

“Let’s talk about IPA II”

Toolkit for Civil Society Organisations

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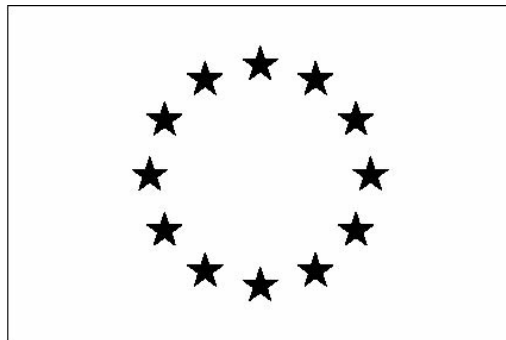
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Introduction

This toolkit is an updated version of the toolkit “Let’s talk about IPA” published in 2011. It aims to give guidance and to support NGOs in Western Balkan countries and stakeholders interested or involved in the programming cycle for pre-accession funding, encouraging them to fully exploit all possibilities and opportunities for public participation within the process.

After a short introduction into the formal programming process and the new IPA II instrument, some case studies of positive and negative examples will illustrate experiences from programming processes in different countries, followed by an overview of possibilities for public participation in pre-accession funds in Western Balkan countries. At the end, the toolkit will provide information on next steps as well as recommendations for a transparent and participatory programming of the pre-accession funding.



EU's pre-accession assistance

The EU provides pre-accession financial aid to the **candidate countries (currently: Iceland, Macedonia, Montenegro, Serbia and Turkey)** and to the **potential candidates (Albania, Bosnia and Herzegovina and Kosovo)** under UN Security Council Resolution 1244/1999). This financial assistance is made available both to individual and multiple beneficiaries. It is intended to help these countries to introduce the necessary political, economic and institutional reforms to bring them into line with EU standards. The reforms necessary for EU membership also intend to improve the lives of citizens in the beneficiary countries. A key aim of assistance is to support political reform, in particular institution building, strengthening the rule of law, human rights, protection of minorities and the development of civil society.

“A functioning market economy” is seen as pre-condition for accessing the EU. In order to cope with competitive pressures and market forces within the EU, assistance is therefore provided to support economic reform, which should lead to “faster growth” and better employment prospects.

The assistance pretends to improve quality of life in EU Member States too, as candidates and potential candidates should align to and gradually adopt EU rules, for example concerning **protection of the**

environment and the fight against crime, drugs and illegal immigration. Furthermore, pre-accession aid should encourage regional cooperation and **contribute to sustainable development** and poverty reduction.

The **Instrument for Pre-Accession Assistance (IPA)** was established in 2006 as the key tool of the European Commission's pre-accession assistance strategy for the 2007-2013 period. The Instrument will continue to be functional in the next period between 2014 and 2020 through the implementation of the Regulation of the European Parliament and of the Council on the Instrument for Pre-accession Assistance (IPA II).

The purpose of IPA is to support countries in their transition from potential candidates to candidate countries and through to membership of the European Union. IPA will help these countries meet the Accession Criteria (fulfil the political, economic and legislative acquis-related criteria for membership, building up their administrative and judicial capacity) and prepare for the programming, management and implementation of EU Cohesion, Structural and Rural development Funds after accession.

For this purpose, in the 2007-2013 period IPA consisted of **five components** under which financial support will be provided. In the future period (2014-2020), the components will be referred to as **policy areas**.

Table 1. shows the titles of the components under IPA I period 2007-2013, their new titles according the IPA II period 2014-2020 and their sectoral coverage.

As seen in the table below, all components found their way in the newly proposed policy areas. The Transition Assistance and Institution Building component (IPA 1) known as the **Transition Process and Capacity Building** in the new period is essentially *acquis*-related¹ and institution building in case of Candidate Countries but fulfils the role of a catch-all component for the Potential Candidate Countries. The Cross-Border Co-operation component (IPA 2) referred to as the **Regional and Territorial Cooperation** in the new period applies to border regions between all beneficiary countries and between them and Member States. The Regional, Human Resources and Rural Development components (IPA 3, 4 and 5), known as the **Regional Development; Employment, Social Policies and Human Resource Development; and Agriculture and Rural Development** under which assistance to Candidate Countries accredited for the management of all aid in a decentralised implementation system is provided in such a way as **to prepare them for managing EU Structural and Investment Funds (ESI) including rural development funding**.

¹ *Acquis communautaire* is a French term referring to the cumulative body of European Community laws, comprising the EC's objectives, substantive rules, policies and, in particular, the primary and secondary legislation and case law – all of which form part of the legal order of the European Union (EU). This includes all the treaties, regulations and directives passed by the European institutions, as well as judgements laid down by the European Court of Justice. The *acquis* is dynamic, constantly developing as the Community evolves, and fundamental. All Member States are bound to comply with the *acquis communautaire*.

IPA assistance may also be used to cover the costs of actions linked to the administration and management, follow-up, control, audit and evaluation and in particular studies, meetings, information, publicity, informatics, technical assistance and administrative support for the purposes of actions managed by the Delegations.

IPA operates in the candidate countries and potential candidate countries, according to Annexes of the IPA Regulation. In the IPA I period, access to funding from all components was only possible for candidate countries, whereas potential candidate countries could use the 1 and 2 component. In the new IPA II, this approach is both simplified and much more flexible. All countries under IPA irrespective of their status, will be eligible for financial assistance under all policy areas.

This simplification and flexibility of the new instrument comes as a result of the modified approach of the IPA II. The new instrument envisions that the strategic decisions on the allocation of assistance are made through comprehensive country and multi-country strategy papers covering the full period of the new financial framework (2014-2020) and reviewed once at mid-term, replacing the current system of three-year rolling indicative planning documents revised each year. More simplification should also result from introducing a sector-based approach to the allocation of assistance for those sectors. In this respect, the needs of the beneficiary countries would be the starting point for determining the sectors/policy areas for assistance.

Name of component (according IPA I 2007-2013)	Name of policy area (according IPA II 2014-2020)	Sectors covered
Transition Assistance and Institution Building (IPA 1 component)	Transition Process and Capacity Building (TPCB)	Public Administration Reform Public Financial Governance Justice and Home Affairs Human Rights and Minorities
Regional Development (IPA 3 component)	Regional Development	Transport Energy Environment Private Sector Development Competitiveness and Innovation
Human resources development (IPA 4 component)	Employment, Social Policies and Human Resource Development	Education and Human Resource Development Labour Market and Employment Social Policies
Rural Development (IPA 5 component)	Agriculture and Rural Development	Agriculture Rural Development
Cross-Border Co-operation (IPA 2 component)	Regional and Territorial Cooperation	Regional cooperation in the above sectors. Territorial cooperation: n.a.

Table 1. Titles of IPA components and policy areas according the IPA I and II periods and their sectoral coverage.

The **IPA Regulation** is the main document defining the instrument. Its text is proposed by the European Commission and the Regulation is adopted by the European Parliament. For its practical implementation, the European Commission develops a **Common Implementing Regulation**. For the purpose of the strategic planning of IPA in all beneficiary countries, a **Common Strategic Framework** (CSF) is established by the European Commission (previously known as MIFF- Multi annual indicative financial framework). The IPA Common Strategic Framework translates the political priorities of the enlargement policy into key actions which can receive assistance under the IPA Regulation.

On national level, the European Commission, in partnership with each beneficiary country establishes a **Country Strategy Paper** for the duration of the whole financial period (previously known as MIPD- Multi annual planning indicative document). The strategy papers specify the appropriate mix of policy areas which will receive financial assistance to reflect needs and priorities in accordance with the IPA objectives, the IPA Common Strategic Framework and the national strategies. The Country Strategy papers include the indicative financial allocations per policy area, and also allow for addressing emerging needs and include incentives to enhance the performance of the beneficiary countries. The CSF also sets criteria for financial allocations per country and provides guidelines for management and implementation.

On national level the beneficiary country further develops national programmes for various sectors and implements them in the course of the

new programming period. Graph 1 below shows the programming pyramid for the IPA II.

Apart from the funding provided to pre-accession countries in the form of the IPA instrument, the European Union provides funding to other countries and regions outside of EU through the following instruments: Development Cooperation Instrument (“DCI”), the European Instrument for Democracy and Human Rights (“EIDHR”), the European Neighbourhood Instrument (“ENI”), the Instrument for Stability (“IfS”), the Instrument for Nuclear Safety Cooperation (“INSC”), and the Partnership Instrument (“PI”). In order to simplify and harmonise the implementation of these instruments, the European Commission proposed a Regulation on the Common rules and procedures for the implementation of the Union’s instruments for external action. This Regulation sets the rules to be followed in the implementation of the above- mentioned instruments, the type of financing to be used under the Regulation and measures that can be financed to support the implementation (such as preparation, follow-up, audit, evaluation, monitoring, provision of information and communication efforts etc).

The Common rules and procedures also state that the European Commission will keep a special annual tracking system for the above instruments of all climate action and biodiversity expenditures. This system is based on the so-called “Rio markers” (OECD methodology, already integrated in the performance management of EU programmes) and should help estimate the overall annual spending related to climate action and biodiversity in the adopted indicative programming documents.

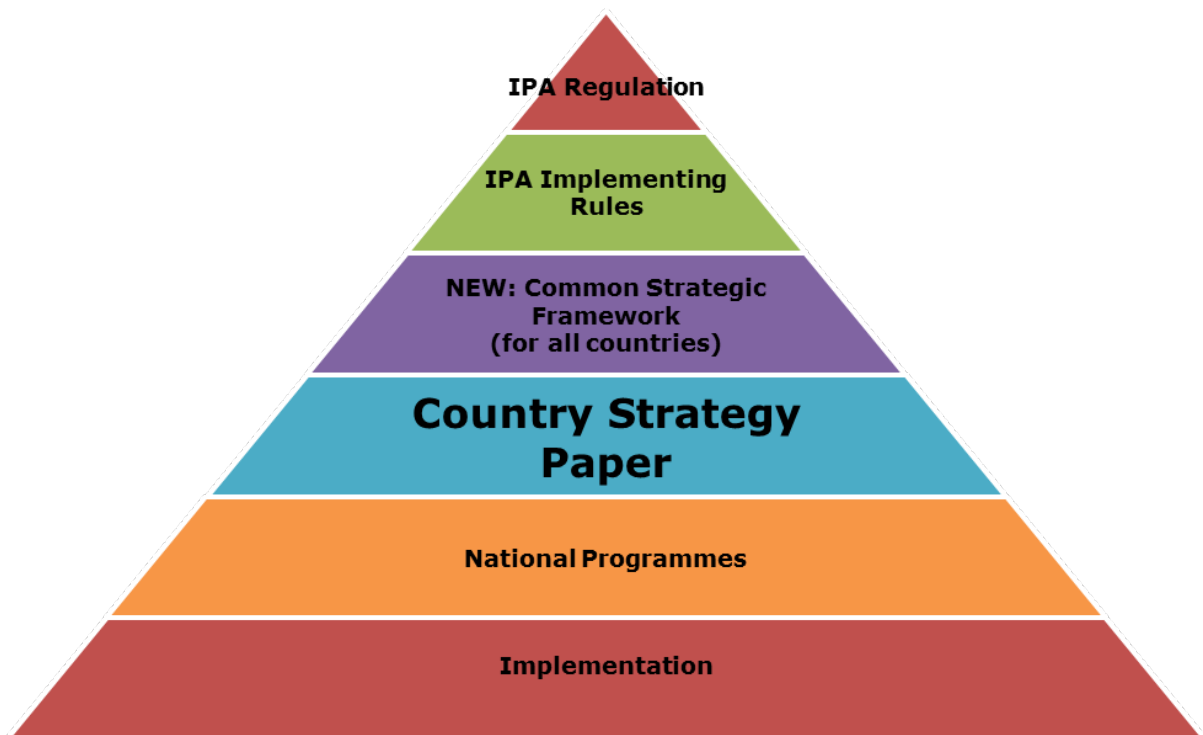
The **yearly enlargement package sets the overall strategic framework** for the pre-accession process within which the IPA must operate (**Accession Partnerships²** and Stability and Association Agreements, **Progress Reports**, Strategy Paper presented each autumn by the Commission to the Council and the Parliament).

Each autumn the Commission adopts its "**enlargement package**" - a set of documents explaining its policy on EU-Enlargement. The package includes an **annual strategy document** offering an updated overview of the Enlargement policy, its objectives and prospects, and an **assessment of the progress made over the last twelve months by each of the candidates and potential candidates**. In addition, **detailed progress reports are published**, where the Commission services monitor and assess in detail what each candidate and potential candidate has achieved over the last year and areas where more effort is needed. In certain years, the enlargement package also includes proposals to the Council of Ministers for revised European and Accession partnerships for each country, in which the Commission lists priority areas for further reform.

² **Accession Partnerships**, as part of the reinforced pre-accession strategy, make up the framework of the pre-accession process for each candidate country. They set out:

- **key priority areas** in which candidate countries need to make progress, i.e. priorities identified in the European Commission's opinion on applications for European Union membership;
- **financial support** under a single framework.

Accession Partnerships may be revised according to the progress achieved by candidate countries and on the development of new situations.



Graph 1. A pyramid showing the programming process for IPA II, starting at the top.

IPA in the EU budget

The Multi-annual Financial Framework for the period 2014 -2020 allocates EUR 10.38 billion to the Instrument for Pre-Accession³. This figure remains significantly below the European Commission's initial proposal (EUR 14.11 billion) and is the result of member states agreeing on a reduction of the overall EU budget.

The EU budget for 2014 – 2020 amounts to EUR 960 billion, split into 5 subheadings. Two thirds of the EU budget is allocated to the European Agricultural Policy and for the development of European regions via Cohesion Policy. IPA is part of heading 4 “Global Europe”, including other external policy instruments like ENI or DCI and sums up to EUR 58.7 billion for 2014 – 2020:

Instrument for Pre-Accession (IPA)	10 380.0
Eur. Neighbourhood Instr. (ENI)	13 682.6
EIDHR	1182.5
Stability (IfS)	2 075.1
Security (CFSP)	2 075.1
Partnership Instrument (PI)	844.3
Development Cooperation Instrument (DCI)	17 380.4
Humanitarian Aid	5 877.9
Civil protection (CPFI) + ERC	128.4
EVHAC	130.1
Instrument for Nuclear Safety Cooperation (INSC)	200.0
Macro-financial assistance	501.0
Guarantee fund for External Actions	1 063.1
Agencies	136.7
Other	1 036.8
Margin	2 000.0
Total	58 704.0

Table 2. Heading 4 “Global Europe”

Country	2007	2008	2009	2010	2011	2012	2013
Albania	61.0	70.7	81.2	94.1	94.4	94.5	95.3
Bosnia & Herzegovina	62.1	74.8	89.1	105.3	107.4	107.8	108.8
Croatia	142.2	146.0	151.2	153.5	156.5	156.1	93.5
Macedonia	58.5	70.2	81.8	91.6	98.0	101.8	113.2
Island	---	---	---	---	12.0	12.0	5.8
Kosovo*	68.3	184.7	106.1	67.3	68.7	68.8	71.4
Montenegro	31.4	32.6	34.5	33.5	34.1	35.0	34.5
Serbia	189.7	190.9	194.8	197.9	201.8	202.0	208.3
Turkey	497.2	538.7	566.4	653.7	779.9	860.2	902.9
Multi-Beneficiary Programme	129.5	137.7	188.8	141.7	186.2	176.2	177.2

Table 3. Overview of IPA spending in the period 2007-2013 (in EUR million).

*According to the UN, Kosovo is “under the United Nations Interim Administration Mission in Kosovo (UNMIK) established pursuant to Security Council Resolution 1244.”

³ According to the Council Conclusions from July 2013. The final adoption of MFF legislation is expected in late autumn 2013. Only than the final EU budget figures can be confirmed.



IPA and IFIs

Western Balkan Investment Framework (WBIF) is the blending mechanism that brings together grant funding from the European Commission and the EU Member States and loans from European Public Finance Institutions (European Investment Bank, the European Bank for Reconstruction and Development, the Council of Europe Development Bank).

The WBIF allocates grants to cover expenditure for technical assistance, interest subsidies and direct equity investments. It plays a significant role in the promotion of large infrastructural projects in the south east Europe, which are implemented in general by EIB and EBRD, as well as by some larger bilateral institutions (e.g. KfW). The projects proposed for support must be nominated or endorsed by the National IPA Coordinator of the respective country and projects with regional impact take precedence when deciding among applications.

The Western Balkans Investment Framework (WBIF) was introduced as a regional tool for EU Enlargement. It aims to enhance harmonisation and co-operation in investments for the Western Balkans' socio-economic development. It aims to streamline existing European Commission-funded facilities, and to pool resources from the EC, the partner IFIs and bilateral donors. Efforts should result in better donor coordination and increased capacity to finance crucial infrastructure in line with accession priorities. The WBIF

aims to maximise the impact of EU and bilateral funding by using it to leverage lending by the international financial institutions on accession priorities identified by the Western Balkan beneficiaries. The WBIF is governed by a Steering Committee and a Project Financiers' Group⁴.

The WBIF focuses on the key sectors of energy, environment, transport, social infrastructure and private sector development. From December 2009 to December 2010 the Steering Committee of the WBIF has met three times and approved 81 grants from all 7 beneficiary countries. Here are some facts about the operation of WBIF so far:

- Over 90% of WBIF projects have a lending opportunity with at least one of the partner IFIs,
- Currently, the leverage effect engendered by WBIF is high: for each €1 grant spent, the total investment created was €44.
- Out of the €139.2 million approved, €116.8 million have been allocated from the EU budget, €11.1 million from the European Western Balkans Joint Fund and €11.3 million from the partner IFIs.

It is also important to note that there has been no public participation around the selection of projects to be financed by WBIF. Both the Steering Committee and Project Financiers' Group are consisted only of

⁴ Western Balkan Investment Framework, Annual Report 2010

representatives of EC, IFIs and bilateral donors. Even though the WBIF website discloses the minutes of the meetings of both governing bodies, it is impossible for citizens or civil society organisations to be involved in the decision making processes. Having in mind the complexity and importance of some infrastructure projects which have entered WBIF database, and the potential of their controversy, it is of utmost importance for public participation to be enabled within this instrument. As the EC is regularly carrying out consultation processes for its financing, it should make sure that the same practice is implemented also in the case of WBIF.

Cases from EU countries on programming and monitoring of EU funds

1. Hungary

Participation of the Hungarian Civil Society Organizations in planning and realizing the operational programs concerning the Structural Funds of the European Union, for the 2007-13 period (Shortened abstract)

This paper is the shortened abstract of the study prepared in late 2008 by Krisztina Molnár Hegymegi for a research of SFteam for Sustainable Future published under the title “Structural Funds and Partnership” (Prague, 2009). Therefore, the paper reflects the situation of late 2008 and has not been updated since.

Information was collected from NGO representatives and officials participating in the investigated processes through questionnaires and 18 interviews, as well as from desk research.

Preconception

In Hungary, the civil activity can be considered very intensive and it looks backwards a long past. Civil activity has intensified under the influence of the change in political and economical system (transition, 1989). It can be supposed that the possibility of the participation of the society in preparing and utilizing the operational programs of Structural Funds in Hungary can be considered comprehensive compared to the

international experiences. However this participation is not too effective – the government only represents partnership by it. We think that the opinion of society is taken into consideration by the government to a small extent.

The civil members are involved to a greater extent in the Monitoring Committees but these members have little influence on the real and actual realization of programs. It seems there isn't any feedback. The serious and important decisions are not made by the Monitoring Committees, their power has decreased and their role has become formal since the period of 2004-2006. It is a question to what extent this situation depends on the civil members themselves?

There are some possibilities for NGOs to apply for EU funds in Hungary but it is quite difficult for them to access these resources. Important changes are needed so that the funds could be used much more effectively.

In the course of our research work, we tried to find the reasons of these supposed conditions. On the basis of the results, we are going to make further suggestions in order to

increase the effectiveness of the processes of planning and realization.

Partnership in the planning for Structural Funds

National Development Concept (OFK)

The purpose of this document is to put down the long-term (2007-2020) basis of development policy in Hungary. The European Union has not obliged Hungary to develop this plan – it was a voluntary interest of the government and the whole society!

Though there were a lot of public discussions moreover experts' conferences were organized as well as data were collected by means of questionnaires concerning the topic of National Development Concept (OFK), all of these were performed without a preliminary strategy. The final version of the Concept was approved in December 2005 by the Hungarian Parliament.

In 2005, an informal work-team was developed by the representatives of NIOK (Nonprofit Information and Training Centre Foundation), the National Society of Conservationists (Friends of the Earth Hungary) as well as the Soros Foundation the purpose of which was to follow the public debate of National Development Plan. The initiative was successful and soon a lot of organizations joined it."⁵ The role of work-team entitled „NGOs for the publicity of the National Development Plan (CNNy)” had got a character of „watchdog”. The team published seven reports about the processes up to the year of 2008 which are available, along with other

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<http://cnny.honlaphat.hu/index.php?menu=1408&langcode=hu>.

documents at <http://cnny.honlaphat.hu/>. CNNy was accepted by the government as a partner from the civil society side. Among others, the CNNy achieved that the planners respond in writing to the incoming observations and they made a lot of practical suggestions concerning the process of public consultation. Surprisingly, 40% of the civil proposals were involved in the draft in spite of the arising difficulties.

“New Hungary” Development Plan (NSRF 2007-2013)

Following the international norms, the second National Development Plan (NFT II) got the name of National Strategic Reference Framework (NSRF). For a while, the ruling party tried to use the document (under the name “New Hungary Plan”) for its political election campaign; this was strongly criticized by Transparency International, among others. The process of a two-round public consultation was coordinated by the National Development Agency (NDA), a governmental entity including all managing authorities.

Operational programmes (OPs)

A homepage containing the updated statistical data of the utilization of First National Development Plan, the main data of all the projects funded and the results of public consultation of the documents of development policy were published on the Internet. (www.nfu.hu).

About 4000 partner organizations – among others different expert and lobby groups, unions, civil society organizations as well as

representatives of science and business – were invited by the Agency by letters or e-mails to take part in the consultation procedure including forums. 1350 organizations took the opportunity and sent their suggestions concerning the OPs in the form of a downloadable questionnaire or essay. Most of the opinions concerned the “Social Renewal OP” and “Transport OP”.

Thus, it follows from the aforementioned facts that though the National Development Agency ensures that everybody can write proposals and comments on the homepage, only some selected NGOs have the possibility for real consultation, personal exchange of views and for participating in workshops. However the selection criteria of these “partners” have not been regulated at that time.

In addition, the NSRF was placed on the agenda of major macro-forums, such as the National Council for the Reconciliation of Interests, the Economic and Social Committee, the Hungarian Academy of Sciences, the National Council on the Environment, the National Council for Regional Development as well as the National Development Council.

A series of consultation forums were organized by the NDA for discussing all the priorities of NSRF; these priorities are as follows: education, employment, public health, economics, transport, state reform, regional development, tourism, environmental protection, energy – by the participation of the representative of the concerned special department and the competent member of the Government Commission for Development Policy.⁶

⁶ Since 2007, the National Development Agency in Hungary used to publish most calls for proposals for EU funds for public comments on the web, on one

Results

We can summarize the experiences by saying that the team processing the NGO proposals accepted a part of them, especially in the case of sectoral operational programs. About 10% of the proposals were accepted. As regards regional OPs, most of the opinions were not involved in them. It was only possible for civil society to have some insignificant parts of the content changed and some changes in wording or language implemented. The authorities did not make any difference between the opinions with wide-scale public backing proposed by several stakeholders and those of individuals and small interest groups. The people interviewed were disappointed when they saw the results. They considered that only few civil proposals were included in the OPs and they regretted the great number of work-hours devoted to this topic. In their opinion it is the reason for the fact that the civil side has become tired and the activity has decreased.

Here we have to note that – by taking into consideration the Hungarian historical, economic-social background – the establishment of relatively clear processes of public consultation can in itself be considered an achievement.

Monitoring Committees (MCs)

Pursuant to the Hungarian government decree No. 255/2006 (XII.8), civil society organizations representing the horizontal aspects are involved in the Monitoring Committees;

single website (www.nfu.hu), prior to the opening of the call. This practice is the result of long-term NGO advocacy and, despite its deficiencies, one also has to acknowledge its novelty and progressive features.

they are as follows: one environmental NGO as well as the delegates of at least one civil society organization representing the Roma, the people with disabilities and representatives of the gender equality issues.

All the interviewed NGO members of MCs have right to vote, most of them are the delegates of some civil platform and had been elected in a transparent way by voting. Most of the delegates feel a strong centralization effect from the side of government. In the delegates' opinion, MCs don't play a real role in the implementation or oversight of the OPs; MCs are rather given short information only and important decisions are made elsewhere. Therefore there isn't any real discussion and the civil delegates are frustrated from many points of view. The EU has disapproved as well that the government does not give enough information but there isn't any significant change in this regard. The presence of the representatives of NGOs in monitoring committees is mostly important as a source of information (espec. if also requesting extra info) and contacts, since they have relatively little influence on the actual realization of programmes due to the low capacities and minority status among members, even if they have voting rights.

Access of civil society to the Structural Funds

As described above, the civil society organizations have taken part in the planning process of the utilization of Structural Funds in Hungary from the beginning. However, another important purpose of the civil society is that it can be a partner in the

effective utilization of Structural Funds and get access to these resources.

Hungarian civil society organizations can present their applications in the following development fields determined in the OPs: education, social services, environmental protection, tourism, employment and community development.

In the regional OPs, civil society organizations can take part as applicants in consortiums. E.g.: barrier-free construction, environmental protection, equal opportunities.

Summary

All in all, it can be concluded that the mechanisms that operated before transition in Hungary, had still been operating since using the Structural Funds of European Union. The paternalist government had considered that the planning of distribution/allocation of resources was its own task.

The utilization of the resources of Structural Funds was preceded by a planning that changed many times as a consequence of the political changes. As regards public consultation, a real strategy was not worked out for that and a uniform legal framework didn't exist either. It was partly due to the permanent lack of time that the involvement of civil society had an ad-hoc character and was often untransparent. Upon increasing civic control, the government and intermediary bodies have become more and more open for public consultation from 2005 on.

Public consultation about the Operational Programs has become more active for the period of 2007-

2013. The programming documents can be easily accessed by means of the Internet by a wider public. However, different ministries take the opinion of civil society into consideration to a different extent. It is a problem for the government that a uniform representation of civil society doesn't exist and the major horizontal issues also appear with different intensity. At national level, environmental groups and those working for the disabled and handicapped are the most active, while the representation of gender issues is difficult and the representation of the interests of Roma people is at a minimum level or non-existent. Locally, only few opinions of civil society could be involved in the Regional Operational Programs. Concerning the programming documents, time shortage and the lack of resources for involving experts and financing the costs of NGO representatives, are real problems for civil society. Nowadays it seems that civil society had become tired. Though the possibility of giving an input to the planning is open for each member of the society, the planners still invite selected partners

only to real workshops and no comprehensive public information is given about this.

The civil society strongly criticize that the processing and evaluation of the submitted comments, opinions and proposals is not transparent and that their refusal is not explained. The recent structure and operation of Monitoring Committees is not effective; there isn't any real feedback and civic control does not take effect practically.

On the basis of our research work it can be stated that an active civil activity can be experienced in Hungary in the process of planning and realizing the Structural Funds. It would be necessary to organize sectoral platforms of civil representations as well as to develop a uniform system of delegation. As regards the government, the transparency of processing public opinions is essential. It is in the interest of the whole Hungarian society that competent experts assist the whole process of using the funds, thus supporting and making the contribution and democratic participation of all stakeholders more effective.

2. Bulgaria

NGO Experience from the programming of EU funds in Bulgaria for the 2007-2013 period

What is programming?

“Programming refers to the administrative mechanism used to pursue the objectives of the Structural and Cohesion Funds. Multi-annual programmes - known as Operational Programmes - ensure consistency and continuity over a seven-year period. Programmes relate to specific geographical areas at national or sub-national level, depending on the governance arrangements in place. Programme aims include identifying strategic priorities and indicative actions, outlining financial allocations, and summarising management and control systems. The current programming period runs from 2007 until 2013.”⁷ Though the programming is fixed to a seven year period there are several steps related to the programming process which span beyond seven years. Those are however not sole responsibility of members states or candidates, but sometimes European Commission's (i.e. ex-post evaluation)

Firstly the planning and ex-ante assessment⁸ of the programming documents are started 2-3 years prior the first year of the period. Secondly the implementation and monitoring are conducted. These continue during the

whole seven year period (may span after the period since money is disbursed longer, but they refer to the seven year period). Thirdly is the ex-post evaluation⁹ which is done usually when the period is over.

According to the partnership principle definition laid down in Article 11 of the Structural funds Regulation¹⁰ during all these steps wide range of stakeholders are entitled to be part of the programming.

“The participation of NGOs in the monitoring committees, the committees for the evaluation and selection of projects and in other departments responsible for proposing, developing and analysing projects, will lead to higher levels of transparency and liability of the institutions. There is little chance for corruption when strong civil control is present.”¹¹

⁷http://ec.europa.eu/regional_policy/glossary/programming_en.htm

⁸ Evaluation of the potential of the programme, its quality and financial allocations <http://wiki.interact-eu.net/display/pc/Practical+Handbook+for+Ongoing+Evaluation+Annex+3>

⁹ Ex-post evaluation, mandatory for EC, member states can also do them <http://wiki.interact-eu.net/display/pc/Practical+Handbook+for+Ongoing+Evaluation+Annex+3>

¹⁰ OJ L 210, 31.07.2006, p. 39

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:210:0025:0078:EN:PDF>

¹¹ Statement of the NGO Coalition “For sustainable use of European funds 2007-2013” Regarding: The implementation of the partnership principle in the process of drafting the Bulgarian framework documents for the use of EU funds (2007-2013) p. 1, http://bankwatch.org/documents/comments_partnership_2007_March_en.pdf

Fisrt programming period in Bulgaria

The 2007-2013 was the first programming period for Bulgaria to deal with Structural and Cohesion Funds as a member of the European Union. However the implementation of the partnership principle was a requirement in developing and implementing projects that were part of the ISPA and SAPARD pre-accession funds (2000-2006). The pre-accession funds should have served to teach the Bulgarian government and civil society how to plan and use the EU Funds.

Since the learning process is lengthy and difficult the initiated in 2004 process of planning for the structural funds was still not very transparent and equally open for all stakeholders. Information about the process was not really available on public domain and was hardly advertised.

The process of planning in general included the set up of working groups for the National Development Plan (later called National Strategic Reference Framework) and the Operational programmes. The role of the first group was to analyse the country development and to set the national priorities according to the country's needs and EU objectives. This framework document is the national strategy for spending the EU funds during the 2007-2013 programming. The other working groups were set up to prepare the Operational Programmes. The OPs are the concrete plans for achieving the national priorities stated in the NSRF. The role of the OP working groups is to prepare the programmes objectives, funding allocations and indicative actions, management and control mechanisms etc.

The planning in the working groups was supposed to be done in a partnership as written in the regulation, thus involving stakeholders in the early stages. A specific mechanism for NGO involvement was supposed to be developed by the Ministry finance and been at institutions disposal. However once established the working groups mainly consisted from officials as well as socio-economic partners (trade unions, employers associations) and NGOs were almost not present (not invited).

Some Bulgarian environmental NGOs such as Za Zemiata and CEIE, both CEE Bankwatch members, had some experience with monitoring ISPA pre-accession funds also as members of ISPA Monitoring Committee. Thus they were the first to approach the relevant authorities and ask for inclusion of environmental NGOs.

There are different reasons for NGOs not being present in the working groups since the beginning. However the most important were:

1. NGOs were not really recognised as an important partner by the authorities
2. The mechanism for NGO selection and inclusion was not really developed and disseminated to the relevant administrative bodies
3. the national regulations defining the partnership principle were considerably weakened during the period 2004-2007
4. just few NGOs were aware of the programming process and had allocated some capacity

In general in the beginning of the programming in 2004 NGOs were either not present or were appointed by the administration and in few cases NGOs ran elections between

themselves to select their representative¹².

What did the NGO do during the programming?

Whilst sending letters and meeting officials to request inclusion Za Zemiata and CEIE initiated the establishment of the Civil Coalition for Sustainable use of EU funds¹³. The idea was simultaneously to build capacity within environmental NGO and take part in the planning of the EU funds. Nowadays the coalition is broader and conducts civil monitoring and assessment of the implementation at national and regional level. In 2009 and 2010 the coalition produced several documents regarding EU funds monitoring. To name few of them: A guide for civil society monitoring of EU funds; Civil monitoring report on EU structural funds in Bulgaria June 2010¹⁴; 101 organisations talk about EU funds in Bulgaria¹⁵; The Coalition is now getting involved in the preparations for the next programming period (2014-2020)¹⁶ and cooperates with several other NGO coalitions to ensure NGO participation in the

12 Environmental NGOs use the online Civic e-governance platform to select their representatives http://vote.bluelink.net/ngovote_info.php, the platform is also recognised by several institutions. The platform will be expanded to also include NGOs from other spheres.

13 The first website of the coalition is still available here <http://www.bluelink.info/eu-funds/> though statements are not available

14 Full report in Bulgarian at <http://fesbg.org/node/162> All rights reserved©2010, PECSD, Varna ISBN 978-954-2904-01-4 (English summary upon request from the Coalition's secretariat)

15 101 организации говорят за европейските фондове в България. All rights reserved©2010, PECSD, Varna. ISBN 978-954-90952-9-6, <http://fesbg.org/node/186> (in Bulgarian)

16 The new website of the coalition is <http://www.fesbg.org/>

programming of 2014-2020 strategic documents. So far this included the preparation of several common letters and statements, and one study¹⁷. As a result several ministries offered those coalitions seats in some working groups dealing with preparation for the programming.

During the planning of the OPs the Coalition managed to negotiate several seats in the working groups. It also managed to comment on different documents related to transport, environment, partnership principle, strategic environmental assessment of OPs and others. Unfortunately most of its comments were not taken on board without any justification why not.

One concrete success however was achieved due to the fact that the NGO representative in OP Environment was very active and managed to convince its colleagues to resist EU funds for renewables to be excluded from the funds managed by the ministry of Energy and included under OP Environment. This proved that only being part of a working group is not sufficient to score, but active and informed participation is crucial.

Bulgarian NGOs also submitted its comments to the European Commission. The intention was while assessing the strategic documents European Commission to put pressure on Bulgarian government along NGO recommendations. The impact of these actions is hard to assess, nevertheless NGO raised awareness among EC about specific issues in Bulgaria and build up their credibility as an important source of information on EU funds. Environmental NGOs in Bulgaria have

17 Challenges to the new programming of EU funds in Bulgaria after 2013 based on the analysis of the experience in 2007 – 2013 (summary in English http://www.osi.bg/downloads/File/EU_Funds_summary_eng.pdf)

a long track record of communication with EC regarding monitoring of EU funds. For example “EC has extensive experience with monitoring committees (ISPA, SAPARD) as regards cooperation with Bulgarian institutions and environment organisations

NGOs often presented information and stances that contradicted the official ones and often put forward alternative solutions and contributed to the more efficient presentation of the problems. The opinion of the public was voiced. Unfortunately, the Finance Ministry excluded environment NGOs from the ISPA monitoring committee because of their critical position vis-à-vis the work of Bulgarian institutions and the quality of some of the infrastructure projects (Lyulin highway³, Sofia Airport, etc.).”¹⁸

In the programming for 2007-2013, however, officials were not that harsh. In order to make the planning more transparent and inclusive the government organised several open discussion forums where all OPs have been represented by members of the respective working groups. At these forums ideas and comments were exchanged in public between the working groups. Moreover since these forums were open for the general public anyone was able to take part in the discussions. NGOs were very active at these and were almost the only ones speaking on behalf of civil society. At these forums some high level figures were also present – ministers, ambassadors, EC

representatives, thus if your country is planning such it is worth for NGOs to prepare and take part.

Some conclusions on the programming process were presented by the NGOs in 2007 and state the following: “Our conclusion is that many of the processes change as a result of the lobbying of ministries, agencies and even individuals rather than as a result of working group discussions. That is why we believe that as a whole the programming process is based on political decisions and the working groups serve merely to render these decisions official and to make the planning process seem “democratic”. As a result, the major problem lies not in the participation of NGOs but in the impossibility to design the programmes on the basis of working group discussions, which are in compliance with the EU’s bottom-up planning regulations.”¹⁹

Some lessons learnt and recommendations:

- NGOs have to actively pursue inclusion in the bodies drafting programming documents at national and regional level. Refer to the Regulations for legal justification;
- NGOs should seek strategic partnership and organise themselves in coalitions;
- NGOs should provide quality information both to national authorities and the European

18 Statement of the NGO Coalition “For sustainable use of European funds 2007-2013” Regarding: The implementation of the partnership principle in the process of drafting the Bulgarian framework documents for the use of EU funds (2007-2013) p. 1, http://bankwatch.org/documents/comments_partnership_2007_March_en.pdf

19 Statement of the NGO Coalition “For sustainable use of European funds 2007-2013” Regarding: The implementation of the partnership principle in the process of drafting the Bulgarian framework documents for the use of EU funds (2007-2013) p. 2, http://bankwatch.org/documents/comments_partnership_2007_March_en.pdf

Commission;

- NGOs should ensure to allocate resources (human and financial) in order to take part in the programming;
- If included, NGOs must insist on having full voting rights if this is not the case;
- NGOs should expect the information flow to be irregular and time allocated for consultations to be short. To avoid this, NGOs may consider to prepare their major demands in advance.



3. Slovakia

Evaluation of the process of EU funds programming for 2007 – 2013 from the perspective of NGO participation

After serious problems in programming of Structural funds for shortened period 2004-2006, the NGOs in Slovakia had a clear goal that these failures must not repeat in next programming process.

Therefore at the very beginning of the 2007-2013 programming (December 2004), NGO members represented in the Independent Civic Watchdog Team²⁰ agreed on key process-related principles that should be respected in order to prevent chaotic and non-transparent programming similar to the one in 2004 – 2006 period. These principles as well as other process-related recommendations were submitted to the Government programming team but were almost completely disrespected.

For instance, NGOs were not informed how the authors of the background analysis for NSRF treated their comments, nor was the final proposal of the analysis published (this

proposal was not finished even during the preparation of the first draft of the NSRF which was submitted for comments). In addition, strategic objective and priorities of NSRF were defined by the Government long before completion of the analysis that had to serve as a basis for programming. Therefore, analytical documents were subordinated to pre-defined strategic goals and priorities. Time period for commenting of important materials was repeatedly abbreviated to 5 days, in other case time period used to be 10 day. The abbreviated period was always substantiated by an absurd explanation „5 days due to the problems of EU affairs“.

Despite frequent emphasize on serious implementation of transparency and participation principles in the programming process by the Government, the real process from the very beginning went in wrong, non-participatory way. NGOs repeatedly warned the Government that this should not happen and tried to prevent continuation of ‘game on programming and partnership’ from the previous period. Unfortunately, with almost zero influence.

As a result, the first draft NSRF released for comments in September 2005 represented an unacceptable, one-sided, ideologically-led unbalanced and inherently inconsistent document focused on economic

²⁰ The watchdog team was initiated in 2001 by Friends of the Earth-CEPA as reaction to nontransparent management of EU funds, low level of integration of municipalities, regional governments and NGOs to programming and implementations as well as critical deficit in publicly accessible information. Currently Friends of the Earth-CEPA coordinates the Watchdog Team and its members are representatives of NGOs working in official monitoring committees and working groups involved in programming and monitoring of EU funds. Also the Watchdog team includes independent experts in regional development policy, public finances and sustainable development. Participation in the Watchdog team is voluntary.

growth without any consideration of sustainable development. Few days after the expiration of deadline for comments to this draft NSRF, the Government organized two regional conferences for invited people to discuss the draft. Without any notification, modified version of NSRF was presented there. The presented version of NSRF was not published and contained several artificial amendments to formally satisfy NGO requests for inclusion of sustainability principles. This version of NSRF was then approved by the Government in mid-October 2005. This showed depraved approach to the programming attempting to "paint green" the already pre-selected objectives and priorities. NGOs did not accept such an approach and announced collective boycott of further programming as well as monitoring of EU Structural and Cohesion funds in Slovakia (December 2005) until fair discussion and inputs of social partners would not be seriously considered in a second version of NSRF. Media and EC was informed about this step and were kept updated about further developments.

After boycott announcement, the authorities expressed their interest in cooperation with NGOs and outlined several constructive proposals to incorporate a part of NGO requirements into the next version of NSRF. Government officials organized a meeting with NGO representatives in January 2006 and explained their position towards the NGO proposals and their proposal on inclusion of NGOs in further programming. At the meeting, some of the comments of the NGOs were accepted, however, none of the principal objections concerning reduction of regional disparities were among them. After the meeting it was

clear that state authorities were not going to change their sectoral approach neither the general focus of the NSRF on economic growth. However, as most of the NGO comments could have been dealt with at the level of individual operational programs, the platforms adopted a decision in February 2006, that they would return to the programming process and try to influence the preparation of the most important operational programs (OP).

In mid-February 2006, the second draft of NSRF was submitted for comments (period for commenting was 10 working days, after that time preparation of OPs was to start). This version incorporated a few NGO requirements. After evaluation of the progress NGOs decided to temporarily terminate the boycotting and submitted their comments to the document.

After the closure of interdepartmental commenting of the NSRF draft in March 2006, the Government postponed its approval by several weeks and, without inviting the partners to participate, changed the proposal in principal matters, related to the structure of the operational programs, as well as financial allocations. Following the approval of the changed NSRF proposal by the Government in May 2006, it became obvious that the then governing government suite headed by M. Dzurinda was aiming at a speeded up completion of the programming, in advance of the term of the preterm parliamentary elections, scheduled for June 2006. This chaos then accompanied also the preparation of individual operational programs - it was copying the same shortcomings as were typical for the preparation of the NSRF: time limits for commenting were extremely short again, discussion

materials for the meetings of individual working groups were sent off only a few days prior to the meetings themselves, which once again made impossible effective participation of not only NGOs, but also all the other partners, including local and regional governments or representatives of final beneficiaries. Term limits for interdepartmental commenting procedures were once more shortened to five working days with the same absurd justification: „On the ground of the problems of EU affairs“. This resulted in the fact that almost none of the principal NGO comments were incorporated into the drafts operational programs.

In July 2006, following the establishment of the new government, NGOs sent a letter to the Prime Minister and to the ministers, in which they repeatedly highlighted the shortcomings of the programming process and called for their remedy. Then it was possible to observe at the level of state bodies efforts for certain content changes of the NSRF and OPs, which would be in compliance with the NGO comments. The process of changing the draft documents, however, can be only with difficulties called other than chaotic, mainly because of unclear procedures and time limits for commenting of the documents.

Summary

The process of the EU funds programming for the 2007 – 2013 period was from the perspective of the participation of the partners from non-profit nongovernmental organizations (NGOs) different, when compared to the programming for the period 2004 – 2006. However, despite the fact, that

from purely formal perspective, the approach of state authorities to the partners in the process improved, in reality NGOs had almost no real opportunities to influence the results of the programming. Shortcomings reached such a severe level that NGOs decided to boycott the whole process some time between the end of 2005 and the beginning of 2006. It was then very difficult trying to finish with positive results the programming process with such a poorly managed opening phase.

In general, it is possible to say that despite certain efforts of the state authorities and mild improvements after the June 2006 elections and under the leadership of the new political suite, until the end of the programming process in December 2006, they did not manage to principally change either their approach to NGOs or the contents of the programming documents in such a way, that would enable the structural funds and the Cohesion Fund to more significantly contribute to the elimination of the regional disparities in the following seven years.

Recommendations

The case shows that partners participating in programming shall be ready to defend their interest in order to avoid similarly chaotic process in future it is necessary to make sure that the programming process rules are clear in advance and not depending on instant political decisions :

1. The process for programming at level of NSRF and OPs shall be designed and agreed in advance with

all partners involved in programming. Any changes of the timeline and amendments of ongoing process shall be consulted with partners in advance and agreed by all partners involved.

2. Framework for the process shall be defined in legislation so that the process' rules are enforceable.

3. There shall be enough time within the process for submitting comments to documents drafts (at least two weeks or more, depending on amount of documentation) so that partners are not in time stress.

4. Documents for meetings of working groups and comities shall be circulated at least 10 working days well in advance so that partners have sufficient amount of time for preparation.

Overview of public participation in IPA in Western Balkan countries

Albania

General legislative framework

The first legislative efforts to enable the public information and participation on the environmental matters in Albania started in 2000 when Aarhus convention was ratified by the Albanian Parliament under the law "On access to information, public participation in decision-making and access to justice in environmental matters" (Law nr. 8672, date 26.10.2000). Following the Aarhus convention several other laws were put in place to ensure the public involvement in the environmental decision making. These are the law no.8990, date 23.1.2003 "On environmental impact assessment"; law no. 8934, date 05.09.2002 "For the environment protection" and the decision of Council of Ministers no.994, date 2.7.2008 "On getting public opinion in decision-making for the environment", law no. 91/2013 date 19.03.2013 "On Strategic Environmental Assessment".

Currently, as the country is aiming to join the EU, the Ministry of Environment, Forestry and Water Administration is working to transpose the requirements of the environmental Acquis into national legislation. In spite of good will, their efforts have not been too successful. The Ministry has incomplete information about the state of environment in the country due to

inefficient monitoring. The new laws adopted, being a translation of the corresponding EU Directives are far from the Albanian needs and reality.

Despite the existing legal framework, the administrative capacity to implement the laws remains weak both on the national and local level. Moreover, the work of the Ministry of Environment, Forestry and Water Administration is generally not coordinated with the other Ministries and other national and local governmental organs. Main attention for the moment goes to improving the implementation of the environmental Acquis and enforce national legislation.

Public participation and access to information practices on project level

After the ratification of the Aarhus convention in 2000, different mechanisms were put in place so that the country would implement the convention properly. This way, with the support of the OSCE presence in Albania, three Aarhus centers were opened in three big cities of the country: Shkodra, Vloora and Tirana.

A board of the Aarhus convention was set up in 2009, with representatives from different ministries and NGO's. Nevertheless, the Aarhus board in Albania is a

structure under the Ministry of Environment which therefore lacks independence. The board has only an advisory mandate and is generally very weak compared to the governmental decisions.

Still on the project level the Aarhus convention, if implemented whatsoever, is done on a minimalistic manner. Unfortunately, this is relevant even when the projects are financed by the European institutions. In 2004 the EBRD, EIB and the World Bank financed the construction of oil and gas combined cycle thermo power plant in the touristic city of Vlora, in south Albania. The project lacked proper public consultation which was confirmed by the UN Aarhus Convention Compliance Committee in 2007.

The report from the Aarhus Convention Compliance Committee did not seem to change much in the future of public consultation process in Albania, as we still see in 2013 that in most of the cases the opinion of the public is totally excluded or ignored. Cases like the Tirana Outer Ring Road are a living proof for this, where the construction started without an environmental and a construction permit, nor a single public consultation.

NGO involved in partnership consultations

On September 24th, 2010 the Albanian Ministry of European Integration organized a consultation meeting on the Strategic Coherence Framework (SCF) for the IPA components III and IV. The invitation was sent to different actors such as representatives from local and central government, diplomatic presence in the country, international organizations

including a small number of local NGOs.

Even though the date of the consultation was announced two months earlier, in July 2010, the draft SCF was made public for the first time just three days before the event, on the 21st of September. Obviously, this short time was not enough for the NGOs to study it properly and come up with thoughtful comments. Moreover the Albanian translation of the document was not accurate, reflecting the lack of seriousness of the process. Following the consultation, the civil society organizations were left with only a week for sending additional comments.

Moreover, the way the consultation was organized allowed the environmental NGOs to be involved only in one of five simultaneous workshops: Transport, Environment, Regional Competitiveness, Labour Market and Education and Vocational Training. It was very difficult for the environmental NGOs to influence the selection of the priorities in the sector of transport for example. The transport working group prioritized the development of motorways, leaving once again the rail transport in the shadows. Since 2010 no other consultation meeting has taken place. Regarding consultations and public participation processes, IPA Funds programming and implementation of selected projects is quite unclear and does not follow a participatory and transparent approach. Eden Center in collaboration with EUD in Albania and the Ministry of European Integration has organized two roundtables and several meetings and has advocated for CSO involvement in the programming process. Also official letters were sent to Ministry of European Integration

requesting active CSO participation and involvement in the process and in the monitoring committees.

The level of knowledge of civil society organisations about the programming cycle and generally IPA funds is low. This is a new learning

process where a better participatory process is needed in order to increase transparency. The overview of the entire process does not create room for real participation and constant contribution from the CSO sector.

General legislative framework

In Croatia, the rights for public involvement in decision-making are described in few separate laws and ordinances. The main is the Environmental Protection Act (Official Gazette 110/2007), and its Regulation on Information and Participation of the Public and Public Concerned on Environmental Matters (Official Gazette 064/2008). There is also a Law on right to access the information (Official Gazette 172/2003).

The Environmental protection act and its regulation stipulate the manner of informing the public in the procedures for: developing the strategic Environmental impact assessment study; evaluation of the need for strategic assessment; evaluation of the need for environmental impact assessment; establishing the content of the environmental impact study prior to its development and the procedure of issuing approval on the Safety Report.

This Regulation also prescribes the manner of informing the public and public concerned and their participation, in the event that public participation is prescribed by the Act, in the procedures for: strategic assessment; adoption of plans and programmes for which strategic assessment is not performed; preparation of laws, implementing regulations and other generally-applicable legally binding rules which may have significant effects on the environment; environmental impact assessment, and determination of

integrated environmental protection requirements for a company installation. Furthermore, it prescribes the manner of conducting a public debate, including public inspection and public display, as well as the related deadlines.

Both of these legislative acts include the Aarhus convention provisions which was adopted officially accepted by Croatian Parliament on 13th of December 2006 (Official Gazette – international contracts; 01/07). Although Republic of Croatia adopted Aarhus convention in 2009, Ministry of Environment, Physical Planning and Constructin (MEPPC) started a court case against Zelena akcija because of performance protest on toxic waste management. We believe that Croatia breached the Aarhus convention provision which states “that persons who use their right based on Aarhus convention should not be punished, prosecuted or disturbed”. In contrary, starting court cases against NGOs with threats of high financial fines is definitely not good partnership cooperation of MEPPC and civil sector. In 2011 Zelena akcija finally won the court case

Public participation and access to information practices on project level

Public participation during the EIA procedure in Croatia is not effective, as the citizens are not allowed to change the projects drastically nor its location. The only

place where the issue of location can be discussed is spatial planning – the stage where the projects environmental impact is known in detail. For example the final version of the Mariscina waste management centre EIA has been finished in the year 2001, and based on that assessment Mariščina location has been set as the most favorable for the county waste management centre. This information speaks for itself. The almost 10 years old Environmental Impact Assessment cannot justify the EU funds involvement into this project. Similar situation happened with second EU financed project – Kastijun waste management Centre whose location was chosen in 1996 and the citizens were not able to influence the location issue in 2007 when the EIA was presented.

NGO involved in partnership consultations

Croatian government approved strategic Development Framework 2006 – 2013 in September 2006. The Framework has been officially adopted after 2 rounds of public consultations with trade unions, non governmental organizations, business associations and general public. Since there is no trace of evidences it is not possible to trace which exact organizations were present on the consultations.

One of the major problems concerning the accession to the EU is a harmonization with EU legislation which reflects on a large number of “European” laws being passed in Croatian Parliament. In several NGOs including Zelena Akcija / FoE Croatia had a press conference with demands directed towards Croatian Parliament and the Government to decrease the number of laws that are being passed

in the Parliament in the urgent procedure without parliamentary readings and thus without any public debate. According to the Rules of Procedure of the Croatian Parliament, passing of laws in the urgent procedure was foreseen only in extraordinary circumstances such as in defense and other specially justified state reasons. During the mandate of the former Government, there were no timely announcements of agendas and materials for the Government's meetings. Also, reports about adoption of certain points of the agendas, as well as the decisions made on the parliamentary committees, were not announced in time. Furthermore, Croatian government was not informing the public about decisions related to the distribution of budget.

The gap in the regulation allowed selective approach of selection of partners in the consultation process and real public consultations of IPA – Environmental Operational Programme 2007-2009 was never organized. However, several NGOs were present on these partnership consultations; NGOs Sunce from Split, Zelena Istra from Pula and NGO Eko Kvarner were present on the consultations and presentations of the waste priority axes. Zelena Akcija from Zagreb, Sunce from Split and Zeleni Osijek from Osijek attended public presentation and consultations on water priority axis.

Transport Operational Programme partnership consultations took place on 6 March 2007 and on 13 June 2007, in the Ministry of Sea, Tourism, Transport and Development. The list of partners who participated in the two consultation rounds included for example: trade unions, universities, journalists and Zelena akcija NGO. Indicative footnote in both of the so far

mentioned operational programmes is “Public consultations process will have to be re-conducted if Operational Programme will become subject of official revision(s).

Human Resources Development Operational Programme consultations took place on 23rd of March 2007 in Zagreb. The programme draft was officially presented to the representatives of employees, employers, local self government as well as other civil society organizations but it is not clear which NGOs were present on the meeting. However this OP states in its body that representatives of the Civil society can be selected as representatives of Sectoral Monitoring Committee.

The list of partners, which were invited to the consultation on the Regional Competitiveness OP, includes a mix of **general economic**

and social partners, of sub-national self-government units and of sector specific institutions. However in the group of various Chambers, Institutes and local governments there were no civil society organizations on the list.

Possibilities

Although the first programming period was organized in this partnership consultations way, the second round of programming for 2011 – 2013 included also a SEA procedure for the Environmental OP. On 10th of May 2010 Croatian MEPPC published the official information on SEA and allowed 30 days for sending initial input from general public. Although this seemed as a start of good participative process, almost a year passed since and Zelena akcija still hasn't received any reflections on its comments nor the OP draft has been published.

General legislative framework

In Macedonia there is a law on free access to information with public character (adopted in 2006) which enables citizens to request information with public character from any authority and in verbal, written or electronic manner. Since its adoption, the practical implementation of this law has been improving, as a special Commission for protection of the right to access to information has been established and oversees its implementation.

Macedonia has also ratified the Aarhus Convention in 1999 which enables citizens to access information, participate in decision-making and access justice in environmental matters. Generally speaking, the access to justice aspect has not been implemented at all, in spite of numerous attempts by the civil society organisations to train the judges in environmental matters. The access to information is fairly implemented, with slight omissions by authorities from time to time. For example, when the environmental civil society organisations requested from the Ministry of economy the study on the development of small hydro power plants in Macedonia, the Ministry decided to deny the request, classifying the study with clearly public character as confidential.

According the law on environment, Macedonian citizens have the right to be involved and be informed about projects and plans which might negatively affect the environment. The law guarantees that

citizens will be informed via 2 daily newspapers and via the website of the Ministry of environment and physical planning about any upcoming projects or plans with possible adverse impact on the environment. Moreover, they would be informed on regular basis when the relevant documents are published and when public consultations are open. Even though the implementation of the procedure for Environmental Impact Assessment has been improving over the years, public participation in decision making in Macedonia in the Strategic Environmental Assessment (SEA) and Integrated Pollution Prevention and Control (IPPC) procedures is far from satisfactory.

Public participation and access to information practices on project level

In the case of the project “Construction of Corridor X” which should be financed by the European Commission, as well as European banks, public consultations in 2008 were carried out in a very inappropriate and inefficient manner. Serious pressure was put by the environmental organisations on the Ministry of environment and European Commission to reconsider and repeat the process. The European Commission denied the project funding until the EIA procedure is carried out in a satisfactory manner. After receiving a set of recommendations on how to conduct proper public participation, the Ministry of environment the following

year carried out probably the best process of public consultations in the country. Everything was published in time and every document was available, all the comments were also available, as well as the individual responses by the Ministry. It can be concluded that the Macedonian authorities can really perform well, under the pressure of the European Commission, and when finances are at stake.

Regarding other procedures, serious breaching of legislation happened recently, when the Ministry of economy decided not to carry out a Strategic Environmental Assessment procedure for the Strategy on use of renewable energy sources in Macedonia until 2020. Even though the environmental groups complained, and the Ministry of environment clearly spelled out that this Strategic Assessment is absolutely compulsory, the Ministry of economy did not perform the procedure and the Strategy was adopted by Parliament. Moreover, there are almost no cases with good practice in public participation regarding the IPPC procedure (involving permitting of large industry).

NGO involved in partnership consultations

Currently the civil society organisations are involved in the following stages of IPA programming:

1. During consultations of Operational programmes.
 - The consultations for the Operational programme for

regional development was carried out in 2007, in a very inappropriate manner, and during holiday season without even allowing enough time (it was less than 30 days).

- Civil society organisations have been invited to comment and participate in the preparation of the technical assistance (IPA component I) operational programme in 2009.

2. On project level

Civil society organisations and citizens were involved in the environmental impact assessment of 2 infrastructure projects financed through the EU funds.

3. In Monitoring Committees

Environmental NGOs have their representative in the Monitoring Committees for rural development and regional development (IPA component III and V) as well as a representative of the Review committee for one specific project focusing on waste under the Operational programme for regional development.

The level of knowledge of civil society organisations about the programming cycle and generally IPA funds is low. There are only few groups (especially few environmental ones) who are aware of the process and take part in various consultations, but generally, there is no particular interest or capacity by the organisations to monitor the funds or projects.

General legislative framework

The framework Law on Environmental Protection from 2004 and 2009 stipulates the right of everyone to participate in decision-making processes.

The Law on Free Access to Information of Public Importance²¹ is regulating free access to information held by a public authority for which public has a justified interest to know about.

The Republic of Serbia ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on May 12th, 2009 and acceded to the Aarhus Convention on July 31st 2009.

Public participation in environmental decision making and consequently access to justice in decisions on specific activities as listed in Article 6 of the Aarhus Convention is regulated by the basic legal act the Law on environmental impact assessment²² (EIA) and its six bylaws.

The key law for preparation of planning and technical documentation is the Law on Planning and Construction ("Official Gazette of the RS", Nos. 72/09, 81/09-modif., 64/10 US and 24/11), which regulates scope and contents of spatial and urban plans and public participation related to these plans. According to 2011 amendments of the Law on Planning

and Construction, strategic environmental impact assessment (SEA) is an integral part only for urban plan for special-purpose area while other spatial and urbanistic plans (Spatial Plan of the Republic of Serbia, Regional Spatial Plan, Municipality Spatial Plan) do not have obligatory SEA.

Participation of the public in the decision making procedure for specific activities is also regulated by some other pieces of legislation like the Law on Integrated Environmental Pollution Prevention and Control (IPPC), and the Law on Genetically Modified Organisms.

Other environmental laws also have provisions on public participation related to official plans and programmes:

- the Law on Air Protection states that a four-year National Programme for Gradual Reduction of Maximum Annual Emissions of Pollutants before adoption by the Government have to be publicly available to the public and the public concerned,
- the Law on Waters foresees EIA for the Strategy and water management plan and special water management plan. The public has the right to information about the state of waters and the work of competent authorities responsible for water management and to participate in the processes of preparation and adoption of water management plans and control of their implementation.
- the Law on Nature Protection states that public has right to review and participate in public debate on the draft document of a protected area

²¹ Official Gazette of the Republic of Serbia No. 120/2004, 54/2007, 104/2009 and 36/2010

²² Official Gazette of the Republic of Serbia No. 135/04 and 36/09- amendments

designation and the supporting documents—the protection study with the accompanying maps as well as on protected area management plans and plans for utilization of natural resources.

- the Law on Forests envisage the SEA report for the Forest Development Plan i.e. plan of forest development in a national park.

Public participation in monitoring on compliance with conditions set out in EIAs, as well as in the issued permits/decisions is not existing.

Public participation and access to information practices on project level

Public participation during the EIA procedure in Serbia is generally still on a low level- NGOs and general public do not use enough this procedure to make impacts on decision- making process. On the other hand, civil society in Serbia on a case by case basis, still face enormous pressure when it comes to public initiatives to stop or change projects or its location. Thus, we had violence against NGOs during the public hearing in the case of hydro power plants on river Lim in Serbia (construction „Brodarevo 1“ and „Brodarevo2“ hydropower plants) in August 2012, when NGO activists wanted to express their opposition for the project were severely beaten at the public hearing organized by the former Ministry for Environment and Spatial Planning.

When the EU, EBRD, EIB and the World Bank are involved in financing projects in Serbia, public consultations is carried slightly better. However, also in those cases, local communities' interests are often not

taken into account. In the case of the construction of Regional waste landfill project, the environmental inspector lost her job, because she requested compliance with legislative procedure. Those cases are breaching the EIA procedure, and in general rule of law.

Since 2004 when the Law on Strategic Environmental Assessment was adopted NGOs in Serbia are not satisfied how SEA procedure is being implemented. Law on Strategic Environmental Impact Assessment, when introduced, was harmonized with the SEA Directive (2001/42/EC), but there are problems with the enforcement- it is to be noted that the National Waste Strategy was not assessed under SEA.

According to amendmends of the SEA Law in 2010, the Minister should determine the list for which plans and programs SEA is compulsory, but even in 2013 this list is still not produced.

NGO involved in partnership consultations

Since 2010 NGOs in Serbia are involved in programming of IPA and other foreign assistance. Firstly, it was on ad-hoc basis, without involving NGOs as partners in defining national priorities for IPA and other developing finance as well as without involving NGOs in monitoring of these funds. Later, NGOs were invited to comment on the document „Needs of the Republic of Serbia for International Assistance 2011-2013“ for the programming of EU funds, and during that ad hoc consultation 67 representatives of civil society organisations participated, organized in four consultative groups.

In mid february 2011, the process of establishing permanent and

planned consultative process with NGOs on the programming of IPA has been started. Unfortunately it started late to influence definition of national IPA priorities and selection of proposed projects for 2012. The consultative permanent mechanism for consultation with civil society is lead by the Serbian Office for European Integration - Department for planning, programming, monitoring and reporting on EU funds and development assistance and it involved selection of so called Sector's civil society organization (SEKO). Proposed permanent mechanism for consultation with civil society involve selection of the SEKO consortiums (consortium of maximum 3 civil society organizations, where one is a leading organisation) for each of eight sectors indicated in the programming of EU funds. SEKO for environment and energy commented on the proposed projects for 2012, as well as on the Draft Operational Programme for Economic

Development 2012- 2013 and the Draft Operational Programme for Human Resources Development 2012 – 2013.

Currently (first half of October 2013) the Serbian Office for European Integration is developing new proposal on how the SEKO mechanism will work in future, and whether it will be also engaged in process of negotiations with EU.

Generally, NGOs in Serbia now know better about the IPA programming process, importance of civil society's participation in it, and possibilities to influence IPA financing and monitoring, but still their rule in monitoring funds and projects are still minor. Generally, NGOs in Serbia now know better about the IPA programming process, importance of civil society's participation in it, and possibilities to influence IPA financing and monitoring, but still their rule in monitoring funds and projects are still minor.



Possibilities for involvement in programming of IPA on national level

Preparation of Operational/ Sectoral Programmes

On national level programming of the IPA 2014-2020 begun in 2013 with the preparation of the Country Strategy Paper for each of the beneficiary countries. This process is expected to be finalized by the end of 2013. It should be followed by the establishment of sectoral working groups and preparation of Operational/ sectoral programmes for various sectors on national level.

Timeline

The preparation of Operational/ sectoral Programmes for the period 2014-2020 will be slightly delayed and

take place during 2014. Civil society organisations and other non-state actors should play an active role in the consultation processes for the preparation and adoption of these programmes.

Civil society organisations should also take a step further and demand their actual involvement in the sectoral working groups established by the Government (and usually only consisted of Ministry representatives). Additionally, the civil society sector should be able to organise themselves and establish a functional, sustainable mechanism for continuous consultation with the Government institutions regarding the EU funds programming in their country.



Recommendations

For the public consultations for the programming:

- The process for programming should be designed and agreed in advance with all partners involved in programming. Any changes of the timeline and amendments of ongoing process should be consulted with partners in advance and agreed by all partners involved.
 - It is advisable to define the framework for the process in legislation so that the process' rules are enforceable.
 - The government needs to ensure the transparency not only of the process of gathering input but also of processing public opinions. Official responses to opinions received is advised.
 - There should be enough time within the process for submitting comments to documents drafts (at least two weeks or more, depending on amount of documentation) so that partners are not in time stress.
 - Documents for meetings of working groups and committees should be circulated at least 10 working days in advance so that partners have sufficient amount of time for preparation.
 - NGOs have to actively pursue inclusion in the bodies drafting programming documents at national and regional level. It is advisable to develop a uniform system of delegation of NGO participants in the working groups or committees.
- NGOs should seek strategic partnership and organise themselves in sectoral coalitions or platforms.
 - NGOs should provide quality information both to national authorities and the European Commission.
 - NGOs should ensure to allocate resources (human and financial) in order to take part in the programming.
 - Competent experts should assist the whole process of using the funds, thus supporting and making the contribution and democratic participation of all stakeholders more effective.

For the work in Monitoring and/or Steering Committees

- It is advisable NGOs to develop a uniform system of delegation of NGO participants in the Monitoring and/or Steering Committees.
- NGOs must insist on having full voting rights if this is not the case.
- NGOs should expect the information flow to be irregular and time allocated for consultations to be short. To avoid this, NGOs may consider to prepare their major demands in advance.
- NGOs should ensure to allocate resources (human and financial) in order to take part in the work of the committees.



Useful links

General information:

http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/index_en.htm

MIPDs:

http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/planning-ipa_en.htm#mipd

Key documents and reports:

http://ec.europa.eu/enlargement/press_corner/key-documents/index_en.htm

Europa “Who is who”, find the relevant person in the relevant institution:

<http://europa.eu/whoiswho/whoiswho.html>

Information materials:

Let's talk about IPA - the Instrument for Pre-Accession Assistance. A toolkit for civil society organisations, 2011

Albanian version: <http://bankwatch.org/documents/IPA-toolkit-Albanian.pdf>

Macedonian version: <http://bankwatch.org/documents/IPA-toolkit-Macedonian.pdf>

Serbian version: <http://bankwatch.org/documents/IPA-toolkit-Serbian.pdf>

EU Budget for everyone - The people's guide to the financial programming of the European Union, 2012: <http://bankwatch.org/sites/default/files/EU-peoplesguide.pdf>

www.bankwatch.org



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