

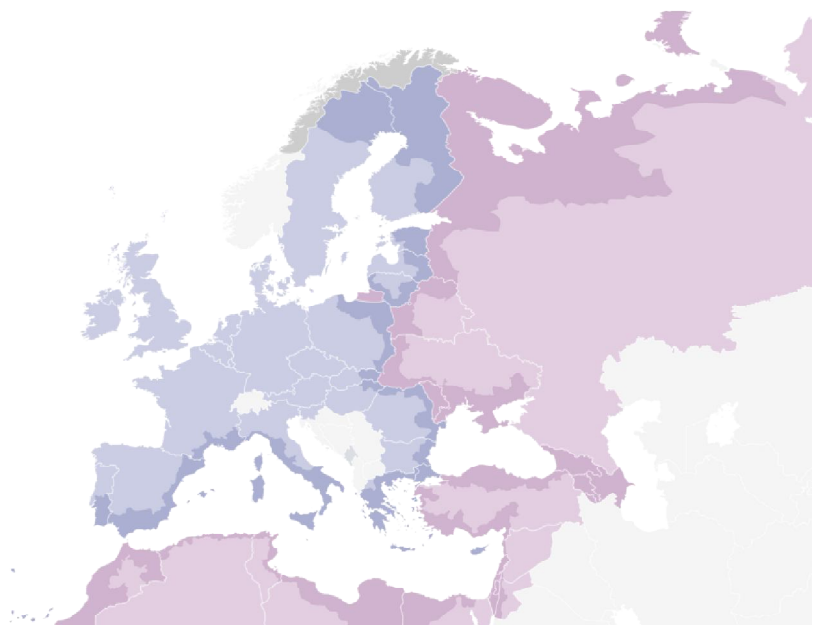
Identification, selection and contracting of Large Infrastructure Projects in ENI CBC programmes

(Practices and lessons learnt on Large Scale Projects 2007-2013)

(INFORMATION PAPER – August 2016)

DISCLAIMER

This paper has been developed by the TESIM project.
It has not undergone revision by the European Commission
and does not necessarily reflect its views on the topic.
It is therefore presented to programme practitioners
for illustrative purposes only.



Introduction

Lists of large infrastructure projects (LIP) which will be selected using direct award procedure have been included in nine of the thirteen ENI CBC Joint Operational Programmes (JOP) adopted by the end of 2015. Both the essence and the implementation procedures of these projects are similar to those of the large scale projects (LSPs) funded by ENPI CBC programmes 2007-2013.

Programme	EE/RU	Karelia	Kolarctic	LLB	LV/RU	PBU	RO/MD	RO/UA	SEFR	Total
No of LIPs identified in the JOP	5	8	8	6	4	18	5	7	14	75

The above-mentioned date for adoption, leaves these programmes a maximum of 2 years for carrying out all the necessary procedures before sending for approval to the European Commission the full applications of LIPs selected using the direct award. As a matter of fact, In the previous period the main difficulty related to LSPs faced by the programmes was the time pressure for contracting and implementing them. Taking into account that in the ENI CBC programmes LIPs funded through direct award will have to be contracted within shorter deadlines than the other projects, it is important to take a look at the experiences gained during the previous period to treasure what was successful and to improve what did not work.

This document is based on the INTERACT ENPI survey on LSPs (Part 1 - Comparative analysis on identification, selection and contracting of LSPs)¹, which summed up practices of the previous period and the provisions of the draft ENI CBC IRs available at that time the survey was issued². Its contents combine the lessons learnt from the previous period and the provisions of the approved ENI CBC IRs relevant for LIPs. It looks specifically into the steps that need to be undertaken for selection and contracting of this specific type of projects.

Simultaneously, the TESIM project has prepared a separate document (“Guidance Note on Direct Award”), which provides details on the use of the direct award procedure and issues suggestions on the evaluation and approval procedures to be applied.

In order to start the LIPs implementation, the **Managing Authorities** have to undergo the following steps:



¹ Available at: http://admin.enpi.interact-eu.net/downloads/8198/Presentation_SURVEY_ON_LARGE_SCALE_PROJECTS.pdf

² The draft ENI CBC Implementing Rules circulated to Member States on 24 December 2013 which meaning is not exactly the same in comparison to the version approved by the EC.

At the same time, the **project beneficiaries** need to finalise a series of tasks and develop documents necessary for the project implementation:



Throughout this guidance, the following steps in the process will be described:

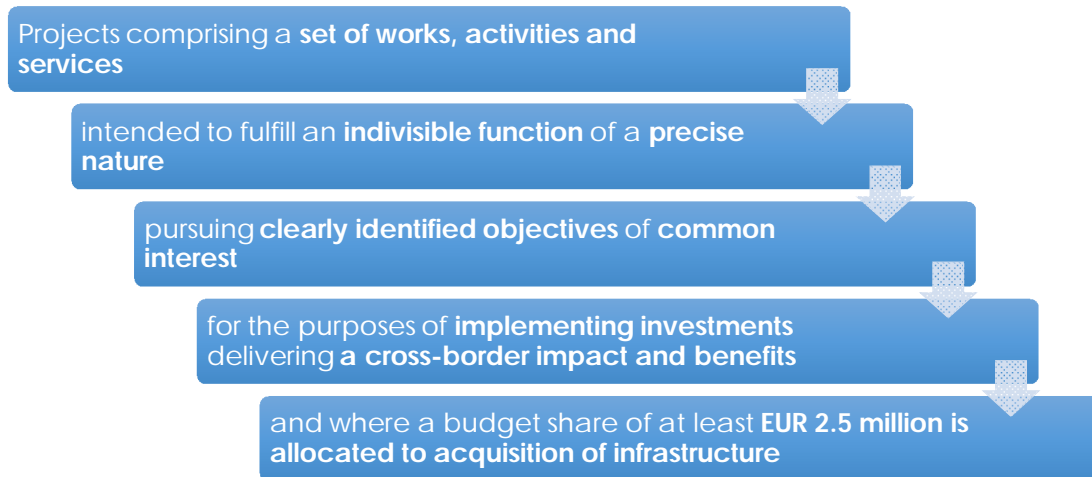
- **Identification of the LIPs** and creation of LIP long list, based on the list included in the JOP;
- **Preparation of documents** necessary for the LIP selection process and their implementation and **selection of LIPs**;
- **Contracting of LIPs**;
- **Communication** between the LIP beneficiaries and programme bodies- Managing Authority (MA) / Joint Technical Secretariat (JTS).

The last step is a horizontal activity that needs to be implemented throughout the entire process of identification, selection and contracting.

1. Identification of LIPs

1.1 Definition of LIPs

According to the definition provided in Article 2 of the ENI CBC IRs, LIPs are:



The LIPs can be awarded using both calls for proposals and the direct award procedure. This document will concentrate only on the LIPs which **are already identified in the JOPs** and will be **selected via direct award**³.

1.2 Identification of the projects and preparatory actions for selection of the LIPs

Article 41.2 of the ENI CBC IRs

A final list of large infrastructure projects proposed for selection without a call for proposals shall be included in the programme.

This step represents the main change compared to the previous period, as it is now a compulsory requirement to have the LIPs identified already in the JOP. This means that no identification of additional LIPs to be selected using the direct award is possible for the programmes approved by the EC. Thus, already from the beginning of the programme implementation the MA/JTS can start working with the applicants of the defined LIPs.

It has to be noted that approval of the JOPs does not mean that the LIPs included therein are automatically accepted by the EC. All projects proposed for selection

³ Please refer to TESIM note on the direct award procedure for more details on projects other than LIPs to be selected via direct award.

without a call for proposals will still **need to be approved by the JMC and the EC based on a two-step procedure.**

Four out of nine programmes (EE-RU, Karelia, Kolarctic, SEFR)⁴ have included in their JOPs a list of LIPs which includes more projects than those which can be financed by the programme in accordance with its financial allocation and the threshold set in the IRs.

Article 38.2 of the ENI CBC IRs

The share of the Union contribution allocated to large infrastructure projects and contributions to financial instruments referred to in Article 42 may not exceed 30%.

In case there is no strict division between the main projects list and the reserve list, the JMC will have to take a decision on how exactly to proceed. The possible criteria for selection of the projects could be:

- project's readiness for implementation (giving priority to projects for which the mandatory national administrative requirements have already been met or are progressing well e.g. in relation to: technical documentation, building permit, environmental impact assessment, the evidence of ownership or access to the land for the indicative activities);
- availability of the co-financing (projects included in national plans/strategies with secured national co-financing may be encouraged as more financially stable);
- experience of project partners in implementation of similar projects;
- topicality of the proposed activities (taking into consideration that the projects were identified 1 year ago).

If a reserve list is established, programmes need to start working with reserve LIPs in parallel with the main list projects, so that in case major problems with LIPs on the main list occur, the reserve list projects would be well advanced. For example, the programme may ask beneficiaries of LIPs from the reserve list to submit their project summaries, while underlining at the same time that the support will be given only if there is budget available for the particular investments.

⁴ Other programmes (PBU, RO-MD, RO-UA) decided to establish a main list and a reserve list, whereas funds available for LIPs in case of LLB and LV-RU does not exceed the funding allocated to the LIPs by the programme.

2. Preparation of documents by the MA and selection of LIPs

2.1 Preparation of the application pack

The same documents (application pack) as for the call for proposals are also necessary for the LIPs. Since these projects have a different selection procedure and requirements for the documents that need to be submitted, programmes tend to develop a specific application pack that is tailor made for the LIPs. In addition to this, it has to be taken into account that the application procedure for LIPs can be different than the one used for the calls for proposals, as the projects of direct award have to compulsorily undergo a two-step selection procedure, whereas this might not be necessarily the case for the calls for proposals.

Article 41.4 of the ENI CBC IRs

The projects proposed for selection without a call for proposals shall be approved by the Commission based on a two-step procedure, consisting in the submission of a project summary followed by a full project application [...]

Moreover, there are also special requirements as to who can implement such projects.

Article 41.1 of the ENI CBC IRs

Projects may be awarded without a call for proposals only in the following cases and provided this is duly substantiated in the award decision:

- (a) the body to which a project is awarded enjoys a de jure or de facto monopoly;*
- (b) the project relates to actions with specific characteristics that require a particular type of body based on its technical competence, high degree of specialisation or administrative power*

Regardless of the selection procedure and monopoly status of the beneficiaries, other aspects regarding drafting of application pack documents (e.g., universal requirements⁵ for CBC projects in the application form, result oriented approach, logical framework and budget templates) shall not significantly differ from the one applied in case of call for proposals.

You can find here below the recommended minimum set of LIPs application pack documents which need to be drafted in order to provide the applicants with the necessary information on the programme requirements:

⁵ For more details regarding the universal requirements for CBC projects, please refer to the Direct Award Note, point 3 "Evaluation of projects to be selected with the use of a direct award procedure."

- A document which describes the procedures for selection of LIPs via direct award procedure (Guidelines for LIPs Applicants);
- Application form including a project summary, full application, templates of budget and logical framework, and the requirements for the infrastructure component of each LIPs (feasibility study and SEA requirements);
- Grant Contract

This document addresses only specific requirements applicable to LIPs, without focusing on the details regarding the contents of the typical application pack documents (i.e., Guidelines for Applicants, Grant Contract) applicable to all other types of projects and which will be the subject of the Application Pack Guide that is being prepared in parallel by the TESIM project.

3. Preparation of the LIPs application

When defining the possible criteria which the LIPs should comply with, programmes shall first of all refer to the LIPs definition described in Article 2 of the ENI CBC IR and to the requirements for award without a call for proposals defined in Article 41.1 of the ENI CBC IR. In addition, the requirements mentioned in the EC's Note on LSPs⁶ can be used as a source of inspiration. These requirements state that the projects that are selected using the direct award shall comply with the following provisions:

- shall directly relate to the programme and its priorities;
- be crucial for the development of the part of the programme area;
- have a clear cross-border impact;
- have an infrastructure character;
- be coherent with the national/ regional development strategies and have support from the national/ regional level authorities on both sides of the border;
- have outcomes of a sustainable character (respecting provisions of Article 39.3 on sustainability requirements);
- be compliant with the criteria defined by the programme and applicable rules and procedures (cross-border partnership, size of the grant, eligibility of the applicant, eligibility of the action, eligibility of costs, etc.)
- project beneficiaries must be clearly identified as the only ones being able to implement the project in question.

⁶ EC guidance note on LSPs as of 10 May 2009.

3.1 Project summary

When defining the necessary elements of a project summary, the above mentioned INTERACT ENPI survey on LSPs may be used as a source of inspiration. Based on it, the LIPs project summary may include the following elements:

- **Brief project description** (project objectives, its compliance with the programme priorities and contribution to programme objectives and indicators, cross border effect, target groups and final beneficiaries, estimated results and main activities to be carried out);
- Short description of the **experience and of the financial and institutional capacities** of the lead beneficiary and other beneficiaries involved;
- Overall indicative **budget**;
- Justification of how the project meets the **criteria for direct award** listed in Article 41 of ENI IR regarding the choice of the lead beneficiary and beneficiaries and justification that the action requires a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power;
- Description and location of the **planned investments**;
- Information on **retroactive costs**;
- Declaration by the applicant and partnership statements;
- **Readiness for the project implementation**. If available, together with the project summary, the applicant can submit additional documents which prove the readiness of the project implementation (e.g., feasibility study, technical documentation, building permit, Environmental Impact Assessment (EIA)).

3.2 Full application form

A full application form should include all information necessary for:

- Project assessment and verification that it complies with the programme requirements,
- Signature of the Grant Contract,
- Project implementation.

Article 41.2 of the ENI CBC IRs

*After adoption of the programme, but not later than **31 December 2017**, the Managing Authority shall provide the Commission with the full project applications including the information referred to in Article 43 together with the justification for a direct award.*

At the same time, according to Article 43 of the draft ENI CBC IRs each project shall contain at least:

Article 43 of the ENI CBC IRs

1. Project application documents shall contain at least:
 - (a) an analysis of the problems and needs justifying the project, taking into account the programme strategy and its expected contribution to address the corresponding priority;
 - (b) an assessment of its cross-border impact;
 - (c) the logical framework;
 - (d) an assessment of the sustainability of the project's expected results after project's completion;
 - (e) objectively verifiable indicators;
 - (f) information on the geographic coverage and target groups of the project;
 - (g) the expected project implementation period and detailed work plan;;
 - (h) an analysis of the effects of the project on the cross-cutting issues referred to in point 3(d) of Article 4 where relevant;
 - (i) the project implementation requirements, including the following:
 - (i) identification of the beneficiaries and designation of the lead beneficiary, providing guarantees of its competence in the domain concerned as well as its administrative and financial management capacity;
 - (ii) description of the project management and implementation structure;
 - (iii) arrangements among beneficiaries in line with Article 46;
 - (iv) monitoring and evaluation arrangements;
 - (v) information and communication plans, in particular, measures to acknowledge the Union support to the project
 - (j) detailed financial plan and budget.
2. Project applications for projects including an infrastructure component of at least EUR 1 million shall in addition contain:
 - (a) a detailed description of the infrastructure investment and its location;
 - (b) a detailed description of the capacity building component of the project, except in duly justified cases;
 - (c) a full feasibility study or equivalent carried out, including the options analysis, the results, and independent quality review;
 - (d) an assessment of its environmental impact in compliance with the Directive 2011/92/EU of the European Parliament and of the Council ⁽¹⁾ and, for the participating countries which are parties to it, UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991;
 - (e) evidence of ownership by the beneficiaries or access to the land;
 - (f) building permit.
3. Exceptionally and in duly justified cases, the Managing Authority may accept a later submission of the documents referred to in point (f).

According to the INTERACT ENPI survey on LSPs, the most time-consuming steps regarding the preparation of the full application were the preparation of the detailed description of the action on the binding template and the elaboration of technical documentation (**time frame ranging from 3 to more than 12 months**). At the same time, the elaboration and signature of the partnership agreements took about **1-12 months**. In the case of other mandatory annexes like the feasibility study, environmental impact assessment (EIA) and building permission, the average time-frame needed for their submission oscillated between **3 to 12 months**.

Taking into consideration the fact that the whole approval process on the programme level shall include an additional step (JMC approval decision), programmes will need to set up efficient selection procedures in order to meet the above mentioned deadline. Likewise, the preparation of the full LIP application form and then the whole implementation process needs experienced experts and this is why programmes may set some additional requirements for employing/contracting of well qualified project personnel (selection or contracting criteria)⁷.

Moreover, the preparation of documentation for infrastructure projects proved to be expensive, thus programme bodies shall consider treating retroactive costs as eligible in accordance with article 48.3 of the ENI CBC IRs and inform all LIPs beneficiaries on such possibility early in advance.

IMPORTANT!

In addition to the requirements set in the ENI CBC IRs, please note that - according to the guidance received from EC - the costs related to studies and documentation for projects may include costs for staff, travel and accommodation, office and administration, external expertise and services.

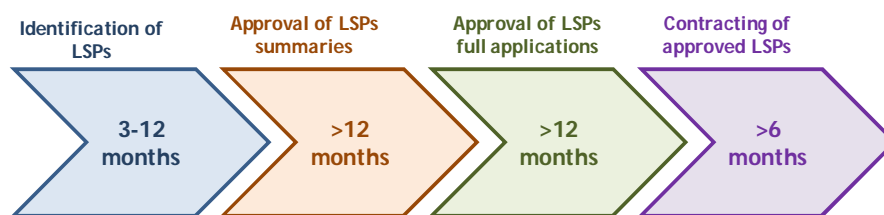
At the same time it has to be underlined that the ENI CBC IRs do not provide any details on the starting date of preparatory costs eligibility and this is why the exact period for preparatory costs eligibility shall be set at the programme level.

Overall, the selection procedure should be flexible enough to allow the MA/ JTS to work along with the beneficiaries, and if necessary intervene in the logic and quality of the applications as soon as problems occur. At the same time, introducing strict deadlines (either joint for all projects or individual) for submission of the relevant application documents is of utmost importance to keep the process under control. And in case of problems, this will also allow timely reallocation of the financing to the LIPs on the reserve list to other projects to be selected, for example through open calls.

⁷ At the same time, well prepared personnel at programme level is also necessary.

4. Contracting of LIPs

As already mentioned, the experience with LSPs in ENPI CBC 2007-2013 programmes showed that the process related to the identification, selection and contracting of LSPs has been extremely lengthy, and often has resulted into not leaving sufficient time for project implementation. According to the INTERACT ENPI survey on LSPs the whole process starting from identification until a project initiation could last in the worst case scenario even more than 3 years.



With problems along the way, more than 3 years may be needed until project initiation

Since the first step (identification of LIPs) has been already completed, the time needed to sign LIPs grant contracts will be inarguably shorter. However, programmes shall not neglect the fact that the selection and contracting may also take lots of time and this is why the procedures set up at the programme level shall allow for carrying out the process efficiently, so that the LIPs contracting deadline (30 June 2019) is met.

One of the most time-consuming steps identified during the contracting process of LSPs was the submission of the **signed partnership agreement**. In order to speed up the entire process, programmes should consider providing templates of partnership agreements. Another possibility to shorten the contracting phase would be asking projects to initiate the partnership agreement negotiations before submission of the full application form so that the signature of the document can take place right after the award decision.

At the same time, project **readiness for implementation** (availability of all required annexes for infrastructure component of a particular LIP as soon as possible) is a very important pre-condition for a smooth selection and contracting process. It has been already proved that the more ready for implementation projects are the faster the grant contract is signed.

Programme bodies shall investigate carefully all cases where any permission is needed to start works (e.g., a building permit) and how long such process may last according to the national legislation and intervene each time concrete problems occur.

5. Communication

A proper communication between programme bodies and LIPs beneficiaries is a key for a smooth selection and contracting process. Please find below some suggestions which might be taken into consideration while working with LIPs beneficiaries:

- Active cooperation with LIPs beneficiaries shall start as soon as possible before the submission of project summaries to the JTS/MA and the beneficiaries shall be informed early in advance about all LIPs requirements stemming from the ENI CBC IRs and JOP;
- LIPs beneficiaries will have to deal with many processes in parallel and the programme bodies shall not only coordinate current tasks (e.g. elaboration of a project summary) but also underline further steps that shall be undertaken in the nearest future (e.g. indicating which additional information will be requested in the full application form) and provide ongoing feedback on other necessary information needed for submission of the full application form to the EC;
- Programme bodies shall provide ongoing support to the beneficiaries on drafting all annexes necessary to get the award decision and sign a grant contract, preferably already during the project summary phase (e.g., on the partnership agreement template and other annexes like feasibility study, Environmental Impact Assessment, technical documentation).

6. Conclusions

Taking into consideration the above mentioned provisions of the ENI CBC IR and the lessons learnt from the previous period, it can be concluded that the LIP selection procedure should be flexible enough to allow the MA/ JTS to work along with the beneficiaries, and if necessary intervene in the logic and quality of the applications as soon as problems occur.

At the same time, introducing strict deadlines for submission of the relevant application documents and in cases where the deadlines are not followed financing should be reallocated early enough to the reserve LIPs or to other projects to be selected, for example through open calls.