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STUDY ON THE TRANSLATION OF ARTICLE 16 OF
REGULATION (EC) N°1083/2006 ON THE
PROMOTION OF GENDER EQUALITY, NON-
DISCRIMINATION AND ACCESSIBILITY FOR
DISABLED PERSONS, INTO COHESION POLICY
PROGRAMMES 2007-2013 CO-FINANCED BY THE
ERDF AND THE COHESION FUND

EXECUTIVE SUMMARY

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This report has been prepared by the Public Policy and Management Institute (PPMI, Lithuania), in partnership with Net Effect (Finland) and Racine (France) at the request of the European Commission. The views expressed are those of the Consultant and do not represent the official views of the European Commission.

The **overall aim** of the study was to establish **to what extent** Article 16 of the General Regulation (EC) N°1083/2006 is reflected in cohesion policy programmes 2007-2013 and to present examples of **good practices**. The article calls for an integration of the principles of gender equality, non-discrimination and accessibility for the disabled during all stages of implementation of Structural Funds.

The study has **4 chapters**. In the first chapter the aim and the scope of the study are clarified. In the second chapter the research design and methodology are described. The third chapter provides a literature review of documents and sources related to the implementation of the themes of gender equality, non-discrimination and accessibility in the context of Structural Funds. The last chapter presents the empirical findings of the study.

Various methods were used during the course of the study. Firstly, based on the analysis of various secondary sources and documents, a **literature review** was carried out. The next step was **the review of 50 Operational Programmes** (OPs) co-financed by the European Regional Development Fund (ERDF) and the Cohesion Fund. Out of a total of 316 OPs officially approved by the beginning of 2009, the sample was formed so as to ensure an adequate distribution of programmes across (a) different objectives of Structural Funds, (b) EU15/ EU12 Member States, (c) regional, national and cross-border programmes, and (d) the variety of welfare state regimes. The review was conducted by screening the texts of the OPs according to a standardized checklist which dealt with the various possible practices used to integrate the three themes of Article 16 at the different stages of OP implementation. Furthermore, all the Managing Authorities of the 50 OPs were asked to fill out a short **e-mail based questionnaire** in order to find out how Article 16 had been implemented since the adoption of the Operational Programme. Thirty one Managing Authorities took part in this survey.

The assessment of the results of OP review led to the selection of 15 OPs for analysis in the **case studies** that aimed to identify and discuss potential good practices. The selection was made with an aim to have all the three themes covered as well the various stages of implementation. The process of conducting the case studies included desk-research (consulting the legal and policy documents as well as statistical data relevant for the implementation of a particular OP) and interviewing people involved in this process (representatives of the Managing Authority, intermediate bodies, social partners and project beneficiaries).

Based on the literature review, the main concepts of the study **were defined** as follows:

- Gender equality was defined as equal visibility, empowerment and full participation of women and men in all spheres of public and private life¹.
- Non-discrimination was understood as the avoidance of direct and indirect discrimination. Direct discrimination occurs where one person

¹ Council of Europe (1998), *Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices. Final report of Activities of the Group of Specialists on Mainstreaming* (EG-S-MS). Strasbourg, May 1998.

is treated less favourably than another is, has been or would be treated in a comparable situation because of his/her gender, age, race, ethnicity, religion, disability or sexual orientation. Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons in the protected categories at a particular disadvantage compared with other persons².

- Accessibility for disabled persons was understood as technical requirements that need to be fulfilled so that the disabled have equal access to the physical environment, transportation, information and communications and to other facilities and services open or provided to the public, both in urban and in rural areas³.

Furthermore, the concepts of the 'stages of implementation' and 'good practice' were of a key importance to this study:

- The various stages of implementation of the Funds analysed in this study were: programme design (including situation analysis, SWOT analysis, definition of objectives and the priority axis, indicators and targets), project selection, programme management, reporting and monitoring, evaluation, communication and publicity, and partnership.
- Good practice was defined as any action, tool or method which was intended to integrate the provisions of Article 16 (implicitly or explicitly) into Operational Programme and/ or any stage of its implementation.

The study demonstrated a **good level of awareness** concerning the principles of gender equality, non-discrimination and accessibility for the disabled among the cohesion policy programmes financed from the ERDF and the Cohesion Fund. A total of 64% percent of the reviewed 50 OPs made an explicit reference to Article 16. Moreover, some of the programmes integrated one or more of the three principles even without making such a reference (5 among these programmes were selected for a good practice analysis in the case studies).

The majority of the reviewed OPs (70%) undertook a **partial mainstreaming** approach toward the integration of the three themes of Article 16. This means that they recognised gender equality and/ or non-discrimination and/ or accessibility as their horizontal priorities. Usually this statement appeared in the strategy part, in a separate chapter or in a separate annex. One or more of the three themes were also reflected in the analysis part. However, there were few relevant practices for integrating these themes into the actual priorities, programme implementation, monitoring and other stages. Also, many of the programmes concentrated on one particular equality issue (for example, gender equality or immigrant population) and gave a limited consideration to other aspects (especially accessibility).

A few of the reviewed programmes (8%) demonstrated **comprehensive integration** (OP 'Stockholm', OP 'West Wales and the Valleys' (UK), OP 'North West England' (UK), OP 'United Kingdom – Ireland'). These programmes formulated relevant practices for all stages of programme implementation from programme design to monitoring and evaluation. The practices were linked and complementary: the analysis provided a

² See Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

³ European Commission, (2007), *Information Note on the Consequences of Article 16 Regulation (EC) No. 1083/2006 on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999.*

basis for a well thought out strategy while an adequate institutional structure was present to implement this strategy. Meanwhile, 22% of the reviewed programmes were cases of **declarative integration**. They scarcely mentioned the three themes of Article 16 at all, or did this in a declarative way, e.g. having described the overall challenges or strategy they claimed that 'in addition' the horizontal principles such as equal opportunities will be taken into consideration, without providing any further detail.

It is recommended

to Member States

(1) Review the integration of Article 16 into the process of implementation of cohesion policy programmes co-financed by the ERDF and the Cohesion Fund, using the Self-Assessment Guide (Annex C of this study). Identify the gaps (both in terms of the three themes and stages of implementation) and measures to deal with these gaps.

Among the **three themes** of gender equality, non-discrimination and accessibility, the first is the most developed and is mentioned in the texts of all 50 of the reviewed OPs (e.g., either in the context analysis, description of strategy and priority axis, or an annex on cross-cutting issues). This is understandable, since (a) the gender dimension has the longest tradition in the EU legal framework and (b) Article 16 uses very strong and active terms when referring to **gender equality**, i.e.: "equality between men and women" is to be promoted as well as the "integration of the gender perspective". The case studies showed that this theme is especially well reflected in the context analysis and indicators (disaggregation of data by gender is requested by Article 66(2) of the General Regulation). In management and monitoring, a frequent practice is the request of an observation of gender balance in Programme Monitoring Committee (8 cases out of 15), and inclusion of representatives of gender organisations into this Committee (9 cases). There were cases of special calls devoted to encourage women entrepreneurship and to increase participation of women in the labour market (OP 'Stockholm', OP 'North Rhine-Westphalia' (Germany), and OP 'Promotion of Cohesion' (Lithuania)).

The theme of **non-discrimination** was reflected in the texts of more than half (60%) of the reviewed programmes. The meaning of this term is context-specific as the discriminated-against groups are different in Member States. In Central East European countries the non-discrimination measures target primarily the Roma population. Meanwhile, in Western Europe such measures focus on the people with an immigrant background.

Article 16 undertakes a rights-based (or negative-action) approach with regard to non-discrimination, as the article asks for *prevention* of discrimination rather than *promotion* of the principle of non-discrimination. Therefore, in order to fulfil this principle, it is enough to ensure that some groups are not treated unfavourably during programme management, reporting and monitoring, evaluation, partnership, and other stages of implementation. The case studies where the rights-based approach on non-discrimination was the most visible were OP 'Sweden-Norway', OP 'Southern Finland', OP 'Border, Midland and Western (BMW) (Ireland)', OP 'Champagne-Ardenne' (France), and OP 'Cantabria'

(Spain). Moreover, 10 out of the 15 case studies identified some proactive measures devoted to the groups such as immigrants, Roma people, older persons or the disabled (e.g., inclusion of representatives of these groups into the process of programme preparation, management and monitoring; preparation of special guidelines, evaluations or information measures).

Few among the reviewed OPs covered the theme of **accessibility for the disabled** (e.g., 38% of programmes mentioned this aspect in the strategy part). Three reasons may explain this. *Firstly*, the accessibility requirement was introduced only in the current programming period and thus there was a lack of guidance and experience on how this requirement may be included. *Secondly*, from a regulatory perspective, accessibility is a requirement often dealt with in national law (e.g. regulation on building construction and infrastructure development). Therefore, to the extent the Member States have defined accessibility requirements in their national law, all the EU-supported projects will have to take it into account even if the OP does not explicit refer to the term itself. *Thirdly*, accessibility is understood in this study as a technical requirement. Meanwhile, the disadvantages that the disabled people face due to their condition or societal prejudices is covered by the principle of non-discrimination and thus the practices used to improve the access to funds for various discriminated-against groups are also applicable to the disabled.

It is recommended

to Member States

(2) Require accessibility to all venues, infrastructures, transport, technology and services. Make accessibility an explicit compliance requirement of project selection and check the compliance during on-the-spot checks of projects. Produce guidelines on accessibility for helping project beneficiaries to take accessibility requirements in consideration.

The case studies revealed a variety of practices used to integrate the three themes of Article 16 **into different stages** of cohesion policy programmes. The analysis demonstrated both good practices as well as difficulties that were encountered during the implementation stage. Some of the good practices are very frequent and appear in many case studies. In **programme design**, the most frequently used indicator was a result-level indicator for the number of jobs created or safeguarded, disaggregated by gender (12 cases out of 15; 9 of these cases have targets). In **project selection** many programmes (10 cases) give some advantage to projects that integrate the aspects of gender equality or non-discrimination well (however, the equality-related criteria do not have a decisive influence). Many practices were identified in **programme management** (guidance, institutional solutions, control measures, and exchange of experience). However the most frequent practice was to provide guidelines and training on horizontal issues to programme authorities (8 cases). A total of 9 case studies indicated that equality-related recommendations of **ex-ante evaluation** contributed to the development of the OP or led to relevant actions during programme implementation.

Partner organisations promoting gender equality or non-discrimination were consulted during the preparation process of all the OPs analysed in

the case studies. In all the cases, such partner organisations were also included in the Programme Monitoring Committee. Sometimes the partner organisations were also involved in the processes of project selection (4 cases) and programme management (e.g. providing relevant advice or guidelines, facilitate exchange of experience, 7 cases). Overall, partnership is **the most developed stage** of programme implementation from the perspective of Article 16.

The case studies also demonstrated that when a partner consistently takes part in various stages of programme implementation, it makes a visible contribution to the integration of the principles of gender equality or non-discrimination. This is because the continuous participation allows the partner organisation to develop expertise, administrative capacity, and reputation. The examples of such continued participation are provided in the OP 'North Rhine-Westphalia' (Germany) ('Zentrum Frau in Beruf und Technik' (ZFBT – 'Centre for Women in Occupation and Technology'), OP 'Health' (Slovakia) (The Office of the Government's Plenipotentiary for Roma Communities), and OP 'Cantabria' (Spain) (Department for Gender Equality of the government of Cantabria – Dirección General de la Mujer del Gobierno de Cantabria).

It is recommended

to Member States

(3) Identify the organisations (public agencies and NGOs) which have substantial competence and authority in addressing any of the three themes of Article 16. Encourage them to take a facilitating role in the integration of the three themes during the implementation of the Operational Programme (for example, the moderation of meetings, joint initiatives with various institutions and NGOs). Encourage public and non-governmental bodies to consult these organisations in pursuing their daily functions related to implementation of the OP. Use the Technical Assistance budget or special projects to provide the necessary financial resources.

The case studies revealed that the Member States usually undertake a mixed approach of **mainstreaming and targeting** in the implementation of principles of Article 16. For example, in the case of OP 'North West England' (UK) the equality themes are integrated (mainstreamed) into all stages of implementation, however at the same time there are targeted measures to support the entrepreneurship of women, racial and ethnic minorities, and the disabled. The programme also plans to develop guidance documents, targeting projects working with minority entrepreneurs and to conduct a special evaluation on equality and diversity. The examples of programmes relying more on the mainstreaming strategy are OP 'Sweden-Norway', OP 'Border, Midland and Western (BMW)' (Ireland), and OP 'Southern Finland'. They emphasise the necessity of integrating the cross-cutting issues into all stages of programme implementation, and have few practices devoted to some particular groups or equality-related problems. On the other hand, in some programmes targeting approach is very visible: OP 'North Rhine-Westphalia' (Germany) targets the issue of women's entrepreneurship; OP 'South Great Plain' (Hungary) puts a strong emphasis on integrating the Roma population.

The Member States use various interventions in order to improve the situation of women and the discriminated-against groups. The analysis demonstrated that several **types of interventions** are funded the most frequently:

- Direct or indirect support to business development and entrepreneurship (this concerns businesses owned or managed by women or other groups, such as immigrants).
- Support to infrastructure that addresses structural difficulties encountered by some groups in the labour market (e.g. public transport and child-care facilities aimed to help women to reconcile work and family life).
- Improvement of access to services and infrastructure for discriminated-against groups (e.g. education and health-care for Roma people; social and health services for older persons).

However **the actual effects** of the approaches and practices identified in this study remain to be seen. In mid-2009 (when the study was carried out) all the programmes were in the early phase of implementation. Among the 15 OPs analysed in the case studies, the implementation of projects had started in 11 programmes while in the other 4 cases the projects were not contracted yet. This means that no judgement can be made on the actual success of implementation of the relevant practices concerning management, monitoring, reporting, and evaluation.

While the study was designed to identify the good practices, some **difficulties of implementation** or even practices that do not have a positive effect from the perspective of Article 16 were discovered. For example two case studies demonstrated that despite a formal commitment to ensure gender balance in the Monitoring Committee, this rule had not been followed (OP 'Sicily' (Italy), OP 'Lower Silesia' (Poland)). Data on some of the monitoring indicators may be difficult to collect due to national requirements on privacy protection (OP 'Stockholm' (Sweden), OP 'South Great Plain' (Hungary)). Important groups are disregarded in programme strategy and partnership (immigrants in OP 'Digital Convergence' (Greece)). While accessibility is a formal requirement, it is not fully ensured due to various reasons (OP 'South Great Plain' (Hungary), OP 'Health' (Slovakia)). Guidelines for integration of horizontal principles may be available but project promoters state that they did not use them (OP 'Sweden-Norway').

It is recommended

to the Commission

(4) Ask the Member States to comment on the practices used to integrate Article 16 and their achievements in **Annual Programme Implementation Reports**. Initiate **an evaluation** of translation of Article 16 to check how the relevant practices actually work and what their effects are.

Among the novelties of the 2007-2013 programming period was a **cross-financing** option (allowing the inclusion of some ESF-type expenses into projects co-financed by the ERDF). The case studies showed that 5 programmes took advantage (or intend to do so) of this rule (OP 'North Rhine-Westphalia' (Germany), OP 'Health' (Slovakia), OP 'Digital Convergence' (Greece), OP Lower Silesia (Poland), and OP 'South Great Plain' (Hungary)). However, at present, it is not possible to say to what extent this option will be used to address equality issues.

Compared to the provisions on horizontal principles during the previous programming periods, Article 16 stands out due to its broad scope, a call for mainstreaming into all stages of programme implementation and an introduction of the accessibility requirement. Therefore there is a high potential for **learning and experience exchange**. The study showed that some programmes initiated exchange of experience and networking events (OP 'Stockholm' and OP 'North Rhine-Westphalia' (Germany)) and made an attempt to exploit synergies with ESF-funded projects (OP 'Stockholm'). Furthermore, it is important not only to share the current experiences, but also to take advantage of the lessons learned already during the previous programming period. Several case studies showed that such lessons had been taken into consideration (OP 'Stockholm', OP 'Southern Finland', OP 'Sicily' (Italy)). However there is a case where important practices on equal opportunities were generated during the previous programming period, yet some of them will be discontinued in 2007-2013 due to the decreased scope of the programme (OP 'Border, Midland and Western (BMW)' (Ireland)).

The practices concerning project selection, management, monitoring and the other stages of programme implementation that were identified in this study could also be a useful learning tool. For example, the case study of OP 'North West England' (UK) showed that a very effective practice is to have a person in charge of equal opportunities in the intermediate body (Equality and Diversity Manager). She proved instrumental in supporting actions of various institutions, initiating relevant competence-building events and sensitising stakeholders to equality issues. The Self-Assessment Guide (to be used by programme authorities to review their performance as regards Article 16) was developed taking these practices into consideration (see Annex C).

It is recommended

to the Commission

(5) Undertake measures for facilitating the exchange of good practices among the Member States. Initiate relevant studies, networking events, and dissemination of good practices. Discuss the issues (and practices) of the implementation of Article 16 at pan-European conferences.

to Member States

(6) Engage in good practice exchange with other Member States, across the three thematic areas of Article 16. Publish some of the thematic evaluations (on cross-cutting issues) in English so that other Member States could become acquainted with them.