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CC: Karl Falkenberg

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CC: Georges-Stavros Kremlis

Head of Unit Cohesion policy and EIA, DG Environment
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Brussels, October 19, 2009

Subject: Your proposal for further simplification of EU funds regulations regarding major projects

Dear Mr. Ahner, Mr. Falkenberg and Mr. Kremlis,

We are writing to you regarding the latest European Commission proposal (from July 22nd, 2009) for further simplification of the EU funds regulations in relation to the economic crisis.

We welcome the initiative of the Commission to harness available resources from the EU funds to help countries tackle the crisis and speed up the implementation of the Operational Programmes. At the same time, however, we are concerned about the potential environmental impacts and sustainability aspects of the proposed measures, especially where major projects are concerned. We are also less than convinced that the EU funds will be effectively used to stimulate the transition to a green economy, a major aim of President Barroso's EU Economic Recovery Plan.

We would like to inquire about the safeguards that the Commission will put in place in order to ensure that the current proposals will not only accelerate EU spending but will also guarantee: **1) the sound, transparent and environmentally harmless use of EU funds for major projects**, and: **2) the optimal contribution of EU spending in the central and eastern European states for the implementation of EU commitments to fight climate change.**

1) Sound, transparent and environmentally harmless use of EU funds

Within the suggested modifications of Articles 39-41 of the current proposal, the Commission is willing to renounce its co-decision power over "environmental major projects" where total project costs are 25-50 million euros. Effectively, this means delegating more power to the member states to decide over major environmental projects. As the Commission is very well aware, new member states are often not suitably well prepared to use the EU funds in a sound and effective way given such things as weak EIA procedures, the secrecy surrounding decision-making processes and the intolerable cases of conflict of

interest in EU funded projects (Bulgaria being the most strikingly illustrative example and investigated by OLAF).

In our view, **the co-decision power and the scrutiny of the Commission on major projects already during the preparatory stage** of the projects act as crucial leverage for the proper deployment of the EU environmental *acquis* and the effective use of European funding – and therefore they **should be strengthened, not weakened**.

As we notified you earlier this year, there is a danger that accelerating major projects without explicit transparency requirements in the new member states may compromise EU environmental law and result in unnecessary infringement procedures which will only deter further the absorption of EU funding.

We find that the justification for the proposed modifications in the explanatory memorandum, stating that the Commission will “1) ensure an appropriate monitoring of all the investment, including those below the threshold provided in the Regulation”, and that member states will have “2) to inform the Commission about the implementation progress in the annual reports on operational programmes”, is vague. Currently, Council Regulation 1083/2006 article 69 stipulates the requirement for publicity and information on the financing of regional programmes and major projects. The Commission’s Implementing Regulation 1828/2006 further specifies the content of information published “electronically or otherwise” in relation to the EU Funds: “the list of beneficiaries, the names of the operations and the amount of public funding allocated to operations.” We consider these requirements insufficient given the changes in EU funds regulations for even further simplification of the rules on disbursement of funding.

In the proposed modifications, there is no indication for any additional measures to improve either the reporting and monitoring systems or the transparency of the EU funds in general. Therefore, we would also like to hear from you how the Commission is going to ensure such “appropriate monitoring” and what kind of information, additional to that already explicitly required under the existing Regulations, is to be sent to the Commission. We want to restate that the Commission should have an even greater responsibility to ensure the accountability and transparent use of the EU funds given the central role that the EU funds will be playing in the recovery process.

We call upon the Commission to explicitly demand that **member states make publicly available information for all major projects applying for EU funds at least 30 days PRIOR to their approval by the national governments**. Additionally, to the information required in Regulation 1828/2006, we deem it necessary that member states should also publish **information on the environmental and social impacts and the assessed alternatives** of the projects with links to the appraisal documents of the projects. These are minimum transparency standards for many IFIs, including the European Investment Bank, and the EU-funded major projects have been falling short of ensuring such standard practices.

Furthermore, we are aware that DG ENVI has developed checklists for member states when applying for EU financing for major waste and water projects, in order to check their compliance with the EU environmental *acquis*. Therefore, we urge the Commission to require that for all major projects – but especially for those above 25 million euros (previously “major” projects) – member states should make public the information required by the check lists as a minimum requirement for publicity and transparency to ensure compliance with environmental law. We believe that such a proposal will not add

red tape but instead will create more legitimacy for the decision-making in the selection process, allow NGOs to act as timely watchdogs and report to the Commission in the case of violations. Most importantly, this can – and probably will – reduce the risk of subsequent infringement procedures.

We would be grateful to hear the Commission's response to these proposals. We would also like the Commission to provide clearer guarantees that, even accelerated as part of the EU Economic Recovery Plan, the EU funds (including TEN-T and TEN-E funds) for all major projects will be approved **ONLY** after the project appraisal is completed.

2) Optimising the contribution of EU spending in the central and eastern European states for the implementation of EU commitments to fight climate change.

We would also like to once again reiterate our support to the Commission's initiative to enhance EU funding towards energy efficiency and renewable energy in social housing. **We are convinced that the EU funds should play an important role in the transition towards a low carbon economy already in the midterm of the current financial period.** Therefore, we encourage the Commission to stimulate member states to truly use this “golden green” opportunity and to relocate funds towards energy savings and renewable energy projects in housing. Positive examples of such shifts in EU funds programmes to support clean and efficient energy in the housing stock are already occurring in new member states such as Latvia, Lithuania and Bulgaria.

Therefore, we would like to inquire:

What steps the Commission is planning to undertake in order to mobilise more member states to harness EU funding for such measures?

We would also like to urge the Commission to closely monitor the revisions of the OPs in relation to the crisis. Our investigation and monitoring shows that in Estonia, for example, recent revisions in the transport allocations have led to significant increases for road construction – up 64% compared to 2007 allocations.

Similar trends towards building road as anti-crisis actions can easily offset the benefits of the climate-friendly measures being pursued in housing, and thus lock countries into carbon intensive development pathways.

We also would like to bring to your attention the lack of assessment of the specific climate impacts in the different European regions and the investment needs for mitigation and adaptation. Such measures will be more central in the programming of the post-2013 cohesion programmes and the member states should prepare already in the mid-term of the 2007-2013 period.

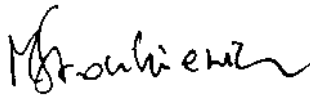
Therefore, we call upon the Commission to:

- **Monitor closely and prevent revisions of the OPs that will channel more EU funds into climate intensive developments. What steps will the Commission undertake in this direction?**

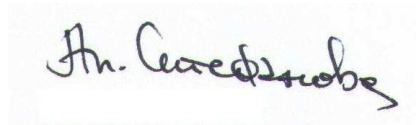
- **Request member states to use funding from the technical assistance of appropriate OPs from the current 2007-2013 period so as to develop “Low-carbon development plans” at the regional or national levels.** These plans should assess the specific impacts of climate change on a given territory, identify investment needs for mitigation and adaptation as well as identify concrete steps to develop green business, technological innovation and green jobs while reducing emissions. Ultimately, these plans should serve as the basis for the post 2013 programming.

We would like to thank you in advance for your response and your collaboration. We believe that the Commission shares our concern regarding the need for transparent, effective and climate friendly use of the EU funds – these funds are emerging as one of the key instruments for crisis recovery and for climate change measures, especially in the new member states.

Yours sincerely,



Magda Stoczkiewicz
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