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COHESION POLICY IN TRANSITION. COMPARATIVE ASPECTS OF THE POLISH AND HUNGARIAN SYSTEMS OF IMPLEMENTATION¹

Abstract

Currently the preparation of the new 2014-2020 multiannual financial framework period is taking place in all areas - e.g. the sectorial legislation, such as the establishment of the new system of Cohesion Policy, is in progress. The rules are being formed in the spirit of a new approach; result orientation will become the main goal which requires a change of attitude in the operation of the institution system. Poland and Hungary are two cohesion countries, both of them using a significant amount of structural funds to finance public investments. Despite the common regulation at EU level the two countries are seemingly choosing different solutions in order to guarantee smoother implementation that will allow policy objectives and results to be achieved more effectively – Hungary is centralizing and Poland is rather decentralizing the system. What is behind this phenomenon? Which is the best way to strengthen the efficiency of the cohesion policy? Our paper will present the institutions systems and mechanism, administrative procedures working in the cohesion policy and compare the Polish and Hungarian systems. It will analyze the directions of changes under the new cohesion policy regulation with regard to the functioning institutions system and national specificities. At the end of our analysis we try to identify good practices and make general recommendations.

Keywords

cohesion policy – efficiency – institution system – multilevel governance

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¹ Text was presented on 22nd NISPAcee Annual Conference in Budapest, 24.05.2014 (Hungary) organized in cooperation with Corvinus University of Budapest and National University of Public Service under the auspices of the Hungarian Ministry of Public Administration and Justice.

INTRODUCTION

The efficiency of public spending has been an important issue throughout the course of history, and in the current economic and financial climate, the questions of on what and how the scarce resources available are spent, and what is the impact of this spending are of particular importance. In connection with the development-oriented utilization of funds, it is of fundamental importance whether the use of public funds is justified, which areas require development and where the best result can be ensured (value for money principle)². In the next 2014-2020 period an important question is how to use the limited resources available in the most efficient and sustainable way, especially the resources aimed for development. Improving the efficiency and effectiveness of public spending is required by the Stability and Growth Pact, but it is also instrumental in ensuring progress towards the agreed goals of the EU 2020 Strategy. The assessment of development policy interventions and the question of the successful absorption of development funds has shifted clearly towards stronger enforcement of the aspects efficiency and effectiveness. So on one hand, fiscal stability must be preserved and public deficit contained. On the other hand the foundations of economic progress must be laid and the economy must be put on a fast lane of expansion, but the main difficulty of this task is to execute these measures simultaneously. The Cohesion Policy is changing dramatically from a mere solidarity instrument to an investment policy.

Currently intensive preparation for the new 2014-2020 multiannual financial framework period is taking place, and planning, programming, and the establishment of the new system of Cohesion Policy are in progress. The new cohesion rules have been formed in the spirit of a new approach, result orientation which requires a change of attitude in the operation of the institution system. Alongside consideration of the planning and programming tasks there occurs also the question,

² G. Nyikos, *The Impact of Developments Implemented from Public Finances, with Special Regard to EU Cohesion Policy*, Public Finance Quarterly, Journal of Public Finance 2013, no. 2, pp. 165-185.

what kind of institution system would be necessary for the implementation tasks, and whether it is necessary, and if so, what kind of change of the currently existing organizations would be needed, and what factors would influence the structure of the cohesion policy's implementation institutional system.

The present paper explores the practice and the cohesion legislation (both existing: 2007-2013 versus 2014-2020) and responds to the questions set out above. The paper uses sources of information based on desk research (analyses of studies, evaluations, official documents and adopted regulations) and experiences from managing and implementing operational programmes, projects, and legal control on them.

I. MAIN SPECIFICITY OF THE COHESION POLICY INSTITUTION SYSTEM

Economic and social cohesion within and among Member States is a key objective of the European Union. EU Cohesion Policy aims to reduce the economic development gap between the poorest regions and other regions and between the poorest communities and other communities within the EU by providing EU co-finance to projects in the Member States. The cohesion funds (in 2014-2020: European Structural and Investment Funds (ESIF)) are governed by common rules and are subject to shared management by the Commission and the Member States. In certain Member states, the rate of the development-oriented use of public funds depends on the level of development; and, though with a different financing rate, EU cohesion policy funds make up the financial sources of development and with the narrowing of available budget resources, in the next period this will become even more emphatic.

One of the key factors in the success of the policy is its decentralized delivery system. The Commission approves multiannual Operational Programmes (OPs), together with indicative financial plans which include the EU contribution, on the basis of Member States' proposals. The programmes are managed at national, regional and local level so the projects selected respond to the priorities at those levels. Projects within the OPs are implemented by private individuals, associations, private or public undertakings, or local, regional, and national public bodies. The Commission has to obtain assurance that the Member States

have set up management and control systems which meet the requirements of the regulations, and that the systems function effectively³.

Member States allocate responsibility for day-to-day administration. This includes the selection of individual projects, the implementation of controls to prevent, detect, and correct errors within the declared expenditure and the verification that projects are actually implemented ("first level checks"). The Member States are responsible for carrying out system audits and audits of operations (i.e. projects or group of projects) in order to provide reasonable assurance on the effective functioning of the management and control systems of the programmes and on the regularity of the expenditure certified for each OP. They report on these audits to the European Commission through annual control reports and annual opinions.

The Member State must also ensure that other areas of Community law such as public procurement, state aid rules, and environment rules are applied properly at the projects. The Member States are responsible for ensuring the proper transposition of EU directives and the consistency of the community law and national law. With the evolution of EU cohesion policy the Member States are also responsible for ensuring more specific requirements (transformed into conditionalities) necessary for the use of the budgetary allocations from the EU.

The main tasks of implementing development programmes are in particular: programme planning, project generation and selection, management and disbursement related to project implementation, monitoring and evaluation, and assessment. Member States allocate responsibility for day-to-day administration to Managing Authorities (MAs) and Intermediate Bodies (IBs) This includes the selection of individual projects, the implementation of controls to prevent, detect

³ Article 317 TFEU: The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management. The regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure (...).

and correct errors within the declared expenditure and the verification that projects are actually implemented (“first level checks”). Certifying Authorities (CAs) verify that “first level checks” are effectively carried out and, where appropriate, undertake additional checks prior to submitting expenditure declarations to the Commission. Audit Authorities (AAs) in the Member States are responsible for carrying out system audits and audits of operations (i.e. projects or group of projects) in order to provide reasonable assurance on the effective functioning of the management and control systems of the programmes and on the regularity of the expenditure certified for each OP. They report on these audits to the Commission through annual control reports and annual opinions.

In EU Cohesion Policy, multi-level governance particularly relies on the implementation of the partnership principle which became a regulatory requirement under the 1988 reform. The partnership principle was codified as a regulatory requirement requiring the involvement of regional and local authorities (1988), economic and social partners (1993), organizations responsible for the environment and gender equality (1999) and NGOs and civil society bodies (2006) in programme formulation and implementation. These requirements have supported and strengthened multi-level partnership arrangements involving the participation of a broad array of public, private, and societal actors. However, it is also clear that national governments have continued to exert a strong grip on key decisions and that there is resistance to EU pressures for sub-national empowerment and inclusive, horizontal partnership-working where this has been against domestic preferences or pre-existing traditions.

II. DIFFERENCES IN THE COHESION POLICY IMPLEMENTATION SYSTEMS IN THE MEMBER STATES

The general conclusion is that the Structural Funds are effective in the Member States that have an appropriate institutional

system⁴. As previously outlined the key feature of the cohesion policy is a decentralized implementation system. The Member States are responsible for management of the programmes, including project selection, control and monitoring – to prevent, to realize, and to correct any irregularities – and also project evaluation. Accord to the cohesion policy rules, performing the tasks of management, certification and monitoring is possible within one organization, but the functions should be separated. There are different approaches in the Member States: in some Member States the different tasks were placed in separate organizations and a number of Member States have different functions within one organization (e.g. Denmark, Spain). There also occurs a structure in which the managing authority and the certifying authority functions are in one organization and the audit function is set up independently from the previous two authorities (e.g. Finland, Sweden). There is also an example where the certifying authority and the audit authority work as separate units of the same entity (e.g. the Czech Republic, and Slovenia) and the managing authority is separated in another organization. Finally, the three authorities can work also in different organizations (e.g. Austria, Portugal)⁵.

It varies also in the Member States how the implementation tasks are centralized: in some Member States one certifying authority operates with all the operational programs (e.g. Austria, Czech Republic, Denmark, Finland, Portugal, Slovenia, Sweden) in other countries certification authorities are set up by OPs (e.g. Belgium France, Germany, Italy). There are similar solutions also for audit authorities: sometimes one central audit authority shall carry out the duties of all operational programmes (e.g. Austria), while elsewhere, for every programme, there are audit bodies (e.g. Germany). In other Member States the audit authority at central level ensures that national operational programmes work

⁴ S. Ederveen, H. de Groot, R. Nahuys, *Fertile Soil for Structural Funds? A Panel Data Analysis of the Conditional Effectiveness of European Cohesion Policy*, Kyklos – International Review for Social Sciences 2006, vol. 59 (1), pp. 17-42.

⁵ S. Davies, F. Gross, L. Polverari, *The Financial Management, Control and Audit of EU Cohesion Policy: Contrasting Views of Challenges, Idiosyncrasies and the Way Ahead*, IQ-Net Thematic Paper 2008, no. 23(2), European Policies Research Centre, Glasgow. Paper presented on IQ-Net Phase IV Conference, Attiki 19-21.11.2008, Greece.

regularly, while audit authorities work at regional level for the regional operational programmes (e.g. Italy, Poland).

The Member State shall designate one or more intermediate bodies to the managing or certifying authority to carry out some or all of its functions under its responsibility. The delegations are usually formed by implementing regulations or contracts by organizing different responsibilities to different organizations. Organizations can be government agencies (ministries, central authorities, regional authorities), public and private companies, non-profit organizations.

A substantial part of the risk of implementing cohesion policy comes from the fact that many of the operational programmes will be organized in many different systems and with a lot of organizations and with the implementation of a very large number of projects. On the other hand, the implementing rules are generally not plain, clear, detailed, and complete at the beginning of the period, so at the same time as the implementation, issues of interpretation problems occur, they are dealt with by legislative changes or sometimes just with Commission's Guidelines, which is a huge difficulty for on-going programmes/projects if the previous practice was not in accordance with the new guidelines recommended later.

Member State	Total available funding (EUR)	ERDF & CF (EUR)	OP-s	Nr of organizations in the programme-implementation	Nr of certifying organizations	Nr of audit organizations
AT	1 276 780 733	680 066 021	9	20	2	1
BE	2 403 876 316	990 283 172	4	6	3	3
BG	6 624 538 988	5 488 168 381	5	7	1	1
CY	579 606 868	492 665 838	1	7	1	1
CZ	26 503 627 152	22 528 083 056	14	24	1	1
DE	26 396 199 001	16 107 961 527	18	90	23	20
DK	509 577 240	254 788 620	1	7	1	1
EE	3 611 579 771	3 011 942 552	2	16	1	1
ES	39 001 563 519	26 600 405 159	23	200+	1	20
FI	2 103 523 445	977 401 980	5	60	1	1
FR	22 690 079 887	8 054 673 061	30	73	1	1
GR	20 172 569 973	15 846 461 042	10	100	1	1

HU	25 049 482 420	21 292 060 049	15	20	1	1
IR	938 897 096	375 362 372	2	16	1	1
IT	44 092 710 694	21 027 307 507	28	50	26	25
LT	7 068 539 664	5 747 186 096	2	14	1	1
LU	85 107 216	25 243 666	1	2	1	1
LV	5 096 599 364	3 979 793 917	2	15	1	16
MT	856 615 354	728 123 051	1	5	1	1
NL	1 968 601 000	830 000 000	4	10	1	1
PL	70 617 533 404	55 514 676 992	20	74	17	17
PT	23 512 385 699	14 899 172 647	10	46	1	1
RO	18 916 024 612	15 528 889 094	5	34	1	1
SE	2 026 189 558	934 540 730	8	1	1	1
SI	3 935 705 031	3 345 349 266	2	8	1	1
SK	11 674 087 288	9 861 016 794	9	24	1	16
UK	11 088 825 121	5 416 019 735	16	23	5	5

Figure 1. Organizations implementing programmes in the Member States (except ETE, TA); 2007-2013⁶

The establishment and operation of the territorial levels are different in the Member States too: the number of regions and the duties and authorities of territorial structure are different. The question is not only how work is shared between the different territorial levels, but also which organizations (municipalities, decentralized agencies, development councils, and agencies) are addressed to the responsibilities and how these will function. In fact, the nominal division of roles does not provide precise guidelines for the practice, i.e. managing authorities and intermediate bodies can be judged depending on the skills of the real content.

A distinction can be made also between the structure of the institutional systems of each Member State according how the central level is organized and how it operates: with a centralized solution by one central body or managing authorities operated in different ministries, by operational programmes independently or in one combined

⁶ K. Böhme, *Regional Governance in the Context of Globalisation: Reviewing Governance Mechanisms & Administrative Costs. Administrative Workload and Costs for Member State Public Authorities of the Implementation of ERDF and Cohesion Fund*, Deliverable – 7 Revised Final Report, Sweco International AB, 2010, available at: http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/2010_governance.pdf [last accessed: 26.11.2014].

management authority, with the use of intermediate bodies (IB-s by OPs or the same intermediate body for all OP), or without them, etc.

It is important also how the levels of tasks are structured: the complexity increases the extra monitoring and reporting system, which may be associated with the articulated complex structure. In addition, the experience has shown that at the lower levels of multi-task operations, there are increases in the audit scope and level of detail and this control is associated with a narrow interpretation. This could also be due to the uncertainty of regulatory and law enforcement, which occurs for various reasons. The most significant factor leading to increased scrutiny could be that while the programming and implementation of cohesion policy is decentralized, the responsibility for the proper implementation is not decentralized – the Member State is responsible for regularity. This in itself brings with it the need for strong control. The multi-level implementation system entails a multi-level control system and monitoring system and increases the administrative costs. In addition, a complex implementation structure can increase the legal uncertainties, which is only counteracted by strong coordination⁷.

The differences between the programmes have a significant impact on how the implementation system is designed. Important factors are i.e. the eligibility of the programme, the thematic focus of the programme, the financial volume of the programme. The more complex the measures of interventions are, the greater is the need for appropriate administrative capacity of both the institutional system and the beneficiary. The relationship between the programme area and the regional structure of the administrative and institutional system has an impact on the implementation structure as well. The financial volume of the programme and the projects supported also affects the necessary administrative capacity; moreover all programmes have general costs that are independent of the size of the programme. It is also important for the establishment and operation of an institutional system, how the use of the EU cohesion funds and national resources

⁷ R. Talaga, *Need for Stronger Coordination in the System of EU Cohesion Policy*, Journal of European Court of Auditors 2013, no. 6, pp. 23-32.

are established: in a coordinated way or not and how the delivery system of the two sources relate to each other.

Considering the harmonization of the national regional development systems and the EU cohesion policy implementation system at the international level on the basis of two criteria we meet the following solutions:

- based on the cooperation of the two institutional systems: integrated – parallel – “mixed” models,
- based on the management of the implementation: centralized – decentralized – “mixed” models.

With regard to cooperation criterion in the integrated system the allocation of cohesion funds takes place through the national decision-making channels. A benefit of the system is that effective and focused use of resources can be assured. Integrated systems also vary between Member States, according to whether the cohesion funds dominate the development of resources (e.g. Poland) or contribute to national development resources (e.g. Germany, Austria).

In the parallel institutional systems there operate specific decision-making mechanisms for the domestic and for the EU funds separately. In this structure on one hand the results and cost of the various programmes are better visible, on the other hand the setting up of a new system and operation of the two systems in parallel have significant additional costs, moreover, there could be problems with the coordination of funds and programmes too (e.g. Hungary).

In the coordinated (mixed) model there are specific decision-making mechanisms for the domestic and for the EU funds. However with the recording of the development priorities and objectives and with other consultation and coordination mechanisms it is building on the existing structure and can ensure coordinated development decisions. However, in the model there are challenges of matching and problems of parallel administrative capacity too.

Centralized	Decentralized	Mixed
Denmark, Lithuania, Estonia, Latvia, Slovenia, Slovakia, <u>Hungary</u> , Greece, Sweden, Rumania, Bulgaria, Cyprus, Malta, Luxembourg	Germany, Italy, The Netherlands, Austria, Belgium, Ireland	<u>Poland</u> , France, Finland, Czech Republic, Spain, UK, Portugal

Figure 2. Centralized, decentralized and mixed implementation systems
Source: author’s compilation

With regard to the second criterion – management – in the centralized system the management tasks are performed by national ministries or other national central organizations with limited decentralization and sometimes with limited partnership too. In most Member States, central government plays an important role in the implementation of cohesion policy (see more Figure 2). National ministries supervise the programme preparation, the expenditures, the monitoring and evaluation. In addition, in some Member States the role of the national level is very strong: there may be some delegation of responsibility, but the national authorities playing the key role of the management authority define every relevant element of the implementation.

In the decentralized (regionalized) implementation system the implementation role and the responsibility for programme implementation is given to the regional level. The role of the central government covers coordination, high-level negotiations with the Commission, intergovernmental consultation and evaluation of the “best practices”. In the decentralized system there is more emphasis on multi-level governance, which can support the effective programme implementation. The objectives can be better defined and the development measures may enjoy the trust and support of local, regional levels. On the other hand the coordination between levels is an important task and additional cost.

Many Member States seek to combine the advantages and disadvantages of the two previous system structures. With sectorial and regional programmes and with the managing authorities (IBs) and national ministries’ matrix-type responsibility system, involving the regional level will be implemented in the development programmes. Mixed systems may be also being designed with fixing the enforcement responsibilities for each

measurement of the OP to different organizations of specific levels. In some cases even the MA functions are shared between the national and regional level. Therefore, there are also national and regional control bodies (including judicial ones), so increasing the complexity and multilayerity of the whole of the systems⁸.

However, the effectiveness of regional policy depends largely on the efficiency of the operation of management organizations and in general the quality of the functioning of the administrative system. Corruption and discrimination can significantly reduce the efficiency. Recent research⁹ confirms that the quality of governance and public administration of countries and regions also affects the capacity for the efficient and effective use of the cohesion funds. It can be concluded that the cohesion policy works best where the circumstances support the policy¹⁰.

As a possible solution the strengthening of institutional capacity and the efficiency of public administration and public services at national, regional, and local level and, where relevant, of the social partners and non-governmental organizations was an ESF priority for the 2007-2013 period (Article 3.2(b) Regulation EC 1081/2006). This priority in practice seems to be a tool which contributes to reforms, better regulation and good governance, especially in the economic, employment, education, social, environmental, and judicial fields. This priority is implemented as a separate operational programme (with one or more priority axes) in four Member States (BG, RO, HU and EL) and ten Member States have chosen to implement it as one priority axis in other programmes, especially regional programmes (CZ, EE, IT, LV, LT, MT, PL, SK, SI, UK Wales).

⁸ R. Talaga, *Multiplicity of Institutions and Legal Procedures in EU Regional Policy. Country Case Studies*, Journal of European Court of Auditors 2013, no. 3, pp. 19-32.

⁹ N Charron, V. Lapuente, L. Dijkstra, *Regional Governance Matters: A Study on Regional Variation in Quality of Government within the EU*, Working Papers – A series of short papers on regional research and indicators produced by the Directorate-General for Regional Policy, European Commission, WP 2012, no. 1, available at: http://ec.europa.eu/regional_policy/sources/docgener/work/2012_02_governance.pdf [last accessed: 26.11.2014].

¹⁰ C. Burnside, D. Dollar, *Aid, Policies and Growth*, American Economic Review 2000, vol. 90, no. 4, pp. 847-868.

However looking at the current absorption figures it is evident, that there is still room to improve the functioning of the system and remove the different obstacles.

In the new cohesion policy rules the general regulation for 2014-2020 (CPR)¹¹ set up rules to boost performance, and new conditions are introduced to ensure, that the EU funding will be a strong incentive for Member States to achieve the Europe 2020 Strategy goals and objectives. So-called *ex-ante* conditions are defined to be met as precondition for use of the funds, and so-called *ex-post* conditions, that are to be achieved, are preconditions of the total funding. In consequence it may cause the suspension or even the loss of resources. In view of this it is essential therefore, what kind of the conditions, objectives, indicators are fixed to measure the effectiveness of the programmes.

There is also a strong focus on the fulfilling of the macroeconomic conditions by the countries and the regions with regard to e.g. public finance regime. Bad performance may cause fines (e.g. a pause in paying the allocations under the cohesion policy) proposed by the Commission in the case of non-implementing the recommendations to improve.

In the proposed new annual clearance and accounts system, the intermediate payments by the Commission due during the financial year would achieve only 90% of the amount due to the Member State, and the remaining 10% would be paid off subsequent to the annual accounts when the full guarantees of the regularity of expenditure would be already available. There is a clear requirement to implement a results-oriented system which is a complex and difficult task. In addition, the cohesion policy in the recent period operates rather by the “process-oriented” approach than by “results-orientation” and the administrative capacity is constantly perceived as a bottleneck to performance. Focusing on results requires a complete cultural shift in the institutional system.

¹¹ Articles 62-64 of the Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17.12.2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006.

The demand of the uniform standards and effective management of this complex system move the structure rather towards centralization, instead of decentralization. However the decentralized planning and implementation could be an effective solution because of the knowledge of local circumstances and characteristics, and of course strong methodological guidance and coordination by the central level is required. According to the regulation – similarly to the 2000-2006 period – the member states and the region can set up multifunds operational programmes also, of course with strong attention to the requirement of thematic concentration. A key issue is therefore the appropriate planning and programming (more important than earlier), which should be consistent with the strategic goals of the Community, the Member States and the regional and local plans¹² with a relevant and manageable system of indicators and this should be combined with an effective, appropriate financial management system.

III. THE HUNGARIAN AND THE POLISH SYSTEMS OF IMPLEMENTATION IN THE 2007-2013 AND IN THE 2014-2020

Decentralization was a basic element of political democratization and pluralism in Hungary¹³ after the change of regime in 1989 and with it the Hungarian spatial development policy was also restructured: the act on regional development and country planning set up 7 planning-statistical units (region) corresponding to the NUTS system, but with Regional Development Councils¹⁴ and without self-government. Partly because of the lack of self-government and political power the regional entities have played a very limited role in the decision-making regarding regional policy and the control on the regional development programmes

¹² G. Nyikos, *Actualities of the Development Policy. Conditionality and Results Orientation, Cohesion Policy Versus Territorial Development*, Spatial Statistic, Journal of the Hungarian Central Statistics Office 2011, no. 14(51)/1, pp. 38-51.

¹³ Regarding the systematic transformation and the three functions of local governments, the reform process of the Hungarian system of decentralization was continuous in the 1990s.

¹⁴ RDC – chairmen of the County Development Councils, representatives of the ministers, representatives of the micro regions, mayors of the big towns and representatives of the economic and social partners.

has remained at the central government. The regional development council established a nonprofit company (Regional Development Agency) to assist the work of the council.

In Hungary in the period after the Regional Development Act came into effect in 1996 until 2008 there have been several domestic development funds available for municipalities and also the private sector, targeting different cohesion objectives. These targeted funds were partly centralized and partly decentralized, but the competency over the centralized funds was on a national level. The competency over the disbursement of decentralized funds has gradually been shifted from the county level to the level of the regions by 2007. The budget for each of these funds was allocated annually. Some of them were available throughout the period (1996–2008), some lasted for a much shorter time, sometimes only for one year. The increased volume of the EU financial assistance in the period 2007–2013 and the related national co-financing requirements resulted in the significant decrease of the available national resources for cohesion type development measures in Hungary.

After the accession to the EU, Hungary set up a parallel and centralized cohesion implementation system. A centralized system of parallel institutions for national and EU funds management was created; even the management of EU funds operated outside the traditional Hungarian public administration system, with all its advantages and disadvantages. The use of development funds basically followed the sectorial logic, and neither the regional coordination objectives of regional balancing, nor those defined in law prevail. While strengthening the regional level and decentralization was a priority of the programme of successive governments until 2010, the regional level institutions could not become substantially stronger. Not only has the structure of the operational programme strengthened the central administration level, but also the structure of the management institutions.

In the 2004–2006 financial period Hungary – based on the PHARE experience and administrative capacity – set up an institutional system where the sectorial ministries embedded the management authorities. The MA worked with numerous intermediary bodies which were different from the organizations responsible for managing the national sources.

In order to meet the challenge, taking into account the experience of the 2004-2006 period, Hungary decided upon a significant structural reform of the institutional system: so in the 2007-2013 period the National Development Agency (NDA) was set up, which in co-operation with the ministries concerned and the development regions, was responsible for the planning and implementation of the entire New Hungary Development Plan as well as for performing managing authority functions with respect to all operational programmes. A considerable part of the tasks connected with the implementation of the operational programmes has been delegated by the managing authorities to intermediate bodies, which were usually non-profit state owned companies and in the case of regional OPs the regional development agencies. In accordance with the centralized characteristic of the system the development goals and funding in the period 2007-2013 were mainly influenced by sector policies. The regional OPs received only a small share of the funding (2 to 7% of the total) and regions played a more influential role only in the fields of tourism and urban development. The largest share of support was allocated to the Transport OP and the Environment and Energy OP, which together absorb more than 40% of the total funding.

In 2010 following the election, at the government level, the Ministry of National Development was responsible for the coordination and implementation of the cohesion policy. After the Hungarian EU presidency some processual and institutional amendments have been introduced e.g.: a simplification of the project selection and implementation, a decrease in the number of IB's with mergers, and OP modifications. In 2012 a government restructuring (or change) took place which also affected development policy: supervision of the implementation and the NDA became the responsibility of the Prime Minister's Office and the regional development councils have been terminated. These institutional changes implied a further centralization. Even further regulatory issues affecting implementation – including changes in the ownership of numerous institutions – took place: every institution formerly owned by county level governments was in state ownership by January 2012 and all hospitals in towns by May 1, 2012. Institutions owned by local governments, such as public schools, were also taken into central state ownership – these changes affected a huge number of projects financed by EU funds.

The required modification of support contracts with regard to ownership and financing details slowed down implementation.

For the next 2014-2020 period Hungary is planning significant changes in the cohesion policy programme structure and in the institutions system. All the programmes will be implemented at the national level and there will be only 2 regional operational programmes: one for the “less developed” 6 regions (TOP) and one for the Central-Hungary region, classified as “more developed” (CCHOP).

From January 1, 2014 the management authorities are working again in the sectorial ministries with twofold responsibilities: for the implementation and closure of the 2007-2013 OP's and for planning and implementing the 2014-2020 OP's, simultaneously the NDA was terminated. Additionally very strong coordination functions will be established in the Prime Minister's Office which cover all the ESI funds and programmes with tasks, such as legal and public procurement control, preparation of almost all support decisions – especially on major projects, the complaint and appeal system, the IT monitoring-, indicator-, and management systems, unified and central communication (including the European Commission), etc. It seems from that list that practically the Prime Minister's Office will have the decision rights of the management authorities, and the MA's in the ministries will be the intermediary bodies. The newest development linked to the institutional issues is confirming this unspoken feeling: the government decided that the current IB's have to be terminated on 15th April 2014 and the relevant ministries will be responsible for the IB's tasks. N.b.: the Commission has not agreed to the amendments yet.

These changes seem to be especially risky, because cohesion policy faces three main challenges with respect to the near future. First, it has to solve the absorption problem which is mainly due to the slow implementation of some priority axes and the irregularity issues¹⁵ affecting

¹⁵ Implementation risks emerged also in 2012 and 2013 also due to irregularity issues linked with the selection criterion of public procurements, although they are at least partly solved, because of the discriminatory methods used by Hungarian authorities the Commission interrupted the implementation of the programmes and decided a financial correction too. Because of the significant time loss the absorption goals of some OPs are still at high risk of de-commitments due to the n+2 rule.

the majority of Hungarian OPs. The second challenge is the timely preparation for the next period, involving a stronger focus on results and channeling the knowledge accumulated during the past two periods into the planning. The final important task of cohesion policy in the coming years is the smooth conduct of institutional changes. All these tasks require a significant increase in management capacities and human resources, the eventual lack of which would significantly hinder the success of development policy.

	Operational programme	ESIF	Managing authority
1	Economic Development and Innovation OP (EDIOP)	ERDF, ESF	Ministry of National Economy
2	Territorial and settlement development OP (TOP)	ERDF, ESF	Ministry of National Economy
3	Competitive Central-Hungary OP (CCHOP)	ERDF, ESF	Ministry of National Economy
4	Human Resources Development OP (HDOP)	ERDF, ESF	Ministry of Human Resources
5	Environment and Energy Efficiency OP (EEEOP)	CF, ERDF	Ministry of National Development
6	Transport-Mobility Development OP (MOP)	CF, ERDF	Ministry of National Development
7	Coordination OP (COP)	CF	Prime Minister's Office
8	Rural Development OP (RP)	EARDF	Ministry of Rural Development
9	Hungarian Fisheries and Aquaculture OP (HFAOP)	EMFF	Ministry of Rural Development
10	European Territorial Cooperation OP's	ERDF, ESF	Prime Minister's Office

Figure 3. Structure of Operational Programmes in Hungary for 2014-2020

Source: the author's own compilation

The implementation of such rush in radical institutional changes will mean further risks to implementation if it is coupled with the loss of human capital and institutional knowledge related to EU funds owing to the turnover. Additionally there are many areas linked to development issues, where centralization-changes are also in process (e.g.: the municipality system; counties and regions, education, etc.).

These changes might finally lead to a more efficient system, but currently they need management resources of the institutions.

In Hungary the most essential regulations had been established as government and ministerial decrees. The concept of a single, unified legislation on cohesion policy has emerged several times since the launch of the operative programmes in 2004, but debates came to a halt even before reaching Government level negotiations despite the fact that several drafts of the Act have been prepared.

From a regulatory perspective, the biggest change was the substitution of the former fragmented legislation with a single government decree in 2010, which provided for all the regulations regarding the management of EU funds in Hungary. The Government Decree 4/2011 (28 January) on the use of funds from the European Regional Development Fund, the European Social Fund and the Cohesion Fund for the 2007-2013 programming period, encompasses the regulations for the structural set-up and responsibilities of the institutional system, the principles to be applied for project application, and financial management, procedures in cases of detecting irregularities, the provisions of collaterals and regulations on the management and control systems. Unfortunately because of the significant and strong political interest and lobbying on these issues there are frequent modification of the regulatory background, on the one hand posing a significant administrative burden on the institutions, while on the other hand, weakening the confidence of the beneficiaries in the stability of the system. The unified regulation enabled stronger coherence between the different areas of implementation, and helped eliminate parallel requirements present in the previous fragmented regulations.

The new government decree, however, did not only combine the previous regulations, but also contained several modifications in the content. An important change is the fact that there is a right of submitting a legal complaint against all decisions that are detrimental for the applicant/beneficiary, if the decision is in breach of the current

legal regulations or if it goes against the content of the call for application or the grant contracts¹⁶.

According to an analysis of the regulatory constraints¹⁷, the majority of the rules which implied constraints for beneficiaries were found rather in the guidelines of interventions, and only a smaller portion of constraints were found in the EC and/or national regulations.

Most of the eligibility rules were meant to steer the technical content of the funded projects and some of the interventions apply such complex and interdependent rules, that they can be fulfilled by the beneficiaries only by using specially designed algorithms. Experiences however show that higher complexity hinders absorption in several ways because of higher resource demands and more requests for change.

According to the practical experience, besides complex eligibility and accounting regulations, the current scheme of grant contracting is also the source of problems: although the contracting scheme itself has no general problems, because the granting is being done with civil contracts under the Hungarian civil code, the practice counteracts and strengthens the negative effects of further issues. The contract usually should define the project scope in so much detail, that most of the projects cannot fill it in the form with evidence or a plan-based content. Some projects are therefore not fully prepared at the moment of contracting, several parameters in the grant contract are only predicted, therefore these cannot provide a basis for precise technical and financial planning – and need adjusting during the implementation. Every second project requested modification to the grant contract, and most modification processes lasted more than one month.

Additionally there are some procedural problems in the practice at recovering processes, especially if they are linked to public procurement issues, because the Hungarian legal system is rather confused if there is an irregularity process working under EU law. The legislation to ensure the provision of collaterals and the repayment of funds in case

¹⁶ This means that instead of the earlier system of being able to raise complaints only during the project selection phase, complaints can now be submitted throughout the entire duration of the application and project implementation phase.

¹⁷ *Evaluation of the regulatory constraints* carried out by AAM Consulting between 5.09 and 4.12.2012.

of irregularities was put in place at the very early stage of the 2007-2013 financial period, having been integrated into the regulation on financial procedures, but not harmonized totally with the public procurement law. There is still confusion in Hungary over who can decide about irregularities and linked public procurement issues (Management Authority versus Public Procurement Authority).

The other serious legal problem is how can we manage the commission guidelines, and in the Hungarian regulations we do not have a solution for that. The Commission set out guidelines e.g. for the financial corrections to be applied for irregularities in the application of the Community regulations on public procurement to contracts. The guidelines give amounts and rates of financial corrections where irregular applications for payment are presented. Although the guidelines are not legislation the Commission services and the Member States institutions have to react accordingly and unfortunately they are sometimes retroactive and go beyond the existing legislations. Of course it is hard to explain legally the applicability of the guidelines, especially if the question is linked to repayment of funds in case of irregularities.

With regard to the legislation, a new government decree have been adopted¹⁸. One of the dilemmas of the preparation and amendment of legislation was to decide which regulations require legislative status and which can remain at a decree or procedural level (e.g. in an Operation Manual). In the previous periods – as mentioned above – the government had the key roles in the cohesion policy, using decrees to regulate the processes. Obviously this practice will continue in the 2014-2020 period as well. With regard to even stronger coordination and uniformization the scope of the new government decree covers all 5 ESI Funds and also Connecting Europe Facility¹⁹. It sustains uniform procedures before the authorities for the whole country, defines the tasks of Managing Authorities, intermediate bodies, Certifying and Auditing Authorities, but also introduces new tools and methods taken from the new cohesion policy regulation. However the new government decree does not solve

¹⁸ Government Decree 272/2014 (XI. 5.).

¹⁹ The decree is very detailed and long (more than 200 articles with 6 annexes, together more than 300 A4 pages) which will be challenging for the beneficiaries as well as for the authorities.

the legal problems mentioned before. The granting will be done with civil contracts under the Hungarian civil code without solutions of the described legal problems (inadequate information at the contracting, unclear irregularity and recovery procedure, etc.). One other serious legal procedural question remains also unsolved by the regulation: in the case of legal complaint against decisions that are detrimental for the applicant/beneficiary the civil court or the administrative court has jurisdiction. The discussion about the jurisdiction went from 2008-2009 and after 140 court case the Curia examined the legal situation and took the view that considering the complexity of the legal structure where both the civil and administrative legal specialties are present, the use of “public contract” would be advisable. Despite this proposal the legislator did not address the issue. [Thereafter](#) in a formal decision²⁰ the Curia confirmed that in the cases of financial grants the procedures have to run before the civil courts.

In Poland the reform of the territorial structure consisting in decentralization of public authority was of key significance in the development of regional policy. In 1998 regional self-governments were established (together with new division of the country into 16 voivodeships) – the entity entitled to independently set development strategies and plans, as well as programmes and projects aimed at their implementation at the regional level – the financial category of voivodeship budgets was also introduced, as well numerous competences were shifted from the central level to the voivodeship level. The development of regional policy bases in Poland was predominated by the prospect of EU membership and, at the same time, by the objectives and principles of the EU Cohesion Policy (Act on self-government from 5 July 1998).

In the 2004-2006 financial period Poland had sectoral operational programmes, a technical assistance programme, a cross-border cooperation programme, and the Integrated Regional Operational Programme (IROP). The IROP covered ca. EUR 3 billion out of EUR 12.8 billion, i.e. ca. 23% of the Cohesion Policy funds. The IROP included 16 regional segments managed by the Ministry of Regional Development (a ministry that was crucial for the implementation and coordination of the OPs)

²⁰ KMK-PK Opinion 1/2012 (XII. 10.).

in cooperation with self-governments of 16 voivodeships. The interesting fact was that the content and division into measures were the same for all regions in those first years of the membership in the EU that did not reflect real decentralization. At the beginning it was a fear of non-sufficient administrative capacity at the regional level and a uniform solution was proposed as a better one.

In 2007-2013 the decentralization of the Cohesion Policy funds management system in Poland increased²¹. In 2009 the government adopted the objectives of the system of Poland's development management, proposing arranging the order and reduction of the number of development strategies binding in Poland. Accordingly in 2010 the National Strategy of Regional Development was adopted, with the most important change as the enhancement of the regional policy role and stressing the importance of the policy determining spatial development in Poland and the line of measures implemented under other policies²². It also departs from dispersed intervention towards more selective (concentrated) investments, and from highly centralized (top-down) governance to the improvement of multi-level governance, including the role of regional level authorities in the implementation of development processes. It introduced the principle of conditionality and mechanisms of competitiveness in terms of access to public resources, remodeling the regional policy financing system, focusing regional policy intervention on the areas of strategic intervention. In the second part of 2013 there were also amendments introduced to the Act on the principles of development from the 6 December 2006 policy that unified also the appeal procedure for beneficiaries of all OPs in Poland, which was a step toward stronger procedural coordination in the country.

In Poland operational programmes for the 2014-2020 financial period have been defined based on a fundamental principle that the integrated approach must be reinforced and maximized and the sectoral approach

²¹ Identified 34% of the Cohesion Policy funds were allocated to 16 regional operational programmes (managed by Voivodeship Boards) and decentralized part of the "Operational Programme Human Capital".

²² National Strategy of Regional Development (NSRD) is one of 9 strategies, but it is superior to the other 8 strategies, since it specifies the regional policy spatial objectives. It has been adopted by the resolution of the Council of Ministers on 13.07.2010.

must be abandoned or limited. The Ministry of Infrastructure and Development²³ elaborated the National Spatial Development Concept 2030 which, together with other legal acts adopted by the Polish government, gave this new shift towards preparing the strategies at the regional and local levels. Also aforementioned new categories like the functional areas and the strategic axes of interventions are defined by the regions²⁴. In the years 2014-2020 the programmes to be implemented at the national level include: European Territorial Cooperation (ETC), 8 sectoral operational programmes, and 16 dual-fund (EFRD, ESF) regional operational programmes (15 for the regions classified as “less developed” and one for the Mazowieckie Voivodship, classified as “more developed”) will be implemented at the regional level (see figure 4).

In Poland the implementation of operational programmes will involve institutions having experience in implementing operational programmes, acquired during one or two programming periods. Thus, the evaluation of their institutional capacity will be decisive for granting and verifying their accreditation. Managing Authorities will be responsible for the preparation of programmes and also for expenditure certification. The MA will be allowed to delegate the implementation of a part of tasks to the intermediate bodies.

	Name of the programme	Found	Managing authority
1.	Smart Growth OP	ERDF	Ministry of Infrastructure and Development
2.	Infrastructure and Environment OP	ERDF, CF	Ministry of Infrastructure and Development
3.	Knowledge Education Development OP	ESF	Ministry of Infrastructure and Development
4.	Digital Poland OP	ERDF	Ministry of Infrastructure and Development

²³ Previously Ministry for Regional Development.

²⁴ P. Idczak, I. Musiałkowska, M. Sapała, *Performance Turn in the Cohesion Policy in Poland in the Years 2014-2020? Analysis of the Strategy of Development of the Łódź Region*. Paper presented on Third workshop “EU Cohesion Policy at the Crossroads: Budget Reform, Geographical Allocations and the Performance Turn in the 2014-2020 Period”, Glasgow, 10-11.12.2012, European Policies Research Centre, University of Strathclyde.

5.	Programme of Development of Rural Areas	EAFRD	Ministry of Agriculture and Rural Development
6.	Fishing and Sea OP [FISH OP]	EMFF	Ministry of Agriculture and Rural Development
7.	Technical assistance OP	CF	Ministry of Infrastructure and Development
8.	Eastern Poland OP	ERDF	Ministry of Infrastructure and Development
9.	European Territorial Cooperation Programmes	ERDF	Ministry of Infrastructure and Development
10.	Regional Operational Programmes	ERDF, ESF	Board(s) of voivodship(s)

Figure 4. Structure of Operational Programmes in Poland for 2014-2020
Source: author's elaboration on the documents of the Ministry of Infrastructure and Development, Poland

In the new financial perspective, more structural funds (ERDF and ESF) will be managed at a regional level²⁵. This applies in particular to ESF, where the involvement at the regional level will grow up to 75%²⁶.

The future rural OP provides for a considerable share of the so-called regional envelope, implemented with the participation of regional self-governments. It will ensure the coordination of activities targeted at rural areas and financed from the cohesion policy (regional OPs) and from the Common Agricultural Policy. Programming and management under the European Maritime and Fisheries Fund will take place on the national level.

With regard to even stronger coordination of legislation, a new legal act is under preparation: the Act on the rules of implementation of the operational programmes under the cohesion policy for the years 2014-2020, that substitutes a part of the Act of 6 December 2006

²⁵ In the years 2007-2013 in Poland only 37% of EU Funds (ERDF and ESF) was managed at a regional level. In the years 2014-2020 it is estimated that 60% of abovementioned EU Funds will be managed at a regional level.

²⁶ However, in the years 2007-2013, a part of the OP Human capital was distributed along so called decentralized "regional priorities" where the intermediate bodies were situated at the regional level. This means that new dual-fund regional operational programmes for 2014-2020 will be based on the experience of the previous programming period.

on the principles of development policy²⁷. It sustains uniform procedures before the authorities and courts for the whole country but also introduces new elements taken from the CPR and defines the tasks of Managing Authorities, intermediate bodies, Certifying and Auditing Authorities, etc. However, it is still noteworthy that Poland has prepared specific legal solutions that are different from those referring to other public resources used in the country or procedures before the courts. It has been challenging for the judges and has an impact on the control function of the e.g. administrative courts. In 2007-2013 there have been a few special procedural tracks for granting and recovering European Funds imposed in order to intensify implementation of Cohesion Policy. First of all there have been special administrative procedures concerning granting European Funds for development policy (an exception to the Administrative Procedure Code of 14 June 1960²⁸) and special administrative court's procedure concerning control of the distribution of European Funds (an exception from the Law on Proceedings before Administrative Courts of 30 August 2002²⁹). Additionally it has been combined with possibilities of protection of both sides of civil contracts transferring the European Funds in procedure before civil courts (Civil Procedure Code of 17 November 1964³⁰). Secondly there has been special administrative procedure for recovering European Funds, if any irregularities occur in the process of financing the projects (an exception from the General Administrative Procedure Code of 14 June 1960) controlled by administrative courts in general administrative court procedure (the Law on Proceedings before Administrative Courts of 30 August 2002).

In Poland, apart from procedural legislative coordination³¹ there is a special development tool for coordination with national instruments, the so called territorial contract. It concerns improving the efficiency

²⁷ Dziennik Ustaw [Journal of Laws] 2009, No. 84, item 712.

²⁸ Dziennik Ustaw [Journal of Laws] 2013, item 267.

²⁹ Dziennik Ustaw [Journal of Laws] 2012, item 270.

³⁰ Dziennik Ustaw [Journal of Laws] 2014, item 101.

³¹ I. Musiałkowska, R. Talaga, *Legal Aspects of the Implementation of EU Funds 2007-2013 in Poland – Practice and Challenges*. Paper presented on 21st NISPAcee Annual Conference “Regionalisation and Inter-regional Co-operation”, Belgrade, 16-19.05.2013, Serbia.

of place-based development policy resulting from bilateral negotiations between the government and territorial self-government. Therefore, the parties to territorial contracts are: the Polish government³² and the voivodships³³. The territorial contract will be used, first of all, for establishing the interventions under ESIF and related selected national resources with respect to territories (regions, functional urban areas), and other strategic intervention areas defined in the National Strategy of Regional Development 2020. The object of the contract is to provide an individualized approach depending on features of a specific region/territory and to rationalize spending of funds, specifically national/sectoral ones; to indicate how to implement interventions targeted at strategic fields/goals that are decisive for the competitiveness of regions in the long run, and to propose specific priority undertakings implemented in geographically and thematically defined strategic intervention areas.

Evidently preparations for the future round of 2014-2020 Partnership Agreement and OPs are underway across all EU Member States. It seems that following the new conditions given by the new cohesion regulation, in some cases major shifts in the policy architecture are planned. However the directions of the changes are different.

Poland is taking a further step towards the decentralization of programming: around 60% of the financial allocation will now be transferred to the regional programmes, which seems to be a new challenge for the national ministry as well as for the regions. Likewise the French regions (Conseil Régionaux) will be fully responsible for managing the ERDF (as MA) and moreover, the regions are considering the option of creating a multi-fund approach combining the ESI funds at regional level. The national government will only have a coordinating role.

By contrast, in Hungary the centralization is strengthened – even if it is going together with the fragmentations at the government level –

³² Represented by the minister responsible for regional development – coordinating the processes involved in the preparation for negotiations, negotiations, and implementation of a contract on the side of the government (which follows experiences from the years 2007-2013).

³³ Self-government, responsible for these processes at the regional level.

with stronger coordination and central decision-making power. Likewise in Finland a more centralized approach is planned – only one national multi-fund programme implemented in two regions – and are concerns about this leading to a centralized model with less involvement from other actors.

Thus, despite the new rules in the cohesion policy regulation, divergence in the cohesion policy implementation is to be expected to remain considerable in the coming years. It is also noteworthy that result orientation and the incorporation of experiences are very important for the last years of the current period as well: together with the strong regularity the focus should be shifted towards results and absorption, and the utilization of evaluations can help in enhancing these aspects.

CONCLUSION

The EU's cohesion policy was undermined by the crisis and wide ranging policy reforms were undertaken. The establishment of the cohesion policy rules has been influenced also by political considerations, setting up a different new system. The effective and efficient cohesion policy will require implementing targeted and complementary measures at all political levels. The integrated interventions have to be in line with the European objectives and tailored to the characteristics of the affected areas, because cohesion policy shows significantly less effectiveness where the individual spatial situations and problems cannot be taken into account³⁴.

The institutionalization of cohesion policy within Member States has far-reaching consequences for the efficiency and effectiveness of development programmes: the effectiveness of regional policy depends largely on the efficiency of the operation of management organizations and also on the absorption capacities in different fields (not only financial absorption but e.g. the need for innovative solutions among the beneficiaries, etc.).

³⁴ G. Nyikos, *Territorial Planning and Territorial Dimension of Development Policy*, Village City Region, Journal for Regional Development and Planning 2011, no. 2, pp. 35-41.

The demand of the uniform standards and effective management of the new cohesion policy seems to push the structure rather towards centralization instead of decentralization. However the decentralized planning and implementation could be an effective solution because of the knowledge of local circumstances and characteristics, but of course strong methodological guidance and coordination by central level is required. All in all, the sustainability of the effects of cohesion policy can only be achieved, if the development interventions are implemented in an integrated strategic approach³⁵.

Following the new conditions given by the new cohesion regulation in some cases major shifts in the policy architecture are planned, but the directions of the changes are different. However, the incorporation of experiences is very important and besides the strong regularity which results should also be focused on.

Accordingly the challenges to be faced by development policy require higher management resources in order to mitigate risks and accomplish the goals set out by the various plans. The ensuring of the approach of efficient and effective and decentralized/regionalized cohesion policy seems to be a difficult task under the new conditions.

³⁵ G. Nyikos, *Development Policy in the Age of Austerity-Result-Oriented, Effectiveness and Sustainability*. Paper presented on 21th NISPAcee Annual Conference, "Regionalisation and Inter-regional Co-operation", Belgrade, 16-19.05.2013, Serbia (ISBN: 978-80-89013-68-5).

