



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Petitions

2.9.2010

NOTICE TO MEMBERS

Subject: **Petition 0269/2010 by Lucian Voicu-Dungan (Romanian), on behalf of SC Aquasturo Project S.R.L., on the problems caused by changes to the Guide for applicants for assistance under Priority Axis 2 (Measure 2.1) of the Fisheries Operational Programme for Romania 2007-2013 financed by the European Fisheries Fund**

1. Summary of petition

The petitioner, whose micro-enterprise has submitted a project for European Fisheries Fund subsidies under Priority Axis 2 (Measure 2.1) of the Fisheries Operational Programme for Romania for 2007-2013, contests the decision by the Romanian authorities which, on the recommendation of the relevant Commission directorate-general, has, through the Management Authority, introduced a number of changes regarding selection criteria and to the Guide for applicants following the launching of procedures and the submission of projects. He indicates that, five months after submitting his project, he received a fax advising him to withdraw it because of changes to the legislative framework and a review of selection criteria. The petitioner argues that to change to the Guide while applications are being assessed is illegal and maintains that the new version contains a number of subjective and ambiguous criteria. He alleges lack of transparency concerning the changes and is seeking access to the relevant documentation.

2. Admissibility

Declared admissible on 17 June 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 2 September 2010.

The petitioner protests against the invitation sent by the Ministry of Agriculture and Rural

Development in Romania to withdraw his project submitted in June 2009 and resubmit it, once revised in line with the Guidelines for Applicants launched by the new Managing Authority for the EFF Operational Programme in 2010.

Over the past two years Romania has had increasing difficulties with the EFF OP implementation, because of the serious weaknesses of the management and control system set up in this respect. Following its analysis of this system, in December 2008 the Romanian Audit Authority gave a negative opinion, identifying key problems at the level of all institutions involved in the management and control system. The most significant findings of the Romanian Audit Authority included:

- not all key functions foreseen in the EU Regulations were attributed to the Managing Authority, respectively to the Certifying Authority
- the principle of separation of functions was not fully ensured by neither the Managing Authority, the Certifying Authority or the Paying Agency.
- the procedures for the submission, evaluation and selection of operations/projects were incomplete.
- the procedures regarding the declaration of expenditure presented deficiencies regarding the separation of functions, archiving the payments requests and verifications to be done at the beneficiary level, according to art. 59 (b) of EC Regulation 1198/2006.
- deficiencies were identified in the procedure for the verification of the delivery of the products and services and the eligibility of expenditure with respect to separation of functions, verification of compliance with national and community legislation on state aid.
- non existence of accounting, monitoring and financial reporting computerised systems to comply with art. 57 (d) and 59(c) of the EC Regulation 1198/2006
- serious deficiencies in ensuring an adequate audit trail
- deficiencies in the procedures for the certification of payments
- deficiencies in the procedures for monitoring and reporting irregularities and for the recovery of funds unduly paid
- eligibility rules, decided at the national level, do not cover all types of operations foreseen for the EFF.

Following an assessment carried out by the Commission on the state of play of the EFF implementation, in July 2009 the Commission sent a letter to the Romanian authorities, indicating that key problems persist, especially with regard to the administrative capacity of the National Agency for Fisheries and Aquaculture as Managing Authority for EFF.

Consequently, the Romanian authorities took the decision to reshuffle the EFF management and control systems and transfer the responsibilities of Managing Authority from the National Agency for Fisheries and Aquaculture to a new Directorate general specifically established for this purpose in the Ministry of Agriculture and Rural Development,

Regrettably, potential beneficiaries of EFF funding have been affected by the weaknesses of the management and control system set up for the implementation of the EFF Operational Programme in Romania.

The calls for proposals launched in 2009 by the National Agency for Fisheries as Managing Authority did not fully respect the EU legislation, some of the deficiencies concerned the

criteria for eligibility. (i.e. co-financing rates were not in line with annex II of Regulation 1198/2006, eligible beneficiaries were not fully in accordance with Regulation 1198/2006, eligibility rules did not fully respect Regulations 1198/2006 and 498/2007 and Directive 77/338/EEC.) Also, the guidelines lacked key information regarding the selection and the appeal procedures and regarding the rights and the obligations of the beneficiaries.

Consequently, there was a high risk that these deficiencies would have resulted in irregularities and financial corrections on the EFF allocation to Romania and recovery of funds paid to the beneficiaries that would have been selected under those calls for proposals.

Prior to the revision of the guidelines for applicants, the Managing Authority submitted for the approval of the EFF OP Monitoring Committee the revised eligibility and selection criteria, which includes representatives of the fisheries sector, the modifications approved having the purpose to bring them fully in line with the EU legislation (Regulations 1198/2006 and 498/2007 and Directive 77/338/EEC). The minutes of the meetings of the Monitoring Committee, including those of the meeting held on 9/02/2010, that discussed the situation of the calls for proposals launched in 2009 as well as the revision and completion of the selection criteria, have been available on the website of the Ministry of Agriculture and Rural Development (<http://www.madr.ro/pages/page.php?sub=2008&self=20>) ever since their adoption.

In this context, the Ministry of Agriculture and Rural Development invited those who submitted projects in the course of 2009, to withdraw and revise their projects in line with the new Applicants Guidelines launched in 2010. This approach was discussed and agreed with the Commission services, in order to clarify the legal requirements and avoid irregularities.

The fact that the project submitted by the company represented by the petitioner was declared admissible and eligible at an earlier stage is not equivalent to the final selection of the project for funding and entails no legal obligation by the Managing Authority to select this project and/or to complete that selection procedure. Conversely, the continuation with the technical and financial assessment of projects submitted under the previous call for proposals would have led to a high and unacceptable risk of irregularities. It has therefore been decided to end this previous procedure.

Conclusions

In view of the above and based on the information currently available, the Commission considers therefore that the approach taken by the Managing Authority to request resubmission of projects under the revised conditions as explained above was prudent and to the benefit both of the Romanian state and the potential beneficiaries, as well as respectful of the Union's interests.

Thus, even though the Commission has sympathy for all the applicants who are in this unfortunate situation, it considers that it is in the petitioner's interest, in spite of the inconvenience incurred, to revise and resubmit the application, in line with the new calls for proposals launched by the Managing Authority for EFF.