

The devil is in the implementation

At the peak of EU funds' programming experiences from CEE countries reveal deficiencies in the application of the Code of Conduct and a flawed implementation of the partnership principle. This undermines the credibility of the programming process and leaves benefits of a comprehensive involvement of all stakeholders untapped.

The partnership principle in Cohesion Policy is supposed to provide for a comprehensive and early stage involvement of all stakeholders into planning, implementation, monitoring and evaluation of EU funds' investments. This involvement can bring various benefits and added value when it comes to enhancing collective commitment and ownership of the EU policies and investments, increasing available knowledge, expertise and viewpoints in the projects' design and selection, and efficient project implementation, as well as ensuring greater transparency in decision making processes and to prevent fraud and misuse of tax-payers money.

The European Commission's proposal for a new Cohesion Policy legislation stipulates in article 5 of the Common Provisions Regulations the introduction of a so called "European Code of Conduct on Partnership" (ECCP). This ECCP should give guidance to Member States and promote best practices in the field of partnership regarding partners' involvement and dialogue with decision makers; their selection process; access to information, to time lines and planning documents; reporting on consultation and consideration of partners' opinions; and the flexibility on specific procedures, combined with the responsibilities to ensure a transparent and participatory process (including to report on measures taken in that regard). Thus it aims to address one of the main weaknesses of the current application of the partnership principle – diverse practices and qualities of involvement in different member states leading often to low-standard partnerships.

During the negotiations on the legislative framework (the "trilogue") Member States proved to be successful to prevent any binding requirement or enforceable minimum standards they would need to adhere to. Under the pressure from Member States the whole partnership principle has been hollowed out and is now put under the reservation of "full flexibility", allowing as much "good conduct" as appropriate from the point of view of the ministries involved.

For more information

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CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.



Member States committed themselves “already in the preparatory phase of the programming documents [to] take into account as far as possible the principles of the draft Regulation¹”, i.e. the main elements of the partnership principle even though the regulations are not yet finally adopted. In February 2013 CEE Bankwatch and partners communicated a cautiously optimistic view on the application of the partnership principle at the beginning of the programming process.² Timelines and the process of involving stakeholders seemed to be set, however the proof of quality partnership was still to come given the early stage of the programming process at that time when the implementation of the partnership principle was just at the beginning.

6 months later, in September 2013 while draft Partnership Agreements have been submitted to the European Commission, and main structures and priorities of Operational Programmes are mainly set, it has become clear that in some Central and Eastern European countries the meaningful implementation of the partnership principle in reality remains a distant prospect. The conclusions below on the state of play of partnership in Bulgaria, Croatia, the Czech Republic, Latvia, Hungary, Poland, and Slovakia show that a number of basic elements of the partnership principle can't be taken for granted without binding requirements: the timely access to information and sufficient time for reaction is far from being guaranteed; the involvement of partners didn't happen at an early stage when major strategic decisions have yet to be taken; and a number of Member States failed to establish a reciprocal dialogue where partners receive feedback on their contributions.

1 Joint declaration of the European Parliament and the Council on the application of article 5(3) of Regulation (EU) No / /2012 (CPR) and the exclusion of any retroactivity relating to it, in particular concerning its joint application with articles 13, 14–and 23 of Regulation (EU) No / /2012 (CPR).

2 <http://bankwatch.org/publications/partnership-principle-early-stages-programming-experiences-cee-countries>
<http://bankwatch.org/publications/response-ngo-representatives-structural-dialogue-european-code-conduct-partnership-dele>

Ultimately this list of partnership shortcomings brings us to the conclusion that a purely voluntary partnership without common standards much too often continues to end up being a purely formal exercise, and that the promotion of best practices alone is not sufficient to ensure quality partnership.

Latvia

Intermediate conclusions on the state of partnership in programming:

There are opportunities for providing for input to the programming process, although the overall framework is not very clear and sometimes confusing (several deadlines for commenting on the same document). It has been much welcomed by partners that draft programming documents have been made available in various stages of the process and public consultations have been conducted on the PA and the OP. Providing feedback to NGO contributions has been getting more problematic with programming speeding up and increased complexity of the technical aspects; answers on partners' contributions from are still due (June 2013).

Efficiency of partnership often has been dependent on the relationship between NGOs and the relevant ministry. It has worked out best when NGOs and relevant ministry can reach agreement on problematic issues bilaterally. In other situation it has been virtually impossible to have meaningful partnership in terms of impact and the Ministry of Finance has not been trying to mediate the process, but left everything to the line ministries. Here NGO involvement was different in each ministry. The process in the Ministry of Environment was quite positive whereas in the Ministry of Agriculture and in the Ministry of Education they mostly would involve and listen to „friendly“ NGOs. A good form example was set by the Ministry of Environment which organised workshops for different stakeholders on each measure that they were responsible for. NGOs could comment and update initial drafts and the ministry sought consensus. This was rather good.

Instead of the SEA process serving as a safeguard mechanism for the environment, what KPMG (a consultancy firm commissioned to conduct the Strategic Environmental Assessment) has recently produced for Latvia views environmental protection as a hurdle.³ After partners' repeated intervention, the Ministry of Finance invited for a meeting with the result that a more integrated approach is planned and with the help of Ministry of Environment to make sure that environment is properly reflected as horizontal priority and integrated in other programmes.

NGOs need to have sufficient capacity to be able to follow the programming process and provide input when necessary. It has worked well in situations when one member of the NGO community takes the lead on following the process in detail and sends regular updates to other NGOs alerting about deadlines for commenting and necessary actions;

Partners' daily grind

Comments will be considered in 2020

Latvian Fund for Nature submitted proposals for measures on biodiversity preservation to be included in the Rural Development Programme. The Ministry of Agriculture responded that they would consider that while preparing programming documents for the 2021–2027 programming period.

Confusing deadlines

There were several deadlines given for commenting on the second draft of the Operational Programme – members of the Temporary monitoring committee were asked to send in comments by August 9; in the official policy planning process the deadline was August 16, whereas for the broader public the deadline was given as August 28.

³ See the full case description at <http://bankwatch.org/news-media/blog/all-sea-key-assessment-eu-funds-programmes-latvia-fails-address-environmental-concer>

Ridiculously short deadline

Environmental NGOs have been approaching the Ministry of Environment regularly asking to be given the opportunity to provide a contribution to the draft Annex to the OP once it becomes available from the Ministry of Finance. Finally on July 9 it was received at 14:05, asking for reactions by 17:00 that same day. The document is 367 pages long and it was the first time NGOs saw it.

The Czech Republic

Intermediate conclusions on the state of partnership in programming:

In the beginning, back in 2012, NGOs were not taken as serious partners and the Ministry of Regional Development (MRD) did not offer any meaningful way for participation in the programming process. Towards the end of 2012 NGOs were finally recognised as a legitimate partner and the MRD offered to allow them to participate in Steering committees of Operational Programmes and invited them to select 5 people as representatives of NGOs in each OP. In some OPs, e.g. Environment, all these candidates were accepted for the main Steering Committees. In others, sometimes only a single representative was accepted, some of the NGO representatives were not allowed to participate in the Steering Committees, especially in thematically limited working groups.

In most OPs, some NGO comments were accepted and a comments' settlement process was prepared. This however is true mostly for smaller, more technical comments. More substantial comments, changing the priorities of the OPs, including new areas of intervention or reasoning for excluding others were not accepted. As it seems, the government has prepared the principal OP and interventions structure itself in cooperation with some of the partners such as the Business Chamber or cities, NGOs were only allowed to make small adjustments. This was also the case for very substantial issues, such as waste incineration,

environmental education or support for fossil fuels infrastructure.

In other higher governing bodies, such as Council for CSF Funds and Council for Partnership Agreement Preparation, very limited NGO participation and the lack of official commenting processes with clear documents and sufficient opportunities led to the lack of a working partnership. The main principles of the Partnership Agreement were prepared long before any NGOs could influence the process. Further, important parts of the PA, such as sustainable development principle implementation, climate mainstreaming or financial allocations to the OPs and priorities are not known to this day. There is an imminent risk that principal questions, such as sustainable development or climate mainstreaming will be added later in a very formalistic way, just to fulfil the obligations set by the EU Provisions, with no real impact over the selection of priorities and projects.

Despite all the flaws in implementation of partnership, NGOs had a rough idea on how, when and on what they could participate in the process so far. The new provisional government, politically not linked to the previous one and installed without a consent of the Parliament, started negotiations about EU funds behind closed doors, in fora that are not officially established and most probably only selected partners are invited to participate. NGOs have been excluded. Before the general elections to be held on 26th September and establishment of a new government, there is a high risk that many changes could take place without any possibility for partners to be involved.

Partners' daily grind

Selection of the "relevant" partners

During a meeting in the Ministry of Regional Development in 2012 the demand for including NGOs as partners into the programming process was responded to by one ministry representative in a quite optimistic manner regarding public interest:

"Do you know how many NGOs are there in the Czech Republic? 72.000 If we wanted to include them into programming, we would have to rent the world championship ice-hockey arena."

In the meantime the ministry understood that there are umbrella NGOs and now accepts some individuals representing NGOs in most of the processes.

Hungary

Intermediate conclusions on the state of partnership in programming:

The programming in Hungary started without any public information on the partnership; partners described the process as not transparent. The application of the partnership principle and code of conduct: is not clear; the management of planning and programming is mostly ruled by government decisions. Bankwatch member group MTVSZ sent recommendations and principles on partnership to the relevant ministries in 2012.

The Ministry for National Economy invited some "expert/professional partners" for a consultation on the draft PA and the programming process in June 2013. No material was sent to the invitees beforehand. After the meeting, the participants got the draft PA with the opportunity to comment on it by 30 June. On that same day Hungary submitted the PA to European Commission (without including partners' comments). In August the Ministry organised an open public consultation about the draft PA, results of the consultation are not known, yet.

Regarding operational programmes: only the Rural Development OP was opened for consultation. The government did not involve any environmental NGOs in the preparation of other operational programs yet, contradicting the recent draft PA that refers to earlier involvement of environmental NGOs.

Partners' daily grind

Better not communicate

The Prime Minister's office, responsible for the overall Partnership is not communicating about the process of putting together partnerships. When approached in June by the Hungarian Bankwatch member group for clarifications on how things are going, they didn't even bother to answer – no communication, not a good start for partnership.

Slovakia

Intermediate conclusions on the state of partnership in programming

Ministries have established official partnership groups consisting of key stakeholders – meetings were called for each milestone in OP preparation. Members had the possibility to negotiate their inputs bilaterally with the relevant Ministries. The level of openness to and access for NGOs differs.

The Ministry of Environment, Ministry of Economy, Ministry of Interior Affairs and Ministry of Transport have been good in communicating reactions to proposed inputs and demands. The Ministry of Labour and the Ministry of Education however have been lagging behind with very little open agenda and with very few and delayed meetings.

The whole process is ad-hoc with no involvement of partners in the actual preparation of documents. The number of amendments based on inputs from stakeholders differs but is rather limited in all cases. Existing best examples in the dialogue with partners, the processing and incorporation of contributions and evaluation of inputs is not being taken into account by the Ministry of Interior Affairs responsible for OP Efficient Public Governance and the Ministries of the Environment and Economy responsible for OP Quality of Environment.

Work on the Partnership Agreement was less participatory with only one session involving the

presentation on the analytical part. A public consultation was launched regarding investment priorities but no clear follow-up process to the consultation is visible.

The Plenipotentiary for Civil Society has proven to be a powerful ally. This office is an important capacity during programming. As a government office representative he has access to all internal procedures and fora. A lot has been achieved through his office including the creation of working groups and nominations that have been respected by the government, as well as actual contributions to OP architecture, setup and content. The problem is that the success depends on the individual person rather than on the office itself.

Partners' daily grind

Establishing transparent processes

Within the Ministry of Transport even ministry staff does not have access to working documents and have problems to get them. Even those people who will later administer them lack information about the OP in their areas – a case for “horizontally” applying the partnership principle within the ministry?

Poland

Intermediate conclusions on the state of partnership in programming

The application of the partnership principle and the code of conduct at this stage is insufficient regarding transparency and responsiveness. Working groups on particular Operational Programmes were being formed after the Partnership Agreement was adopted by the government, (no civil society partners were included in the earlier stage of the process; it was considered to be an "inter-ministerial process". However, agreement by the Ministry of Environment, which did consultations with environmental NGOs on the PA was not secured.

The government is "passively resistant" in its

involvement of partners. The partnership process feels like a facade – a process that looks perfect when put into official reports for the European Commission, but in practice on the national level it leaves almost no space for engagement.

The situation looks better on a regional level though, where there is a real opportunity for dialogue and exchange.

Partners' daily grind

The responsiveness of an IT-system

In August 2013 the Ministry for Regional Development announced the public consultations of the Partnership Agreement. The deadline for submitting comments was August 30th and they could be submitted only via the online system. When the coalition of environmental NGOs started to submit its comments it appeared that for some parts of the Partnership Agreement submitting any comment is impossible due to the architecture of the online system. The person that submitted the joint comments didn't receive any confirmation that submitted comments were successfully placed in the online system – lack of feedback however is not only true for the IT-system: in general there is little if no reaction to partners' contributions, no one basically gets any feedback in submitted ideas and proposals. And this is not due to the technical specificities of an online tool...

Bulgaria

Intermediate conclusions on the state of partnership in programming

Many decisions were taken behind closed doors during the summer. The general feeling since May-June with the new government was that programming has been frozen. In the meantime some programmes have been modified: there are positive developments in the rural Development Programme where safeguard mechanisms have been included. Also in OP Environment NGOs will be able

to apply for grants for demonstration projects. In the current period only biodiversity projects with quite a high threshold were eligible to be implemented by NGOs.

Mechanisms related to the climate change though seem to be less appealing to the government. At the moment climate mainstreaming of programmes is in decline – e.g. measures for adaptation under OP Regions in Growth were eliminated.

Most of all and despite the mentioned positive developments, these modifications took place without the knowledge of the Working groups. Representatives of civil society are expected to confirm or rubberstamp "draft" decisions. There is also the feeling that after the changes in staff that came with the new government, the new heads of the OPs are very insecure – some of them we know from before and they were very cooperative and talkative, now they seem to be afraid to speak to CSOs. Further there are a number of proposals in the working groups which remain unanswered, in other cases replies on submitted positions are very basic and or hardly comprehensible.

Partners' daily grind

The empty cash – box highway

The OP managing authorities keep asking for money for roads from Brussels even though they risk losing the money: this summer the Bulgarian government said that they cannot find the money to assess the program for OP Transport.

Croatia

Intermediate conclusions on the state of partnership in programming

The programming process runs behind the official timeline. In this regard it is early to assess the application of the partnership principle, as the process of programming did not reach the public yet. However, public consultations on Partnership

Agreements and OPs are expected in the autumn.

Partners' daily grind

Under time pressure

Mr. xyz sends the e-mail:

From: censored...

Sent: Friday, August 30, 2013 1:40 PM

To: 45 addressees

Subject: "partnership agreement – summary of important elements for TO7"

Importance: High

"answer to this email and send comments by Monday 10 AM"

... which gave partners full 3 hours and 20 minutes of the remaining working day available to submit their contributions.