. Please provide explanation on the demarcation line to avoid overlaps between these two specific objectives. The focus of the specific objective 3.5 is not sufficiently elaborated.
95. For the result indicator ‘Primary energy resources’ under the specific objective 3.5, please define which area of primary energy you would like to target. The result indicator should focus on the heat sector to reflect the specific objective 3.5 properly. Moreover, information is required on the basis for fixing the target. As far as the output indicators are concerned, the common indicators no. 31, 32 and 34 could replace the common indicators currently used (no. 1, 2, 3, 6 and 7). Please also use some programme specific output indicators to understand the actions of the programme.
96. The inclusion of TO7 under this priority axis to provide support to high-voltage transmission grids is not properly justified. The elements currently provided in the OP do not allow this activity to be considered as eligible for ESI fund support.
97. The indicative allocation for TO7 under the OP amounts to EUR 200 million from the ERDF (4.63 % in relative terms). There would be only one beneficiary, a state-owned



company CEPS. The inclusion of this activity in the OP is questionable due to the following aspects.

- The company CEPS is a large enterprise (495 employees) with a rather stable net profit during the last years (in 2013 the net profit before taxation reached CZK 2.3 billion, approx. EUR 82 million). It seems then that the ESI funds are simply replacing the private funds in this case, which should not happen. Clear justification on why the intervention of ESI funds is needed has not been provided.
  - According to the relevant EU legislation, support for high-voltage transmission grids is possible under TO7. Nevertheless, a number of strict criteria have to be fulfilled to consider the investment as eligible. The compliance with the definition of 'smart infrastructure' has to be properly demonstrated and the requirement to integrate renewable energy has to be properly met.
98. The EIB has been requested to contribute to the financing of one project of the transmission grid from its loan investment programme. The project cost is estimated at EUR 360 million and the EIB contribution would not exceed the usual proportion for this type of projects. The project comprises 14HV and EHV schemes ranging from 110 kV up to 400 kV, located in different regions of the Czech Republic. The project comprises among others also modernisation of control and protection systems. Explanation shall be provided why additional ESI funds are needed to financially support the transmission grids in the Czech Republic and how the complementarity would be ensured to avoid double funding.
99. One energy project in the Czech Republic ('Internal lines to increase capacity at north-western and southern borders') is included on the list of projects of common interest (PCIs) adopted by the Commission in October 2013 for a possible financial support from the Connecting Europe Facility (CEF). The regulation on guidelines for trans-European energy infrastructure (the TEN-E regulation) states that such financial assistance should ensure the necessary synergies with the Structural Funds, which will finance smart energy networks of local or regional importance. Clear complementarity and synergies with this PCI project need to be described in the OP.
100. 'The programme specific output indicator 'Number of comprehensive measures to strengthen the energy security of the transmission system' is very general. The pure number of measures funded does not imply any information of type, scope, financial volume etc. It should be possible to understand the actions of a programme in its output indicators.'

#### **PRIORITY AXIS 4 —DEVELOPING HIGH-SPEED INTERNET ACCESS NETWORKS AND ICT**

101. 'Additional households with broadband access of at least 30 Mbps' is not a programme specific output indicator, but common indicator No 10. In accordance with Article 6(2) of the ERDF Regulation, quantified target values for 2023 have to be set for common

indicators and programme specific output indicators. The target value for the common indicator no. 10 can't be a range of 400 000 – 600 000.

102.The specific objective 4.2 has been redefined in line with informal observations on the OP. It seems now to be more aligned with the result indicator ‘The added value of IT services as a share of GDP’. Nevertheless, it still seems to be distant from the policy and the supported activities are still not clear enough. It shall be clarified how the potential of the ICT sector is planned to be increased and which products and services shall be developed.

103.It shall be clarified what is meant by ‘sophisticated shared services’ as one of planned supported activities under the specific objective 4.2.

104.Please use some programme specific indicators to capture all actions under the specific objective 4.2.

## **PRIORITY AXIS 5 — TECHNICAL ASSISTANCE**

105.The intervention logic has to be clearly spelled out also for the priority axis of the technical assistance. Activities to be co-financed must address the gaps identified through an analysis of the current performance.

106.As regards the co-financing of salaries of staff, it is only possible if the following conditions are fulfilled.

- A sound needs analysis in terms of staff is carried out and a kind of Human resources action plan is elaborated specifying the estimated allocation of posts by institution. Evidence stemming from experience from the past should be provided that supporting salaries has a positive contribution towards staff capacity and HR stability.
- A level of salary support which takes into account remuneration levels on the labour market in order to retain staff and build/keep know-how in the administration.
- If bonuses are to be financed, these should be clearly performance based.
- There should be an adequate regulatory framework in place guaranteeing the independence, stability and competence of the staff, addressing critical issues such as full transparency in the recruitment/appointment process (e.g. via open competitions), appropriate appraisal and promotion provisions (based on performance indicators) and personal development provisions.
- A review/monitoring measures should be in place, e.g. to assess the fluctuation of staff, transparency and correctness of the recruitment process, consistent approach by all actors, etc.

The Commission understand that the majority of these points are to be covered by the elaborated methodology for the development of human resources. Please refer to it and

indicate the main elements of the strategy in the programme (including the allocation of posts based on sound needs analysis, measures to stabilise the staff, reduction of fluctuation and retention of competent personnel, selection of staff, competence mapping, training, monitoring and review measures, remuneration, etc.) including a timeframe for the approval of the methodology and the fulfilment of the underlying steps by the managing authority. Also, the relation of this methodology to the civil servants acts shall be clarified.

The co-financing of salaries of staff in intermediate bodies (e.g. technology agency) shall be clearly described in the OP.

107. As regards salaries, the indicator 'Number of supported FTEs' shall be added in the OP. Given that this indicator should not be used for monitoring purposes only, neither baseline nor target values are required.
108. The list of supported activities should be more explicit, especially in relation to technical and IT equipment.
109. The supported activity under the specific objective 5.1 'Implementation of necessary measures in connection to the implementation of the specific objective 4.1' shall be better elaborated so that the scope of the interventions is clear.
110. The supported activity 'Closing the implementation of the 2007–13 programming period, including *ex post* evaluation' fits more under the specific objective 5.1 as it is linked with the implementation of the OP and not with the publicity.
111. A new single monitoring system MS2014+ will be co-funded from the OP Technical Assistance in the 2014–20 programming period. This investment has been accepted by the Commission under the condition that the system will be used for all operational programmes. Consequently, no investment in an own information system used solely for this OP can be considered as eligible.
112. A specific budget within the TA allocation has to be reserved for targeted support to beneficiaries. The Commission therefore needs to see a more detailed set of measures designed to improve project development and implementation capacity of beneficiaries.
113. Due to non-fulfilment of the *ex ante* conditionalities related to public procurement and state aid, the OP needs to contain at least the main elements of the action plans and make references to activities potentially supported by the TA.
114. In line with Article 125(4)(c) of the CPR, the commitment of the partnership agreement to put in place effective and proportionate anti-fraud and anti-corruption measures in relation to ESI funds' implementation should be translated into specific activities in the OP for the use of the TA. The OP makes reference to the national anti-corruption strategy related to ESI funds without listing any programme-specific measures. The OP should state that the necessary risk assessments will be carried out and that the necessary anti-corruption measures will be put in place.

115. Each defined specific objective has to be accompanied by relevant result indicators, giving both baseline and target values. Some of the indicators are not very well selected and do not reflect the desired change in relation to the main weaknesses identified in the past. Example: the result indicator of the specific objective 5.2 ‘Awareness of the public about the ESI funds’ is too general.
116. The Commission also recommends adding more qualitative indicators which would better reflect the level of service provided by the managing authority to the beneficiaries. It is recommended to include indicators which would relate to improving the absorption capacity of beneficiaries, level of error rate, number of irregularities in the public procurement procedures, turnover of staff in charge of the OP implementation or average time for project approval or management of payment claim. Other examples to be considered: ‘Share of identified training needs (skills needed) covered by training courses’, ‘Share of staff involved in OP implementation trained on (public procurement, state aid, environmental compliance ...) issues’, ‘Share of electronic applications in total project applications (%)’, ‘Share of information about funding opportunities online in total information about funding opportunities (%)’, ‘Number of projects contributing to the reduction of administrative burden’, ‘Number of evaluations discussed in the monitoring committee’, ‘Number of evaluations, studies, surveys, experts, reports, etc.’, etc.

### **SECTION 3 FINANCING PLAN**

(Reference: point (d) of the first subparagraph of Article 96(2) of the CPR)

117. See the general comment on a need to ensure consistency of data between the language versions, data in the SFC2014 and the partnership agreement. The figures need to be checked and corrected, e.g. currently the OP financial allocation stated in the partnership agreement differs from the allocation indicated in the text of the OP.
118. The Commission cannot give its agreement on the performance reserve (and on the OP itself) unless there is clear evidence that Articles 20 and 22 of the CPR are respected for all operational programmes and in line with the data provided in the partnership agreement. As regards the amount of the performance reserve for ERDF, the requirement in Article 22 of the CPR (among others stipulating that the total amount of the performance reserve allocated by the ESI fund and category of region has to be 6 %) is not respected (contrary to the condition of the allocation to each priority within a programme to be 5–7 % which is observed).
119. Similarly, before the adoption of the ERDF and ESF OPs, a complete overview of the ERDF and ESF allocations for the Czech Republic broken down by category of region has to be submitted to the Commission.
120. The financial table might need to be modified to reflect the adoption of the OP only in 2015. This means, that the allocation for the year 2014 would be stated as zero and the

allocation for the year 2015 would include the previously planned allocations for the first two years of the 2014-2020 programming period.

121. As a consequence of the OP adoption in 2015, the financial plan will need to be modified to clearly indicate a zero allocation for the year 2014 and allocation for the year 2015 comprising both originally planned allocations for the years 2014 and 2015.

#### **SECTION 4 INTEGRATED APPROACH TO TERRITORIAL DEVELOPMENT**

(Reference: Article 96(3) of the CPR)

122. According to the OP, intense support will be provided to enterprises in three categories of regions, in line with the partnership agreement and 'the national document for territorial dimension' which divides the Czech Republic into several categories of regions: (1) economically weak regions and regions with a high unemployment rate, (2) developing and urban territories and (3) other territories (the territory of the specific objective 4.1).

More detailed information should be provided so that it is clear through which instruments this planned increased (more intense) support will be provided (e.g. opening of special calls for proposals).

It shall be clear which other specific objectives (besides the specific objective 2.1) will be concerned in case of regions with high unemployment rates — the category 1.

More detailed information shall be provided on more intense support to be provided under the specific objective 4.1 (high-speed Internet) — the category 3.

123. The role of local action groups (LAGs) in the implementation of the OP is not clear enough. According to the OP, under the specific objective 2.1, 'the sub-regional/rural areas' will in a certain way be taken into consideration in case of involvement of LAGs, and this beyond the national document for territorial dimension.

Additional points during the project's evaluation are envisaged for projects of micro-enterprises which submit together with the project application a proof of compliance with the CLLD or other strategy. This can easily lead to a situation where only projects submitted by micro-enterprises in cooperation with LAGs successfully pass the selection procedures.

- Clarification shall be provided on why a special approach shall be given to micro-enterprises and why a special sub-regional dimension should be tackled, beyond the national document of territorial development. According to the description of the specific objective 2.1, the grants are planned to be provided mainly for micro-enterprises while for SMEs other forms of finance are planned (financial instruments). This means that there should not be competition among enterprises of different sizes (micro vs SMEs).
- The OP does not elaborate why micro-enterprises would need special treatment, whether their absorption capacity is not sufficient. There can be other forms of

supporting micro-enterprises in successfully applying for support under the OP (e.g. special seminars, trainings) rather than directly earmarking a special financial allocation for them, proposing an additional bonification for their project applications, etc. This needs to be better explained and properly justified.

We are of the opinion that projects submitted by micro-enterprises shall be subject to the same selection procedures as other projects and no special bonification shall be given for the size of the enterprise or for the cooperation with the LAGs.

124.It is not clear from the OP how the LAGs will be co-financed. The following sentence in chapter 4.1 shall be explained: 'The contribution for the activities of the LAGs in relation to the OP EIC will be co-financed in the way determined by the Ministry for Regional Development'.

125.Please note that sustainable urban development (SUD) can only be implemented through integrated territorial investments (ITIs), specific OPs or designated priority axes. Therefore the Integrated development plans foreseen for six regional cities, will not be counted as an SUD. Consequently, this text needs to be changed to reflect the above.

126.As for the ITIs, the text remains vague. The exact linkage between the OP and the ITIs remains unclear. Information shall be provided on how the coordination among the OP and other OPs will be ensured within the ITI.

127.Since the interventions under this OP are foreseen mainly in the urban and metropolitan areas, it should be explained how these will be coordinated with the ITIs possibly taking place in the same areas. Please specify whether these interventions will be included in the ITI strategies for the urban/metropolitan areas in question.

128.It shall be also indicated within the OP how management and implementation of the ITIs will be carried out and the extent of the urban authority involvement. It shall be also indicated within the OP how management and implementation of the ITIs will be carried out and the extent of the urban authority involvement. The current set up is not in compliance with Article 7 which foresees that urban authorities shall be responsible for tasks relating, at least, to the selection of operations, and consequently act also as IBs with responsibilities proportionate to the level of delegation.

129.National permanent conferences seem to play a certain role in the management of integrated tools. Its composition, powers and legal basis shall be clarified in the OP.

130.The section 4.4 on the mechanisms to ensure coordination with cooperation activities and macro-regional and sea-basin strategic shall foresee the possibility of cooperation with beneficiaries located in at least one other member state (use of Article 70(2) of the CPR).

## **SECTION 5 SPECIFIC NEEDS OF GEOGRAPHICAL AREAS MOST AFFECTED BY POVERTY OR TARGET GROUPS AT HIGHEST RISK OF DISCRIMINATION OR SOCIAL EXCLUSION (WHERE APPROPRIATE)**

(Reference: point (a) of Article 96(4) of the CPR)

131.This part is not filled in as claimed not relevant for this OP. However, an adequate analysis shall be added since the OP intends to intensify support for enterprises in economically disadvantaged regions and those regions with high unemployment levels (e.g. under the priority axis 2), as described in chapter 4 on the integrated approach to territorial development.

## **SECTION 6 SPECIFIC NEEDS OF GEOGRAPHICAL AREAS WHICH SUFFER FROM SEVERE AND PERMANENT NATURAL OR DEMOGRAPHIC HANDICAPS**

(Reference: point (b) of Article 96(4) of the CPR)

## **SECTION 7 AUTHORITIES AND BODIES RESPONSIBLE FOR MANAGEMENT, CONTROL AND AUDIT AND THE ROLE OF RELEVANT PARTNERS**

(Reference: Article 96(5) of the CPR)

132.The administrative capacity of the MA shall allow for the effective implementation of Article 125(4)(c) of the CPR to put in place risk-based, effective and proportionate fraud prevention measures. In order to reflect this legal obligation, a reference should be made in the OP to the administrative capacity to implement this obligation, and in particular to the fraud risk analysis that has to be performed and how the results of the fraud risk analysis will be used in the internal control system of the MA.

133.The text also does not mention the intermediate bodies while they are repeatedly mentioned in other chapters. This needs to be clarified.

134.The section 7.2.1 is underdeveloped in terms of planned activities to ensure active participation of partners in implementation, monitoring and evaluation, including activities in terms of accessibility. There is only a very general statement. It should be specified how the technical assistance will be used to ensure active participation.

## **SECTION 8 COORDINATION BETWEEN THE FUNDS, THE EAFRD, THE EMFF AND OTHER UNION AND NATIONAL FUNDING INSTRUMENTS, AND WITH THE EIB**

(Reference: point (a) of Article 96(6) of the CPR)

135.The demarcation line between the OP and Integrated regional OP (IROP) in relation to social enterprises needs to be better clarified to avoid overlaps. Under both OPs the enterprises are listed as possible final beneficiaries and similar activities seem to be considered as eligible ones.

136.Only the link between the OP and the OP Employment is mentioned as relevant for the investments in educational infrastructure despite the fact that also the Integrated Regional OP will support educational infrastructure. The information shall be completed in the OP.

137.The regeneration of brownfields can possibly be supported from three OPs (OP Enterprise and Innovations for Competitiveness, OP Environment and OP Rural Development Plan). The demarcation line seems to be clearly defined between the OP Environment and the OP EIC (OPE intervening in removal of ecological burdens).

Nevertheless, the demarcation line between the support provided from the OP EIC and the RDP is now missing. Please establish some criterion to avoid possible overlaps (e.g. in the 2007–13 programming period the demarcation line was established on the basis of the size of the brownfield).

138. The information on interface between the OP Technical assistance at national level and the TA allocation of the OP shall be complemented. The purpose is to ensure maximum synergies while avoiding potential overlaps in the use of technical assistance.

139. It shall be clarified whether investment under the priority axis 1 of the OP also covers the food sector. Clear provisions on complementarities and synergies shall be defined to avoid overlaps between support provided from the rural development plan and the OP.

140. Synergies with other EU instruments are not sufficiently described, as only links are listed in the OP. More specific information, e.g. on the upstream and downstream measures with Horizon 2020, Horizon 2020 specific programmes or the type of projects from COSME, shall be shortly indicated. Enterprises shall be motivated to participate in international consortia and competitive calls, such as Horizon 2020 and COSME.

A clear reference to those synergies could be added, specifically the ones with public–public partnerships (joint programming initiatives, ERA-NET, Article 185 initiatives); public–private partnerships (Article 187 initiatives) and actions under Part IIIa of Horizon 2020 relating to spreading excellence and widening participation, in particular ‘Teaming’, ‘Twinning’ and ‘ERA Chairs’ could be mentioned as well.

141. Please provide information on whether the memorandum of understanding between OP Research, Development and Education and OP Enterprise and Innovations for Competitiveness has already been signed. Please indicate whether it will be attached to the OP.

142. With the aim to facilitate complementarity it is suggested that the OP lists relevant macro-regional strategies, sea-basin strategies and European territorial cooperation operational programmes (cross-border and transnational) that operate within the territory of the OP or in relation to this territory.

## **SECTION 9 *EX ANTE* CONDITIONALITIES**

(Reference: point (b) of Article 96(6) of the CPR)

143. Each OP has to identify all *ex ante* conditionalities (EACs) applicable to that OP and provide assessment of their fulfilment. When an EAC is not fulfilled, an action plan has to be introduced within the corresponding OP containing actions to fulfil the EAC, the responsible bodies and a timetable for such actions (Article 96 of the CPR). No detailed action plans have been provided for all applicable EACs, particularly for the general EACs 4, 5 and 7, but also for certain thematic EACs. The grids for general EACs make reference in some criteria to the partnership agreement which is not sufficient; all information should also be provided in the OP.



144. The EAC 1.1 is not fulfilled and it is correctly stated in the OP and the action plan is attached. A list of the selected priorities/a summary of the main outcomes of the RIS3 should be integrated in the OP, once the strategy is finalised.

We have noted that different deadlines for submission of RIS3 to the Commission are reported in the OP (31 December 2014) and on the official website of the Ministry of Education, Youth and Sport (September 2014 without Strategic environmental assessment (SEA)). We would like to remind the Czech authorities that no SEA is required at RIS3 level as the SEA procedure is mandatory for the OP itself.

The table on the EAC contains standard text used in all OPs including investment under the TO1. This standard text still refers to draft regulations.

145. EAC 2.1 and 2.2 are not fulfilled as correctly stated in the OP. The action plans attached to the OP include sets of dates for the adoption of strategic documents. To have these documents enter in force before the end of 2016, milestones and bodies responsible for the implementation of the action plans are clearly defined. At this stage, it would be useful to receive more detailed information on the structure of these strategic documents and their main aims. Once the monitoring committee of the OP is established, it shall be informed in detail about the progress achieved to fulfil these EACs.

146. The EAC 6.1 on the water sector is also applicable to the OP as the specific objective 3.1 includes investment in small hydropower installations. Please amend the OP accordingly and provide an action plan for this EAC which is considered as not fulfilled.

147. In order to be able to agree with the Czech self-assessment of the third criterion of the EAC 8.2 (pages 184–187, assessed as fulfilled by the Czech authorities), the information should be added on coverage of the following aspects in the concept of support for SMEs 2014–20: needs analysis of disadvantaged and under-represented groups, and integrated approach responding to the needs of the targeted groups outlining all the entrepreneurship support activities and how they relate to each other.

148. Regarding the general EAC on public procurement and the necessary arrangements for the effective application of EU public procurement rules through appropriate mechanisms, the Commission considers that the following points and questions should as a minimum (but not exclusively) be covered by a detailed action plan.

- The setting-up of a coordination mechanism including not only the meetings of a working group, which will be established, but also its powers/mandate (how will it decide and would it be able to enforce its decisions, for example upon the Office for the Protection of Competition (OPC)), monitoring and follow up of issues linked to the effective application of EU public procurement rules. Moreover, the EAC assessment attached to the PA states that there is a planned analysis of the working group activities to be carried out by the end of 2016 - this should be a part of the action plan.

- Information/plan on how are the most common errors will be tackled, when an analysis is going to take place, what would be the follow up, when this is going to take place and by whom.
- Regarding the internal database of most common errors, the assessment of this EAC in the PA notes that it will be modified; the action plan has to state when the database will be functional, when it is intended to be public and when it will be modified.
- Regarding any possible incompliance of the decisions of the OPC with the European Commission, European Court of Auditors and Court of Justice of the European Union, we acknowledge that the OPC is an independent body, but a mechanism shall be in place to prevent, monitor and follow up any possible discrepancies (e.g. an analysis has to take place at a certain point in time by a responsible body about the compliance, e.g. on a sample basis).

As for the arrangements to ensure the administrative capacity for the implementation and application of EU public procurement rules, it is still not clear whether the competent bodies have already ensured the necessary capacity (see also our previous point regarding the necessity of an HR analysis) and, if not, by when it will be ensured. The same comment is also valid for the OPC, where the administrative capacity to deal on time with public procurement cases linked to the EU funds in the past was not sufficient.

149. According to the action plan for the *ex ante* conditionality on the state aid (SA) included in the partnership agreement, individual operational programmes will describe in the SA action plan on OP-specific measures to fulfil this *ex ante* conditionality. As the current OP does not mention any additional OP-specific measures compared to the PA, it shall be amended correspondingly for the first and third EAC criteria.

For the first criterion ‘Arrangements for the effective application of EU state aid rules in the field of CSF funds’, the suggestions are as follows.

- Only public funding not exceeding the de minimis threshold is put in the central registry of de minimis aid and only funding from the ESI funds will be included in MS2014+. An action plan shall be submitted for registering and monitoring all public support not covered by the above two categories of public funding (e.g. public support exceeding the de minimis threshold financed exclusively from public budgets) to respect relevant aid ceilings.
- As the Czech authorities have considered the sub-criterion on the control of compliance with the general block exemption regulation and approved schemes and the sub-criterion on the knowledge about any aid granted not to be met, appropriate OP-specific measures shall be included in the action plan.

150. For the general EAC on EIA/SEA, a critical point is that the action plan is limited to the adoption of modified EIA law, but does not indicate any information on the fulfilment of the commitments given by the Czech Republic with regards to co-financed projects as

well as transitional measures. Also, no details on the foreseen methodological guidelines are available.

151. For all unfulfilled (elements of) EACs it should be noted that there is a risk the significant prejudice clause would be triggered.

## **SECTION 10 REDUCTION OF ADMINISTRATIVE BURDEN FOR BENEFICIARIES**

(Reference: point (c) of Article 96(6) of the CPR)

152. The chapter has been improved substantially and provides a good overview on the activities foreseen. However, it should be made more precise as regards detailed timeframes for the foreseen activities.

153. It also has to explain how e-cohesion is going to be implemented especially with regard to Article 122(3) of the CPR regarding the electronic data exchange between beneficiaries and a managing authority, a certifying authority, an audit authority and intermediate bodies.

154. As regards the involvement of the LAGs, their role needs to be better explained and justified since it is not evident how they will contribute to the project preparation and realisation. Please indicate whether the functioning of the LAGs is to be supported from the technical assistance resources.

## **SECTION 11 HORIZONTAL PRINCIPLES**

(Reference: Article 96(7) of the CPR)

## **SECTION 12 SEPARATE ELEMENTS**