



Audit conclusion from audit No. 10/14

Financial Means Earmarked for Measures Regarding the Waste Disposal

The audit was included in the audit plan of the Supreme Audit Office (“SAO”) for 2010 under the number 10/14. The audit was managed and the audit conclusion drawn up by member of the SAO Ing. Zdeněk Brandt.

The aim of the audit was to scrutinise the provision, drawing and use of finances earmarked for the implementation of measures in the field of waste disposal.

The audit covered the years 2007 and 2010 and also, where relevant, the period immediately before that and the period up to the date of the audit. The audit was conducted from June 2010 to January 2011.

Auditees:

Ministry of the Environment;

State Environmental Fund of the Czech Republic;

and selected funding beneficiaries:

BONUS obchodní agentura, spol. s r.o., České Budějovice; ECO – RETEL s.r.o., Mladá Boleslav; ENVISTONE, spol. s r. o., Předměřice nad Labem; KOVOŠROT GROUP CZ a.s., Děčín; ODAS ODPADY s.r.o., Žďár nad Sázavou; SVITAP J. H. J. spol. s r. o., Svitavy; město Příbram; město Tábor; obec Přešovice; Jiří Holešák – HBH Sběr surovin, Havlíčkův Brod, Havříská 1124; Stanislav Čmakal, Chromeč 120.

Objections to the audit protocol lodged by the Ministry of the Environment, the State Environmental Fund of the Czech Republic, ECO – RETEL s.r.o., ENVISTONE, spol. s r.o., and Stanislav Čmakal were dealt with by the heads of the audit teams by decisions on the objections. No appeal was lodged against the decisions on the objections.

At its 9th session on 2 May 2011 **the Board of the SAO**

approved by resolution no. 10/IX/2011

the audit conclusion worded as follows:

I

Introduction

The Ministry of the Environment (hereinafter also “MoE”) is the central body of state administration dealing with, among other things, waste management. Within the meaning of Act No. 185/2001, on waste and amending certain other acts, it exercises supreme state oversight in the field of waste management, with the exception of the protection of public health in connection with waste disposal, and draws up the *Waste Management Plan of the Czech Republic* (hereinafter “WMP”) and changes thereto. Under a government resolution¹ the MoE was charged with the function of the management authority for the *Environment operational programme* (“OP Environment”) for the 2007-2013 programming period, in consequence of which it is responsible for the effectiveness and regularity of the management and implementation of OP Environment.

The State Environmental Fund of the Czech Republic (“SEF”) was established by Act No. 388/1991, on the State Environmental Fund of the Czech Republic. It is administered by the MoE. The scope of the SEF’s activity is defined by its statute. In the field of waste management the SEF finances national programmes announced by the MoE and sees to national co-financing of programmes supported by European funds. In the context of OP Environment it carries out the role of mediating entity, whose duties are set out in the delegation agreement² concluded between the MoE and the SEF.

The audit focused mainly on the MoE’s work as the managing authority of OP Environment and the SEF’s work as the mediating body of OP Environment in the provision and drawdown of finances from priority axis 4, specifically intervention area 4.1 – *Improvement of Waste Management*. Another focus of scrutiny was the MoE’s work in drawing up and assessing the WMP, including an assessment the benefits of the support provided in 2003-2007 out of state funds and European funds to improve the state of waste management.

Table 1 – Finances of the Czech Republic and European Union funds spent on improving waste management in the years 2003-2007

Programme/support	Source	Paid expenditure (CZK millions)	Number of projects supported
National Programme 4	SEF	1,604.2	185
Infrastructure Operational Programme	ERDF	482.9	38
	SEF	80.8	
Cohesion Fund	CF	1,183.6*	1
	SEF	63.4*	
Total		3,414.9	224

Source: SEF and MoE information.

*) At an exchange rate of 25 CZK/EUR.

¹ Government resolution no. 175 of 22 February 2006 on the *Draft National Development Plan of the Czech Republic for the Years 2007 to 2013*.

² *Agreement on the Delegation of Certain Activities and Powers of the Ministry of the Environment as the Managing Authority of the Environment Operational Programme to the State Environmental Fund of the Czech Republic* of 4 December 2007.

Table 2 – Finances of OP Environment, intervention area 4.1 – *Improvement of Waste Management* allocated and spent on projects from 1 January 2008 to 23 November 2010

Number of projects with an issued decision on grant provision	Total eligible expenditure of projects with an issued decision on grant provision (CZK millions)	Expenditure paid out of the <i>Cohesion Fund</i> and SEF finances (CZK millions)	Total finances allocated for 2007-2013 (CZK millions)
380	3,898.2	2,139.7 (FS)	15,038.5
		221.7 (SEF)	

Source: SEF and MoE information.

NB: All the legal regulations mentioned in this audit conclusion are applied in the wording applicable to the audited period. The period before 2007 was also covered by the audit in order to assess the development of waste management.

II

Audit findings concerning the MoE and SEF

1. Goals of the WMP and assessment thereof

In 2003 the MoE drew up the WMP, which sets out waste management goals, principles and measures for a ten-year period. The binding part of the WMP (announced by government resolution no. 197/2003³) and changes thereto are a set of binding rules for regional waste management plans and for decision-making and other waste management activities of the responsible administrative authorities, regions and municipalities.

In 2003 the MoE laid down the WMP objectives according to the effective European and national legislation and in some cases anticipated the future development of European legislation. **Although there have been significant changes in the European and national legislation on waste management since 2003, the MoE did not update the WMP and did not adjust its goals to bring them into line with this legislation.**

This shortcoming was mentioned in the **WMP assessment reports** drawn up annually by the MoE by 31 December of the following year, as required by Act No. 185/2001. **In these reports the MoE repeatedly stated in respect of certain unachieved goals that the targets are inordinately high, unrealistic and cannot be assessed because the parameters were unsuitably defined.** For example, the MoE confirmed that the target of 100g used portable batteries per person per year by 2006 was set too high. According to the latest assessment of the WMP drawn up by the MoE for 2008, the attained result was 31.9g per person per year. The target of increasing the re-use and recycling of communal waste to 50% by 2010 compared to the year 2000 was also set too high. In 2008 the re-use of communal waste was 27%. The European Union directive⁴ did not set an equivalent target until 2008, specifically 50% by 2020 – what is more, this target only applies to selected components of communal waste.

³ Government resolution no. 197/2003, on the Waste Management Plan of the Czech Republic.

⁴ Directive No. 98/2008 of the European Parliament and of the Council (EC) of 19 November 2008, on waste and repealing certain Directives

When drawing up assessment reports the MoE uses statistical data and data it obtains from the waste management information system. Data are entered into this system by municipalities with extended competence on the basis of the record-keeping and reporting duties of the originators of waste and persons authorised to manage waste as designated by Act No. 185/2001. These persons send the data by 15 February of the year following the report year. The municipalities verify the data and by 30 April pass it on to the Czech Environmental Information Agency, which draws up statistical outputs and information on which to base the assessment of the WMP. This procedure takes a lot of time and, as a result, the MoE presents the assessment reports to the Czech government at a time when the data used for these assessments are no longer up-to-date. For example, in January 2010 the MoE submitted to the Czech government an assessment report that specified the degree of WMP targets attainment on the basis of data applicable in 2008.

To achieve the WMP goals the MoE defined a total of 94 tasks, not setting a deadline for 33 of them. According to the latest assessment of the WMP which the MoE drew up for 2008, 18 tasks were insufficiently implemented.

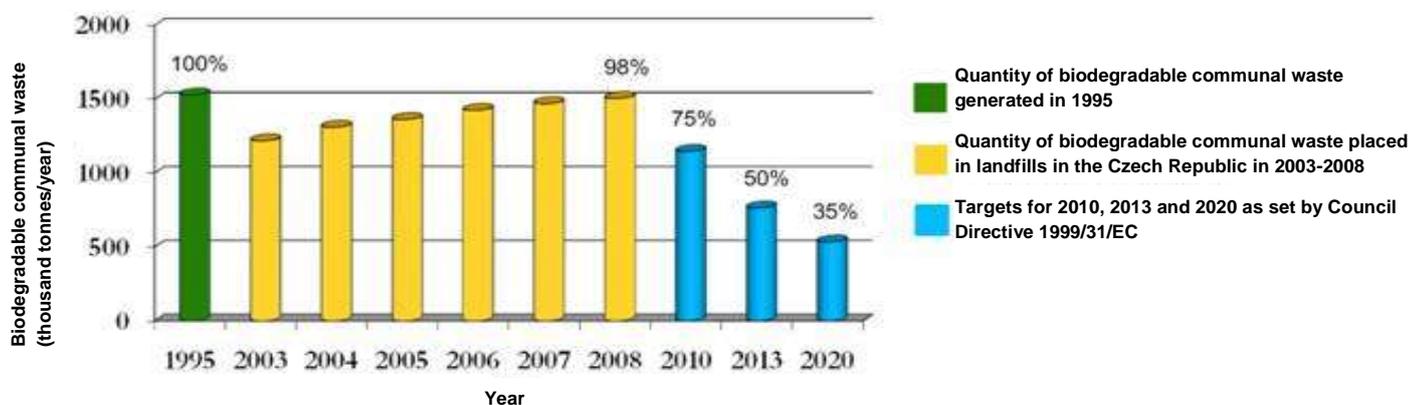
One of the most problematic goals of the WMP is reducing the maximum proportion of the quantity of biodegradable communal waste placed in landfills so that the proportion of this component is at most 75% by mass in 2010, at most 50% in 2013 and at most 35% in 2020 compared to the total quantity of biodegradable communal waste generated in 1995. The MoE took these targets for the WMP from Council Directive 1999/31/EC⁵, which laid down requirements for reducing the quantity of biodegradable communal waste placed in landfills by EU member states.

The quantity of biodegradable communal waste placed in landfills has been gradually rising since 2003 (see graph 1). In 2008 the proportion of biodegradable communal waste placed in landfills was as high as 98% of the quantity in 1995. One of the key measures intended to help attain the goals laid down by Council Directive 1999/31/EC, i.e. reducing the proportion of biodegradable waste placed in landfills, is the amendment⁶ of government regulation no. 197/2003, effective since 31 December 2009. The amendment omitted the provision that had prohibited supporting the construction of new communal waste incinerators out of public money since 2003. This made it possible – starting in January 2010 – to draw funds from OP Environment to support energy-generating use of waste. Increasing the number of facilities for energy-generating use of waste reduces the quantity of waste placed in landfills, thus also reducing the quantity of biodegradable communal waste stored in landfills. **Not implementing Council Directive 1999/31/EC would put the Czech Republic at risk of being penalised by the European Commission.**

⁵ Council Directive No. 1999/31/EC of 26 April 1999 on the landfill of waste.

⁶ Government resolution no. 473/2009 amending government resolution no. 197/2003, on the Waste Management Plan of the Czech Republic.

Graph 1 – Placing of biodegradable communal waste in landfills in the Czech Republic and targets for reduction in landfill disposal up to 2020 as set by Council Directive 1999/31/EC



Source: MoE information.

NB: At the time of the SAO audit the MoE possessed no information about the quantity of biodegradable communal waste placed in landfills in 2009.

2. Support out of public money and European Union funds on improving the state of waste management in 2003-2007

National Programme 4 – Waste Management announced by the MeO was funded out of SEF finances. The programme was broken down into the following sub-programmes: *Programme of Support for Clear-up and Recultivation of Old Landfills*; *Programme of Support for the Use and Neutralisation of Waste*; and *Programme of Support for the Preparation of Regional Waste Management Plans*. In the period from 2003 to 2007 beneficiaries of support from these programmes completed 185 projects, for which the SEF provided CZK 1,604.2 million.

Operational Programme Infrastructure, sub-measure 3.4 A – Building an Integrated Waste Collection and Recycling System received funding from the *European Regional Development Fund* (“ERDF”) in the years 2004-2006. Under this sub-measure 38 waste collection and recycling facilities were built, with expenditure from the ERDF and SEF totalling CZK 563.7 million. The final report of OP Infrastructure (drawn up by the MoE) revealed that as of 30 June 2009 10,954 tonnes of waste could be processed per year in the built waste management facilities, 9480 tonnes of waste could be recycled per year and as much as 49,563 tonnes of waste could be sorted per year. These figures give the facilities’ capacity, however, i.e. the quantity of waste they are capable of processing. Out of *Cohesion Fund* resources the MoE granted support (including SEF co-financing) worth CZK 1,247 million to one project that had been commenced and financed under ISPA pre-accession aid⁷.

⁷ Pre-accession structural policies instrument.

In the years 2003-2007 the MoE and SEF spent a total of CZK 3.4 billion out of state finances and European Union funds. By the time when the SAO audit was completed they had not, however, assessed the benefits of this support for improving the state of waste management or this support's influence on attainment of the WMP targets.

3. Support for improvement of the state of waste management under the *Environment Operational Programme* in the 2007-2013 programming period

Support for the improvement of waste management takes place under priority axis 4 of OP Environment, specifically intervention area 4.1 – *Improvement of Waste Management*, to which CZK 15,038.5 million is allocated from the *Cohesion Fund* and national public money. Up to 23 November 2010 the MoE had decided to support 380 projects, for which CZK 2,139.7 million was paid out of the *Cohesion Fund* and CZK 221.7 million out of the SEF. Although the OP Environment programming document envisaged 11 major indicative projects over EUR 25 million, no such project had been submitted by the time the audit was completed. The MoE and SEF have issued calls for major project support since January 2010 based on an amendment of government resolution no. 197/2003, which made it possible to support the construction of facilities for energy-generating use of communal waste.

3.1 Provision of support

As the OP Environment managing authority the MoE delegated to the SEF almost all programme implementation activities. Among other things, the SEF assessed applications in technical, ecological and economic terms based on the published assessment criteria. In performing this assessment the SEF proceeded according to the *OP Environment Implementation Document*⁸ and other programme implementation rules approved by the MoE. In December 2009 the MoE altered the *OP Environment Implementation Document*, specifying that applications will be judged on published assessment criteria solely with regard to the technical and ecological criteria. Another change was that applicants' economic fitness and creditworthiness would be checked, i.e. their ability to implement the project. If the result came out negative no grant provision decision would be issued. In line with this **the SEF has judged applicants' economic fitness and creditworthiness since December 2009, but it only did so on the basis of internal (non-public) and thus insufficiently transparent procedures.**

The SAO audit found four cases where the SEF rated applicants' economic fitness and creditworthiness as "risky", so no grant provision decision should have been issued in these cases according to the new version of the *OP Environment Implementation Document*. Nevertheless, the MoE approved these projects for financing and issued a grant provision decision.

The *OP Environment Implementation Document* also laid down basic principles for staging public tenders for projects co-financed out of OP Environment. Detailed procedures for support beneficiaries (for the award of contracts, among other things) were described in MoE

⁸ The OP Environment Implementation Document is a document whose substance follows up the OP Environment programming document and contains detailed information about the implementation of the programme, the operational level of the priority axes and other information about intervention areas.

guidelines⁹ and in binding instructions¹⁰ approved by the MoE. Since the beginning of the programme's implementation there have been 17 versions of the binding instructions and 4 versions of the MoE guidelines. Several versions of the instructions applied in turn during the course of one call even. **This made the rules for support beneficiaries confused and, in the case of the award of contracts outside the system set out in Act No. 137/2006, on public contracts, unclear. For example:**

- no procedure was defined for beneficiaries in the event of a change in the tender regulation during the preparation for the opening of the tender;
- no procedure was defined for support beneficiaries in the award of contracts in cases where the applicable MoE guideline contained provisions that conflicted with the binding instructions.

The SEF performed control of the procedure followed by support beneficiaries in the award of public contracts. The SAO audit found shortcomings in the award of a contract in two out of seven cases. The SEF failed to identify these shortcomings in its control work. In both cases the tender documentation laid down absolutely specific technical parameters for the required facilities, which led to a restriction of the set of potential tender participants. In the case of support beneficiary Stanislav Čmakal (see also part 3) the SEF also failed to discover the fact that it was wrongly stated in the notification of the contract sent by the contract awarding body to ISVZ - US¹¹ that the entity responsible for appeals would be the Office for the Protection of Competition – but this office could not have been the responsible entity as the contract awarding body was not a public contract awarding body. This false information misled an excluded candidate, who submitted a suggestion for review of the contract awarding body's procedure to the Office for the Protection of Competition. The Office had to stop the administrative proceedings, however, on the grounds that it was not competent to deal with the suggestion.

3.2 Assessment of the benefits of support

To assess the impacts of the intervention area 4.1 support the MoE used monitoring indicators (proportion of total waste recycled, volume of communal waste and proportion of total annual production of communal waste put to use) that are statistical indicators for the Czech Republic as a whole and are not directly linked to OP Environment support. The MoE was not able to assess the impact of the intervention area 4.1 supported projects on waste management in the Czech Republic and has not even prepared any systematic monitoring relative to the attainment of WMP targets. What is more, to enumerate the expected target state of the share of total waste accounted for by recycled waste it used a value (75%) that was already met in 2007, when OP Environment was launched (81%).

To assess the benefits of individual supported projects the MoE defined indicators mainly in the form of the capacities of the built facilities and the number of built facilities. **Neither the MoE nor the SEF scrutinised the actual use of the built facilities' capacities, however, which makes it impossible to assess sufficiently the economy of the expenditure.**

⁹ MoE Guidelines for submitting applications and on the provision of finances for projects under OP Environment, including co-financing from the State Environmental Fund of the Czech Republic and state budget of the Czech Republic – chapter 315 (Environment).

¹⁰ Binding instructions for applicants and support beneficiaries in OP Environment.

¹¹ Information System on Public Contracts – publishing subsystem.

Act No. 185/2001 provides that all originators of waste and persons disposing of waste, i.e. including support beneficiaries, are obliged to keep records on waste and how it is disposed of. Neither the MoE nor the SEF imposed such an obligation on beneficiaries in the conditions of the use of grants, however. The OP Environment rules made it possible for support beneficiaries to let the subject of the support to third parties. The beneficiaries were consequently not obliged to keep records on waste and therefore were not even obliged to possess up-to-date information on the quantity and processing of waste, i.e. information on the use of the built capacities for the purposes of monitoring by the MoE and SEF.

3.3 Control of programme implementation

In its checks of implementation of the tasks delegated to the SEF and performed in the years 2008 to 2010 the MoE found that the SEF was not complying with certain provisions of the delegation agreement, most notably that in some cases it was not following the OP Environment work procedures manual¹²; this was also demonstrated by the SAO audit. The SEF did not implement the measures imposed on it by the MoE to remedy the identified shortcomings, and in some cases repeatedly failed to do so. The MoE did not penalise the SEF.

Under the delegation agreement the MoE transferred to the SEF the obligation to monitor the continuance of operation, i.e. to check whether the support beneficiary was meeting the defined conditions for a period of 5 years after the end of the project. The SEF was supposed to perform these follow-up checks after the final assessment of the project. As of 23 November 2010 the SEF had not issued any protocol on the final assessment of a project; it had therefore not completed the final assessment of any project and, consequently, had not performed any follow-up checks. Yet the implementation of 107 projects had been completed by the end of July 2009 and the support beneficiaries had subsequently submitted all the documents required for final assessment. Of that number, in the case of 14 projects that had received total support of CZK 97,825,256 the SEF already possessed all the documentation necessary to draw up the final assessment at the end of May 2009. The monitoring period for continuance of operation ends on 9 May 2013 for the two projects which were the first to be completed and have been operational since 10 May 2008.

The system put in place for the final assessment of projects and follow-up controls has ultimately led to a situation where neither the MoE nor the SEF currently have any information about the operation and use of the built facilities since the end of implementation. In two cases this state of affairs has already lasted 2.5 years.

¹² An internal regulation applicable to both the managing authority and the mediating entity is denoted as the OP Environment work procedures manual; the regulation describes all activities performed during implementation of the programme.

III

Findings concerning support beneficiaries

11 projects supported under intervention area 4.1 of OP Environment and with total costs of CZK 212 million were audited. Shortcomings were mainly found in the area of public procurement and fulfilment of the grant provision conditions:

- Stanislav Čmakal defined specific technical parameters in the tender documentation, resulting in the set of potential tender participants being restricted. He also did not accept and deal with the properly submitted objections of an excluded candidate. **In consequence of these facts the beneficiary was in breach of good budgetary practice in drawing a grant from European Union funds worth CZK 33,892,422.30 and from SEF finances worth CZK 5,981,015.70.**

The beneficiary did not archive some documents and written materials necessary for proper control.

In contravention of the grant provision decision, an acquired mobile recycling line was used mainly for sorting and crushing quarry stone and handling equipment was used for building work. These activities are not linked to the purpose for which the beneficiary received the grant.

- ECO – RETEL s.r.o. awarded a contract combining the supply of machinery and building work under one contract, which made it impossible for machinery suppliers to lodge a separate bid.
- By not archiving certain documents and written materials necessary for the proper exercise of control the municipality of Přešovice did not comply with the obligation laid down in the grant provision decision.
- By wrongly entering part of the eligible expenditure for the performed technical improvement of property worth CZK 4,033,433.12 as operating costs Jiří Holešák – HBH Sběr surovin was in breach of the act on accounting. After the completion of the action it did not enter the property of the said value in the appropriate asset accounts. In contravention of the grant provision decision it only drew up the final monitoring report during the SAO audit, i.e. approx. 20 months after the set deadline.

IV

Summary and evaluation

In the years 2003-2007 the MoE and SEF spent a total of CZK 3,414.9 billion out of state finances and European Union funds. **Neither the MoE nor the SEF, however,** assessed the benefits of this support in terms of improving the state of waste management or **this support's influence on attainment of the targets** of the *Waste Management Plan of the Czech Republic*.

For the years 2007-2013 a total of CZK 15,038.5 has been allocated towards improving waste management under the *Environment* operational programme. **Up to November 2010 the MoE had paid a total of CZK 2,361.4 million** out of the *Cohesion Fund* and out of the

SEF. **11 projects** supported under intervention area 4.1 of OP Environment and **with total costs of CZK 212 million were audited by the SAO.**

The MoE did not create a sufficient system of indicators to assess the benefits of support provided under OP Environment. Neither the MoE nor the SEF monitored the actual use of facilities acquired under this programme to improve waste management. In the area of administration it was found that the rules for support beneficiaries were often changed during programme implementation and were confused and unclear. The rules for assessing grant applications from an economic perspective were not published after December 2009 and the assessment of applications was therefore insufficiently transparent.

The system put in place for the final assessment of projects and follow-up controls of projects financed out of OP Environment has ultimately led to a situation where **neither the MoE nor the SEF currently have any information about the operation and use of the built facilities since the end of implementation. In two cases this state of affairs has already lasted 2.5 years.**

The waste management goals, principles and tasks are set out by the *Waste Management Plan of the Czech Republic*, which the MoE drew up in 2003 for a ten-year period. Although there have been significant changes in the European and national legislation on waste management since 2003, the MoE did not update this plan and did not adjust its goals to bring them into line with this legislation. In assessment reports on the implementation of the *Waste Management Plan of the Czech Republic* **the MoE repeatedly stated that some of the targets not being attained were set too high, were unrealistic or could not be assessed on the grounds of unsuitably defined parameters.**

One of the most problematic goals of the *Waste Management Plan of the Czech Republic* is reducing the quantity of biodegradable communal waste placed in landfills. Since 2003, when government regulation no. 197/2003 took effect, a larger quantity of biodegradable communal waste is placed in landfills than specified by Council Directive 1999/31/EC and the quantity of biodegradable communal waste placed in landfills has grown gradually. As a result the Czech Republic is at risk of being penalised by the European Commission. Supporting the construction of new communal waste incinerators is one important measure for implementing the said directive. The Czech legislation has only allowed for this support since January 2010, however. Yet the directive's requirement that the proportion of biodegradable communal waste that is placed in landfills is reduced should have been fulfilled in 2010. Developments and the current state of affairs indicate that the target set by Council Directive 1999/31/EC for 2013 will also not be attained.

ABBREVIATIONS

Delegation Agreement	<i>Agreement on the Delegation of Certain Activities and Powers of the Ministry of the Environment as the Managing Authority of the Environment Operational Programme to the State Environmental Fund of the Czech Republic</i>
ERDF	<i>European Regional Development Fund</i>
CF	<i>Cohesion Fund</i>
ISPA	<i>Instrument for Structural Policies for Pre-accession</i>
ISVZ – US	Information System on Public Contracts – publishing subsystem
MoE	Ministry of the Environment
OP Environment	<i>Environment Operational Programme</i>
WMP	<i>Waste Management Plan of the Czech Republic</i>
SEF	State Environmental Fund of the Czech Republic