

## At the start of spending: Environmental partners still ostracised

### An assessment of the application of the “European Code of Conduct on Partnership” during the establishment of the national implementation bodies and the first phase of ESI Funds implementation in the Czech Republic, Hungary, Latvia, Poland and Slovakia

The European Code of Conduct on Partnership (ECCP) sets standards for the involvement of environmental partners into EU funds’ programming, implementation, monitoring and evaluation. After the programming period has been concluded, environmental partners from the Czech Republic, Hungary, Latvia, Poland and Slovakia assess how the guidelines set by the ECCP have been applied during the first phase of the 2014–2020 EU funds spending period:

- Identification of relevant partners
  - Representation of environmental NGOs in monitoring committees formally accomplished.
  - Environmental authorities though are not always adequately represented.
  - The selection of environmental groups’ delegates is organised in different ways, umbrella organisations playing a crucial role. Representativeness and thematic coverage not always ensured.
  - When formulating its own rules of procedure, monitoring committees only formally took into account some of the provisions laid down in the ECCP.
- Access to information
  - A sometimes stagnant information flow between managing authorities and monitoring committee members needs to be made smoother.
  - The preparatory documents and minutes of the monitoring committees are not equally publicly accessible.

For more information

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- Involvement during implementation
  - Unsatisfactory involvement of partners in the preparation of calls for proposals.
  - Insufficient consideration by managing authorities of the environmental partners' suggestions, especially regarding the integration of sustainability into the selection criteria of calls for proposals.
  - Managing authorities do not tend to involve environmental NGOs in the assessment of proposals, especially regarding the horizontal integration of sustainability to project selection.
  - Potential conflicts of interest are not dispelled fully.
- Strengthening the institutional capacity of relevant partners
  - No standard system for the capacity building of relevant partners, especially for environmental NGOs working for the horizontal integration of sustainability into ESI Funds.
  - Where established, the system of capacity building efforts is rather fragmented: while travel and other direct expenses will be reimbursed, it is not covering crucial elements recommended by the ECCP in order to strengthen the institutional capacity of partners.

In order to implement the given provisions of the Code of Conduct, and to fully realise the benefits of an efficient partnership, further efforts by managing authorities are required to:

- enable timely access to all relevant information;
- involve partner into decision-making processes;
- include partner into strategic discussions;
- increase stakeholders' capacity.

## Partnership for added-value

The partnership principle in Cohesion Policy is supposed to provide for a comprehensive and early stage involvement of all stakeholders (including environmental authorities, social partners and civil society organisations, e.g. in the field of environment) into the planning, implementation, monitoring and evaluation of EU funds' investments. Environmental partners provide unique expertise in questions of environmental sustainability and can support the integration of environmental requirements throughout the whole project cycle based on their knowledge of particular environmental needs and challenges within local circumstances. Such involvement and engagement can foster various benefits and added value such as enhancing the collective commitment and ownership of EU policies and investments, increasing knowledge and sectoral expertise in project design and selection, supporting the mainstreaming of sustainable development principles and efficient project implementation, as well as ensuring greater transparency in decision-making processes and the prevention of fraud and misuse of taxpayers' money.

### *The European Code of Conduct on Partnership (ECCP)*

The 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, laid down via a Delegated Act<sup>2</sup>, gives guidance to member states and promotes best practice in the field of partnership regarding: partners' involvement and dialogue with decision makers; their selection process; access to information, time lines and planning documents; reporting on consultation and partners' role and added-value during programming, while maintaining flexibility on specific procedures, combined with the responsibilities to ensure a transparent and participatory process (including the reporting of actions taken in that regard).

Regarding partnership, during implementation the ECCP covers the following areas:

- involvement during preparation of calls for proposals;
- involvement during progress reports;
- involvement in monitoring;
- involvement in evaluation.

The non-governmental environmental partners can significantly improve the mainstreaming of environmental protection requirements throughout EU funds implementation. CEE Bankwatch Network and Friends of the Earth Europe groups have been deeply involved in EU funds programming for the 2014–2020 period and are currently actively participating in 11 different monitoring committees as elected or delegated environmental partners.

Based on the provisions laid down by the ECCP (see Annex), environmental partners in the Czech Republic, Hungary, Latvia, Poland and Slovakia have assessed how those provisions have been put into concrete actions and framework conditions during the first phase of implementation. This first-hand experience report is supported by best practice examples which show that identified deficiencies in the application of the ECCP can be remedied.

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<sup>1</sup> <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2019&furtherNews=yes>

<sup>2</sup> The COMMISSION DELEGATED REGULATION (EU) No 240/2014 of 7 January 2014 on "the European code of conduct on partnership in the framework of the European Structural and Investment Funds".

## I. Identification of relevant partners

### **Representation of environmental NGOs in monitoring committees formally accomplished**

Overall the formal representation of environmental NGOs in monitoring committees of Partnership Agreements and Operational Programmes has been accomplished. Environmental and social groups are represented with up to five (regular) members in national or regional monitoring committees or subcommittees. Those members have full voting rights. NGO representatives have been selected either via self-organised election procedures, have been nominated by the relevant national umbrella organisations or the elections are organised and held among NGOs but with the support of regional or national bodies responsible for the cooperation of NGOs and the authorities.

In the case where ministerial guidelines are set to organise relevant partners' identification (Poland), the full representation of most relevant stakeholders' involvement could not, however, be guaranteed<sup>3</sup>. In some important OPs, e.g. OP Transport in the Czech Republic, environmental NGOs are not represented at all.

### **Environmental authorities though are not always adequately represented**

Whereas in Poland, Latvia and Slovakia<sup>4</sup> the ministries of environment or regional environmental authorities do have representatives in monitoring committees, in the Czech Republic monitoring committees do not include officials from authorities closely related to the subject, sometimes excluding the environmental authorities. In most of the Hungarian OPs<sup>5</sup> the Ministry for Agriculture, which is responsible for environmental issues, is not involved.

### **The selection of environmental groups' delegates is organised in different ways, umbrella organisations playing a crucial role. Representativeness and thematic coverage not always ensured.**

In Poland the selection of partners is defined by ministerial guidelines, which does not always result in the selection of the most representative candidates (see above). Procedure-wise, a candidate can be proposed with the support of a minimum of 10 organisations or one cross-sectorial federation. The voting is open, meaning the votes are published after the election is held. The election is organised and held by central or regional administrative bodies with all costs covered. Organisations can vote for only one couple of representatives, i.e. the member and deputy member; this must always be one woman and one man. Out of the four compulsory seats for NGOs in each monitoring committee, one goes to environmental protection, one to inclusion and non-discrimination, one to a representative of an umbrella organisation or a federation and one to a representative of an organisation working on at least some subjects covered by the OP.

In the Czech Republic, NGO representative were selected by the voting of an ad-hoc group

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<sup>3</sup> The horizontal guidelines on the setup of Monitoring Committees adopted by the Ministry of Infrastructure and Development (MI&D) are flawed in this regard, because they don't limit membership to only those NGOs which are active in the field of environmental protection or sustainable development. This leads to a situation where oftentimes the environmental NGO seat was won by a representative of groups which are by law an NGO, but which include environmental protection in their statutes without being active in the field of environmental protection.

<sup>4</sup> In Slovakia "coordinators of Horizontal Principle Sustainable Development" are members of each monitoring committee.

<sup>5</sup> With the exception of the Partnership Agreement monitoring committee, the Environment and Energy OP monitoring committee, and the Economic Development and Interreg OPs where a representative of the Ministry for Agriculture (Envi) is present.

of umbrella NGOs called the “Partnership 2014+”. However, due to power struggles and the uneven representation of some of the umbrella NGOs, proper representation and the necessary level of expertise of some of the nominated representatives in some of the OPs is not ensured.

In Latvia NGOs were selected on voluntary bases rather than on a transparent selection procedure; this led to an uneven representation along sectors and thematic fields of work. For environmental groups the “Environmental Advisory Board” selects and nominates its representative in a democratic way (by voting). However, most NGOs represented in the monitoring committee lack management and institutional capacity to ensure effective participation.

A process has been initiated in Slovakia which resulted in the creation of an “NGO chamber of the Government Council” (composed from representatives of umbrella organisations) through which NGOs are nominating and voting for representatives in OP monitoring committees. The condition for candidates was to submit a CV to prove the fulfilment of requirements set by the NGO chamber. The mandate of NGO representatives is accepted by all authorities and by the NGO sector.

Mainly Hungarian managing authorities asked the Hungarian Green NGO Cooperation (an informal umbrella of almost all the active environmental NGOs in Hungary) to appoint delegates. Those suggested delegates were finally accepted<sup>6</sup>.

### **When formulating their rules of procedure, monitoring committees only formally took into account some of the provisions laid down in the ECCP**

The functioning of the monitoring committees in Poland is regulated by guidelines authored by the Ministry of Infrastructure and Development, including elements of the ECCP; the internal rules of procedure routinely invoke this code of conduct and follow its general structure and provisions. Thus some regions account for partnership requirements and, in the case of some monitoring committees, the internal regulation directly references the ECCP. Generally, coherence with the requirement of the ECCP is ensured, either explicitly or through the act of following the ministerial guidelines on monitoring committees and on partnership, which apply to all monitoring committees for national and regional OPs.

While ECCP’s provisions were mostly taken into account in Latvia, the general lack of a transparent and clear selection of NGOs for monitoring committee membership and the lack of financial support for effective partnership led to a partnership which is rather weak and not always effective.

Formal requirements are all met in Slovakia, but in some monitoring committees the proportionality of membership is absent, with public authorities retaining more than 50% of the votes. In general however the share of non–state members is higher than in the previous period, with NGOs having more seats.

The monitoring committees in Hungary do have a minimum of 40% non–governmental partners. Capacity building issues are centralised and dealt with by the Public Administration OP, thus other OPs’ monitoring committees do not decide upon capacity building.

## **II. Access to information**

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<sup>6</sup> With the exception of two cases: in the Rural Development OP and in the Romania–Hungary Interreg OP, the managing authority refused to accept candidates proposed by the Hungarian Green NGO Cooperation.

### **A sometimes stagnant information flow between managing authorities and monitoring committee members needs to be made smoother**

Generally, in all the countries, managing authorities send the relevant documentation to monitoring committee members ten working days ahead of the meeting, including all other necessary logistical information. This allows members to give feedback and comments which are subsequently incorporated by the managing authorities before the meeting. Thus those final documents, which are the basis for the monitoring committee's discussions and decisions, are regularly submitted only shortly before meetings take place – they thus include substantial changes to the original document without allowing members the same timeframe needed for assessment of these changes.

### **The preparatory documents and minutes of the monitoring committees are not equally publicly accessible**

Working and preparatory documents are only publicly available in Latvia, the minutes and decisions of monitoring committees meetings on the other hand are displayed on the relevant websites, or, as in Slovakia, shared by NGO representatives on their own initiative.

## **III. Involvement during implementation**

### **Unsatisfactory involvement of partners in the preparation of calls for proposals**

Latvia is the only country where currently NGOs are fully involved in the preparation of calls for proposals. In the Czech Republic this is not the case for the Transport OP. In Slovakia and Poland first calls have been published without NGO participation. This should not set a precedent for the whole programming period, as it threatens sustainability in energy or waste disposal projects.

In Hungary environmental NGOs were involved in a few calls only, and then only rather informally – partners outside the monitoring committees do not get the possibility to get involved. Many of the measures are not publicly announced under open calls for proposals, but rather addressed to specific organisations appointed by the government. In such cases MAs provide the possibility for beneficiaries (mainly governmental or local governmental organisations) to comment on draft calls for proposals. Then MC members get a maximum ten days for commenting on a call for proposals, which makes the consultation with their constituencies difficult. Environmental NGO MC members can comment only at the very last stage. The Rural Development OP managing authority does not even send a draft call for proposals to MC members, only draft selection criteria.

### **Insufficient consideration by managing authorities of the environmental partners' suggestions, especially regarding the integration of sustainability into selection criteria of calls for proposals**

Environmental NGOs in Poland are generally the very last to be heard, and the inclusion of sustainability criteria is rather rare and usually comes down to evaluating if a project is in line with EU and national environmental laws as well as ticking a box that the project is in line with the general horizontal principle of sustainable development. The managing authority of the Czech Transport OP is not considering inputs from environmental NGOs in this regard. In Latvia generally there is little interest to discuss civil society partners' concerns. Ongoing discussions on project criteria between the Ministry of Environmental Protection and Regional Development and environmental organisations on the one side and the Latvian Association of Local and Regional Governments on the other have been forwarded to the Cabinet of Ministers for a final decision. This indicates the inability of the managing authorities to lead discussions in monitoring committees and subcommittees. Slovak environmental partners so far have been involved in defining biomass sustainability criteria, thus building the base for further procurement conditions for biomass. In Hungary,

this kind of involvement is barely happening: members have limited time for giving inputs, meetings are too formal, and in most cases partners' suggestions do not make it into final decisions. The big exceptions in Hungary though are the Environment and Energy OP managing authorities which are much more open for contributions from environmental partners.

#### **Managing authorities tend not to involve environmental NGOs in the assessment of proposals, especially regarding the horizontal integration of sustainability to project selection**

It is only in Slovakia where the rules for EU funds implementation include a right of NGOs to be present at the evaluation of proposals, overseeing the process. This competence however lacks better definition to function efficiently. Another issue is the capacity to do proper evaluation. Without technical assistance and the professionalisation of public control, this function remains formal only. In Latvia there is a platform and tools for NGO for participation in the assessment of proposals, but calls have not opened yet and it is still difficult to comment on whether or not the participation is effective.

#### **Potential conflicts of interests are not dispelled fully**

Whereas in Latvia there is an obligation under the Latvian Cohesion Funds management law to avoid potential conflicts of interest, in Poland beneficiaries merely have to "tick a box".

Another particular case is Hungary, where pre-defined beneficiaries themselves get the opportunity to influence calls for proposals.

### **IV. Strengthening the institutional capacity of relevant partners**

#### **No standard system for capacity building of relevant partners, especially for environmental NGOs working for the horizontal integration of sustainability into ESI Funds**

In spite of promises made, there is still no transparent system for the capacity building of relevant partners to enhance the enforcement of the partnership principle in Latvia and the Czech Republic. Poland established a system of support for partners from Technical Assistance of the relevant OP: NGO representatives are eligible to receive support for trainings and capacity building as related to their work in the monitoring committees; each monitoring committee specifies the rules and the amount of funds available in its internal regulation. There is no special support for monitoring horizontal principles; this support applies to all partners from the NGO side. In Slovakia a process of preparation of support is ongoing. OP Technical Assistance is being reviewed to enable the eligibility of the Office of Plenipotentiary for civil society which should subsequently result in a national capacity building project. The Public Administration OP in Hungary includes a measure which addresses the capacity building of partners.

**Where established, the system of capacity building efforts is rather fragmented, while reimbursing travel and other direct expenses, it is not covering crucial elements recommended by the ECCP recommended to strengthen institutional capacity of partners.**

Established systems of financing partners from Technical Assistance cover the basic direct costs incurring from the participation in monitoring committee meetings, but do not actively foster partnership or substantially build up partners' capacity. It is aimed more at fulfilling EU obligations in the area of partnership than at supporting partnership understood as a value added to the process of monitoring and evaluation. Currently the

reimbursement of travel and accommodation costs is ensured; in some cases (PL) the costs of commissioning expert analyses or studies as needed to support the work of the representative in the monitoring committee are eligible as well; trainings and capacity building however are only available to members of monitoring committees.

Generally costs related to work time, preparation and participation in monitoring committee meetings, monitoring and evaluations are not covered, nor are coordination efforts and the networking structures of partners within the scope of support.

The overall allocated resources consequently might be sufficient to cover the direct (travel) costs incurred.

## **V. Best practices**

### **Creation of efficient working groups and inclusion of additional expertise in Poland**

In the OP Digital Poland, the practice is to set up ad hoc working groups in order to adequately discuss selection criteria for specific investment priorities. These ad hoc groups are said to work well as temporary expert platforms, and to deliver high-quality solutions based on extensive cooperation. In OP Infrastructure and Environment, NGO partners initiated the creation of a working group focused on energy. In order to give the group a stronger voice, representatives of different institutions were invited to join, including associations of employers and businesses, as well as regional authorities and central environmental bodies.

In one of the regional OP monitoring committees, an additional environmental NGO expert was invited to join the monitoring committee when it became clear that the capacity of the appointed partners was insufficient. This shows that the regions assign real value to the participation of environmental NGO partners and experts in the implementation of the Regional Programme, and that NGO involvement is not merely a formality.

In the OP Knowledge, Education, Development (national level ESF OP), there is also the good practice of organising workshops/trainings for monitoring committee members ahead of each monitoring committee meeting. The training sessions concern the subject to be discussed during the subsequent monitoring committee meeting. This means that even NGO representatives working on very different issues can attend the monitoring committee meeting with at least a basic knowledge about the subject of discussion.

The Regional OP monitoring committee of one of the southern regions has close cooperation with the local NGO community – they routinely send over working drafts of implementation documents, including project selection criteria, in order to collect and incorporate feedback and comments before finalising the drafts.

### **Fair representation of environmental groups in Czech OP Environment and working groups**

Four NGO representatives are members of the MC of the OP Environment. Each priority axis has one or even two working groups where NGO partners are involved. In total, there are around nine representatives in these working groups which provide NGOs with the real opportunity to get involved in often very technical issues. The working groups prepare background documents such as the calls for proposals for the monitoring committee so that NGOs have the possibility to spot problems or to intervene in good time.

### **Solid selection of NGO representatives and systematic public control in Slovakia**

The creation of the “Government council for NGO” in Slovakia is deemed to be a very

effective and representative mechanism for selecting and nominating NGO representatives.

Even though it is still in preparation, Technical Assistance for public participation could enable the professionalisation of public control and provide resources for the institutional capacity building of involved NGOs.

### **Self-organising umbrella of environmental NGOs recognised as partners in Hungary**

Environmental NGOs in Hungary have been co-operating for 25 years, including the use of a system of organising delegations for various occasions. These NGOs have formed a non-registered network named Hungarian Green NGO Cooperation. The network has its own operating rules and organises yearly meetings where 400 representatives of about 150 NGOs participate. NGO representatives elect delegates for governmental advisory bodies, including for the monitoring committees of OPs. They also elect a 20-member Coordination Council which co-ordinates the co-operation, including the delegation to monitoring committees between the two annual meetings. All OP monitoring committees involve environmental NGO members with voting rights (Interreg MCs with advisory rights), and almost all of the managing authorities accept that the Hungarian Green NGO Cooperation delegates environmental NGO members to the monitoring committees.

## ANNEX

# Assessment of the implementation of the European Code of Conduct on Partnership in establishment of the national implementation bodies of ESI Funds – guiding questions for partners

### Identification of relevant partners – Article 4

Does each monitoring committee (OPs and PA) involve representatives of environmental NGOs with voting rights?

Does each monitoring committee (OPs and PA) involve representatives of the environmental authority with voting rights?

Is the selection of NGO MC membership transparent and fair, and based on their representativeness, and taking into account geographic and thematic coverage, management capacity, expertise and innovative approaches?

If CSOs have established umbrella organisations, do they have the right to nominate a representative?

### Rules of procedure of the monitoring committee – Article 11

When formulating its own rules of procedure, does the monitoring committee take into account the elements recommended by ECCP?

Do managing authorities inform monitoring committee members in acceptable time about meetings and documents, not less than 10 working days?

Are the preparatory documents and minutes of the monitoring committees accessible for the general public?

### Involvement of partners in the preparation of calls for proposals – Article 13

Do managing authorities involve environmental NGOs in the preparation of calls for proposals?

Do managing authorities consider seriously the suggestions of the environmental NGO monitoring committee members, especially regarding the integration of sustainability into the selection criteria of calls for proposals?

Do managing authorities involve environmental NGOs in the assessment of proposals, especially regarding the horizontal integration of sustainability to project selection?

Do managing authorities take appropriate measures to avoid potential conflicts of interest when involving relevant partners in the preparation of calls for proposals or in their assessment?

### Strengthening the institutional capacity of relevant partners – Article 17

Do managing authorities set up a system for capacity building of relevant partners, especially for environmental NGOs working for the horizontal integration of sustainability into ESI Funds?

Does the system of capacity building efforts cover all the elements which the ECCP recommends, such as workshops, training sessions, supporting coordination and networking structures or contributions to the cost of participating in meetings on the preparation, implementation, monitoring and evaluation of a programme?

Are appropriate ESF resources allocated to the capacity building activities of social partners and non-governmental organisations that are involved in the programmes in less developed regions?

Does the support cover support for partners to strengthen their institutional capacity for participating in international cooperation activities for European territorial cooperation programmes?

## Relevant chapters of the ECCP

### **Article 4**

#### **Identification of relevant partners for programmes**

1. For each programme, Member States shall identify the relevant partners among at least the following:

..(c) bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including:

(i) bodies working in the areas related to the planned use of the ESI Funds contributing to the programme and to the application of horizontal principles, referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013 based on their representativeness, and taking into account geographic and thematic coverage, management capacity, expertise and innovative approaches;...

3. Where public authorities, economic and social partners, and bodies representing civil society have established an umbrella organisation, they may nominate a single representative to present the views of the umbrella organisation in the partnership.

### **Article 11**

#### **Rules of procedure of the monitoring committee**

When formulating the rules of procedure, monitoring committees shall take into account the following elements:

- (a) the members' voting rights;
- (b) the notice given of meetings and the transmission of documents, which, as a general rule, shall not be less than 10 working days;
- (c) the arrangements for publication and accessibility of the preparatory documents submitted to the monitoring committees;
- (d) the procedure for adoption, publication and accessibility of the minutes;
- (e) the arrangements for the establishment and activities of working groups under the monitoring committees;
- (f) the provisions on conflict of interest for partners involved in monitoring, evaluation and calls for proposals;
- (g) the conditions, principles and arrangements for reimbursement rules, capacity building opportunities and use of technical assistance.

### **Article 13**

#### **Involvement of relevant partners in the preparation of calls for proposals**

Managing authorities shall take appropriate measures to avoid potential conflict of interest where involving relevant partners in the preparation of calls for proposals or in

their assessment.

## Article 17

### Strengthening the institutional capacity of relevant partners

1. The managing authority shall examine the need to make use of technical assistance in order to support the strengthening of the institutional capacity of partners, in particular as regards small local authorities, economic and social partners and non-governmental organisations, in order to help them so that they can effectively participate in the preparation, implementation, monitoring and evaluation of the programmes.
2. The support referred to in paragraph 1 may take the form of, inter alia, dedicated workshops, training sessions, coordination and networking structures or contributions to the cost of participating in meetings on the preparation, implementation, monitoring and evaluation of a programme.
3. For rural development programmes, the support referred to in paragraph 1 may be provided through the national rural network established in accordance with Article 54 of Regulation (EU) No 1305./2013.
4. For ESF programmes, managing authorities in less developed or transition regions or in Member States eligible for Cohesion Fund support shall ensure that, according to need, appropriate ESF resources are allocated to the capacity building activities of social partners and non-governmental organisations that are involved in the programmes.
5. For European territorial cooperation, support under paragraphs 1 and 2 may also cover support for partners to strengthen their institutional capacity for participating in international cooperation activities.



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