

2. FINDINGS OF THE REVIEW

2.1 Relevance

2.1.1 Changes in the context (Q1)

SOP Transport

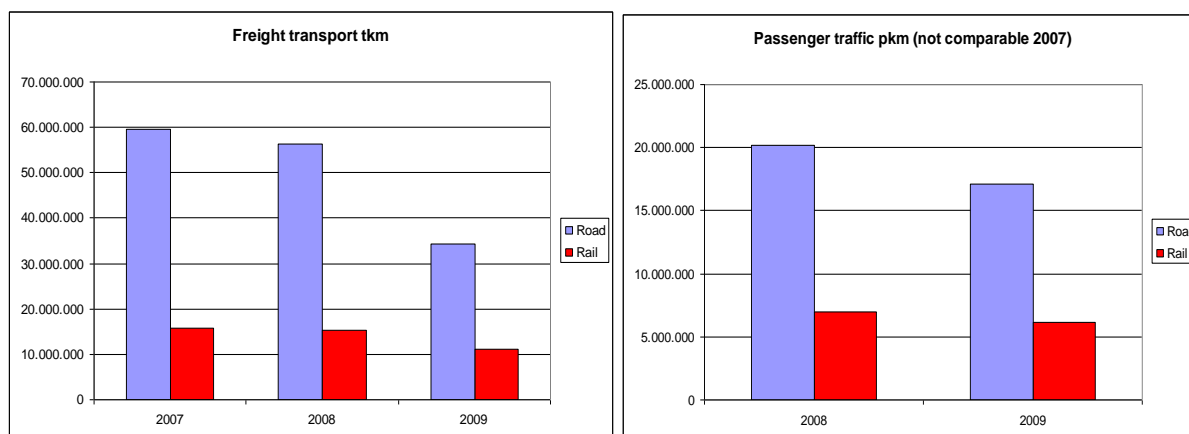
11. The Sector Operational Programme for Transport (SOP T) was launched in 2007 when the expectations were that Romania would continue to enjoy robust economic growth. However, following the global economic crisis, Romania experienced a sharp drop in economic growth in 2009 (-7.1%) and is expected to continue to register GDP decline in 2010 as well (-1.9%, as estimated by the International Monetary Fund). The country will probably resume modest growth in 2011 (1.5%) and return to higher growth rates in the following years (4.4% in 2012, 4.2% in 2013³).

12. There are two possible effects of the crisis on the development of transport infrastructure:

- (i) indirectly, through lower traffic, which affects the economic case for and benefits of the infrastructure projects;
- (ii) directly, by the effects of limited public spending in transport (both co-financing of EU projects and development of national supported programmes, and through lower subsidies to state-owned operators, mainly CFR Calatori⁴).

13. **Traffic.** Since there is a clear correlation between economic growth and demand for mobility, the crisis has reduced traffic overall, for all transport modes and for both passenger and freight transport (ref: **Figure 1**). One can expect traffic demand to increase in the following years, following the economic recovery; but rates of growth of GDP and traffic will be lower than before 2008. The traffic expectations have the **highest impact on the relevance of the projects**⁵ (ref: **Section 2.1.2**).

Figure 1 – Freight transport and passenger traffic evolution for road and rail transport



³ IMF data, as per IMF mission in November 2010.

⁴ National Railways Company for Passengers.

⁵ www.mt.ro, Statistici.

14. **Deficits.** At the same time, the deficit of the Romanian consolidated budget soared to 7% of GDP in 2010, as the combined result of lower budget revenues due to the economic crisis and higher spending prompted by policy measures affecting pensions and wages taken in 2007-08. The crisis would thus affect the available public financing for transport infrastructure for both road and rail. In railways deficits would affect also the operators (the Government's subsidy obligation to CFR Calatori), and the ability of the state-owned, still subsidized clients of CFR Marfa⁶ to pay in time (e.g. coal mines). Thus, the deficit would likely pose constraints on the co-financing available for EU funds, particularly in rail (ref: **Section 2.4**).

Box 2: Railway and road sector structures (*World Bank, 2010*)

The **road sector** consists of public infrastructure and private operators. Investment and maintenance of national roads and motorways are managed by the National Roads Company (CNADNR), whereas local and county roads are managed by local authorities. Operators for national roads (drivers, transport companies) are private and pay directly for infrastructure through 'road vignettes' and some small tolls (one bridge). The financing gap is covered from the state budget, received through Ministry of Transport (MoT). In Romania, fuel excises are not earmarked for road expenditure (since 2002, when the previously existing Road Fund financed from fuel excises was replaced by the road vignette). In future, tolls will be introduced for newly constructed motorways under SOP-T to ensure financing of maintenance.

The **railways sector** consists of one infrastructure company CFR, one state-owned passenger operator company CFR Calatori plus several very small passenger operators; and one state-owned freight operator CFR Marfa which operates in a very competitive market with over 20 private freight operators. The operators pay track access charges to CFR infrastructure.

CFR Calatori obtains revenues from sales of tickets plus a subsidy from the Government in the Public Service Obligation contract (subsidy per passenger per km). The amount is chronically insufficient. CFR Calatori cannot timely pay its track access charges and electricity bills, which are collected by CFR and paid to electricity distributors. In 2010 the arrears exceed 1 billion RON.

15. But more importantly, and with positive effects in the longer run, the operations and spending for both roads and railways, covering over 90% of the traffic, could be sharply rationalized, if the MoT implements long overdue reforms on pressures from external conditionality and deficits (ref: **Box 2**). Depending on how committed the Ministry is to reform, the sector could save substantial resources needed for co-financing of EU projects, covering ineligible expenditures and ensuring adequate funding in the long term for maintenance of the infrastructure built under the SOP T, and could substantially improve the planning capacity in respect of long-term projects.

Box 3 – The financial crisis could trigger long overdue reforms in the transport sector

Railways: In the past decade, the unfinished railways restructuring led to a significant increase in budget spending on railways, which are not sustainable during the crisis: currently, Romania spends on railways a higher share of GDP than developed EU countries (0.6% compared to 0.3-0.4%). Of this figure, only one fifth is spent on infrastructure, which leads to severe underfinancing of

⁶ National Railways Company for Freight

maintenance (hence speed restrictions for safety reasons) and inability to finalize capital repairs. CFR and CFR Calatori are not financially viable because of: (i) falling traffic and growing operating costs for the existing but underutilized network (almost 3,000 km of loss-making lines that should be spun off CFR), (ii) high track access charges paid and low passenger tariffs collected by CFR Calatori and (iii) insufficient payments in the public service contract (subsidies to CFR Calatori). The financial crisis put additional pressures and also negatively impacted the financials of CFR Marfa.

Roads: The major problems are volatile strategies, substantial delays in implementation of major projects and escalating costs. Strategies except the projects 'fixed' in the SOP T are as volatile as the leadership (3 ministers in 3 years, 5 directors in CNADNR in the same period). Costs for major projects have tended to escalate and projects were delayed for various reasons (mainly faulty designs, land expropriation and claims). Sometimes it is widely acknowledged that costs are likely to escalate but there is no reassessment of project efficiency (see Brasov-Bors motorway). Particularly during the crisis the cost escalation must be carefully monitored not to drain resources for other programmes, including maintenance (World Bank, 2010).

As a result, Romania's transport sector might be finally compelled to enter a major reform programme in 2010-2011, as proposed recently by the World Bank⁷. This should entail an overall reassessment of sector strategies along more sustainable lines, as well as clarifying the roles and relationships between the MoT and companies CFR, CFR Calatori, CFR Marfa and CNADNR, by basing them on contractual agreements. The current portfolio of investment projects in the transport sector must also be cleaned up (e.g., the portfolio of all approved investments under all sources of financing exceeds nine times the available financing envelope, and the MoT has agreed to review and rationalize these). In railways, reforms could include also the privatization of CFR Marfa, the re-examination of the Public Service Contract for CFR Calatori to ensure affordable financial viability, and the closure of 2500-3000 km of loss-making lines. In roads, the reform would mean improved accountability on spending, better financing on sustainable road user charges, non-pledging of road vignette revenues for repayment of commercial loans and, possibly, a re-examination of payment and implementation schedule for the Transylvania motorway contract, which earmarked the majority of CNADNR's budget in 2009.

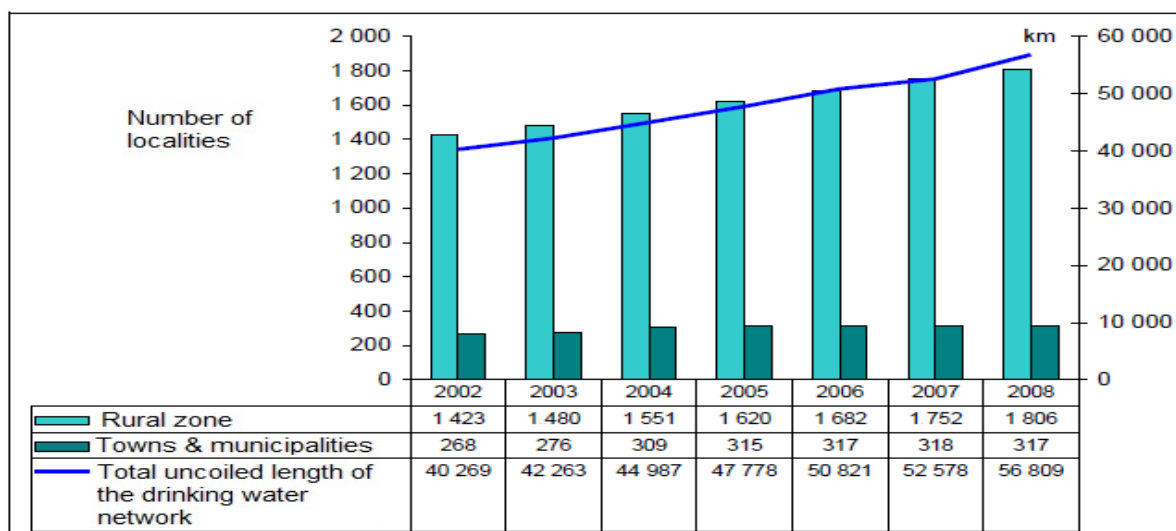
SOP Environment

16. The primary and secondary data sources of the review indicate that the economic crisis is generally regarded a temporary, macro-economically led phenomenon and not a basic shift in economic relationships or structures with fundamental significance for SOP ENV interventions.

17. **Priority Axis (PA) 1 Water/waste water sector.** According to the Statistical Year Book of Romania, at the end of 2007, the number of localities (municipalities, towns, communes) having installations for water supply was 2,070. The total length of the drinking water network distribution was 52,578 km. The evolution of the drinking water distribution network for 2002-07 is presented in **Figure 4**.

⁷ World Bank Functional Reviews – Transport sector (September 2010); Draft Public Expenditure Review Transport (July 2010), unpublished

Figure 4 – Evolution of the drinking water distribution network (2002-08)



Source: The Statistical Annual of Romania, 2009

18. Statistics for 2009 (Source ANAR) related to the level of wastewater treatment in Romania show that only about 23.6% of wastewater is treated in order to observe the quality requirements to allow them to be discharged into the environment. The rest of wastewater is treated insufficiently (44.2%) or not at all (32.3%).

19. As indicated in **Table 5**, among activities within the national economy generating waste water, the field of towns and communes' administration holds an important share:

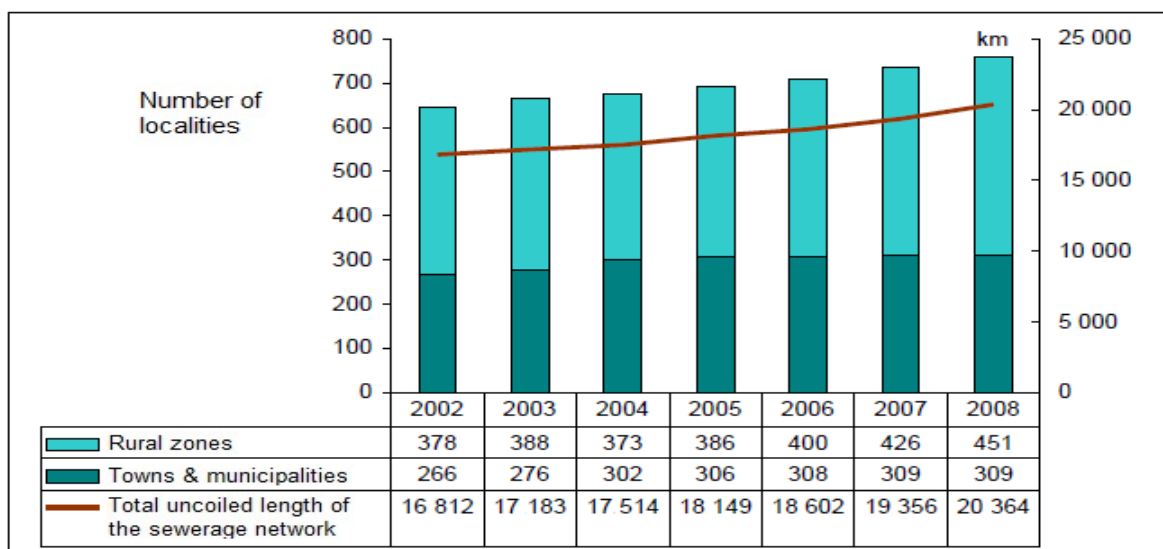
Table 5 – Distribution of waste waters by activities of the national economy

| Wastewater categories | generate | | requiring treatment | | without any treatment | | treated insufficiently | |
|--|--------------------------|-----|--------------------------|----|--------------------------|----|--------------------------|----|
| | mill. m ³ /an | % | mill. m ³ /an | % | mill. m ³ /an | % | mill. m ³ /an | % |
| Economic activity | | | | | | | | |
| Towns and communes' administration | 1,297 | 25 | 1,290 | 63 | 529 | 79 | 458 | 50 |
| Thermal & electric energy (cooling waters) | 3,497 | 67 | 378 | 18 | 7 | 1 | 313 | 34 |
| Engineering & metallurgical industry | 141 | 3 | 139 | 7 | 98 | 15 | - | - |
| Chemical processing | 129 | 2.5 | 120 | 6 | 28 | 4 | 41 | 5 |
| Others | 130 | 2.5 | | 6 | 7 | 1 | | 11 |

20. Out of 1,363 total waste water treatment plants (urban and industrial) investigated in 2009, 445 plants, representing 33%, operated adequately, the remaining 919 plants, representing 67%, operated improperly.

21. Compared with the period 2002-2005, the years 2006-08 saw a significant increase of the wastewater discharge distribution network, as shown in **Figure 6**. This trend followed the privatisation of the services in the domain. The private providers started to modernize and extend the wastewater discharge distribution network to reduce costs and attract more clients.

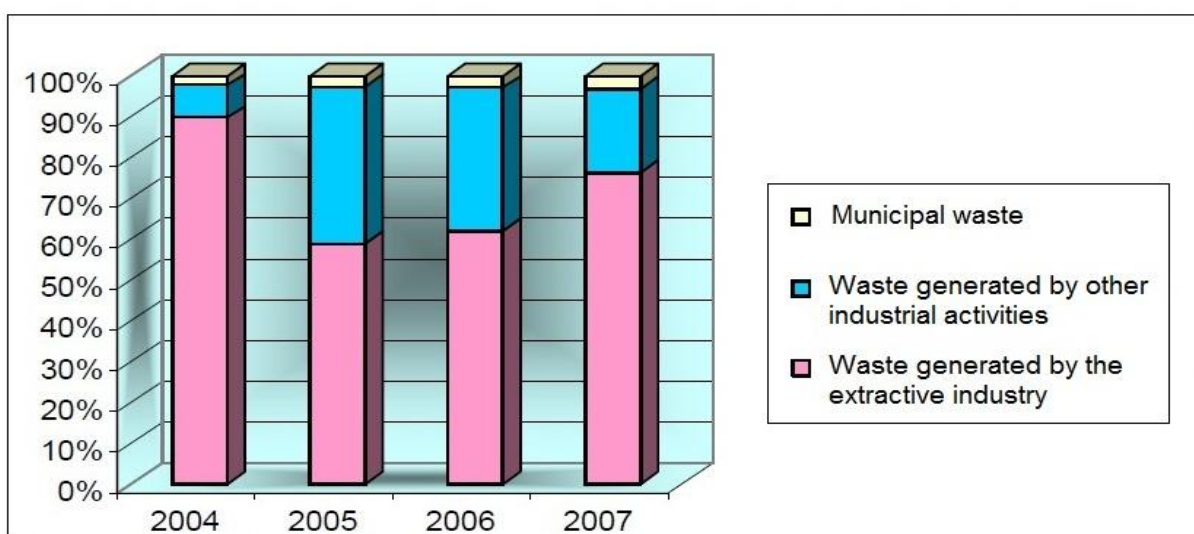
Figure 6 – Evolution of the sewerage networks (2002-08)



Source: The Statistical Annual of Romania, 2009

22. **PA2 Waste management.** Specific data and information related to waste generation and management are collected by the National Agency for Environment Protection annually or more frequently, according to relevant legal reporting requirements. As indicated in **Figure 7**, the evolution of waste generation actually followed the industrial trends.

Figure 7 – Evolution of the quantitative distribution of the main categories of waste (2004-07)



Source: The National Agency for Environmental Protection

23. As indicated in **Table 8**, the increase rate of municipal waste generation (kg/inhabitant/year), the integrated management of which represents the main objective within the PA 2, diminished over the period 2003-07 and increased again in 2008⁸.

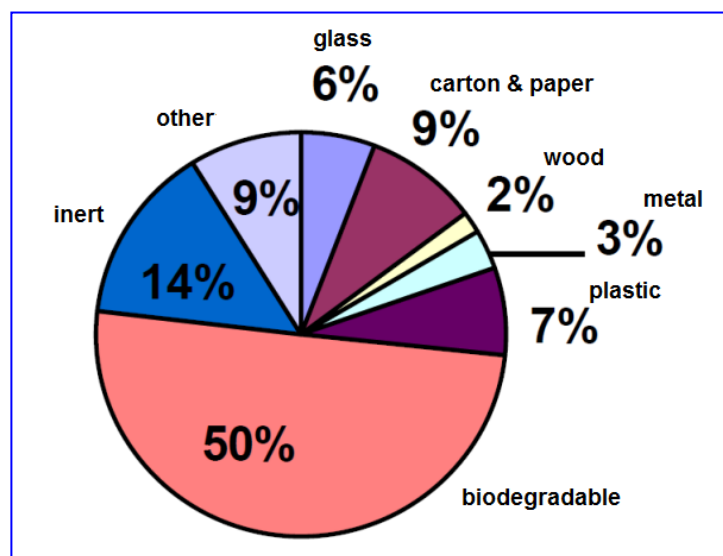
Table 8 – Evolution of the municipal waste generation

| Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|--|------|------|------|------|------|------|
| Municipal waste kg/inhabitant/year | 364 | 378 | 398 | 410 | 412 | 430 |
| Percentage (%) of increase compared to the previous year | | 4 | 5 | 3 | 0.05 | 4 |

24. Within the structure of the municipal waste in Romania, the highest percentage is held by the household waste (approx. 81%), while the street waste and the ones generated by constructions & demolitions hold about the same share – 10%, and 9% respectively. Over 90% of these wastes are disposed in landfills.

25. The composition of the household waste in 2008, as indicated in **Figure 9**, had around 50% of biodegradable waste; about 27% of it belongs to the recyclable category.

Figure 9 – Composition of the household waste (2008)



26. The management of the biodegradable waste in Romania remains a problem difficult to be solved. Although the last years showed a decrease of the biodegradable share within the municipal waste, from 72% in 1998 to 61% in 2002, and approx. 50% in 2008, the total quantity of biodegradable waste/head/year increased in this period of time due to the fact that the overall municipal waste generated augmented.

27. In Romania landfills remain the main option for municipal waste disposal (98% of the municipal waste generated within a year is disposed in landfills).

28. The evaluation of the existing landfills in 2004 revealed that 240 of them did not comply with the requirements of the EU relevant directive. During the negotiations on the environment chapter,

⁸ The official statistics are available only up to 2008.

Romania committed to cease disposal on 139 landfills until July 16, 2009 and on the remaining 101 municipal landfills between that date and July 16, 2017.

29. In practice, within 2004 - 2009, Romania ceased the activity on 135 noncompliant municipal landfills, at the end of 2009 remaining operational 101 noncompliant landfills mentioned above (having a transition period for compliance), plus other 4 noncompliant landfills that did not cease their activity until the deadline (**Table 10**).

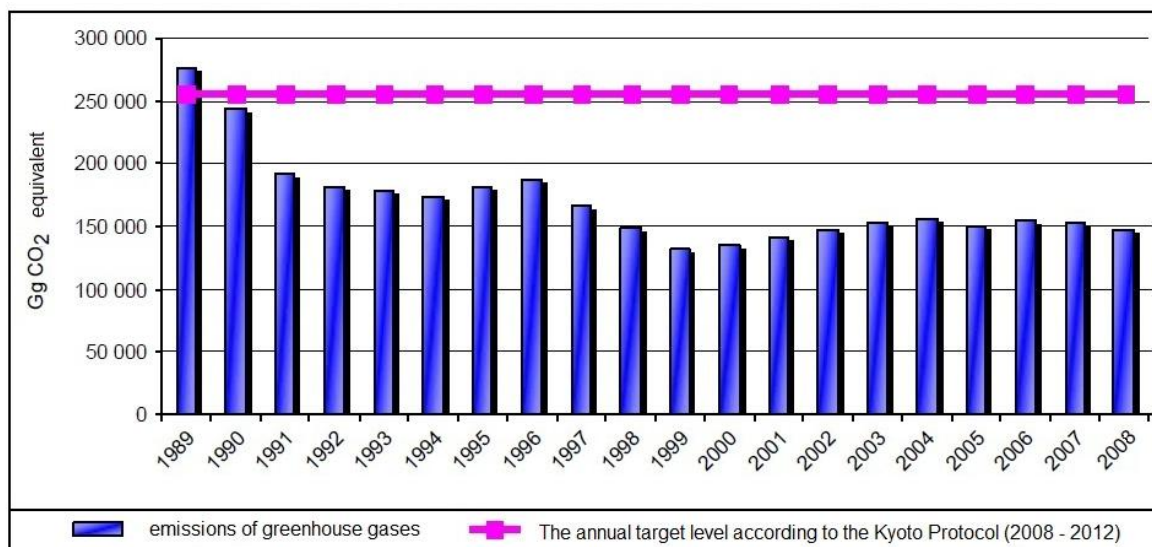
Table 10 – Quantity of disposed waste on the 101 noncompliant landfills

| | 2006 | 2007 | 2008 | 2009 |
|--|------|------|------|------|
| Quantity of disposed waste on the 101 noncompliant landfills (mill. tones) | 1.96 | 2.16 | 2.19 | 2.01 |
| Maximum admitted quantity according to the Accession Treaty (mill. tones) | 3.87 | 3.24 | 2.92 | 2.92 |

(Source: National Environment Protection Agency)

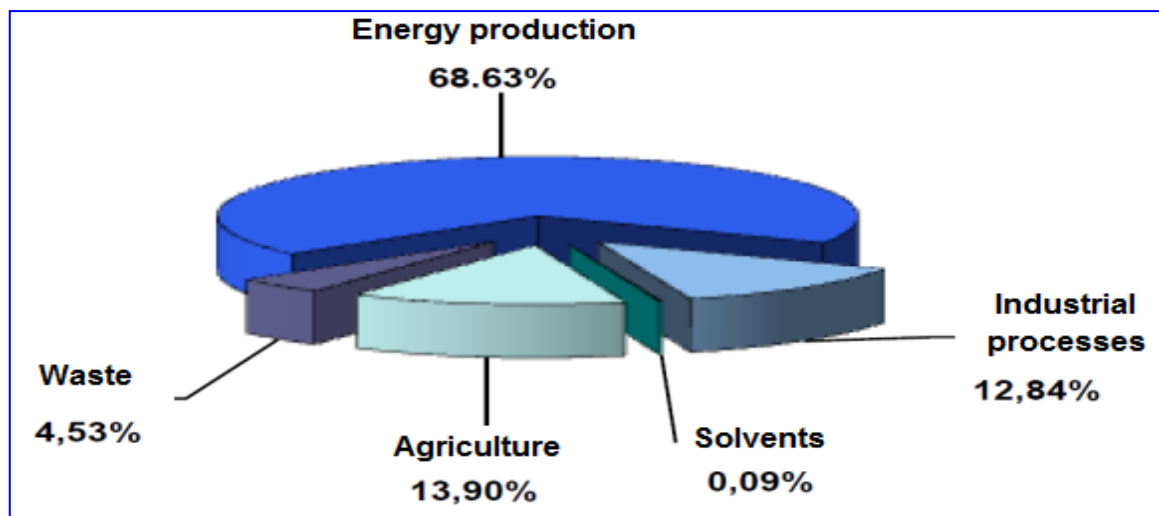
30. **PA3 Decrease of pollutants' emissions in LCPs (large combustion plants).** Of all emissions generated by the burning of fossil fuels in LCPs, much attention is given to the greenhouse effect gases. Due to economic mechanisms applied in Romania in the last 18 years, the levels of greenhouse effects emissions are situated much under the annual thresholds established according to the Kyoto protocol (**Figure 11**).

Figure 11 – Levels of the total emissions of greenhouse gases



31. As shown in **Figure 12**, in 2008 the energy sector had the highest contribution to the total emission level of greenhouse gases (over 68%).

Figure 12 – Contribution of economic activities to the total emission level of greenhouse gases (2008)



32. **PA4 Conservation and development of biodiversity sustainable development.** At European level, Romania holds the most diversified and valuable natural patrimony; the surface of the protected natural sites of national interest, related to the surface of the country is 7%, and the total surface of the Natura 2000 sites, related to the surface of the country is 17,84% (in 2009). The total surface of the natural protected areas in Romania covers approx. 20% of the country's area.

33. Biological diversity faces a continuous threat because of the intensification of economic activity, which puts increasing pressure on the environment. In particular, there is an increase of anthropogenic pressure in the form of increased land occupation, development of agriculture and economy, landscape and ecosystems change, natural space destruction, unreasonable soil use, and over-concentration of activities in sensitive areas having a high ecological value.

2.1.2 Relevance of the changes on the OPs (Q2)

SOP Transport

34. **Projects in the SOP T continue to remain relevant in the long run, beyond the economic crisis.** The routes of projects under PA1 are on the TEN-T axes, which will continue to represent a substantial share of the traffic in Romania, both national and international (e.g., on railways, 50% of the traffic is on the TEN-T axes, which constitute 20% of the infrastructure). Road projects under PA2 and other projects on EU technical specifications, while not effectively prioritized, are at least contributing to achieving Romania's commitments in the accession negotiations with the EU (Chapter 9 – Transport), e.g. for roads these should be open to international traffic and bear 11.5 t/axle loads; for railways the speed must be 160 km/h for passengers and 120 km/h for freight. Large investments in less visible, hence politically unattractive measures, such as traffic safety, signalling and traffic monitoring are usually neglected in national strategies and are therefore good candidates for SOP T. A KAI on inter-modal transport development, though another 'ideal' candidate for the SOP T in terms of complexity potential outcome (competition among modes for the most efficient alternative) has unfortunately been delayed, because of difficulties in setting up an appropriate institutional

framework (ref: **Section 2.3.2**). However, the discussion will be reopened in a broader context in the preparation of the next SOP T, in a more comprehensive approach (for several large cities on main corridors and involving more than just two modes).

35. **The most important – crisis-related – factor that could affect the relevance of the projects and priority axes is traffic variation.** The extent to which variations in traffic demand will impact on the economic indicators of major projects is difficult to ascertain, and is not being considered by beneficiaries and MA for the re-assessment of the current portfolio of projects. In economic terms, there are two possible impacts that must be considered:

- (i) **technical efficiency:** Does the financial net present value (NPV) of the present project remain positive?
- (ii) **allocation efficiency:** Are there other, potentially better projects (opportunity costs)?

36. Based on the two criteria, as explained below, **it is expected that the major projects on rail (PA1), the railway station rehabilitations (PA2) and some smaller road projects on PA2 would need a reassessment** to identify whether they continue to be relevant in economic terms. Such a reassessment may take place in 2012, when the possibility of reallocation of funds between projects and axes will be analysed by the MoT, together with the European Commission (EC). While this reassessment is necessary, as it will generate information for the future, it still will not be the only consideration for the reallocation of funds. The latter also depends on other policy constraints (e.g., in the case of rail projects the risks associated with the re-opening of a two-year discussion on technical specifications). The reasons why the above-mentioned projects have to be subject to reassessment on economic feasibility, whereas the other projects are expected to remain relevant, are summarized below.

37. **Roads.** On **technical efficiency**, the feasibility studies for roads include sensitivity tests for a variation of -20% in expected traffic. The projects that are selected for investments are those with a positive NPV, even under these conditions. Thus, since the drop in GDP has not been more than 7.1% and traffic/GDP elasticity is 1-1.1 (according to the assumption adopted in SOP T), all projects are expected to remain relevant, as long as the feasibility studies are sufficiently recent (i.e. not older than three years). In addition, Romania's need for road infrastructure development is not determined solely by economic growth, as indeed the SOP T correctly points out. Romania's infrastructure has experienced years of neglect, and the growth of road traffic and car ownership has exceeded substantially GDP-growth after 1990, when the strict regulations on car ownership/road transport and railway use for freight transport for distances over 50 km were abandoned. The lingering effects of this 'catching up' process are visible in the form expansion of car ownership even under the current crisis conditions and despite a temporary reduction in traffic, as indicated in **Figure 1** (e.g., the number of individual cars in use rose from 4 million in 2008 to 4.2 million in 2009)⁹. **Road traffic will be less influenced by a temporary GDP contraction in the next period and recover once GDP-growth resumes.** In addition, large investment projects have benefits accruing over at least 20-25 years, extending beyond the current crisis that affects transport operators. The major construction projects will also be finalized in several years, after the effects of the crisis will have been partly amortized.

⁹ Ref: www.mt.ro, Statistics.

38. It would be extremely difficult to capture the immediate effects of the crisis in terms of short-term traffic reduction, considering that the available capacity in the Romanian government for traffic forecasting is not yet refined enough. There is at present no adequate capacity for traffic forecasting in Romania across all transport modes, or even within each mode¹⁰.

39. In terms of **allocation efficiency**, the motorway projects on the European corridor (PA1) remain relevant in the long run, as there is also practically little 'competition' from alternative projects. The question is **whether the proposed projects under PA2 (bypasses for smaller towns – consultancy and construction, and the rehabilitation of certain sections of national roads) are or continue to be the most relevant use for the European Regional Development Fund (ERDF) resources**. While road projects under PA1 have remained as in the initial SOP T (an indication of continued relevance), some projects under PA2 have changed. According to the MoT the new projects were selected as they were eligible and more mature, and the bypasses were included for financing from ERDF (construction or preparation of bidding documents) following TA recommendations in respect of prioritising several bypasses. However, there is no indication whether the newly included bypass-related activities (bidding documents for 21 bypasses and construction of 3) have a higher priority than other potentially eligible projects under PA2, such as rehabilitation of other national roads.

40. **Rail**. The railways construction projects under PA1 are confronted with an atypical situation. Some of the sections on the European corridor were initially planned at a certain technical specification (160 km/h on 27-50% of total track length), but the final technical specification accepted by the EC after two years of discussion was much higher (160 km/h on about 90% of total track length)¹¹. This technical specification is in line with the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC). Applying this technical solution means 2.2 BEUR of additional cost, with potentially the same quantity of traffic. The economic internal rate of return (EIRR) at lower standards was 5.6%, just slightly above the limit of 5.5% for the project to be considered beneficial to the society in the expected traffic forecasts¹². Thus, on **technical efficiency**, the EIRR for the higher technical standard is probably much lower because of the higher costs and expected lower traffic, and does not justify the additional expense. Reportedly, EIB is not willing to co-finance one of the sections under the new technical specifications, while they would have accepted the lower standard, which is an indicator that the new solution is

¹⁰ Romania does not have the capacity to forecast multi-modal traffic. It is understood that the Transport Master Plan, a draft strategy prepared in 2008-2009 for the MT and supposed to prioritize projects for SOP T, has been rejected because of the failure to provide a solid traffic forecasting model. In roads, CNADNR's Centre for Technical Roads Studies (CESTRIN) makes 5-yearly traffic counts and employs various softwares for traffic forecasts. Unfortunately, these are not considered very reliable even within CNADNR. Recently, inputs to traffic forecasting in roads deemed valuable by CNADNR staff have been provided by JASPERS (Joint Assistance to Support Projects in European Regions) to national authorities. Feasibility studies for major road projects contain estimates made individual project, in the absence of a model that could be consistently applied. For rail transport, there is a general acknowledgement that projects proposed are not justified in economic terms, regardless of the crisis.

¹¹ The sections under debate in this phase were Radna (km 614)-Simeria and Sighisoara-Brasov, which will slip into SOP T 2014-20. The 2-year discussion and the approval of the design for the line also affected the 3 sections that will be prepared in due time to be financed and implemented in 2007-13+2 and which are actually the 3 contracts that were never an issue (since it concerned a line that could be upgraded to 160 km on the same alignment).

¹² This is based on secondary data collected from National Railways Company and EIB representatives..

suboptimal in economic terms, also in respect of **allocative efficiency**. Thus, the higher specifications would save relatively little travelling time (only about one hour), which would not attract substantial new traffic) at significantly higher costs and will use the resources allocated to the railways in two programming periods of SOP T, instead of just the current one. A better alternative might have been to accept lower speed specifications, use less financial resources and discuss with the EC to finance other projects (e.g., build a TGV line by 2025) within the financial envelope of the two programming periods of SOP T. Under the current technical solution and financial envelope, Romania will have only the Bucharest-Curtici line by 2025, while at the same time MoT cannot find the financing for adequate rolling stock for operators to travel at 160 km/h (passengers) and 120 km/h (freight). The EC has accepted the project to be split up for financing under two SOPs, otherwise the total Romanian contribution would have been much higher than if MoT had decided to finance the lower technical standards solution in full from state budget sources. In addition, judging by past experience, CFR will probably not have enough resources to ensure adequate maintenance and the lines could have speed restrictions several years after construction. A case in point is the Bucharest-Campina line, which was designed and constructed for 160 km/h, but on which the average speed is 100 km/h. The fact that the **rolling stock purchase included under KAI 2.2 Modernization and development of national railway infrastructure and passenger service was deemed ineligible for EC funding by DG Regio (because of state aid issues)** means that the operator (CFR Calatori) would have to purchase rolling stock for the 160 km/h speed, using own funds. This is unlikely, given its chronic lack of resources for upgrading its 30-year average old rolling stock. On top of this, since the railway line at the higher technical standards would be finished several years later (by 2022), when Romania would also have finalized the competing motorway on Corridor IV. Several additional years of rail speed restrictions during construction of the railway could contribute to the modal shift from rail to roads in the meanwhile.

41. Despite the fact that the above-mentioned rail construction projects are reportedly suboptimal in economic terms and will become even less relevant after the crisis, **it is debatable whether the rail projects on PA1 can be effectively reconsidered in 2012**. The debate on the technical specifications has taken two years, and the reopening of this sensitive issue might just lead to longer discussions and would delay the projects even more. Therefore, for the current SOP T, the technical solution agreed with the EC (three sections at the higher standards) remains in place not only for the reason of compliance with the European standards, as previously indicated, but also because it was considered that a more performant railway will compete with the motorway on the respective corridor

42. The last railways project under PA1 (ERTMS¹³ II Pilot, traffic monitoring), which is a pilot for future traffic monitoring along the entire rail corridor is relevant, to the extent that the design speed of 160 km/h is relevant in itself and not connected to the crisis.

43. The projects under PA2 consist of rehabilitation of railway stations and bridges. Bridges are important not only for transport, but also for safety reasons, so the crisis affects their relevance less. **The economic efficiency of the rehabilitation of stations must be carefully appraised, based on previous experience and future traffic forecasts**. Thus, in the past, CFR had a number of similar

¹³ Electronic Railway Traffic Monitoring System.

railway stations modernization projects (to attract traffic), sponsored by EIB or EBRD (e.g., Constanta, Brasov, Bacau, Suceava and Iasi). The modernization included commercial spaces that CFR could let to private companies to earn additional revenue. Since CFR decided not to let real estate below a certain price (but which was higher than what the market was willing to offer), the spaces remained empty and deteriorated rapidly, thus partly negating the benefits of modernization.

44. With regard to **waterways**, the Danube projects (KAI 1.3 *Modernization and development of water transport infrastructure along the TEN-T priority axis 18*) remain relevant, also in view of the objective to increase the market share of water (river) transport; KAI 2.3 *Modernization and development of river and maritime ports* (works on Constanta port) remains relevant in the long term, as well as the management system for traffic on the Danube.

45. The **air transport** projects are in too early a phase to assess. The EC recently approved the state aid scheme and the applicant's guide was finalized in 2010. The selection criteria for airports should be made strict enough to allow only the most relevant airports to benefit from financing, instead of spreading the available financial envelope thinly over too many airports with very low traffic.

SOP Environment

46. The changes in the socio-economic environment resulting from the economic crisis do not affect in any way the relevance of the interventions under SOP ENV. The needs identified during the programming period (investments included) remain as relevant as initially estimated. Needs analysis started from the requirements of compliance with EU environment standards, being agreed through the Accession Treaty and this is not connected to the economic crisis.

47. The economic climate may influence SOP ENV to some degree as follows:

- The composition of municipal waste regarding the share of some components (e.g. the quantity of construction waste could be bigger in economic growth periods, as well as the electric and electronic waste; under economic crisis conditions, the above mentioned types of waste may decrease to a certain degree);
- The capacity of state-owned or private companies to observe the deadlines established through the compliance programmes that are conditioning the operation permit or through internal management programmes.

48. It is possible to carry out all investments estimated to be necessary for achieving the applicable objectives through implementation of projects in the pipeline, the major ones being prepared with TA. Under these circumstances, all KAIs remain relevant for SOP ENV.

49. KAI 2.2 *Rehabilitation of historically contaminated sites* is no longer highly relevant, for reasons unconnected to the current economic situation, but rather to as a consequence of national legislation and ownership of historically contaminated lands. The contaminated lands are usually large former industrial sites, which are predominantly privately owned. Unless local authorities are the owners of the sites, interventions on these sites are not eligible under SOP ENV. However, the potential beneficiaries for SOP ENV (public authorities) do not have the *capacity* to apply for and make use of all the funds allocated to this purpose.

50. The database of historically contaminated lands was created with EU pre-accession assistance. Out of 1,800 sites, local authorities own only six. Applications for three sites to be financed under SOP ENV were under preparation. When funds were allocated under the PAs, these figures were not known. The three projects cover only a part of the allocated funds. For the balance of funds available, there are two possibilities: either to reallocate it to KAI 2.1 *Development of integrated waste management systems and extension of waste management infrastructure*, or to elaborate three more applications for the remaining contaminated sites. The later option presumes local authorities' willingness to advance the cost of preparation, for reimbursement once the projects are approved and contracted.

51. Due to a large variety of historical pollution correlated with an even larger diversity of geological environment, each combination of these factors requires a specific solution. It is therefore inappropriate to approach the rehabilitation of historically contaminated sites through pilot projects, as they mostly cannot be replicated.

2.2 Consistency

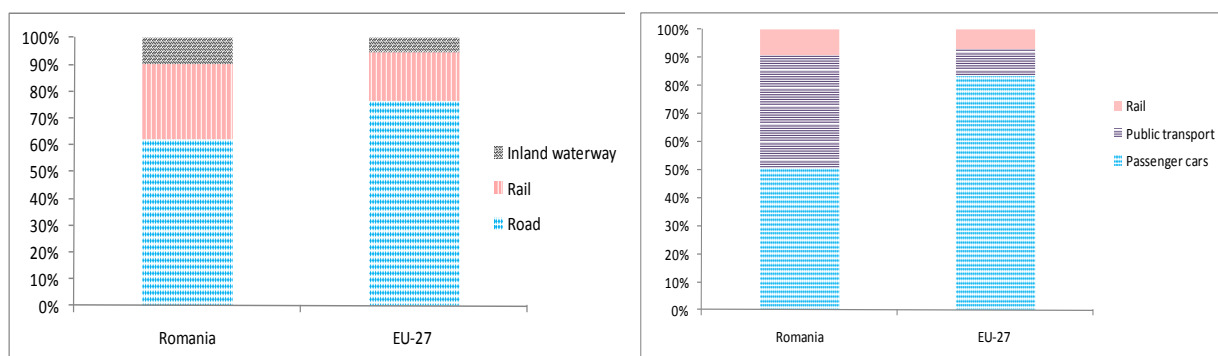
2.2.1 Complementarity of the implementation (Q3)

SOP Transport

52. The implementation to date of the projects among the PAs is not complementary. The railways, air and naval transport projects lag far behind the preparation of projects in the roads sector (ref: **Section 2.4**). While this is partly a problem of effectiveness of the management system and reflects differences in this respect among the entities involved, it affects the outcome of the implementation of the entire SOP T.

53. Over the past two decades, a modal shift from rail to road traffic has taken place also in Romania, even though the share of rail transport still remains higher than the average for the 27 EU Member States (EU-27) [ref: **Figure 13**].

Figure 13 – Share of rail transport – comparison with EU-27

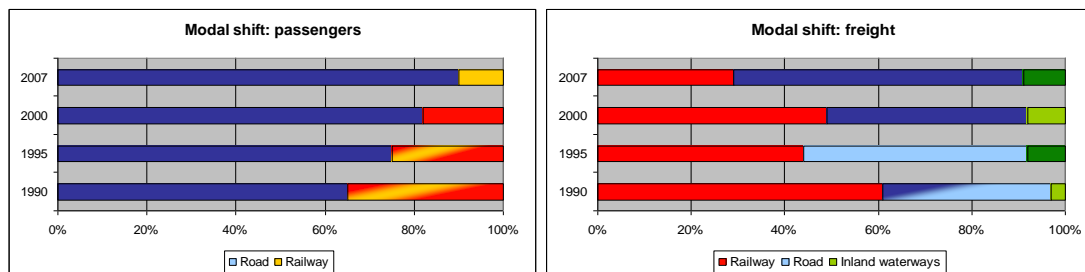


54. The total railway traffic volume in traffic units (ton/km plus passenger/km) decreased by 52% between 1995 and 2008. The railway traffic composition in terms of the ratio between passenger and freight traffic changed from 40/60 in 1995 to 30/70 in 2008. At the same time, the trend in the EU is to support rail transport for its benefits (safety and reduction of pollution). The EU has set as an objective to bring back or keep railway market shares around 15% for freight and 10% for passengers

by 2015 across all EU member states. In Romania the market share of railways is 28% for freight and 9% (already below target) for passengers¹⁴ (ref: **Figure 14**). Both will continue to decline (by 1.5% per year according to CFR estimates), for passengers because of travel conditions and for freight because heavy industry (e.g. mines) will continue to undergo restructuring. The fact that railway projects have been substantially delayed compared to roads, combined with the fact that the originally envisaged rail construction programme will now be finalised under two programming periods of SOP T (instead of one), **reinforces the already strong shift of traffic from rail to road**.

55. The pace of preparation of rail projects under the SOP T has increased in the second half of 2010, and by the end of the year the total amount of projects submitted by CFR may be expected to cover the full financial envelope of the PAs. There remains a risk at the later stages (approval, contracting, implementation), in that it is possible that the problems in these later phases in railways may prompt the Romanian Government to seek a reallocation of funds from the rail to the roads sub-sector in the future, if railways projects should prove not mature enough.

Figure 14 – Modal shift from rail to road in the past 20 years, passengers and freight



SOP Environment

56. The objectives of the SOP ENV are fully correlated with the *National Strategy for Waste Management* and with *the National Strategy for the Sustainable Development of Romania. Horizon 2013 – 2020-2030*. The projects related to PAs 1 and 2 are complementary at the level of water resources quality improvement by reducing the intake of pollutants in groundwater aquifers and surface waters, while the projects related to PA1 are complementary, in principle, with the objectives of PA4 at the level of habitats quality improvement as it relates to aquatic ecosystems.

57. The complementarity of the PA4 objectives with the ones of KAI 5.1 *Protection against floods* will materialise only if the project solutions for combating floods effects take into account the conservation of involved watercourses ecosystems' functionality. Similarly, the complementarity of the objectives of PA4 with the ones of KAI 5.2 *Reduction of coastal erosion* will be ensured if the projects developed under this KAI have in view the improvement of habitat conditions for the main sand source for the beaches located south of Eforie (in respect of the mollusc populations on the Black Sea continental shelf).

58. SOP ENV covers a few areas of interest for regional development. That is why SOP ENV funded projects are complementary to most other OPs, thus contributing to the development of regions as a whole. KAI 2.1 *Development of integrated waste management systems and extension of waste management infrastructure* finances large infrastructure projects for waste management. The

¹⁴ World Bank, 2010

National Rural Development Programme (NRDP) finances small local infrastructure projects for rural areas (especially facilities of selective waste collection and local composting stations). PA3 finances Large Combustion Plants (LCPs) related to municipal heating systems owned by local authorities, whilst the OP for Increasing Economic Competitiveness (SOP IEC) finances LCPs that supply electricity to the national energy system. The same complementarity is between the PA1 of SOP ENV and the measure 322 of the NRDP, related to the infrastructure of waste water. In fact, there is a protocol in place in order to avoid double financing.

59. The Regional Operational Programme (ROP) assists – in the context of its PA1 *Support of Sustainable City Development* – the rehabilitation of historically contaminated lands in urban growth poles, where owners are private entities. This is complementary with SOP ENV PA2, KAI 2.2 *Rehabilitation of historically contaminated sites* (ref: **Section 2.1.2**).

2.2.2 Coherence with recent major relevant policies/strategies (Q4)

SOP Transport

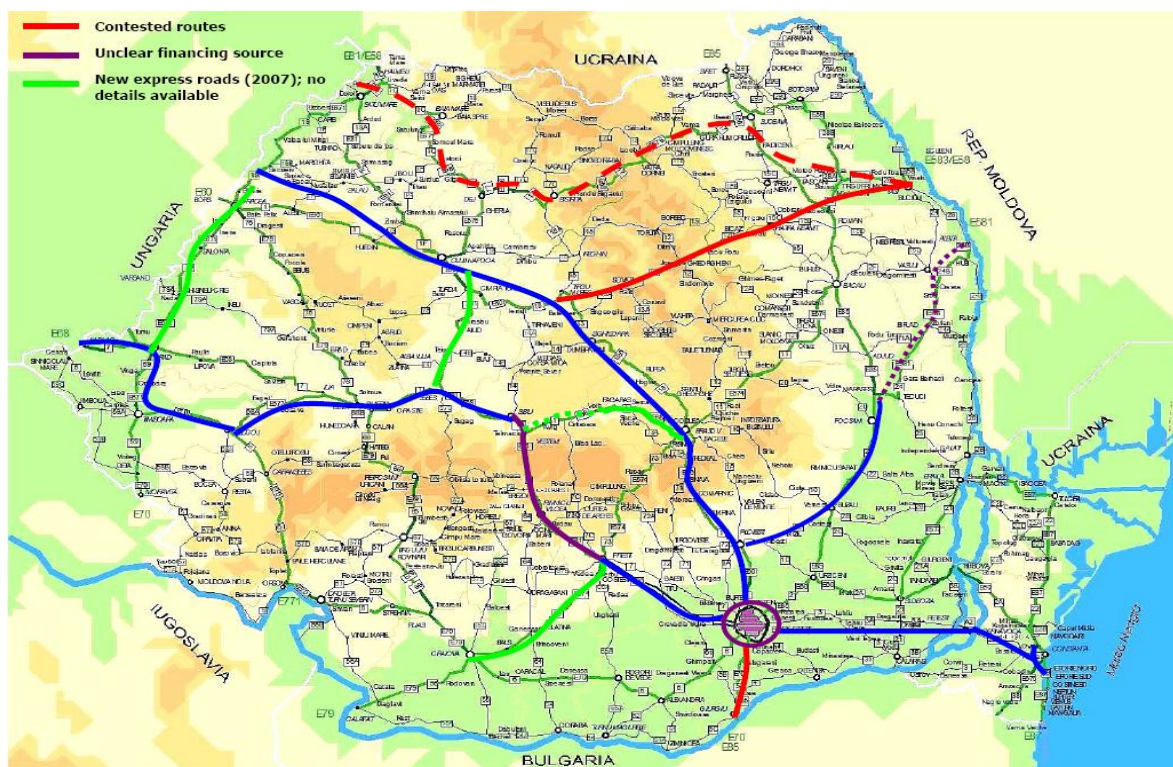
60. There are substantial issues in terms of relevance and economic benefits, particularly issues with regard to economic justification (ref: **Section 2.1.2**). But beyond economic relevance, a major benefit of the SOP T is the **stabilization effect on transport strategies**. In a volatile political environment like in the Romanian transport sector, this effect is critical for the finalization of major investment programmes, which take at least 5-7 years from the planning stage to the final delivery of the works.

61. The transport sector has had serious problems of implementing long-term strategies, an issue highlighted in all reports on the institutional setup of the sector¹⁵. Even with the delays and issues highlighted in the current report, **SOP T remains one of the very few programmes in the transport sector, which is pursued consistently, beyond one electoral cycle**. It is also the only programme that considers all modes of transport in a single package. Before the advent of SOP T there was no previous comprehensive and stable strategy for the transport sector. An attempt in 1998 to implement a Master Plan was immediately abandoned. Various strategies of different ministers such as the 2003 strategy, still on MoT's website, was abandoned within two years from elections (ref: **Figure 15**). Past experience shows that even on a single mode, only the programmes benefiting from external assistance or subject to external conditionality are actually pursued in the longer term (e.g., the rehabilitation of national roads in 15 stages, financed by IFIs and from the national budget, which started in 1994 and is currently at stages 4-6).

62. Because of all the above, the drive for full absorption of funds could actually be hazardous, if taken to extremes (ref: **Section 2.3.2**). The attempt to absorb funds in full without proper attention given to the overall programme outcome (targets and objectives) would push for an unbalanced focus on faster disbursing KAIs instead of on transport sector development priorities. This could undermine the internal coherence of the SOP T, with – since it is the only strategic foundation – very substantial impact on the long-term development in the sector.

¹⁵ World Bank, Romanian Academic Society, Romanian Center for Economic Policies.

Figure 15 – Alternative routes related with different motorway strategies



63. The EU-funded projects are the most stable. For all others projects (such as those not on EU corridors, financed from own budget sources or by proposed public-private partnerships, and express roads) the terms are changing frequently, generally within less than one year (alignment, financing, opportunity and connection to strategy). For example, the expressways plans proposed in 2007 were abandoned completely after 2008, whilst the Pitesti-Sibiu segment of motorway on TEN-T 7 is no longer proposed to be a public-private partnership (since it is now considered unrealistic because of high costs and the risks attached).

64. SOP T could trigger some action in the preparation of other, complementary, but never properly prepared strategies. For example, the roads and railways sub-sectors have never had comprehensive and prioritized maintenance strategies, despite substantial efforts (supported by the World Bank and various consultants)¹⁶. Such strategies are now required by the SOP T, which creates an opportunity to finally rationalize maintenance. In terms of effectiveness of EU conditionality, the EC has managed to push for a clear commitment to establishing a toll policy for motorways. This was a requirement for EC approval of the request for financing of the Arad-Timisoara motorway (PA1, KAI 1.1 *Modernization and development of road infrastructure along the TEN-T priority axis 7*). The

¹⁶ The major cause for the incapacity to prepare a feasible, prioritized maintenance strategy in both roads and railways is the persistence of 'normatives', and the budgetary practice to ask for more and get less. The maintenance programmes in roads and railways are based on normative principles such as 'every road needs resurfacing every 5 years' – regardless of traffic and deterioration, and 'each track of characteristic X or sleeper must be replaced every 3 years'. The resulting programmes are unrealistic and financially unsustainable, and there is no incentive for prioritization (particularly in railways, where improper maintenance is also a risk for safety and in case of an accident the person who has not requested funding for repairs is criminally liable). Therefore, the financial allocation for maintenance for roads is typically 1/3 to 1/2 of the requested budget, whereas for railways it is under 10%.

purpose was to ensure the maintenance of motorways financed from the Cohesion Fund and ensure that if CNADNR realises net profits, these will be deducted from the construction budget and reduce the EU-grant and budget co-financing contributions proportionally. The fact that now MoT finally has to clarify the toll (road user charges) policy is crucial for the transport sector, as it creates the prerequisites for redefining infrastructure financing in a more coherent fashion.

65. Regarding the practical coordination with other projects and strategies outside the transport sector, the only coordination evidence is that the MoT has representatives on the Monitoring Committee (MC) of ROP and provides information on existing projects relevant to development poles.

SOP Environment

66. Operations financed through SOP ENV observe the principle of sustainable development and were selected on the basis of a long-term development strategy for the sector, which takes into consideration the economic, social and environment dimensions in an integrated way. SOP ENV operations are compliant with EU environment policy objectives in respect of conservation, environment quality protection and improvement, rationalisation of natural resources use, as well as human health protection.

67. Projects financed through PA1 and PA5 have to observe the European Directives specific to each field (including, respectively, the Water Framework, Waste Framework, Habitats, Wild Birds Conservation, Limitation of Certain Pollutants Generated by LCPs and Flood Management Directives).

2.2.3 No actual overlaps (Q5)

SOP Transport

68. SOP T is fortunate in that, from an overlap perspective, most major projects were known well in advance of the preparation of the programme and project selection is not based on competition between beneficiaries. The **coherence and avoidance of overlaps with other EU and national programmes was checked during the programming phase of SOP T**. The approved version of the projects also considered the ROP projects, the links with the NRSF and other strategies or projects financed from national sources.

SOP Environment

69. The 2009 Implementation Annual Report pointed out several cases (in particular in the water sub-sector) of *potential* overlaps between projects financed through SOP ENV and projects financed by different institutions and financing sources (including the Ministry of Regional Development and Tourism, MRDT – Investment National Company, MRDT – Phare Programme, Chancellery of Prime Minister – Ordinance 7/2006, Ministry of Environment and Forests – Environment Multiannual Programmes and the Environment Fund Administration). In order to avoid overlaps and correlate investments, adjustments and even changes of technical solutions within projects have been made. The MA and IBs managed to avoid 'double-financing' situations. However, considerable delays have been experienced with regard to finalising applications, especially because of the lack of ownership of projects on the part of local authorities.

2.3 Effectiveness

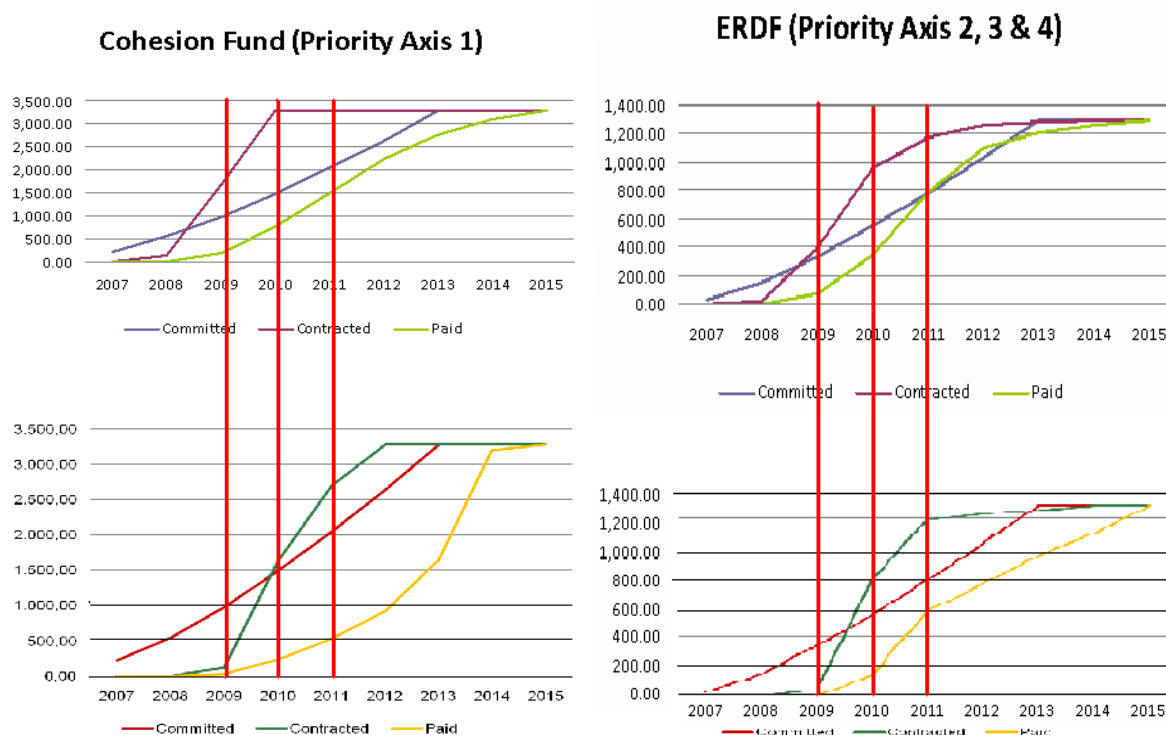
2.3.1 Actual progress in implementation (Q6)

SOP Transport

70. SOP T is clearly delayed compared to initial progress estimations. **Figure 16** compares, as an example, the expectations formulated at the MC meeting in November 2008 (top) with the expectations at the latest MC meeting in June 2010 (bottom). While the MC discusses progress and takes note of the projects or KAIs not launched, its expectations with regard to the project pipeline and absorption seem to reflect the slowest acceptable evolution to ensure full absorption, instead of **actual implementation capacity** (as observed by the EC representative during the June 2010 meeting of the MC).

71. The latest Annual Implementation Report (2009) does not include values SOP T targets, except the length of railway lines to be upgraded by 2015 (180 km). The expectation is that a new consultancy will be contracted by end-2010 to revise these targets and propose some intermediary figures for the remaining years. But the current assumption on which the MA and beneficiaries operate is that the measure for success of the SOP T implementation is full absorption, which could explain why there is little sense of urgency for the redefinition of the OP's targets.

Figure 16 – Differences in plans from November 2008 vs. June 2010



72. The following indicators have been used to illustrate the factors that influence progress, based on the model used in the NSRF Evaluation report¹⁷:

- popularity ratio (requested grant/allocation);
- admin processed ratio (admin processed grant (under evaluation and approved)/requested grant);
- approval ratio (approved grant/admin processed grant);
- contracting ratio (contracted grant/approved grant);
- payment (advance or re-imbursed) ratio (paid grant/contracted grant);
- absorption ratio (re-imbursed or pre-financed grant/allocation in the period 2007-10).

Table 17 – Process factors influencing progress of the PAs and KAIs for SOP T (%), as of October 15, 2010

| Priority Axis/Key Area of Intervention | Popularity ratio | Admin Processed Ratio | | Approval Ratio | | Contracting Ratio | | Payment Ratio | Absorption Ratio |
|--|------------------|-----------------------|------------|-----------------|-----------|-------------------|-----------|---------------|------------------|
| | | No. of projects | Grant | No. of projects | Grant | No. of projects | Grant | | |
| PA 1/KAI 1.1. Roads TEN-T 7 | 190 | 100 | 100 | 33 | 9 | 100 | 100 | 30 | 5 |
| PA 1/KAI 1.2 Railways TEN-T 22 | 130 | 100 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| PA 1/KAI 1.3 Water transport TEN-T 18 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PA 2/KAI 2.1 National roads | 252 | 92 | 97 | 73 | 60 | 63 | 72 | 0 | 0 |
| PA 2 / KAI 2.2 National railways | 28 | 100 | 97 | 17 | 28 | 0 | 0 | 0 | 0 |
| PA 2/KAI 2.3 Ports | 156 | 100 | 101 | 40 | 80 | 100 | 100 | 0 | 0 |
| PA 2/KAI 2.4 Air transport | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PA 3/KAI 3.1 Inter-modal transport | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PA 3/KAI 3.2 Safety | 46 | 100 | 98 | 83 | 34 | 100 | 100 | 4 | 1 |
| PA 3/KAI 3.3 Environment mitigation | 227 | 100 | 100 | 25 | 1 | 100 | 100 | 49 | 1 |
| PA 4/KAI 4.1 TA for SOPT | 2 | 89 | 100 | 100 | 100 | 100 | 9 | 8 | 0 |
| PA 4/KAI 4.2 Publicity SOPT | 13 | 100 | 100 | 100 | 100 | 100 | 100 | 1 | 0 |
| TOTAL 15/10/2010 | 140 | 96 | 100 | 57 | 16 | 86 | 83 | 10 | 2 |

NB: Absorption ratio = popularity x admin processed x approval x contracting x payment

¹⁷ Ministry of Public Finance, Authority for Coordination of Structural Instruments (ACIS), Conducting evaluations for the Period 2009-10: First Draft of NSRF Evaluation Report, June 2010.

73. While the other administrative processes of the OP seem to support progress, the major bottlenecks for absorption as of October 2010 seem to remain the approval and payment ratios¹⁸. However, the relatively very low approval and payment ratios in comparison with the popularity ratio must be interpreted with care: as previously explained, it signals a drive for absorption and submission of major projects in the past year. We can expect the approval and contracting ratio to improve in 2011 after the finalisation of the evaluation of newly submitted projects. To ensure that these ratios indeed improve, attention must be paid to the capacity of the staff and departments that are involved in the evaluation, approval and contracting processes. Contracting and payments also depend on available financing; even though the MoPF wants to improve the absorption of EU funds, the implementation of a MTEF means that MoPF, MoT and beneficiaries need to have stable budgets during the year and not have to rely on ad hoc budget amendments.

74. In terms of popularity, the situation has improved significantly since the cut-off date of the NSRF evaluation (June 30, 2009), when the value of submitted projects amounted to only 14% of total allocation. This indicates the drive for full absorption, which however might not be the best long-term solution. The popularity ratio indicates a wave of new projects submitted for financing under SOP T in the course of 2010 (e.g., a total of 1.38 billion EUR have been submitted in January-October 2010 under PA1 railways alone), which are currently under evaluation.

75. With regard to the large KAIs, the current total of projects submitted exceeds the total allocation (the exception seems to be KAI 2.2 *Modernization and development of national railway infrastructure and passenger service*, but CFR envisages to submit additional projects that will cover the allocated amount in full by the end of the year). The KAIs with lowest popularity (and which might trigger the need for reallocation after the discussion with the EC in 2012 or could extend in the next SOP T) remain:

- water transport on TEN-T 18 (KAI 1.3 *Modernization and development of water transport infrastructure along the TEN-T priority axis 18*). This KAI will very likely need reallocation after the discussions with the EC in 2012, particularly because of the environment issues expected to appear on Portile de Fier II Calarasi and Calarasi Braila second phase (ref: Box 16);
- air transport (KAI 2.4 *Modernization and development of air transport infrastructure*), where the guide for applications has been finalized in 2010 after discussions on state aid and the amount allocated is relatively small;
- inter-modal transport (development of logistics for transfer of traffic from one transport mode to another). The main issue with this intervention area has been one of clarifying the institutional framework to establish ownership for the project (local, from local authorities, or national, from beneficiaries CFR and CNADNR). The amount is very small, but the project objective is critical for the development of a competitive transport infrastructure (facilitating choice for the most efficient transport mode). This KAI will be launched in 2011. It is foreseen that funds from this KAI will be reallocated and by the next SOP T the approach is likely to be amended (instead of focusing on inter-modality, a broader policy would be followed, meaning the development into

¹⁸ Since then, one major project has been approved by the EC – Arad Timisoara, 124 MEUR.

hubs for all transport modes of some major cities on main corridors – Bucharest, Constanta and Timisoara).

- the TA for transport (KAI 4.1 *Support for effective SOPT management, implementation, monitoring, and control*) needs to be allocated soon to ensure that beneficiaries have the capacity to implement projects; the MA and beneficiaries are proposing lists of needed TA by end-2010.

SOP Environment

76. There is progress with regard to the establishment of structures, procedures and practices related to implementation. In most cases, there has been good progress in launching calls and in obtaining responses to these calls. Still, responses to calls have been quite variable, with some calls heavily over-subscribed and others under-subscribed.

77. After a slow start and long delays, progress in processing applications has improved and is moving towards the point of being reasonably effective. Moving approved projects through to contracting stage has also improved, although the crisis is seen as creating hesitation on the part of some applicants with regard to both contracting and initiation of implementation.

78. The financial progress of SOP ENV can be measured at a number of stages: value of applications, value of approvals, value of contracted projects and value of actual payments (**Table 18**). These values can be compared either with the allocation for the whole period or for the allocation for the years 2007-10¹⁹.

79. Although the cut-off date for the present review is August 31, 2010, the MA for SOP ENV preferred to present the most recent implementation status, due to progress made since the cut-off date.

Table 18 – Process factors influencing progress of the PAs and KAIs for SOP-ENV (%)

| <i>Priority Axis/ Key Area of Intervention</i> | <i>Popularity Ratio</i> | <i>Admin Processed Ratio</i> | <i>Approval Ratio</i> | <i>Contracting Ratio</i> | <i>Payment Ratio</i> | <i>Absorption Ratio</i> |
|---|-------------------------|------------------------------|-----------------------|--------------------------|----------------------|-------------------------|
| PA 1/KAI 1.1 Extension and modernization of water and wastewater systems | 212 | 100 | 47 | 100 | 16.8 | 16.7 |
| PA 2/KAI 2.1 Development of integrated waste management systems | 158.2 | 100 | 30.8 | 100 | 8.9 | 4.3 |
| PA 2/KAI 2.2. Rehabilitation of historically contaminated sites | 0 | 0 | 0 | 0 | 0 | 0 |
| PA 3/KAI 3.1 Restructuring & Renovating Urban Heating Systems (hot-spot) | 203.3 | 100 | 45.6 | 69.1 | 0 | 0 |
| PA 4/ KAI 4.1 Implementation of Adequate Management Systems for Nature Protection | 278.6 | 50 | 64.6 | 27.3 | 10.4 | 2.6 |
| PA 5/ KAI 5.1 Implementation of adequate infrastructure for Natural Risk Prevention | 141.8 | 100 | 0 | 0 | 0 | 0 |
| PA 5/KAI 5.2 Protection and rehabilitation of the Black Sea shore | 8.2 | 100 | 100 | 100 | 0 | 0 |

¹⁹ Allowing for the fact that 2010 was not finished when the data were collected.

| | | | | | | |
|--|--------------|-------------|-------------|-------------|-------------|-------------|
| PA 6/KAI 6.1. Technical support for the management and evaluation of SOP Env | 65.8 | NA | NA | 68 | 7.4 | 3.3 |
| PA 6/KAI 6.2. Technical support for communication and publicity | 49.9 | NA | NA | 47.9 | 37.9 | 9.05 |
| TOTAL – 31/08/2010 | 182.1 | 72.5 | 58.9 | 94.6 | 15.3 | 11.3 |
| TOTAL – 30/09/2010 | 187.8 | 72.6 | 59.4 | 94.8 | 15.1 | 11.6 |

80. A comparison with the situation at the cut-off date (31 August 2010) shows the following differences:

- under PA2, one more project was approved out of the total projects under evaluation;
- under PA4, nine more projects were approved and ten more contracted.

81. As presented in **Table 18**, compared to the funds allocation for 2007-10, the value of applications submitted reached 188% for SOP ENV as a whole. Out of the total of applications submitted, 59.4% were approved. Of the projects approved, 95% projects were contracted. Payments, however, have so far reached only 15.1% of the contracted projects. The absorption rate at the cut-off date (30/09/2010) was 11.6%. This highlights the fact that a crucial issue now is the outlook for actual absorption. Causes that led to the relatively low values of process indicators presented above are detailed in the next sections.

2.3.2 Progress to date leading to achievement of OP objectives (Q7)

SOP Transport

82. If full absorption in terms of the N+2/N+3 rule is the goal of the MoT, then it can be achieved. The projects proposed for the SOP T cover the full envelope of the programme, and under the ERDF there is a chance of over-contracting in 2014. If not all of these are approved by the EC in time for full implementation, three options remain:

- propose substantial revisions of allocations on axes and KAI in 2012, when there will be a joint reassessment with the EC of the SOP T axes.
- 'bridge' projects (projects that overlap two SOP Ts and are split into two parts) – similar to ISPA experience, under which projects not finalised by applicable ISPA deadlines were moved to SOP T, it might be possible to split some projects at the end of the current SOP T, support their first stages from the current SOP T and their following stages from the next SOP T (this might well apply to the Lugoj-Deva motorway section, to be submitted for EC for approval in 2011).
- inclusion in SOP T of projects that are currently envisaged to be financed from other sources (including the national budget). They only have to meet eligibility criteria and be contracted under the national rules applicable also to EU projects. In other words, the beneficiaries can submit a financial application on such projects for EU financing, even if they were already started with other financing, provided these meet the eligibility requirements.

83. However, full absorption *per se* should not be the ultimate goal of SOP T, but the achievement of certain output/outcome indicators relevant for the entire SOP T programme as a coherent package, or at least the progress in the achievement of physical targets. So far, there are no

intermediary targets, and the initially set final targets are now under reassessment (ref: **Section 2.3.1**). Not focusing on such programme targets could undermine the balanced implementation of the SOP T and favour the better performing or disbursing KAIs to the detriment of those lagging behind, in the interest of using resources as opposed to achieving agreed targets.

SOP Environment

84. All projects under implementation are in accordance with objectives established in the OP for each PA. The existing projects were designed in order to reach OP objectives. Project specific objectives are agreed with the EC in the financing contracts and are in line with those objectives.

85. Many initiatives have been taken over the last year in order to overcome obstacles, such as improvement of procedures, enhancing communication between actors and an accelerated decision-making process. Consequently, increased progress may be expected.

86. Taking into account the fact that a higher number of applications have recently been submitted, the MA for SOP ENV considers that it is likely that OP objectives can be achieved under application of the N+3/N+2 rule. Indeed, based on the evidence with regard to the application submission and contracting ratios it is likely that the OP objectives will be reached. Still, the payment ratio indicates that there are bottlenecks in implementation. The secondary and primary data collected during the review show that the problems encountered are mainly related to the public procurement procedures, which generate delays in contract implementation and, ultimately, the achievement of OP objectives.

87. **PA1** is progressing at a satisfactory level, mainly because the elaboration of most PA1 projects had started already in 2004 and represented the basis for the implementation of the OP. According to the MA for SOP ENV, additional funds are required to respond to the large existing needs in the water and wastewater sub-sectors.

88. Progress with regard to **PA2** reflects previous experience gained through ISPA TA projects, which has helped beneficiaries to prepare a sound pipeline of solid waste management projects. Investment in solid waste is financed on the basis of development of Master Plans, which form part of application documentation and incorporates lessons learnt in the pre-accession period. Related to KAI 2.1 there are important aspects that are not available in some of the Master Plans, which may have a negative effective on the project implementation and sustainability. These include: (i) availability of specialised companies to recycle plastic, metal or paper waste; and (ii) utilisation of the compost produced in other location than rural households.

89. **PA 5** is progressing quite slowly. Progress with regard to project submission under KAI 5.1 *Protection against floods* is very slow compared to the political importance of controlling flood damage. As for KAI 5.2 *Reduction of coastal erosion*, currently there are no projects related to coast erosion control. KAI 5.2 objectives neither considering the biological dimension of the problem nor take into account the almost exclusively biogenic source of the beach sand²⁰ south of Eforie Sud. The coast erosion on Romania southern coast derives from ecological imbalance of the sea biocenosis²¹

²⁰ Sand created by the crushing of shells by wave action.

²¹ All plant and animal organisms populating an ecosystem.

within the adjacent continental shelf, therefore the problem could be approached through projects developed within PA4. A Master Plan defining technical solutions for coast erosion control is under elaboration.

2.3.3 Factors contributing to the gap between actual and planned performance (Q8)

SOP Transport

90. The **internal factors** that affect project implementation mainly relate to staffing, staff turnover at management level and risk aversion.

91. *Staffing* issues refer to work overload, demotivation after the recent pay cuts in response to the crisis and shortage of personnel. There are no unitary human resources policies within the MA and the beneficiary companies, which would ensure proper and timely SOP implementation. The quality and number of staff is crucial for effective project preparation and implementation and the differences in pay and work conditions lead to high turnover and even migration from SOP T responsible departments and to other units inside the same organization. Thus, MA staff has relatively low salaries and receive the 75% bonus. However, their salary is subject to the 25% cut implemented in the summer of 2010. By decision of their respective boards, staff in the companies (CNADNR, CFR) no longer receive the 75% bonus.

92. All relevant sections (within the MA, CNADNR and CFR) signal work overload, better prospects in the private sector and being saddled with more tasks than foreseen in their job description. As indicated in **Table 19**, the situation is particularly worrying in the railways company CFR, where only half of the positions are filled. The company is concerned it may not have enough project officers for the project implementation stage starting in 2011. Within CNADNR, the major cause of faulty designs (the factor triggering most delays and cost escalations in motorway construction) is considered to be the limited time for design checks (one week on average for each complex project) and the number of staff involved, prior to submission to the Technical-Economic Committee (TEC) for approval.

Table 19 – Comparative data on staffing situation among MA SOP T, CNADNR and CFR²²

| Staffing at 31/12/2009 | MA | CNADNR | CFR |
|---------------------------------|-----------|---------------|------------|
| Filled Positions (Number) | 96 | 111 | 94 |
| Vacant Positions (Number) | 4 | 24 | 79 |
| Total Staff Complement (Number) | 100 | 135 | 173 |
| Occupancy Rate (%) | 96 | 82 | 54 |

93. The *lack of management capability and excessive turnover at high level* affects core functions such as risk management, accountability for major long-term projects and the willingness to focus on over-arching objectives for the transport sector, instead of potentially eligible projects (especially in the case of project under PA 2).

²² SOP-T Annual Implementation Report, 2009

94. *Excessive red tape and risk adversity* takes various forms, ranging from the 'normative' approach to maintenance, through complicated approval procedures for financial applications, to resistance with regard to issuing instructions or simplifying procedures. Examples include:

- the MA requests financial information in a certain format according to the Applicant's Guide. This format differs from the EC template for the request for financing and therefore requires substantial additional work to re-fashion in the format required for major projects that need EC prior approval (over 50 MEUR);
- comments from the MA concern mostly presentation, bullet points and numbering, rather than substantial issues;
- the risk aversion to take advantage of the 2009 amendment to the Council Regulation (EC) N° 1083/2006, according to which the EC can approve reimbursement of certified expenditures before the actual approval of major projects (which tends to reduce the budgetary burden but requires confidence that the major project will be approved). The MA is willing to explore the possibility of taking advantage of this crisis-related opportunity, but demands exact estimates of project costs. Beneficiaries cannot be certain of the amounts to be paid in the future on the contracts before the tenders are finalized;
- repeated reviews of the same information. The MA reviews the data in the financial application three times; in the Feasibility Study, in the Technical Proposal and in the signed contract. All these are checked also by the Technical Economic Council because there are sometimes substantial discrepancies between the three documents);
- there are missing items in internal procedures regarding the instructions (deadlines, standardization of usual documents, e.g. the differences between "Annex XXI" – the financial request in EU format and the financial request format required by MoT from beneficiaries, and inconsistent instructions issued by various departments within the MA);
- the approval process with regard to tenders at beneficiary level is complicated. For example, the CFR cannot organise a tender unless it has the prior approval of the General Shareholders Assembly (an additional control point, which was introduced after a notorious corruption scandal). However, this is a major source of delays in the implementation of EU-funded projects (for instance in the case that a tender cannot be launched because the Assembly has not met for a number of months);
- since tenders cannot be launched without the necessary financing being available in the budget, the procedure is to ask small amounts of money for all projects to tender or contract, so as not to lose the allocation. This however may delay projects because of staff being overburdened with many projects and because of contracting beyond staff capacity to manage.

95. Among the **external factors** the following are the most important:

- in spite of the limited availability on the market of quality engineering consultants, legally it is difficult to create 'black lists' of poorly performing companies that would not be allowed to tender for design assignments in the future. It remains to be discussed with the procurement authority to ensure that the procedure does not unlawfully restrict the number of bidders;

- the regulations on public procurement, before the amendment of the procurement legislation in the summer of 2010, made contestations very easy. The newly amended version of Ordinance 34/2006 allows contestations to be made only if the contestant makes a guarantee deposit. The extent to which this would deter unjustified contestations remains to be seen;
- procurement checks and clarifications, for example from the Unit for Coordination and Verification of Public Procurement (UCVPP) are perceived sometimes as a burden, as well as the budgetary restrictions during crisis and possibly the Fiscal Responsibility Law, which does not allow budget amendments, are all external factors reducing the actual performance of the beneficiaries.

SOP Environment

96. The **internal factors** that affect SOP ENV projects' implementation mainly relate to limited capacity for project development and lack of project ownership, difficulties in the decision-making process, difficulties in the project evaluation phase and lacking details on the KAI 5.1 in the SOP ENV Implementation Framework Document.

97. The low quality of applications reflects the lack of local authority involvement in project preparation and the *limited administrative capacity for project development* within local administrations. Projects are typically elaborated at the request of the Ministry of Environment, using TA support, with a view to achieving objectives established in the context of the Accession Treaty. Beneficiaries consequently often have an *ownership problem*, since they do not consider these projects as their own but rather perceive them as an MA or EC request.

98. Local authorities often face *difficulties in the decision-making process, inter alia* with regard to: postponement of important decisions for project preparation; approval of investment priorities and Master Plans; postponement of decisions on the creation of the institutional framework for implementing regional projects; establishing Intercommunity Development Associations (IDAs) and regional operators; signing service management contracts, as well as ensuring sufficient capitalisation of regional operators. In the case of PA 2, local authorities have difficulty in identifying sites for waste management projects and consequently making decisions on this aspect.

99. The lack of continuity at decision level, due to political and management changes generates changes in investment priorities. There are many examples of infrastructure projects the location of which was changed during the design and preparation phase (e.g. for water distribution networks), requiring reconsideration of the feasibility studies, including consultations with the local community (often meeting with their rejection, especially in the case of waste dumps). Under PA5, the small number of applications is largely the result of the lack of continuity at decision level within the National Administration 'Romanian Waters' (ANAR).

100. Another source of delay concerns the *project evaluation* phase and involves a variety of factors, including:

- differences between the value of the financing contract and the actual cost of project implementation, due to changes in macro-economic indicators and exchange rate variations during the implementation stage;

- insufficient human resources on the part of MAs and IBs, combined with low salaries not commensurate with the heavy responsibilities of staff involved in OP management;
- the outsourcing of part of project evaluation (because of the need for specific technical knowledge) to contracted evaluators without decision-making powers. This requires extensive consultation between the contracting authority (which retains the ultimate responsibility for project selection) and the outside evaluators;
- often low quality of consulting services for project preparation, typically necessitating correction and completion of project documentation by the beneficiary. In fact there has not been a single case of an application that did not need improvement.

101. In the course of project implementation, beneficiaries are often confronted with long tender documentation design periods, due to a lack of experience with regard to technical issues or the management of (large) infrastructure projects, especially amongst staff employed by local authorities. Although elaborated with TA, tender documentation tends to contain inconsistencies. At the end of the day, the responsibility for the quality of tender documentation remains with the beneficiary entity, which has the obligation to check all documentation, including the justification of the selection criteria.

102. The *lack of details* in the Implementation Framework Document of SOP ENV on KAI 5.1 *Protection against floods* causes a slow progress. The objective of KAI 5.1 refers to sustainable management of floods in the most exposed areas, but the framework document does not detail the expected approach to KAI 5.1 to the extent it does for the other KAIs.

103. Among the **external factors** the most important refer to the difficulties related to the public procurement process, the lack of consistency between technical solutions applied in Romania so far and the provisions of the European Directives concerning protection against floods, as well as to the contradicting interests of the private waste operators compared to the provisions of the Master Plan.

104. SOP ENV beneficiaries are confronted with a major external factor generating delays during the public procurement process, Beneficiaries have to deal with different approaches to the same problem on the part of, respectively UCVPP, NARMPP and NCSC (National Council for Solving Complaints). Addressing the issues caused by these different approaching puts project implementation on hold, until a commonly shared solution is found and adopted.

105. There is a lack of consistency between technical solutions applied in Romania on the protection against floods, on the one hand, and the provisions of European Directives and the latest developments in the field in Western Europe, including reactive solutions and pro-active solutions with sustainable development in mind, on the other hand. The minutes of the June 2010 MC meeting and the interviews conducted during the current evaluation show that three projects cannot be submitted and implemented because the solutions adopted were not compliant with legislation in force (Ministerial Order 1163/2007 on 'Measures for Improvement of Technical Solutions for the Design and Implementation of the Watercourses Works', Ministerial Order 1215/2008 on 'Criteria and Principles for the Valuation and Selection of the Technical Solutions for the Design and Implementation of the Watercourses Works', as well as Directive 2007/60/EC–WFD on the 'Valuation and Management of Flood Risk').

106. The process of project elaboration for KAI 2.1 *Development of integrated waste management systems and extension of waste management infrastructure* is affected in some cases by the involvement of local political actors, or by interests of private waste operators that may to a degree be contrary to Master Plan provisions.

2.3.4 The effect of the economic crisis on the implementation progress (Q9)

SOP Transport

107. While the economic crisis has not affected implementation directly, it could have effects in the future indirectly through potential budget restrictions (ref: **Section 2.3.1**), restructuring of the MoT and beneficiary entities, and staff lay-offs in 2011 (possibly by 25%, although it is unclear whether they would apply only to the Ministry or to state-owned companies also). The MoT and beneficiaries are preparing for a future reorganization and re-definition of structures and roles because of conditionalities imposed by World Bank, IMF and EC under the joint 20 BEUR loan. Thus, the World Bank Functional Reviews (ref: **Annex 7**) propose a major restructuring of the transport sector, whereas the IMF monitors 10 companies with arrears, including CFR, CNADNR, CFR Calatori and CFR Marfa. In addition, the Romanian Government is focusing on acceleration the absorption of EU Funds, which could lead to other restructuring initiatives. An across-the-board solution to lay off staff proportionally from all departments would be the worst solution, as this would demotivate staff and reduce capacity even more in units that are overstretched (for example, CFR project officers). There have been several TA reports and advisory services under Phare and World Bank projects containing findings and recommendations on business processes and models, market conditions and management development for the two largest beneficiaries (CFR and CNADNR) that could be used to focus the necessary restructuring.

SOP Environment

108. The availability of the budgetary resources was reported to be the single largest factor triggered by the economic crisis that affected the projects implemented under SOP ENV. Beneficiaries have difficulties in ensuring project co-financing and cash flow because the financial allocations from the state budget were reduced and the revenues from local services decreased. Although the projects from sectors considered strategic such as water, wastewater and solid waste management infrastructure benefit from the Government Emergency Ordinance N° 9/2010, which provides public beneficiaries with state guarantees, SOV ENV beneficiaries continue to have difficulties in obtaining loans. Furthermore, the bottlenecks in beneficiary entity liquidity have a negative influence on the cash flow of projects, especially when it comes to make advance payments during the last months of the financial year. This is because advance payments have to be justified by delivery of works by the end of the same financial year, typically not a practical proposition. The rule has negative impact on the cash flow of services providers and, ultimately, negative impact on the quality of services delivered by them in projects.

109. As further explained in **Section 2.4.2**, and similar to SOP T, salary cuts, staff turnover and possibly staff reductions will have a negative influence on staff motivation and performance at the MA, the IBs, as well as beneficiaries entities. This is decreasing both the efficiency and the effectiveness of project implementation.

2.4 Efficiency

2.4.1 Management system (Q10)

SOP Transport

110. The management system for SOP T is improving as the programme becomes more mature and solutions are found for problems as they are encountered. The preparation and implementation of SOP T, must necessarily be a learning process, particularly in this first programming period. There is a shared perception within the MA and amongst beneficiaries that: (i) certain problems (including economic return calculation errors and the accuracy of applications) are being solved and not repeated; (ii) the quality of applications improves with each application (applications for railway stations being a case in point); and (iii) the reasons underlying interruptions and requests for clarifications by the EC and the MA are becoming more sophisticated as SOP T advances. Since staff working in the MA and beneficiaries generally have also worked on projects financed from pre-accession funds (ISPA, Phare), the opportunity to use previously gained experience exists. However, this experience is being used only in some certain projects and not in others (ref: **Box 20**).

Box 20 – Lessons learned and remaining lessons

During the construction of the Bucharest-Campina line, the CFR saw that it cost more to contract all components of the railway construction (respectively buildings, track, electrification, signalling and interlocking) with a single company, than to contract each component separately²³. To avoid repetition, the construction of the Bucharest-Constanta line was split into five different contracts for each of its four sections, requiring the coordination of a total of 20 contracts. The line has been under construction for almost 10 years and will be probably finalized in 2011. The delays emanate from a lack of adequate coordination of the different contracts. Delays experienced by contractors entitle them to claim liquidated damages, which subjects the project to the risk of cost overruns. The Bucharest Constanta experience showed that, in the end, concluding separate contracts for each component leads to both delays and higher costs from constructor claims. Learning from both experiences, the CFR and the MA have agreed to ensure contracts for the railway sections under PA1 are concluded with one contractor only.

In the case of water transport, major projects to be undertaken concern upgrading of Constanta port and the Danube waterway. Half of the allocated amounts (about 150 MRON) are set aside for a project (Portile de Fier II – Calarasi) that requires the deepening of the Danube to 2.5 m in several bottleneck areas. The project is likely to encounter delays due to the need for environmental approvals. To clear the way for implementation, the project will need public debate and the consent of environment NGOs, as well as the subsequent approval of DGs Regional Policy and Environment. Given the complexity of the project, and looking at what has happened in the past on the very similar Calarasi-Braila project financed under ISPA 2005, this project is risky. The contract on Calarasi Braila was signed before completion of the Environment Impact Assessment (EIA), in spite of the fact that carrying out an EIA is a condition for obtaining the second instalment of the advance payment. In the event, the Calarasi Braila project was blocked because of complaints on the part of NGOs. Even now,

²³ This evidence was drawn from comparisons with other similar contracts.

in 2010, the project still has not been approved by DG Environment. While the consultant was contracted already in 2006, four years later on the project is still not ready, with two years of delays due solely to environmental issues. The projects currently under preparation may also be expected to meet with environment-related opposition in the course of 2011, which, if history repeats itself, might mean delays extending beyond the N+2/N+3 rule.

111. Despite overall improvement, the management system for the SOP T continues to have several weaknesses of an institutional and operational character, as set out below.

112. **Institutional relationships.** The problems in this category are connected to the balance of powers between the MA and the beneficiaries, the quality of the institutional relationships between the MoT and the two largest beneficiaries (CFR and CNADNR), and administrative capacity in terms of staffing, risk management systems and continuity of procedures.

113. A fundamental problem in the transport sector is the unclear relationship between the MoT (which includes the MA) and its subordinated companies²⁴. In the particular case of SOP T, this means that the ministry, which manages the operations of the subordinated companies (CNADNR, CFR), interacts directly with them in setting project or programme financing priorities. In doing so, it sometimes bypasses the MA in respect of decisions affecting major transport projects in the SOP T. For example, the fact that some projects under PA2 (the priority status of which is not well documented) have changed since the preparation of the SOP T, could indicate that these are nevertheless high on the political agenda. Thus, the Annex 3 of SOP T contains as likely projects the rehabilitation of several national roads, although the focus has shifted to bypasses.

114. Interference by MoT in operational matters affects SOP T in various forms, most obviously a lack of continuity (frequent changes in management, particularly at beneficiary level, and organization structure). The MA has seen only one change in leadership since the beginning of the OP, but changes in top level management of the beneficiary companies have been much more frequent (e.g., five successive Directors at CNADNR since the start of SOP T, mostly following the appointment of a new Minister of Transport. Similarly, the Director General of the CFR has been replaced three times since the start of SOP T).

115. The organization charts of beneficiaries are also subject to frequent change, and a new across-the-board reorganisation is expected in coming months, affecting staff morale and confusing job descriptions. Some past reorganisations were necessary, as in the case of the MA, which obtained management and control powers in June 2009 after a series of reorganisations within the MA itself. Other reorganisations concerned the beneficiaries and were designed to ensure compliance with functional requirements and as well as those of Council Regulation (EC) N° 1083/2006.

116. Frequency of changes has wide ranging effects. That there is no effective risk management system to provide early warning of difficulties in the implementation of SOP T (ref: **Box 20**) can be traced back to the fact that beneficiary entities typically lack stable top management, with the necessary institutional memory, capacity to exert leadership and ability to manage risk.

²⁴ World Bank, 2010

Box 21 – Current risk management systems are not effective for early warning

SOP T has a formalised risk management procedure. However, in practice, there are reasons for concern in respect of the existing risk monitoring mechanism's effectiveness in terms of providing early warning of issues arising. There is little systematic communication between MA and beneficiaries or even within beneficiaries on major risks that may appear in projects, including those attaching to land expropriation or initial designs problems in the roads sub-sector. Beneficiaries also do not share information on common risks, such as land expropriation. A case in point concerns the CFR, which now has to deal – for the first time – with expropriation of land in some 30% of the corridor with a total length of 500 km. The CFR could profit much from the CNADNR's experience with the practical problems in this sphere. These factors seem not to have been considered when assessing the risk of project delays beyond the N+2/N+3 rule.

In terms of budgeting in the context of the Medium Term Expenditure Framework (MTEF), the MoPF – at the most recent MC meeting – flagged the possibility of unsustainable peaks in expenditure for the period 2014-15. These peaks result from MoT assumptions with regard to the N+2/N+3 rule and the absence of budgetary constraints or ceilings set by the MoPF beyond the MTEF horizon (2010-13). While ISPA experience has shown that large allocations in the final years of a programme may be allowed, there is no indication that the MA is taken the existing budgetary risks seriously. In addition, ISPA supplementary budgets in the past tended to change the priority setting of other projects, which affected the overall consistency of transport strategies (including their assumptions with regard to EU grant-funding and loans from commercial banks and IFIs, thus affecting allocations for maintenance for example). In respect of the 2011 budget, there are indications that at least one of the beneficiaries might not have access to the funding necessary to commence project implementation. Thus, CFR management estimates that the company's budgetary allocations for 2011 might not amount to more than 15% of the total need, while CNADNR expects not to have enough money for land expropriations in 2011. The assumption that budget amendments might solve funding problem in case of implementation going faster than currently expected by the MoPF and the MoT can no longer be taken for granted, now that the new Fiscal Responsibility Law, which is closely monitored by the IMF, substantially reduces the scope for budgetary amendments.

117. **Operations.** Several issues were highlighted in the discussions held in the course of the present evaluation. One example concerns the *high degree of informality in problem solving* and the general lack of internal deadlines for specific responses, such as queries by beneficiaries addressed to the MA and requests for instructions. In most cases, responses are obtained by direct calls and informal discussion, which leaves arise the need to formalise the process to ensure that the designated staff member can be held accountable. Existing risk management (including the provision of information on how to deal with a specific problem, such as expropriations) relies on informal communication between project officers, without assurance that the information is shared with all other project officers encountering similar problems.

118. Because the risk management system is not fully functional and accountability is diffuse due to a lack of formalised business process, there is much opportunity for *key risk factors not being considered*.

Box 22 – Why don't we have motorways?

The *major risks* in respect of delays in the construction of new roads are: faulty design, contestation of tenders, slow construction permits, lengthy and unsuccessful land expropriation procedures and utility relocation.

The usual sequence of events for projects is presented below. There is no evidence that CNADNR, even though its individual staff members are well aware of these risks, considers them as such as an institution and, in particular, from the angle of potential delays in the implementation of SOP T beyond 2013 or in the context of the N+3/N+2 rule. That is, these risks are not formally monitored with the use of a risk management system aiming at taking timely remedial action.

For example, in the case of projects based on the *FIDIC Red Book* (with design and supervision being separated from construction), consultants often prepare designs of poor quality. Tenders for construction and expropriations can start once the technical proposal is ready. But even though legislation in force since 2004 facilitates expropriation²⁵, these can still take very long and may be risky, as explained below. The issues set out below occurred in the case of road construction works on the sections Arad-Timisoara and Cernavoda-Constanta, as well as the Arad and Constanta bypasses and are likely to happen again in any similar project, including bypass-related works under PA2:

- a poorly designed TP has to be changed after the initial decision for expropriation. That means CNADNR needs to purchase other land plots (and sell the previously purchased land, to recoup the earlier expenditure);
- there are issues with the cadastre such as the impossibility to identify land ownership, because of poor cooperation with local authorities;
- the expropriation of land belonging to other administrative entities tends to be more cumbersome than expropriation from private individuals. For example, local authorities may be in the process of restituting property expropriated under communism at the same time CNADNR is engaged in preparing expropriation documentation for the same property necessitating the revision of that documentation with the new owners;
- the expropriation of buildings owned by other public institutions is also difficult. For example, the constructor contracted by CNADNR must build a similar building on another land plot made available by the municipality. However, MoPF forbids that one credit ordinator (CNADNR) uses its allocated budget to build property for another credit ordinator (the public institution that owns the building);
- the land given to a public institution by law cannot be expropriated by a lower normative act, but only through another law. However, for this case there is a construction agreement allowing CNADNR to build on the public institution's land before the legal transfer of the land ownership is completed.
- the majority of landowners (mostly agricultural land) accept the compensation paid by CNADNR in the case expropriation. However, there are cases when a speculator buys the land and sues CNADNR for higher compensation. For example, CNADNR has an on-going lawsuit for a plot of

²⁵ Expropriations can start immediately after the finalization of the TP

land for which it paid 1 MEUR and the owner claims 11 MEUR.

- In case of archaeological findings on the site, the project must be changed (either alignment or technical solution).

Construction may start before the design consultant prepares the detailed specifications for project execution. If the design is of poor quality, the constructor might find during construction that it is not possible to build the road on the basis of the detailed specifications, for example when the quantities of materials specified are insufficient. This is a major source of significant cost escalations and substantial delays. The procurement department in CNADNR must formally endorse the contract addendum after making sure the addendum with the additional quantities is not in breach of the procurement legislation. Any delays due to mistakes on the part of CNADNR give the constructor the possibility to claim damages. In most cases, however, there are claims on both sides, so neither party is interested to pursue its claim. It is interesting to note that because of the crisis CNADNR is less willing to pursue claims against constructors as this might affect the constructor's liquidity and the capacity to complete the construction in time.

Another common cause of delays consists of tender complaints (half of the infrastructure projects experience delays for this reason). For example, on the Deva-Orastie motorway, financed under ISPA 2004, the tender had to be re-launched four times, due to five different complaints. The contract was finally signed only in early-November 2010.

SOP Environment

119. In the course of the evaluation, the MA for SOP ENV stressed the importance of developing close partnerships with all key stakeholders from the first stages of SOP ENV elaboration, through consultation and involvement in decision making. One of the major concerns of the MA was to ensure compliance of SI-funded operations with both Community and national legislation related to public procurement, environment protection, promotion of equal opportunities and competition rules.

120. The management system within the MA includes the organisational structure, planning activities, responsibilities, practices, processes and resources through which the organisation is oriented and controlled in relation to the fulfilment of SOP ENV implementation requirements. Overall, the system is functional in the sense that it has been put in place, is operational and improving over time, as a result of incremental adjustments based on experience. The system is very much embedded in Romania's public administration overall, and its efficiency is therefore highly dependent upon that of the public administration system as a whole.

121. The interviews conducted with representatives of IBs and PIUs revealed issues of an organisational nature that affect SOP ENV implementation efficiency. Thus, the position PIUs within the organisational charts of some County Councils, which are beneficiaries of major projects, is marginal. This threatens the decision capacity of project managers. The possibility to allocate tasks within PIUs in a balanced manner is affected when the project manager is formally subordinate to project team members in the organigramme of the local authority.

122. The basic documentation of the management system consists of 'Operational Procedures' specific to each MA department. These procedures consist of manuals and operating regulations describing the general legal framework for SOP ENV, organisational and personnel matters, the competencies and activities of department and units, as well as their relation with other

departments. A number of aspects render the management system complex and tend to reduce the efficiency of the MA. Thus, the complex processes described by most of the existing operational procedures represent an accumulation of elementary processes. Each of the operational procedures include aspects related to documents and records control, internal and external communication, identification and solving of non-conformities, legal requirements, other issues related to the coherent operation of the management system as a whole, while these elements should be separate subjects of system procedures, available for all activities developed within the MA.

123. The management system lacks clear rules regarding the format and coding of categories of documents (system procedures, operational procedures, instructions, forms, records). Furthermore, the procedures do not indicate clearly the continuous performance improvement process of the management system.

124. There is a limited expertise amongst beneficiary staff involved in TA contracts related to the preparation of large infrastructure projects. When combined with low quality consulting and consultants' delays in finalising applications, it generates substantial delay with regard to submitting adequate applications.

125. Interviews held with MA, IBs and PIUs' representatives revealed that their staff is overloaded with frequent reporting to control entities. Most reports are required both on paper and in electronic format, resulting in large paper files that have to be kept for long periods of time. The files take a lot of space that has to be properly maintained and guarded against unauthorised access, leading to additional costs.

126. There were cases when the entities in charge of controlling asked for scanned/copied documents, signed and stamped on each page, to attest conformity with the original document. In some cases the documentation requested in this form amounted to more than 6,000 pages.

127. As all the other MAs, the MA for SOP ENV has to undertake SMIS reporting. But the MA is generally dissatisfied with the support provided by SMIS because of the limitations of the system in dealing with the reporting particularities for SOP ENV (especially with regard to the monitoring of project level indicators). That is why the MA uses parallel records in Excel and Word formats, which over-burdens staff with reporting tasks.

Box 23 – Lessons learnt from SOP ENV implementation

A major cause of the delays appeared during the SOP ENV implementation is generated by the solving process of procurement procedures launched by beneficiaries within the major projects.

According to the MA SOP ENV data on the tendering stage within the major contracts approved under the PA1 and PA2, for the projects amounting over 5 billion RON, 116 procurement procedures have been launched, of which 72 have been finalised by the conclusion of procurement contracts. A great part of the launched procurement procedures were cancelled and then re-launched, some of them several times, either by the beneficiary (32 cases), or as a result of the appeals made by the tenderers (16 cases). Once reached the tenders evaluation stage, a large part of the procurement procedures have been appealed, 24 such procedures being in Court at present. Counted in number of days, the delay caused by the cancellation and re-launching of procurement procedures amounts approx. 2,900 days, and the delay caused by appeals amounts approx. 9,400 days.

The data above show that, due to causes that can be identified and remedied through managerial

measures, the delays registered during the procurement process within the projects approved under the PA1 and PA2 amounted approx. 12,300 days, which represents an average of 106 days of delay for each procurement procedure.

The lesson that has to be learnt refers to the following main causes of delay within public procurement procedures: the deficiencies of the Terms of Reference (ToRs), of the evaluation procedures and the ones related to the correspondence of the ToRs' requirements with the evaluation criteria for tenders. Once these deficiencies solved, the number of cancellations of public procurement procedures will be reduced through:

- adjustment of the ToRs requirements to the market situation of the potential tenderers (the "no tenderer" situations are avoided);
- elimination of non-compliances of regulatory nature, noticeable by the control and supervision bodies (e.g. UCVPP).

2.4.2 Economic crisis affecting efficiency (Q11)

SOP Transport

128. The main effect of the economic crisis concerns the availability of funding for the projects to be implemented in coming years. In the past, initial budget estimates for investments overrated the capacity for implementation in CFR and CNADNR and frequent budget rectifications (sometimes as often as 4 times per year) took place. Given current budget constraints and the track record of the transport sector, there is a risk that the budget for railways investment and maintenance will be severely constrained. A case in point is that the budget the railways sector expects to have available for 2011 is around 15% of what is needed to finance the advances necessary for the start of project implementation in 2011.

129. There are some concerns in CNADNR regarding the budget for 2011 allocated for the land expropriations, but relatively few concerns with regard to the financing available for future projects. As mentioned above, the MoT and companies expect budgetary rectifications if implementation speeds up, but take little heed of the possibility that budgets be constrained once the Fiscal Responsibility Law (requiring budgetary predictability, hence restricting budgetary rectifications) comes into force (in 2011).

SOP Environment

130. So far there was no attempted to quantify the precise impact of the crisis, i.e. what would be the counter-factual in terms of progress if the crisis had not occurred. The common sense perception resulting from stakeholder experience is that the economic crisis has had and will have an adverse effect on projects. In the absence of quantifiable evidence however, the crisis is often used as an explanation for bottlenecks that might have arisen anyway.

131. That said, the economic crisis has a major impact on the human resources involved in the management and implementation of SOP ENV. The 25% salary reduction for civil servants has demotivated staff. With the MA and the IBs there is increasing staff turnover, with remaining staff being overloaded and performance affected negatively. Legislative measures to reduce the number of positions and restrictions with regard to hiring temporary staff have decreased staffing levels just at the time when the number of applications/projects is starting to increase significantly.



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132. Another effect of the budgetary restrictions deriving from the economic crisis refers to the reduction of the budget allocations necessary for on-site visits. This has a negative impact on the efficiency and the effectiveness of projects monitoring and, ultimately, on the quality of project implementation.

133. Because of the crisis, many contractors cannot obtain the financial guarantees necessary for advance payments. This means they have to ensure implementation cash flow from their own resources. Because many contractors currently lack a solid financial foundation, they work with a reduced number of staff, which generates delays and lower quality of work.