



Inputs to the Draft Legal Framework for European Territorial Cooperation (ETC)

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Background

This paper sums up the key changes required to provisions of the Draft Legal Framework for the cohesion policy 2014-2020¹ with regard to ETC. It is a summary of two input papers, which build on consolidated opinions² of ETC programme stakeholders, available at www.interact-eu.net and to be consulted for further details and arguments. Even though a significant number of ETC stakeholders have contributed to their content, these papers cannot represent all possible opinions of ETC programmes managers and concerned institutions.

While acknowledging substantial progress for ETC, programme stakeholders suggest some further simplifications and adjustments. Following inputs can help ETC stakeholders to prepare for the 2014-2020 programming period, as well as for the negotiation of the provisions related to ETC in the Draft Legal Framework, within a Region or a Member State, with cooperation partners, the European Commission, Council or Parliament, etc.

Key points to be addressed

- 1. Thematic concentration (Art. 9 Gen. Reg.):** The current proposal disregards the complexity and some of the challenges faced by border regions (e.g. limited accessibility to services of general economic interest) and by transnational cooperation areas (e.g. demographic change). The **limitation of choice of thematic priorities to maximum four should be removed** also for these programmes, otherwise it will not be possible to select the most appropriate combination of solutions to common challenges. Moreover, cross-border cooperation areas have historically benefited from investment priorities like tourism and management of cultural and natural heritage, as well as transport accessibility beyond the TEN-Ts, which currently are excluded from the list proposed. It should be ensured that cooperation programmes can continue working on these objectives.
- 2. Macro-regional strategies:** A clear reference to Macro-regional strategies for the Investment for growth and jobs goal should be added, e.g. in the scope of support of the ERDF (Art.3 ERDF Reg.) or as an additional horizontal investment priority (art. 5 ERDF Reg.). For the success of these strategies, ETC cannot be the only financing source. Additionally, the **involvement of CBC programmes should be added to Art. 6(b) ETC Reg.**, where only transnational programmes are mentioned. Coordination with ENI CBC and IPA CBC programmes should be assured as well.
- 3. Indicators - proposed list of ETC core output indicators (Art. 15 and Annex to the ETC Reg.) does not reflect the specificity of cooperation objectives and should be revised.** The indicators could be removed from the ETC Regulation and approved later in the form of implementing act, this would give more time to prepare good list of common ETC indicators³.
- 4. Partnership principle (Art. 5 Gen. Reg.):** The extended partnership principle can undermine the effectiveness of ETC programme implementation, especially in big-transnational and interregional programmes. Involvement of too many actors in the MC of the programmes can block decision-making and influence negatively the impartiality of the MC as a main decision-making body of the programme. The principle of **proportionality** should be observed.
- 5. Geographic flexibility (Art. 19 ETC Reg.):** The limits set in Art. 19 (2) (b) should be dropped (20%, 30%). It should be sufficient to ensure that all activities are for the clear benefit of the programme area (in general, not only "the Union Part of it"). Moreover, to assure flexible geographic coverage, the possibility to have Lead Partners from third countries should be introduced in the Art. 12(4) ETC Reg., as several programmes have successfully implemented projects with e.g. Norwegian Lead Partners. Additionally, Art. 4(7) ETC Reg. should allow for the use of the funds not committed in due time under ENI and returned to intra-EU cooperation programmes for cooperation on external borders, derogating to the restrictions of Art. 19 ETC Reg.

¹ Relevant acts of the legal package are: COM(2011) 611 Proposal for Regulation [...]the European territorial cooperation goal (ETC Reg.), COM(2011) 614 Proposal for a Regulation [...] the European Regional Development Fund [...] (ERDF Reg.) and COM(2011) 615 Proposal for a Regulation [...] on the European Regional Development Fund, the European Social Fund, the Cohesion Fund [...] (Gen. Reg.).

² The opinions have been collected during INTERACT events on 25 and 26 October 2011 in Brussels, 2-3 November 2011 in Amsterdam, 9-10 November 2011 in Budapest, 24-25 November 2011 in Dublin, 8-9 December 2011 in Bratislava, 13-14 December 2011 in Geneva.

³ ETC programmes have already been involved in developing ETC indicators by INTERACT. A draft is available at www.interact-eu.net



6. **Role of joint bodies:** The role of joint programme bodies is not sufficiently reinforced and does not reflect the ETC nature. For example: The joint monitoring committee (JMC) role has not been extended e.g. to key decisions on programme management, the joint secretariat functions are not listed, Art. 23 ETC Reg. still emphasizes the AA more than the Group of Auditors, the accrediting body is a body of only one MS and MA sole responsibility on complaints (Art. 63 Gen. Reg.) potentially undermines decisions of the JMC.
7. **Accreditation (Art. 64 and 117 Gen. Reg. and Art. 24 ETC Reg.):** The requirement to have a separate accrediting body at Ministerial level of only one of the MSs participating in a programme is seen as problematic for ETC and in contradiction with the principle of cooperation. Moreover, this might cause serious delays in programme start and unnecessary additional audits. The most suitable and simple options for ETC programmes would be that either the **European Commission keeps its current accreditation role** or that the **AA with the Group of auditors assume this role** (or that any accrediting body has to rely on these audits).
8. **Partnership agreement (Art. 7(5) ETC Reg.):** A clarification is necessary as to what should be the scope of agreement to the programme to be submitted by the MS and how far it differs to current ETC practice. The requirement for coordination among the various Funds (art. 7.2 (c) ETC Reg.) needs further clarification.
9. **State aid:** State aid is not addressed by the draft legal package. If it cannot be solved at Cohesion Policy level, **efficient solutions for handling state aid in the ETC context needs to be found while updating the state aid guidelines.**
10. **Requirements and timing of programming:** There are many new requirements for the OP content (Art. 5 ETC Reg.) e.g. description of management and control system to be ready together with the OP, as well as short deadlines e.g. Art. 7 (2) (g), OPs of ETC programmes to be submitted within nine months of approval of Gen. Reg. and six months of adoption of the Common Strategic Framework. **A longer time is necessary for ETC, because of its multi-national decision-making procedures.** Also Art. 7(3) of the ETC Reg. providing for opinions from national equality bodies of all concerned MSs can lead to major delays.
11. **Technical Assistance (Art. 16 ETC Reg.):** Proposed minimum TA amount (1,5 Mio. EUR) is too low to ensure proper implementation of cooperation programmes and neglects the complexity of the multi-country approach and the geographical size of some programme areas. **Individual negotiations of TA rate for smaller programmes (e.g. below 50 Mio EUR ERDF) would be a better solution.**
12. **Co-financing rate (Art.110 (3) Gen. Reg.):** Proposed co-financing rate is 75% at priority axis level is lower than in case of "Obj. 1 - investment goal" programmes in less developed regions (85%), which makes it less attractive. Additionally the co-financing rate set at priority level limits the possibility to differentiate the level of co-financing in order to attract beneficiaries to some strategic priorities. **Establishing the co-financing rate at programme level and increasing the maximum rate to 85% for less developed regions is necessary.**
13. **ETC Eligibility rules:** Joint approaches and rules for eligibility of expenditures would be beneficial. European Commission should (in line with Art 17(1) ETC Reg.) adopt a delegated act to establish specific rules on eligibility of expenditure⁴.
14. **Administrative burdens on programme management can be further decreased and simplified:** A number of elements are introduced to simplify programme implementation and administrative burden. However certain new provisions (e.g. Art. 65(1) Gen. Reg.) may be even more cumbersome for ETC programmes, considering the need to coordinate with other countries concerned. Other examples: The annual closure of programmes suits bigger investment programmes, where audit of projects can be efficiently closed on functionally independent project phases, taking place in just one MS; on the contrary, for ETC the control and audit work in different MSs, with different rules and timetables, may be extremely time consuming and costly, therefore exceeding the benefits of the annual closure. Project data to be transmitted four times a year, twice a year spending forecast (Art. 102 Gen. Reg.), as well as the early annual reporting by 30.04. In the light of ETC specific eligibility rules, there is also no added value in the requirement to designate the same controllers for the ETC as for the national operational programmes (Art. 22(4) ETC Reg.), changing current functioning systems. **Exceptions for ETC programmes should be added and proportionality principles should be strengthened.**
15. **Committees and development of delegated, implementing acts or guidance by the European Commission:** There is strong appeal to the European Commission to assure that the specificities of the ETC are discussed and reflected in foreseen acts and that ETC representation is assured in all relevant committees and working groups.

⁴ INTERACT work carried out with ETC programme managers can be beneficial.