

Drawing experiences from pre-accession countries

Guidelines and recommendations for public participation in IPA programming

Briefing

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1 Importance of public participation

Effective planning of objectives and achievable targets for regional development requires the integration of all partners and stakeholders into planning and programming, taking into account their specific knowledge of the local context and so guaranteeing the results orientation of Cohesion funding, a major condition set out by the MFF.

A close link to citizens is crucial for the realisation of the principle of subsidiarity within the EU, bringing EU policies closer to European citizens and thus improving the legitimacy of public spending. Only where citizens have the impression that their concerns are heard and that they are able to contribute to political decisions will EU actions find acceptance. The involvement of civil society – given that the basic level of transparency is secured – serves as an additional control mechanism on the spending of EU funds, which is of particular importance especially in CEE countries where misuse of public money is much too often on the agenda.¹

Increased civic engagement and participation of environment stakeholders will help to improve the quality, relevance and effectiveness of government policies and ensure that socio-environmental concerns are addressed alongside economic issues. An inclusive approach is likely to create more confidence in the policies and decisions, and in the institutions that develop and deliver them.² Only public participation, transparency and access to information can guarantee the proper application of different environmental safeguard procedures such as the EIA and SEA, and are essential for facilitating the accountability of political processes and decisions.

2 Public participation in EU pre-accession period

¹ <http://bankwatch.org/sites/default/files/FundingEuropesFuture.pdf>

² The Need for a Reform of the Future EU Cohesion Policy – Putting Our Money Where Our Mouth Is. Position paper of the European Environmental NGO Coalition for Sustainable EU Funds; January 2010

2.1 Croatia

2.1.1 Participation in preparation of national Laws and strategies related to EU approximation process

As it is already well known, Republic of Croatia is most probably entering the European Union as 28th member if all the current member states manage to ratify its agreement which is expected to happen by the 1st of July of 2013. As this historic date for Croatia is approaching, we would like to emphasise some of Croatian mistakes made and propose the solutions for following countries which will use EU Funds as a tool for reaching European standards and European Union in general.

The journey for Croatian accession started in June 2004 when European Commission gave to Croatia – candidate country status and in 2005 after some difficulties, the negotiation process has started. The negotiations determine the conditions under which each applicant country will join the European Union. On joining the Union, applicants are expected to accept the "acquis", i.e. the detailed laws and rules adopted on the basis of the EU's founding treaties, mainly the treaties of Rome, Maastricht, Amsterdam and Nice. The negotiations focus on the terms under which the applicants will adopt, implement and enforce the acquis, and, notably, the granting of possible transitional arrangements which must be limited in scope and duration. Under similar arrangements in previous accession negotiations, new Member States have been able to phase in their compliance with certain laws and rules by a date agreed during the negotiations.³

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 in 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 defence 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 similar practice has occurred considering most of the strategies, plans and other operational programs in all of the sectors of necessary approximation. ***The practice of ignoring public participation procedure and not disclosure of information about important legislative acts shall not be allowed in new candidate countries which are getting closer towards the EU, especially not under the "EU" fast approximation procedures excuses.***

Additional issue with the negotiation process was the lack of transparency of the negotiating questions for general Croatian Public. The so called negotiation chapters were in Croatia kept secret until the time when all the chapters were negotiated, on 1st of July 2011. This practice shall also not repeat in future as in Croatia created serious public protests. The recommendation for all new candidate countries would therefore be to ***fully, or at least partially inform citizens about the negotiation process and most important questions to be negotiated with EU.*** For example, citizens of Plomin would like to know that best

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http://ec.europa.eu/enlargement/archives/enlargement_process/future_prospects/negotiations/eu10_bulgaria_romania/index_en.htm

available technology in Plomin coal power plant will not be installed immediately but only few years after the EU accession.

2.1.2 Participation in preparation of EU funds planning documents and criticism of partnership principle

Croatian Government approved Strategic Coherence 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.

The public participation gets even worse after The Environmental Protection Operational Programme (EPOP) 2007-2009 was published in September 2007 as a part of Instrument for Pre-Accession. The development of this EPOP was parallel to the development of the National Waste Management Implementation Plan, which is the main planning document for the up-coming establishment of new waste management centres at county/regional levels, which is the prime measure under the EPOP's Priority axis 1. In that report Republic of Croatia, more precisely MEPPPC provided to European Commission a statement that consultation with county representatives took place on 11th April 2007 in Zagreb with a public presentation of the draft National Waste Management Implementation Plan by MEPPPC's Minister and State Secretary. Zelena akcija/Friends of the Earth stated that the MEPPPC had a really distorted interpretation of the meaning of public presentation and the whole subject of public participation and Aarhus convention. Therefore: **the invitations made in non transparent procedure for representatives of some sectors should not replace the public participation procedure in its full meaning which is to hear the voice of the public while there is still time for changing the matter of the documents.**

When looking into Cohesion policy 2007 – 2013 documentation, the principle of partnership has been described. **The principle of partnership** is widened, which is to say that any appropriate organisation representing civil society, environmental partners, non-governmental organisations and organisations responsible for promoting equality between men and women can participate in negotiations concerning the use of Structural Funds. It not only participates in management but is involved at every programming stage (setting up, follow-up and evaluation). However, there is no mentioning of organizing **public participation procedures** where general public can review the documents and participate on the public debates. 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 Zelena 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). In conclusion;** IPA policy so far did not require broad public participation procedures but only partnership consultations. **The national governments in future EU member states should go beyond previous practices and organize effective public consultations for all the major documents (plans, programmes and other).**

2.1.3 Participation in SEA procedures

The Republic of Croatia in IPA budget period 2007-2013 did not use the instrument of Strategic Environmental Assessment either for plans and programmes on national level or for Operational Programmes under the EU related financial instruments. Such instrument in Croatia was introduced only in 2007 through the Environmental Protection Act (NN 110/07) and the first SEA were started only in 2010 for plans and programmes on local and national level and for the Operational Programme for Environment 2013. However this instrument was used selectively for some programmes and for some major programmes, the Republic of Croatia didn't start the procedure. One of those is Croatian Energy Strategy (NN 130/2009) which definitely has high environmental impact. **The SEA procedure shall be conducted for all the plans and programmes related with environmental impact no matter if the subject is local or national.** It has to be also remembered that, candidate country also has to follow the EU environmental legislation if the EU funds will be spent on the projects which will be described in these plans or programmes.

2.2 Macedonia

2.2.1 Public participation in programing 2007-2013

Civil society in Macedonia was not involved in the programming period 2007-2013 in an open and transparent manner. In 2007, civil society organisations were invited to make comments to the Regional Development Operational Programme. However, the call for comments was announced in August, during holidays and the deadline for the comments was end of August. Only one comment was submitted. However, this consultation process for the Operational Programme was not done in a truly open and participatory manner. Civil society organisations were invited to comment on a document available only in English language, without any explanation and introduction. The process for the preparation of this document (Operational Programme) and what it means was not clear to civil society organisations. The period for comments was too short (it was less than 30 days) and during holiday season, making it impossible to prepare good quality comments and truly participate in the drafting of the document. Even though the Ministry of transport and communications was asked to prolong the period for comments, this did not happen and consultations were closed.

Selection of representatives

The implementation of Macedonia's Operational Programmes (OPs) requires setting up a Monitoring Committee. Usually, the European Commission advises governments and their environment ministries to include environmental NGO representatives in the committee when the Operational programme includes environmental issues. In Macedonia, the Ministry of Environment and Physical Planning was in charge of the selection process for NGO representatives. The process for selecting an environmental NGO representative for the Committee monitoring the implementation of the Regional Development OP in Macedonia was announced on May 5 2008 by the Civil Platform of Macedonia by e-mail. The Civil Platform of Macedonia was set up informally in 2004 to connect NGOs working on various topics, but does not represent the NGOs as such. The main initiators of the platform are the Macedonian Center for International Cooperation and USAID. With its email announcement, the Civil Platform only informed 14 NGOs pre-selected by the Ministry of the Environment, and not all the environmental NGOs in the country. The announcement requested that candidates were to be proposed by May 7- an unrealistically short deadline- and that the Secretariat of the Civil Platform would select the candidate. This suggested practice was hardly democratic- if environmental NGOs propose candidates, then they should be able to

vote on them. The Center for environmental research and information Eco-sense (Eko-svest) immediately sent to the Ministry of Environment and the Civil Platform comments on the process and asked for an open and democratic approach. The initiative for organising the process in a transparent and participatory way was supported by many NGOs, who sent emails calling for a new process. The following week, a meeting was organised between the environmental NGOs and the Ministry of the Environment. At this meeting, a new process was drafted, a verification committee was established and new criteria for the representatives were drawn up. One week later the whole process was organised and the voting had commenced. The process was transparent and the candidates' applications were posted on the environmental portal Eko.net.mk. The voting by environmental NGOs also took place online, and the candidate and his deputy were selected in the given time. All environmental NGOs were informed via e-mail and the portal about the process and their chance to cast their vote.

2.2.2 Public participation in EIA, SEA and IPPC procedures

Legal preconditions for public participation in the Republic of Macedonia exist for a while. Twelve years passed since the ratification of the Aarhus Convention, and seven years since the beginning of the process of "harmonization of the legislation with the EU acquis". In the last year our practical experience by participating in decision-making and policy-making processes finally has exceptional examples. Unfortunately, for many years of active participation in decision-making processes, our conclusion largely coincides with the remark stated in the progress report of the European Commission: "The stakeholders are not involved in the decision making processes".

Our experience shows that in most cases of public participation in Macedonia there is no actual, effective public participation in decision making and policy development in the field of environment. Opposite to the essence of the provisions on public participation, in most cases the authorities pay attention only to the formal fulfilment of the letter of the law, ignoring the real needs of the public to participate. This problem is most strongly expressed in the integrated environmental permitting process, which is complex novelty in our legislation and not well known among the general public. Local population is particularly uninformed about the essence of environmental permits and their rights in the procedure.

In the main participatory procedures in accordance with the Law on Environment (EIA, SEA and IPPC procedures), there is still a one-way communication with the competent authorities – stakeholders provide comments, but don't get response whether the comments are accepted or not, and the reasons for this - leading to the fact that the public is not aware of how or if their participation influenced the final decision. There are numerous cases when the authorities involve the public in the proceedings only to "produce the legitimacy" (since it is an already adopted decision). Our experience shows that the public is included in the procedures related to the environment only "because the law requires so" without possibility to affect the essence of the final decision. Even in cases where the public provides well-argued comments, they are rejected without any explanation.

Competent authorities, including the Ministry of Environment and Physical Planning, often ignore the Decree for public participation during the preparation of regulations and other laws, as well as plans and programs related to the environment. This crucial bylaw allows the public to involve in the preparation of laws and other regulations and planning documents at the earliest stage of the proceedings. However, without explanation, the authorities do not fulfill this Regulation, which in practice means that in most cases they do not identify the public concerned at the beginning of the proceedings; do not invite locally affected citizens and environmental civil society organizations to the public hearings; nor they respond to all submitted comments during the consultation process.

3 The future: minimum standards for the next financial period

The funds regulation for the next period should set minimum standards for access to information, the role of partners and the procedures for involvement, and enhance several structural adjustments. Some of the bad practices can be easily avoided by following checklist prepared by CEE Bankwatch and partners.⁴

3.1 General access to information

National IPA managing authorities should actively – not only upon request – provide for the public access to all information necessary to allow for informed participation in the decision-making process.

They should disclose information on programming procedures and documents drafts as well as detailed information on projects that are already available at national level in a timely fashion. This should be accompanied by an assessment and the publication of costs and impacts of programmes, subsidies and projects that affect the life of citizens.

The information should be timely and easily accessible at all relevant levels (European, national and regional) and should include the following documents: preparatory documentation within programming and implementation, the programmes, project selection criteria and processes, the composition of selection committees, project proposals, EIAs, selected projects, beneficiaries, auditing, monitoring and evaluation criteria and reports.

Processes leading to decisions, and the implementation and enforcement of them, should be clear and accessible to everyone.

3.2 Partnership in programming:

- The national and regional reform strategies and objectives on which the Partnership Contracts are based should be the result of a broad consultation process.
- Clear rules and timelines for programming shall be set and authorities shall adhere to them.
- Programming shall be based on partnership-based working groups with an even representation of partners; and voting rights given to all members.
- The aforementioned working groups shall be established via transparent processes and the list of their members should be made public.
- Drafts of programming documents shall be available publicly for comments.
- Working groups/authorities shall provide feedback to those commenting on draft documents, including providing explanations for the acceptance/rejection of comments.
- Programming shall be coupled with Strategic Environmental Assessment processes starting at an early phase of programming, with wide-scale documented public involvement.

What should be disclosed?

- ✓ Rules and timelines,
- ✓ Draft documents,
- ✓ Programs, strategies,
- ✓ Preparatory documents for the programming and implementation
- ✓ Detailed information on the project and selection criteria
- ✓ Composition of the selection committees,
- ✓ Environmental impact assessment studies
- ✓ Lists of selected projects,
- ✓ Monitoring and evaluation reports

⁴ <http://bankwatch.org/sites/default/files/FundingEuropesFuture.pdf>

3.3 Partnership in implementation

- Capacity building shall be provided for stakeholders (including NGOs and civil servants etc.) to participate in partnership processes (to understand each other's motivations, internal processes etc.).
- Assistance, consultation and trainings shall be provided to potential project applicants for IPA funding.
- The EU and member states shall make sure that financial support can be allocated for NGOs' participation.
- In the case of some measures (eg. Social development, community development), cooperation with NGOs shall be a mandatory prerequisite for applicants.
- Administrative and financial barriers in access to funding from the EU Funds for NGOs should be reduced;
- Member state authorities and the European Commission should publish information about the implementation of projects in their scope of competence in a coherent way on the Internet.
- NGO experts should be involved in project evaluation and selection teams.
- Partners' direct costs (eg. travel) related to their participation in planning, monitoring, project evaluation or other partnership-based bodies should be reimbursed.

3.4 Partnership in monitoring

- The scope of competence of monitoring committees should be enhanced (in terms of adopting any change to the relevant programming and implementation documents and also dealing with the "horizontal" performance of programmes).
- A monitoring committee supervising all Operational Programmes at national level should be set up..
- Partners should be evenly represented in monitoring committees and be selected via transparent processes respected by the authorities.
- Monitoring committees should operate in a transparent manner, including the regular publication of meeting documents.
- NGOs should be represented in all Monitoring Committees and their representatives would have voting rights.
- NGOs should be able to elect their own representatives and the authorities should not be able to influence these elections.
- There should be no requirements or restrictions for NGO representatives different than those for any other member of the Monitoring Committee.

3.5 Specific recommendations regarding the implementation of the Strategic Environmental Impact Assessment (SEA)

- Strategic environmental impact assessment (SEA) should be conducted early in the planning stage – the procedure should start in parallel with the preparation of the Strategic Framework for IPA, strategy documents and operational programs;
- SEA should assess the effects of the documents/programs on the climate;
- Recommendations and priorities of the SEA should be included in the contracts (Strategic documents) that will be signed between the EC and the Government;
- Impacts on the environment should be properly assessed by the SEA, and not be left for evaluation by the environmental impact assessment (EIA) of specific projects;
- Public participation in the SEA procedure should not be a substitute for public participation in the preparation of operational programs;

- Public participation in SEA procedure should follow the European and national legislation and should be effective, efficient and participatory process;
- The system of indicators/reports should be in accordance with the EC SEA Directive (2001/42/EC, Article 10).