

A Recipe for Success

**Cookbook on public participation
with experiences from Visegrad 4
and Eastern Partnership countries**



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Introduction

On the road towards building democracies, countries of central and eastern Europe have had a wide range of experiences regarding functional (and non-functional!) public participation. This 'cookbook' aims to examine the existing practices of public involvement in decision making process about EU investments across the region. Based on exchanges of experience and knowledge on specific cases, Bankwatch members and partners reflect on the progress made thus far in their countries toward meaningful public participation. Illustrated through case studies, we present several conclusions and lessons learned.

This cookbook is the product of almost one and half years of exchanges between partner groups of a project funded by the Visegrad foundation and the Dutch Ministry of Environment.

2018 will be a pivotal year for policy changes at EU financial institutions. Discussions about the rules and priorities for the future EU budget, including the partnership principle, is ongoing. EU financial institutions will undergo revisions to their transparency, public participation and accountability principles and standards.

Bankwatch has made transparency and public participation in financial institution's decision making a tool and an objective of its operations. Why do we look at these financial institutions? Decisions about how EU finances are allocated are one of the most visible parts of a government's activities, serving as a benchmark for the public and private sectors.

The democratisation of investments by the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD) and EU funds can only be secured with the proper consent of impacted communities and respect for civil, economic, social and cultural rights of these same communities.

Ensuring the right for participation in investment decision making should be on the agenda of CEE and EU stakeholders, including governments, EU institutions, NGOs and communities.

There is a critical difference between going through the empty ritual of participation and having the real power necessary to affect the outcome of a process. This difference is brilliantly displayed in a poster painted by French students to explain the student-worker rebellion in 1968. The poster highlights the fundamental point that participation without redistribution of power is an empty and frustrating process for the powerless. It allows the power holders to claim that all sides were considered, but makes it possible for only some of those sides to benefit. It maintains the status quo¹.



FIGURE 1 French Student Poster. In English, I participate; you participate; he participates; we participate; you participate . . . They profit.

Partners in the project from countries in the Visegrad and Eastern Partnership (EaP) regions had intense communication, sharing experiences, expertise and support for each other in regards to ensuring wider and better public participation practices in their respective countries. Reviewing the practices in the region we came to the conclusion that the most effective public participation is a nexus of legislative measures, mechanisms for enforcement and an enabling environment. The V4 countries are considerably advanced in terms of public participation and application of the partnership principle in decision making, which is widely promoted

1 Arnstein, Sherry R. (1969) 'A Ladder Of Citizen Participation', Journal of the American Planning Association, 35: 4, 216 – 224

by the EU. Shrinking space for the participation of civil society in some of the Visegrad countries is already impacting the effectiveness of the mechanisms for public participation. In EaP countries, poorly developed legislation on the promotion of public participation and partnership, coupled with the absence of practical mechanisms, forms and procedures of public participation, raises a number of obstacles that adversely impact the natural environment and people, while simultaneously delaying sustainable development.

The exchange between civil society in V4 and EaP countries leads not only towards increased partnerships, but also towards some successes in terms of sustainable development, that is on display in the cookbook case studies. During the work on the cookbook, we try to find out the specific achievements and failures that environmental CSOs experienced in their respective countries regarding public participation, in its forms and trends, in order to ensure further exchange of information.

The best example of a participatory mechanism: the ‘partnership principle’ in EU funds

The partnership principle was introduced in 1988 as one of four principles of the Cohesion Policy to become a formal arrangement for consultation, coordination and decision making for Structural Funds. The partnership principle was substantially strengthened in the last decade with the implementation of the multi-levelled governance; stakeholders, including regional and local authorities as well as CSOs are involved in the process, as well as the state authorities. In 2013 the European Code of Conduct on Partnership became a legal act that aids Member States in setting up mechanisms for the management of EU funds.

Effective partnerships promote equity and value parity of esteem between partners. They offer a clear focus on the objectives at hand, while recognising that the interests of individual partners may not be the same. Different outcomes are therefore both possible and permissible. In this context, compromise is just one strategy that may be used to arrive at consensus and other approaches may be deployed, so that effective partnerships tend to be innovative. On the ladder of citizen participation, partnership is considered as one of the stages with real citizen power in the decision-making process.

As displayed by the experience of CSOs in the new Member States – Hungary, Poland, Slovakia – the

enforcement of the partnership principle in the case of EU Structural Funds resulted in multiple benefits. Benefits included an increase in the administrative capacity of authorities, expertise and improved efficiency of all stakeholders, as well as new methods of organizing among civil society sectors.

The link between the partnership principle, public participation and transparency has emerged a proven source of good governance, sustainable development and the fight against corruption. The Commission evaluation of partnership states that “...many programmes and initiatives ha[ve] emerged as not only a formal arrangement for consultation, coordination and decision making...but also as a significant capacity for joint multi-organisational action and operations in specific policy areas, sectors, regions and localities. Further, this capacity now often extends well beyond the remit of Structural Fund activities and is in many instances a key resource for regional and local development and for innovations in social policy”².

In that circumstance, the public participation and partnership does not represent a mere formality. The twenty years of NGO networking and experience from Hungary gives a strong example of successful co-operation among NGOs and government offices. In the case of the EU Cohesion Fund, this structured, well-maintained co-operation leads towards increased quality of integration of environmental sustainability criteria in project proposals for EU funding. The provision for partnership enhances and straightens the existing apparatus for NGO’s coordination and representation – such as annual NGO forums and transparent selection processes.

These mechanisms become examples of democratic and participatory decision making within other sectors of the society. Despite the recently elected Hungarian government having less support for public participation in EU Funds and attempts to implement the bare minimum partnership requirements of the EU regional policy, the environmental NGOs still have significant impact, ensuring improved environmental and social performances of the EU Fund, due to their well-developed, transparent and bottom-up based approaches. In EaP countries the partnership principle applies through established official EU–Civil Society Platforms, which has resulted in increased public participation and involvement within EU programming activities and government actions on project and budget levels. While the full application of the partnership principle is limited in Eastern Partnership countries, there are the signs that application of best practices, means and instruments for public participation may positively impact overall planning, implementation, monitoring

2 http://ec.europa.eu/regional_policy/sources/docgener/evaluation/doc/rathe/asec8.pdf

and evaluation of investments from the European Union, as well as from international financial institutions (IFIs).

Therefore, we may conclude that the EU Fund's requirements for partnership principle implementation lead to several structural changes in the decision-making process:

- changes in the behaviour of the public administration towards seeking and welcoming public participation
- improved quality and sustainability of the programmes and projects, introducing aspects and considerations brought forth by the civil society partners such as concerns of affected communities in environmental and social regards.
- strengthen NGO systems of organisation, networking and representation
- strengthen NGO capacity and knowledge – training sessions for partners to empower civil society to be capable of negotiating proposals and solutions.

The European Commission and Member States can play an important role in further strengthening CSOs both inside and outside the European Union, especially in Eastern Partnership countries. In accordance with the European Neighbourhood Instrument (ENI) regulation, which states “...the objectives of this regulation should be pursued with an appropriate involvement of external action partners, including civil society organization and local authorities, in preparing, implementing and monitoring Union support, given the importance of their roles. The ENI should also support the strengthening of the capacity of civil society organizations to guarantee effective domestic accountability and local ownership, and to be full actors in the democratization processes.”³

The overall framework of the EU funding for EaP countries, which includes budget support, defining of single framework priorities and joint programming can create a solid foundation for the application of partnership principles. This is especially important, considering the fact that the EU development agenda more and more emphasizes the need to channel the necessary support through so-called “blending” mechanisms that use EU funds as guarantees for loans. The aim of this mechanism is to pair EU funds with IFIs and private investments through the leverage of scarce public resources.

The trend will be even more visible in forthcoming years, as the Commission plans to use the new approach for the next EU budget for the period 2020-2027. The new approach consists of mobilizing

European funds, which were spent in the past as direct grants to projects, as guarantees for loans and operations of IFIs, thus leveraging the scarce public resources to mobilize private finance and trigger private sector operations in a context of budgetary constraints.

Therefore, it's more than important to ensure that the EU and governments of the EaP countries continue the dialogue, ensuring the application of partnership principle and best practices of public participation for funds coming through European sources, including public banks. With the growing trend of increasing restrictions on space for civil society (through restrictive laws and/or intimidation of dissenting voices), we often see the precondition for any form of public participation, let alone best practice, lacking. The EU, therefore, must look at what leverage it has at its disposal to encourage the EaP countries to ensure that the environment for civil society is indeed conducive for active participation.

Approximation to EU legislation and strengthening civil society: pros and cons of dialogue between CSOs and national governments

The experiences from both the European Union and EaP countries are not one sided. The case studies from these countries show that you can find positive examples and willingness of decision makers may or may not be found in each concrete case. It is also apparent that EU groups are more concerned with policy work that would have a wide ranging impact on development policies in their country, whilst the CSOs from EaP countries are still more busy with concrete campaigns. However, there are examples of public participation of the CSOs from EaP countries that are even leading the sectoral reform agenda, like in the case of Armenia and small hydro development.

The costs of ignoring the public's input in the development of new policies and/or new development projects are more than drastic, in the case of EU Member States and EaP countries. It involves the delayed implementation of reforms or the stalling the development projects for a long period of time. The case of S7 Expressway in Poland is remarkable for that point, as the project partner stressed “...partnership and public participation can really make investment projects better – as long as they are taken seriously. It is common for road projects to generate environmental controversy, but through honest dialogue, it is usually

3 <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R0232>

possible to find solutions that minimize harm to the natural environment.”

The same logic could be expanded to cases in Armenia, Georgia and Ukraine; honest public dialogue, which seeks alternative solutions, could present less of an impact on the environment and engage citizens in public participation.

Best example for enabling environment: CSOs structured dialogue with EU institutions in Georgia

In March 2014, the European External Action Service (EEAS) and the European Commission presented ‘Neighbourhood at a crossroads’,⁴ highlighting the importance of CSOs as a structural element of EU co-operation with its eastern and southern neighbours⁵. Their efforts were focused on establishing a structured dialogue between civil society, local authorities and the EU. From the beginning of 2014, EU delegations in the European Neighbourhood Policy countries had the responsibility to engage with civil society.

The Commission provided CSOs with financial support, expecting them to successfully scrutinize their governments and take part in the programming, planning and monitoring of EU operations in their countries alongside their European counterparts. The last years’ practices show that success varies from country to country, depending on both the level of preparedness of CSOs and on democratic processes within the country.

The EU delegation in Georgia set a great example of their efforts in 2016-2017: the EU-Georgia joint programming process was a meaningful process of public participation in which the position of the CSOs and government were treated equally and the final decision was made based on comprehensive consultation. As a result, the Single Support Framework for Georgia 2017-2020, prioritises energy. “Increasing energy independence is a geostrategic necessity, which can be supported through energy sector reforms in line with the integration process with the EU and use of renewable energy sources.” It also underlines that the environmental assessment of energy projects (SEA or EIA) should be “...carried out according to EU

standards⁶”, which creates significant safeguards for communities impacted by the projects.

The local delegation’s liaison and involvement of CSOs is especially important for countries that sign the association agreement and commit to approximation with EU legislation.

There are still obstacles that may significantly impact the speed of the approximation. One example being The Law of Ukraine “On the Environmental Impact Assessment” (EIA) together with another Law on Strategic Environmental Assessment (SEA⁷, was adopted in May 2017 and entered into force on the 18th of December 2017, replacing the current Law on Ecological Expertise. The laws were about to be adopted simultaneously in 2016, however, they were vetoed by the president of Ukraine in autumn 2016. These events raised concerns of many politicians and CSOs, blaming the political lobby and pressure from representatives of big industrial groups, especially coming from the side of agroholdings and certain industrial meat producers. The implementation of the new EIA law is questionable, as the supportive by-law legislation has not yet been developed.

The situation almost fully replicates the state of affairs in case of approximation of Georgia’s environmental legislation with 85/337 and 2001/42/ EC directives.

Despite the fact that formal deadlines have been met, in situations where communities live in a “parallel reality” without proper information or consultation of ongoing reforms and planned projects, they stay without any safeguards. Worse yet, attempts by communities to raise concerns based on the scant information they do have are met with threats and intimidation. As a result, the big companies are using the momentum and lack of legal and rights information to pursue their interests in “land grabbing” and expansions of the environmentally dangerous enterprises – livestock factories.

Given the current trends in shrinking space for civil society, the situation with civil society as a whole in any given country must also be taken into account when considering structured dialogues with CSOs. A recent resolution by the European Parliament put it most eloquently, as, among others, it called “for the EU to acknowledge the need to provide guidance to governments, political parties, parliaments and administrations in beneficiary countries on developing strategies for establishing the appropriate legal, administrative and political environment to enable the efficient work of CSOs”, welcomed “the

4 <http://europeanpublicaffairs.eu/a-review-of-the-european-neighbourhood-policy-2014-edition/>

5 http://eeas.europa.eu/enp/pdf/2014/joint_communication_en.pdf

6 Adopted 13 July, 2017, http://ec.europa.eu/transparency/regcomitology/index.cfm?do=search.documentdetail&Dos_ID=14731&DS_ID=51944&Version=2

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EU's long-standing commitment to and support for civil society in developing countries," and reiterated "its unequivocal call for continued and increased EU support and funding in creating a free and enabling environment for civil society at country and local level, including through annual programming"⁸

CSOs towards sustainable development

The opening space for civil society's participation in decision making leads to situations in which CSOs are bringing and developing more initiatives, ensuring sustainable development in particular sectors. For example in Armenia, the CSO initiated process "Supporting New Reforms in SHPP Sector through CSO-government Dialogue"⁹ involves almost all stakeholders, CSOs, governmental officials, and academia. Based on onsite monitoring of 135 small hydropower plants (SHPPs) and river ecosystems throughout last three years, the working group revealed problems in loss of biodiversity, disruption of ecosystems, deforestation, and a lack of water for agricultural purpose. Further problems were found with adequate compensation in accidents and, as well as an absence of public participation mechanisms in the decision making processes.

It also creates solutions for existing HPPs, as well as preventing further development of the number of policy documents and regulations that are now under the consideration by Armenian Government.

The situation is echoed with the efforts of Slovakian CSOs, who fight to ensure sustainability criteria is met for energy generation from wood biomass, preventing an increase of an already massive logging industry and further degradation of biodiversity. The increased funding opportunities from the European Structural and Investment Funds were a driving force for the Slovak government, developing the politically sensitive processes of the establishment of biomass sustainability criteria. The CSO task force developed sustainability indicators, which, after some backlash, were approved by the Monitoring Committee for the Operation Program Quality of the Environment. However, the applicability of the indicators, due to a political lack of will in the government to undertake the full pledge of the forestry reform, still represent the concern for Slovak CSOs, who are also looking for other avenues of opportunity within the EU legislative process.

These two cases clearly show that CSO communities, both within the new Member States as well as in EaP countries, already have the knowledge and capacity to promote sustainable development through public participation and to encouraging the local communities, groups, academia and individuals to contribute in elaborations of tools and instruments for better governance as well as work to eradicate and prevent existing and future environmental and societal harm.

In order to achieve this goal, the CSO space should be open, rather than diminishing. Meanwhile, in numerous EaP countries, as well as in some new MS, we see the overall state of affairs are deteriorating and worsening, which plays an increasingly negative role in civil society's involvement in decision-making procedures.

The case studies below highlights the government's unwillingness to commit to the principles of participatory democracy and ensure people's involvement in decision making, delaying the programme and project implementation. Further, some government's attempts use special forces against striking communities breeds anger and mistrust in democratic institutions.

Prospects for the future

The application of good governance standards, particularly the partnership principle and public participation in decision-making, is one of the biggest challenges for countries in the EaP region. Eastern Partnership, intending to strengthen the collaboration and integration of eastern European countries and the EU, is not a stand-alone process. The decision makers must ensure that all EU actions help promote democracy and contribute to the protection of human rights and sustainable development. Citizens in each of the countries should see the benefits – not just fine rhetoric but meaningful actions.

To achieve this goal it is important that the European Commission and Member States support EaP countries in regards to good governance, the application of partnership principle and public participation, utilising the leveraging the financial tools they have at their disposal to encourage these countries. The promotion of the dialogues (European Commission, Government and CSOs) in different formats – including human rights dialogue, EU-Country Association CSO platforms and improved legislations – would raise the bar in the four neighboring country's governments.

The binding applicability of the partnership principles, in case of budget support and single framework priorities, would also increase the public participation in decision-making processes.

Therefore, its important, that European Commission, MS and EaP governments

8 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0365+0+DOC+XML+V0//EN>

9 <http://www.sgp.am/en/Projects?id=72>, <http://www.sgp.am/en/Projects?id=60>

- Promote and develop the mechanisms for dialogue with CSOs, including consultations in budget support priorities, sectoral reforms and implementation. Ensure effective public participation in EIA, both on the country and the project/programme levels, through the establishment of best practices for procedural democracy.
- Recognise CSOs as the proper partners in dialogues and consultations with the state authorities
- Support implementation of ESIA and SEA legislation, as well as speed up processes of harmonization and approximation with EU law, including mitigation of social impacts and controls for effective and timely public participation and access to EIA reports by affected groups, academic institutes and NGOs for projects and programmes implemented through EU support;
- Support the equal opportunities for marginalized groups (woman, elderly etc) and prevent pressure on local communities from business or state enforcement structures.
- Ensure meaningful consultations with CSOs and communities on projects and programs,
- Ensure that, in both practice and law, there is an enabling environment for civil society to actively participate and for all different voices to be heard.

CSOs in EaP and Visegrad countries

- Should continue their collaboration, exchanging knowledge and experiences on the program and project levels, and lead the initiative towards sustainable development
- Should ensure that the civil society can be a strong partner for local residents in the decision-making processes, helping them to defend their environmental, social and economic rights.
- Should be able to carry out their activities free from threats or intimidation and have free access to effective, independent recourse mechanisms if their safety or security is compromised.

Case Studies

Armenia

SHHP development in Armenia does not meet social and environmental needs of people, violating their environmental rights

Background

As of January 1, 2017, around 178 small hydropower plants (SHPPs) operated in Armenia, five more than the year before. Their total installed capacity was about 328 MW – about 957 million kWh.¹

The absolute majority of SHPPs have been built last decades. The loans have been provided by international development banks, such as IFC, EBRD, and KfW. The share of KfW is the largest largest, at EUR 66 million Euros².

Nevertheless, with the exception of three to four SHPPs, the operating SHPPs have problems meeting social and economic standards of development banks, including the Argichi SHPP and SHPPs constructed on Eghegis river supported by KfW.

Argichi SHPP

The Argichi SHPP was constructed without relevant permits in 2012, and is operating since 2013. The absence of relevant permits violates a number of laws, including RA Law ‘On Environmental Impact Expert Assessment’ and RA Law ‘On Lake Sevan’³, as Argitchi River is a part of Lake Sevan drainage basin⁴. The Lake Sevan Preservation Committee of National Academy of Science of Armenia issued a negative opinion against all SHPPs, including Argichi, as they have an adversary influence on biodiversity, endemic and red-listed species and water quality.

One of the major deficiencies of the project was the lack of public consultation with would-be-affected communities and landowners. This negligence lead to an escalated situation between the community and the hydro plant, as it used without adequate land compensation to the village residents. The social conflict grew in 2013, when the Argichi water derivation pipes exploded and severely damaged the property of the 30 families in the Verin Getashen village. Ecolur’s monitoring project revealed Argichi SHPP derivation pipes where damaged a number of the times due to the technical accidents, resulting in a probable increase of engineering and geological risks on adjacent areas (like landslides etc).⁵

1 http://arka.am/en/news/technology/share_of_electricity_produced_by_hydropower_plants_in_armenia_can_reach_40/

2 The first loan agreement was EUR 6 million (2004), second agreement – EUR 18 million (2010), the third agreement EUR 40 million (2012) <http://www.gaf-re.am/index.php?id=28>

3 <http://ecolur.org/en/news/sevan/documents-on-small-hpp-project-on-argitchi-river-expired/4072/>.

4 Sevan drainage basin is a complex ecosystem with freshwater reserves over 37 billion cubic meters at the height of 2000 meters above sea level. The residents of littoral communities use the water of the rivers and springs flowing into Lake Sevan for irrigation and drinking purposes due to their purity and high organoleptic properties

5 <http://ecolur.org/en/news/energy/argitchi-shpp-monitoring-results-photos/8140/>

Despite the numerous requests to the government, the company and the local administration, to this day the people have not been compensated for damage, regardless of the promises from the local authorities.⁶ Meanwhile, in a majority of the lands it's now impossible to conduct any agricultural activities, therefore leaving people without their major source of income⁷.

The residents of another impacted community, Nerqin Getashen, faced the problem of losing their harvest because of an absence of irrigation water in recent summers. "The Argitchi River used to have so much water that people didn't feel any shortage, but as soon as the SHPP has been constructed, people are killing each other for water."⁸

The monitoring visit in 2017 clarifies that the situation is dire for locals, due to the increased water deficit, absence of adequate compensation for the damages, land acquisition and downgrades to the village's quality of life. Villagers, with support of Ecolur, prepared the initial submission of a formal complaint to KfW's compliance mechanism DEG.⁹

The problem of SHPPs constructed on the rivers flowing in Sevan Lake has become one of the important issues discussed by the government. In 2015 President Serzh Sargsyan stressed that "the issue must be addressed through talking to people, making an arrangement with them, buying back those stations via the fund and dismantling them¹⁰." The governmental decision about mechanisms to dismantle SHPPs on the rivers flowing in Sevan Lake has not been adopted yet

The cascades of hydropower in Yeghegis Gorge

The Yeghegis River flows through the picturesque Yeghegis Gorge in the Vayots Dzor Region, Armenia. Favourable conditions, rich biodiversity (bezoar goats¹¹), cultural monuments and cultural-historical heritage (12th century Jewish cemetery, Smbataberd Castle constructed in X-XI century, Zorats Church from 1303) are attractive for tourist development.

6 <http://ecolur.org/en/news/energy/verin-getashen-residents-demanding-compensation-from-shpp-administration/7943/>

7 <http://ecolur.org/en/news/water/signal-alarm-from-gegharkounik-region-again-argitvhi-shpp-pipes-broke/5273/>.

8 <http://ecolur.org/en/news/water/residents-in-nerqin-getashen-left-without-irrigation-water/9333/>

9 Communication with KfW DEG is ongoing

10 <http://ecolur.org/en/news/officials/armenian-president-proposes-to-dismantle-shpps-constructed-on-rivers-flowing-into-lake-sevan/7666/>

11 WWF (World Wildlife Fund) organized a tourist observation point to observe red-listed animals, bezoar goats, which go down to drink water from the Yeghegis River, near Shatin Village

However, in recent years the Yeghegis Gorge landscape has been significantly disturbed, biodiversity lost and sanitary conditions have deteriorated because of a lack of water in the river and a worsening microclimate. All of that due to the fact that, in addition to the Hermon – Yelpin pipeline taking water to irrigate 200 ha of land, 19 derivation SHPPs has been constructed on the Yeghegis River and its tributaries. As a result, the gorge is deprived of its water in the peak of a high tourist season¹².

As local authorities witnessed, "the water in the summer season is little...before [the] SHPP operation there was much brown trout, but now this fish species [was] eliminated because of the SHPPs", stressing that tourism and agriculture can become major income for locals. Unemployment is common in the community and it has not been solved by the SHPP's development, while the absence of infrastructure and investments in small local industries hinders the development of tourism.

Local authorities stressed that tourism and agricultural development is in conflict with SHPPs, "They take away water... and destroy our sightseeing We don't benefit from SHPPs...Nobody asked us whether or not we want a SHPP to be constructed in our community... During the summer season there is no water [for] kilometers. The entire sewage flows into the river and the river vegetation gets eliminated...If you can't irrigate, what you will harvest?...What is the benefit of SHPPs for people? What have they done for people?"¹³.

The results of monitoring 135 SHPPs in Armenia

The SHPPs public monitoring was conducted in the frames of "Supporting New Reforms in SHPP Sector through CSO-government Dialogue" supported by UNDP/GEF Small Grants Programme, launched from 2014¹⁴. The project been implemented by NGO EcoLur, in co-operation with the Ministry of Nature protection, academia and other CSOs.

During 2014-2017, joint monitoring teams performed checks on 135 SHPPs and river ecosystems. The monitoring project revealed that the SHPPs operational regimes often lead to disruptions of ecosystem, loss of biodiversity and fish in the rivers, deterioration of physical and chemical indicators of water, and deforestation. Meanwhile, the number of socio-economic impacts (including a lack of the water for agricultural purposes,

12 <http://ecolur.org/files/uploads/pdf/dzernarkangleren.pdf>

13 <http://ecolur.org/en/news/energy/social-conflicts-available-in-small-hydropower-and-affected-communities-not-eliminated/9249/>

14 <http://www.sgp.am/en/Projects?id=72>, <http://www.sgp.am/en/Projects?id=60>

noise generated by SHPP equipment, hindered development of agriculture and ecotourism, the problems with adequate compensation during the land acquisition and accidents, the absence of public participation mechanisms in the decision-making processes) have been revealed on a systemic level. All of that has strong socio-economic impact on affected communities, decreases the quality of their livelihood and leads to violation of the environmental rights of the citizens of Armenia.

Based upon the first year's findings during monitoring, the Ministry of Nature Protection together with EcoLur established the Council for elaboration of concept on National Policy and Program on SHPP Development. The council includes representatives of governmental agencies, civil society and SHPP business representatives.

The council approved the action plan developed by the project team group and laid the foundation for the draft of the government protocol "Approving Action Plan Ensuring Provisions of Hydropower Development Concept in the Republic of Armenia". The plan proposes the action of developing a number of legislative amendments and policy documents that would ensure more efficient use of water resources and sustainable environmental flow in rivers, upgrading the rules for environmental permits and supervision during construction and operation ¹⁵

RA Nature Protection Ministry proposes the Governmental Protocol Resolution "On Approving Environmental Impact Assessment Criteria of Small Hydropower Plant Construction and Operation" on the basis of the EcoLur Programme results. The proposals are:

To approve the standards for environmental impact assessment for the construction and operation of small hydropower plants.

To prevent or minimise the adverse effects of small hydropower plants on the environment we should set the following criteria for the approval or denial of construction and operation of small hydropower plants:

- Rivers, which are endemic, i.e. they are spawning sites of the fish species inherent to the area of Armenia, or there are red-listed fish species in the river basins
- Rivers, which have overload of derivation pipelines of 40 % or more
- River sections where the factual water flow does not exceed the magnitude of environmental flow
- Water ecosystem sanitary preservation zones
- Areas of river flow formation
- Areas adjacent to natural monuments with a diameter of 150 meters

15 <https://www.e-draft.am/projects/240>

- Noise impact on the environment and human health¹⁶

Conclusions

The construction of SHPPs without proper environmental and social studies and public participation violates the fundamental human rights in SHPP affected communities – the right to access to water, the right to food, life in safe environment, the right to development, the right to participation.

The business may often use the fact that local residents are not aware of their rights and push their interests forwards. Often the local governmental representatives that are intermediaries in the processes may not protect the interests of the residents, but rather those of SHPP owners. The fact is that the owners are influential representatives of the authorities, such as MPs and representatives of tycoon families. These people contribute greatly and have impact during the local elections.

Therefore, it is important to have strong regulations on a state level developed in co-operation with civil society and academia from one side, whilst on the other to increase awareness of local communities regarding their rights and enhance ties with active NGOs who may help organize information campaigns for the protection of residents' interests and act against the violation of their rights to decision making in regard to use of natural resources, seizure of property etc.

Only a united community and civil society can resist development of unsustainable practices that infringe upon the rights of the community and its residents. The community should be able to participate in meaningful consultations and their voices should be heard by central and local governments. The civil society should be strong partner for local residents in the decision-making processes and help them to defend their environmental rights.

Amulsar Gold Mining

Background

Lydian International's Amulsar gold mine exploitation project is going to be operated in central Armenia. According to the project plans, the excavated ore is to be processed with the use of cyanide. After receiving the mining right to exploit the deposit in 2009, the operating company modified its mining project twice, in 2014 and 2016.

16 <https://www.e-draft.am/projects/182/about>

In both cases, the main condition to the project's amendment was an increase in the volume of mining deposit. All three projects have been approved by the relevant state bodies and the mining right was awarded in all cases since 2009. Current project life is declared to be over 13 years, including two years of construction and 11 years of active mining and processing, followed by closure.

Importantly, the EBRD and IFC are shareholders in the Lydian International CJSC, and the company announced that its operations are based on the IFC Performance Standards and the EBRD Performance Requirements. The principle of rule of law is declared to be respected by both of these financial institutions.

The project's impact

The environmental impact assessment (EIA) prepared in 2009 by the company does not correspond to Armenia's national legislation, nor to the IFC nor EBRD standards. With Lydian's mining right issued, the mining code of conduct directly bans mining operations in the habitat of rare or endangered species of biodiversity has been challenged.

The project also endangers the water resources of Sevan Lake and the Vorotan and Arpa river basins. Meanwhile, the Spandaryan and Kechut reservoirs, as a result of acid mine drainage, endanger the biodiversity of the Amulsar Mountain and the citizens of Gndevaz village, one kilometre from which the company is constructing the gold leaching factory.

Since 2009, environmentalists and local citizens organised numerous protests and actions in Yerevan and Jermuk, including discussions, critical articles, petitions, as well as an action to lodge numerous complaints to the National Judiciary and international redress mechanisms, including the Aarhus Convention, and IFC CAO/Ombudsman¹⁷. One of the issues that the mining and processing of gold will cause irreparable damage to the environment and economy of the region as well as the health of local residents, including the city of Jermuk, a spa town renowned for its mineral waters. Only the ESIA 2016 recognise the city as an impacted area.

Project influence on Armenian legislation

Some of the most distinctive features of the Amulsar mining project are the legal amendments to the environmental legislation and mining regulations that one serve the specific needs of the project. The dates of legal amendments entirely correspond with the dates of public hearings of the project or the modification of

it. The government decree 781-N on "Establishing the Procedure of Utilization of Items of Flora for their Protection and Reproduction in Natural Conditions", which has been seen as the main obstacle, was changed in order to allow the company to transfer the endangered species of biodiversity to national parks or botanical gardens as a means of biodiversity offsetting. The mentioned legal amendments did, in fact, relieve the government of the legal obstacles for awarding the mining right.

With another decree (N. 244-N), adopted by the government on March 10, 2015 "On Grading of Pit Ramps for Haul Roads", Lydian was allowed to save more than USD 100 million by simply changing the technical parameters of mining operations¹⁸. Under the new regulation, the permissible slopes have been increased to 10 %, from 7 % in the past¹⁹. The company emphasizes the environmental benefits of this change that will decrease the waste rock removed from the pit. Ultimately, the goal was to significantly reduce the operating costs of the project. This can be further inferred by the industrial valuation of the deposit, as the operational costs shall be calculated during the geological survey.

Obstacles to right to participation and access to justice

There have been massive local protests since the announcement of the plans regarding the project. The local communities stand against the mine and fiercely defend their opinion in public hearings.²⁰ They are refusing to sell their land, submitting complaints and collecting signatures for numerous petitions to stop the project.

In 2014 the 'EcoRight' and 'EcoDar' NGOs, as well as 12 residents of Gndevaz Community in Vayots Dzor Region lodged a claim against the permitting documents of the Amulsar gold mining project, demanding to annul the EIA of the amended Amulsar project for 2014.

However, in 2016, the group had been forced to submit a communication to the Aarhus Convention Compliance Committee (ACCC), as there was a fundamental problem of permanent and total inobservance of the provisions of the convention by Armenian government and court. The complaint accused the government of denying the right of access to justice by way of the public authority's failure to account for the outcome of public participation. While the RA Administrative Court rejected the opportunity to protect the position of the public concern regarding the admissibility and

17 http://www.cao-ombudsman.org/cases/case_detail.aspx?id=221

18 Government decree of 10 March, 2015 "On grading of pit ramps for haul roads"

19 Article in www.media.com web portal, "Lydian shares pop after Armenia's USD 100m gift" <http://www.mining.com/lydian-shares-pop-armenias-100m-gift/>

20

thoroughness of its comments presented to the public authorities in relation to the Amulsar mining project.

It should be noted that the Compliance Committee has already issued three communications of non-compliance to Armenia, in accordance to Article 9 of the Aarhus Convention. The first communication was adopted in March 2006, and the second in June 2008 has already been approved by the Meeting of the Parties. The third communication with same wording was presented in September 2017 at a Compliance Committee meeting and will be proposed to the Meeting of the Parties in 2018.

However, the new law on Public Organizations and the Administrative Procedure Code of The Republic of Armenia introduced in May 2017, restricts the environmental NGOs legal standing to litigate the alleged violations of public authorities in relation to environmental matters. It goes fully against of the Convention itself.

As a result, in August 2017, the ongoing judicial processes regarding the Amulsar mine and the legal standing of 'EcoRight' and 'EcoDar' was suspended and court cases were continued with only natural plaintiffs.

Complaint to IFC CAO

The two complaints have been submitted to IFC CAO by number of residents of Gndevaz and Jermuk villages, as well as environmental NGOs. The complainants were concerned with the inadequacy of the ESIA and project impacts on local water basins, environmental contamination, livelihoods, impact on healthcare etc. After a number of stages of reviewing complaints, the two have been merged and a compliance investigation report was released in August 2017.

The investigation found that IFC's pre-investment review was not commensurate to risks associated to the mine's exploration phase. Despite the fact that IFC's supervision of the project has lead to significant improvement in the client's performance – reflected in the development of an exploration phase, Environmental

and Social Management System – and an international standard Environmental and Social Impact Assessment (ESIA), the investigation still found a number of shortcomings, including a lack of proper assessment of the impacts on local tourism in the spa town of Jermuk and impacts on the nearby community of Gndevaz.

The IFC CAO still keeps the case open and plans to monitor the IFC's management response from July 2017. However, in its response that IFC made multiple investments to Lydian's Amulsar project in 2007 and 2015, IFC has "...divested its investment in Lydian" despite the belief, "...that the sustainable development of the Amulsar project has the potential to contribute to economic growth in Armenia". Therefore, its not clear how the IFC CAO/Ombudsman will monitor implementation of its recommendations.

Lessons learned and conclusions

Public officials have influenced the regulatory framework of the mining sector for the benefit of the mining company, in favor of the Amulsar project, as opposed to public interest. With frequent and discretionary regulatory interference, the government crucially influenced the decision making process.

Such discretion negatively affects human rights, as people who will be influenced by the awarding decision will suffer from abuse of liabilities of public officials who pursue private gain of the mining companies instead of the public interest and contains high corruption risks.

Ignoring and not implementing the recommendations of the ACCC to ensure the citizens right to access to information, public participation and access to justice on environmental matters undermines human rights and the rule of law in Armenia.

The huge investments into projects without significant public support may lead towards increased conflicts in an area, shrinking the CSO space, as it happened in case of Amulsar.

Georgia

EU Funds programming development in Georgia

Introduction

The present case study highlights the EU-Georgia joint programming process for 2017-2020 and public participation process. It shows that a comprehensive and early stage involvement of all stakeholders (including environmental authorities, social partners and civil society organizations, e.g. in the field of environment) into the planning of EU and MS support to Georgia, can play an important role and increase the quality and efficiency of future funding.

The involvement of environmental partners can provide unique expertise in questions of sustainability, supporting the integration of environmental requirements from scratch. The engagement of a CSO to participate actively in the elaboration of joint programming framework documents also increases their commitment and ownership, supports the mainstreaming of sustainable development principles and efficient project implementation, as well as ensures greater transparency in decision-making processes and the prevention of fraud and misuse of taxpayers' money. In the end, it serves as one of the most important tools for a successful implementation of the EU-Georgia Association Agreement.

Single Support Framework for Georgia 2017-2020 and Joint Programming

The ENPI provides a new approach to Joint Programming, a common effort of the EU Member States and Switzerland ("EU+") to better coordinate and synchronize assistance programs through creation of the Single Support Framework. In October 2016, after comprehensive consultations with the Georgian Government, the European Commission disclosed the draft Joint Programming documents. The Joint Programming was structured around the Government's six donor coordination areas:

- public governance;
- rule of law and justice;
- economic growth;
- human capital;
- social welfare;

- sustainable use of natural resources.

Each sector was addressed by one sector fiche, each containing a brief analysis of the situation in the sector, listing ongoing EU Member State and Swiss interventions, and laying out common goals and priorities for future support. While these fiches were non-binding, it was proposed to provide a framework within which the EU Member States and Switzerland are planning to work.

The disclosure of the draft of Single Support Framework for Georgia 2017-2020 serves as a starting point for a series of public consultations.

Problematic issues detected in Fiche "Sustainable Use of Natural Resources"

The first draft of the document highlights the requirements supposed to be covered by Donors during 2017-2020. It emphasizes issues such as energy independence, environmental protection, water, waste, climate, biodiversity, natural disasters.

However, the document includes a number of contradictory and questionable assumptions regarding the development of hydro potential in Georgia. High priority was granted to "untapping the potential of Georgia's hydropower sources" as, according to the document, Georgia heavily depends on energy imports in winter. Further, it was recognized that "electricity generated by hydropower plants is significantly affected during the winter period". Thus, it became unclear how further development of hydro could potentially contribute to the diversification of the energy mix of the country and decrease energy imports in winter if hydro generation is impacted heavily during the winter months.

It should be stressed that the document highlights the need to strengthen the Environmental and Social Impact Assessment legislation and practice, recognizing that dubious environmental, social and economic impacts of HPPs construction. On the other hand, the document does not address the lack of the national energy strategy and energy needs assessment, coupled with a number of other strategic reports, which could determine how hydropower development can decrease energy dependence and fit together with other renewable energy, energy efficiency and conservation alternatives.

The draft of Single Support Framework for Georgia 2017-2020 underlines the 280 MW Nenskra HPP project as a high-priority project in order to solve the so-called energy deficit during the winter months. The other,

more important, priorities of Georgia's energy sector, including the energy efficiency and development of new renewable were largely omitted. Based on the document, it was also planned to allocate money from the EU Neighbourhood Investments Fund for Nenskra HPP.

An assessment of Georgia's energy sector

Meanwhile, in Georgia, around 70 % of the supplied primary energy is imported in forms of oil and gas, 20% of energy comes from electricity produced by hydropower stations, while 15% of consumption is fuel wood. The country is highly dependent on imported fossil fuel, which puts the country at high risk of economic and political dependence. While Georgia consumes six times less energy per capita than Norway and Finland and two-and-a-half times less than Greece. Georgia, however, uses four-and-a-half times more energy per unit of GDP production than these countries; though the Georgian economy and population consume less energy, this consumption is very inefficient.

It has been calculated that cost-saving energy-efficiency measures (replacement of incandescent bulbs with low energy ones, insulation of buildings, transfer of motor transport to gas consumption, energy-efficient stoves, new technologies, introduction of daylight saving time) would make it possible to reduce energy consumption by approximately 25 %, improve energy efficiency, decrease dependence on imported fossil fuels and perhaps save hundreds of millions of dollars²¹ Georgia has considerable potential for the reduction of GHG emissions by improving energy efficiency and increasing the share of renewable-energy sources, notably wind and hydro. Additionally, this would help reduce Georgia's reliance on fuel imports, thus contributing to increased energy security.

Achieving a high level of security is an important objective. The research conducted to analyse the Georgia's short-term energy security through IEA's MOSES (Model of Short-term Energy Security) clarifies that the highest security risk is associated with natural gas supply, due to the lack of diversification option, and due to the fact that "gas consumption per unit of GDP in Georgia is 57 times higher than in developed EU countries, as a result of high share of residential consumption and low efficiency of industrial consumption"²². Another high risk associated with overuse of biomass and illegal harvesting is that needs to be "gradually diminished through a combination of forestry reform, energy efficiency and provision of alternative fuels"²³. According

to the study "Hydropower has low annual variability compared to non-hydro-dominated countries and can be considered a relatively reliable energy source."²⁴

Meanwhile, the government of Georgia has fiercely promoted the country's hydropower potential in recent years as the major direction to tackle energy security. The Ministry of Energy has introduced schemes for 120 hydropower plant (HPPs) projects in Georgia. However, the country still lacks the major programming documents of energy development strategy, a Strategic Environmental Assessment for the hydropower sector, the cost-benefit analysis and river basin management plans.

Since signing and adopting the EU-Georgia Association Agreement in 2014, the government committed to reform energy and environmental sectors and to approximate its legislation with EU directives. Since then, the Ministry of Energy rushed out concessions on 84 plants as potential investment opportunities without involving the National Regulatory Agency. In 2016, Georgia joined the European Energy Treaty, which obliged the government to increase transparency and democratic scrutiny. The construction of the hydropower plants and associated facilities (e.g. high voltage transmission lines) heavily financed by European and/or Member State Institutions (as EBRD, EIB, KfW and others) caused the active protests of the affected communities all around the country.

The Government promotes both small and medium HPPs, as well as large dam projects, as 702 MW Khudoni HPP, 433 MW Namakhvani HPP cascade and 280 MW Nenskra HPP. The Nenskra project has been recognized by the government as a high priority project for the country, attempting to obtain the necessary construction funds from international financial institutions, including EBRD, EIB, Italian SACE and others.

In order to ensure political support from the EU for the Nenskra project, the Government proposed to integrate Nenskra HPP as a strategic project in the EU-Georgia Joint Programming framework for 2017-2020. The Nenskra HPP represents the public-private partnership between the state-owned Partnership Fund and Korea's state agency, K-Water. Contrary to existing practice in Georgia, the contract for the HPP has been never been available for public; further, no evidences has been presented by the government to confirm its strategic importance. The project-affected communities are severely protesting the project due to the poor public participation and concerns related to the geological risks, land acquisition and impacts on livelihood.

21 World Experience Georgia, www.weg.ge

22 <http://weg.ge/en/short-term-energy-security-assessment-georgia-international-methodology>

23 IBID

24 IBID

Public participation around single support framework for Georgia 2017-2020

As a result of the two rounds of public consultation meetings (November 2016 and February 2017) between the EU delegation and CSOs from different sectors, the Single Support Framework for Georgia 2017-2020 undergoes a number of positive changes.

The public consultation was conducted in a way that discusses the different sectors of the Joint Programming document in detail with interested CSOs, as well as to submit written feedback to the delegation.

Among the numerous changes, the final draft of “Single Support Framework for Georgia 2017-2020” published in March 2017²⁵, commits that “[i]ncreasing energy independence is a geostrategic necessity, which can be supported through energy sector reforms in line with the integration process with the EU and use of renewable energy sources.” It stressed that “[s]ustainable management of natural resources (sustainable production and consumption, environmental protection and resilience, energy and resource efficiency) and circular economy (along with green economy) are still under-performing in Georgia.”

It prioritises the support of the “commitments stemming from the Association Agreement, the Energy Community Treaty²⁶ as well as the Paris Agreement on Climate Change”.

While the Joint Programming document does not exclude hydropower, it does not prioritise the Nenskra project enough to deserve support by the ENP budget and requires that environmental assessments (SEA or EIA) be “carried out according to EU standards”. That would serve as the safeguard for hydropower affected communities, as well as decrease the footprint on environment.

In general, along with the existing research into Georgia’s energy sector,²⁷ the Joint Programming document works “to enhance energy efficiency, to increase energy independence...through energy sector reforms, the promotion of energy efficiency improvements, use of untapped renewable energy sources and boosting investments in low emission technologies.”

Lessons learned and conclusion

Informed and meaningful public participation is an effective instrument to integrate public concerns into the final documents. Thus, in order to ensure sustainable development, public access to information and meaningful public participation are crucial steps. Certainly, it is not only public participation that ensures sustainable development, but experience shows that the more open political processes and public authorities are towards public participation, the more it provides opportunities for integration of environmental and development issues.

According to Georgian legislation, there is an established, precise practice in the development of plans and programmes in Georgia, though there is less practice in the development of policy documents. As a rule, such documents are developed by administrative bodies (with the donor’s support); consultations are often held between the interested agencies and other stakeholders in the process of their preparation, finally to be approved or declined by various statutory acts (for example, by presidential or governmental decrees, or by the acts issued by the heads of different public authorities).

It should be noted that EU-Georgia Joint Programming Process 2016-2017 represents a clear example of how meaningful public participation process looks, where the position of the CSOs and government are treated equally and the final decision is made based on comprehensive consultations. Therefore, it is highly important that the practice established by, and used by, the EU to further disseminate for use by public authorities and other donor organizations; its use should ensure:

- participation of all interested stakeholders at the initial stage of decision making, when options are still open for making significant changes; reasonable time frames for public participation;
- information on participation opportunities should be provided effectively to the public, meaning that public notice on opportunities to get involved in decision making should reach all interested stakeholders;
- the public should also have an opportunity to submit written comments;
- proper consideration of opinions/comments submitted by interested stakeholders.

25 Adopted 13.July, 2017, http://ec.europa.eu/transparency/regcomitology/index.cfm?do=search.documentdetail&Dos_ID=14731&DS_ID=51944&Version=2

26 Including the “Energy Efficiency” and “Renewable Energy” Action Plans and the EU Monitoring Mechanism Regulation.

27 www.weg.ge

Participation in decision making in Georgia's energy sector

Introduction

For the last decade, the government of Georgia has promoted hydropower as a way of tackling energy security and turning the country into a regional energy player. The European Bank for Reconstruction and Development (EBRD), World Bank (WB), International Finance Corporation (IFC), European Investment Bank (EIB) and KfW Development bank (KfW) are the key catalysts of this hydro boom. Yet the presence of the international financial institutions has not been enough to ensure the development of comprehensive energy strategies, robust project assessments and meaningful public consultations.

Currently there are more than 114 planned hydropower plants (HPPs) in Georgia, including 11 dams and number of high Voltage transmission lines, slated for construction with a total installed capacity of up to 3,000 MW. The plans foresee highly controversial large dam cascades mainly in mountainous areas of Georgia, including the Khudoni HPP (702 MW installed capacity, annual output 1.5 TWh, on the Enguri river), the Namakvani cascade (433 MW, annual output 1.5 TWh), Nenskra Cascade (280 MW, 1.2 TWh). The plans also include diversion-type projects such as Paravani (87 MW, annual output 450,746 GWh), Dariali HPP (109 MW) etc. Dozens of additional plants have been identified as potential investment opportunities, resulting in an unclear mix of conflicting projects that may place an excessive burden on the environment and people's livelihoods.

The government's denial of the need for a proper cost-benefit analysis and environmental and social impact assessments – acting to ensure planned energy projects be implemented by any means, including police raids, discrimination and marginalisation of opponents – undermines the public's ability to meaningfully participate in the environmental decision making processes of almost all energy projects. In the end, all over Georgia, the affected communities are organizing opposition movements against the projects.

Meanwhile, the implemented projects are experiencing numerous problems (delays of construction, interference from landslides, collapsed tunnels etc.), due to the low-quality Environmental Impact Assessments and almost complete absence of state control over the construction. This includes all hydropower plants, including those that have been constructed with support of international financial institutions during

2010-2017. In addition, more and more questions are being raised by experts and international organisations about the impact of those projects on the future of Georgia's energy sector development, on energy security and affordability for population.

Planning problems in the energy sector

Georgia's energy sector has quite some problems – in 2017, the total final consumption (TFC) of the country equals 4631 kilotonnes of oil equivalent (KTOE), with 82% supplied primary energy being imported; 75% of TFC constitutes oil and gas (54 % natural gas and 36% oil products²⁸); 15% of electricity was produced locally (primarily by hydropower), while 10 % of TFC been covered by fuelwood. In comparison with 2007, the trend goes towards increased imports of the oil and gas products.

However, Georgia still has no comprehensive energy strategy that would address the shortcomings of energy balance and identify the plans to overcome it; nor does it have clear and actual targets for energy sector development. The major direction of energy sector development is still based on the existence of generation facilities by any means, including revitalizing the projects declined by Soviet government in last century.

In 2008, the new renewable energy program²⁹ been declared as the priority for the energy sector development. It's aim is twofold, to ensure energy security through increased electricity export from the Turkish and, later, the southeastern European markets by 2015-2017. The program included the numerous hydropower plants up to 100 MW and high voltage transmission lines to attract investors under the "Building, Own, Operating" principles. Meanwhile, the rules and procedures for the selection and development of the hydropower facilities above 100 MW have been at the exclusive discretion of the Georgian government. Despite declaring renewables as priority, the government supports the construction of numerous gas power plants³⁰ and coal power plants³¹.

The memorandums with project sponsors were developed in frame absent of a comprehensive energy development strategy, strategic environmental assessment, a proper cost-benefit analysis of the given projects and inadequate river basin management plans. This typical practice of the Georgian government has been

28 <https://www.iea.org/statistics/statisticssearch/report/?country=Georgia&product=balances>

29 Decree N107 of the Government of Georgia the State Program "Renewable Energy 2008" approved the rules to enable the Construction of Renewable Energy Sources in Georgia, however, it was fully focused on hydro

30 Including by Stated owned partnership fund

31 Gardabani Coal power plant, http://greenalt.org/wp-content/uploads/2016/11/Gardabani_Coal_fired_20161.pdf

widely supported by international financial institutions, namely the EBRD and IFC.

The memorandums actually guarantee the project sponsors a number of privileges, including the transferring of lands to the project without compensation (a symbolic price) and a lack of required adequate financial guarantees in case of environmental and social risks posed or in case of possible losses connected to hydropower projects. The 2008 renewable energy program obliged potential developers to sell plant output to the domestic market over the three winter months, for the duration of first 10 years of the power plant operation.

The drastic drop of electricity prices since 2014 in Turkey and Europe does not largely impact the Georgian government's plans for energy sector development. The government simply reoriented the program for increased electricity production to ensure the country's energy security without an assessment of the problems within the sector planning, delaying the energy efficiency schemes and programmes by any means.

In order to attract the investors, the memorandums signed during 2014-2016 start to include guaranteed purchase agreement articles, which, in some cases, guarantees the purchase of the total output of the plants on predetermined prices. That has been done despite the fact that Georgia signed the Association Agreement with European Union and was requested to join the European Energy Treaty (EET) and its regulation.

In the case of the Gardabani coal power plant (1 billion kWh output per annum), the government guarantees to purchase electricity for next 15 years under the predetermined price (USD 7.9-9.8 cents per kWh), provided that it operates on local coal. From the European Energy Community point of view, it is a clear violation of articles 107.2 and 107.3 on state aid, which stipulate that country cannot have state aid if it is not estimated and approved by the appropriate body.

This could clearly jeopardize the implementation of the commitments undertaken by Georgia under the EU-Georgia Association Agreement and the European Energy community Treaty. However, given the agreement's provisions, obliging the system operator to buy electricity at a predetermined price until 2035, the prospect of developing sustainable electricity seems more than doubtful.

The 280 Nenskra Hydro power plant project is another clear example of the fact that obliging the system operator to buy electricity almost 2 GWh annually (full production) at a price of USD 85.32 per MWh for next 36 years, may fully jeopardise the prospect of developing sustainable electricity.

Nenskra HPP, will be built by JSC Nenskra Hydro, a joint venture between the state-owned Partnership Fund and the South Korean state company K-Water. International financial institutions are considering financing

three quarters of the project's total costs, over USD one billion³². Among the numerous concerns surrounding the Nenskra hydropower project is a lack of transparency about the contract between the Georgian government and the project company. The government of Georgia, after nearly four years of public battles for access to information, only partially reveals the contracts – not highlighting the most controversial points of the deal.

Meanwhile, the "Memorandum of Economic and Financial Policies (MEFP)" signed between the government of Georgia and IMF in May 2017, clearly reveals that that power purchase agreements (PPAs) in the energy sector contains increased fiscal risks associated with the state-owned enterprises (SOEs) and public-private partnerships (PPPs), particularly in the energy sector. This is specifically due to the purchase guarantee period, as well as a guaranteed purchase tariff that should not be more than US 6¢ kWh, while the cumulative installed capacity of these projects under negotiations should not exceed 500 MW.³³

The IMF made exclusions for two projects, the Namakhavani HPP Cascade Project and Koromkheti Hydro Project.³⁴ However, the IMF also underlined that these two projects should not go forward unless a "thorough fiscal risk analysis" was completed "comprehensively for all fiscal risks, in consultation with the energy expert of the World Bank and the IMF", while the risk assessment should "describe and quantify other risk-sharing contractual obligations (including, for instance, termination risk or construction risk".

The IMF's concerns were echoed by World Bank, arguing that "...if the current Georgian power market model is not updated, operating the power system will lead to higher costs and higher impact on the bottom 40 % of the population. For example, since 2014 the government has entered into power purchase agreements (PPA) to stimulate hydropower and achieve energy self-sufficiency through public-private partnerships. However, the associated contingent liabilities and risks have not been properly accounted for, which increased exposure to fiscal risks.³⁵"

32 These banks include the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB) and the Asian Infrastructure Investment Bank (AIIB).

33 <https://www.imf.org/en/Publications/CR/Issues/2017/04/13/Georgia-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-Cancellation-44834>

34 With cumulative capacity 600 MW

35 <http://documents.vsemirnyjbank.org/curated/ru/229391493845045659/pdf/P161767-Georgia-PLR-Approved-for-SECPO-04072017.pdf> Report No. 108467-GE; page 13

Environmental and Social Impact Assessment

The hydropower plant projects in Georgia, developed with the support of international financial institutions, represent the clearest examples of the projects where social and environmental impact assessments have been undertaken with numerous violations and a lack of proper public consultation process. The existing environmental permit law in Georgia does not provide adequate safeguards, neither for environment nor local communities. The environmental impact assessment and its final document serve as a mere formality. According to the high officials from the ministry of environment, should the company “acknowledge” the high risks and its acceptable for them, the government should not interfere and just provide a “positive ecological expertise conclusion”³⁶. That approach leads towards various situations, when the HPPs are taken by landslide³⁷ or damaged heavily by floods³⁸, which is often connected with the death of the people and irreversible damage to a community’s living environment.

As the cases below prove, the same problems also characterised HPPs constructed with support of the international financial institutions. The claims of international financial institutions that their involvement brings additional value, in terms of application of best available practices and international standards, are under question. One of the most problematic issues underlined is that nothing changes for affected communities who often rely on the authority and prestige of those institutions, neither in terms of meaningful public participation nor in terms of consequences.

Paravani HPP

The Paravani HPP project’s total costs were USD 156.5 million. It has been supported by EBRD with USD 52 million in funding and USD 5 million equity stake from Georgia Urban Energy, the Georgian subsidiary of the Turkish conglomerate Anadolu Group. The IFC provides additional USD 40.5 million and a further USD 23 million has been syndicated via commercial banks.

The Paravani HPP is a derivative type of project that involves the construction of 14 kilometre derivation tunnel to divert 90 % of the Annual Average Flow from the Paravani to the Mtkvari River upstream of the village Khertvisi. Given that the Mtkvari River is already threatening the village because of regular flooding, diverting 90 % of the Paravani only increases the risks of flooding. Moreover, leaving only 10 % of the annual average flow, as a ‘sanitary flow’, for the preservation of the river ecosystem has already destroyed fish species in the river.

The HPP project aimed to supply electricity to the Georgian market during the three winter months (December-February) and to export power to the Turkish market in the remaining nine months of the year. The construction started in 2010 and it was supposed to be completed in 2014. However, in November 2012, the construction of the HPP was stopped, as the Turkish construction company ILGI, contracted by Georgian Urban Energy, left the project. The explanation was that the company had undergone financial and material losses. The materials that needed to be excavated were much harder than previously defined by the Environmental and Social Impact Assessment and some of its machinery broke down, while the project sponsor did not cover the subcontractor’s additional expenses.

In December 2011 Green Alternative submitted a complaint to the EBRD Project Compliance Mechanism (PCM), requesting to undertake a compliance review in order to verify whether the project’s Environmental and Social Impact Assessment correctly identified the risks and associated mitigation measures, namely: (1) the improper selection of a river flow regime that could have drastic impacts on the river ecosystem and fish species (including red-listed trout); and (2) the possible flooding of the Khertvisi village.

The final compliance review report of the project was released in the beginning of 2014, and it confirmed that the bank failed to properly assess the environmental risks on the project, thus violating its Environmental and Social Policy with respect to the potential impacts on biodiversity. The PCM found that the percentage of the water flow was determined without validation and an appropriate baseline assessment of the river’s ecology, morphology and flow rates in order to ensure the avoidance of irreversible damage to the river ecosystem.

It is notable that the report did not find the EBRD in breach of its policy in regards to the potential flooding risks to the Khertvisi village, as according to the report this issue was included in a ‘side agreement’ between the EBRD and project investor at a later stage and thus subject to public consultation. As it turns out, the company never disclosed the study regarding the flood risks to Khertvisi, while assuring the public that the project will not flood the village.

36 Forecasted Tragedy – Unstudied Environmental Risks, <http://liberali.ge/articles/view/3628/prognozirebadi-tragedia--garemos-sheufasebeli-riskebi>

37 The Bakvi HPP Power House was taken by landslide in 2013, <http://www.interpressnews.ge/ge/politika/230399-mthavroba-qbakhvi-hesisq-eqsploataciashi-shesvlis-tharighis-gadavadebaze-imsjelebs.html?ar=A>

38 Kintrishi HPP is under construction. The tunnel of HPP was taken by landslide in December 2017, while in October 2017 after strong rain the facilities has been fully filled by sediments, and dam heavily damaged <http://ajaratv.ge/news/ge/21592/kintrishi-hesi----dzlieri-tsvimis.html>

Dariali HPP

The construction of 108 MW Dariali project was supported by EBRD in May 2014. The total costs of the project was a USD 123 million loan, from which the EBRD allocated USD 80 million USD.³⁹

The construction of the HPP started in 2011, without the relevant environmental permit, on the territory of the Kazbegi National Park. In 2012, the project promoter, JSC Dariali Energy, requested and received a permit for the Dariali project that included the territory of Kazbegi National Park in November 2011. In February 2012, “To rectify” an obvious wrongdoing committed by the Ministry of Environmental Protection for allowing the construction of Dariali HPP on the protected area, the Parliament of Georgia amended the law on Kazbegi National Park to excluded that territory from the protected areas system.

Some of the major concerns of the CSOs and communities around Dariali HPP were the improper selection of the project site and the inadequate assessment of the risks involved in developing the project in a dangerous geodynamic area. In May and August 2014, two consecutive landslides on the Devdoraki glacier lead to the death of at least six workers and four truck drivers at the construction site.

Georgian Environmental groups submitted a complaint against Dariali HPP to EBRD’s Project Complaint Mechanism (PCM) in 2014. In 2017, PCM finds out that the EBRD failed to sufficiently assess the potential risk of natural disasters caused by the project, including the formation of ravines, landslides, debris flows, rock slides, and mudflows. The PCM concluded that the bank violated its own standards for environmental protection and social policy when they made the decision to finance the Dariali project. This represented a huge blow to the Georgian Ministry of Energy, who had repeatedly claimed that the Dariali project fully complied with international standards.

Shuakhevi HPP

The Shuakhevi HPP is the third project that was approved by the international financial institutions in spite of strong opposition from locals and civil society. The project involved the construction of the 22-metre Skhalta (with a 19.4 hectare reservoir) and the 39-metre Didachara dams (with a 16.9 hectare reservoir) on the rivers Skhalta and Adjaristskali, as well as the construction of three diversion tunnels (with lengths of 5.8, 9.1 and 17.8 kilometres) to divert water flow from the upper parts of the Adjaristskali, Skhalta and Chirukhistskali

rivers towards the reservoirs and then the powerhouse. The total project costs up to USD 420 million.

According to the 2015 EBRD statement “IFC, ADB, EBRD, Tata Power, and Clean Energy help Georgia achieve energy self-sufficiency⁴⁰” the project were largely supported by IFIs: “The USD 250 million debt financing arranged by IFC represents the largest-ever private hydropower investment in Georgia, consisting of two USD 90 million long-term senior loans, one each from ADB and EBRD, and USD 70 million from IFC. IFC’s total investment in this project is USD 104 million, which includes a USD 34 million equity investment in the project company, Adjaristsqali Georgia, a joint venture between India’s Tata Power and Norway’s Clean Energy Invest (40 % each), and IFC (20 %).”

The major concerns raised by local communities and CSOs have been addressing the fact that construction work had begun without the required, detailed geological survey for the project implementation in place. While the project does not require any type of resettlement, the locals fear that project will impact villages outside of the predetermined project site, taking into account the fact that this area has been landslide prone. The construction of derivation tunnels using blasting methods and arranging reservoirs below the village of Ghurta or in the close vicinity of the villages Didachara, Tsalana or Chanchkhalo could potentially activate slides that might have drastic results for these villages. The company refused to sign warranty contracts with villagers to offer compensation in cases where construction will cause damage.

As public protests continue, three years ago the local people’s protests against the Shuakhevi project was suppressed by the police, with the participation of the Deputy Minister of Energy.

During the construction period, locals has been complaining about the disappearance of spring water in a number of villages, landslides occurred, houses were damaged and living conditions were significantly deteriorated. For most of the affected, the government was forced to elaborate the resettlement programme, providing only USD 10 000 for relocation.

The hydropower plant was officially opened in June 2017. Meanwhile, in July 2017, locals in the village of Gorkhanauli, who had previously complained about dried-up springs after the HPP construction, started to become concerned by increasing groundwater levels in the villages. Soon it became clear that the plant was experiencing technical difficulties and could not operate.

In September 2017, the official statement from the company that “[t]here appears to be some blockage in

39 <http://www.ebrd.com/work-with-us/projects/psd/dariali-hpp.html>

40 <http://www.ebrd.com/cs/Satellite?c=Content&cid=139524388679&d=Mobile&pagename=EBRD%2FContent%2FContentLayout>

the transfer tunnel between Skhalta and Didachara. This blockage is estimated to be around 170 meters away from the tunnel outlet in the Didachara reservoir area. However, this blockage will not impact the operations of the Shuakhevi Plant which is ready for commercial operations⁴¹.”

In November 2017, the company’s CEO admitted that the tunnel collapse may have been due to unknown, and unpredictable, geological development in the area. He also claims that it has been doing the detailed geological studies concurrently with the construction work. The accepted practice requires full, detailed geological studies before receiving permission from the company for the construction work. The company had also claimed that it could not do any damage to locals.

The State Roads Department is forced to spend 800 thousand GEL (around USD 350 000) to restore the Khulo-Batumi road, as the river washed out the soil and a landslide occurred.⁴²”

Public participation

It should be noted that in terms of ensuring public participation in permit-issuing decisions, since 2005 the national legislation has been in full conflict with the international commitments, including the Aarhus Convention undertaken by the country in 2001.

The convention requires that the public be involved in the decision-making process in a timely and effective manner, whereas according to the Law on Licenses and Permits, decisions are made through simple administrative proceedings and this rule, in itself, does not envisage public involvement in the process. Since 2018, the new law on environmental impact assessment processes will be enforced, that it is in line with EU directives. However, that change only came under the EU-Georgia Association Agreement, which requires approximate legislation by 1st September 2017.

The new draft law on EIA and ESIA “Environmental Assessment Code” was practically ready by the end of 2015, as the law was developed under the Green Economy program supported by The EU and OECD. However, without explanations, the law was shelved for

the whole year of 2016 and was presented to the Parliament of Georgia, almost unchanged in the spring of 2017. The law will come into force as of January 1, 2018.

However, the new law does not guarantee that public participation would be truly encouraged from the side of the government. For example, in the case of the Ksani Stepanstmina Transmission Line, funded by KfW, in the spring 2017, there was a number of mass protests. Affected Communities were concerned with landslides caused by construction work at a very short distance from their houses. Protest actions were organized several times in both regions that the line crosses – Dusheti and Kazbegi. The greatest concern of the local communities is the impact of electromagnetic fields on human health. In all cases, the authorities responded to the protest by mobilizing riot police. In May, the situation became heated with the mobilization of locals protesting the construction of the transmission line, forcing the company to stop construction.

The clashes between locals and police were used by the Minister of Energy, Mr. Kaladze, and Deputy Prime Minister, Mr. Eloshvili, to accuse the CSOs and local communities to be “a destructive force”, accusing them to be traitors of the state and playing on Russia’s side.⁴³

Lessons learned

The environmental impact assessment and public participation are sensible, if the government is not expecting to receive only positive feedback and unconditional support of all their decisions, while discrediting any serious opponents, or not taking into account those who express their concerns and fears, claiming that they don’t represent the communities.

Conclusions

Broad and meaningful public participation can support the improvements projects, as well as help to avoid external costs of the fixing almost-irreversible damage

41 http://www.agl.com.ge/view_news.php?id=157

42 <http://batumelebi.netgazeti.ge/news/108711/>

43 “Dangerous Work – INCREASING PRESSURE ON ENVIRONMENTAL NGOs AND ACTIVISTS IN THE COUNTRIES OF THE FORMER SOVIET UNION AND THE U.S.”

Hungary

NGO networking and transparent delegation systems: a good basis for effective participation with EU Funds

Hungarian environmental NGO co-operation has a long record, having started in 1990. In this case study we will describe what elements of the co-operation exist and what the most important impacts of the networking are.

National networking structures

The legitimate electoral system of NGOs working in the fields of environmental protection and nature conservation are based on the National Gathering, organised each year by a different organisation since 1990. At the National Gathering, all registered green organizations have voting rights. Nominating candidates is an open process, while elections are made by secret ballot. At present, this forum of organizations elects a delegate for about 40 bodies, including all the monitoring committees of EU funds. Its delegations are acknowledged by the government.

The National Gathering served as a forum for professional exchange initially; however, from 1996, it also took on the function of an electoral body when environmental NGOs first received the opportunity to delegate representatives to various bodies – advisory, grant-making, professional decision-making. This made it necessary to create internal Rules of Operation, which include regulations on the election process. Delegates are elected for two years; however, this is not a problem for monitoring committees, where the low turnover of delegates is preferred, because the NGO community usually grants trust to the delegate for the whole EU budgetary period. Delegates are also obliged to inform the environmental NGO community about their work through a general mailing list regularly. If they don't perform, they can be recalled – however, this has not yet been the case so far.

With the progress of time, as the number of delegates grew and information flow accelerated, environmental NGOs realised it was necessary to set up a more formal co-operation system, this was five years ago. The co-operation system was named Green NGO Cooperation, and twenty members of the Coordination Council are

elected every year to organise NGO networking between two national gatherings. The Coordination Council meets every other month to discuss networking issues, providing a platform for exchanging information on recent environmental campaigns and deciding about delegations to several governmental councils. The society players/stakeholders, including the government, treat it as a representative, consultative partnership forum of environmental NGOs. Because the Coordination Council organises NGO delegation during the year, the three-daylong National Gathering could become a more informal meeting and happening of 400-600 environmental NGO activists and green-conscious citizens in each year.

This methodology is not necessarily fit for each branch of the civil society, but it is probably worth considering it. The twenty-year existence of the system proves its resilience and quick responsiveness. The internal rules of co-operation have been developed along natural internal needs and they observe democracy and equity in networking.

Regional co-operation of environmental NGOs

Another important networking tool of environmental NGOs in Hungary is named the Network of Green Regions, coordinated by the National Society of Conservationists – Friends of the Earth Hungary (NSC – FoE Hu). They have been working with regional and local environmental NGOs on EU Funds since 2000. They formulated seven networks of NGOs in the all NUTS2 regions of the country. More than 170 NGOs joined the regional networks, which serve as EU Fund information centres that ensure the exchange of good practices and experiences as well as coordinate environmental advocacy in regional planning and in the implementation of the operational programmes. The regional networks have had a number of successes during the years in regional public participation, but over the last years they have lost importance because the government organised the regional development planning on a county level (NUTS3), instead of in NUTS2 regions.

Participation in EU Funds monitoring committees

Among other things, due to the well-organised representation system of environmental NGOs, it is probably Hungary where monitoring committees have the most environmental NGO members: all of the national and cross-border monitoring bodies invited an environmental NGO partner to represent the horizontal aspects of the sustainable development. The environmental NGO members are elected by the Green NGO Cooperation, as described above. Those NGO representatives generally are the most active members of the committees: they submit the most proposals for improving environmental conditions of plans, programmes and call for proposals, and advocate for a meaningful public participation as well. They collect input from the NGO community before meetings and spread information about funds through webpages, e-mail lists and the meetings of the Coordination Council. The Environmental NGO delegates of the monitoring committees also have networking activities in which they regularly exchange information and experiences, organise meetings and training sessions to build up each other's capacity. Although the recent government of Hungary has been less supportive of public participation in EU Funds and has tried to implement only the bare minimum partnership requirements of the EU regional policy, environmental NGOs could keep the transparent, bottom-up based delegation and network system in monitoring committees. The NGOs were able to impact and modify, for example, the call for proposals and internal rules of committees for a better environmental and social performance of the EU Funds.

Project sustainability assessments

Between 2004 and 2006, the Managing Authority of the Regional Development Operational Programme (RDOP) commissioned the NSC-FoE Hungary to co-operate in the assessment of the RDOP project proposals regarding environmental sustainability, acknowledging the experiences of the organisation on environmental and regional policy matters.

That time, project proposals were assessed and scored at regional levels; the Managing Authority, however, also assessed them against several criteria such as environment and equal opportunities. The NSC-FoE Hu expert team had the opportunity to propose whether the project proposal should be accepted, rejected or sent back to the project owner for amendments. Based on the opinion of experts and regional development agencies, the Decision Preparation Committee would make a final suggestion for or against funding. Within a year, NSC-FoE Hu experts assessed about 1000 project proposals. About 10 % of the projects were proposed

to be rejected, 20 % to be amended. The majority of the rest was supported by the Committee, but strict environmental conditions were set for contracting. Some of the project proposals were not adequate enough from an environmental perspective and were therefore rejected. In many cases, this happened because of the determined stance of the representative of the Ministry of Environment. This shows a strong example of successful co-operation among NGOs and government offices. The main advantage of the re-assessment and quality assurance system of project proposals was that as the Managing Authority regularly sent back project proposals with low environmental performance for amendment, regional agencies and project owners themselves also started to understand the importance of considering "environmental sustainability" more deeply and tried to present it in the proposals; as was revealed by the (improved) quality of the proposals. This was due to the fact that even the project guide on "environmental sustainability" tried to take an integrative approach.

The direct project assessment co-operation ended in 2007, but some level of involvement of NGO experts in the decision preparation was still ensured between 2007 and 2010. NGO experts, among others, had the opportunity to apply – following strict criteria – for membership in a pool of experts. Members of each project evaluation committee were selected from this pool by drawing lots. It was also a major step forward that the government published a searchable database of EU-funded projects, with basic information about each project, including the list of names of the members of the project evaluation committee. Unfortunately, the ruling government changed the rules of procedures and abolished the mandatory involvement of NGO experts in project evaluation teams.

Financing NGO work from EU Funds

In the previous programming period, several operational programmes offered EU co-financed budget lines for NGO activities. As a result of the concerted efforts of major regional NGOs, facilitated by regional coordinators of the Network of Green Regions, regional development agencies and the Managing Authority of Regional Development Programmes supported the initiative of including budget lines for NGO activities in almost all regional operational programmes. Measures included development of civil society infrastructure, as well as activities for environmental co-operation programmes of local governments and NGOs.

Apart from the above funds, there had also been some other calls for proposals within the framework of the Social Renewal OP for NGOs. A special measure had been dedicated for networking, development of advocacy capacities, and organizational development

of NGO networks. For example the National Society of Conservationists – Friends of the Earth Hungary used the funding possibility to strengthen the Network of Green Regions through capacity building of regional NGOs, supporting regional coordination and widening the network. Environmental NGOs also advocated successfully for the Environment and Energy OP to include a special measure for awareness-raising campaigns on

sustainable consumption, where NGOs could apply for grants.

In the recent programming period the government narrowed down the NGO funding possibilities in the EU Funds, but several limited measures have been opened for environmental NGO projects, for example, raising public awareness on energy efficiency and renewables, or non-formal education activities on healthy food in schools.

Slovakia

The road to biomass-sustainability criteria within EU-funded programmes

Introduction

The development of bioenergy projects in Slovakia has enormously increased demand for wood biomass, resulting in massive logging and a decrease of biodiversity, among other negative impacts. Therefore, several environmental NGOs advocated for the establishment of a task force that developed sustainability criteria for the energy use of biomass. This case study summarises the key steps and lessons learned from this process.

Demand for wood from the energy sector in all EU countries, including Slovakia, is driven by:

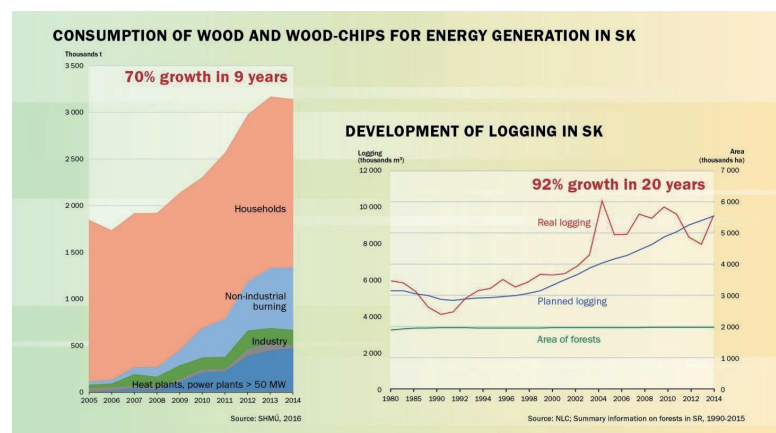
- depletion of the world’s reserves of non-renewable fossil fuels, their decreasing energy efficiency and availability;
- The pace and nature of global climate change and the forecasts of its expected economic, social and environmental impacts;
- The energy gain from biomass is preferred and subsidized;
- Poverty, costs of other fuels and other factors.

For most bioenergy (with the exception of biofuels in the transport sector) there is no sustainability requirements, therefore we have no means to ensure that the use of biomass stays within limits that do not cause

environmental damage. However, there are EU Directives that need to be complied with.

By committing to adopt sustainability criteria for energy generation from wood biomass in any new bioenergy project funded by the European Structural and Investment Funds (ESIF), the Slovak Government obliged itself to start a politically sensitive process.

As shown in the graph below, an absence of sustainability criteria has resulted in spending a vast amount of EU funding on building many large-scale, wood-based heat and power plants, both communal and industrial (dark blue). Public subsidies designed to mitigate climate change often supported the reconstruction or enlargement of obsolete fossil-fuelled district heating plants when they pledged to add wood into their fuel base (dark blue as well). In addition, new EU-funded boilers, fueled by wood, replaced older coal, coke, electric or gas boilers in hundreds of public facilities (light blue). As a result, consumption of wood for energy generation in Slovakia grew by 70 % in just nine years (from 2005 to 2014).



The graph shows the dark side of this unregulated chain. The subsidized development of bioenergy projects in Slovakia has enormously increased the demand for wood biomass. A large number of new companies engaged in wood chipping have emerged and the transportation of wood has increased significantly, as well. Timber logging in forests has almost doubled over the last two decades (from 1994 to 2014), despite the fact that the area of forests remained the same and logging still continues to grow further. The same applies to official forestry planning. The increased demand even extends ruthless logging in environmentally sensitive habitats such as river banks, on agricultural land and along roads etc.

Steps for advocating biomass-sustainability criteria

Getting sustainability of biomass utilisation into the Partnership Agreement and into relevant Operational Programmes: Negotiations focused on achieving compliance with EU legislation in the documents. Within the Partnership Agreement, we (environmental NGOs) managed to include biomass sustainability into the definition of the Horizontal Principle on Sustainable Development. We then used this reference to align the texts of the relevant operational programmes.

The level of detail at this stage was low – the Partnership Agreement and Operational Programmes included a basic declaration that EU funds support of biomass energy utilisation would be subject to sustainability standards, as stipulated in EU regulations.

This formed the basis for further negotiations.

Negotiating the process: Our effort focused on the Ministry of Environment (MoE), which manages the Operational Programme on Quality of Environment, in the past they had shown some willingness to co-operate. We aimed for the creation of a formalised task force established under the monitoring committee of the OP. We, therefore, pushed for the inclusion of task forces into the monitoring committee statute. This was successful. We motivated the MoE to create a task force for biomass sustainability through meetings with the State Secretary and the Head of the Ministry division responsible for managing the OP. These Ministry representatives understood the need to have applicable criteria to allow the drawing of EU funds for biomass support and agreed to create the task force.

The MoE had been able to include the Ministry of Agriculture and Rural Development into the process, as this ministry also invests into biomass energy utilisation through the Rural Development Programme (RDP). The position of the Ministry of Agriculture was, however, rather superficial. It had nominated only representatives of the RDP managing authority, but the Ministry's

Forestry division, (they key division) ignored the process. This fact decreases the strength of the criteria. Knowing the stance of the Forestry division, the push for nationally recognised criteria will be a hard effort.

Assembling the task force: The MoE kept the competence to name task force members. Although they accepted our candidates, they did not opt for an open nomination procedure through a call for experts. This decreases the public acceptance of the task force.

Task force operation: The creation of the criteria had to be subject to public procurement as the Ministry of Environment lacked internal expertise. Expertise and consultancy services were procured for the Ministry within a single-framework contract. At the first meeting of the task force, on March 17, 2016, the members were informed that the MoE had already signed a contract on development of the document (background analysis and proposal of criteria) with a commercial consultancy company. It became clear very soon that the consultancy company does not deal either with forestry or energy issues and had hired a senior analyst from the National Forestry Centre (NFC), an expert institution controlled by the Ministry of Agriculture responsible for forestry research, information and planning.

The vested interests of this key person, representing the forestry sector and appointed to draft the whole document soon became obvious. Therefore, NGO representatives questioned the set-up of the task force, at the first meeting they proposed to submit their own analysis and draft sustainability criteria to be developed before the official process started ("Position Paper on the Useful and Efficient Use of Biomass", 2016). The document was prepared by Friends of the Earth-CEPA in co-operation with seven other NGOs dealing with biodiversity, forestry and energy.

The document resulted from the long-term efforts of Friends of the Earth-CEPA, and established a system of sustainable energy planning on the regional and communal levels. Along with a broad analysis of unsustainable logging and use of wood biomass in Slovakia, it contains recommendations for public authorities dealing with incentives for bioenergy and a proposal for four main sustainability criteria (1. Minimal energy efficiency for buildings supplied by wood-based heating; 2. Guaranteed minimum efficiency of wood-based boilers/ovens; 3. Declaration of the place of origin of biomass used for energy/fuel generation; 4. Maximum transport distance of wood biomass for energy generation /whole life cycle). This surprising proposal, at the beginning of the process, was an important factor in changing the dynamics within the task force because the group started to discuss the NGO proposal.

Meanwhile, NGO representatives sharply criticised the drafted background papers of the NFC expert and

requested significant corrections. His draft papers unambiguously overestimated the available stocks/reserves of wood on the one hand and, simultaneously, significantly underestimated the real consumption of wood for energy production in order to legitimize the expected output of the analysis: that there is a surplus of wood biomass for further increase of both logging and consumption and, therefore, the sustainability criteria should be flexible enough to allow for further financing of the bioenergy sector.

It should be emphasized that the positions and activities of the representatives of state agencies were fair and progressive. Only the representative of the Ministry of Agriculture gradually ceased to co-operate with the task force. It was obvious that adoption of sustainability criteria was not in their interest.

According to the time schedule of the official process, the analysis was to be finalised in May and draft criteria in June 2016. However, disagreements between NGOs and the drafter caused a delay and the MoE did not want to complete it without consensus on major points among all stakeholders. The delay resulted in a serious postponement of the announcement of all calls for proposals for any biomass or bioenergy projects funded by ESIF in Slovakia.

Approving the criteria: After a series of bilateral negotiations among the task force members, NGO representatives agreed not to insist on the principal changes in the analytical part of the document in exchange for accepting the three criteria they requested (more than 50 % of the original request by Friends of the Earth-CEPA). As a result, the MoE submitted the compromise document on September 8, 2016, for an official interdisciplinary commenting procedure (this process is public to collect comments from all agencies and the public prior to the official adoption of the document).

The release of the document provoked strong opposition from the Wolf Forest Protection Movement, requesting its complete redevelopment and cancellation of any public subsidies for bioenergy projects. After long, unsuccessful negotiations between the MoE and the NGO, the MoE decided to close the public commenting procedure and submitted the document to the Monitoring Committee for the Operation Programme Quality of the Environment.

Nine months later, this committee finally voted on the document. On June 20, 2017, despite opposition by supporters of bioenergy, it adopted the draft criteria, while the analytical aspects were neither discussed nor adopted and will be postponed for further discussion.

Further work of the task force: The Ministry of Environment needs to create a working system for applying the criteria. It needs to set up conditions, reporting procedures and control mechanisms. This will be subject to further negotiations in late 2017.

Lessons learned

The creation of sustainability standards for biomass utilisation, in this case, was motivated by the need to draw EU funds, not by political will to ensure sustainability in forestry and energy production. This limits the applicability of the criteria.

There is a lack of co-operation between ministries and few possibilities to create a cross-cutting task force. There is practically no will to transform forestry in Slovakia. The forestry division of the Ministry of Agriculture is clearly ignoring any effort to introduce sustainability standards and is negating any evidence of forest degradation and depletion in Slovakia.

Current situation and next steps

Due to mounting evidence proving the negative impacts related to the use of bioenergy, such as destruction of valuable forest ecosystems (which we face in Slovakia, discussions on new-and-improved bioenergy sustainability policy have started on the EU level. Sadly, the European Commission proposal on the new bioenergy policy published in the framework of the Clean Energy Package, November 2016, falls short of what is needed to put the brakes on the environmental damage caused by the existing policy. It is now in the hands of the national governments (the Council) and the European Parliament to strengthen the policy in a way that it genuinely ensures sustainability and long-term use of biomass for energy use. The countries with existing sustainability criteria or certification schemes are best placed to advocate for solutions that are functional and effective.

Final sustainability criteria for energy use of wood biomass as agreed within the task force

All three criteria listed below have the character of exclusion criteria, i.e. for the project to be considered sustainable, all three criteria must be met.

Failure to meet one of the criteria is a reason for refusal of the project in the project review process or to return the subsidy to the implementation phase.

The intermediary body of the relevant operational programme will carry out a check on the fulfillment of the criteria.

■ Criterion 1: Proof of origin of feedstock

This criterion is to ensure more efficient management of timber in a sustainable way, i.e. optimal use of forested and non-forested land, as well as solid-wood-based residues, which are the most important source of wood biomass for energy generation in Slovakia. This criterion is to prevent fuel production and generation of heat and electricity from wood, whose technical parameters allow

its use/processing with a higher added value. At the same time, it is to prevent wood biomass from non-forested land from being exploited in conflict with management of protected areas and Natura 2000 sites.

■ **Criterion 2:** Transportation and distribution

This criterion is to contribute to ensuring the sustainability of wood biomass potential for energy use, reducing greenhouse gas emissions, increasing energy security and self-sufficiency (especially in less developed regions) and reducing dependence on fossil fuel consumption. This criterion also attempts to increase the transparency of wood biomass flows.

Due to the fact that the prevalence of demand for biomass availability may arise in some regions, the sustainability of wood biomass for energy generation is ensured by determining the transport distance, i.e. direct distance from the place of origin to the place of consumption, as follows:

(A) The transport distance for the construction of new energy facilities for the use of wood biomass is 50 km within the definition of the defined area.

(B) The transport distance for the reconstruction or upgrading of existing energy facilities for the use of wood biomass is 100 km within the definition of the defined area.

The aim of this criterion is, besides providing a regional approach to the use of wood biomass, also to achieve an optimal level of minimization of greenhouse gas production by limiting transport of wood biomass as well as replacing obsolete fossil fuel combustion plants (e.g. coal) with energy efficient wood-based boilers located in regions with insufficient availability of wood biomass.

■ **Criterion 3:** Effectiveness of wood biomass energy conversion

This criterion is to increase the efficiency of the use of wood biomass for energy generation, including the reduction of greenhouse gas production and the reduction of other pollutants arising from the conversion of energy. The minimal guaranteed energy conversion efficiency values arise from Art. 13, point 6 of Directive 2009/28/EC on the promotion of energy from RES

Poland

Waste management challenges

Introduction

Poland has been allocated a certain amount of EU funds to modernise our waste management systems. Exactly how those funds are spent is for the national administration to decide – in consultation with social partners. The Polish Green Network tried to use this space for public participation to encourage the government to spend the money on recycling and circular economy solutions rather than big waste incinerators. We did not quite succeed, because good arguments are not enough – you also need to put some skill and effort into convincing everybody else to accept them.

Poland's waste management is far from perfect. The country recycles only about 26% of waste, and quite a lot of waste still ends up in landfills, generating major environmental and social problems; take for instance the Radiowo landfill outside Warsaw, which should have

been closed several years ago, yet continues to operate – poisoning the area around it and infuriating the local inhabitants who have been tirelessly campaigning against it. Poland still has not fully implemented the 2008 EU framework directive on waste, which sets recycling targets. In the meantime, the EU has adopted the 2016 Circular Economy Package, which, among other measures, imposes even more ambitious recycling targets and introduces concepts such as industrial symbiosis, where one industry's waste becomes another industry's raw material. The 2016 package also introduces the notion of extended producer responsibility, which makes manufacturers responsible for the waste that their products become. In this context, spending a big part of the available waste management funding on new incinerators is not the best idea. Yet, this is what was initially proposed in early 2017 when the Polish administration presented drafts of the detailed programming document for waste management projects to be supported with EU funds and of project selection criteria.

Problem identification

The documents stated in detail what waste management projects would be eligible for support from EU funds. What was striking was that their main idea was to deal with Poland's still heavy reliance on the landfilling of waste by building more waste incinerators. This is problematic in several ways. Firstly, such an approach is against the objectives of the long-established EU policy on waste, which are to reduce, reuse and recycle, and to incinerate only the residual waste that cannot be disposed of alternatively. Secondly, it makes no sense in the context of the new circular economy objectives adopted in 2016 – as confirmed by the European Parliament's ITRE committee, which recently voted against support for waste-to-energy schemes, arguing they were difficult to reconcile with the principles of circular economy. If Poland were to spend the EU funds available for waste management on new waste incinerators, it would end up locked-in with an obsolete technology that would stand in the way of the development of circular economy solutions, or would risk being left with stranded assets – i.e. waste incinerators struggling to meet environmental requirements, or even to find enough waste to burn. Finally, building waste incinerators is a recipe for social conflict, as nobody wants this kind of installations in their neighbourhood due to the known risks of environmental pollution and the nuisance of seeing (and smelling) heavy garbage truck traffic just outside one's windows.

Method of partnership

The Polish Green Network (PGN) is a member of the Infrastructure and Environment Monitoring Committee – a body composed of governmental, local government and civil society representatives who approve the programming documents and criteria based on which infrastructural and environmental projects get selected for EU support. In this capacity, the PGN was able to invite an external expert to present to the Monitoring Committee and comment on the draft. The expert proposed a long list of changes to the draft document. He called for more focus to be placed on the reduction and recycling of waste, pointed out that it was perfectly possible to implement comprehensive waste management solutions without incineration and argued that such solutions would be more helpful in achieving the targets set by the Waste Directive and meeting the future challenges of the circular economy. The expert also carefully highlighted all the provisions that were incompatible with the future circular economy objectives, current EU guidelines on dealing with waste and even national legislation on waste in force in Poland.

Added value of public participation

The originally proposed criteria offered no chance of bringing Poland closer to the achievement of the current recycling targets, let alone the future circular economy models, and would create the risk of stranded assets, i.e. misguided investments that never pay off. The involvement of an external expert invited by the PGN created an opportunity for the institution in charge of managing EU funds in Poland to significantly improve the quality of EU funds spending, avoid investing money into installations that will likely become obsolete by the time the investment pays off and support innovative projects that would really bring waste management in Poland to 21st century standards.

Lessons learned and recommendations

Unfortunately that opportunity was wasted. In the end, very few of the comments were taken into account, and the final documents prioritise waste incineration as a way to reduce landfilling. Poland can now go ahead with 34 new, EU-funded waste incineration projects. That is very bad news for the environment and the communities that will be affected by the pollution and garbage-truck traffic generated by the new plants. It's also bad news for the development of alternative waste management strategies based on reducing, reusing and recycling. Those strategies will not get an impulse for development, as the incinerators will likely swallow up much of the support available. EU money will be used to conserve an obsolete system in Poland instead of financing progress and innovation.

Could we have done better? Probably, yes. The lesson from this story is that coming to a Monitoring Committee meeting with a presentation, no matter how well argued, is 'too little, too late'. If you have a group of people who have always thought of incineration as the best and most progressive solution available, and you wish to challenge that view, convince those people that incinerators are in fact obsolete, and put forward a radically different way of thinking about waste, you need to start at an earlier stage. PGN could have better prepared the ground by sending the comments in advance to all the Monitoring Committee members, alongside a short explanation why waste incineration is not compatible with the future circular economy model and what alternative solutions should be supported instead. The limited time and space of the Monitoring Committee meeting was not enough to convince the MC members; the old way of thinking about waste ultimately prevailed.

Conclusion

Having missed this opportunity to influence waste spending, the NGOs will now explore other avenues (such as public participation in environmental permitting procedures) to try to prevent Poland from building the 34 new waste incinerators. This time we have to do better, otherwise Poland may end up importing other countries' garbage to fire its vast fleet of brand new waste incinerators.

The S7 expressway in Poland – a cautionary tale

Introduction

The S7 expressway in Poland is an important route that, if built according to the plan, would transect a habitat of protected butterflies. It is funded by the EU, and Polish environmental organisations have used all the means that the EU partnership framework offers to get the project modified and save the habitat. However, the investor, the state administration, effectively refused to treat them as partners – and the outcome is disappointing.

Background

The S7 is a main transit route connecting major cities in Poland: it runs from Gdańsk in the north to Warsaw in central Poland and to Kraków in the south. As a north-south transport axis, it is an important and busy route which is in the process of being upgraded to expressway standards. The roadworks have been divided into sections, with separate permitting and tendering procedures for each section. Some of the sections have already been upgraded, some are under construction and some are still at the permitting stage. The entire expressway project is financed from an EU grant and a loan extended by the European Investment Bank.

The part we will be looking at is an eight-kilometre section near the town of Skarżysko-Kamienna in central Poland.

Problem identification

The routing of the road originally proposed by the GDDKIA, the Polish road-building authority, was controversial from the environmental perspective. Instead of upgrading the old road, GDDKIA chose to build the Skarżysko section anew, passing through a forest and meadows located in the Oleśnica river valley to the west of the original road, in order to bypass residential areas.

However, the meadows in question are home to one of Poland's most important populations of the endangered Marsh Fritillary butterfly, and the river valley is an major wildlife corridor for wolves and moose. The road project envisaged a large junction to be built right on the spot with the highest concentration of butterflies and their host plants. The road also poses another threat to the wildlife corridor in that it does not include a wildlife bridge for large mammals.

Partnership and public participation

Pracownia, a Polish environmental NGO that monitors the environmental impact of road projects, decided to campaign to get the road redesigned so as to spare the Marsh Fritillary habitat. In 2011, Pracownia challenged the road construction permit, arguing that it was based on a flawed environmental impact assessment. The long legal battle that followed ended with a verdict by the Supreme Administrative Court which upheld the road construction permit. However, such a verdict was possible only because Poland had incorrectly transposed the EU directive on Environmental Impact Assessments – a fact that became apparent in the course of the legal process.

In the meantime, Pracownia and Bankwatch turned to the European Investment Bank (EIB) and the European Commission, the funders of the S7 expressway project. Using the Commission's complaints mechanism and the EIB's compliance mechanism, the two organisations filed complaints arguing that the expressway financed from an EU grant and an EIB loan would destroy the habitat of the protected Marsh Fritillary butterfly, and asked the two institutions to act in order to modify the road project. The bank then proceeded to carry out its assessment, and the Commission started an EU Pilot procedure, i.e. an exchange of correspondence with the Polish side, to find a solution.

In 2016, a meeting was held between the environmental organisations and the Polish road authority. In the meeting, the road authority presented a compromised variant of the road, which spared the butterfly habitat. For a brief moment, it looked like the problem was solved, but shortly afterwards the GDDKIA shelved their alternative and continued working on the contested routing, with only minor and insignificant modifications. The probable reason as to why it insisted on building the original variant is that back in 2011, when the permitting procedure was still far from over, it bought land and cleared the forest for that variant. If it were to modify the routing, it would risk being held accountable for that hasty business decision.

Having concluded its assessment, the EIB decided to put the disbursement of its loan on hold until a satisfactory solution is found and the Commission resolves the

case. The procedure at the Commission is still pending. However, the GDDKIA has recently decided not to wait for the outcome. In early October 2017 it announced that it was starting construction works immediately and would finance the Skarżysko section of the S7 expressway from its own funds, thus exempting itself at least partly from the oversight of the EU institutions.

Added value of public participation and the partnership principle

Public participation could have played a positive role in this project, but the opportunity has been wasted. Pracownia got involved early on, pointed out the environmental risks and alerted the EU institutions. The institutions responded and launched dialogue between the parties involved, creating a space to modify the project. A good alternative was feasible and a satisfactory compromise solution was within reach, nevertheless we ended up with a project that was delayed, environmentally destructive and paid for by the Polish taxpayer instead of the EU.

Lessons learned and recommendations

If there is any lesson to be learned from this story, it is that partnership and public participation can vastly improve investment projects – so long as they are taken seriously. It is common for road projects to generate environmental controversy, but through honest dialogue it is usually possible to find solutions that minimise harm to the natural environment. In the case of the S7, a business decision to buy land was taken prematurely,

before the end of the permitting procedure, probably because the road authority believed that getting all the permits would be a mere formality and did not consider the objections of civil society to matter. Then, the road authority ended up defending its premature move and ultimately, self-financing a delayed, environmentally harmful project, for which it may yet be held accountable. All because it did not care about the environment and refused to listen to those who did.

Conclusion

The battle to save the Marsh Fritillary habitat has been going on for seven years. If the road had been designed with proper regard for the natural environment in the first place, it would have already been built, to the benefit of the local people and drivers travelling between the north and south of Poland. In the course of those seven years, there were multiple occasions to improve the road project and avoid environmental damage. What was lacking, however, was a will to compromise and engage in honest dialogue on the part of the road authority.

The final outcome of this story has not been decided yet. Pracownia is still following the last legal avenues available in a bid to prevent the destruction of the Marsh Fritillary habitat and the wildlife corridor. However, if GDDKIA has its way, the Polish taxpayer will foot the bill for a long-delayed road project which could, and should, have been financed from EU funds, and Poland and Europe will lose an important piece of endangered wildlife. There will be no winners.

“By involving partners in the planning, implementation, monitoring and evaluation of projects supported by EU funds, Member States will be better able to ensure that funds are spent where they are most needed, and in the best way possible.”

László Andor, Commissioner for Employment, Social Affairs and Inclusion in the forward to the The European code of conduct on partnership in the framework of the European Structural and Investment Funds