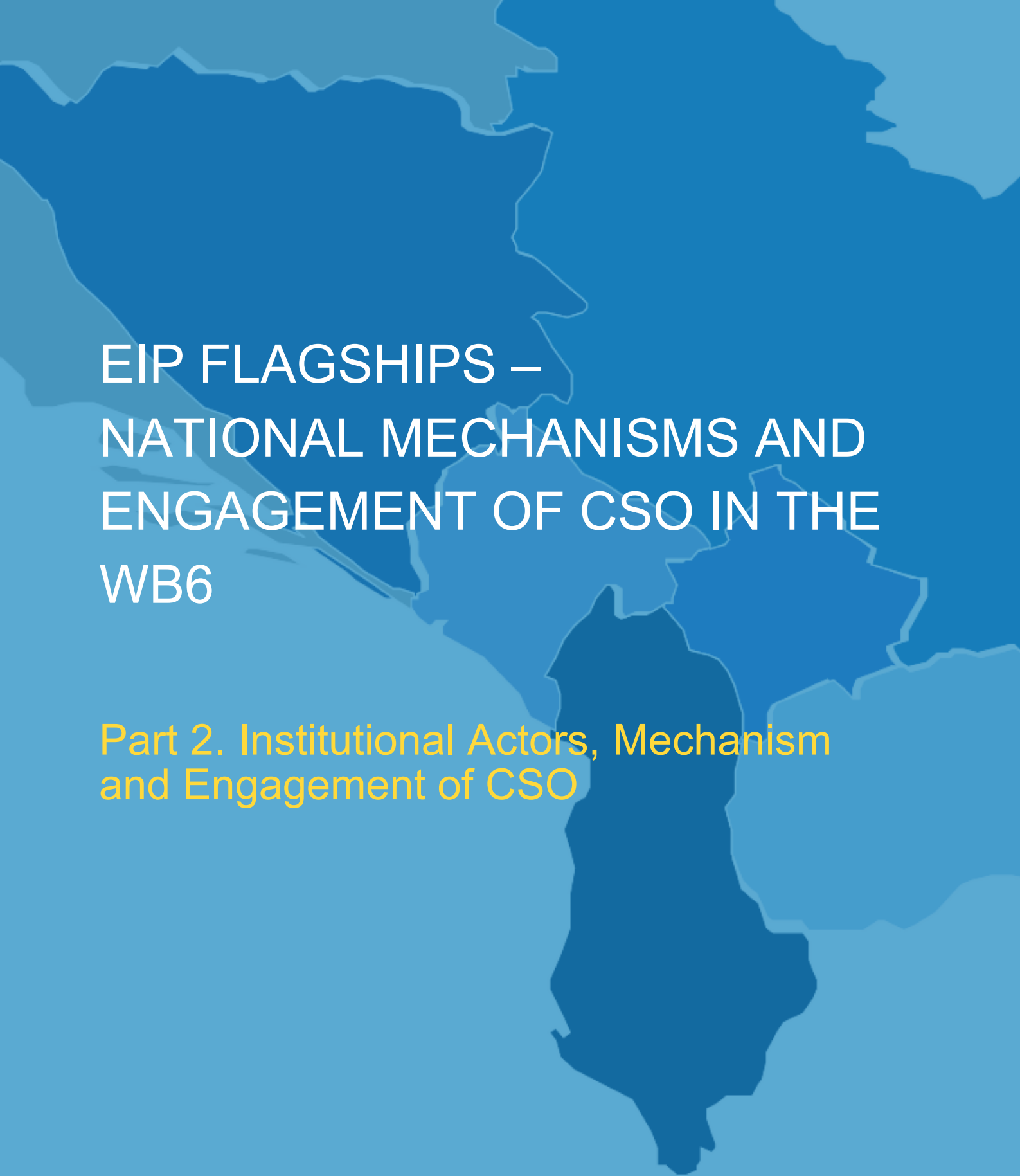

EIP FLAGSHIPS – NATIONAL MECHANISMS AND ENGAGEMENT OF CSO IN THE WB6

Part 2. Institutional Actors, Mechanism and Engagement of CSO

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SMART Balkans
Civil Society for Shared Society in the Western Balkans

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Executive Summary

In WB6 the coordination mechanisms associated with the policy-making and respective stages of infrastructure project cycle are the result of the EU *acquis*. As all the countries are adopting the relevant EU policies and decision-making procedures, their internal WB6 policy framework, legislative context and procedures are almost identical amongst the six. This similarity is reinforced by the necessity for WB6 contracting bodies to respect standard International Financial Institutions (IFI) project financing and implementation procedures.

The main exceptions relate to WB6 country specifics – as in the case of Bosnia and Herzegovina (BiH) where its different political entities affect the process; or in the drafting and use of special laws that allow mostly for by-passing EU-based legislation (often introducing exceptions from EU-based procurement rules).

The national institutional frameworks that cover infrastructure projects, reflects that pattern. In all the countries there is a National Investment Committee (NIC), sector working groups (SWG), Single Sector Project Pipelines (SSPP), National Single Project Pipelines (NSPP), donor coordination meetings (DCM), etc. Their composition may slightly vary reflecting, country's governance levels (i.e. such as BiH) and / or the strategic importance of the project.

In each country the mechanisms and the institutions involved work together from the phase of project identification to its audit & evaluation. We have counted a total of eight categories of partners involved directly in at least one of Project Cycle Management (PCM) stages – they include Line Ministries, Local Government Units (LGUs), European Union Delegation (EUD) structures, Brussels-based EU structures (such as DG NEAR / WBIF), IFI, sectorial regional bodies and bilateral donors.

Those institutions are bound to collaborate in each infrastructure project stage. There are stages where at least eight different categories of institutions should work together, each of them with their own agency and expected contribution in the PCM. On top of technical knowledge and expertise, this demands huge amount of resources – both human and financial.

The current project pipeline mechanism aims to produce mature project dossiers. What counts is that the project presented for financing is complete, that the procurement respects the EU parameters, that the supervisor certifies the works or that the auditor gives a clean sheet. Being all backed-up by WB6 sovereign guaranties, nullifies the risk taken by different IFI in the financing part.

However, the way those mature projects were dealt with by national actors / what happened inside the "black box" of national institutions - is not in the radar of EU. Covered by the "reform" conditions that apply to national and local institutions in charge, it is by national institutions that all the transparency and accountability is to be applied in the phase of project identification, for example. National competency "holes" in phases of project assessment / appraisal, of planning & design, of procuring & tendering or implementation & execution are filled through external technical assistance paid by EU or / and involved IFI.

After 30+ years of capacity building and engagement in policy-making and in infrastructure PCM, many vibrant WB6 civil society organisations (CSO) and think tanks have accumulated knowledge, expertise and *savoir-faire* that can be applied directly in almost all the phases of infrastructure PCM. Notwithstanding their very limited resources, CSO bring in their contribution and the voice of WB6 citizen into the whole project dynamics, wherever they can. They are valuable partners of national institutions, EU, IFI and other project actors involved in WB6 infrastructure investments.

The following paper aims to lay the ground for a systemic planning, support and engagement of CSO into infrastructure PCM. The final outcome would be a greater legitimacy of those projects resulting into transparency, accountability, integrity compliance, and better use of both EU and WB6 tax-payers money.

I. WB6 INFRASTRUCTURE IN POLICY MAKING AND IN PROJECT CYCLE MANAGEMENT

I.1) The Policy-making framework

The EU Commission mentioned "state capture" for the first time in the 2016 EU Enlargement Strategy to explain the rule of law and economies in WB6. State capture, the lack of political will to speed up the reforms, and poor governance were quoted as the main components of "structural weaknesses" that affect WB6 institutions.

In infrastructure project implementation those structural weaknesses take the form of:

- "political will" as expressed by the policy capture mostly during the: i) design of long-term strategic vision for infrastructure, ii) assessment of their impact on fiscal sustainability, affordability, and value for money; iii) enforcement of a transparent, systematic, and effective stakeholder participation; iv) promotion of a coherent, predictable, and efficient regulatory framework, and: v) implementation of a unified government approach to manage threats to integrity; and,
- "poor governance," as expressed by the weak administrative capacity of national institutions to design, implement, and operate such projects.

As underlined by the strong conditionality embedded into the Growth Plan, national institutions still today face a lot of challenges affecting policy-making and in PCM. In that context having skin in the game, CSO engagement is necessary to ensure the legitimacy, transparency and accountability in every step of those projects.

Under the guidance (and with support) of the European Commission, the WB6 countries have established the mechanisms and adopted the procedures to be used in all PCM steps. National Investment Committees (NIC) - which are in charge of endorsing the respective Single Project Pipeline – have been set up. This new framework is key to a comprehensive prioritization and detailed planning mechanism, able to ensure the country's budgetary resources and fiscal space, along with contracting the loans and implementing the investment projects are efficient and remain on time.

WBIF's "New methodology to support Infrastructure Projects in the Western Balkans" further defines the investments co-financing scheme; sets up a clear distinction between 'national' and 'regional' projects; and sanctions the establishment of such a mechanism.

This methodology provides the rails where the identification, preparation and selection for funding of prioritized investment projects - regardless of the source of funding – should progress. With small variations the prioritization mechanism is the same in all WB6 countries, and can be described through the following steps:

1st Step: Establishment of Sectorial Strategic Management Group (SSMG). This structure is set up by an Order of the Lead Minister (i.e. Ministry that is impacted most by the project in question). Normally the SSMG is headed by the Minister or respective Secretary General. The SSMG is in charge of identifying the strategic relevance criteria for each sector that will be used to shape the formats of the Project Identification Fiches (PIFs). The PIFs will serve as the initial document defining the scope the upcoming completed project. The SSMGs evaluates, scores and ranks the PIFs in compliance with the agreed strategic relevance criteria (as mentioned above); and will finally produce the draft Single Sector Project Pipeline (i.e. the list of projects of this specific sector ranked by their relevance).

2nd Step: Preparation of Strategic Relevance Criteria of Project Identification Fiches. The Strategic Relevance Criteria are applied in the assessment phase of the PIFs by the SMG. They are discussed and agreed by the involved line ministries and consequently adopted by each Strategic Management Group.

3rd Step: Preparation and submission of PIFs. During the PIF preparation, the main problems can relate to low or inexistent involvement of LGUs (which affects the acceptance and endorsement of the local population of LIPs); to the quality of the submitted PIFs that reflects the quality (or the absence of it) of the related policy framework (i.e. National Strategy for Development and Integration, as well as of respective Sectorial Strategies); etc.

4th Step: Strategic Management Group and Completion of Strategic Relevance Assessments. Each of Strategic Management Groups is responsible for the completion of the strategic relevance assessment and grid of the projects. The SMG produce the final ranking of proposed projects ranked by sector, which will then is presented to the donors. At this step, we have still different sector project pipelines (one for each sector) and not yet a Single (unified) Project Pipeline.

5th Step: Finalization of SSPPs and consultation with donors. During this stage, SSPPs are completed with the respective gap assessments and evaluation grids. Moreover, the fiscal space is identified in cooperation with Ministry of Finance / Budget. In addition, the harmonization of the Mid Term Budget Plan with the IPA, is done through the responsible ministries. Basically the SMG receives different SSPPs and are free to select the projects that will be presented for financing. While sounding logical, this approach leaves the project list vulnerable to the political cycle and resulting electoral preferences. In this stage, the individual SSPPs lists are consulted with the donors, but there is no meaningful consultation with other stakeholders such as CSOs, academia, etc.

6th Step: Finalization, consultation and approval of the Single Project Pipeline. In this phase, the different SSPP merge in one single SPP. The ranking and the prioritization of the projects, follows their strategic relevance, the maturity in terms of implementation; and their financial viability after completion of investment.

7th Step: Closure of the process. The SPP list is discussed by the Strategic Planning Committee/NIC that debated on the strategic relevance of main priority project and subsequently approved the final SPP. The final SPP is submitted to the European Union Delegation accredited in respective WB6 capitals and to DG NEAR.

I.2) Project Cycle Management framework

SPP projects that are submitted for financing can be in different stages of maturity. Depending on the criteria of strategic relevance some can be even at the project idea stage while some other are almost ready for procurement. As a result politics is quite present into the first three steps of PCM: needs identification and selection; appraisal and planning and project phase. Such a strong policy component makes infrastructure very susceptible of external influences in its first steps. The heavy focus for transparency directed on the procurement have left the “preparation” phase relatively unattended.

The OECD phases of PCM are as follows:

a. Needs definition and selection phase. The infrastructure cycle starts with the definition of the needs and the identification of the best way to respond to this need. Actors are Line Ministries, National Investment Committee, Prime Minister’s Office, Parliament, regulators, consultants, and others (lobbyists, NGOs, and potential contractors). This phase is heavily affected by politics and takes place in policy-making level of PCM mechanism, as explained above.

b. Appraisal phase serves to evaluate an infrastructure project’s feasibility, to give the official approval, and to determine how and by whom it will be financed. It also includes the Environmental and Social Impact Assessment and the Feasibility Study. Actors include all government levels linked to the project, companies, consultants, lobbyists and financial institutions backing the project. The politics component remains strong, notwithstanding the “entry” of IFI in the process.

c. Planning and projection phase consists in the transparent and fair development of the bidding documents, including detailed project design, estimated project costs, and terms of reference composed by the details and specifications of the work to be undertaken and evaluation criteria for the bidding process. Actors are project owners (i.e. road agency, public company, LGU, etc), public officials responsible for issuing planning permits and other approvals, consultants, potential bidders, and contractors. Here the shift of agency from politics to technical bodies becomes much more relevant.

d. Procurement/ Tendering (P/T). In the P/T phase, suppliers decide to respond to public needs by submitting an offer. Bids are evaluated and contractors selected based on their technical skills and cost proposal. Actors are bidders, contractors, public officials, and consultants. Even if technical, here we have workable suggestions, such as making obligatory the participation of specialized local CSOs as "observers" in evaluation and selection committees.

e. Implementation and Contract Execution concerns the construction or maintenance work, and operations. Actors are project owners (i.e. government, agency, public enterprise, LGU, etc), consultants, contractors, suppliers, and sub-contractors.

f. Evaluation and Audit ensures that adequate internal controls are applied throughout the project cycle. Actors are contractors, supervisors, auditors, consultants, and public officials.

It can be observed that politics agency decreases with the advancement of project in its PCM stages. As a result, there is an overlap between policy-making actors and Large Infrastructure Project (LIP) stakeholders in the first PCM stages.

PCM stakeholders include the WB6 governments as represented by their different national administrative bodies (including the NIPAC, NIC, Ministry of Infrastructure, Ministry of Finance, local government units (LGU), and program management units), publicly owned companies, private sector actors, foreign donors, and the five WBIF partner banks (IFI).

In the case of the EIP Flagships, this complex institutional structure has not incorporated any meaningful mechanism for the direct involvement of CSOs or other NGOs in the LIP project cycle. In theory, both stakeholder groups – CSO and LGU – are requested by law to be consulted during the: (i) preparation of the National Single Project Pipeline (NSPP) and other different national consultation mechanisms regarding the identification and prioritization of infrastructure projects; and, (ii) phase of pre-feasibility and feasibility study through the Environmental and Social Impact Assessment (ESIA). But as presented above, citizen and even LGUs are absent from the preparation of NSPP, while ESIA consultations are marred with problems.

As a result, in reality EIP Flagships in Western Balkans are identified, designed, financed, implemented, and operated mainly within the institutional triangle of: (i) Government (PMO, Ministry of Finance and Ministry of Transport); (ii) of EU Commission (on projects that receive IPA grant support, WBIF technical assistance and extension of the Trans- European Transport Network / TEN-T); and of, (iii) IFI (for loan modalities).

Moreover, WB6 governments have recently passed special laws that allow for the direct procurement of large projects based only on bilateral agreements (hence outside the EU-based contracting rules and procedures). As expected, those projects suffer from a lack of transparency, problems during implementation, and often produce negative impacts on the environment and on the fiscal sustainability of the country.

Despite such an environment, many local CSO have continued to represent and protect the interest of the citizens and have duly identified cases where the LIP governance has been poor and resulted in increased costs for the WB6 countries. Risks and failures linked to integrity in every project phase are also becoming public by the media.

Beyond their LIP monitoring role, CSOs are holders of a critical mass of knowledge on many activity sectors, key reforms, and accession negotiations chapters. Their work on the ground is crucial for enriching and complementing the policy-making processes across sectors, and in almost all the PCM stages. locally based CSOs have a vested interest in the efficiency and

impact of EU financial aid as well as its sustainability. Hence the input of civil society should become a systemic component of the local contribution of infrastructure projects.

Table 1. Institutions and Structures in charge per Project Cycle Management phase

	INSTITUTIONS AND STRUCTURES IN CHARGE PER PCM PHASE	(1) Identification	(2) Project assessment / appraisal / screening	(3) Planning and design	(4) Procuring / Tendering	(5) Contract implementation and execution	(6) Evaluation and audit
1	Ministries of Line (central government)	x	x	x	x	x	o
2	Local Government Units	o		o		o	
3	NIPAC/NIC/Strategic Planning Committee	o	o	x			o
4	EU Delegation in Tirana		x				
5	EC/DG NEAR (WBIF SECRETARIAT)		o	o	o		x
6	Partner Financial Organizations (EBRD, EIB, KFW, AFD, etc)		x	x	o		
7	Regional bodies (RCC, TCS, Energy Community. etc)		o			o	
8	Bilateral Donors		x	x	x		

Legend

- X: primary role
- O: secondary role

II. NEEDS IDENTIFICATION AND SELECTION OF PROJECTS

This phase consists in determining the needs and priorities of the citizens and defining the best way to meet or solve them.

Notwithstanding public declarations, *de facto* impacted LGU and relevant CSO have little impact on needs identification and no impact in selection of projects.

CSO at this stage:

- should use their legal attributions and advocacy tools to provide their input in the legal and strategic policy documents, including national development plans and sector strategies;
- insist that the specific public investment decision is based on those approved national strategic documents, and regional or sectorial objectives that take into account their interests and input;
- should lobby so that the selection of public investment projects takes into account the specific interests and priorities of their citizens and constituents.

All three actions above depend on the availability of entry points and engagement mechanisms allowing CSO to participate in the relevant policy-making endeavour.

II.1. Observations regarding this stage

As a rule, the needs and priorities of the citizens of a WB6 country are identified and translated into concrete programmes in the respective National Strategies and National Development Plans (at the central and also sometimes at the local level). The needs are identified based on the Government Programme, usually for four years and also through the revision of the National Strategies and Action Plans by the respective Ministries of Line and of Municipalities (in case of regional development plans).

In BiH this exercise is conducted at state, entity, district and cantonal levels. Needs are identified based on the Government Programmes (for periods from four to seven years) and through the revision of the National Strategies and Action Plans by the respective entities, cantons, district and ministries.

It is in the **central level**, that the attention of the foreign donors has been clear, relevant and concrete. The EU is investing mostly in raising the capacities of the central institutions based on the needs identified during the EU integration process. Also the EU is supporting the central institutions in drafting and implementing EU infrastructure projects, through specified Technical Assistance projects.

With IPA III, the Ministries of Line are involved in the process of drafting the multi annual programmes (operational programmes) and WBIF-requested ones. At this stage, the allocated space and role of the civil society is very limited. The CSO's and social partners are consulted only when a national strategy and/or action plan is drafted (based on the Law on public consultation).

However with the upcoming programming process of IPA III Operational Programmes (OP), the institutions are obliged consult the civil society about the support areas of each programme. Here we can mention the web platform "eKonsultacije" in BiH as an e-format were interested public, civil society organizations and citizens are invited to participate in the creation and implementation of public policies that are the responsibility of the BiH institutions, via Internet.

Even if limited in one consultation session per each OP, this is a positive signal towards inclusion of civil society in needs identification phase and constitutes a "CSO entry point". Since the Operational Programmes are going to be implemented in indirect mode by the national structures, this also means that the need for transparency and visibility of actions

becomes more important. The OP's will prepare the central institutions for the implementation of future structural funds, when WB6 will join the EU.

On top of ministries, sometimes Agencies[1] under the umbrella of the Prime Minister's Office, have a mandate to design, implement, propose, coordinate and monitor local and international public policies and manage donor funds.

In Kosovo despite the establishment of the platform "Council for Government Cooperation with civil society" CSOs do not have a direct role in the identification or selection of LIP/projects. The primary purpose behind the Council's formation was to enhance collaboration between the government and civil society. Its goals include promoting and supporting the growth of the civil society sector, as well as ensuring effective coordination and monitoring during the implementation of the Government Strategy for Cooperation with Civil Society 2019-2023.

With regard to the **local level** the Municipalities in all WB6 are facing big challenges such as limited capacities in the absorption of funds; cash flow limitations directly impacting municipalities obligations with regard to pre-financing obligations; limited ability to meet co-financing obligations, reimbursement of VAT as well as of other taxes/obligations, etc.

Other LGU shortages affect technical, managerial, or financial capabilities and a shortage of skilled personnel with experience in project management, financial management, and procurement processes. Implementation of an infrastructure project often requires navigating complex bureaucratic procedures and regulatory requirements as well as overcome funding constraints.

In that regard, the creation of a specific fund by the Government of Albania for the support of public institutions with co-financing budget (such as VAT refunds in the 2022 budget), constitutes an important development towards addressing the problems. In this context, further support to local governments with pre-financing, co-financing, VAT refund, etc needs to be designed, budgeted and executed.

II.2. List of institutions involved / in charge

The first step in the selection and prioritization process is to identify relevant sectoral infrastructure projects that could be important for the implementation of sectoral strategies and state/regional socio-economic development programs, and which meet the basic criteria of relevance.

With regard to the identification of the projects, the **Line Ministries (LM**) have the responsibility to identify priority projects, based on the sectorial action plans. This prioritisation produces a sectorial list of infrastructure projects, which latter became part of the National Single Project Pipeline.

Project identification and prioritization starts at the level of Sector Working Groups. It is here that policy priorities are translated into an initial list of projects ranked by sector called sector-based programming. At that level, Sector Working Groups (SWG) are responsible for the preparation of the Single Sector Project Pipeline (SSPP). SWG is responsible for the identification and preparation of the SSPP list, in accordance with the principles of the sectoral approach. Permanent members of the SWG are representatives of competent institutions at all levels of government, public companies and other entities responsible for infrastructure projects, and representatives of the ministries of finance at the state and entity level. If necessary, representatives of civil society organizations, other subjects as well as international donors active in the given sector can attend the meetings.

Sectoral working groups are established by Government decision and have rules of procedure for their work. SWGs are composed by members of all the institutions active in a specific sector. NIPAC representatives are always included and ensure the link with the NIC. Some of

[1] In Albania the agencies under PMO can be found here: https://kryeministri.rks-gov.net/zyra-e-kryeministrit/agjencite/

them include the CSOs representatives, although the selection process remains unclear/non-transparent.

SWG is responsible for: i) collection of infrastructure project proposals (in the form of PIFs) from various relevant institutions; ii) evaluation and ranking of these projects in accordance with pre-defined strategic relevance criteria; and, iii) preparation of the SSPP as a result of the prioritization process, with indicative funding sources and project maturity status.

SWG will then prepare a Strategic Relevance Assessment (SRA) of each project based on data from PIF, in accordance with strategic documents and plans of the sector and other relevant documentation. But the current mechanisms for identifying needs and selecting projects are focused only on a limited number of parameters related to the micro-environment of the project, and not take into account the inevitable accompanying factors related to the policies in the concrete sector, citizens' needs, demographic and other trends, maintenance costs and long-term sustainability and utility. The affected CSOs are often not involved in this phase.

North Macedonia has not had a National Development Plan for more than a decade. On several occasions national authorities have mentioned the role of the national Economic Reform Program (ERR) as a key development strategy, but in reality, that program is not an adequate replacement. This is especially the case when it comes to infrastructural development, which represents only a marginal aspect in the ERP, the information in this area is insufficient, is not contextualized and is only related to macroeconomic aspects.[2]

All Albania's central government institutions (currently 16 ministries) and Agencies under the umbrella of the Prime Minister's Office have as part of their organogram a specific Directorate that deals with the programming and monitoring of the donor projects, including EU ones. These Directorates are responsible for the programming and project management, and also coordinate internally the process of programming and monitoring of EU funds, such as IPA and WBIF projects. All of the LM's send to SASPAC the list of infrastructure projects under their remit, ranked as per priority and importance for the sector.

In BiH the multi-layered political system increases the complexity of this exercise. On top of different levels of government, such as state, entity and cantonal levels, there are various agencies which have the authority to manage donor funds. All central government institutions and ministries have a specific Directorate within their organizational structure that deals with the programming and monitoring of donor projects, including those from the EU, usually called Department for strategic planning and aid coordination or EU Integrations department. These departments are responsible for programming and project management, and they coordinate internally the processes of programming and monitoring EU funds, such as IPA and WBIF projects.

In the **LGU** level are established and are functioning specific departments dealing with programming and implementing the national and donor's funds. In Albania's 61 Municipalities are also established EU Offices, which also are collaborating internally in order to identify the possible projects which are in line with the requirements of the EU accession process. Set up since a couple of years, with very few exceptions their capacity in identifying and writing projects are still very limited.

BiH municipalities and cantons have been established departments responsible for programming and implementing national and donor funds. EU Offices have also been set up in each of these municipalities and cantons, where they collaborate internally to identify potential projects that align with the requirements of the EU accession process

As IPA should prepare WB6 for European Structural and Investment Funds (ESI funds) and considering that 80% of EU funds are applied at the regional and local levels, LGUs and CSO must urgently be targeted by EU for WB6 for capacity building. As current Operational Programs (OPs) are designed to prepare central institutions for the implementation of ESI

[2] Ibid, p.16

funds, it is necessary to consider to tailor them to serve the purpose of preparing actors at the regional and local levels for the utilization of those funds.

In that phase we observe deficiencies regarding transparent planning and design of investments and of their associated financial allocations. Presently, these are often influenced by the preferences of political elites rather than being driven by expert analysis. There is tendency to consider projects only from their monetary and fiscal impacts with less emphasize on public benefits. This often results in a lack of consideration for the needs of the country's businesses and citizens.

The role of the CSO's is almost inexistent in terms of identification and selection of LIP / projects, being it at national level or at regional/LGU one. There is no mechanism neither space to allow willing and knowledgeable CSO to meaningfully engage at this step.

III. PROJECT ASSESSMENT/APPRAISAL

This phase serves to determine the feasibility and sustainability of the project, as well as to assess the impact it will have on the environment and social aspects. It covers the preparation of feasibility and impact studies that are usually drafted by external companies and business consultants.

In that context, the key challenges include providing objective, reliable and robust studies that will not be influenced by lobbyists, political influences or corrupt deals. LGUs have in that phase maybe the highest agency in the LIP lifecycle through the Environmental and Social Impact Assessment (ESIA). They must make sure that economic feasibility, and the environmental and social impact assessments are objective, credible, and professional. For that purpose, they must be crystal clear about the benefits and costs that the project has for the LGU and its citizens, inform the citizens accordingly, mobilize them wherever necessary and make sure they participate in all ESIA hearings and meetings, and streamline the citizen movements towards the same goal: maximizing the benefit of the LIP for the local community.

It is also *important to ensure that specialized CSO, with in-depth understanding of public finance management, environment and social aspects, especially in relation to the specific territory (grassroot), are also included in this phase*; that they receive all the necessary information; and that their impact is taken into serious consideration.

III.1. Observations regarding this stage

When it comes to the assessment of the proposal, in case of EU funded projects the main responsibility belongs to the NIPACs, as the counterpart of the EC in deciding which projects will be eligible for EU financing (especially the infrastructure projects). The NIPAC coordinates the process of programming and monitoring of the EU funded projects.

As the list of infrastructure projects part of the Single project Pipeline, no consultation is done with the civil society. The impact studies are contracted to external consultancy companies hired by the beneficiary institutions. Their appraisal and selection is done by Ministries of Line in charge, the EC, EUD, WBIF Technical Secretariat, International Financial Institutions, Regional Bodies, and/or Bilateral Donors which are considered financial donors. No space or role for CSO engagement exists here. There is neither a mechanism nor space allowing willing and knowledgeable CSO to engage in this step.

There is no specific framework or role designated for CSO involvement, except in instances where CSOs proactively seek accountability from the relevant institutions concerning the implementation phase. Despite the valuable expertise and potential contributions that CSOs can offer, there is a notable absence of an engagement plan for their participation in the process.

III.2. Institutions involved / in charge

NIPAC/ NIC

NIPAC is the counterpart of the EU Commission delegation in the WB6 country and it is supported by the NIPAC SO which is working directly with the IPA Units in the beneficiary institutions (mostly Line Ministries), in programming and implementing the EU funds.

In Albania it is the Director of State Agency for Strategic Programming and Assistance Coordination (SASPAC) that is appointed as NIPAC - this function is supported by the NIPAC SO within the SASPAC. The role of NIPAC is to coordinate the whole process of programming and monitoring/evaluation of the IPA funds, based on the FFPA (Financial Framework Partnership Agreement in the case of IPA III). The Director of SASPAC and NIPAC is also the head of the NIC technical Secretariat.

In BiH it is the State Committee for Investments[3] that oversees the prioritization of strategic infrastructure projects (in accordance with the priorities of state, regional and EU strategic documents) that adopts the Single List of priority infrastructure projects for BiH; that makes decisions on updating it, and considers the financial sources necessary for project implementation.

In North Macedonia NIC is co-chaired by the National IPA Coordinator (NIPAC), i.e. the Deputy Prime Minister in charge of European Affairs and the Minister of Finance. Apart from the political level, NIC also meets at the technical level (the technical working group - the second level of the NIC. This constitutes the operational body which formulates, promotes and monitors the implementation of the sector approach; monitors the preparation of projects through the various phases of the project cycle and secures mature, sustainable and strategically important projects for funding priorities. The technical level of NIC is chaired by the state secretary from the Secretariat for European Affairs of the Government.[4]

In Kosovo the NIPAC is a Directorate in the Office of Prime Minister of Kosovo[5] and has the main duties as the other NIPACs of the region.

The only case when NIPAC is obliged to consult the Civil Society and the Donors, is the Country Strategic Response for IPA III. Recently in Albania, the obligation for NIPAC to coordinate the process of consultation of the areas of support of the Operational Programmes with the civil society, has been added. Even so, the role and responsibility of the civil society is very limited, and their interventions cannot make substantial changes in the prepared documents.

Sector Working Groups/Line Ministries (primary role)

SWGs so far have failed to ensure substantive inclusion of CSOs in their work in general, while there is no data that LIPs are discussed at all with CSOs in the SWGs. Considering that there is no regular reporting on the work of SWG (or NIC), nor proactive transparency on the part of the key institutions concerned, their work largely remains unknown to other stakeholders and the general public.[6]

According to a North Macedonia 2020 survey about 104 CSOs, only 9 responded that they participated in the work of some of the SWGs. An additional difference is made in the way and degree of inclusion of CSOs in SWGs. Namely, according to the Rules of Procedure of each of the SWGs, in some of them the CSOs representatives are included as members, while in other SWGs they have only a monitoring role. Such difference makes it difficult for CSOs to have a unified approach towards their participation in the work of the SWGs.[7]

[3] The State Committee for Investments in Bosnia and Herzegovina was established in 2015. The members of the Committee reflect the structure of the country – its members are: Chairman of the Council of Ministers of Bosnia and Herzegovina; Minister of Finance and Treasury of Bosnia and Herzegovina; Minister of Foreign Trade and Economic Relations of Bosnia and Herzegovina; Minister of Foreign Affairs of Bosnia and Herzegovina; Minister of Communications and Transport of Bosnia and Herzegovina; Minister of Civil Affairs of Bosnia and Herzegovina; State IPA coordinator; Prime Minister of the Federation of Bosnia and Herzegovina; Prime Minister of Republika Srpska; and the Mayor of Brčko District of Bosnia and Herzegovina.

[4] https://www.sep.gov.mk/post/?id=8806

[5] https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61472

[6] Ibid, Krstinovska A., Hackaj A.,

[7] https://www.nvosorabotka.gov.mk/sites/default/files/Obrazec%20na%20inicijativa_Strukturen%20dijalog_FOOM_0.pdf

EUD / DG NEAR – Technical Secretariat of WBIF

Each Delegation of the European Union in the WB manages EU Assistance programmes and informs the public, decision-makers and opinion-formers about the integration process, EU institutions and its policies. The NIPAC consults the EUD when it comes to the projects identified for support from IPA and/or from WBIF funds.

The WBIF Secretariat is hosted by the European Commission. The Secretariat's main role is to prepare, support and implement decisions of the Project Financiers' Group and the Steering Committee, and to maintain an efficient working relationship with the NIPAC's and the other WBIF Stakeholders. Its tasks are:

- coordination of stakeholders, preparation of the annual work programme and overall arrangements for carrying out the screening and assessment of active Rounds for proposals (both technical assistance and investment grants); administrative support to the WBIF with planning and executing the selection process, including regular WBIF meetings (Paris Group, Project Financiers' Group, and Steering Committee), and recording of relevant activities via the WBIF Management Information System (MIS);
- implementation tasks related to the operation and maintenance of the MIS and specific tasks assigned to the Secretariat by the Project Financiers' Group, or the Steering Committee;
- communication and reporting (e.g. Monitoring Report, WBIF Annual Report, WBIF website management).

Notwithstanding an Open Letter asking for CSO[8] involvement as observer in selected WBIF mechanisms, they have not been included yet. In informal discussion it has been mentioned the idea to invite CSO on an ad-hoc basis.

International Financial Institutions and WBIF

The WBIF was launched in December 2009 as a joint initiative of the European Commission, the partner International Financial Institutions (the European Investment Bank - EIB, the European Bank for Reconstruction and Development - EBRD, the Council of Europe Development Bank - CEB, Kreditanstalt für Wiederaufbau - KfW, Agence Française de Développement - AFD, the World Bank Group – WBG), as a participating International Financial Institution); of and bilateral donors.

Their role is mainly linked to the WBIF projects and in some cases they are involved in the implementation of IPA national projects as entrusted entities by the EC. Main IFI are shortly described below:

- The **EIB** tasks are to support projects both within and outside the EU. Its shareholders are the Member States of the EU. One of its main objectives in EU is to develop less-developed regions. It seeks to modernise or convert undertakings, or develop new activities which cannot be completely financed by means available in individual Member States.
- The **EBRD** provides project financing mainly for private enterprises, usually together with other commercial lending partners, in countries that are committed to, and apply, democratic principles. It also works with public partners to support privatisation, restructuring and improvement of municipal services. It does this by financing investments, providing business services and getting involved in high-level policy dialogue in these countries to support private sector development.
- The **KfW** finance is concentrated in the areas of: a) small and medium-sized enterprises, liberal professions and business start-ups, b) risk capital, c) housing, d)

[8] https://cdinstitute.eu/wp-content/uploads/2021/09/WB6-CSO-s-Open-Letter-to-the-EU-Institutions.pdf

environmental protection, e) infrastructure, f) technical progress and innovations, g) internationally agreed promotional programmes, etc.;

- The Agence Française de Dévelopement (**AFD**) supports and accelerates the transitions to a fairer and more sustainable world focusing on climate, biodiversity, peace, education, urban development, health and governance.
- The World Bank Group (**WBG**) activities focus on developing countries in human development, agriculture and rural development environmental protection, infrastructure, large industrial construction projects, and governance.

Bilateral Donors

The Bilateral Donors (Austria, France, Germany, Italy, Luxembourg, Norway, Poland, Slovenia, Sweden, etc.) are mostly state-backed development agencies active in the WB6. Beside bilateral engagement, many of them are actively involved in the WBIF governance and operations to support small-scale technical assistance and investment projects in all sectors.

Donor coordination (where EU also takes place) takes place at national level and - during the last years - mostly on an ad-hoc basis. Because of an increased need for an influx of funds due to migrant crisis, floods, pandemic of COVID-19, war in Ukraine, etc., more systematic coordination is required. Currently it is the Delegation of the EU in the country which provides coordination services, and it covers only donors from EU member states.

Regional Organizations

The main regional (Regional Cooperation Council, Transport Community, Energy Community) organisations involved in LIP PCM in the region, are:

- **Regional Cooperation Council** areas of cooperation are: Economic and Social Development; Energy and Infrastructure; Justice and Home Affairs; Security Cooperation; and, Building Human Capital.
- **Transport Community** is an international organisation in the field of mobility and transport. Transport Community is working on integrating Western Balkans' transport markets into the EU by assisting the six Western Balkans partners connecting Western Balkans regional partners among themselves and with the EU.
- **Energy Community** is an international organisation which brings together the EU and its neighbours to create an integrated pan-European energy market.

IV. PLANNING AND DESIGN OF DOCUMENTATION

This phase consists in the preparation and transparent & fair development of the bidding documents, including detailed project design, estimated project costs, and terms of reference composed by the details and specifications of the work to be undertaken, as well as the evaluation criteria for the bidding process.

At this phase it should be ensured that purposeful adjustment of the specifications, budget manipulations, division of contracts, asymmetry in information and similar manipulations are to be avoided in order not to create an advantage for a certain economic operator, at the expense of others.

Here, the involvement of CSO could help to avoid tailoring of specifications by specific interest groups; to fight asymmetrical information especially on the impact (positive and / or negative) on the ground; to include in the design the needs of local communities; and, to protect the interest of the citizens.

IV.1. Observations regarding this stage

The planning and all the project maturity documents are prepared by the beneficiaries and Line Ministries in collaboration with the involved International Financial Institution and bilateral donor. In this phase, projects are written and discussed jointly by the Beneficiaries, bilateral and other potential donors and participating financial institutions, and agreed via the NICs or equivalent national structures with regard to project prioritisation (for projects proposed for an investment grant).

For the proposals submitted to WBIF, project design is prepared by the beneficiaries with the support of the Technical Assistance consultants (mostly paid by EU). The project should be assessed as mature prior to its financial submission. As regards the LGU's, the project documents are almost always prepared by a consulting company paid by the Municipality or by the donor who is financing the infrastructure project.

The mature project documentation should be consulted with the stakeholders, including the civil society, but this randomly happen, since there is no mechanism to do so and no legal base in place.

With regard to IFI and bilateral donors' supported projects, CSO and citizen involvement is to be assured through Stakeholder Engagement Plan (SEP). The purpose of SEP is to enhance stakeholder engagement throughout the life cycle of the Project, and to allow out stakeholder involvement in line with the national laws, as well as with the requirements of IFI. However the citizen & CSO involvement through SEP is ex-post – no mechanism is foreseen for citizen to either initiate and / or participate in the drafting of documents.

IV.2. List of institutions involved / in charge

Line Ministries (primary role)

Different rules are applied in each phase of a project depending on who finances it and through which instrument. Subsequently the role of the line ministry/ies may slightly vary[9].

- When the **planning and design** of a project is funded (100%) through the national budget, the line ministries prepare the Terms of Reference (ToR) and procure the services for the specific phase of project preparation. In this case, the national procurement rules are applied.

[9] In BiH the Government of the Brčko District has the competencies of a line Ministry

- When the planning and design are funded through WBIF, via Infrastructure Project Facility (IPF)[10] and financed 100 % by EU grants[11], the line ministry (which is "beneficiary" of the project) creates a working group with representatives from various departments and other institutions / agencies depending from the ministry. This working group contributes to the preparation of ToRs and provides all necessary technical documents to the WBIF-hired consultants responsible for preparing the project dossier. The working group is also one of the main responsible parties for endorsing deliverables from the consultant. The EU financed consultancy is procured by the EIB (as IFI in charge of this task) for the Infrastructure Project Facilities (IPFs). The IPFs contract the local experts (up to 10 % of the total amount allocated to that task) following EU and IFIs contracting standards.
- In the case planning and design are prepared via the Wester Balkan Joint Fund TA (WBIF JF TA)[12], IFI sector experts are more directly involved in the preparation of all the necessary documentation. However, this slight change does not affect the role and contribution of the line ministry which stays the same as when the preparation is 100% supported by EU.
- In cases where the design in the sector of transport, energy, and digital is prepared via CONNECTA (consultancy contacted by DG NEAR)[13] the role of the line ministry remains the same as in the cases with IPFs involvement.

LGUs (secondary role)

The LGUs are involved by the line ministries in providing data and input for the preparation of technical documents. There is no fixed procedure regarding LGU consultation.

NIPAC/NIC/Strategic Planning Committee (primary role)

During this phase, NIPAC acts as the primary counterpart of the EU and coordinates the overall process. However, NIPAC is not officially part of the working group created by the line ministry. As a result, when things run smoothly they are mostly excluded from the process but get involved only when there are problems to be resolved with EU/WBIF secretariat (such as change of budget between budget lines, need to increase the budget, no feedback from the line ministry change of government priorities etc). In some cases, the NIPAC is consulted on draft documentation such as Feasibility Study (FS), Detailed Design (DD), ESIA etc, but does not have a say on the endorsement of the technical documents.

EC/DG NEAR (WBIF SECRETARIAT) (secondary role)

The DG NEAR/WBIF secretariat contracts IPF consultants for project preparation tasks and allocates the responsible IPF funds when a project enters the planning and design phase. The

[10] IPF is a consultancy contacted by the EU (financed thought European Western Balkan Joint Fund) and indirectly management by delegated agreement by EIB. There is no website dedicated to IPFs but there is information on the IPA Multi Country Page (https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-12/AD%2001%20W3W4-MC%20WBIF%202021-2023_amend%201-FINAL.pdf) as well as directly on the page of the contacted company (example (http://systema.com.gr/en/western-balkans-investment-framework-wbif-ipf-7-infrastructures-energy-environment-transport-and-social/)

[11] Through this procedure EU supports the line ministries to prepare the necessary documents required for the design and implementation of major infrastructure investment projects in the Western Balkans, EIP flagship being the main ones

[12] This fund is financed through International Financial Institutions or bilateral donors and finances project wherever the funds are not available with IPFs. This fund does not have and official website but you can find information in different IFIs website (example https://www.eib.org/attachments/eu-grant-contribution-wbif-en.pdf) ;

[13] CONNECTA is a consultancy contacted directly by the EU to speed up the maturing of EIP projects. Currently the official website of Connecta does not work https://connecta-info.eu/

EUD has been delegated most of the EC's tasks, including contributions to and review of ToRs and of the technical documentation, approval of the local experts proposed by IPF, and participation in project meetings. The EUD in each WB6 country also endorses project documentation.

IFI and Partner Financial Organizations (EBRD, EIB, KFW, AFD, etc) (primary role)

When IPF implements a project, after it completes the draft technical documentation, it submits it for final endorsement to the LM / established working group. Nevertheless the IFI in charge plays a main role in contributing / reviewing / endorsing the project documentation. The IFI technical team (constituted by sector experts) reviews and contributes to the ToRs and to technical documentation, participates in project meetings, and approves the local experts proposed by IPF. The Lead IFI is also a stakeholder who endorses project documentation.

If the preparation of documentation is funded through the Joint Fund, the IFI's role becomes even more prominent. The sector expert of the IFI will be directly involved in preparing the ToRs and will continue to participate in the project implementation progress until project completion.

Bilateral donors

At this phase the bilateral donors are consulted only when the project is funded through WBIF Joint Fund TA. The consultation consists in reviewing/ contributing of the prepared planning and design documentation.

As it can be noticed, there are no entry pints foreseen for CSO in that step.

V. PROCURING / TENDERING

The tendering phase includes the submission of bids by suppliers/contractors, the evaluation and the selection of the most favourable bid.

Even if procurement is one of the most media-covered stage, ***CSO do not have any agency in that phase unless its representatives are part of the procurement bodies (which is extremely rare). Recently different CSOs have brough to justice selected procurement procedures out of which the new justice institutions have followed up some big cases. The challenge is that this "watchdog" function, even when it is successful, it acts ex-post.***

V.1. Observations regarding this stage

In this phase, the main responsibility for the procurement and tendering procedures is of the Ministries of Line and also of the partner IFI. The tendering documents are prepared by the beneficiaries with the support of the TA (IFI Coordination Office). ***In the evaluation and selection committee there are no Civil Society representants.*** The results of the processes are not open to public and by extension to the civil society.

V.2. List of institutions involved / in charge

Line Ministries (primary role)

When the project is 100% financed by the national budget, the line ministry deals with the procurement and tendering process under national rules.

When co-funded by WBIF, the Line Ministry announces[14] if they will act as the Contracting Authority for the project or assign another state-owned public agency to perform this role. The subsequent Contracting Authority will be responsible for organizing the tendering process from the public announcement stage to the evaluation and contracting phase. They will typically establish a Project Implementation Unit (PIU) responsible for the daily execution of project activities, including the preparation of tender specifications/ToR, and for the management and supervision of contractors.

Always in the case the project is co-funded by EU, the Contracting Authority will follow EU procurement rules based on the EU procurement directive, the rules of the Lead IFI, or other local procurement rules[15]

In some cases, when the Lead IFI rules are stricter, specific requirements will be imposed on the Contracting Authority by the IFI regulations. Once the procurement is concluded, for works contracts, the Beneficiary will use the FIDIC[16] type of contracts.

EC/DG NEAR (WBIF SECRETARIAT) (secondary role)

During this phase, EC/DG NEAR receives reports from IFIs, EUD[17] and WBIF country representatives and alerts the national authorities, NIPAC and line ministry if they find any procedural violations.

[14] When applying for WBIF investment grant.

[15] In Albania the local legislation is partially harmonized with the EU rules on procurement

[16] FIDIC is well known for drafting standard forms of contract ("FIDIC Model Contracts") in the field of consulting engineering industry worldwide and over the years, it has consistently improved its contracts. The main purpose of the FIDIC Model Contracts is to define the contractual relationship between the parties and distribute the risks fairly to the parties (https://fidic.org/themes/fidic-contracts)

[17] If a procurement procedure is bought out by media.

IFI and Partner Financial Organizations (EBRD, EIB, KFW, AFD, etc) (secondary role)

As mentioned above, the IFIs in charge establish the rules that must be followed during the tendering process in situations where their requirements are more stringent than national laws (in most cases IFIs procurement rules are stricter that national ones). IFIs are responsible for overseeing the entire process and consulted when changes are needed to any part of the documentation or procedure. IFI alerts EU and all necessary stakeholders involved in the WBIF instrument if they find any procedural violations.

NIPAC

Every couple of months, the line ministry provides an update to the NIPAC regarding the progress of procurement procedure and any potential delays.

Suggestions

A workable suggestion would be to make mandatory the participation of impacted LGU and of specialized, local CSO as “observers” in the evaluation and selection committees, under the condition that both LGU and CSO must be knowledgeable and acquire all the necessary information to make sure that the winning bidder is the most qualified. CSO can use the “observer” status to produce real-time monitoring reports on public procurements (all by respecting to the letter the integrity compliance and confidentiality clauses in the same manner as externally-contracted evaluators), flagging potential problems and faulty processes that favour collusion, bid-rigging, and favouring of particular supplier(s).

VI. CONTRACT IMPLEMENTATION AND EXECUTION

CSO with their mandate of “watchdogs” of the public interest should also be active in a monitoring role and follow the implementation of the projects. They should also advocate for increased transparency and accountability by requesting that necessary documents are made public and by exposing all wrongdoings that they may become aware off. CSO (and media) should be encouraged to investigate more in depth failed projects and put constructive pressure on all involved stakeholders to adopt a more transparent, responsible and accountable approach, and deliver better results.

VI.1. Observations regarding this stage

The only possibility for the CSOs to be part of the monitoring process during contract implementation and executions, is through their participation in the IPA Monitoring Committees (IPA MC) albeit in a very limited role & agency. The number of participants form Civil Society in IPA MC is very small and their impact is even smaller. Usually in the IPA MC the beneficiary institutions are discussing and informing the EC on the progress of the implementation of the IPA-supported projects and on the problems they have encountered during the implementation. In this stage the CSOs role is too week.

VI.2. List of institutions involved / in charge

Line Ministries (primary role)

The Project Implementation Unit (PIU) set up by LM has overall responsibility for the contract implementation, disbursement of the funds and verification of the project reports. The PIU reports regularly to the lead IFI on the developments and obstacles, while the reporting for the EC/WBIF and NIPAC is done every 6 months.

LGUs (secondary role)

LGUs issue construction permits, participate in expropriation procedures, and are expected to mobilize their inspection services to check compliance with relevant laws and / or regulations under LGU remit.

EC/WBIF and NIPAC

At this stage, both actors have an observational role. However, they may intervene in case of needed amendments to the approved Grant Application, to budget reallocations, etc.

VII. EVALUATION AND AUDIT

CSO do not have any officially recognised agency here. However whenever possible, they must inform the auditors (and / or make public) about issues that in their assessment have impacted the project. In addition, evaluation and audit reports should serve CSO as tools for their own monitoring reports and policy documents, in order to inform their understanding, argumentation and support the process of constant learning and improvement through past lessons, mistakes and good practices.

VII.1. Observations regarding this stage

Usually the evaluation of the EU implemented projects is done by an external company hired by the EC. The evaluators contact and meet the beneficiaries and all the actors involved in the programming and implementation phase. In this phase, the evaluators are performing a closed process, which means that *no civil society organization is involved in or informed about the process*. The final reports might be published in the EC website, and the main beneficiaries from these reports are the institutions involved.

In all the IPA countries are established Audit Authorities for the IPA programmes and usually they are producing reports on the findings that they have identified during the audit missions. These reports are not published and no involvement of the civil society is envisaged.

VII.2. List of institutions involved / in charge

EC/DG NEAR (WBIF SECRETARIAT) (primary role)

The EU contracts external independent evaluators and auditors in order to evaluate, audit and systemically improve the project cycle. They will be the first recipient of the evaluation and of audit reports with the goal of using those reports to address the issues from the side of EU and to protect and enhance direct management procedures.

Line Ministries (secondary role)

One of the main stakeholders to be assessed and interviewed for the evaluation and the audit will be the ministry responsible for the project. Once the audit and evaluation documents are completed and approved, they are sent out to them through the NIPAC.

NIPAC/NIC/Strategic Planning Committee (secondary role)

In the evaluation process the NIPAC SO is one of the main stakeholders providing a comprehensive overview of the whole process to the external evaluator. In order to systemically improve the project cycle, NIPAC is the recipient of the evaluation and of audit reports which later will disseminated to all involved stakeholders.

Parliaments

The role of Parliaments is very important on infrastructure project that fall outside the *acquis*, such as direct procurement ones. Parliaments need to be equipped with the adequate administrative capacity and resources to exercise their control and supervisory role in that case. Here the cooperation with specialised CSOs can be symbiotic.

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