

IMPLEMENTATION OF NGO-GOVERNMENT COOPERATION POLICY DOCUMENTS

Lessons Learned

by

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I. Introduction

1. What is a “compact?”

A decade ago, the term “compact” would have raised very few, if any, associations with the world of non-profit, non-governmental organizations (“NGOs”), their role in public life, and their cooperation with government. The first compacts appeared in 1998 in the United Kingdom and were defined as agreements “between government and the voluntary and community sector in England to improve their relationship for mutual advantage.”² The expanding and more constructive role played by the NGOs in the development of good political processes and delivery of high quality public services, and their contribution to the public’s well-being were factors that persuaded or even impelled governments to initiate negotiations with NGOs on cooperation documents.

These documents are often referred to by different names:

- “compacts” in the England, Wales, Scotland, and Northern Ireland;
- “Program for Cooperation with Non-governmental Organizations (NGOs)” in Croatia;
- “Concept for the Development of Civil Society” (“EKAK”) in Estonia,
- “Accord” in Canada;
- “NGO Charter” in France;
- “Charter for Interaction between Volunteer Denmark and the Public Sector” (Denmark); and
- “Government Civil Society Strategy” (Hungary).

For ease of reference, we will call these documents “*compacts*.”

The public party to the document can be represented by the government (England) or Parliament (Estonia). The documents can be bi-lateral (Scotland) or unilateral (Hungary). They can be comparatively short (UK) or detailed (Estonia). They can be followed by Codes of Good Practice and local compacts (UK) or remain predominantly a national process (Croatia). As explained more fully below, not all compacts are “agreements” between the state and the sector, either; in some cases, compacts come about as a result of unilateral action by one party, usually the government.

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² <http://www.thecompact.org.uk>

The common characteristic of all such documents is that they express a mutual recognition of principles and values of cooperation between the public and the non-profit sector and outline the structure of their future work together. The documents represent an effort to institutionalise the two sectors' relationship in order to improve public participation in political decision-making and to raise the quality of public services by improving NGOs' access to opportunities to participate in service delivery.³ The state's recognition, either explicit or implicit in the document, of civil society and its place in public life is certainly important. But the real value of cooperation documents is in their practical impact and their ability to bring together the public and non-profit sectors for the benefit of society.

Seven years after the first compacts appeared, the focus has changed; it is no longer on compact initiatives, although several countries are at the outset of negotiations or even preparing draft documents. What deserves attention today is *what has happened?* Did compacts achieve the intended outcomes and if so, how? What facilitated that process? What hampered or obstructed it, and how can these challenges be overcome?

This paper will address the lessons learned from the implementation of compacts in a number of countries, predominantly in Western and Eastern Europe. It will examine the factors that contributed to successes in the implementation process, as well as to failures. The objective of the paper is to be of help to governments and NGO sectors which are considering compacts, or re-evaluating existing compacts. We hope that the findings and examples presented here will help to facilitate their path to an effective document beneficial to society.

2. *What is "implementation?"*

What is meant by "implementation" of a compact? Compacts are still a fairly new development, and there has not been enough history to provide a complete picture of a good and effectively implemented compact. All of the compacts adopted to date are in the *process* of being implemented, and this process has yielded both positive and negative results, all with great potential as sources of learning.

To put the concept of implementation in concrete terms, consider these examples of how NGOs and governments have partnered in developing activities to make their commitments to one another "real." All these activities have been undertaken in the process of the parties' fulfilment of their compact commitments – to increase the NGO sector's financial sustainability, develop new enabling legislation supporting NGO activities, facilitate grant-making and application procedures, and provide tax benefits to NGOs, etc

- In **England**, the Government
 - developed guidance for its departments on the delivery of small grants;
 - passed legislation (Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Community Interest Company Regulations 2005) establishing a new legal form – the Community Interest Company -- which allows social enterprises to use their profits and assets for the public good. These companies benefit from a simplified procedure for formation and operational flexibility but are subject to additional requirements for,

³ Bullain, N., Toftisova, R., A Comparative Analysis of European Policies and Practices of NGO-Government Cooperation, March 2004, available at <http://www.policy.lv/index.php?id=102865&lang=en> cite the journal?

- e.g., reporting to ensure that they are acting for the benefit of the community.⁴; and
- launched ChangeUp, a strategy developed jointly with the NGO sector to build sector capacity and infrastructure, with an initial investment of £80m and another £70m allocated for that program for the fiscal years 2006/2007 and 2007/2008;⁵
 - Also in **England**, the Compact led to intensified efforts to amend the legislative framework for charitable giving as a means of promoting the independence of the NGO (or as called in the Compact, “community” sector). The Gift Aid Program was reformed in 2004, and a modernized Charities Bill was introduced in Parliament (although the Bill was not approved by the Queen and was reintroduced again). It is estimated that these changes brought about an increase in charitable giving of £580 million in 2003/2004;⁶
 - In response to **Scotland’s** Executive Direct Funding Review of 2001, the Scottish Executive planned to reform the arrangements for direct funding of the voluntary sector. A key goal is to adopt principles and processes to facilitate voluntary organisations’ applications for funding (e.g., publishing funding opportunities on the Scottish Executive website; producing an annual published version of funding opportunities introducing standard packages of funding criteria.)⁷
 - In **Estonia**, the Joint Committee charged with drafting the EKAK (the Estonian compact), also developed an Implementation Plan. In addition, an earlier initiative to develop a tax policy promoting citizen initiative and encouraging charity led to the recognition of nonprofit associations and foundations as eligible for exemption from the income tax and customs duties, etc.⁸
 - The **Canadian** Government introduced more than 60 changes in the regulatory framework for the voluntary sector following adoption of a compact;⁹
 - In **Croatia**, compact implementation led to legislative reform benefiting NGOs, including
 - a new Law on Associations,
 - a Lottery law dedicating lottery proceeds to finance the NGO sector activities,
 - draft laws on volunteerism and foundations,
 - a draft Code of good practice in grant-giving,
 - tax law amendments providing deductions for donations to NGOs;
 - tenders for funding NGOs under the new laws and the compact;, and
 - a multiyear financing scheme (replacing the prior system of single year funding.)¹⁰
 - In **Denmark**, the Government-NGO Charter signed in 2001 led to a better balance in international development funding between large and small NGOs, with funds

⁴ For additional information see <http://www.dti.gov.uk/cics/>.

⁵ http://www.homeoffice.gov.uk/docs4/Compact_61pp_web.pdf

⁶ *Idem*.

⁷ <http://www.scotland.gov.uk/library5/government/scimps-00.asp>

⁸ EKAK Implementation Plan at

http://www.ngo.ee/orb.aw/class=file/action=preview/id=4316/material_EKAK_impl_plan_2004_2006_Eng_fin_1_02.doc

⁹ Based on input from Marie Gauthier, Director of Social Development Canada Non-Profit and Voluntary Sector Affairs Division, presentation at the conference on Civil Society Excellence, 3-5 March 2005, Tallinn, Estonia

¹⁰ Based on input from Cvjetana Plavska-Matic, Director of the Foundation for civil society development.

for large groups reduced by 5% and re-distributed among a larger number of smaller organizations.¹¹

Nonetheless, a balanced account of the record of compact implementation to date would have to acknowledge setbacks in fulfilling commitments made in various documents:

- Fewer than 40% of voluntary organizations in **England** believe that the that Compact has had a positive impact on their relationships with government offices;
- **Estonian** NGOs remained silent as the Parliament passed a Gambling Act which did not include provisions dedicating funding to the voluntary sector;
- **Hungarians** failed to adopt a proposed program for cooperation with NGOs – the Civil Strategy of the Government, as both sectors failed to arrive at a joint position on the matter; (although, as discussed later on, the draft program had a considerable and positive impact on the government-NGOs relations); and
- In **Scotland**, government and the voluntary sector developed separate guidelines for the implementation of the Compact. This led to diversified implementation approaches, low awareness of compact values and principles by both parties, and general lack of compliance with Compact provisions.

a. definition

The Compact implementation process fulfils the commitments made in the compact by the public sector either alone or together with the voluntary sector for purposes of encouraging an improved relationship and better cooperation between the two sectors. The implementation process involves a series of specific actions designed to achieve the main objectives of the compact. These actions, therefore, are usually aimed to produce particular outcomes, which may include, among others:

- more effective delivery of public services,
- better systems for consultations between the two sectors,
- more developed funding mechanisms to support the third sector in its public benefit activities, and
- more extensive dialogue on draft legislation affecting civil society.

Implementation with no compact?

The process of negotiating a compact, even where a formal document does not result, may have a *positive impact* on the inter-sectoral relationship. A draft compact may even be partially implemented. Take the example of Hungary, where the Government Civil Strategy was not adopted, but certain provisions nevertheless were implemented. The Strategy for example anticipated the “1% Law,” giving taxpayers the right to designate a percent of their taxes to be paid to NGOs.

The Strategy is often referred to and its socio-political importance is undoubted, despite the fact that it was not adopted and therefore cannot be “implemented” as we ordinarily understand that term. This demonstrates the opportunities for legal and other reform where goodwill is fostered by compact negotiations. The Strategy has the potential for even greater impact should it be formally adopted – implementation of an actual compact could lead to more specific and comprehensive measures to improve NGO government cooperation.

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Ultimately, the public benefits from higher quality services, a more democratic political system allowing for greater public participation in political decision-making, and greater opportunity to enjoy the fruits of citizenship and the basic freedoms it implies. A report by the Scottish Compact review group underlines that the ultimate goal of the compact implementation process is improving public well-being: “the Scottish Executive and the voluntary sector work in partnership *to build a better Scotland*.”¹²

Effective compact implementation, therefore, means that *in reality* the relationship between the two sectors has reached a higher level. But how does one assess effectiveness? Plainly, there is a need to consider *measures* of success. As discussed further on, establishing indicators to measure the success of implementation in practical terms has presented challenges which the public and civil society sectors continue to negotiate.

The importance of using specific indicators to measure successful implementation is illustrated by the case of England. The English Compact was the first policy document developed, signed, and implemented, so the implementation process should now be smoothly advancing. In reality, recent studies using indicators tied to specific commitments in the compact (e.g., the number of local compacts signed, the amount of funding provided to the voluntary sector, the number of governmental agencies that have actually developed a strategy on financing the voluntary sector, the level of awareness of Compact goals and achievements on both sides), have established that there is a lot more to do. This finding led researchers to recommend more extensive promotion, dedication of more resources to Compact implementation, and regular reviews and monitoring to ensure that the Compact is, as intended, a milestone on the path to an improved relationship between the sectors, and not the end of the journey.¹³

In response, in April 2005, the Government announced its new program to further promote the voluntary sector as a keystone partner in building a “healthy society” and in delivering public services. Plans include the launch of “Compact Plus” -- a new and simplified implementation scheme; the creation of “Capacity Builders” – an agency that will manage partnership funds backed up by a £70 million funding this commitment for the period until 2008; and a further monetary investment for Futurebuilders (a Government investment fund intended to promote participation of the voluntary sector in the delivery of public services) for the same period. Perhaps as importantly, the program identifies reasons for past inefficiencies and proposes new measures to meet the challenges of implementation.¹⁴

b. the continuous nature of implementation

Compacts are often considered a process because the purpose for which the document is adopted – improved relations between the sectors – is continuing in nature. Because the public-voluntary sector relationship always is open to improvement, we can argue that in practice there is no fully implemented compact – a document is always in the process of *being* implemented. Each phase of implementation must therefore be viewed in the context of the whole process, contingent on current priorities, and inter-related with previous and upcoming activities and commitments.

¹² Supra note 5 (emphasis added).

¹³ “The Paradox of Compacts: Monitoring the Impact of Compacts,” UL Home Office Online Report, 02/05, <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0205.pdf>

¹⁴ http://www.homeoffice.gov.uk/comrace/active/temp/bright_future.html

Take, for example, Estonia's special Joint Commission made up of representatives of the government and civil society. The Commission, created in October 2003, was envisioned by the Civil Society Development Concept, or EKAK. Its work demonstrated a new, higher level of the two sectors' capacity to work together and collaborate. The establishment of the Commission was not one-off activity. The Commission was not the final objective - it was meant to advance other implementation goals. Among other things, the Commission was tasked to evaluate the degree to which the parties have fulfilled the commitments undertaken in EKAK, as well as to develop an Implementation Plan for future action. Thus, while created in execution of the EKAK this body has served as the link between the between various stages of the adoption and implementation processes.

The Scottish Compact, adopted in 1998, provides another example demonstrating the continuing nature of the implementation process. After an initial assessment of the compact's implementation, the Scottish Executive/Voluntary Sector Forum agreed that the document should be "reviewed with a particular focus on identifying ways in which it might be more effectively implemented by both the Executive and the voluntary sector."¹⁵ A joint review group was created to examine and report on implementation problems and to recommend solutions, demonstrating the need for periodic re-examination of a compact and its implementation.

The reporting group on the English Compact reached similar conclusion -- that the Compact should not be a "dead" paper but a "living" compact -- and recommended that its implementation should be ensured "through regular reviews."¹⁶

c. compliance and implementation

Implementation can be considered within the broader context of compact adherence or "*compliance*." The term compliance suggests a more comprehensive requirement for respect and fulfilment of all statements and commitments undertaken by the parties to the compact. One aspect of compliance is secured through implementation of specific commitments made in the document.

The *whole* of the text of a compact cannot be implemented; part of its content consists of "static" clauses which either establish outset positions -- such as who represents one party or the other -- or recognize existing circumstances or relations between the parties. For example, art.2.1 of Chapter 2 of the Voluntary Sector Scheme of Wales contains a definition of the term "voluntary sector" which the two parties agree to respect: "voluntary organizations, community groups, volunteers, self-help groups, community co-operatives and enterprises, religious organizations and other non for profit organizations of benefit to communities and people in Wales." The Assembly of Wales, representing the public sector, undertakes (art. 2.2 of the Voluntary Sector Scheme) "to recognize, value and promote the voluntary sector" and to build a partnership with it. Further on in the Scheme, we find a more specific provision in which the Assembly "designates the First Secretary to have overall responsibility for the Voluntary Sector Scheme" and commits to maintain "a Code of Practice for funding the voluntary sector" (art.2.11).¹⁷

¹⁵ Supra note 6.

¹⁶ Supra note 13.

¹⁷ <http://www.wales.gov.uk/themesvoluntarysector/content/voluntarysectorscheme/index.htm>

While the first provision is a statement on a shared value, and as such requires general compliance in a manner subject to the parties' interpretation, the latter is a more specific commitment the implementation of which requires specific action. Both the more general statements and the concrete provisions are included in compacts as means to achieve improved public-NGO relationships, and they both require observance if the compact's objectives are to be reached. Only the specific commitments, however, are likely to be the subject of implementation activities and require action by the parties. The parties will have to do something -- adopt a document, develop a mechanism, organize an event, take an initiative, etc. – if these commitments are to be fulfilled.

d. impact of national priorities on compacts and on their implementation

Experience has shown that compacts have potential both in circumstances where the NGO/government relationship is good – they “cement and secure” it,¹⁸ and where the parties faced problems in working together – in which case “the Compact might act as a lever for change.”¹⁹ The implementation process and the degree to which it can be considered successful follow from the policy document itself (the drafting and negotiation process, content, momentum) as well as of the objectives set up in it. In other words, the success of implementation should always be assessed against the specific goals of the compact.

Each national and local compact is a product of particular circumstances and is designed to meet specific societal needs. The differences in circumstances and needs among countries explains the varying values and objectives of compacts as well as the lack of similar processes for adopting them. Not surprisingly, all of these factors affect compact implementation. Thus, for example, the Croatian Program for Cooperation was developed with the primary objective of hastening and assisting ongoing NGO legal reform. Following years of war and ethnic conflict in Croatia, the Program naturally focused on values like non-violence and equal opportunity. However, as discussed below, historical factors and unstable governmental interest in the Program led to implementation problems and a failure by the government to respect the commitments it made.

In Estonia, in contrast, priorities focused on sustainability, accountability and transparency mechanisms for civil society, subjects viewed with enthusiasm by civil society and a committed Parliament. The result: the Estonian EKAK is among the most advanced in its implementation -- it has its own Implementation Plan, and its implementation schedule is followed strictly by both parties.

These national priorities are reflected in EKAK implementation activities, which are designed to address issues of great concern to both the public and voluntary sectors, including

- legislation regulating citizen initiatives,
- involvement of citizens and citizens' associations in the decision-making processes,
- financing of citizens' associations,
- compilation of statistics on NGO sector size and activities,
- civic education and
- public awareness.

¹⁸ Supra note 13, p.9

¹⁹ Supra note 13, p.10

The necessary bodies, including joint committees, have been established and started work so that these priorities can be realized more quickly and comprehensively, with the aim of building “a civil society and a social economy in Estonia with the active participation of its citizens.”²⁰ For example, in the area of civic education, university programs are being developed to expand knowledge of the third sector legal framework and values among students at law and other faculties – at the University of Tartu and the University of Tallinn. In the area of citizens’ involvement the State Chancellery, which is the coordinating body for public involvement in governmental institutions, has collected information about and encourages new practices, such as the use of electronic means of promoting civic engagement, training public servants in public participation methodologies, initiating consultations and working groups on best practices, and others.²¹

Similarly, in other countries, national priorities are reflected in the compact implementation process. In Denmark, NGOs have traditionally been engaged in providing international aid, and the Danish Charter for Interaction therefore is focused on this aspect of voluntary sector activity. Indeed, the government changed its practice in channelling funding for international aid only through large NGOs to respect its commitment “to make sure that the Danish NGOs have the necessary strength and legitimacy by virtue of their popular rooting.”²² In Germany, the focus is on poverty alleviation.²³ The compact pioneers in England sought to improve the system of funding the third sector; therefore, the English Compact requires Codes of Good Practice, including a Code on Funding and Procurement whose objective is to improve funding and procurement relationships.²⁴

d. international sharing of lessons learned

Means of sharing lessons learned regarding compact implementation have received increased attention over the past several years. Mechanisms for the international exchange of experience should be encouraged to facilitate the learning process and help solve problems that may arise in the course of implementation. One example of such an exchange is the international conference on Compacts Implementation that took place in Estonia in early March 2005. The conference served as a forum for sharing of success stories and implementation problems from England, Estonia, Canada, and other countries.²⁵ The advantages of such an exchange became evident as experts from countries with actual or draft compacts raised examples of such “successful transfers” of information. The Canadian Accord was drafted on the basis of the English Compact; Estonians studied the four UK compacts in order to develop their EKAK; Romanians have sought to learn from other countries’ experiences to help launch a successful compact campaign.

The strong national character of each policy document on cooperation does not allow the internationalisation of the documents themselves, and each national example remains unique.

²⁰ See EKAK Implementation Plan at <http://www.ngo.ee/4307>

²¹ Based on input from Kristina Mand, Executive Director of NENO, presentation at the conference on Civil Society Excellence, March 3-5, Tallin, Estonia.

²² <http://www.um.dk/en/menu/DevelopmentPolicy/DanishNGOs/>

²³ Based on input from Douglas Rutzen, President of ICNL, presentation at the conference on Civil Society Excellence, March 3-5, Tallin, Estonia. See also <http://www.un.org/esa/agenda21/natlinfo/wssd/germany.pdf>

²⁴ http://www.thecomact.org.uk/C2B/document_tree/ViewACategory.asp?CategoryID=44. This Code, which is useful for anyone seeking or using public funds, was published in 2000 shortly after the Compact was signed, and revised and republished in 2005.

²⁵ See www.ngo.ee

In Poland, for example, the national “compact” differs significantly from other European examples, which developed first at a national level. One of the reasons for that is that in Poland, local documents for the third sector’s engagement in the delivery of public services were developed years before a national cooperation policy document was considered. As a result, the scope, objectives, legal force, and priorities of the national compact are specific for that country only, and their transfer to another national set of circumstances will not only be difficult and pointless, but also dangerous.

An intense process of international exchange of concepts, principles, models, and – lately – experiences, has been going on since the first compacts were signed and has begun to influence practices. The partial “transfer” of expertise and experience from other places can be extremely useful in designing an effective implementation process, and can help to avoid unnecessary implementation errors and failures.

II. How should a successful implementation process be structured?

“Compacts don’t work all by themselves as if by magic.”²⁶ Implementation requires substantial effort if a compact’s objectives are to be achieved.

The initial period of enthusiasm following the adoption of a compact often gives way to difficulties in implementation that far exceed the problems associated with preparation and signing of the policy document itself. Joint groups and committees are formed to review and monitor how the parties fulfil their undertakings. Reports summarize major obstacles and recommend future strategies.²⁷ The focus turns to implementation plans recommending actions, identifying good practices (and bad practices that provide valuable learning points), proposing schedules, allocating responsibilities, and establishing mechanisms to monitor what has been achieved and what remains.

For example, the Report group on the Scottish Compact found that: the Compact should have been implemented better by both parties; awareness of the Compact must be raised; leadership and political commitment are essential; capacity building across both sectors needs further attention; and monitoring and evaluation are crucial. The group proposed a three year strategy to implement the Compact in view of these findings, one that would take advantage of momentum towards good implementation.²⁸

These types of strategy papers assist in the practical realization of compact objectives, and promote systems for measuring progress and identifying obstacles to it. In other words, they help assess where the two sectors stand on the road to a better society, what has been done and what remains to be attended to, and propose future actions.

In England, where compacts have the longest history, the National Council for Voluntary Organizations (NCVO) convened a working group to develop a Mini-guide on local compacts implementation. The Mini-guide offers specific advice on how to prepare and achieve successful compact follow-up at the local level. The guide emphasizes several objectives: raising awareness (making the compact known through publications, internet posting,

²⁶ http://www.thecomcompact.org.uk/module_images/MG6%20Implementation.pdf

²⁷ See “Scottish Compact Implementation Strategy”, <http://www.scotland.gov.uk/library5/government/scimps-00.asp> and “The Paradox of Compacts: Monitoring the Impact of Compacts,” UL Home Office Online Report, 02/05, <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0205.pdf>

²⁸ Supra note 6.

briefing, etc.); identifying good resources and allocating responsibilities (finding competent staff, organizing discussions, etc.); making the best application and use (good planning, briefing, developing local codes, etc.); ensuring compliance (setting up monitoring, dispute resolution, and mediation systems); and evaluation (holding review meetings, revision, etc.)²⁹

In the following sections, we will consider the elements of a successful implementation process, keeping in mind that the process is often facilitated if implementation is considered at the time that a compact is negotiated. Among other things, we will address:

- What factors most affect successful compact implementation?
- At which stage of the compact process should these factors be considered, and how, in order to avoid later difficulties in implementation?
- Who should be involved in implementation and what role should each participant play?
- What systems of monitoring and review are most effective, and what difficulties have been encountered in administering these systems?

The timely and comprehensive consideration of these factors will, we hope, help build a working mechanism to achieve compacts' objectives to the parties' mutual benefit and for the well-being of society.

1. Mutual interest of the Parties

The success of implementation follows to a certain extent the path of drafting, negotiating, and adopting the compact. Experience demonstrates that the adoption of a compact is, as a rule, contingent upon the good will of the parties and a favourable set of circumstances – for example, an event of national importance affecting the third sector, successful negotiations between the public and the voluntary sector on another issue, the arrival of a new government whose members are personally well-inclined towards NGOs, the adoption of a compact in a neighbouring or otherwise close country, etc. As some compacts are not legally binding, successful implementation often depends on the good will of the parties to honour the commitments that they have undertaken.

If the parties are to remain committed to the implementation process, they must have a *mutual interest* in doing so, a commitment frequently reflected in the compact itself. The mutual expectations of the parties – including the contributions they are ready and willing to make and the outcomes they hope to achieve – must be clearly outlined. Where the compact focuses on an agenda that is “owned” by both parties, the chances that it will be realized greatly increase.

Scotland's compact presents an example of how a lack of commonality on implementation plans undermined effective compact implementation. In the Scottish compact the public sector undertakes to apply best funding practices and flexibility in the use of financial resources to support the voluntary sector, and the latter undertakes to promote good management practice and monitor and report on the use of public funds.³⁰ However, rather than come to agreement, the two parties decided to develop and use separate guidelines on the

²⁹ Idem.

³⁰ Idem.

implementation of the Compact for their respective stakeholders. The Scottish Executive drafted Good Practice Guides covering issues of funding, consultation, and working partnerships available to the public bodies involved in Compact implementation. The Scottish Council of Voluntary Organizations (SCVO), representing the third sector, issued Implementation Guidance to Voluntary Organisations. The existence of two separate guidelines as well as the change of the Executive in 1999/2000 caused a delay in promoting and implementing the Compact. This was acknowledged as a setback by both parties, who in response set up a joint review group to address the problem.³¹

The Compact Plus scheme – the new program recently launched by the English Government - acknowledges that lack of “ownership” was among the obstacles to good implementation. Each party thought that the other should take the lead. Other challenges include the diversity of views and priorities within the voluntary sector.³² To overcome these problems, the scheme includes plans, among other things, to create ‘Capacity Builders’ – an independent agency which will ensure “a sector lead focus” on partnership programs, fund management, coordination and successful implementation of the ChangeUp program. The increased capacity of the NGO sector is expected to help organizations take the lead in their own reform and in services delivery, and to improve their participation in policymaking. The promise of the scheme is that successful reform is more likely if the sector fully understands and leads reform rather than having it imposed by the government.³³

2. *Planning*

Effective implementation requires separate planning, monitoring, and reporting, often initiated at the time of negotiation of the document. In Estonia and in Scotland, the parties developed separate Implementation strategies with the object of reviewing compact achievements and examining difficulties, and outlining future actions. An implementation plan may also be drafted as a part of a compact (for example the Croatian Program for Cooperation includes a short section on implementation.) The plan may be periodically reviewed and amended, either as part of the process of revising a compact or separately.

Both approaches have a potential for success and the choice depends on national and political traditions and preferences. Planning implementation at the time of compact adoption ensures that the parties agree on general guidelines for future actions. A more detailed implementation strategy developed after the compact’s adoption facilitates the allocation of tasks and responsibilities as well as development of specific steps to implement the compact’s provisions, based on data gathered from assessment and the initial implementation experience.

Various mechanisms have been introduced to ensure effective planning, both during the negotiation of the compact or later, during the course of the implementation process.

- English governmental agencies have formed their own action plans, and the compact itself provides for annual reviews and planning;
- A separate working group or entity can be created as part of a planning scheme for compact implementation – for example in the England a special body has been formed to coordinate the two parties’ efforts – the Active Community Unit (ACU). Its role is

³¹ Supra note 6.

³² “Developing Capacity: Next Steps for ChangeUp”, at http://www.homeoffice.gov.uk/docs4/ChangeUp_16pp_web.pdf

³³ Idem.

“to promote the development of the voluntary and community sector, and to encourage people to become actively involved in their communities,” including through “development and implementation of the Compact.”³⁴ The existence and the work of the ACU are of considerable importance in appropriate implementation, monitoring and coordination.

- In Scotland voluntary sector liaison offices were created within the Executive at the outset and held responsible for the implementation of the compact;
- Estonians established a Joint Committee consisting of the two sectors’ representatives, which elaborated an Implementation Plan for EKAK; specific targeted events (discussions, meetings, etc.) have been organized to meet the EKAK commitments;
- In Canada, the Voluntary Sector Initiative launched in 2000 encompassed the adoption of the Accord as well as the institutional framework for its implementation and monitoring and evaluation mechanisms.³⁵

These experiences, however diverse, suggest that planning is essential at the outset of the compact process. At the same time, a flexible approach to the stages of implementation should be adopted by the parties as it facilitates adaptation to a changing environment, taking into account new priorities, obstacles, and players.

a. how early?

The question of how early the implementation process should be considered appears rhetorical: preparations cannot start too early. It is only logical that implementation of a compact should be considered as soon as the concept of an agreement is introduced. For example, the English compact includes implementation provisions that were discussed and adopted together with the rest of the document.³⁶ However, attitudes, as well as implementation mechanisms, may change over time. The lessons learned from practice should be used to adapt implementation policies to the current political, social, legislative, economic, and/or cultural environment.

A very good example of such flexibility has been shown by the Estonian government. The Estonian EKAK³⁷ was the result of bilateral initiatives and nation-wide public discussions. Initially, the implementation process turned out to be slow and difficult, but both sides responded with renewed initiative. By 2003, a Joint Committee formed, with representatives of government (8) and non-profit organizations (14). In August 2004, the Estonian government adopted the 2004-2006 Implementation plan for the EKAK on the basis of the work of the Committee. This was the first example of the use of a separately developed document in connection with implementation of a compact. The Implementation plan formulates goals, activities to achieve each goal, as well as the specific indicators to measure achievement. It allocates responsibilities, and fixes a schedule. Although the Implementation plan was drafted in pursuit of the EKAK’s short-term priorities,³⁸ it also came as a result of the joint efforts and understanding of the government and the non-profit sector on the essential aspects of civil, legislative, and economic life in the country and on the importance of adopting a comprehensive approach to the solution of problems in these fields.

³⁴ <http://www.homeoffice.gov.uk/about-us/organisation/directorates-units/communities-group/acd/acu?version=1>

³⁵ <http://www.vsi-isbc.ca/eng/about/index.cfm>

³⁶ Supra note 2 and 3.

³⁷ Supra note 3 and <http://www.emy.ee/alusdokumendid/concept.html>

³⁸ <http://www.emy.ee/eng/alusdokumendid/concept.html>

3. The influence of a compact's provisions on successful implementation

The content and scope of a compact depends on a number of factors, including national political and legislative traditions; the current political and social environment; timing; models used in the drafting process; particular features of the discussion and negotiation process; and personal preferences of the drafting team. One approach to drafting a compact is not necessarily superior to another in terms of assuring good implementation; England and Estonia achieved similar results despite their differing approaches to content.

In England, the Compact is a comparatively short document outlining the general framework for future cooperation. By contrast, in Estonia, the EKAK is detailed, addressing many aspects of cooperation and elaborating means for its implementation as well. However, in both countries, compacts have been popularized and have seen substantial progress towards effective implementation. Significantly, both countries have implementation plans of local and national, and maybe even international, importance: the Mini-guide on the implementation of local compacts in England and the EKAK Implementation Plan. The former lists the main steps to take and proposes a checklist of activities at the local level, and the latter is, like the EKAK itself, more detailed and instructive, including schedules and specific tasks and responsibilities. These are two different but equally successful approaches towards the follow-up stages of a compact, which illustrate that the different approaches to the contents of compacts do not necessarily entail different probabilities of successful implementation.

Regardless of the approach towards the content of the compact, experience demonstrates that the text should provide clear guidelines on implementation. These guidelines can provide for:

- Formation of working groups, as in Estonia,
- development of follow-up documents,
- Codes of Conduct, as in England,
- the process for review and revision, like in almost all compacts adopted in Europe.
- specific deadlines, as in the Estonian EKAK,
- space for flexibility, as in the Croatian Program.
- Allocation of specific responsibilities regarding implementation, as in the EKAK,
- allocation of general responsibilities as in the Scottish Compact.

However, the approach towards formulating a compact should not be engraved in stone. The parties should remain flexible, taking into account the change in political, economic, and social environment. New circumstances call for reconsideration of the contents of a compact. In England, for example, the Government recently adopted a new program called “Strengthening Partnerships: Next Steps to Compact.” The program acknowledges that the Compact might not have worked well because, among other reasons, both the agreement and the Codes are too lengthy – about 140 pages altogether. As a result, both the government and the community sector may have had difficulty complying with the terms of these documents.³⁹ To overcome this problem, the new “Compact Plus” is designed to be a much simpler and “more succinct tool” that will enable organizations to evaluate their compliance more easily.

³⁹ http://www.homeoffice.gov.uk/docs4/Compact_61pp_web.pdf, p.7

4. *Dissemination of information on the policy document*

Almost every country with a compact has experienced the need – at an earlier or later stage – to convey information *about* compacts and *how* to implement them to all players and to the public. As a key objective of these documents is to encourage public participation in political life and to raise the level of services delivered to the public, the public must be included in the awareness building campaign. Moreover, the commitments established in a compact cannot be fully met if the document is left in the folders of those who have signed it, so the parties must also be targeted by the campaign. Awareness-raising has been recognized as a crucial factor in facilitating implementation and is considered among the most important next steps in compact implementation processes in Estonia, Canada, England, Wales, and Scotland.

The English Mini-guide on Local Compacts Implementation advises that a Compact should be popularized in every way possible: on web sites; at events; through publications; newsletters; and interviews; etc.⁴⁰ It also underlines the importance of the emotional aspect of publicity with the advice: “Communicate your Compact imaginatively and with enthusiasm.”⁴¹ Communicating competence and optimism is perhaps a secondary, but still an indispensable element of awareness-raising.

A number of factors contribute to an effective publicity campaign. One key element is a working system of statistics analysis and research. The collection and targeted distribution of data can play a crucial role in successful implementation. Experts from various fields who have participated in compact development can assist in awareness-raising by providing explanations of the compact and implementation activities.

Even in England, where compacts originated (and reputedly one of the best countries for follow-up activities and implementation), awareness of the Compact’s existence is still considered low.⁴² The lack of broadly applicable mechanisms for compact promotion may account in part for the low level of awareness. For example, on the public side, some government departments were very active, with senior officials visiting regional offices, publishing materials, running workshops, discussing compacts at internal events, and mentioning them on any available occasion. Others, however, were not, instead relying on one “champion” (see s.6.b) or treating the compact as irrelevant to their work. These attitudes changed with the launch of new policies demanding a more diversified range of service-providers and, therefore, wider participation of the voluntary sector in government decision-making and closer cooperation between government departments and voluntary organizations.

Internet sites are a modern means of information dissemination - easy, accessible to a broad audience, and frequently rich in content. NGOs’ web sites or sites specifically created to offer updates on compact implementation, as well as government sites, can be used to disseminate information. For example, in England there is a website containing information regarding the national and local compacts.⁴³ The data is recent and reliable; and therefore, targeted to achieve its objective – making available comprehensive information about the compacts – their drafting and adoption, discussions, review, revisions, practice, and contacts – to anyone

⁴⁰ http://www.thecompact.org.uk/module_images/MG6%20Implementation.pdf

⁴¹ *Idem*.

⁴² Based on input from Richard Hebditch, NCVO (presentation at the Conference on Civil Society Excellent, Tallinn, Estonia, March 3-5, 2005)

⁴³ *Supra* note 2.

interested. This method works well in Estonia too, where the site of the Roundtable of Estonian NGOs offers the texts of EKAK and the Implementation Plan as well as activity reports and other interesting information. A special web site that is part of the Voluntary Sector Initiative in Canada⁴⁴ includes the text of the Accord and related initiatives, the institutional framework, reports, research and statistics, etc. It is regularly updated as well.

Organizations that work in more than one country and thus have access to comparative information regarding compacts also assist in creating awareness. The International Center for Not-for-Profit Law has posted on its web site⁴⁵ not only descriptions of and articles on compacts (e.g., from France, Croatia, Estonia) but offers comparative research on related issues as well.⁴⁶

Other technological means can be deployed in the awareness raising process: CD-ROMs and video-presentations have joined workbooks and training sessions in the toolbox used by the Canadian government and the voluntary sector in implementing the Accord and the Codes of Good Practice.⁴⁷

Disseminated information requires regular updates. Changed circumstances and in some cases, revisions to compacts mean that publicity must change accordingly. This applies to websites as much as other means of dissemination, as neglect in updating a site may render it useless and sometimes misleading. In 2001, the French government created a site on “vie associative” and posted data relevant to the newly adopted NGO Charter.⁴⁸ The site contains the text of the document, description of the commitments by the government and the third sector and new developments relating to these commitments, contact information, and several other legislative and political documents, speeches, and news reports. This information is no longer up to date, however, and has lost much of its value and effect. Similarly, in Croatia, the site dedicated to the Government Office for Cooperation with NGOs and the Program for Cooperation with NGOs offers data posted in 2002 that, except for the text of the Program, is no longer relevant.⁴⁹ To some extent, the gap is filled by the site of the new National Foundation for Civil Society Development created to replace the Office.⁵⁰

One example of awareness-raising that could serve as a model is the annual designation in England of a “Compact Week.” This is “an annual awareness raising week to highlight how the Compact can help voluntary and community organizations in their relationships with central and local government.”⁵¹ During Compact Week, the two parties are asked to do one thing to promote the Compact or to learn more about it.

a. dissemination of best practices

Dissemination of best practices – cases where the government-NGOs relationship has improved as a result of a well-implemented compact - is an essential component of

⁴⁴ www.vsi-isbc.ca

⁴⁵ www.icnl.org

⁴⁶ See, for example, Daimar Liiv, *Guidelines for the Preparation of Compacts*, <http://www.icnl.org/journal/vol3iss4/Guidelinesforcompacts8.htm>

⁴⁷ <http://www.vsi-isbc.ca/eng/relationship/accord.cfm#codes>

⁴⁸ <http://www.vie-associative.gouv.fr>

⁴⁹ <http://www.uzuvrh.hr> (in Croatian)

⁵⁰ <http://zaklada.civilnodrustvo.hr/>

⁵¹ http://compact.live.poptech.coop/C2B/document_tree/ViewACategory.asp?CategoryID=35

implementation. It is closely related to information dissemination in that it is designed to make a compact well-known and facilitate its realization. The English Compact serves as a good example; the website dedicated to the compact includes a section on “sharing good practices.”⁵² It features success stories on Government and NGO practice in popularising the Compact and using its principles, establishing and developing cooperative relations, and building a good partnership on a national or local level.

Despite some achievements in dissemination of good practices, there is no set mechanism in England to identify such practices or to “highlight behaviour which is not compliant with the Compact,” as the Government recently acknowledged. Because a compact is a non-legally binding agreement, sanctions for non-compliance cannot be imposed. This can result in diminished effectiveness of compact clauses. Compact Plus (see above) is an attempt to provide sanctions to parties who have declared their adherence to the mandatory character of compact.

The Croatian National Foundation for Civil Society Development offers awards to mayors who have promoted good practices in cooperation with the civil society sector. The Foundation took over many of the functions of the Government Office for Cooperation with NGOs. That office (with the leadership and initiative of the former Director of the Office and current Manager of the Foundation, Mrs. Plavska-Matic) organized and coordinated the drafting, discussion, and adoption of the Croatian Government Program for Cooperation with NGOs. The award announcement is posted on the web site of the Foundation⁵³ and provides not only a forum for sharing best examples of implementation practices, but also an incentive for local administrations to seek NGO partners.

Various best practices can serve as models, as the above example shows: specific partnerships formed to pursue a local compact, closer cooperation between local authorities and NGOs, development of new forms of funding for the voluntary sector, introducing new improved systems for service-delivery, setting up discussion groups, initiating, drafting, and adopting local compacts, etc.

An interesting version of a “success story” took place and was popularised through the web site of the English Compact.⁵⁴ This was the Leicester case, which some consider a legal precedent on the Compact. Following a funding cut by the city council, voluntary organizations took the council to court. The court decided that fair consultations had not taken place and issued a judgment obliging the Leicester Council “to consult again with local groups after funding cuts were proposed.” The High Court ruled that funding to the voluntary bodies that had not been consulted about the cuts should be reinstated. The importance of the Leicester case is three-fold. First, by taking account of Compact principles, it underlines the force of the local compact as a document with which both voluntary organizations and local authorities should comply. Second, it serves as a reminder that compacts are not a one-party political paper; rather, they reflect commitments of (central and local) governments that cannot and should not be neglected even when the political party in office has changed. And third, it demonstrates the practical necessity of abiding by compact commitments, since if fair consultation with NGOs had taken place, the local council would have not had to pay the case costs and face the embarrassment “of having decisions quashed by a judge.”⁵⁵

⁵² http://www.thecomcompact.org.uk/C2B/document_tree/ViewACategory.asp?CategoryID=37

⁵³ <http://zaklada.civilnodrustvo.hr/news/>

⁵⁴ Supra note 2.

⁵⁵ <http://www.thecomcompact.org.uk/C2B/PressOffice/display.asp?ID=95&Type=2>

5. *Parties' involvement: joint implementation strategy*

All parties to the discussion and adoption of a compact must be involved in preparing a sound implementation scheme. Even when the compact is unilaterally adopted or is not legally binding, commitments are more likely to be respected and met by a party who has participated in drafting the agreement. In addition, experience with drafting helps establish a more consistent and long-lasting practice of meetings, discussions, and joint work, which has proved to be one of the basic factors for a well-prepared, efficient, and well implemented cooperation document

David Carrington, a member of the English ACU, emphasizes that a joint strategy increases the chances for a successful implementation because it takes advantage of the strengths of both sides.⁵⁶ The Estonian implementation plan was developed by experts of government and the third sector, through a Joint Committee and shared chairmanship of the working groups. According to participants, this approach worked well, and highlights the benefits of a close and active involvement by both sides. It could also be applied in a flexible manner in other countries to contribute to a successful implementation program.

Similarly, the French State-Associations Charter provided for a three year evaluation of its implementation. The evaluation was assigned to the National Council for Associative Life (CNVA) which involves NGO representatives and government members in advising the Government on issues related to the third sector.⁵⁷

The parties can adopt a “joint” working plan even if it is a result of the initiative or the efforts of just one of them. For example, in Croatia, the Program for Cooperation was developed by the government unit for cooperation with NGOs, although the input of numerous organizations (about 30,000 NGOs) was invited and considered.

6. *Institutional framework for PD implementation*

*a. liaison bodies*⁵⁸

The Compacts implementation process requires an adequate institutional framework if it is to function effectively. Good implementation is often accomplished by means of specific bodies with defined responsibilities for liaising with the other sector and for carrying out the compact's terms. Compacts are in the first instance political rather than administrative tools. They are crafted and adopted first by politicians, and are then implemented by civil servants. The creation of specific liaison and implementation bodies can be a first step towards a successful transition from the political to the administrative realm. The “administrative viability of institutions for ongoing development” is one of the decisive tests of implementation success.⁵⁹

⁵⁶ Supra note 3.

⁵⁷ http://www.worldvolunteerweb.org/dynamic/infobase/pdf/2002/FRA020501_charter_state_ngo.pdf

⁵⁸ See for more Bullain, N., Toftisova, R., A Comparative Analysis of European Policies and Practices of NGO-Government Cooperation, March 2004, p.3, available at <http://www.policy.lv/index.php?id=102865&lang=en>

⁵⁹ Phillips, S., “Striking an Accord,” Paper presented to the Annual Meeting of the Canadian Political Science Association, Toronto, May 29, 2002

Such bodies have been established primarily in the public sector, which often carries a heavier responsibility for implementation. Much of this has to do with the logical expectations of the government party to a compact – it is mostly governments that have committed to *give* while the non-profit sector is expected to *accept and report* properly. In Canada, a government division responsible for non-profit and voluntary affairs was created at Social Development Canada, part of the Voluntary Sector Initiative. The Division develops policy related to the non-profit sector, coordinates joint initiatives, and facilitates the Accord’s implementation.⁶⁰ The process is monitored by a Joint Steering Committee.

The Scottish Compact focuses, in its Implementation section, on governmental commitments to form and maintain an administrative unit to “promote voluntary sector interests” as well as to ensure that all departments within the Executive have such units. The Scottish Executive has appointed officers in its Voluntary Sector liaison offices with responsibilities for the third sector and Compact implementation, review, monitoring, and evaluation.⁶¹

In Croatia, the Government Office for Cooperation with NGOs not only carried out coordination of the development and adoption of the Program for Cooperation with NGOs but also launched the initial stages of the Program’s implementation.⁶² The Estonian government appointed ministers as members of the Joint Committee that elaborated the EKAK Action Plan.

b. “compact champions”

Compacts are implemented by people and it is important to successful implementation that these people have specific responsibility for implementation, and a good understanding of compact principles. They should also have adequate capacity to carry out their jobs.

There is no such specialty as “compact-drafter” or “compact-implementer.” These skills are acquired through practice and are usually found in those who have dedicated themselves to promoting cooperation between the public and private sectors. For example, in Estonia, the leaders of two of the biggest NGOs in the country – Kristina Mand (NENO) and Mall Hellam (Open Society Foundation) -- have been among the most active participants in compact-development mechanisms since the initial phases of compact negotiation. They have become experts on cooperation issues as a result. More recently, they have served as co-chairs of two of the working groups for the EKAK Implementation Plan.

In England, so-called “compact champions” have been designated to promote the compact or one of the codes adopted on the basis thereof. These are qualified individuals devoted to the compact’s ideals. In England, at the central government level, these champions were initially senior officials within various departments who were assigned to drive the Compact forward. These appointments had varying results. For example, it was established that certain champions who “embraced that responsibility...with enthusiasm” indeed fulfilled their tasks.⁶³ Others left Compact promotion to other officials with an interest in the process. Where the assigned minister viewed the Compact as a political priority, other officials followed his or her lead, and the department took active steps (including allocation of funds) to implement the agreement. The lesson learned from these experiences is that understanding

⁶⁰ <http://www.vsi-isbc.ca/eng/about/vsad.cfm>

⁶¹ www.scotland.gov.uk/scottishcompact

⁶² Supra note 54.

⁶³ HM Treasurer’s Cross-Cutting Review of 2002, supra note 13.

and acceptance of compact principles by senior state officials and careful selection of responsible “champions” for the implementation process is critical to a successful implementation effort.⁶⁴

The importance of the personnel factor is clearly illustrated by the Croatian example. As mentioned above, the Government Office for Cooperation with NGOs has been a leading body in the Program for Cooperation process since the outset. The role of its former director – Mrs. Cvjetana Plavska-Matic – must be highlighted, as the launch of the program was largely a result of her personal initiative. After Mrs. Plavska-Matic left the office, the position remained unoccupied for some time, due to the new Government’s lack of interest in the Program’s implementation. The result was that the text of the program has not been revised since its adoption, despite a requirement in the Program, and most implementation activities have been “frozen.” The lack of political will in the new government is the primary contributing factor; however, the negative impact of a key player’s departure is beyond dispute.

The role of competent “compact staff” can be essential both for awareness-raising and for meeting promises and commitment. In England, interviewed government personnel expressed frustration ‘with the failure of central government to comply with Compact requirements, both on funding and, particularly, on consultation.’⁶⁵ In one department the staff even responded to a central government circular with the comment that it was inconsistent with Compact principles.

Formation and training of staff can be a part of the compact discussions and drafting. Experts can provide training to all engaged in the implementation process so that the number of persons actively contributing to that process expands. The English local Mini-guide advises to: “[p]rovide training so that people know how to use your Compact.”⁶⁶ The Croatian Foundation for Civil Society Development has listed, as among its primary functions, training of public servants to increase their capacity to implement joint projects with the civil sector.⁶⁷ The Estonian EKAK provides for the inclusion of civic society related topics in training programs for officials. The heads of civic organizations are also included in the training programs. Civic education in Croatia has been advanced by university programs offering a Master’s degree in Non-profit Management. Increasing capacity of the voluntary sector to “meet the demands placed on it”⁶⁸ and to serve society has been one of the first phase priorities of the Canadian Voluntary Sector Initiative as well, and the increased third sector skills, knowledge, and capacity to manage resources have been reported as one of the Initiative’s achievements.⁶⁹

c. the role of experts

The role of legal and other experts in the preparation of policy documents for cooperation can, on the one hand, be considered only technical. They draft the compact, advise on its content, and participate in working and discussion groups. On the other hand, their contributions can be much wider and their roles more decisive to a successfully implemented compact, during and after the process of its drafting and adoption. By providing advice on the proposed

⁶⁴ Supra note 13.

⁶⁵ Supra note 13.

⁶⁶ Supra note 45.

⁶⁷ http://zaklada.civilnodrustvo.hr/foundation/mission_vision_goals/

⁶⁸ http://www.vsi-isbc.ca/eng/about/cjt_general.cfm

⁶⁹ http://www.vsi-isbc.ca/eng/about/cjt_general.cfm

content, experts can influence how the compact's provisions will affect its implementation. They can also advise on factors that contribute to successful compact implementation, and participate in the training process in order to ensure that both sectors have competent staff to carry out implementation activities.

In all countries where a compact process has been launched, the use of experts has been a logical and inherent part of the process. Lawyers, economists, sociologists, and other specialists are usually involved from the outset and can be an asset in the follow up stages as well.

7. *Momentum*

A timely implementation kick-off is of paramount importance to the success of a compact implementation campaign. Of equal importance is the building of momentum after adoption of a compact and through the launch of the implementation campaign. In other words, the parties should not wait too long after signing the agreement before beginning implementation of its commitments. As the English experience shows, lengthy preparations pose a risk that the best time for a launch will pass, and the issues will become "too cold."⁷⁰ A prolonged gap between the publication of a compact and the start of implementation takes the issue off the agenda. Interest and enthusiasm diminish, and opportunities to initiate activities wane. Once momentum is lost, new activities designed to keep issues hot may become necessary. These may include renewed discussions, publication of explanatory documents, distribution of success stories, or revision and redrafting of the implementation plan where one exists.

The second Annual Review of the English Compact remarked that "[c]ompact development at both national and local level seemed to have lost its momentum."⁷¹ This was attributed to insufficient support provided by central government departments "and a decline in support from intermediary organisations such as the Local Government Association..."⁷²

In order to build momentum, implementation and monitoring should be planned together with the compact itself. A well implemented compact may in practice depend on political will, culture, and traditions in a given country. However, good monitoring mechanisms and a clearly defined allocation of responsibilities at the outset helps to avoid some potential obstacles, and strengthens the links between the drafting, adopting, and implementation phases.

The French NGO Charter was signed in 2001 during the celebrations of 100 years anniversary of the Law on Associations. The year was also declared an International Year of Voluntarism – an ideal time to promote the role of NGOs in political and social life in a country where associative life has strong traditions.⁷³ The Government undertook to implement some activities, mostly those related to the promotion of volunteer work and financing mechanisms. A government decree authorized public bodies to enter into multi-year agreements subsidizing NGO programs and an evaluation guide was drafted and published. Employees received additional rights to take time off to perform volunteer work. Laws providing for greater tax incentives, particularly those encouraging charitable donations, were enacted. Many of these

⁷⁰ http://www.thecompact.org.uk/module_images/MG6%20Implementation.pdf

⁷¹ <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0205.pdf> (2002)

⁷² *Idem*

⁷³ *Supra* note 53.

measures began before 2001 and therefore, the Charter did not introduce but built on them. The change of Government in 2002 sent the Charter to the state “frozen priorities” list and the momentum towards more comprehensive implementation was unfortunately lost.

8. *Review and revision processes*

As mentioned above, chances of successful implementation increase where implementation provisions have been agreed upon in the compact itself. It is advisable that the parties contemplate in the agreement important steps such as the *review* and *revision* of the compact. Such provisions demonstrate commitment to compact ideals even while acknowledging that implementation may take place under changed circumstances. Revising the compact is in itself a part of good faith implementation because it expresses the parties’ will to continue the improvement of their relationship – the main objective of a compact – under changed circumstances.

In practice, it is not easy to separate the process of adopting a compact and its revisions from the process of its implementation: they are inter-related. In the course of implementation, the level of preciseness, timeliness, and comprehensiveness of the compact articles is tested, which may lead to revision -- unsuccessful implementation may be attributable to a poorly written compact. A process of revision and amendment of the text may follow, in which implementation of the new content will again be attempted. The Scottish Compact, for example, will be revised due to lessons learned during implementation; a similar process is underway in Wales.

Review and revision provisions as a rule are found in all compacts. In Estonia, the provisions of EKAK regarding such revisions are quite clear: the Government and representatives of the civil society sector (the Round Table of Non-profit Associations) are tasked with preparing annual action plans and creating a mechanism “for on-going monitoring and assessing of the implementation process of EKAK.” Reporting on implementation at the parliamentary level takes place every two years, and parliamentary discussions on proposals for amendment of the EKAK are to be organized every five years. All parties concerned have so far complied with their allocated responsibilities, including the Joint Committee, the Government, all public institutions, and the civil sector.⁷⁴

Under the English Compact, implementation review is done jointly by the Compact Working Group, the Government, and the Local Governments Association at a regular annual meeting. The participants review progress in implementing the national Compact and Local compacts and agree on an action plan to take forward the Compact for the year. A summary of the meeting’s discussions, together with proposals and concerns raised by the voluntary sector, are submitted to Parliament and published on the Internet.⁷⁵

The Scottish Compact also confirms the parties’ commitments to ensure a good monitoring, review and evaluation procedure and to report to parliament. In 2003, the Compact was reviewed and revised to ensure that its principles were up-to-date. Mapping studies, case studies, and best practices are underway as part of a broader evaluation process, which aims to reach conclusions on the progress of implementation and the impact of the document.

⁷⁴ See www.ngo.ee, <http://www.riigikogu.ee/?id=15034>, www.emy.ee

⁷⁵ http://compact.live.poptech.coop/C2B/document_tree/ViewACategory.asp?CategoryID=55

The Croatian Program for Cooperation also envisages annual meetings between the Government and the civil society sector to “revise and analyse actions within the Program.” The report from these discussions must be made public and submitted to Parliament. However, due to the change of government and its priorities, and to staff changes in the government body responsible for the Program’s implementation, these activities have not taken place. The text of the Program has not been revised and analysed.

“The Paradox of Compact: monitoring the impact of Compacts,⁷⁶ a report from the Home Office in England, emphasized the importance and impact of compact reviews. In 2002, Her Majesty’s Treasury commissioned and published a cross-cutting review of the role of the voluntary and community sector in service delivery, which “saw the Compact as underpinning the expansion of the sector’s role”⁷⁷ and confirmed the Government’s commitment to the Compact. Many interviewees commented that the cross-cutting review had raised the profile of the Compact. In addition, several seminars to discuss the review were held or planned by government offices and these were expected to increase awareness of Compact content and values and facilitate its implementation.⁷⁸

9. *Monitoring and reporting mechanisms*

Virtually all compacts require monitoring of compliance. The parties generally recognize the need for ongoing monitoring of how their commitments are being fulfilled and appoint specific bodies responsible for monitoring and evaluation. Sometimes these are joint institutions – like the Joint Committee in Estonia or the Joint Steering Committee in Canada – and in other instances are units formed by a particular sector, such as the specialized unit assigned to the Executive in Scotland.

Most “compact countries” establish mechanisms for parliamentary reporting (whether they function in practice or not.) This signifies the importance attached to the process of compact implementation. In certain cases, the Parliament actually takes part in the discussions – as in Estonia -- and in others, it is simply informed about compact-related developments.

In England, parliamentary discussions during the Compact Annual Meeting allow for questions on Compact implementation, to which Government Ministers must respond. The action plan proposed by the Working group meeting must be approved by Parliament, thus setting up a system of parliamentary control. Currently, a more active role for Parliament in the compact process is under consideration.

All compacts establish specific and, generally, very limited deadlines for reporting: two years in Estonia; annually in England and in Croatia. The French State-Associations Charter is reviewed every three years, and the Welsh Compact, every four years. The regularity of the review and reporting mechanisms appears to be considered essential for effective parliamentary control. Even more effective is the system of public reporting on compact implementation developed in Canada, because of the wider public impact of the reporting and the greater possibility for public opinion to influence the implementation process. Joint public reports and separate background papers on Accord implementation are regularly published.

⁷⁶ <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0205.pdf>

⁷⁷ <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0205.pdf>

⁷⁸ Idem

10. *Mediation and dispute-resolution system*

The adoption of a compact indicates that there is already an advanced relationship between public institutions and the civil society sector. Nonetheless, it is inevitable that disputes and problems will arise. How to resolve these disputes, and whether existing means of dispute resolution or mechanisms specific to the compact should be employed, are issues confronted in a number of compact countries.

The most obvious avenue of dispute resolution is the judicial system. At least in theory a party (most likely the civil society sector) may take its counterpart to court and claim a breach of the latter's obligations under a compact. The Leicester case mentioned above demonstrated that this mechanism may also be effective in practice. One problem with the courts is that compacts, as a rule, are not legally binding. Although the precedential effect of the Leicester case is even greater in the light of the non-binding nature of the Compact; it is still uncertain whether in other countries courts will give similar effect to a compact's provisions. Alternative means of problem solving therefore need to be developed, preferably of a more flexible and less drastic nature – for example, mediation systems.

England actually has such a system – the Compact Mediation Scheme funded by the Home Office. The scheme is run by the Centre for Effective Dispute Resolution (CEDR) which has an extensive experience in resolving disputes on diverse issues, and as of January 2005 had worked on over 8000 cases. The Centre has mediated Compact-based disputes between government or local public bodies and voluntary organizations since March 2003. It operates the mediation scheme on behalf of the Home Office's Active Community Unit.⁷⁹ According to Home Office Minister, Lord Filkin, the “new mediation service provides an independent way of resolving disagreements quickly.”⁸⁰ The mediation system in England has great potential, but has not yet become popular as a dispute-resolution mechanism for compact related issues.

Also in England, the Program on Compact Advocacy run by the National Centre of Voluntary Organizations offers legal assistance and, within the Compacts Problem Resolution program, provides negotiations, advocacy, and lobbying or campaigning services on behalf of voluntary organizations to help them find solutions against a Government department or agency that fails to comply with a Compact.⁸¹

The Parliamentary Ombudsperson is another institution used to improve and provide supplementary resources to the implementation process. It is available to assist citizens who seek redress where a public institution has infringed their rights or neglected its duties, including cases of non-compliance with a Compact (national or local).

The new program “Compact Plus” in England anticipates a new mechanism for dispute-resolution. The new Compact, which will be shorter and simpler in content, will require membership – public sector bodies and voluntary organizations will opt to join. They will elect a Compact Champion who, among other functions, will adjudicate complaints of breach

⁷⁹ Before that, CEDR operated, together with the National Council for Voluntary Organizations, a joint mediation service available to all charities and voluntary organisations.

⁸⁰ <http://www.cedrsolve.com/casestudies/index.php>

⁸¹ http://compact.live.poptech.coop/C2B/document_tree/ViewACategory.asp?CategoryID=54

of Compact Plus. Sanctions will include a publication of the resolution and potential withdrawal of Compact Plus membership or imposition of penalties or compensation.⁸²

III. What are the indicators of successful Compact implementation?

1. The Search for measurable indicators

Now that a number of compacts are in their implementation phases, it is appropriate to ask “*how to recognize success?*” How are the parties – and society in general – to be sure that these initiatives have not been useless and expensive wastes of time? Are the mere statements of the government and CSOs that they have begun to work together sufficient?

To answer these questions, compact proponents have worked to develop monitoring and evaluation tools to measure the progress of compact implementation against the compact’s goals. This has led to a search for appropriate indicators against which to measure progress. As compacts are still a relatively new phenomenon, there is little information available regarding whether progress has actually been achieved. However, a number of countries have begun to develop indicators that will assist in making this determination, and a summary of the lessons learned from this process follows.

Selection of appropriate indicators depends on the goal of a particular compact. For example, improved services (social or other) to citizens on a national or local scale can serve as an indicator for a well-implemented compact where the document has the goal of public-private cooperation in the delivery of services. So, to the extent that one could measure the degree to which particular services improved as a result of compact implementation activities, it would undoubtedly be considered a clear sign of effective implementation.

The difficulty that arises is how to measure this improvement -- how to quantify the impact. So, for example, one quantifiable indicator might be the increase in the number of NGOs delivering public services on a national scale or, perhaps, at a local level. Alternatively, where competition exists, it might be possible to estimate the percent of clients that have chosen NGOs as their service provider. However, these indicators, while easy to measure, fail to address a key component of improved service delivery – higher quality services. Thus, the search for appropriate indicators might lead to measures of client satisfaction with services – more difficult and likely more expensive to quantify. Moreover, compact results may not appear immediately, and when results are achieved, it will not always be clear whether they arose from the compact itself, or from other circumstances and events. In either case, results are often not easy to measure, as it is difficult to capture the impact in terms of the parties, relationship, service delivery or other goals.

The search for appropriate indicators is significant to the parties’ credibility and accountability, both to each other and to the public. The government may say that a compact has resulted in better public participation in legislation; but if it is to be truly accountable, and the investment in the compact justified, then the improvement must be quantified. For example, it may be demonstrated by showing that today a smaller number of draft laws are adopted without public participation than before the compact. NGOs may claim that the government has not fulfilled its commitment to increase funding for the third sector; however,

⁸² http://www.homeoffice.gov.uk/docs4/Compact_61pp_web.pdf, p.8

this could be shown to be false if adequate statistical data indicated the contrary. In Canada, the Accord's implementation has brought 70 changes in the regulatory framework for the voluntary sector. The commitment to increase knowledge about the sector has resulted in the preparation of three national surveys on non-profit related issues⁸³ - figures that help estimate the concrete impact of the Accord to the public.

The success of implementation can not be measured solely by fulfilment of the compact's undertakings. For example, if a compact provides for a government agency or other unit that would secure the third sector's interests, the establishment of such a body does not necessarily lead to fulfilment of the compact's objectives, e.g., an improved profile for the sector. The agency must also achieve results by functioning in accordance with its allocated responsibilities and meeting the objectives of the compact.

Successful implementation is a process, and a young one at that, so development of appropriate indicators is still underway. In Estonia, the NGO sector led by NENO has undertaken the challenge to draft a set of indicators and expects it to be ready by the end of 2005.⁸⁴ Development of indicators is one of the next steps in Canada's Accord implementation as well.

There are a number of possibilities for a more tangible measurement of implementation of compacts, depending on their specific goals:

- a. *the number of legislative acts adopted using public participation procedures;*
- b. *the number of public discussions and consultations held on legislative drafts;*
- c. *the number of amended legislative acts in furtherance of compact or to facilitate its implementation (tax laws, laws on charity giving, procurement laws, etc.);*⁸⁵
- d. *the number of trainings organized for civil servants and non-profits on cooperation issues and compact implementation;*
- e. *the percentage of civil servants/NGOs/the general public aware of a compact's existence and content, and implementation tools (as established by surveys, for example);*
- f. *the number and dimensions of structural changes that have been made in governmental institutions and in non-profits in order to facilitate their relationship; for example, national and local liaison offices established on the basis of compact;*
- g. *the number of joint initiatives undertaken by the two sectors on a national and/or local scale;*
- h. *the amount of public funds transferred to not-for-profits;*
- i. *structural changes in government funding for NGOs (for example, prevalence of contract-based funding as opposed to grants);*
- j. *development, dissemination, and estimated use of performance evaluation procedures and rules;*

⁸³ Based on input from Marie Gauthier, Director of Social Development Canada Non-profit and Voluntary Sector Affairs Division (presentation at the Conference on Civil Society Excellence, Tallinn, Estonia, March 3-5, 2005)

⁸⁴ Based on input from Kristina Mand, Director of NENO.

⁸⁵ However, in these first three possibilities it may be argued that the impact of the introduced legislation should also be evaluated – there may be new laws which are not properly implemented or do not produce the desired effect. To the extent that here we only discuss compact implementation and its measurement, the general impact on society will not be considered.

- k. *the number of contracts for public services delivery signed and implemented between the state or local authorities, and NGOs;*
- l. *higher quality of public services delivered by NGOs:*

Despite some positive examples in the development and use of indicators, the challenge and the need for more tangible indicators remain. Their preparation and use will require efficient mechanisms for data collection, statistical research, information dissemination, and feedback evaluation.

2. *Is the number of codes of practice or other documents signed on the basis of the compact a good indicator of successful implementation?*

Some have suggested that, in those situations where a code of good practice is contemplated by a compact, the adoption of such a code can be used as a measure of successful implementation. The adoption of codes, however, is not likely to serve as a good indicator.

Codes of good practice have been envisaged by the English Compact and the Canadian Accord. Following up the Accord, two Codes of Good Practice have been signed in Canada: on Funding and on Public Policy. The English Compact designates five areas within which a code of good practice must be signed: black and minority ethnic groups, community groups, consultation & policy appraisal, funding and volunteering.

The adoption of a code of good practice is *not* in itself implementation of a compact. Political culture and traditions explain the existence of codes of good practice in the UK and in Canada and not in the countries with a continental legal system. Compacts aim at a better and more constructive relationship between the two sectors to the benefit of society.⁸⁶ This can be achieved by implementing a series of specific measures that are contained in the codes. Therefore, codes are means of implementing the compact and not the result of implementation itself. The web site of the Canadian Voluntary Sector Initiative recognizes as much: “The Codes of Good Practice are a resource of tangible, concrete ideas about how to take the spirit and guidelines of the Accord and put them into action in both government and voluntary sector organizations.”⁸⁷ In England, the codes contain specific rights and responsibilities of both parties which should be reflected in their relationships “to make it work.”⁸⁸

3. *Is the number of local policy documents signed a good indicator of successful implementation?*

From the national level, compact negotiations often move to the local level – and end with local compacts. This usually – but not exclusively – happens when the national compact provides for future local agreements to be signed. The adoption of local compacts in some countries – like England – is considered to be evidence of a successful national compact implementation process. As the national compact explicitly contemplates local compacts, the number of local compacts signed could logically be considered an appropriate indicator of successful implementation. Four years after the Compact was signed in England, there have been documented efforts towards the development of local compacts in 94% of the 388

⁸⁶ The motto of the Canadian Voluntary Sector Initiative is “Partnering for the benefit of Canadians.” See <http://www.vsi-isbc.ca>

⁸⁷ <http://www.vsi-isbc.ca/eng/relationship/accord.cfm#codes>

⁸⁸ http://www.thecompact.org.uk/C2B/document_tree/ViewACategory.asp?CategoryID=34

counties.⁸⁹ At the 2004 Annual Compact Meeting of the Compact Working Group, Government Ministers and Local Governments Association, one of the goals was to set up Compacts in all remaining local authorities by April 2005.⁹⁰

The February 2005 English report, however, concluded that quantity, i.e., the number of local compacts signed, could no longer be seen as the test of successful implementation. Rather, the focus turned to quality – whether local compacts are well-drafted, well-publicized, and effectively implemented.⁹¹ Therefore, despite the impressive number of compacts signed in the counties and regionally, a new (perhaps more difficult to measure) indicator for successful implementation seems to be taking hold – the quality of local policy documents on cooperation. “Quality” can be evaluated based on the impact of implementation efforts. This means that the process of measuring successful implementation is transferred to the local level.

Again, this is an issue closely related to political traditions and culture. The means of evaluation of local compacts cannot be transferred without revision from one to another country – largely because the goals of compacts are not all the same.

Recently, Croatia has registered its first “local charter.” In November 2004, the City Council of Rijeka adopted an NGO Charter regulating the cooperation between the City and local NGOs. The Charter sets City policy toward NGOs, emphasizing transparency in financing NGO activities. It provides for the creation of a Coordination Committee, which will consist of NGO representatives and City government representatives. The Committee will set standards for City departments that finance NGO activities, providing them with templates, procedures and objective criteria for evaluating NGO grant proposals. The NGO Charter is the first of its kind to be adopted by a municipal government in Croatia. The Vukovarska County has already followed the Rijeka example and has used it as a model for its own NGO Charter. Other local governments are expected to initiate the adoption of similar documents.⁹²

While the signing of these agreements may not necessarily be a good indicator of the success of a national compact, they are nonetheless encouraging, particularly given the delays in the implementation of the national Program for Cooperation mentioned above. They further present an opportunity for successful transfer of national negotiations and agreements to the local level.

Local compacts have been particularly important in Poland where they came into being independent of and *before* the national agreement. The first agreements between local authorities and the local community sector appeared in the 1990s with the purpose of uniting the sectors’ efforts towards improved public services. Polish local compacts were, therefore, more limited in scope than many; however, they went beyond most other compacts by addressing concrete technical issues shaping the cooperation between the parties rather than principles and values. Terms included the establishment of liaison offices, joint coordination bodies, funding, etc. The Law on Public Benefit Associations now makes adoption of local compacts mandatory for local governments.⁹³ More recently, an agreement similar to a

⁸⁹ Supra note 3.

⁹⁰ <http://www.thecomact.org.uk/C2B/pressoffice/display.asp?ID=38&Type=1&Search=true>

⁹¹ <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0205.pdf>

⁹² <http://www.icnl.org/PRESS/Articles/2004/20041126.htm>

⁹³ Law on Public Benefit Activity and Volunteerism (2003) Article 5, paragraph. 4.

compact has been signed among the public, business, and non-profit sectors; this document is a statement of shared principles of cooperation for the development of Polish regions and the role of NGOs in that process.⁹⁴ Obviously, the adoption of local compacts in Poland cannot be considered an indicator of the successful implementation of a national agreement, since they preceded it. Nonetheless, the Polish situation provides an interesting illustration of how local context must be considered in choosing indicators of success, as local circumstances vary so widely.

4. Improved relationship and joint follow-up activities by the parties

The relationship between the public and the private sector is not easy to evaluate and measure because it has numerous facets. More frequent meetings and discussions, common projects, or the signing of a local compact may appear to be evidence that the NGO/Government relationship has reached a higher level. But quantifiable measures may not bear this out. The parties need to demonstrate in a more rigorous fashion – to the public and to themselves – that their relations have moved from the stage of good understanding to that of cooperation and “working together.”

For example, in England the Compact Working Group conducts annual sector survey. In 2003, the survey found a significantly higher rate of improvement in relations in communities where local compacts were being developed. “A poll taken at Swale’s Local Compact event six months after publishing their compact gave a 27 per cent net improvement in the council’s relationship with local groups.”⁹⁵ This is compared to a 20% improvement across England in 2004. Therefore, despite certain problems and difficulties in compact implementation discussed above, the parties have achieved a noticeable improvement in their relationship through working together.

The Charter for Interaction between Volunteer Denmark / Associations Denmark illustrates another way to measure improved relations stemming from a compact. As discussed above, a key component of the Danish government’s development assistance strategy, and a moving force behind the Charter, was a need to strengthen small Danish NGOs in their provision of humanitarian assistance. In the Charter, therefore, the Government committed that “funding made available to NGO projects will to a lesser extent be channelled through a small group of large ... organisations”⁹⁶ and will be redistributed through a broader range of organizations. This was a public recognition of the need to accept as government partners more organizations that have a broader popular rooting. The change in the distribution of funding aims to preserve or raise the quality of assistance to developing countries while at the same time improving flexibility and strengthening the popular support for participating Danish NGOs by broadening the spectrum of funded organizations.

By 2004, assistance to the large NGOs has been reduced by 5 percent, and will be reduced to approximately 10 percent in 2006.⁹⁷ The established relationship of confidence made it

⁹⁴ Based on input from Zbigniew Wejzman, Support Office for the Movement of Social Initiatives in Warsaw (BORIS) (presentation at the Conference on Civil Society Excellent, Tallinn, Estonia, March 3-5, 2005).

⁹⁵ <http://compact.live.poptech.coop/C2B/pressoffice/display.asp?ID=106&Type=1&Search=true>

⁹⁶ *Idem*.

⁹⁷ http://www.um.dk/Publikationer/Danida/English/DanishDevelopmentCooperation/AWorldOfDifference/kap03_1.asp

possible to ensure that relief activities can be launched at very short notice, an important factor in implementing programs for humanitarian assistance.

IV. Conclusion

The history of the cooperation and collaboration between governments and the non-profit sector did not start yesterday. Institutionalised relationships supported by a legal framework and based on a policy document governing, however, date from quite recently. Compacts although not indispensable to the public-voluntary sector relationship in all countries, have proven, efficient, supportive, and sometimes even crucial to good cooperation in the interest of society. This is true on one condition: that the compact does not remain a paper but is instead diligently respected, complied with, and implemented by all concerned.

The lessons learned have come from both positive and negative practice – good and bad experiences have proven equally useful. These lessons include the following:

- a compact should be developed only where it is favoured by a legal, political, social, and historical framework that call for it and a by state of government-voluntary sector relationship that would benefit from it (England, Estonia, Canada);
- both sectors should be involved from the very beginning of the drafting and negotiating process (Croatia);
- implementation terms and plans can (and should be) drafted in tandem with a compact (Estonia);
- both parties should develop and apply jointly an implementation strategy (which did not happen in Scotland);
- compacts should be familiar to a wide audience, and the involvement in implementation of “champions” who know and “feel” them better can be an advantage (England, Canada);
- regular monitoring and reviews not only help establish progress in implementation of a compact but can also be used to evaluate its content and the need to revise it (Scotland, Wales);
- monitoring, reports and revisions should begin early on and should continue throughout the implementation process (Scotland, Estonia);
- when compacts work, the results can be felt by big and small stakeholders (Denmark);
- local compacts can be useful (England, Poland) but not absolutely necessary (Estonia);
- distributing best practice (England) and granting awards for successful compact implementation (Croatia) can boost the process making an agreement reality;
- the close involvement of high government officials in the compact implementation process improves the chances for quick results, particularly in the area of legislative reforms and funding schemes (England);
- data and statistics form an important element of compact-evaluation and implementation (Estonia).

The primary challenge faced by the two sectors now is the identification of tangible indicators to measure implementation. A set of such indicators will enable both parties to draw a clearer picture of how much the compact they have signed has contributed to a better working relationship. More advanced measurement schemes will help the parties to adapt the compact

to new realities. Further, they will assist in faster, simpler, and more effective implementation of all terms by both parties to the benefit of society.