

2017 Report on European Code of Conduct on Partnership implementation in CEE countries

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This report provides an assessment of the application of the “European Code of Conduct on Partnership” (ECCP) during the first half phase of ESI Funds implementation in the Czech Republic, Hungary, Latvia, Poland and Slovakia.

The European Code of Conduct on Partnership (ECCP)¹ sets standards for the involvement of partners into EU funds’ programming, implementation, monitoring and evaluation. In the middle of the programming period (and midterm review), environmental and where available, social NGO delegates – later commonly referred as NGO partners or civil society partners – were asked from the Czech Republic, Hungary, Latvia, Poland and Slovakia to provide assessments based on a standardised questionnaire about their experience how the guidelines set by the ECCP have been applied during the first half phase of the 2014–2020 EU funds spending period. The assessment can be regarded as an overview of the implementation of the ECCP based on first hand experience by civil society partners in CEE countries.

Summary and recommendations

1. Process of involvement of NGO delegates

- Representation of NGO partners in monitoring committees formally accomplished.
- The selection of environmental groups’ delegates is organised in different ways, umbrella organisations playing a crucial role. Representativeness and adequate thematic coverage are not always ensured.
- When formulating their own rules of procedure, monitoring committees only formally took into account some of the provisions laid down in the ECCP.

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

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

2. NGO access to information, influence

- The information flow between managing authorities (MAs) and monitoring committee (MC) members is sometimes lacking and needs to be made smoother. Even though the required timing (10 days for consultation) is met, the reality is that procedural constraints make it difficult to establish and maintain a coordinated, working collaboration between NGO partners and MA or between partners.
- The procedures and rules of the MC allow the NGOs a limited opportunity to influence. The main problems include that governmental/authority representatives outnumber the non-governmental representatives, government decisions are sometimes made before MC consultation, especially in major/priority projects. Another challenge is that achieving influence (including production of detailed NGO papers, forming coalitions or stimulating public debate) requires significant time and capacity from the NGO side, yet capacity building opportunities provided by the MAs are limited. Some improvements are however noted, including the Slovakian new law for a more balanced voting system, and the Latvian practice that MC members become a State Official.
- The preparatory documents and minutes of the monitoring committees are not equally publicly accessible.

3. NGO involvement during implementation (calls, progress reports and evaluation, monitoring)

- Regarding NGO influence, relatively late or unsatisfactory involvement of partners is found during the preparation of calls for proposals. Early involvement only occurred in Slovakia.
- Insufficient consideration by managing authorities of the environmental partners' recommendations, 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.

- NGO partners are involved in a later stage to comment on the largely statistical, uncontroversial progress reports developed by the Managing Authorities, thus the potential to influence is limited. Based on earlier experience, the same applies to monitoring/evaluation.
- Potential conflicts of interest are not fully dealt with or resolved.

4. Strengthening the institutional capacity of NGO partners

- There is no standard system for the capacity building of relevant partners, especially for environmental NGOs working for the horizontal integration of sustainability into ESI Funds or for key facets, such as low-carbon development, climate change, and environmental protection.
- Where established, the system of capacity building efforts is rather fragmented and does not fully meet the need of the NGO delegates: while travel and other direct expenses may be reimbursed, there is a lack of crucial elements recommended by the ECCP in order to strengthen the institutional capacity of partners. There is often a lack of understanding by MAs of which capacity building costs are eligible under the technical assistance funding.

Recommendations to EU decision makers:

1. In order to improve the implementation of the Code of Conduct, and to fully realise the benefits of an efficient partnership, further efforts are needed by the managing authorities to enable timely access to all relevant information, involving NGO delegates better in strategic discussions and decision-making processes, and increasing the capacity of stakeholders.
2. More support is needed to strengthen the partners' institutional capacity and deal with the workload. Such support could take the form of better accessibility of external expert assistance, establishment of permanent Monitoring Committee secretariats independent of the Managing Authorities, and, possibly, a mechanism to pay out per diems to those Committee members who work there in addition to their normal duties. The European Commission – (DG Regio) could also consider a financing framework for national watchdog experts from the technical assistance.

3. The imbalance of voting rights should also be addressed because in the current setup the government side can always outvote the civil society side and it entirely depends on the MA whether it takes the civil society comments or recommendations into account or discards them without due consideration or explanation. Amendment of Law no. 292/2014 on the contribution from the ESIF in Slovakia can provide an example for how to address this issue in other countries.

Added-value: partnership in detail

In Cohesion Policy, the partnership principle aims 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 can provide unique expertise in questions of sustainability, supporting the integration of environmental requirements throughout the whole project cycle. Their engagement can enhance the collective commitment and ownership of EU policies and investments, increase knowledge and sectoral expertise in project design and selection, support the mainstreaming of sustainable development principles and efficient project implementation, as well as ensure greater transparency in decision-making processes and the prevention of fraud and misuse of taxpayers' money.

Environmental NGO partners can significantly improve the mainstreaming of environmental protection requirements throughout EU funds implementation. CEE Bankwatch Network groups have been deeply involved in EU funds programming for the 2014–2020 period and are currently actively participating in several different monitoring committees as elected or delegated environmental partners.

1. NGO representation in the Monitoring Committees (Identification of relevant partners – Article 4)

Environmental groups, (NGOs) are represented with a minimum of 1 member per national or regional monitoring committees or subcommittees, NGO members have full voting rights, and MAs receive them. 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 Czech Republic, the biggest OP the Transport Operational Program has still no environmental NGO representatives, despite the fact that NGOs have been advocating for it since 2015.

There are various selection processes:

In Hungary, the green NGO members of the Monitoring Committees (MC) are elected democratically by the Hungarian Green NGO AGM, with open delegating process and voting. The MC materials are shared with them electronically and they have access to the central info system. The delegate reports to the green NGO list, the list of NGO delegates and the regulations are on the green NGO website www.zoldcivil.hu. The delegate usually shares the papers with its constituents (NGOs) in order to represent them properly at the MC.

In Slovakia, NGOs vote for representatives in OP monitoring, Partnership agreement (PA) and horizontal principles (HP) through the “NGO chamber of the Government Council for NGOs” whose members – representatives of platforms and NGO networks – nominate delegates.

In Czechia, selection of the NGO representatives to MCs was held within the framework of the Government Council for NGOs. Unfortunately, this process cannot be seen as representative, transparent or based on expertise and innovative approaches.

In Latvia, the recent change in the organisation of the MC is that the coalition “Council of the Memorandum of NGO and Cabinet of Ministers” is also represented at the MC and involves other NGOs but moreover – there is a constant debate going on in the Memorandum Council meetings to discuss the progress and evaluate the partnership principle implementation thus bringing this issue to the highest national level. To represent environmental interest the “Environmental Advisory Board” selects and nominates its representative in a democratic way by voting and historically in the MC has been one place for the representative of Latvian Environmental protection club president.

In Poland, the non-governmental members of Monitoring Committees were elected in a process organised by an umbrella organisation, OFOP. The composition of MCs as a rule includes a post for a representative of environmental organisations, and in most cases (but not always) these posts are filled by genuine environmental activists. In some MCs, environmental activists are also involved as experts.

In more countries, the NGO minority in the MCs was criticised because non-state actors including NGOs did not have a real possibility to outvote state representatives

in controversial issues during the meetings. In SK this would luckily change by the amendment of the law No. 292/2014[1] as a result of an initiative by NGOs.

2. The extent that the procedures/rules of the monitoring committee allow NGOs the opportunity to influence (Article 11)

The procedures, rules of the MC allow the NGOs a limited opportunity to influence. The main challenge is that non-governmental representatives are outnumbered by governmental ones. NGOs can influence better if they come up with consistent and strong arguments, raise public debate about the project and/or form coalitions but these require a significant time and capacity from their side while capacity building opportunities provided by the MAs are limited. In the past years in Czechia and Slovakia the balance of stakeholders have improved. Another common challenge for NGO delegates is the limited time to process the MC documents: the 10 days requirement is met, but in practice this is not enough to properly discuss the content with the NGO sector, the other delegates, or with the MA. The rarity of MC meetings also pose a challenge. In PL, the working groups on energy/sustainability have proven to be effective avenues of influence. The political priority given to bigger infrastructure projects often limit the influence of MCs. In Latvia the NGO delegate – as any member of the MC becomes a State Official, which is one way to ensure higher influence and recognition.

3. Involvement of partners in the preparation of calls for proposals (Article 13)

The level and timing of involvement of NGOs into the preparation of calls for proposals vary from country to country. Approving national projects for dozens of millions of Euros can be problematic due to lack of information for a proper assessment and decision on financing them. MCs also do not have authority for decisions related to the demand-driven calls for proposals. Where NGOs can join the preparation of calls in an early stage (p.eg. in Slovakia), NGOs recommend MAs to elaborate brief concept notes of calls for proposals for initial discussion with MCs. The ability to comment on purpose, eligibility and other essential aspects can prevent future problems and improve achieving targets and results of the OPs.

MAs in most cases and in most countries take appropriate measures to avoid potential conflicts of interest when involving relevant partners in the preparation of calls for proposals but in some countries it cannot be fully avoided that MC members at least in one OP vote on projects that are related to them.

In Hungary, the relevant Ministry and the MA prepares the calls and the MC is asked for opinion in a later stage, before finalizing the call, thus only a smaller part of the NGO recommendations are integrated, especially if the government has already made the strategic decision or the project is a priority one. Even so, the MA properly feedbacks on each of the recommendations (why it was or was not adopted).

In Slovakia, the MA of OP (Quality of Environment, QoE) created working groups to involve environmental NGOs and other experts into the preparation of calls for proposals. Environmental NGOs cooperated and even directly drafted the criteria for the sustainable use of biomass WG and they were active designers of calls on green infrastructure and ecosystem adaptation. Other Slovakian OPs have rather just formal working groups, for example transport and IT infrastructure which do not reflect the requirements of the partnership principle as not all members of the MC were invited to join important processes.

In Czechia, In operational programme for Environment as well as in the Integrated Regional operational programme, NGOs are consulted in working groups preparing the calls and their written or oral meeting comments are taken into account. However, their suggestions are taken into account only in cases where there is not a serious conflict with the view of the managing authority, or when they are supported by stronger interest groups such as industry. Regarding horizontal mainstreaming, despite the fact that NGOs comments were taken into account, in practice horizontal mainstreaming brings little real effects. In the operational programme for environment, NGOs are regularly informed on the results of specific calls or priority axes and have the possibility to influence calls based on their feedback.

In Latvia, the process of preparing calls for proposals is open for the MC members and despite the fact that all the NGO representatives working voluntarily and lack the capacity to take part in all processes, there are several examples where NGO suggestions and comments were taken into account. Unfortunately, there is neither any request nor invitation from the Latvian Managing Authority for NGOs to take part in the assessment of proposals or in discussing the implementation of horizontal principles in them.

In Poland, involvement is limited in most cases to making comments and voting on call criteria. The sequencing of calls and their specific content is decided by the Managing Institutions on the basis of the provisions of Operational Programmes, Detailed Descriptions of Priority Axes and previously established performance

frameworks. In one case, however, partners were consulted at all stages of the call preparation procedure. There is no legal basis in the national regulations for the involvement of monitoring committee members in the preparation of calls, the MA is mandated to do them.

4. Involvement of partners in the preparation of progress reports (Article 14)

Progress reports are drafted, developed by the Managing Institutions/Authorities and presented to Monitoring Committee members for commenting and approval. NGO partners are involved in the process in this later stage to submit written/oral comments which are usually considered in the countries. In some countries (SK) NGOs can give their inputs as member of evaluation working groups of MCs. Since the report is usually largely statistical and uncontroversial in nature and contains only brief, not result-focused descriptions about climate protection, sustainable development or other horizontal aspects, lacking detailed monitoring of the concrete projects, progress reports are not considered to be an important aspect of NGO influence in most countries. In Czechia and Latvia overall annual progress evaluation reports are very formal and monitoring committee members in general have almost no influence on their content.

In Latvia an example of good practice is noteworthy: every week several press releases are prepared by the Managing Authority and Central Finance and Contract Agency. These are then sent out to inform about the ongoing project tenders and projects. In addition, monthly progress reports are sent to the members of the MC.

Latvian authorities are sending out monthly updates and press releases of the progress of EU funds investment implementation, however that is only state authorities opinion reflected and risks and comments noted by NGO representatives are mostly not reflected there. Many of NGO networks like Council of the Memorandum of NGO and Cabinet of Ministers, Environmental Advisory Board and NGOs separately like European Anti-Poverty Network are sending regular comments and suggestions to the state authorities and they are formally taken into account or answered although many of NGO representatives note that often the answer is rather formal, p.eg. not contentious enough or not really answering to the content of the comment.

5. Involvement of relevant partners in the monitoring and evaluation of the programmes (Article 15 and 16)

The first evaluation processes for the current Multi-Annual Financial Framework (MFF) are only beginning. All members of the MC that express interest can have access to the evaluation but the delegates (also the NGO ones) need to be proactive if they want their position to be heard.

In Hungary, there are no working groups or coordinated consultations for the evaluation. In Slovakia the comments on evaluation and selection criteria were accepted in the past, the new evaluation process is in an early stage (no commentable materials exist yet), however the impact indicators already seem insufficient. In Latvia there are several persons from different NGOs taking part regularly at the MC, some also in the subcommittees and only very few taking part in the written procedures like evaluation. Thus here even stronger cooperation is needed. The task is time- and capacity-consuming and being an NGO delegate comes with a State Official status which can be a burden. In Czechia, overall annual progress evaluation reports are very formal and monitoring committee members in general have almost no influence on their content.

6. Strengthen NGO institutional capacity and impact on the MC (Article 17)

The European Code of Conduct on Partnership recommendations regarding capacity building are not followed properly in practice in most of the examined countries. Despite systematic and regular recommendations and requests from the NGO side, MAs in the countries – except in SK – generally fail to provide sufficient scheme or funding for capacity building of NGO delegates. The lack of financial or administrative support for effective partnership tends to result in a partnership which is rather weak and not always effective. This has negative consequences for the effectiveness of the NGO performance in MCs thus needs to be urgently addressed.

In Hungary, MAs are under the false impression that capacity building of NGO delegates are not eligible under the Partnership fund although NGOs have presented the Slovakian good practice to them that could be adapted. In SK, an initiative of the Office of Plenipotentiary for development of civil society resulted in a one year pilot project in partnership with the Central Coordination Authority with funding from the OP technical assistance (TA). This is the first ever case of OP TA covering costs of non-state experts performing work on participation, partnership and transparency in

ESIF monitoring and implementation. In Czechia, some funding is finally available for NGOs under the Operational Programme Technical Assistance but this does not lead to capacity building as its form resembles rather a consulting contract for NGO networks to evaluate specific areas of EU funding. In Latvia, after years of requesting proper support mechanism, there are none. In 2017 the MA finally have been organizing several trainings where also MC member NGOs were involved to take part but it turned out the trainings are only for state institutions and administrative staff working with EU funds implementation. In Poland, the situation varies by Monitoring Committee: one offers trainings which do not always perfectly suit the partners' needs. In the other, every partner has an annual allowance that they can spend on training of their choice but only as reimbursement. There are also various arrangements for obtaining external expert opinions, but these are not very easy to use, either.

It is a general problem for NGO representatives in the examined countries that the Monitoring Committee membership creates an excessive work burden and consumes a lot of their time, including private time, because their organisations have insufficient human resources to provide replacements or shift tasks, and the Committee members have to do that work in addition to their normal duties.

As CEE Bankwatch has pointed out in the past, comprehensive involvement requires the capacity of several full time job equivalents. Technical assistance should be provided for capacity building, expertise and reimbursement of time and travel costs for the partners, outreach to other stakeholders and the collection of inputs from the public should be financed from the technical assistance as well.

As respondents mentioned, support needs to be better tailored to the partners' needs. More resources and easier procedures to obtain external expert assistance are needed, as well as the establishment of permanent Monitoring Committee secretariats that would be financially and operationally independent of the Managing Institutions and able to ease the workload that the NGO members have to deal with.

7. Best practices and worst cases

Best practices of ECCP implementation do exist in the scope countries but MAs should be more willing to learn from and adapt these good practices from other countries. This current paper wishes to contribute to that purpose. One of the main common challenges ("worst cases") identified across all countries is the lack of time and opportunity for working cooperation with the MA and the lack of capacity building for NGOs.

Adaptable practices in MC structure:

In Hungary, environmental NGOs in Hungary have been co-operating for 25 years, including through 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.

Adaptable practices – involvement in processes (call, progress report, evaluation)

In Slovakia, best practices include two working groups in OPQoE, the sustainability of biomass and green infrastructure (described in detail in the annexes): NGOs were directly involved in consultations and in drafting of the calls for proposals. Also, Central Coordination Authority properly elaborated rules for implementation and the preparation of the law No. 292/2014. NGOs were also present at meetings and directly contributed to the drafting process of the law, the ESIF Implementation Management System and the ESIF Financial Management System. Cooperation of NGO experts with the MA and the Office of Plenipotentiary for development of civil society on OP Effective public administration (OP EVS) is another good example of preparation of calls for proposals in a participative manner. The cooperation continues for example by organising high quality info-seminars and with decent setup for monitoring.

in Hungary, NGO delegates are invited to yearly assessment conferences and MAs provide proper and detailed feedbacks to NGO delegates to their every comments, opinions sent in.

Some problematic practices:

As a bad practice, in Czechia there is an excessively complicated application MS 2014+ which serves as the centralised monitoring system of the EU funds. The European Commission applied a 25% financial correction on this system in a suspicion of a fraudulent public procurement procedure (see <http://bit.ly/analysisPP> <http://goodgovernance.cz/wp-content/uploads/2016/12/Analyza-zakazky-v->

cesku-anj-final.pdf).

A bad project case can be also mentioned from Latvia where the NGO members of the MC have not yet been able to have their views taken into account, the Riga tram infrastructure development case.

The development of the project is characterized by total lack of public involvement, lack of transparency and partnership with civil society. The selection of this particular tram line has never been discussed publicly, not even within the Transport Committee of the Riga City Council. The justification of the tram line is based on the Skanste local plan that has not received a final public hearing and has no legal status. Experts from the transport, environment and cultural sector, NGOs (including MC delegates) requested the Managing Authority to make the project application public and shared their concerns about the development of this project. In response, the City Council of Riga and the developer classified the whole project application as a trade secret. After growing public criticism parts of the application were finally published, but several important parts (e.g. the most relevant justification documents) were excluded. Riga City Council Mayor was giving false statements on very important rules of the projects and blaming European Commission for that. Nevertheless, the Operational Programme and the EC representatives in Latvia have reacted and confirmed that it is up to the City to decide which project concept they want to develop. Such a response is clearly not in the spirit of the Code of Conduct for the partnership principle.



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ANNEX 1: 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 Partnership during the establishment of the national implementation bodies and the the first phase of ESI funds implementation 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.