

Legal Aspects of EU Funding Related to State Organisational Units in the Czech Republic

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Abstract

State organisational units in the Czech Republic play different roles while receiving appropriations from the EU budget. The robust implementation structure was established at the national level delegating power on selected state organisational units to manage funds under shared management such as European structural and investment funds. In addition, state organisational units might be beneficiaries of projects under direct and indirect management. The paper focuses on key problems that the present system brings.

Keywords

management of EU funding; state organisational unit; simplification

1 Introduction

The goal of the paper as a whole is to identify some of the obstacles having impact on smooth financing of EU projects in the Czech Republic. The three main ways of the implementation of the EU budget will be scrutinised by the application of comparative, descriptive and analytical methods.

Initially, it is necessary to introduce key actors and their mutual relations for the proper understand of the system of funding. Therefore, a state organisational

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unit, the base stone of the state budget in the Czech Republic, will be defined and the management of EU funding shall be examined.

The second part analyses case legal issues that a state organisational unit encounters as a managing authority or a beneficiary of a project. The aim of this part is to bring readers to more real, down to the earth life of EU funding.

Finally, in May 2018 the European Commission's budget proposal 2021+ was launched and in a short time the simplification of EU financial rules "Omnibus", Regulation on the financial rules applicable to the general budget of the Union repealing Regulation (EU, Euratom) No. 966/2012 and delegated regulation (EU) No. 1268/2012 should come to force. These two undoubtedly significant moments should be commented on.

2 The System of EU Funding

There are three methods of implementation of the EU budget. First, EU projects are managed jointly by the European Commission and national authorities. Second, the European Commission manages projects directly. Finally, other delegated authorities inside or outside of the EU are appointed to manage the EU projects. Under this system, based on the EU legislation, various roles are assigned to state organisational units in the Czech Republic.

2.1 State organisational units in the Czech Republic

Rather than a general definition stipulated by law under which the state organisational unit should be ranked, there is an enumeration of organisations such as ministries and reference to other bodies considered to be state organisational units by special law. Without prejudice to its performance and responsibility, the state organisational unit is not a legal person; it is the state, so it acts as the state – the public legal person. It is an accounting unit (sec. 3 of Act No. 219/2000 Coll.). The money management is settled in budgetary rules (sec. 45 of Act No. 218/2000 Coll.). The literature mentions other important aspects concerning state organisational units. For instance, the chapters of state budget represent the sphere of activity and responsibility of state organisational units in the role of independent state budget chapters such as the Supreme Audit Office once it is stipulated by a special law (Marková and Boháč, 2007: 92–93). The state budget expenditure is used on their activities besides other things (Janošíková et al., 2016: 91). A state organisational unit is considered to be a *subordinate addressee* (Karfíková et al., 2018: 50) or semi-subordinate/semi-superior addressee of financial law regarding EU funding.

2.2 Management of EU funding

Shared management – funds are managed mostly in cooperation with member states (over two thirds of the EU budget). In other words, responsibility for conducting checks and annual audits lies mainly with national governments (Europa.eu, 2018d). For a long time only secondary legislation for each sector provided rules setting relations between the European Commission and the national authorities. There have been two legislative provisions strengthening this type of management. The first concerns the Lisbon Treaty which was signed in 2007 and took effect in 2009, Art. 317 in which the cooperation of the European Commission with the Member States and vice versa is highlighted (Syslová et al., 2010: 941). Afterwards, the 2012 Financial regulation clarifies the obligations of the Member States and the European Commission which aimed at increasing ownership for the management of the funds for the Member States (European Union, 2014: 224).

Direct management – implementation of the EU budget by programmes and funds is handled directly. It means that there is no involvement of the Member state or non-member country. Besides the European Commission, some of the tasks might be carried out by the European executive agencies.

Indirect management – the European Commission executes budget by entrusting tasks to: partner countries or to bodies designated by them, international organisations and their agencies etc.

As a result, under the definition of superior addressee as an executive power might be subsumed the European Commission, delegated body but also partly state organisational unit. However, the European Commission stays above all of them as “*the supranational subject of the financial law*” (Karčíková et al., 2018: 52).

2.3 In pursuit of a well-arranged list of programmes/funds

Any beneficiary, researcher, stakeholder would welcome a list of the programmes or funds divided according to these three methods to understand the principles of management of EU funds more profoundly and simply to have a picture about the possibilities offered. Instead, the Financial Regulation in Art. 175 specify only programmes or funds under shared management such as ESIF, the Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (ISF) and information can also be found on the EU websites (Europa.eu, 2018b).

What about directly or indirectly managed programmes? Then the only way to get it is to jump into the ocean of sectoral regulations, delegated regulations, guidelines, grant agreements etc. which is an immensely time-consuming activity. The website of the European Commission (Ec.europa.eu, 2018a) offers the list of the programmes without required classification. Enthusiasm over the creation of own list of programmes under direct and indirect management ends with the finding that one programme can be managed more than one way and a real confusion starts. Consequently, at this

moment, only examples of programmes divided according to methods of implementation of the EU budget in the Czech Republic must be satisfactory. Fortunately, state organisational units are familiar with all types of management so that Connecting Europe facility, Life+, Horizon 2020 are for us well-known directly-managed programmes while Erasmus + also has activities under indirect management.

3 Case Legal Issues

A state organisational unit faces various roles while receiving EU funds as a managing authority under shared management or a beneficiary under direct and indirect management. The first two cases in subchapters 3.1 and 3.2. are typical for shared management.² Connecting Facility Europe CEF is in the Czech Republic the most significant directly managed programme in terms of allocation of appropriations (Ec.europa.eu, 2018c).³ The case in subchapter 3.4 is linked to it. Life+, Horizon 2020 under direct management as well as the indirectly managed branch of Erasmus+ might be seen in subchapter 3.3, 3.4 and 3.5.

3.1 Who am I to you?

Amendment No. 367/2017 Coll. to Act No. 218/2000 Coll. on Budgetary Rules meant a breakthrough in the subsidy award procedure. With coming into force at the beginning of the year 2018, rules of administrative procedure have been partly applied on it and here comes the problem with contributory organisations financially dependent on their state organisational units in the role of a founder and a provider of subsidies (usually a line ministry) as is stipulated in budgetary rules (sec. 53 (1) and sec. 54 (1) Act No. 218/2000 Coll.) because these state organisational units do not have to be managing authorities providing EU subsidy. As a result, the founder is an unwanted intermediary

² As for shared management, four separated implementation structures have been created. Cohesion policy with Structural and Investment Funds (ESIF) managed by the National Coordination Authority (NCA) – the Ministry of Regional Development of the CR, managing authorities – line ministries for regional development, transport, environment, agriculture, social affairs, education, home affairs, with eight operational programmes represent the most significant EU funding under shared management, followed by Common Agricultural Policy (CAP), the policy with the most effective implementation structure and low score of irregularities in the long term. The others are funds under Migration and Home Affairs (AMIF, ISF) and the Fund for European Aid to the Most Deprived (FEAD). The trend to bring the systems of management at the national level under unified methodological framework starting with the financial framework 2014–2020 with the Rural Development programme (RDP) included in ESIF may continue further. Under these circumstances, NCA besides others such as the Czech Government Office, Ministry of Finance etc. is becoming a key partner for negotiation with the EU about budget proposal 2021+.

³ It supports the development of high performing, sustainable and efficiently interconnected trans-European networks in the fields of transport, energy and digital services. As for shared management, four separated implementation structures have been created.

who does not know who is responsible for what as far as calls for proposal, award and evaluation procedure are concerned.

In brief, even though there is a system of regulations, delegated regulations directly applicable and binding in their entirety across the EU (Tomášek et al., 2013: 108; Europa.eu, 2018a) “soft law” at the EU level, guidelines at national level noted in Government Resolution No. 345/2013 for Cohesion policy, it does not seem to be enough and state organisational units prefer to follow rules set in the national budgetary legislation (Zemánek et al., 2012: 196).

3.2 You did it wrong, sorry!

Regardless of the methods of implementation of the EU budget, a subsidy provided to a beneficiary is split into several instalments in accordance with the sound financial management (Art. 310 (5) Title II Financial provisions TFEU and Chapter 7 Arts. 30–33 Regulation (EU, Euratom) No. 966/2012). These instalments are interdependent. It means that the instalment is paid once the previous instalment is audited by a managing authority. When there is something wrong, the next instalment might be reduced. Amendment 25/2015 Coll. to Act No. 218/2000 Coll. repealing sec. 44a (5) considering reduction as a levy for the breaching of budgetary discipline, adjusting sec. 14e and adding the new sec. 14f causes confusion in real life.

Interpretation of provisions in sec. 14e and sec. 14f of the Ministry of finance supported by the Court’s ruling of the Supreme Administrative Court (Supreme Administrative Court, 6 Afs 270/2015-48) perceives secs. 14e and 14f separately. Under sec. 14e a provider of a subsidy (managing authority) relates irregularities to unpaid appropriations once sec. 14f is not used until the appropriations were paid. This interpretation is valid since 20 February 2015 when the above mentioned amendment came into force. Yet managing authorities prefer to reduce the next instalment rather than to ask a beneficiary to send back provided appropriations resulting from irregularities of the same instalment. From a logical point of view, their procedure seems to be more in tune with the sound financial management. Secs. 14e and 14f reflect the national practice of providing subsidies in one ex-post instalment or ex-ante instalment.

3.3 Great!! We were awarded a grant!

A state organisational unit’s budget people may shine with happiness when the grant is awarded and does not include staff financing under the project. Indeed, this happens rarely.

In fact, the inflexibility of state employees’ policy, salary tariffs including various bonus items on one side and limitations by strict budget provisions on the other side do

not create suitable conditions for the project work in the state administration. To realise the project while the state employee is having a vacation or unpaid days off seems to be rather uncomfortable and does not make sense, as well as to hire an extra staff for the duration of the project whereas the state administration could engage its experts whose agenda fits with the aim of the project. Moreover, even though the obstacles concerning salary and budget are overcome, the limited duration of the project seems to be a problem as once the state employee for indefinite period is involved who will work on his contemporary agenda while he is working on the project. In addition, once the state administration hires somebody just for the time of the project, limited time of the work may not attract the right people or such outsourcing might be needlessly costly. The above mentioned facts may be one of the reasons why the Czech Republic belongs to EU member countries with a low rate of experts in Twinning and similar projects requesting expertise abroad for instance under European Neighbourhood Policy. No doubt that only projects with a real European added value, result-oriented projects should be supported.

3.4 The Czech entity wants to send us some money!

The situation gets even more complicated when the project is realised under the so called multi-beneficiary grant agreement which means that one of the beneficiaries is a coordinator of the project, receives grant appropriations and sends the money to the other beneficiaries (partners) of the project. To do so, beneficiaries sign a document setting financial, evaluation and audit provisions based on the rule of law of the EU member country of the coordinator.

A general template or a minimum of the conditions for such legal document was not found so far.⁴ After searching in documents for Horizon 2020 and Erasmus+ the Consortium agreement,⁵ Accession form, Administrative agreement, Internal cooperation agreement and surely many other agreements might be concluded meaning the same financial partnership among beneficiaries. However, perhaps the word “partnership” is booked within the EU legislation (strategic partnership, innovative partnership, public-private partnership, and financial framework partnership) that much that it is not used in this case.

Finally, questions arise when the state organisational unit in the role of a beneficiary receives funds from let us say the Spanish coordinator and the consortium agreement is concluded under the Spanish law. Is the financial relationship public or private? Are

⁴ Taking into account informal comments of the EC experts questioned during my study visit in the EC in July 2018, the EC does not really feel responsible for setting common rules or templates for financial partnership agreements under multibeneficiary grant agreements. On the other hand, the EC support of the EU member states sharing of their experience at the national level is apparent.

⁵ It is necessary to open an expert discussion over the suitability of the Consortium agreement for state organisational units as far as Act No. 219/2000 Coll., on Property of the Czech Republic, as amended is concerned.

they EU appropriations or Spanish ones? The answer has the impact on reporting, evaluation and auditing of the money sent since subsidies from the EU or the National Fund (Paying and Certifying Authority for ESIF) established within the Ministry of Finance are understood as EU appropriations according to the budgetary rules [sec. 6 (2) Act No. 218/2000 Coll.].

On top of that, the Czech budgetary law does not define a partnership. The Ministry of Finance refers to directly applicable EU legal acts and leaves the responsibility on the state organisational units in question. So far, there were noted cases when a coordinator of the EU project was a Czech entity, in one case it was a region, in the second case it was a private entity. With respect to sec. 6 (2) of the Budgetary Rules, the Ministry of Finance refused to take the appropriations to be sent to the accounts of state organisational units as the ones from abroad and left it completely on the state organisational units. In the first case, the state organisational unit backed out of the agreement, in the second one, the project is being realised as a national one.

3.5 Do you really mean abroad?

The last case which is often subject of discussion without clear results is providing appropriations abroad under the project agreement. The following questions occur regularly: What should be the legal basis of such a transfer? Is it a subsidy in the form of decision or public agreement? If it is not a public agreement, how can we ensure audit, evaluation and return of appropriations back in case of irregularities or the return of the rest of the unused allocations? According to budgetary rules sec. 7 (1), the state budget expenditure shall be a gift provided abroad and also subsidies to international organisations which is neither the case. A model example can be the grant awarded under indirect management by the National Agency for Erasmus+ to state organisational units which is requested by the Ministry of Finance whether they are entitled to realise such a type of project with foreign partners. Under the shared management of the Cohesion policy, European Territorial Cooperation Programmes are implemented. The advantage might be seen in the managing authority at national level and setting rules which provide more legal certainty to beneficiaries. Nevertheless, the matter of partnership agreement is also on the table.

Shortly, rather than the implementation structure, the legal background of the financial relationship between particular subjects of law notably a state organisational unit and other body while executing EU project under shared, direct and indirect management appears to be a matter of interest as in some cases brings law uncertainty.

4 Simplification and the Future of EU Finance

It is fair to mention that in spite of all complaints on EU funding regardless of a method of implementation, there is the endeavour to reduce administrative burden, red tape, bottlenecks for beneficiaries which were made kept for years. Question is if the same people can make things better.

The long-awaited, so-called Omnibus regulation should be presented soon. It would simplify financial rules promoting for example: the simplification for recipients of EU funds, cross reliance on audit, one set of rules to hybrid actions, more effective use of financial instruments, more flexible budget management, focus on results and streamlining of reporting, simple and leaner EU administration, citizen engagement (Ec.europa.eu, 2018a). The new financial regulation replaces two so far valid regulations which will be repealed [Regulation (EU, Euratom) No. 966/2012; Delegated Regulation (EU) No. 1268/2012].

Second, the European Commission's budget proposal 2021+ was launched at the beginning of May presented as the one which reflects lessons learned from the past and present and responds to challenges coming such as Brexit, world development, EU citizens' voice etc. seen as a "pivotal moment for our Union and opportunity for Member States and the European institutions to unite around a clear vision for the future of Europe and to show unequivocally that the Union is ready to back up its words with the actions" (Europa.eu, 2018c).

Finally, the two promoted measures will be commented on from the national point of view: simplified cost options and a combination of programmes under different types of management. Both are applicable already in this financial framework 2014–2020.

4.1 Simplified cost options

The use of simplified cost options such as flat rate financing, standard scales of unit costs and lump sum is seen by the EC as an advantage because beneficiaries do not have to spend time and resources to carry out detailed accounting and calculations of project costs when submitting reimbursement requests. However, it means that pre-financed expenditure on EU projects by the state organisational unit through the state budget is never equal to payments from the EU budget. Consequently, it distorts data presented by the Czech Statistical Office to Eurostat about the National Fiscal Policy.⁶

⁶ First, the EC really sees this as a help even though it requires a lot of number crunching. The majority of beneficiaries welcomes it mainly in the private sector. Once the beneficiary is a unit of the general government sector here comes the problem explained above. The advice of the EC expert during my study visit in the EC in July 2018 was to fix it at the national level.

4.2 The combination (blending) of programmes

The combination of programmes under different types of management means that EU grants from for example the Connecting Europe Facility (CEF), Horizon 2020 are to be combined with those EU funds implemented by Member States' authorities under shared management, namely the European Structural and Investment (ESI) Funds. The management of the combination of programmes seems to be neglected. However, blending of programmes cannot be effective and successful without such an umbrella management.

5 Conclusion

The problems identified by methods of comparison, description, inductive and deductive reasoning and criticism can be seen from different points of view. The state organisational unit's perspective was chosen. For that reason, the paper analysed problems with grants and subsidies. The state organisational unit might be either a managing authority or a beneficiary. The paper shows that without the expert cooperation at the national level and the knowledge sharing with the other EU member countries resulting in setting of the legislative framework including possible amendments in budgetary, state property, salary law, the chance for creating clear conditions for the EU funds implementation wherever state organisational units are involved remains uncertain.

The European Commission must really focus on the needs of the beneficiary. Regardless of the level of implementation, once the legal aspects are difficult to understand, they are unclear and arising legal uncertainty, the beneficiary loses the motivation to implement the EU project. The topics discussed in this paper were supported by case legal issues to confront legal settings with practice. The research confirms that the EU legislation is complex and indeed does not provide single book rules to implement the EU project smoothly.

It is obvious that the European Commission is aware of the problems and the future will show whether the simplification which is a key issue of the new financial regulation, the so-called Omnibus [Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council] as well as the European Commission's budget proposal 2021+ will be successful. The European Commission seems to hand more freedom and responsibility to national authorities than ever before. It was not the aim of the paper to answer all the questions raised but to scrutinise the complexity of the EU legislation related to the EU funding so the research purpose was reached. In conclusion, as an EU citizen I only wish to have the EU strong in reasonable activities rather than in striking words.

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